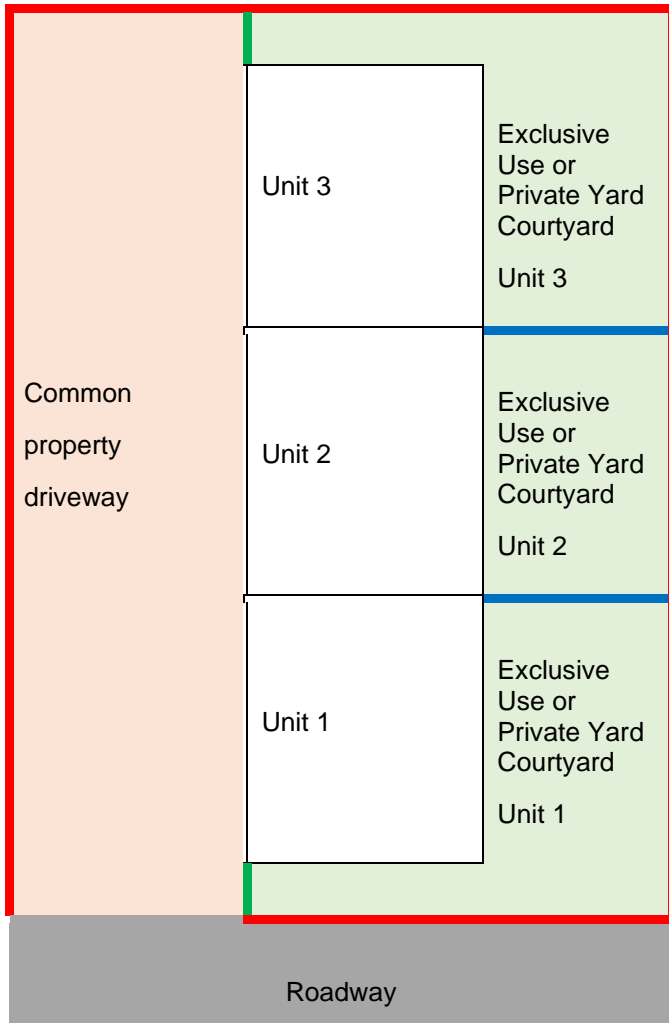


fences

Identifying the exact fence that needs maintenance!



Red Fence

This is the perimeter or boundary fence to the entire scheme.

Maintenance is shared between:

- The body corporate; and
- Adjoining property owner

It does not matter that not all owners have access to all sections of the fence. The fence is boundary between the entire scheme and outside neighbours.

Section 311 of the Body Corporate & Community Management Act 1997 states:-

311 Body corporate to be taken to be owner of parcel for certain Acts etc.

- (1) The body corporate for a community titles scheme is taken to be the owner of the scheme land for the following Acts—
- *Land Act 1994*
 - *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011.*

Accordingly, the body corporate (in conjunction with the neighbouring property owner) is responsible to repair, replace and maintain the perimeter or boundary fence.

This matter has been considered by the Commissioner's Office in Noosa Close [2005] QBCCMCmr 200 (14 April 2005)

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2005/200.html?context=1:query=noosa%20close;mask_path=au/cases/qld/QBCCMCmr

(1) the current dividing fence enclosing the scheme land is the boundary fence for the scheme land for the purposes of section 311 of Body Corporate and Community Management Act 1997; and

(2) the Body Corporate is responsible for the repair, replacement and maintenance of the dividing fence;

Green Fence

This is a dividing fence between an owners Exclusive Use or Private Yard and Common Property.

Maintenance is shared between:

- The body corporate; and
- The owner of the yard

This matter has been considered by the Commissioner's Office in Highfield Terraces [2009] QBCCMCmr 123 (20 March 2009)

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2009/123.html?context=1:query=highfields;mask_path=au/cases/qld/QBCCMCmr

The responsibility for maintenance to (or improvement of) a fence on the boundary (or thereabouts) of an owner's lot and the common property is therefore a joint liability of the body corporate and the respective lot owner.

Accordingly, the body corporate and the relevant lot owner are responsible to repair, replace and maintain the fence between the courtyard and common property.

The body corporate and owner should contribute equally.

Blue Fence

This is a dividing fence between two owners Exclusive Use or Private Yards.

Maintenance is shared between:

- The owner; and
- Adjoining lot owner

This matter has been considered by the Commissioner's Office in The Gardens [2004] QBCCMCmr 351 (13 July 2004)

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QBCCMCmr/2004/351.html?context=1;query=fences%20exclusive%20use;mask_path=au/cases/qld/QBCCMCmr

2. The applicant is jointly responsible with the owner of lot 16 for maintaining the fence between the exclusive use areas of lots 16 and 17; and

Accordingly, the two lot owners are equally responsible to repair, replace fence between the two courtyards.

Why can't the body corporate just fix all the fences!

Yes ... sometimes the body corporate does make the decision to fix all the fences.

Is this technically right ... No!

However, some bodies corporate form the view that they will take on the 'project' for the following reasons:

- All fences are in the same poor condition and it would be a benefit to all to have new well-maintained fences
- No one lot is being significantly advantaged
- No one lot is being significantly disadvantaged

Thus while some bodies corporate take on the 'project' there should be **NO** expectation that this happens.

Boundary Fences

The maintenance and replacement of boundary fences is regulated by the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*



Can we just replace the boundary fence and send a bill for half share to the neighbour?

No ... you need agreement first

- (3) However, other than for urgent fencing work, subsection (1) is only enforceable if—
- (a) the adjoining owners have agreed under this chapter about carrying out the fencing work; or
 - (b) QCAT has ordered that the fencing work be carried out.

How much should the neighbour be contributing?

Equally unless one party wants a 'greater' standard fence.

- 21 Contribution between adjoining owners—generally**
- (1) Adjoining owners are each liable to contribute equally to carrying out fencing work for a sufficient dividing fence.
 - (2) An adjoining owner who wants to carry out fencing work for a dividing fence to a standard greater than the standard for a sufficient dividing fence is liable for the fencing work to the extent that it is greater than the standard for a sufficient dividing fence.

How to get agreement with the neighbour?

There is a relatively detailed process of trying to get agreement with the neighbour including

- Obtaining quotations
- Providing a written notice to contribute
- Etc

How can you force the Neighbour to contribute?

While the Act requires neighbours to contribute the only way to enforce the Act against the neighbour is to refer the matter to QCAT

QCAT

Queensland Civil and Administrative Tribunal

This means a member of Committee being prepared to attend a hearing (usually at the local Court House in front of the local Magistrate).

We are not prepared to go QCAT what are our alternatives?

Without agreement from the Neighbour and if you are not prepared to visit QCAT then the only option left is pay for the fence without contribution from the Neighbour.

Even without getting any money from the Neighbour you still should be getting their agreement.