



21 NOV 2018

Hon Judith Collins
Member of Parliament for Papakura
Parliament Buildings
Wellington

Hon Nikki Kaye
Member of Parliament for Auckland Central
Parliament Buildings
Wellington

Dear Hon Judith Collins and Hon Nikki Kaye

Thank you for your letter dated 2 October 2018, regarding the draft Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill.

I believe that your draft Bill has some merit and reflects a number of issues from the Unit Titles Act 2010 Review, completed in 2017. However, it is also clear that substantial further work would be needed to make the necessary amendments to the Bill to achieve the full set of results officials have recommended. Some of the areas where additional provisions would be needed include:

- additional requirements for disclosures relating to purchases “off-the-plans”
- additional reporting requirements on body corporate managers and body corporate committees
- the need for explicit powers for the Chief Executive of the Ministry of Housing and Urban Development; these are needed to support effective investigations into activity in the sector.

In other areas, the proposed approaches in your draft Bill do not align with the officials' recommendations. In particular your Bill has:

- proposed mandatory requirements for large unit title complexes that their body corporate managers must be members of industry associations
- requirements for maintenance plans and funds to have mandatory expert peer review and audit processes
- a reduced range of issues that are proposed for inclusion in the agreement with a body corporate manager.

Annex One is a summary of my officials' advice, taking submissions on the Review into account, compared with your draft Bill.

I appreciate your approach to work together on this issue. However, the Government's legislative priorities for the housing portfolio right now are the Urban Development Legislation, Residential Tenancies Act Reform and Healthy Homes Regulations. As I see the need for some substantial amendments to your draft Bill for it to be suitable for Government support, I do not propose to seek to adopt your draft Bill as a Government Bill at this stage.

In the circumstances I would encourage you to submit this as a Members Bill. In that case, it would be up to Government Parties' Caucuses to decide whether or not to support the Bill, if it is drawn from the ballot. I still intend to progress the results of the Unit Titles Act Review in due course, when priorities and resources permit.

Yours sincerely

A handwritten signature in blue ink, consisting of the letters 'PH' followed by a long horizontal line and a vertical stroke at the end.

Hon Phil Twyford
Minister of Housing and Urban Development

Annex One

| Key Area | Draft Bill proposal | Draft Bill aligns with officials' recommendations? | Comment |
|--------------------------------|--|--|---|
| Disclosure regime | <p>Single step – most information disclosed before purchaser signs agreement for sale and purchase</p> <p>Purchaser can request additional information</p> <p>Seller can require purchaser to pay for the cost of obtaining the additional information</p> <p>Additional information to be provided for “purchase off the plans”</p> | <p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p> | <p>Officials had considered whether the costs of all information provided by the seller could be charged to the prospective purchaser. This option was rejected, to ensure maximum transparency for the buyer – cost of information provision is a cost of selling.</p> |
| Body Corporate Managers | <p>Requires medium and large complexes to employ body corporate managers (with opt out for medium sized complexes)</p> <p>Requires body corporate manager to be member of industry association</p> | <p>Yes – minor variation</p> <p>No</p> <p>Gap</p> | <p>Officials recommended that body corporate managers should be mandatory for large complexes only</p> <p>Officials advised against requiring body corporate managers to be members of industry associations – as professionalism is still developing and requiring membership adds to operating costs, and advantages the current industry organisations.</p> <p>Officials advised a range of mandatory requirements for contracting with body corporate managers, many of which have not been included in the draft Bill.</p> |

| Key Area | Draft Bill proposal | Draft Bill aligns with officials' recommendations? | Comment |
|---|--|--|---|
| Body Corporate Governance | <p>Requirements to identify, declare, manage and register conflicts of interest</p> <p>Specifies duties of Body Corporate Committees</p> <p>Use of and reporting of delegated powers</p> <p>Restrict use of Proxy votes</p> | <p>Yes</p> <p>Gap - Covers some identified duties</p> <p>Gap - Some provisions covered</p> <p>No</p> | <p>There are additional elements in duties of body corporate committees, and in the use and reporting of use of delegated powers, that officials advised should be included in statute.</p> <p>Officials advised against prohibiting a person holding multiple proxies and exercising them.</p> |
| Long term Maintenance Plans (LTMPs) and Long Term Management Funds (LTMFs) | <p>Requirements for Long Term Maintenance Plan (LTMP) covering 30 years and Long term Management Funds (LTMF) with some exceptions and opt outs</p> <p>Expert signoff of LTMP by members of three specified organisations required</p> <p>Required annual audits of LMTF by independent auditor</p> <p>Large complexes (more than 30 units) must have LTMP and LTMF</p> <p>Medium sized complexes (11 to 29 Units) must have LMTP covering 30 year forecast period) but can avoid any other prescriptive requirements re LMTPs and LMTFs by special resolution</p> | <p>Substantial alignment</p> <p>No</p> <p>No</p> <p>Yes</p> <p>No</p> | <p>Officials advised that proposed legislative changes needed to balance the benefits of prescriptive requirements against the costs these impose on complexes of different sizes.</p> <p>Officials advised against the need for mandatory independent reviews and annual independent audits of LTMPs and LTMFs</p> <p>Officials proposed that LMTPs apply to all complexes with more than 3 units, due to concern that even small scale complexes can have substantial maintenance challenges which need consideration and transparent management.</p> |

| Key Area | Draft Bill proposal | Draft Bill aligns with officials' recommendations? | Comment |
|---|--|--|--|
| LTMP and LTMF continued | Other complexes – fewer than 11 units, have no requirements for LTMP or LTMF | No | |
| Proposed Regulatory powers for Chief Executive of MHUD | No reference | No | Officials advised of the need for CE to investigate issues in the sector, and to have powers to require provision of information, to allow such investigations to be effective. These provisions were essential to support effective information provision and decision-making across the unit title sector. |
| Dispute Resolution | Proposes to reduce the fees for Tenancy Tribunal involvement in matters relating to Unit Titles | Yes | Officials recommended that the name of the Tenancy Tribunal should be changed to add reference to its coverage of Unit Titles, explicitly. This is not included in the draft bill. |
| Other items | Provisions relating to "Utilities interest apportionment processes" Provisions for people to attend and vote via remote access. | Not mentioned in Review Not mentioned in Review | Will require further analysis. |