18 August 2015

Mr John Vernon
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Re: Strata Schemes Development and Management Bills – UDIA NSW Submission

The Urban Development Institute of Australia NSW ("UDIA NSW") is the leading industry body representing the interests of the urban development sector, with more than 500 member companies that span all facets of the industry. More than 300 members have direct input to policy through UDIA NSW Policy Committees. The Institute advocates for better planning; timely and affordable housing, and the building of vibrant communities to increase local job opportunities.

UDIA NSW welcomes, and remains supportive of, the strata reforms the government has put forward in the draft bills. The Institute believes that these provisions will greatly assist in the renewal of Sydney's building fabric. Strata is recognised as the fastest growing form of property ownership not only in NSW, but nationally. The exponential growth in the popularity of this type of ownership means that reform is urgently needed. The existing legislation is outdated and needs to reflect modern living.

As you are aware, the Institute has been actively involved in the discussion surrounding development of the draft legislation. Many of our concerns and issues have been addressed in these bills and we welcome the opportunity to comment on these. While the reforms are welcomed, the changes will have an impact on many stakeholders and we would like to highlight a number of concerns and also draw attention to elements that will benefit both the industry and strata living.

Draft Development Schemes Bill

Clause 4 (1) – Definitions
planning approval means:
(a) a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
(b) an approval under Part 3A or Part 5.1 of that Act.

Comment: This clause outlines the definition of planning approval and refers to "an approval under Part 3A or Part 5.1 of the Environmental Planning and Assessment Act." Part 3A of that Act has been repealed, it is presumed that the reference to Part 3A should be replaced with reference to Part 5.

Clause 10 (3) (e) - **General requirements for strata plan**
The administration sheet for the proposed strata scheme must include the following:
(e) a valuer's certificate for the proposed schedule of unit entitlement,

Comment: A significant reform in this Bill is in Clause 10 (3) which requires a valuer's certificate to accompany the schedule of unit entitlement.

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This will mean that the appropriate professional person will be involved in calculating the unit entitlement for each lot which will significantly reduce the number of future disputes over the unit entitlements allocated to the lots in a strata scheme. This is seen as a positive measure within the bill and is supported by the Institute.

Clause 14 - **Subdivision of development lot**
(1) A development lot may be subdivided into lots, or lots and common property, by the registration of a plan as a strata plan of subdivision that complies with the relevant development contract.
(2) The plan must:
(a) include a location plan, a floor plan and an administration sheet, and
(b) if the plan is for a leasehold strata scheme—be accompanied by the replacement leases for the plan.
(3) The administration sheet for the plan must include the following:
(a) a proposed schedule of unit entitlement relating to the strata scheme that complies with clause 5 of Schedule 2,
(b) a strata certificate for the proposed strata plan of subdivision,
(c) a surveyor's certificate for the proposed strata plan of subdivision,
(d) a valuer's certificate for the proposed schedule of unit entitlement,
(e) any other information or document prescribed by the regulations.
Note. Subsection (3) (b) does not apply to a plan lodged by the Crown. See section 199 (2).
(4) In this section:
lot includes a development lot.

Comment: This will allow for a development lot in a staged strata scheme to be subdivided into two or more development lots. The Institute supports this reform as it will allow greater flexibility in the staging of strata developments. This flexibility is something that has been absent from existing legislation, and something which the Institute has advocated for.

Clause 34 – Creation or variation of easements, restrictions and positive covenants
(1) The owners corporation of a strata scheme may, by special resolution:
(a) execute a dealing creating or varying an easement that burdens the common property in the scheme, or a restriction on the use of land or a positive covenant that burdens the common property or the whole parcel, or
(b) execute a dealing releasing or varying an easement, a restriction on the use of land or a positive covenant that benefits the common property or the whole parcel.
(2) The owners corporation of a strata scheme may, by ordinary resolution:
(a) accept a dealing creating an easement, a restriction on the use of land or a positive covenant that benefits the common property in the scheme or the whole parcel, or
(b) accept a dealing releasing an easement that burdens the common property, or a restriction on the use of land or a positive covenant that burdens the common property or the whole parcel.

Comment: The granting and release of easements that benefit the common property is an ordinary resolution and is supported by the Institute. This will lead to greater transparency and democracy within strata schemes.

Clause 36 – Restrictions on dealings under this Division
(1) An owners corporation of a strata scheme must not execute a dealing for the purposes of this Division that disposes of common property in the scheme unless:
(a) any common property rights by-law that relates to the common property being disposed of has been repealed or amended so it does not relate to the common property, and
(b) each registered interest in the common property being disposed of has been released or the dealing has been made subject to the interest, and
(c) each statutory interest, or other interest that is not registered, in the common property being disposed of and of which the owners corporation has been notified has been released.

(2) A dealing lodged for registration under the *Real Property Act 1900* or the *Conveyancing Act 1919* for the purposes of this Division must not be registered unless it is accompanied by a certificate under the seal of the owners corporation certifying that:
(a) the resolution authorising the dealing was a special resolution or ordinary resolution (as required under this Division), and
(b) the resolution was passed after the expiration of the initial period, and
(c) subsection (1) (c) has been complied with.
(3) Subsection (2) (b) does not apply to a dealing if:
(a) the original owner owns all lots in the strata scheme, or
(b) an order has been made under section 27 of the *Strata Schemes Management Act 2015* authorising the registration of the dealing.
(4) The certificate is conclusive evidence of the facts stated in the certificate in favour of the Registrar-General and any person taking under the dealing or benefiting by the registration of the dealing.
(5) This section does not prevent:
(a) the execution in accordance with section 87 of a dealing by an owners corporation, or by a developer on behalf of the owners corporation, to give effect to a decision about a development concern, or
(b) the registration of a dealing referred to in paragraph (a).

Comment: We ask that this clause within Division 6 be relaxed during the introductory period and that the restrictions are removed for this initial period.

The Institute believes that the removal of restrictions in the initial period will increase flexibility within strata schemes.

Clause 54 (1) (b) (iii) – **Strata certificate for strata plans and subdivision of development lots**
(iii) each building referred to in subparagraph (i) was completed not more than 12 months, or a longer period fixed by the local council in any particular case, before the application for the strata certificate was made

Comment: This clause and specifically 1(b) (iii), requires further clarification as to the fixing of the period a building was completed by the local council and whether this can be done retrospectively.

Part 10 Clause 153 - Purpose of Part
The purpose of this Part is to facilitate the collective sale or redevelopment of freehold strata schemes, other than a scheme relating to a parcel that is the subject of a development contract, in accordance with the process set out in the Part.

Comment: UDIA NSW welcomes this part of the Bill as it is the most significant innovation planned for the new legislation. The reduction in the requirement of 100% of owners to 75% of owners in support of terminating a strata scheme is seen as a positive reform. It provides for a process that a strata Owners' Corporation can follow to terminate the strata scheme so that the parcels of land can be redeveloped.

The process will allow for easier termination of strata schemes following a special resolution of the owners of the lots in the building. Such a process will greatly assist the urban renewal and urban growth in NSW, particularly within the metropolitan area of Sydney. It will allow for metropolitan areas to become unlocked and open doors to much needed redevelopment.

The process is owner driven and not developer driven which is seen as a positive step.

Clause 161 (1) – Election of members
(1) The owners corporation may elect, as members of the strata renewal committee, persons who are eligible for appointment or election to the strata committee of the owners corporation.

Comment: This clause allows for the Owners' Corporation to elect members to the strata renewal committee. The Institute believes that members of the strata renewal committee should be made up solely by equity owners or their nominees and not by tenants.

There is no exclusion of tenants in this clause which the Institute feels is a shortcoming as it could allow for non-owner residents to make fundamental decisions on the future of the strata scheme. An equity owner only renewal committee, would ensure that owners within the scheme would be responsible for decisions relating to the renewal of the strata scheme which would impact on all owners.

Schedule 4 (2)1(d) – Strata management statements
Matters that must be included
(1) A strata management statement must provide for:
(d) the settlement of disputes, or the rectification of complaints, about the management of the building or its site, whether by requiring reference of disputes or complaints to the Chief Executive or Tribunal or, with the person's consent, to any other person for a recommendation or decision or otherwise

Comment: This clause allows for the settlement of disputes or the rectification of complaints about the management of the building to be brought before the The NSW Civil Administrative Tribunal. The Institute supports the decreased costs will be in consumers interests.

Draft Management Schemes Bill

Part 11 – Building Defects

Clause 207 – Bond to be given
(1) The developer of a strata scheme must give the Chief Executive a security (a ***building bond***) for building work to which this Part applies before the completion of the building work.
(2) The amount secured by a building bond is to be 2% of the contract price for the building work.
(3) The purpose of the building bond is to secure funding for the payment (up to the amount of the bond) of the costs of rectifying defective building work identified in a final report under this Part.
(4) If the building work to which this Part applies comprises only part of the building work to which a contract price applies, the amount secured is to be 2% of the part of the contract price applicable to the building work to which this Part applies.
(5) A developer must not fail to comply with this section. Maximum penalty: 200 penalty units.
(6) An occupation certificate must not be issued for the use or occupation of a building or a part of a building on which building work to which this Part applies is carried out unless the building bond payable for the building work has been provided in accordance with this Division.

Comment: UDIA NSW has grave concerns in relation to the proposal to introduce a 2% bond to cover the cost of any defect rectification. This 2% bond, which is to be calculated at 2% of the construction costs, has the potential to have a serious negative impact on the industry. There is a potential that the cost will be passed on to the consumer, resulting in increased prices and a reduction in affordability.

Developers are already required to pay a 2.5% retention bond, this combined with the proposed 2% defect bond would effectively leave a developer paying a 4.5% bond. While the Institute acknowledges the justification behind the need for such a bond, we would ask that the following is considered as an alternative.

UDIA NSW would recommend that 0.5% of this retention bond is returned to the developer and the remaining 2% rolls over into a trust held by the Office of Fair Trading. This 2% bond

would be held together with the proposed 2% defect bond, until it is released following sign off of the inspection report and not later than two years after completion of the building works.

The Institute believes that this would be a compromised solution that would still provide residents with the protections afforded to them by the defect bond but would also reduce the impact on developers. Holding the bonds in a trust in the Department of Fair Trading would also provide added security to both the Owners' Corporation and the developer as the funds will be secure should they need to be accessed.

Clause 31 – Persons who are eligible to be elected to strata committee
(1) The following persons are eligible for appointment or election to the strata committee of an owners corporation:
(a) an individual who is a sole owner of a lot in the strata scheme,
(b) a company nominee of a corporation that is a sole owner,
(c) an individual who is a co-owner of a lot or a company nominee of a corporation that is a co-owner of a lot in the strata scheme, if the person is nominated for election by an owner who is not a co-owner of the lot or by a co-owner of the lot who is not a candidate for election as a member,
(d) an individual who is not an owner of a lot, if the person is nominated for election by an owner of a lot who is not a member, or is not seeking election as a member, of the strata committee
(2) To avoid doubt, a sole owner of a lot may nominate himself or herself for election as a member of the strata committee.
(3) Only one co-owner of the same lot may be a member of a strata committee at the same time.

Comment: The Institute believes that by allowing tenants to attend Strata Committee and Owners' Corporation meetings there will be a greater understanding of the current issues impacting on tenants living in strata schemes. Tenants will be given a voice and can help the Owners' Corporation improve common areas and address issues that may otherwise not be highlighted.

This improvement in tenant conditions may reduce the rate of tenant turnover and provide them with a greater sense of belonging. This may in turn instil confidence in investment in future strata schemes.

Clause 57 – Breaches by strata managing agent
(1) If a strata managing agent has been delegated a duty by an owners corporation and a breach of the duty by the owners corporation would constitute an offence under a provision of this Act, the agent is guilty of an offence under that provision (instead of the owners corporation) for any breach of the duty by the agent occurring while the delegation remains in force.
(2) A strata managing agent must not, in connection with the provision of services as a strata managing agent or the exercise of functions as a strata managing agent, request or accept a gift or other benefit from another person for himself or herself or for another person.
Maximum penalty: 20 penalty units.
(3) Subsection (2) does not apply to:
(a) remuneration paid to a strata managing agent or an employee or contractor of a strata managing agent by an owners corporation, or
(b) a monetary commission paid to a strata managing agent, if the payment of such a commission is in accordance with the terms of appointment of the strata managing agent by the owners corporation or has been otherwise approved by the owners corporation, or
(c) a gift or other benefit that has a value that is less than the amount prescribed by the regulations for the purposes of this subsection.
(4) In this section: ***gift*** has the same meaning as it has in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*.

Comment: This clause makes it an offence for a strata manager to request or accept a gift. There are a number of issues with this clause; when declaring a gift is the value split across

the number of properties it may relate to? Under this clause, the definition of gift is:"has the same meaning as it has in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*." The Institute believes that the definition of a gift should be contained within the Act or Regulations.

Clause 26 (7) – Appointment of proxies
(7) **Limit on number of proxies that may be held**
The total number of proxies that may be held by a person (other than proxies held by the person as the joint owner of a lot) voting on a resolution are as follows:
(a) if the strata scheme has 20 lots or less, one,
(b) if the strata scheme has more than 20 lots, a number that is equal to not more than 5% of the total number of lots.

Comment: This clause states that a person can only hold one proxy for a general meeting of a strata scheme which has 20 lots or less. Currently, legislation places no limitation on the number of proxy votes by owners at Owners' Corporation meetings. The proposed limitation appears to be impractical and undemocratic. Quite often, an owner who cannot attend a meeting and does not know the owners of any other lots appoints the Chair as their proxy. Therefore the Chair can hold numerous proxies.

However with this proposed requirement of only holding one proxy there are many votes that people wanted to have cast on their behalf but are unable to. It must be recognised that 90% (or over 60,000 strata schemes) in NSW have less than 20 lots. Therefore this proposed restriction on first accepting proxies will have a significant impact on the meetings at 90% of schemes in NSW. The limitation will lead to a handful pf people making decisions which could create great difficulties for people living in strata schemes.

As a compromise, the said clause also allows that where a strata scheme has more than 20 lots a person can hold proxies for 5% of those lots. This means that for a strata scheme with 21 lots a person can hold four proxy votes, where in a strata scheme of 20 lots a person can hold one proxy vote. UDIA NSW believes that it would be more practical than for a scheme with 20 lots or less that a person can also hold up to four proxy votes.

It is a fundamental right for owners to have a proxy vote and this should not be limited or removed.

Clause 85 (4) – **Interest, discounts on contributions and payment plans**
(4) An owners corporation may, by resolution, determine (either generally or in a particular case) that a person may pay 10% less of a contribution levied if the person pays the contribution before the date on which it becomes due and payable.

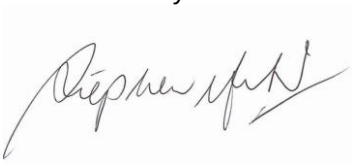
Comment: This allows for the Owners' Corporation to permit a person to pay 10% less of the required contribution levy if that person pays before the due date of the levy. Even though this could be an incentive for people to pay their levies before the due date, it, in practice, causes significant financial difficulties in preparing the administrative and sinking fund budgets for a strata scheme.

An Owners' Corporation determines the administrative fund budget based on the predicted expenses incurred during the 12 month period. Every time an owner pays 10% less of the levy it means that the Owners' Corporation does not have enough funds to meet its financial commitments.

The Institute would ask that reference to discounts be removed from clause 85. This will enable the Owners' Corporation to adequately plan for any eventualities and ensure that there are enough funds in the sinking deposit should they be required.

UDIA NSW welcomes the opportunity to discuss these issues further and to comment on the development of the regulations. If you wish to do so, please contact James White, Manager, Policy and Research, on 02 9262 1214 or jwhite@udia-nsw.com.au

Yours sincerely



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