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Consultation on the Unit Titles Act 2010 (UTA) Regulations 2023

Submission on behalf of the ADLS Property Law Committee

04 August 2023

The Auckland District Law Society (ADLS) is a national lawyers membership organisation which is responsible for drafting many of the standard forms and business agreements used by most people in New Zealand for the sale and purchase of land and leasing, often in consultation with the Real Estate Institute of New Zealand.

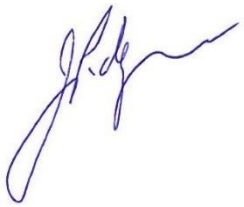
ADLS was part of the Unit Title Working Group and provided comprehensive submissions in writing and orally on the Unit Titles (Strengthening Governance and Other Matters) Amendment Act in 2021.

Upon the introduction of the Unit Titles Act 2010 (UTA), ADLS also produced a set of model operational rules for residential, commercial and mixed use developments that have regularly been used by developers and bodies corporate throughout the country, as the default statute operational rules are basic and do not address many matters of concern to bodies corporate.

The submission has been made following consideration of the Unit Titles Act 2010 Regulations Discussion Paper June 2023, as released by the Ministry of Housing and Urban Development.

Thank you for the opportunity to make submissions in respect of the Regulations. Please contact Daniel.Conway@adls.org.nz, Committee Executive to the ADLS committee, if you have any questions.

Yours sincerely,



Joanna Pidgeon

Convenor, ADLS Documents and Precedents Committee
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ADLS Submission on the Unit Titles Act 2010 (UTA) Regulations 2023

PART A

1. Do you agree with the reasons why regulations are needed?

1.1 Yes, these regulations will enable the implementation of matters within the UTA and provide greater clarity and guidance to parties involved with the UTA and its recent amendments. Providing prescribed lists, diagrams and procedures will give further context to the responsibilities of body corporates and body corporate managers, allowing them to exercise their obligations more effectively and transparently. They are an essential resource for all practitioners and professionals who work in the Unit Titles field in New Zealand.

1.2 Increased certainty is balanced against flexibility and lower compliance costs.

2. Do you have any comments on who will be affected by the proposals and how?

2.1 We agree with the identified parties and note that the proposals will affect those administering the Unit Titles system, such as Tenancy Tribunal adjudicators and regulators.

2.2 These regulations are said to apply to all bodies corporate, no matter their size. Though most proposed regulations are not of concern, those related to electronic voting and remote attendance procedures may disproportionately affect body corporates with fewer principal units, those being developments that do not fall under the definition of ‘large’. These bodies corporate do not have a legal requirement to engage a body corporate manager and therefore many do not and do not have the support and technology that a manager can provide.

2.3 The assumption that tenants will not be affected is true to the extent that they do not get to vote on matters, but as many units are rented, the decisions made by bodies corporate have a direct effect on renters, such as when there are leaky buildings, when decisions are made around repairs and maintenance. Tenants must also comply with operational rules, despite not owning the unit.

2.4 Kāinga Ora rents (and owns) many units in different body corporates, and impacts from some social housing tenancies have impacted on bodies corporate ability to obtain insurance and/or increased the price of insurance in some buildings where there has been damage and other issues associated with units being utilised for social housing.

2.5 Many owners have mortgages, and so mortgagees are also impacted by these changes, with particular impacts with large remediation projects. Problems with obtaining insurance in some parts of the country or when buildings are earthquake prone also impacts on owners and mortgagees alike. Recent flooding and extreme weather events are also impacting on bodies corporate and insurance also.

3 Do you consider that Māori interests are specifically affected by these proposals? If yes, how?

3.1 It appears likely that Māori interests as owners and tenants will be similar to those of other owners. We do not know the numbers of iwi or Māori owned units. Māori will be tenants in bodies corporate as will other ethnicities. It is important that housing is maintained with good and effective long term planning and so it is anticipated that the improvements in these areas will improve the standard of housing overall, with healthy homes and remediation issues impacting on all occupiers.

3.2 We are aware of some iwi developing leasehold unit title developments on iwi land, however the interplay there is between the Iwi trust as landlord and the body corporate and leasehold unit owners as lessees. As there is a different relationship with these whanau lessees than that of a completely arms' length leasehold situation we do not see these as being specifically affected by these proposals.

3.3 Traditionally Papakainga housing has used occupation licences rather than unit title developments for development.

3.4 We agree that Article 2 of Te Tiriti is not engaged by the proposals, and that that in unit titles there is a dynamic between the rights and obligations of the individual ownership as well as a responsibility to the collective, and that unit title governance may not reflect a tikanga Māori approach to property ownership.

4. Do you consider that the Māori and Iwi Housing Innovation (MAIHI) Ka Ora principles are useful for considering these proposals in relation to Māori unit owners?

4.1 We support obtaining equitable housing outcomes for Māori. There are also other housing ethnicities such as Pacifica who also need to obtain equitable housing outcomes. MAIHI Ka Ora does have some principles which can be used to consider whether the proposed regulations support Māori housing or impose barriers. Such consideration will provide the opportunity to examine the proposed regulations, such as tino rangatiratanga to ensure that the processes for voting etc support engagement in decision making rather than being a barrier. Also with Manaakitanga – ensuring that there are mechanisms of engaging and building relationships within bodies corporate. With Whakamana - empowering whānau intergenerationally - it is important that there is good governance and good maintenance and disclosure as when there are buildings which are poorly maintained and need remediation this can be financially devastating for families intergenerationally. With Tikanga - doing things right, being in the right place at the right time – ensuring that body corporate processes are clear and easy to follow so that owners are not disenfranchised by being unable to vote and so on.

4.2 Some of our comments in later sections will touch on where with the principles of MAIHI Ka Ora the regulations can be improved.

4.3 We would encourage more study in these areas and note that the UTA will interplay with other property structural relationships such as leasehold when developing Iwi owned land.

5. Do you consider a template or practice notice would be of value to support bodies corporate to take a levy claim through the Tribunal without engaging a lawyer?

5.1 Yes, templates and practice notes will support the ability to bring a levy claims before the Tenancy Tribunal more easily without necessarily engaging a lawyer and this will improve access to justice with lower costs. This is especially true of undisputed levy claims which form a significant part of the Tribunal's case load. Ensuring that documentation is correct will enhance the efficiency of hearings by promoting the correct use of documentation, which is especially important given current court

system delays. Practice notes will also assist junior lawyers to appear at a lower cost if legal representation is sought.

5.2 However given that body corporates are staffed by volunteer committees and body corporate managers are over worked and because the current levy collection system is not streamlined or fast track for undefended levy claims, and there are a lot of technical requirements to be met for a successful levy claim, whether defended or not, and we envisage most bodies corporate will continue to engage lawyers to handle that for them.

PART B

Section 1: Information Requests

1. Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 1)?

1.1 ADLS agrees with the objectives of the Regulations. The regulator needs the opportunity to request sufficient information to see whether it needs to exercise its functions and powers without being too onerous on bodies corporate and body corporate managers. The Regulations need to provide clarity as to what is required and which documents need to be retained.

1.2 It is also important to realise that while body corporate managers will usually store electronically most information from the manager, that individual committee members will have their own email systems often without formal document management systems, may change jobs and email addresses and people buy and sell units, and join and depart the committee and the current BC committee may be unable to access that information held by past committee members without a court order.

1.3 The Regulations need to be clear how long the information is saved for as well. We note new section 202A(1) (in force on 9 May 2024) requires the documents in the prescribed list to be retained for at least three years. Retaining documents for this period will likely increase document storage costs (physical and/or electronically) for body corporate managers who will likely pass that cost on to their body corporate client via their annual fee. We note however that parties may file proceedings up to

6 years from the date of the cause of action, and that for building claims this is a period of 10 years.

1.4 We also need to remember that some bodies corporate are self-managed and those bodies corporate will have greater difficulty complying with these Regulations.

2. Do you agree with the preferred option (Option Two)?

2.1 Remembering that the Regulator is going to usually be alerted to a problem to investigate by a complaint from an Owner or a Body Corporate who will have access to some information themselves, such as correspondence in relation to levies. We need to ask what the purpose is of obtaining the information.

2.2 For Financial Information we would agree with Option 2 with the addition of correspondence in relation to audits as just the audits themselves might not reveal concerns raised by the auditors.

2.3 For Maintenance Information we would agree with Option 2. However, we question why correspondence between a body corporate and a building consultant regarding the long-term maintenance plan is needed. We comment further below.

2.4 For Governance Information we would agree with Option 2. However, we recommend the reference to “terms of employment” for a body corporate manager is removed. They will have a written agreement, but they are not usually employees.

2.5 For Other Information we agree with Option 3 as issues being raised about conflicts are important. However, we favour limiting this to a conflicted committee member or body corporate manager’s written notification to the committee that they have a conflict of interest, or have failed to notify. This step must occur alongside making an entry into the Interests Register. If notice hasn’t been given where there is a conflict this should be apparent from copies of the minutes and interests register.

2.6 We would also like to see a shorter retention time period placed on some of the documents. E.g., Holding the proxy and postal voting forms for a meeting for three years seems too long and unnecessary. Our preference would be these are held for the longer of 1 year from the meeting and the next AGM.

2.7 We recommend the new regulation states that the documents can be retained in either hard copy or electronic format. This means the body corporate and body corporate manager can choose themselves whether they keep an original or not. This is on the assumption that the MBIE Chief Executive will accept electronic versions when requesting documents. We would hope that to be the case as expecting bodies corporate and body corporate managers to hold and hand over hard copies is unreasonable and too costly and burdensome given current technology available for electronic storage purposes.

3. Are there any specific documents that you believe should not be included in the prescribed list? If so, please name the document and describe the reason it should not be included.

3.1 For Maintenance Information is correspondence needed with the building consultant – isn't what is needed is just evidence that a building consultant has been consulted – e.g., a copy of their advice and/or report should be enough?

3.2 The 'large' body corporate has either complied with the requirement to consult with a building consultant when preparing and reviewing their long-term maintenance plan" (LTMP), or they have not. The body corporate will either have advice and/or a report from the building consultant evidencing such compliance, or they it will not. We do not see retention of "correspondence" in relation to this as being necessary. Plus, this correspondence could potentially be a huge amount of documentation which may be very difficult to compile being on body corporate manager's files and individual committee members files that may or may not still own in the building.

3.2 Our preference is to see "correspondence" removed and replaced with "evidence of consultation with a building consultant in relation to the development of a LTMP".

3.3 For Governance Information what evidence of compliance with a designated resolution is required and for how long? Often lawyers carry out designated resolution processes and the body corporate and body corporate manager will not hold such information. Often the body corporate doesn't hold the insurance policy – they have confirmation of cover but not the full policy which needs to be obtained from the broker.

4. In relation to Option Three, do you have any comments on introducing the ability for the regulator to request additional correspondence in relation to particular documents?

4.1 For Financial Information we would like the addition of correspondence in relation to audits as just the audits themselves might not reveal concerns raised by the auditors.

4.2 For Other Information we agree with Option 3 as issues being raised about conflicts are important, but please see our comment above suggesting the focus is on the notification made by the conflicted party.

5 Do you consider that Māori interests are specifically affected by these proposals, and how?

5.1 We believe that transparency leading to better understanding benefits Māori interests in the same way as all ethnicity interests.

6 Do you have any additional comments you would like to make?

6.1 Good clear guidance as to the method of storing and for how long the information is required to be held for is important. Guidance on how to handle information held by committee members current and past would also be helpful.

<u>Section 2: Electronic voting and remote attendance procedures</u>

1. Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 2)?

1.1 ADLS notes the proposed objectives for the electronic voting and remote attendance regulations are as follows (page 39, MHUD UT Act Regulations discussion paper (**MHUD Paper**)):

a) *enable accessibility for unit owners to participate in body corporate governance remotely;*
b) *uphold the integrity of electronic voting and remote attendance by ensuring the processes and procedures are secure and have a similar level of privacy as in-person meetings;*
c) *allow for a sufficient degree of flexibility to provide for the different requirements of different bodies corporate, appropriate to their size and needs.*

1.2 ADLS agrees with objectives (a) and (c) above. However, we believe objective (b) should place emphasis on ensuring the processes and procedures for attending and voting at general meetings by remote means are similar to those used when attending and voting in person. We feel the reference to having a "similar level of privacy as an in-person meeting" is not relevant as the Privacy Act 2020 obligations around receiving and holding personal information are the same regardless, as is pointed out on page 40 of the MHUD Paper.

1.3 It is ADLS's view that objective (c) should instead read (our edits in **bold**):

c) *uphold the integrity of electronic voting and remote attendance* ***by ensuring the processes and procedures and security of information held are similar to those used for in-person attendance and voting;***

1.4 It is ADLS' view that the current wording of objective (c) has caused aspects of the electronic voting and remote attendance Options 2 and 3 to be too prescriptive and ultimately unworkable in practice, particularly around owner identity verification.

1.5 As noted on page 17 of the MHUD Paper, the ability for a unit owner to attend a general meeting by remote means was introduced into the Unit Titles Act 2010 (UTA) on 25 March 2020 due to Covid-19. Since then, bodies corporate and body corporate managers have been implementing remote attendance and related voting processes and procedures at general meetings for almost 3 ½ years. ADLS understands, anecdotally, that bodies corporate and body corporate managers across the country have adopted their own processes and procedures during this time and which are working effectively. ADLS is unaware of any evidence that these processes and procedures are undermining the integrity of remote attendance and electronic voting (in its current unregulated form).

1.6 ADLS agrees with the overall aim of Options 1, 2 and 3 for electronic voting and remote attendance - to "balance providing effective remote access to unit owners with allowing for a reasonable degree of flexibility for bodies corporate." However, ADLS believes the proposed options need to be measured against

(a) what is currently happening in practice; and

(b) what is already required under the UTA for a person attending and voting at a meeting in person.

1.7 ADLS notes there are no identify verification requirements under the UTA for a unit owner attending a meeting in person, and there never has been since the UTA legislation was introduced in 1972. Over the past 50 years there has been no change to this practice. ADLS is reluctant to support imposing a higher threshold of owner identify verification on electronic voting and remote attendance, when compared to in person requirements. There appears to be no clear evidence that such higher thresholds are needed for electronic voting and remote attendance.

1.8 For smaller bodies corporate owners and managers will often know each other. Owners register at meetings currently (whether in person or online) and if there is an issue as to who the person is and what unit they represent that is addressed at the time. The manager/chairperson will have a list of owners and whether levies are paid and people are ticked off against that list. If a proxy or a postal vote has been received for that unit that is reconciled at the time.

1.9 ADLS understands that generally current industry processes and procedures for owners attending and voting at meetings remotely are working adequately. Therefore, it seems we should not try to fix something that is not yet broken. Instead, it seems more sensible to formalise and validate practices that bodies corporate are already using.

1.10 If too much prescriptive rigor is added to an element of the UTA that is already working adequately, there is a real risk of it

(a) significantly increasing costs and burden on bodies corporate (e.g., needing to invest in or change technology to comply, and self-managed bodies corporate needing to engage a body corporate manager etc);

(b) becoming unworkable,

(c) if registration processes take too long some owners will leave meetings early or give up registering thereby disenfranchising owners; and

(d) ultimately leading to costly and unnecessary disputes.

1.11 Our comments below focus on electronic voting and remote attendance for body corporate general meetings as that has been the focus of the MHUD Paper. Please see our comment on committee meetings at paragraph 2.7.4 below.

2. Do you agree with the preferred option (option two)?

2.1 No, ADLS does not agree with Option 2 for electronic voting and remote attendance procedures, in the form currently proposed.

2.2 For the reasons set out above, we would prefer to see a combination of Option 1 and Option 2, set out as follows (using table headings from page 18 to 22, MHUD Paper):

Definition of an 'electronic vote'

a) We agree with Option 2. Including the "submission of a postal vote form via email or similar" in the definition of "electronic vote" is essential to ensure that self-managed bodies corporate that do not have access to pre-meeting voting software are able to treat receiving a postal vote by email or similar as an "electronic vote". If this is not included in the definition, then a self-managed body corporate (plus some that are managed) would need to purchase and implement pre-meeting voting software which is an unreasonable burden and cost on them. If they did not do so, they would be in breach of new section 103A by not providing a means of electronic voting. However, if someone is attending a meeting by telephone for example or by audiovisual means, voting by verbally voting needs to be expressly included in the definition of electronic voting.

Notification of intent to attend meeting (RSVP)

b) We agree with Option 2. An RSVP may be used to influence the size of the in-person meeting, but Bodies Corporate may not prevent owners from attending in person if they have not RSVP'd as we note section 88(3) UTA provides that owners have a legal right to attend a meeting either in person or by remote means. Other ways that this good by done by might be a survey monkey or a similar tool before an AGM, rather than an RSVP to the actual meeting. We

would suggest this could be amended along the lines of the Body Corporate may solicit preferences before a meeting as to whether owners wish to attend a meeting in person or online, and then organise meeting space to cater to anticipated meeting numbers. In that way, if there aren't enough seats in a meeting venue, the owners who didn't indicate they would attend in person would have some responsibility for the lack of seating for example.

c) An RSVP is a tool currently used by some body corporate managers to gauge the likely number of owners attending in person and online, and to plan the meeting accordingly. However, most often the physical meeting room for the general meeting is already booked before any such RSVP is sent out hence better to have an indication of method of attendance ahead of time rather than a specific RSVP if desired. ADLS understands the "RSVP" tool is mostly used to enable an owner to pre-register to attend remotely and to receive the meeting link.

d) There is no legal obligation on an owner to respond to a meeting notice or agenda, nor any other form of RSVP, and in ADLS' view there should not be any such obligation. An owner is essentially free to decide up to the last minute whether they attend the meeting or not, and how they attend. An owner's response to an RSVP should not be connected to their right to attend the meeting, nor the way in which they attend. ADLS understands, anecdotally, that generally owner responses to a meeting notice are low anyway. So, it seems that adding an additional RSVP step to the process is highly unlikely to be adopted by owners and is not desirable.

e) As noted, some body corporate managers use the RSVP/indication of method of attendance tool to help meeting preparation and management. They should be able to continue to do so, but ADLS note that it should not bind owners to their method of meeting attendance but is merely a tool, if desired to be used to assist bodies corporate with not having to book rooms which are too large and expensive and gives them protection from being criticised from under catering for meeting numbers. This tool will however hold no legal weight in terms of committing an owner to attendance.

Information to be provided to unit owners regarding access to remote attendance and electronic voting (during a meeting)

f) We agree with Option 2, with one deletion set out below (see para (h)).

g) We recommend this information is added to the list of documents/information that must accompany the notice of a general meeting (i.e., the Agenda) under existing Regulations 6(4), 8(2) and 8A(5).

h) We believe the reference to "the text of a motion to be decided" in Option 2 should be deleted from the instruction information to be provide as it is not required. Bodies corporate and their managers are already sending out information to owners on how to attend a general meeting remotely and how to vote prior to the meeting. This is being sent together with the meeting Agenda which must contain the motions (see existing Regs 6(4)(b), 8(2)(c) or 8A(5)(c). There is no need to require the motions to be sent out again within these instruction documents. This is an unnecessary double up.

i) The motions listed in the Agenda have legal standing under existing Regs 6(4)(b), 8(2)(c) and 8A(5)(c). They are the motions that must be considered and voted on at, or prior to, the meeting. Adding the text of these motions into the instruction document as well will only complicates matters, add an unnecessary step, and open up possible disputes. For example, if a motion listed in the instruction document differs from the motions listed in the Agenda in error, we see legal disputes arising over which is the valid wording. The motions in the Agenda should always take precedence.

j) If the intention is that the electronic voting platform (provided by the body corporate to owners to cast their vote) must contain the text of motions, then that seems sensible and needs to be made clearer, however given that many electronic voting platforms are actually just zoom or teams meetings this may be difficult for all to achieve given some people may not be good sharing screens to show resolutions etc. All owners at the meeting should have the agenda in front of them which has the text of the motions.

Information to be provided regarding the voting process for pre-meeting voting

k) We agree with Option 2.

l) This information could be included in the list of documents/info that must accompany the Agenda for a general meeting, under existing Regs 6(4), 8(2)

and 8A(5).

m) We support the requirement for this information, but it should be left for each body corporate to draft their own as this will be different from body corporate to body corporate and will depend on the form(s) of electronic voting a body corporate provides.

n) The closing date and time of a pre-meeting electronic vote should also be left for the body corporate to determine, as again this will depend on the form(s) of electronic voting a body corporate provides.

o) However, the validity of a pre-meeting electronic vote if a meeting is adjourned or a motion is materially amended at a general meeting should not be left up to a body corporate to determine. These should be expressly stated in the new regulations. We refer to our comments on these important aspects in paragraphs (ee) to (jj) below.

p) Assuming postal votes submitted by email or similar are treated as an "electronic vote", it is essential that the new regulations acknowledge that postal votes are already subject to certain requirements in the UTA. The UTA already addresses the date postal voting closes and the validity of a postal vote if a general meeting is adjourned or a motion is materially amended at a meeting. We do not recommend those are changed. We recommend any new regulations address all other forms of "electronic voting" only.

q) To assist, we list the current requirements for postal votes:

    i) Section 103(3) – a postal vote must be sent to the chairperson or the person authorised by the chairperson to receive postal votes;

    ii) Section 103(2) – every postal vote must use Prescribed Form 12 from the UT Regulations;

    iii) Prescribed Form 12 for Postal Voting in the UT Regs – allows insertion of a cut-off date for postal votes and who they are to be returned to;

    iv) Regulation 15(1) - If a motion is materially amended at a general meeting, a postal vote cast on the motion must not be counted in

relation to that motion, but may still be counted for the purposes of achieving a quorum under regulation 13(1).

v) Regulation 15(2) - If a general meeting is adjourned, a postal vote remains valid for the purposes of the reconvened meeting, unless the voter who cast the postal vote attends the reconvened meeting in person or by proxy.

r) We see the above as adequate and do not see any need for amendments to the above for the purposes of postal votes as "electronic votes".

When access to pre-meeting electronic voting must be provided

s) We agree with Option 2. Access to pre-meeting electronic voting should be available from the time the general meeting Agenda is issued, even if this is issued earlier than the minimum prescribed time in Regulations 6, 8 or 8A. Voting via a postal form is already available from this time onwards also, and the postal voting form must accompany the Agenda.

Notification that a proxy wishes to attend a meeting remotely

t) We agree with Option 2.

u) However, we recommend the wording is altered to say: (a) a proxy form appointing a person who will attend a general meeting remotely must be submitted to the body corporate within the time determined by the body corporate and noted on the proxy form; and (b) the time determined by the body corporate must be no earlier than 24 hours prior to the general meeting.

v) We encourage cross checking this new requirement with existing proxy form requirements. For a proxy attending remotely, existing Regulation 14(4) can be used and modified accordingly, and existing Regs 14(1) to (3) will also apply. Existing Reg 14(5) should not apply.

Amount of time prior to a meeting that a pre-meeting electronic vote must be cast

w) We agree with Option 2. This enables the body corporate to determine the cut-off day/time for the return of electronic votes. This ensures flexibility and

enables time for tallying votes and meeting preparation prior to commencement. This is already the approach used for postal votes (see paragraph 2.2.2(q) above).

Identity Verification process – addressed immediately prior or during the meeting

x) We do not agree with Option 2 as presented for identify verification processes. For this part, we wish to see a combination of Options 1 and 2 from page 21 MHUD Paper. We set out our recommendation in paragraph (z).

y) First, our reasons for not supporting Option 2 as presented are these:

i) Verifying an owner's identity when attending a general meeting remotely should not be any more onerous than when they attend in person.

ii) There is no requirement under the UTA for a body corporate to verify that a person attending a meeting "in person" is the person named on the legal record of title for the unit. In practice, an attendance register is signed by all those attending "in person" noting their name and unit number. The person attending is not required to provide evidence they are the owner noted on the legal title, (e.g., via their drivers licence or passport). There is no legal requirement to do so, nor is there any legal requirement to sign an owners register. This means, in theory, someone could attend in person and impersonate an owner. In smaller bodies corporate owners are recognised by other owners and/or known by the manager. If anyone was concerned about verifying an identity eg there purported to be 2 different people claiming to be an owner at a meeting this would be addressed at that time, however, unless someone raises an identity issue, the body corporate accepts that people are who they say they are. If someone was concerned that someone falsely represented them at a meeting that owner would need to raise and address the issue. Requiring the body corporate to verify the identity of every person attending a meeting "in person" to check they are an owner places an unwarranted obligation on the body corporate.

iii) ADLS believes the same approach should apply to owners attending meeting remotely. The onus should not be on the body corporate to ensure the person attending remotely is who they say they are and is

the owner on the legal title. They will identify themselves and their unit number and it is only if someone raises an issue that additional verification might be undertaken.

iv) Based on ADLS's discussions with other stakeholders and body corporate managers, the Society takes the view that requiring an owner to use only their email address or phone number in the owners' register to sign in/call in as a remote attendee at a meeting is unworkable in practice. There are various reasons for this.

v) Often there are co-owners resulting in more than one email address and phone number in the owners' register, causing uncertainty over which one must be used and creating an issue when they all enter the meeting remotely via different emails.

vi) Often an owner will forward the meeting link to a different email and enter the meeting from that email which is not in the owners' register. Or they forward the meeting link to their proxy's email and the proxy enters the meeting remotely from an email that is not in the owners' register.

vii) The same issue arises with phone numbers. Often an owner will call in to a meeting from a different phone number that is not in the owners' register. They may be at work, on holiday, or oversees, using a work, family member, or friend's phone etc instead. There may be multiple owners of a unit also Often a group of owners will meet in another owner's apartment and use only one zoom link for multiple owners to watch and vote but only one unit would have logged in.

viii) In practice, there are many different scenarios that can occur when an owner is attending remotely that would not fit with the proposal that the email or phone number from the owners' register must be used. Making it mandatory to use the email or phone number in the owners' register is too prescriptive and we envisage it causing numerous disputes, particularly where a matter at a meeting is contentious and owners and their legal advisors look for non-compliance around the running of the meeting in order to invalidate the entire meeting and related voting.

ix) It is also important to note that an owner does not technically “enter” or “log in” to a remote meeting software platform (such as Zoom, Teams, Google Meet etc) using their email. They are emailed a link, and then any person can click on that link to enter the meeting (including someone other than the owner). In practice, the meeting chair will ask each remote attendee to write their name in the “meeting participant” function so it appears on the corner of their video. The chair will take an attendance register of those attending remotely (just as is they do for “in person” attendees) and will note their attendance in the meeting minutes. So, the wording proposed that an owner must “enter” a meeting remotely using their email in the owners’ register does not work from a technical sense either.

x) ADLS is also concerned that restricting remote meeting attendance and electronic voting to an email address only will prohibit the use of other technology, current and new. For example, there are other platforms available such as tokens and codes that enable the submission of a secure electronic vote and we are aware of a body corporate management company using this method already. Limiting such matters to an email address only means the industry is unable to harness this new technology and use it to improve processes and security.

xi) Owners must provide their email or a postal address to the body corporate for the owners register as their preferred method of contact (see section 85(2) UTA and Reg 4). The body corporate must issue meeting notices and agendas to that email or postal address (see Regs 5(1), 6(1), 7(1), 8(1) and 8A(1).) The existing requirement that agendas and accompanying information must be issued to this email or postal address should be treated as a sufficient means of the body corporate identifying the owner as the correct recipient of this information. Requiring the body corporate to take further steps to verify the identity of the person that attends the meeting or votes is unnecessary and unwarranted.

xii) In terms of a post-meeting audit of the voting at a meeting, ADLS understands that if an owner challenges the votes and a body corporate wishes to undertake this task, meeting records such as the minutes, attendance registers, proxy forms, and postal voting forms will be used.

An audit will not include verification of the identity of each remote attendee via checking their identification or email or phone number used when “entering” the meeting. Nor would the latter actually be possible in practice post-meeting.

What does ADLS wish to see re identify verification processes?

xiii) ADLS supports the need for some level of identity verification of those attending remotely so that the meeting chair knows who is voting for which unit and can calculate the quorum and voting, and complete the meeting minutes. This makes the approach consistent with, and no more onerous than, what currently occurs for in person attendees.

xiv) ADLS understands that chairs and body corporate managers have now come to grips with facilitating remote attendance at meetings in the past 3 ½ years, and they now seek reassurance that the practices they have adopted for remote attendance and voting are legally valid.

xv) ADLS believes the solution is to provide guidance to the industry clarifying that:

- a vote by an owner or proxy attending a meeting by audio link, audio visual link, or other remote means, can be accepted if given verbally, or by raise of hand, or by an online ballot, or by a written note within the remote access facility, or by some other similar means available within the remote access facility; and

- a body corporate may adopt its own practices to identify and record owners attending a general meeting remotely, and to identify and record their voting during the meeting.

z) Based on the above, ADLS wishes to see a combination of proposed Options 1 and 2 for identify verification processes from page 21, MHUD Paper), as set out below - with recommended edits in ***bold/italics***:

i) electronic voting system must include reasonable measures for verifying the identify of each unit owner – from Option 1

ii) Bodies Corporate can determine what is appropriate for their circumstances – from Option 1

iii) We recommend the following be added – ***Guidance issued to make clear that a vote by an owner or proxy attending a meeting by audio link, audio visual link, or other remote access facility, can be accepted if given verbally, or by a raise of hand, or by an online ballot, or by a written note within the remote access facility, or by some other similar means available within the remote access facility to indicate the voting intention of the voter.***

iv) We recommend the following be added – ***Guidance issued to make it clear that a body corporate may adopt its own practices to identify and record owners attending a general meeting remotely, and to identify and record their voting during the meeting***.

v) Guidance issued to make clear that the ***meeting*** chairperson should engage with ~~***and identify***~~ all proxy holders, ***whether*** attending ***in person or*** remotely, and establish which unit(s) they represent for voting purposes – from Option 2

vi) Guidance issued to make clear that the ***meeting*** chairperson should engage with ~~***and identify***~~ all co-owners ***of a unit present, whether attending in person or remotely***, and establish which co-owner shall vot~~e~~ for the unit – from Option 2.

vii) We recommend the following be added – ***Guidance to make clear that the meeting chairperson should engage with any owners that appear to be attending remotely as a group by sharing a means of remote access, and establish which unit(s) they represent for voting purposes.***

aa) ADLS sees the above combination as meeting MHUD's proposed objectives and measurement criteria on the basis of "ease of implementation, being workable in practice, implementation can be achieved, and unintended consequences being low" (page 39, MUD Paper). Also allowing for necessary flexibility and changes in technology.

bb) The above formalises what is already occurring in practice, together with accompanying guidance.

Whether or not a pre-meeting electronic vote can be changed – at a meeting

cc) We agree with Option 2, that the regulations should not prevent a pre-meeting electronic vote from being changed at a meeting.

dd) However, we believe this is only workable if the owner that submitted the pre-meeting electronic vote is in attendance at the meeting. To address this, we recommend the regulations makes it clear that a pre-meeting electronic vote cast prior to the meeting may only be changed at the meeting if the owner or their proxy is in attendance at the meeting. This would include postal votes, assuming they are included in the definition of ”electronic vote”.

Validity of a pre-meeting electronic vote in the case of a reconvened meeting

ee) We agree with Option 2 and support a pre-meeting electronic vote remaining valid for the purposes of a reconvened meeting, unless the voter who cast the vote attends the reconvened meeting in person or by proxy.

ff) This is consistent with the current treatment of a postal vote which remains valid for a reconvened meeting, unless the voter who cast the vote attends the reconvened meeting in person or by proxy – as per existing Reg 15(2).

Status of a pre-meeting electronic vote if a resolution is substantially changed at a general meeting

gg) We agree with Option 2 and support a pre-meeting electronic vote on a particular resolution not being included in the voting count if that resolution is materially amended at the general meeting.

hh) This is consistent with the current treatment of a postal vote in this scenario – as per existing Reg 15(1).

ii) However, the regulations should also record that the electronic vote can still be used to establish a quorum under existing Reg 13(1), just as Reg

15(1) does for postal votes in that scenario.

jj) This also highlights the need to update existing Reg 13(1) to refer to "electronic voting" alongside postal votes. When "electronic voting" comes into force existing Reg 13(1) must also be changed to say (our edit in ***bold):***

"A general meeting of a body corporate may proceed without a quorum if the persons who have cast postal votes and electronic votes together with those present are entitled to exercise voting power….. "

Ensuring remote attendees can participate in the meeting (audio/visual)

kk) We agree with Option 2. Given owners have a legal right to attend a meeting by remote means (section 88 UTA), it is reasonable to include the corresponding obligation on the body corporate to provide such audio and visual means.

ll) The use of the term "reasonable" throughout the proposal is essential in our view, as it ensures owners are unable to make unreasonable demands on the body corporate.

39) However, we would like to see the regulation also state that "the choice of the audio and visual remote access facilities that is used for a meeting is a matter for the body corporate", or something similar, to make it clear that owners cannot request a specific type of audio and visual remote access facility.

Post-meeting - Storage of votes and proxy forms

nn) We agree with Option 2, but not in its current form. We recommend the reference to "all votes" be changed to "all voting records". We also recommend adding reference to electronic storage being sufficient.

oo) We also recommend it be made clear this applies to body corporate general meetings, not committee meetings.

3. Do you believe a postal vote submitted via email or similar communication software prior to a meeting should be included in the definition of an electronic vote?

3.1 Yes, ADLS does believe this should be included. Please see comments at paragraphs 2.2.2 (p) to (r) above.

4. Do you have any particular views on how a unit owner who wishes to attend a meeting remotely should have to verify their identity?

4.1 Please see our comments and proposals in paragraphs 2.2.2(x) to (bb) above.

5. Do you have any suggestions on how a body corporate should be required to ensure that remote attendees can participate in a meeting?

5.1 ADLS wishes to see the body corporate retaining the ability to choose for itself which audio and visual remote facility to use. This is current practice and we see no reason to change this.

5.2 However, we do suggest that the audio facility must include the ability of an owner to call in by phone (i.e., by mobile or landline) and should not be solely audio within a meeting software package. This ensures that an owner with no internet access can still attend remotely by calling in via phone.

5.3 However, we do suggest that the audio facility must include the ability of an owner to call in by phone (i.e., by mobile or landline) and should not be solely audio within a meeting software package. This ensures that an owner with no internet access can still attend remotely by calling in via phone.

6. Do you consider that Māori interests are specifically affected by these proposals, and how?

6.1 It is important for all owners including Māori that the regulations do not impose barriers or disenfranchise owners and support involvement in decision making.

Clarity about processes will hopefully remove disputes and encourage engaging and building relationships within bodies corporate. Body corporate processes need to be clear and easy to follow so that owners are not disenfranchised by being unable to vote and be involved and some flexibility. Access to technology for hybrid meetings can be an issue for older owners (who often join a fellow owner with technology in their home to participate or a younger family member) so prescriptive logins could be difficult and disenfranchising.

7. Do you have any additional comments you would like to make?

Committee members attending Committee meetings by remote means

7.1 Committee members have a legal right to attend a committee meeting either in person or by remote means (section 88 UTA). However, electronic votes will only (and should only) apply to body corporate general meetings (new section 103A), in the same way that postal voting forms and proxy forms only apply to body corporate general meetings (sections 102 and 103 UTA).

7.2 This means when the regulations for electronic voting and remote attendance are drafted, very careful consideration is needed to ensure that committee meetings do not get included inadvertently. The drafting will need to be very clear that these requirements apply to body corporate general meetings only.

7.3 We recommend the regulations stay silent on matters of remote attendance at committee meetings. We see no need or justification to regulate committee meetings any further at this stage and each committee can decide within the existing rules how best they wish to run their meetings.

Mandatory requirement for general meetings to by hybrid – allowing both in person and remote attendance

7.4 We ask that MHUD please consider reviewing section 88 which gives owners a legal right to attend a general meeting via remote means or in person. Section 88 as it currently stands means a body corporate must always run a hybrid general meeting to accommodate both in person and remote attendance. The industry feedback ADLS is receiving is that hybrid meetings are particularly challenging. ADLS askes MHUD to consider reviewing this section in the short term (with

stakeholder and public consultation) to find a solution that will enable a body corporate to have additional options to hold a general meeting entirely by remote means or entirely in person.

Section 3: Determination of Legal costs in the Tenancy Tribunal

1. Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 3)?

1.1 ADLS supports the aim of providing a lower cost approach to determining unit title claims in the Tribunal but believes that this is best directed by providing more streamlined processes of determining these disputes, such as having a fast-track undefended levy process which enables hearing by telephone rather than a personal appearance by Counsel. Scale and fixed costs do not limit the costs incurred by a party as the party instructing the lawyer will always pick up the costs incurred beyond the fixed and scale costs having passed these on in full to their client. By having scale or fixed costs regime there is an incorrect presumption that this will reduce the cost of the process, without taking into account that the body corporate who is collecting the unpaid levies will have to pick up the costs shortfall from the "innocent", being all remaining owners in the body corporate to their detriment and to the benefit of the defaulting unit owner that did not pay the levy in the first place.

1.2 One of the key rationales behind having scale costs for court disputes is so that a party can work out what their cost liability will be if the dispute is not settled and make a decision whether to settle or not. In the case of a body corporate, owners are required by law to pay their levies in full (section 80(1)(f) UTA) and the body corporate is obligated to pursue all of the levies and recover the debt. The levies raised are necessary to operate the building(s) on an ongoing basis and meet all statutory requirements. This means a settlement for only part of the levies owing is not appropriate and would impoverish the body corporate as a whole and see all the body corporate owners levied further to cover the shortfall in levies and costs. Payment of body corporate levies is a legal obligation of all owners and they should bear the actual reasonable costs of defaulting. This is different from a dispute where there can be wrongs and rights on both sides.

1.3 The Regulations while admirable in their intent will not reduce the costs of the process (including legal) and will see bodies corporate unfairly picking up the balance of the actual costs. This is the same in all other court cases where there are fixed or scale costs. However, in the context of a body corporate and the strict obligations owners have to pay all levies, the body corporate should not be subsidising the costs of collecting from defaulting owners when there is no valid defence to not paying the levies. The only party this favours is the defaulting owner.

1.4 Section 124 of the Unit Titles Act 2010 entitles the Body Corporate to recover any reasonable costs incurred in collecting money as a debt due. The current situation where the Tenancy Tribunal awards costs on a reasonable basis is working well. Rather than set fixed costs or scale costs, if the intention is to reduce costs for the benefit of all we see a prime opportunity for government to improve the Tribunal processes making the levy debt collection process much more efficient, which in turn would likely reduce the costs spent by a body corporate in recovering the debt. This is especially true for undisputed levy proceedings which under the current system still require the application to be completed online in the same format as a complex dispute and the attendance of the parties in person at a hearing. There is significant scope to streamline this process for these types of applications.

1.5 If a Tenancy Tribunal adjudicator thinks that the costs claimed are unreasonable they have the ability to make reduced cost order and there is already a known body of precedent decisions that have been issued by the Tribunal over time that regulates this satisfactorily . Having scale or fixed costs will always be a blunt tool, and to have a fair amount will always see the possibility of unders and overs in charging, and so we believe it is appropriate for the Tenancy Tribunal to have the ability to award reasonable costs as they can take into account relevant factors.

1.6 The reduction in the filing fee for levy claims will already have a significant impact on reducing costs of undefended levy proceedings.

2. Do you agree with Option 2 as the preferred option?

2.1 Our preference would be for the cost regime to remain as it is with efforts made to make the levy collection process simpler and more streamlined to reduce costs rather

than fixing costs. If this is not accepted our preference would be for Option 2 with fixed costs for levy claims only.

2.2 This is because this method gives clarity as to what the costs will be rather than there being arguments over complexity and level of experience. Undefended levy claims should usually be the same in terms of the elements of proving the claim, however depending on how long the arrears have been accruing (plus penalty interest if charged) and the total value of the outstanding debt there may be more complexity in the amount of documentation to prove the claim.

3. Do you agree with the proposed award of a fixed cost of $1,800 for legal costs following a levy recovery claim in the Tribunal?

3.1 ADLS does not agree with $1800 (and we presume plus GST) for fixed costs as it does not allow for all of the elements of the process for debt collecting. Body corporates usually approve a debt collecting regime at each AGM setting out the process for collecting undisputed levies, including penalty interest as provided for in the Unit Titles Act 2010.

3.2 Costs typically awarded are around $3,000 plus GST and disbursements including reimbursing the filing fee. Any scale needs to make sure there is the ability to also collect disbursements and GST.

3.3 The work required to recover an undisputed debt of $1,500 with no interest being recovered would likely be vastly different to a disputed debt of over $80,000 which has an interest component running over multiple years of levies, highlights the inadequacy of adopting a fixed fee regime.

4. Do you agree with the activities identified, and costs apportioned in Table 5?

4.1 ADLS does not agree that all costs incurred are covered by Table 5 and there are further costs which need to be addressed. Bodies corporate also incur further body corporate manager costs for trying to collect the levy debt and liaising with lawyers and supplying the necessary information.

4.2 The steps taken also include:

a. The BC Manager sending 1 or 2 demand letters and costs associated with that.

b. The BC lawyer sending a demand letter before commencing proceedings.

c. Before filing a claim the BC lawyer needs to obtain from the BC Manager (who charges for assembling that information) and establish:

(i) That the respondent was an owner at the relevant time, obtaining and checking title searches;

(ii) That the levies outstanding were levied properly with copies of minutes showing meetings were quorate and the levy otherwise lawful – this could cover several time periods and therefore reviewing several sets of BC minutes, and checking all levy and penalty interest calculations are correct for all outstanding levies;

(iii) That copies of all reminder notices and letters/emails seeking payment were correctly sent;

(iv) That the law firm has been authorised properly by the body corporate to pursue the debt;

(v) the total amount owing, interest, additional costs etc to have a total amount claimed.

d. The proceeding needs to be drafted and filed

e. Prepare for the hearing, which may include statements of claim and other documents – this can be dependent on the adjudicator

f. Travel to the hearing, possibly wait time and then appear at the hearing

g. Report to body corporate

4.3 Costs need to take into account these steps also, and so $3,000 plus GST and disbursements for legal costs should be the set fixed cost amount if fixed costs are to be adopted.

5. Do you consider that Māori interests are specifically affected by these proposals and how?

5.1 As previously stated we do not know the statistics on how many iwi/Māori own principal units, we doubt that iwi/Māori are not more likely specifically affected more than any other ethnic populations who own principal unit titles or for that matter any

other owners. While like any owners there may be Māori owners who are pursued for levy arrears, equally there will be other Māori owners like all owners who pay their levies and will unfairly have to cover shortfalls in costs if these proposals are implemented fixing costs.

6. Do you consider that the proposed amounts in either option will be affected by inflation?

6.1 Yes costs will be affected by inflation. Law firms and body corporate managers do increase their charges over time as they need to hire and retain staff and keep pace with market salaries and other costs to remain in business and have suitably qualified and trained staff.

6.2 The proposed amount (in either option) should be adjusted intermittently over time to reflect inflation. Leaving the fixed cost as a set amount for an unknown period of time is unreasonable. Lawyer and body corporate manager fees generally increase over time in line with inflation (as do body corporate levies needed to fund ever increasing operational costs within the building). As time goes on, the cost shortfall that the "innocent" remaining body corporate owners will have to pay from their pocket will only increase exponentially. As noted above, the only party this favours is the defaulting owner and that benefit will increase progressively if any proposed fixed amount does not regularly increase in line with inflation.

7. Do you have any additional comments you would like to make?

7.1 ADLS would prefer that the current regime remain as is, as Tenancy Tribunal adjudicators are able to make the decision as to whether costs are reasonable or not based on the merits of a particular proceeding and the conduct of the parties in respect of the same. Defaulting owners need to pay their levies, and pay them on time, otherwise the actual costs will unfairly fall on other owners in the building who pay their levies on time. Implementing fixed or scale costs will only see the Body Corporate and levy paying owners having to carry costs unfairly. Having fixed or scale costs will not reduce the costs of the process (legal costs, body corporate manager costs or other), only seeing defaulting owners having their costs subsidised. This only disincentives them to pay levies when they are due which in our view is contrary to statutory debt collection regime created by the UTA.

7.2 Accordingly, the current costs system should remain, and costs will already reduce with the lower filing fee. We would be happy to work with the Ministry of Justice and the Head Tenancy Tribunal Adjudicator to work on improving the systems including having a simpler undisputed levy fast track process which would greatly reduce the costs for all parties. As a starting point we would suggest that any application for the recovery of a levy has its own specific tailor-made application form via the website that is distinct and separate from all other types of applications.

Section 4: Other Regulations

Issue: Proxy holder not following directions on form:

1. Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 4)?

1.1 ADLS agrees with the proposed objectives of the Regulations to enable unit owners to participate in decision-making through their proxy holder and to provide clarity for bodies corporate about validity of votes. Appointing a proxy is different to a postal vote which is a vote on particular motions and is locked in. A proxy holder has more flexibility to listen to the discussion, with or without specific direction from the owner, and then is able to vote. A proxy holder has the ability to speak at a meeting which a postal voter cannot, which enables greater participation. This also enables an owner to appoint someone who may be better at speaking than them, or if they feel

intimidated. Often lawyers are appointed when a matter is contentious to enable them to speak on behalf of their client owner.

1.2 Regulations should ensure the maximum participation with certainty over valid proxies.

2. Do you agree with the preferred option (option 2)?

2.1 ADLS agrees that option 2 is the appropriate option to meet the objectives for the following reasons: -

2.1.1 A directed proxy assists a proxy holder by indicating the preferences of the owner, but there needs to be the flexibility of allowing the proxy holder flexibility in voting. While the committee usually sets the agenda, in discussion at the meeting new good points can be raised, with compromise and discussion changing matters, and resulting on motions being amended. The proxy holder must be free to absorb that information and vote in the owner's best interest.

2.1.2 The owner does however need to understand that with a directed proxy the proxy holder may change their vote and we would suggest the form is amended to put a note on the form along the following lines "While you may direct your proxy how to vote on this form, this is not binding on them and they may vote how they see fit. Be mindful of this when you choose your proxy. A postal vote will lock your vote as directed, but a proxy empowers the proxy holder to vote as they see fit."

2.1.3 It is not desirable for the body corporate to interfere between the unit owner and their proxy and that the proxy is left with the independence to vote as they see fit hearing the debate without the body corporate stepping in and stopping or potentially seeking to change their vote to match the voting direction given.

2.1.4 It should not be the body corporate's responsibility to "police" the proxy's voting decisions to ensure they are in line with any direction given by the owner in the proxy form. The body corporate's sole role is to make sure the proxy holder has been properly authorised by all owners of the unit to attend the meeting and vote on the owner's behalf. From there it is up to the proxy holder as to how they will vote.

2.1.5 Given the complexity of hybrid meetings, postal votes and proxies, it is also quite impractical and unworkable for the meeting chairperson to check the proxy's voting against the directions in the proxy form and would lead to further complexity and delays in the meeting at each vote, plus the potential for disputes. The longer a meeting is the more likely owners will leave early before it is completed, disenfranchising owners.

Issue: Motion changing materially at a general meeting:

3. **Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 5)?**

3.1 ADLS agrees with the objectives of the Regulations to enable unit owners to participate in decision-making through their proxy holder and to provide clarity for bodies corporate about validity of votes. The unit owner must have an unfettered right to vote on any motion through their proxy. If a proxy could not vote on a changed resolution some owners might seek to change a motion specifically to disenfranchise owners. The proxy acts in the unit owner's place at that meeting (like a power of attorney) with the same rights and powers under the authority of the proxy form. To interfere with that relationship and to remove the ability to vote would disenfranchise owners.

3.2 Furthermore, it is important that as many unit owners, either in person, electronically or through their proxies attend and vote on particular motions at general meetings to ensure the body corporate has maximum engagement and representation at meetings. This objective is supported by ADLS.

4. Do you agree with the preferred option (option 1)?

4.1 ADLS agrees with the preferred option 1 for the following reasons:

4.1.1 Option 1 supports the objectives of the Regulations.

4.1.2 Option 1 ensures that the unit owner's voice can be heard at the meeting through the proxy irrespective of the terms of the motion and prevents the cynical change of regulations to disenfranchise owners.

4.1.3 As well as stating that the chairperson has no responsibility to ensure the proxy direction is followed the Regulations should also state that the Proxy Holder does not have to follow the specific direction of the owner, but to take that direction, the matters discussed at the meeting and any changes to the motion into consideration when exercising their proxy.

4.1.4 It is important that the proxy holder be able to listen to the debate and make a decision so a unit owner needs to be careful in who they select as their proxy to ensure that they understand the role of the proxy holder. The ability of the proxy holder to vote should not be curtailed. If an owner wants to mandate voting in a particular way then they should send a postal vote. We note that postal votes are not counted when there is a material change to a motion.

4.1.5 Option 1 ensures that if a motion is materially changed there are still as many votes as possible on the motion ensuring maximum participation and voting by unit owners and proxies at meetings whatever the final terms of the motion.

4.1.6 Option 2 would disenfranchise unit owners who are unable to attend meetings but have appointed a proxy to stand in their shoes and vote for them, and opens the situation to parties seeking to amend motions specifically to disenfranchise owners.

4.1.7 We note that there is no commentary on the situation where owners give their proxies to the chair of the meeting. Many body corporate managers chair meetings and use these proxies solely to have a quorum for the meeting, but, unless they are directed, they do not use these proxies to vote on motions at meetings. This is because they do not want to be seen to be exercising votes in a "political" manner and want to be the objective manager of the processes of the body corporate. We anticipate that body corporate managers will continue to follow that approach. If they receive direction on the proxy voting form they can follow that direction, and choose not to vote if the motion changes materially. If they do not receive direction they can still choose not to vote just as they did prior to the recent introduction of directions. If they are uncertain they can consult with the owner that has appointed them proxy.

Issue: Documents included in pre-settlement disclosure statement for off-the-plans contracts:

5. Do you agree with the proposed objectives for the regulations (see Discussion Document Part C, Issue 6)?

5.1 ADLS agrees with the objectives of the Regulations to promote transparency for buyers of unit titles and to encourage best practice by bodies corporate.

6. Do you agree with the preferred option (option 2)?

6.1 ADLS supports Option 2. We note this would require the "off the plans" pre-settlement disclosure statement to include all documents and information from the pre-contract disclosure statement for existing units where it was now available.

6.2 We do not support Option 1 as this would only require the body corporate to advise whether it was involved in any proceedings in any court or tribunal or was aware of any possibility of a claim, and to provide financial statements and any audit reports. If the unit has been sold off the plans it is unlikely there will be any financial statements

and audit reports for the previous three years so this is of no real help to the purchaser.

6.3 ADLS supports Option 2 as it requires an extensive list of documents and information to be provided if available. This will include details of new contracts entered into before settlement, e.g. building manager, body corporate manager, embedded network agreement, licence of common property etc which is important information for a purchaser to receive and understand before settlement of their purchase.

6.4 Some properties are sold "off the plans" very early without even a resource consent being obtained yet and post purchase considerable decisions and changes of direction can be implemented before settlement, so advising of those changes is important for transparency. We agree that this information and documentation is better included in the pre-settlement statement rather than an updated pre-contract disclosure statement, as that would mean a further disclosure charge.

General Questions:

7. Do you consider that Māori interests are specifically affected by these proposals and how?

7.1 It is important that consideration is given to the impact of the regulations on Māori as both owners and occupiers of unit titles. The MAIHI Ka Ora principles such as Manaakitanga, Whakamana and Tikanga impact on how the regulations should be framed so that they encourage governance, promote prudent care of resources to promote intergenerational wealth and housing and that the tikanga of body corporate engagement is clear as to what the procedures are. These are good outcomes for all body corporate owners no matter what ethnicity.

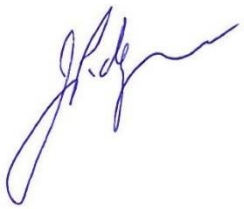
8. Do you have any additional comments you would like to make?

8.1 As outlined above, consideration could be given to future legislative change as to whether meetings have to be hybrid. Could a body corporate have the ability to opt out of this if there was unanimous agreement?

8.2 We note that the UTA still provides the right to attend meetings in person as well as online meaning that all meetings are usually hybrid. In terms of promoting efficiencies and keeping costs down, we would like consideration to be given to bodies corporate able to opt out of having an in-person meeting if no one objects. As discussed in consultations, after Covid-19 work practices have changed and many bodies corporate managers are now working more flexibly, often from home. Having to leave home to have even a nominal venue such as a small office meeting room in the evening for no one to turn up is not an effective use of time and adds additional costs to the body corporate. For health and safety reasons, many companies do not allow a manager to attend a body corporate meeting on their own either. If all owners are happy with conducting a meeting remotely, consideration should be given to allowing bodies corporate to be more self-determinative, as long as there are checks and balances in the process.

These submsissions have been provided by Joanna Pidgeon, Liza Fry-Irvine, Ben Thomson and Ria Shon on behalf of the Property Law Committee of the ADLS. Please contact Daniel Conway, Secretary to the Committee for any further matters.

Yours sincerely,



Joanna Pidgeon

Convenor, ADLS Documents and Precedents Committee
Member, ADLS Property Law Committee