

Discussion Paper on Belvue Apartments Crosslease 93132

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1 Objectives

The first purpose of this document is to describe the structure and function of our crosslease, its purpose, rights, obligations and responsibilities, as derived from the legal framework. It is meant to provide a plain English summary of relevant rules and regulations for the members of the owners committee to understand our own individual roles in relation to the overall role of the crosslease.

Secondly, it attempts to give a reasonably comprehensive and systematic review of our current operations, with some historical perspective and a focus on areas in need of improvement. It is acknowledged that many things are perfectly fine and adequate, considering that our crosslease is governed by apartment owners without special training, who volunteer to keep the building's affairs running smoothly at a comparatively low cost. But the purpose of this document is not to self-congratulate, but to point out our weaknesses. This part is necessarily not just about pure facts, but also about opinion. It is meant as a starting point for further discussion about our mode of operation, engagement, dialogue and feedback.

Lastly, this document aims to show how to build upon that common understanding and especially the recognition of our shortcomings to improve the way we conduct our affairs. The main focus here is to establish more openness, inclusiveness, transparency and accountability in the governance of the crosslease.

This document at present represents a draft version, which you are invited to contribute to and improve and especially correct, should you spot any factual errors in its contents.

Part I

Legal Framework

2 Our Legal Identity

Our crosslease has come into existence through the document called “Memorandum of Lease” being registered with the land registry in 1981 for the building on Deposited Plan 93132. You will probably have received a copy of this document when you bought your apartment, or you may obtain it from “Land Information New Zealand (LINZ)”.

The Memorandum of Lease (MoL) is a legal document, which can be difficult to understand by a non-lawyer. It is mainly concerned about creating the legal constructs *Lessors* (all “apartment owners” of the building acting as a common legal entity) and *Lessee* (an individual “apartment owner”), as well as the relationship between the two parties. Even though the phrase “apartment owner” is not right in a strict legal sense, in practice the lease construct is viewed as a form of shared ownership and that phrase is used in the following text without quotation marks. It may seem confusing that both the Lessors and Lessee are listed as “Target Estates Limited at Christchurch” in our MoL, but that only means the building was entirely owned by that company in early 1981. As apartments were subsequently onsold, every *current* apartment owner of the building is now a Lessee and the Lessors continue to be all *current* owners acting together as a common legal entity, with the details of the MoL still governing our relationship.

The phrase “a crosslease” is used generically for the type of legal arrangement expressed in a MoL document, whereas “our crosslease” refers to the specific group of current apartment owners of our building acting together as a single legal entity according to the rules set out in our MoL. In the following text, the words “we”, “us” and “our” are used as abbreviations to refer to “our crosslease”. To be specific about the identity of our crosslease when communicating with external parties, it is commonly identified by the number of the Deposited Plan at the land registry as “Crosslease 93132”. The more common name “Belvue Apartments”, according to the sign “Belvue” (in exactly this spelling) displayed on the building, may be added for easier recognition, but is not sufficient to identify our crosslease in any legal documents.

Frequently, our crosslease is referred to as a “body corporate”. However, this is misleading and adds to the confusion about the proper understanding of our crosslease. A “body corporate” is any of a number of different legal structures constituted under specific acts of law, such as the Companies Act 1993, the Unit Titles Act 2010 and others. While the Unit Titles Act does not apply to our crosslease, it is a more modern law aiming to regulate a similar relationship between apartment owners acting individually and apartment owners acting as a common legal entity. So, it may be useful to compare our crosslease against the standards set by “body corporates” according to the Unit Titles Act. There is an excellent and easy to understand report by Auckland Regional Council issued in August 2003, titled “The Mysteries of Bodies Corporate. A guide to the rights and responsibilities of apartment ownership”, still obtainable under the old ARC link

<http://www.arc.govt.nz/albany/fms/main/Documents/Auckland/Auckland%20growth/The%20Mysteries%20of%20Bodies%20Corporate%20-%20A%20guide%20to%20the%20rights%20and%20responsibilities%20of%20apartment%20ownership%202003.pdf>

But we have to keep in mind, our crosslease does not fall under that legislation. Further background to the distinction between a crosslease and a body corporate can be found in the Law Commission report “Shared Ownership of Land” from November 1999, obtainable from

<http://www.nzlii.org/nz/other/nzlc/report/R59/R59.pdf>

3 Structure and Delegation of Powers

Ultimately, all rights and responsibilities of our crosslease, as defined in our MoL, rest with the apartment owners acting collectively. The MoL is a legally strong instrument. Altering any provisions in the MoL itself would be a protracted legal process that would require unanimous support of *all* apartment owners. In contrast, actions and decisions allowed by and not contradicting our MoL, can be taken at any time by the simple majority of all apartment owners, where 1 apartment equals 1 vote.

For practical purposes, the MoL allows the crosslease to appoint a management committee (also called an “owners committee”) and delegate the rights and responsibilities of the crosslease to it. Our crosslease is making use of this structure, with an owners committee appointed at the annual general meeting of the crosslease. The owners committee

is required to uphold the provisions of the MoL, act in the best interest of orderly management of the building and remain accountable towards all owners for its own actions and decisions.

Our MoL does not further refine the structure or delegation of powers within the owners committee. All appointed members of the owners committee are volunteers, each contributing their specific skills and capabilities to the common goal and each member having equal decision rights in the group.

4 Responsibilities Resulting from Our MoL

Our MoL deals with rights and obligations of individual owners as well as the rights and obligations of our crosslease as a whole. The former is the private affair of each individual owner. This discussion paper mainly deals with the latter, since this is the part we need to organise and manage.

The following tasks and responsibilities are specified for our crosslease:

- Maintain in good order repair and condition the common electrical and plumbing equipment, drains, roofs, spouting, downpipes and other amenities serving the building. Maintenance of the ground floor building manager office is also the responsibility of the crosslease. Services with a transition point between common infrastructure and apartment-internal infrastructure are the responsibility of the crosslease only up to the transition point (e.g. power cabling only maintained up to fuse box, water supply only maintained up to mains water tap at entry of apartment).

Common areas of the building (like balconies, stairwells, laundries and store rooms), common lighting, TV aerials and aerial cabling, phone cabling, the fire alarm system and the lift are regarded as other amenities within the responsibility of the crosslease, even though they are not listed in the MoL.

- Maintain in good order repair and condition the common grounds, paths, fences and other amenities related to the land.
- Keep the building insured for full replacement value against fire and earthquake and other risks normally associated with a comprehensive house owners policy.

The building/ground maintenance and the insurance requirements are essentially the only responsibilities of the crosslease, as specified in our MoL. However, additional responsibilities of the crosslease may arise from other laws and from actions and contracts entered into by the crosslease (see section 6).

5 Rights Resulting from Our MoL

In addition to responsibilities, our MoL also gives our crosslease specific rights:

- The right to levy individual apartment owners an equal share of all the costs reasonably required for the proper management, maintenance, control and administration of the land and building.

- The right to employ a building caretaker/manager (who might reside on-site in the ground floor “office” apartment), or alternatively the right to rent the “office” apartment and use the rental income to reduce overall levies for all apartment owners.
- The right to employ any secretarial or accountancy services.
- The right to amend the house rules in the interest of safety, care, cleanliness, as well as good order and behaviour.
- Various “enforcement” rights to ensure individual apartment owners comply with their responsibilities. But this is balanced with the requirement that the crosslease does not unreasonably interfere with the apartment owners’ rights to “quiet enjoyment” of their property.

Essentially, the crosslease is free to use any combination of voluntary work by apartment owners, employment and contracting to fulfill its obligations. In practice, all three forms of service delivery are used simultaneously to accomplish different tasks.

6 Other Rights and Responsibilities

6.1 Building Act 2004

The Building Act requires the owner of any multiparty building with certain features (among them: lifts and fire alarm systems) to obtain, display and renew on a yearly basis a current Building Warrant of Fitness (WOF) Certificate. Since our crosslease is the formal owner of our building, it is the crosslease who is responsible for compliance with the act.

The authority overseeing the Building Act in our region is Auckland Council. This establishes our relationship with and obligation towards Auckland Council.

6.2 Income Tax Act 2007

Income earned by our crosslease, mainly in the form of interest income on our bank accounts and dividends received from Auckland Energy Consumers Trust on our power account, is taxable under the Income Tax Act. As a result, filing an income tax return at the end of the tax year falls under the responsibilities of our crosslease.

This establishes our relationship with Inland Revenue.

6.3 Rights and Responsibilities Towards Individual Apartment Owners

The crosslease really is all apartment owners acting together as one. Since it would be impractical to involve the participation of every owner in every action or decision, we need to have fair and effective procedures for the administration of our internal affairs. According to established conventions, our crosslease needs to:

- Keep and maintain an owners’ register with contact details, so we know who we all are.

- Provide a point of contact for the crosslease to facilitate adequate communications by mail, phone and e-mail.
- Organize the Annual General Meetings (AGMs) and Owners Committee Meetings (OCMs) of the crosslease, including the timely distribution of preparatory materials and the keeping of meeting minutes.
- Keep contracts, invoices and other important documents on record and make them available on request.
- Invoice owners for the services provided by the crosslease and follow up on late payments.
- Keep track and oversight of all incoming and outgoing payments of the crosslease.
- Keep financial accounts according to good accounting practices, including participation in audits and the yearly planning of a new budget.
- Handle cases of non-compliance with the MoL by individual apartment owners, if necessary. This may include arbitration and enforcement matters.
- Deal with any new or unexpected issues brought to the crosslease's attention.

6.4 Rights and Responsibilities Derived from Contractual Relationships

Our crosslease has a number of formal contracts or less formal arrangements with various service providers. While all of these relationships off-load some of our duties off our shoulders, each of these relationships also places a new duty of management and oversight upon us. This section lists the more enduring service provider relationships. Other service providers are engaged on a more or less regular basis for specific tasks.

6.4.1 Building Caretaker/Manager

Since our crosslease has chosen to employ a building caretaker/manager, we collectively have become an employer, with all rights and responsibilities that flow from the various employment laws. This means, our crosslease now has to comply with the

- Employment Relations Act 2000 (for managing the employment relationship),
- Health and Safety in Employment Act 1992 (for providing a safe work environment),
- Accident Compensation Act 2001 (for paying ACC and handling possible work-related injuries),
- Income Tax Act 2007 (for PAYE tax payments to IRD),
- Holidays Act 2003 (for holiday and holiday pay),
- Minimum Wage Act 1983 (for complying with minimum pay),
- KiwiSaver Act 2006 (for retirement savings)
- and possibly other employment-related laws.

6.4.2 Secretarial and Accountancy Services

Most of our crosslease’s administration tasks are currently performed by Body Corporate Administration Ltd. (BCA). This includes the tasks described in section 6.3, with non-routine or exceptional matters handled by the owners committee and with the authorisation of outgoing payments currently done by Graham Smith, who is the single signatory on our bank accounts. BCA also files our tax returns, arranges quotes for maintenance matters and insurance and handles any insurance claims we may have.

While BCA supports us in these tasks and performs most of the work associated with them, responsibility for these matters and the oversight of BCA’s work still rests with us, the crosslease. Normally, when a service supplier enters into an agreement with a customer to provide a wide-ranging and long-lasting service-relationship, there is a clear service contract outlining the precise rights and responsibilities of both parties. However, there seems to be no such contract between our crosslease and BCA. Two years ago, I requested to see a copy of the contract that established our relationship from back in the 1980’s or 1990’s. In reply, I was told by BCA (Alana Augustino), BCA does not have such an agreement between BCA and our crosslease. Instead, BCA was only able to send me a copy of their current “standard cross lease agreement” as an indication of services offered.

The lack of a proper service contract is a serious deficiency and shows that our relationship with BCA is on shaky grounds.

6.4.3 Banking

Our crosslease has a transaction and savings bank account with Westpac bank. This implies a standard customer-relationship with Westpac. Graham Smith is currently the sole signatory to the accounts and acts on behalf of our crosslease when authorising transactions.

6.4.4 Financial Auditing

We engage an independent auditor to audit our annual financial accounts. These audits are currently done by Greg Mason of Auckland Chartered Accountants Ltd., where BCA prepares and supplies our accounts to the auditor and the auditor does some checks and may require BCA to provide additional explanations or corrections.

The appointment of the auditor is a standard service contract, which places no particular obligations on our crosslease, but requires our service provider BCA to cooperate with the auditing process.

6.4.5 Building Valuation and Insurance

Our building insurance, as required by our MoL, is usually tendered annually for the period from 1. April to 31. March. Our current insurer is Vero Insurance Ltd. The insurance contract generally requires our crosslease to keep a current building WOF and comply with any fire safety standards.

Preceding the yearly insurance tender, we obtain a current valuation for the building to make sure the building is insured to the appropriate total value. The yearly valuation itself

does not imply any contractual obligations on our crosslease. It is simply a commercial service utilized by us.

6.4.6 Office Bearer Liability Insurance

Members of the owners committee acting on behalf of our crosslease are insured by an office bearer liability insurance. Our current provider is Vero Insurance Ltd.

As usual under such insurance policies, the insured members of the owners committee are expected to understand their rights and responsibilities and act in the best interest of the crosslease. If any members were to act outside their powers or under conflicts of interest, their actions would not be insured.

6.4.7 Lift Services

The lift in our building is covered by a maintenance contract between our crosslease and Otis Elevator Company Ltd.

6.4.8 Fire Alarm Services

Our building fire alarm system is regularly tested and maintained by the company Argus Fire Protection.

6.4.9 Building WOF Compliance Services

ISIS Building Inspections Ltd. is contracted by our crosslease to help us comply with the requirements for our building WOF certificate.

6.4.10 Common Electricity Supply

The part of the building electric power supply, which is servicing common areas, is charged to the crosslease. It includes power for the lift, laundries and common lighting. Our electricity supplier is Empower Ltd.

The electricity supply contract is a standard residential consumer contract with no unusual responsibilities for us.

6.4.11 Water Supply and Wastewater Services

The water supply and wastewater services to our building is done by Watercare Services Limited, an Auckland Council organisation. Due to the layout of the water piping system, private use of water by apartment residents and common use of water (laundries and garden taps) is metered together on one single supply contract with a single bill charged to the crosslease.

Again, this is a standard residential consumer contract with no unusual responsibilities for us.

6.4.12 Rubbish Disposal and Recycling

We have a contract with Rubbish Direct Ltd. for rubbish disposal and recycling, which is a competitor to Auckland Council's rubbish removal. The contract started in June 2010 and runs for 3 years, with automatic extensions for further 3 year periods, unless terminated prior to renewal. Our main constraint from this contract is that we are bound to using and paying Rubbish Direct's services — whether we need them or not — until the time for renewal comes up.

6.4.13 Painting Services

The exterior painting of our building is maintained on a yearly basis through a contract with Programmed Property Services Ltd. (PPS). This includes waterblasting of the building. The contract started in 2005 and is scheduled to run until 2017. Our main responsibilities to the contract are: pointing out areas in need of repainting and organising for cars in the car parks to be moved for access to the areas to be painted.

6.4.14 Laundry Services

Gooder Equipment Ltd. provides, owns and maintains the washing machines and dryers in our laundries. The machines are coin-operated and our crosslease receives 20% of the proceeds as income, which offsets part of our water/power bills. One obligation on us is to either insure the machines against theft and vandalism or carry these risks ourselves. We have chosen not to insure the machines, but carry the risk.

6.4.15 Gardening Services

The garden areas on our property are maintained by the contractor Heath BM & LG. No particular obligations on us arise from this relationship.

6.4.16 Other Services with Minor Impact on Rights and Responsibilities

There is a small number of relationships with service providers, which do not require regular interaction, but nevertheless it is worthwhile to list them here for completeness in case they are needed.

Our lift contains an intercom system that would enable any trapped lift passenger to alert our lift services company for rescue. The intercom system uses a Telecom phone line, for which we are charged a monthly phone bill by Telecom.

Our locksmith All Lock Services Ltd. provided locks to the laundries and storerooms accessible with floor-specific keys as well as a master-key for all installed locks. Should any new locks be required, it should be considered to include them into the established master-/floor-key hierarchy.

Our TV aerial system was installed by Babylon Communications Ltd. and this company is naturally most familiar with the aerial communications setup.

The company BDM Plumbing Ltd. has done various plumbing jobs for us and is therefore reasonably familiar with the piping infrastructure of the building.

The company Alive Electrical Services Ltd. has done various electrical maintenance tasks for us and is therefore reasonably familiar with the electrical cabling infrastructure of the building.

Part II

Current Status of Our Crosslease

People become part of the crosslease through the purchase of an apartment in our building. There are obviously no specific qualifications, skills, knowledge and experience required of the owners when they join in to become the crosslease. The quality of a crosslease's governance is only as good as the willingness and capability of its members to take their affairs into their own hands. This applies equally to the entire crosslease convening at the AGM as it applies to the owners volunteering to have themselves appointed to the owners committee.

Most apartment owners are just interested to own a place to live in, or to own a place for rental income and property value increase. The average owner does not even realise that by buying an apartment, he/she becomes responsible for the proper running of the building. Most apartment owners seem to assume that somehow the affairs of the building are automatically being taken care of, even without their involvement. This general passivity and lack of understanding frequently results in meetings, where only a select few “in the know” are asking the critical questions or running the affairs, with others being led to agree with what appears to be the group-consensus by those people doing the talking.

Anyone who might be qualified as a lawyer, real estate professional or accountant would likely be regarded under these circumstances as being in a strong position, possibly dominating the affairs of the crosslease. In crossleases lacking owners with this kind of knowledge, affairs are frequently dominated by whoever is contracted to do their administration work.

In contrast, under conditions where knowledge and understanding about the rights and responsibilities of an organisation are more widely shared, a more democratic governance structure is the norm. Part of the objective for creating and circulating this document is to spread the knowledge and understanding of our crosslease in order to improve openness, transparency and accountability.

The following sections describe the established routines and practices within our crosslease and an assessment of what they reveal about our organisation.

7 Annual General Meetings

AGMs of our crosslease are organised by our secretarial and accountancy services provider BCA. They are usually chaired by the same person, who traditionally has chaired all AGMs and OCMs for at least the last decade. The meetings follow a reasonably standard agenda, which includes

- listing apologies and proxies to determine, if the meeting quorum has been reached,
- reviewing the meeting minutes of the previous AGM,
- the (re-)appointment of an owners committee for the next year,
- reporting on completed maintenance work,

- reporting on the financial accounts,
- reporting our most recent choice of insurance provider and seeking authorization for the owners committee to choose among next year’s insurance quotes when the current contract ends,
- discussion of next year’s proposed maintenance work,
- a decision on next year’s budget and corresponding levies and
- allowing for some “general discussion”.

Although there is the opportunity to discuss or ask questions about individual agenda items or even raise other matters in the meeting, the AGM is rarely the forum for serious discussion about accountability or other fundamental questions. The event is usually carefully stage-managed and controversial issues are often deflected with a few subtle mechanisms, such as:

- AGM materials (e.g. accounts) are not distributed with the meeting invitation, giving the attendees practically no time to familiarize themselves with the handouts to engage in any informed discussion.
- Controversial items are frequently postponed to the “general discussion” at the end of the meeting and then cut short due to time constraints.
- Some questions or issues are taken out of the meeting with the promise to be treated separately at a later time. Later, they may be conveniently forgotten.
- Warm and fuzzy words are sometimes invoked for public praise of individuals to display goodwill and prevent or disguise the appearance of tensions.
- Inconvenient or controversial raised issues during the meeting are sometimes omitted from or misrepresented in the meeting minutes.

8 Owners Committee Meetings and Beyond

A similar pattern applies to OCMs as to AGMs. OCMs are also prepared by BCA, chaired by the same person as AGMs and consist roughly of the following agenda:

- list apologies,
- review the meeting minutes of the previous OCM,
- report on the financial accounts,
- report on completed maintenance work,
- discuss upcoming maintenance work,
- decide between quotes obtained for upcoming maintenance work,
- possibly ask for volunteers to take charge of a specific identified issue,

- allow for some “general discussion” and
- set a date for the next meeting.

Although BCA does distribute meeting materials a day or two in advance via e-mail and discussions at OCM meetings tend to be a little bit more candid than at AGMs, the same subtle techniques as for AGMs are sometimes used to control the meetings.

AGMs and OCMs are officially supposed to be the governing and controlling mechanisms of our crosslease. We engage in both types of meeting in formalised routines and have grown accustomed to them over the years to such an extent that it is difficult to even consider there might be anything wrong with our proceedings. But as the average outcome of these meetings is about 1 or 2 choices between different maintenance priorities or alternative quotes presented, AGMs and OCMs do not in practice exercise the powers of the crosslease. After the regular scheduled meeting agenda items have been worked through, there never seems to be much time left to ask questions or discuss more fundamental matters, before time pressure and the desire to rush home for dinner end the meeting. The real decisions are made elsewhere — behind the scenes and out of sight.

With an average of 4-5 OCMs per year of approximately 1 hour duration, it is more revealing what does not happen at these meetings than what does happen.

Some activities between meetings are handled via e-mail exchanges. Unfortunately, this excludes current owners committee members Anna Curtis and Len Nola from those conversations taking place, due to the lack of e-mail access. But both have been made aware that e-mail exchanges are used for official owners committee business and are invited to join. I use e-mail extensively, mostly to ask questions and point out mistakes in our accounts, which tend to be plentiful. In general, it is considered best practice to copy all reachable owners committee members when e-mailing. Some people are more selective and less inclusive in their choice of target audience.

But by and large, in between meetings, all the levers of power seem to be concentrated in the hands of one person. This is not in any way formally authorized by any democratic procedure, but is simply the result of historic practice established more than a decade ago. Everyone seems to be fooled by the presumption of legitimate authority, when accepting the (un-elected) *chairman* of the owners committee as having a privileged position within our crosslease. In reality, the chairman is just the person who happens to chair a meeting — nothing more or less. But as long as the general misperception is perpetuated that all our powers should be vested in a single person, who without effective accountability

- drives the meeting agendas,
- exclusively chairs all meetings,
- is the editor-in-chief of the meeting minutes,
- controls our bank accounts,
- appoints our auditor,
- negotiates on our behalf with external service suppliers,

- is considered the single signatory for contracts,
- is in charge of our relationship with BCA and
- acts as the employer of our building manager,

our crosslease is not really exercising control of its own affairs. Most other democratic organisations — from small sports clubs to community organisations to cooperative associations — establish shared accountability by splitting their internal governance into separate roles with regular election of candidates, such as one person chairing meetings, another person doing the paperwork and a third person handling finances — roles commonly referred to as chairperson, secretary and treasurer.

While I don't view the separation of governing roles (such as chairperson, secretary and treasurer) as absolutely necessary, I do insist that anyone entrusted to act on behalf of our crosslease needs to be extra cautious not to overstep his/her position of trust and *always act in line with decisions of the crosslease*.

Furthermore, since our crosslease doesn't officially have a privileged person, the legal position is that *any apartment owner* of the crosslease is entitled to act or sign a document on behalf of the crosslease — provided only that the act or document has been agreed upon by the crosslease. This may come as a surprise to some.

9 The Avoided Questions

Initially, when joining the crosslease as a new owner or joining the owners committee as a new member, it's natural to assume that everything must be in good order, because we live in a benign society, all the people are friendly, the discussions are good-mannered, and the AGM and OCM proceedings have an aura of officialdom and formal structure with some impressive sounding legal phrases thrown in. But this attitude is pure naïvety. Behind the façade of smiling faces, bodycorp administration is a highly competitive business with its own intrigues and legal wranglings. While our crosslease is expected to have its affairs managed by BCA without the legal certainty of a proper service contract, BCA's own interests are rigorously fought at the High Court. We may have averted a ridiculously overpriced roof repair five years ago by bringing in an alternative quote ourselves, but the corrupt practice of "back-hand deals" is widespread in the property industry according to an interview with the Home Owners and Buyers Association on Radio New Zealand on 27.11.12, see

<http://www.radionz.co.nz/national/programmes/ninetonoon/20121127>

During a case fought by BCA at Auckland High Court, it was acknowledged in the court findings that such inappropriate payments have indeed been received within BCA, see sections [86-87] in the court's findings at

<http://jdo.justice.govt.nz/jdo/GetJudgment/?judgmentID=173285>

So, after initially assuming everything must be just fine, it's our duty to actually start asking serious questions, demand answers, and point the finger at anything which doesn't appear right, regardless if someone might feel upset about it or not. To the contrary,

whenever someone feels upset about a question asked, it is imperative to insist on answers and dig deeper.

In addition to its day-to-day business, any well-run organisation should regularly stop for a moment, reflect and ask itself, whether

- it fulfills all its responsibilities,
- its division of labour between its members, employees and contractors works well,
- its activities are run cost-efficiently,
- it engages in any unnecessary or wasteful activities and
- its governance is appropriate.

Our crosslease has not engaged in a systematic review of these questions within at least the last 12 years and every member of our crosslease is equally responsible for this state of affairs. This discussion paper is part of my contribution to raise awareness of our rights and responsibilities as members of our crosslease. We need to stop being complacent and start being compliant in order to prevent becoming complicit. After all, we have volunteered to be involved in the governing of our crosslease and need to take our role seriously. Otherwise, what's the point of volunteering to serve as member of the owners committee?

10 Assessment of Specific Tasks; Questions and Suggestions

This section goes down the list of our actual responsibilities from sections 4 and 6, regardless whether they arise from our MoL, common law, obligations of fairness towards all apartment owners or contractual relationships.

10.1 Maintenance and Repairs

The initiative for maintenance work originates mostly from members of the owners committee or reports of damage received from owners. There is usually much scope in determining how localised or widespread a problem is, whether a quick fix or a more permanent solution is the best approach and which of a number of different solutions should be chosen. Where a maintenance task is vague and needs to be further elaborated, a subcommittee or individual is asked to volunteer to take a lead on the matter. Transparency and inclusiveness in these preliminary stages have been an issue in the past. At the OCM, great care will be taken to give everyone the same opportunity to participate. However, I have volunteered to be included in subcommittees in the past, only to find out later that I've been sidelined and the site-visit with contractors went ahead as an old boys club meeting among mates. Reality doesn't always match the talk. By the time quotes are presented to the OCM, usually many choices have already been made.

But major maintenance and repair work, as far as it is not covered by a service contract, seems to be the part of our responsibilities that is discussed comparatively well at OCM

meetings, although at times the OCM is presented with quotes to choose from for the solution of some problem, before the OCM has been made aware of the existence of that problem in the first place.

For example, a quote for an alternative rubbish disposal service appeared out of the blue at the OCM meeting of 8.6.2010, with a second quote allegedly requested but not received in time for the meeting. In the meeting, Graham and Warrick made the point, replacing the Auckland City Council rubbish disposal with a private rubbish disposal service was popular among other multi-party properties. The quote was shortly discussed and accepted within just a few minutes. At a later OCM, after Catherine had the opportunity to review the matter, she alerted us to the fact that rates rebates for private rubbish disposal are not handled consistently across the greater Auckland area and the upcoming amalgamation of councils into the newly formed Auckland Council might change the rates rebate status for us. But by that time, our contract with Rubbish Direct Ltd. for a 3-year fixed term with automatic extensions and no early exit clause was already signed. Of course, Rubbish Direct understood well why they wanted a fixed term contract — we didn't. It would have been much better, if the idea to change our rubbish disposal provider was discussed at the time it came up (to be considered by all), rather than being introduced and decided in one OCM. This would have made it possible for us to consider Catherine's warning in time before signing the contract.

BCA offers as part of its standard crosslease agreement to "advise, co-ordinate and obtain quotes for ground and property maintenance". In practice, we often handle this ourselves, with one or more volunteers designated to take care of a specific maintenance matter. If a member of the owners committee is not taking "ownership" of the maintenance matter, the story frequently goes like this: the task is raised in an OCM or e-mail exchange; the language describing the task is vague; someone at BCA (who has probably never seen our building) is asked to get in quotes; BCA calls 2 or 3 contractors and describes the task, which is usually even more vague than the original description; contractors are dispatched to our building to look at the issue for their quote; at our property, they may or may not talk to our building manager; our building manager may or may not be able to explain the issue, will happily provide the key for access (whether roof, laundries, electricity rooms or whatever), but is unlikely to accompany the contractor to show what exactly needs to be done; by this time, the contractor will already think "what an unorganised body corporate!", but will provide some kind of quote based on his best guess of what needs to be done; the 2 or 3 quotes based on wildly different assumptions will be presented 2 months later at the next OCM; the OCM is likely to find the presented quotes uncomparable and might want clarification, which will introduce further delays; the work might be delayed or cancelled due to budgetary constraints or because the contractor now (3 months later) has no free capacity or is already fed up with the disorganised process; if the work proceeds to a satisfactory conclusion, it may be just luck.

Whereas the decisions on the *appointment* of repair and maintenance contractors tend to be discussed and decided at OCMs, their *follow-up* tends to be a much more murky affair. In general, payments are only made after it has been verified that the associated work has been completed satisfactorily. This is the good news. But here is another example: our fire alarm switchboard needed repair; Argus Fire Ltd. didn't know how much time the repair would take, so they quoted 4 hours (quote presented at 12.06.2012 OCM), but saying it may be less or more; our building manager said, it took one worker approximately 2 hours to fix; nevertheless, the full 4 hours from the original quote were

charged and paid. It seems, contractors understand that their work is not being monitored, so they may be tempted to overcharge or under-deliver. What is the process here supposed to be?

A few other open questions: what are the contractual arrangements with the gardener we are paying on a monthly basis? How is his work recorded and monitored? What does our contract with him say about how much work he is supposed to deliver? Who has a record of how much work he has actually delivered last year? As far as I can see, gardening work is generally performed by one of our owners on a voluntary and unpaid basis. Does anybody know, if the gardener we are still paying is actually still doing any work for us?

10.2 Building Valuation and Insurance

The process of building valuation is usually not even mentioned in OCM meetings. It just happens somehow behind the scenes. Who initiates that process and is there anybody accompanying the valuer on site? BCA's current standard contract says: "the reinstatement valuation certificate is put out to tender every 2 years", but I have only ever seen valuation certificates by Sheldon and Partners Ltd. in the last decade. It would be interesting to see, if other valuers assess our building to a similar value.

The process of obtaining insurance quotes seems to be working reasonably well, but there has been at least 1 occurrence within the last 5 years when the insurance policy renewal was so late that we came uncomfortably close to being uninsured. The payment of our 2012 insurance was more than 2 months late and it is unclear what impact this late payment would have had, if there had been a significant loss event prior to our payment. I would suggest to maintain a calendar of recurring tasks (see appendix B), so that important matters are not forgotten.

10.3 Building Warrant of Fitness

Most of our responsibilities from the Building Act 2004 are handled by our contractor ISIS Building Inspections Ltd., with a file of records kept at the building manager office. It remains for the building manager to actually *display* the Building Warrant of Fitness Certificate where it can be seen. Section 108 of the Building Act says: "The owner must publicly display a copy of the building warrant of fitness in a place in the building to which users of the building have ready access [...]. A person commits an offence if the person [...] fails to display a building warrant of fitness that is required to be displayed [...]. A person who commits an offence under this section is liable to a fine not exceeding \$20,000". That means *we*, the crosslease, can be fined. Despite the law being clear about this, I have never seen a building WoF displayed in our building since I moved in in 2001. At the OCM on 6.03.2012, when our building manager said a displayed certificate would quickly be vandalised, she was clearly told by Catherine to "just get on with it" and we decided to buy a \$50 certificate holder. It's unclear if this purchase was ever made. After the following OCM, I told our building manager, if she has concerns about vandalism, she should display the building WoF inside the managers office on the window facing the staircase. She said, she had the WoF laminated to be displayed. But the WoF is still not being *displayed* to this day. Something is very dysfunctional here.

10.4 Income Tax Return

As far as I'm aware, the income tax return for our crosslease has never been discussed and never been even presented to the owners committee. Judging by the poor record of financial accountability (see section 10.10) by BCA, it would be worthwhile to look at how BCA's track record on acting as our tax agent is.

10.5 Owners Register

I'm assuming, the owners register for our building is kept reasonably up to date. This is essential for levy invoicing and any other direct communication. At a recent OCM, Glenn complained that it is a nightmare keeping the register up to date, because in a crosslease (as opposed to a body corporate), there is no legal requirement for a new owner to "register" with either the building manager or secretary (BCA). Anyway, whether nightmare or not, when in doubt, it should be reasonably straightforward to ask a tenant who the landlord is.

10.6 Point of Contact

BCA is supposed to provide a point of contact for the crosslease to facilitate adequate communications by mail, phone and e-mail, internally and externally.

Judging just from how our crosslease is known by our *regular* contractors and communications partners, we seem to suffer a really bad case of identity crisis and confusion. Our crosslease is variously referred to as "Belvue Apartments Crosslease 93132", "Bellevue Apartments", "Body Corp Bellvue", "Crosslease 93132", "Building DP 25961", "Crosslease property 9 Sarawia St.", "Body Corporate 9 Sarawia St.", "Body Corporate Bellevue Apartments", "Sarawia Apartments", or "XL Sarawia".

Letters sent on our behalf by BCA usually contain the BCA letterhead and some reference like "RE: CROSS-LEASE PROPERTY Sarawia" or a different variety. Our building itself has a pinboard next to the manager's office, but without any contact information — only the occasional "car park for rent" notice. The door on the manager's office has a sign "Private Residence", as if to say: "Keep off — do not disturb!" If any water leak happened or some other maintenance matter, I guess the average building tenant would not even know who to contact — the landlord (or his agent), the family living downstairs behind the "Private residence" sign or some company in Queen Street.

There is a simple solution to these problems: the consistent use of a standard letterhead and e-mail signature when acting on behalf of our crosslease, identifying us with our official name "Belvue Apartments Crosslease 93132" and always distinguishing between ourselves and BCA. Furthermore, a letter listing all contact information, including after hours emergency contact should be displayed on the building's pinboard. This would be a good start in effective communication.

10.7 Paperwork for Meetings

Paperwork to be discussed at AGMs is usually not distributed prior to the meeting. This is a shortcoming limiting the potential for a more informed debate.

After the meeting, one of the sentences appearing in the AGM minutes is this: "It was resolved that if any proportionate share of costs either authorised by this or any

other general meeting of the cross lease property are not paid by a proprietor on the due date, then the property administrator is authorised and instructed on behalf of the cross lease property to exercise those powers conferred on the property pursuant to the lease including the recovery of any costs expended as a result of that proprietor's default". Of course, that's nonsense, the meeting did not even last long enough to formulate such a long sentence! So, after diligently asking BCA to correct the meeting minutes and remove the reference to the resolution that never actually happened, it's practically certain that at next year's AGM the same wrong meeting minutes are re-printed in the handouts (I have complained about wrong meeting minutes in the past and it was ignored). What this means is: whoever behind the scenes is in charge of preparing the paperwork, is not really interested in meeting minutes that correctly reflect what was said or decided at the meeting, but more interested to repeat what many years ago some lawyer decided would be a good phrase to include.

This is just one trivial example of minute-taking degenerated into a hollow procedure. More substantial cosmetic surgery takes place, but this only becomes visible after consciously deciding to open one's eyes.

How does the process of creating and distributing the paperwork function? Is the task of writing up meeting minutes delegated further down the chain to someone who did not attend, akin to the kindergarten game of "Chinese whispers"? Who is in charge of editing here?

10.8 Record Keeping

Our crosslease has many different records, partly electronic, partly on paper. Meeting invitations, agendas, handouts and minutes are official records of our activities. Contracts between our crosslease and other parties record our rights and obligations and generally need to be kept for as long as the relationships are ongoing. Quotes and correspondence in connection with contracts may need the same retention period. Our financial records generally have to be kept for 7 years (IRD requirement).

Most of our records are kept at BCA, although some materials are kept on-site at the building manager office and some are duplicated at both sites. It would be a good idea to ask BCA and our building manager for an overview of the records kept, just to be more aware of what's relevant to the day-to-day operations of our crosslease.

I'm not sure, which other owners committee members have ever requested copies of documents or records from BCA and what level of satisfaction with BCA's service others have. But it is my experience that most requests for even very specific items of information tend to be ignored on first e-mail and only grudgingly actioned after a second request 2 weeks later or even require more persistence. While not exactly a "request for information", chasing up BCA to get our overcharged PPS payments refunded with the proper interest took more than a full year and at least 8 to 10 e-mails, phone calls and face-to-face exchanges at OCM meetings.

10.9 Levy Invoicing

One of the first things a businessperson learns is how to invoice properly. IRD is helpful enough to tell in its introductory brochure what must be included in a GST tax invoice. Even small corner dairies run by immigrant families usually get this right — but not BCA

Ltd. If the invoice is done by a GST-registered person, it should have the words “GST Tax Invoice” and the GST-number included. Up to 2007, a GST number was not included in our levy invoices. Obviously only some time in 2008, someone at BCA must have realised that the words “GST Tax Invoice” always go together with an actual GST-number.

When it comes to the actual invoicing and levy collection, a constantly recurring issue is the correct handling of the early payment discount. BCA has been found repeatedly to accept discounted payments past the cutoff date. Obviously, less strict enforcement means less work and less arguing with unwilling payers. But it is our duty towards all apartment owners to be fair and equitable towards all. Once we start granting an early payment discount to someone who paid late, there will inevitably be others rightfully demanding the same lenient treatment. It really should be a no-brainer: most payments arrive electronically and have a transaction date associated with them. If it's past the cutoff date, the difference between the discounted and full levy should be immediately charged with a new follow-on invoice. Recently, it was decided to charge additional interest once a payment is more than a full month late. However, it seems BCA's invoicing and accounting is not up to the task to handle this additional interest correctly.

10.10 Financial Oversight

Our financial accounts have been of poor quality for a number of years. Since about 5 years ago, I started to take a closer look and since then kept on discovering many problems, most of them recurring over and over again. This shows, BCA is not necessarily a “learning organisation” (correcting and improving its own procedures when errors are found), but continues to act in the “old ways”, even knowing they regularly lead to errors.

We are not alone in receiving accounting services of questionable standard. The High Court case Paula Beaton led against the Institute of Chartered Accountants in 2005, when she was still Director of BCA, makes some interesting reading, see

<http://jdo.justice.govt.nz/jdo/GetJudgment/?judgmentID=100150>

It started out with complaints from the public to the Institute of Chartered Accountants (of which Paula Beaton was a member) about charging already paid levies again and about using an old audit report in support of new accounts. (section [85] of the court decision). The Institute of Chartered Accountants then led an investigation against Paula Beaton for offering accountancy services to the public through her company BCA without the proper Certificate of Public Practice required. During that investigation, “there appeared to be instances of breaches by [Paula Beaton] of certain of the Institute's professional standards. [...] there are differences of opinion between [Paula Beaton] and the Institute as to the way in which interest has been accounted for, as to the operation of certain client trust accounts and in respect of the manner in which accounting for professional fees was undertaken” (section [74]). Just a short time before the conclusion of the High Court case, Paula Beaton resigned as director of BCA and sold off her shares in the company, with Glenn Kwok taking over as the new director and owner. Paula and Glenn swapped roles between “director” and “general manager”. But because Glenn was not a member of the Institute of Chartered Accountants, “the change in shareholding deprived the Institute of any further jurisdiction in the matter” (sections [79] and [184]). “Correspondence during May 2005 between [Paula Beaton], BCA's new solicitors and the

Institute firmly established BCA's future position: it was not prepared to cooperate in any way with the Institute's investigation and would not supply any further information or documents to that body" (section [80]). The High Court case itself deals mainly with very procedural matters and in the end comes to the conclusion that the Institute of Chartered Accountants may investigate Paula's dealings further, but the company BCA is out of reach. Further details on the case were suppressed by the judge, because they related [at that time in 2005] "with matters currently before the Professional Conduct Committee of the Institute" (section [205]).

The above case shows unmistakably, BCA prefers to continue the "old ways", not caring much about professional standards. It's up to *us* to enforce accountability. To quote from the latest auditor's report, "The Cross Lease Property **Owners are responsible** for the preparation of financial statements in accordance with generally accepted accounting practice in New Zealand and that give a true and fair view of the matters to which they relate, and **for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error**". [Emphasis added for clarity].

There are a few levels of checks that should be done to ensure the quality and correctness of financial accounts:

- At the first level, one can look at the statement of financial position, statement of financial performance, statement of receipts and payments and similar *derived* information. This view can reveal, whether basic accountancy *cross-checks* are satisfied, i.e. whether the numbers "add up". If the numbers add up, one can have some confidence that accounting systems are *working* and staff *understand how to use them*.
- At the second level, one can compare the same types of statements across multiple time periods. The closing balances of the previous period need to match the opening balances of the following period. There are other accounting *cross-checks* that can uncover inconsistencies *over time*. Up to this point, the numbers still may be pure fantasy.
- At the third level, one can compare the previous *derived* tables against *actual* bank statements. This will give assurance that the numbers do not represent fantasy, but actual financial reality.
- At the fourth level, one can compare the bank statements against actual invoices for all incoming and outgoing payments. This will give assurance that everything properly *invoiced* has been properly *paid or received*.
- At the fifth level, one can compare the *amounts invoiced* against the *actual goods and services received* or the *actual contractual obligations agreed*. This will give assurance that payments were properly *due*.

In practice, all of the above checks would need to happen to assure financial accountability. The track record for our crosslease on these checks is at best patchy.

My accounting checks in previous years were restricted to the first and second levels outlined above. During the 2010/2011 budget year, our accounts showed inconsistencies that warranted more scrutiny and a closer look into the “deeper” levels of possible checks. This was the starting point for my request to the OCM for me having online read access to our bank accounts.

When I originally suggested the possibility of a split between the chairperson and treasurer roles for our crosslease on 4.4.12, it was in *response* to the claim it would be impossible to give another person online bank access. The history of this push for financial information is indicative of the uphill battle faced when trying to institute accountability within our crosslease:

- 18.10.2011 OCM: It was agreed to allow me to be able to view our bank accounts online.
- 20.11.2011: I asked Graham Smith via e-mail about the type of transaction account we have with Westpac bank in order to determine its online accessibility. The reply was sidetracked into telling me the interest on our savings account. A follow-up clarification the next day that I was seeking the details of our *transaction* account remained unanswered.
- 2.04.2012: Graham e-mailed me “I went to Westpac today to see if they could provide you with ‘read only’ access to our accounts but apparently this is not possible” and offered paper statements instead.
- 4.04.2012: I rejected “paper statements” and asked again about our type of transaction account. No reply to this mail.
- 22.06.2012: I found out during a visit at BCA that BCA *has* online read-access to our transaction account, thus proving Graham’s previous statement from 2.4.12 was plainly wrong. Frustrated by the fact this affair had already dragged out over 8 months, I asked Graham bluntly to comply with the 18.10.11 decision and described his previous moves as “disingenuous and evasive”. The reply came swiftly. Graham did not like the tone of my e-mail and suggested I might want to check with the bank myself. I replied that, yes, I would like to check with the bank myself, but needed the information, which of the more than 10 different account types listed on the Westpac web site our transaction account is. No reply again.
- 25.06.2012: I took up Catherine Byrne’s suggestion to call Graham. As he was not reachable, I left a decidedly polite voice message suggesting to either visit the bank together or alternatively have Graham mail me the requested account information. No reply again.
- 28.06.2012: In a revealing side-show, Warrick Smith addressed BCA with the request to cease all direct communication with me and declared the 18.10.11 OCM decision for online read access to our banking records as “nonsense” and “certainly not warranted”. That colourful e-mail also drums up all “Indians (committee members)” to re-affirm loyalty towards their “Chief (Chairman)”.
- 11.09.2012 OCM: Nothing was said during the meeting about the issue. After the meeting, Graham and I came to the amicable agreement that (a) my previous choice

of words (“disingenuous and evasive”) originated out of frustration with the delays in getting bank access and (b) Graham just passed on to me, what he was told by the bank and that he was genuinely unaware, BCA had online read access to our transaction account. This agreement re-established friendly relations between Graham and myself.

- Subsequently, with the help of paper bank statements for the budget year 2010/2011, supplied by Graham to me, my previous suspicions of both errors and deliberate manipulations of our accounts (as presented by BCA) were proven to be true.
- 9.10.2012 OCM: Prior to the meeting, I was able to find out our account number from previous records and obtain information from Westpac bank, telling me that the facility called “business online banking”, available for our type of account, *does* provide the online read access facility previously described as not possible. I informed Graham of this finding at the OCM and asked him again to establish that long overdue access for me.
- 25.10.2012: When I asked Graham on progress on this matter, he e-mailed me that he was at the bank and picked up the application form, but then continued to say, the form “raises some issues for which I need to obtain independent advice. I will revert to you in due course”.
- 29.10.2012: Graham sent me an e-mail thanking me for my work on finding errors in our accounts (but avoided to acknowledge there have been deliberate manipulations). He then created the impression to speak on behalf of the owners committee when saying that our accounting should be left to BCA (suggesting I should now back off). Three days later, at the AGM, it turned out, Graham’s e-mail was not sent on behalf of the owners committee.
- 1.11.2012: I responded to the latest e-mail regarding online banking read access and asked Graham, what “issues” the application form raises and what kind of “independent advice” he might need that could have higher authority than our existing OCM decision. No reply yet.
- 14.01.2013 (Warrick Smith’s revealing side-show, Act 2): BCA distributes “revised minutes from the last Committee Meeting held 9.10.12 incorporating changes as requested by Warrick Smith”. In the revised minutes, the sentence “It was agreed that BCA Ltd and Christoph Paszyna continue to work together on the accounts” has suddenly changed to “It was noted that BCA Ltd and Christoph Paszyna have been collaborating on a few minor accounting issues that are close to being ratified”. What was the urgent need to prepare a revision of the minutes and declare the accounting issues as *minor*, even before BCA gave any explanation what went wrong in our accounts and before the audit process has run its course? Looks like subtle Orwellian history revision at work here. Under the law for body corporates, yearly accounts have to be finalised 2 months after the end of the financial year. The September 2012 accounts are by now 3 1/2 months overdue and we are still waiting.
- Today, I’m still not able to access the necessary data conveniently in order to check the validity of our accounts as presented by BCA.

Of course, the story so far is in my humble opinion just a ridiculous show case of the persistent disregard to comply with a decision of our crosslease by the person entrusted to be in charge of our bank accounts. Any refusal to allow proper financial oversight should ring alarm bells and this case lays bare the gap between public appearances and actual reality in the governance of our crosslease.

10.11 Managing our Building Manager

This is probably the most sensitive topic of our crosslease. Employment matters can be tricky. Section 6.4.1 outlines the responsibilities of our crosslease when employing a building caretaker/manager. Employment is a relationship between two parties (assuming in our case there is no Union involved), the employer and employee. This may sound obvious, but is important to clarify: the employer in our case is “Belvue Apartments Crosslease 93132” (and nobody else) and the employee is Katrina James (and nobody else). This means, every one of us is an employer, acting in unison with all our fellow owners. You might not have considered yourself as *being an employer* before reading this, but you are!

The terms of an employment agreement are usually specified in an employment contract. Even if no formal paper employment contract exists, under NZ law an employment relationship is still established when it’s clear from the circumstances that a regular payment is exchanged against regular work. (As an aside: usage of the ground floor “office” apartment is not a residential tenancy, but part-payment of Katrina’s employment and the door sign “Private Residence” is just misleading. It’s primarily a workplace, but also available for private use by the current employee). Once an employment relationship is thus established, both employer and employee are bound by the employment laws until that relationship is properly dis-established according to these employment laws. It may be of no concern, if a friend or relative of Katrina occasionally helped her sweep the balconies or keep the rubbish area clean. But there is a fine line between us becoming aware of Katrina’s help and inadvertently sliding down a slippery slope into a new employment relationship.

Now, my intention is to bring the current employment arrangements between us and our building manager into the open. I think, not everyone is fully aware, what exactly these arrangements are. But if we are to be fully compliant with all our responsibilities as an employer, we need to know the details (and not just assume, everything is handled “automatically” in the right way by a good fairy).

So, the first step is to look at our records from the time when the employment relationship was originally established. BCA’s (Alana Augustino) reply to this question from 17.01.2013 is: “We advise that there was never a formal contract put in place or documentation at the time that Katrina James took over the caretaker role in March 1995. It was always a very casual arrangement”. Not the best starting point, but deficiencies of the past do not justify their continuation into the future.

Next are the very basic questions about the job that would normally be answered by an employment contract. It all starts with elementary record keeping and documentation of the status quo. At present, I have more questions than answers, but I’m confident other members of the owners committee can fill in the blanks:

- Who should our employee be reporting to? Since our crosslease is all us owners taken together, it would be too intimidating for our employee to have so many superiors.

Just as it makes sense to organise collaborative leadership into chairperson, secretary and treasurer, it also makes sense to designate one person from our midst to exercise personnel responsibility for our employee — giving work related directions, conducting a regular performance review and generally managing the employment relationship, while ensuring accountability towards the crosslease. The ideal person for this task would be anyone familiar with HR, experienced with staff management in their day job or with similar qualifications.

- What are the work hours? Certainly, it's not a full-time job (otherwise, we would have run afoul of the Minimum Wage Act 1983). But how many average working hours per week does the job involve? Are there any fixed times, during which our employee is expected to be *actually* working? Are there any fixed times, during which our employee is expected to be *available* for work, should the need arise? Are there any on-call shifts *outside regular working hours*? Obviously, flexibility and self-management are part of the employment relationship and the amount of work cannot always be foreseen. But is there a recording of actual hours worked after the fact? At least one month of recording *actual* work hours would provide some confidence that we have a realistic estimate of average work hours for the job.
- How is holiday leave and sick leave recorded and accounted for? Is there stand-by cover organised when our employee is unavailable?
- What are all the actual responsibilities, duties and tasks of the job? Although there is some shared understanding, a clear list of items is needed. It was noted by Warrick Smith at our 9.10.2012 OCM that we should be writing a proper job description. I fully agree. Who of the owners committee feels best prepared to come up with a draft for discussion?

Employment law imposes rights and obligations on both parties, the employer and employee. The main characteristics are trust, duty, fairness, honesty and accountability. These are the criteria by which both ourselves and Katrina are to be judged. First, we have to clarify the above questions and work with Katrina to ensure we have captured everything that would usually go into an employment contract. I suggest that we ask Katrina to keep a calendar as a logbook of all her work — timekeeping and actual tasks. In situations, where work has a large degree of independence and is essentially self-managed, a logbook is the best approach to maintain accountability. It should be the starting point for Katrina and her manager to reconcile our determinations about her job duties with her own interpretations of them. Our objective has to be that we arrive at a fully honest and good job description of all the work Katrina *actually does* for us. Only then can we reason about how the job itself develops into the future. With this, we will be in a position to have a well-documented and managed employment relationship to ensure we are fully compliant with employment laws.

Our employment relationship with Katrina is now in its 18th year and she has signalled her intention to retire some time in the near future, but without making a firm commitment yet. While I don't know, whether Katrina has already reached the age of entitlement for NZ superannuation, the rules on retirement in the employment laws now don't have a reference to a specific age. Employment law now views it as improper age discrimination, unless a fixed retirement age has been specified in an employment agreement at a time when it was still legal to do so. Instead of a fixed retirement age, it is

now assumed, an employment relationship will come to a natural end, when either the employee resigns or the employee is no longer able to fulfill the regular job duties, in which case the employer can end the employment relationship. In practice, the employee and manager may conclude at a yearly performance review that the time has been reached. We should prepare for this eventuality. There is nothing morally questionable in this determination: when the capability of an employee to perform the regular tasks of the job has ceased, employment law deems it appropriate to end the employment. It is not the moral obligation of apartment owners to continue the employment beyond that point, whatever the personal circumstances of the employee might be. Full honesty and fairness in the process are the important points here. While we as an organisation are constrained by a fixed personnel budget we cannot exceed without AGM approval, conciliatory gestures can be taken to ease the way in the form of allowing a few months of personal usage of the “office” apartment after employment has ended. But such a benefit could only be provided, if we decided to delay filling the vacant job position again.

10.12 Managing other Contractual Relationships

Most of our relationships with commercial service suppliers are only discussed in more detail within the owners committee when being established. After that, they are often managed more like a private relationship. As a result, the owners committee frequently loses sight of the continued relationship with the contractor, unless our representative in this relationship chooses to keep us well informed. We are generally unaware of the extent of subsequent interaction and influence happening between these contractors and our representatives in this relationship. What’s out of sight of the owners committee is not under control of the committee. For example: how many members of the owners committee know how our relationship with our auditor or the gardening services contractor “Heath BM & LG” is managed?

BCA is usually our point of contact for administrative matters and our building manager is usually contacted, when a contractor is on-site at our building. In an ideal situation, the service person would meet the building manager (or another crosslease representative) when arriving on-site, discuss the work to be done and — after finishing the job — show the completed result. Monitoring of the contractor’s performance in terms of man-hours worked, the quality of the job, and other aspects like the responsiveness to call-outs would then be easily accomplished through our records of the events. The contractor’s invoice would be checked against our own records of work done, before payments are made. For this to work, our representative would need to have good basic understanding of a variety of maintenance matters, be willing and able to walk around the whole property and have decent record-keeping discipline.

However, the process does not necessarily work like that in our crosslease. For sure, one or two volunteers have the laudable personal commitment to examine the entire building for paint defects and make sure the defects are covered by the yearly PPS maintenance. But the monitoring of contractor performance is not organised in a systematic way and has its gaps. There is much room for improvement here.

Part III

What Next?

11 Review and Reflection

It may be worthwhile to look at the 2003 Auckland Regional Council report “The Mysteries of Bodies Corporate”, page 11, under the question “What makes a good secretary?”. There, it says: “A good body corporate secretary

- Maintains frequent and open contact with the body corporate committee and reports fully and regularly
- Keeps accounts and budgets up to date
- Ensures AGMs are held at the appropriate time, agendas are circulated in good time beforehand and minutes are accurate and properly disseminated
- Monitors contracts closely
- Sorts out issues promptly and efficiently
- Responds promptly to inquiries and has copies of paperwork such as accounts, budgets, rules, minutes, details of levies ... available on request
- ...”

You may ask yourself: how well does BCA rate? Similarly, under the question “What makes a good building manager?”, it says: “A good building manager:

- Is identified by the cleanliness and tidiness of the areas for which he or she has responsibility
- Is available at times stated in their contract, at least by mobile phone
- Responds to problems promptly
- Is often a handy person capable of fixing minor maintenance problems
- Keeps a watch on the performance of trades people ...
- Ensures trades people’s bills are accurate and paid promptly
- Reports clearly and regularly to the owners’ committee and/or secretary
- Maintains a current register of owners and tenants
- Can discreetly quieten noisy occupiers and their visitors
- ...”

Surely, we as the crosslease have failed to provide clear direction and guidance as to the duties expected as part of the building manager employment. If our building manager ranks poorly on this scale, it's also part of our negligence. The point is to acknowledge the present situation in order to be able to map the way ahead.

At this stage in this discussion paper, I'd like to make a pause and distribute what I've written so far. Certainly, I have some ideas on the remaining sections under the outlined headings. But I think, it is time for members of the owners committee to read the text so far and have a chance to gather your own reflections on our current state of affairs and where to go from here. I would like to suggest — after some time for digestion (maybe a month or so) — to convene an OCM with just the committee members (without BCA and our building manager), in order to have a frank discussion about where we're standing and where we want to go. This OCM would be just for the purpose of establishing a common understanding about the positions and opinions of each other, with proper decisions postponed to be made at a later time. I'd be happy to host such a meeting at my place.

11.1 Linking Responsibilities to Actions

11.2 Division of Labour

11.3 Cost-efficiency

11.4 Unnecessary Activities

11.5 Governance

Part IV

Appendices

A External Contacts

B Schedule of Recurring Tasks