



Body corporate maintenance

Basics – where to start

1. Survey plan:
 - a. Standard
 - b. Building
2. Module
 - a. Accommodation
 - b. Standard
 - c. Commercial
 - d. Small
 - e. 2 Lot



Default position

1. Common property = body corporate

The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.

1. Lot = owner

The owner of a lot included in the scheme must maintain the lot in good condition.



Exceptions

1. Causation
2. Incidental works
3. Improvements
4. Utility infrastructure
5. Exclusive use
6. Building format plan



Causation

Causation - damage caused by something else and not due to lack of maintenance of the item (eg leak from upstairs has damaged ceiling)

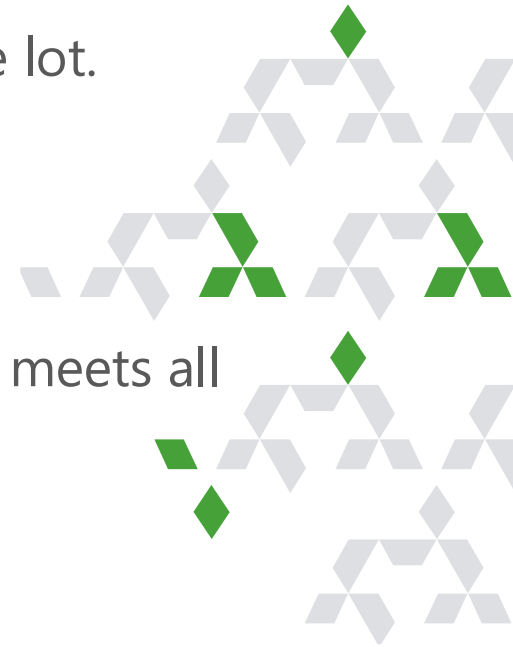
Examples:

- Car bumps into common property
- Flexi hose leak from one lot into another
- Drilling a hole into a rooftop membrane
- Not maintaining tiles or grout



Causation quiz

- Body Corporate is responsible for maintaining rooftop in good condition.
 - The roof leaks because of a hole and causes water damage to internal of the lot.
 - Who is responsible for the repair to the lot?
-
- A gutter that the body corporate is responsible for is in good condition and meets all standards.
 - During severe rainfall the gutter can't cope with the volume of water.
 - Water backflows into a lot and causes water damage to internal of the lot.
 - Who is responsible for the repair to the lot?



Incidental works

Incidental works – when carrying out maintenance additional works are required

Examples:

- Tiling works when replacing membrane
- Cutting a hole in wall to access utility infrastructure the Body Corporate' is responsible for

Esplanade [2014] QBCCMCmr 449 the adjudicator relevantly provided:

I further note that installing a new membrane on the open deck areas will require removal of the existing tiles, existing small wooden deck, and the spa. New tiles will be required to replace the existing tiles however the existing wooden deck and spa should be able to be returned to their positions after the waterproofing membrane is replaced. I also note the applicant has nominated a replacement tile that is quoted as less expensive than replacing the tiles with a like tile and pattern.

I am therefore satisfied the body corporate should pay the entire cost of waterproofing the open deck areas, retiling these areas, and replacing the existing fixtures...

The tiles are currently in good condition and unlikely to require any further maintenance for at least ten years. Given the replacement tiles and pattern nominated by the applicant has been quoted to cost less than a like for like replacement, the body corporate should pay the entire cost of replacement tiles

Incidental example

- Body Corporate is replacing the waterproof membrane on a balcony
 - The tiles are in good condition and need to be pulled up
 - Who is responsible for replacing the tiles?
-
- Body Corporate is replacing the waterproof membrane on a balcony
 - The tiles are not in good condition and are the reason the membrane needs replacing
 - Who is responsible for replacing the tiles?
 - Who is responsible for replacing the membrane?



Improvements

Improvement – changes to common property

Examples:

- Lot owner installs an awning on the common property over a window
- Cutting a hole in wall to access utility infrastructure the Body Corporate' is responsible for

An owner who is given an authority under this section— (a) must comply with conditions of the authority; and (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

Improvements example

- Lot owner installs a solar panel on the common property rooftop
- Who is responsible for the solar panel maintenance?



Utility infrastructure (1 of 2)

Most complicated example

Is it common property - default position is that all utility infrastructure is common property and therefore the maintenance obligation of the body corporate unless an exception will apply

- First exception is not being common property (section 20 of BCCMA). Satisfied if the infrastructure:
 - Only supplies utility services to a lot;
 - Is within the boundaries of the lot; and
 - Not in a boundary structure.
- Another exception is if an agreement was entered into when installed that it would not form common property (for example, Telstra antenna).

If neither exception applies – it is common property.

If first exception applies – it is part of the lot.

Utility infrastructure (2 of 2)

Even if common property, the lot owner can still be made to be responsible for the cost of the maintenance of the infrastructure if:

- The infrastructure only relates to servicing a lot; and
- Is one of the following:
 - (A) hot-water systems;
 - (B) washing machines;
 - (C) clothes dryers;
 - (D) solar panels;
 - (E) air-conditioning systems;
 - (F) television antennae;
 - (G) another **device** providing a utility service to a lot

Key issue here is DEVICE. If not primarily associated with a device – it is still body corporate infrastructure.



Utility infrastructure example

- A pipe is only connected to a toilet in a lot
- The pipe cracks and needs repairs
- Who is responsible for the pipe repairs?
- An electricity cable from the main switchboard (servicing multiple lots) to the transformer is damaged
- Who is responsible for the cable repairs?
- A gutter on the common property only services a single lot
- Who is responsible for the gutter repairs?



Building format plan

In a building format plan the Body Corporate takes on the maintenance obligation for many items it would otherwise not be responsible for:

Good condition:

- railing, parapets and balustrades on, whether precisely, or for all practical purposes, the boundary of a lot and common property;
- doors, windows and associated fittings situated in a boundary wall separating a lot from common property;
- roofing membranes that are not common property but that provide protection for lots or common property

Structurally sound condition (not good condition):

- Foundation structures;
- Roofing structures providing protection;
- Essential supporting framework

Building format plan examples

- The paint on a structural beam in a building format plan needs repainting
- Who is responsible?
- A balcony door opening from a lot's inside to the outside needs replacing
- Who is responsible?
- A pergola on a podium balcony needs replacing
- Who is responsible?



Exclusive use

Default position is that a grant of exclusive use transfer maintenance obligations over the common property to a lot owner.

An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

What adjudicators say:

- If there is any reference to maintenance obligations in the by-law the obligations are ONLY what is stated in the by-law. Can incidentally reduce the maintenance obligations
- BFP exception - Body Corporate remains responsible for roofing membranes in good condition and structural elements in structurally sound condition – unless there is a specific note in the by-law to the contrary

Exclusive use examples

- The EU by-law is silent as to maintenance obligations
- Who is responsible for the lighting costs of an exclusive use area
- The EU by-law specifically provides that a lot owner is responsible for the painting of an exclusive use area
- Who is responsible for cleaning of the exclusive use area?
- The EU by-law (in a BFP) says that a lot owner is responsible for keeping a roofing membrane in good condition
- Who is responsible for maintaining the roofing membrane?





Waterproof membranes

Waterproof membranes

- What is a waterproof membrane? Usually an applied liquid, that then once dried, stretches and prevents water from egressing.
- Maintenance issues (and who is responsible for the costs of maintenance) continue to be one of the most prevalent issues for owners and bodies corporate.
- Waterproof membranes are one of the most common, and misunderstood, maintenance issues within a building.



Common property or a lot - SFP

- Maintenance starting point is usually determining common property or part of the lot
- Standard format plan:
 - lot owner will be responsible for any waterproof membranes in their lot.
 - Body corporate responsible for common property

Common property or a lot - BFP

- Building format plan – some maintenance obligations are transferred from lot owner's lot to body corporate
 - lot owner will be responsible for any waterproof membranes in their lot except:

roofing membranes that are not common property but that provide protection for lots or common property
 - body corporate remains responsible for common property

Bathroom membranes

- A common misconception is that in a building format plan, the body corporate is responsible for all waterproofing membranes in the building.
- However, although a bathroom waterproofing membrane may provide protection for a lot, it is not a *roofing membrane*.
- This position was confirmed in The Dalgety (Apartments) [2020] QBCCMCmr 118 where the adjudicator relevantly provided:

"...However, I do not consider waterproofing within the bathroom of a lot can rationally be categorised as a roofing membrane..."
- Lot owner will remain responsible for this maintenance

Balconies and rooftops



- For lots created in a building format plan, the most common roofing membranes are those located:
 - within a balcony of a lot (which acts as a rooftop structure for the lot below);
or
 - on the common property rooftop of the scheme.
- These membranes fall within the maintenance obligation of the body corporate.

No membranes

- Many older buildings were not constructed with a waterproofing membrane on balconies. At the time of construction, building standards did not necessitate such a membrane to be installed like in more contemporary developments.
- Importantly, the body corporate's maintenance obligations do not extend to an obligation to carry out an improvement to install a new waterproof membrane except in limited circumstances.
- In Bayview Tower [2022] QBCCMCmr 161 the adjudicator relevantly provided:

there was no duty on the body corporate under this section to repair a membrane if the balconies are constructed without a membrane

New membranes



- However, in Sanctuary Gardens [2007] QBCCMCmr 570, the adjudicator provides:

I find that there is no duty on the body corporate under this section to repair a membrane if the balconies are constructed without a membrane. However, there is a duty on the body corporate to take steps to maintain the structure of a lot, and it may be that providing a membrane is the way to do that.

- Accordingly, if the lack of membrane will otherwise cause a maintenance issue that the body corporate is responsible for (such as structural damage to the building) then the body corporate would be obliged to install a new membrane.
- This duty is not related to the membrane duty – it is related to other body corporate maintenance obligations

Other obligations

- Maintaining common property
- If the way to maintain one of these items means installing a membrane, then that is the solution

- (a) maintain in **good condition**—
 - (i) railings, parapets and balustrades on, whether precisely, or for all practical purposes, the boundary of a lot and common property; and
 - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
 - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
- (b) maintain in a **structurally sound condition** the following elements of scheme land that are not common property—
 - (i) foundation structures;
 - (ii) roofing structures providing protection;
 - (iii) essential supporting framework, including load-bearing walls.

Tiles and ancillary works

- To carry out waterproof membrane rectification works, any tiles installed on top of the membrane will need to be removed and replaced.
- Those tiles (forming part of the lot) are not part of the roofing membrane and will remain the maintenance responsibility of the lot owner.

- However, in Esplanade [2014] QBCCMCmr 449 the adjudicator relevantly provided:

I further note that installing a new membrane on the open deck areas will require removal of the existing tiles, existing small wooden deck, and the spa. New tiles will be required to replace the existing tiles however the existing wooden deck and spa should be able to be returned to their positions after the waterproofing membrane is replaced. I also note the applicant has nominated a replacement tile that is quoted as less expensive than replacing the tiles with a like tile and pattern.

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The tiles are currently in good condition and unlikely to require any further maintenance for at least ten years. Given the replacement tiles and pattern nominated by the applicant has been quoted to cost less than a like for like replacement, the body corporate should pay the entire cost of replacement tiles

Other considerations

- If the tiles / grout also in need of work – lot owner still responsible for that work
- If the tiles / grout not being in good condition:
 - Accelerated the damage
 - Caused the damage,

Then can reduce or pass on maintenance costs to lot owner

- Need clear building advice and evidence to prove this.

Damage to/from the membrane



- Even though the body corporate is responsible for the maintenance of the membrane, if a lot owner causes damage to the membrane, the lot owner is responsible for that damage. Relevantly, the regulation module provides:
To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2), the body corporate may recover the prescribed costs, as a debt, from a person, whether or not the owner of the lot, whose actions cause or contribute to the damage or deterioration of the part of the lot.
- This protection is commonly relied on by bodies corporate when:
 - owners carry improvements to their lot and damage the membrane;
 - owners install linings on the floor above the membrane and this accelerates the deterioration of the membrane; or
 - owners do not properly maintain the remainder of their lot (such as the tiles or grout) and this damages the membrane.

Damage to/from the membrane

- Similarly, if the waterproofing membrane is not maintained by the body corporate, and this results in damage to the lot, the body corporate can be held responsible for the damage to the lot.

281 Order to repair damage or reimburse amount paid for carrying out repairs

- (1) If the adjudicator is satisfied that the applicant has suffered damage to property because of a contravention of this Act or the community management statement, the adjudicator may order the person who the adjudicator believes, on reasonable grounds, to be responsible for the contravention—
 - (a) to carry out stated repairs, or have stated repairs carried out, to the damaged property; or
 - (b) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out to the property by the applicant.

Example—

A waterproofing membrane in the roof of a building in the scheme leaks and there is damage to wallpaper and carpets in a lot included in the scheme. The membrane is part of the common property and the leak results from a failure on the part of the body corporate to maintain it in good order and condition. The adjudicator could order the body corporate to have the damage repaired or to pay an appropriate amount as reimbursement for amounts incurred by the owner in repairing the property.

- (2) The order can not be made if—
 - (a) for an order under subsection (1)(a)—the cost of carrying out the repairs is more than \$75,000; or
 - (b) for an order made under subsection (1)(b)—the amount fixed by the adjudicator would be more than \$10,000.



Flexi hose case study

Lot owner responsibility

In *River Park View* [2006] QBCCMCmr 29:

Section 109(3)(b) Standard Module states that the occupier of the lot is responsible for maintaining utility infrastructure..... in good order and condition, to the extent that the utility infrastructure relates only to supplying utility services to that lot. Whilst I accept that Mr Bracanin may have maintained the water filter to the best of his ability, he must bear the responsibility for the fact that it was defective, or became defective. He has failed in his statutory duty to maintain the water filter. He may well have a claim against the water company.



Soleil

- Body corporate actively reminded all owners about their flexi hoses creating a risk of water damage (which they are not obliged to do)
- Some owners ignored this and their flexi hoses burst – common cause for water claims
- Body corporate resolved that these owners should bear the insurance excess costs
- Owners challenged that decision in the Commissioner's Office arguing that:
 - *the Insurance Excess creates an unreasonable financial burden on the Applicants; and*
 - *it is unreasonable for the Body Corporate to require the Applicant to pay the Insurance Excess in circumstances where the Body Corporate provided insufficient notice of the defective flexi-hoses.*



Soleil

Lot 4704:

[22] However it is evident from the respondent's submission that a lower excess for water damage could not be obtained due to the claim history for the Scheme, as per the attached correspondence from the Body Corporate's insurance broker.

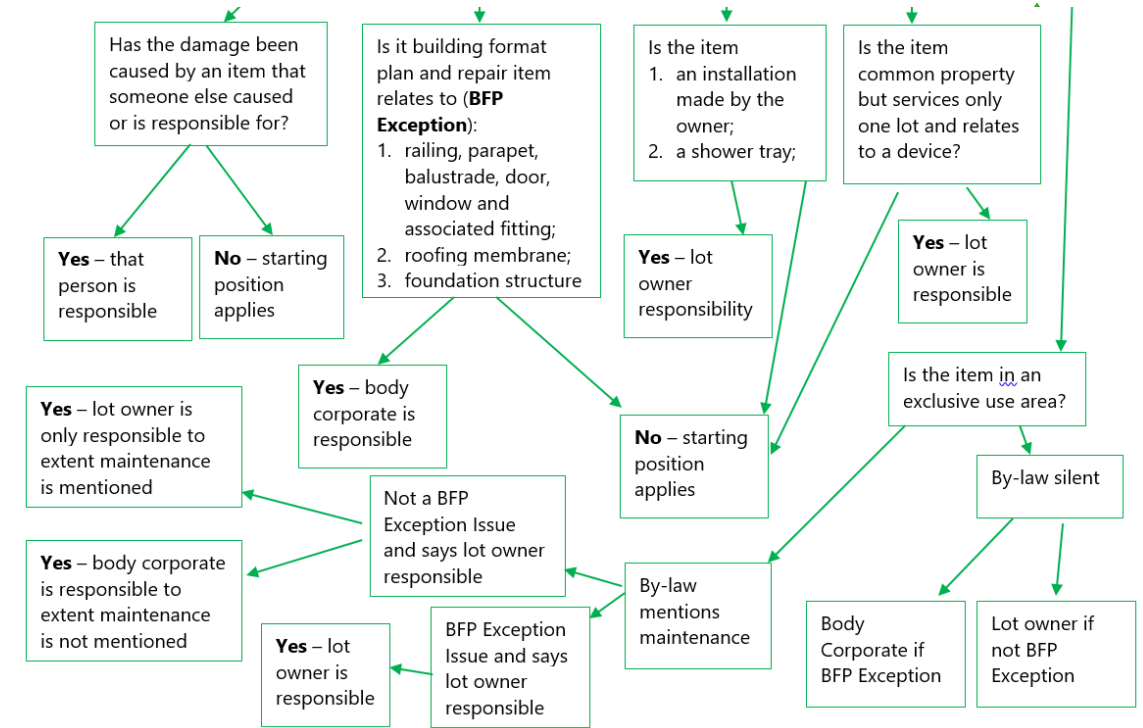
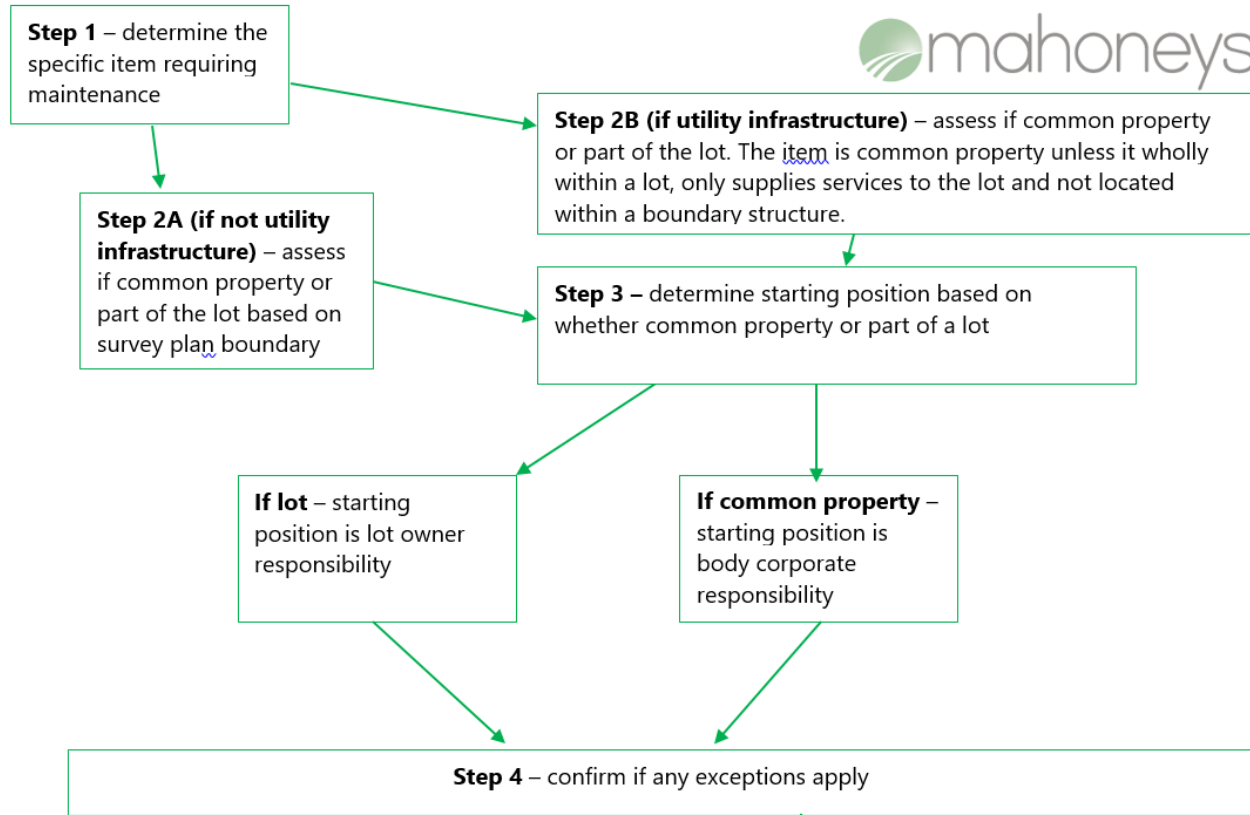
[23] The applicant does not argue, nor provide any evidence to demonstrate, that a lower water damage excess was available. Consequently, I accept that the body corporate was unable to purchase an insurance policy with a lower water damage excess. In circumstances where a lower excess was unavailable, I cannot accept that the burden placed upon lot owners was unreasonable even if it was heavy. The body corporate is obliged to insure each building within the scheme that contains a lot[7] and it appears that the only way it could achieve this was to purchase a policy with a \$10,000 water damage excess.

Lot 4205:

- Same comments as above but also:

[27] The Body Corporate's suggestion of having the applicant contact the building manager to arrange a contractor to replace flexi hoses, does not alleviate the applicant from its obligations under section 201 of the Accommodation Module. The owner of a lot is obliged to maintain the utility infrastructure within the boundaries of the lot in good condition.

Flow chart



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The background of the slide is a faded, wide-angle photograph of a city. A large, white steel truss bridge spans a body of water in the foreground. In the background, a dense urban skyline with various high-rise buildings is visible under a clear sky. The overall tone is professional and modern.

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