New Zealand Institute of Valuers
Level 3, 69 The Terrace,
Wellington 6011
PO Box 5304, Lambton Quay,
Wellington 6145

T: 0800 698 258
E: national@valuers.org.nz
www.valuers.org.nz

10 March 2017

Unit Titles Act Review
Construction and Housing Markets, BRM
Ministry of Business Innovation & Employment
PO Box 1473
WELLINGTON 6140

By email only: **UTAreview2016@mbie.govt.nz**

Dear Sir or Madam

UNIT TITLES ACT REVIEW SUBMISSIONS OF THE NEW ZEALAND INSTITUTE OF VALUERS

1. Introduction

The New Zealand Institute of Valuers ('NZIV') is a statutory body under the Valuers Act 1948. Section 10 (d) of that Act provides that one of the general functions of the NZIV is: "*to consider and suggest amendments to the law relating to the valuing of land and related subjects*". We welcome the opportunity and are pleased to contribute these submissions on the valuation and land economics issues for the proposed amendments to the Unit Titles Act 2010 ('**UTA**').

s 9(2)(a)

The NZIV President appointed s 9(2)(a) as a liaison on this matter. s 9(2)(a) valuation and legal background and contacts have allowed the NZIV consultation process to:

- consider the submissions of the Auckland District Law Society ('**ADLS**'), the Property Council New Zealand ('**PCNZ**') and the New Zealand Law Society ('**NZLS**');
- confer with senior law and valuation practitioners around New Zealand such as those with post-quake Christchurch and Auckland leaky building experience, and;
- engage with academic faculty.

The NZIV have the advantage of a law reform group which includes two polymath Registered Valuers who are also current/former lawyers as well as other experienced and senior valuation contributors.

In his 'Message from the Minister' in the Review of the UTA Discussion Document December 2016 ('**Discussion Document**'), the Honourable Dr Nick Smith recognised three drivers of the rapid growth of the number and size of unit complexes. The first of these related directly to the "value of land". The NZIV consider that the complexity of process and asymmetry of information available to the market is detrimental to the transparency and liquidity of the market for unit titles.

With this in mind, we propose a central conduit and repository in the form of an online bodies corporate register similar to the Companies Office website. This would assist with public education, transparency, ease and cost of transacting, and would be more consistent with the balance of our Torrens land electronic register system.

To do otherwise would be to akin to maintaining the old paper deed title system when we know an online publically accessible register is superior. As the number of units grows, this problem will become exponentially more difficult and expensive to resolve.

The Privacy Act 1993 and legal privilege can afford protection and redaction where appropriate. This is already seen in council property file records with similar contextual issues.

It is appreciated that there would be costs in establishing and maintaining such a system. The costs, however, should be looked at in the context of the significant enduring benefits, including transactional savings, market and administrative transparency, the potential for self-auditing within the development, and the value benefit to each unit title.

The proportionality of significant legislative framework responses should include the ongoing benefits across both the public and private sectors. Introducing such benefits would likely enhance liquidity of the unit title market and reduce the risk profile of unit titles to the benefit of mortgagees and mortgagors, as well as to the wider sector.

We are cognisant that this is not a review of the full UTA. Other issues warranting review and further analysis, as we understand, fall outside this targeted review process. We would welcome the opportunity to address those aspects in due course. NZIV concur with the NZLS submission on this matter, in particular that:

> *"… there are further issues in the Act and Unit Titles Regulations that need to be addressed... A more comprehensive review, rather than piecemeal reform, is needed."*

For this review, the NZIV will next address the questions posed in the Discussion Document and then provide comment which we believe relates to the fundamental issues arising in this review. Some further comment in respect of valuation terminology applied in the UTA is also made.

These submissions will follow the following format:
1. Introduction
2. Discussion Document Questions
3. Support for ADLS, PCNZ and NZLS Submissions
4. Further Comments
5. Continued Support and Engagement

2. Discussion Document Questions

1: We propose that the following legislative requirements apply to complexes with 10 units and over. The body corporate for complexes between 10 and 29 units, may, however, resolve against adopting any of these requirements by special resolution. Bodies corporate	The NZIV observes ADLS's reference to the size of budgets, and logical gaps in regard to high value and high liability small unit developments, rather than just the number of units. The NZIV consider this acknowledgement is meritorious. However, the NZIV has some concerns about the potential for budgets to be manipulated and a budgetary threshold may create incentives to distort budgets. In addition to recognition of potentially large budgets for a small number of units, there may

must: - report on the performance of delegated powers at the annual and any other general meeting; - contract a body corporate manager to perform functions as specified in the UTA; - have LTMPs signed by the body corporate chair and a qualified person; - have a LTMF to finance the long term maintenance plan already required under the UTA; and - have body corporate accounts and LTMFs audited annually. Do you agree? If no, why?	be very high values for developments with a small number of units, for example; the many high value units situated around Auckland's Waitemata Harbour. Many New Zealanders take little responsibility for their real estate as it is. For that matter, so do trustees and directors of property owning companies. Co-owners of multi-owner real estate should be accountable to one another. There should be no minimum threshold for a budget, accounts and reporting. Budgeting and reporting can be relative to size. Very small unit developments' owners could opt to convert to fee simple if the development is not suited to unit titles. Chairperson signing: There is good reason to have an expert and some acknowledgment of the reliance on an expert's report by a body corporate. Thus, a resolution of the committee should suffice. It is a formal record of the democratic process. They are acting on the advice received. The NZIV consider that a passed resolution should be substituted for the requirement for the chairperson to sign. Otherwise, few unit owners might want to be chairperson if required to sign personally. Whereby, such a provision might mean no chairperson makes himself or herself available for election – which would defeat the legislation significantly. Thus, a committee resolution adopting the expert advice is the appropriate solution.
2: Do you consider that it is appropriate for complexes between 10 and 29 units to be able to opt out of the above proposed legislative requirements by special resolution? If no, why?	All complexes should be required to keep accounts, to report and to have a LTMP and LTMF suitable to the nature and scale of the development. The current system and proposals of three divisions of development size are needlessly complex. This would impose compliance costs and administrative burdens upon both the private and public sectors that cannot be expected to yield proportional benefits. The proposed thresholds also leave logical gaps for small unit developments involving high value, high budget and high liability. For an opt out threshold, 29 / 30 units is too low. The only distinction need be that developments under 50 units should be able to opt out of (and back into) having an administrator and auditing. For clarity, the NZIV recommends two simple categories: - under 50 units, which may opt out of (and back into) administrator and auditing requirements, and; - 50 units and over, which may not opt out.

3: Please comment on : - how government agencies might achieve a more joined up approach; - how we can improve the services we provide; and - whether you think a separate dedicated entity is warranted; and if yes, what functions and responsibilities would a dedicated unit titles entity deliver? Please list.	The NZIV do not consider that a single entity / ministry is necessary. The disclosure requirements are too complicated and costly. They do not provide transparency in the market place. Public online access would be far superior. The NZIV strongly recommends the use of a publicly accessible website (similar to the Companies Office website) with online lodgement of body corporate AGM and EGM minutes (with all supporting documents), notices, addresses for service, committee members recorded, LTMPs, LTMF accounts and financial statements. Any new details not yet uploaded would have to be uploaded to the website by trigger of pre-purchase provisions – or a statement be lodged that there is no new material information / change. This would be much more streamlined and easier to use for the whole sector. This system would be subject to and covered by the Privacy Act and 5.2 of the ADLS draft submission. The NZIV proposal would facilitate public education with live examples of systems used. In particular, issues around transparency, access to records, building lifetime, redevelopment and long term budgeting issues as well as the allocation of rights. It would thus solve many of the problems of lack of awareness and lack of public access to information. An online public access register will inevitably be needed in the future as the best and most efficient option, and it would be better to start sooner rather than later. There could be external links to the LINZ public access title ordering system to order titles, supplementary record sheets and body corporate rules. In due course, there could be links to council property files and to order a LIM and other council documents, as well as links to Project Resolve online systems. We are otherwise creating an equivalent of the old title deed paper system when we know an electronic land register is vastly superior. All of these documents can significantly affect the value of the property rights and indeed can affect the rights themselves. It need not be through Landonline. The idea is promoting transparency and creating self-auditing by the wider unit ownership. Compilation and availability of documents is needed by owners and the wider market.

	One of the reasons unit titles have such a negative perception is the information asymmetry pre-sale. The public cannot check or get advice which compares sales of units with regard to their relevant details as valuers cannot trigger the vendor – purchaser provisions for disclosure for potentially comparable units. Established economic theory supports the premise that such informational asymmetry can distort and undermine markets. George Akerlof was awarded the Nobel Memorial Prize in Economic Sciences in 2001 for his 1970 paper "The Market for Lemons: Quality Uncertainty and the Market Mechanism". The paper examines how the quality of goods traded in a market can degrade in the presence of information asymmetry between buyers and sellers. The uninformed buyer's price creates an 'adverse selection' problem that drives the high-quality cars from the market. Adverse selection is the market mechanism that leads to a market collapse. Where this information asymmetry is to the disadvantage of buyers, buyers cannot distinguish between a high-quality and a low-quality product. Yet, sellers know whether they hold a 'peach' or a 'lemon'. Low prices drive away sellers of high-quality goods, leaving only lemons behind. Thus Akerlof's paper shows how informational asymmetry can lead to prices that determine the quality of goods traded on the market and undermine the market. Making available this information would significantly reduce informational asymmetry, relative to the risk of purchasing a unit without knowledge of the unit itself or of sales comparisons, and thus reduce risk in the unit title sector. This would enhance market confidence through transparency and reduce risk to mortgagors and mortgagees (and the wider financial sector). This would likely affect the ability to obtain a mortgage and risk profiling for banks, Kiwi Saver, and those wishing to invest, be it in their first home, retirement or those wishing to develop units. The NZIV website proposal would also save immense transactional time, complications and costs which the MBIE papers have cited as being in the vicinity of $2,000. There will be a cost but this should be seen in proportion to the proper context and timeframe. The cost of such a system would likely be well and truly compensated by the value benefit alone, in addition to the transactional costs savings. A standard annual unit title levy could pay to fund this as per the company fee for registration.

	There could also be online credit card payment for searching certain information. Many online systems would already naturally interlink with this. Many government systems provide excellent facilities for ease of doing business in New Zealand. The UTA is not one of them. The NZIV see great potential for long term efficiency and ease of doing business via such a publically accessible online conduit and repository.
4: Do you agree that the current pre-contract, pre-settlement and additional disclosure step should be consolidated into one step? If no, why?	We appreciate that the purpose of a guaranteed search is to prevent any nasty surprises post settlement. Therefore a pre-settlement step may be prudent. Ideally however, a significant amount of information would be available through pre-lodgement via an online system (please refer to Answer 3 above).
5: Do you agree that these additional requirements should be included in disclosure statements? Do you consider any other requirements should be included?	Yes. The NZIV also has concerns about transparency in relation to non-disclosure of confidential mediated settlements. In particular, disclosure of weathertightness claims might not include mediated settlements which can directly affect the rights of property owners to any future claims. In this respect, they can affect the value of the bundle of rights. As such, information might not be disclosed to prospective purchasers and may not be known to the wider market when considering comparisons of recently sold units.
6: Do you agree that bodies corporate should certify that all disclosed information is complete and correct? If no, why?	Having considered the complexities addressed in the ADLS response, the NZIV does not wish to comment on the legal processes for this question.
7: We propose to add provisions to the UTA that address conflicts of interest that achieve similar aims to the provisions included in the Incorporated Societies Bill. Do you agree? If no, why?	Although the NZIV has reservations about making submissions on finer legal points, the perceived lack of transparency and accountability under the current UTA system is, at times and in particular contexts (such as for potential leaky building developments), a significant concern in the market place. It would seem that there may be benefits in following incorporated societies and company director conflict provisions. In particular, the development of case law and recognition of principles may usefully inform not only professionals but laypersons too. The predictability of the outcome of any dispute is a concern which should be carefully considered in statutory drafting. Where society and the legal profession can draw upon precedent and other guidance, there is likely to be greater certainty as to the outcome from a court or tribunal decision.

	Where parties in dispute are advised by professionals who have a common understanding of the likely outcome due to precedent, the cost involved in continuing the dispute may be saved. Therefore, the benefit of analogy with circumstances from incorporated societies and companies cases may be of benefit. However, there are contextual issues for bodies corporate in the unit title circumstances. In particular, there is an inherent prospect of conflict of interest in that a member of the committee must be a unit owner. Therefore, their decision might well be naturally influenced or partial to their particular ownership to the detriment of other owners. Other types of conflict have included, for example, a body corporate committee member promoting his concreting company for a supply contract and being in a position to influence the selection process. There could also be family connections which are conflicts, albeit not directly pecuniary. Due to the physical nature of unit titles bodies corporate, there are dynamics which are not always readily analogous to other types of legal entities that are not natural persons. For example, a unit owner might own the adjacent fee simple site and have an external interest which might create a conflict. The democratic process may be one of the best means of keeping in check the natural conflicts of a unit owner. Legislative provisions might assist in dealing with the type of conflict which can come about through a committee proposing a supply contract. However, additional care and thought will need to be considered due to the physical nature of unit titles where a conflict can arise due to the ownership of adjoining land that is external to the body corporate development. Conflicts due the ownership of adjoining land are already known to exist in the context of the redevelopment of Auckland with its new Auckland Unitary Plan – Operative in Part. We suggest that the subject specific Australian legislation which specifically deals with personal liability of strata committee members may provide useful guidance due to its analogous application.
8: We propose that bodies corporate of large sized complexes (30 and over) should report on the performance of their delegated	Yes. However, the extent of the reporting and frequency of meetings should be relative to the scale of the development. By scale, we refer not just to the number of units but to the quantum of budgets and values involved.

powers at every general body corporate meeting? Do you agree? If no, why?	We also refer to our Answer 2 that the threshold should be 50 units.
9: We propose including additional provisions on the duties and responsibilities of a body corporate committee similar to those included in Queensland's Code of Conduct for committee members. Do you agree? If no, why?	The NZIV is reluctant to give significant legal comment on this issue. However, there would seem to be an advantage in drawing from some of the Australian legislation (in particular, the Queensland and New South Wales legislation referred to in the ADLS submission). The NZLS submissions are also noteworthy.
10: Do you consider that the risk of proxy farming is sufficiently high to warrant changes to the UTA to limit the number of proxy votes one person can hold at a time? If yes, why?	The NZIV concur with the Discussion Document's sentiment that "unit title ownership is about a 'community of owners' exercising their property rights by democratic decision-making". The difficulty with the proposed limit is that although there is the potential for misuse of proxy voting, in any event each voter has control of and responsibility for their vote at the outset. Whilst legal experts might be aware of the potential legal mechanisms relating to abuse of minority interests, lay people may be uninformed as to the potential ramifications of conduct and legal consequences. There is a point at which the government, through legislation, cannot be expected to adequately inform lay people on all such technical legal subtleties. The nature of the common law is such that it can develop to make known legal principles for the context. In this respect we concur with and support the submissions of the ADLS in that Tenancy Tribunal decisions on unit title disputes (with party names and development addresses) should be published and readily searchable for both the legal profession and the general public. Such a level of transparency, even for a tribunal of first instance, would potentially be of great guidance to professionals and the wider public. The solution would therefore appear to be to respect the rights of voters to take advantage of a proxy mechanism to participate in the democratic process. The Tenancy Tribunal processes should be clear on circumstances where there might be an abuse of minority interests (as may be analogous to minority shareholder protection principles).
11: We propose to amend the UTA so that bodies corporate can vary the terms of or seek to release themselves from	The NZIV does not have a position on this issue. It is observed that a democratic body may not wish to be bound in the future by a previously elected committee (analogous to

longer term contracts in certain circumstances. Do you agree? If no, why?	Parliamentary supremacy). However, commercial parties relying on commercial contracts should be protected from the whims of transient committee membership. If commercial parties cannot rely on contracts with bodies corporate this may increase the risk profile and therefore the cost to bodies corporate of engaging commercial parties. One would need to be careful that such a perceived risk were not so great that bodies corporate were unable to contract. The NZIV suggests that this issue might need some further consideration with respect to: - the sanctity of contracts; - the ability of a contractor to enter into a long duration contract with rights of renewal; - Glasgow leases; and - Maori land. In addition to the implications where there are conflicted body corporate committee members, initial development schemes should also be considered. We refer to the vehement comments of the Court, whereby we understand that the Court found the management rights contract harsh and unconscionable. Justice Mark Woolford exercised his discretion to terminate it (refer *Body Corporate 396711 & Or v Sentinel Management Limited* HC AK CIV 2010-404-007754 [8 August 2012]).
12: Do you agree with the proposals made above as they relate to: - Minority relief – no change warranted; - Alteration to units – sections 79 and 80 (i) to be amended if necessary to align with section 65; - Quorum – section 95 to be clarified; and - Resolutions – section 101 to be amended. If no, why?	Minority relief – please see above comments at Answer 11. If there were a proposal to mirror the minority shareholders relief under the Companies Act the NZIV would consider this favourably. Alteration to units – The NZIV understands that some of our concerns relating to alterations to units falls outside the scope of this review. However, we consider that wider review is necessary and we would be available to make submission on the valuation issues in that respect. Quorum – The NZIV does not have a position on this issue. Resolutions – The amendment appears appropriate.
13: Do you agree that industry bodies such as those mentioned have the ability to increase professionalism and help address body corporate management issues? If no, why?	It should be noted that the NZIV is a statutory professional body. Our intention in making these submissions is to give useful and relevant comment on land economics issues. Accordingly, the NZIV does not have a position on this issue. It is also acknowledged that there are a variety of opinions on this broader topic within the NZIV membership. The Government's position in the Discussion Document is noted.

14: Do you support requiring body corporate managers to be members of a professional group and being subject to the codes of practice of the group? If no, why?	Please see above comments at Answer 13.
15: Do you support body corporate managers being mandatory for medium and large complexes? If no, why?	Please see above comments at Answers 2 and 13.
16: Do you support the functions of body corporate managers being set out in the UTA? If no, why?	Please see above comments at Answer 13.
17: What functions, if any, do you think should be prohibited from being contracted to a body corporate manager?	Please see above comments at Answer 13. It would appear appropriate that body corporate managers be prohibited from giving approval to change the LTMP, long term contracts and ground leases, etc.
18: Do you support the setting of additional requirements in regulation for body corporate managers? If no, why?	Please see above comments at Answer 13. The NZIV has concerns about the handling of money, especially money held in trust.
19: Do you agree that a member of a recognised surveying institution or professional group should be required to guarantee the accuracy and completeness of the LTMPs? If no, why?	Yes. Lay people in New Zealand tend to believe, particularly with residential property, that they have a great deal of knowledge and understanding of technical property issues. On the contrary, there is often is a fundamental lack of awareness of significant property rights, values, liabilities and maintenance issues. Where there is a lay committee of owners elected as required through a statutory process, the other owners are exposed to the risk of the decision makers who have been elected. Such exposure should not extend the risk of non-committee members to lay committee members' assuming they have sufficient expert knowledge. In particular, the benefits of accountability and professional liability of external specialists should serve to guide the committee so as to protect the greater property and the property rights involved. A lay body corporate committee member should not be considered to be a civil engineer or a weathertightness building surveyor. There should be some check in the system and proper

	accountability for other people's property rights where control has been delegated through statute to lay people. However, the NZIV has some concerns as to the clarity, meaning and implications of the term "recognised surveying institution or professional group". If this relates to a LTMP, then any suitably qualified person should be able to guarantee the accuracy of the plan once due diligence has been completed. This is different from undertaking the survey of the structure – where multiple professional people may need to be involved.
20: Do you agree that the body corporate chairperson, on behalf of the body corporate, should be required to sign LTMPs to guarantee accuracy (to the best of their knowledge)? If no, why?	No. Please see above comments at Answers 1 and 19. Requiring the chairperson to sign might result in a road block in the legislation. The problem would be the liability, or at least perceived liability, on the chairperson. Whereas it is the expert's advice and expertise, not a lay chairperson's advice, to which liability ought to attach. Even if the liability issue were resolved, the legislation may well be undermined as it may be difficult to fill the role of chairperson were signing to be required. Logically, it need not be the chairperson signing, it would only seem to need the expert to sign and the democratic process to accept and record that the advice is adopted. The committee should pass a resolution to accept (or reject) the independent expert's advice. However, perhaps a secretary may need to affirm that the LTMP was properly ratified and is true and correct should a copy be sought.
21: Are there mandatory fields/ information you consider should be included in the revised template? If so, please list.	Please see above comments at Answer 1.
22: Do you agree that 30 years is an appropriate timeframe for LTMPs for medium (unless they resolve not to) and large complexes? If no, what threshold or timeframe do you consider appropriate?	Yes. Large outlay expenditure may not be captured by the 10 year timeframe. For example, a retaining wall might have a significantly longer remaining life span than 10 years from the LTMP date. However, such potentially significant expenditure would be more likely to be captured by the longer timeframe and the cost better provided for over a 30 year timeframe. The existing statutory framework appears to be premised on the accounting assumption that the lifetime of a business is perpetual

	(the going concern principle). Whereas for bodies corporate relating to unit title developments, the physical life of structures is not perpetual. In the view of the NZIV, there should be much greater statutory regard for the end of life of the physical structures. In particular, the experience of Auckland's leaky buildings and Canterbury's earthquakes should inform us that we should be planning now for all of the buildings to be demolished and redeveloped at some point. With this in mind, there should also be reference to potential for demolition and redevelopment of part or all of such developments. Committees should not be obliged to maintain, for example, a dilapidated common area pavilion where it is uneconomic to do so. More significantly, large multi-unit mixed used developments, such as inner city high rise developments, might be infeasible to remediate and the demolition cost could exceed the underlying site value. Unlike the liquidation of a company, the physical existence of what might be a dangerous building would need to be dealt with. Real estate can have negative value in some circumstances. The NZIV note that material failure is becoming more common, and that there may need to be recourse to re-open the LTMP where defects are discovered / disclosed. The NZIV also observe the 50 year requirement of the Building Act 2004 so perhaps periods of 25 years ought to be considered.
23: Do you agree that LTMPs for medium and large complexes should be reviewed every three years? If no, what threshold or timeframe do you consider appropriate?	Yes, for the reasons mentioned in Answer 22 above.
24: We propose that medium sized bodies corporate comprising 10-29 units are required to establish and maintain a LTMF (unless they resolve not to by special resolution). Large complexes comprising 30 units and over would be required to have and maintain a LTMF. Do you agree? If no, why?	Please see above comments at Answer 2. The NZIV suggest that 50 units would be a more appropriate threshold. The NZIV also suggest that all bodies corporate should have a LTMF. If a complex is too small to warrant a LTMF, say just two or three units, then it would seem more appropriate for them to convert to fee simple, unless they are vertically stacked attached units (in which case an LTMF would be appropriate). There are some difficulties in using the number of units in a

	development as the determinant for the application of any threshold. Other factors could also have been considered, such as: budget, unit areas, value, construction materials, etc. However, all of these would result in significant complexity and might unduly impose (through legislation) government control over private real estate and the micro-communities of unit developments. Therefore, giving a wider discretion to opt in and opt out at a 50 unit threshold allows interested parties to make the decision appropriate to their development and circumstances. Nonetheless, we consider that all bodies corporate should have an LTMF. The NZIV now provides some context from member experience: In Auckland we have many 1970s and 1980s unit developments on or next to slopes. The retaining walls are coming due for repair and replacement. These are highly expensive items once you consider new engineering requirements, trees, drainage and utilities, Council costs, subcontractors passing on fencing and other compliance (for health and safety, etc.) – in addition to the cost of the actual wall. Lift shafts or new joinery for an entire high rise development are also representative of high expense items. For these reasons, there needs to be a timeframe exceeding 10 years. If a body corporate over-plans a little there is no real harm. If they only focus on trimming trees and exterior paint, however, under-planning could be a major problem. Intergenerational owners would face an uneven distribution of costs (allocation of true costs-to benefit, etc.). Cost spikes might become unworkable for funding. The big costs should be spread to give some continuity of budgeting. The LTMPs can serve to 'flag' things that might need work in 15 or 25 years within that 30 years so that budgeting can be an informed process. The bigger and more complex developments become, the more complex rework will become necessary. Thus, the longer 30 year term would provide better future proofing.
25: We propose that the LTMFs of medium and large bodies corporate are audited	Yes, an audit for bodies corporate for 50 or more units would be appropriate. For unit developments under 50, there should be an option to voluntarily opt out of an annual audit (with the potential

annually. Do you agree?	to opt in again). A view expressed within the NZIV is that should the web based registry operate, then an annual return would be filed confirming that the body corporate complies with the requirements of the UTA (same as or similar to the Companies Office requirements). A body corporate failing to comply would trigger an audit query. The Ministry should have powers to do routine audits and comprehensive audits similar to the Land Transfer Act and the certifications under electronic lodgement rules.
26: Do you support the proposed fee level for the dispute resolution service? If no, why?	The NZIV does not have a position on this issue.
27: Would you consider using mediation if the above option was adopted? If no, why?	The NZIV does not have a position on this issue.
28: Do you agree that the name of the Tenancy Tribunal should be changed to the 'Tenancy and Unit Titles Tribunal' to reflect its jurisdiction over unit title disputes? If no, why?	The NZIV does not have a position on this issue.

3. Support for ADLS, PCNZ and NZLS Submissions

The NZIV have had the benefit of perusing the submissions made by ADLS, PCNZ and NZLS. In particular, we emphasise our support for the following submissions:

ADLS:

3.3 It may also be appropriate to consider restructuring the website to become more fully-featured in line with other services like the Companies Office. It could be an easily-searchable and publically available means of storing Body Corporate AGM & EGM minutes, supporting documents, notices, addresses for service, committee members recorded, and LTMPs.

3.3.1 We note that MBIE has cost concerns in relation to providing this sort of service, and consideration should be given as to what information is publically available to everyone, and what should only be available to those who have an interest in the unit.

4.1.1 It may also be appropriate, for practicality, to have an online filing regime in respect of all the information that is currently required in mandatory disclosure (some body corporate managers already provide this), with a couple of additions including insurance arrangements and developer-generated budgets in the case of new developments who have not yet set up a Body Corporate.

5.2 In terms of disclosure relating to the supply of notices and meetings of general and committee meetings, we submit that if there is ongoing litigation involving the body corporate that results in the body corporate committee meeting minutes being privileged, then there should be guidelines developed and made available to these committees about redaction and the matter of dealing with privileged material in general. Alternatively, we submit that committees in this situation provide a summary of the meeting minutes that excludes mention of the privileged material if the quantity of information being redacted is too great.

PCNZ:
3.1 Property Council generally supports a regulatory regime that ensures unit title purchasers are provided with as much relevant information as possible to enable the purchaser to make a full and informed decision when purchasing a property subject to a unit title. We recognise there are currently issues with what information purchasers are receiving and when they are receiving that information. We therefore support an 'up-front' approach to disclosure of information.

NZLS:
The Law Society suggests that a UTA-specific website should be established (and maintained jointly by MBIE, MOJ and LINZ). The website could include relevant statutory and other information and education for unit title developers, bodies corporate, owners and tenants, plus links to relevant external organisations, such as the Strata Community Association. [Final paragraph of page 3]

4. Further Comments

The Website:
The NZIV consider that our proposals and recommendations (including the website) are consistent with the focus of this review, articulated in the 'Message from the Minister' as:

> "*- improving the disclosure regime to make more comprehensive information about a unit or apartment and the body corporate available to prospective buyers earlier in the purchase process;*
> *- strengthening body corporate governance without inhibiting flexibility and autonomy to govern units and unit complexes;*
> *- increasing the professionalism and standards of body corporate managers;*
> *- ensuring long term maintenance plans accurately detail expected repair and maintenance expenses for the near to medium future; and*
> *- making the dispute resolution process a more accessible and appropriate recourse mechanism for resolving unit title disputes."*

The NZIV proposals would provide information to buyers earlier, would require collation and disclosure, and would facilitate autonomous self-auditing within a development. This would promote stronger corporate governance and increase professionalism among body corporate managers. The register would host LTMPs and would assist dispute resolution processes, perhaps preventing the need for use of dispute resolution resources in some circumstances.

It is appreciated that the costs would need to be further analysed, but the significance of the value benefit should not be underestimated, especially with a rapidly growing number of unit titles. Our membership would be available to provide further analysis in this respect.

The NZIV proposals would provide simplicity where there is excessive complexity for disclosure processes. The additional compliance requirements and costs should be considered not just in the context of the troubled existing processes but with regard to the benefits of better alternatives.

We concur with the minister that those involved in the market for unit titles should be able to

> *"… feel secure in their purchase decisions, know their rights and responsibilities and ensure a readily accessible recourse regime is available if needed. Living in a unit title arrangement should be an attractive alternative to other forms of property ownership."*

At present, the above aspiration does not reflect the state of the market and the NZIV have concerns that what is proposed will not satisfy this aspiration either.

Conversion to Fee Simple Tenure:
The NZIV would strongly support streamlining and practical promotion of information explaining the potential to convert small (often older and under-utilised) developments to fee simple tenure. This can be facilitated through the use of valuation processes by way of division in kind under the Property Law Act 2007. The NZIV consider this crucial to resolving the archaic application of unit title law to two or three unit complexes.

There are potential benefits in providing party wall easements and converting to fee simple even where flats are attached vertically. Experience shows that once units are converted to fee simple, redevelopment can include construction of free standing units whereby the party walls can remain until the adjoining property is also ready for redevelopment. That is, construction technology has advanced, together with market preferences, to facilitate free standing buildings where attached units once stood.

Review of Valuation Terminology and Processes Required Under the UTA:
As the UTA is applied to circumstances as they arise, the NZIV recommend that a review of valuation terminology and processes under the UTA be undertaken. Cases now exhibit circumstances which can bring about various interpretations of valuation requirements.

Case law has developed some guidance in response. It would be useful to monitor the development of valuation law as it applies to unit titles. See for example: *Dominion Finance Group Ltd & Ors v Body Corporate 382902 & Ors* HC CHCH CIV 2012-409- 2133 [11 December 2012].

Concern has been expressed within the NZIV about redevelopment and the valuation terminology adopted by the UTA. Where there is the need for redevelopment, such as after the Christchurch earthquakes or in an irremediable high-rise leaky building, it is necessary to consider how the ownership share should be apportioned in certain circumstances.

For example, s 38 2 (a) and 2 (b) refer to "relative value" rather than market value. The term "relative value" is undefined. Consolidation of guidance as to "relative value" on creation and dissolution would be of assistance. Alternatively, it may be helpful for legislative draftspeople to confer with the NZIV as to use of received valuation terminology and thus give clarity to the legislation at the outset.

5. Continued Support and Engagement

The NZIV commend MBIE for their engagement through the Discussion Document, workshops and other forum. A disclosure draft of the bill would also be very helpful.

It is appreciated that a wide range of submissions on various issues will be received. It is also appreciated that the Government will have policies, timeframes and budgetary considerations.

The NZIV would welcome further engagement with MBIE and would hope to assist with the review process and a further more comprehensive review.

If you have any questions about these submissions, please contact s 9(2)(a)

It is logical that valuation and land economics issues will become even more significant as more unit titles proliferate. We advise prudence and a long term view to transparency in the market to counter the significant current and worsening issue of informational asymmetry.

The NZIV hopes these submissions will be of assistance. Thank you for your consideration.

Yours faithfully

The New Zealand Institute of Valuers

s 9(2)(a)