

UNIT TITLES BILL – SOMETHING FOR EVERYONE

It is no secret within the property industry that the Unit Titles Act 1972 (the “Act”) is outdated and in need of reform. A review has been under way for some time, culminating in the introduction of the Unit Titles Bill (the “Bill”). The Bill was introduced to Parliament late last month, and looks to replace the current Act. This article looks at some of its main features and what it means for various participants in the property industry.

What it means for you?

Property owners:

- A chance to review the structure of your unit title development on a number of fronts including, unit entitlements, rules, layered developments etc.
- An opportunity to be an early adopter with a view of increasing the desirability of your unit title development. Anecdotal evidence suggests developments, which make provision for proper governance and financial management can increase in value.
- Looking at historical barriers presented by the Act in respect of easements, covenants and access ways to see if they would still apply if the Bill was enacted.
- Making sure personal contact details held on the register are accurate and up to date.

Developers:

- Reviewing current disclosure practices including determining what funds will be adopted.
- Revisiting staging of developments and contribution requirements.
- Reviewing the proposed structures being used and looking at whether layered developments provide a viable alternate.
- Determining what considerations will start to form the basis for setting the utility entitlements.
- Implementing formal systems for a handover of property and construction related material to the body corporate.

Landlords and tenant:

- Reviewing who will contribute to what funds and how those contributions are to be made and if applicable refunded on termination or assignment.
- Looking at the breadth of powers vested in the Tribunal for breaches to the rules and the impact of tenant breaches.

Body Corporate Managers:

- Looking at the transitional implications if the Bill is adopted.
- Undertaking a system review to facilitate the adoption of multiple fund models.

Quantity Surveyors:

- Introduction of 'sinking fund' style plans for long term capital payments in other jurisdictions have generally been carried out with the assistance of quantity surveyors.
- Offering assistance in setting utility interests, as we see quantity surveyors may have a significant part to play in modelling this process.

Key features

Some of the key features are:

Definition of Principal Unit (PU): Where certainty was lacking in the past, it is now clear that a PU must contain a building or be contained in a building. Allowing a PU to consist wholly of airspace is not permitted by the Bill.

Unanimity relaxed: The previous requirement for unanimity has been relaxed to a special resolution (being 75% of the eligible voters vote in favour). This relaxation covers a multitude of areas including redevelopments, amendments to staged unit plans, grant of easement/ covenants and cancellation. The Bill contains a process for dissenting minority unit holders to apply to the Tribunal or Courts (depending on jurisdiction) for relief against a decision, where the effect of the resolution would be unjust or inequitable on the minority. There are notice obligations where a unit owner commences an action under the minority protection provisions.

Future development units (FDUs): A new approach to FDUs is proposed by making FDU owner members of the body corporate for certain purposes, including payment of levies where a FDU is being used as a place of residence, business or otherwise.

Staged developments: The previous staged development provisions have been largely maintained but updated in respect of:

- Relaxing unanimity requirement for amendments to staged unit plans to a special resolution (subject to minority rights).
- Specifically permitting (but not obliging) local territorial authorities to issue section 224(c) certificates for a stage unit plan if it is happy that conditions for later stages can be satisfied at a subsequent date (being before lodgement of a later staged unit plan or a complete unit plan).

Layered developments: A completely new concept of layered developments has been introduced. This allows for grouping of a number of individual unit title developments, which all subscribe to a parent unit title development (which may also contain other principal units). The layered scheme approach is best depicted by the diagrams contained in Schedule 1 to the Bill. This concept is most likely to be used in mixed use developments, adding an extra level of flexibility in structuring developments of this nature. It may also be looked at by current developments, which operate a pseudo layered style developments by use of incorporated societies or management agreements.

Unit entitlements: Probably one of the most common criticisms of the current Act is the inflexibility surrounding unit entitlements. The Bill proposes splicing unit entitlements in two:

- **Ownership interest:** determined by reference to relative value of the unit in relation to each other unit. The ownership interest is used to determine matters such as the beneficial interest in the common property, voting rights, capital improvement fund levies and surpluses, and ground rental liability (for leasehold estates).
- **Utility interest:** the utility interest is the same as the ownership interest unless it is reviewed (discussed below). The utility interest is used to determine matters such as unit contributions to the long-term maintenance fund, optional contingency fund, and the operating account (together with refund of any surpluses arising out of them).

Ownership and utility interests may also be reviewed under the Bill provided a special resolution is passed at the general meeting, however, they must not be reviewed more than once every 36 months.

Easements, covenants and access lots: Flexibility has been introduced allowing:

- Dealings with easements or covenants relating to the underlying fee simple title;

- A body corporate the ability to grant or acquire easements and covenants over or for the benefit of the common property;
- Principal unit owners to grant or acquire easements and covenants over or for the benefit of their unit to greater degree than permitted under the current Act; and
- A body corporate to own a share in an access lot with such share to be treated as common property.

Redevelopments: Redevelopments have been separated into two categories, namely:

1. Adjustments between units that do not materially affect the common property or other units: redevelopments of this type allow an amendment to the unit title plan to be lodged as opposed to a completely new redevelopment plan; and
2. All other instances: a redevelopment plan is required together with the support of a special resolution.

Financial management: The Bill allows four new funds to be established with two mandatory and two optional. The funds are:

1. Operating fund (mandatory) – similar to the traditional fund operated under the current Act to meet the annual needs of the body corporate;
2. Long term maintenance fund (mandatory) – to cover budgeted maintenance items in the 10 year outlook plan. This is similar in concept to a “sinking fund,” which is sometimes used in the property industry at present;
3. Contingency fund (optional) – to pay for unbudgeted expenditure that is in excess of what was anticipated in the long term maintenance fund; and
4. Capital improvement fund (optional) – for spending that adds to or upgrades the unit title development.

Disclosure: The Bill introduces a new disclosure regime concept. This works on upfront pre-contractual disclosure and ongoing disclosure (where requested by the buyer). Differing remedies apply according to the disclosure obligations with termination allowed where post-contractual disclosure is not made on time. Details on what is required to be disclosed have been left to the regulations (which are not available).

Transitional arrangements: The Bill provides that it applies to all existing unit title developments, save that there is a 15 month grace period offered in respect of rules and establishing the financial funds (discussed above), unless a body corporate elects by special resolution to become an early adopter.

Where to from here?

The Bill now goes to select committee process with public submissions expected. Generally the select committee has six months to report back to the House. That report will recommend amendments (if any) to the House.

Once the report is presented to the House, it is ready for its second hearing from the third sitting day onwards. It is at the second hearing that the Bill is debated at length on whether to accept it, accept it with amendments or whether it is defeated.

Duncan Cotterill’s property projects team work exclusively in this ever-changing area. To discuss any issues on the Unit Titles Bill please contact us at info@DuncanCotterill.com or visit www.DuncanCotterill.com