QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*The Body Corporate for Redvue CTS 36342 v The Superseal Group (Qld) Pty Ltd* [2022] QCAT 212
PARTIES:	**BODY CORPORATE FOR REDVUE CTS 36342** (applicant) **v** **THE SUPERSEAL GROUP (QLD) PTY LTD** (respondent)
APPLICATION NO/S:	BDL147-20
MATTER TYPE:	Building matters
DELIVERED ON:	16 May 2022
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Senior Member Brown
ORDERS:	**The proceeding is dismissed.**
CATCHWORDS:	CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – THE CONTRACT – GENERALLY – where the applicant body corporate entered into a contract with the respondent building contractor for the performance of building work in the common areas of the community title scheme – where the building work is alleged to be defective – whether the dispute, as a preliminary issue, is a domestic building dispute or a major commercial building dispute – consideration of the meaning of 'domestic building work' – finding that the building work was undertaken in respect of a portion of the building neither designed, nor constructed, to be used as a residence – finding that the work could not be characterised as the renovation, alteration, extension, improvement or repair of a home – finding that the dispute was not a domestic building dispute – consideration of whether the building work falls within the meaning of tribunal work and reviewable commercial work – finding that the building dispute was a major commercial building dispute – where the respondent building contractor did not consent to the tribunal deciding the major commercial building dispute – finding that the tribunal does not have jurisdiction to determine the dispute. ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where the tribunal

lacks jurisdiction to determine the proceeding – whether the proceeding would be more appropriately dealt with in the District Court to order a transfer of the proceeding – finding that the transfer of proceeding would be of minimal utility, taking into account the need for pleadings, the potential expense of amending the originating application and the cost of commencing a fresh proceeding.

Acts Interpretation Act 1954 (Qld) s 14A(1), s 14D, s 14 B
Body Corporate and Community Management Act 1997 (Qld), s 10(2)(b), s 35(1), s 35(3), s 36(1), s 94(1)(a), s 152(1)(a)
Queensland Building and Construction Commission Act 1991 (Qld), s 75, s 77(1), s 77(2), s 78, s 79 schedule 1B, s 1, s 4(1), s 4(3), s 9(1), s 9(2) schedule 2.
Queensland Building and Construction Commission Regulation 2018 (Qld) s 46
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 47, s 52(2)(a)

Anderton & Anderton v Parks Horticultural Services Pty Ltd [1996] QDC 281 (unreported)
Fraser Property Developments Pty Ltd v Sommerfeld & Ors [2004] QSC 363
Fraser Property Developments Pty Ltd v Sommerfeld (No 1) [2005] 2 Qd R 394
Marshall v Marshall [1999] 1 Qd R 173
Number One Quality Homes Pty Ltd v Murphy & Anor [2020] QCAT 339

APPEARANCE: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] The Tribunal directed that the following preliminary question be determined:

> *Is the dispute, the subject of the proceedings, a domestic building dispute or a major commercial building dispute.*

[2] The determination of the preliminary question is of significance in the proceedings. If the dispute is a major commercial building dispute, it is clear that the requirements of the *Queensland Building and Construction Commission Act* 1991 (Qld) (QBCC Act) were not complied with at the time of commencement of the proceedings. The absence of such compliance has fatal consequences in respect of a proceeding for a major commercial building dispute.

The background to the dispute

[3] The applicant is the body corporate for a scheme at Redcliffe. The scheme has 41 lots contained in an 8-level building. Level 1 is the ground floor. There are 2 levels

of basement car parking. The upper of these levels is Basement 1. The respondent is a building contractor.

[4] In November 2016 the respondent provided to the applicant a quote in respect of the performance of works at the scheme.[1] The scope of works set out in the quote comprised 24 items of work. The price for the works was $169,675.00 inclusive of GST. Provisional sums totalling $37,325.00 were also included. A revised quote was provided by the respondent to the applicant in May 2017 (the revised quote). [2] It seems uncontroversial that the applicant subsequently accepted the revised quote. It also seems uncontroversial that the parties thereby entered into a contract for the performance by the respondent of the scope of works contained in the revised quote although there is some dispute as to whether the revised quote formed the entirety of the contract or whether the contract between the parties was partly in writing and partly oral. For present purposes, this aspect of the dispute is not relevant in determining the preliminary question.

[5] The works were subsequently undertaken by the respondent and reached practical completion on 14 November 2017.[3] On 21 November 2017 a form 16 inspection certificate was issued in respect of the works.

[6] The applicant says that in October 2018 a liquid began leaking from the ceiling of Basement 1 onto vehicles below. The ceiling of Basement 1 is also referred to in various documents as 'the podium slab'. In March 2019 the respondent undertook remedial works to address the issues identified by the applicant. A form 16 inspection certificate was issued on 4 April 2019 in respect of the remedial works.

[7] The applicant says that, despite the remedial works being undertaken, the podium slab continued to leak.

The statutory framework

[8] The Tribunal has jurisdiction to decide building disputes. A building dispute may be a domestic building dispute or a minor commercial building dispute or a major commercial building dispute.[4]

[9] A 'domestic building dispute' includes a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work.[5] A 'building contractor', for the purposes of domestic building work, includes a person who carries out domestic building work.[6] A 'building owner' means the person for whom domestic building work has been, is being, or is to be, carried out.[7] 'Domestic building work' includes the renovation, alteration, extension, improvement or repair of a home.[8] 'Domestic building work' also includes 'associated work'.[9] 'Associated

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1 Quote QM115 dated 18 November 2016.
2 Quote QM115_Rev001 dated 31 May 2017.
3 QBCC Resolution Services Initial Inspection Report dated 3 June 2020.
4 *Queensland Building and Construction Commission Act* 1991 (Qld) (QBCC Act), s 77(1), schedule 2.
5 Ibid, schedule 2.
6 Ibid, schedule 1B, s 1.
7 Ibid.
8 Ibid, schedule 1B, s 4.

work' includes work associated with the renovation, alteration, extension, improvement or repair of a home.[10]

[10] A 'commercial building dispute' includes a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work.[11] A 'building contractor' for the purposes of reviewable commercial work means a person who carries on a business that consists of or includes carrying out building work, and includes a subcontractor who carries out building work for a building contractor.[12] 'Building work' includes the renovation, alteration, extension, improvement or repair of a building.[13]

[11] Some preliminary observations should be made at this point. Firstly, it is clear from the definition of 'domestic building work' that the work undertaken by the respondent did not involve the erection or construction of a detached dwelling. Secondly, in order for the work undertaken by the respondent to be domestic building work, it must involve the renovation, alteration, extension, improvement or repair of a 'home'. A 'home' is a building or portion of a building that is designed, constructed or adapted for use as a residence.[14] A 'home' includes a strata or community title home unit or residential unit.[15] A 'home' does not include a building or a part of a building declared under a regulation not to be a home.[16] The *Queensland Building and Construction Commission Regulation* 2018 (Qld) (QBCC Regulation) sets out, for the purposes of s 9(2) of schedule 1B of the QBCC Act, buildings that are not a 'home'.[17] Premises not intended to be used for permanent habitation are by regulation declared not to be a home.[18] The term 'premises' is not defined in the regulation.

[12] The monetary jurisdiction of the Tribunal in respect of building disputes is unlimited. In respect of both domestic building disputes and commercial building disputes, a person may not apply to the Tribunal to have the Tribunal resolve the dispute unless the person has first complied with a process established by the QBCC to attempt to resolve the dispute.[19]

[13] Commercial building disputes may be minor commercial building disputes (where the amount in dispute does not exceed $50,000) or major commercial building disputes (where the amount in dispute exceeds $50,000).

[14] For the Tribunal to have jurisdiction to decide a major commercial building dispute, the parties must consent to the jurisdiction of the Tribunal and file that consent at the

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9 Ibid, schedule 1B, s 4(3)-(4).
10 Ibid.
11 Ibid, schedule 2.
12 Ibid.
13 Ibid.
14 Ibid, schedule 1B, s 1.
15 Ibid, schedule 1B, s 9(1).
16 Ibid, s 9(2).
17 *Queensland Building and Construction Commission Regulation* 2018 (Qld), s 46.
18 Ibid, s 46(a).
19 QBCC Act, s 77(2).

same time as the application commencing the proceeding.[20] There is no such requirement in respect of minor commercial building disputes.

What do the parties say?

[15] The applicant says that the works undertaken by the respondent included works to the podium floor involving dismantling swimming pool balustrading, timber decks and planter boxes and removing existing tiles to enable waterproofing to the entire podium floor. The works also included the installation of new paddle flanges, tiling, reinstating timber decks and swimming pool balustrading and rendering repairs to walls.

[16] The applicant says that Basement 1 is beneath the podium floor and that the works related to the podium floor.

[17] The applicant says that the multi-level building, including the basement levels, is a 'home' for the purposes of schedule 1B, s 9 of the QBCC Act and relies upon the following:

(a) the works fall within the description of renovation, improvement and repair work;

(b) the building where the works were carried out is a community management title scheme registered under the *Body Corporate and Community Management Act* 1997 (Qld);

(c) the building is solely for the use of its residents to live;

(d) the building does not fall within the exclusions found in s 46 of the QBCC Regulation;

(e) the form 16 signed by the respondent states that the building is class 2. A class 2 building is a building containing 2 or more sole-occupancy units each being a separate dwelling;

(f) a 'home' includes any part of a home;

(g) the work undertaken by the respondent falls within the meaning of 'associated work'. The work carried out to the podium level which included the swimming pool and which was the roof of the carpark is clearly envisaged to be associated work relating to a home. The waterproofing to the podium floor was to improve services and facilities of the building by ensuring better accessibility and amenities to the building.

[18] The respondent says that the building works undertaken by the respondent do not fall within the meaning of 'domestic building work':

(a) The works were not undertaken to a detached dwelling, home or kit home. The works were completed to common areas of a strata or community title home unit/residential unit complex and not the home unit itself;

(b) The works relate to common areas used by guests, residents, staff, contractors and the like entering the premises owned by the body corporate;

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[20] Ibid, s 78, s 79.

(c) The works were not associated with the renovation, alteration, extension, improvement or repair of a home unit;

(d) The works did not involve the erection or construction of buildings and fixtures;

(e) The QBCC publishes on its website the following statement: 'The QBCC contracts are for domestic work only. They shouldn't be used for commercial work, which includes, for example, construction work on common property carried out for a body corporate.';

(f) The dispute between the parties is a major commercial building dispute;

(g) The respondent has not given consent to the jurisdiction of the Tribunal to decide the dispute;

(h) The proceedings should be dismissed with costs.

[19] In reply the applicant says:

(a) the definition of 'associated work' is not exhaustive and by the use of the word 'includes', expands upon the ordinary definition of 'associated work' with the 'home';

(b) associated work must have a degree of association, proximity or substantive relationship with the home for the use of the residents but does not need to be physically connected to the home. In this regard, the applicant refers to the examples of associated work as including landscaping and paving;

(c) examples used in a statute are not exhaustive and can extend the meaning of a provision;[21]

(d) the entertainment podium floor is akin to a driveway, garage and swimming pool as there is an association with the 'home' being for the use and enjoyment of the residents;

(e) associated work is not confined to work relating to a single unit;

(f) the podium level is not available for use by the public and is for the sole use and enjoyment of the residents of the scheme;

(g) it is impermissible to have reference to the QBCC website in construing the relevant statutory provisions, as the respondent seeks to do, unless the requirements for reference to extrinsic material are satisfied. In this regard, the applicant points to s 14B(1) of the *Acts Interpretation Act* 1954 (Qld);

Consideration

[20] In *Number One Quality Homes Pty Ltd v Murphy & Anor*[22] I said the following about the determination of preliminary issues:

> [2] Preliminary issues may involve questions of law, questions of fact or questions of mixed law and fact. While the determination of a

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21 *Acts Interpretation Act* 1954 (Qld), s 14D.

22 [2020] QCAT 339.

> preliminary issue may result in savings in costs and delay, a separate determination should only be ordered if the utility, economy and fairness to the parties of a separate question is beyond issue.
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> [3] The *Uniform Civil Procedure Rules* 1999 (Qld) ('UCPR') do not apply in the tribunal however the various cases dealing with the application of r 483 of the UCPR are of assistance in considering the present matter.
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> [4] Rule 483 provides:
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> > The Court may make an order for the decision by the court of a question separately from another question, whether before, at, or after the trial or continuation of the trial of the proceeding.
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> [5] The discretion conferred by r 483 has been held to be a wide one, to be exercised having regard to what is just and convenient.
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> [6] In *Reading Australia Pty Ltd v Australian Mutual Provident Society* it was held that a number of factors tell against the making of an order for the determination of a preliminary issue and specifically where the separate determination may:
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> (a) give rise to significant contested factual issues both at the time of the hearing of the preliminary question and at the time of trial;
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> (b) result in significant overlap between the evidence adduced on the hearing of the separate question and at trial – possibly involving the calling of the same witnesses at both stages of the hearing of the proceeding. This factor will be of particular significance if the court may be required to form a view as to the credibility of witnesses who may give evidence at both stages of the hearing of the proceeding; or
>
> (c) prolong rather than shorten the litigation.
>
> [7] These are useful guiding principles in approaching whether in tribunal proceedings it is appropriate to determine a preliminary issue. (footnotes omitted)

[21] I am satisfied that there are no significant contested factual issues relevant to the determination of the preliminary issue. As these reasons will reveal, the determination of the preliminary issue in a particular way will shorten the litigation in the Tribunal. I am therefore satisfied that it is appropriate to determine the preliminary issue.

[22] Whether the work undertaken by the respondent was building work will be considered by reference to the following:

(a) 'Domestic building work' within the meaning of that term in s 4(1) of schedule 1B of the QBCC Act;

(b) 'Associated work' within the meaning of that term in s 4(3) of schedule 1B of the QBCC Act;

(c) 'Reviewable commercial work' and 'tribunal work' within the meaning of those terms in schedule 2 and s 75 of the QBCC Act.

[23] It is appropriate to first say something about the objects of the QBCC Act. The objects of the Act include the regulation of the building industry to ensure the

maintenance of proper standards in the industry and to achieve a reasonable balance between the interests of building contractors and consumers, providing remedies for defective building work and regulating domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners.

[24] The Act has a regulatory function of which the main object is to protect building owners or 'consumers' from incompetent or dishonest builders.[23]

[25] With these provisions in mind, I turn now to a consideration of the identified issues.

Was the work undertaken by the respondent 'domestic building work' within s 4(1), schedule 1B of the QBCC Act?

[26] As I have observed, domestic building work includes the renovation, alteration, improvement or repair of a 'home'. A 'home' is a building or a portion of a building that is designed, constructed or adapted for use as a residence. A 'building' means a structure (including a temporary building and other temporary structure) and a part of a structure.[24] Clearly the individual home units or apartments in a multi lot building are each a 'home' for the purposes of s 9(1), schedule 1B of the Act.

[27] While the individual apartments within multi lot residential building are 'homes', a scheme also comprises common areas. Do the common areas of a scheme fall within the meaning of a 'home'?

[28] The terms 'home' and 'detached dwelling' are given quite separate and distinct meanings in schedule 1B of the Act. The term 'dwelling' is not defined and should be given its ordinary meaning: a house, apartment etc where a person lives.[25] A detached dwelling therefore means a stand-alone residential structure including a duplex residential structure. 'Home' has a more expansive meaning than 'detached dwelling'. A 'home' includes a detached dwelling, but it also includes, among other things, a strata or community title home unit or residential unit. A 'detached dwelling' is effectively confined to a single dwelling or a duplex.

[29] In applying the definitions of those terms, it is apparent that a 'home' includes a 'dwelling', but a 'dwelling' does not necessarily include a 'home'. This distinction is important when considering the meaning of 'domestic building work'. The *erection or construction* of a 'home' is not domestic building work unless the 'home' is a 'detached dwelling' (including a duplex).[26]

[30] Two issues fall for consideration. If the erection or construction of a building comprising more than a single dwelling or a duplex is not domestic building work, how is the work to be categorised in the context of a building dispute? Similarly, if building work involves the renovation, alteration, extension, improvement or repair of a building other than a home, how is a dispute relating to such work to be categorised?

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23 *Marshall v Marshall* [1999] 1 Qd R 173.

24 QBCC Act, schedule 1B, s 1.

25 *Oxford Dictionary* (online at 4 May 2022) 'dwelling'.

26 Note the examples of a 'home' in s 9(1) as including a 'semi-detached dwelling' also called a duplex.

[31] As I have earlier observed, a building dispute may be a domestic building dispute or a commercial building dispute. A commercial building dispute is one involving 'reviewable commercial work' or a contract for the performance of 'reviewable commercial work'. 'Reviewable commercial work' means 'tribunal work' other than 'domestic building work'. What is 'tribunal work' is set out in s 75 of the QBCC Act and includes the erection or construction of a building[27] and the renovation, alteration, extension, improvement or repair of a building.[28] Accordingly, if a building dispute involves a dispute about the erection or construction of a building (other than a dwelling or a duplex) or a contract for the performance of such work, the dispute is a commercial building dispute. Similarly, if a building dispute involves a dispute about the renovation, alteration, extension, improvement or repair of a building (other than a home) or a contract for the performance of such work, the dispute is also a commercial building dispute.

[32] It is clear from the foregoing that the legislature intended domestic building disputes involving new builds (as opposed to renovations, alterations and the like) to be confined to single dwellings and duplexes. Domestic building disputes involving renovations, alterations and the like, as defined in s 4(1)(b) of schedule 1B of the QBCC Act, were not intended to be so confined and include disputes relating to all types of 'home' within the meaning of that term in s 9 of schedule 1B.

[33] The building work undertaken by the respondent was not a new build. Although it is unnecessary to consider further s 4(1)(a) of schedule 1B it should be noted that even had the building work been part of a new build, it would not be 'domestic building work' as the relevant building is not a 'detached dwelling'.

[34] Does the building work fall within s 4(1)(b) of schedule 1B? It is clear that the work involved the repair of part of a building. It is also clear that the part of the building the subject of the building work was common property. For the reasons that follow I reject the submission by the applicant that the body corporate common property forms part of a 'home'.

[35] 'Common property' comprises those parts of scheme land not forming part of any individual lot.[29] 'Common property' is owned by the owners of the lot included in the scheme as tenants in common.[30] An owner's interest in a lot is inseparable from the owner's interest in the common property.[31] The body corporate of a scheme is responsible for the common property and may sue and be sued for rights and liability related to the common property as if the body corporate were the owner of the property.[32] The body corporate for a scheme must administer the common property and body corporate assets reasonably and for the benefit of the lot owners.[33]

[36] To construe 'home' in s 9 of schedule 1B of the QBCC Act as including the common property of a community title scheme would be to give the term an

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27 QBCC Act, s 75(1)(a).
28 Ibid, s 75(1)(b).
29 *Body Corporate and Community Management Act* 1997 (Qld), s 10(2)(b).
30 Ibid, s 35(1).
31 Ibid, s 35(3).
32 Ibid, s 36(1).
33 Ibid, s 94(1)(a), s 152(1)(a).

expansive meaning unlikely to have been intended by the legislature. The wording of s 9(1) quite specifically refers to 'a building or a portion of a building that is designed, constructed or adapted for use as a residence'. In the present case, the roof of the carpark clearly does not fall within this definition.

[37] The applicant submits that a home includes any part of a home and therefore includes scheme common property, ostensibly on the basis that the individual lots enjoy the benefit of the common property. At the heart of this submission is the proposition that a 'home' includes both an individual lot within a scheme as well as the entirety of the site of the scheme not comprising other lots. If the applicant's submission were to be accepted, then any part of the building or the land comprising a scheme which does not form part of the individual lots would nevertheless be a 'home'. This would include, for example, the external walls of a multi-lot building, the building foundations, and the external balcony balustrades in addition to building and utility infrastructure, roads, carparking, and entertainment, recreational and garden areas.[34] Such an expansive meaning of 'home' cannot have been intended by the legislature.

[38] Such a construction would also be inconsistent with the clear words of s 9(1). A home is a building or a portion of a building that is designed, constructed or adapted for use as a residence. Each individual lot within a scheme might properly be described as a portion of a building designed and constructed as a residence. The common property areas of a scheme cannot be so described. In the present case, whether described as 'the podium area' or the ceiling of the basement carpark, the building work was undertaken in respect of a portion of the building neither designed, nor constructed, to be used as a residence.

[39] The applicant's construction of the meaning of 'home' as it applies to lots in a community title scheme is to be contrasted with building work involving a 'dwelling'. It seems to me that it would be entirely consistent with the objects of the Act and the consumer protection focus of the legislation that in circumstances where building work involves a dwelling, s 4(1)(b) and s 9(1) would be construed so as to extend to building work carried out on the site of the dwelling. It would, in my view, be incongruous for, say, the construction of a swimming pool at a completed dwelling to be categorised as commercial building work and not domestic building work. Such building work would clearly involve the improvement of a home. This appears to have been the view of McGill DCJ in *Anderton & Anderton v Parks Horticultural Services Pty Ltd*[35] where His Honour considered the meaning of s 4 of the (then) *Queensland Building Services Authority Act* 1991 (Qld) which defined building work as including:

> (b) the renovation, alteration, extension, improvement or repair of a building; or
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> ...
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> (e) any site work (including the construction of retaining structures) related to work of a kind referred to above; or

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34 Assuming the scheme is a Building Format Plan.

35 [1996] QDC 281 (Unreported).

[40] In *Anderton* the dispute between the parties involved, inter alia, extensive landscaping work undertaken at the time of renovation works. McGill DCJ held:

> In my opinion the work done was site work, and in view of the findings above was related to the renovations undertaken to the house, or extensions to it. It was therefore building work as defined. *Indeed, I would hope that the carrying out of $250,000 worth of landscaping around a house, or even $150,000, would amount to an improvement of the house*. (emphasis added)

[41] It is the last sentence of the passage quoted that is of particular relevance for present purposes. It also seems reasonably clear that His Honour considered 'house' as including the parcel of land on which a house is situated and that the landscaping works performed on the site were an improvement of, or to, a building.

[42] As I have observed, scheme common property is owned by all lot owners as tenants in common. The interest of the lot owners in the common property is an equitable one. It is also a proprietary right. However individual lot owners, with the possible exception of a grant of exclusive use, do not have authority to deal with common property. The body corporate is responsible for the common property on behalf of all lot owners. Whilst it may be readily conceded that lot owners enjoy the benefit of, and share liability in respect of, common property, it would impermissibly stretch the language of s 9 to construe 'home' as including the common property. As the *Body Corporate and Community Management Act* 1997 (Qld) makes clear the owner's interest in a lot is inseparable from the owner's interest in the common property.[36] There is no notion that the lot itself has a physical connection to the common property as is the case of a detached dwelling situated on a parcel of land. All lot owners have a shared interest in the common property, the extent of that interest being determined by the lot entitlements as set out in the contribution schedule and the interest schedule contained in the community management statement for the scheme. As I have observed, individual lot owners have no entitlement to deal with common property. Common property may only be sold or leased, or leased common property transferred, pursuant to a resolution of the body corporate without dissent.[37] Building work of the type referred to in s 4(1)(b) of schedule 1B of the QBCC Act when carried out on common property could not be said to be in respect of a 'home'. Rather it is work undertaken to property in which the individual lot owners all have an interest.

[43] It is clear, by referring to specific examples in s 9(1) of schedule 1B, that the legislature turned its mind to what falls within the meaning of a 'home'. Had the legislature intended that body corporate common property be included in the definition the provision could clearly have been expressed thus.

Was the work 'associated work' pursuant to s 4(3), schedule 1B of the QBCC Act?

[44] The applicant says that the building work was 'associated work' within the meaning of that term in s 4(3) of schedule 1B.

[45] It is appropriate to set out s 4(3) and s 4(4) of schedule 1B in full:

> (3) ***Domestic building work*** includes—

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36 *Body Corporate and Community Management Act* 1997 (Qld) s 35(3).

37 A lease of under 3 years may be granted or amended by a special resolution.

> (a) work (***associated work***) associated with the erection, construction, removal or resiting of a detached dwelling; and
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> (b) work (***associated work***) associated with the renovation, alteration, extension, improvement or repair of a home.
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> (4) Without limiting subsection (3), associated work includes—
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> (a) landscaping; and
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> (b) paving; and
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> (c) the erection or construction of a building or fixture associated with the detached dwelling or home.
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> *Examples of buildings and fixtures—*
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> retaining structures, driveways, fencing, garages, carports, workshops, swimming pools and spas

[46] Section 4(3)(b) is concerned with domestic building work other than work relating to a new build. 'Associated work' is part of, or an extension of, 'domestic building work'.[38] The definition of 'associated work' is an inclusive and therefore not exhaustive definition to which a wide meaning should be given.[39]

[47] However, for building work to be 'associated work' within the meaning of s 4(3)(b) there must be the necessary nexus between the work and the renovation, alteration, extension, improvement or repair of a home. Here, for the reasons previously set out, the nexus is absent.

[48] It follows from my conclusion that the subject building work was not 'domestic building work' within the meaning of that term in s 4(1)(b) of schedule 1B, that the work cannot be 'associated work'.

Was the work 'reviewable commercial work' and is the dispute a 'commercial building dispute'?

[49] I am satisfied that the subject building work falls within the meaning of 'the renovation, alteration, extension, improvement or repair of a building' within the meaning of s 75(1)(b) of the QBCC Act. The building work is therefore 'tribunal work'. 'Reviewable commercial work' means tribunal work other than domestic building work.[40] The subject building work is therefore 'reviewable commercial work'. I am satisfied that the body corporate is a 'building owner' and the respondent a 'building contractor' within the meaning of those terms in schedule 2 of the QBCC Act. I am satisfied that the dispute between the parties is a 'commercial building dispute' as defined in schedule 2 of the Act.

[50] The amount claimed by the applicant is more than $50,000.00. Accordingly, the dispute is a major commercial building dispute.[41] The respondent has not consented to the jurisdiction of the Tribunal to decide the dispute. The jurisdiction of the

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38 *Fraser Property Developments Pty Ltd v Sommerfeld (No 1)* [2005] 2 Qd R 394.
39 *Fraser Property Developments Pty Ltd v Sommerfeld & Ors* [2004] QSC 363.
40 QBCC Act, schedule 2.
41 Ibid.

tribunal in respect of a major commercial building dispute is only enlivened if the parties to the dispute consent.

[51] Absent such consent, the Tribunal does not have jurisdiction in respect of the present dispute.

[52] Where the Tribunal does not have jurisdiction to hear all matters in a proceeding the Tribunal may transfer the proceeding to a court of competent jurisdiction.[42] In this case, it would seem the appropriate court is the District Court. The originating application filed by the applicant is not in the form of a pleading. The (then) President of QCAT, Alan Wilson J, observed in a case involving a proceeding in which the Tribunal lacked jurisdiction and in which the transfer of the proceeding to the Supreme Court was considered:

> [14] Under s 52 QCAT may, if inclined to order a transfer, also give directions to *"...facilitate the transfer, including an order under an Act or other law for starting a proceeding before the relevant entity*". Procedural difficulties will arise here if M & J's application to QCAT is transferred to the Supreme Court. Despite substantial verbiage and attachments, it is not in a form which would constitute an adequate pleading. Because it was filed before the lessors' action was commenced in the Supreme Court, it is also unresponsive and on any view M & J, or both parties, would be required to re-plead if the QCAT application was simply transferred to the Court.
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> [15] It is not, then, a matter in which a transfer to the Court can be readily or comfortably facilitated. It is not impossible that, had M & J's legal representatives turned their minds to the matter, appropriate directions may have been fashioned but, in the absence of any attempt to do that, the better course is to simply dismiss the QCAT proceeding and allow M & J to seek its relief in the present Supreme Court action (or elsewhere if it chooses).

[53] It seems to me that the 'appropriate directions' referred to might have included the filing by the applicant of a document in the form of a statement of claim compliant with the requirements of the *Uniform Civil Procedure Rules* 1999 (Qld).

[54] In the present case I see little utility in having the applicant file an amended claim. This will put the applicant to further expense in circumstances where further amendment to the originating proceedings may be required once the proceeding is transferred. This will in turn result in additional expense. This is to be weighed against the costs the applicant will incur in simply starting over in the appropriate court.

[55] Where the Tribunal lacks jurisdiction, the appropriate order is that the proceeding be dismissed pursuant to s 47 of the QCAT Act. I order accordingly.

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42 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 52(2)(a).