

Legislation CMSS Plans

Presented by Andrew Suttie



Platinum Partners



Gold Partners



Silver Partners



Bronze Partners



Member Benefit Partner



History

Act

Modules

.....

CMS

Lot Entitlements

By-Laws

.....

SFP

BFP

VFP

History

- The Torrens System of title registration was introduced into Queensland by the *Real Property Act (Qld) 1861*
- Prior to 1965 Queensland did not have a statutory system of title for units or flats so ownership was achieved through:
 - “company titles schemes” (e.g. Torbreck – 1960 first residential high-rise in Qld)
 - “lease schemes” or
 - “tenancy in common schemes”

History

- 1965 - Building Units Titles Act
- 1973 - Group Titles Act
- 1980 - Building Units & Group Titles Act 1980
- 1985 - Sanctuary Cove Resort Act
- 1988 - Retirement Villages Act
- 1983 - Mixed Use Development Act
- 1987 - Integrated Resort Development Act
- 1989 - South Bank Corporation Act
- 1997 - BCCMA and Regulations
- 2008 - new Regulations
- 2020 - new Regulations
- 3000 – new Act??????

BCCMA

Body Corporate and Community Management Act 1997

- Took effect from 13 July 1997
- Introduced Community Management Statements (CMSs)
- Basic requirements for CTS:
 - 2 or more lots
 - Common Property
- CTS established by recording CMS and Survey Plan
- Regulation Modules

BCCMA

Primary object of the Act:

The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land, having regard to the secondary objects.

BCCMA

How the primary object is to be achieved:

For the achievement of its primary object this Act provides for:

- (a) the establishment of community titles schemes; and*
- (b) the operation and management of community titles schemes.*

BCCMA

The secondary objects are:

- (a) to balance the rights of individuals with the responsibility for self management as an inherent aspect of a CTS;*
- (b) to promote economic development by establishing sufficiently flexible administrative and management arrangements for a CTS;*
- (c) to encourage the tourism potential of community titles schemes without diminishing the rights and responsibilities of owners, and intending buyers, of lots in a CTS;*

BCCMA

...The secondary objects are:

- (d) to provide a legislative framework accommodating future trends in community titling;*
- (e) to ensure the body corporate for a CTS has control of the common property and body corporate assets it is responsible for managing on behalf of owners of lot in the CTS;*
- (f) to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within a CTS;*

BCCMA

...The secondary objects are:

- (g) to provide appropriate level of consumer protection for owners and intending buyers of lots included in a CTS;*
- (h) to ensure accessibility to information about CTS issues;*
- (i) to provide an efficient and effective dispute resolution process.*

BCCMA

The Act and the Regulation Modules are overseen by the Office of the Commissioner for Body Corporate and Community Management, which:

- has exclusive jurisdiction to determine disputes that are not complex disputes
- provides a conciliation service for the resolution of disputes
- provides an adjudication service for the resolution of disputes
- provides an information service for the public

Regulation Modules

The Regulation Modules contain guidelines about:

- Composition and operation of the committee
- Meeting procedures and requirements
- Engaging Body Corporate Managers and Building Managers
- Financial management
- Property Management
- Insurance
- Administrative (roles and records)

Regulation Modules

Standard – default (no particular requirements)

Accommodation – lots predominantly for accommodation

Commercial – lots predominantly commercial

Small Schemes – must be a basic scheme, no more than 6 lots and no letting agent

Specified Two-Lot Schemes - only 2 lots, not part of a layered arrangement, no letting agent, residential lots only

Regulation Modules

BCCM

Form 19



Queensland
Government

Department of
Justice and Attorney-General

The effect of a change in the regulation module applying to a scheme

Body Corporate and Community Management Act 1997

This form is effective from 1 March 2021

For information visit www.qld.gov.au/bodycorporate or contact the BCCM Office on free call 1800 060 119.

This explanatory note outlines some of the implications of a change to the regulation module applying to a community titles scheme. This note must accompany the voting paper for a general meeting where that voting paper proposes a change to the existing module identified in the community management statement. You should carefully consider the differences between the regulation modules before voting on the motion. **NOTE:** The **bold text** indicates a departure from the 'standard position' as represented by the *Body Corporate and Community Management (Standard Module) Regulation 2020*.

Subject	Standard Module	Accommodation Module	Small Schemes Module	Commercial Module	Specified Two-Lot Schemes Module
Committee	If the body corporate elects a committee, it must consist of a chairperson, secretary, treasurer, and it may also include ordinary committee members.	The same requirement as the Standard Module.	If the body corporate elects a committee, it must consist of a secretary and a treasurer.	The committee consists of a chairperson, secretary, treasurer, and it may also include ordinary committee members.	A scheme under this module is not required to elect a committee.
	An individual lot owner can only nominate themselves, another lot owner or a member of the owner's family for election as a committee voting member.	The same requirement as the Standard Module.	A lot owner or a person nominated by a lot owner is eligible to be the secretary or treasurer of the body corporate.	A lot owner or a person nominated by a lot owner is eligible to be a voting member of the committee.	
	The relevant limit for committee spending can be set by the body corporate. If no amount is set it is an amount determined by multiplying the number of lots in the scheme by \$200.	The same requirement as the Standard Module.	The same requirement as the Standard Module.	There is no limit for committee spending.	
General meetings	The notice of a general meeting must include a voting paper that states each motion to be considered at that meeting.	The same requirement as the Standard Module.	There is no requirement for voting papers to be included in the notice of a general meeting.	The same requirement as the Standard Module.	A scheme under this module is not required to hold general meetings. Body corporate decisions are made by written agreements (lot owner agreements) between the owners of both lots included in the scheme.
	A person must not hold: <ul style="list-style-type: none"> If there are 20 or more lots in the scheme, proxies greater in number than 5% of the lots. If there are less than 20 lots in the scheme, more than 1 proxy. 	The same requirement as the Standard Module.	No restriction on the number of proxies a person may hold at a general meeting.	No restriction on the number of proxies a person may hold at a general meeting.	
	A proxy vote cannot be used for electing or appointing a member of the committee.	The same requirement as the Standard Module.	No equivalent provision.	No equivalent provision.	

Body Corporate and Community Management Act 1997 • Form 19 • V8 • March 2021
Body Corporate and Community Management (Accommodation Module) Regulation 2020 Section 80(5)
Body Corporate and Community Management (Commercial Module) Regulation 2020 Section 48(5)
Body Corporate and Community Management (Standard Module) Regulation 2020 Section 90(5)

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Regulation Modules

Subject	Standard Module	Accommodation Module	Small Schemes Module	Commercial Module	Specified Two-Lot Schemes Module
Body corporate managers, service contractors and letting agents	Not eligible to be a voting member of the committee.	The same requirement as the Standard Module.	Body corporate managers and service contractors are not eligible to be secretary or treasurer.	Body corporate managers only are ineligible to be a voting member of the committee.	A body corporate manager or service contractor engaged by a body corporate for a scheme under this module is not eligible to be a representative of an owner of a lot included in the scheme.
	The term of engagement of a body corporate manager must not be longer than three years, including options.	The same requirement as the Standard Module.	The term of engagement of a body corporate manager must not be longer than one year, including options.	The same requirement as the Standard Module.	The term of engagement of a body corporate manager must not be longer than one year, including options.
	The term of engagement of a service contractor must not be longer than ten years.	The term of engagement of a service contractor must not be longer than 25 years.	The term of engagement of a service contractor must not be longer than one year.	The term of engagement of a service contractor must not be longer than 25 years.	The term of engagement of a service contractor must not be longer than one year.
	The term of authorisation of a letting agent must not be longer than ten years.	The term of authorisation of a letting agent must not be longer than 25 years.	There cannot be a letting agent for a scheme under this module.	The term of authorisation of a letting agent must not be longer than 25 years.	There cannot be a letting agent for a scheme under this module.
Financial matters	The body corporate must be authorised by a resolution without dissent before it can borrow an amount exceeding the number of lots multiplied by \$250.	The body corporate must be authorised by a special resolution before it can borrow an amount exceeding the number of lots multiplied by \$250.	The body corporate must be authorised by a resolution without dissent before it can borrow more than \$3000.	The body corporate must be authorised by special resolution before it can borrow an amount exceeding the number of lots multiplied by \$250.	A body corporate for a scheme under this module may fund body corporate expenses in a way agreed between the owners of the lots included in the scheme. There is no requirement for the body corporate to decide annual budgets, levy contributions, establish administrative and sinking funds or prepare annual statements of accounts.
	The body corporate must establish and maintain an administrative fund and a sinking fund.	The same requirement as the Standard Module.	The same requirement as the Standard Module.	The body corporate may also keep and maintain a promotion fund.	
Property matters	The body corporate may, by special resolution, grant or amend a lease for three years or less over part of the common property.	The body corporate may, by special resolution, grant or amend a lease for ten years or less over part of the common property.	The same requirement as the Standard Module.	The body corporate may, by special resolution, grant or amend a lease for ten years or less over part of the common property.	The body corporate may, by lot owner agreement, grant or amend a lease over part of the common property. There is no maximum time limit for the lease.
Records	The body corporate must allow all committee members reasonable access (without payment of a fee) to the body corporate records. Members of the body corporate who are not committee members are entitled to access after payment of a fee prescribed under the module.	The same requirements as the Standard Module.	The body corporate must allow the secretary and treasurer reasonable access (without payment of a fee) to the body corporate records. Members of the body corporate who are not committee members are entitled to access after payment of a fee prescribed under the module.	The same requirements as the Standard Module.	The body corporate must allow the owners of each lot included in the scheme reasonable access to the body corporate records. The first request for access does not incur a fee. The body corporate must also appoint a person prescribed in the regulation to keep the body corporate records.

Regulation Modules

- If the body corporate was created prior to 13 July 1997 it had 3 years to adopt a regulation module and record a new CMS, failing which it was deemed to have adopted the Standard Module and a standard CMS was generated for the scheme.
- A change of regulation modules requires:
 - Special Resolution
 - BCCM Form 19
 - New CMS recorded at titles office

Standard CMS

STANDARD COMMUNITY MANAGEMENT STATEMENT Section 285. Body Corporate and Community Management Act 1997

Dealing: 704187630
Title Reference: 19201384
Lodgment: 1071781
Date: 15/07/2000 12:28:08

1. Name of Community Title Scheme

BEAUTY POINT

2. Regulation Module

Body Corporate and Community Management (Standard Module) Regulation 1997

3. Name of Body Corporate

BODY CORPORATE FOR BEAUTY POINT COMMUNITY TITLES SCHEME 13722

4. Address for service of documents on the body corporate

15/19 BELLEVUE TERRACE
ST LUCIA QLD 4067

5. By-Laws

Taken to be those in effect as at 13 July 2000
[section 285 (5)(a) Body Corporate and Community Management Act 1997]

6. Contribution Schedule 7. Interest Schedule

Lot	Entitlement	Lot	Entitlement
1 in BUP1384	1	1 in BUP1384	1
2 in BUP1384	1	2 in BUP1384	1
3 in BUP1384	1	3 in BUP1384	1
4 in BUP1384	1	4 in BUP1384	1
5 in BUP1384	1	5 in BUP1384	1
6 in BUP1384	1	6 in BUP1384	1
7 in BUP1384	1	7 in BUP1384	1
8 in BUP1384	1	8 in BUP1384	1
9 in BUP1384	1	9 in BUP1384	1
10 in BUP1384	1	10 in BUP1384	1
11 in BUP1384	1	11 in BUP1384	1
12 in BUP1384	1	12 in BUP1384	1
13 in BUP1384	1	13 in BUP1384	1
14 in BUP1384	1	14 in BUP1384	1
15 in BUP1384	1	15 in BUP1384	1
16 in BUP1384	1	16 in BUP1384	1
17 in BUP1384	1	17 in BUP1384	1
18 in BUP1384	1	18 in BUP1384	1
19 in BUP1384	1	19 in BUP1384	1
20 in BUP1384	1	20 in BUP1384	1
21 in BUP1384	1	21 in BUP1384	1
22 in BUP1384	1	22 in BUP1384	1
23 in BUP1384	1	23 in BUP1384	1
24 in BUP1384	1	24 in BUP1384	1
25 in BUP1384	1	25 in BUP1384	1
26 in BUP1384	1	26 in BUP1384	1
27 in BUP1384	1	27 in BUP1384	1
28 in BUP1384	1	28 in BUP1384	1

Total Lots: 28 Aggregate 28 Total Lots: 28 Aggregate 28

Community Management Statements

- A CMS is defined by Section 12 of the Act as a document that:
 - (a) identifies land;
 - (b) complies with the requirements of the Act.
- A CMS is a statutory contract between the body corporate and the owners and occupiers of Lots within a CTS
- A CMS must be recorded to create a CTS
- A CMS has no effect unless it is recorded
- A CMS can not be changed. Any approved amendments to a CMS must be incorporated into a new CMS for recording at the Titles Office

Community Management Statements

CMS - Includes components to identify the scheme land:

- Identifying information – name, unique number (allocated by the Titles Office when the CTS is registered), address for service
- Regulation module
- Contribution schedule lot entitlements and interest schedule lot entitlements (Schedule A)
- Future development rights (Schedule B)
- By-Laws (Schedule C)
- Statutory easements; service location diagrams; landscape and architectural codes (Schedule D)
- Exclusive Use allocations and plans (Schedule E)

First CMS

- Recording of CMS takes effect under Section 115 of the Land Titles Act 1994
- Lodged with the General Request Form 14
- CMS must comply with format required by registrar (e.g. EU plans)
- Registrar is not required to check whether CMS is compliant (e.g. by-laws)
- First CMS must be signed by the original owner (i.e. the owner of the land which is being subdivided to form the CTS)

New CMS

- New CMS must be approved by the body corporate
- New CMS must be dated, signed and sealed by 2 committee members, one of whom must be the chairperson or secretary (unless approved otherwise by the authority of an ordinary resolution) – make sure the seal is legible and includes the correct name and number!
- Must be lodged within 3 months of approval (really?)
- Approval:
 - Resolution without dissent for changes to Schedules A (with exceptions), B or D (or to an exclusive use (EU) by-law in Schedule C);
 - Special resolution for changes to Schedule C (other than EU by-laws);
 - Committee or ordinary resolution for swapping EU spaces, subdividing a lot (not affecting common property), making changes of no substance (such as correcting typographical errors).

CMS - Schedule A

- The original owner determines the lot entitlements when preparing the first CMS for the scheme.
- There are two schedules of lot entitlements recorded in the CMS:
 - Contribution Schedule Lot Entitlements; and
 - Interest Schedule Lot Entitlements
- Since 2011, new schemes are required to adopt one of the following deciding principles when determining lot entitlements:
 - Interest Schedule Lot Entitlements
 - **Market Value Principle**
 - Contribution Schedule Lot Entitlements
 - **Equality Principle; or**
 - **Relativity Principle**

CMS - Schedule A

Interest Schedule Lot Entitlements

- Generally required to reflect the market value of each lot
- Used to determine:
 - each lot owner's share of the common property
 - each lot owner's share in the scheme land and body corporate assets in the event the scheme is terminated
 - government rates, land tax and other statutory charges based on land value
 - any levy raised for the purpose of insuring the buildings on scheme land

CMS - Schedule A

Contribution Schedule Lot Entitlements

- Used to determine the proportion of the administrative and sinking fund levies that are to be paid by the owner of a lot
- Used to determine the value of a lot owner's vote when voting on an ordinary resolution by poll vote

CMS - Schedule A

Contribution Schedule Lot Entitlements

- Used to determine the proportion of the administrative and sinking fund levies that are to be paid by the owner of a lot
- Used to determine the value of a lot owner's vote when voting on an ordinary resolution by poll vote

CMS - Schedule B

Development Rights

- Determines how the scheme can be developed in the future including by:
 - subdividing existing scheme land to create new lots and common property (staged subdivisions)
 - removing lots and common property from scheme land
 - creating layered arrangements
 - granting exclusive use to lots
 - determining changes to lot entitlements
- If the proposed future development is consistent with Schedule B, the committee is required to sign off on a new CMS within 30 days of receiving it from the developer.

CMS - Schedule C

By-laws may only provide for the following:

- The administration, management and control of the common property and body corporate assets
- The regulation of, and conditions applying to, the use and enjoyment of:
 - lots included in the scheme;
 - common property, including utility infrastructure;
 - body corporate assets, including easement areas relevant to common property; and
 - services and amenities supplied by the body corporate.
- Other matters the BCCMA permits to be included in by-laws

CMS - Schedule C

A by-law will be invalid if it:

- is inconsistent with BCCMA, regulation module or another Act;
- restricts the type of residential use in circumstances where a lot can be lawfully used for residential purposes;
- restricts or prevents a transmission, transfer, mortgage or other dealing in relation to a lot;
- discriminates between types of occupiers;
- imposes a monetary liability on an occupier or owner of a lot;
- is oppressive or unreasonable.

CMS - Schedule D

Schedule D may include:

Statutory easements imposed under the Land Title Act between the lots and common property for Support, Shelter, Projections, Utility Services and Infrastructure

Services location diagrams – required for changes to existing services or addition of new services for SFP lots

Architectural and landscape codes, including the establishment and operation of an architectural review committee

CMS - Schedule E

Schedule E records any areas of common property or body corporate assets which have been allocated as exclusive use under an exclusive use by-law in Schedule C.

An exclusive use by-law attaches to a lot and gives the owner or occupier of the lot exclusive use to the rights and enjoyment of, or other special rights about:

- Common property
- Body corporate assets

If an exclusive use by-law attached to a lot that is a subsidiary scheme, the exclusive rights are for the benefit of that scheme

The common property or body corporate asset must be specifically identified in the by-law or allocated by a person authorised under the by-law to make the allocation (***authorised allocation***) or by 2 or more owners under a reallocation agreement (***agreed allocation***)

Before the registrar records a new CMS that includes an exclusive use by-law, the registrar may require the relevant common property or body corporate asset to be identified in a plan (or in another way the registrar directs to avoid doubt about the extent of the common property or the identification or extent of the body corporate asset)

CMS - Schedule E

The titles registry is cracking down on the clarity of EU plans, which are now required to be of sufficient quality for electronic reproduction (because they have progressively lost clarity as each new CMS has been recorded and the EU plans are a copy of a copy of a copy...)

You should familiarise yourselves with the [Registrar of Titles Directions for the Registration of Plans](#)

- Some EU areas can be properly identified by reference to structural elements and the plans signed off by a committee member
- Most surveyors are happy to send you the original drawings without charge, if they're still on file
- If you can save your client the cost of having the EU areas resurveyed, you will be even more loved and respected than you are now!

CMS - Schedule E

11.12 Examples for exclusive use areas:

Figure 11-1: Exclusive use areas in a basement car park. As these are referred to structural features, it is not necessary to mark each corner.

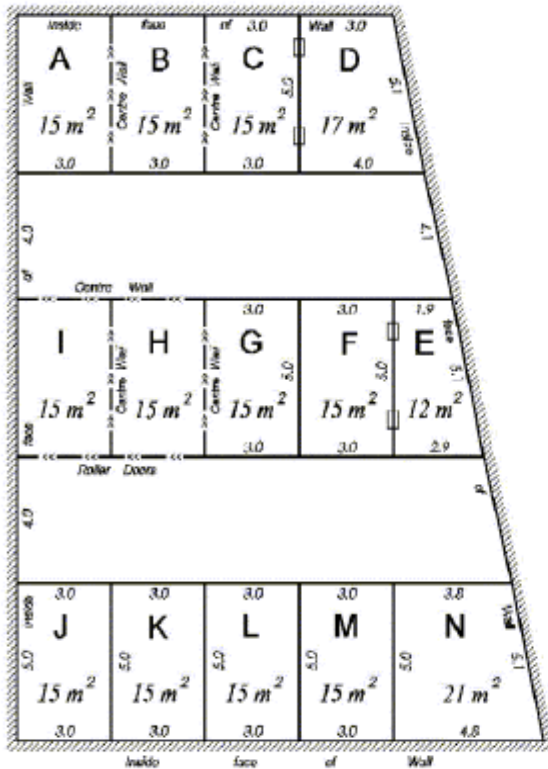
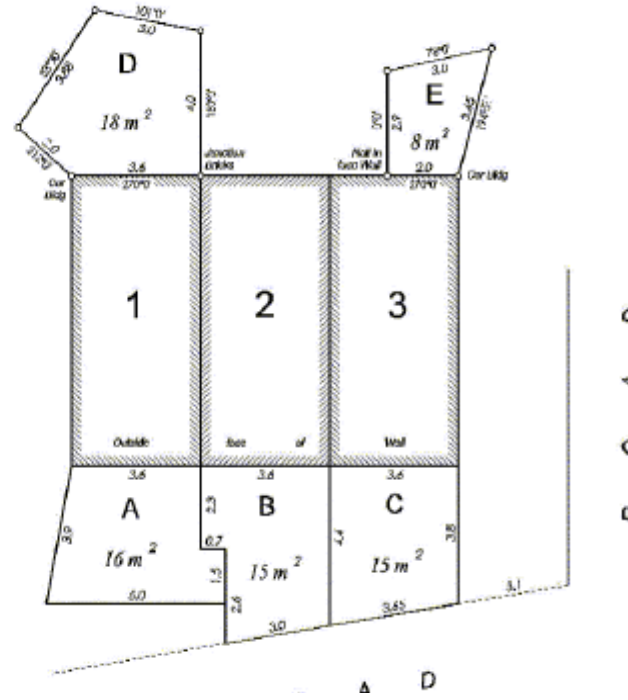


Figure 11-2: Exclusive use areas A to C need distances only, do not require to be marked and a sketch plan may be certified by a member of the body corporate. Exclusive use areas D and E must be fully marked (if no structural elements), dimensioned and certified by a cadastral surveyor.



Plans

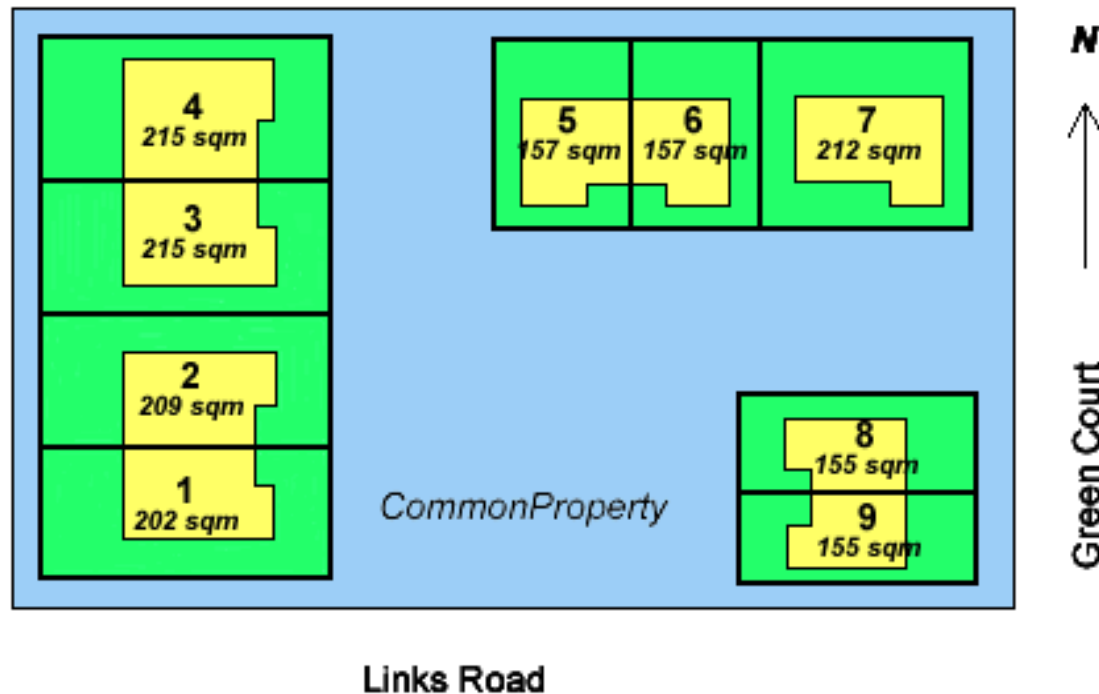
- The Land Title Act 1994 explains the available types of Plan Format
- The plan is created by a licensed cadastral surveyor under the directions issued by the Registrar

There are 3 common types of Plans:

- **Standard Format Plan** - Defined by land boundaries (previously Group Titles Plan)
- **Building Format Plan** – Defined by boundaries of buildings structures (previously Building Units Plan)
- **Volumetric Format Plan** –subdivided air space – 3 dimensional

Standard Format Plan

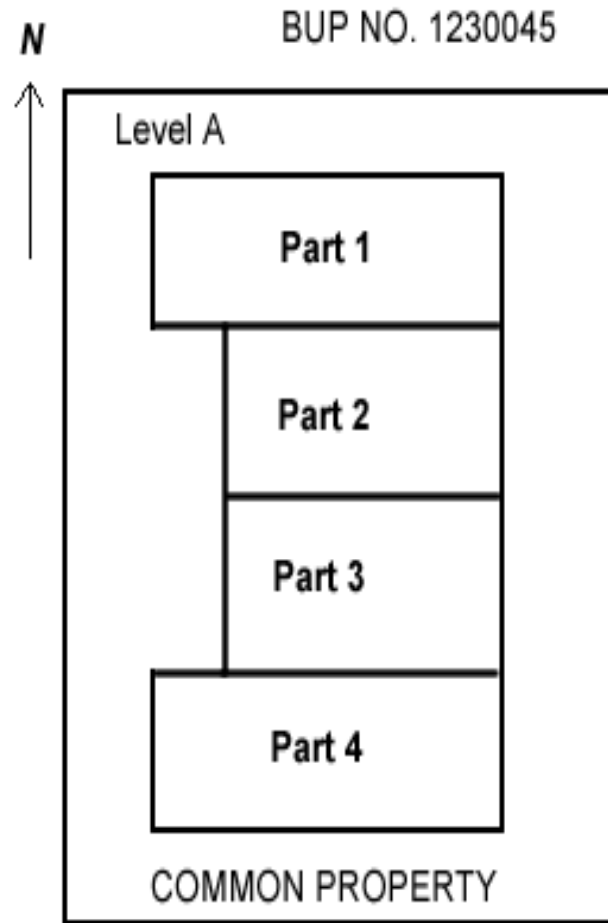
- Section 48B LTA
- A standard format plan of survey defines land using a horizontal plane and references to marks on the ground E.g. survey pegs in the ground.



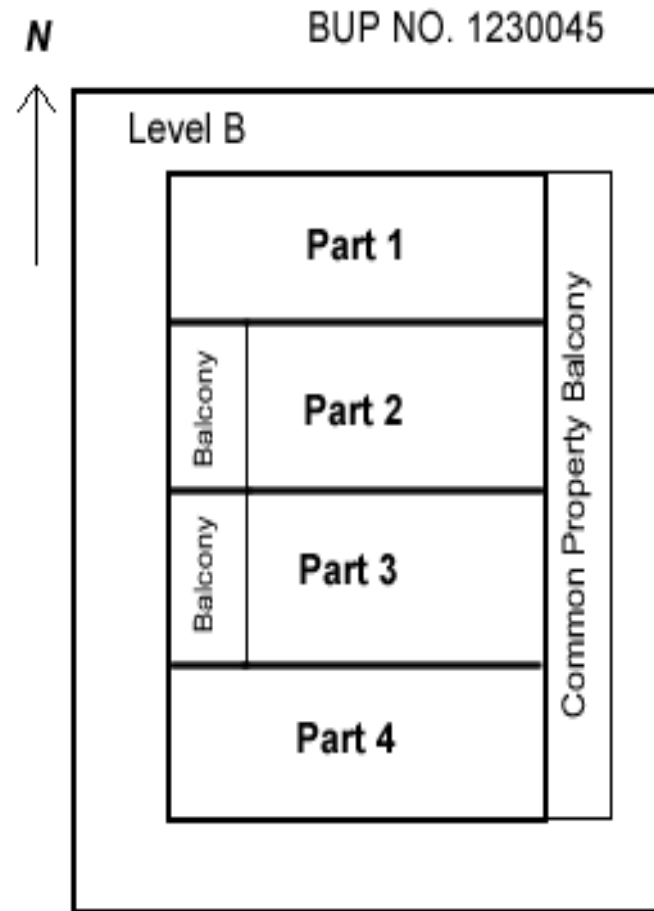
Building Format Plan

- Section 48C LTA
- A building format plan of survey defines land using the structural elements of a building including, for example, floors, walls and ceilings.
- “structural elements”, of a building, includes projections of, and references to, structural elements of the building.
- Projections might be used to define a lot that includes a balcony, courtyard, roof garden or other area not bounded, or completely bounded, by a floor, walls and a ceiling.

Building Format Plan



White Road



White Road

Building Format Plan

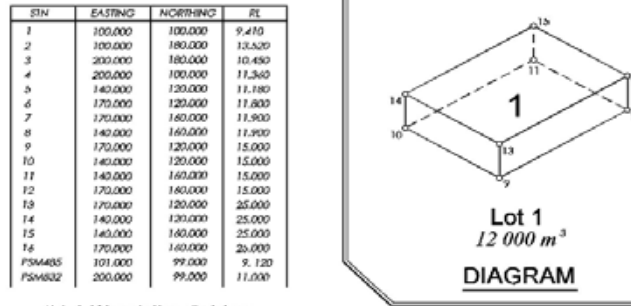
Boundaries

- On building format plans, the boundaries of a lot are represented by hard black lines.
- In the previous diagram, the plan of level A shows the common property and part of the 4 lots (units) that together make up the scheme land.
- The plan of level B shows the balance part of the 4 lots and a common property balcony running along the eastern side of the building. The thin line that outlines the balcony indicates that the balcony is common property.
- Note the balcony attached to the western side of Lots 2 and 3. The hard black lines define the boundary of Lots 2 and 3. The thin line shows that each balcony is within the boundary of Lots 2 and 3.

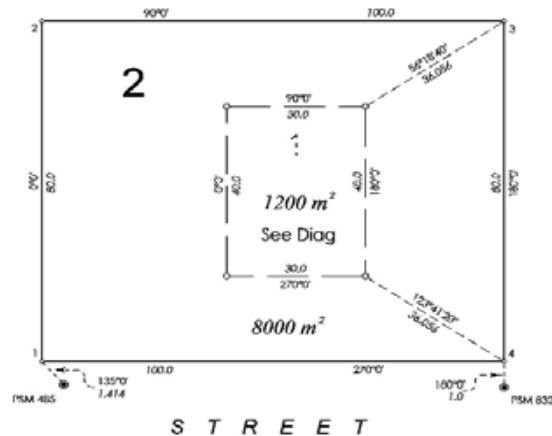
Volumetric Format Plan

Section 48D LTA

A volumetric format plan of survey defines land using 3-dimensional located points to identify the position, shape and dimensions of each bounding surface.

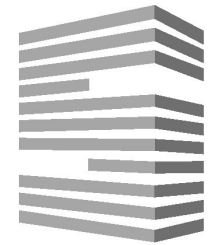


Note: Lot 1 bounded by vertical planes.



Datum for AHD: PSM 123 - RL 8,465
Co-Ordinate System: Plane, Origin Stn 1 100,000 E., 100,000 N.

**Thanks
everyone!!**



STRATIFY
LEGAL

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