OWNERS CORPORATION NETWORK

Body Corporate Owners Network

28 January 2015

QUT Review - BCCM
c/- Office of Regulatory Policy
Department of Justice and Attorney-General

By email to QUTreview-BCCM@justice.qld.gov.au

Dear Sirs,

Thank you for the opportunity to give input in response to the Governance Options Paper #1.

We make this submission on behalf the Owners Corporation Network of Australia and the Body Corporate Owners Network, both of which represent community scheme owners. OCN and Body Corporate Owners Network are working together as a key consumer voice to encourage sound governance and to protect rights in community schemes in Queensland.

Our answers to the Options Paper questions follow.

Regarding scheme termination, we are contributing additional suggestions. Also, to offer more background information, we attach the Owners Corporation Network 2012 submission on strata termination which was tendered to the NSW Strata Law Review.

Yours sincerely

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Governance Options Paper – By-laws, Debt Recovery, Termination Questions & Responses

2. BY-LAWS

2.2 ISSUE: UNLAWFUL PARKING IN BREACH OF THE BY-LAWS AND TOWING

1. Should bodies corporate have the express ability to tow a vehicle that has been parked in a visitor car park in contravention of the by-laws?

Yes, as outlined in the Options Paper using processes in 2.2.3.3 and under safeguards in 2.2.3.5. In addition, bodies corporate should have the ability to tow a vehicle parked in other common areas without body corporate permission.

An additional option, which could help body corporate in cases of unlawful parking, might be for bodies corporate to be given access to the vehicle registration database of the Department of Transport and Main Roads. In this way bodies corporate could check whether a car belongs to an owner, occupier or someone from outside of the property.

The wording (below) of the Privacy Statement in the DTMR New Customer Application form suggests such access might be possible if "required by law".

> **Department of Transport and Main Roads Privacy Statement:**
>
> The Department of Transport and Main Roads (the department) collects information on this form under the Acts nominated on this form to manage the Queensland driver licence, industry authority, adult proof of age and vehicle and vessel registers. This information is accessible by authorised departmental persons and the Queensland Police Service. Information about vehicle and ship registration may also be disclosed to vehicle insurers, statutory entities, lawyers, insolvency entities, persons involved in vehicle or ship accidents/incidents, vehicle manufacturers and to or through interstate registering authorities. Information about driver licences, adult proof of age card and industry authorisations may also be disclosed to interstate licensing authorities as allowed under the relevant transport Acts and the Adult Proof of Age Card Act 2008. The department will not disclose your personal details to any other third parties without your consent unless required by law.

2. Who should be authorised to initiate towing a vehicle in special circumstances (e.g. a resident manager (where one has been appointed) or a designated member of the committee who lives on-site)?

Authority for initiating towing of a vehicle should rest with:

- The Body Corporate Committee, under emergency contingency actions specified in BCCM Regulations: 'Voting outside committee meetings' [e.g. Standard Module S54]

- A resident manager (where one has been appointed)

There should be no delegation of authority to on-site committee members – this could lead to bias, perception of bias, misuse of power and discord.

3. **What right should a lot owner have to deal with a vehicle parked in their space without permission?**

The right to engage a licenced tow truck to remove a vehicle, as per 2.2.3.1. We note that in some schemes allocated parking spaces are not on lot titles.

4. **Should the body corporate be liable to pay for the costs of recovering the vehicle and the cost of dispute resolution in the BCCM Commissioner's office if a vehicle is towed away improperly (either in special circumstances or non-urgent circumstances)? What other safeguards should be placed on the body corporate's ability to tow vehicles?**

Yes, the body corporate should be liable. Apply the safeguards listed in 2.2.3.5.

2.3 ISSUE: PETS

5. **Should bodies corporate have the right to decide by resolution without dissent, to prohibit pets in the scheme? Why or why not?**

There is no need to require a resolution without dissent.

As for any other by-law, a Special Resolution should be required to approve a by-law that prohibits pets in the scheme.

We note that in NSW this decision is by Special Resolution and that the NSW Strata Scheme Management Regulation 2010 includes this option amongst the Model By-laws.

6. **Do you support the existing rules relating to keeping of pets? How should the BCCM Act deal with the issue of pets?**

Any by-law allowing pets should incorporate the right of owners and occupiers to peaceful use and enjoyment of their lot.

In addition to the existing rules, a Body Corporate should have the right to decide by resolution without dissent to prohibit pets (except for guide dogs, hearing dogs and the like).

The fact that a scheme does or does not allow pets would inevitably be factored into the market value of the lot when it is sold. If the decision is by resolution without dissent, all existing owners support this impact (potentially positive or negative) on the market value of their lots.

Of interest is that in NSW, the Strata Schemes Management Regulation 2010 offers three options for Model By-laws about 'Keeping of Animals' which can be adopted by residential schemes (see below). One of these is an option to prohibit animals. Each refers to Section 49(4) of the NSW SSM Act which provides for the keeping of guide dogs and hearing dogs.

NSW Strata Schemes Management Regulation 2010

Schedule 2 Model by-laws for residential strata schemes

17 Keeping of animals

Note. Select option A, B or C. If no option is selected, option A will apply.

Option A

(1) Subject to section 49 (4) of the Act, an owner or occupier of a lot must not, without the prior written approval of the owners corporation, keep any animal (except fish kept in a secure aquarium on the lot) on the lot or the common property.

(2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

Option B

(1) Subject to section 49 (4) of the Act, an owner or occupier of a lot must not, without the prior written approval of the owners corporation, keep any animal (except a cat, a small dog or a small caged bird, or fish kept in a secure aquarium on the lot) on the lot or the common property.

(2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

(3) If an owner or occupier of a lot keeps a cat, small dog or small caged bird on the lot then the owner or occupier must:

(a) notify the owners corporation that the animal is being kept on the lot, and

(b) keep the animal within the lot, and

(c) carry the animal when it is on the common property, and

(d) take such action as may be necessary to clean all areas of the lot or the common property that are soiled by the animal.

Option C

Subject to section 49 (4) of the Act, an owner or occupier of a residential lot must not keep any animal on the lot or the common property.

2.4 ISSUE: SMOKE DRIFT

7. Should bodies corporate have an ability to prohibit smoking on a balcony or where a structure is within four metres of another structure on an adjacent lot?

Yes, bodies corporate should have the ability to approve by-laws via a Special Resolution to prohibit smoking on a balcony in a building format plan or where a structure is within four metres of a structure on an adjacent lot in a standard format plan.

The Options Paper refers to the "harmful effects of second hand smoke". There is clear research evidence of the morbidity impacts of passive smoking (also called second hand smoke or

sidestream smoke). This has been commonly accepted in Australia and has led to the banning of smoking in restaurants, etc.

8. If not, how should bodies corporate deal with this issue?

Not applicable. Our response was 'Yes' to question 7.

2.5 ISSUE: OVERCROWDING

9. If there are reasonable grounds to believe that a lot is overcrowded, should the body corporate have the authority to give consent, on behalf of the lot occupier, for the local council or fire services to investigate the suspected overcrowding?

Yes.

10. Which option do you support and why? If you do not support any of the options, how would you deal with this issue?

We support Option 2 - to allow a body corporate, via a committee decision, to give consent on behalf of the lot occupier (in this case, including owner occupiers) to allow the fire service or the local government to enter a lot to investigate overcrowding.

2.6. IMPROVING BY-LAW ENFORCEMENT

11. What issues should be covered by the by-laws in schedule 4 of the BCCM Act?

It would be helpful if Schedule 4 By-laws covered all matters that are generally common to scheme by-laws. Additional model By-laws could include a Flooring By-Law, Car Park Signage By-Law, Keeping of Animals By-Law and Non-smoking By-law.

In NSW, the Act's Strata Schemes Management Regulation 2010 offers differing sets of model by-laws for different types of scheme (residential schemes, retirement village schemes, industrial schemes, hotel/resort schemes, commercial/retail schemes, mixed use schemes). This is a helpful approach that could be applied to the BCCM Module Regulations, as there are certain clear differences between the various types of schemes.

12. If the by-laws for a scheme are silent about an issue that is covered by the by-laws in schedule 4 of the BCCM Act, should the relevant schedule 4 by-law apply by default?

No. While this would seem a logical way to provide consistency across schemes, in practice it would not be workable. Even though the BCCM Act requires that the Community Management Statement

be distributed to owners and occupiers, the average owner or occupier is not familiar with their scheme's by-laws and furthermore unfamiliar with the BCCM legislation. To add to the CMS an additional layer of model by-laws, and require that owners, occupiers and Committees be aware of how these interweave, would be unlikely to be effective.

13. Should the by-laws for a community titles scheme be deemed to be an agreement signed and sealed by each of the body corporate, owners, occupiers and mortgagees from time to time?

Yes.

14. Should Queensland adopt a version of the South Australian Model and allow bodies corporate to fine lot owners and occupiers who, after receiving a contravention notice, continue to breach or fail to comply with the by-laws?

No, it would be more prudent to keep the current dispute resolution process and to add that an adjudicator have the option of fining lot owners and occupiers on behalf of bodies corporate, with the bodies corporate receiving the monies.

In many cases Body Corporate committee members are not sufficiently knowledgeable and/or do not have the skills required to make good judgements. Anybody can be elected to a Committee, regardless of capability. There are cases where malevolent or misguided committees apply by-laws for vindictive, racist and other hidden agenda purposes. For these reasons, it would be best for judgements leading to fining to be made by an objective and qualified outsider.

15. Should bodies corporate have the ability to authorise a resident manager, body corporate manager or a single executive committee member to issue on-the-spot contravention notices to owners and occupiers who contravene or fail to comply with the by-laws?

No. There are several issues related to accountability, consistency of application, objectivity and personal safety, which work against this being a useful process.

3. DEBT RECOVERY

16. Should the BCCM Act specify a scale of costs for debt recovery actions taken by the body corporate to collect unpaid contributions and penalty interest?

Yes, as long as this must be adhered to by all strata managers, debt collectors and solicitors. If the scale of costs is provided only as a guideline, that could see such service providers charging higher amounts for their services, leaving bodies corporate to fund the gaps. Bodies corporate should be able to recover the full amount expended.

17. Aside from legal costs allowable under the UCPR, what items should be included in a scale of costs for debt recovery? Should there be fixed charges for certain items or monetary limits imposed depending upon the size of the debt?

All cost items related to debt recovery should be included. Any fixed charges or limits should not be imposed relating to the size of debts but rather on the hours of work required to recover the debt. Again, fixed charges would need to be applicable to all strata managers, debt collectors, solicitors, etc. or else they may charge more and the body corporate would be left to cover the gap between the fixed charge allowable to be claimed and the actual cost.

18. Should the definition of 'body corporate debt' in the Regulation Modules be amended to specifically include recovery costs and judgments?

Yes, very definitely.

19. Should the body corporate have a non-judicial power of sale over a lot when the lot owner has outstanding body corporate debt?

No

20. Should the body corporate debt of a lot owner be a charge on the lot?

Yes.

21. How long should bodies corporate allow unpaid contributions to accrue before taking steps to recover the amounts?

A short timeframe would be preferable, to address an outstanding debt before it escalates.

The NSW Strata Schemes Management Act sets no maximum time limit, but states that debt recovery action cannot begin until one month after the contribution is due. This tends to encourage action to be taken after one month.

NSW SSMA SECTION 80 How does an owners corporation recover unpaid contributions and interest?

(1) An owners corporation may recover as a debt a contribution not paid at the end of one month after it becomes due and payable, together with any interest payable and the expenses of the owners corporation incurred in recovering those amounts.

(2) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.

3.3.3. ADDRESS FOR SERVICE

22. Are there any reasons why the Regulation Modules should not require lot owners to provide an Australian address for service and maintain the accuracy of the address?

Regardless of whether an Australian address for service is or is not required, the Regulation Modules should require the accuracy of an address for service to be maintained and, in relation to this, there should be means for encouraging compliance and discouraging non-compliance.

There are key reasons why the Regulation Modules should not require overseas lot owners to provide an Australian address for service.

1. The BCCM Regulations already provide sufficient timeframes for notice of meetings and notice of contribution payments for overseas owners to be able to act and comply in a timely fashion.

2. The most concerning difficulty arising with an overseas address for service is when it is necessary to serve legal documents for the purpose of court action. This relates to a small minority of lot owners whose debt is large.

3. Having to provide an Australian address for service would be particularly onerous for overseas owners who do not have a local agent renting out their property.

4. For the purpose of serving legal documents, simply an Australian "address for service" would be insufficient. There would have to be a person involved (an "addressee") and the address could not be a PO Box.

5. Even with an Australian address for service, defaulting owners could find ways to avoid communication or being served.

6. Experience with the Standard Module Regulation (which requires an Australian address for service) indicates there are problems getting overseas owners to provide and update their Australian address. In practice this requirement is ineffective and unenforceable.

FURTHER EXPLANATIONS

1) The BCCM Regulations already provide sufficient timeframes for notice of meetings and notice of contribution payments for overseas owners to be able to act and comply in a timely fashion.

   - Under the BCCM Act, notices must be 21 days in advance of General Meetings, 7 days in advance of Executive Meetings (or as varied), and 30 days before required payment of contributions. This allows sufficient time for mailing to an overseas address, or emailing to the overseas owners if agreed by the owner.

     (Under the BCCM Act owners (whether overseas or not) can opt to receive notice of meetings, minutes and levy notices by email.)

2) The most concerning difficulty arising with an overseas address for service is when it is necessary to serve legal documents for the purpose of court action. This relates to a small minority of lot owners whose debt is large.
   - This is only a concern where a lot owner is so far in arrears on the payment of contributions that a large enough debt accrues to merit legal action by the Body Corporate.

- Most of the purposes of an address for service are already adequately catered for in the Regulations. The "address for service" is used for ordinary notices of the body corporate relating to meetings, minutes and contributions. According to the Options Paper, notices of meetings and minutes can be posted to an overseas address or under the Electronic Transactions (Queensland) Act 2001 (Qld) may be sent electronically.

3) Having to provide an Australian address for service would be particularly onerous for overseas owners who do not have a local agent renting out their property.
   - If the owner engages someone to manage rental of their lot, that person could easily be the address for service. However, those who do not rent out their lot may have difficulty finding an Australian address, and hence more likely to ignore the requirement (as currently happens under the Standard Module Regulation).

4) For the purpose of serving legal documents, simply an Australian "address for service" would be insufficient. There would have to be a person involved (an "addressee") and the address could not be a PO Box.

5) Even with an Australian address for service, defaulting owners could find ways to avoid communication or being served.
   - It is possible that defaulting owners would be more likely than compliant owners to pursue other unethical behaviours to avoid payment.
   - If the justification for having an Australian address is that bodies corporate have difficulty serving notice in another country, this problem could occur even when an Australian address is provided, as the addressee may also have difficulty communicating with the owner.
   - If the Australian address for service was a real estate agent, a defaulting owner could terminate the services of the real estate agent, in order to avoid being served.

6) Experience with the Standard Module Regulation (which requires an Australian address for service) indicates there are problems getting overseas owners to provide and update their Australian address. In practice this requirement is ineffective and unenforceable.
   - The Options Paper cites evidence that it is now already problematic getting owners to update the name and address of their agent, this problem would be compounded by a requirement to provide and keep updated an Australian address for service.
   - The outcome of requiring an Australia address for service could still be that overseas owners might not provide an Australian address, so the issue of serving legal documents would not be solved by amending the Module Regulations.
   - To assist with assessing the value of requiring an Australian address, it would be instructive obtain data regarding what percentage of overseas owners in standard module schemes actually do provide an Australian address. There would be little merit in extending this requirement to all modules, if it turns out that the requirement is mostly not adhered to under the Standard Module Regulation.
   - We obtained feedback from a body corporate manager who services 100s of client schemes throughout the Sunshine Coast where there are a lot of overseas owners. Many of his client schemes operate under the Standard Module Regulation which requires an Australian address for service. He said this was unenforceable and mostly not done. His view is that requiring an Australian address under the Standard Module Regulation is unenforceable and it would be best to remove this requirement from the Standard Module Regulation also.

3.3.4. SERVICE OF LEGAL PROCESS ON INDIVIDUAL LOT OWNERS

23. Are there any reasons why the BCCM Act and the UCPR should not provide special provisions to assist a body corporate to recover unpaid contributions from lot owners that have not provided an Australian address for service?

See response to Question 22 above for reasons why requiring an Australian address for service is not a workable solution.

The number of overseas lot owners on whom body corporates need to serve legal documents or warrants on is small compared to the total number of overseas lot owners. Requiring all overseas owners to provide an Australian address because of a handful of defaulting owners seems out of perspective and administratively onerous.

The Options Paper explains that in the absence of being able to serve notice, the body corporate can make an application to the court for substituted service. This would allow the body corporate to take steps to recover of unpaid contributions where service of notice has not been possible.

3.3.5. COLLECTING AFTER A JUDGMENT

24. In circumstances where a body corporate has obtained a judgment against a lot owner for unpaid body corporate debt, should the body corporate have a mechanism to garnishee the rental income from the lot to satisfy the judgment by serving the tenant or real estate agent for the lot? Why or why not?

Yes, as described in the Options Paper under 3.3.5.1 'Option – Ability to directly garnishee rental income'.

Continued on following page . . .

4. SCHEME TERMINATION

We offer here some ideas to be considered in developing a framework for scheme termination.

The Owners Corporation Network made a submission in relation to scheme termination to the NSW Government's Strata Law Review in 2012. The OCN's recommendations were subsequently reflected in the NSW Government's 2013 Position Paper.

We quote here from and make reference to some of the OCN recommendations and also attach the OCN 2012 Submission 'Strata Renewal Model' for information.

1) To Repair or Sell?

The OCN 2012 submission points out that legislatively focussing only on scheme termination assumes that once a building is old, dilapidated, unsafe or fails to meet current Building Code requirements, the only solution is to demolish the building and erect a new building in its place.

In some cases significant improvements to older buildings can be achieved in terms of aesthetics, amenity, environmental performance and refurbishment at a reasonable cost. OCN encourages the Government and other relevant bodies to facilitate such redevelopment and refurbishment where possible.

2) 'Scheme Termination' vs 'Collective Sale'

The OCN Submission to the NSW Strata Law Review put forward that termination of a strata scheme is a distinctly separate concept from the collective sale of all of the lots and common property in a strata scheme.

Referring to and legislating for only 'scheme termination' may conflate the two concepts and overlook the difficulty of obtaining the agreement of lot owners to sell their lots to a third party (referred to in the Singapore Strata Titles legislation as a Collective Sale), as separate from obtaining agreement to terminate the scheme.

The real problem for owners and developers is the lack of provision in the legislation to facilitate the collective sale of all the lots and common property in a strata scheme to a third party. Once a single owner has obtained ownership of all the lots in a strata scheme, termination of the scheme will, in most cases, be a mere formality.

3) Collective Sales in Queensland

The BCCM Act currently appears to deal only with terminating schemes (Part 9 Termination of Schemes) with no specific mention of Collective Sales.

However, we note that the Options Paper states the following, suggesting that collective sale processes take place, perhaps under the Land Title Act:

> "Where the building has reached the end of its economic life the owners may enter into a collective sales arrangement with a developer who agrees to purchase all the lots, terminate the scheme and redevelop the site. . . . This means that, effectively, one dissenting owner can stop a scheme from being redeveloped." (page 50)

The Options Paper goes on to explain the current system for terminating schemes in Queensland:

> "When the scheme is terminated, the title to all individual lots is cancelled and replaced with a single title held by the (now former) owners as tenants in common. The body corporate is dissolved and the assets and liabilities of the scheme are vested in the former owners as tenants in common in shares proportionate to their respective interest schedule lot entitlements (as immediately before the termination)." (pages 50- 51)

4) Collective Sales in Singapore

In 1999 the Singapore *Land Titles (Strata) Act* was amended to include provisions for dealing with what have become known as collective or "en bloc" sales of property for redevelopment, in addition to already existing provisions for Variation or Termination of Schemes. In subsequent years, in the light of experience and court challenges, the legislation was further amended, now providing a useful model.

A collective or en bloc sale in Singapore typically involves the following steps:

1. Initiation and evaluation
2. An Extraordinary General Meeting of the lot owners to appoint a Collective Sales Committee
3. A second EGM to approve the appointment of lawyers and other consultants
4. A third EGM to approve the Collective Sale Agreement and the apportionment of the proceeds of sale
5. Signing the Collective Sale Agreement
6. One or more meetings to update lot owners on the signing of the Collective Sale Agreement and the proposed terms of sale
7. Marketing the property
8. One or more meetings to update lot owners on offers received and consider the terms of sale of the property

5) Strata Renewal Panel

OCN's submission to NSW included the concept of a Strata Renewal Panel or Tribunal, based on the Singapore Strata Titles Board, with the role of reviewing strata renewal plans, including for Collective Sale, particularly where it has been signed by less than 100% of lot owners.

In Queensland, the role of a Strata Renewal Panel could be to mediate between minority and majority lot owners to ensure an outcome that was fair and acceptable to all parties. If agreement

was reached, the Panel would make an order formally approving the Collective Sale. If mediation had proceeded as far as possible, but agreement could not be reached within 60 days, the Panel would make an order discontinuing the proceedings. It would then be open to the Committee on behalf of a majority lot owners to apply to the District Court to approve the Collective Sale and Scheme Termination.

6) Various Building Scenarios

There are a variety of circumstances that may require either remediation expenditure or collective sale and scheme termination. These differing scenarios should be taken into account in developing scheme termination protocols.

The following table contains examples of scenarios, listed in approximate order of seriousness, and indicates potential solution options. In most of these cases the Body Corporate is faced with making a decision about whether to do nothing or to embrace one of the solution options.

Scenario	Solution Options
Schemes where a developer is gradually buying lots with an intent of eventually purchasing all lots and terminating the scheme afterwards themselves	Scheme termination by developer after purchase of all lots (body corporate then fully controlled by developer). Residual common assets and liabilities distributed to developer.
Schemes where, for opportunistic reasons, a number of owners, but not all, would like to see a collective sale and scheme termination (but no offers on the table)	Collective sale by lot owners and scheme termination by buyer
Schemes where the body corporate has been approached by developer(s) with offer(s) to purchase all lots and common property	Collective sale by lot owners and scheme termination by buyer
New developments where severe defects and regulatory non-compliance (e.g. fire safety standards) result from inferior work of builders/developers (after the warranty period or where builders/developers succeed in avoiding responsibility)	Expensive repairs or Collective sale and scheme termination
Poorly maintained schemes where repairs would be so costly that collective sale would be more cost-effective	Expensive repairs or Collective sale and scheme termination
Buildings condemned by Council or refused insurance by insurers due to significant regulatory non-compliance (fire safety, asbestos, etc.)	Expensive repairs or Collective sale and scheme termination
Buildings deteriorated to such an extent that structural collapse takes place requiring significant expenditure (e.g. concrete cancer)	Expensive repairs or Collective sale and scheme termination

Regardless of the criticality of the scenario, under current legislation it can be difficult to obtain owner approval for major repairs (special resolution) or for a collective sale and termination of a scheme (resolution without dissent).

7) Suggested Process

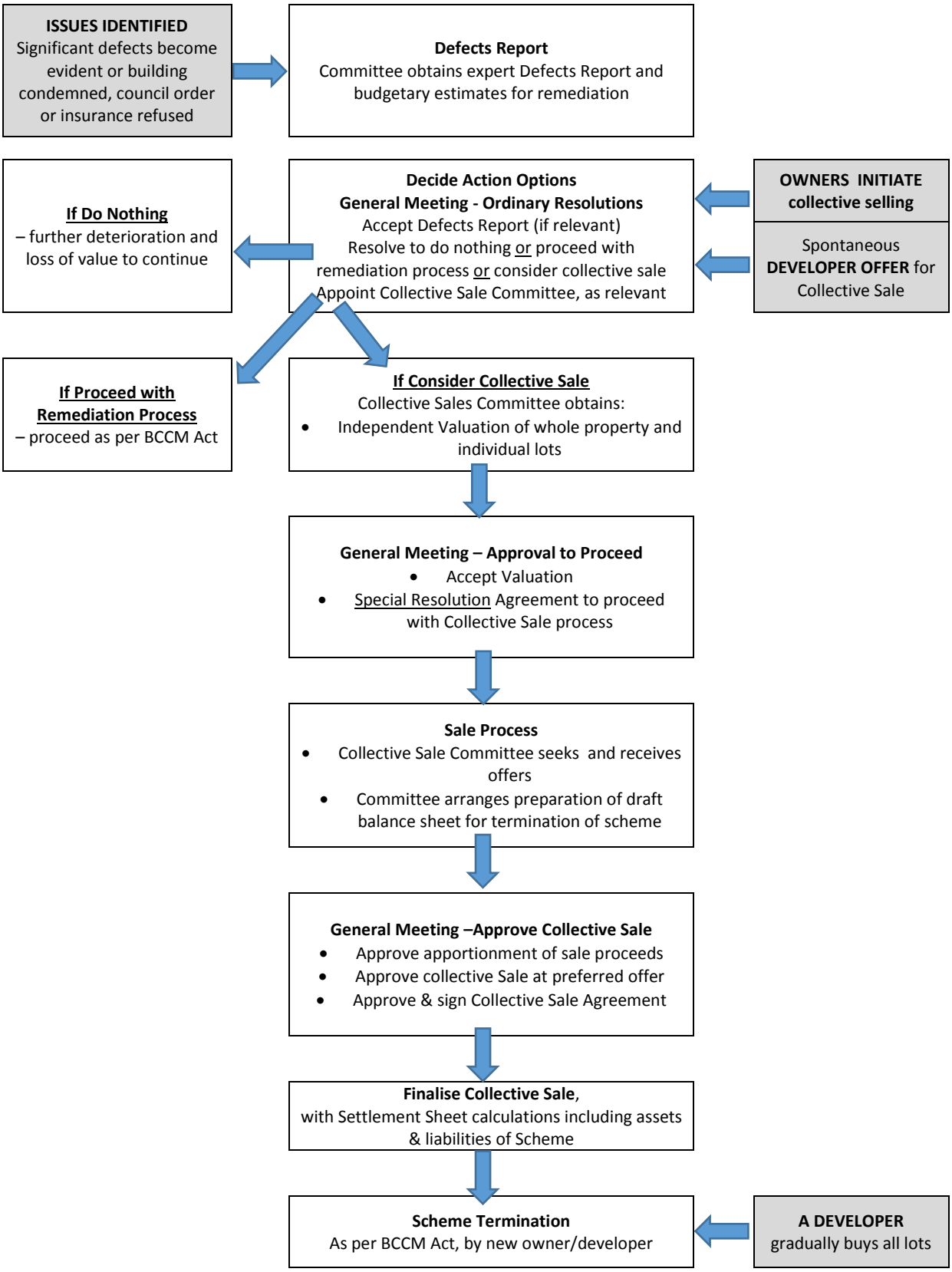
A draft process is depicted in the flow chart on the next page. The process includes:

- A requirement to obtain an expert Building Defects Report to assess extent of apparent major defects and provide budgetary estimates of remediation
- An ordinary resolution at a General Meeting to decide whether to do nothing, proceed with a remediation process or consider Collective Sale (Note: where a building is condemned, a Council Order exists, or the building is uninsurable, there is no 'Do nothing' option)
- If resolved to consider Collective Sale, an ordinary resolution at the same General Meeting to appoint a Collective Sale Committee
- A requirement to obtain a Valuation of the whole property by an independent qualified registered valuer, including of all lots and common areas - to be provided to owners for the next relevant General Meeting
- A Special Resolution at a subsequent General Meeting to agree to proceed with the Collective Sale process (Note there is no guarantee that offers would be forthcoming from developers or that offers would match the market valuation)
- Collective Sale Committee to seek offers and recommend preferred offer to a General Meeting
- A requirement to prepare a draft balance sheet incorporating all assets and liabilities including costs of terminating any contracts and leases - to be provided to owners for the next relevant General Meeting and as input to Sale Settlement Sheet calculations
- A General Meeting with a Resolution by % owners to approve Collective Sale and sign a Collective Sale Agreement
- After the Collective Sale is completed, the developer (new owner) proceeds with Scheme Termination as per the BCCM Act.

7) Apportionment of the Proceeds of Sale

A fundamental issue, that it would be helpful to have prescribed in the BCCM Act, is whether as part of a Collective Sale, lot owners receive payment for their lots based on the proportional market valuation of their lots, or on the basis of their Lot Entitlements. If the BCCM legislation were to remain silent on this matter while proposing a Collective Sales process, the issue could be a bone of contention and impact on the willingness of lot owners to sell.

Draft Collective Sale / Scheme Termination Process Flow Chart



25. Should a body corporate be able to voluntary terminate the scheme with less than 100% agreement of lot owners? What percentage should be required?

Please refer to the discussion on preceding pages of this document which outlines a suggested process. Moreover we submit that the challenge is not with scheme termination but with the earlier step of gaining lot owner agreement to the collective sale of all lots and common property.

We suggest that:

- A section about Collective Sale be added to the BCCM Act. This would provide for a legislated process for the Body Corporate to carry out a collective sale with a Collective Sale Agreement signed by a legislatively specified percentage of lot owners.
- The BCCM Act would need to specify that the Settlement Sheet calculations which are part the sale process would include the assets and liabilities of the body corporate, with assets or liability distributed to lot owners as part of the sale in shares proportionate to interest schedule lot entitlements. Liabilities include the cost of terminating existing contracts and leases.
- After the Collective Sale is completed, the new owner (probably a developer) would arrange for Scheme Termination as per existing BCCM Act.

As outlined in the Options Paper, in Singapore **schemes can be terminated** voluntarily by unanimous agreement of the management corporation or by an order of the court. In addition, the relevant legislation contains provisions to allow a majority of owners (90% for buildings less than 10 years old, or 80% for buildings more than 10 years old) to force the minority to sell their lots in accordance with **a collective sales agreement** that has been entered into by the majority. Once all the lots are sold, the scheme is terminated and the land is redeveloped.

The NSW Government in its 2013 Position Paper proposed that the threshold required to initiate a **collective sale** under the proposed model be 75% of lot owners, where each lot has one vote (that is, the decision is not based on unit entitlements).

We suggest that a preliminary decision to proceed with the selling process should only require a special resolution (see Flow Chart above). We support the percentages in the OCN's 2012 submission to the NSW Government that, in reference to **Collective Sales,** the threshold should be 100% of lot owners for schemes with four or less lots and 80% for schemes with more than four lots. These percentages should only come into play when an actual Collective Sale is on the table and approval to sell is required. After the Collective Sale is completed, the scheme termination would be carried out by the buyer/new owner/developer.

26. What safeguards should be in place for lot owners that do not support the voluntary termination?

If the process outlined in the discussion flow chart on preceding pages is is included in the legislation and carried out, there would be no further safeguards required.

The issue faced is that there may be a perception or a reality that some owners might face hardship if they have to sell their lot. Elderly people may find it emotionally upsetting, difficult and costly to relocate. Some may argue they cannot buy another property in the same location for the price obtained from the sale of their lot.

Unfortunately many property buyers are unaware of the risks involved in purchasing property. This lack of awareness may be addressed with the provision of more public education and disclosure statements.

27. What factors should the District Court consider when deciding whether it is just and equitable to order the termination of a scheme?

As outlined in the Options Paper:

- whether the building is uneconomic to maintain
- whether the redevelopment potential of the land is high where the building is otherwise sound
- the consequences (costs and benefits) to the lot owners if the scheme is terminated
- the consequences (costs and benefits) if the scheme is not terminated
- the age and condition of the building
- Sinking fund forecasts, expected capital expenditure, and current balance.
- The projected balance sheet at termination including cost of terminating any contracts and leases.

28. Should it be possible to terminate schemes that are part of a layered scheme without terminating all layers? What is the best way to achieve this?

Yes

29. What safeguards would need to be put in place if the threshold for scheme termination is reduced?

See answer to question 26.