Regulatory Impact Statement: Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill: Policy Proposals

Coversheet

Purpose of Document	
Decision sought:	Approval for legislative changes to the Unit Titles Act 2010 that improves protections for unit owners and bodies corporate, while being proportionate to the issues raised, across a range of policy areas.
Advising agencies:	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
Proposing Ministers:	Hon Poto Williams Associate Minister of Housing (Public Housing)
Date finalised:	4 August 2021

Problem Definition

The Unit Titles Act 2010 (the UTA) does not provide for the protection of unit title owners and unit title developments, and support democratic decision-making by unit owners as well as it could. We propose making a number of amendments to the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (the Bill), which is a Member's Bill.

A well-functioning UTA is necessary to encourage and support people to live in higher-density housing because more New Zealanders are living higher-density housing and the Government has directed local authorities to enable greater height and density through the implementation of the National Policy Statement on Urban Development.

Executive Summary

Why Government intervention is required

The Bill is currently before the Finance and Expenditure Committee (the Committee). The Bill makes a range of proposals to amend the UTA. As the Bill is a Member's bill, the proposals in it have not been considered or approved by Cabinet, or subject to a regulatory impact analysis.

The Cabinet paper does not seek confirmation of the proposals in the Bill where we agree with those proposals. The proposals to Cabinet are proposals to amend specific parts of the Bill. This regulatory impact statement (RIS) only addresses the proposals for amendments to the Bill. This RIS therefore does not undertake a regulatory impact assessment of the Bill as a whole.

The accompanying Cabinet paper also seeks approval for the responsible Minister to make minor policy decisions. Therefore, this RIS does not include any minor policy amendments we are intending to propose to the Bill.

Without Government intervention, the Bill could be passed with a range of proposals that are disproportionate to the issues raised, or are less workable. Alternatively, the Bill may not be passed, and the status quo would remain.

The proposals in this RIS

The proposals in this RIS in relation to pre-purchase disclosure are:

- require disclosure statements to be provided at the pre-contract and pre-settlement stage
- limit when a buyer can cancel a contract for defective or incomplete disclosure, and clarify how repeated delays of settlement are managed.

The proposals in this RIS in relation to body corporate managers are:

- require bodies corporate of medium and large developments to employ a body corporate manager, with the ability for the body corporate to opt out
- remove the requirement for body corporate managers to be a member of an industry body, but insert a code of conduct for body corporate managers in the Bill.

The proposals in this RIS in relation to body corporate governance are:

- remove limits on how many proxies a person can hold
- allow remote attendance of meetings to occur as of right, and provide for procedural requirements to be set in regulations
- allow directors of non-natural entities to appoint employees or classes of employees to represent them on body corporate committees
- consolidate the existing and proposed requirements for body corporate committees to report on the use of delegated powers.

The proposals in this RIS in relation to long-term maintenance planning and funding are:

- apply the requirements in the Bill that relate to medium and large residential developments, to all medium and large developments
- require bodies corporate of medium and large developments to have a 30 year Long-Term Maintenance (LTM) Plan comprising of detailed cost estimations for the first 10 years and a high-level projection for the following years
- require medium and large developments to consult with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary (with the ability to opt out)
- remove the requirement in the Bill to identify defects in a LTM Plan
- require all bodies corporate to specify how their LTM Plans will be funded.

The proposals in this RIS in relation to dispute resolution are:

- reduce fees to $250 for mediation and $500 for adjudication, with a ‘top up’ of fees where parties move from mediation to an adjudication
- increase the jurisdiction of the Tenancy Tribunal (Tribunal) to $100,000.

The proposals in this RIS in relation to enforcement are:

- clarify powers to request information from body corporate or body corporate manager and clarify powers of entry to unit title developments

- empower the Chief Executive to issue an improvement notice to a body corporate or body corporate manager requiring them to remedy a breach of the UTA
- empower the Chief Executive to apply to the High Court for the appointment of an administrator for a body corporate
- empower the Chief Executive to take or defend any proceedings on behalf of any party to a unit title dispute, if certain criteria are met
- empower the Chief Executive to seek civil pecuniary penalties in the Tribunal or courts against bodies corporate or body corporate managers for a limited range of breaches of the UTA.

Potential impacts of the preferred options

The preferred options will bring benefits to unit owners, prospective owners, bodies corporate and body corporate managers. Unit owners and prospective owners will have better information to help them make informed decisions. The changes in body corporate governance support the ability of unit owners to be involved in decision-making by the body corporate and body corporate committee. The requirements on bodies corporate to consider whether to employ a body corporate manager, and to decide what obligations in the long-term maintenance planning regime apply, ensure that bodies corporate consider what is best for their unit title development.

The preferred options will bring greater clarity for body corporate managers, as the UTA will include them, and set out the expectations for their behaviour and obligations. This gives some clarity for body corporate managers, and protection for bodies corporate and unit owners, while not placing a heavy compliance burden on body corporate managers.

The preferred options will also allow the Ministry of Business, Innovation and Employment (MBIE) to undertake greater information and education activities. This will support the unit titles sector, particularly body corporate committees, to understand and meet their obligations. MBIE will also have an improved ability to investigate and take enforcement action where there is a breach of the UTA, and it is in the public interest for the regulator to be involved.

The preferred options will bring some additional costs to unit owners, bodies corporate and body corporate managers, through additional compliance requirements and costs. There may be some costs for these parties to become familiar with the new obligations and to set up the processes and systems to address them. However, in many cases, while the preferred options bring additional costs above the status quo, the cost would be greater under the proposals set out in the Bill.

There is a risk that the increased compliance costs and complexity may discourage some prospective owners from buying unit title developments. However, as noted above, in many cases, the proposals reduce compliance costs from the Bill's proposals. The proposals also bring greater protections for unit owners, which are intended to encourage prospective owners.

There is a risk that regulated parties will not understand the proposed changes and therefore will not comply with them. This risk will be mitigated by the proposed information and education campaign.

Views of stakeholders

The stakeholders in the unit title system include unit title owners and prospective owners. Some unit title owners volunteer to be chairpersons or BC committee members. The professionals in the system include developers, body corporate managers and lawyers. All stakeholders have an interest in ensuring the rules are clear, the rules enable them to participate in the unit title system fairly, and there are cost-effective mechanisms for addressing disputes. There is also a wider society interest in having successful unit title developments that enable increased housing density in designated urban areas.

Most submitters to the Committee considering the Bill were in favour of change to the UTA. However, in some cases, submitters felt the Bill was too prescriptive or placed too great a compliance burden on the unit titles sector without corresponding benefit. In some cases, some submitters argued for greater compliance requirements.

The Bill contains no proposals on the Chief Executive's enforcement powers. However, 18 percent of submitters on the Bill still addressed this issue. Most of these submitters called for the powers of the Chief Executive in the UTA to be enhanced and better resourced, while some proposed that bodies corporate should have enforcement powers. Some submitters supported better auditing powers, better oversight of body corporate managers, or introducing penalties or infringement notices.

Limitations and Constraints on Analysis

Scope

The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and to some extent, constrains the types of amendments which may be made by the Government.

The main constraint for consideration of policy options has been the timeframes the proposals have been developed within. As the Bill is before the Committee, there is a time limit by which the Bill must be reported back to Parliament. This has limited the time for developing options, gathering and assessing new evidence, and undertaking the impact analysis. We have, however, been able to draw on previous policy work undertaken in 2016-17, which has been useful in assisting in our consideration of policy options.

Assumptions

The assumptions made in this RIS include that unit owners generally want greater protections under the UTA, and more information. Another assumption is that unit owners do not want a sharp increase in compliance requirements or costs.

The proposals assume that unit title developments are governed by unit owners with a range of skills, experience and levels of knowledge of the UTA and other relevant

matters. But the proposals also assume a general willingness to comply with obligations and operate in the best interests of the unit title development.

Another key assumption is that small developments are less complicated and require fewer operational requirements than large developments. However, we are aware that each unit title development is different, and some large developments may be relatively simple, like "villa style" developments, or have specific features, like timeshare developments.

Data and evidence

Data and evidence have been drawn from the submissions on the Bill and other anecdotal evidence from stakeholders. HUD has also included some data about the unit title applications at the Tribunal.

HUD has had a limited ability to draw on further data sources in the time available, including gathering evidence to quantify the anticipated costs of some options. In relation to some proposals, HUD has considered legislation from other jurisdictions, such as Queensland, Australia.

Limitations on consultation

The Bill was developed by a working group that included some members of the unit titles sector. As it was not a Government bill, there was not public consultation on the provisions before the Bill was introduced. However, stakeholders and the public have had an opportunity to submit to the Committee on the proposals in the Bill. Their submissions have informed the development of the proposals recommended in this RIS.

The Bill does not include any proposals in relation to enforcement, so the public has not had an opportunity to submit on the enforcement options considered in this RIS. However, 18 percent of submitters (at least 16 submitters) made submissions on enforcement matters, and those submissions have informed the development of the proposals in this paper in relation to enforcement.

Responsible Manager
Claire Leadbetter Manager, Tenures and Housing Quality Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development      4 August 2021

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development

Panel Assessment & Comment:	The Panel considers that the RIS partially meets the quality assurance criteria. It concludes that the assessment is complete, clear and convincing. The analysis of costs, benefits and other impacts is framed by assessment criteria based on the intended outcomes of the policy interventions. While there are some gaps in the evidence base and not all costs and benefits are quantified, the assumptions underpinning the qualitative assessments are stated and appear reasonable. On balance, based on the analysis presented, the preferred options and the approach to their delivery appear to be appropriate. While the document is comprehensive and clearly written, it is longer than comparable assessments and would benefit from a more concise approach to the issues, particularly those that are more minor in nature. The policy proposals that are the subject of the RIS respond to stakeholder submissions to the Committee from affected parties and have also been the subject of consultation with other government agencies. The RIS outlines how the policy proposals have been informed by stakeholder submissions to the Committee from affected parties, while acknowledging the limitations on consultation, particularly in relation to the enforcement options, arising from the policy development process.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Current state of the unit titles sector

1. The unit titles sector is comprised of the properties that are subject to the Unit Titles Act 2010 (the UTA). A unit title property (known as a unit title development) is created by depositing a unit plan with Land Information New Zealand (LINZ) in accordance with the provisions of the UTA. A unit title development then becomes subject to the regime in the UTA. Not all multi-unit properties use the UTA regime, as some developers use different property arrangements for their developments.
2. As of July 2021, there are around 14,952 unit title developments in New Zealand, and of these 11,560 (77 per cent) are based in the major cities of Auckland, Christchurch, Wellington, Hamilton and Tauranga.[1] Auckland holds 45 per cent of all unit developments and has a population projected to reach 2 million by 2033.[2]
3. There has been continuous growth in the multi-unit sector. This is particularly the case in urban areas. For instance, 40 percent of residential consents issued in the year ended June 2021 were townhouses, flats, and units (13,529) and apartments (4,165).[3] This compares with the number of building consents issued for multi-unit properties which made up 21 percent of building consents in 2016. This number has been steadily growing over the last five years, being 29 percent of building consents in 2018, and 35 percent of building consents in 2020. These are the number of consents for new individual dwellings, not the number of new properties (i.e., each unit within an apartment building, but not the number of apartment buildings). This includes properties that are not unit title developments under the UTA. The number of unit title developments is likely to continue to increase, especially in high population growth areas.
4. There is diversity in unit title developments across New Zealand. Within unit titles developments, most developments have a small number of units. While there are fewer developments with many units, these developments contain a high proportion of all the units in New Zealand. For example, a recent report noted that only one percent of unit title developments in New Zealand contain 101 or more units.[4] However, this one percent of unit title developments contains 24 percent of all the unit titles in New Zealand.
5. We expect the number of unit titles developments to increase as our cities become denser to enable better social, economic and environmental outcomes. For example, denser cities create more social capital, reduce emissions from transport and create efficiencies in business. We expect people will look for housing options that reduce

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[1] Information provided by Land Information New Zealand.

[2] Statistics New Zealand Projection.

[3] Source: Statistics NZ. https://www.stats.govt.nz/news/new-home-consents-continue-to-break-records.

[4] The Australasia Strata Insights Report is published by an Australian body corporate industry association, Strata Community Australia, and an Australian university, the University of New South Wales. The information is based on statistics from the 2018 New Zealand census: https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/.

commute times to the central city. As cities become larger, the value of land will increase due to increasing demand. Unit titles may also meet needs for smaller household sizes, with a greater proportion of retired people, and younger people without children.

6. The increase in multi-unit properties is expected especially in high population growth areas. The National Policy Statement on Urban Development (NPS-UD) directs local authorities to enable greater housing supply and that new development capacity encourages well-functioning, liveable urban environments. Council plans will need to enable greater height and density, particularly in areas of high demand and access. This means that the implementation of the NPS-UD will likely result in a significant increase in multi-unit properties in urban centres.

Key features and objectives of the regulatory system

7. The UTA repealed and replaced the Unit Titles Act 1972. The UTA provides a regulatory framework for the ownership and management of land, associated buildings, and facilities by communities of individual owners. The unit owners together are the body corporate, which manages the unit title development. The UTA sets out:
    a. the process of subdividing land and buildings into unit title developments through depositing a unit plan with LINZ.
    b. rules for decision-making by the body corporate, including the ability for the body corporate to form a body corporate committee.
    c. requirements on bodies corporate, such as planning ahead for maintenance needs, and providing disclosure of information about the body corporate to prospective purchasers.
    d. avenues for resolving disputes, through the Tenancy Tribunal or the courts.
    e. the ability for the regulator[5] to investigate breaches of the UTA.
8. The UTA does not include provisions relating to body corporate managers. Some bodies corporate choose to contract a body corporate manager. The functions of body corporate managers vary but can include administration functions, preparing body corporate budgets and organising repairs.
9. The purposes of the UTA include:
    a. to establish a flexible and responsive regime for the governance of unit title developments
    b. to protect the integrity of the development as a whole.[6]

2016-17 review of the Unit Titles Act and a Member's Bill

10. The UTA was a significant change in the law. Through the process of 'bedding in' the law, gaps and practical problems have become apparent. In 2016, the Unit Title Working Group presented a report of issues with the UTA and proposed solutions to the then Government. The issues were centred mainly on five key topic areas:

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[5] The chief executive of Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development, currently delegated to the chief executive of the Ministry of Business, Innovation and Employment.

[6] Section 3.

a. improving the disclosure regime for prospective buyers
b. strengthening body corporate governance
c. ensuring professionalism in body corporate management
d. improving the long term maintenance planning regime
e. improving the accessibility of the disputes resolution process.

11. In response to this, the Government undertook a review of the UTA. The Ministry of Business, Innovation and Employment (MBIE) held a public consultation process from December 2016 to March 2017. The proposals were across the five key topic areas raised in the Unit Title Working Group's report. The Government took a suite of proposals to Cabinet in 2017 and obtained agreement across these five key topic areas, and also in the area of strengthening enforcement.[7] Work on reforming the UTA was paused following the 2017 General Election.

12. The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (the Bill) proposes a range of changes raised in the Unit Title Working Group's report and the previous government's consultation document. In particular, the Bill:

    a. Increases the amount of information to be provided at the pre-contract disclosure stage, removes pre-settlement disclosure and sets out administrative requirements for the disclosure process.
    b. Makes a range of changes to body corporate governance in relation to new rules for body corporate meetings and voting (e.g., limits on proxies), additional duties for body corporate committees (BC committees) (e.g., declaring conflicts of interest) and new rules around electing chairpersons or BC committee members (e.g., requiring that a candidate for the BC committee must have no unpaid levies).
    c. Introduces body corporate managers into the UTA, requiring them to be a member of a professional organisation, setting out their duties and obligations, and requiring certain bodies corporate to engage a body corporate manager.
    d. Amends the long-term maintenance regime, for example, by extending the timeframes for a long-term maintenance plan for certain bodies corporate and requiring a professional peer review.
    e. Reduces the application fee for unit title applications to the Tenancy Tribunal.

13. Although the Bill is a Member's Bill, the Government has agreed to support it. The Bill is currently before the Finance and Expenditure Committee (the Committee).

Linkages and interdependencies with other ongoing government work programmes

14. As noted previously, the UTA links with the NPS-UD. Providing a regulatory environment that increases confidence in the integrity of unit title developments is of growing importance as the Government's NPS-UD requires local authorities to enable high density developments in designated urban areas. In assessing the options, we will need to consider whether the recommended option aligns with the Government's policy on intensification. This means striking the right balance between ensuring that

[7] EGI-2017-MIN-0211.

residents of unit title developments have the right regulations in place, as well as enabling flexibility to be applied in instances where the developments operate well.

15. There is also an important relationship between the UTA and other work the Government is undertaking in relation to disclosures for new builds and supporting remediation of residential earthquake prone buildings. We note that unit owners may often face building problems and pathways to remediation that are more complex than those faced by owners of standalone houses. For instance, if a unit title development develops significant leaks or is found to be earthquake-prone, unit owners, through the body corporate, must collectively decide on an appropriate remediation plan. We consider that amendments to the pre-purchase disclosure regime, body corporate governance, and long-term maintenance planning and funding will help unit owners to identify, understand and more efficiently remediate these issues.

How the status quo might develop if no action is taken

16. If the Bill is not passed, and the status quo continues, there will be some problems with how the UTA works in practice. Prospective buyers may continue to buy into unit title developments with unanticipated problems and costs, as the disclosure required under the current regime does not always give sufficient information to make informed purchase decisions. Unit owners may also face difficulties in getting timely and necessary information about the body corporate from the BC committee.

17. Unit owners may be unclear about their rights and responsibilities. This especially applies to those unit owners who volunteer to be chairpersons or BC committee members. Body corporate managers will continue to have no status in the UTA, and no boundaries or requirements on their behaviour. This could lead to confusion, mismanagement or, in rare cases, intentional misconduct.

18. Unit owners may be unclear about how to resolve disputes, or may simply lack the funds to apply to the Tenancy Tribunal. The regulator will have limited ability to investigate, and no practical recourse, if it considers a unit title development, or person involved with it, warrants investigation.

19. These problems with a continuing status quo have several potential outcomes:

    a. discouraging potential homeowners from choosing unit title developments

    b. mismanagement of some unit title developments

    c. unit owners and others in the unit title sector not understanding their rights and responsibilities, and how to resolve disputes.

20. If the Bill is passed in its current state, it will address some of the issues with the status quo. However, in some cases the Bill creates additional compliance that is not justified by the potential issue it seeks to address. There is a risk that the additional costs and complexity imposed by the Bill will discourage potential homeowners from choosing unit title developments. The costs and complexity may also discourage unit owners from becoming chairpersons and BC committee members. The more complexity in the UTA, the more likely a unit title development will inadvertently (or sometimes, deliberately) not comply with the UTA.

What is the policy problem or opportunity?

A summary of the overall problems

21. The UTA does not provide for the protection of unit title owners and unit title developments, and support democratic decision-making by unit owners, as well as it could. A well-functioning UTA is necessary to encourage people to live in higher-

density housing because the Government is requiring local authorities to enable this type of development through the NPS-UD.

22. Since the UTA was passed in 2010, some issues with the law have become apparent. The UTA and the Unit Titles Regulations 2011 (the Regulations) can be fairly prescriptive, which can make it difficult to change and respond to developing situations. This regulatory impact statement (RIS) addresses issues that arise under the topics of pre-purchase disclosure, body corporate governance, body corporate managers, long-term maintenance planning and funding, dispute resolution and enforcement. These topics are addressed individually in the issues and options analysis (sections 2A-2F). The root causes of these issues are discussed below.

23. Evidence of the problem is drawn from the information and evidence presented in submissions on the Bill, and from the 2017 public consultation. As a result, the size of the problem is difficult to quantify.

A specific problem – lack of enforcement powers

24. Currently, the UTA contains limited powers for the Chief Executive to investigate potential breaches of the UTA and to take enforcement action in response. The powers in the UTA rely on the cooperation of the parties with any investigation. There have been very few requests to the Chief Executive to use their investigation powers under the UTA. The regulator has decided in each case, that it did not meet the threshold for intervention, considering the public interest.

25. In most cases, the Tribunal will continue to be the appropriate place to resolve disputes between unit owners, bodies corporate and body corporate managers. However, the number of unit title developments are likely to increase. We are likely to see more people entering the market who may not be capable of representing themselves. There may also be situations where unit owners do not wish to take their body corporate or body corporate manager to the Tribunal for fear of retaliatory action or jeopardised relationships with other unit owners.

26. In these circumstances it is important that the Chief Executive is able to effectively intervene when it is in the public interest to do so. Options for enforcement are discussed in section 2F below.

The root causes of the issues

27. One of the main problems is information asymmetry, where the body corporate generally holds more information than other parties. One or more other parties do not have the information needed to act in their best interests. This is a problem which can arise in most areas addressed in this RIS. Some examples are:

    a. pre-purchase disclosure (information held by the body corporate, of interest to the prospective owner)

    b. body corporate governance (information held by the chairperson or BC committee, of interest to unit owners)

    c. information and education (a general lack of understanding about the rights and responsibilities of each party in the unit title sector, and how to resolve disputes).

28. Another problem is behaviour, where cognitive biases (subconscious errors in thinking) can lead to poor decision-making. People have different levels of appetite for risk, and different approaches to homeownership. But when people own a unit title, they enter into a community of ownership. Problems can arise where cognitive biases mean that poor decisions are made around, for example:

a. long-term maintenance planning and funding, where the optimism bias may discount the future likelihood and scale of future maintenance

b. body corporate governance, where “group think” may mean BC committee members consider conflicts of interest are not a problem when making decisions on behalf of the body corporate.

29. As noted, there are 14,952 unit title developments in New Zealand. While many unit title developments operate well, there is a potential for them not to. The consequences depend on how issues are managed are within a unit title development. But the consequences can include unit owners or the body corporate more generally being uncertain of their responsibilities, unit owners feeling that decisions are being made improperly or that decisions are being made without their input. Decisions can have a significant financial or personal impact on unit owners, for example, if a unit title development is facing an unexpected expense.

30. Evidence of the impact of the current problems have been drawn from the submissions on the Bill and other anecdotal evidence from stakeholders. We have also reviewed the recent decisions of the Tenancy Tribunal. However, there are not large numbers of unit title applications to the Tribunal, potentially because of the high application cost. From this evidence, it is difficult to establish the scale and extent of problems.

31. An indirect consequence of the problems is the reputation of unit title developments, and the (lack of) attractiveness to some buyers. There is a perception amongst some people that unit titles are more complicated and expensive than other forms of ownership. There is a concern that unit titles are riskier than other ownership forms, because of people buying into unit titles with significant building problems, or some bodies corporate where the chairperson or BC committee does not act in the best interests of the body corporate as a whole.

32. Because unit tiles include collective ownership and decision-making, owners cannot deal with their property unilaterally. Unit owners and others need to have confidence that the unit title system protects them, with good information, body corporate processes and minimum requirements.

Stakeholders and their view of the problem

33. The stakeholders in the unit title system include unit title owners, and prospective owners. Of the unit title owners, some volunteer to be chairpersons or BC committee members, and their interest is governing a unit title development. The professionals in the system include developers, body corporate managers and lawyers. They have an interest in ensuring the rules are clear, the rules enable them to participate in the unit title system fairly, and there are cost-effective mechanisms for addressing disputes. There is also a wider society interest in having successful unit title developments, as part of New Zealand’s increasing density.

34. As noted above, the 2016-17 review was initiated after sector leaders presented a report of issues with the UTA and proposed solutions to the then Government. 119 submissions were received on the Government’s 2017 consultation. In summary, there was broad agreement on the need for the reform and its scope, but stakeholders expressed different views on how to achieve the reform’s objectives.

35. There were 85 submissions on the Bill. Again, most submitters were in favour of change. However, in some cases, submitters felt the Bill was too prescriptive or placed too much compliance on the unit titles sector without corresponding benefit. These issues are discussed in detail in each of the sections.

This regulatory impact statement

36. The proposals in the Cabinet paper) are proposals to amend specific parts of the Bill. We understand from the Cabinet Office that only proposals to amend the Bill need be considered. This RIS only addresses the proposals for amendments to the Bill. This RIS therefore does not undertake a regulatory impact assessment of the Bill as a whole.

37. Where we agree with the proposals in the Bill (and therefore no changes are proposed to Cabinet), they are not addressed in this RIS. The accompanying Cabinet paper also seeks approval for the responsible Minister to make minor policy decisions. Therefore, this RIS does not include any minor policy amendments we are intending to propose to the Bill.

What objectives are sought in relation to the policy problem?

Objectives for the proposals

38. We have adopted the objectives in the Cabinet paper considered by the previous Government in 2017:

    a. provide greater protection for current and prospective unit title owners

    b. encourage prospective homeowners to consider apartment and other high-density living as a viable and attractive alternative to free-standing houses

    c. ensure that the UTA is enabling for the growth in high-density living.

39. We consider these objectives are still relevant for the unit titles sector today. Considering the increased focus of the Government on increasing density in the NPS-UD, the objectives are even more relevant now.

40. There are some tensions between these objectives. Introducing new requirements can improve the governance or transparency of unit title developments, which provides greater protection for current unit title owners. For example, the Bill introduces a requirement for certain bodies corporate to employ a body corporate manager. However, introducing new requirements imposes costs on the body corporate, which are met by the unit owners. Unit title developments are perceived as having greater costs than standalone homes, and increasing costs may decrease their attractiveness. Working towards the objective of greater protection can work against encouraging prospective homeowners to consider high-density living.

41. Likewise, proposals for change need to be flexible to ensure the UTA is enabling for the growth in high-density living. Unit title developments can vary widely in size, typology, use and complexity. Proposals that give greater protection to owners may be more prescriptive, and less flexible.

Criteria for assessing the options

42. The following criteria will be applied when assessing the options relating to pre-purchase disclosure, body corporate governance, long term maintenance planning and funding, body corporate managers, and enforcement:

    a. Promoting transparency: Proposals promote transparency, enabling informed decision making, minimising unexpected costs, and allowing unit owners to effectively exercise their property rights.

    b. Encouraging best practice: proposals incentivise best practice amongst bodies corporate and body corporate services are discharged to a high standard and effectively support the operation of the body corporate.

c. Proportionality: The regulatory burden (cost) is proportional to the benefits the proposed change is expected to deliver.

d. Accessibility: proposals promote timely and accessible information and dispute resolution services.

e. Flexibility: the regime is adaptable to the diversity of development types and sizes. The regulatory system has the capacity to evolve in response to changing circumstances.

f. Ease of implementation: the proposals are workable in practice – implementation risks are low or within acceptable parameters, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

43. The changes to dispute resolution will be measured against the criteria of cost-effectiveness, appropriateness, accessibility and provide timely dispute resolution.

44. The criteria for assessing options in the RIS will be applied to all options discussed in this RIS with the following key:

Key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

Section 2A: Deciding upon an option to address the policy problem – Pre-purchase disclosure

What issues are addressed in this section?

45. The issues to be addressed in this section are:

    a. When should information be disclosed?

    b. When should non-compliance with disclosure requirements allow a purchaser to cancel a contract or delay settlement?

What criteria will be used to compare options to the status quo?

46. The following criteria will be applied across the options considered for pre-purchase disclosure: promoting transparency, encouraging best practice, proportionality, accessibility, flexibility and ease of implementation.

47. The criteria of encouraging best practice and promoting transparency can be achieved at the expense of flexibility. A fully adaptable regime would be one with few limits. Proportionality can be achieved through a trade-off between transparency and encouraging best practice. For the purposes of assessing the options against the criteria, we have assigned the criteria equal weighting. We consider this appropriate as the assessment is qualitative, rather than quantitative.

What scope will options be considered within?

48. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government. However, we consider that this does not constrain the range of options available to reform the pre-purchase disclosure process in the UTA.

49. As the pre-purchase disclosure process is set out in the UTA and Regulations currently, non-regulatory options will not address this issue. s 9(2)(f)(iv) [redacted]

50. In the Bill, additional information must be provided in the pre-contract disclosure statement. These requirements are currently set out in the Regulations, and the Bill amends the Regulations. The additional information includes matters such as whether the unit title development has earthquake-prone issues. The Bill also sets out specific pre-contract disclosure requirements for off-the-plan sales.

51. This additional disclosure would go further than the status quo to ensure that prospective buyers receive a clear picture of the development and body corporate they are buying into. This protection for prospective buyers, and the importance of disclosure to the integrity of the unit titles system, outweighs the additional compliance costs.

52. We support the proposal in the Bill to provide additional information in the pre-contract disclosure statement. The options below have been considered with this in mind.

Issue 1: When information should be disclosed?

What options are being considered?

Option One – Status Quo: pre-contract disclosure, pre-settlement disclosure and additional disclosure

53. Currently, a prospective buyer has an opportunity to access information through the pre-contract, pre-settlement and additional disclosure statements. Additional disclosure statements can be provided if the prospective buyer requests information, and at the buyer's expense.

54. This approach allows for information to be provided at various stages of the purchase process, and for different reasons. The pre-contract disclosure helps a prospective buyer to decide whether to enter into a purchase agreement. The pre-settlement disclosure allows for information to be updated since the agreement was signed, and assists in the settlement process by allowing for a final calculation of body corporate levies.

55. Assuming that more information is being provided at the pre-contract disclosure stage, the additional disclosure does not provide much additional benefit. There is a time pressure for the body corporate, as currently additional disclosure must be made within five working days of the request.

Option Two – pre-contract disclosure and additional disclosure (the Bill)

56. The Bill provides for pre-contract disclosure and additional disclosure. It removes the pre-settlement disclosure. The advantage of this approach is that is more efficient to provide one compulsory set of disclosure, rather than two. The increase in documents provided for the pre-contract disclosure would reduce the likelihood of buyers wanting additional disclosure.

57. However, a significant issue raised by submitters on the Bill in relation to disclosure was how many disclosure statements there should be. A number of submitters, many of them lawyers, indicated the pre-settlement disclosure statement should be retained. No submitters made submissions in favour of the removal of the pre-settlement statement. The pre-settlement statement allows information to be updated since the contract stage – for an ordinary sale, this could be several months, and a number of changes could have occurred in the unit title development in that time. For sales off-the-plans, there could be a year or more before settlement. The pre-settlement statement also allows for a final calculation of the levies due, and the statement can be withheld by the body corporate if levies are overdue.

58. It should be noted the Bill provides for additional disclosure, with the documents that can be requested through additional disclosure to be prescribed in the Regulations. However, the amendment to the Regulations by the Bill removes the list of documents. This creates uncertainty about what information could be requested. There was some apparent support for the additional statement from submitters, although submissions focused on the concern that the Bill does not prescribe what the buyer could ask for as additional disclosure. One submitter was concerned that the additional disclosure requirements place a particular burden on off-the-plan sales, when there is a significant time between an agreement and the settlement date.

Option Three – pre-contract disclosure and pre-settlement disclosure (preferred option)

59. Another option is to provide for both pre-contract disclosure and pre-settlement disclosure. This ensures that prospective buyers get enough information before they

decide to enter into a purchase agreement. Then, the buyer gets the right information to facilitate the settlement of the purchase in the pre-settlement disclosure. The additional disclosure statement is not available on the basis that there is more information in the pre-contract disclosure.

60. This option is more efficient than the status quo (Option 1), as there are not three points of disclosure. Currently, while buyers are required to pay for the additional disclosure statement, the collection of the information still imposes compliance work on the body corporate. This option provides the required information for buyers to settle their property purchase, as discussed under Option 2 above.

61. This option has the disadvantage of removing the ability of buyers to seek additional information. If buyers have insufficient information, they may make an uninformed decision to purchase a property when they would not have otherwise. However, this is mitigated by the additional information that will be available in the pre-contract disclosure.

How do the options compare to the status quo?

	Option One – status quo	Option Two – pre-contract and additional disclosure (Bill)	Option Three – pre-contract and pre-settlement disclosure (preferred)
Transparency	0 Information is available when prospective buyers need it.	-- Information is available to help prospective buyers enter into a contract. But information will not be updated before the settlement.	0 Information is available when prospective buyers need it. More information at the pre-purchase disclosure means additional disclosure is not necessary.
Best practice	0 Regime allows information to be disclosed when needed. Buyers need to request additional information to receive it.	- Information is not provided before the settlement. Buyers may not be aware of relevant information as they become an owner.	+ Regime allows information to be disclosed when needed. More relevant information is provided at the pre-contract stage.
Proportionality	0 Bodies corporate have additional compliance burden as they may have to provide additional disclosure.	- Bodies corporate are required to provide additional disclosure. This may be unnecessary as additional disclosure is unlikely to provide significant new information.	+ Bodies corporate are required to provide information when necessary to assist purchases. Bodies corporate are not required to provide additional disclosure, which may be of limited benefit to buyers.
Accessibility	0 Information is not being released at the most appropriate stage in the process to support prospective buyers to make informed decisions.	0 It is difficult for buyers to access relevant information before settlement to assist the settlement process, and provide relevant information for them as a unit owner.	++ Because of the additional information provided at the pre-contract stage, it is easier for buyers to access information.
Flexibility	N/A	N/A	N/A

	Option One – status quo	Option Two – pre-contract and additional disclosure (Bill)	Option Three – pre-contract and pre-settlement disclosure (preferred)
Ease of implementation	0 As well as two disclosure statements, bodies corporate may have to provide additional disclosure.	- Currently, this option provides for additional disclosure but the documents that can be requested are not set out in the amended regulations. New regulations would need to be to be developed to clarify this. There is a risk that the sale of unit titles would be delayed, leading to a loss of reputation of the unit titles sector.	+ This option is easier to implement than the status quo, as bodies corporate will no longer be required to provide additional disclosure.
Overall assessment	0	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

62. Officials recommend proceeding with Option 3 – having pre-contract disclosure and pre-settlement disclosure. This option will require information to be disclosed to prospective buyers when it is most needed by buyers – when they are deciding whether to enter into a purchase agreement, and before the sale is completed and they become a unit owner.

63. Limiting the disclosure requirements to two stages will reduce compliance costs and focus disclosure on the times when it is most useful to prospective buyers. Having disclosure at the set times will be easier for bodies corporate to manage, than having to respond to requests for additional disclosure. A body corporate may have more notice of the need to gather information for disclosure, as a unit owner will likely advise when they are intending to put their unit on the market.

Issue 2: When should disclosure non-compliance allow a purchaser to cancel a contract or delay settlement?

What options are being considered?

Option One – Status Quo

64. The UTA provides that a buyer can delay settlement until five working days after the day the disclosure statement is provided:

    a. If a pre-settlement or additional disclosure is late (less than five working days before settlement date) or not given before settlement date.

    b. If a statement to correct an error in a disclosure statement is given less than five working days before settlement date.

65. The UTA also provides that if a pre-settlement or additional disclosure does not meet the times prescribed for providing them, and the buyer does not delay the settlement, the buyer can cancel the contract by giving notice in writing.

66. This provides an ability for a buyer to delay settlement and receive further information that has not been provided to them. It also provides the buyer with the ability to cancel a contract. However, it is restricted to situations where the disclosure statement has not been provided. There are situations where the information in the disclosure statement may be incorrect or incomplete. Currently, a seller could provide disclosure that omitted a serious matter, for example, information that the development is a leaky building, and the buyer would need to complete the settlement.

Option Two – Ability to cancel contracts and delay settlements (the Bill)

67. The Bill proposes that a buyer can delay the settlement date if:

    a. The additional disclosure is late (less than five working days before settlement date) or not given before settlement date)

    b. The seller has not provided a pre-contract disclosure statement earlier than five working days before settlement date.

    c. The seller has provided an incomplete pre-contract or additional disclosure.

68. If the settlement date is delayed, and another statement is required (for example, because the statement provided is incomplete), the settlement date can be again delayed from five working days from the date of the last complying statement. The buyer must give notice of the delay within five working days of the triggering event.

69. The Bill also proposes that a buyer can cancel the contract if:

    a. the seller has not provided a pre-contract disclosure statement, or additional disclosure statement, or it is defective or incomplete, and

    b. the buyer does not delay the settlement.

70. This provides a stronger ability to cancel contracts where the pre-contract disclosure is defective or incomplete. It also provides the ability to delay settlement if a statement provided during the delay period is incomplete. This gives a greater ability for a prospective purchaser to protect themselves when entering into a purchase agreement. These provisions also give a strong incentive to the seller to ensure the disclosure is complete and correct when it is first provided.

71. The Bill also brings clarity to the cancellation process. It is much clearer that the buyer gives notice and this gives the seller an opportunity to complete the disclosure.

Whether or not the disclosure is completed, the buyer can decide whether to proceed or cancel. This allows the buyer to cancel the contract where the information now disclosed means they would not have entered into the contract.

72. However, a seller usually has a reasonable expectation that a sale will occur once an unconditional contract is reached. This allows the seller to arrange their affairs on that basis. This option undermines that reasonable expectation. Some submitters were concerned about the impact of the provision on sellers, in particular the impact on developers selling units off-the-plans.

73. With the ability to delay settlement if a statement provided during the delay period is incomplete, there is a risk that there could be multiple delays to settlement if the disclosure statement cannot be completed. If information is missing, the seller will only ever be able to provide incomplete disclosure. The Bill does not indicate how this will be resolved.

Option Three – Limits on the new abilities to cancel contracts and delay settlements (preferred option)

74. Under this option, the ability to cancel contracts where the pre-contract disclosure is defective, or incomplete is retained. In response to submitters, the ability to cancel contracts does not apply where:

    a. the disclosure is incomplete, but this was noted in the pre-contract disclosure statement. The buyer chose to enter into the contract with the knowledge that the disclosure was incomplete, so should not be able to rely on that as a reason to cancel the contract.

    b. the matter that was not disclosed is not significant. The buyer should only be able to cancel a contract for a significant reason – one that would have influenced a reasonable person's decision to enter into the contract. A significant reason could lead to increased and unexpected costs for a buyer, for example, an undisclosed building defect in the unit title development that requires correction.

    c. the disclosure was defective or incomplete, but has already been corrected before the buyer gives notice to cancel the contract. This would be included for the avoidance of doubt.

75. This option would also allow a buyer to delay settlement up to two times in relation to a pre-contract statement. If the pre-contract disclosure statement provided in the second delay period is still incomplete, the buyer can choose to cancel the contract by giving 10 days' notice in accordance with the cancellation provisions. If the buyer doesn't cancel the contract, the settlement must be completed 10 working days after the second statement.

76. This option would not propose a restriction on how many times a buyer can delay settlement because of an incomplete pre-settlement statement. As the pre-settlement disclosure relates to information that is currently held by the body corporate, there should not be a situation where the information is missing.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Can cancel contracts and delay settlements (the Bill)	Option Three – Limits on the new abilities (preferred option)
Transparency	0 This supports transparency through the ability to cancel a contract and delay settlement when the disclosure statements have not been made in time. Good disclosure helps prospective buyers to make informed decisions.	++ This provides better support for transparency as a contract can be cancelled when a disclosure statement is incomplete or defective, or settlement delayed if a disclosure statement is incomplete.	++ This provides better support for transparency as a contract can be cancelled when a disclosure statement is incomplete or defective, or settlement delayed if a disclosure statement is incomplete.
Best practice	0 This encourages sellers to ensure that disclosure has been made in time. Bodies corporate will need to operate effectively to achieve this.	+ This encourages sellers to ensure that disclosure has been made in time, is complete and correct.	+ This encourages sellers to ensure that disclosure has been made in time, is complete and correct.
Proportionality	0 This imposes some compliance costs, which are justified to meet the need of providing information. Disclosure helps prospective buyers to make informed decisions.	- This option supports greater transparency, which helps prospective buyers to make informed decisions. But the broad ability to cancel contracts or delay settlement is a disproportionate response. Sellers cannot rely on an unconditional contract, which undermines contract-making.	+ This option supports greater transparency, which helps prospective buyers to make informed decisions. The limits on the ability to cancel contracts ensure that the impact on unconditional contracts is limited and proportionate to the problem. The amendments to the ability to delay settlement ensure that there is a process in place to resolve situations where missing information cannot be located.

	Option One – Status Quo	Option Two – Can cancel contracts and delay settlements (the Bill)	Option Three – Limits on the new abilities (preferred option)
Accessibility	0 The status quo promotes timely access to information, through the requirement for disclosure statements to be made on time.	+ This option promotes timely access to information. It also seeks to ensure that disclosure information is complete and accurate.	+ This option promotes timely access to information. It also seeks to ensure that disclosure information is complete and accurate.
Flexibility	N/A	N/A	N/A
Ease of implementation	0	0 / - This option adds complexity to the settlement process, with new rules that may confuse buyers and sellers. This option may lead to increased delayed settlements and cancelled contracts when people are not entitled.	0 / - This option adds complexity to the settlement process, with new rules that may confuse buyers and sellers. While the limits on the ability to delay and cancel ensure the new powers are proportionate, the limits add greater complexity.
Overall assessment	0	0 / +	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

77. Officials support Option three – limits on the new abilities to cancel contracts and delay settlement. This option retains the positive aspects of the proposals in the Bill, with limits to ensure the proposals are proportionate and fair to sellers. This option will encourage sellers to ensure that disclosure statements are complete, accurate and provided on time. Transparency helps prospective buyers to make informed decisions about their purchase.

78. Option three also provides some protection for the seller. Where a prospective buyer has signed a contract with awareness of missing information, or where the information is not significant, the seller should be entitled to rely on the unconditional contract. Option three also resolves what will happen when a buyer has delayed settlement because of missing information from a disclosure statement, but the seller and body corporate are unable to locate the information. This option sets out a solution for resolving the impasse.

Section 2B: Deciding upon an option to address the policy problem – Body corporate managers

What issues are to be addressed in this section?

79. The issues to be addressed in this section are:

    a. the requirement to employ a body corporate manager

    b. occupational regulation of body corporate managers.

What criteria will be used to compare options to the status quo?

80. The following criteria will be applied across the options considered for pre-purchase disclosure: promoting transparency, encouraging best practice, proportionality, accessibility, flexibility and ease of implementation.

What scope will options be considered within?

2017 review of the UTA

81. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government. However, we consider that this does not constrain the range of options available to reform the dispute resolution process in the UTA.

82. As the body corporate managers will be included in the Bill, non-regulatory options will not address this issue. s 9(2)(f)(iv)

Relevant experience from Australia

83. We have considered relevant experience from Australia when analysing the requirement to employ a body corporate manager.

84. We note that in addition to compliance with the Queensland Act, each unit title development in Queensland is registered under one of the following regulation modules:

    a. Standard Module

    b. Accommodation Module

    c. Commercial Module

    d. Small Schemes Module

    e. Specified Two-lot Schemes Module.

85. Submitters noted that the size thresholds contained in the Bill could form the basis of the initial module regulations, with further modules to be developed at a later date through regulation.

86. Adopting Queensland's regulation modules in New Zealand would create multiple sets of secondary legislation, each targeted at a particular type of unit title development. The regulation modules recognise that there is no "one-size-fits-all" approach to unit title developments. However, this type of regime would not be suitable in New Zealand because it would be a clear departure from what is currently contained in both the UTA as well as the Bill. If regulation modules were adopted, it would require significant work to see how it could be applied in New Zealand and would require stakeholder

consultation. We could consider that similar outcomes could be better achieved through the options considered in this RIS.

87. We note that no other state in Australia has adopted module regulations. Instead, other states, such as Victoria, have introduced thresholds based on the size of the development.

The decision to introduce thresholds based on the size of the development

88. New Part 2A of the Bill introduces special provisions for medium and large residential developments, relating to body corporate managers, body corporate governance, and long-term maintenance and funding.

89. The Bill defines a medium residential development as a development with between 10 to 29 residential units, and a large residential development with 30 or more residential units.

90. Many submitters to the Bill, including a mix of individuals and professionals, noted that smaller bodies corporate may deal with the same issues as larger ones and that the requirements outlined in Part 2A of the Bill should be dictated by the complexity of the development, rather than size.

91. We acknowledge the concerns raised by submitters that there are a variety of factors other than size which influence the functioning, governance, and management of unit title developments. However, we consider that it would not be proportionate to require small bodies corporate, to comply with the requirements outlined in Part 2A of the Bill, particularly as many smaller developments comprise of between 1 to 2 units.[8] We note that there is often a level of effort in organising a special resolution.

92. While there are some exceptions, larger developments usually have greater management requirements. The quantum of annual body corporate levies is also higher for larger developments.

93. In making our proposed changes, we have focused on striking the right balance between the perceived risk associated with the size of the unit title development, and not imposing unnecessary costs on bodies corporate that are comfortable with managing their own affairs. To achieve this balance, we have given both medium and large developments the flexibility to opt out of many of the requirements contained in Part 2A of the Bill by special resolution.

Issue 1: Requirement to employ a body corporate manager

What options are being considered?

94. The four options explored in the RIS for the requirement to employ a body corporate manager are:

    a. Option One: status quo

    b. Option Two: require large developments to employ a body corporate manager (with the ability to opt out).

[8] Data provided from LINZ dated 21 June 2021 indicates that 30 percent of unit title developments comprise of between 1 to 2 units.

c. Option Three: require bodies corporate of medium and large developments to employ a body corporate manager (with the ability to opt out for medium sized developments)

d. Option Four: require bodies corporate of 10 bodies corporate to employ a body corporate manager (with the ability for the body corporate to opt out by special resolution).

Option One – status quo

95. Currently, body corporate managers are not defined in the UTA or any other Act and there is no requirement to employ a body corporate manager. While body corporate managers are not a requirement, some bodies corporate are employing body corporate managers to help with the day-to-day management of their developments and with fulfilling their responsibilities under the UTA.

96. This means that some bodies corporate that are able to manage their affairs by themselves are not required to turn their minds to whether a body corporate manager would be appropriate to support the needs of their development.

97. It also means that the UTA does not define the responsibilities of body corporate managers and does not provide legislative protections to the current developments that employ a body corporate manager.

98. The outcomes of this situation can include financial disadvantage if bodies corporate do not receive the level of operational support required to manage their affairs well and meet the requirements of the UTA.

Option Two – require bodies corporate of medium and large developments to employ a body corporate manager (with the ability to opt out for medium sized developments)

99. Under this option, bodies corporate of medium and large developments will be required to employ a body corporate manager; however, only medium sized developments will be able to opt by special resolution. This option is currently required by the Bill.

100. This would mean that medium and large developments will receive, through their body corporate manager, additional operational and administrative support to run their development.

101. However, this option does not address the key concern of submitters that there are a variety of factors other than size which influence the functioning, governance and management of unit title developments. Some large size developments may have minimal operational requirements, and the requirement to employ a body corporate manager without the ability to opt out would impose additional costs as well as restrict the ability of unit owners to make decisions for their development. Other large developments, particularly single owner developments owned by Kāinga Ora, may also employ other professionals to manage their unit title development.

Option Three – require bodies corporate with 30 or more units (large developments) to employ a body corporate manager (with the ability to opt out)

102. Under this option, only bodies corporate of large developments will be required to employ a body corporate manager. Large bodies corporate will have the ability to opt out by special resolution. There would be no requirement for bodies corporate with less than 30 units to employ a body corporate manager.

103. This option will help strengthen the governance of large bodies corporate by encouraging them to consider whether they require professional management, without imposing costs on those developments that can manage their affairs.

104. It is possible that some small and medium sized developments that require support to meet the disclosure, long term planning, and body corporate governance contained in the UTA may not engage the services of a body corporate manager if they are not required to by legislation.

Option Four – require bodies corporate of medium and large developments to employ a body corporate manager (with the ability for the body corporate to opt out by special resolution).

105. Under this option, bodies corporate of medium and large developments are required to employ a body corporate manager, with the ability for the body corporate to opt out of this requirement by special resolution. Option four differs from option two (the current requirement in the Bill) because it allows large developments to also opt out of the requirement to employ a body corporate manager.

106. This option is proportionate because it strengthens the governance of medium and large developments by encouraging them to consider whether they need the support of a body corporate manager, without imposing costs on those developments that have other strategies in place that deliver the same benefits.

107. It also addresses the concerns raised by timeshare operators, villa style developments, and single owner unit title developments. By giving the bodies corporate of medium and large developments the ability to opt out by special resolution, it avoids the need to create exemptions for timeshares, villa style developments, and single owner unit title developments.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – medium and large developments required but medium can opt out (the Bill)	Option Three – large developments required but can opt out	Option Four – medium and large developments required but can opt out (preferred option)
Transparency	0 If a body corporate is unable to manage its affairs by themselves, and does not employ a body corporate manager, unit owners may lack access to key information or decisions.	+ Unit owners and prospective owners of large residential developments may have better access to information and governance matters through the development's body corporate manager. Unit owners and prospective owners of small and medium residential developments still have access to information and governance matters if they decide to opt into the body corporate managers regime.	+ Unit owners and prospective owners of medium and large developments may have better access to information and governance matters through the development's body corporate manager. Unit owners and prospective owners of small developments still have access to information and governance matters if they decide to opt into the body corporate managers regime.	+ Unit owners and prospective owners of medium and large developments may have better access to information and governance matters through the development's body corporate manager. Unit owners and prospective owners of small developments still have access to information and governance matters through a body corporate manager if they decide to opt into the body corporate managers regime.
Best practice	0 Concerns have been raised that some developments are not receiving the appropriate level of operational support required to manage their affairs well and meet the requirements of the UTA.	+ Encourages large residential developments to actively consider whether they require external support to ensure they are meeting UTA requirements. Small and medium developments can still engage a body corporate manager if they require one.	+ Requires larger developments to employ external support to ensure they are meeting UTA requirements. Encourages medium developments to actively consider whether they require external support to ensure they are meeting UTA requirements.	++ Encourages medium and large developments to actively consider whether they require external support to ensure they are meeting UTA requirements. Smaller developments can still engage a body corporate manager if they require one.

	Option One – Status quo	Option Two – medium and large developments required but medium can opt out (the Bill)	Option Three – large developments required but can opt out	Option Four – medium and large developments required but can opt out (preferred option)
			Smaller developments can still engage a body corporate manager if they require one.	
Proportionate	0 Concerns have been raised that some developments are not receiving the appropriate level of operational support required to manage their affairs well and meet the requirements of the UTA.	+ Strengthens the governance of large bodies corporate by encouraging them to consider whether they require professional management, without imposing costs on developments that are comfortable with managing their own affairs.	+ Strengthens the governance of large developments by requiring them to employ a body corporate manager. This may impose unnecessary additional costs for large developments with minimal operational requirements.	+ Strengthens the governance of medium and large developments by encouraging them to consider whether they require professional management, without imposing costs on those developments that are comfortable with managing their own affairs.
Accessibility	0 If developments are not receiving an appropriate level of operational support to manage their affairs, this may be affecting unit owner.	+ Unit owners and prospective owners may have access to information through the development's body corporate manager.	+ Unit owners and prospective owners may have better access to information through the development's body corporate manager.	+ Unit owners and prospective owners may have better access to information through the development's body corporate manager.
Flexibility	0 Bodies corporate retain autonomy to decide whether or not to engage a body corporate manager.	+ All bodies corporate can still decide on whether they want to employ a body corporate manager, but bodies corporate of large developments that wish to self-manage will have a slightly higher administrative burden as they need	+ Small and medium developments can decide whether they want to employ a body corporate manager. However, there will be a higher administrative hurdle for medium developments as they need to opt out of the new requirements.	+ All bodies corporate can decide whether they want to employ a body corporate manager. However, there will be a higher administrative hurdle for medium and large developments as they need to opt out of the new requirements.

	Option One – Status quo	Option Two – medium and large developments required but medium can opt out (the Bill)	Option Three – large developments required but can opt out	Option Four – medium and large developments required but can opt out (preferred option)
		to opt out of the requirement by special resolution.	Does not provide flexibility to large residential developments.	
Ease of implementation	0	0 Low implementation risk. The requirement to employ a body corporate manager can be quickly achieved by most medium and large bodies corporate. Bodies corporate, or body corporate committees, of medium developments need to decide on whether they require a body corporate manager. Bodies corporate will also need to be aware of the threshold (75 percent) to opt out.	0 Low implementation risk. Bodies corporate, or body corporate committees, of large developments will need to decide on whether they require a body corporate manager. Large bodies corporate will also need to be aware of the threshold (75 percent) to opt out.	0 Low implementation risk. Bodies corporate, or body corporate committees, of medium and large developments will need to decide on whether they require a body corporate manager. Medium and large bodies corporate will also need to be aware of the threshold (75 percent) to opt out.
Overall assessment	0	+	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

108. The preferred option is - Option Four, requiring bodies corporate of medium and large developments to employ a body corporate manager (with the ability for the body corporate to opt out by special resolution).

109. There is a risk that imposing more administrative measures, such as a mandatory requirement to employ a body corporate manager, would decrease the attractiveness of unit title developments as well as high density living to prospective homeowners. There is also a risk that developers may choose to build, or homeowners may choose to purchase, small residential units, to avoid greater administrative measures. Conversely, Option Four may also help to give more certainty to prospective homeowners that are on the edge about purchasing a unit title because they perceive unit title developments to be poorly managed.

110. Providing a regulatory environment that increases confidence in the integrity of unit title developments is of growing importance as the Government is NPS-UD encourages high density developments in designated urban areas. The recommended option aligns with the Government's policy on greater intensification because it ensures residents of unit title developments have the right protections in place while enabling flexibility where a large development functions well without the need for a body corporate manager. For instance, prospective homeowners could view the added cost of employing a body corporate manager as burdensome, particularly if they are purchasing a unit from a small development.

111. While we are not proposing the UTA to require it, we encourage bodies corporate of smaller residential developments to engage a body corporate manager to minimise risk, if appropriate for their situation. Should smaller developments choose to employ a body corporate manager, then the statutory requirements outlined in the Bill will apply.

Issue 2: The requirement for body corporate managers to be a member of an industry association

What options are being considered?

112. The three options explored in the RIS for issue two are:

    a. Option One: Status quo

    b. Option Two: Require body corporate managers to be members of an industry association which has a purpose of fostering professional development of body corporate managers. Body corporate managers must abide by the industry association's code of conduct (the Bill)

    c. Option Three: Inserting a code of conduct in the Regulations, as well as introducing a requirement for body corporate managers to comply with the code of conduct in the terms of engagement

113. At this time, we have not analysed whether occupational regulation of body corporate managers is required. While this approach would likely improve standards in the sector, it is important to recognise this is a developing and progressively self-regulating sector. We consider that it is appropriate to give industry bodies time to establish self-regulatory frameworks before occupational regulation is considered, particularly given the likely costs associated with occupational regulation.

Option One – Status quo

114. Body corporate managers are currently an unregulated profession with no requirement to comply with a code of conduct.

115. The status quo gives a body corporate flexibility to engage a body corporate manager on terms unique to their development. For instance, some bodies corporate may only require a body corporate manager for one task.

116. The disadvantage of the status quo is that it is currently unclear to bodies corporate what responsibilities they can contract to a body corporate manager and how that manager should operate. This can lead to body corporate managers taking advantage of a lack of knowledge of their role, for example by influencing the body corporate meeting and decision making.

Option Two – Require body corporate managers to be members of an industry association which has a purpose of fostering professional development of body corporate managers (the Bill)

117. Under this option, all body corporate managers must be a member of an industry association which has the purpose of fostering professional development of body corporate managers. There is also a requirement for body corporate managers to abide by the industry association's code of conduct, if the industry association has a code of conduct.

118. This option is currently contained in the Bill. However, this option received limited support from submitters to the Bill. Numerous submitters commented that there was currently no organisation or professional body that would be a suitable industry association. There was consensus amongst submitters that a code of conduct should be contained in the Bill. Submitters noted that there may be industry associations that do not have a code of conduct.

119. Submitters also referenced the Queensland Act as an example of statutory regulation of body corporate managers. The Queensland Act provides a framework for the appointment and termination, code of conduct, and duties for body corporate managers.

Option Three – Inserting a code of conduct in the Regulations

120. Under this option, there is no requirement for body corporate managers to join an industry body. Instead, a code of conduct for body corporate managers will be added to the Regulations. To enforce the code of conduct, we consider that a requirement to comply with the code of conduct must be a term that is included in the agreement engaging the body corporate manager. This will ensure that body corporate managers know they are required to comply with the code of conduct from the start of their engagement. It will also mean that if a body corporate managers breaches any aspect of the code of conduct, the contract between the parties will dictate what the sanction ought to be.

121. The code of conduct would include aspects of the code of conduct for body corporate managers in the Queensland Act, as well as the general requirement to act in good faith. These requirements are:

    a. Body corporate managers must always act in the best interests of the body corporate.

b. Body corporate managers must comply with the requirements of the UTA, Regulations, and other legislation applicable to the body corporate for which the manager has responsibility (including financial management and reporting responsibilities).

c. Body corporate managers must have a good working knowledge and understanding of the UTA, Regulations, other legislation, or issues which they are advising or acting on behalf of the body corporate.

d. Body corporate managers must comply with the requirements of the UTA and Regulations applicable to body corporate managers.

e. Body corporate managers must disclose conflicts of interest to the committee, or, if there is no committee, to the chairperson.

f. Body corporate managers must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

g. Body corporate managers must take reasonable steps to ensure an employee of the body corporate manager complies with the UTA.

h. Body corporate managers must ensure that goods and services provided are supplied at competitive prices.

i. Body corporate managers are required to demonstrate keeping of records as required under the UTA.

122. Including a code of conduct in the Regulations will ensure that body corporate managers can easily access a set of standards that they must abide by. There will be greater accountability and transparency between body corporate managers and bodies corporate as well as greater protection around the management of body corporate funds.

123. This option is also consistent with the treatment of the code of conduct for body corporate committees which is currently outlined in the regulations of the Bill. Amending the Regulations will also be easier than amending the UTA if changes to the code of conduct are required in the future.

124. This option addresses the concerns raised by submitters that a code of conduct should be included in the UTA.

125. As noted previously, this option imposes an obligation for all agreements containing the body corporate manager's terms of engagement to include a requirement for body corporate managers to comply with the code of conduct. While this will ensure that body corporate managers know they are required to comply with the code of conduct, there is a low risk that some body corporate managers will exit the industry because of the increased operational requirements. This may lead to less competition and higher fees for bodies corporate.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo / Counterfactual	Option Two – Members of an industry association (the Bill)	Option Three - Inserting a code of conduct in the Regulations (preferred)
Transparency	0 Limited guidance on how body corporate managers ought to behave.	+ Promotes greater transparency regarding the roles and responsibilities of body corporate managers.	+ Promotes greater transparency regarding roles and responsibilities of body corporate managers.
Best practice	0 Concerns that body corporate managers are not up to an appropriate standard.	+ Provides guidance for body corporate managers to discharge their services to a high standard and effectively support the operation of the body corporate. This option will also allow body corporate managers to access a professional community with a similar interest in ongoing professional development. Some industry associations may have professional disciplinary processes that would help regulate body corporate managers.	+ Provides guidance for body corporate managers to discharge their services to a high standard and effectively support the operation of the body corporate.
Proportionate	0 Limited guidance on the roles and responsibilities that body corporate managers should have in relation to the body corporate.	+ Requires self-regulatory measures to be created and enforced by the sector. There may be a risk that requiring body corporate members to be a member of an industry association would increase costs to bodies corporate, which will be passed onto unit owners. We consider that the costs of the proposal are likely to outweigh the benefits. This is because there are only a few industry bodies with self-regulation mechanisms in place. There may	+ Addresses the preference of submitters for a code of conduct to be included in the Regulations, while recognising self-regulatory measures being undertaken by the sector and avoiding costs to bodies corporate / body corporate managers that are associated with joining an industry body. The additional requirements contained in the code of conduct may

	Option One – Status Quo / Counterfactual	Option Two – Members of an industry association (the Bill)	Option Three - Inserting a code of conduct in the Regulations (preferred)
		also be inconsistencies between different industry association, for instance some industry associations may not have a code of conduct.	increase costs to body corporate managers which are passed onto the body corporate.
Accessibility	0 Limited guidance on the roles and responsibilities that body corporate managers can undertake	+ Unclear what industry association currently meets the definition of "industry body with the purpose of fostering professional development of body corporate managers".	++ Clear guidance on the code of conduct for body corporate managers. The information can be easily accessed at it is in the Regulations.
Flexibility	0 Requirements apply to all development types and sizes	+ Requirement to be a member of an industry association applies to all body corporate managers. However, some body corporate managers may not abide by a code of conduct if the industry association they belong to does not have one.	+ Requirement applies to all body corporate managers.
Ease of implementation	0	- This option may be difficult to implement because there are currently limited organisations that a body corporate manager can join.	+ This option will be relatively easy to implement. Bodies corporate will need to include a requirement for body corporate managers to comply with the code of conduct in the terms of engagement. Both the body corporate and body corporate manager will also need to be aware of the requirements contained in the code of conduct.
Overall assessment	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

126. The preferred option is Option Three, inserting a code of conduct for body corporate manager in the Regulations.

127. We consider that this option most effectively meets the Government's objectives by ensuring the UTA provides a strong, clear framework that promotes professionalism in body corporate management, while allowing bodies corporate to manage their own affairs.

128. While there would be some additional compliance costs for body corporate managers, we consider these would be minimal and are outweighed by the benefits that this option provides.

129. We consider that Option Three is preferable to the current requirement in the Bill for body corporate managers to join an industry association, and comply with the industry association's code of conduct. We consider it relevant that:

    a. the costs associated with joining an industry association is likely to be passed from the body corporate manager onto unit owners

    b. there are currently limited organisations that can fulfil the industry association role

    c. like other service providers, body corporate managers are already subject to obligations under the law, including contract law and the Fair Trading Act 1986, which can be enforced through the Disputes Tribunal and the courts

    d. there may be some industry associations that do not have a code of conduct.

130. However, we support the continued self-regulation of the body corporate management industry. While we are not requiring it, we encourage body corporate managers to join industry associations aimed at lifting the standards of body corporate managers.

Section 2C: Deciding upon an option to address the policy problem – Body corporate governance

What issues are addressed in this section?

131. The issues to be addressed in this section are:
    a. Whether there should be limits on proxy voting
    b. Providing for remote attendance at meetings and electronic voting before meetings
    c. How to support non-natural entities' representation on BC committee
    d. How the BC committee should report on delegated powers and provide information to body corporate.

What criteria will be used to compare options to the status quo?

132. The following criteria will be applied across the options considered for pre-purchase disclosure: promoting transparency, encouraging best practice, proportionality, accessibility, flexibility and ease of implementation.

133. The criteria of encouraging best practice and promoting transparency can be achieved at the expense of flexibility. A fully adaptable regime would be one with few limits. Proportionality can be achieved through a trade-off between transparency and encouraging best practice. For the purposes of assessing the options against the criteria, we have assigned the criteria equal weighting. We consider this appropriate as the assessment is qualitative, rather than quantitative.

What scope will options be considered within?

134. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government. However, we consider that this does not constrain the range of options available to reform body corporate governance in the UTA.

135. As the governance rules are set out in the UTA and Regulations currently, non-regulatory options will not address this issue. s 9(2)(f)(iv) [redacted]

Issue 1: Whether there should be limits on proxy voting

What options are being considered?

Option One – Status Quo (preferred option)

136. The UTA provides that unit owners can nominate another person to vote on their behalf at a general meeting (their proxy). There are no limits to the number of proxies a person attending a general meeting can hold.

137. We would propose a slight addition to the status quo. The Regulations include the proxy appointment form. We propose amending this form to make it clear that a person appointing a proxy can give direction specifically on the proposed motions, or a more general instruction.

138. Most submitters on this issue in the Bill strongly supported having no limits on proxies (and opposed the provisions in the Bill). These submitters included body corporate managers, other professionals such as lawyers, and the Unit Title Working Group. Having no limits is supported because it allows unit owners to be represented at general meetings. In many situations, the unit owners may only know the chairperson or the body corporate manager, and those persons may be proxy for a number of unit owners. This is particularly relevant for timeshare owners, who do not know other unit owners as they only spend one week a year in the unit. Submitters were also concerned about the additional costs as noted in Option Two below.

139. The stated concern with having no proxy limits is that there may be proxy farming. This term is used when a number of proxy votes are gathered to ensure a decision is passed. However, there does not appear to be sufficient evidence of proxy farming to warrant this substantial limit on the voting rights of unit owners. Some submitters who have experience across a wide number of unit title developments, such as body corporate managers and lawyers, did not consider proxy farming was an issue. The submissions in support of limits on proxy voting were generally from individuals and residents' or owners' groups which may have personal experience of misuse of proxy votes. We also note that unit owners may generally use proxies less, following the legislative change supporting remote attendance at meetings.

Option Two – Limits on proxy voting (the Bill)

140. The Bill provides that a proxy cannot:

    a. act for more than one principal unit owner if there are fewer than 20 principal units

    b. for developments with 20 or more units, hold more than five percent of the total number of votes.

141. Some submitters supported having limits on proxies. These submitters were concerned that unlimited proxies can allow for abuse of the voting process. The limits would stop any one person amassing a number of votes where they can influence the outcome of a vote.

142. The disadvantages of limits on proxy voting include the concerns noted under Option One. Another issue for unit owners is that where they hold over five percent of the votes in different units, they would be unable to appoint one person as proxy for multiple units. They would have to appoint multiple proxies. As well as affecting a unit owner who is not represented at a meeting, there are wider implications for the body corporate and the person running the meeting. Submitters were concerned that some bodies corporate would struggle to meet the quorum requirements of a general meeting if some proxies could not be included. If quorum is not met, the meeting is held at the same time a week later, and proceeds whether or not there is a quorum. This could reduce the ability of unit owners to attend, and would increase administrative costs.

143. Another concern is how the person running the meeting would determine whose proxy was valid if they received too many proxy appointments for the same person (for example, the chairperson). This would result in some unit owners not being represented, as they would be unaware their proxy had been rejected as over the limit. Submitters indicated that many proxies are appointed near the start of a meeting, so even if a unit owner was made aware of the rejection of their appointee, there may not be time to find another suitable proxy.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo (preferred option)	Option Two – Limits on proxy voting (the Bill)
Transparency	0 May be more transparent as it is clear to a unit owner when they appoint a proxy, that person will have the right to represent them.	- Less transparent as there is a risk that the unit owner's appointed proxy will not be able to represent the unit owner if the appointee is over the proxy limit. A unit owner may not be represented at a meeting, and may not discover this until after the meeting.
Best practice	0 Best practice is to support the ability of unit owners to participate in decision-making. Unit owners should have the ability to appoint whom they wish to represent them at a meeting.	- - Best practice is to support the ability of unit owners to participate in decision-making. Limits on proxy voting may make it difficult or remove the ability for unit owners to be represented.
Proportionality	0 The status quo of having no limits is proportionate to the issue. If there is proxy farming or misuse of proxy votes, it appears to be rare.	- - Limits on proxy voting conflicts with the principle of democratic decision-making in the UTA. It also creates an administrative burden and may increase costs. Limits on proxies should not be introduced unless there is clear evidence of proxy farming/misuse.
Accessibility	0 A unit owner can access information about the proceedings of a general meeting through a proxy.	- A unit owner's access to information is limited if they are unable to appoint a proxy to represent them. If they are unable to attend the meeting in another manner, they will have less access to the discussions held. While the body corporate must circulate minutes of the meeting, unit owners may wish to have more detailed information that only attendance can bring.
Flexibility	0 No limits on proxies allows unit owners to make arrangements that work for them. Having no limits appears particularly important in timeshare resorts, but also in other unit title typologies.	- A 5% limit on proxy voting is very prescriptive. It does not allow for different and emerging unit title typologies to make different proxy arrangements that suit them.

Ease of implementation	0 Unit owners continue to appoint proxies where useful.	- - Submitters are concerned this option would result in unit owners not being represented, or having significant difficulty finding someone who can represent them. There is also a risk that some bodies corporate will not meet their quorum.
Overall assessment	0	- -

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

144. The status quo, no limits on proxies, is preferred. There is no clear evidence of a problem that requires legislative change. The implications for democratic representation and the practical difficulties raised by the proposal in the Bill, make it undesirable.

145. Currently, if a unit owner decides to appoint a proxy, they can direct that proxy how to vote on the proposed motions, or give them more general direction. The proxy form is set out in the Regulations. We propose amending the proxy form to make it clearer the unit owner can give direction specifically on the proposed motion or a more general instruction.

Issue 2: Providing for remote attendance at meetings and electronic voting before meetings

What options are being considered?

Option One – Status quo

146. The UTA does not ordinarily allow for remote attendance of meetings, either general meetings or BC committee meetings. However, the UTA does have a temporary amendment which is noted at Option Three.

147. The UTA ordinarily provides that a unit owner can attend a meeting in person, send a postal vote, or appoint a proxy. While these methods have served well in the past, and will continue to serve some well, more flexibility is needed. The COVID-19 pandemic has demonstrated that is some situations, meetings cannot be held in person. Many people are now more accustomed to attending online meetings, and having this option in the UTA would serve unit owners better and better support democratic decision-making.

Option Two – restricted use of remote attendance (the Bill)

148. The Bill authorises remote attendance at body corporate general meetings, and at BC committee meetings. However, to allow remote attendance at a general meeting, the body corporate must agree in advance by special resolution (which requires a 75 percent vote in favour to pass). In addition, the chairperson must decide if remote attendance is appropriate, any requirements set out in the special resolution must be met, and the necessary facilities must be available. For the BC committee meetings,

the chairperson must decide if remote attendance is appropriate, and the necessary facilities must be available.

149. This option provides for remote attendance, which is useful. Remote attendance provides another opportunity for unit owners to become involved in the decision-making of the body corporate.

150. However, the threshold requirements to hold a remote meeting are very restrictive. Generally, a special resolution is reserved in the UTA for matters of high importance, such as reassessing the utility interest (which determines the proportion of each unit owners' contributions). Special resolutions do not usually relate to procedural or administrative matters. In addition, the chairperson has a lot of power in deciding whether a particular meeting may be held with remote attendance.

Option Three – remote attendance with procedural requirements (preferred option)

151. This option provides for remote attendance as of right, without the threshold that the body corporate has agreed in advance that general meetings can be held in this way. As noted above, the UTA already has a temporary amendment that allows members of a body corporate to attend a general meeting, and members of the body corporate committee to attend a committee meeting by audio link, or audio-visual link. This could be used as a model for this option. The ability to attend remotely does not replace the ability for a unit owner to attend a meeting in person.

152. The temporary amendment was included in the UTA by the COVID-19 Response (Further Management Measures) Legislation Act 2020. The temporary provision will be automatically repealed 12 weeks after the expiry of the Epidemic Preparedness (COVID-19) Notice 2020 (the Notice). The Notice has been renewed several times; the current Notice expires on 20 September 2021.

153. Allowing remote attendance and electronic voting supports the participation of unit owners in democratic decision-making. Owners will no longer need to appoint a proxy to vote on their behalf if they are unable to attend meetings in person. This amendment will also address instances where quorum requirements cannot be met, leading to a delay in urgent decision making.

154. There may be some risks in having remote attendance at meetings. When a body corporate has many members, it can be difficult to ensure that the attendees are entitled to attend the meeting. This is especially so if the username appearing on the screen is different to the name of the unit owner, or their video and audio are turned off.

155. In response, some submitters suggested there should be regulations that cover remote attendance procedures. These submitters noted that remote attendance procedures are necessary to ensure that attendees are adequately verified. Submitters also proposed that the Bill should provide for voting by remote access, both during a meeting and prior to a meeting, as an alternative to paper postal voting. This option would include a regulation-making power in the Bill. After the Bill is passed, officials would engage with stakeholders about what type of verification processes would be appropriate for attendance and voting at meetings, and pre-meeting voting.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Restricted use of remote attendance (the Bill)	Option Three – Remote attendance with regulations (preferred)
Transparency	0 Without the ability to attend meetings remotely, unit owners may be less well-informed about matters occurring in the body corporate. They may be unable or unwilling to appoint a proxy to report to them on the meeting.	0 Unit owners are better able to attend remote meetings if the conditions are met. However, the chairperson may decide that it is not appropriate for a general meeting to have remote attendance, and it may not be clear to unit owners how that decision was reached.	+ Unit owners are better able to attend meetings remotely, and be informed. The Regulations will make it clear what requirements must be met, allowing unit owners to organise themselves to effectively exercise their democratic rights.
Best practice	0 In 2021, it is no longer best practice to require people to meet in person or to provide a postal vote in advance. Best practice is to provide electronic options for people to be engaged.	+ Allowing unit owners to attend meetings remotely is best practice. However, the restrictions may result in remote attendance being unnecessarily prevented.	++ Allowing for remote attendance in all cases provides for unit owners to attend and be engaged in the decision-making process. This best supports the democratic basis of the UTA.
Proportionality	0 The status quo does not provide for remote attendance. Unit owners may incur costs to attend meetings in person, or to arrange for a proxy to attend.	- While this option provides for remote attendance, the restrictions mean that remote attendance will not occur as of right. Bodies corporate will have additional compliance costs and complexity to meet the restrictions. When remote attendance is not allowed, unit owners may incur costs to attend or arrange for a proxy to attend.	+ This option addresses the concern that some unit owners cannot participate in decision-making. It does not impose unnecessary restrictions or barriers to the ability to attend remotely. The Regulations will set out processes for verifying attendance and voting procedures. The proportionality of this option will ultimately depend on the Regulations.

	Option One – Status quo	Option Two – Restricted use of remote attendance (the Bill)	Option Three – Remote attendance with regulations (preferred)
Accessibility	0 A unit owner's access to information is limited if they are unable to attend a meeting remotely. If they are unable to attend the meeting in person or via proxy, they will have less access to the discussions held.	+ A unit owner can access information about the proceedings of a general meeting through remote attendance. However, the restrictions may result in remote attendance being unnecessarily prevented.	++ A unit owner can access information about the proceedings of a general meeting through remote attendance.
Flexibility	0 This is not flexible to the growth in the sector, which may include more unit owners who live away from the property. It also does not effectively use available technology.	0 While this is slightly more flexible to modern technology, the restrictions are unnecessary. The growth in the sector may lead to an increase in unit owners preferring remote attendance.	++ Allowing remote attendance as of right creates flexibility for different development types and sizes to meet the needs of their unit owners.
Ease of implementation	0	0 The body corporate must meet certain criteria before holding a meeting with remote attendance. This creates risks that bodies corporate do not follow requirements and this invalidates the meeting.	0 / + The body corporate will be required to follow procedures for verifying attendees and holding voting. There is a risk that bodies corporate do not follow requirements. However, we intend to develop the regulations in consultation and aim to reduce implementation concerns through that process.
Overall assessment	0	0 / +	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

156. The preferred option is Option Three – remote attendance with procedural requirements. This option best provides for democratic decision-making, which the UTA is based on. There is more certainty for unit owners that remote attendance is permitted. Bodies corporate are not required to undertake additional compliance by obtaining special resolutions and the chairperson deciding whether each general meeting can be held remotely.

157. The Regulations will set out the particular procedural requirements for verifying attendees at remote meetings, and for pre-meeting electronic voting. These regulations will provide protection for the body corporate that those participating have the right to do so. This protects the integrity of the democratic process.

Issue 3: How to support non-natural entities' representation on BC committees

What options are being considered?

Option One – Status Quo

158. The regulations provide that if a candidate for the BC committee is not a natural person (for example, a company), the candidate must nominate a director to act as committee member on the candidate's behalf. The regulations provide that a director includes a person occupying a position in the entity that is comparable with that of a director of a company.

159. This provision gives the ability for non-natural entities to be represented on BC committees. This is important as the ability to be more involved in the governance of a body corporate should not be limited to unit owners who are natural persons.

160. However, a number of submitters were concerned that this provision is limiting for a company, and particularly for other non-natural entities. For example, Kāinga Ora owns approximately 757 units in 118 bodies corporate. This is a significant property holding, and Kāinga Ora is not able to be represented at BC committees in respect of the properties. The persons eligible in Kāinga Ora to be represented on BC committees are its board members. It is not appropriate for board members to undertake the detailed role that being a BC committee member requires. Board members have been appointed to provide governance over Kāinga Ora as a whole. It is likely that other entities which own unit titles also experience this problem.

Option Two – Ability to appoint employees or classes of employees (preferred option)

161. Under this option, the term "directors" could include employees authorised by directors to undertake the role. The legislation would not prescribe which employees an entity could authorise. For example, each entity could decide whether to authorise named employees or a class of employee, for example, a fourth-tier manager.

162. This allows non-natural entities to have a greater opportunity to be represented on BC committees, and to have a role in managing the body corporate. In addition, employees of non-natural entities may have useful skills to contribute to the body corporate.

163. The directors of an entity that authorises an employee to be represented would not then have the ability to be on the BC committee themselves. However, the requirement

for the directors to authorise the person to be on the BC committee provides oversight by the entity. There is also the employer-employee relationship to provide oversight of the employee's performance on the BC committee.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Ability to appoint employees (preferred option)
Transparency	0 Non-natural entities have less ability to be represented on BC committees. This may lead to less informed decision-making by the body corporate if the BC committee has a significant holding in the unit title development.	+ May support informed decision-making if non-natural entities have the ability to be represented on BC committees and can provide their perspective and insights on issues facing the body corporate.
Best practice	0 While non-natural entities may be represented on the BC committee, this is limited to directors. In practice, entities like Kāinga Ora cannot be represented by their Board Directors.	++ Allows non-natural entities to contribute more fully to body corporate governance. Employees of non-natural entities may have useful skills to contribute to the body corporate.
Proportionality	0 There are minimal compliance costs considerations with this issue.	+ This option can provide benefit to both non-natural entities and bodies corporate. It does not impact on the compliance costs for the body corporate in electing members of the BC committee.
Accessibility	0 The body corporate may have less access to information and insights from non-natural entities who are unable to be represented on BC committees.	+ May support the body corporate's access to information if non-natural entities are able to be represented on BC committees and provide their perspective and information.
Flexibility	0 The status quo does not provide flexibility for the different types of owners. As the unit title sector grows, there may be increasing numbers of owners that are non-natural entities.	++ Increases flexibility for non-natural entities that own unit titles.
Ease of implementation	0	++ It should be a simple process for non-natural entities to appoint an employee to represent them in accordance with

	Option One – Status quo	Option Two – Ability to appoint employees (preferred option)
	It can be difficult for non-natural entities to have representation on the BC committee.	their usual decision-making processes. This provides non-natural entities with a more workable option to have representation on BC committees.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

164. The preferred option is Option Two – ability to appoint employees or classes of employees. This proposal allows greater ability for non-natural entities to be represented on BC committees. This delivers benefits to the entity in being able to be represented and to assist in governing the body corporate. It can also deliver benefits to the body corporate, through the employee's skill set, and through the information and perspective of the entity on the BC committee.

Issue 4: How the BC committee should report on delegated powers and provide information to body corporate

What options are being considered?

Option One – Status Quo

165. The UTA and the Regulations require BC committees to report to the body corporate on the exercise of their delegated powers and duties at each AGM. Reports must include a description of the powers and duties that have been delegated since the previous report, and an update on how those delegations have been fulfilled. The Regulations also require a BC committee to provide meeting minutes to unit owners upon request.

166. The requirements to report to the body corporate on the exercise of delegated powers and duties is useful. It allows the body corporate to have oversight of the BC committee. The body corporate may also choose to revoke their delegations to the BC committee if it is concerned with how the delegated powers are duties are being exercised. However, the Regulations suggest that the report need only provide an update on how the delegations granted since the previous report have been fulfilled. This could be very limiting – a BC committee may have nothing to include in a report, even though they are exercising a number of duties and powers.

167. The requirement to provide meeting minutes to unit owners on request is useful, it promotes transparency for unit owners and accountability of the BC committee. However, the Regulations do not currently specify a timeframe in which minutes must be provided. This creates uncertainty for unit owners and BC committees about what is reasonable. It can also allow BC committees to delay releasing information. It is also reactive, so relies on unit owners knowing they can request this information.

Option Two – Increased reporting by BC committees (the Bill)

168. The Bill has additional requirements for BC committees of medium (10 to 29 units) and large residential developments (30 or more units) to report on the performance of their delegated powers at each AGM. Medium residential developments can opt out of this requirement by special resolution. The Bill also amends the regulations to require BC committees to provide minutes all unit owners promptly, but no later than one month after the meeting. Information does not need to be provided where privacy or other issues require it to be redacted.

169. These amendments increase transparency and access to information. The requirement to report on delegated powers partially overlaps with the current requirement. It is narrower in that it applies to medium and large residential developments. But it is wider as it is clear it requires the BC committee to report on all delegated powers and duties. Most of the submitters who commented on this requirement did not support it on the grounds that it duplicated current requirements.

170. The amendments to the minutes provide welcome clarification around timing. It also ensures that minutes are provided to all unit owners, not just those who request information. Most submitters who commented on this proposal supported it. The ability to redact information refers to privacy, but could refer to other reasons why information might need redaction.

Option Three – Consolidate reporting requirements (preferred option)

171. This option consolidates the delegation reporting requirement. As currently, the requirement will apply to all unit title developments. It will be broadened to require the BC committee to report on all delegated functions and powers, if they have been performed or exercised during the period since the last report on delegations. This provides the increased transparency and accountability, without having duplicate requirements in the UTA and the Regulations. Under this option, we will provide more reasons for when the minutes can be redacted – because of legal privilege, commercial sensitivity, or to comply with other statutory requirements.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Increased reporting by BC committees (the Bill)	Option Three – Consolidate requirements (preferred option)
Transparency	0 Information about use of delegated powers is provided to bodies corporate but appears limited to the exercise of recently delegated powers, so may be of limited use in practice. Minutes can be provided to unit owners, but only on request and without a timeframe.	++ Information about the use of delegated powers is provided to bodies corporate, but wider requirements only apply to medium and large developments. Minutes are provided to all unit owners, greatly increasing transparency.	++ Information about the use of delegated powers is provided to bodies corporate. Minutes are provided to all unit owners, greatly increasing transparency.
Best practice	0 BC committees provide some information about the exercise of their delegated powers, but not all. It would be best practice for the body corporate to be aware of how the BC committee is exercising all their delegated powers.	+ Increased reporting to the body corporate on the use of delegated powers is best practice. However, the duplicated processes mean unnecessary work for the BC committee which is not good practice.	++ Increased reporting to the body corporate on the use of delegated powers is best practice.
Proportionality	0 The BC committee needs to report on less, but if the Regulations raise uncertainty, it can be time-consuming for a BC committee to get clarify. The BC committee need only provide minutes on request, but that can lead to inefficient processes.	- The BC committee is duplicating processes. This inefficiency is disproportionate to providing more information about delegations. The BC committee is providing minutes each time and to each unit owner. While there is some increase in compliance, BC committees may create efficient processes to manage. The BC committee has less	+ The BC committee is providing useful information. The additional compliance costs will not be out of proportion to the benefits for the body corporate and unit owners. The BC committee is providing minutes each time and to each unit owner. While there is some increase in compliance, BC committees may create efficient processes to manage. The BC committee has more

	Option One – Status quo	Option Two – Increased reporting by BC committees (the Bill)	Option Three – Consolidate requirements (preferred option)
		information about the reasons it can redact the minutes.	information about the reasons it can use to redact the minutes.
Accessibility	0 Some information is being provided to the body corporate about delegations, but it is not complete. The minutes are not being provided in a timely or accessible manner.	+ Better information would be provided to the body corporate about delegations. The minutes are being provided proactively to the unit owners, so they do not need to have knowledge about the process.	+ Better information would be provided to the body corporate about delegations. The minutes are being provided proactively to the unit owners, so they do not need to have knowledge about the process.
Flexibility	N/A	N/A	N/A
Ease of implementation	0 While there are fewer requirements, it is unclear how quickly the minutes must be provided.	- As there are multiple similar requirements, BC committees will have more processes to manage. It may lead to BC committees unintentionally not complying.	+ While the requirements are slightly increased, there is greater clarify for BC committees about how to meet requirements. This will be easier to manage, and BC committees are less likely to fail to comply by mistake.
Overall assessment	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

172. Officials recommend Option three – consolidate reporting requirements. This option combines the greater transparency from the Bill's proposals, with simplifying the requirements on the body corporate through consolidation. It avoids confusion that duplication would bring. It ensures that the requirements apply equally to all bodies corporate.

173. The BC committee has clearer information about the reasons it can redact information in the minutes. Some submitters raised concerns about bodies corporate being required to provide hard copies of minutes to all unit owners, for example, one submitter estimated that providing hard copies of BC committee minutes to 1,700 timeshare owners in one timeshare unit title development would cost $14,000 per annum. We note the Bill does not specify how minutes are to be provided. We consider that BC committees would be able to provide minutes to unit owners through the means that best suits their circumstances, such as via post, email or an online portal.

174. To reduce concerns about the requirement to send physical mail to unit owners with little interest, the Bill could provide that the minutes may be provided electronically, including on an online portal. The Bill could also provide that any unit owner has the ability to request a physical copy of the minutes. This will allow those interested unit owners without electronic access to review the minutes, but should reduce the sending of physical copies to disinterested unit owners.

Section 2D: Deciding upon an option to address the policy problem – Long term maintenance plans and long term maintenance funds

What issues are addressed in this section?

175. The issues to be addressed in this section are:

    a. whether Part 2A of the Bill should apply to all developments, not just residential developments

    b. the duration of LTM Plans

    c. whether there should be a requirement to consult with a suitably qualified professional when drafting or reviewing LTM Plans

    d. whether there should be an additional purpose for LTM Plans to identify defects

    e. whether all bodies corporate should be required to have a LTM Fund, and if so what level of funding should be contained in the LTM Fund.

What criteria will be used to compare options to the status quo?

176. The following criteria will be applied across the options considered for pre-purchase disclosure: promoting transparency, encouraging best practice, proportionality, accessibility and flexibility.

177. The criteria of encouraging best practice and promoting transparency can be achieved at the expense of flexibility. A fully adaptable regime would be one with few limits. Proportionality can be achieved through a trade-off between transparency and encouraging best practice. For the purposes of assessing the options against the criteria, we have assigned the criteria equal weighting. We consider this appropriate as the assessment is qualitative, rather than quantitative.

What scope will options be considered within?

178. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government. However, we consider that this does not constrain the range of options available to reform LTM Plans and LTM Funds.

179. As the requirements on LTM Funds and LTM Plans are set out in the UTA and Regulations currently, non-regulatory options will not address this issue. s 9(2)(f)(iv)

Issue 1: Whether Part 2A of the Bill should apply to all developments, not just residential developments

What options are being considered?

Option One – Part 2A of the Bill only applies to residential developments (the Bill)

180. The UTA does not draw a distinction between residential, commercial, or mixed-use developments. However, as noted previously new Part 2A of the Bill introduces special provisions for medium and large residential developments, relating to body corporate managers, body corporate governance, and long-term maintenance and funding. The Bill defines a medium residential development as a development that includes between 10 to 29 units that are primarily used as places of residence. Similarly, the Bill defines a large residential development as a development that includes 30 or more principal units that are primarily used as places of residence.

181. A residential development can have a mix of residential and non-residential units, but the thresholds contained in the Bill currently only relate to places of residence.

182. Submitters had mixed views on this issue. Numerous submitters, including SCANZ, commented that the new requirements outlined in the Bill should apply to all developments, including commercial. Three submitters, including the New Zealand Law Society, commented that the Bill should contain a set of rules targeted at commercial and mixed-use developments. The New Zealand Law Society noted that these developments should be required to comply with a higher set of standards.

183. As noted previously in the RIS, Crockers recommended the adoption of the regulation modules from Queensland. Crockers noted that a regulation module targeted at commercial and mixed-use developments could addresses the different needs of these developments.

184. We assume that unit owners of commercial developments are generally more comfortable with managing their own affairs than individual unit owners. We note that there were no submissions from commercial developments on whether they require additional safeguards such as the ones outlined in new Part 2A. We also note that there is nothing precluding bodies corporate of commercial developments from adopting aspects of Part 2A.

Option Two – Part 2A of the Bill applies to all developments

185. Under this option, the requirements contained in Part 2A of the Bill will apply to all developments, including commercial and mixed-use developments.

186. We note that the UTA currently does not make a distinction between residential and commercial developments. Imposing additional requirements based on size for only residential development is likely to cause confusion amongst unit owners.

187. We also note that the distinction between residential and commercial developments was not addressed by the previous Government review of the UTA in 2017. The proposed changes to body corporate managers, LTM Plans and LTM Funds, applied to all developments regardless of use.

How do the options compare to the status quo/counterfactual?

	Option One – Part 2A only applies to residential developments (the Bill)	Option Two – Part 2A applies to all developments (preferred)
Transparency	+ The additional requirements will provide greater transparency for medium and large residential developments. This will help bodies corporate of residential developments make more informed decisions.	++ The additional requirements will provide greater transparency for all medium and large developments. This will help all bodies corporate make more informed decisions.
Best practice	+ Bodies corporate of medium and large residential developments will have additional requirements in relation to body corporate managers, LTM Plans and LTM Funds, and the provision of certain information from body corporate committees. This will help residential bodies corporate manage their affairs well and meet the requirements of the UTA.	++ Bodies corporate of all medium and large developments will have additional requirements in relation to body corporate managers, LTM Plans and LTM Funds, and the provision of certain information from body corporate committees. This will help all bodies corporate manage their affairs well and meet the requirements of the UTA.
Proportionality	+ Strengthens the governance of medium and large residential developments by encouraging them to consider whether they need additional measures, without imposing costs on developments that are comfortable with managing their own affairs.	++ Strengthens the governance of all medium and large developments by encouraging them to consider whether they need additional measures. May impose costs on medium and large commercial developments that are comfortable with managing their own affairs. These benefits outweigh the potential costs. We note that medium and large developments can opt out of many of the requirements contained in Part 2A of the Bill. If the requirement is too expensive, or does not suit the needs of their development.
Accessibility	+ Unit owners and prospective owners of medium and large residential developments may have access to better information through the requirements contained in Part 2A.	++ Unit owners and prospective owners of medium and large developments may have access to better information through the requirements contained in Part 2A.
Flexibility	+ Bodies corporate of medium and large residential developments can still	+ Bodies corporate of medium and large developments can still decide whether

	decide whether to follow the requirements contained in Part 2A (but bodies corporate of these developments who wish to have less administrative measures will have a slightly higher administrative burden as they need to opt out of these requirements).	to follow the requirements contained in Part 2A (but bodies corporate of these developments who wish to have less administrative measures will have a slightly higher administrative burden as they need to opt out of these requirements).
Ease of implementation	0 Bodies corporate of medium and large residential developments will need to be aware of all of the requirements outlined in Part 2A of the Bill, and whether these requirements are appropriate for their development. Bodies corporate of these residential developments will also need to be aware of the opt out threshold for the requirements. It may take some time before bodies corporate turn their minds to all of the different requirements contained in Part 2A.	0 Bodies corporate of all medium and large developments will need to be aware of the requirements outlined in Part 2A of the Bill, and whether these requirements are appropriate for their development. All bodies corporate will also need to be aware of the opt out threshold for the requirements. It may take some time before bodies corporate turn their minds to all of the different requirements contained in Part 2A.
Overall assessment	+	++

188. We note that we have not compared the options against the status quo. The reason for this is because the requirements contained in Part 2A of the Bill are not currently in the UTA. Furthermore, as previously noted, the UTA does not draw a distinction between residential and commercial developments.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

189. We consider that the best option is Option Two, requiring all developments to comply with Part 2A of the Bill. As discussed previously, imposing additional requirements based on size for only residential developments is likely to cause confusion for unit owners. It is also not consistent with the rest of the UTA which applies equally to both residential and commercial developments.

190. We note that while the additional requirements may impose additional costs and additional administrative burdens on some commercial developments, it will help these developments manage their affairs well and meet the requirements of the UTA. For instance, many commercial developments may benefit in the same way as residential developments from employing a body corporate manager to help the body corporate meeting their long term maintenance, disclosure, and governance requirements. In short, the anticipated benefits of this proposal outweigh the additional costs.

Issue 2: The duration of LTM Plans

What options are being considered?

Option One – Status quo

191. Currently, the UTA requires LTM Plans to cover a period of at least 10 years from the date of the plan or the last review of the plan.

192. The advantage of maintaining the status quo is that 10 years is a timeframe within which unit title owners can realistically budget to cover upcoming maintenance. Unit title owners are likely to be willing to participate in funding 10 year maintenance plans, in expectation that they could still own their unit by the time the maintenance is due.

193. The disadvantage of the status quo option is that LTM Plans that cover a period of 10 years can overlook building components that have a lifespan exceeding this timeframe, such as the joinery and cladding. This may lead to an increased risk of levy spikes when unforeseen maintenance of these vital and costly building components arises.

Option Two – Extend the timeframe of LTM Plans for medium and large developments to 30 years (the Bill)

194. The Bill introduces a requirement for the body corporate of medium and large residential developments to have a LTM Plan that covers at least 30 years. The Bill does not change the duration for the LTM Plan for small developments. Unlike other provisions related to size, there is no ability for medium sized developments to opt out by special resolution.

195. There was varied support amongst submitters on the requirement for medium and large residential developments to have a LTM Plan that covers at least 30 years. Some submitters, including the New Zealand Law Society, supported the 30-year term for LTM Plans. The New Zealand Law Society noted that many unit title developments have complex building systems (such as lifts and air-conditioning) which are expensive to maintain and replace.

196. Other submitters, many representing individual unit title developments, noted that a mandatory 30-year term for LTM Plans was too long. Some of these submitters represented bodies corporate with limited common areas, and villa-style developments. These submitters noted that bodies corporate did not want to set money aside for future owners.

197. We consider that an advantage of this option is that it encourages bodies corporate for medium and large developments to prepare LTM Plans that adequately cover all prospective expenses associated with maintaining a development, including “long life” building components. This longer timeframe enables better foresight of upcoming maintenance costs, reducing the risk of levy spikes. A mandatory requirement to provide detailed LTM Plan covering 30 years may also increase the market value of the units. In economic terms the value of assets held by a body corporate (for instance, driveways or cladding) should be factored into the market value of the units within the unit title development.

198. The disadvantage of this option is that 30 years could be too long a timeframe for unit title owners to accurately predict the costs of upcoming maintenance. Factors such as new technologies and building materials, or changing costs of labour may make predicting maintenance costs 30 years ahead of the due date impractical. Additionally, unit owners who do not plan to own the unit in 30 years’ time may be reluctant to

contribute funds to a LTM Plan if they do not consider they will receive the benefits of schedules maintenance

Option Three: Require unit title developments with four or more units to have a 30-year LTM Plan comprising detailed cost estimations for the first 10 years and a high-level projection for the following 20 years

199. This option was the preferred option for the previous Government. This option requires all unit title developments with four or more units to have a 30-year LTM Plan comprising detailed cost estimations for 10 years and a high-level projection for the following 20 years.

200. The advantage of this option is that 10 years is a timeframe within which unit title owners can realistically budget to cover upcoming maintenance. In addition, cost predictions (including factors such as inflation, new technologies and building materials, or changing costs of labour) will remain fairly accurate from the time they are forecast to the time they are due. The additional 20 years of high-level costings for predicted maintenance ensures that the lifespan of longer-term building components are noted and anticipated to lessen the risk of levy spikes, and bodies corporate do not incur costs for detailed estimates that will likely become quickly out of date.

201. The disadvantage of this option is that bodies corporate may defer maintenance by placing it in the longer-term section of the LTM Plan in order to avoid immediate levy increases. The risk is lessened by the fact that this proposal will act simultaneously with the current requirement under the UTA that the LTM Plan must be reviewed at least once every three years.

202. We do not consider that the threshold for this requirement should be four or more units. While we recognise the previous Government's concern that many smaller bodies corporate are not complying with their long term maintenance requirements, we consider that there may be a risk that imposing different size thresholds for the different requirements contained in Part 2A of the Bill could cause confusion for unit owners. For instance, a development of five units would not be required to fulfil other requirements in Part 2A of the Bill, but would be required to have a 30-year LTM Plan.

203. We also note that, while not always the case, unit developments comprising of between four to nine units usually have less complex building systems. For instance, these developments are unlikely to have an elevator or extensive common areas. As such, we consider that these developments should have greater flexibility regarding the maintenance of their developments.

Option Four: Require bodies corporate of medium and large developments to have a 30-year LTM Plan comprising of detailed cost estimations for the first 10 years and a high-level projection for the following 20 years

204. Under this option, the bodies corporate of medium and large developments will be required to have a 30-year LTM Plan comprising detailed cost estimations for the first 19 years and a high-level projection for the following years. This option uses the size thresholds that are already contained in the Bill. This means that small developments are those that do meet the definition for medium (10-29 units) or large development (30+ units).

205. Option Four carries the same benefits as Option Three. The only difference is that Option Four does not apply to developments comprising of between 4-9 units. Option Four provides unit owners with greater visibility of the expected maintenance over the long term and prepares current and future unit owners for the costs associated with owning a unit title. This option recognises that it is sometimes difficult for unit owners to

accurately predict the cost of upcoming maintenance. Factors such as inflation, new technologies and building materials, or the changing costs of labour may make predicting maintenance costs 30 years ahead of the due date impractical. Bodies corporate will not incur costs for detailed cost estimates that may become out of date.

206. Option Four also carries the same disadvantages as for Option Three. As developments with nine units or less would not be required to maintain a maintenance plan, there is a risk that these developments would not have visibility of (and consequently would not plan or fund for) the maintenance requirements. This could lead to levy spikes to cover unexpected maintenance expenses. However, even though we are not requiring it, we would encourage smaller developments to consider long term planning and funding arrangements for longer than the 10-year period as required by the UTA, if appropriate to their situation.

How do the options compare to the status quo/counterfactual?

	Option One – Status quo/ counterfactual	Option Two – 30 years for medium and large developments (the Bill)	Option Three – 30 (10 + 20) for developments of four or more units	Option Four – 30 (10 + 20) years for medium and large developments (preferred)
Transparency	0 Provides visibility of likely maintenance for a 10-year period.	+ Provides visibility of likely maintenance for medium and large developments for a 30-year period. Provides visibility of likely maintenance for small developments for 10 years.	+ Provides visibility of likely maintenance requirements for developments with 4 or more units for a 30-year period.	++ Provides greater visibility of likely maintenance requirements for developments where there is likely to be the greatest need (medium and large developments).
Best practice	0 Concerns have been raised that the current framework is not promoting best practice maintenance planning.	+ Encourages best practice maintenance planning by identifying likely expenses over the long-term supported by detailed costings for the life of the plan for medium and large developments. The 10-year LTM Plan requirement may not promote best practice maintenance planning for smaller developments.	+ Encourages best practice maintenance planning by identifying expenses over the longer-term for developments with 4 or more units.	++ Encourages best practice maintenance planning by identifying likely expenses over a longer-term for developments where there is likely to be the greatest need.
Proportionality	0 Concerns have been raised that the current regime does not accurately account for long-life building components (e.g., roofs).	+ The regime will account for long \-life building components (e.g., roofs) for medium and large developments.	+ Addresses concerns that the current 10-year term for LTM Plans does not identify longer-life building components.	++ Addresses concerns that the current 10-year term for LTM Plans does not identify longer-life building components while focusing additional requirements on developments

	Option One – Status quo/ counterfactual	Option Two – 30 years for medium and large developments (the Bill)	Option Three – 30 (10 + 20) for developments of four or more units	Option Four – 30 (10 + 20) years for medium and large developments (preferred)
		There is a risk that medium and large developments will incur costs for estimating expenses over the 10 years that will likely be out of date once that maintenance is due.	The requirement to develop a 30-year LTM Plan may add costs to smaller developments, particularly developments comprising of 4 to 10 units. The likely benefits of this option outweigh the costs for medium and large developments. However, the costs of this option may outweigh the benefits for smaller developments there is no ability to opt out of the requirement.	where there is likely to be the greatest need. As with Option Three, the likely benefits of this option outweigh the costs for medium and large developments.
Accessibility	0 Ensures information on the next 10 years of maintenance requirements is accessible to unit owners.	+ Ensures information on the next 30 years of maintenance requirements is accessible to unit owners of medium and large developments.	+ Ensures information is available to current and prospective unit owners on the next 30 years of maintenance requirements.	++ Ensures information is available to current and prospective unit owners on the next 30 years of maintenance requirements.
Flexibility	0 Requirements apply to all development types and sizes.	+ Different requirements depending on the size. Focuses additional compliance requirements on developments that are likely to have the greatest maintenance requirements.	+ Focuses additional compliance requirements on a significant proportion of unit title developments.	++ Focuses additional compliance requirements on developments that are likely to have the greatest maintenance requirements.

	Option One – Status quo/ counterfactual	Option Two – 30 years for medium and large developments (the Bill)	Option Three – 30 (10 + 20) for developments of four or more units	Option Four – 30 (10 + 20) years for medium and large developments (preferred)
Ease of implementation	0	0 / - It may take bodies corporate longer to prepare a LTM Plan for 30 years than 10 years. This is especially the case for bodies corporate that have limited resources. Conversely, some bodies corporate already have LTM Plans that cover a 30 year period, so this additional requirement is already implemented.	0 / - It may take bodies corporate longer to prepare a LTM Plan for 30 years (With detailed costings for the first 10 years and a high level projection for the following 20 years). This may be especially the case for smaller bodies corporate, or bodies corporate with limited resources. Conversely, some bodies corporate already have LTM Plans that cover 30 years, so this additional requirement is already implemented.	0 / - It may take bodies corporate longer to prepare a LTM Plan for 30 years (With detailed costings for the first 10 years and a high level projection for the following 20 years). This may be especially the case for smaller bodies corporate, or bodies corporate with limited resources. Conversely, some bodies corporate already have LTM Plans that cover 30 years, so this additional requirement is already implemented.
Overall assessment	0	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

207. The preferred option is Option Four – requiring bodies corporate of medium and large developments to have a 30-year LTM Plan comprising of detailed cost estimations for the first 10 years and a high-level projection for the following years. This option ensures that medium and large developments, which are likely to have more significant requirements than smaller developments, have a detailed understanding of, and estimates for, maintenance requirements for a 10-year period. In addition, these developments will have greater visibility of expected maintenance over the longer-term preparing current and future owners for the costs associated with owning a unit title.

208. Under this option bodies corporate of smaller developments are still required to have a LTM Plan that covers 10 years. This will ensure that smaller developments still have visibility of (and consequently would plan and fund for) the maintenance requirements, minimising the risk of levy increases to cover unexpected maintenance expenses.

209. We note that many bodies corporate already have detailed LTM Plans that covers a 30 year period. While we are not requiring it, we encourage all bodies corporate to have detailed LTM Plans that cover a 30 year period.

Issue 3: Whether there should be a requirement to consult with a suitably qualified professional when drafting or reviewing LTM Plans

What options are being considered?

Option One – Status quo

210. LTM Plans are often prepared by people who do not have the appropriate qualifications or competencies, resulting in 'hidden' issues with the development not being captured or disclosed.

211. This could expose owners and new buyers to financial risk and, when the major building components need replacing, levy spikes that have not been budgeted for.

Option Two – Require LTM Plans to be peer reviewed by a member of a specified organisation (the Bill)

212. The Bill requires the LTM Plan of medium and large residential developments to be peer reviewed by a member of the New Zealand Institute of Building Surveyors, the Royal Institute of Chartered Surveyors, the Institute of Professional Engineers New Zealand, or any other body prescribed in the regulations, at each review. Medium residential developments may opt out of this requirement by special resolution. We recognise that this option would provide some assurance to current and future owners regarding the maintenance requirements of the development.

213. There was limited support from submitters for the requirement for LTM Plans to be peer reviewed by a member of a specified organisation. At least nine submitters, including a range of individuals, bodies corporate and professionals, proposed removing the requirement for a member of an industry body to peer review the LTM Plan. These submitters noted that an additional requirement to peer review the LTM Plan would increase costs for the body corporate. These submitters recommended that a better

avenue would be to require a suitably qualified professional to draft the LTM Plan. Some submitters noted that in some cases currently, professionals draft LTM Plans, so this would not be a change for those bodies corporate.

214. One submitter, a body corporate, noted that it would be difficult engaging a professional to review a LTM Plan. Multiple submitters also noted that the professional organisations listed in the Bill were not suitable to determine the adequacy of matters such as paint, floor coverings, and windows.

215. We also note that qualified surveyors often only perform superficial examinations of the buildings, and the examinations are usually caveated with a disclaimer that all issues may not have been captured, and that the surveyor does not accept liability for unforeseen maintenance excluded for the examination.

Option Three – Require bodies corporate to consult with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary

216. Under this option, the bodies corporate of medium and large developments will be required to consult with suitably qualified professionals when drafting a LTM Plan. Unlike Option Two, this option does not explicitly specify what organisation the suitably qualified professional must belong to. This would give bodies corporate the flexibility to identify the areas where it needs professional support. It would also simplify the process by improving the standard of LTM Plans, without the additional peer review step.

217. Both medium and large bodies corporate can also opt out of this requirement by special resolution. The high threshold for opting out will allow all medium and large bodies corporate to consider the benefits of professional support, and whether they need professional support when drafting a LTM Plan. It will not impose additional costs on bodies corporate that are capable of managing their own LTM Plans.

218. We note that the Regulations currently require all bodies corporate to carry out a review of its LTM Plan at least once every three years. This option also requires medium and large bodies corporate to consult with suitably qualified professional during the review process, when necessary.

How do these options compare to the status quo/counterfactual?

	Option One – Status quo/counterfactual	Option Two - Require LTM Plans to be peer reviewed by a member of a specified organisation (the Bill)	Option Three – Require bodies corporate to consult with suitably qualified professionals when drafting a LTM Plan (preferred)
Transparency	0 No requirement to consult with a professional when drafting or reviewing a LTM Plan may result in hidden issues not being discovered.	+ Unit owners and prospective owners may have access better information about the long-term maintenance needs of the development if the LTM Plan is reviewed by a member of a specified organisation.	+ Unit owners and prospective owners may have access better information about the long-term maintenance needs of the development if the body corporate consults with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary.
Best practice	0 Currently, many LTM Plans are drafted by people who do not have the appropriate competencies or qualifications.	+ Ensures that the LTM Plan of all large (and most medium) bodies corporate will be reviewed by professionals.	+ Ensures that the bodies corporate of medium and large bodies corporate will consider if they require the support of a suitably qualified professional when drafting a LTM Plan, and from then on when necessary.
Proportionality	0 Concerns raised that the lack of professional oversight is resulting in some LTM Plans that do not adequately address the long-term maintenance needs of developments.	0 Requiring the LTM Plans of all large bodies corporate to be reviewed by a member of a specified organisation every three years may impose costs on large bodies corporate that are comfortable with managing their own affairs	+ Ensures that the bodies corporate of medium and large developments consider whether they need to consult with suitably qualified professionals when drafting a LTM Plan and from then on when necessary. This option does not impose additional costs on bodies corporate that are comfortable with managing their own affairs.
Accessibility	0 If LTM Plans do not adequately address the needs of the development, this may	+	++ Unit owners and prospective owners may have better access to information if their body

	Option One – Status quo/counterfactual	Option Two - Require LTM Plans to be peer reviewed by a member of a specified organisation (the Bill)	Option Three – Require bodies corporate to consult with suitably qualified professionals when drafting a LTM Plan (preferred)
	be affecting unit owners' access to relevant information about their development.	Unit owners may have difficulty engaging a member of a specified organisation every three years to review the LTM Plan. Unit owners and prospective owners may have better access to information if their body corporate consults with a member of a specified organisation.	corporate consults with a suitably qualified professional when drafting the LTM Plan.
Flexibility	0 There is no requirement for all unit title developments, regardless of the size of the development, to engage a professional when drafting or reviewing a LTM Plan.	0 Bodies corporate of large developments will be required to engage a member specified organisation to peer review their LTM Plan. Bodies corporate of medium developments can opt out of this requirement.	+ Bodies corporate of medium and large developments can opt out this requirement.
Ease of implementation	0 Some LTM Plans are prepared by unqualified professionals. While others are prepared or reviewed by qualified professionals.	- This option is more difficult to implement than the status quo. As noted by submitter, bodies corporate may struggle to engage a member of a listed organisation to peer review their LTM Plan every three years. Medium developments will also need to be aware of the opt out provision.	- This option may add extra time to the preparation of LTM Plan. Some bodies corporate may struggle to consult with a member of a listed organisation. Both medium and large developments will also need to be aware of the opt out provision.
Overall assessment	0	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

219. Our preferred option is Option Three – requiring bodies corporate of medium and large developments to consult with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary (with the ability to opt out by special resolution).

220. We consider that Option Three is preferable to Option Two, which requires the LTM Plan of medium and large bodies corporate to be peer reviewed by a member of an industry association listed in the Bill. We note that in instances where the body corporate opts out of the requirement to consult with suitably qualified professional professionals when drafting the LTM Plan, unit owners and potential buyers receive no assurance that the LTM Plan meets reasonable industry standards. However, we consider that the high threshold for opting out (75 percent of all unit owners that vote on the matter) counterbalances this concern.

221. We recognise the concern shared by submitters that members of the listed associations may not be best placed to assess matters central to long term maintenance such as repainting the exterior of buildings. We also recognise the additional expense and difficulty in engaging members of the listed industry associations. It would be particularly burdensome if a body corporate did not meet its obligations under the Bill because no member of a professional body was willing to undertake the review of the LTM Plan.

222. Option three also provides greater flexibility to bodies corporate as it allows both medium and large bodies corporate to opt out of the requirement to consult with a suitably qualified professional. This could address instances where members of the body corporate already have the necessary skills to draft a LTM Plan, or when the body corporate has limited common areas.

Issue 4: Whether LTM Plans should have an additional purpose to identify defects

What options are being considered?

Option One – Status quo

223. Under the UTA there is currently no purpose for LTM Plans to identify defects. Instead, section 116(3) lists the following purposes:

    a. identify future maintenance requirements and estimate the costs involved

    b. support the establishment and management of funds

    c. provide a basis for the levying of owners of principal units

    d. provide ongoing guidance to the body corporate to assist in making its annual maintenance decisions.

Option Two – Require LTM Plans to identify defects in unit title developments (the Bill)

224. The Bill inserts an additional purpose for LTM Plans to identify defects in, or repairs required, to unit title developments and estimate the cost.

225. Numerous submitters, including industry bodies, lawyers, and representatives of bodies corporate, noted that there was a risk that a requirement to identify defects would

widen the scope of a maintenance plan to a defects report from either a building surveyor or an engineer. Submitters, including the New Zealand Law Society and Crockers, noted that this requirement would add a significant cost to bodies corporate, and impose additional obligations on body corporate committees.

226. The Body Corporate Chairs Group (BCCG) highlighted in their submission the distinction between defects and maintenance. The BCCG noted that defects often need to be repaired immediately, whereas maintenance occurs over time.

227. Submitters also expressed concerns that there was a risk that the inclusion of this requirement would increase disputes about what is a defect or repair. To minimise that risk, submitters, including Barfoot and Thompson and Liza Fry Irvine (a specialist unit title lawyer), suggested amending the requirement to identify "known defects that have not yet been remedied".

How do these options compare to the status quo/counterfactual?

	Option One – Status quo/counterfactual (preferred)	Option Two – Require LTM Plans to identify defects (the Bill)
Transparency	0 There may be a risk that defects in the unit title development are not captured or disclosed.	+ Unit owners may have better understanding of upcoming maintenance needs if they are aware of current building defects.
Best practice	0 Currently the focus of LTM Plans is to identify future maintenance requirements and estimate the costs involved.	0 The focus of LTM plans will expand to identify defects, which may often need to be repaired immediately, as well as identify future maintenance and estimate the costs involved.
Proportionality	0 Bodies corporate may incur costs when preparing the LTM Plan.	- - Bodies corporate will incur significant costs. They will most likely be required to employ an engineer to prepare a "defects report".
Accessibility	0 Unit owners will be made aware of their future maintenance requirements through their LTM Plans.	+ Enhances information available to unit owners on defects in the building.
Flexibility	0 All bodies corporate are required to have a LTM Plan. The length of the LTM Plan will depend on the size of the development.	- All bodies corporate are required to have a LTM Plan that identifies defects. This may add significant costs to small bodies corporate as well as bodies corporate that have other means of funding immediate repair work.

Ease of implementation	0	- There may a be a risk an additional requirement for LTM Plans to identify defects may open up disputes on what constitutes a defect. May also be difficult to implement if unit owners need to engage a building professional to identify the development's building defects.
Overall assessment	0	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

228. Our preferred option is the status quo. We consider that the key purpose of LTM Plans is to set out the upcoming maintenance and the repairs required for a unit title development. As noted by submitters, LTM Plans are not defects reports. Including the additional purpose for LTM Plans to identify defects would impose too great an onus on bodies corporate, unit owners, and potential buyers to predict what falls under the definition of "defects". Even if the new purpose is amended to "known defects that have not yet been remedied", there is still uncertainty about what constitutes a "known defect" as it will differ on a case-by-case basis.

229. As noted previously, a key purpose of LTM Plans is to identify future maintenance requirements and estimate the costs involved. This means that LTM Plans will account for the normal maintenance costs for unit title developments. Planned maintenance might include the maintenance of lifts, repainting the exterior, and roofing or cladding repairs. LTM Plans do not usually cover earthquake strengthening or weather-tightness type defects. These issues require special consideration by bodies corporate. In most cases, bodies corporate will need to create a separate plan to manage the potentially significant costs related to them. I note that these plans are likely to operate on a different timeframe to LTM Plans.

230. We note that if LTM Plans are required to identify defects or repairs required it would impose costs, sometimes significant, for bodies corporate. This may be particularly burdensome for smaller bodies corporate.

Issue 5: Whether unit title developments should have the ability to opt out of having a LTM Fund

What options are being considered?

Option One – Status quo

231. The UTA requires all bodies corporate to establish a LTM Fund with the ability to opt out by special resolution. The UTA also specifies that the LTM Fund may only be applied to spending relating to the LTM Plan.

232. The advantage of this option is that it encourages bodies corporate to consider the maintenance costs estimated in the LTM Plan and when setting levies, without mandating how bodies corporate should organise their budget.

233. The disadvantage of this option is that bodies corporate may opt out of the requirement to have a LTM Fund. This may result in lower levies initially; however large levy increases may occur in the future to cover the cost of unforeseen maintenance.

Option Two – Require bodies corporate of medium and large residential developments to establish a LTM Fund without the ability to opt out of establishing such funds (the Bill).

234. The Bill requires all bodies corporate of medium and large residential developments to establish and maintain a LTM Fund without the ability to opt out of establishing such funds. As the Bill does not make a provision for small developments, these developments can still opt out of the requirement to have a LTM Fund by special resolution.

235. There were varied levels of support for the requirement for bodies corporate of medium and large developments to establish and maintain a LTM Fund (without the ability to opt out). Some submitters recommended that this obligation should apply to all bodies corporate, regardless of size. Other submitters noted that preventing medium and large bodies corporate from opting out of the LTM Fund requirement imposed an obligation on a group of owners with no justification.

236. Submitters requested clarity on the amount of funding which should be contained in the LTM Fund. Submitters noted that there needed to be clarity about whether the LTM Plan is fully funded by the LTM Fund, or whether the LTM Plan is partially funded by the LTM Fund, and the remainder by special levies. Many individual submitters noted that maintenance funds were expensive and involve opportunity costs for owners. These submitters noted that unit owners ought to make their own decisions on the level of funding they contribute to the LTM Fund. Conversely, another submitter recommended that the LTM Fund ought to fully fund the plan to ensure that the body corporate has funds ready to cover maintenance and protect new owners from special levies.

237. The advantage of this option is that it ensures that larger bodies corporate (who are likely to have greater maintenance expenses) are more likely have adequate funds to maintain their development.

238. The disadvantage of this option is that some medium and large bodies corporate may already fund their LTM Plan through other avenues. Imposing a mandatory requirement to establish a LTM Fund would minimise the ability for bodies corporate to govern their development and make financial decisions.

Option Three – Clarification that bodies corporate can decide on the level of funding contained in the LTM Fund

239. Under this option, the status quo of requiring all bodies corporate to establish a LTM Fund with the ability to opt out by special resolution remains. However, this option requires the UTA to clarify that bodies corporate can decide on the level of funding contained in the LTM Fund. To counterbalance that, this option also requires bodies corporate to specify how their LTM Plans will be funded.

240. The advantage of this option is that bodies corporate can decide on how to manage their money, but at the same time be required to turn their minds to how their LTM Plans will be funded.

241. A disadvantage of this option is that without mandating a specific amount each body corporate must contribute to their LTM Plans, bodies corporate may contribute amounts to the LTM Fund (or other funding avenues) that are too low to effectively meet the cost of maintenance included in the LTM Plan. However, we consider that this

risk is reduced by requiring bodies corporate to specify how their LTM Plans will be funded. This ensures that bodies corporate are transparent. It will also encourage bodies corporate to set their levies to correspond with the costs of upcoming maintenance.

How do these options compare to the status quo/counterfactual?

	Option One – Status quo/counterfactual	Option Two – Medium and large developments to have a LTM Fund without ability to opt out (the Bill)	Option Three – Clarification on the level of funding contained in the LTM Fund (preferred)
Transparency	0 There is no certainty that a body corporate will set aside money in the LTM Fund to address the future maintenance requirements outlined in the LTM Plan.	+ There will be certainty that all bodies corporate of medium and large developments will have their LTM Plans supported by LTM Funds.	+ There will be transparency about the level of funding in the LTM Fund, and if there is no LTM Fund, there will be transparency about how the LTM Plan of a unit title development will be funded.
Best practice	0 There is no certainty that a body corporate will set aside money in the LTM Fund to address the future maintenance requirements outlined in the LTM Plan. Maintaining a LTM Fund helps ensure that long term maintenance will be discharged to a high standard and effectively support the operation of the body corporate.	+ Having a LTM Fund that indicates how the LTM Plan will be funded would appear to be best practice. However, there is a risk that the LTM Fund may not fully fund the LTM Plan, and the body corporate does not a plan of how their LTM Plan will be funded.	+ There is a risk that bodies corporate will opt out of the requirement to establish a LTM Fund. However, this is counterbalanced by the requirement for bodies corporate to specify how their LTM Plans will be funded. This option recognises that many LTM Plans are funded through other ways, such as a contingency fund.
Proportionality	0 There may be concerns that the ability to opt out of having a LTM Fund is resulting in levy spikes.	+ Will reduce the risk of levy spikes for medium and large developments.	+ Will reduce the risk of levy spikes for developments.
Accessibility	0 Difficult to access information on amount available for maintenance.	+ Easier to access information on amount available for maintenance for medium and large developments.	+ Easier to access information on amount available for maintenance for all developments.

Flexibility	0 Requirements apply to all development types and sizes.	- Focuses compliance requirements on medium and large developments, without the ability to opt out of establishing a LTM Fund.	+ Requirements apply to all development types and sizes. However, the option provides more flexibility to unit because it allows them to opt out of the requirement to have a LTM Fund.
Ease of implementation	0	0 / - It may take some additional time for bodies corporate that currently do not have a LTM Fund to set up a LTM Fund.	0 This option would not be difficult to implement. This option clarifies the status quo under the UTA but requires bodies corporate to be more transparent.
Overall assessment	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

242. We consider that the best option is Option Three. Under this option, all bodies corporate will be required to establish a LTM Fund with the ability to opt out by special resolution. This option gives bodies corporate the flexibility to decide on the level of funding contained in the LTM Fund. This option also requires bodies corporate to specify how their LTM Plans will be funded.

243. This option addresses the concern raised by submitters on the amount of funding which should be contained in the LTM Fund. Under this option, it will be clear in the UTA that bodies corporate can decide on the level of funding contained in the LTM Fund, and that it does not need to contain sufficient funds to pay for all items in the LTM Plan. We note that there are there are other ways provided by the UTA for bodies corporate to pay for the maintenance specified in the LTM Plan such as through a contingency fund.

244. We note that imposing a requirement for the LTM Fund to pay for all of the upcoming maintenance identified in the LTM Plan reduces flexibility for bodies corporate, and therefore, reduces flexibility for unit owners to decide how to manage their money. There is a risk that imposing this requirement would decrease the attractiveness of unit title developments to prospective homeowners. It may also create a scenario where some bodies corporate underreport the level of maintenance identified in their LTM Plan to reduce their contribution to the LTM Fund.

245. Transparency around how a LTM Plan will be funded is important to ensure that unit owners and prospective buyers are aware of future expenses and plan their finances accordingly. On that basis, we consider that bodies corporate, regardless of whether they have established a LTM Fund, should be required to specify the funding sources for their LTM Plan, including any future levies they made need to impose to pay for those costs

Section 2E: Deciding upon an option to address the policy problem - Dispute resolution

What issues are addressed in this section?

246. The issues to be addressed in this section are:

   a. classification of unit titles disputes

   b. level of application fees

   c. maximum jurisdiction of the Tenancy Tribunal (Tribunal)

What criteria will be used to compare options to the status quo?

247. The following criteria will be applied across the options considered for our proposals on dispute resolution under the UTA:

   a. cost-effective: resolve unit title disputes in the most effective way, at the lowest cost, including steering parties towards using mediation services before they engage the Tribunal's adjudication services.

   b. appropriate: use the most appropriate method to resolve the dispute based on the nature of the dispute and the needs of the parties, for example many parties choose mediation as a more cost effective and timely way of achieving a resolution which has a better chance of preserving good working relationships

   c. timely: resolve unit titles disputes within a reasonable period of time

   d. easily accessible: ensure that parties understand the dispute resolution options open to them and can access them easily, including by ensuring costs are not prohibitive.

   e. Ease of implementation: the proposals are workable in practice – implementation risks are low or within acceptable parameters, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

248. These criteria are generally complementary and so one need not be achieved at the expense of another. Whilst timeliness is an important objective within the UTA's dispute resolution process, the time taken to resolve Tribunal cases has not been raised by submitters. In our view, all options considered should usually keep resolution timescales within acceptable timescales of 2-3 months from commencement to a hearing at the Tribunal (where applicable).

What scope will options be considered within?

249. The general scope of options for consideration has been set by the Bill as introduced. This has formed the basis of stakeholder submissions to the Committee and constrains the types of amendments which may be made by the Government. However, we consider that this does not constrain the range of options available to reform the dispute resolution process in the UTA.

250. s 9(2)(f)(iv) [redacted]

Issue 1: Classification of unit titles disputes

What options are being considered?

Option One – The Status Quo

251. The UTA currently uses a classification system to determine how much a unit title dispute applicant to the Tribunal should pay. The current classification is as follows:

    a. Category 1 proceeding ('complex'): of average or high complexity, likely to involve a hearing before the Tribunal to resolve it, e.g., the repair or maintenance of common property and the governance or decisions and procedures of a body corporate.

    b. Category 2 proceeding ('non-complex'): of a straightforward nature, likely to involve mediation to resolve it, e.g., the day-to-day management of the development, the effect of the behaviour of unit owners on others, and non-compliance with the operational rules.

252. There are no figures on how many disputes currently fall into each category, however as of 22 June 2021, 980 applications to the Tribunal had been received over the period of 5 years since 28 May 2016. Of these, 873 (89%) went to adjudication before the Tribunal and 107 (11%) went to mediation. These numbers include 218 matters which were withdrawn either before or after mediation or adjudication. The majority of applications related to unpaid body corporate levies (69%) which we assume to usually have been 'non-complex', Category 2 proceedings.

253. The benefits of this approach are that it seeks to determine the likely costs of a dispute based on its complexity and assigns a fee weighted according to the likely cost impact on the Tribunal of resolving it.

254. However, this approach does not recognise the fact that a proceeding may be resolved without the need for adjudication – which is generally more costly than mediation. Parties pay for both methods of resolution, regardless of whether they use them. This approach also does not structurally direct parties to decide whether they want to use mediation to resolve their dispute. We consider that mediation is usually time-effective, cost-effective, and an appropriate starting point to resolve an issue.

255. Parties also need to decide at the start of a proceeding if the proceeding is 'complex' or 'non-complex'. One submitter, an adjudicator at the Tribunal on unit titles disputes, argued that the distinction between complex and non-complex disputes should be removed on the grounds that it is often difficult to determine – particularly at the start of proceedings. In addition, the submitter noted that disputes such as payment of levies, which were initially considered to be non-complex sometimes became 'complex' once proceedings had commenced and arguments had been developed.

256. In addition, if neither party can agree on the category of dispute, MBIE is required to decide on the categorisation during the case management process, which we understand causes confusion for applicants and tension at times.

Option Two – categorise only on basis of whether proceeding uses mediation or adjudication services (preferred option)

257. Under this option, the categorisation of proceedings as 'complex' or 'non-complex' as set out in Option One would be removed. Instead, fees would be charged based on whether they require mediation or adjudication with a 'top up fee' for those requiring both.

258. This simplified approach takes account of the problems caused by needing to categorise proceedings before the complexity of a dispute may be apparent and avoids the confusion and tension of parties needing to rely on MBIE to decide on the classification.

259. It also uses fee classifications based on the methods the parties have decided to use to resolve their dispute – mediation or adjudication – directing parties to consider the method of resolution before proceedings start. In combination with lower fee levels for mediation (which generally reflect that mediation is a more cost-effective dispute resolution method compared to adjudication) they steer parties to negotiation as a way of resolving their dispute in a timely fashion.

260. Six submitters gave views on mediation with two (a body corporate manager and a law firm) not viewing mediation as an effective dispute resolution tool but with four supporting its use. The Property Council of New Zealand considered that mediation was useful but could be prohibitively expensive for some parties. We consider that generally this supports the structural promotion of mediation as a dispute resolution method.

261. The disadvantage of this approach is that it does not take account of more complex disputes which may require a combination of mediation and adjudication (or perhaps several rounds of mediation on particular issues before going to adjudication). For these types of disputes, categorisation based on whether they need mediation or adjudication may be too simplistic and may not as well reflect the costs involved to the Tribunal in resolving them. Nevertheless, we note the high proportion of cases involving unpaid levies and the likely low complexity of these cases. On this basis Option Two seems suitable for the majority of unit titles disputes.

Option Three – categorise only on basis of complexity and whether proceeding uses mediation or adjudication services

262. This option reflects the approach currently proposed in the Bill. Under this option, disputes are classified as either ‘complex’ or ‘non-complex’ as per the status quo in Option One, but are also classified based on whether the proceedings require mediation or adjudication with those requiring both methods paying both fees applicable to their categorisation. A ‘complex’ proceeding requiring adjudication carries the highest fee whilst a ‘non-complex’ proceeding requiring mediation carries the lowest fee.

263. The benefit of this approach is that, unlike Option Two, it retains an assessment of the complexity of a case and seeks to price it based on the likely higher cost of such a dispute. It also places structural incentives on parties to select mediation for either ‘complex’ or ‘non-complex’ disputes as these are the cheapest application fees. It also allows for an additional payment to be collected where a proceeding moves from mediation to adjudication and vice versa.

264. The drawback of this approach is that it still requires the parties to assess and agree on the complexity of their proceedings at a point where this might not be apparent. As arises under Option One with has the potential to cause delay and stress, particularly where the parties cannot agree.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo / Counterfactual	Option Two – Categorise based on whether adjudication or mediation (preferred)	Option Three – Categorise based on complexity and whether adjudication or mediation (the Bill)
Cost effectiveness	0 Variable. The fee structure includes adjudication or mediation services, whether needed or not, and charges based on complexity, for example a 'complex' dispute quickly resolved via mediation may not be very cost-effective.	++ Classifying fees on the basis of the method of resolution ensures parties are not paying for a method they may not use and are steered towards mediation – usually the most cost-effective way of resolving a dispute.	+ Classifies fees in part based on the method of resolution they use but still distinguishes between complex and non-complex. Parties pay do not pay for a method they may not use but will have a less cost-effective outcome if their dispute happens to be 'complex'.
Appropriateness	0 Variable. Data shows 89% of disputes go to adjudication but that 69% of disputes are over unpaid fees, presumably simple disputes most appropriately resolved via mediation.	++ Fees structure directs parties to consider the resolution method and to agree the most appropriate way of resolving their dispute before the proceedings start.	+ As with Option Two, directs parties to consider the resolution method and to agree the most appropriate way of resolving their dispute before the proceedings start.
Timeliness	0 No current data on the speed of disputes but evidence from 2017 suggested a typical wait time of between two to three months for an application to be adjudicated. This compares very well with the resolution of cases in the courts.	0 We do not expect this option to have a positive or negative impact on the timeliness in which disputes are resolved.	0 As with Option Two we do not expect this option to have a positive or negative impact on the timeliness in which disputes are resolved.
Accessibility	0 Limited accessibility due to need for applicant to assess the complexity of their	++ A clear and simple fee structure which makes clear to the parties what services they will be	– Retains the current potential confusion of the complex/non-complex categorisation and

	application and the potential for dispute over this classification.	able to use. No complicated assessments required beyond this.	additionally requires applicants to select the resolution method, providing four different fee types.
Ease of implementation	0 This option requires the parties to assess and agree on the complexity of their proceedings at a point where it may not be apparent. This has the potential to cause delay and stress, particularly where the parties cannot agree.	+ This option would be easier to implement than the status quo. This is because the applicant will not be required to determine whether their dispute is "complex" or "noncomplex" from the start of their proceedings.	0 As with the status quo, this option requires the parties to assess and agree on the complexity of their proceedings at a point where it may not be apparent. This has the potential to cause delay and stress, particularly where the parties cannot agree.
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

265. The preferred option is Option Two – a fee structure for unit title disputes based on whether the parties choose mediation or adjudication. We believe that this best addresses the problem of accessibility to the unit titles dispute resolution process by providing an accessible fee structure, directing parties to agree the most appropriate form of resolution of their dispute. It dispenses with the confusing requirement to assess the complexity of a dispute and provides greater cost-effectiveness by ensuring parties are not paying for services they may not need.

Issue 2: Level of application fees

Option One – The Status Quo

266. This option reflects the following fee structure currently used for unit title disputes in the Tribunal:
    a. $3,300 for category 1 (complex) proceedings.
    b. $850 for category 2 (non-complex) proceedings, regardless of whether the dispute is resolved by mediation or adjudication.
    c. Application fee paid by applicant only. If the applicant is wholly successful, the Tribunal must order the respondent to reimburse the applicant for the application fee.
267. This option would not incur any additional cost to the Government. This is particularly key because application fees are charged on a cost-recovery basis (see below).
268. The current fee structure is significantly more expensive than for applications in other dispute resolution tribunals, as set out below. We consider that this places significant barriers for some unit owners to access the dispute resolution process, preventing them from resolving disputes or potentially holding bodies corporate to account for breaches of the UTA.

Tribunal	Application Fees
Tenancy Tribunal	$20.44 (RTA disputes)
Disputes Tribunal of New Zealand	Range from… $45 (for a claim of up to $2,000) to $180 (for a claim of between $5,000 and $30,000)
NSW Civil Administrative Tribunal (NCAT) (handles unit title disputes)	General applications: AUD$107 for an individual AUD$214 for a corporation

Option Two – Significantly reduced fee levels to $250 for mediation and $500 for adjudication

269. Under this option, fees would be charged based on whether they require mediation, adjudication or both and would be as follows:
    a. $250 for mediation
    b. $500 for adjudication.
270. The applicant would pay for the application fee. If an application were moved from mediation to adjudication, the applicant would be required to pay a 'top up' of an additional $250 to bring the total fee paid up to the level of the adjudication fee. $500 is the maximum that could be paid for any application.
271. Under this option, fees are significantly reduced compared to the status quo, by as much as 92.5% in the case of a complex application under that regime which opts for mediation alone under this option. However, these fee levels are still well above the application fees for other dispute jurisdictions, and equivalent fees for unit title disputes in New South Wales.

272. The significant reduction in the cost of applying to the Tribunal, particularly where its mediation services are used to resolve the dispute, means that cost barriers to accessing the unit title dispute resolution process under the UTA would be significantly reduced for unit title owners with limited financial resources under this option.

273. The higher fee levels compared to other dispute resolution jurisdictions mean that:

    a. s 9(2)(f)(iv)

    b. there is some incentive for parties to seek to resolve their disputes between themselves before applying to the Tribunal. s 9(2)(f)(iv)

274. The fee levels under this option better reflect the services used by the parties to a unit title dispute, ensuring they are not charged for services they do not use, and also incentivise use of the cheapest, mediation, option and the associated benefits of this method of dispute resolution.

275. s 9(2)(f)(iv)
the benefits of making it available to a far wider range of unit owners, and the enforcement benefits of parties being held to account in the Tribunal for breaches of the UTA outweigh the costs of this option.

276. However, the fees proposed in this option may still pose some cost barriers to accessing the dispute resolution process for unit owners with limited financial resources.

277. s 9(2)(f)(iv)

Option Three – Moderately reduced fee levels (equivalent to cheapest fees proposed in Bill)

278. This option reflects the cheapest fee structure which would be charged under the Bill for non-complex applications:

    a. $300 for mediation

    b. $600 for adjudication.

279. Parties are required to divide the cost of the application equally between them unless a party has refused mediation, in which case the whole of the adjudication fee is payable by that party. If a dispute is referred to both a Tenancy Mediator and adjudication before the Tribunal, both fees are payable. The total fee payable under this option could thus be up to $900.

280. As with Option Two, this reflects reduced fees compared to the status quo, for this option (as much as 91% in the case of a complex application under that regime which

opts for mediation alone under this option) but are still above application fees for other dispute resolution regimes.

281. The benefits of this option are that it represents a moderate reduction in the cost of applying to the Tribunal, particularly where its mediation services are used. This assists with addressing cost barriers to accessing the unit title dispute resolution process under the UTA.

282. s 9(2)(f)(iv)

283. As with Option Two, the fee levels better reflect the services actually used by the parties to a unit title dispute and incentivise the use of mediation.

284. However, the fees proposed in this option may still pose some cost barriers to accessing the dispute resolution process for unit owners with limited financial resources and are more expensive than under Option Two above.

285. s 9(2)(f)(iv)

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo / Counterfactual	Option Two – Significantly reduced fee levels (preferred option)	Option Three – Moderately reduced fee levels (the Bill)
Cost effectiveness	0 Variable but generally poor compared to other regimes. Based on complexity, parties may pay $3,300 or $850 and could have an effective resolution through mediation or a less effective resolution involving mediation and adjudication.	++ Parties pay a maximum of $500 and as little as $250 based on the methods they use to resolve their disputes. Although this is less cost effective than other regimes it is a significant improvement on the status quo. The requirement for applicants to pay a 'top up' of $250 where a proceeding starts in mediation and then proceeds to adjudication allows some of the additional costs of Tribunal adjudication to be recovered.	+ Parties pay a maximum of $900 and as little as $300 based on the methods they use to resolve their disputes. This is less cost effective than other regimes but an improvement on the status quo.
Appropriateness	0 Variable. Fee levels do not incentivise parties to consider the most appropriate resolution method – often mediation.	++ The pricing of mediation at $250 provides a price incentive for parties to select mediation – often the most appropriate form of resolution where relationships need to be maintained. The requirement for applicants to pay a 'top-up' of $250 where a proceeding starts in mediation and then proceeds to adjudication means that the applicant pays the same amount as if the proceeding started in adjudication. This ensures that the fees regime adapts to the needs of the proceeding.	++ As with Option Two, the pricing of mediation (in this option at $300) provides an incentive to select mediation – often the most appropriate form of resolution where relationships need to be maintained.

	Option One – Status Quo / Counterfactual	Option Two – Significantly reduced fee levels (preferred option)	Option Three – Moderately reduced fee levels (the Bill)
Timeliness	0 No current data on the speed of disputes but evidence from 2017 suggested a typical wait time of between 2 to 3 months for an application to be adjudicated. This compares very well with the resolution of cases in the courts.	0 We do not expect this option to have a positive or negative impact on the timeliness in which disputes are resolved.	0 As with Option Two, we do not expect this option to have a positive or negative impact on the timeliness in which disputes are resolved.
Accessibility	0 The current fee levels are significantly more expensive than other regimes and pose a significant accessibility barrier to applicants on limited budgets.	++ Significantly reducing application fees is likely to remove cost barriers to accessing the unit title dispute resolution process for most unit owners.	+ Moderately reducing application fees is likely to remove cost barriers to accessing the unit title dispute resolution process for many unit owners.
Ease of implementation	0 As noted under "timeliness".	0 s 9(2)(f)(iv) The ability to "top up payments" is unlikely to be more difficult to implement if MBIE's ICT systems is updated accordingly to take two different payments.	0
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

286. The preferred option is Option Two – the reduction of fees to $250 for mediation and $500 for adjudication with a 'top up' of fees where parties move from mediation to an adjudication. This best meets the criteria of cost-effectiveness, appropriateness and accessibility with a neutral impact on timeliness. It will deliver the highest net benefit, as noted in the table; s 9(2)(f)(iv)

287. We also note that requiring the applicant to pay for the proceedings is preferable than the current requirement in the Bill for the application fees to be divided equally between the parties. This will avoid instances where respondents may refuse to pay the application fee to frustrate the proceedings. We note that the UTA already requires the Tribunal to order the respondent to reimburse the applicant for the application fee where the applicant is fully successful.

Issue 3: What should be the maximum jurisdiction of the Tribunal?

Option One – The Status Quo

288. This option reflects the current maximum jurisdiction of the Tribunal with respect to unit titles disputes which limits it to consider claims of up to $50,000.

289. The District Court currently handles disputes from $50,000 to $200,000 and disputes relating to insurance up to a value of $50,000. The High Court currently handles disputes with a value in excess of $200,000, disputes relating to title of land and disputes involving insurance in excess of $50,000. The High Court can also hear applications to cancel unit title plans, for the conversion of existing schemes or to appoint an Administrator.

290. This option would not incur any additional cost to the Government. This is particularly key given the way the Tribunal is currently funded on a cost-recovery basis (as outlined above).

291. The Tribunal's current jurisdiction is lower than for disputes under the RTA where, since February 2021, claims of up to $100,000 can be heard. There is little logic for the Tribunal to be less accessible for the UTA than the RTA on this basis, particularly given the potential for much higher claims which might arise under the UTA compared to the RTA.

292. The Tribunal generally provides a more cost-effective and accessible dispute resolution path compared to the District or High Courts, yet this may not be open to a significant portion of unit title disputes which happen to be for more than $50,000 (for example where unit owners dispute being asked to contribute to significant building repairs).

293. Claims for more than $50,000 which have to be heard in the District or High Courts could face delays (compared to the Tribunal) before they are resolved.

Option Two – Increase the Tribunal jurisdiction to $100,000 (preferred option)

294. This option is to increase the maximum jurisdiction of the Tribunal with respect to unit titles disputes to $100,000. This mirrors the Tribunal's jurisdiction for disputes under the RTA which was increased to $100,000 in February 2021.

295. The District Court jurisdiction would be between $100,000 and $200,000. The High Court jurisdiction would be unchanged.

296. Several submitters indicated that they thought the jurisdiction of the Tribunal to hear unit title claims of up to $50,000 was too low. One submitter noted that claims involving major repairs could total more than $50,000, leading to greater costs in the District or High Court. Another submitter noted that the $50,000 threshold was inconsistent with the Tribunal's jurisdiction since February 2021 to hear residential tenancy claims of up to $100,000.

297. The benefits of this option are that it increases the number of unit titles applications which can be made at the Tribunal, which provides a faster and cheaper alternative to the District Court. This will support access to justice for those claimants who may not have been able to afford to make a claim in the District Court.

298. In particular it provides a timelier and more cost-effective dispute resolution path for claims which might arise under the UTA for issues such as building repairs over $50,000 which currently must be considered in the Courts.

299. As Tribunal adjudicators are now dealing with claims up to $100,000, this gives confidence that they have the capacity and expertise to handle unit titles cases at this higher threshold.

300. s 9(2)(f)(iv)

301. A maximum jurisdiction of $100,000 may still not be sufficient to allow some claims to be heard by the Tribunal, particularly where they relate to issues such as expensive building repairs.

Option Three – Increase the Tribunal jurisdiction to $200,000

302. This option is to increase the maximum jurisdiction of the Tribunal with respect to unit titles disputes to $200,000. This mirrors the jurisdiction of disputes between students and educational providers under the Education and Training Act 2020. The District Court jurisdiction would be changed to disputes of between $200,000 and $350,000 and the High Court would have its jurisdiction changed to above this level.

303. The benefits of this option are that it increases the number of unit titles applications which can be made at the faster and cheaper Tribunal beyond those that could be heard in Options One and Two, thus improving access to justice.

304. It would ensure a wide range of disputes involving significant claims, such as for building repairs, could be heard at the Tribunal. However, it is unclear what the capacity of the Tribunal to handle such significant claims would be given that it exceeds the current jurisdiction of $100,000 under the RTA.

305. In addition, we would expect the increased number of applications to the Tribunal combined with their likely complexity to increase the costs of the Tribunal compared to Options One and Two. s 9(2)(f)(iv)

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo / Counterfactual	Option Two – Increase the jurisdiction to $100,000 (preferred option)	Option Three – Increase the jurisdiction to $200,000
Cost effectiveness	0 The Tribunal's current jurisdiction of $50,000 impacts the cost effectiveness of disputes above this level which must use the comparatively more expensive District or High Courts.	++ The Tribunal already has capacity to handle claims of up to $100,000 under the RTA. Parties with claims up to this level will generally benefit from better cost-effectiveness compared to District and High Courts.	+ Parties will benefit from a generally cheaper and faster forum; however, the Tribunal does not currently have experience of handling claims above $100,000. This may impact on cost-effectiveness of the Tribunal's services.
Appropriateness	0 The current jurisdiction allows parties to select the Tribunal (and its mediation and adjudication services) where it is appropriate to their needs but only for claims up to $50,000.	+ Parties wanting to use the Tribunal's adjudication and mediation services can do so up to claims of $100,000.	++ Parties wanting to use the Tribunal's adjudication and mediation services may now do so up to claims of $200,000.
Timeliness	0 No current data on the speed of dispute resolution but evidence from 2017 suggested a typical wait time of between 2 to 3 months for an application to be adjudicated.	0 We do not anticipate an increased volume of claims between $50,000 to $100,000 impacting on the Tribunal's capacity to resolve disputes between 2 to 3 months.[9]	- It is conceivable that the Tribunal's lack of experience in dealing with claims at this level could impact on timeliness.

[9] Based only on reported cases, in the last 5 years there have been 9 cases heard in the District Court which relate to Unit Titles. Of those: 1 was for between $50-100,000 and 1 was for between $100-200,000.

	Option One – Status Quo / Counterfactual	Option Two – Increase the jurisdiction to $100,000 (preferred option)	Option Three – Increase the jurisdiction to $200,000
Accessibility	0 Parties may only access the Tribunal for claims up to $50,000 beyond this they must use less accessible jurisdictions (District and High Courts).	+ Parties will have improved access to the Tribunal to also resolve disputes of between $50,000 and $100,000.	++ Parties will have improved access to the Tribunal to also resolve disputes of between $50,000 and $200,000.
Ease of implementation	0 Currently the jurisdiction to hear UTA disputes in the Tribunal is not consistent with the RTA, even though the same resources is used across both regime.	+ This option would not be difficult to implement as the Tribunal already has experience to hear claims of up to $100,000 under the RTA.	0 / - It is unclear what the capacity of the Tribunal to handle significant claims would be given that it exceeds the current jurisdiction of $100,000 under the RTA.
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

306. The preferred option is Option Two – increase the jurisdiction of the Tribunal to $100,000. We consider this maximises accessibility to the Tribunal by increasing the value of claims which may use its services and ensures cost-effectiveness in part due to the Tribunal's existing experience with claims of up to $100,000 under the RTA. We do not consider that the increase in applications under this options will significantly impact on the Tribunal's timeliness. s 9(2)(f)(iv) [redacted]

Section 2F: Deciding upon an option to address the policy problem - Enforcement

What criteria will be used to compare options to the status quo?

307. The following criteria will be applied across the options considered for pre-purchase disclosure: promoting transparency, encouraging best practice, proportionality, accessibility, flexibility and ease of implementation.

What scope will options be considered within?

308. The scope of options has been considered with particular reference to the Chief Executive's powers under the Residential Tenancies Act 1986 (RTA). This provides a useful comparison for a regime that includes powers of investigation and enforcement. The options have also been developed from considering the submissions on the Bill.

309. This RIS considers both regulatory and non-regulatory options. However, it is noted that non-regulatory options will not provide additional powers to the Chief Executive.

Options ruled out

310. We have ruled out the option of allowing bodies corporate to be given powers to issue infringement notices to those unit owners not complying with operational rules, which was suggested by some submitters. We do not support this option. Infringement notices are issued for offences which can be prosecuted as criminal offences and are properly issued by a public body and not a body corporate. We also do not agree that compliance with operational rules or duties under the UTA is best incentivised by making breaches criminal offences.

311. We have ruled out the option for UTA duty-holders to bring exemplary damages claims against each party for breaches of the UTA. Under the RTA, landlords and tenants can apply to the Tribunal where there has been a breach. As well as ordering compensation where appropriate, the Tribunal can also order a civil penalty be paid from the party in breach (known in the RTA as exemplary damages). We do not consider that including exemplary damages is appropriate. As the body corporate is comprised of all unit owners, the unit owners must meet any costs incurred by the body corporate. This includes any damages awarded. We therefore consider that civil penalties should only be imposed where it is necessary to support the integrity of the compliance system.

312. We have also ruled out applying Part 4 of the Search and Surveillance Act 2012 (SSA) to the proposed new powers of entry to unit title developments. We consider the scope of the search powers in Part 4 of the SSA to be far broader than what is required in the proposed power of entry, and required for a UTA search power. It is disproportionate to apply the SSA as the proposed power does not propose entry to a private residence without permission.

313. The RTA power of entry to rented premises sets a useful precedent (which includes places of residence). The RTA does not apply Part 4 of the SSA (with the exception of applicable rules on immunity) but does include requirements which reflect the SSA requirements, such as the need to provide notice of a search and for the officers conducting the search to identify themselves. However, I do not propose that a Tribunal be required to authorise our proposed power of entry, as is required under the RTA. This is consistent with the existing UTA power of entry and reflects that (unlike the RTA), the proposed power does not include a right of entry to a place of residence without permission.

What options are being considered?

Option One – Status quo with improved information and education

314. s 9(2)(f)(iv) [redacted]

315. The powers in the UTA relating to enforcement powers would be unchanged:

    a. Monitoring and reporting on the long-term financial and maintenance planning regime of bodies corporate. The Chief Executive can access the unit title development (but not a principal unit without the owner's authority) and require information relating to the body corporate's long-term financial and maintenance planning regime from the body corporate.

    b. The Tribunal has jurisdiction to hear disputes directly involving the Chief Executive. Currently, the Chief Executive must be a party to such a dispute and cannot initiate proceedings on behalf of someone else (e.g., a unit owner).

    c. Investigation of any alleged breach of the UTA. The Chief Executive can investigate (either after receiving a complaint or on their own motion) any alleged breach of the Act. The Chief Executive is empowered to take such action as they think proper, including legal proceedings, negotiation or arbitration. However, they currently have no powers to incentivise compliance with such an investigation, meaning parties could frustrate the investigation by choosing not to comply.

316. Few submitters on the Bill directly identified a need for further information on unit titles. As a non-regulatory option, it was not included in the Bill. However, some submissions evidenced a lack of knowledge on unit title issues such as dispute resolution, suggesting a greater need for information in this area.

317. The goal of a regulator should be to ensure that unit title stakeholders properly understand their rights and responsibilities and voluntarily comply. Voluntary compliance can be supported through providing clear, accessible information and education to bodies corporate, body corporate managers and current and prospective unit owners about their responsibilities and how they can comply with their obligations. It can also help by directing disputing parties towards appropriate dispute resolution services, as well as ultimately reducing the need for these services by addressing the lack of understanding that may lead to non-compliance.

318. However, this option does not address the problem that the Chief Executive's powers of investigation and enforcement are limited. While good access to the correct information and the ability to use dispute resolution services will address most situations, they will not address all situations. Some unit title developments have complex issues to solve. The unit owners may not have the financial resources or expertise to represent themselves or may fear retaliatory action or jeopardised relationships with other unit owners.

Option Two – Package of strengthened investigation and compliance measures

319. This option includes the increased information and education measures to improve understanding of the UTA. It also includes regulatory measures to provide the Chief Executive with more ability to investigate and enforce alleged breaches of the UTA.

320. We propose the following additions to the Chief Executive's powers under the UTA:

    a. a new general function and power for the Chief Executive to monitor and assess compliance by bodies corporate and body corporate managers with the UTA.

    b. a duty on bodies corporate and body corporate managers to retain specified documents. These documents would be set out in regulations.

    c. empower the Chief Executive to obtain these documents with written notice where this is reasonably required for the purposes of their functions or powers under the UTA and inspect, make records, copies and extracts of those documents.

    d. empower the Chief Executive, or a person they authorise, to enter a unit title development (not an individual unit without permission) with 24 hours' written notice, where they have reasonable grounds to believe a UTA breach has occurred, and inspection is necessary to their functions or powers under the UTA in relation to the breach. The Chief Executive would have the power to inspect, photograph and take samples from the unit title development.

    e. empower the Chief Executive to obtain information from a body corporate manager, with written notice, to monitor and report on a body corporate's long-term financial and maintenance planning regime.

    f. empower the Chief Executive to issue an improvement notice for certain actual or expected breaches of the UTA. A party subject to an improvement notice would have the right to object to the notice at the Tribunal.

    g. empower the Chief Executive to apply to the High Court for the appointment of an administrator for a body corporate.

    h. empower the Chief Executive to initiate, assume the conduct of, or defend any proceedings *on behalf of any party to a unit title dispute.*

    i. empower the Chief Executive to initiate a single case involving multiple bodies corporate on the basis noted above.

321. The Chief Executive's proposed powers with respect to initiating, assuming conduct of, and defending unit title proceedings may be used if the Chief Executive is satisfied it is in the public interest to use them and:

    a. there are allegations of conduct that is likely to cause or has caused significant risk to the health and safety of any person

    b. there are serious or persistent breaches of the Unit Titles Act 2010

    c. the actions of a party or parties risk undermining public confidence in the administration of the Act, or

    d. any other ground that the Chief Executive considers appropriate.

322. Under this option, the Chief Executive would also be able to apply to the Tribunal to impose pecuniary penalties in limited situations (set out at **Annex A**). The Chief Executive could seek pecuniary penalties where a body corporate or body corporate manager failed to comply with the Chief Executive's request for information under the UTA, obstructed or hindered the Chief Executive in exercising their power of entry or failed to comply with an improvement notice. The proposed penalties in Annex A are a maximum; the Tribunal would decide what penalty to impose in any case.

323. In addition, the Chief Executive would be able to seek a pecuniary penalty against a body corporate manager where they breached certain duties under the UTA in relation

to disclosing a conflict of interest, or obligations where the body corporate manager acts for more than one body corporate.

324. The new powers would give the Chief Executive a more effective ability to request information, as the power is broader than the current power. The request can also be supported by the ability of the Chief Executive to apply to the Tribunal for a pecuniary penalty if the body corporate or body corporate manager does not comply. Likewise, the power of entry can be for broader purposes.

325. The new powers also give the Chief Executive an ability to respond where their investigations reveal a breach of the UTA. Allowing the Chief Executive to take proceedings on behalf of another party means they can intervene where a party is vulnerable and unable to assert their rights themselves.

326. The pecuniary penalties are primarily designed to incentivise bodies corporate and body corporate managers to comply with the Chief Executive's compliance activities. The penalties for body corporate managers recognise that body corporate managers can wield significant power over bodies corporate. As professionals, they should meet a high standard of professional conduct. It is recognised that body corporate managers also must comply with the code of conduct to be included in the Regulations, and their terms of engagement with a body corporate must include this obligation. This is another level of protection for bodies corporate and unit owners.

327. Most submitters on the issue of enforcement called for the powers of the Chief Executive in the UTA to be enhanced and better resourced. Some submitters supported better auditing powers, better oversight of body corporate managers, or introducing penalties or infringement notices. Several submitters proposed that bodies corporate should have the ability to impose fines on unit title owners who do not comply with the UTA or the body corporate operational rules.

328. s 9(2)(f)(iv)

329. As this proposal was not part of the Bill, stakeholders have not had the opportunity to consider it and provide feedback. Stakeholders who did not submit on the enforcement issue in the Bill may have views about the general approach, or specific proposals within it.

How do the options compare to the status quo/counterfactual?

330. As improved information and education is part of each option, it is not compared in the table below.

	Option One – Status quo/more information	Option Two – Strengthened enforcement measures (preferred)
Transparency	0 Relying on voluntary compliance does not promote sharing of information relevant to Chief Executive investigations.	+ Enhances the provision of information relevant to Chief Executive investigations.
Best practice	0 Relying on voluntary compliance will work for most parties, who will seek to comply with the rules. But there will be	+ The enforcement measures may incentivise greater voluntary compliance.

	some parties who choose not to comply.	
Proportionate	0 The Chief Executive's powers are inadequate to intervene and provide a proportionate response where it is in the public interest to do so.	+ Provides an ability to intervene where it is in the public interest. Powers and penalties are limited to provide a proportionate response to non-compliance.
Accessibility	0 Chief Executive's ability to access information to investigate potential breaches of the UTA is limited as compliance is voluntary.	+ Improved access to information allows the Chief Executive to investigate potential breaches, where appropriate, and consider a course of action.
Flexibility	0 Current powers offer little flexibility for the Chief Executive to respond to more unit title developments, or changes in the sector.	+ Helps to future proof the UTA. In particular, unit title developments may become more common and unit owners may be in more need of assistance.
Ease of implementation	0 The Chief Executive has limited ability to investigate or respond to breaches of the UTA. The current provisions are not workable and could lead to breaches not being addressed through dispute resolution or enforcement.	0 / + The Chief Executive has the opportunity to investigate and respond to breaches of the UTA, where appropriate. The greatest risk for this option is if insufficient is provided for the Chief Executive to effectively use these powers.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

331. The preferred option is Option Two – Strengthened enforcement measures (and additional information and education). Under this option, the Chief Executive has more tools to be able to investigate and respond to alleged breaches of the UTA. The restrictions on the option mean that the Chief Executive will be responding and taking action when it is in the public interest to do so.

332. This option is an opportunity to future proof the Bill. It also allows for a proportionate response by the Chief Executive, who can respond according to the intention of parties to comply. In many cases, providing information and education will be sufficient. In some cases, an investigation will prompt action. In others, more direct tools such as an improvement notice is required. For the minority, the Chief Executive will be able to apply to the Tribunal for correction of their behaviour.

All topics: What are the marginal costs and benefits of the preferred package of options?

Affected groups	Comment	Impact.	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated parties - body corporate (with costs passed on to unit owners)	*Changes to pre-purchase disclosure* Additional information in the pre-contract disclosure statement is likely to increase compliance costs to bodies corporate, and consequently, the unit owners that make up the body corporate. There is likely to be additional administration and resource costs to bodies corporate. This will apply when they gather the information, and when providing the information to prospective buyers on an ongoing basis.	Low	Medium
	Body corporate managers The requirement for medium and large developments to employ a body corporate manager (with the ability to opt out) will mean that more bodies corporate employ a body corporate manager. The costs of employing a body corporate manager will be passed on to individual unit owners. There is also a risk of additional indirect costs from requiring body corporate managers to comply with the code of conduct.	Low	Medium
	Long term maintenance planning and funding The requirement for medium and large bodies corporate to consult with suitably qualified professionals when drafting a LTM Plan, and from then on when necessary, will increase costs to the body corporate, if they are not taking this approach currently. The requirement for medium and large developments to have a LTM Plan comprising detailed cost estimations for the first 10 years and a high-level projection for the following 20 years will increase costs to bodies corporate who are not already doing so. These costs are likely to be passed on to unit owners.	Low	Medium

	Dispute resolution The reduction in application fees to $250 for mediation and $500 for adjudication will mean that it is likely that bodies corporate will defend more cases. This will increase costs to unit owners. Conversely, the reduction in application fees and the re-classification of unit titles disputes may mean that it is more likely that the bodies corporate may take more cases against owners. This will increase costs to the unit owner in a private capacity as well as in their capacity as a member of the body corporate. *Body corporate governance* There may be some additional costs for bodies corporate as they become familiar with the new governance rules. The new code of conduct for body corporate committee members may impose additional costs on unit owners.	Low Low	Medium Medium
Regulated parties – individual unit owners	*Body corporate governance* Some unit owners may incur additional costs in setting up the necessary infrastructure to attend, or vote in, meetings remotely. *Dispute resolution* The classification of unit title disputes based on whether the applicant considers the dispute will require mediation or adjudication and the lowering of application fees may result in more unit owners defending cases against their body corporate. Conversely, it may also mean that more unit owners are able to take claims against their body corporate. In both scenarios, there will be added costs incurred by unit owners in a private capacity.	Low Low	Medium Medium
Regulated parties - body corporate managers	*Body corporate managers* Body corporate managers may have additional costs to ensure they comply with the code of conduct. The requirement in the terms of engagement for body corporate managers to comply with the code of conduct is likely to increase costs to body corporate managers if they breach the code. In that case, the contract	Low	Medium

	between the parties will dictate what the sanction or outcome will be. *Dispute resolution* The reduction in application fees will mean that it is more likely that bodies corporate will apply to take body corporate managers to the Tribunal if they do not comply with their terms of engagement, the UTA or the Regulations. *Enforcement* The additional power for the Chief Executive to apply to the Tribunal to impose a pecuniary penalty in certain situations will increase costs for body corporate managers if they do not comply.	Low Low	Medium Medium
Regulators: HUD / MBIE	s 9(2)(f)(iv)		Medium Medium Medium Medium

	s 9(2)(f)(iv)		
Wider Government	There is no direct cost to the wider Government.	Low	Medium
Tenancy Tribunal and the Wider Justice sector	s 9(2)(f)(iv) There is a risk of additional administrative costs associated with any increase in disputes arising from the reduction in fees. However, they are likely to be offset in part by the impact of the proposed information and education measures and enforcement measures, which are anticipated to redirect demand from the Tribunal.	Low	Low-medium
Total monetised costs		s 9(2)(f)(iv)	Medium
Non-monetised costs		Low – Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated parties – bodies corporate (with benefits passed on to unit owners)	*Body corporate managers* The requirement for medium and large developments to employ a body corporate manager encourages bodies corporate to actively consider whether they require external support to ensure they are meeting UTA requirements. Unit title developments that employ a body corporate manager may have better access to information and governance matters. Requiring body corporate managers to meet a code of conduct set out in the Regulations improves confidence in the professionalism of body corporate managers, and in the unit titles system.	Medium – High	Medium
	Body corporate governance The ability for unit owners to attend general meetings and body corporate committee (BC committee) meetings by remote access aligns the UTA with advancements in technology. Allowing remote attendance supports the participation of unit owners in democratic	Medium	Medium

	decision-making. Owners have an alternative to appoint a proxy. This amendment will also reduce instances where quorum requirements cannot be met, leading to a delay in urgent decision making. The removal of limits on proxies and broadening the ability for non-natural entities to appoint people to represent them on BC committees, support the ability of unit owners to be involved in decision-making.		
	Dispute resolution The reduction of application fees to the Tribunal will better enable unit owners and the body corporate to remedy their disputes. This provides better protection to unit owners and the body corporate. The removal of the fee classification as Category 1 or Category 2 will remove the need for parties to decide on the complexity of their dispute at a stage where this may not be immediately clear.	Medium - High	Medium
Regulated parties – unit owners	*Dispute resolution* The reduction of application fees will enable more unit owners in their individual capacity to afford to access justice. *Enforcement* The strengthening of the Chief Executive's powers under the UTA may address situations where unit owners are not capable of representing themselves as well as situations where unit owners do not wish to take their body corporate or body corporate to the Tribunal for fear of retaliatory action or jeopardised relationships with other unit owners.	Medium - High	Medium
Regulated parties – body corporate managers	*Body corporate managers* The requirement (with the ability to opt out) for medium and large developments to engage a body corporate manager will lead to an increase in demand for body corporate managers. There will be increased guidance on how body corporate managers should conduct their roles and responsibilities. This is contained in the code of conduct for body corporate managers. Body corporate	Medium	Medium

	managers will also be required to follow a consistent set of standards, so expectations of their behaviour will be clear.		
Regulators - HUD / MBIE	*Enforcement* Access to a broader range of compliance intervention tools will enable a more efficient and effective graduated response to non-compliance by the body corporate or body corporate manager. There are also efficiency and effectiveness benefits from enabling the lodgement of single applications and clarifying limitation periods. *Information and education* Improved UTA information and education will also help improve the skills and capacity of the unit title sector, particularly in body corporate committees. This may reduce the need for applications to the Tribunal.	Medium	Medium
Wider government and public good	Many of the proposed options contained in this RIS strike the right balance between providing greater protection for current and prospective unit owners, encouraging prospective homeowners to consider apartment and other high-density living as a viable and attractive alternative to free-standing houses, and ensuring that the UTA is enabling for the growth in high-density living.	Medium	Medium
Wider public - prospective purchasers of unit titled property	*Disclosure* The changes to pre-purchase disclosure will result in the provision of timely and accurate information and improve transparency. The provision of more documents to prospective purchasers will help them make informed decisions. This supports trust in the unit titles system and allows people to interact in the market with confidence. The ability to cancel contracts where the pre-contract disclosure is defective or incomplete addresses instances where a seller provides disclosure that omitted a serious matter.	Medium – High	Medium

	Body corporate governance As noted previously, the removal of limits on proxies, and broadening the ability for non-natural entities to appoint people to represent them on BC committees, support the ability of unit owners to be involved in decision-making. This supports the integrity of the system and its attractiveness to prospective owners. *Long term maintenance, planning and funding* The requirement for LTM Plans to have a high level projection for 30 years will ensure that prospective owners of unit titled property will have a high level understanding of the future maintenance needs of the development they are purchasing.		
Total monetised benefits		-	-
Non-monetised benefits		*Medium - High*	*Medium*

What are the key assumptions underlying the cost benefit analysis?

333. The assumptions made in this RIS include that unit owners generally want greater protections under the UTA, and more information. Another assumption is that unit owners do not want a sharp increase in compliance requirements or costs. The proposals assume that unit title developments are governed by unit owners with a range of skills, experience and levels of knowledge of the UTA and other relevant matters. But the proposals also assume a general willingness to comply with obligations and operate in the best interests of the unit title development.

334. Another key assumption is that small developments are less complicated, and have fewer operational requirements, than large developments. Most of our proposed options in relation to body corporate managers and LTM Funds and LTM Plans (the Part 2A requirements), are based on the assumption that medium and large developments have greater management requirements and that the quantum of annual body corporate levies is also higher for those developments. However, that is not always the case, as some large developments may have limited funding, or may have just completed a remediation project. Submitters from large developments representing timeshare developments and “villa style” developments often noted that their developments are simply structured and have limited common property.

335. We consider the ability for medium and large developments to opt out of the Part 2A requirements counterbalances this assumption. Bodies corporate of large developments that do not require additional operational support may opt out of the additional requirements if they are too onerous or unnecessary for their development. Conversely, while we are not proposing the UTA to require it, we encourage the bodies

corporate of smaller developments to consider whether the new requirements based on size are appropriate to their situation.

336. One of the key assumptions underlying the cost benefit analysis is that reducing unit title fees will improve access to justice and increase applications to the Tribunal. s 9(2)(f)(iv)

337. s 9(2)(f)(iv)

If there are non-monetised costs or benefits identified, how has the impact (low/medium/high) been determined?

338. We have determined the impact of non-monetised costs or benefits by considering how the proposal will impact the unit titles sector. We have considered the number of stakeholders the proposed options will affect, as well as how significant a change the proposal is to the status quo.

339. We have also considered submissions made at select committee when determining the impact of a non-monetised cost or benefit. For example, numerous submitters representing individual bodies corporate commented that it would be a significant cost to impose a mandatory requirement to employ a body corporate manager (without an ability to opt out by special resolution) as required in the Bill. As such, we have assessed the non-monetised cost of our proposal to require medium and large bodies corporate to employ a body corporate manager (with an ability to opt out by special resolution) as “medium”. Our proposed option gives bodies corporate flexibility to opt out of the requirement, if the cost of employing a body corporate manager is too high, or if a body corporate manager is not suitable for the needs of their development.

340. As we have not tested the preferred options with stakeholders, we have not assessed the certainty of any of the proposed options as “high”.

Section 3: Delivering the preferred approach

How will the new arrangements be implemented?

Legislative Change

341. The options agreed by Cabinet will be presented to the Committee in their consideration of the Bill. If the Committee agrees with the proposals, they will be included in the Revised Track version of the Bill that is reported back to the House. The Bill is scheduled to be reported back to the House by 8 November 2021.

342. To give effect to the proposals, certain regulations are required:

    a. verification processes for remote attendance and voting at general meetings, and pre-meeting electronic voting

    b. the list of documents that the Chief Executive can request from a body corporate or body corporate manager, for the purposes of the Chief Executive's functions under the UTA.

343. HUD intends to undertake consultation with stakeholders on the policy relating to any proposed regulations.

Timing

344. Clause 2 of the Bill states that the Bill will come into force on one or more dates set by an Order in Council, with any remaining provisions brought into force within two years of the Bill's Royal Assent. HUD will provide advice on an appropriate commencement date, or dates, closer to the time of Royal Assent. A key consideration on the appropriate commencement date will be allowing sufficient time for parties to implement and prepare for the changes. In particular, MBIE will have significant implementation, including making the required ICT changes. Regulated parties, particularly body corporate managers, will need to sufficient time to prepare for the changes.

345. The passage of the Bill is subject to the rules for progressing Member's bills in Parliament. This makes it difficult to determine when the Bill might receive Royal Assent, but it is likely to be in early 2022.

Implementation Management

346. HUD and MBIE will develop a legislative implementation plan that will ensure:

    a. operational policies, processes and systems are in place to meet their responsibilities and give effect to the new requirements. Note that sufficient time is required to ensure a smooth transition to the new rules

    b. HUD and MBIE can deliver an effective communications programme that ensures key stakeholders understand the changes to the law, and have sufficient time to give effect to them

    c. The Tenancy Tribunal, and other government agencies with an interest in the reforms, are engaged appropriately

    d. HUD can meet its regulatory stewardship responsibilities, including monitoring and evaluating the impact of the proposed changes.

347. s 9(2)(f)(iv) [redacted]

s 9(2)(f)(iv)

Operational guidance

348. MBIE, as the regulator, would need to create operational policies and procedures to give effect to the proposed enforcement provisions. MBIE would develop operational guidelines for the new compliance and enforcement staff to ensure consistency in the application and effective use of the new tools.

s 9(2)(f)(iv)

Communications

350. The preferred option outlined in this RIS sees MBIE develop and implement a programme to improve the provision of unit titles information and education. s 9(2)(f)(iv)

351. This will help ensure that unit title stakeholders, including prospective unit owners, are made aware of their existing and new rights and obligations under the UTA. s 9(2)(f)(iv)

s 9(2)(f)(iv)

Implementation risks

354. There is a risk that the proposals increase complexity and compliance costs for unit owners and bodies corporate in running unit title developments. These increases may discourage prospective owners from buying unit title developments. This risk has been mitigated through considering each proposal to see whether it is proportional to the issue. In many cases, the proposal reduces the compliance cost from the Bill's proposals, or increases flexibility for bodies corporate to choose whether a requirement will apply in their situation.

355. s 9(2)(f)(iv)

356. There is a risk that regulated parties do not understand the proposed changes and therefore do not comply with them. This risk will be mitigated by the proposed information and education campaign.

How will the new arrangements be monitored, evaluated, and reviewed?

357. HUD is the regulatory steward for the unit titles system and will monitor the implementation of the whole set of changes in the Bill, including the changes proposed in this RIS.

358. HUD and MBIE will work to develop a monitoring plan for the proposed changes, which will set measures and identify the required data sources for monitoring the impact of the new provisions. There is currently no system-level monitoring of the UTA in place. This means that there may be a need to seek new sources of data, in order to effectively monitor the impact of the new provisions. This will be determined as part of the development of the monitoring plan.

359. Without pre-empting the planning work, we anticipate the approach will include data collection relating to the Tribunal. This could include the number of applications for mediation and adjudication and the types of issues being raised in the applications.

360. After implementation, HUD will also work across government and with key stakeholder groups to review the new provisions. This will enable the identification of any issues that need policy work leading to further legislative or regulatory change to address gaps or operational issues.

Annex A: Table of proposed pecuniary penalties

That the body corporate or body corporate manager has intentionally and without reasonable excuse…	Maximum penalty awardable against:	
	Bodies corporate	**Body corporate managers**
A body corporate manager has breached their duty under the UTA to: a) disclose a conflict of interest to the body corporate; or b) if engaged as a body corporate manager by more than one body corporate, to • act independently in relation to each body corporate • independently satisfy all matters for which the body corporate manager is responsible in relation to each body corporate or • not intermix the funds, records, or any other things of any body corporate with one or more of the other bodies corporate, and that action has materially negatively impacted on individual unit owners or the body corporate as whole	N/A	$5,000
Fails to comply with the Chief Executive's request for information under the UTA	$1,500	$1,500
Obstructs or hinders the Chief Executive or a person they authorise, in exercising their power of entry to a unit title development	$3,000	$3,000
Fails to comply with an improvement notice	$3,000	$3,000