

BCCG Headquarters

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22nd October 2018

Ministry of Housing and Urban Development

Housing and Urban Branch

Healthy Homes Standards

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Background to BCCG:

Body Corporate Chairs Group Incorporated ("BCCG") is a volunteer-based interest group with aims of supporting Body Corporate Chairs elected under the Unit Titles Act 2010. This support is through inter-action between BCCG members, their contracted service providers and sector specialists involved in administering or advising bodies corporate and unit title owners on the management of their properties.

The focus for BCCG is on providing educational opportunities for members through workshops and presentations, and to also identify areas in which the successful operation of Body Corporates ("BC's") could be enhanced by amendments to legislation and regulations under which they operate.

This submission is provided only to address the potential for changes arising from the Residential Tenancies Act or new Healthy Homes Standards to unfairly or unreasonably impact on Bodies Corporate formed under the Unit Titles Act such that operation and good management of the body corporate may be frustrated.

BCCG has empathy with the objectives of improving housing supply at affordable prices, and to ensure that standards of such accommodation are of liveable quality. Any building operating under a body corporate already has many obligations in respect to maintenance and weathertightness. In a small number of cases, construction defects or poor maintenance may impact on building performance but the remedies for resolution of such matters is provided through the Unit Titles Act and a number of significant Court cases that have filled the procedural gaps in the present Act.

BCCG has strongly supported the recent MBIE review of the Unit Titles Act and is presently waiting on these changes to be considered by Parliament.

BCCG submission (WHICH INCLUDES THE SUPPORTING PAPER THAT FOLLOWS IMMEDIATELY BELOW):

For HUD to:

1. be cognisant of landlord obligations to comply with their priority obligations to the Body Corporate within which their residential tenancy activities reside, and
2. exercise its powers under S138B(6) to ensure that existing rights and obligation of bodies corporate under Unit Titles Act 2010 especially in relation to multi-tiered properties are not compromised, and
3. consult with BCCG in all subsequent stages of the process as the legislation and standards proceed towards implementation.

A handwritten signature in black ink, appearing to read "David Watt", is written over a horizontal line.

For and on behalf of BCCG, David Watt, Treasurer.

SUPPORTING PAPER:

Legislation under which BC operate.

BC's need to comply with a wide range of legislation apart from the Unit Titles Act 2010 (and its predecessor the 1972 Act) including the Building Act and where applicable, the Residential Tenancies Act. Examples of other more recent legislation that have significantly affected the operation of BC's is the Health and Safety at Work Act 2015.

Number and types of BC in New Zealand:

Based on 2016 research by MBIE (based on LINZ data) and from BCCG's own research, the size and number of BC's in New Zealand were considered to be as follows:

Comparative Scheme and Title Numbers		
Source	LINZ information	
NZ size in numbers	Titles	Schemes **
Total 2-9	41,051	11,162
Total 10-29	32,265	2,045
Total 30+	71,172	873
TOTAL	144,488	14,080
** Scheme numbers advised by LINZ to BCCG		
NZ size in %	Titles	Schemes **
Total 2-9	28.4%	79.3%
Total 10-29	22.3%	14.5%
Total 30+	49.3%	6.2%
TOTAL	100%	100%

Why is this relevant to this submission ?

In the smaller sizes of BC's, the physical structure is more likely to be akin to townhouses built on cross-lease titles. This means that the physical structure related to an individual owner is more likely to be standalone, that is, not in a multi-tiered building structure (they are likely to be horizontally tiered, not vertically tiered).

This could mean that about 79% of BC's representing 28% of unit titles in New Zealand could be in a physical structure where an owner acting as a landlord may have more control over their property than does a landlord leasing out an apartment in a multi-tiered BC.

Conversely, multi-tiered BC (vertically tiered) are only about 21% of BC entities by number **BUT** represent 72% of unit title properties.

While it is important that it is this sector (vertically-tiered titles) to which our attention and comments are primarily focussed, all bodies corporate are subject to the same laws and regulations under Unit Titles Act 2010.

Relationship to landlord owners.

Landlords as owners have the same responsibilities to comply with the Unit Titles Act and any other legislation that affects the operation of the BC as do owners who reside in their apartment or townhouse. BC's expect their owners who lease out their property to comply with all the rules, regulations and legislation that apply to residential owners.

BCCG does not involve itself or its members in matters related to investor / landlord aspects as they are quite rightly a matter for an individual owner to manage. New Zealand Property Investors Federation (covering we believe 20 local Property Investors' Associations across New Zealand) is the industry body that provides support to investors who wish to utilise their Unit Title property for commercial gain. BCCG does not have any ties with NZPIF or with any of its' regional Associations. We understand from NZPIF website that submissions will be made on Residential Tenancies Act reform and on Healthy Homes Standards development – BCCG is not privy to any such submissions, and has not offered any information to NZPIF or any of its members Associations on this matter.

BCCG Concerns.

Our concern is to avoid any directives from this new work that may appear to cut across Body Corporate activities arising from new landlord requirements being placed in conflict with the Operating Rules and management requirements of residential apartments. These concerns relate to multi-tiered buildings only.

Key points are these:

- Owners in a Unit Title development have both rights (S79) and obligations (S80) under the Act, irrespective of whether they reside in or lease out their unit
- Absentee owners leasing out their unit have specific obligations under S81.
- Under S79 An owner of a principal unit:
 - (e) subject to section 80(1)(h) and (i), may make any alterations, additions, or improvements to his or her unit so long as these are within the unit boundary and do not materially affect any other unit or common property
 - This is tempered however by S80(1) (h) to (j)
- Under S80(1) An owner of a principal unit:
 - (e) must carry out, without delay, all work that may be ordered by a territorial authority or public body in respect of the unit to the satisfaction of that authority or body
 - (g) must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building
 - (h) must notify the body corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work:
 - (i) must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate:
 - (j) the owner must comply with the body corporate operational rules.
- Under S81(3) a person appointed as an agent under subsection (2) [of S81] or the Residential Tenancies Act 1986 has the power to enforce the body corporate operational rules.

Common law also has a part to play in establishing what Body Corporate obligations are in areas that affect the overall building and its integrity.

For example, some observations from Wheeldon CIV-2014-488-2012 [2015] NZHC 884:

- In Wheeldon [48] integrity includes aesthetic [*“Integrity” in that sense is not simply structural but, by virtue of the expansive definition of “building elements”, aesthetic as well.*]
- In Wheeldon [163] the requirement is for BC to comply with S17 of the Building Act which provides [17 All building work must comply with Building Code.]

So any action under the present legislative review such as requiring heat or cooling equipment to be installed must be cognisant of the BC requirements to manage the structure including aesthetics of the building. The BC is therefore already obligated to comply with Building Code and weathertightness aspects.

It is quite possible that some types of installation if not already installed at the time of construction, may not be practical for sound reasons:

1. The placement of heating or cooling units on the roof:
 - a. The roof support structure may not be designed to handle the weight load from multiple unit installations
 - b. The penetration of vertical service ducts may create a passive fire hazard
 - c. Wiring from individual apartments to their dedicated units may be impractical
2. The placement on unit decks:
 - a. Possible space limitation
 - b. The potential negative aesthetic effect of multiple choices of units may require the BC to set a standard for which units are acceptable

Consent to alterations.

Many BC's are very protective of the processes to obtain building consents within their property as an application for relatively minor issues may trigger a chain of far larger events requiring major projects that would otherwise not be required. BCCG supports the keeping of high standards of maintenance and asset renewals within buildings as in the long run this provides the best outcomes in terms of resident well-being and financial asset protection.

But this process is managed by the BC on behalf of all owners, and an individual owner may not be able to take a simple quick fix solution as it is the majority of owners who have established such processes in the best interest of all owners.

Not a detailed submission.

This letter is provided to the Ministry as part of the submission process simply to preserve BCCG rights to be involved all subsequent considerations of the matter. BCCG does not take a position on the content of the proposed standards, simply wishes to record concern on the potential impact on the ability of Bodies Corporate (UTA BC) to manage and control the affairs of the BC on behalf of all owners.

Specific concerns to BCCG:

In particular:

- **S138B(3)** gives the power to impose standards that may be not be appropriate to vertically-tiered buildings under body corporate ownership and management

(3) The requirements that may be imposed by standards under subsection (2)(c) include the following (for example):

- (a) requirements that things be installed or provided at the premises:
- (b) requirements about the inspection, maintenance, or replacement of things that are installed or provided at the premises:
- (c) requirements about the quantities, locations, condition, types, or technical specifications of things that are installed or provided at the premises and requirements about methods of installing or providing things at the premises.

- **S138C** gives this power to over-ride existing and well-proven management practices developed over 46 years since the introduction of Unit Titles in 1972.

138C Powers to make regulations under sections 138A and 138B not limited by other enactments

To avoid doubt, nothing in the Building Act 2004, or in any other enactment relating to buildings, health, or safety, limits the provision that may be made by regulations under section 138A or 138B.

- **S138B(6)** gives the power to provide differently for different descriptions of landlords and premises, and BCCG seeks HUD support in creating appropriate measures under this section to protect existing BC rights and obligations for vertically-tiered properties under BC ownership and management.

(6) Regulations under this section may—

- (a) make different provisions for different descriptions of landlords, premises, areas in New Zealand, or other circumstances:
- (b) make provisions applying to all landlords or provisions that apply only to particular descriptions of landlords, premises, areas in New Zealand, or other circumstances.

Prepared by David Watt

22nd October 2018