



Submission on MBIE's proposed amendments to the Unit Titles Act 2010

December 2016

Name of submitter: s 9(2)(a)

Organisation: Solutions In Engineering

Contact address: s 9(2)(a)

Contact phone number: s 9(2)(a)

Contact email address: s 9(2)(a)

- MBIE officials can contact me if they have a question about the content of my submission
- I wish to remain anonymous in any reporting or submission analysis

Making a submission

To make a submission, please fill out the submission form below, and send to UTAreview2016@mbie.govt.nz. Both Word documents and PDFs will be accepted.

Alternately, you can download the submission form and post it to:

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

Consultation on the Unit Titles Act finishes on Friday 3 March 2017 at 5pm. Thank you for your submission.

SUBMISSIONS: MBIE *Unit Titles Act* review

4.4 Ensuring Adequate Long Term Maintenance Plans

Proposal 1: Guarantee the credibility of the LTMP through body corporate committee and appropriately qualified signatories

1

Do you agree that an appropriately qualified person should be required to guarantee the accuracy and completeness of the LTMPs? If no, why not?

We support this proposal.

Inaccurate long-term maintenance planning is a challenge for bodies corporate. Currently, it is difficult for the consumer to differentiate between a quality LTMP and a LTMP that is not based on industry standards. Requiring membership of a recognised surveying institution or professional enables the consumer to be sure that a LTMP is evidence-based and prepared by a professional operator.

2

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?

We neither agree nor disagree with this proposal.

We doubt that in theory the requirement for the chairperson to sign the LTMP would make much difference to the legitimacy of an LTMP given that a qualified person has already guaranteed the accuracy and completeness of the LTMP per the first part of proposal 1.

Proposal 2: Develop a new online template for LTMPs

3

Are there mandatory fields/information you consider should be included in the revised template? If so, please list.

We support the proposal to require a more in-depth description of the current state of the common property.

The existing LTMP requirements in regulation 30 of the *Unit Titles Regulations 2011* do not require substantial change. A majority of jurisdictions provide limited guidance for the contents of a long-term maintenance plan, and regulation 30 is generally representative of industry best practice.

Greater specificity in describing the common property as well as describing the maintenance requirements would assist consumers in understanding and applying the LTMP.

Proposal 3: Extend the timeframe of LTMPs to 30 years

4

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?

We support this proposal.

A thirty-year timeframe is appropriate, provided that it is accompanied with proposal four (require bodys corporate to review their LTMPs every three years). A thirty-year timeframe has significant advantages. A thirty-year period captures building components for which maintenance, repair, and replacement would not ordinarily occur within ten years of a LTMP. The maintenance, repair, and replacement of these components often involves a substantial capital cost, and it is inequitable to disproportionately place the cost of these components onto later owners.

The disadvantage of proposal three is that it is often difficult to accurately predict the capital cost of items that require maintenance in thirty years. This is not a substantial disadvantage: The unavoidable inaccuracies for these items will only result in the LTMP being over or underfunded by a small amount. These inaccuracies will be minimised by updating a LTMP every three years. The cost will be re-estimated according to the best available information, and the extent of any over or underfunding will be minimised as far as possible.

Proposal 4: Require body corporates to review their LTMPs every three years

5

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?

We support this proposal in principle, however we do not believe that it goes far enough.

There are inherent limitations in all long-term planning for future maintenance requirements, including changes in market costs, changes in maintenance requirements, and changes in levy receipts. A regular review of a LTMP minimises inaccuracies.

A three-year review schedule is ideal. There is a necessary balancing act to be undertaken between the desire to obtain an accurate LTMP, and to minimise the cost to owners in obtaining a LTMP. A five-year review schedule, as required in New South Wales, fails to capture substantial cost fluctuations and evolving maintenance requirements. As a result, schemes with a reduced review schedule experience greater fluctuation in levies. This is a substantial financial impost to owners which can be mitigated by reviewing a LTMP more frequently. In our opinion, a three-year schedule captures the majority of cost fluctuations, while minimising the cost of obtaining a LTMP review.

However, we do not believe that only medium and large complexes should be reviewed every three years. Small complexes should also be required to review their LTMP every three years. There is a

very tenuous link between the size of a scheme and the maintenance needs of a body corporate. More importantly, a small scheme is just as likely to see their maintenance cost assessment fluctuate due to the inherent limitations discussed above. Cost escalations and new maintenance requirements do not discriminate based on the size of building.

It is likely that under this proposal, small complexes will be budgeting for maintenance based on calculations that no longer resemble their true obligations. Given an LTMP with a timeframe of thirty years, it is conceivable that a committee is budgeting maintenance based on calculations that are nearly thirty years old. These are unavoidably inaccurate. These cost fluctuations mean that such schemes will see large fluctuation in levies and a substantial financial impost on later owners. As argued above, a three-year review schedule is ideal.

Proposal 5: Require large bodies corporate to have a LTMF

6

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 units would be required to have and maintain a LTMF. Do you agree? If no, why?

We support this proposal in principle, however we do not believe that it goes far enough.

We support the requirement to have and maintain a LTMF. Without a LTMF, funds ostensibly for long-term maintenance are mixed with short-term maintenance and other administrative expenses. Due to this commingling, a LTMP is often never fully implemented. The requirement to establish a LTMF would assist in eliminating intermingling and provide for better financial planning for long-term maintenance.

However, we also propose that the new Act imposes a requirement that bodies corporate fund the LTMP in the LTMF. Proposal 5 does not clarify that bodies corporate would be obliged to implement the LTMP, for instance by having sufficient funds in the LTMF to meet forecasted maintenance obligations. In other words, the LTMP can become irrelevant as a scheme is not bound to implement it.

It is not necessary to require schemes to adhere closely to the LTMP. An example can be found in the *Strata Schemes Management Act 2015* (NSW) s80(7), which requires strata schemes in New South Wales to implement their plan 'so far as practicable.' This would substantially minimise the risk of maintenance obligations going underfunded, and reduce the reliance on exceptional levies, which disproportionately place the maintenance burden on later owners.

However, we do not believe that only medium and large complexes should be required to have a LTMF. As discussed above, there is only a tenuous link between the size of a body corporate and the maintenance needs of a body corporate. All owners have a duty to maintain their lots and to maintain the common property, each of which is dependent on adequate maintenance planning. This occurs irrespective of the size of the property. There are substantial financial consequences for insufficient maintenance planning, including a higher cost for delayed emergency maintenance,

increased frequency of public liability claims caused by lack of maintenance, and diminution of the value of units.

We propose that all bodies corporate are required to have a LTMF that is funded, so far as practicable, pursuant to the LTMP.

Proposal 6: Require bodies corporate LTMFs to be annually audited

7

We propose that the LTMFs of medium and large bodies corporate are audited annually. Do you agree?

We support this proposal.

We agree that it is imperative that LTMFs are audited to ensure that bodies corporate are held accountable for large sums of money in the fund, and that residents and all people on the property are made aware of how the fund is allocated.

We further propose that, in line with our proposal 5, that small bodies corporate are also required to have LTMFs that are audited annually so far as is practicable.

