

14 March 2014

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Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice
GPO Box 149
Brisbane, Qld 4001



Dear Minister, *Jarrod*

Property Law Review – Issue Paper 2 (BCCMA)



Thank you for the opportunity to provide comment on the *Property Law Review Issues Paper 2 – Lot entitlements under the Body Corporate and Community Management Act (BCCMA) 1997*.

The Property Council's view is that any changes to the BCCMA must be consistent with three fundamental principles. These are:

1. Ensuring the developer is able to set lot entitlements in a manner that reflect **market drivers for that specific development**.
2. Placing disclosure at the centre the system. Specifically, that **the knowledge of the owner when purchasing a lot is the most relevant factor** when considering amendments to the legislation, or adjustments of lot entitlements.
3. That certainty is paramount. Purchasers of new or existing lots must have **confidence to budget and plan on the basis that their contribution will not alter** in the future.



Much of the community angst and hardship that has transpired over the past decade has resulted from progressive movements away from these core principles in the legislation.

Adhering to these principles will ensure:

- A greater level of confidence in the system across the community.
- Lot entitlements do not artificially distort the property market. Developers will be able to ensure a mix of product, including affordable housing, is incorporated into their project.
- Lot entitlements are set fairly. It is in the interest of the developer to set lot entitlements such that their development is attractive to the market segments which they are targeting. When combined with disclosure, market forces will ensure lot entitlements align with community expectations.



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- The untenable circumstance of a property owner enduring the double whammy of an unexpected increase in body corporate fees and a lower capital value will be avoided.

Setting of lot entitlements

The Property Council does not support the equality principle as a uniform basis for setting lot entitlements.

The equality principle significantly impacts the ability of a developer to offer a diversity of product within the same development. Mandated uniform lot entitlements particularly affect the availability of affordable dwellings simply by the fact that they make the dwelling more expensive to own.

In contrast, lot entitlements set using the relativity principle provide a developer with greater flexibility to respond to the market.

The Property Council believes the developer should be able to consider any relevant factors when setting lot entitlements provided these are disclosed in the community management statement.

Adopting this approach delivers the dual benefit of reducing red tape on the property and construction sector and also providing a clear and transparent mechanism for purchasers to make informed decisions.

It is important to note that such an approach would not necessarily preclude a developer from applying lot entitlements equally should they wish, provided this was disclosed.

Adopting this approach would reduce complexity and remove the need for consideration of many of the other options canvassed in the discussion paper, such as differentiated rates for capital and administrative funds, or a different approach for mixed-use schemes.

SILVERSTONE DEVELOPMENTS Adjustment of lot entitlements in new schemes

An adjustment of the lot entitlements away from those set by the developer (that have been disclosed to the first and subsequent purchasers) should only occur in extremely limited circumstances.

The Property Council would envisage these would relate to:

- Correcting an error; or
- Where 100 per cent of owners consent to the change; or
- Where there is a material change or resumption.

This limited approach is justified on the basis that each purchaser knew that the lots were or were not equally split at the time of purchase, and therefore would have no grounds other than those listed above to justify a change to lot entitlements.

Any adjustment order sought on the above grounds should be made to a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT).



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However the adjudicator's determination should retain, as far as practicable, the rationale, framework and relativity adopted by the developer at the time the scheme was established. The adjudicator should also consider what the person knew at the time they purchased a lot as a relevant factor. This will ensure any changes to lot entitlements are minimised, providing greater levels of certainty to all parties.

Adopting the above approach would also reduce complexity in the legislation and remove the need to consider other options canvassed in the discussion paper, such as requiring the adjudicator to consider the financial impact of a determination.

Adjustment of lot entitlements in existing schemes

The Property Council is regularly contacted by individuals who have been materially adversely impacted by the variety of legislative changes that occurred over the past decade.

The Property Council is concerned that any further changes will merely exacerbate, or reallocate, these adverse impacts within existing schemes. It is the unintended consequences of past changes that have had the most devastating impact. This review should endeavour to avoid making the same mistake.

Unfortunately, the mess created by past changes means there will be people who purchased prior to an adjudication who had their fees changed as a result of the subsequent application of the equality principle.

The Property Council's view is that such changes were inappropriate and had a major negative impact on many people.

However some people have purchased into a scheme since the introduction of the equality principle, and it is equally unreasonable to now force those people to accept a reversion. Their decision was reasonably based on the law that applied when they purchased.

Therefore the Property Council endorses the approach outlined in section 4.3.1 of the issues paper as the most appropriate way to resolve disputes about lot entitlements in existing schemes. Allowing lot owners in pre April 2011 schemes the opportunity to establish their own deciding principle by passing an appropriate resolution is considered reasonable. This decision should then be binding on all future adjudications.

Transitional provisions

The Property Council agrees that:

- Any changes to the legislation should only apply to new schemes. They should not be retrospective.
- Existing schemes should be given the opportunity to voluntarily transition to the new principles. The option noted above in relation to the adjustment of lot entitlements in existing schemes is an example of such an approach.

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Thank you again for the opportunity to provide comment on the *Property Law Review Issues Paper 2 – Lot entitlements under the Body Corporate and Community Management Act (BCCMA) 1997*. If you have any questions regarding the Property Council or this submission, please do not hesitate to contact me on 07 3225 3000, or kmacdermott@propertyoz.com.au.

Yours sincerely



Kathy Mac Dermott
Executive Director