

**Title: Auckland Council Submission on Discussion Document: Review of Unit Titles Act 2010, December 2016**

Submission to Ministry of Business, Innovation and Employment

**1 Introduction**

- 1.1 This submission is from Auckland Council, Private Bag 92300, Auckland 1142.
- 1.2 The submission contains feedback on the discussion document 'Review of the Unit Titles Act 2010, published by the Ministry of Business, Innovation and Employment's ('MBIE'), in December 2016.
- 1.3 This submission has been endorsed by the council's Planning Committee (a Committee of the Whole).
- 1.4 Council would welcome the opportunity to discuss the submission with MBIE, if required. Contact can be made through Megan Tyler, Executive Officer, Chief Planning Office ([megan.tyler@aucklandcouncil.govt.nz](mailto:megan.tyler@aucklandcouncil.govt.nz))

**2 Executive Summary**

- 2.1 Auckland Council (**Council**) broadly supports the proposals in the *Review of the Unit Titles Act 2010 discussion document*. The Auckland region is experiencing greater numbers of apartment, terrace housing and mixed-use developments as people seek different housing options and living environments. The Unit Titles Act needs to be updated to keep pace with current and future expectations of residents, tenants and developers.
- 2.2 The Council's submission uses the format of the discussion document and responds to the questions raised through each proposal. Each section begins with the specific proposal in the discussion document followed by the questions and Council's response.
- 2.3 The key elements of Council's submission include:
  - size is not the only differentiator when considering thresholds for legislative requirements. Vertical complexes (e.g. multi-storey apartments) often have more complex structural and operational requirements than horizontal complexes (e.g. terraced housing).
  - Strong support for the proposal to combine the pre-contract, pre-settlement, and additional disclosure elements into one step

- supports proposals to strengthen body corporate governance in order to foster trust and accountability in bodies corporate and within the broader sector
- supports increased accountability and professionalism in body corporate management
- recognises the importance of ensuring accurate long-term maintenance plans and long-term maintenance funds
- considers that the Tenancy Tribunal will only be useful in dealing with disputes under the Unit Titles Act if mediators are upskilled in matters relating to the Act
- where there is a single owner of all units in a development, the reduced legislative requirements should apply
- minority relief actions should extend to the ability to review cost estimates for repairs.

### 3 Feedback on the proposal to apply legislative requirements based on the size thresholds (Section 3.1)

#### Proposal:

#### Proposals 1 & 2: Size thresholds for more rigorous legislative requirements

1

We propose that legislative requirements apply to complexes with 10 units and over. The body corporate for complexes between 10 and 29 units, may, however, resolve against adopting any of these requirements by special resolution.

2

Do you consider that it is appropriate for complexes between 10 and 29 units to be able to opt out of the above proposed legislative requirements by special resolution? If no, why?

#### Feedback:

- 3.1 Council supports the intent of the proposal to apply thresholds to differentiate legislative requirements. This approach reduces onerous compliance costs in unit title developments that will not benefit from the legislative requirements in the Unit Titles Act 2010 ('the Act').

3.2 While Council supports the intent of the proposal, thresholds other than the size of a complex that should be considered as a differentiator. There are various types of unit title developments with different levels of complexities and risks. For instance, a 15 storey apartment building is generally more complex than a 15 unit terraced housing development. Mixed-use developments where there are both commercial and residential uses are particularly complex, and often include differential treatment of levies and funding of Long-term Maintenance Plans. As such, the threshold differentiators need to be nuanced to reflect these complexities.

3.3 Council holds that the following factors are crucial in considering threshold differentiators:

- whether the complex is a vertical apartment-type complex compared to a horizontal collection of dwellings
- whether the complex has a mix of uses (i.e. commercial and residential)

3.4 If size thresholds as a method for defining legislative requirements are retained, Council supports altering the size thresholds to:

<b>Complex size</b>	<b>Requirements</b>
Under 10 units	Minimal requirements (status quo)
Medium (10-20 units)	Maximum requirements apply, unless the body corporate resolves against adopting these requirements by special resolution
Large (over 21 units)	Maximum requirements apply

3.5 In Council's experience, 20 unit developments exhibit greater complexity and risk than smaller developments. While the complexities are different depending on whether the development is vertical apartments or horizontal terraces, in general terms a 20 unit complex requires significant long-term maintenance needs and robust governance. As such, the highest level of legislative compliance is merited in respect of developments of this size.

3.6 We support the option for medium sized developments to opt-out of the maximum requirements if the thresholds are changed as per paragraph 3.4.

3.7 While Council supports opt-out provisions for medium sized complexes (for the thresholds stated above), there is a need to ensure that minority relief provisions are provided for. This is to ensure that where there is a 'block voting' scenario, unit owners that form the minority are appropriately protected.

#### 4 Feedback on proposal to improve government services to the UTA sector (Section 3.2)

##### Proposal

##### Proposal 3: Improving government services to the UTA sector

3

How government agencies might achieve a more joined up approach? How we can improve the services we provide; and whether you think a separate dedicated entity is warranted; and if yes, what functions and responsibilities would a dedicated unit titles entity deliver?

##### Feedback

- 4.1 Council supports a single government agency with oversight of the sector. A single government agency can bring stewardship and coordination to the sector and help deliver on the proposals for professionalism and oversight outlined in the discussion document.
- 4.2 A single agency will alleviate some of the issues of disjointed and piecemeal information provision and advice on the Act. Also, an agency that plays the role of a professional watchdog with disciplinary powers, similar to that of the Real Estate Institute, would benefit the sector.
- 4.3 Council would support the creation of a register of bodies corporate, similar to that of the 'companies register' or 'register of incorporated societies'. Such a register could contain information such as body corporate rules, main point of contact for the body corporate and disclosure statements.
- 4.4 Such a register will create efficiencies for many organisations but particularly territorial local authorities when they need to serve documents on owners or engage with whole or part of the complex on development issues.

**5 Feedback on proposal to improve the disclosure regime for purchasing unit title developments (Section 4.1)**

**Proposal**

**Proposal 4: Amalgamate the current requirements of the pre-contract, pre-settlement and additional disclosure statements into one step**

- 4** Do you agree that the pre-contract, pre-settlement and additional disclosure step should be consolidated into one step? If no, why?

**Feedback**

- 5.1 Council supports the intent of improvements to the disclosure regime to ensure buyers are adequately informed and protected when purchasing a unit title development.
- 5.2 Council strongly supports the proposal to combine the pre-contract, pre-settlement, and additional disclosure elements into one step.
- 5.3 The current three-step approach can be difficult for a potential purchaser to navigate, especially where a potential purchaser is unfamiliar with the Act. Combining these steps would reduce the complexity and increase transparency for the purchaser at the pre-contract stage. A one step process would also significantly reduce costs for a potential purchaser and ensure that they are fully informed at the beginning of the process. From a vendor perspective, costs would also be reduced as there would only be one fee to pay in order to collate this information.
- 5.4 Council recognises that developments can take months or years to build and that many developers seek to sell “off the plans”. Council considers that in these instances, where these steps have been combined, there should also be a confirmatory step much closer to the point of final settlement (which could be more than a year after the initial deposit or sales agreement). This would ensure that the information is still accurate and relevant, or that any changes in information are available and transparent.

## Proposal

### Proposal 5: Add further requirements in disclosure statements

- 5 Do you agree that these additional requirements should be included in disclosure statements? Do you consider any other requirements should be included?

## Feedback

- 5.5 Council supports some additional requirements outlined in the discussion document to be added to the disclosure requirements to provide a more complete picture of unit title dwellings before settlement:
- current legal proceedings by the body corporate (i.e. led by the body corporate or proceedings against the body corporate)
  - details of local authority rates payable in addition to body corporate levies
  - significant upcoming capital expenditure
  - details on any earthquake-strengthening requirements
- 5.6 Council also recommends a validity period, of approximately three to six months, for disclosure information. This requires bodies corporate to update disclosure statements and therein ensures an additional layer of transparency for buyers.

## Proposal

### Proposal 6: Require a statutory warranty on all disclosure statements

- 6 Do you agree that bodies corporate should certify all disclosed information is complete and correct? If no, why?

## Feedback

- 5.7 Council supports the proposal that all disclosed information should be certified by the body corporate.
- 5.8 However, Council recognises the significant liability and insurance risks inherent in this proposal. The certification should not fall on the body corporate chairperson, but rather on a body corporate manager. It is questionable whether anyone would want to be a part of a body corporate, particularly as a chairperson, if the body corporate did not have a body corporate manager. This would be an onerous compliance for small and medium sized unit title developments where there is not the same ability to spread costs among owners as large developments.

- 5.9 Council proposes the creation of a database that houses the information relating to bodies corporate, including relevant disclosure information. When a sale occurs the database could then be accessed for relevant disclosure information (see section 5).

## **6 Feedback on proposal to strengthen body corporate governance (Section 4.2)**

- 6.1 Council supports proposals to strengthen body corporate governance in order to foster trust and accountability in bodies corporate and within the broader sector.

### **Proposal**

#### **Proposal 7: Address conflicts of interest**

- 7** We propose to add provisions to the UTA that address conflicts of interest that achieve similar aims to the provisions included in the Incorporated Societies Bill. Do you agree? If no, why?

### **Feedback**

- 6.2 Council supports the proposal to address conflicts of interest in order to foster more transparency and accountability in body corporate governance. At present, conflicts of interest can be shrouded due to the lack of disclosure. When conflicts of interest are uncovered, it can be difficult to address. An obligation to disclose conflicts is one step in improving body corporate governance.

### **Proposal**

#### **Proposal 8: Increase reporting of delegated powers**

- 8** We propose that bodies corporate of large sized complexes (30 and over) should report on the performance of their delegated powers at every general body corporate meeting? Do you agree? If no, why?

### **Feedback**

- 6.3 Council supports the proposal to increase reporting of delegated powers of the body corporate, particularly in larger complexes, or where there is a significant financial responsibility.

- 6.4 Council recommends that this requirement be mandatory for medium and large complexes and that a minimum of six-monthly reporting should be in place for large complexes.

### Proposal

#### Proposal 9: Duties and responsibilities of body corporate committees

- 9 We propose including additional provisions on the duties and responsibilities of a body corporate committee similar to those included in the Queensland's Code of Conduct for committee members. Do you agree? If no, why?

### Feedback

- 6.5 Council supports the proposal to outline duties and responsibilities of the body corporate committees, as it clarifies the roles of the body corporate committee for the benefit of the entire body corporate.
- 6.6 Council recommends that some provision be allowed for members to record dissension to decisions made at body corporate meetings.

### Proposal

#### Proposal 10: Limit the number of proxy votes an individual can hold

- 10 Do you consider that the risk of proxy farming is sufficiently high to warrant amendment of the UTA to limit the number of proxy votes one person can hold at a time? If yes, why?

### Feedback

- 6.7 Council agrees that limiting the number of proxy votes an individual can hold will reduce the risk of proxy farming. Council recommends that the limit be established at a maximum of three proxy votes per individual rather than one proxy vote per individual.
- 6.8 Three proxy votes per individual will help to ensure that a quorum can be reached for a meeting, particularly in complexes that have a very high number of absentee owners.

## Proposal

### Proposal 11: Limit the impact of unfair service contracts

11

We propose to amend the UTA so that bodies corporate can vary the terms of or seek to release themselves from longer term contracts in certain circumstances. Do you agree? If no, why?

#### Feedback

- 6.9 Council supports the proposal to limit service contract timeframes and specify a specific renewal period for service contracts. This provides bodies corporate protection against providers that are underperforming or where poor decisions were made historically.
- 6.10 However, Council also recognises that there is merit in having long-term service contracts for large assets such as roads, water supply, etc.
- 6.11 Therefore, limits on service contract timeframes will need to be considered on a case-by-case basis by each body corporate.

### Proposal 6: Clarification of governance terms

Do you agree with the proposals as they relate to:

- Minority relief – no change warranted;
- Alteration to units – sections 79 and 80 (i) to be amended if necessary to align with section 65;
- Quorum – section 95 to be clarified; and
- Resolutions – section 101 to be amended.

If no, why?

#### Feedback

- 6.12 Council agrees with the changes proposed.
- 6.13 In addition, Council recommends changes to s 80(1) to include specific reference to building elements and infrastructure. Council's experience as a consent authority is that unit owners can involve Council in what is actually a body corporate issue when it comes to changes to the exterior of a building. An example is where a unit owner wishes to change a window to a French door. This in itself does not usually require a resource consent or a building consent, nor is it a change to "structural elements" or "common

property” under the Act, but Council often becomes unnecessarily involved in disputes between an owner and a body corporate where changes like this are made.

6.14 Another example is where a change in use of a unit results in changes to the underground drainage system. While this may require a building consent from a council, it is not a change to a “structural element” or “common property”. It may, however, have an effect on the long-term maintenance plan in that it may cost the complex more to maintain for the benefit of that one unit. Again, Council can become involved in such a dispute between the unit owner and the body corporate.

6.15 Accordingly we suggest the following change to section 80(1) shown in bold:

*“... must not make any additions or structural alterations to the unit that materially affect any other unit or the common property **or external or structural building elements or infrastructure** without the written consent of the body corporate.”*

## **7 Feedback on proposal to strengthen professionalism in body corporate management (Section 4.3)**

7.1 Council supports increased accountability and professionalism in body corporate management. Body corporate managers are important to the effective operation of the body corporate and helps ensure body corporate’s legal duties are met.

### **Proposal 1: Status Quo and Self-Regulation**

**13** Do you agree that industry bodies such as those mentioned have the ability to increase professionalism and help address body corporate management issues? If no, why?

**14** Do you support requiring body corporate managers to be members of a professional group and being subject to the codes of practice of the group? If no, why?

### **Feedback**

7.2 Council agrees that industry bodies can improve standards of practice and improve professionalism in body corporate management. Best practice standards, information and training for body corporate managers are welcomed in order to improve the operation and compliance of bodies corporate. This would also build knowledge within the industry.

7.3 Council supports the requirement for body corporate managers to be a member of a professional group and to be subject to professional codes of practice. This supports

upskilling of body corporate managers and helps bodies corporate identify good body corporate managers. This would only improve the quality of management services.

### **Proposal 2: Make contracting a body corporate manager a requirement for medium and large complexes**

**15** Do you support body corporate managers being mandatory for medium and large complexes? If no, why?

#### **Feedback**

7.4 Council supports the mandatory requirement for medium and large complexes to contract a body corporate manager. However, Council recommends that medium complexes should not be allowed to opt out of this requirement. The reasoning for this relates to comments in section 3 around the different types of development being as important as size. A medium sized mixed use development may be just as complex and warrant a body corporate manager as much as a large residential-only development.

### **Proposal 3: Define body corporate managers in the UTA and introduce operational requirements in regulations**

**16** Do you support the functions of body corporate managers being set out in the UTA? If no, why?

#### **Feedback**

7.5 Council supports the proposal to set out functions of a body corporate manager in relation to the body corporate, body corporate chair and body corporate committee members, within the Unit Titles Act 2010.

7.6 Clarifying the functions and responsibilities of the body corporate manager will support bodies corporate in understanding minimum requirements that apply to body corporate management, avoid confusion of roles and help allocate the right level of responsibility to the body corporate manager.

7.7 Council also supports specifying minimal operational requirements for body corporate managers within regulations.

## **8 Feedback on proposal to ensure adequate long-term maintenance plans (Section 4.4)**

- 8.1 Council recognises the importance of long-term maintenance plans and the need to ensure best practice accounting practices around these plans.

### **Proposal 1: Guarantee the credibility of the LTMP through body corporate committee and appropriately qualified signatories**

- 17** Do you agree that an appropriately qualified person should be required to guarantee the accuracy and completeness of the LTMPs? If no, why not?

#### **Feedback**

- 8.2 Council supports the proposal that requires the long-term maintenance plans to be certified by a recognised professional and/or body. This ensures the accuracy and robustness of the LTMP.
- 8.3 However, council does not support the body corporate chairperson being the person to certify the LTMP. As discussed in section 5, the liability and risk associated with a chairperson certification would be unwarranted and unnecessary. A professional should certify the LTMP in line with industry codes of practice.

### **Proposal 2: Develop a new online template for LTMPs**

- 21** Are there mandatory fields/information you consider should be included in the revised template? If so, please list.

#### **Feedback**

- 8.4 Council supports the creation of an online template for LTMPs. Council suggests the inclusion of the following additional items in a template:
- swimming pools
  - gymnasiums
  - children's play areas
  - infrastructure such as outdoor lighting, roads and drainage
  - structural elements (particularly for vertical developments)

### Proposal 3: Extend the timeframe of LTMPs to 30 years

- 22** Do you agree that 30 years is an appropriate timeframe for LTMPs for medium (unless they resolve not to) and large complexes? If no, what threshold or timeframe do you consider appropriate?

#### Feedback

- 8.5 Council supports the intent of the mandatory timeframe for LTMPs. However, Council recommends the following:
- a 20 year mandatory timeframe for medium-sized developments (with no opt-out ability)
  - a 30 year mandatory timeframe for large-sized and mixed-use developments
- 8.6 The difference in timeframes reflects the typical difference in complexity and building elements.

### Proposal 4: Require bodies corporate to review their LTMPs every three years

- 23** Do you agree that LTMPs for medium and large complexes should be reviewed every three years? If no, what threshold or timeframe do you consider appropriate?

#### Feedback

- 8.7 While Council supports the intent of the LTMP review, the requirement of the review can be differentiated according to the size (or type) of the complex. A medium sized complex can have a longer review time of five years. However, the three year review requirement should apply to large complexes and mixed-use complexes.

### Proposal 5: Require large bodies corporate to have a LTMF

- 24** We propose that medium sized bodies corporate comprising 10-29 units are required to establish and maintain a LTMF (unless they resolve not to by special resolution). Large complexes comprising 30 units and over units would be required to have and maintain a LTMF. Do you agree? If no, why?

#### Feedback

- 8.8 Council supports the proposal that a long term maintenance fund (LTMF) be made mandatory. Council recommends that the LTMF should be owned by the body corporate and is not refundable upon sale of units. The LTMF should accumulate to appropriately fund large maintenance expenditures.

- 8.9 Refunds upon sale of units will undermine the purpose of the LTMF and will be complicated and difficult to estimate.
- 8.10 Council also recommends that the LTMF should be held in a separate account to the operating expenditure, and it should be an interest-bearing account. This is to recognise its long-term nature and to maximise the opportunity to make money over the lifetime of the fund.

### **Proposal 6: Require bodies corporate LTMFs to be annually audited**

**25** We propose that the LTMFs of medium and large bodies corporate are audited annually. Do you agree?

#### **Feedback**

- 8.11 Council supports the intent of the LTMF audit. However, the annual timeframe may be an onerous requirement for the smaller versions of medium bodies corporate. It is recommended that medium bodies corporate can opt-out of an annual audit at its body corporate annual general meeting, however, an audit of the LTMF should be mandatory every three years.

### **9 Feedback on proposal to improve the accessibility of the dispute resolution regime (Section 4.5)**

#### **Proposal 1: Fee settings**

**26** Do you support the proposed fee level for the dispute resolution service? If no, why?

#### **Feedback**

- 9.1 Council supports the reduction of the fees for mediation. A reduction of fees will remove one barrier to the uptake of the service.
- 9.2 Council recognises that there are situations where mediation will not be successful and that such a process would not be worthwhile. Accordingly, it is recommended that a provision is added to allow the matter to move straight to the adjudication stage, if both parties agree to do so.
- 9.3 In general, Council considers that mediation will be useful where:
- the mediator is familiar with the Unit Titles Act
  - the result of the mediation is binding on both parties
  - the matter at hand relates to issues such as disputes between neighbours or use of common property, not matters relating to liability and legal issues

- 9.4 Council urges that mediators for matters under the Unit Titles Act 2010 are required to be appropriately skilled and experienced in managing disputes under this Act.

### **Proposal 2: Revise the name of the Tenancy Tribunal (preferred proposal)**

28

Do you agree that the name of the Tenancy Tribunal should be changed to the 'Tenancy and Unit Titles Tribunal' to reflect its jurisdiction over unit title disputes? If no, why?

#### **Feedback**

- 9.5 Council supports the change in name to appropriately reflect the Tribunal's jurisdiction over unit title disputes. This would help to remove the perception that the Tenancy Tribunal manages tenancy and renting disputes rather than matters arising under the Unit Titles Act
- 9.6 However, the Tenancy Tribunal will only be useful if the mediators are skilled in matters under the Unit Titles Act as mentioned above.

#### **10 Other matters not raised in the discussion document**

- 10.1 Council wishes to make two other recommendations on matters not raised in the discussion document.
- 10.2 First, where there is single owner of all units in a development, that reduced legislative requirements apply. Council has a number of situations where Council is the owner of an entire unit title development because it has been acquired under the Public Works Act. In most instances the development will eventually be demolished or resold, but until the public work is finished, Council remains the sole owner. Council considers that it is unnecessary to comply with the full legislative requirements under the Act in such situations.
- 10.3 The second matter relates to minority relief. Council considers that minority relief actions should extend to the ability to review cost estimates for repairs.