29 February 2012

Ms Helen Hull
Editor, Open Forum
Global Access Partners Pty Ltd
53 Balfour Street
Chippendale, NSW 2008
Email: hhull@openforum.com.au

Dear Ms Hull

**PIA NSW Submission on NSW Strata Laws – Open Forum**

The NSW Division of the Planning Institute of Australia (PIA NSW) welcomes the opportunity to provide comments to the Strata Titles ‘Open Forum’ consultation. PIA NSW is the peak body representing professionals involved in planning Australian cities, towns and regions. The Institute has around 4,500 members nationally and around 1,200 members in NSW. PIA NSW plays key roles in promoting and supporting the planning profession within NSW and advocating key planning and public policy issues.

PIA NSW supports the proposal of the NSW Government to review the State’s strata and community title laws. Amendment of the legislation is appropriate in the future planning of the metropolitan area and necessary for the redevelopment of obsolete residential and commercial buildings that have reached the end of their useful life.

Many residential flat buildings across the Metropolitan Area were the product of housing booms or redevelopment schemes in the 1950s through to the 1970s, and many of the buildings which were strata subdivided have now reached a stage where continuous refurbishment is not an option for owners. Owners are unable to redevelop their property even though most of the owners may agree that redevelopment is the only solution. The Strata Schemes legislation requires 100% agreement to go forward. Similarly, many strata titled commercial and retail buildings have resulted in older office and shopping complexes stagnating in terms of their amenity and rental returns because of the inability of the owners’ corporation to meet changing demands or reach agreement on redevelopment.

The difficulty of achieving the legislation’s requirement for 100% owners’ agreement for redevelopment means that many buildings are obsolete, are in substandard condition or may be considerably underdeveloped. This can lead to safety issues for occupants, lost opportunities for development to meet current demand for housing and jobs, or the owners frustrated by the inability to improve their properties to capitalise on their investment. For the planning of our cities and regions, this can mean that the potential of residential precincts or town centres to undergo renewal can be compromised leading to decline of urban areas and associated social
and economic constraints and problems. One way to deal with this outcome is to free up the process for termination of strata schemes so that sites can be redeveloped if a significant majority of the owners agree. Many other cities around the world such as New York, Singapore and Tokyo have legislation with a lower threshold of approval by owners (80-90%) for termination of a strata scheme to enable redevelopment to occur.

Strata title is an important component of NSW property tenure. It is a key ingredient for delivering future housing and employment through ownership and leasing of commercial tenancies for small business, for the securing of affordable housing, investment in property and provision of rental accommodation. There are however, potential significant social impacts that can be associated with residential strata title termination that need to be understood and resolved before the introduction of any new legislation. Strata housing is a vital source of low cost and affordable housing. Access to affordable housing is an essential part of social wellbeing. The proposed changes may contribute to an increased supply of units but would not guarantee that this will also replace or provide sufficient affordable housing.

The distribution of older and run down strata buildings is also important. Many of these are in inner suburbs. Displacement of the residents of these buildings may mean their displacement from the area. Any scheme to amend the legislation must take account of the fact that many older cheaper strata residential units may be owned or rented by people who are elderly, frail, suffer from an illness, or are unable to speak English fluently. A robust system of safeguards should therefore be in place for these people before there is any change to the regulations.

Options to amend the legislation have been considered and they primarily differ in terms of the mechanism to terminate the strata scheme. They include a percentage of the collective owners’ agreement to sell the property for redevelopment by a third party or by a proportion of the owners cooperatively agreeing to enter into a ‘renewal plan’. There are aspects of each option that need to be resolved:

- The appropriate % threshold for owners’ agreement and whether the threshold should vary according to the size of the scheme (for example, dual occupancy at 100%; 12 units- 80 %; > 50 units- 75%).
- The role of the Registrar General, Tribunal or Supreme Court in resolving disputes.
- Who bears the initial costs (e.g. for plans, surveys, legal advice and building advice).
- What process of notification and consultation should occur for owners and tenants.
- The responsibilities for obtaining valuations for the property and the process to assist remortgaging of strata units /bank financing of the redevelopment.
- The role of Strata Managers, mortgagees and third party developers.
- Arrangements for dispute resolution procedures and arbitration.
- The arrangements for relocation of occupants or termination of leases, including consideration and appropriate treatment of hardship cases.
- Avoiding speculative and unrealistic property value escalation as a result of the legislative change which then makes it harder for redevelopment to occur.
- A system of certification may be required upon completion, to confirm that the interests of the owners were protected or compensated.
Whether there should be a period of ‘countdown’ in non-emergency instances through a strata plan’s annual general meeting. That way it could be disclosed to future purchasers.

Ensuring that the conditions of a ‘Renewal Plan’ are not too onerous as to be unreasonable or stymie the redevelopment.

The ability to ‘on-sell’ the redevelopment potential in whole or in part i.e. individual stratum lots or the whole strata plan.

One of the processes to facilitate redevelopment of strata title buildings that has been suggested is to allow redevelopment to occur using a ‘Complying Development Certificate’ mechanism. PIA NSW believes that this may result in unforeseen, adverse consequences by removing a level of scrutiny by local government of the condition of the new buildings and preventing an adequate assessment of issues that should occur through a development assessment process. The merits of alternative processes need to be considered along with the detail for their implementation to ensure that an equitable, procedurally fair and practical process is adopted.

The Strata Title reform issue is not simple and PIA NSW has identified a range of planning matters that need to be considered with any option presented for change. These include:

- Ensuring redevelopment at a higher density only where consistent with a metropolitan or regional strategy.
- A mechanism to assess the impact on the availability of affordable rental housing through residential strata scheme redevelopment and whether inclusionary zoning is used to mandate a proportion of affordable units.
- Social impacts associated with the displacement of residential tenants arising from a redevelopment scheme (this includes likely gentrification of an area as well as the specific impacts on existing tenants).
- Adding safeguards to the legislation to protect vulnerable owners, residents and communities, to ensure the quality of buildings as well as maintain confidence in the strata title system.
- Achieving a higher standard of environmental sustainability and managing climate change impacts under BASIX, AGBR or some other rating tool for the redeveloped building.
- Whether a ‘net community benefit test’ should apply and how an adequate and independent social impact assessment can be undertaken.
- What development assessment process should be undertaken to achieve the desired redevelopment and address all social, affordable housing and building quality objectives.
- Legal implications for properties relying on existing use rights.
- Whether floor space ratio or other ‘planning’ bonuses should be used to facilitate redevelopment.
- How local precinct planning can facilitate strata scheme site redevelopment to clarify site density potential, access provision, public domain improvements and infrastructure upgrades.
PIA NSW considers that amendment to the strata schemes legislation is an essential element of the long term actions that will be needed to increase housing supply in the metropolitan area, to revitalise older urban centres and increase employment opportunities. The review of the legislation for strata buildings can lead to a better understanding of housing demand and create a new means of increasing housing supply. It may point to a better way for local councils to support neighbourhood redevelopment, manage social change in areas, improve sustainability, enhance affordability, protect our built heritage and support local communities.

There are important but not irresolvable issues to be considered in drafting the amendments to the legislation. A goal should be to deliver an equitable, sustainable and fair strata renewal system. PIA NSW is well placed to contribute to the discussion on the issues and solutions. PIA NSW urges the Government to progress with changes to the current strata title legislation with continued opportunities for participation by interested stakeholders as the detail of legislative amendments are released.

Should you wish to discuss any of the issues raised within the submission please contact the PIA NSW Executive Officer, Robyn Vincin, on telephone number (02) 8904 1011 or email nswmanager@planning.org.au.

Yours sincerely,

Greg Woodhams FPIA CPP
Chair, PIA NSW Policy Committee