

Annexure 1

Questions

1.

Should lot entitlements continue to be used to determine a lot owner's contribution to body corporate expenses and liabilities? If 'no', what other method should be used to allocate expenses within a body corporate?

A. 'Yes', but with a revised and more sophisticated formula as recommended by UOAQ

2.

What is the most appropriate method for the sharing of expenses within a scheme and why?

a.

Equal contribution to all expenses;

b.

Differential contribution (e.g. value or area of the lot);

c.

A combination of equal and differential contribution depending upon the nature of the expense; or

d.

Another method?

A. Combinations as recommended by UOAQ, to include equal, differential and market value.

3.

If body corporate expenses are shared equally should there be an ability for a developer to set lot entitlements having regard to just and equitable factors? If 'yes', what factors should be taken into account when deciding on the contribution schedule lot entitlements?

A. Providing a mechanism is maintained to review the lot entitlements, the developer may provide the initial schedule. Should owners find the schedule to be unfair they may seek a review.

4.

If expenses are shared on a differential basis according to contribution schedule lot entitlements, should the Act: (indicate preference)

a.

Specify the factors that *must* be used to determine lot entitlements (e.g. area of the lot, level in the building, use of the lot, market value or some other factor)? Should there be one factor only?

b.

Specify the factors that *may* be used to determine lot entitlements? (This would be an exhaustive list).

c.

Allow a developer to choose any factor provided the basis for calculation is specified in the community management statement? Should the developer be required to explain the basis using a clear formula/example (e.g. Base lot entitlement of 100 and adjusted for water-front + 20; park frontage +10; main road -10)?

A. The UOAQ submission provides answers to these questions.

5.

If a differential basis using market value is used, is there a need to retain two types of lot entitlements (i.e. contribution and interest) for each lot?

A. The UOAQ supports the maintenance of the equality principle to determine lot entitlements.

6.

If expenses are shared on a differential basis is there a need to retain the equality principle as an option for setting contribution schedule lot entitlements?

A. Refer answer to Question 6.

7.

Do you support a model where lot owners contribute differently to recurrent expenditure and capital expenditure?

a.

Option 1 – equal contribution to administrative fund, and market value to sinking fund;

b.

Option 2 – specified factor (e.g. area, use of lot, level in building) for administrative fund, and market value for sinking fund.

c.

If you do not agree, do you have a different suggestion?

A. Refer to UOAQ submission.

8.

Are there any models of best practice for setting lot entitlements not identified above, which this review should consider?

A. Refer to UOAQ submission

9.

What is the best way to educate prospective purchasers and lot owners about lot entitlements and the circumstances under which lot entitlements may change?

A. An information document from the Office of the Commissioner BCCM would be a good start.

10.

Should different principles from those discussed above, apply to different types of schemes (e.g. single scheme, layered scheme, mixed use schemes, two lot schemes, hotel style schemes) in relation to the setting and use of lot entitlements?

A. In the UOAQ submission it is suggesting that 3 schedules be considered for setting and use of lot entitlements. This formula would allow for additional schedules to be considered should they more fairly represent settings for different usage.

11.

Is there more justification for allowing greater flexibility in the setting of lot entitlements, or the allocation of expenses in a mixed use, or progressively developed scheme?

A. There could be justification for greater flexibility.

12.

What, in your view, is the most appropriate method for the allocation of expenses within a mixed use scheme where residential, retail or commercial lots are within the same scheme? Are there any examples of best practice?

A. Application of schedules that reflect the apportionment of the cost to the usage of the lot.

13.

What in your view is the most appropriate method for the allocation of expenses within a mixed use scheme where residential, retail, or commercial lots are within different schemes, or volumetric lots within a layered or other type of scheme? Are there any examples of best practice?

A. UOAQ has limited experience with this arrangement and abstains from a response.

14.

In your experience, what are the benefits of using building management statements to allocate costs between residential and commercial or retail lots in a mixed use development?

A. UOAQ is unfamiliar with the term 'building management statements', and is unaware of their usage under BCCM legislation.

15.

Is there a need for a different method of allocation of expenses within complex mixed use schemes other than through a community management or building management statement?

A. A CMS seems adequate. Allocation of expenses could be applied on the basis of usage.

16.

Do you think that developers should be responsible for setting lot entitlements when establishing new schemes? Why or why not?

A. Experience has shown that developers do not exercise fairness in new schemes. The developer is best placed to establish the initial schedules, providing availability to a mechanism that reviews lot entitlements is available to continuing owners.

17.

What supporting information should be required when registering a scheme (e.g. if lot entitlements are based on value, should the developer be required to include a valuation by a qualified valuer)?

A. Developers should be required to use competent professionals to register a scheme. The use of quantity surveyors for lot entitlements seems to be the preferred option. The developer should be denied any opportunity to influence the quantity surveyors.

18.

What input should lot owners have to the setting of lot entitlements? Should there be a right for a majority of owners to challenge the basis upon which lot entitlements are allocated? If 'yes', on what basis should they be challenged [e.g. unreasonable, inequitable, special resolution (without dissent unanimous)? What principles or criteria could a court use to determine the new allocation?

A. Currently, Specialist Adjudicators engage a quantity surveyor to assist them to determine fair schedules. The adjudicator determines how the costs of a review are shared. This enables any owner the right to seek a review, and should an applicant make a spurious application, he would be imposed with the total costs. Owners would generally not be qualified to determine a sophisticated schedule, and reference to a quantity surveyor should be preferred. The current system of a dispute with the body corporate being referred to a Specialist Adjudicator or QCAT seems a fair opportunity for an aggrieved owner. The criteria to be used to determine any new allocation are covered in the UOAQ submission and this document.

19.

Should the government or another body approve lot entitlements when registering schemes? Should there be discretion to reject an application for a scheme if the lot entitlements have not been set appropriately or they are unreasonable?

A. The maintenance of a review opportunity ensures that fairness will eventually prevail. A penalty on a developer (exercised by the adjudicator) for failing to appropriately determine fair and reasonable schedules may be a sufficient deterrent.

20.

Is there some other suitably qualified specialist that could be accredited by the government to evaluate lot entitlements and be required to certify that lot entitlements for new developments have been set in accordance with the required legislative principles?

A. Independent Quantity Surveyors.

21.

Should there be penalties or sanctions for developers who allocate lot entitlements unreasonably and in ways that do not accord with legislative principles?

A. 'Yes'. That would be a reasonable deterrent.

22.

Should bodies corporate of new schemes have the right to adjust contribution schedule lot entitlements after establishment of the scheme?

A. 'Yes'. But only through an application to a Specialist Adjudicator or QCAT.

23.

If 'yes', should there be any limits on when adjustments may be made (e.g. only to correct errors, or when there is a substantial change to the scheme)?

A. The intent is to determine fairness. A fair outcome should not be limited.

24.

Do you agree that for new schemes the power to adjust contribution schedule lot entitlements by resolution and by written agreement between lot owners should be retained?

A. This option should be retained provided there is the opportunity of a review.

25.

Should the voting threshold for a resolution to adjust contribution schedule lot entitlements require a resolution without dissent, a special resolution, or some other percentage in order to be passed by a body corporate?

A. Currently one owner can apply to review the contribution schedule lot entitlements. This opportunity should be retained in the interest of fairness. Response to Question 18 provides protection to unfair or unreasonable applications.

26.

Do you think that the current limited rights of a lot owner to seek an adjustment order by a specialist adjudicator or QCAT should be retained?

A. The question states that the current arrangements provide limited rights to a lot owner. UOAQ cannot share this view. An arrangement that allows a single owner to seek adjustment to this view demonstrates flexibility. Such an arrangement should be retained as it provides fairness to all owners, particularly any minority owners who may find that they may be excluded due to alternative arrangements as contemplated in Questions 21 to 25.

27.

If the right to seek an adjustment order is retained, on what basis should a lot owner or the body corporate be able to seek an order? Should the order be limited to whether the deciding principle was correctly applied or the allocation of lot entitlements is manifestly unreasonable?

A. The basis for retaining a right to seek an adjustment order should be that it is in the interests of fairness. Should an owner be able to argue or demonstrate that the current schedules are unfair, they should be able to pursue redress. Apportionment of costs based on amended or additional schedules that apply those costs on a lot owner's usage would demonstrate more fairness.

28.

Do you agree that for new schemes a tribunal or court should be able to adjust lot entitlements where there is a material change or resumption?

A. 'Yes'. An application for review should be available at all times to cover any circumstance.

29.

If 'yes', should one lot owner be able to instigate such a review? Should an ordinary resolution be required to support the application for a review?

A. A single aggrieved lot owner should have the right to seek a review. The suggested alternative of an ordinary resolution would lead to a majority of owners suppressing the rights of the other owners. That would provide the possibility of a fair outcome.

30.

Should the definition of 'material change' be limited to physical changes to the scheme? Should the definition provide examples of material changes? What should those examples be?

A. 'No'. Body corporate law has evolved over time and past legislation is superseded by current legislation. Should an issue arise and an owner considers that they are aggrieved; the right to seek a fair outcome through an application to a Specialist Adjudicator or QCAT should be available.

31.

Do you agree that new schemes should retain the current provisions relating to lot entitlements for amalgamated and subdivided lots? If not, how should lot amalgamations and subdivisions be treated if lot entitlements are to be adjusted?

A. There are different circumstances for subdivisions and amalgamations. A subdivision adds an additional lot owner to the scheme and a review would determine an additional lot entitlement contribution that would be additional to the original scheme and a benefit to other owners. An amalgamation would reduce lot entitlement contributions. The circumstances of the amalgamation would be considered by a Specialist Adjudicator or QCAT to determine a fair outcome.

32.

If the current provisions are not retained for new schemes,

a.

Should the lot entitlements for all lots in the scheme be adjusted following an amalgamation or a subdivision?

A. 'Yes'.

b.

Should the owner of an amalgamated lot be able to equalise their lot entitlements with other lots in the scheme by way of an adjustment order?

A. 'Yes', if it can be argued or demonstrated to a Specialist Adjudicator or QCAT that is a fair outcome.

c.

Should sub-divided lots be allocated lot entitlements equally to other lots in the scheme on an adjustment order?

A. That would seem to be a fair outcome.

33.

Is there a better way for lot entitlements to be allocated to post-subdivision lots?

A. A review by a Specialist Adjudicator or QCAT seems to provide the fairest outcome.

34.

Should a specialist adjudicator or QCAT be required to consider whether a lot has been amalgamated or subdivided when making an adjustment order for new schemes?

A. This is a confusing question as it considers adjusting a new scheme. A circumstance that may require such an adjustment is when a developer makes a sale that is not consistent with the original plan. An application to a Specialist Adjudicator or QCAT would be to determine a fair outcome of the completed scheme. It would be expected that developers would want to make changes as a development is built and this flexibility should be retained. On completion of the development should plans have been changed. An application for a review would ensure fairness to all owners.

35.

Should adjustment orders consider whether amalgamated lots are being used as separate residences?

A. 'Yes'. Each residence should contribute its fair share to body corporate costs.

36.

In addition to the mechanisms discussed, are there any additional mechanisms that may be appropriate or desirable in relation to setting and adjusting lot entitlements?

A. Refer to UOAQ submission.

37.

If adjustment orders are permitted, should the legislation limit the impact that an adjustment order would have on a particular lot owner's lot entitlement, for example by stipulating that a lot owner's contribution schedule lot entitlement cannot increase by more than a certain percentage as the result of an adjustment order?

A. 'No'. There should be uniformity to ensure fairness is properly and appropriately applied and not be arbitrarily limited.

38.

Should specialist adjudicators and QCAT be able to consider what a person knew about the lot entitlements in a scheme at the time that person purchased the lot (i.e. if the person purchased the lot with actual or deemed knowledge that the lot entitlements were not equal, should that person have a right to seek an adjustment order)?

A. The purpose of a review is to determine fairness. What a purchaser or any owner knew must be irrelevant in the pursuit of finding fairness in the scheme.

39.

Should new schemes be able to decide a different method of allocating all or some costs by passing a resolution or a by-law? If no agreement can be reached, should there be a right to apply to a court or tribunal to resolve the allocation of lot entitlements?

A. 'No'. If such arrangements exist, contrary to law, right of application to review should remedy such a problem.

40.

Should a motion of the body corporate to adjust contribution schedule lot entitlements require the consent of registered mortgagees and other parties that have a registered interest in the lot?

A. UOAQ sees little to be gained in maintaining these consent arrangements. They may also slow down the process unnecessarily.

41.

Should registered mortgagees and other parties that have a registered interest in the lot have any rights at all in relation to adjustments of lot entitlements?

A. It would be expected that they would have the same rights as the owner should they be required to take possession. That should be adequate.

42.

Should the legislation provide specific provisions in relation to the re-allocation of lot entitlements on the completion of a stage of development in progressively developed schemes? What are the problems in practice?

A. UOAQ has little experience with these issues.

43.

Should developers be liable for costs if lot entitlements become unreasonable as the result of the completion of a staged development?

A. UOAQ has little experience with this issue.

44.

Are there any other mechanisms that should be introduced in Queensland relating to adjustments of lot entitlements in the context of a progressively developed scheme?

A. The current arrangements available to owners in being able to apply for a review by a Specialist Adjudicator or QCAT seem to be adequate.

45.

Should lot owners in existing schemes retain the right to seek adjustment orders for contribution schedule lot entitlements?

A. 'Yes'. The current arrangements provide an opportunity for a review by competent specialists.

46.

If so, what should these rights be?

A. The right to obtain a review is the dominant feature of current arrangements.

a.

Should these rights be the same as the rights given to lot owners in new schemes?

b.

Should the current rights be retained?

A. 'Yes'.

c.

Should lot owners in all existing schemes have the right to seek an adjustment order, as existed in the BCCM Act prior to 14 April 2011?

A. 'Yes'.

47.

Should the distinction between pre and post 14 April 2011 schemes be removed?

A. 'Yes'.

48.

If existing schemes have the right to seek adjustment orders, on what basis should these schemes be adjusted?

A. As determined by a Specialist Adjudicator or QCAT.

a.

What type of body corporate resolution should be required to support an application for an adjustment order?

A. A resolution is not required as an application can be made by a single owner. Should a majority of the body corporate wish to support that owner it would have no consequence to the outcome as the Specialist Adjudicator or QCAT would be confined to an outcome in accordance with law.

b.

Should adjustments be limited to situations where lot entitlements are unreasonable or have become unreasonable?

A. It should be a Specialist Adjudicator or QCAT that determines whether the lot entitlements are unreasonable. They would then consider adjustment.

c.

Should what is fair and equitable be decided on the basis of any new/current principles or on the basis of the deciding principle at the time the scheme was created?

A. The purpose of a review is to establish what is fair and equitable. That fairness can be established by the use of any principle so long as it is fair in the circumstances. The fair outcome should be determined on today's values, not confined to past arrangements that may be questionable.

d.

If the deciding principle for setting lot entitlements in a pre-April 2011 scheme is not expressed in the community management statement should the adjudicator, or QCAT, or the lot owners, determine the deciding principle for the scheme?

A. The UOAQ is recommending the use of multiple principles to determine the fairest outcome. Quantity surveyors have demonstrated their ability to apportion costs on different bases, which seem to determine fairest outcomes.

49.

Should Specialist Adjudicator and QCAT be required to use the same principles to adjust a contribution schedule as were used to set it (e.g. if lot entitlements for a scheme registered under BUGTA were based on value, should a Specialist Adjudicator or QCAT be required to make any adjustments to the lot entitlements using value as the basis)?

A. Should the law evolve to establish fairer and more equitable outcomes? These outcomes should be available to any applicant, in the interests of obtaining fairness. Past arrangements, or means of setting contributions may not be considered fair today.

50.

If no changes are made to the law for setting or adjusting lot entitlements for new schemes, should there be changes to the right of adjustment for existing schemes?

A. The right to obtain a fair outcome should be the same for existing and new schemes.

51.

Should the right to seek an adjustment order as existed prior to 14 April 2011 be reinstated or should some other right apply? What should that right be?

A. The right of an owner to seek an adjustment order at any time should be retained, and the right as existed prior to 14 April 2011 seemed effective.

52.

Should schemes created prior to April 2011 be given the right to adopt a deciding principle?

A. The UOAQ argues that a mix of principles should be available to all schemes, and that the Specialist Adjudicator/QCAT with advice from a Quantity Surveyor determines those that are appropriate for the scheme to achieve the fairest outcome.

a.

If 'yes', should the decision be made by an ordinary resolution of the body corporate, a special resolution or a resolution without dissent?

A. None of these. Application should be made to a Specialist Adjudicator/QCAT to obtain expert review.

b.

What should happen if an agreement cannot be reached?

A. Refer to a Specialist Adjudicator/QCAT

c.

How long should schemes have to adopt a deciding principle?

A. A deciding principle can be adopted when the scheme is registered, and owners, should they believe that the deciding principle is inadequate or inappropriate; can apply to have it reviewed.

53.

Should the deciding principle be binding on Specialist Adjudicators and the tribunal in the event of an adjustment order?

A. 'No'. Specialist Adjudicators/QCAT should have the expertise to determine the most appropriate principles for the scheme. They should not be bound by a decision that has been made by a party that may not have their expertise.

54.

Do you agree that, subject to any transitional arrangements, there should be no retrospective operation of new provisions relating to setting and adjusting lot entitlements for existing schemes?

A. 'Yes'. We agree that there should be no retrospective operation of new provisions.

55.

Should existing schemes be able to vote to opt-in to new provisions for setting and adjusting lot entitlements, or should existing schemes be permitted to transition only to the new provisions with a court order on the basis of minimum considerations?

A. If any new provisions are to be contemplated they must be implemented to provide increased fairness to all in the system. In those circumstances all schemes should be able to access the fairer system.

56.

Would your decision to opt-in depend on what the new provisions for setting or adjusting lot entitlements are? If 'yes' which option would you choose?

a.

Option 1 - equal contribution to all expenses;

b.

Option 2 - Differential contribution on basis of

(v)

Value

(vi)

Area

(vii)

Level in building

(viii)

Other;

c.

Option 3 – combination of 'equal' for administration fund and 'market' for sinking fund.

A. UOAQ is recommending the use of multiple schedules, and has provided in its submission explanations as to how they would apply.

57.

How much time should existing schemes have to opt-in or seek a court order?

A. There should be no time limit and any owner should be able to seek review should they believe that the current arrangements are unfair.

58.

What should happen to existing schemes that do not opt-in to the new provisions within the required timeframe? Should they retain the current right to adjust lot entitlements or should they forfeit that right altogether (so that only new schemes would have a right to seek adjustment orders)?

A. This question presupposes a time limit which the answer to Question 57 addresses.

59.

Should BUGTA schemes be subject to the same lot entitlement adjustment principles as existing schemes under BCCM Act?

A. If owners in BUGTA schemes believe that the BCCM Act provides a fairer arrangement than that applying to their scheme, they should be provided with the means to apply, and seek that fairer outcome.

60.

If 'yes', how should the principles be applied to BUGTA schemes? Should BUGTA and the specified Acts be amended with provisions equivalent to any new provisions under the BCCM Act or should some other method apply (e.g. automatic migration to the BCCM Act or an 'opt in' procedure)?

A. UOAQ believes that legislators are best equipped to provide the answer to this question. It is reasonable to believe that the same fairness any new provisions may provide should be made available to any affected owners who believe they are subject to unfair legislative provisions.