



Cabinet Economic Growth and Infrastructure Committee

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Minute of Decision

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Regulations to Support the Unit Titles Act 2010

Portfolio: Housing

On 25 August 2010, the Cabinet Economic Growth and Infrastructure Committee (EGI):

Background

- 1 **noted** that:
 - 1.1 the Unit Titles Act 2010 (the 2010 Act) provides a legal framework for the ownership and management of multi-unit property developments with unit title tenure;
 - 1.2 a commencement order is required to bring the 2010 Act into force;
- 2 **noted** that on 21 April 2010, EGI invited the Minister of Housing to report back on the results of consultation on regulations to support the 2010 Act and with proposals for regulations, by the end of August 2010 [EGI Min (10) 7/7];
- 3 **noted** that the paper under EGI (10) 191 proposes a mix of regulations and consumer guidance to address the main provisions in the 2010 Act;

Summary of proposals

- 4 **noted** that:
 - 4.1 many of the proposals in the paper under EGI (10) 191 for regulations are current requirements under the Unit Titles Act 1972 (the 1972 Act);
 - 4.2 these requirements have been delegated to regulations, due to changes in legislative drafting style and the technical and detailed nature of the requirements;
- 5 **noted** that many of the proposals in the paper under EGI (10) 191 that are not requirements under the 1972 Act arise from new regimes under the 2010 Act, such as those relating to the enhanced disclosure regime and the new long-term maintenance regime;
- 6 **noted** that some of the proposals in the paper under EGI (10) 191 that are not requirements under the 1972 Act have been proposed as a result of consultation, or as a result of international comparison;

Disclosure statements

- 7 **noted** that the 2010 Act provides a more comprehensive disclosure regime that seeks to provide prospective buyers access to existing documents so that they can make an informed and confident purchase decision;
- 8 **agreed** that the content of the pre-contract disclosure statement be a list of publicly available documents that:
- 8.1 explain unit title property ownership;
 - 8.2 highlight important information about the property that is being sold; and
 - 8.3 explain what other information will be made available;
- 9 **noted** that the Department of Building and Housing will develop a plain English default form that sellers or their agents can obtain to comply with the regulations;
- 10 **noted** that the content of the pre-settlement disclosure statement will be a statement of unit owner liability, similar to the current section 36 certificate under the 1972 Act;
- 11 **agreed** that the additional disclosure statement be a list of documents available on request that the body corporate would be reasonably expected to have;
- 12 **agreed** that the turnover disclosure statement be documentation relevant to the unit title development that the original owner (the developer) would be reasonably expected to have compiled or obtained during the development process;

Default body corporate operational rules

- 13 **noted** that default operational rules help to protect the common property and reduce disputes between owners by setting expectations as to what kind of behaviour is appropriate for those living and working in the development and how the property should be treated;
- 14 **noted** that default body corporate operational rules must be provided in regulations;
- 15 **noted** that the body corporate can choose to change the default rules provided in regulations to suit the characteristics of their development;
- 16 **noted** that the proposed default rules set the minimum details a body corporate should have for managing and protecting the common property, with optional extra rules relating to pets and to the external appearance of units for residential developments;
- 17 **noted** the further details of the proposed default body corporate operational rules, as set out in Appendices Two and Three of the paper under EGI (10) 191;
- 18 **noted** that the detail of the proposed default body corporate operational rules, as set out in Appendixes Two and Three of the paper under EGI (10) 191, are based on rules that currently apply to unit title developments, with some clarifications and additions that have arisen from the consultation process;
- 19 **agreed** that default rules that include rules prescribed in regulations be limited to rules relating to the common property;

- 20 **noted** that the Department of Building and Housing will develop consumer guidance to assist bodies corporate transition to the new default operational rules;
- 21 **noted** that the Department of Building and Housing will develop targeted consumer guidance with lists of optional extra rules that bodies corporate can use to build on the default rules prescribed in regulations;
- 22 **noted** that the Department of Building and Housing will develop targeted consumer guidance to help bodies corporate that want to change the default body corporate rules do so, without the need for legal assistance;

Body corporate governance

- 23 **noted** that the purpose of prescribing regulations for body corporate governance procedures is to provide certainty to unit owners that those running the body corporate will do so transparently and democratically, and will be accountable to unit owners and the body corporate;
- 24 **agreed** that regulations prescribe how a chairperson and a subsidiary body corporate representative is elected;
- 25 **agreed** that regulations prescribe the responsibilities of a chairperson;
- 26 **agreed** that regulations prescribe the content and use of the body corporate register;
- 27 **agreed** that regulations prescribe the process of calling a body corporate general meeting;
- 28 **agreed** that regulations prescribe matters relating to the body corporate committee;
- 29 **noted** that a practice has developed whereby some professional body corporate managers obtain enduring proxy votes from unit owners, analogous to a power of attorney;
- 30 **noted** that the use of enduring proxies was not envisaged or desired when the 1972 Act was originally designed, and that there are other existing legal frameworks under which an enduring proxy is more suitably arranged;
- 31 **agreed** that regulations prohibit the use of enduring proxy votes;
- 32 **agreed** that regulations prescribe restrictions on unbudgeted spending from body corporate common funds;
- 33 **agreed** that regulations prescribe how bodies corporate may sign or execute documents;

Financial statements

- 34 **noted** that the purpose of prescribing regulations for financial statements is to provide a minimum set of requirements a body corporate would need, with options for increasing the level of scrutiny for developments with larger budgets;
- 35 **agreed** that regulations prescribe a minimum set of requirements that would be necessary to provide a transparent report to unit owners, and that will be capable of being audited, reviewed, or verified;
- 36 **agreed** that regulations prescribe an additional set of optional extra requirements for bodies corporate to opt into by special resolution;

Long-term maintenance plans

- 37 **noted** that the purpose of prescribing regulations for long-term maintenance plans is to:
- 37.1 provide minimum details for best practice;
 - 37.2 ensure plans are reliable; and
 - 37.3 provide flexibility for developments with little or no common property to create their own plans;
- 38 **agreed** that regulations set out the broad principles of a best practice long-term maintenance plan;
- 39 **noted** that the Department of Building and Housing will develop targeted consumer guidance on long-term maintenance plans;

Retirement villages and timeshare developments

- 40 **noted** that the 2010 Act provides retirement villages and timeshare developments on unit title tenure some relief from unique problems they were experiencing with the 1972 Act arising from how those developments are set up and operate;
- 41 **agreed** that, where similar or better provisions exist under the Retirement Villages Act 2003 or supporting regulations:
- 41.1 an exemption be made for registered retirement villages; or
 - 41.2 compliance with a provision in the Retirement Villages Act or supporting regulation is deemed to comply with the provision in the Unit Titles regulations;
- 42 **agreed** that modifications be made under Unit Titles regulations for timeshare developments that are consistent with modifications made under the 2010 Act;

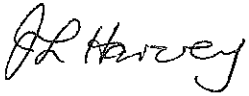
Forms and certificates

- 43 **noted** that forms and certificates are required to be prescribed in regulations for various processes, and to certify the accuracy of information provided to the Registrar-General of Land;
- 44 **noted** that the content of forms and certificates is largely dictated by the provisions in the 2010 Act, and does not require further public consultation or policy decisions;
- 45 **noted** that the Minister of Housing has instructed the Department of Building and Housing to issue drafting instructions to Parliamentary Counsel Office for the forms and certificates required under the 2010 Act;

Other matters

- 46 **invited** the Minister of Housing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals;

- 47 **noted** that the paper under EGI (10) 191, and the associated Regulatory Impact Statement, will be published on the Department of Building and Housing's website.



Janine Harvey
Committee Secretary

Reference: EGI (10) 191

Present:

Hon Bill English (Chair)
Hon Anne Tolley
Hon David Carter
Hon Phil Heatley
Hon Kate Wilkinson
Hon Maurice Williamson
Hon Nathan Guy
Hon Dr Pita Sharples

Officials present from:

Office of the Prime Minister
Officials Committee for EGI
Treasury
Department of Building and Housing

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