



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Property:DHg11505275

11 May 2018

Mr John Tansey
Executive Director
Regulatory Policy, Better Regulation Division
Department of Finance, Services & Innovation
PO Box 972
PARRAMATTA NSW 2124

By email: StrataDefectsBond@finance.nsw.gov.au

Dear Mr Tansey,

Exposure draft of Strata Schemes Management Amendment (Building Defects Scheme) Bill 2018 (“Amendment Bill”)

The Law Society of NSW appreciates the opportunity to comment on the Amendment Bill. The Law Society’s Property Law Committee has contributed to this submission.

The Amendment Bill makes a number of changes to the processes involved in the strata building bond and inspections scheme and increases a number of penalties. Generally we support the proposed changes, with two comments as set out below.

1. Item [9] of Schedule 1 of the Amendment Bill

The proposed amendment to s 207(1) of the *Strata Schemes Management Act 2015* (“SSMA”) is supported. However, requiring the building bond to be lodged with the Secretary before the developer applies for the issue of an occupation certificate, rather than at any time before an occupation certificate is issued, may not be sufficient. We understand that the aim of the amendment, as set out in the table explaining the amendments made in the Bill is to “ensure that the certifying authority will not inadvertently issue the occupation certificate before the building bond has been lodged.”

Without an obligation being imposed upon the certifying authority to check that a building bond has been lodged with the Secretary, it is possible that a certifying authority might inadvertently issue the occupation certificate. We suggest further consideration be given to imposing such an obligation.

2. Item [27] of Schedule 1 of the Amendment Bill

The proposed amendment to s 211 of the SSMA to limit the developer’s rights to apply to the Tribunal for a determination of the contract price in only those circumstances prescribed by the regulations appears unnecessarily restrictive. We note this will depend upon the breadth of circumstances that will be provided in the regulations, once drafted, and would appreciate the opportunity to comment on the draft regulations.

3. Other suggested amendments for inclusion in the Amendment Bill

Like other stakeholders, we remain concerned that under s 199 of the SSMA, the interim report is not required to include the specification of the work required to rectify a defect. Our letter to you dated 20 September 2017, copy enclosed, raised the issue of the difficulties in determining the cost of rectification works where the scope of rectification works is not provided in the building inspector's report.

We understand that one of the reasons that the specification of rectification works is not required in the interim report was the concern that it would add to the preparation time for the report, making it difficult to complete within the necessary timeframe. If that is the main reason, consideration should be given to extending the time for the preparation of the interim report. Without the specification of rectification works in the initial report, the cost of rectification works cannot be calculated without undertaking further inspections and the engagement of consultants, which is costly and time consuming for all parties involved in the process, including the lot owners in the scheme.

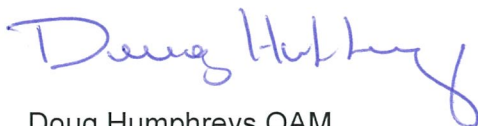
We are also concerned that if the building inspector does not specify the rectification works required in the interim report, the builder/developer may opt for a more cosmetic solution, rather than address the cause of such a defect. This would be unfortunate as this scheme is aimed at properly addressing building defects as soon as possible in the building process.

It also seems anomalous that specification of the rectification works for a defect is only required when that defect is identified in the final report as outstanding. We expect that it would be helpful for all parties involved to have information as to what is required to be done to rectify the defect earlier by including this information in the interim report.

We submit that the Amendment Bill should include an amendment to s 199 of the SSMA to require the interim report to specify the work which is required to rectify a defect.

Should you have queries about this letter, please contact Gabrielle Lea, Policy Lawyer by email to gabrielle.lea@lawsociety.com.au or by phone on (02) 9926 0375.

Yours sincerely,



Doug Humphreys OAM
President

Encl.



THE LAW SOCIETY
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Our ref: Property:PWgl1399667

20 September 2017

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Dear Mr Tansey,

Strata building bond and inspection scheme

The Law Society of NSW appreciates the opportunity to comment on proposals to amend the strata building bond and inspection scheme and to attend the recent stakeholder consultation meeting. As requested, we provide our further comments on the proposals as outlined at that meeting.

1. Scope of defect works

We note that under the scheme, the building inspector appointed by the owners corporation and the developer will not be required to determine either the scope of the works to rectify defects or the cost of rectification. If the owners corporation and the developer cannot agree on the cost of rectification, the Commissioner for Fair Trading will make that determination at the joint cost of the owners corporation and the developer, and may engage a quantity surveyor to assist with the determination.

We are concerned that the Commissioner (and any quantity surveyor engaged by the Commissioner) will have difficulties in determining the cost of the rectification works where there is no scope of works provided. The building inspector is required to identify the defects, but not the scope of works required to rectify the defects. Simply identifying a defect without further identifying the cause or nature of the defect and the scope of works that will be required to rectify the defect, may make it very difficult to determine the extent and the cost of any rectification works.

In our view, the absence of a requirement to identify the scope of rectification works needs to be addressed for the scheme to work as intended.

2. Multi-stage developments

We understand that the amount of the bond required will be 2% of the value of the building works as determined at the date of the issue of the (interim or final) occupation certificate. This appears to be straight forward for a single stage development but potentially problematic for a multi-stage development. For example,

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how would the contract price be determined for the entirety of a multi-stage development at the time when an interim occupation certificate issues for the first stage, but there are one or more stages which are incomplete, or where work may not have been commenced? Multi-stage developments can also span several years which may result in additional difficulties.

We note that the contract price is defined to include variations. The additional cost due to variations can only be properly determined when the occupation certificate for the final stage issues, unless there are separate contracts for each stage.

We suggest that the additional issues raised in calculating the contract price for a multi-stage development should be specifically addressed in the proposed amendments to the scheme.

3. General comment

The Law Society broadly supports the work being done to further clarify how the scheme will work and the roles of the owners corporation, developer, appointed building inspector and the Commissioner in the process. However we are concerned that it appears that changes to the principal Act and supporting regulations are being designed and implemented within a short timeframe, which may result in industry being insufficiently prepared for their commencement.

The Law Society would be pleased to be involved in any consultation on draft legislation to give effect to the proposals. Should you have queries about this letter, please contact Gabrielle Lea, Acting Senior Policy Lawyer by email to gabrielle.lea@lawsociety.com.au or by phone on (02) 9926 0375.

Yours sincerely,



Pauline Wright
President