

15 November 2012

Strata and Community Scheme Review  
Fair Trading Policy  
PO Box 972  
Parramatta NSW 2124

Email: [policy@services.nsw.gov.au](mailto:policy@services.nsw.gov.au)

Dear Sir/Madam,

**Re: Strata & Community Title Law Reform Discussion Paper**

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in development and the planning of the urban environment to engage in constructive dialogue with government and the community.

The Urban Taskforce has reviewed *Making NSW No. 1 Again: Shaping Future Communities - Strata & Community Title Law Reform Discussion Paper* ("the discussion paper"). We find the discussion paper to be a well researched and drafted document that clearly outlines many of the key issues and concerns associated with the regulatory framework supporting strata titled development in New South Wales. We strongly support this review and appreciate the opportunity to provide further input for your consideration.

You will note that our comments are focused primarily on the "managing the built environment" theme contained in the discussion paper and in this regard I confirm that members of the Urban Taskforce are particularly interested in reforms to the strata laws to simplify the termination of a strata scheme to facilitate urban renewal.

**1. Urban Renewal is essential**

It is encouraging to note that the discussion paper highlights the need for urban renewal and that the existing strata laws are often an impediment to the redevelopment of aged housing stock. It should be noted that the Urban Taskforce supports strata legislation and the opportunity that it provides unit owners to have title to land. However, there is definitely a need for legislative reform, particularly with the view of ensuring that strata legislation does not prevent the renewal of urban areas.

Many older strata titled buildings are now nearing 100 years old. The discussion paper advises that approximately 30% of residential strata schemes in the Sydney metropolitan area were registered more than 30 years ago and that there are now many strata buildings needing major renovation or redevelopment. However, we understand that the need to achieve consensus for redevelopment from all property owners is difficult, if not impossible on most occasions and in this regard, strata title often acts as a barrier to change.

As the need for housing becomes severe the need for urgent strata law reform becomes more obvious. This is particularly the case when one considers the unfortunate fact that Sydney was recently ranked four highest in the world for rental costs by a recent PricewaterhouseCoopers analysis of the world's biggest and influential cities. It is widely accepted that this is a direct result of the undersupply of housing in new and existing urban areas.

To make matters worse, by 2031 Sydney will have 1.4 million more people and need 570,000 more homes. This means that existing, older, but well located urban areas must be redeveloped. We agree with the statements made in the discussion paper that “unless some of the existing low density strata schemes can be renewed this target will not be met”.

Strata buildings built after the strata laws were introduced in 1961 are often outdated and unsightly and have reached the end of their economic life. They may be constructed of inferior materials and have a design which is unsympathetic to a local area, or are inconsistent with the current planning framework established for the area.

Furthermore, many older buildings do not meet current Building Code of Australia Standards and unless procedures are in place to facilitate the redevelopment of strata buildings, the community will continue to bear the cost of unproductive developments.

Redevelopment of such buildings should be supported with new laws whereby termination of strata schemes can be more easily facilitated, while maintaining a balance between the interests of individual owners and the greater majority of owners.

We concur that one of the factors stifling urban renewal is the complex and difficult process associated with terminating a strata scheme. As the laws currently stand, owners of a strata titled property who wish to benefit from a proposal to redevelop their scheme can be blocked by one individual who does not want to participate or simply wants to “hold out” for an unreasonable buyout price. When this happens, the general community also misses out on the benefits of replacing a tired, run down scheme with a modern building that can accommodate more people in accessible locations. Alternative strata scheme termination laws are urgently required.

## **2. *Termination of strata schemes must be fair and simplified***

The Urban Taskforce supports changes to the strata legislation to allow strata titled buildings to be developed more easily.

The current legislation requires a unanimous vote by owners in favour of any redevelopment of the building, which in most cases is extremely unlikely and empowers individual owners to an unreasonable extent compared to the interests of the rest of the owners in the scheme.

The Urban Taskforce supports the introduction of an alternative method for Strata Scheme termination. We prefer adoption of the Singapore based Collective Sale Model in the interest of fairness, transparency and minority concerns. This model is overseen by a Strata Titles Board and requires 90% owner support if the scheme is less than 10 years old; and 80% if the scheme is 10 years or older. A unit owner who has not agreed to the sale can lodge an objection within 21 days of notification of the proposed application of sale to the Board.

However, while we prefer the Singapore model it is suggested that the voting percentage and notification elements of this model be altered to include a requirement, that no more than 25% of owners vote against the termination of a building, and that owners be provided with a six week notification period between application for en-bloc sale and Board approval of the sale and termination of the strata scheme.

With regard to the lower vote proportion, we consider that this should be conditional upon the purpose of termination being in the public interest. These conditions include:

- Changes to local planning provisions which then create a significant underdevelopment of the land.
- Inadequate building maintenance and repair, resulting in the requirement or order for a major upgrade which the owners are unable to fund.

An extension of notification period will provide owners with time to consider their own accommodation options, financial issues and objections.

### **3. *Building maintenance is the responsibility of all owners***

The Urban Taskforce supports the principle that all building owners be responsible for building maintenance. Individual owners must be responsible for the maintenance of their building (strata titled lot) and collectively, all owners are responsible for the maintenance of common property.

Owner's corporations are responsible for the management and control of common property thus "common property" must be identified easily and with certainty. However, it is not always easily identifiable. It may be more easily categorised through the mandatory lodgement of a schedule identifying all common property with the strata plan, to be updated as needed through a by-law. This will ensure the issue is addressed early in the strata scheme and will limit conflict and uncertainty.

Owner accountability for the ongoing care and maintenance of strata buildings is a logical centrepiece of strata law reform. Building longevity and functionality is significantly affected by the quality and frequency of maintenance. The Urban Taskforce supports the suggestion that developers/builders be required to present a maintenance schedule for consideration and adoption at the first annual general meeting of new strata schemes. In fact, the legislation should make maintenance schedules for all strata buildings mandatory. Such schedule should be prepared by the builder, identifying the required maintenance.

While the builder is able to prepare the maintenance schedule, the owners are better placed to coordinate maintenance works and will be the party to suffer in the event that maintenance is not implemented.

We support the idea that the maintenance schedule be linked to the sinking fund plan and the requirement for the sinking fund to be adequately financed by the owners, during the life of the scheme. In this regard, owner's corporations should be required by law to apply the accumulated proceeds from sinking funds to the provision of maintenance in accordance with the maintenance schedule.

Furthermore, owner's corporations should be required to establish the rates of contribution to the sinking fund based on the estimated costs of compliance with the maintenance schedule, adjusted to take account of inflation and other factors likely to increase the cost of compliance with the maintenance schedule over time.

Consideration should also be given to a compulsory maintenance levy. Such a levy would require an amount to be allocated to maintenance on an annual basis and require that this budget be spent. This would ensure the ongoing upkeep of the building and force an owner's corporation to properly maintain the building.

### **4. *Sinking funds are an essential building management tool***

Many strata buildings have become neglected through the inadequate contributions by owners to the upkeep of the premises. Large strata schemes are inevitably also large buildings that require constant maintenance and repair as well as proper asset management. This creates problems with management and funding. Large strata schemes require a realistic sinking fund to be established immediately upon registration of the strata plan. The Urban Taskforce agrees that legislative reform is required in this area.

The continuation of a 10-year sinking fund plan has merit. However, we suggest that the sinking fund plan be prepared by an appropriately qualified asset or facilities manager perhaps with the assistance of an engineer, building surveyor or quantity surveyor. This plan should be reviewed at least every 2 years. Levies could then be set accordingly.

The amount to be contributed to the sinking fund could be based on expert advice obtained on an estimate of funds required to protect against foreseen and predictable

upgrade and maintenance. An alternative could be to simply collect a percentage of the administrative fund.

I trust that you find our submission informative and worthy of further consideration as you continue with this very important review of strata laws. We are always willing to provide a development industry perspective on government policy and we would welcome the opportunity to discuss these issues with you in more detail.

Should you have any further enquires in relation to this submission please feel free to contact me on telephone number 9238 3927.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in blue ink, appearing to read 'Chris Johnson', with a long horizontal flourish extending to the right.

Chris Johnson, AM  
Chief Executive Officer