

PROJECTS AND REAL ESTATE

NEWS

MAY 2022



WELCOME

to Issue No. 13 of
Projects and Real Estate News,
Bell Gully's regular digest on
regulatory developments,
together with cases and news
of interest in the **projects** and
real estate sectors.

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Projects and Real Estate News is a regular digest on regulatory developments, together with cases and news of interest in the projects and real estate sectors.

For more information, please contact [Sonia Ng](#), your usual [Bell Gully contact](#), or visit our [website](#).

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REGULATORY UPDATES

* REAL ESTATE

Significant revisions to unit titles law passed in Parliament

The [Unit Titles \(Strengthening Body Corporate Governance and Other Matters\) Amendment Act 2022](#) (the **Amendment Act**) became law on 9 May 2022. The Amendment Act is the government's response to calls to rectify certain issues and deficiencies in the [Unit Titles Act 2010](#) (the **Act**) that have been identified since the Act came into force.

Unit titles are a form of property ownership most commonly utilised for apartments, some townhouses, and multi-unit commercial or mixed residential/commercial buildings. Owners become a member of the body corporate, which is responsible for making decisions about various matters relating to the unit title development.

We have summarised below some key changes to the Act that will come into force as a result of the Amendment Act. It is important to note that the changes contained in the Amendment Act may not necessarily come into force immediately – instead, they will come into force on one or more dates to be set by Order in Council. If no commencement date is set by Order in Council for a particular provision, then that provision will come into force on 9 May 2024.

Body corporate governance

An important theme of the Amendment Act is improving how bodies corporate are run and governed in unit title developments. In this respect, the Amendment Act provides for a number of updates, including the following:

- members of a body corporate are expressly permitted to attend and vote at meetings by audio-visual means, despite any limitations in this regard in the body corporate operational rules;
- a unit owner must satisfy certain eligibility requirements, such as not being in arrears in their body corporate levies, in order to be able to form part of a quorum at a general meeting;
- electronic voting at a body corporate meeting is expressly permitted;
- the body corporate must not delegate matters that must be decided by special resolution to the body corporate committee;
- the body corporate committee must produce an agenda for each committee meeting, keep written records of its meetings and resolutions, and provide copies of the minutes of its meetings to all unit owners promptly, and in any event not later than 1 month after the meeting date;
- members of a body corporate committee must comply with a code of conduct, and a duty to disclose conflicts of interest and keep a register of such disclosures;
- a “body corporate manager” is now defined as a person engaged by a body corporate to provide any record-keeping or administrative services, financial services (including the handling of money belonging to the body corporate), and regulatory compliance services. A body corporate manager must also disclose any conflicts of interest and comply with a code of conduct. The body corporate committee must keep a register of any disclosure by the body corporate manager of conflicts of interest; and
- the existing limitations in the Act relating to an original owner's (i.e. the owner when the plan for the development was first deposited) rights to enter into service contracts have been extended to include signage agreements (i.e. agreements by the body corporate to allow another person to display signs within the development). Service contracts or signage agreements entered into by the original owner, which last for 24 months or longer, must comply with additional requirements.

Information disclosure for the sale and purchase of unit title properties

Currently, the Act prescribes information that must be disclosed to buyers or prospective buyers when a unit owner wishes to sell their unit title.

Before the buyer and seller enter into a sale and purchase agreement, the seller must provide a pre-contract disclosure statement (**PCDS**). Once the parties enter into an agreement and it becomes unconditional, the seller must also provide the buyer with a pre-settlement disclosure statement (**PSDS**) by the fifth working day before the settlement date. The seller must also provide an additional disclosure statement (**ADS**) if requested by the buyer.

Failure to provide a PSDS or ADS (if one was requested) in accordance with the Act can give rise to rights in the buyer's favour to delay settlement, or cancel the sale and purchase agreement.

The Amendment Act significantly revises this disclosure regime, by:

- removing the requirement to provide an ADS;
- substantially amending the information that must be provided in a PCDS and a PSDS, including specific requirements in each case where the unit is being sold "off the plan";
- giving the buyer the right to delay settlement, or (in certain circumstances) cancel the agreement, if the PCDS was provided late or not provided at all, or was incomplete or inaccurate. There is a process that must be followed before the buyer can exercise the delay or cancellation right; and
- revising the circumstances in which the buyer can delay settlement, or cancel the agreement, if the PSDS was provided late or not provided at all, or was incomplete or inaccurate. The process for delay or cancellation have also been revised.

Reassessment of utility interest

When a unit title development is created, a utility interest is assigned to each unit, which is then used to calculate the share of body corporate levies payable by the owner of that unit. The Amendment Act allows for a utility interest to either be a single uniform interest for the unit, or comprised of a multiple set of interests relating to particular services or amenities across the unit title development. This is intended to permit a fairer division of costs across the unit owners within a development (for example, it would allow units on upper floors of an apartment building to be allocated a greater share of the costs of repairing and maintaining lifts, than units on the ground floor).

Special provisions for unit title developments comprising 10 or more principal units

The Amendment Act imposes additional obligations on unit title developments comprising 10 or more principal units (**large unit title developments**):

- the body corporate must engage 1 or more body corporate managers to manage the large unit title development, unless the body corporate decides not to do so by special resolution; and
- the long-term maintenance (**LTM**) plan for large unit title developments must cover at least 30 years from the date of the plan or when the plan was last reviewed (as opposed to unit title developments of less than 10 principal units, where the LTM plan is only required to cover the next 10 years). The body corporate must review the LTM plan every 3 years, or as soon as practicable if it becomes aware of any matter that may materially impact the LTM plan. The body corporate must consult with building professionals or other suitably qualified professionals when it develops or reviews the LTM plan, unless it decides by special resolution not to do so.

Dispute resolution

The jurisdiction of the Tenancy Tribunal (the **Tribunal**) to determine disputes relating to a unit title development has been extended. The Tribunal can hear disputes involving a body corporate manager or a party to a signage agreement.

The threshold for which the Tribunal can make orders or hear claims relating to unit title developments is also increased from NZD\$50,000 to NZD\$100,000.

Enforcement provisions for breaches

The Amendment Act seeks to improve compliance with the Act by adding several new enforcement tools:

- the Tribunal can order a body corporate manager, the body corporate, or both, to pay a pecuniary penalty to the Crown if certain duties have been breached intentionally and without reasonable excuse;



- the chief executive of the Ministry of Business, Innovation and Employment (**MBIE**) can issue improvement notices requiring a person to remedy a contravention of the Act, or to prevent a likely contravention from occurring;
- MBIE also has the power to require a body corporate or body corporate manager to produce any documents (subject to legal professional privilege) that it is required to retain under the Act, for inspection by MBIE;
- on application by MBIE, the Tribunal can decide to make an order authorising a person to enter a unit title development to inspect it. The power of entry does not authorise a person to enter any principal unit without the occupier's consent; and
- MBIE may initiate or assume the conduct of any proceedings in the Tribunal or court relating to a unit title development, provided that MBIE cannot initiate proceedings any later than 12 months after the date on which MBIE becomes aware of the matters on which the proceedings are based.

Modernising the regulatory framework for managing Crown pastoral land

The [Crown Pastoral Land Reform Bill](#) (the **Bill**) was passed into law on 17 May 2022. It amends the Crown Pastoral Land Act 1998 and the Land Act 1948 to redesign the regulatory system for managing Crown pastoral land.

The Crown is responsible for managing around 1.2 million hectares of high country pastoral land in the South Island of New Zealand. Much of this land is leased to farmers for pastoral grazing on a long-term basis. Tenure review is a voluntary process that gives pastoral lessees an opportunity to buy land capable of economic use, while land with high conservation values is protected and returned to full Crown ownership as conservation land.

One of the major changes brought about by the Bill is the end of the tenure review process, which the Minister for Land Information, Damien O'Connor, has [described](#) as having "reached a point where it is costly and uncertain for both applicants and the Crown". In addition to ending tenure review, the Bill introduces an "outcomes-based" approach that all persons exercising powers under the Crown Pastoral Land Act 1998 and the Land Act 1948 must seek to follow. The Bill also aims to provide a more transparent statutory decision-making process for considering applications to undertake discretionary pastoral activity, such as clearing indigenous vegetation, on pastoral land.

The change to end tenure review became effective on 18 May 2022. Most of the other changes in the Bill will commence on 17 November 2022. Land Information New Zealand remains responsible for administering Crown pastoral land, and will work alongside relevant stakeholders over the coming months to develop the regulations and standards required to implement the Bill.



OTHER NEWS

* REAL ESTATE

[Budget 2022 outlines initiatives for real estate and infrastructure sectors](#)

The Budget 2022 released by the government on 19 May 2022 contains a number of initiatives, which have implications for the real estate and infrastructure sectors:

Housing

More support to first home buyers is to be provided through increasing the house price caps for the [First Home Grant](#), and removing house price caps altogether for the [First Home Loan](#). The First Home Grant is provided by Kainga Ora to eligible first home buyers, to assist them with buying a first home up to the value of the specified price cap for the relevant region. First Home Loans are underwritten by Kainga Ora and issued by selected banks and lenders, so that eligible first home buyers are only required to contribute a minimum of 5% equity towards buying their first home, rather than the usual 20%.

A new Affordable Housing Fund was also announced to support the development of new affordable homes for low-to-moderate income families in areas facing the biggest housing supply and affordability challenges. The fund will leverage partnerships with investors, philanthropic organisations, developers, and the affordable housing sector to increase affordable housing options.

Other initiatives announced include NZD\$1 billion in funding for public and transitional housing during the period from 2022/23 to 2025/26, and NZD\$355 million funding for emergency housing during the period from 2022/23 to 2023/2024.

Read the government press release [here](#).

Resource management

Significant reforms are currently underway to transform New Zealand's resource management framework. Budget 2022 will provide funding to implement the new resource management system, which is expected to combine the many national direction instruments of the current system into a single framework. Funding is also allocated to local government and councils to develop the first spatial planning plans under the new framework.

Read the government press release [here](#).

Bell Gully is closely monitoring progress of the resource management reforms. Please see below for our previous updates on this topic:

- [Resource management reform milestone – Environment Committee reports on NBA exposure draft \(November 2011\)](#)
- [Resource management reform - consultation underway on NBA exposure draft \(June 2011\)](#)
- [Government confirms anticipated RMA reforms, reveals new details \(February 2011\)](#)

Infrastructure

New infrastructure investments in Budget 2022 include NZD\$349 million of capital funding to replace and modernise rail assets, NZD\$1.3 billion capital funding to upgrade health infrastructure and deliver priority health projects (e.g., the redevelopment of the Whangarei Hospital and Nelson Hospital), and a further NZD\$777 million in capital investment to education and schooling infrastructure.

Read the government press release [here](#).

Banning restrictive covenants in the retail grocery sector

As part of the cost-of-living package announced in Budget 2022, the government at the same time introduced urgent legislation to ban certain grocery retailers from using land covenants and/or lease provisions to prevent competitors from accessing land to develop or operate retail grocery stores.

The government previously signalled these moves after the Commerce Commission delivered a market study that found competition in the retail grocery sector is not working well, and is detrimentally affecting consumer choices and grocery prices as a result. The study made a number of recommendations to improve competition in the sector – we summarised the recommendations that related to the real estate sector in the March issue of Projects and Real Estate News [here](#).

The [Commerce \(Grocery Sector Covenants\) Amendment Bill](#) (the **Bill**) proposes to amend the [Commerce Act 1986](#) (the **Act**) by deeming the following types of covenants to be unenforceable if a 'designated grocery retailer' has an interest in them:

- a restrictive land covenant which has the purpose, or the effect or likely effect, of impeding the development or use of land as a retail grocery store; and
- an exclusivity covenant or other provision in a lease which has the purpose, or the effect or likely effect, of impeding another person at the same premises from operating a retail grocery store.

A 'designated grocery retailer' is defined in the Bill as Foodstuffs North Island Limited and Foodstuffs South Island Limited (who together own the "Pak'n'Save" and "New World" brands, alongside other retail grocery brands), and Woolworths New Zealand Limited (the owner of the "Countdown" brand, alongside

other retail grocery brands) and includes these entities' successors and franchisees. The Governor-General can also, subject to following a specified process, designate another person or entity as a 'designated grocery retailer'.

For the purposes of the Bill, a 'designated grocery retailer' is considered to have an interest in a subject covenant in certain situations, such as where it is or was a party to the covenant.

A covenant that has received authorisation or clearance from the Commerce Commission under the Act, or certain covenants entered into in respect of retail fuel sites, are excluded from these changes.

The changes in the Bill are intended to apply irrespective of whether a subject covenant was entered into before, or after, the date that the Bill is passed into law. The Bill is currently undergoing a shortened Parliamentary process, with the closing date for public submissions only one week after the Bill was first introduced.

It should be noted that the Bill only covers designated grocery retailers, and therefore similar restrictive covenants which do not relate to the retail grocery sector, are unaffected.

Read the government press release [here](#).

We recently discussed the Commerce Commission's retail grocery sector study [here](#).

■ PROJECTS

[New Zealand's first long-term Infrastructure Strategy unveiled](#)

The New Zealand Infrastructure Commission/Te Waihanga (**Te Waihanga**) has unveiled its 30-year [Infrastructure Strategy 2022-2052](#) (the **Strategy**) this month. The Strategy lays out Te Waihanga's recommendations to the government and the infrastructure sector to address current and future infrastructure challenges, and incorporates a total of 68 recommendations.

The Strategy was tabled in Parliament in April, with the government now having six months to respond and to identify the recommendations that it agrees should be implemented. These will be developed into an action plan and each recommendation transitioned to the appropriate agency for implementation.

The Strategy sets five strategic objectives based on the infrastructure challenges and opportunities that Te Waihanga has identified:

1. **Enabling a net-zero carbon emissions Aotearoa**

The [Climate Change Response Act 2002](#) was amended in 2019 to set several targets, one of which is to achieve net-zero carbon emissions by 2050. The Strategy identifies that large reductions in carbon emissions, primarily from the transport, forestry and industry sectors will be needed. The country will also need to build significantly more low-emissions electricity generation, most of which is expected to come from new solar and wind generation. The Strategy makes a number of other recommendations, such as developing a streamlined consenting approach to resource management legislation to develop renewable energy zones.

2. **Supporting towns and regions to flourish**

The Strategy recommends that barriers to providing infrastructure services to regional and rural areas need to be addressed. It suggests developing a National Digital Strategy to ensure better connectivity to regional areas. It also outlines that routes by air, road and water to the regions need to be better integrated to improve efficiency of freight and reduce supply chain issues.

3. **Building attractive and inclusive cities**

The Strategy acknowledges that New Zealand's urban cities face major challenges in terms of being or becoming congested, unaffordable and polluted. To address these matters, the Strategy recommends implementing congestion charging in Auckland and progressing planning for congestion pricing schemes for other cities as appropriate. The Strategy also suggests reforms to reduce pressure on water infrastructure, and to increase low-emission transport nodes in the cities.

4. Strengthening resilience to shocks and stresses

To better prepare New Zealand for the impact of shocks and stresses such as earthquakes, pandemics and manmade threats (e.g., cyberattacks), the Strategy recommends that the government should identify and strengthen service levels to the country's critical infrastructure.

5. Moving to a circular economy

The Strategy identifies that New Zealand has a waste problem, and New Zealanders need to make different choices about recycling and waste management. The Strategy recommends improving recycling infrastructure for priority materials, and developing construction and demolition waste collection services. Responsible agencies should also develop technical specifications for reusing recycled construction materials in infrastructure, and support procurement of innovative infrastructure design that make greater use of recyclable materials.

The Strategy makes other recommendations across five key areas relating to: (1) decision-making, (2) funding and financing, (3) planning and consenting, (4) technology use, and (5) workforce capabilities.

Please [click here](#) to read the full Strategy.

Bell Gully's projects and real estate team is across the current developments and trends in the industry. If you have an issue related to real estate or construction law that requires attention, we would be happy to assist.

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