

CASE NOTE:
**DISCOVERING COMMON GROUND – APPROPRIATION OF
COMMON PROPERTY FOR EXCLUSIVE USE AND SCHEME
TERMINATIONS**
**RECONSIDERING *ALBRECHT v AINSWORTH & ORS* [2015]
QCA 220**

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I INTRODUCTION

The Queensland Court of Appeal's decision in *Albrecht v Ainsworth & Ors* [2015] QCA 220 favoured stakeholders' rights and interests to determine whether it was just and equitable to allow the appropriation of common property for exclusive use. This aspect of the case was ultimately overturned by the High Court in *Ainsworth v Albrecht* [2016] HCA 40 [12 October 2016] as an error of law. However, given the similarity between the wording of provisions interpreted by the Court of Appeal, and the termination provisions in s 78(2) of the *Body Corporate and Community Management Act 1997* (Qld), the Court of Appeal's decision may guide the District Court's assessment of an application seeking the termination of such a scheme.

Multi-owned housing in Queensland is predominantly regulated by the *Body Corporate and Community Management Act 1997* (Qld) (*BCCM Act*). The legislative solutions built into the *BCCM Act* suit modern schemes' complex nature within contemporary society. The *BCCM Act's* distinct consumer protection emphasis seeks to achieve a workable balance between competing stakeholders' rights.¹

The dispute arising in relation to Viridian Noosa Residences Community Titles Scheme 34034 dealt with an owner's request for the allocation of approximately five square metres of common property for the exclusive use and benefit of Lot 11 in the scheme.²

Common property for a scheme is land within the scheme, but external to the boundaries of a lot.³ Given that scheme lot owners own the common property as tenants in common,⁴ changes to its use may only be implemented if the owners pass a resolution without dissent at a general meeting of the body corporate.⁵ In the case of Viridian Noosa Residences, Albrecht, the owner of Lot 11, sought allocation of the airspace abutting the exterior wall of his lot. Exclusive use of that area would have facilitated the construction of an extension to join his two balconies together to form one large deck.

The seven votes recorded against the motion at the general meeting vetoed the proposal,⁶ and Albrecht challenged its failure using the dispute resolution provisions in

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¹ *BCCM Act* ss 4(g), (h).

² *Ainsworth v Albrecht* [2016] HCA 40, [7].

³ *BCCM Act*, s 10.

⁴ *Ibid* s 35(1).

⁵ *Ibid* s 171.

⁶ *Ainsworth v Albrecht* [2016] HCA 40, [10].

the *BCCM Act*.⁷ The Commissioner for Body Corporate and Community Management referred the dispute for resolution by a specialist adjudicator. In making the orders sought, the Adjudicator classified the dispute as falling under s 276(1)(a) of the *BCCM Act*.⁸ Section 276(1)(a) of the *BCCM Act* provides:

276 Orders of adjudicators

- (1) An adjudicator to whom the application is referred may make an order that is just and equitable in the circumstances ... to resolve a dispute, in the context of a community titles scheme, about —
- (a) a claimed or anticipated contravention of this Act or the community management statement; or
- (b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement...

Albrecht sought an order consistent with Item 10 of Schedule 5 of the *BCCM Act*,⁹ which provides:

If satisfied a motion (other than a motion [for the] ... termination or amalgamation of the scheme) considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable — an order giving effect to the motion as proposed, or a variation of the motion as proposed [may be made].

Albrecht argued that opposition to the motion was unreasonable and, accordingly, a breach of s 94 of the *BCCM Act*. Section 94 of the *BCCM Act* requires the body corporate to act reasonably when administering the common property, enforcing the community management statement and carrying out its other functions, or in making, or withholding a decision to carry out those activities. Albrecht submitted that the breach of s 94 of the *BCCM Act*, entitled him to relief under s 276(1)(a) of the *BCCM Act*.

The requirement in the *BCCM Act* for a resolution without dissent to transfer the benefit of common property, evidences the strong protections granted to property rights in the *BCCM Act*. It prevents a diminution in the rights of the body corporate without the consent of its members. Objections to an appropriation of common property for exclusive use must not be unreasonable.¹⁰

By way of contrast, there is no similar obligation on lot owners to act reasonably when voting on a motion – which may also only be approved by the passage of a resolution without dissent – to terminate a scheme under s 78(1) of the *BCCM Act*. The only alternative means to effect a termination is to obtain an order from the District Court, pursuant to s 78(2) of the *BCCM Act*. The Court may make the order in circumstances where Their Honours conclude that it is just and equitable to terminate the scheme.¹¹ In making its determination, the Court must have regard to the views of

⁷ The failure of the motion may be regarded as a complaint pursuant to the definition of ‘dispute’ in Sch 5 of the *BCCM Act*. A dispute between an owner of a lot within the scheme and the body corporate is subject to the dispute resolution provisions of the *BCCM Act* (s 227).

⁸ *Viridian Noosa Residences* [2013] QBCCMCmr 351, [30].

⁹ *Ainsworth v Albrecht* [2016] HCA 40, [11].

¹⁰ *BCCM Act*, item 10 Sch 5 and *Ainsworth v Albrecht* [2016] HCA 40, [59].

¹¹ *BCCM Act*, 78(2).

owners, tenants, the local government and, if the land is in a priority development area, the Minister for Economic Development, Queensland.¹²

While ss 276(1) and 78(2) of the *BCCM Act* are not identically worded, the immediate similarity – the requirement for an order to be made that is just and equitable – highlights the potential capacity for *Albrecht v Ainsworth & Ors*¹³ to provide guidance in interpreting s 78(2) of the *BCCM Act*. This is relevant, particularly as *Body Corporate for Nobbys Outlook v Lawes*¹⁴ is the only case to have been brought before the District Court pursuant to s 78(2) of the *BCCM Act*.¹⁵ However, in that case, Her Honour Kingham DCJ declined to make the orders sought by the parties, instead remitting the matter back to mediation. Her Honour preferred to allow the parties to negotiate an agreement on the issues which Her Honour regarded as problematic in the application.¹⁶ As a result, Kingham DCJ's decision in *Body Corporate for Nobbys Outlook v Lawes*¹⁷ only concerned a costs award relating to the earlier trial when the matter was sent back to mediation.¹⁸ Consequently, no precedent exists on what considerations the District Court may relevantly take into account under s 78(2) of the *BCCM Act* when determining what is just and equitable in the termination of a scheme.

II THE RELEVANCE OF ERRORS OF LAW IN *ALBRECHT V AINSWORTH & ORS* [2015] QCA 220

The High Court, in *Ainsworth v Albrecht*,¹⁹ ultimately overturned the Queensland Court of Appeal's earlier decision,²⁰ concluding that Their Honours made multiple errors of law in the decision. Those errors stemmed from Their Honours upholding of the Adjudicator's incorrect classification of the dispute. The High Court resolved that the dispute was not one that fell under s 276(1)(a) of the *BCCM Act*. Rather s 276(1)(b) of the *BCCM Act* applied. Their Honours held that it was not a question of whether the body corporate had acted unreasonably in failing to pass the motion and, therefore, contravened the *BCCM Act*.²¹ Rather, the dispute concerned the exercise of the respective scheme lot owners' voting power when casting their vote in the general meeting.²²

Neither s 276 of the *BCCM Act*, nor Item 10 of Schedule 5 of the *BCCM Act* extend to an application for the termination of a scheme made under s 78(2) of the *BCCM Act*. Therefore, the error of law made by the Queensland Court of Appeal in *Albrecht v Ainsworth & Ors*²³ is irrelevant in assessing the precedent value of the case for its potential application to scheme terminations under s 78(2) of the *BCCM Act*. Instead, the Queensland Court of Appeal's comments in determining what is just and equitable, and the reasonableness of a decision, may prove helpful.

¹² Ibid s 78(6). The Minister for Economic Development, Queensland is authorised pursuant to Pt 2, Ch 3 of the *Economic Development Act 2012* (Qld) to declare priority development areas within the State.

¹³ *Albrecht v Ainsworth & Ors* [2015] QCA 220.

¹⁴ *Body Corporate for Nobbys Outlook v Lawes* [2013] QDC 301.

¹⁵ Ibid.

¹⁶ Ibid [8].

¹⁷ Ibid.

¹⁸ Ibid [9].

¹⁹ *Ainsworth v Albrecht* [2016] HCA 40.

²⁰ *Albrecht v Ainsworth & Ors* [2015] QCA 220.

²¹ *BCCM Act* s 94(2)

²² Ibid s 276(1)(b)

²³ *Albrecht v Ainsworth & Ors* [2015] QCA 220.

It is perhaps unsurprising that the relevant stakeholders' opinions on the acceptability or otherwise of Albrecht's proposal for the common property were divided. It is likely that a similar rejection of a motion proposing termination of a scheme will occur where diverse ownership exists, and those owners have competing and disparate interests in their ownership plans for their lot and the scheme itself.²⁴

*Ainsworth v Albrecht*²⁵ established that it is not unreasonable for a dissenting owner to act in a self-interested manner and oppose a motion where there is a 'reasonable apprehension' that their rights, or the use and enjoyment of their lot, may be adversely impacted by a proposal.²⁶ In relation to the allocation of common property for exclusive use, the decision maker must adjudge whether the owners acted unreasonably in casting that dissenting vote at the general meeting. In the case of a termination, the District Court may make orders despite the reasonableness or otherwise of the dissenting owners' objections. In this regard, those dissenting owners' opinions, while undoubtedly relevant, are but one factor pertinent to the Court's decision. Their Honours must also have regard to the potentially competing views of the additional stakeholders in s 78(6) of the *BCCM Act* in determining what is just and equitable in the circumstances.

A *Balancing the parties' interests in decision-making*

The Adjudicator determined, after having regard to ss 94(2), 276(1)(a) and Item 10 of Sch 5 of the *BCCM Act*, that her task was to decide whether the body corporate had acted unreasonably and, therefore, contravened the *BCCM Act* in failing to pass the motion at the general meeting.²⁷ In order to make that determination, she considered all the relevant circumstances,²⁸ balancing the rights and interests of those owners in favour of, and those against the motion,²⁹ in order to reach a fair outcome.³⁰

In the High Court's dismissal of the Adjudicator's classification of the dispute under s 276(1)(a) of the *BCCM Act* as an error of law, Nettle J resolved that a 'balancing act' may have been appropriate if the Adjudicator was required to decide what was just and equitable.³¹

His Honour arguably highlighted a number of relevant points which could guide the District Court in its decision making process under s 78(2) of the *BCCM Act*. That is, the District Court should apply an 'even-handed ... conciliatory approach ... [recognising] the interests or wishes of others'.³² This could be achieved by Their Honours placing themselves 'in the shoes of the body corporate, posing the issue in terms of what a "just and equitable" balancing of interests required'.³³

In reviewing the Adjudicator's decision to order the allocation of common property for exclusive use under Item 10 of Sch 5 of the *BCCM Act*, the Queensland Court of Appeal regarded the following factors as relevant.³⁴

²⁴ Cathy Sherry, 'Termination of Strata Schemes in New South Wales – Proposals for Reform (2006) 13 *Australian Property Law Journal* 227, 230.

²⁵ *Ainsworth v Albrecht* [2016] HCA 40.

²⁶ *Ibid* [64].

²⁷ *Viridian Noosa Residences* [2013] QBCCMCMr 351, [22], [28], [30].

²⁸ *Ibid* [36].

²⁹ *Ibid* [33-34].

³⁰ *Ibid* [37].

³¹ *Ainsworth v Albrecht* [2016] HCA 40, [85].

³² *Ibid*.

³³ *Ibid* [87].

³⁴ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [23], [24], [83], [84].

- the high market value of the units at the time of acquisition by the owners;
- the architectural design principles for the scheme, which attempted to limit the functionality and, therefore, the noise generated from balconies;
- the conclusion, based on disputed expert reports, that the improvements would not negatively impact on the design principles for the scheme;
- the conclusion, once again based on disputed expert reports, that there would be a limited increase in use and, therefore, noise on the balcony;
- the perceived easy solution to overcome any diminution in privacy to the adjoining lot owner resulting from an extension to the balconies;
- the number of votes cast for and against the motion;
- the lot owner's desire to improve his lot, and the additional value-add that the extension would create, and
- the limited use of the common property to the other owners of lots in the scheme which was impacted by the exclusive use allocation.

In an application for a termination under s 78(2) of the *BCCM Act*, the District Court might be expected to take into account related issues. The protection of the dissenting owners' right to security of title and concomitant 'immunity from expropriation'³⁵ would be expected to be a high priority for the Court. In balancing these rights, however, the Court may consider the social and economic justifications for termination of the scheme, particularly if it is nearing, or has exceeded, its economic life span. In doing so, a number of broader factors become relevant. That is, renewal or redevelopment may become more cost-effective for owners than maintenance.³⁶ Further, the impact on the wider community through the retention of economically obsolete assets may need to be considered,³⁷ however, the need to provide affordable housing solutions, which may be more prevalent in older neighbourhoods, may also be relevant.³⁸ Tourism income for a region,³⁹ and the easing of scarcity concerns through higher density development or redesigned streetscapes, the slowing of urban sprawl and satisfaction of housing needs for growing inner urban populations⁴⁰ are all broader-application factors which may be material considerations

³⁵ A M Honoré, 'Ownership' in A G Guest (ed), *Oxford Essays in Jurisprudence* (Clarendon Press, 1961), reprinted in Michael A Heller, 'The Tragedy of the Anticommons: Property in the Transition from Marx to Markets' (1997–98) 111 *Harvard Law Review* 621, 663.

³⁶ Jan Warnken, Roslyn Russell and Bill Faulkner, 'Condominium Developments in Maturing Destinations: Potentials and Problems of Long-term Sustainability' (2003) 24 *Tourism Management* 155, 155 and Property Council of Australia, 'Renewing our strata titled city: a discussion paper on reforming strata title law' (Discussion Paper, July 2003) 9–10 <<http://www.propertyoz.com.au/library/SUB%2003%20NSW%20Renewing%20Our%20Strata%20Titles%20City.pdf>>.

³⁷ Warnken, Russell and Faulkner, above n 36, 160.

³⁸ Nicole Stelle Garnett, 'The Neglected Political Economy of Eminent Domain' (2006–07) 105 *Michigan Law Review* 101, 112 and Amnon Lehari and Amir N Licht, 'Essay Eminent Domain, Inc.' (2007) 107 *Columbia Law Review* 1704, 1711.

³⁹ Warnken, Russell and Faulkner, above n 36, 160.

⁴⁰ Queensland Department of Infrastructure and Planning, 'Findings from the Gold Coast City Broadhectare Study', (2008, 6th ed) 6; Australian Broadcasting Corporation, 'Sydney Housing "Unaffordable"', *Stateline NSW*, 19 March 2010; Property Council of Australia, 'The Urban Renewal Lifeline' (2011); City Futures Research Centre, Faculty of the Built Environment,

for the varying classes of stakeholders set out in s 78(6) of the *BCCM Act* and, accordingly, assessable by the District Court under s 78(2) of the *BCCM Act*.

B Reasonableness

After the Adjudicator's classification of the dispute, she went on to consider whether the actions of the body corporate were reasonable and, subsequently, whether the order under Item 10 of Sch 5 of the *BCCM Act* should follow. The Adjudicator's enunciation of what factors determined reasonableness, in order to achieve a just and equitable balance between the parties' interests, may have wider application.⁴¹ She accepted the ordinary, broad, common sense meaning of 'reasonable', assessable according to an objective standard.⁴² While a 'logical and understandable' basis for a decision may exist, that basis is only indicative of its reasonableness, not decisive.⁴³ That is, protection of the owners' genuine interests, and their entitlement to vote on a matter, was sought to be balanced against 'the justifiable position of proponents [in] the face of unfounded or vexatious opposition'.⁴⁴ Reasonableness is, therefore, determinable based on the material facts of each case.⁴⁵

It should be noted that in the joint judgment of the High Court, Their Honours held that an owner voting in a general meeting of the body corporate need not act 'sympathetically or altruistically' towards another owner who is presenting a motion which would diminish theirs, or the body's corporate, property rights.⁴⁶ Owners must only act reasonably, without 'spite, or ill-will, or a desire for attention'.⁴⁷

With respect to a termination, while there is no specific obligation to act reasonably, it is likely that this criterion may be satisfied anyway. An owner who opposes a motion to terminate the scheme on the basis of their emotional connection to their property,⁴⁸ and the desire to remain in it, is unlikely to be regarded as acting with 'unfounded or vexatious opposition'.⁴⁹ Similarly, opposition against a termination motion for purely economic reasons, such as an attempt to extract the maximum financial return from a sale, may still be 'logical and understandable' in the circumstances,⁵⁰ particularly if an owner-developer is seeking termination of the scheme to facilitate redevelopment of the land.

C Compensation

The Adjudicator concluded that the area of common property which was affected by Albrecht's request for exclusive use, was of little or no use to any of the other lots

University of New South Wales, Submission to NSW Premier's Council for Active Living, *Metropolitan Strategy Review: Sydney Towards 2036*; and Australian Bureau of Statistics, Austats (2011) Australian Government, <<http://www.abs.gov.au/Ausstats/abs@.nsf/mf/3222.0>>.

⁴¹ *Viridian Noosa Residences* [2013] QBCCMCmr 351, [22], [28], [30].

⁴² *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 referred to in *Albrecht v Ainsworth & Ors* [2015] QCA 220, [22].

⁴³ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [22].

⁴⁴ *Viridian Noosa Residences* [2013] QBCCMCmr 351, [38].

⁴⁵ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [22].

⁴⁶ *Ibid* [57].

⁴⁷ *Ibid* [63].

⁴⁸ Margaret Jane Radin, 'Property and Personhood' (1982) 34 *Stanford Law Review* 957 and Nicole Stelle Garnett, 'The Public-Use Question as a Takings Problem' (2003) 71 *George Washington Law Review* 934.

⁴⁹ *Viridian Noosa Residences* [2013] QBCCMCmr 351, [38].

⁵⁰ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [22].

within the scheme.⁵¹ The valuer's report provided by Ainsworth and the other dissenting owners, provided an indicative value of between \$10,000 and \$20,000.⁵² By way of contrast, Albrecht's real estate agent's appraisal concluded that, based on the limited usefulness of the land to the body corporate and other lot owners, its value was nominal.⁵³ Surprisingly, the Adjudicator disagreed with the qualified valuer's opinion. Without justifying the decision, she ruled that Albrecht's lack of an offer to pay compensation for his appropriation of the common property was not a reasonable ground for the owners to have refused their consent to the motion.⁵⁴ Somewhat incomprehensibly, the Queensland Court of Appeal upheld the Adjudicator's position on this point.⁵⁵

By way of contrast, in the joint judgment of the High Court, Their Honours were scathing of the treatment of compensation in the Adjudicator's decision.⁵⁶ The appropriation of the common property for the exclusive use of Lot 11 would not have advantaged the body corporate or other owners in any way, yet it would undoubtedly have benefited Albrecht. In this regard, the extension of the balcony area would have added both functionality and size to the exclusive use area, together with a corresponding increase in value.⁵⁷ Their Honours determined that a land owner, in this case the other scheme lot owners as owners of the common property, were entitled to insist on compensation for an agreement to part with their property, irrespective of its current use.⁵⁸

Termination of a scheme may be proposed for a number of reasons, but presumably, there must be an exit strategy for owners, whether it be sale, redevelopment or a myriad of other options.⁵⁹ That exit strategy must provide some return to owners in exchange for title to the lot, or if the transfer occurs after termination, for the owners' share of the land formerly part of the scheme held as tenants in common with the other owners.⁶⁰ In these circumstances, the question is not whether owners should receive consideration for the transfer of their lot to another. There is no doubt that consideration for the acquisition component of a termination should be paid, particularly given the High Court's strong ruling on this point in *Ainsworth v Albrecht*.⁶¹ Rather, the question which should be asked revolves around what level of compensation is appropriate in the case, particularly if the site is proposed to be redeveloped post-termination. Should the owners be paid based on the current market value of the lot? If the value of the combined parcel will increase as a result of the reassembly of lots with the common property to form a larger parcel capable of redevelopment on a more comprehensive scale, should the owners receive a proportion of the total aggregation surplus?⁶² An assessment by the District Court of whether an application is just and equitable should extend to an assessment of the

⁵¹ *Viridian Noosa Residences* [2013] QBCCMCmr 351, [46].

⁵² *Ibid* [135].

⁵³ *Ibid* [136].

⁵⁴ *Ibid* [47].

⁵⁵ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [87].

⁵⁶ *Ainsworth v Albrecht* [2016] HCA 40, [64].

⁵⁷ *Ibid* [64].

⁵⁸ *Ibid* [62].

⁵⁹ Section 78(1)(b) of the *BCCM Act* requires the owners and all lessees to enter into a 'termination issues' agreement dealing with the items 'necessary for the effective termination of the scheme'.

⁶⁰ *BCCM Act* s 81.

⁶¹ *Ainsworth v Albrecht* [2016] HCA 40.

⁶² For a discussion on this point in the context of compulsory acquisition see Melissa Pocock, 'Orgies of seizure and violence: Compulsory acquisition and private sector redevelopment – lessons for Australia' (2015) 20 *Local Government Law Journal* 27.

quantum of consideration payable to owners upon distribution or sale of the body corporate assets and scheme land upon a termination.

While neither the adjudicator, nor the Queensland Court of Appeal, regarded consideration to be a relevant factor in assessing the reasonableness of the refusal of consent, the author argues that the level of compensation payable is pertinent to an assessment of whether the order for a termination would be just and equitable under s 78(2) of the *BCCM Act*.

III FUTURE IMPLICATIONS / POINTS OF NOTE

There is a strong property rights theme permeating the decisions of the High Court in *Ainsworth v Albrecht*.⁶³ In the joint judgement, French CJ, Bell, Keane and Gordon JJ held that an owner voting in the general meeting of a body corporate need not act 'sympathetically or altruistically' towards an owner who is presenting a motion which would diminish theirs or the body's corporate property rights.⁶⁴ Owners must only act reasonably, without 'spite, or ill-will, or a desire for attention'.⁶⁵ Their Honours recognised that an objection would be regarded as reasonable where a 'reasonable apprehension' of a diminution in the owners' rights, or in the use and enjoyment of their lot, had been created from the proposal before the body corporate.⁶⁶

*Ainsworth v Albrecht*⁶⁷ was limited to alterations to exclusive use areas and the appropriation of common property. However, the interpretation of the provisions adopted by the Queensland Court of Appeal in *Albrecht v Ainsworth & Ors*⁶⁸ resulted in a discussion of the circumstances in which it might be just and equitable to issue relief to an owner. Despite the finding of an error of law in *Ainsworth v Albrecht*,⁶⁹ the Court of Appeal's discussion may provide guidance to the District Court when making a determination pursuant to s 78(2) of the *BCCM Act*. The means of balancing the parties' interests when engaging in the decision-making process, the reasonableness of objections to a termination and, although not required by the Adjudicator or the Queensland Court of Appeal, the consideration payable to owners as a result of the proposal, may all contribute to the making of a just and equitable decision in a termination.

The only case borne from an application under s 78(2) of the *BCCM Act* did not result in a decision on termination.⁷⁰ Consequently, the District Court provided no guidance on the considerations relevant to the Court's decision. If any lessons may be learnt from *Body Corporate for Nobbys Outlook v Lawes*,⁷¹ it is that the Courts will likely prefer parties to reach agreement on the matter, rather than imposing a decision which will interfere with a validly made decision of the body corporate.⁷² The strong protections granted to property rights by the High Court will likely also be reflected in any decision by the District Court.

All parties, particularly dissenting owners, must be treated fairly both in the proceedings and the proposal stemming from a termination application. Being given

⁶³ *Ainsworth v Albrecht* [2016] HCA 40.

⁶⁴ *Ibid* [57].

⁶⁵ *Ibid* [63].

⁶⁶ *Ibid* [64].

⁶⁷ *Ibid*.

⁶⁸ *Albrecht v Ainsworth & Ors* [2015] QCA 220.

⁶⁹ *Ainsworth v Albrecht* [2016] HCA 40.

⁷⁰ *Body Corporate for Nobbys Outlook v Lawes* [2013] QDC 301.

⁷¹ *Ibid*.

⁷² *Viridian Noosa Residences* [2013] QBCCMCmr 351, [30].

the opportunity to voice concerns is only one aspect of this. As in the High Court's decision in *Ainsworth v Albrecht*,⁷³ it is anticipated that the objections by dissenting owners will carry substantial weight, particularly because the negative impact on property rights may be enough to render opposition by those owners 'logical and understandable', and not 'unfounded or vexatious'.⁷⁴

The assessment of the stakeholders' interests to reach a just and equitable decision will necessitate the balancing of varied factors. It remains to be seen, given the High Court's continued strong protection of property rights, whether the District Court is likely to find that a diminution of dissenting owners' rights to the extent necessary to effect a termination could be just and equitable.

⁷³ *Ainsworth v Albrecht* [2016] HCA 40, [11].

⁷⁴ *Albrecht v Ainsworth & Ors* [2015] QCA 220, [22].