



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Unit Titles Act 2010 Regulations

Information requests

Electronic voting and remote attendance

Legal costs in the Tribunal

Discussion Paper

June 2023

Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development

Te Tūāpapa Kura Kāinga plays a lead role in helping individuals, family and whānau have healthy, secure and affordable homes that meet their needs.

We want to create thriving communities that connect to the places people live, work, learn and play.

As the Government's lead advisor on housing and urban development, we're working to:

- address homelessness
- increase public and private housing supply
- make existing homes warmer and healthier
- make housing affordable for people to rent and buy, and
- support quality urban development and thriving communities.

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Any questions should be directed to unittitles@hud.govt.nz

June 2023

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Making a submission

Submissions

Te Tūāpapa Kura Kāinga - The Ministry of Housing and Urban Development (the Ministry) seeks written submissions on the proposals raised in this document by **Friday 4 August 2023**. We have included proposals and questions throughout the document. You may comment on any or all of the proposals and we also welcome any other relevant information, comments, evidence and examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission by:

- filling in the online form at [Unit Titles Act 2010: Regulations survey](#)
- emailing your submission to unittitles@hud.govt.nz

Use of information

Your submission will help the government to develop policy that may be put into regulations. Ministry officials may contact submitters directly if we require clarification of any matters in submissions.

Release of information

We propose publishing our submissions analysis. This will include a summary of submitters' views and may include the names of individuals or organisations that have made submissions.

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including Te Tūāpapa Kura Kāinga. Any personal information you supply to us in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the issues canvassed in this discussion paper. Please clearly state in the online submission form and any email or covering letter if you do not wish your name, or any other personal information, included in the summary of submissions.

Submissions may be requested under the Official Information Act 1982. Please set out clearly in the submissions template or in your covering letter or email if you have any objection to the release of the information contained in your submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. We will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.

Further information

If you have any questions or would like more information about the process for making submissions, please email unittitles@hud.govt.nz

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Part A: Overview

This document seeks your input on options for regulating various aspects of how bodies corporate govern unit title developments.

This part of the document, **Part A**, sets out the high-level problem definition for why regulations are needed, the proposed scope of the regulations and the objectives we are seeking to achieve, and poses high level questions for submitters about these matters.

Part B of this document contains the detailed policy proposals. It also poses questions for submitters about the proposals.

Part C of this document presents the objectives and criteria and analyses the options.

Background and context

The unit titles system

The Unit Titles Act 2010 (UTA) provides a legislative framework for the ownership and management of building developments where multiple owners hold a unit title. A unit owner owns a defined part of the development, such as an apartment or townhouse. Together the unit owners are members of the body corporate that owns the common property, such as driveways, and manages the unit title development.

There is a wide variety of unit titles developments:

- A development could have a few units or hundreds.
- A development can be all residential, all commercial, or a mixed development.
- Unit title developments are most often found in the main centres, but some are located in smaller centres.
- Bodies corporate may be run by a professional body corporate manager, or self-run by the unit owners.

There are over 185,000 units in over 15,000 unit title developments. The majority of unit title developments have nine or fewer units, at over 11,000 unit title developments. However, there are only about 44,000 units in total in those developments. There are about 141,000 units in the 4,000 unit title developments with 10 or more units. Auckland, Wellington and Christchurch have over 10,000 unit title developments between them. The remaining developments are mostly located in other cities, such as Hamilton, Dunedin and Queenstown.

The Amendment Act

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (Amendment Act) became law on 9 May 2022. The key changes in the Amendment Act relate to the disclosure regime, body corporate governance, body corporate managers, the long-term maintenance regime, dispute resolution and the regulator's powers.

Scope of the regulations

There are three sets of regulations needed to give full effect to the Amendment Act:

Regulation	What will the regulation include, and why?
Information that must be provided from a body corporate or body corporate manager to the regulator on request	<ul style="list-style-type: none">• Will set out a list of documents that must be kept and provided to the regulator on request.• Will support the regulator to obtain information for its functions and powers, for example, compliance and enforcement.
Rules for electronic voting and remote attendance procedures	<ul style="list-style-type: none">• Will support bodies corporate to have processes for voting electronically and attending meetings online/by telephone.• Will support integrity and consistency in voting practices across the sector.• From 9 May 2024, unit owners will be able to vote electronically before a general meeting.
Rules for determining legal costs for unit titles disputes at the Tenancy Tribunal	<ul style="list-style-type: none">• Will set out principles and rules for the Tenancy Tribunal to decide what legal costs should be awarded when someone is successful in a unit titles dispute.• Will support the Tenancy Tribunal as a low-cost means of dispute resolution by ensuring cost allocation is appropriate to the claim.• From 9 May 2024, regulations can determine how legal costs are awarded.

This discussion document also proposes some additions to existing regulations, the Unit Titles Regulations 2011 (the Regulations). The Amendment Act provides that a unit owner can give direction to a proxy holder on a proxy appointment form. The regulations could address what happens if the proxy holder does not follow the direction, and where the motion changes substantially during the general meeting.

The Amendment Act also provides new requirements for pre-purchase disclosure when purchasing a unit off the plans. The regulations could address what is included in the pre-settlement disclosure statement to include information that has become available since the contract was signed.

These regulations will apply to all bodies corporate, no matter what size they are. As a result, it is important for bodies corporate to have flexibility in how they meet their obligations, where practical.

Why do we need regulations?

Why we need information request regulations

Currently under the UTA, the regulator has a limited ability to request documents from bodies corporate. On 9 May 2024, this ability will be repealed, and the new provision to request documents will come into force. But the regulator will not be able to request

documents until regulations are in place. If regulations are not made, it will be difficult for the regulator to undertake compliance and enforcement work.

Why we need electronic voting and remote attendance regulations

A provision allowing electronic voting in advance of meetings will come into force on 9 May 2024. This means unit owners will be able to vote electronically, but without regulations, there will be no electronic voting rules. This could lead to confusion and potential legal challenges over voting practices if a vote relates to a contentious issue.

Some bodies corporate may use voting platforms and processes that go beyond what the requirements will be when the regulations are made. This could mean stricter processes or spending on unnecessarily expensive options. Other bodies corporate may use processes that fall short of what the requirements will be, which could leave unit owners concerned about the integrity of the voting process. Regulations will ensure a suitable level of security and consistency across the sector.

Why we need regulations to determine costs in the Tenancy Tribunal

Regulations will enable the Tenancy Tribunal (Tribunal) to award legal costs that are appropriate in the Tribunal setting.

The UTA recognises that bodies corporate should be able to recoup reasonable costs of recovering unpaid levies through the Tribunal. The High Court has decided that legal costs are part of the reasonable costs of recovering unpaid levies. This has resulted in awards of full legal costs in the Tribunal which can be significant in comparison to the levies owed. The Residential Tenancies Act 1986 (RTA) allows parties to have legal representation in the Tribunal only where the dispute is for more than \$6,000. Under the UTA, lawyers may appear as agents for bodies corporate, even if the matter is under \$6,000. Following the High Court determination that legal costs are included as reasonable costs in levy cases, lawyers' fees for acting as agents have been awarded as costs for the body corporate in low value matters that are under the \$6,000 threshold.

From May 2024, section 124 of the UTA will specify that the determination of reasonable costs that are legal costs will be subject to regulations. Until these regulations are in place the Amendment Act does not alter the way cost awards are determined in the Tribunal. Adjudicators will continue to exercise discretion choosing to apply a percentage approach or awarding full legal costs.

Why we need the proxy and disclosure regulations

The changes in the Amendment Act which allow a unit owner to direct a proxy how to vote at a general meeting has raised some practical questions. If regulations are not made, then there may be confusion and differing practices. This could lead to potential legal challenges over voting practices if a vote relates to a contentious issue.

The Amendment Act provides new requirements for pre-purchase disclosure when purchasing a unit off the plans. If changes are not made to the pre-settlement disclosure requirements, a buyer could buy a unit without having useful information about the unit title development.

Who is affected by the proposals?

Unit owners, prospective buyers, bodies corporate, body corporate managers and lawyers who represent clients in the Tribunal may be affected by the proposals. In particular, the proposed regulations may affect a unit owner's ability to be involved in body corporate decision-making and may affect body corporate costs. Tenants who live in unit titles will not be directly affected by the proposals.

More information is provided in each section about how the proposed regulations will affect different people.

Are iwi/Māori affected by the proposals?

As set out above, unit owners will be affected by the proposals, but tenants living in unit titles will not be. There is little data available on the ethnicity of those who own unit titles. However, we consider that currently iwi/Māori are not more likely than other populations to own unit titles. Unit title developments may be used more frequently in the future for Māori housing developments as Aotearoa New Zealand respond to climate impacts and the need for more density in urban areas.

As with other unit owners, Māori unit owners will experience the potential benefits and costs of the proposals. The Ministry is committed to equitable housing outcomes for Māori, in accordance with Article 3 of Te Tiriti o Waitangi. For these proposals, we will consider whether there are any unintended impacts of the proposals on Māori.

We consider that Māori interests are not specifically affected by these proposals. The Ministry understands that the approach to property ownership in the UTA, which includes individual as well as collective ownership, may not reflect a tikanga Māori approach to property ownership. We do not consider that Article 2 of Te Tiriti is engaged by these proposals.

MAIHI Ka Ora – the National Māori Housing Strategy is the Ministry's strategy document for Māori housing.¹ The principles of MAIHI support te mauri o te whānau: mauri, whakamana, manaakitanga, tino rangatiratanga, whanaungatanga and tikanga.

The proposals in this discussion document may support various principles of MAIHI for Māori unit owners. For example, tino rangatiratanga – in supporting the ability of unit owners to be engaged in decision-making in their body corporate.

How will the proposed regulations be implemented, monitored, evaluated, and reviewed?

To support implementation, once the regulations are final, the Ministry will work with Ministry of Business, Innovation and Employment (MBIE) to prepare guidance for unit owners, bodies corporate and others about their rights and obligations under the regulations. Parties will also be able to call the Unit Titles Services to seek advice. In addition, MBIE may respond to

¹ More information is available on the Ministry's website: <https://www.hud.govt.nz/our-work/maihi-ka-ora-the-national-maori-housing-strategy/>.

complaints of systemic issues where bodies corporate are not fulfilling their obligations under the regulations.

For example, MBIE could produce a template to support bodies corporate to take their own claims for levy recovery through the Tribunal without engaging legal representation. Alternatively, the Ministry could invite the Principal Tenancy Adjudicator to issue a practice note to support correct use of documentation and smooth the process for adjudicators in the Tribunal.

The Ministry and MBIE are the regulatory stewards for the unit titles system and will monitor the implementation of the proposed regulations. As part of this work, Ministry policy officials are in regular contact with MBIE's Tenancy Services team, which holds compliance, enforcement, information and education, and mediation functions for the UTA, and with Justice Services within the Ministry of Justice, which administers the Tribunal. The Ministry also monitors Tribunal decisions which may deal with matters related to the proposed regulations.

Limitations and constraints

These regulatory proposals are made in the context of the empowering law – that is, they need to fall within the scope of section 217 of the UTA (as amended by the Amendment Act), and section 176A of the UTA (to be inserted by the Amendment Act).

As such, any potential options which would not align with those sections have not been considered. This includes any other amendments to the UTA itself – as they would require a legislative change process.

This discussion document is written with the express purpose of seeking public feedback on the proposals and the underlying analysis which these have been based on, and so the current information may not always be complete. Input received during public consultation will ensure that the final proposals are as well informed as possible.

What is the timeframe for making the regulations?

Date	Milestone
28 June 2023	Discussion paper released for consultation
4 August 2023	Submission period ends
August 2023 – March 2024	Analysis of submissions, Cabinet decisions and drafting of regulations
May 2024	Anticipated time regulations may come into force

Questions on Part A

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

1.	Do you agree with the reasons why regulations are needed?
2.	Do you have any comments on who will be affected by the proposals, and how?
3.	Do you consider that Māori interests are specifically affected by these proposals? If yes, how?
4.	Do you consider that the Māori and Iwi Housing Innovation (MAIHI) Ka Ora principles are useful for considering these proposals in relation to Māori unit owners?
5.	Do you consider a template or practice note would be of value to support bodies corporate to take a levy claim through the Tribunal without engaging a lawyer?

Part B: Policy proposals and questions for submitters

This Part is split into four sections and presents options on policy proposals alongside questions for submitters to respond to.

Section 1: Information requests

Section 2: Electronic voting and remote attendance procedures

Section 3: Determining legal costs in the Tribunal

Section 4: Other regulations

Section 1: Information requests

This section presents three options that aim to balance the effective ability of the regulator to request information, with the regulatory burden on bodies corporate and body corporate managers.

1.1 What will the regulations cover?

Currently, the UTA allows the regulator to request relevant information from bodies corporate to enable it to report on the body corporate's long-term financial and/or maintenance planning regime. The regulator cannot request information from a body corporate for any other purpose, or from a body corporate manager.

The regulator has powers to investigate breaches of the UTA, but until the new provisions in the Amendment Act come into force, it has no power to require information from parties for the purpose of an investigation. This means the regulator's investigation could be frustrated through non-cooperation.

The Amendment Act requires a body corporate and body corporate manager to keep the documents that have been set out in regulations. They must keep the documents for three years from the creation of the document. The requirement to keep documents will begin from 9 May 2024. The requirement applies to all documents held or controlled by the body corporate or body corporate manager once the regulations commence. The regulator can request any document on the prescribed list if the regulator reasonably requires it for the purpose of its functions or powers under the UTA.

1.2 Options Description

Option One – Limited list

The prescribed list will include documents that are produced throughout the operation of a body corporate, but is limited to those that show compliance with operational, financial and governance requirements of the UTA.

Option Two – Complete list

The prescribed list will include all documents that are produced throughout the operation of a body corporate and could reasonably be expected to be required by the regulator for the purpose of its functions and powers under the UTA.

Option Three – Complete list + correspondence

Option three includes all the documents in option two. Option three also includes correspondence (e.g., emails) that relate to body corporate compliance with specific sections of the UTA. The inclusion of specific correspondence is intended to capture further decision-making context that may not be found in formalised documents.

Types of information

The tables below show the documents required under each option. They are categorised in four main areas: financial, maintenance, governance and other information.

Financial information

Financial information is useful for the regulator to understand whether bodies corporate are operating in a way that is fiscally responsible, and to ensure they are being sufficiently transparent in their practices.

<p>Option One:</p> <ul style="list-style-type: none"> ▪ Details of all body corporate funds and bank accounts ▪ Financial statements and audits ▪ Assessment of ownership interest ▪ Documents relating to utility interest decisions ▪ Levy information 	<p>Option Two:</p> <ul style="list-style-type: none"> ▪ Invoices from the body corporate to an owner for metered charges <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Details of all body corporate funds and bank accounts ▪ Financial statements and audits ▪ Assessment of ownership interest ▪ Documents relating to utility interest decisions ▪ Levy information 	<p>Option Three:</p> <ul style="list-style-type: none"> ▪ Correspondence between specified parties that relates to: <ul style="list-style-type: none"> ▪ financial statements and audits ▪ levy information <p>And from Option Two:</p> <ul style="list-style-type: none"> ▪ Invoices from the body corporate to an owner for metered charges <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Details of all body corporate funds and bank accounts ▪ Financial statements and audits ▪ Assessment of ownership interest ▪ Documents relating to utility interest decisions ▪ Levy information
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Maintenance Information

Maintenance information helps the regulator understand whether bodies corporate are meeting their obligations in reference to the maintenance of the unit title development.

<p>Option One:</p> <ul style="list-style-type: none"> ▪ Long-term maintenance plan and the next review date ▪ Remediation, earthquake-prone and land defect reports 	<p>Option Two:</p> <ul style="list-style-type: none"> ▪ Correspondence between building consultant and body corporate in relation to the development of the long-term maintenance plan ▪ Notices from body corporate to owners regarding entering a unit <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Long-term maintenance plan and the next review date ▪ Remediation, earthquake-prone and land defect reports 	<p>Option Three:</p> <ul style="list-style-type: none"> ▪ Correspondence between specified parties that relates to remediation, earthquake-prone and land defect reports <p>And from Option Two:</p> <ul style="list-style-type: none"> ▪ Correspondence between building consultant and body corporate in relation to the development of the long-term maintenance plan ▪ Notices from body corporate to owners regarding entering a unit <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Long-term maintenance plan and the next review date ▪ Remediation, earthquake-prone and land defect reports
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Governance information

Governance information is useful for the regulator to understand the way in which the operation and management of the body corporate is managed, and to ensure correct procedures are being followed.

<p>Option One:</p> <ul style="list-style-type: none"> ▪ Register of all unit owners ▪ Notices, agendas and minutes of body corporate and committee meetings ▪ Contact details for any current body corporate or committee chairperson or current or past body corporate manager ▪ Notice of designated resolution ▪ Notices of delegation from the body corporate to the body corporate committee ▪ Report from the body corporate committee to the body corporate on the exercise of the duties and powers delegated to it ▪ Details of all current insurance policies ▪ Details of any proceedings in any court or tribunal that the body corporate is involved in ▪ Written agreement of body corporate managers' terms of employment 	<p>Option Two:</p> <ul style="list-style-type: none"> ▪ Body corporate operation rules and any amendments ▪ Records related to any current warranties from third parties for common property, assets owned by the body corporate, or building elements and infrastructure ▪ Evidence of compliance with a designated resolution ▪ Notice of resolution to be decided without general meeting ▪ Notice requiring an owner to sign any document in order to carry out a resolution <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Register of all unit owners ▪ Notices, agendas and minutes of body corporate and committee meetings ▪ Contact details for any current body corporate or committee chairperson or current or past body corporate manager ▪ Notice of designated resolution ▪ Notices of delegation from the body corporate to the body corporate committee ▪ Report from the body corporate committee to the body corporate on the exercise of the duties and powers delegated to it ▪ Details of all current insurance policies ▪ Details of any proceedings in any court or tribunal that the body corporate is involved in ▪ Written agreement of body corporate managers' terms of employment 	<p>Option Three: same as Option Two:</p> <ul style="list-style-type: none"> ▪ Body corporate operation rules and any amendments ▪ Records related to any current warranties from third parties for common property, assets owned by the body corporate, or building elements and infrastructure ▪ Evidence of compliance with a designated resolution ▪ Notice of resolution to be decided without general meeting ▪ Notice requiring an owner to sign any document in order to carry out a resolution <p>And from Option One:</p> <ul style="list-style-type: none"> ▪ Register of all unit owners ▪ Notices, agendas and minutes of body corporate and committee meetings ▪ Contact details for any current body corporate or committee chairperson or current or past body corporate manager ▪ Notice of designated resolution ▪ Notices of delegation from the body corporate to the body corporate committee ▪ Report from the body corporate committee to the body corporate on the exercise of the duties and powers delegated to it ▪ Details of all current insurance policies ▪ Details of any proceedings in any court or tribunal that the body corporate is involved in ▪ Written agreement of body corporate managers' terms of employment
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Other information

Other information covers additional documents produced throughout the operation of a unit title development, that the regulator may require for the purpose of its functions under the UTA.

Option One: <ul style="list-style-type: none">▪ Conflict of interest register for the body corporate committee▪ Conflict of interest register for the body corporate manager▪ Service contracts	Option Two: <ul style="list-style-type: none">▪ Proxy appointment form▪ Postal voting form▪ Historical additional disclosure statements And from Option One: <ul style="list-style-type: none">▪ Conflict of interest register for the body corporate committee▪ Conflict of interest register for the body corporate manager▪ Service contracts	Option Three: <ul style="list-style-type: none">▪ Correspondence between specified parties that relates to conflict of interest register for the body corporate committee or body corporate manager And from Option Two: <ul style="list-style-type: none">▪ Proxy appointment form▪ Postal voting form▪ Historical additional disclosure statements And from Option One: <ul style="list-style-type: none">▪ Conflict of interest register for the body corporate committee▪ Conflict of interest register for the body corporate manager▪ Service contracts
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1.3 Proposal

We propose Option two – the complete list of documents.

Option One enables the regulator to obtain information it requires. However, it is limited where additional context is necessary for an investigation. For example, if the regulator wants to check if a notice was provided within the required timeframes, it may not be able to request the relevant document under Option One.

Option Three provides the regulator with the most effective means to obtaining the information it requires. Correspondence associated with the development of specified documents will help the regulator understand valuable background context. However, this option may require bodies corporate to work through a significant number of emails and other correspondence, taking time and introducing cost.

Option Two provides the regulator with a more effective investigation function than Option One, without the potentially burdensome requirements of Option Three. Therefore, it presents the most reasonable balance between the administrative burden placed on bodies corporate and establishing an effective mechanism for investigation.

See **Part C** for the objectives, criteria, and a more in-depth analysis for the above options.

1.4 What will the regulations mean for me?

As a member of the body corporate, or a body corporate manager

The Amendment Act does not require that new documents be created solely for the purpose of providing them to the regulator.

It will require that existing documents are stored for at least three years and are readily accessible in case they are requested by the regulator. Bodies corporate will already be required to keep many of the documents included in the list for the purpose of providing a complete pre-contract disclosure statement and pre-settlement disclosure statement.

As a unit owner

The information request provisions enable the regulator to investigate and consider complaints about bodies corporate. The enforcement tools of the regulator can support compliance with the UTA, which benefits all unit owners, including Māori.

The document list will create a regulatory burden for the body corporate, the costs of which will be met by the unit owners. As noted above, many of the documents are already required to be kept to meet the pre-purchase disclosure requirements in the UTA. Not all of these documents will be held for three years. The additional burden of these options is that extra documents that must be kept, or that they must be held for a longer time.

1.5 Questions on Section 1: Information requests

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

1.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 1). Why / why not?
2.	Do you agree with the preferred option? Why/why not? (Option Two)
3.	Are there any specific documents that you believe should not be included in the prescribed list? If so, please name the document and describe the reason it should not be included.
4.	In relation to Option Three, do you have any comments on introducing the ability for the regulator to request additional correspondence in relation to particular documents?
5.	Do you consider that Māori interests are specifically affected by these proposals, and how?
6.	Do you have any additional comments you would like to make?

Section 2: Electronic voting and remote attendance procedures

This section presents three options that aim to balance providing effective remote access to unit owners with allowing for a reasonable degree of flexibility for bodies corporate.

2.1 What will the regulations cover?

Previously, the UTA did not clearly provide for the ability to vote electronically in body corporate general meetings. In March 2020, in response to the COVID-19 pandemic, a temporary amendment was added to the UTA to enable remote attendance and voting at body corporate general and committee meetings.

The Amendment Act includes a permanent provision that enables a member of a body corporate to attend and vote at meetings via “audio link, audio-visual link, or remote access facility”. This provision came into force on 9 December 2022 and is currently operational.

The Amendment Act will introduce the ability for unit owners to vote electronically prior to a meeting, and states that the electronic vote must be cast in accordance with the regulations. This provision will come into force on 9 May 2024. The provision will come into force even if regulations are not made.

2.2 Options Description

The features of the electronic voting and remote attendance process can be organised into four categories: process, pre-meeting, meeting, and post-meeting. Within each category, there are different elements that we could regulate. The following table sets out all of the elements addressed across the three options. Note that each option only addresses some, not all of the elements listed below.

Category	Element
<i>Process</i>	<ul style="list-style-type: none"> ▪ Definition of an ‘electronic vote’
<i>Pre-meeting</i>	<ul style="list-style-type: none"> ▪ Notification of intent to attend a meeting (RSVP) ▪ Information to be provided to unit owners regarding access to remote attendance and electronic voting (during a meeting) ▪ Information to be provided regarding the voting process for pre-meeting voting ▪ Amount of time prior to a meeting that access to pre-meeting electronic voting must be provided ▪ Amount of time prior to a meeting that notification of a proxy who wishes to attend a meeting remotely ▪ Amount of time prior to a meeting that a pre-meeting electronic vote must be cast
<i>Meeting</i>	<ul style="list-style-type: none"> ▪ Identity verification process ▪ Changing of a pre-meeting vote after it has been cast ▪ Validity of an electronic vote in the case of a reconvened meeting ▪ Status of a pre-meeting electronic vote if a resolution is substantially changed at a general meeting

Category	Element
Meeting	<ul style="list-style-type: none"> Requirements to ensure remote attendees can participate in the meeting
Post-meeting	<ul style="list-style-type: none"> Storage of votes

Option One

Sets out 'baseline' requirements for enabling electronic voting and remote attendance at body corporate general meetings. It provides bodies corporate with a *significant* degree of flexibility to determine their processes and procedures in a way that suits their needs.

Option Two

Builds on Option One by including some additional requirements. It also replaces some of the flexibility provided in Option One in favour of setting out clear procedures for all bodies corporate.

Option Three

Further limits the flexibility provided to bodies corporate to determine their own processes and procedures, in favour of more rigorous requirements. Additionally, the approach in Option Three is through regulations, whereas the approach in Option Two addresses some of the elements through guidance.

Process – comparison of all options

The below table presents options regarding elements that relate to entire process of electronic voting and remote attendance.

Option One	Option Two	Option Three
<i>Definition of an 'electronic vote'</i>		
<p>The definition of electronic voting should include:</p> <ul style="list-style-type: none"> an owner voting during a body corporate meeting using electronic means and not in person; and an owner submitting a vote via electronic software/online portal either before or during a body corporate meeting; an owner submitting a postal vote form via email or similar 	<p>The definition of electronic voting should include:</p> <ul style="list-style-type: none"> an owner voting during a body corporate meeting using electronic means and not in person; and an owner submitting a vote via electronic software/online portal either before or during a body corporate meeting; and an owner submitting a postal vote form via email or similar 	<p>The definition of electronic voting should include:</p> <ul style="list-style-type: none"> an owner voting during a body corporate meeting using electronic means and not in person; and an owner submitting a vote via electronic software/online portal either before or during a body corporate meeting <p><i>note: this option requires a body corporate to facilitate electronic voting via electronic software/online portal.</i></p>

Pre-meeting – comparison of all options

The below table presents options regarding the electronic voting and remote attendance procedures that need to be addressed prior to, or to prepare for an upcoming body corporate general meeting.

Option One	Option Two	Option Three
<i>Notification of intent to attend meeting (RSVP)</i>		
No RSVP requirement	An RSVP (for attendance and form of attendance) <u>may</u> be used to influence the capacity of the in-person venue booked for the general meeting	An RSVP (for attendance and form of attendance) <u>may</u> be used to influence the capacity of the in-person venue booked for the general meeting
<i>Information to be provided to unit owners regarding access to remote attendance and electronic voting (during a meeting)</i>		
<ul style="list-style-type: none"> • Instructions on how to attend the meeting remotely • Instruction on how to cast an electronic vote • The text of a motion to be decided 	<ul style="list-style-type: none"> • Instructions on how to attend the meeting remotely • Instruction on how to cast an electronic vote • The text of a motion to be decided 	<p>Prescribe a form that bodies corporate must use to provide meeting participants with the following information:</p> <ul style="list-style-type: none"> • Instructions on how to attend the meeting remotely • Instruction on how to cast an electronic vote (in all its forms) • The text of a motion to be decided
<i>Information to be provided regarding the voting process for pre-meeting voting</i>		
<ul style="list-style-type: none"> • Describe to owners how pre-meeting electronic voting occurs (in all its forms) • The closing date and time of the vote (as set by the body corporate) • Set out the validity of an electronic pre-meeting vote if a general meeting is adjourned • Set out the validity of an electronic pre-meeting vote if the corresponding resolution is materially amended at the general meeting 	<ul style="list-style-type: none"> • Describe to owners how pre-meeting electronic voting occurs (in all its forms) • The closing date and time of the vote (as set by the body corporate) • Set out the validity of an electronic pre-meeting vote if a general meeting is adjourned • Set out the validity of an electronic pre-meeting vote if the corresponding resolution is materially amended at the general meeting 	<ul style="list-style-type: none"> • Describe to owners how pre-meeting electronic voting occurs (in all its forms) • The closing date and time of the vote (as set by the body corporate) • Set out the validity of an electronic pre-meeting vote if a general meeting is adjourned • Set out the validity of an electronic pre-meeting vote if the corresponding resolution is materially amended at the general meeting

Option One	Option Two	Option Three
<i>When access to pre-meeting electronic voting must be provided</i>		
Access must be provided at least by the minimum required time for a notice of AGM/EGM to be sent out	Notice of AGM/EGM must be accompanied with access to electronic voting, including if the notice is sent out “early”/prior to the minimum required notice period	Notice of AGM/EGM must be accompanied with access to electronic voting, including if the notice is sent out “early”/prior to the minimum required notice period
<i>Notification that a proxy wishes to attend a meeting remotely</i>		
A body corporate can determine that a remote proxy must be lodged up to a limit of 24 hours prior to the meeting	A body corporate can determine that a remote proxy must be lodged up to a limit of 24 hours prior to the meeting	24 hours prior to the meeting
<i>Amount of time prior to a meeting that a pre-meeting electronic vote must be cast</i>		
Up until the meeting starts	A body corporate can determine the date and time of return for pre-meeting electronic votes prior to a general meeting	A body corporate can determine the date and time of return for pre-meeting electronic votes prior to a general meeting

Meeting – comparison of all options

The below table presents options for the electronic voting and remote attendance procedures that must be addressed immediately prior, or during the course of a body corporate general meeting.

Option One	Option Two	Option Three
<i>Identity verification process</i>		
<p>The electronic voting system must include <u>reasonable measures</u> for verifying the identity of each unit owner.</p> <p>Bodies corporate can determine what is appropriate for their circumstances.</p>	<p>Each unit must have an email address assigned to it. These email addresses will be stored in the 'register of unit owners'. The registered email address must be used to place an electronic vote or to enter a meeting remotely.</p>	<p>Each unit must have an email address assigned to it. These email addresses will be stored in the 'register of unit owners'. The registered email address must be used to place an electronic vote or to enter a meeting remotely.</p>
	<p>A body corporate can rely solely on the email in the owners' register being used by a remote attendee as verification that the attendee is the owner.</p>	<p>A body corporate can rely solely on the email in the owners' register being used by a remote attendee as verification that the attendee is the owner.</p>
	<p>A unit owner who wishes to attend a meeting by audio only, must dial into the meeting using the phone number in the owners' register.</p>	<p>A unit owner who wishes to attend a meeting by audio only, must dial into the meeting using the phone number in the owners' register.</p>
	<p>A proxy will need to provide an email address via the proxy appointment form. This email address must be used to place an electronic vote or to enter a meeting remotely.</p>	<p>A proxy will need to provide an email address via the proxy appointment form. This email address must be used to place an electronic vote or to enter a meeting remotely.</p>
	<p>Guidance issued to make clear that the chairperson should engage with and identify all proxy holders attending remotely and establish which unit(s) they represent for voting purposes.</p>	<p>At the outset of a meeting, the Chairperson must engage with all proxy holders attending remotely and establish which unit(s) they represent for voting purposes, in accordance with the submitted proxy forms.</p>
	<p>Guidance issued to make clear that the chairperson should engage with and identify all co-owners and establish which owners, whether in person or remote, shall vote for the unit.</p>	<p>At the outset of a meeting, the Chairperson must engage with and identify all co-owners and establish which owners, whether in person or remote, shall vote for the unit.</p>
<i>Whether or not a pre-meeting electronic vote can be changed</i>		
<p>Regulations do not prevent the vote from being changed.</p>	<p>Regulations do not prevent the vote from being changed.</p>	<p>Once cast, a vote cannot be changed.</p>

Option One	Option Two	Option Three
<i>Validity of a pre-meeting electronic vote in the case of a reconvened meeting</i>		
If a general meeting is adjourned, an electronic vote remains valid for the purposes of a reconvened meeting, unless the voter who cast the vote attends the reconvened meeting in person or by proxy.	If a general meeting is adjourned, an electronic vote remains valid for the purposes of a reconvened meeting, unless the voter who cast the vote attends the reconvened meeting in person or by proxy.	If a general meeting is adjourned, an electronic vote remains valid for the purposes of a reconvened meeting, unless the voter who cast the vote attends the reconvened meeting in person or by proxy.
<i>Status of a pre-meeting electronic vote if a resolution is substantially changed at a general meeting</i>		
A pre-meeting electronic vote on a particular resolution should not be included in the voting count if that resolution is materially amended at the general meeting.	A pre-meeting electronic vote on a particular resolution should not be included in the voting count if that resolution is materially amended at the general meeting.	A pre-meeting electronic vote on a particular resolution should not be included in the voting count if that resolution is materially amended at the general meeting.
<i>Ensuring remote attendees can participate in the meeting (audio/visual)</i>		
No requirements set out in regulations.	The body corporate must take reasonable steps to ensure the electronic facilities are sufficient that remote attendees could reasonably expect to participate in the meeting both via audio and visual inputs.	The body corporate must take reasonable steps to ensure the electronic facilities are sufficient that remote attendees could reasonably expect to participate in the meeting both via audio and visual inputs.

Post-meeting – comparison of all options

The below table presents options for the storage of votes and proxy forms following the conclusion of a body corporate general meeting.

Option One	Option Two	Option Three
<i>Storage of votes and proxy forms</i>		
No requirements set in regulations.	All votes (whether in person, by proxy, remote, postal, or pre-meeting electronic) must be stored for 28 days after the end of the meeting. All proxy forms must be stored for 28 days after the end of the meeting. The votes and forms must be stored securely, and in a way that they are available for use during a general meeting to tally votes.	All votes (whether in person, by proxy, remote, postal, or pre-meeting electronic) must be stored for 28 days after the end of the meeting. All proxy forms must be stored for 28 days after the end of the meeting. The votes and forms must be stored securely, and in a way that they are available for use during a general meeting to tally votes.

2.3 Proposal

We propose Option two.

Option One provides effective remote access for unit owners to body corporate meetings. This option is limited in the number of and detail of its prescriptions, this allows bodies corporate the flexibility to determine procedures that are best suited for its own needs. However, the integrity of the processes could be reduced. For example, an individual body corporate would be able to determine an identity verification process that is reasonable for their circumstances.

With Option Two, unit owners will have more certainty that their remote access to body corporate meetings will be ensured, and that the meeting integrity is upheld. As a result, bodies corporate will be provided with less flexibility to determine their own procedures than in Option One. Guidance will be issued to assist bodies corporate with implementing their new processes.

Option Three provides unit owners with even greater certainty that they will be able to access and participate in a remote meeting successfully. For example, the body corporate must provide an online portal that owners must use to cast an electronic vote, and they must take reasonable steps to ensure remote attendees can participate in the meeting. As a result, this option provides bodies corporate with the least flexibility in determining procedures that suit their needs.

We consider Option Two represents the most effective means of providing remote access to unit owners, in a way that upholds integrity but also allows a reasonable degree of flexibility to bodies corporate.

See **Part C** for the objectives, criteria, and a more in-depth analysis for the above options.

2.4 What will the regulations mean for me?

As a unit owner

If you wish to attend a meeting remotely, there may be new procedures you will need to follow in order to participate in the meeting. For example, there may be a process around verifying your identity when signing into the remote attendance platform. This will protect your ability to take part in decision-making.

As a body corporate chairperson or body corporate manager

These regulations will bring in a number of requirements for bodies corporate to provide information to unit owners around remote attendance and electronic voting, in advance of the meeting. Depending on the option chosen, there may also be requirements for bodies corporate during and after the meetings.

2.5 Questions on Section 2: Electronic voting and remote attendance procedures

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

1.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 2). Why / why not?
2.	Do you agree with the preferred option? Why / why not? (Option Two)
3.	Do you believe a postal vote submitted via email or similar communication software prior to a meeting should be included in the definition of an electronic vote?
4.	Do you have any particular views on how a unit owner who wishes to attend a meeting remotely should have to verify their identity?
5.	Do you have any suggestions on how a body corporate should be required to ensure that remote attendees can participate in a meeting?
6.	Do you consider that Māori interests are specifically affected by these proposals, and how?
7.	Do you have any additional comments you would like to make?

Section 3: Determination of legal costs in the Tenancy Tribunal

This section presents two options that aim to provide a fair and low-cost approach to the determination of reasonable costs that are legal costs for unit title claims in the Tribunal. These are the costs awarded to the successful party in a claim before the Tribunal. Objectives and criteria are provided in further detail for each option in Part C.

3.1 What will the regulations cover?

Courts and tribunals in New Zealand typically apply either a scale cost (based on a percentage of actual costs), or a fixed cost (pre-determined maximum) approach when awarding legal costs to a successful party in a claim. The unsuccessful party is then required to pay that amount to the successful party. Both approaches would require a unit owner and body corporate to share the costs of recovering unpaid levies through a Tribunal hearing. Tribunals and courts in New Zealand apply a cost-sharing approach which reflects the principle that parties should avoid bringing unnecessary legal claims.

Non-levy claims would continue to be determined as they are currently – at the discretion of the Tribunal on the basis of a percentage of the actual cost, normally in the range of 40 – 70 percent of the actual legal cost. Non-levy cases make up approximately 30 percent of unit title cases at the Tribunal, they are often complex and require legal representation.

As noted in Part A, the current approach to levy cases has resulted in awards of full legal costs in the Tribunal which can be significant in comparison to the levies owed. There are no current concerns with the way the Tribunal determines legal costs in non-levy cases.

The Amendment Act allows regulations to be made that will set out the principles and rules for deciding legal costs in unit titles disputes in the Tribunal. This section sets out two options for a cost regime and seeks your feedback on the preferred approach. This section also proposes the level at which the costs regime is set.

3.2 Options Description

Table 2: proposed options

	OPTION 1 - SCALE COSTS	OPTION 2 - FIXED COSTS
Target – levy/non-levy	All unit title claims - levy and non-levy cases	Levy claims only (non-levy matters will continue to be determined by status quo percentage basis)
Scaled or fixed	Scale approach (current approach for non-levy cases and used by District Court)	Fixed cost approach (like ACC cost awards)
Cost calculation	Sum of fees per activity as portion of fixed daily rate	Fixed costs for preparation and attendance at hearing

Option One – scale costs

Regulations would prescribe a scale cost regime that sets a daily maximum cost across different complexity levels. The scale would include a schedule of activities with allocated timeframes represented as a portion of the daily maximum cost – the timeframes have different levels, reflecting the amount of time considered reasonable for that activity. Tenancy Adjudicators would apply the scale to the facts of the case they were deciding.

This approach would apply to all unit title cases, both levy claims, and claims that consider matters other than levy recovery that are heard in the Tribunal. The schedule would also enable calculation of the cost of identifiable activities carried out by lawyers.

Example of scale costs

The scale cost regime that is used by the District Court applies a maximum daily rate across three categories that recognise complexity as either category 1, 2 or 3. The rate is normally at two-thirds of the daily rate that would be considered reasonable in each type of case.

Category	Complexity level	Maximum daily rate
Category 1	Straightforward – can be carried out by a junior lawyer	\$1,270
Category 2	Average complexity – lawyers with average skill and experience required	\$1,910
Category 3	Greater complexity and require counsel to have special skill and experience	\$2,820

Time is allocated to specific tasks as a portion of these daily rates across three levels - each reflecting greater complexity and therefore requiring more time:

- A – activities where a comparatively small amount of time is considered reasonable
- B – activities where a normal amount of time is considered reasonable
- C – activities where a comparatively large amount of time is considered reasonable.

A simplified example based on the District Court schedule is set out in the table below. A straight-forward levy case would fall within complexity category 1 and require a comparatively small amount of time – ‘A’.

The District Court schedule of activities and time allocations is not completely transferable to the activities and tasks required to take claims through the Tribunal. It reflects a more involved process than what is likely required for straight-forward undisputed levy claims in the Tribunal.

Table 3: Simplified example applying the time and fee schedule used in the District Court

Lawyer's activities as portion of the daily rate	Maximum daily rate Category 1 Simple case \$1,270		Maximum daily rate Category 2 Complex case \$1,910	
	Short time 1A	Normal time 1B	Short time 2A	Normal time 2B
Prepare statement of claim (including filing and serving) A = 0.75 B = 1.5	\$952.50	\$1,905	\$1,432.50	\$2,865
Prepare for short hearing A = 0.5 B = 0.5	\$635	\$635	\$955	\$955
Appearance at hearing A = 1.0 B = 1.5	\$1,270	\$1,905	\$1,910	\$2,865
Total	\$2,857.50	\$4,445	\$4,297.50	\$6,685

Option Two – fixed costs

Regulations would prescribe a maximum fixed cost regime for determination of legal costs in unit title levy claims only. Non-levy claims would continue to be determined as they are currently – at the discretion of the Tribunal based on a percentage of the actual cost, normally in the range of 40 – 70 percent of the actual legal cost.

Example of fixed costs

A fixed-cost 'maximum' fee would apply to identified activities in levy claims covered by section 124 of the UTA only. A similar method is used to determine recoverable costs for ACC reviews. Costs are identified as a maximum recognising that there are times when a lesser amount is more appropriate.

This approach would only apply to levy claims that are undisputed. This is because a disputed levy claim is likely to involve additional matters and raise broader questions about the validity of the body corporate's decision-making processes. Determination of legal costs in these cases would continue to follow the current approach where costs are awarded at 40 – 70 percent at the discretion of the adjudicator.

Table 4: Example of fee and time allocations for ACC review hearing (simplified)

Lawyer's activities to prepare for and attend a hearing	Fixed cost maximum award
Preparation and lodging of application to the Tribunal	\$136.35
Other preparation of case for review	\$409.07
Appearance at hearing	\$409.07
Other expenses reasonably incurred	681.77
Total	\$1,636.26

3.3 Proposal

We propose option 2 – a fixed cost regime.

A fixed-cost regime to determine legal costs in undisputed levy cases will correct the problem of high-cost awards where section 124 of the UTA applies. A fixed-cost regime is simple to understand, easy to implement and entirely predictable. While it offers no flexibility for levy cases, the status quo will continue to apply to non-levy cases where flexibility is more important. This option provides a proportionate response to the problem because it targets levy claims and will encourage the development of a streamlined approach amongst industry professionals.

A scale cost regime would enable flexibility as it will enable recognition of different levels of complexity. However, it will be more costly to establish and time consuming to implement due to its complexity. The lack of a maximum ceiling for scale costs means this option may result in higher costs being awarded and potentially require additional time at the Tribunal to determine costs. It is a comparatively disproportionate response to design and implement a complex schedule across all unit title hearings to address the issue of high costs that affects levy claims only.

Further analysis of the options is in Part C of this discussion document.

A further proposal – level of the costs

We propose that the fixed cost reflect the example based on the ACC regime with an increase to \$1,800.

The slight increase is proposed to accommodate discrepancies between preparation and attendance at ACC reviews and the Tribunal. It is also intended to accommodate any unknown increases in costs and inflation in the foreseeable future.

We propose a breakdown by activity as suggested in the table below. We welcome your feedback on the final proposed amount, and the proposed amounts apportioned to each activity. We understand that inflation is a present issue, but we do not propose to have a regulatory requirement to review the fixed cost amount at a regular interval. There are costs

associated with any review process, regulatory change and implementation. The fixed cost will remain in place until a review is considered appropriate.

Table 5: Example of proposed activity and fee allocations for unit title levy hearings

Lawyer's activities to prepare for and attend a hearing	Proposed maximum fixed cost award
Preparation and lodging of application for review	\$300
Other preparation of case for hearing	\$425
Appearance at hearing	\$425
Maximum for other expenses reasonably incurred	\$650
Total	\$1,800

3.4 What will the regulations mean for me?

As a member of the body corporate, or a body corporate manager

The regulations will impact the ability of a body corporate to recover full legal costs when pursuing a levy recovery claim in the Tribunal.

Depending on the approach in the regulations, a body corporate will either recover a portion of the cost of engaging legal representation in the Tribunal, or a fixed amount that may not cover all of a body corporate's legal costs. This means that unit owners who have paid levies will bear part of the legal cost in collecting levies from the unit owner who is not paying their levy. Bodies corporate may choose to take a levy recovery claim through the Tribunal themselves.

As a unit owner with unpaid levies

The regulations will prescribe the way the Tribunal awards legal costs against a unit owner in a claim for unpaid levies. It will become less likely that an award of costs will exceed the amount of levy that is owed. A unit owner may be required to either pay a portion of the legal costs incurred by the body corporate, or a fixed amount.

As a tenant within a dwelling that is a unit title

Any action to recover unpaid levies will be taken against a unit owner, and not a tenant within a unit title dwelling. Tenants will not be involved in the levy recovery process and will not need to engage a lawyer. These regulations will not affect tenants directly as they will not be directly impacted by levy recovery actions or award of legal costs against a unit owner.

3.5 Questions on Section 3: Costs regime

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

1.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 3). Why / why not?
2.	Do you agree with option 2 as the preferred option? Why / Why not?
3.	Do you agree with the proposed award of a fixed cost of \$1,800 for legal costs following a levy recovery claim in the Tribunal? Why/Why not?
4.	Do you agree with the activities identified, and costs apportioned in Table 5? Why/Why not?
5.	Do you consider that Māori interests are specifically affected by these proposals, and how?
6.	Do you consider that the proposed amounts in either option will be affected by inflation?
7.	Do you have any additional comments you would like to make?

Section 4: Other regulations

4.1 What will the regulations cover?

Proxy voting

The Amendment Act made various changes to the UTA and the Regulations. Following the passage of the Amendment Act, stakeholders have raised issues where the UTA or Regulations could be clarified.

A unit owner can appoint a proxy to represent them and vote at a general meeting of the body corporate. The proxy form includes a summary of each motion to be voted on at the general meeting. The Amendment Act changed the proxy appointment form to include the ability for the unit owner to direct a proxy holder how to vote on each motion. The Amendment Act did not set out consequences if the proxy holder did not follow the direction.

The Regulations should address the following issues:

- What happens if the proxy holder does not follow the directions on the form?
- What happens if the motion changes materially during the general meeting? While the motion is sent out before an annual meeting, during the meeting, unit owners can put forward amendments as a result of the discussion.

Pre-settlement disclosure statements

The Regulations set out what documents and information must be included in the pre contract disclosure statement, which is the information given to a prospective buyer before they agree to buy a unit. The Regulations also set out the information to be included in the pre-settlement disclosure statement, which is the information given to a buyer after they have agreed to buy a unit, before settlement has been completed. The Regulations include a separate list of required information for existing units and for off-the-plans units.

For off-the-plans units, the pre-contract disclosure statement requires less information than for existing units, as the information did not exist when the contract was signed. It is possible that some of this information may be available by the time the pre-settlement disclosure statement is given to the buyer. Regulation 34(2) could require some additional information in the pre-settlement disclosure statement for off-the-plans units.

Issue: Proxy holder not following directions on form

4.2 Options description

Option one: Chairperson of body corporate to ensure the proxy direction is followed

Under this option, the regulations would require the chairperson of the body corporate to ensure the proxy direction is followed. In practical terms, this would require the chair, or person running the meeting, to check each proxy form for directions. Where a proxy form included directions, they would have to ensure the vote by the proxy was the same as on the proxy form. If the proxy direction was not followed by the proxy holder, then the vote would be invalid.

The proxy form could be considered at the same time as a postal voting form by the chairperson or person running the meeting. A postal voting form is considered during the voting process, to ensure the vote is counted.

Option two: Regulations confirm the chairperson has no responsibility to ensure the proxy direction is followed

Under this option, the Regulations would explicitly state that the chairperson has no responsibility to ensure the proxy direction is followed. This clarifies the role of the chairperson.

In this option, the chairperson or person running the general meeting has no role to ensure the proxy direction is followed. If the proxy holder does not follow a direction in the proxy appointment form, this is between the unit owner and the proxy holder. The unit owner is responsible for instructing the proxy to vote on their behalf and any deviance from their instructions is to be resolved between the proxy and the unit owner.

Further option rejected

A further option could be for the Ministry and MBIE to issue guidance, rather than change the Regulations. The guidance would indicate the chairperson has no responsibility to ensure the proxy direction is followed. However, we consider this does not provide sufficient clarity to the sector.

4.3 Proposal

We propose Option two: the Regulations to confirm the chairperson has no responsibility to ensure the proxy direction is followed. Any vote made by a proxy holder who is validly appointed is a valid vote.

The proxy process is primarily a relationship between the unit owner and the proxy holder. This option makes it clear the chairperson or other person running a general meeting has no role in that relationship. This places the regulatory burden on the unit owner, who is best placed to meet it, and has the benefit of using a proxy. It is not proportionate to require the body corporate to meet that regulatory burden.

If a unit owner is not confident in a proxy holder to follow their directions, they can choose another method of participation in body corporate decision-making. For example, the unit owner can attend remotely, or use a postal vote or electronic vote.

Further analysis of the options is in Part C of this discussion document.

Issue: Motion changing materially at a general meeting

4.4 Options description

Option one: Proxy holder still able to vote on that motion

If a motion changes substantially during a general meeting, the proxy holder will no longer be expected to comply with the direction on the proxy form. This is consistent with the provisions for a postal voting form when the motion changes materially (regulation 15(1)).

However, the proxy holder will still be able to vote on the motion, using the general authority provided by the proxy appointment. The UTA provides that a proxy for an eligible voter is entitled to attend and be heard at a body corporate meeting as if the proxy were an eligible voter (section 102(2)).

Option two: Proxy holder not able to vote on that motion

If a motion changes substantially during a general meeting, the proxy holder will no longer be expected to comply with the direction on the proxy form. Because the proxy holder no longer has a direction on the motion, the proxy holder will not be able to vote on that motion.

4.5 Proposal

We propose Option one: proxy holder still able to vote on the motion. The directions will not be valid, but the proxy holder can vote.

This option is consistent with the concept that the proxy holder has standing in the meeting as if they were the unit owner. The unit owner still has the opportunity to be represented on the issue. If a unit owner is not confident in a proxy holder to make a good decision when the directions no longer apply, they can choose another method of participation in body corporate decision-making.

Further analysis of the options is in Part C of this discussion document.

Issue: Documents included in pre-settlement disclosure statement for off-the-plans contracts

Regulation 34(2) already requires the seller to provide the name and contact details of the body corporate manager, if there is one, and the insurance information required in the pre-contract disclosure statement. These were identified as information that may be available by settlement date, which would be relevant for buyers who are about to become unit owners.

4.6 Options description

Option one: require sellers to disclose certain information if available

This option proposes including the following in the pre-settlement disclosure statement for off-the-plans units:

- Whether the body corporate is involved in any proceedings in any court or tribunal
- Financial statements and audit reports for the previous three years.

if there is a long period between the contract and settlement date, and if other unit owners have bought into the unit title development before the new buyer, this information may be available. A new development may not have been operating long enough for other documents to exist, such as a long-term maintenance plan.

Option two: general requirement for sellers to disclose additional information if available

Under this option, a general requirement would be included in the pre-settlement disclosure statement for off-the-plans units. Every seller would need to consider the list of documents in

the pre-contract disclosure statement for existing units, and any information that was available at the time the pre-settlement disclosure is made should be included in the disclosure statement.

4.7 Proposal

We propose Option two: a general requirement for sellers to disclose additional information in the pre-settlement disclosure statement for off-the-plans contracts if available.

Option two provides a greater level of transparency to a buyer. It allows the buyer to understand any issues with the property they are about to own. It also puts an off-the-plans buyer in the same position as anyone who is entering an agreement to buy an existing unit in the same unit title development at the time they are settling. Option two does not require the body corporate to undertake more work and carefully consider the entire list of pre-contract disclosure to see if any matters apply. However, this additional administration will better support a new unit owner to be an effective member of the body corporate.

Further analysis of the options is in Part C of this discussion document.

4.8 What will the regulations mean for me?

As a unit owner

If you wish to appoint a proxy, you can choose to give them directions. However, the body corporate is not required to ensure the proxy holder follows your directions. And if the motion changes materially during the meeting, then your proxy may not be able to follow your directions, but they can still vote. You need to ensure you can trust your proxy holder to vote in your interests.

As the chairperson or person running the meeting

You are not required to check how each proxy holder is voting against their proxy appointment form.

If the motion changes materially, you should inform the attendees at the meeting, so any proxy holders understand they need not follow the directions on the proxy appointment form.

As a proxy holder

You should make sure you have a copy of the proxy appointment form. If the form has any directions, you should make sure you understand them and follow them. You should also know how the unit owner would like you to vote if the motion is materially changed in the meeting.

As a potential buyer of a unit title

If you are buying an off-the-plans unit, you will have more information about how the body corporate is operating in the pre-settlement disclosure statement.

4.9 Questions on Section 4: Other regulations

These questions can be used to guide your feedback. You can also give us feedback on any other matters relating to the proposals.

In relation to Issue: Proxy holder not following directions on form:	
1.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 4). Why / why not?
2.	Do you agree with the preferred option? Why / why not? (Option two)
In relation to Issue: Motion changing materially at a general meeting:	
3.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 5). Why / why not?
4.	Do you agree with our preferred option? Why / why not? (Option one)
In relation to Issue: documents included in pre-settlement disclosure statement for off-the-plans contracts:	
5.	Do you agree with the proposed objectives for the regulations? (see Part C, Issue 6). Why / why not?
6.	Do you agree with our preferred option? Why / why not? (Option two)
General questions:	
7.	Do you consider that Māori interests are specifically affected by these proposals, and how?
8.	Do you have any additional comments you would like to make?

Part C: Objectives, criteria and analysis of Policy Proposals

Please note that the analysis of options has been carried out on an **interim basis**. Feedback received during the public consultation will inform this analysis and the proposals may change.

We welcome feedback on any of the options, the analysis and the conclusions so that the final options are as well-informed as possible. Because this consultation relates to proposed regulations, non-regulatory options have been excluded.

Issue 1: Documents required to be kept and provided to the regulator if requested (see section 1.2)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- ensure the regulator has a means to obtain any information it may need to exercise its functions or powers under the UTA.
- limit the regulatory burden on bodies corporate and body corporate managers to what is necessary to monitor and enforce the UTA.
- provide clarity to bodies corporate and body corporate managers regarding the documents that need to be retained. It needs to be clear so that regulated parties are not retaining unnecessary documents or are uncertain about their obligations.

Each option is measured against the following criteria:

- Effectiveness; provides a means for the regulator to obtain information to support the exercise of its functions and powers.
- Proportionality; the regulatory burden of providing a document to the regulator is proportional to the benefits that option is expected to deliver.
- Ease of implementation; the proposals are workable in practice, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

The following table shows an analysis of how each option measures against the above criteria.

Options analysis

Criteria	Option One – Limited list	Option Two – Complete list	Option Three – Complete list + correspondence
<i>Effectiveness</i>	<p>This option enables the regulator to request the majority of documents that it needs to monitor compliance with the operational, financial and governance requirements of the UTA.</p> <p>However, it does not include a number of documents that may be useful for the regulator.</p>	<p>All documents captured by option one are included in Option Two, with a number of additions. This option contains most documents produced through the operation of the body corporate, enabling an effective investigatory function for the regulator.</p> <p>The main additions to this list are the inclusion of notices sent to various parties relevant to the bodies corporate. These notices will enable the regulator to understand if the required notification was given where necessary.</p>	<p>This option includes all documents in Option Two. It also include specific correspondence.</p> <p>The correspondence may provide the regulator with useful decision-making context that may not be included in formalised documents. This could provide the regulator with information regarding a breach of the UTA that would not otherwise be available and may be useful for proving intent (which is required for the Tribunal to order a pecuniary penalty).</p>
<i>Proportionality</i>	<p>Most documents prescribed in this list will also be required to be retained to provide pre-purchase disclosure statements. The additional burden imposed by these regulations is therefore limited and is proportional to the benefit afforded to the regulator.</p>	<p>Most documents prescribed in this list will also be required to be retained to provide pre-purchase disclosure statements.</p> <p>Additional documents included in this list may be less likely to be required by the regulator or may be difficult to store. The burden of retaining these additional documents may be limited by the fact that storage systems required for Option One may also be sufficient to store the documents in this list.</p> <p>The burden is proportional to the benefit afforded to the regulator.</p>	<p>The ability to request additional related correspondence, and therefore the burden on bodies corporate, is limited to documents where background context may be particularly important, therefore the burden is proportional to the benefit.</p> <p>Bodies corporate will be required to retain this correspondence and then filter through it to gather what is deemed relevant in the event of a request. This will impose additional burden (resource cost) that may be passed on via management fees to unit owners as consumers.</p>
<i>Ease of Implementation</i>	<p>Bodies corporate and body corporate managers may have to</p>	<p>Similar to Option One, regulated parties may need to create new information</p>	<p>It may be difficult for a body corporate to determine which correspondence would</p>

Criteria	Option One – Limited list	Option Two – Complete list	Option Three – Complete list + correspondence
	<p>create new processes for managing and storing information.</p> <p>The document list clearly expresses which documents would be required to be retained. There should be no ambiguity, which should aid regulated parties in establishing their new processes.</p>	<p>management and storage processes in order to retain the required documents.</p> <p>As this option includes most documents produced throughout the operation of a body corporate, such as most notices sent out to unit owners, these processes may need to be correspondingly more extensive.</p> <p>This may be more difficult for self-managed bodies corporate, in comparison with those managed professionally.</p>	<p>be considered “related” for the regulator’s purposes. We can consider how the regulations drafting could clarify this matter.</p> <p>Correspondence could contain information protected by the Privacy Act. This may further complicate the process for regulated parties in determining what information they provide and what information they should withhold under privacy grounds.</p> <p>These issues may be more difficult for self-managed bodies corporate.</p>
<i>Summary</i>	<p>This option provides an effective means for the regulator to obtain information it requires. However, it is limited where additional context is necessary to determine compliance with the UTA. The burden placed on bodies corporate is proportionate to the benefit provided to the regulator and due to the clarity of the list, should be relatively straightforward to implement.</p>	<p>With the addition of notices to this option, the regulator is provided with a more effective means of obtaining the information it requires. The burden on the regulated parties is proportionate. The clarity of the list should mean it is relatively straightforward to implement.</p>	<p>This option provides the regulator with the most effective means of obtaining the information it requires. Targeted correspondence will benefit the regulator, and so despite the increased burden on bodies corporate, it is proportionate. This option is more difficult to implement, as determining which correspondence is relevant could be a relatively complex process.</p>

Issue 2: Procedures for electronic voting and remote attendance at meetings (see section 2.2)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- enable accessibility for unit owners to participate in body corporate governance remotely
- uphold the integrity of electronic voting and remote attendance by ensuring the processes and procedures are secure and have a similar level of privacy as in-person meetings
- allow for a sufficient degree of flexibility to provide for the different requirements of different bodies corporate, appropriate to their size and needs.

Each option is measured against the following criteria:

- effectiveness; how well the option meets the policy objectives
- proportionality; the regulatory burden (cost) associated with the option is proportionate to the benefits the option is expected to deliver
- ease of implementation; the proposals are clear, workable in practice, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

The following table analyses each option measures against the above criteria.

Options analysis

Criteria	Option One	Option Two	Option Three
<i>Effectiveness: Accessibility</i>	Bodies corporate provides measures to enable access for unit owner remote participation.	Bodies corporate provides measures to enable access for unit owner remote participation. The body corporate is required to take reasonable steps to ensure that remote attendees can participate in the meeting.	In addition to the requirements in Option Two, this option provides clarity about how to enable accessibility. This is achieved by prescribing processes and procedures where relevant.

Criteria	Option One	Option Two	Option Three
<i>Integrity</i>	The identity verification process may be considered insecure, as this option does not prescribe a verification process through regulations. The Privacy Act 2020 provides the appropriate protections for any information that linked to an identifiable individual. This applies to all options.	This option includes further measures that bolster the integrity of remote meetings. These include rules around identity verification and the storage of votes and proxy forms after a meeting.	This option includes the further measures introduced in Option Two to bolster the integrity of remote meetings. These include rules around identity verification and the storage of votes and proxy forms after a meeting.
<i>Flexibility</i>	Bodies corporate are able to determine reasonable measures for their circumstances.	This option has less flexibility than Option One, in favour of providing more clarity to bodies corporate. For certain measures, guidance is recommended as opposed to prescribing regulations.	For certain measures, this option prescribes a specific process or procedure. Body corporate flexibility is limited in favour of providing more clarity and certainty.
<i>Proportionality</i>	Due to the flexibility and discretion in this option, the regulatory burden placed on bodies corporate is considered low. Any burden (financial, temporal, logistical or otherwise) will be at least partially determined by the body corporate themselves and what they believe is appropriate for their circumstances.	The burden placed on bodies corporate is increased in this option. However, the corresponding benefits are proportionate to that burden, and operate to address the areas of concern raised by stakeholders.	The benefits that this option delivers may be considered more or less proportionate, depending on the size and needs of the particular unit title development. Smaller bodies corporate or those who self-manage, may see these requirements as an unnecessary burden. They would either need to become familiar with additional processes, or engage a body corporate manager, which is an additional cost.
<i>Ease of Implementation</i>	The baseline requirements formalise processes that have become common practice since the introduction of remote attendance at meetings, or are consistent with other meeting or postal voting rules.	This option includes the introduction of a number of new processes and procedures that bodies corporate will need to understand and implement. Due to this option also allowing for a degree of flexibility and discretion, this could lead to ambiguity as to how the	The prescriptive nature of this option should make implementation relatively straightforward. There is less discretion for bodies corporate to design their own individual procedures, and therefore should be more uniform throughout the

Criteria	Option One	Option Two	Option Three
	<p>There is a risk that some bodies corporate may be unsure how to implement some of the new requirements.</p> <p>A higher degree of flexibility, and a variation in how requirements are met, may also increase the risk of legal challenges to process.</p>	<p>requirements must be implemented. This risk is at least partially mitigated through the provision of guidance.</p>	<p>unit titles sector. This should reduce the risk of unintended consequences.</p>
<i>Summary</i>	<p>This option provides effective access for unit owners to remote body corporate governance. The integrity of processes is limited due to a lack of prescription. However, provides the most flexibility to individual bodies corporate.</p> <p>This option places the least regulatory burden on bodies corporate. The burden can be determined by bodies corporate themselves.</p> <p>Processes should be easy to implement as they are formalising practices that bodies corporate are using.</p>	<p>This option enables better accessibility and greater integrity, while reducing flexibility. The regulatory burden is increased, but the benefit to the regulator is increased correspondingly, making the option proportional. As a result of more prescribed processes, implementation will be slightly more difficult, but this will be mitigated through the provision of guidance.</p>	<p>This option provides a greater level of accessibility due to the clarity provided to bodies corporate regarding enabling participation, with the same level of integrity as Option Two, but with even less flexibility provided to bodies corporate. The regulatory burden is increased, with the benefits delivered depending on the size and needs of the particular unit title development. The prescriptive nature of the option should make implementation straightforward.</p>

Issue 3: Determining legal costs in the Tenancy Tribunal (see section 3.2)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- Establish a cost regime for determination of reasonable costs that are legal costs for unit titles claims that supports the Tribunal as a low-cost means of dispute resolution.
- Provide a flexible and predictable mechanism to ensure cost allocation is appropriate and proportionate in claims for levy recovery.

We have measured the options against the following criteria:

- Effectiveness; provides a low cost means for the Tribunal to award costs.
- Proportionality; the regulatory burden (cost) associated with the option is proportionate to the benefits the option is expected to deliver.
- Ease of implementation; the proposals are workable in practice – implementation risks are low and can be achieved within reasonable timeframes and the risk of unintended consequences is low.

The table below compares Options One and Two for each of the above criteria.

Options analysis

Criteria	Option One – Scale Costs	Option Two – Fixed Costs
<p><i>Effectiveness:</i> <i>Low-cost access to the Tribunal</i></p>	<p>A scale cost regime will be less effective at maintaining the low-cost accessibility of the Tribunal for the following reasons:</p> <ul style="list-style-type: none"> • The schedule of specified legal activities, and absence of a maximum ceiling on legal costs may enable high legal costs to be passed on to unit owners that are disproportionate to the amount of unpaid levy. • The ability to claim high legal costs may not discourage bodies corporate from engaging lawyers for straight forward levy cases or encourage them to keep costs low. • Application of the scale cost regime will add complexity and may increase use of Tribunal time and costs. • Parties may not agree on the complexity level, or the category of time that is reasonable for identified activities. 	<p>A fixed cost regime that applies to claims for levy recovery only will maintain the low-cost accessibility of the Tribunal.</p> <ul style="list-style-type: none"> • The maximum ceiling on legal costs will prevent high legal costs from being passed on to unit owners disproportionate to the amount of unpaid levy. • The inability to claim high legal costs will encourage bodies corporate to keep legal costs low.
<p><i>Flexibility</i></p>	<p>A scale-cost regime allows flexibility as it will apply to all Unit Title hearings regardless of whether there are unpaid levies are part of the claim.</p> <p>It also accommodates levels of complexity in proceedings and recognises different time allocations as reasonable across each activity.</p>	<p>A targeted fixed-cost regime is less flexible in claims for unpaid levies. However, as the majority of these are undisputed, and a straightforward, predictable process, the inflexibility is appropriate.</p> <p>The Tribunal will continue to apply a flexible approach to non-levy cases, and cases that include other matters alongside a claim for unpaid levies, as these require more time at the Tribunal and necessitate legal representation and expertise.</p>

Criteria	Option One – Scale Costs	Option Two – Fixed Costs
<i>Predictability</i>	<p>A scale cost regime will increase predictability as steps and costs can be identified ahead of time.</p> <p><i>However</i>, predictability will be limited by variations in approach by different lawyers and adjudicators.</p>	<p>Parties will be able to identify the costs associated with levy recovery at any time. This improves incentives for lawyers to operate on a fixed fee basis.</p>
<i>Proportionality</i>	<p>Time and expertise will be required to develop a scale cost schedule that correctly identifies legal activities for all Tribunal cases, with reasonable time allocations. This makes the scale costs regime a comparatively expensive and potentially heavy-handed option to address the limited problem of high costs in levy cases.</p> <p>Bodies corporate that have been awarded full legal costs in levy recovery claims would receive an award of a portion of their costs only, and will still need to contribute the remainder of the legal fees themselves.</p>	<p>A fixed-cost approach is currently applied to determine costs in ACC Review claims. The approach is straight forward to reproduce in the Tribunal setting which makes it a comparatively cheaper option.</p> <p>A body corporate that is able to engage a lawyer for a fixed fee that corresponds to the fixed costs awarded for levy recovery claims will not need to contribute to additional legal fees in levy recovery cases.</p> <p>A body corporate that is able to pursue levy recovery claims through the Tribunal themselves without legal representation will not incur additional legal fees.</p>
<i>Ease of Implementation</i>	<p>The scale cost schedule requires consideration of the complexity level of each case, and an assessment of the appropriate reasonable timeframe.</p> <p>The complexity of the regime may lead to the need for additional hearings to determine costs.</p>	<p>With a fixed-cost approach for levy claims, adjudicators will apply a streamlined approach without the need to calculate time, activities, or consider the relative expertise of the lawyers involved.</p> <p>There is a risk that experienced lawyers are less likely to participate in lower fixed cost regimes. However, most straightforward levy cases are appropriate for junior lawyers and self-representation by bodies corporate.</p>
<i>Summary</i>	<p>Partially meets criteria</p> <p>This option partially meets criteria, enabling flexibility and limited predictability. It is not our preferred approach.</p>	<p>Preferred Approach</p> <p>A fixed-cost regime will correct the problem of high-cost awards where section 124 applies. It is our preferred and recommended approach.</p>

Issue 4: When a proxy holder does not follow the directions on the proxy form (see section 4.2)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- enable unit owners to participate in decision-making through their proxy holder
- provide clarity for bodies corporate about validity of votes.

Each option is measured against the following criteria:

- effectiveness; how well the option meets the policy objectives
- proportionality; the regulatory burden (cost) associated with the option is proportionate to the benefits the option is expected to deliver
- ease of implementation; the proposals are clear, workable in practice, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

Options analysis

Criteria	Option One – ensure proxy is followed	Option Two – Chairperson not responsible
<p><i>Effectiveness:</i></p> <p><i>Participation in decision-making</i></p> <p><i>Clarity about validity of votes</i></p>	<p>Gives unit owner greater confidence that the proxy directions are being followed.</p> <p>Any vote not in accordance with the proxy form would be invalid. Regulations would provide clarity.</p>	<p>Unit owner will have to trust proxy holder to follow directions on the proxy form.</p> <p>If the form is not checked, the vote of a proxy holder would be assumed to be valid.</p>
<p><i>Proportionality</i></p>	<p>This places a significant responsibility on chairperson. Chairperson is required to “referee” an agreement between the unit owner and proxy holder.</p> <p>It may practically be difficult to check the proxy directions for each proxy during the process of voting. This may be more difficult when the meeting has many attendees, or the proxy holder is attending online.</p> <p>Potential source of litigation if a chairperson fails to ensure the proxy direction is followed. May lead to reluctance in people becoming a chairperson.</p>	<p>There is no additional responsibility on the person running the meeting.</p> <p>The responsibility is on the unit owner to ensure the proxy holder understands the directions and will comply with them. This is likely to be part of communication with a proxy holder when they are appointed. The regulatory burden falls on the unit owner, who has the benefit of being able to appoint a proxy.</p> <p>A unit owner can choose to participate in decision-making another way if they are not confident that the proxy holder will follow their directions.</p>
<p><i>Ease of Implementation</i></p>	<p>A chairperson does not always run the meeting. There would need to be clarity about who is responsible if the chairperson is not undertaking this role.</p> <p>This option introduces a new procedure that bodies corporate will need to understand and implement.</p>	<p>Unit owners now have the ability to issue directions on their proxy form. This option introduces a new procedure for unit owners to discuss the directions with the proxy holder, but it is likely they would do this anyway.</p>
<p><i>Summary</i></p>	<p>This option is not preferred.</p>	<p>This option is the proposed option, because it is a more proportionate regulatory burden.</p>

Issue 5: When a proxy form includes directions and the motion changes materially at the general meeting (see section 4.4)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- enable unit owners to participate in decision-making through their proxy holder
- Provide clarity for bodies corporate about validity of votes.

Each option is measured against the following criteria:

- effectiveness; how well the option meets the policy objectives
- proportionality; the regulatory burden (cost) associated with the option is proportionate to the benefits the option is expected to deliver
- ease of implementation; the proposals are clear, workable in practice, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

Options analysis

Criteria	Option One – proxy holder can vote	Option Two – proxy holder cannot vote
<p><i>Effectiveness:</i></p> <p><i>Participation in decision-making</i></p>	<p>Unit owner continues to have benefit of having a proxy holder present at the meeting and able to vote on the motions. If the unit owner has directed on the motion, the proxy holder has some insight into the unit owner’s preferences. Risk the proxy holder may vote in a way the unit owner would not have.</p>	<p>Unit owner does not have the benefit of a proxy holder who can vote on an amended motion. However, the risk the proxy holder may vote in a different way is removed.</p>
<p><i>Clarity about validity of votes</i></p>	<p>A proxy holder’s vote is valid, even if the motion changes.</p>	<p>A proxy holder cannot vote if the motion changes materially.</p>
<p><i>Proportionality</i></p>	<p>The person holding the meeting will need to advise any proxy holders that any direction on the proxy form does not apply to that materially amended motion. This is a minimal requirement, as it could be an announcement to the meeting, not each individual proxy.</p> <p>A unit owner could discuss with a proxy holder that the proxy holder will have to make their own decision if the motion changes materially.</p>	<p>This places a responsibility on the person holding the meeting when a motion is materially amended, to check each proxy appointment form to see if there is a direction. If there is a direction, the meeting chair will have to advise the proxy holder they cannot vote.</p> <p>This places some additional burden on the meeting chair. However, they will have to go through a similar process to identify and remove the postal forms for that motion.</p>
<p><i>Ease of Implementation</i></p>	<p>This option introduces a new procedure that bodies corporate will need to understand and implement.</p> <p>This option introduces a new procedure for unit owners to discuss the directions with the proxy holder, but it is likely they would do this anyway.</p>	<p>This option introduces a new procedure that bodies corporate will need to understand and implement.</p>
<p><i>Summary</i></p>	<p>This option is the proposed option, as it better supports participation in decision-making.</p>	<p>This option is not preferred.</p>

Issue 6: Information to include in a pre-settlement disclosure statement for off-the-plans contracts (see section 4.6)

Objectives and criteria

The regulations should achieve the following proposed objectives:

- promote transparency for buyers of unit titles
- encouraging best practice by bodies corporate.

Each option is measured against the following criteria:

- effectiveness; how well the option meets the policy objectives
- proportionality; the regulatory burden (cost) associated with the option is proportionate to the benefits the option is expected to deliver
- ease of implementation; the proposals are clear, workable in practice, implementation can be achieved within reasonable timeframes and the risk of unintended consequences is low.

Options analysis

Criteria	Option One – specified documents	Option Two – general requirement to provide pre-contract documents
<p><i>Effectiveness:</i></p> <p><i>Transparency</i></p> <p><i>Encouraging best practice</i></p>	<p>Unit owner has some increased transparency. Information that is more likely to be available at the time of settlement can be provided.</p> <p>Requires seller to provide greater level of information to buyer.</p>	<p>Best opportunity for unit owner to have transparency. Any information from the standard pre-contract disclosure statement that is available at settlement, will be provided.</p> <p>Requires seller to provide all information in the list that is available. A buyer will have the same knowledge as anyone buying an existing unit at the same time as they are settling.</p>
<p><i>Proportionality</i></p>	<p>The body corporate will need to consider two additional pieces of information for disclosure. This increases the burden for pre-settlement disclosure, but not significantly.</p>	<p>A body corporate will need to consider the full list of pre-contract disclosure information to see what exists and must be disclosed on settlement. A potentially significant increase in the burden for pre-settlement disclosure. However, this burden will ensure the new member of the body corporate has the information to understand how the body corporate is operating, and to contribute effectively to decision-making.</p>
<p><i>Ease of Implementation</i></p>	<p>This option introduces the requirement to disclose information that bodies corporate will need to understand and implement. A shorter list may be easier for bodies corporate to implement.</p>	<p>This option introduces the requirement to disclose information that bodies corporate will need to understand and implement. A longer list may be more difficult for bodies corporate to implement.</p>
<p><i>Summary</i></p>	<p>This option is not preferred.</p>	<p>This option is the proposed option, as it better meets the objectives.</p>

Glossary

Body corporate	The entity made up of all the owners within a unit title development.
Fixed cost	A method for the Tribunal to determine legal costs: a fixed maximum amount that can be recovered towards paying a lawyer to carry out an activity.
Legal costs	The fees parties to a dispute must pay their lawyer for the activities the lawyer does to prepare for and take their claim through the Tenancy Tribunal.
Levy	The regular fee that a unit title owner is required to pay to the body corporate to cover expenses of the body corporate and maintenance of communally owned property.
Long-term maintenance plan	A plan established by the body corporate to identify future maintenance requirements and estimate the costs involved.
MBIE	Ministry of Business, Innovation and Employment
Ministry	Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development
Pre-contract disclosure statement	The information that must be provided by a seller to a buyer before they enter into an agreement to buy a unit in a unit title development.
Pre-settlement disclosure statement	The information that must be provided by a seller to a buyer before the settlement of the sale of a unit in a unit title development.
Proxy holder	The person appointed by a unit owner to attend a general meeting and speak and vote on their behalf.
Reasonable costs	Costs that a court or tribunal will consider were reasonably incurred and can be recovered by a successful party in a claim.
Regulator	The Chief Executive of MBIE, under delegation from the Chief Executive of the Ministry.
Scale cost	A method for the Tribunal to determine legal costs: the amount that can be recovered towards paying a lawyer to carry out an activity based on a percentage of the actual cost.
Unit owner	An owner of a defined part of a building, such as an apartment. A unit owner also owns a share of common areas with other owners in a unit title development.
Unit title development	The individual units and the common property comprising a unit title property.