

Auckland Council Submission to the
Local Government and Environment Committee

**Regulatory Systems (Building and Housing)
Amendment Bill**

November 2016

Auckland Council Submission on the Regulatory Systems (Building and Housing) Amendment Bill.

Introduction

1. Auckland Council recognises and appreciates that the amendments proposed in the Regulatory Systems (Building and Housing) Amendment Bill (the Bill) is to maintain the efficiency and effectiveness of the regulatory systems established by the Acts amended by the Bill and to reduce the chance of regulatory failure.
2. To this end, among other things, the Bill clarifies and updates provisions of the Acts amended by the Bill, addressing duplication, gaps, errors and inconsistencies within and between different pieces of legislation. Auckland Council supports these provisions.
3. Council notes there is an identified need for further work and legislative reform in the Unit Titles Act area, particularly arising from the Unit Title Working Group report of May 2016. The mechanism of unit title ownership is increasingly being used in Auckland as housing intensifies and more apartment-type dwellings are in demand. Council supports this work being advanced to improve the operation and regulation of this area.
4. Auckland Council has identified an additional issue related to the scope of the Regulatory Systems (Building and Housing) Bill that concerns unit title developments that are completed in stages, that it believes merits similar treatment to address an inconsistency and a technical issue identified in the process requirements in the Unit Titles Act and the Resource Management Act.
5. This submission explains the issue and proposes that additional minor technical legislative amendments be included in the Bill to address the problem.
6. The Council wishes to appear before the Local Government and Environment Select Committee to discuss this submission.

Staged Unit Title developments

Procedural inconsistency concerning Council certification requirements under Unit Titles Act 2010 and the Resource Management Act 1991

7. The Unit Titles Act 2010 enables the development of housing to be held in unit titles to be undertaken in stages. The development community has taken advantage of this ability to construct larger scale developments across the city.
8. Under the Resource Management Act 1991 (s224(f)) during the step in the subdivision process requiring survey plans to be deposited with Council, the Council is required to be satisfied and certify that that every existing building to which a unit title plan relates complies with the building code. The certificate is then lodged with the Register-General of Land (LINZ). This then enables titles to issue for the development
9. This happens at the initial "proposed Unit development" stage and not subsequent stages. The problem is that at the time any certificate is sought for a staged unit title development, building consents will not have generally been issued for the subsequent stages and the buildings will not be able to be assessed for compliance with the building code.
10. The ability of the developer to undertake the staging of the development (by staging the building consent process in line with the staged development) is therefore constrained or restricted by the requirement of s224(f) RMA which is not the intention of the Unit Titles Act 2010.

Discussion

11. The direction inherent in the Unit Titles Act 2010 to enable staging of unit title subdivisions has stimulated the development community to undertake development at scale across larger sites, by encouraging the sharing of financial and construction resources over an extended timeframe.
12. The process for the creation of new titles is prescribed by the Resource Management Act 1991 (RMA) with section 224(f) of the RMA requiring certification that Council “[...] *is satisfied on reasonable grounds that every existing building or part of an existing building (including any building or part thereof under construction) to which the [...] unit title plan relates complies with or will comply with the provisions of the building code described in section 116A of the Building Act 2004 [...]*”. Section 116A of the Building Act 2004 requires that the buildings comply with the (current) Building Code in respect a range of matters.
13. The “*Interim guideline for Unit Titles Act 2010.*” (LINZG20720) published by Land Information New Zealand (LINZ), requires s224(f) RMA certification to occur at ‘Proposed Unit Development’ stage and specifically not on stage 1, stage 2 or any subsequent stages. To enable Council to so certify, the developer is required to have Building Consents issued for every and all stages of the development at the initial deposit of a survey plan for the staged development process prior to application for s224(f) RMA certification.
14. Hence, the requirement for certification under s224(f) RMA that all buildings shown on the ‘Proposed Development Plan’ do or will comply with the current Building Code requires consideration of those matters through a building consent process which is not possible if not all building consents have been issued for all the buildings in the development. This requirement for s224(f) RMA certification at the initial deposit of a survey plan for the staged development process will constrain or restrict the ability of a developer to undertake the staging required.
15. The consequence is that any benefits to be gained by the ability to stage the development (as described in the Unit Titles Act 2010) are voided by the requirement for building consents for the total development at the first stage of the process (as described in s224(f) RMA).
16. To better align the requirements and enable the desired staging of unit title developments to occur in the manner specified in the Unit Titles Act 2010 without the subsequent constraints imposed under RMA s224(f), it is therefore recommended that an exception to s224(f) RMA to allow for staged developments be inserted in the Unit Titles Act 2010 to accommodate and promote the ability to carry out the staging of unit developments as intended by the Unit Titles Act 2010.

Recommendation

Auckland Council:

17. Seeks an amendment to the Bill to :
 - (a) insert a reference to section 224(f) of the Resource Management Act 1991 in sections 28 and 29 of the Unit Titles Act 2010 to enable s224(f) certifications to take place at the appropriate stages in a development; and
 - (b) insert a consequential amendment to s224(f) of the resource Management Act 1991.
18. Suggested drafting of the amendments are attached as **Appendix A**.

APPENDIX A – Requested amendments to Unit Titles Act 2010 and Resource Management Act 1991

28 Application of Resource Management Act 1991 to staged development

- (1) *Nothing in section 11 or Part 10 of the Resource Management Act 1991 applies to the deposit of a stage unit plan or a complete unit plan except for—*
 - (a) *the requirement to obtain a certificate under section 224(c) **or 224(f)** of that Act (as modified by section 29 of this Act) unless a certificate under section 224(c) **or 224(f)** has already been obtained for the proposed unit development plan; and*
 - (b) *the requirement to comply with section 224(e) of that Act.*
- (2) *Section 11 and Part 10 of the Resource Management Act 1991 apply to the deposit of a proposed unit development plan except for the requirement to obtain a certificate under section 224(c) **or 224(f)** of that Act if a certificate will be obtained for each stage unit plan and the complete unit plan in accordance with subsection (1).*
- (3) *For the avoidance of doubt, the certificate required to be obtained under section 224(c) **or 224(f)** of the Resource Management Act 1991 may be provided for either—*
 - (a) *the proposed unit development plan; or*
 - (b) *each stage unit plan and the complete unit plan.*
- (4) *The reference in section 224(c) **or 224(f)** of the Resource Management Act 1991 to a **unit title plan or** survey plan is, in respect of a staged unit plan or a complete unit plan, a reference to the proposed unit development plan to which the staged unit plan or complete unit plan relates.*

29 Stage unit plan or complete unit plan and certificate under section 224(c) **or 224(f) of Resource Management Act 1991**

- (1) *Unless a condition of the subdivision consent for a stage unit plan or a complete unit plan requires otherwise, a certificate issued by a territorial authority under section 224(c) **or 224(f)** of the Resource Management Act 1991 for a stage unit plan or a complete unit plan may certify that—*
 - (a) *the conditions specified in the subdivision consent that are relevant to that stage of the subdivision consent have been complied with to the satisfaction of the territorial authority; or*
 - (b) *in respect of conditions that have not been complied with,—*
 - (i) *the conditions specified in the subdivision consent are not relevant to that stage and therefore do not need to be complied with; or*
 - (ii) *if the conditions specified in the subdivision consent that are relevant to that stage of the subdivision consent have not been complied with, the provisions of section 224(c)(i), (ii), and (iii) of the Resource Management Act 1991 continue to apply.*
- (2) *If subsection (1)(b)(ii) applies, a territorial authority may issue a certificate under section 224(c) of the Resource Management Act 1991.*

Consequential amendment to the Resource Management Act 1991 s224(f) to enable certification to occur at every stage of a unit development. :

224 ***Restrictions upon deposit of survey plan***

[...]

- (f) *in the case of a subdivision of land to be effected by the grant of a cross lease or company lease, or by the deposit of a unit plan, the territorial authority is satisfied on reasonable grounds that every existing building or part of an existing building (including any building or part thereof under construction) to which the cross lease, company lease, or unit title plan relates complies with or will comply with the provisions of the building code described in section 116A of the Building Act 2004, and a certificate signed by a person authorised by the territorial authority to sign such certificates is lodged with the Registrar-General of Land; where subdivision of land to be effected by the deposit of a staged unit plan, a certificate must be sought and lodged with the Registrar-General of Land at each stage in the staged unit plan ; and*