



With most maintenance requests that come through the Hartley's Body Corporate Management office, the question over who is responsible for the repair and the cost of an item is always at the forefront of any maintenance enquiry. None of us want to spend money if we can avoid it.

This Fact Sheet explores the general guidelines to assist owners and managers in making an informed decision when it comes to their maintenance.

First, let's quickly examine the law.

In general terms *Section 159* of the Body Corporate and Community Management (Standard Module) Regulation 2008 requires a Body Corporate to maintain common property, and *Section 170* provides that the owner of a lot included in a scheme must maintain the lot in good condition. However *Section 159(2)* provides additional maintenance responsibilities under a building format plan.

When a request for maintenance is first received there are a number of important questions that require answering prior to deciding on who is responsible for the maintenance, i.e. the lot owner or the Body Corporate. Following the simple steps below will assist in the evaluation of responsibility.

1. The first step is to identify the plan the building is registered under. A quick check of the survey plan will usually come up with the answer.

There are **two** types of plans relevant to this article and they are Standard Format Plans (SFP's) and Building Format Plans (BFP's) .

- a) A **Standard Format Plan (SFP)** is a subdivision of land with reference to marks on the land or a structural element, e.g. A survey peg or part of the building. These can include a courtyard or carport area and often do.  
If the plan is a SFP, it is extremely unlikely the Body Corporate will be responsible as the owner generally has Torrens Title and owns everything within the surveyed boundary of the lot.
- b) A **Building Format Plan (BFP)** is usually a sub division of a building, (although some townhouse schemes have been registered under this plan), where the boundaries are defined on the plan by references to structural elements of the building, e.g. Walls, floors and ceilings.

If the plan is a BFP then dependent on where the boundary sits will determine if the Body Corporate or owners are responsible for the maintenance and costs.

Once the correct plan has been identified, move to the next evaluation stage.

2. If the plan is identified as a BFP, the next step is to identify the boundaries and where they are located on the plan. This is important as it will provide information on where features such as a window or door sits in relation to the boundary of the lot.
3. Equally important is to then identify if the boundary of the lot is between the lot and an exclusive use, or a private yard on title, or the common property.

To work out the above you will need to review the plans and the bylaws for the scheme and locate the boundaries of the lot. The plans generally will show the boundary of the lot as a thick black line, whilst a lighter and sometimes dashed line will show internal boundaries.

4. The next step is to review the bylaws to establish if there are any exclusive use areas allocated to the lot - these can be found under schedule "E". There may also be a bylaw which states how the exclusive use area is maintained and by whom. If there is no bylaw then the legislation defaults to the person who has been allocated the exclusive use, in this case the lot owner.

If no exclusive area or bylaws exist and maintenance required is in the common property or in a boundary wall between the lot and common property then it is the Body Corporate's responsibility for maintenance. This also relates to any associated hardware or fittings attached to a window or door.

If the maintenance required is within an exclusive use area allocated to the lot and a bylaw does not state otherwise the lot owner is responsible for maintenance.

As you can see it is not always a simple yes or no answer when it comes to determining who is responsible for maintenance in a Body Corporate scheme, so for your assurance and certainty in maintenance matters make sure you utilise the services of a professional Body Corporate management firm who will easily guide you through the process.