

Reform of Strata Laws

Fair Trading NSW

E: policy@finance.nsw.gov.au

Draft Strata Schemes Development Bill 2015 and Strata Schemes Management Bill 2015

The Urban Taskforce has reviewed the draft Strata Schemes Development Bill 2015 and Strata Schemes Management Bill 2015. We have provided a number of comments for your consideration.

1. *The Urban Taskforce supports the proposed reforms*

The Urban Taskforce is generally supportive of the proposed strata reforms as set out in the draft legislation. As the trend towards an urban lifestyle and apartment living continues in the urban centres of NSW and particularly the Sydney metropolitan area, it is vital that NSW adopts a modern, up to date legislative framework to support strata titled living arrangements. We represent many of the developers who are currently producing strata titled residential buildings and we have received feedback from our members in relation to the draft legislation, which is outlined below.

2. *Collective sale and renewal - 75% agreement required to terminate a strata scheme*

The Urban Taskforce fully supports the proposed process to terminate a strata scheme, where 75% of owners can agree to end the scheme, as opposed to the current requirement for unanimous support from all owners. This is in line with international best practice adopted in countries such as Singapore, New Zealand and the United Kingdom. These countries allow for cancellation of a strata scheme with less than 100% support of owners. While there have been claims that vulnerable owners, for example, the elderly or disabled, may be left in difficult circumstances should a strata scheme be terminated without their agreement, there are also many cases of individuals being disadvantaged under the current strata legislation.

The Urban Taskforce has many examples of owners wishing to sell their strata-titled property and terminate the strata scheme, as part of a group sale, only to have one or two owners in the strata scheme refusing to sell, demanding higher prices for their property than the rest of the owners in the strata scheme. This is effectively holding all other owners in the strata scheme 'for ransom'. Often in these cases the buildings are old and need significant and costly maintenance work, requiring owners to pay a special levy, often up to \$50,000 to undertake the necessary repair work. Many owners in strata schemes cannot afford or do not want to pay these large levies and would prefer to terminate the strata scheme and buy or rent another property elsewhere. The proposed strata reforms will prevent this from happening and ensure that financially vulnerable owners are not left liable for hefty strata levies to maintain an ageing, substandard building due to one person refusing to sell.

The draft proposal for 75% support to terminate a strata scheme seems fair and reasonable, provided that the proposed process for collective sale and renewal includes checks and balances to ensure all owners receive fair financial compensation for their property and that vulnerable owners would be provided with advice and free advocacy and assistance in finding alternative housing.

3. Strategic planning changes to achieve desired urban renewal outcomes

The proposed changes outlined in the draft bills provide significant opportunities for renewal of a large number of substandard apartment buildings throughout NSW, particularly in the Sydney metropolitan area. A whole of government approach is needed to ensure that this urban renewal can occur and property development potential can be maximised in appropriate locations.

Areas where there are significant numbers of older strata-titled buildings which may be redeveloped as a result of these reforms should be identified by the Department of Planning & Environment (DP&E). These areas should be master-planned and appropriate planning controls applied to ensure that these sites are given sufficient density and uplift to make redevelopment and renewal economically viable. We realise this is not within the scope of the strata reforms, however the state government should adopt a pro-active, whole of government approach to this issue and ensure that DP&E, (or the Greater Sydney Commission) provides a suitable regulatory framework to deliver urban renewal for these sites. For example, DP&E could use the State Environmental Planning Policy (Urban Renewal) to identify and rezone appropriate precincts for renewal. We have also raised this issue with the Department for their consideration in a separate letter.

Our members have also raised concerns that should these proposed reforms become law, certain councils will commence 'down zoning' sites with existing strata buildings, by applying a low-density land use zone on the site. This 'down zoning' can effectively sterilise these sites for future higher-density development. The existing strata building can remain on the site as it has 'existing use rights' however any proposed redevelopment of the site for higher density development would be prohibited.

4. The 2% bond must be carefully managed to ensure it does not become an additional cost

While the Urban Taskforce understands that defects in strata titled buildings are an important issue for a body corporate once the building is handed over from the developer, there needs to be a fair and independent way of identifying and assessing building defects.

The Urban Taskforce has supported the government's intent to establish a better process to resolve disputes over building defects. Independent assessment of alleged building defects and retention of some funds to cover the costs of rectification of building defects is considered the best and most appropriate approach, provided that the independent assessor signs off once the defects have been rectified and the funds are released in a timely manner.

The Urban Taskforce believes that any assessment of an alleged building defect must be undertaken by an assessor that is clearly independent, suitably qualified and appropriate to the scale of the project. The draft legislation proposes that an

independent assessor should be 'jointly agreed upon' by the developer and the body corporate, however this could result in an unworkable situation. The body corporate may use the approval process as a way to delay the impartial assessment of any building defects. We believe that the independent assessor should be accredited and chosen by the government to ensure they are truly objective in their assessment. The scale of fees should also be determined by the government and should be a reasonable amount.

Our members have also raised concerns concerning legal action by body corporates against property developers. Certain legal firms will proactively approach body corporates (who often do not have significant technical skills and expertise in building issues) to develop legal cases against the property developer and builder for supposed building defects. After a time-consuming court case where significant legal costs are incurred by both parties, a small payout may be made, usually far less than the legal fees. A small number of opportunistic legal firms appear to be encouraging body corporates to commence costly legal proceedings against property developers for non-existent or minor building defects.

Our members have also raised the concern that the terminology of the draft bills could lead to legal interpretations that could frustrate the intent of the bond. It is very important that these legal loopholes are closed. We recommend that government take a devil's advocate position to test the impact of the proposed legislation (and the future regulations), particularly the impacts of the legislation upon developers.

An additional impact for consideration is that property development and building and construction companies come in a variety of different sizes, with different business practices, structures and legal responsibilities. Larger companies tend to have sufficient cash flow to incorporate the proposed 2% bond without great financial difficulty. However, smaller companies have less cash flow and may experience financial problems and have trouble obtaining finance for their developments. This can result in additional capital costs and these may be passed onto home buyers. The government needs to be aware that the proposed reforms will impact upon businesses in a variety of ways, with some experiencing greater financial difficulty as a result.

5. Builders not included in the legislation

A number of our members have raised concerns that the role and responsibility of the builder is not mentioned in the draft legislation. While it is understood that the property developer is the party which enters into a contract with the body corporate after handover, it is ultimately the builder who is responsible for the quality of workmanship. Clarifying the roles and responsibilities of all parties (including the builder) in the legislation would be beneficial.

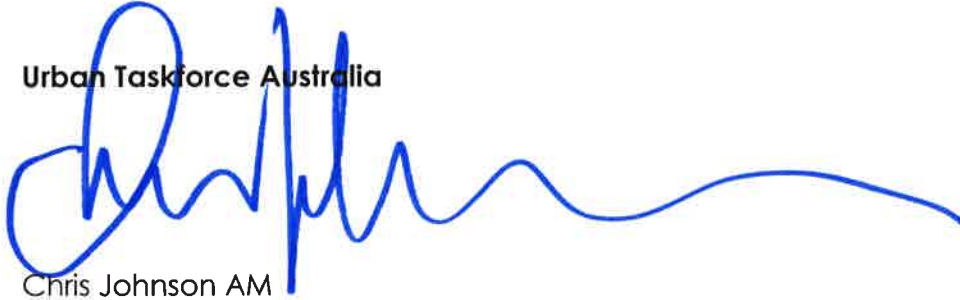
In summary, the Urban Taskforce is supportive of the draft reforms, with the qualifications outlined above. On the more detailed issues we refer to submissions made by two of our members, Meriton and Brookfield Multiplex, who have been involved in many meetings with the government on these issues. The Urban Taskforce has made a number of submissions on the strata reform process and we have attended many meetings and workshops. We believe the government has been open about involving the industry and we thank all involved in the

process to date. As NSW was the first jurisdiction to adopt strata-titling in Australia we believe it is appropriate that the NSW Government now takes the lead in improving and updating this legislation.

The Urban Taskforce is happy to continue working closely with the Government to provide a development industry perspective on this issue. Please feel free to contact me on telephone number 9238 3927 to discuss this further.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in blue ink, appearing to read 'Chris Johnson', with a long, wavy horizontal line extending to the right.

Chris Johnson AM

Chief Executive Officer