**Proposed Unit Titles Act changes**
**Submission by Ockham Residential Group of Companies**
**March 2017**

**Background**

1. Ockham Residential is an Auckland based 'brownfields' developer.
2. Formed in 2009, we have completed 270 units in urban locations around Auckland over the past nine years, representing s 9(2)(b)(ii) of completed value.
3. Every one of our developments over this period has been completed on freehold unit title.
4. Our current pipeline will see us complete around 340 units with a built value of around s 9(2)(b)(ii) over the coming 18 months, again with all of these in freehold unit titled developments.
5. Most of our units are in developments of a reasonable size in the NZ context, with 27 being the smallest we have completed in recent years, and the largest (currently under construction) will be 120 units on completion.
6. From a design point of view, the unit title concept is extremely powerful in that it allows for facilities like parking, recreational space, rubbish management etc to be shared spaces.
7. This achieves efficiencies in use of space and allows for a greater level of utility for all owners – green space, for example, can be a large combined facility allowing for greater utility and community interaction, rather than several small isolated yards.
8. The unit title concept is therefore, in our view, a key plank in the growing importance of medium to high density developments in New Zealand.

9. We are also the owners of a significant number of units within our completed developments.
10. Our interest in the unit titles area is therefore both as a developer, and as corporate owner.
11. The writer of this submission also has other relevant experience having served for a number of years as s 9(2)(a) a voluntary membership organisation serving real estate agents and property managers), and for three years as General Manager of s 9(2)(a)

12. Ockham Residential supports the initiative to review the Unit Titles Act as there are some practical issues in the current model which do require review.
13. We are also supportive of the approach being taken by MBIE in releasing the consultation paper and conducting a series of workshops with a range of voices from the sector.
14. We also support the proposal to issue a White Paper following this part of the process as a precursor to the development of legislation.
15. We believe that the collaborative process of this nature will result in an enhanced outcome for all who rely on the Act.

**Structure of this submission**

16. In the interests of brevity we comment in this submission only on the matters pertinent to our particular areas of interest.
17. This does not follow the same structure as the feedback form, but we trust that the readers of this document will be able to follow the intent of our comments.

**Pre Contract Disclosure**

18. In common with many developers, we sell a large proportion of our units off the plans prior to or during the construction phase.
19. As a result, the body corporate for the property is almost never formed when the sale and purchase contract is entered into.
20. The proposal that the "Pre Contract Disclosure" document contain all of the information currently provided for in the three stages of disclosure will work well for existing properties where the body corporate is extant at the time of the contract being formed.
21. Clearly the requirement cannot be met in the case of a body corporate which is yet to be formed, which is of course the case in the case of pre sales.
22. Allowing a corollary provision which enables the buyer to cancel the contract when the information is provided later effectively gives all 'off the plans' purchasers a potential "out" from the contract when settlement is pending at the completion of the construction process.
23. Bank funding is essential to most large scale development projects, and bank funding is generally conditional on a certain number of unconditional pre sales.
24. A process such as that described at point 22 effectively renders all pre sales conditional until almost the end of the project.
25. Banks are unlikely to advance funding under those circumstances.
26. We therefore recommend that an alternative approach be taken, as described below.

27. Contrary to some views, we do not think that unit titled developments per se suffer from market resistance.
28. We do acknowledge that there is a significant education process required as the concept is new to most buyers and relatively complex compared to the fee simple model, and agree that MBIE providing independent and authoritative information to the market will assist with this process.
29. Where we do encounter negative market perception is in the perception of apartments overall, arising from the number of well publicised design and structural failure in apartment complexes in the last 1980 – 1990s.
30. Addressing this will take considerable time and requires ongoing delivery of well designed, well built and well managed apartment complexes to address the residual negative perceptions.
31. Many new unit titled properties are large scale developments, completed after a period of 'off the plans' marketing.

32. Sales are generally signed up on the standard REINZ / ADLS Sale & Purchase Form, with additional 'Further Terms'.
33. The inherent nature of the development process means that these documents are generally long, complex and include a number of unfamiliar terms.
34. Consumers should always seek legal advice prior to entering into such transactions; however, we know that many do not.
35. As discussed in point 20, allowing a buyer to cancel on receipt of information later in the process, such as on settlement, would be seriously detrimental in that it would potentially prevent large developments from proceeding due to increased settlement risk and a reluctance of banks to provide funding in the face of such risk.
36. We suggest that an alternative, specific and prescribed form of disclosure could be adopted for sales of unit titled properties in situations where the contract is formed prior to the formation of the body corporate (i.e., off the plans).
37. This might also be an opportunity to greatly enhance disclosure in off the plan sales in the wider interest of better consumer protection.
38. We suggest that the disclosure might be along the lines of the simple form disclosure required by the Credit Contracts Act, and cover at the least the following in respect of the proposed development:
    a. The purchase price of the unit.
    b. Whether or not any escalation clauses are included in the Sale & Purchase Agreement which might result in an increase in the purchase price of the unit.
    c. If any escalation clauses apply, the maximum possible purchase price of the unit.
    d. The total proposed budget for the (intended) body corporate.
    e. The expected utility interest of the unit and any associated AUs.
    f. The expected annual body corporate levy for which the unit and associated AUs.
    g. The body corporate manager that the developer intends to appoint.
    h. Whether there is any relationship between the developer and the intended body corporate manager whether by way of financial recompense for the appointment or any form of ultimate ownership in common.
    i. Any contracts the body corporate will adopt which are with parties related to the developer, on the basis described above.
    j. Any arrangements the developer has made for supply of essential services such as power, water or telecommunications services which will mean that the unit owner will not be able to choose another supplier of those services.
    k. The identity of the parties with whom those arrangements have been made, and any relationship (again as above) between the developer and the provider of those services.
    l. Key conditionality dates, including:
        i. The date by which the developer must declare any developer's due diligence condition satisfied, and whether any extensions are possible to this date;

   ii. The date by which the developer must deliver the apartment, and who (Vendor & Purchaser; just Vendor; just Purchaser) has cancellation rights at this point.
m. A declaration as to whether or not the developer has the right at any point to cancel the agreement and re-sell it to another purchaser.
n. Whether the purchaser may market the property for sale prior to its completion.

**Regulation of Body Corporate Managers**

39. We believe that the body corporate management sector must be regulated.
40. The sums involved in the management of body corporate trust accounts, the fact that consumers cannot choose their body corporate manager without the engagement of their fellow owners (which is difficult to secure, especially where owners are non-resident in the complex) and the importance of professional management in enhancing confidence in this critical sector are all key reasons for this view.
41. Body corporate management could become a chapter under the Crown Agency which currently exists for the licensing and regulation of real estate agents, the Real Estate Agents Authority.
42. This would allow for relatively cost effective oversight of the sector.
43. We are unconvinced of the likely success of a voluntary model.
44. The sector is small and membership organisations are expensive to staff and run capably.
45. It is also very difficult to be an organisation in a small sector that both touts for membership and disciplines its members.
46. At the very least, if the membership organisation model is chosen, MBIE should:
    a. Provide a template Code of Conduct incorporating minimum standards which organisations must include in their Code of Conduct.
    b. Approve the Code of Conduct of all 'approved' body corporate management membership organisations.
    c. Provide a process independent of the body corporate management sector through which consumers can raise a complaint against a body corporate manager.

47. We also believe that the role of body corporate manager should be defined in the Act.
48. The Act should also define the processes for appointment and removal of the body corporate manager.
49. This should include a requirement that the appointment must be brought to a General Meeting of the body corporate, and that the power to appoint to this role cannot be delegated to the committee.

**Governance Matters**

50. The proposal asks whether the number of proxies which may be held by an individual at a meeting should be limited.

51. We do not support this proposal at all.
52. We question why a person or entity that is the legal owner of units representing say, 35% of the utility interest of a BC should be disenfranchised of their votes by an arbitrary threshold.
53. That owner pays their share of the BC's costs through their levies, and is entitled to a commensurate vote on the activities of the BC.
54. Collection of proxies is often essential to the formation of a quorum.
55. In any case, a provision limiting the number of proxies an individual could hold would be easily circumvented by bringing additional numbers of individuals to hold those proxies.

56. We note one point, not addressed in the consultation paper, which is of concern to us in the governance area.
57. That is the matter of who may be appointed to a committee.
58. Currently only a person who is the owner of a unit, or the Director of a company which owns a unit, may be nominated to the committee of the body corporate.
59. A corporate entity can therefore only appoint a Director to the committee.
60. In most corporate structures beyond a private holding entity (such as a look through company) the day to day management will not be with the Board of Directors, but will sit with an employee or contractor such as a property manager.
61. Under the current arrangements, a property manager who is not also a Director of the company owning the property cannot technically be appointed to a committee.
62. The reality of large bodies corporate is that between meetings, the management of the body corporate, including the appointment of contractors (currently including the body corporate manager), is in the hands of the committee.
63. A corporate owner is therefore potentially dissuaded from owning in a body corporate by the fact that they are not able to properly represent their interests between General Meetings.
64. We believe that the legislation / regulations should provide a process by which owners of all types, including corporate entities and natural persons, may appoint another natural person to represent them on a body corporate committee.

**Audits**

65. We do not support the proposal that bodies corporate cannot contract out of obtaining an audit once they are past a certain size threshold.
66. Audit services can be expensive and this could be a significant cost impost on owners.
67. We support retaining the current requirement that requires that a special resolution be required to opt out of this requirement, for all sizes of body corporate.

**Long Term Maintenance Plans & Funds**

68. We support requiring bodies corporate to at least work towards providing funds to meet the requirements of the long term maintenance plan; however, we do not

believe that it is necessary to provide for 100% funding of the plan's estimated requirements.

69. Owners of standalone homes do not sell their homes with a maintenance fund, and if purchasers are given access to appropriate information, ultimately owners will see the value of their property adjusted by the market for the perceived value of incomplete and unfunded maintenance.

70. We do not support requiring the body corporate chair to sign the Long Term Maintenance Plan, as we believe that this will further discourage owners stepping into this role.
71. We do not believe that the discussion at the workshops to the effect that the act of signing the plan will only indicate that process has been followed would dissuade other owners from considering legal action if dissatisfied with it in later years.
72. We suggest instead that the body corporate should consider the plan at a General Meeting and vote by ordinary resolution to adopt (or not adopt) the plan.

**General Matters**

73. We are very supportive of the indication that MBIE will take a greater role in being an independent source of information on unit title matters.
74. This is a complex area and consumers desperately need an authoritative and independent source of information and assistance – along the lines of the existing Tenancy Services help desk which currently assists landlords and tenants.

75. We also support providing mediation as an option for dispute resolution, and encouraging its use by means of cheaper fees.
76. Our support comes with the proviso that for this to be effective, the mediators must be both trained mediators and have a good understanding of the legalities of the Act.
77. We also note that both parties must be able to decline mediation and insist on proceeding directly to adjudication, on the basis that numerous failed attempts have been made to resolve the dispute in less adversarial ways.
78. We also support removing debt collection issues from the disputes process to increase the efficiency of the debt collection process and reduce the number of disputes in the channel to genuine disputes only.

79. At the workshop we attended a suggestion was raised that the name of the Act could be changed to follow the Australian model, in which these types of developments are referred to as "community titles".
80. We support this suggestion, as it more closely resembles the nature of the entity into which a purchaser is buying when they buy into a multi-unit development – ultimately, the owners form a community, be it functional or otherwise, and this is an important point we would support seeing emphasised.
81. This might also provide an opportunity to bring existing multi-unit developments such as cross leases, which are governed by old, outdated and largely ignored lease

documents and which can cause issues with matters such as insurance and maintenance of shared facilities such as the building envelope.

82. In the wake of the passage of the Health & Safety at Work Act 2015, a number of the bodies corporate of which we are members are spending significant time and sums on health and safety matters, and individuals on the committee are concerned about the potential for personal liability under this Act.
83. We question whether the carve out for volunteers applies to bodies corporate, and would welcome MBIE making this point clear.