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MINISTRY OF BUSINESS, INNOVATION
& DEVELOPMENT

JC : REVIEW OF UNIT TITLES ACT
2010

- DISCUSSION DOCUMENT

1 ENCLOSE SUBMISSIONS

Review of the Unit Titles Act 2010

Discussion Document – Submissions by ^{s 9(2)(a)}

This submission is directed to the application of the Long Term Management Fund (LTMF) in relation to the repair and maintenance obligations of the Body Corporate (s 138 of the Act) and the unit owner (s 80(1)(g)) and the issue “*who pays*” when the prescribed work is required (s 126 and s 138 (4)).

It is the primary obligation of the Body Corporate by s 138(1)(d) to repair and maintain “*any building elements and infrastructure that relate to or serve more than 1 unit*”.

It has been held that the obligations of the Body Corporate have priority over the owner’s obligation to repair and maintain the unit under s 80(1) – Wheeldon v Body Corporate 342525 (2015) NZHC 884.

S 116 requires the Body Corporate, inter alia, to “*identify future maintenance requirements and to estimate the costs thereof*” over a term of the LTMP being at least 10 years.

Having regard to ss 138 and 80 and Regulation 30(1)(a)(i) of the Unit Titles Regulations 2011 it is unlikely that a LTMP could ever properly fail to include building elements as defined, and infrastructure as defined.

The LTMF is funded by the levying of owners of principal units – s 116(3)(c).

Notwithstanding the LTMP term of 10 years (or 30 years) the legislation contemplates spending during the term – ss 116(3)(d), 117(2) and (3).

The Act, Regulation 30 and the LTMP template (or amendments to the template) do not anticipate expenditure by reference to principal units – e.g. Regulation 30(1)(a)(i) refers to “*The common property, building elements, and infrastructure of the unit development.*”

It is submitted that in fairness and equity where work of repair and maintenance of a kind contemplated by ss 138 or 80 or by a LTMP is required whether to a unit or units, the owner or owners should be entitled to recourse to the LTMF, to which they or their predecessors in title have contributed by levies, or any contingency or other fund established to provide for the maintenance of the building or buildings of the unit title development.

It follows that ss 80(1)(g), 126 and 138(1) and (4) and 117(3) should require legislative amendment accordingly.

This would not affect the liability of an owner pursuant to s 127.

It is logical and prudent and in the interest of the unit development as a whole that repairs and maintenance of building elements and infrastructure of a unit be attended to when the need becomes apparent and so for example a roof should be maintained whether it spans or adjoins one or more units.

In Wheeldon v Body Corporate 342525 Justice Muir decided that “*relates to or serves*” in s 138(1)(d) is not confined to adjoining units but is causally relevant to another unit whether physically or economically and that aesthetic effects form part of the analysis.

At para 51 of his judgement, he held: “*Maintenance of the integrity of the development as a whole is an essential purpose of the Act. Only by doing so is it possible to manage the building on a socially and economically sustainable basis as s 3 recognises*”.

Damage to any unit or common property is likely to devalue all units.

I note that the definition of “*building elements*” includes reference to the “*external and internal components of any part of a building ... that are necessary to ... the exterior aesthetics of the building ...*”

Accordingly repair and maintenance of the building elements and infrastructure of any unit is for the interests of the owners of all principal units.

It is only equitable that any affected owner or owners should have the benefit of the LTMF to which they or their predecessors in title have contributed, when it is necessary to effect work of the kind for which the LTMF is established.

Why otherwise should they be levied for the uncertain benefit of some future owners of units in the development 10 of 30 years hence?

LTMP – Questions 19 and 20.

No, I do not agree. The purpose of the LTMP is to “*identify future maintenance requirements and estimate the costs involved*”. I do not comprehend a requirement to guarantee the accuracy of an estimate of what might or might not be required in the future, supposedly for the protection of a prospective purchaser.

Who then would have ultimate liability? The owners of all the other units.

A warranty of disclosure of any existing defects affecting a building of which the Body Corporate has actual knowledge would be more reasonable.

Dated 28 February 2017

s 9(2)(a)