Body Corporate and Community Management and Other Legislation Amendment Bill 2023

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SUBMISSION TO LEGAL AFFAIRS AND SAFETY COMMITTEE INQUIRY: BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2023

This is the formal submission of the Community Alliance Assoc Inc (Community Alliance) to the above inquiry.

Proposed 75% rule
We note the proposal to reform body corporate legislation "to allow for terminating uneconomical community titles schemes to facilitate renewal and redevelopment having regard to the New South Wales approach." This includes changing the agreement requirements to terminate community titles schemes from 100% to 75% of lot owners.

Community Alliance is very concerned that the Government, seemingly heavily influenced by the development lobby, is using the current housing shortage to justify some very ill thought out 'reforms' in its BCCM Amendments Bill. These will do nothing to improve the supply of housing in the beachside suburbs of the Gold Coast —suburbs that are already suffering from a massive amount of overdevelopment thanks to the problematic 2016 City Plan and the overly flexible provisions of the performance-based Planning Act 2016.

Instead of increasing housing availability, the "75% rule" will have the opposite effect —certainly in the short to medium term. That is because there is at least a five-year period between a developer's acquisition of a site and the completion of high-rise tower construction. And that assumes that the DA is approved relatively quickly, which is often not the case—particularly with developments that fail to comply with the requirements of the City Plan.

So, the densification that will inevitably occur should this Bill become law, will **diminish** the housing supply for a number of years. In addition, many of those buying into one-unit -per-floor high rise towers do not plan to become full -time residents. Many are wealthy buyers from southern States and New Zealand who are acquiring luxury high rise units to use only during the winter months. The construction of such buildings is not increasing the housing supply but is in reality driving out long-term residents, be they owners or tenants.

Perception of unfairness
The Bill is grossly unfair in that it apparently favours the interests of property developers and others with a vested interest over those of the wider community. There has been a disgraceful lack of meaningful community engagement with those citizens most likely to be adversely affected by the Bill. On the Gold Coast over 40% of the population reside in apartments covered by community titles schemes. Very few of

these residents will be aware of the seismic changes proposed to scheme termination arrangements and how this will make their security of occupancy as a lot owner far more volatile.

Evidence of apparent developer influence can be seen in the unseemly rush to get these so-called reforms legislated. The Community Alliance objects in particular to two aspects of the process of bringing this Bill to Parliament:

- No Public Hearings are to be held in the two areas with the greatest number of community titles schemes—the Gold and Sunshine Coasts. An appearance via Zoom is no substitute for an in-person involvement in the Hearing.
- The period of time between the introduction of the Bill into Parliament and the close of submissions is absurdly short. Most Gold Coast residents have no knowledge of the Bill and its accompanying documents. And those who have been able to read the Bill have had very little time to digest its implications. This lack of knowledge has been exacerbated by the fact that in past week the media have been preoccupied by the biggest local story in years—an alleged murder by a Gold Coast councillor. The Gold Coast Bulletin is well informed about the community's objections to the Bill, but due to a lack of staff will only be able to publish the story **after** the deadline for submissions has passed.

Loopholes in the Bill

Essentially, the Bill allows for the termination of a community titles scheme with the support of lot owners where the body corporate committee has agreed that there are economic reasons for termination which meet defined thresholds. The economic reason for termination is that it is not economically viable—or **will not be within 5 years**—to carry out repairs or maintenance to the parts of the property that the body corporate is responsible for. Examples in older high rises would include expensive items such as replacement of lifts, roofs, painting and treating concrete cancer.

Although at first glance this might seem reasonable, there is too much scope for an unscrupulous body corporate committee to manipulate the situation for their own benefit rather than respect the interests of the majority of lot owners. For example, there are already many body corporates that neglect essential maintenance through apathy, ignorance, and a desire to keep owners happy in the short term with unrealistically low levies. With the lure of a large payout from a developer, the temptation to deliberately run down a building will be irresistible to many body corporate committees.

The Bill specifies that a body corporate committee that wishes to sell to a developer, thereby terminating their Scheme, will have to have a Pre-termination Report prepared by suitably qualified people, including a structural engineer. Although the Bill refers to conflicts of interest by those preparing the Report, there are no penalties proposed for a body corporate committee that goes 'expert shopping'. The potential for corruption is alarming.

Lack of protection for unwilling sellers

The Explanatory Notes claim the Bill contains protections for those lot owners unwilling to sell. For example, lot owners wishing to prevent the termination of their Scheme will be able go to the District Court to seek an order that the termination of their Scheme not be implemented. In reality, owners facing the threat of being forced out of their home will rarely have the financial resources to pay for expensive legal costs. Our submission is that the proposed protections are ineffective and must be replaced with just and effective provisions that provide fair and affordable access to review, for example via an independent, low cost, non-judicial tribunal.

There is also the potential for developers to underwrite legal and other costs of body corporate committees for the sites they are anxious to acquire.

One of the reasons owners on middle incomes will be forced out of beachside suburbs is that even if offered a unit in a replacement high rise, they will never be able to afford the body corporate levies required to pay for all the services considered essential in a luxury high rise. These include lifts, swimming pools, live -in managers and so on. Currently the levies in a 3-storey walk up are in the range of $3000 per year—a far cry from the $12,000 to $20,000 per year paid by owners of a mid-level floor in a luxury high rise.

Conclusion

Due to the short time that the Community Alliance has had to liaise with its members and to prepare this submission, it is less detailed than we would have liked. However, we would point out the following:

- We have been advised by experts that there are already adequate provisions in the law to deal with aged strata that are genuinely no longer economically viable.
- This Bill has the potential to become a lawyer's picnic, given the issues that have been overlooked, whether by accident of design.
- This Bill if enacted will lead to bullying and the inevitable mental health issues that will affect those who are being pressured to sell. The Bill is a loaded gun being pointed at those who will lose not only their home but will never again be able to afford to live in a beachside suburb.
- Given that the existing law relating to adequate sinking funds is being flouted by many building managers and body corporate committees, it is time for the existing legislation to be enforced. Of course, such action would not be supported by the powerful development industry lobby who apparently relish the thought of large numbers of ageing, dilapidated buildings in desirable beachside locations.

In short, it is our belief that any improvements to the housing shortage that this Bill purports to address are far outweighed by the certain adverse consequences—either for individual owners or for those living in adjacent buildings to the sites being targeted by aggregators working in the interests of developers.

We are concerned that the Bill as currently drafted presents an unacceptable impact on the property rights and reasonable expectations of lot owners in community title schemes. We consider it seems to be tilted well in favour of the development industry to the long-term detriment of the wider community. We therefore consider the Bill is not in the public interest, a fundamental requirement of any legislation. We consider the Bill is being rushed through with inappropriate haste and with a disgraceful lack of meaningful community engagement with those citizens most likely to be adversely affected.

Our overarching submission is this Bill is not fit for purpose and must not be approved in its current form. We ask that the Bill not progress until significant amendments are made following a substantial, meaningful community engagement program covering those citizens most likely to be affected by the proposed changes.

Thank you for considering our submission. We hope it will provide a counter-balance to the misleading claims of the development lobby.

Sincerely,

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About us

Community Alliance Assoc In is a coalition of 13 community groups (refer website) who have come together to address issues of common concern. A shared theme underpinning many of our issues is the need for better management of growth and the need for far greater delivery of meaningful community engagement. Since incorporation in 2019 we have focused substantial effort to improving liveability outcomes for the community in the face of an unprecedented population surge. This has included detailed submissions to the long-running Gold Coast City Plan major amendment process and submissions to the Deputy Premier advocating reforms to the Planning Act 2016.