

29 March 2018

Strata Titles Reform Team
Landgate
1 Midland Square
MIDLAND WA 6056

Via email: StrataTitlesActReform@landgate.wa.gov.au

To whom it may concern

STRATA TITLES AMENDMENT BILL 2018: TERMINATION OF STRATA TITLE SCHEMES

Thank you for the opportunity to provide feedback in relation to the proposed section of the *Strata Titles Amendment Bill 2018, Termination of Strata Titles Scheme*. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the urban development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

UDIA strongly supports the reform of strata titles legislation and acknowledges Landgate's commitment to ensuring strata legislation is both contemporary and effective. The Institute greatly appreciates the opportunity to provide feedback on the draft Bill, however, because of the short period of consultation together with the confidential nature of the document, UDIA is only able to provide limited feedback on the draft Bill.

Whilst supporting the Bill and the proposed amendments that it sets out, the Institute does have a number of concerns regarding the content of the draft legislation. Therefore, UDIA offers a number of recommendations to address these concerns and ensure that the legislation delivers positive development outcomes that satisfy the diverse and evolving needs of our communities.

Resolution Thresholds and Tribunal Determinations

The Institute strongly supports the proposed lowering of the resolution thresholds by which a strata scheme can be terminated. This is a sensible solution that will help to overcome the existing barriers which prevent the redevelopment of strata schemes despite such proposals being widely supported by lot holders. Enabling and unlocking redevelopment opportunities for existing strata schemes is vital to achieving a number of State Government imperatives including increasing infill development, ensuring land is used efficiently to support housing affordability and advancing the development of the METRONET precincts.

The Institute is supportive of the proposed Tribunal assessment and determination of strata scheme termination proposals for two-lot and three-lot schemes where all parties are not in agreement. However, the Bill is unclear if a Tribunal determination is needed where all lots within a scheme support a termination. The Bill is silent on this issue for two and three lot strata schemes and s70J. d) refers to *'at least 75% of the total number of lots'* for schemes greater than three lots. To ensure that the Tribunal resources are used efficiently, the Institute recommends that where all lots support a proposed termination, then the Tribunal should not be required to determine the proposal and the draft Bill should make this clear.

Similarly, as a Tribunal determination is triggered where 50% of lots within a two lot scheme support termination and where the majority of lots (66%) within three lot schemes support termination, the Institute recommends that the threshold determination by the Tribunal for schemes greater than three lots should also be revised; allowing for a Tribunal assessment where the majority of lots support the termination of the scheme.

Although more pragmatic thresholds may be adopted for determining whether a scheme should be terminated, the Institute is concerned that the provisions of section 70K 15) may continue to prevent the termination of schemes. Greater clarity is needed regarding how the Tribunal will determine the impact of modifications to proposals, particularly as *'modifications must not have the effect of being less advantageous to any owner of a lot'*. Recognition needs to be given to the fact that the modification of proposals is likely to add additional costs to proposals which in turn will affect the considerations set out in section 70K 10) which include *'the full costs of the termination proposal to lot owners taking into account the costs of... any other charges'*. As such, the Institute recommends that section 70k 15) is amended to read *'modifications must not unreasonably have the effect of being less advantageous to any owner of a lot...'*

The Institute is also concerned that the Bill does not address whether a Tribunal decision can be appealed and the procedures involved in this process. The Institute recommends that this is addressed and an appropriate appeal process be established.

Uncertainty Surrounding Timeframes

The Institute queries the provisions of section 70B and why a proposal for the termination of a scheme cannot proceed within 6 months of a previous unsuccessful termination proposal. This is a significant period of time in which there will be a great deal of uncertainty for residents of strata schemes and proponents alike. This is compounded by the provisions of 70Q which mean the notice not to proceed with a termination may take up to 12 months. Whilst UDIA believes the intention of this provision may be to create certainty for lot holders, the proposed 6 month lock-out period for new proposals does not provide this, rather it simply elongates the process and therefore the length of time in which uncertainty persists. Therefore, the Institute recommends that the 6 month period in which a proposal cannot be submitted is removed. Maximum periods should also be placed on the length of time in which a Tribunal can determine that termination proposals cannot be accepted.

Uncertainty also surrounds the timeframes in which submissions can be made to proponents of termination proposals as section 70I (3) simply states that a 'reasonable opportunity must be provided'. To improve clarity and consistency in the application of the Bill, the Institute recommends that a prescribed number of days be identified for providing submissions to termination proposals. Similarly, clarity is also needed regarding the provisions of section 70H. 2) which states that strata companies must provide a receipt of notice of a termination 'as soon as practicable'; along with sections 70K 19) and 70P 1), which use the same terminology.

Conclusion

In closing, UDIA reiterates its support for the draft *Strata Titles Amendment Bill 2018* and the attempt to ensure the legislation is more representative of the majority of positions regarding the termination of strata schemes.

The Institute appreciates Landgate's efforts in engaging with the development industry on this issue. Should the agency require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Please do not hesitate to contact me at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely



Chris Green
Acting Chief Executive Officer