

House of Representatives

Supplementary Order Paper

Tuesday, 16 March 2010

Unit Titles Bill

Proposed amendments

Hon Maurice Williamson, in Committee, to move the following amendments:

Clause 3(a)

To insert after “leasehold” (line 19 on page 11) “or licence”.

Clause 4

Subclause (1)(b)(iv): to omit “otherwise” (line 13 on page 12) and substitute “for other uses”.

Subclause (1)(b)(viii): to insert after “part of a building” (line 23 on page 12) “and its accessory unit”.

Subclause (1)(b)(ix): to insert after “utility interest” (line 29 on page 12) “and”.

Subclause (1)(h)(i): to omit “and” (line 27 on page 14).

Subclause (1)(h)(i): to insert before “land” (line 27 on page 14) “title to”.

Clause 5(1)

Definition of **appropriate decision-maker**: to omit this definition (lines 3 to 5 on page 16) and substitute the following definition:

appropriate decision-maker means the Tribunal or the court that, if the matter were a dispute under **subpart 1 of Part 4**, would have jurisdiction over that dispute in accordance with that subpart

Definition of **body corporate**: to omit “that unit plan in respect of a unit title development” (lines 33 and 34 on page 16) and substitute “a unit plan”.

Paragraph (b) of the definition of **common property**: to omit “from which the subsidiary unit title development was subdivided” (lines 29 and 30 on page 17) and substitute “subdivided to create the subsidiary unit title development”.

Definition of **future development unit**: to insert after “of land” (line 29 on page 18) “or a principal unit”.

Paragraph (a) of the definition of **head unit title development**: to omit “under **section 9**” (line 6 on page 19) and substitute “of land”.

Definition of **unit plan**: to omit this definition (lines 26 to 36 on page 22) and substitute the following definition:

unit plan means a plan that has been or is intended to be deposited under the Land Transfer Act 1952 in accordance with this Act, and includes—

- (a) a proposed unit development plan:
- (b) a stage unit plan:
- (c) a complete unit plan:
- (d) a unit plan amended in accordance with this Act:
- (e) a plan that has been or is intended to be deposited in substitution for an existing unit plan

Clause 5(2)(a)

To insert before “land” (line 18 on page 23) “a parcel of”.

Clause 5(2)(b)

To insert after “subdivision of a principal unit” (line 22 on page 23) “and the whole accessory unit (if any)”.

Clause 5B(3)

To omit this subclause (lines 11 to 13 on page 25) and substitute the following subclause:

- (3) A reference to a **principal unit** that is to be, or has been, subdivided to create a subsidiary unit title development includes a reference to any accessory unit subdivided with the principal unit (as described in **section 16(1A)**).

Clause 6A(b)

To omit “**sections 91 to 92**” (line 14 on page 27) and substitute “**sections 67(g), 68(1)(a)(iv), 68(1)(h), 69(3), 69(4), 71(3), 91, 91A, and 92**”.

Clause 7B

Subclause (1): to omit “Except as provided in **subsection (3)**,” (line 15 on page 28)

Subclause (2): to omit “(a **prerequisite consent or other resolution**)”.

Subclause (3): to omit this subclause (lines 24 to 28 on page 28).

Subclause (5): to omit this subclause (lines 33 to 35 on page 28) and substitute the following subclause:

- (5) If the body corporate requests in writing, the authority undertaking the public work must, at its own expense, prepare the new unit plan or amendment to a unit plan, as the case may be.

Clause 9

Subclause (1): to insert after “building or buildings” (line 1 on page 30) “(if any)”.

Subclause (2): to insert after “prescribed form” (line 4 on page 30) “(if any)”.

Clause 16

Subclause (1A): to insert after “principal unit and the” (line 36 on page 33) “whole”.

Subclause (1B): to omit this subclause (lines 3 to 6 on page 34).

Clause 17(1)(b)

To insert after “accessory units” (line 29 on page 34) “(if any)”.

To insert after “building or buildings” (line 31 on page 34) “(if any)”.

Clause 17(2)(a)

To insert after “prescribed form” (line 5 on page 35) “(if any)”.

Clause 22

Subclause (2): to insert after “deposit” (line 20 on page 37) “under the Land Transfer Act 1952”.

Subclause (3): to omit “under **section 9**” (line 25 on page 37) and substitute “of land”.

Clause 22A

Subclause (3): to insert after “building or buildings” (line 28 on page 38) “(if any)”.

Subclause (5): to omit this subclause (line 34 on page 38).

Clause 25(1)

To omit “a licence” (lines 17 and 18 on page 40) and substitute “licence”.

Clause 27

Heading to *clause 27*: to insert after “**Stage unit plan**” (line 5 on page 42) “**or complete unit plan**”.

Subclause (1): to insert after “stage unit plan” (lines 7 and 8 on page 42) “or a complete unit plan”.

Subclause (1): to insert after “stage unit plan” (line 10 on page 42) “or a complete unit plan”.

Subclause (3): to omit this subclause (lines 29 to 33 on page 42).

Clause 27A

Subclause (1): to omit this subclause (lines 35 and 36 on page 42) and substitute the following subclause:

- (1) This section applies to any alteration to a proposed unit development plan other than one—
 - (a) required under **section 46 or 47A**; or
 - (b) required in relation to a redevelopment under any of **sections 55 to 58**.

Subclause (3): to omit “existing unit plan” (line 6 on page 43) and substitute “existing proposed unit development plan”.

Subclause (5)(a)(ii): to insert after “any unit” (line 15 on page 43) “or a caveat or notice of claim entered on the register over any unit”

Subclause (7): to omit this subclause (lines 25 to 27 on page 43) and substitute the following subclause:

- (7) In addition to the provisions referred to in **section 27B(2)(a), sections 27C(2)(a) and (b), and 27F to 27H** apply in respect of a substituted proposed unit development plan.

Subclause (9): to omit this subclause (lines 32 and 33 on page 43).

Heading to subpart 3A of Part 2

To omit “for” (line 34 on page 43) and substitute “relating to”.

Clause 27B

Subclause (1): to add (line 37 on page 43) “**or subpart 3 of Part 4**”.

Subclause (2)(a): to omit “**27C(2)**” (line 3 on page 44) and substitute “**27C(2)(c)**”.

Clause 27C(2)(a)(i)

To insert after “every building” (line 31 on page 44) “(if any)”.

Clause 28

Subclause (4): to omit “unit” (line 29 on page 48) and substitute “units”.

Subclause (5): to omit “**57(3)**” (line 34 on page 48) and substitute “**57(2)**”.

Clause 31(3)

To insert after “elapsed since” (line 25 on page 50) “the deposit of the plan or”.

Clause 33(1)(b)

To omit “(if any)” (line 1 on page 52).

Clause 33(1)(c)

To insert after “leasehold” (line 6 on page 52) “or licence”.

Clause 34(1)(b)

To omit “(if any)” (line 22 on page 52).

Clause 39

To insert after “deposited” (lines 15 and 16 on page 54) “under the Land Transfer Act 1952”.

Clause 43

Subclause (5): to insert after “registered interests” (line 9 on page 56) “or caveats or notices of claim”

Subclause (6): to omit “or other registered interest” (lines 14 and 15 on page 56) and substitute “, other registered interest or caveat or notice of claim entered on the register”.

Clause 44A(1)(b)

To omit “the whole or ”.

Clause 46

To insert after line 30 on page 58 the following subclause:

- (2A) If a unit plan referred to in this section includes a stage unit plan,—
- (a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and
 - (b) both plans must be prepared, approved, and deposited in accordance with this section.

Clause 47A

To insert the following subclause after *subclause (1)* (after line 18 on page 61):

- (1A) If a unit plan referred to in this section includes a stage unit plan,—
- (a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and
 - (b) both plans must be prepared, approved, and deposited in accordance with this section.

To insert the following subclause after *subclause (4)* (after line 28 on page 61):

- (4A) The beneficial interest (under **section 44(2)**) in the land included as part of the common property pursuant to the transfer is deemed to be held by each unit owner—
- (a) subject to the same terms, conditions, liabilities, and interests as those on or subject to which the owner held the unit immediately before the registration of the transfer; and
 - (b) subject to any instrument of mortgage, encumbrance, charge, lease, or sublease affecting the owner's unit as if the beneficial interest in the transferred land had been included in the instrument expressly.

New heading and new clause 54A

To insert the following heading and clause after *clause 54* (after line 1 on page 67):

References to unit plan in relation to redevelopments

54A References to unit plan in relation to redevelopments

If a unit plan referred to in **sections 55 to 58** includes a stage unit plan,—

- (a) the reference to the unit plan includes both the stage unit plan and proposed unit development plan; and
- (b) both plans, or amendments to both plans, as the case may be, must be prepared, approved, and deposited in accordance with the applicable provisions of **sections 55 to 58**.

Clause 55

Subclause (1): To omit this subclause (lines 12 to 17 on page 68) and substitute the following subclause:

- (1) This section applies if a redevelopment consists solely of the adjustment of the boundary between 1 or more units shown on a unit plan but the adjustment does not materially affect—
 - (a) the common property; or
 - (b) the use, enjoyment, or ownership interest of any unit the boundary of which is not being adjusted.

To insert the following subclause after *subclause (2)* (after line 20 on page 68):

- (2A) **Sections 27C(2)(a), (2)(c), 27D(3), and 27E to 27H** apply in respect of the deposit of the amendment to the unit plan under **subsection (2)**.

Clause 55B(1)

To insert after “must” (line 7 on page 69) “be in the prescribed form (if any) and”.

Clause 57

Subclause (1A): to omit this subclause (lines 3 to 5 on page 71) and substitute the following subclause:

- (1A) In addition to the provisions referred to in **section 27B(2)(a), sections 27C(2)(a) and 27F to 27H** apply in respect of a new plan.

Subclause (2)(b): to insert after “part of the common property” (line 22 on page 71) “, the transfer into the common property of a unit or part of a unit,”.

Clause 58(1)

To omit this subclause (lines 16 and 17 on page 72).

Clause 60(1)

To omit “to the base land” (line 6 on page 73) and substitute “over the base land”.

Clause 61(4)

To omit “**section 47(3) to (10)**” (lines 13 and 14 on page 74) and substitute “**sections 47(1)(c) and 47A**”.

Clause 62(2)

To insert after “**section 17**” (line 16 on page 75) “(and in the case of a staged development, when the first stage unit plan is deposited under **section 22**)”.

Clause 71

Subclause (2)(b): to omit “parent” (line 8 on page 80).

Subclause (3)(b): to omit “parent” (line 18 on page 80).

Clause 72(1)(b)

To insert after “lease” (line 29 on page 80) “or licence”.

Clause 73A(5)

To omit “**subsections (1) to (3)**” (line 6 on page 83) and substitute “**subsections (1) to (4)**”.

Clause 87

To insert the following subclause after *subclause (2)* (after line 14 on page 90):

- (2A) For the motion to pass by ordinary resolution where a poll is requested, 50% of the ownership interest represented by those voting must vote in favour of the motion.

Subclause (3): to insert after “pass” (line 15 on page 90) “by special resolution”.

Clause 91A(1)(a)

To insert after “principal units,” (line 35 on page 92) “future development units,”.

Clause 92(3)(b)

To omit “parent” (line 31 on page 93).

Clause 93(2)(b) and (ba)

To omit these paragraphs (lines 13 to 17 on page 94) and substitute the following paragraph:

- (b) **section 31** (which provides for the reassessment of ownership interests and utility interests):

Clause 121(2)(a)

To omit “buildings” (line 2 on page 107) and substitute “units”.

Clause 135(2)

To omit “sale and purchase agreement” (line 10 on page 116) and substitute “agreement for sale and purchase”.

Clause 140(1)(b)

To insert after “original owner” (line 7 on page 117) “or an associate of the original owner”.

Clause 143(1)

To omit “section” in each place where it appears (lines 5 and 7 on page 118) and substitute in each case “Part”.

Clause 144(1)

To omit “section” (line 15 on page 118) and substitute “Part”.

Clause 145

To omit “**section 56(3)**” (line 5 on page 119) and substitute “**sections 27A(5)(b) and 56(3)**”.

Clause 146(1)

To omit “section” (line 9 on page 119) and substitute “Part”.

Clause 147(1)

To omit “section” (line 6 on page 120) and substitute “Part”.

Clause 148(1)

To omit “section” (line 12 on page 121) and substitute “Part”.

Clause 150(5)(c)

To omit this paragraph (lines 33 to 35 on page 123) and substitute the following paragraph:

- (c) enter a memorial to the effect that the lease has expired.

Clause 155(5)(c)

To add (line 33 on page 127) “of this Part”.

Clause 160

Subclause (3): to omit this subclause (lines 33 to 36 on page 130).

To insert the following subclause after subclause (4) (after line 3 on page 131):

- (4A) Before making the application for cancellation of the unit plan, the body corporate must (in addition to complying with **section 193(1)**)—
 - (a) serve a copy of the draft application on—
 - (i) every unit owner; and
 - (ii) every person who has a registered interest in, or caveat or notice of claim entered on the register over, any unit or the common property; and
 - (b) if the unit title development is a stratum estate in leasehold, serve a copy of the resolution and the draft application on the lessor of the base land.

Subclause (5)(a): to omit this paragraph (lines 7 to 9 on page 131) and substitute the following paragraphs:

- (a) the documents required by **subsection (4A)** to be served have been served on the persons specified in that subsection; and
- (ab) if an objection was made under **section 193** and the High Court confirmed the resolution, the standard period for lodging any appeal in respect of the matter has expired or the outcome of any appeal or appeals is that the decision of the High Court to confirm the resolution is upheld; and

Subclause (5)(c): to omit this paragraph (lines 12 and 13 on page 131).

Clause 163

Subclause (2)(c): to omit “benefiting land” (line 25 on page 135).

New clause 164A

To insert the following clause after *clause 164* (after line 16 on page 136):

164A Extinguishment of registered interests, etc

- (1) This section applies if an application is made under **section 160** and the Registrar has received a certificate from the body corporate that complies with the requirements of **sections 160(5) and 195**.
- (2) Every registered interest in, or caveat or notice of claim entered on the register over, any unit or the common property is extinguished.
- (3) Nothing in **subsection (2)** extinguishes an easement or covenant of a kind that will, under **section 162(2)(b) or (c) or 163(2)(b)**, continue after cancellation of the unit plan.
- (4) The Registrar must make the necessary entries on the register to give effect to the extinguishment under **subsection (2)**.

Clause 165

Subclauses (3) and (4): to omit these subclauses (lines 9 to 14 on page 137) and substitute the following subclauses:

- (3) If **subsection (1)** applies, the Registrar must create a computer register for the land in accordance with **section 162(2) or 164**.
- (4) If **subsection (2)** applies, the Registrar must create a computer register for the principal unit in accordance with **section 163 or 164**.

Clause 168(2)(e)

To omit this paragraph (lines 33 to 35 on page 138) and substitute the following paragraph:

- (e) every other person who has a registered interest in, or caveat or notice of claim entered on the register over, any unit, the common property, or the base land; and

Clause 169(3)

Paragraph (b): to omit “.” (line 3 on page 140) and substitute “; or” and also to add the following paragraph:

- (c) a direction to modify or extinguish, in whole or in part, any registered interest or caveat or notice of claim entered on the register in relation to any unit, the common property, or the base land.

Clause 170(5)

Paragraph (a): to omit “**paragraphs (a) to (d)**” (line 29 on page 140) and substitute “**paragraphs (a) to (c)**”.

Paragraph (b): to omit this paragraph (lines 33 and 34 on page 140) and substitute the following paragraph:

- (b) **sections 160(6), 162, 163, 164, and 165**, unless the High Court directs otherwise:

Paragraph (c): to omit “**31(2), 166**” (line 35 on page 140) and substitute “**166**”.

Clause 180(1)

To omit “**27C(1)(e)**” (line 24 on page 147) and substitute “**27C(1)(d)**”.

Clause 193

Subclause (1): to omit paragraph (b) (line 7 on page 157) and substitute the following paragraphs:

- (b) every person who has a registered interest in, or has a caveat or notice of claim entered on the register over, any unit; and
- (c) if the resolution is to cancel the unit title development,—
- (i) every person who has a registered interest in, or has a caveat or notice of claim entered on the register over, the whole or part of the common property; and
- (ii) any person who is the grantee of an unregistered lease or licence over the whole or part of the common property.

To add the following subclauses (after line 24 on page 157):

- (4) Despite **subsection (3)**, no person may object under that subsection in respect of an easement or covenant of a kind that will, under **section 162(2)(b) or (c) or 163(2)(b)**, continue after the cancellation of the unit plan.
- (5) If a person served with a notice under **subsection (1)** has made an application for relief under **section 191** or has filed an application to have a matter relating to the resolution heard and determined under **subpart 1 of Part 4**, he or she must, by written notice to the appropriate decision-maker, withdraw that application before giving a notice of objection under this section.
- (6) A mortgagee or other person with a registered interest in, or caveat or notice of claim entered on the register over, all or part of a secured property is to be treated as having consented to a resolution if that mortgagee or other person does not object to the resolution or does not file an objection in time or made an objection but the appropriate decision-maker confirmed the resolution.

Clause 195(1)(ca)

To omit this paragraph (lines 11 to 18 on page 159).

Clause 196

Paragraph (a): to add (line 33 on page 159) “or to cancel a unit plan”.

Paragraph (ka): to insert after “plans” (line 22 on page 160) “and amendments to unit plans”.

Heading to clause 199

To insert after “**91**,” (line 28 on page 161) “**91A**,”.

Clause 199

To insert after “**91**,” (line 30 on page 161) “ **91A**,”.

Clause 200B

To omit this clause (lines 29 to 32 on page 162 and lines 1 to 3 on page 163).

Clause 203C(3)

To omit this subclause (lines 25 to 31 on page 165).

Clause 204

To add the following subclause as *subclause (2)* (after line 16 on page 166):

- (2) The consequential amendments to sections 7, 22, 23, 24, and 25 of the Weathertight Homes Resolution Services Act 2006 set out in **Part 1 of Schedule 2** do not apply until section 37 and Schedules 2 and 3 of the Unit Titles Act 1972 cease to be in force in relation to a body corporate by operation of **sections 198 and 199**.

Schedule 1A

Item relating to section 55: to add the following items (after line 24 on page 170):

Subsection (3): omit “the unit owners” and substitute “at least 75% of the timeshare owners of the timeshare units”.

Subsection (4): omit “The unit owners” and substitute “At least 75% of the timeshare owners of the timeshare units”.

Item relating to section 86: to omit “under this section” (lines 9 and 10 on page 173) and substitute “under **section 85**”.

Schedule 2: Part 1

Item relating to Weathertight Homes Resolution Services Act 2006 (2006 No 84): to add the following items (after line 5 on page 178):

Section 7(7): omit “the rules or constitution of a body corporate” and substitute “the Unit Titles Act **2010** or any body corporate operational rules made under that Act”.

Section 7(8): omit.

Section 22(3): repeal and substitute:

- “(3) In the case of a unit title complex, a claim cannot be brought under section 19 or 20 unless a resolution has been passed in

accordance with the Unit Titles Act **2010** authorising the body corporate to take the actions stated in subsection (4).”

Section 22(6)(c): repeal.

Section 23(2), (3), and (4): repeal and substitute:

“(2) If the representative bringing a claim under section 19 or 20 is a body corporate, every administrative decision relating to the claim must be made in accordance with the Unit Titles Act **2010** or any body corporate operational rules made under that Act.”

Section 23(7): repeal and substitute:

“(7) Subsection (6) overrides anything to the contrary in—

“(a) the constitution of a flat-owning or office-owning company; or

“(b) the lease of, or any licence relating to, any dwelling-house in a cross-lease complex.”

Section 24(a) and (b): repeal and substitute:

“(a) any obligation of the body corporate or body corporate committee, procedural or otherwise, under any enactment other than this Act, or under any body corporate operational rules made under the Unit Titles Act **2010**.”

Section 25: repeal.

Explanatory note

This Supplementary Order Paper amends the Unit Titles Bill. In particular—

- it amends *clause 5* to substitute a new definition of **unit plan**. The new definition is intended to reflect the fact that a unit plan is deposited under the Land Transfer Act 1952 in accordance with this Bill.
- it amends *clause 7B* (which relates to the relationship of the Bill with the Public Works Act 1981). *Subclause (3)* which restricted the ability of a unit owner to reach an agreement for the acquisition of land with an authority undertaking public work is omitted. *Subclause (5)* is amended to provide that if the body corporate requests it, the authority undertaking the public work must prepare any new unit plan or amendment to a unit plan that is required.
- it amends *clause 27* to provide that, in respect of certificates issued under section 224(c) of the Resource Management Act 1991, staged unit title subdivisions are treated the same as any other subdivision.
- it amends *clauses 27A, 46, and 47A* and inserts *new clause 54A* to clarify the applicable requirements for substituting new unit plans in staged unit title developments.

- it amends *clauses 27A, 55, and 57* to clarify the application of general requirements in *subpart 3A of Part 2* when substituting proposed unit development plans and doing redevelopments.
- it amends *clause 47A* (which relates to the registration of additions to common property) to set out the basis on which the beneficial interest in the additional common property is held by each unit owner.
- it makes additional amendments to provide for the counting of votes if a poll is requested in relation to either an ordinary resolution or a special resolution (*(clause 87(2A) and (3))*).
- it amends *clause 91A(1)(a)* to clarify that this provision (which relates to amendments, revocations, and additions to body corporate operational rules) applies to future development units as well as principal units.
- it amends *clause 140* (which relates to turn-over disclosure by an original owner to a body corporate). The amendment provides that the statement setting out any interest that the original owner has in any contract or arrangement made by the body corporate up to the time of disclosure must also set out any such interest that an associate of the original owner has.
- it amends *clause 160* (which relates to application to the Registrar-General of Land to cancel a unit plan) *New subclause (4A)* (replacing *subclause (3)*)—
 - makes further provision for the service of documents on persons who have a right to object to the resolution to cancel the unit plan; and
 - provides that if the unit title development is a stratum estate in leasehold, the lessor of the base land must be served with a copy of the resolution and draft application for cancellation.
- it amends *clause 160(5)* to add to the matters required to be contained in the certificate given by the body corporate to the Registrar-General of Land when applying for the cancellation of the unit plan. A new requirement applies if an objection to the proposed cancellation was made under *clause 193* but the High Court confirmed the resolution. The body corporate must certify to the Registrar that any appeal rights the objector has have been exhausted (*see new clause 160(5)(ab)*).
- it omits the requirement in *clause 160(5)(c)* for the body corporate to certify that no unit is subject to any registered caveat, mortgage, charge, lease, or sublease. It is possible that, at the point at which the application to cancel is made by the body corporate, there may still be registered interests in existence. The provisions about the consequences of cancellation now provide (*see new clause 164A*) for the extinguishment of any remaining registered interests, caveats, and notices of claim entered on the register.
- it inserts *new clause 164A* specifically dealing with registered interests, caveats and notices of claim entered on the register at the time when a unit plan is cancelled. Under the Bill the express consent of these interest holders to the cancellation is not required, but the objection process in

clauses 192 to 195 of the Bill is available to them. The *new clause 164A* applies where a complete certificate as required by *clauses 160(5) and 195* has been provided by the body corporate to the Registrar-General of Land. That certificate states the results of the objection process and also that any rights of appeal an objector had have been exhausted (*see new clause 160(5)(ab)*). If the objection process is completed then, on cancellation, these interests are extinguished.

- it amends *clause 169(3)* to make it clear that in an application to the High Court under *clause 168* for the cancellation of a unit plan, one of the directions the Court could make when authorising the cancellation is a direction regarding a registered interest or caveat or notice of claim.
- it makes several amendments to *clause 193*—
 - *subclause (1)* is amended to require notice of an objection to be given to persons who have a registered interest or have a caveat or notice of claim entered on the register over a unit. This has the effect of giving those persons a right to lodge an objection to the resolution:
 - *new subclause (4)* clarifies the application of this right in relation to easements and covenants:
 - *new subclause (5)* provides for the situation where an objector has made other applications for relief under the Bill. Any such applications must be withdrawn before a notice of objection is given:
 - *new subclause (6)* clarifies when a mortgagee or person with a registered interest is deemed to consent to a resolution.

This Supplementary Order Paper also makes some consequential amendments and includes a number of minor and technical drafting changes.