



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# **Indicative content of regulations to support the Unit Titles Bill 2008**

**Supplementary information for public submissions**

**Department of Building and Housing**

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# Purpose of this document

- 1 The Unit Titles Bill is currently before the Social Services Select Committee for consideration. The Committee has requested public submissions on the Bill.
- 2 The Bill is intended to repeal and replace the current Unit Titles Act 1972. Policy development during the review of the current Act indicated a complete re-write of the Act was necessary.
- 3 The Bill substantially re-structures the existing Act, with fundamental principles being retained in the Bill. Process-based and technical rules and requirements will be contained in regulations.
- 4 Regulations are laws made under Acts and usually deal with matters of detail or implementation, matters of a technical nature or matters likely to require frequent alteration or updating. Regulations are developed after a bill is enacted and are approved by a Minister or Cabinet. They come into force after being assented to by the Governor-General.
- 5 This document contains the **indicative content** of what regulations under a new Unit Titles Act could look like. The purpose of this document is to enable you to make an informed submission on the Unit Titles Bill by giving you a fuller picture of how the proposed changes will work, what effect the proposed changes will have and what the proposed changes might mean for those who own, live and work in unit title developments.
- 6 **This document is not:**
  - official government policy. The information in this document is illustrative of the kinds of processes that are used in unit title developments in other countries, as well as those currently used in unit title developments throughout New Zealand. Formal policy development on the content of regulations has not yet been undertaken or approved by government. Policy development will be undertaken once the Bill has been enacted
  - consultation on the content of regulations. This can only be undertaken when the final content of a new Unit Titles Act is known. A separate consultation on the final form of the regulations will be undertaken by the Department of Building and Housing once the Bill has been enacted
  - a definitive list of what will be in the regulations. The final content of a new Unit Titles Act are not yet known. It may be that some of the processes indicated in this document are not needed, or other processes are identified as necessary after the Bill is passed. The examples in this document are an indication of some common processes, and are not an exhaustive list.
- 7 **Please note** that the Select Committee cannot deal with any part of submissions that comment on the indicative content of regulations. The Select Committee can only deal with parts of submissions that comment on the proposed changes contained in the Bill.

# Title and survey matters

## Technical and procedural requirements

- 8 Under the current Act, the Registrar General of Land has a range of functions in relation to the deposit, cancellation and ongoing maintenance of unit plans, supplementary record sheets, computer registers (formerly, certificates of title) and registration of transfers and interests (such as easements and covenants). These functions will continue under new legislation.
- 9 Regulations could prescribe guidelines for the office of the Registrar General of Land in how these processes are carried out. For example:
  - how unit plans are numbered
  - how amendments to unit plans are numbered.

## Governance

- 10 The following indicative content relates to those provisions in the Unit Titles Bill that deal with the way unit title developments are governed.

### Governance structures

#### Refer to clauses 72-74 and 93-99 in the Bill

- 11 Register of unit owners (clause 73). The body corporate is required to keep and maintain a register of all unit owners. Regulations could prescribe:
  - what information is required to be kept on the register. For example, full name, unit number, address for service (particularly if the unit owner does not live full-time in their unit), contact details (phone number, email, fax) and unit entitlement
  - who is able to access the register. For example, the register could be accessed by all members of the body corporate or only the body corporate committee and/or chairperson of the body corporate or committee
  - what purposes the register can be used for. For example, use of the register could be restricted so it can only be used for advising unit owners of body corporate meetings, agendas, resolutions of the body corporate, service of documents or any other important matters connected to the body corporate and the development.
- 12 Delegation (clauses 93-96). The body corporate may delegate any of its duties or powers to the body corporate committee (except for certain, specified powers and duties). Regulations could prescribe the process by which the body corporate delegates duties or powers to the committee, for example:
  - what should be contained in the written notice advising of delegation. For example, what function is being delegated, for how long, whether there are any financial or other constraints on the committee in undertaking the

delegation, a statement to the effect that the notice is evidence of the committee's authority to act. Note, these requirements could be a standard form

- what should be contained in the written notice revoking delegation (what function is being revoked and from what date). Note, these requirements could be a standard form
- who has the authority to serve the above notices, for example, the chairperson
- who the above notices are served on.

13 Body corporate committees (clauses 97-99). A body corporate committee is mandatory if there are more than 9 units in a development and optional if the development contains 9 units or less. Regulations could prescribe:

- the process for electing members of the committee and the term of election. For example, nomination and election of the committee is undertaken at the first annual general meeting of the body corporate and at subsequent intervals (for example, annually)
- the minimum and maximum number of members on the committee. For example, a minimum of 3 and maximum of 9 (set to enable ease of decision-making)
- who is eligible for election to a committee. For example, only unit owners or unit owners and someone who is engaged to manage the development on behalf of the body corporate (a professional body corporate manager)
- timelines for when the committee must meet following initial election. For example, the committee must meet within one month of being elected
- conflict of interest declaration. For example, a committee member or nominee must declare any conflict of interest that may exist if he/she takes up the position prior to election or when the conflict arises
- how vacancies on a committee are dealt with. For example, how a new member is nominated and elected and whether there is a specified timeframe within which this must be done; the process for voting on matters when there is a vacancy on the committee
- the minimum frequency of committee meetings. For example, monthly, quarterly or annually
- quorum necessary for transaction of committee business. For example, half if there are an even number of members, a majority if there is an odd number of members but in any case a minimum of 3
- what happens when quorum is not met. For example, if a quorum is not present the meeting will be adjourned until the following week. If the required quorum is not present at the adjourned meeting, those present will constitute the quorum

- process for electing the chairperson of the committee. For example, the chairperson could be elected by the body corporate at the same time as committee members are elected or elected by committee members at the first committee meeting
- who can be elected as chairperson. For example, only a committee member, only a unit owner or any person engaged by the body corporate to undertake that function (for example, a professional body corporate manager)
- guidelines for remuneration of committee members.

14 Reporting requirements (clause 99). The body corporate committee must report to the body corporate on the exercise of delegated powers and duties. Regulations could prescribe:

- frequency of reporting. For example, no less than once a year at annual general meeting but may do so on a more frequent basis, either at a general meeting or by any other means necessary (such as a regular newsletter)
- the types of matters contained in the report. For example, financial information (expenditure, auditing, investment performance), property (repairs and maintenance issues), governance/administration, contracts (what contracts have been entered into, what contracts are up for renewal), copies of minutes, matters voted on.
- level of detail in report. For example, must be enough to give unit owners a clear picture of committee activities, including information on any matters which may require the body corporate to vote. Note, minimum content/components for report could be prescribed in a standard form

## **Body corporate meetings and voting**

### **Refer to clauses 75-90 in the Bill**

15 At the first annual general meeting a chairperson must be elected (clause 76). Regulations could prescribe:

- the process for nominating and electing a chairperson. For example, the nominee must agree to the nomination, who runs the election process (the nominations, vote collecting and counting), whether this is done by secret or open ballot
- term of position. For example, the term of the chairperson expires at the commencement of each annual general meeting, at which time a new candidate is nominated and elected. The incumbent may be re-elected
- who is eligible to be chairperson. For example, only unit owners or any person engaged by the body corporate to undertake that function (for example, a professional body corporate manager). If a chairperson is a service contractor, what happens when the contract is terminated

- conflict of interest declaration. For example, the chairperson or nominee must declare any conflict of interest that may exist if he/she takes up the position prior to election or when the conflict arises
- what the roles and functions of the chairperson will be. For example, the chairperson could be responsible for the functions currently undertaken by a body corporate secretary – calling and running meetings, setting agendas, keeping proper accounts of financial dealings, keeping accurate records of meetings, organising reporting from body corporate committee, holding necessary information for unit owners to uphold disclosure requirements
- guidelines for remuneration of the chairperson.

16 Notice requirements for calling body corporate meetings (clause 77). Regulations could prescribe:

- minimum of 21 days' notice must be given to all unit owners, either by post at address for service, in person or via email, stating the time, date and place for the meeting
- notice of general meeting must be accompanied by certain information. For example, postal voting papers, proxy voting forms, an agenda with all matters to be voted on at the general meeting and any other documents that will be necessary for a unit owner to vote on any resolution proposed at the meeting (for example, quotes for spending, audit reports, details of proposed contracts)
- how unit owners can propose agenda items. For example, a unit owner can submit an item for the agenda by the end of the financial year preceding the annual general meeting.

17 Subsidiary body corporate representative. For layered developments, regulations could prescribe the process by which a representative is nominated and elected to act on behalf of a subsidiary body corporate at a meeting of a parent body corporate. For example:

- the nominee must agree to the nomination, who runs the election process (the nominations, vote collecting and counting), whether this is done by secret or open ballot
- term of position. For example, the term of the representative expires at the commencement of each annual general meeting, at which time a new representative is nominated and elected. The incumbent may be re-elected
- who is eligible to be the representative. For example, only unit owners or any person engaged by the body corporate to undertake that function (for example, a professional body corporate manager). If a representative is a service contractor, what happens when the contract is terminated

- conflict of interest declaration. For example, the representative or nominee must declare any conflict of interest that may exist if he/she takes up the position prior to election or when the conflict arises.
- 18 Quorum requirements (clause 82). Regulations could prescribe the process to be followed when the quorum is not achieved. For example, if a quorum is not present the meeting will be adjourned until the following week. If the required quorum is not present at the adjourned meeting, those present will constitute the quorum.
- 19 Voting at a body corporate general meeting (clauses 83-90). Regulations could prescribe:
- who is responsible for counting the votes. For example, this could be undertaken by the chairperson or another person nominated at the start of the meeting
  - how voting is recorded. For example, the results of a vote are recorded in the minutes of the meeting
  - how to count votes. For example, no rounding is permitted to achieve the required 51% or 75% thresholds
  - the process for requesting a poll. For example, any person present and entitled to vote on any resolution can request that vote be conducted by poll. The chairperson then conducts the poll as per an ordinary or special resolution. Postal votes are to be included
  - how proxy voting is undertaken. For example, a prescribed form to be completed and handed to the chairperson before/at the meeting, who can act as a proxy
  - how postal voting is undertaken. For example, a prescribed form to be completed, who the form must be sent to and where, when the form must be received by in order for the vote to be counted.

## **Management and maintenance**

- 20 The following indicative content relates to those provisions in the Unit Titles Bill that deal with how developments are managed and maintained.

### **Body corporate rules**

#### **Refer to clauses 91-92**

- 21 Body corporate operational rules (clauses 91-92). The body corporate operational rules will be prescribed by regulations, which could prescribe rules on matters such as:

- pets
- car parking (commercial or resident)
- signage
- use of common property (for example, that common property may not be used in a manner that interferes with any other owners' right to use the common property)
- use of facilities (for example, swimming pool hours, storage lockers)
- rubbish/recycling collection
- hours of business
- external colour scheme
- noise
- any other matter pertaining to the development and the body corporate that is not already prescribed in the Act

22 Note: these rules will be able to be amended, added to or revoked by the body corporate.

## **Long-term maintenance plan**

### **Refer to clause 101**

23 The body corporate will be required to establish and maintain a long-term maintenance plan (clause 101). Regulations could prescribe components that may need to be covered in the plan, for example:

- an asset register – a stocktake of buildings, materials used, paint colours, manufacturer's guidelines
- review periods
- itemised list of building elements or infrastructure, for example:
  - exterior cladding – washing, repainting, repair, replacement
  - painting
  - roof – including spouting repair and replacement
  - foundations
  - shared infrastructure e.g. wastewater and stormwater pipes
  - electricity and telecommunications cables

- air-conditioning
- fire detection
- lifts
- framing
- communal hot water cylinders
- specific items of common property maintenance eg tennis courts, swimming pools etc

## Disclosure

### Refer to clauses 128-141

24 The 4 disclosure statements will have their form and/or information prescribed by regulations. The prescribed information could cover that detailed in the following paragraphs.

25 Pre-contract disclosure to prospective buyer (clause 130):

- general information about unit title developments to help purchasers understand how unit titles and common property work and the role and significance of the body corporate. Note, a proposed function of the Department of Building and Housing will be to create consumer information (brochures, pamphlets etc) that will assist with this potential requirement
- a list of relevant documents that are publicly available, with a short description of the significance of the documents (note, this could be prescribed in a standard form)
  - computer registers (formerly certificates of title)
  - unit plans, including stage unit plans and proposed unit plans
  - ownership and utility interests
  - any easements or other restrictions affecting the title
  - Land Information Memorandum (LIM)
  - subdivision consents
  - land use consents
  - building consents
  - claims settled or currently with the Weathertight Homes Resolution Service

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- a list of documents that will be provided in the pre-settlement disclosure, if an agreement for sale and purchase is entered into (see paragraph 23).

26 Pre-settlement disclosure to buyer (clause 131) – a statement of owner's liability, for example:

- amount of any contribution the unit owners is required to pay to the body corporate and for which period (for example, how much the levies are per quarter/annum)
- manner and time of payment of those contribution(s)
- how much of the contribution has already been paid by the current unit owner
- any amount of the contribution that is outstanding and due to the body corporate
- whether or not the body corporate has performed or entered into any contract for repair, work or act that the unit owner has or will have to contribute to and the general nature of the repair, work or act
- the rate at which interest is accruing in respect of any amount owing to the body corporate
- whether or not the body corporate has received notice that any court or tribunal proceedings are pending against the body corporate
- body corporate operational rules
- long-term maintenance plan

27 Additional disclosure (clause 132) – a list of documents that are available to the purchaser on request, for example:

- balances of any funds or accounts operated by the body corporate
- audited accounts of body corporate
- recorded minutes of body corporate general meetings
- body corporate insurance details
- key details of contracts between body corporate and committee
- ground lease details (if applicable)
- contact details for body corporate and committee

28 Turn-over disclosure by original owner (clause 140):

- as-built building plans and specifications
- asset schedules
- code compliance schedules
- recommended maintenance schedules of construction materials, systems and infrastructure from manufacturer or installer
- warranty and guarantee details
- fire evacuation plans
- building warrant of fitness
- existing and proposed maintenance and service contracts, including contractors' contact details
- any direct or indirect interests the original owner has in any contract or arrangement entered into in their capacity as the body corporate at any time
- the "turn-over" date (ie: the date from which the original owner no longer exercises 75% of the voting rights for the development according to unit ownership or unit entitlement ownership interest)

## Forms

29 Various forms will be prescribed under regulations for a range of matters, for example:

- application to deposit a unit plan
- certification of TA authorisation for deposit of plan (clause 10(1)(f))
- registered valuer to show ownership interest (clause 10(1)(g))
- for the body corporate to notify of utility interest reassessment (clause 32(1))
- postal and proxy voting forms (clauses 89-90)
- amendments to body corporate operational rules (clause 91(4)(a))
- certificate of expiry of lease (clause 150(3))
- application to cancel a unit plan by consent (clause 160)
- application for unit plan cancellation following court decision (clause 170(3))
- application to cancel easements on cancellation of unit plan (clause 171(5))
- application for caveat to forbid subdivision (clause 178(3))

- notice to persons in respect of a specified resolution (clause 193(1))
- notice of objection to specified resolution (clause 193(3))
- certificate that objection process has been completed (clause 195(1))