Legislation Committee

From: Fulvio Prainito
Sent: Thursday, 27 September 2018 8:25 AM
To: Legislation Committee
Subject: Strata Titles Amendments Bill 2018 - Fulvio Prainito 27 September 2018 - Opening Statement

OPENING STATEMENT

I am here to beg the Legislative Council via this Committee to consider making a transitional provision in this Bill that would grandfather, from non-unanimous termination until 1st July 2025, owner occupiers that bought their home before 1st July 2008 in existing strata titled schemes unless it is beyond reasonable doubt that the strata building structure is unsafe and beyond the financial capacity of owners to repair. This would be about 5 to 6 years after the Regulations are done and this Bill becomes effectively law. This is the minimum period for dissenting long term strata home owner occupiers to adjust to the fact that they would be forced to sell their home for the public benefit of renewal and the rights of strata property investors. This would enable this Bill to pass the Legislative Council as soon as possible, as requested by the Minister, without the Bill's unintended consequences harming dissenting long term strata home owners in a still fit for purpose strata scheme especially if already controlled by the proponent like mine by giving them sufficient time to adjust to a new world where money is considered the cure of all evil.

Fulvio Prainito BE MBA PCertArb IntPE(Aust) Registered Practising Engineer (Queensland #10858)

Legislation Committee

From: Fulvio Prainito
Sent: Wednesday, 26 September 2018 11:16 PM
To: Legislation Committee
Subject: Legislative Council - Standing Committee on Legislation - Inquiry into Strata Titles Amendment Bill 2018 - Part 12 Termination of strata titles scheme - Answers by Fulvio Prainito to list of questions for hearing on Thursday 27 September 2018

1.1
Q: Please give some background information on your occupation of the strata complex at 94 Marine Parade, Cottesloe, including details to terminate the strata scheme.

A: I bought my beachfront townhouse home at 7/94 Marine Parade, Cottesloe (Seapines) in mid 1992. I have occupied it since that time except from a period from 1995/6 to 2001/2 when I lived and worked in Singapore, Malaysia, Germany and Israel. During this period it was rented out to the Cottesloe Beach Chalets that operated it as part of their short stay resort business across the road like many investors at the Seapines do. Speculators started to buy into the Seapines in 2003/4. Since that time there have been no properly documented proposals to terminate the strata scheme. The letter dated 28 February 2007 in the Appendix of my submission is the closest to a proposal to terminate the strata scheme that I have received. It is the longest of a half a dozen letters received in 15 years. Communication from the proponent has been poor. As recently as a few months ago there was an application by the proponent to the Town of Cottesloe for a planning scheme amendment approving an extra storey on the Seapines land without any consultation with the other owners that are not part of the speculators' syndicate

1.2
Q: Have there been any votes by the proprietors of your strata scheme on a proposal to terminate the scheme?

A: No. The speculator, despite owning 57% (16/28) of lots, only controls 68% (19/28) of lots. Under the current law, she does not have the numbers (75%) to apply for termination in a court of law because the strata company will not pass the special resolution (>50% for, not >25% against) that she needs to deem a resolution to terminate unanimous. Under this Bill she will be able to start the termination process because she controls the strata company by virtue of owning more than 50% of lots. Consequently I urge the Committee to consider a transitional provision, at least for existing strata schemes of 20 & over lots that are still fit for purpose and where the proponent controls the strata company, to retain existing threshold of 75% before the termination process can be started. This would align strata companies with corporation law where, for companies of 20 & over shareholders, the takeover by a majority process starts at 75% with the compulsory acquisition process enforceable only at 90%. It is discriminatory to treat owners of a strata company differently from shareholders of a company when the only motivator for termination, on the basis of probabilities, is the same namely profit.

1.3
Q: What are your key objections to the termination of the strata scheme at 94 Marine Parade?

A: There are many and they are detailed in my submission. Now I would like to focus on the 1 that has been the least understood because it is personal and it comes from the heart not the mind. I do not want to be forced to sell because I like my irreplaceable home and I do not like to be bullied into selling because there is no real need for termination. I like my home's location in the Town of Cottesloe Foreshore Centre. I like its absolute beachfront position: on Marine Parade just across world famous Cottesloe Beach,

shaded by the Norfolk Seapines in front of Indiana but not obstructed by it & away from the bus stop; on the corner of John St near all the great lifestyle spots of the rich and famous that live nearby. I love the world class beach views from my terrace balcony and of the ocean over Indiana from my mezzanine roof window; meditating in my own space while watching the sunset is very important for my well being. My home gives me unobstructed land views too, especially of the sunrise from my bedroom; naturally waking up by the sunrise helps my well being; I sleep with curtains open all the time because of this. I like that it is practically the same as a green title townhouse: there is no one living above or below me. I love that it has very high ceilings because I feel well when ceiling height is at least twice my own height. It has an irreplaceably positioned West facing private terrace solidly enclosed on 3 sides and top for wind protection; its high enough for viewing the beach life and to feel secure but low enough to enable interaction with friends walking past on the footpath below; as I get older this is the social interaction that I enjoy the most because it is unplanned but safe; in case of any redevelopment my home will be replaced by a bar or restaurant. I like my peaceful East facing partially covered private courtyard patio & garden near the swimming pool which is long and deep, sheltered by the wind and welcoming as the complex social hub with its built in heavy duty BBQ. I like that it is far enough away from Stirling Highway and Curtin Avenue so that I can not hear heavy traffic but close enough to quickly walk to the train station if I do not want to drive. Environmentally it is the best unit in the strata complex because it is the only beachfront townhouse unaffected by the kitchen exhaust fumes from Amberjacks Fish & Chips and the noise & diesel fumes from the bus stop since it is in the middle of the 2 polluting sources; I rarely use the air conditioning due to the cooling sea breeze so my electricity bill is low. It is next door to great social venues: the Cott, Il Lido and, of course, Cottesloe Beach. Most importantly it is in good condition because I have looked after it including the common property around it at my own effort and cost. I have renewed it in 1992, 2003, 2010 and 2016 when all internal and external surfaces were repainted and renewed to match new furniture; it is so easily cleaned that I have not seen a cockroach or an ant inside. It is these little things that make homes the most overvalued asset on earth. This is why I paid the 2nd highest price of all the units in the strata complex when they were all offered for sale at the same time in 1992; my beachfront townhouse was 27% more expensive than the those at the back. My home is an integral part of my happiness that no amount of speculators money or near enough is good enough like for like replacement can compensate for. This building inspection report dated 14 May 2016 says that the Seapines strata complex is in average condition. It is not unsafe. There is no dangerous asbestos or dilapidating concrete cancer as claimed by the proponent. The concrete slab above the underground car park has not fallen down within 10 years, as claimed in 2006 by the speculator's young PhD structural engineer whose dad owned the company, unless fruitless spiralling expensive repairs were made. These expensive repairs were not done since the speculator would not allow us to do so (see letter of 28 February 2007). Only some inexpensive repairs that I thought appropriate were done and the slab is still fit for purpose 12 years later. The strata levies at $1,100 per quarter per unit are not beyond the capacity of owners to pay. There is no repairs and maintenance that can not be covered by these affordable levies now. Despite the fact that there was a period of 5 years when the proponent did not pay her levies which resulted in accelerated deterioration of the strata complex some of which is still evident now, the Seapines are still fit for purpose and it would be in much better shape if it was allowed to have a reserve fund so that it could be better maintained. In fact our strata complex is in better condition than its neighbours Indiana across the road and the Lido complex next door. The Committee needs to take particular note that the eye sore that is the Lido building next to the Seapines is in far worse shape and it has no dissenting strata owners to blame for why it has not been renewed because the whole is owned by 1.

I was living a happy life until this Bill came along. I was planning to retire next year at 55 but Part 12 has wrecked havoc with my life. The loss of income in the last few years and into the future due to the disruption of defending my home should not be underestimated. So I truly appreciate the opportunity you have given me to be here.

1.4
Q: What steps have you taken to provide feedback to the development proponents and relevant agencies and what has been their feedback?

A: The feedback that I have given to the development proponents since the beginning is that I have no objection to a redevelopment as long as I am an integral part of it. This is because I knew that I could not effectively be forced to sell so that I could negotiate the like for like replacement that I needed. This changed when I learnt of this Bill's intent to allow termination by a majority that eventually lead to compulsory acquisition of a minority. So at the end of the 2016 strata AGM, I asked the proponent if she was intending to offer a like for like replacement on an off the plan buy back basis to owners of beachfront townhouses that have the most to lose from termination. She replied that there will not be a like for like replacement offer because we will not be able to afford any of the exclusive beachfront apartments, or words to that effect that another owner, Carolyn Milton-Smith, can vouch for as she was present. When I questioned the speculator about the planning scheme requirement of half of dwellings below 70 square metres (25%) and below 90 square metres (25%), she said that would be catered for by the 30 short stay planning requirement. After this depressing news, I contacted the Town of Cottesloe planning office where I was told that I was legally correct because the requirements of half affordable dwellings and 30 short stays were mutually exclusive since dwelling and short stay have different legal meaning. However a planning scheme amendment on appeal to the Minister would make the speculator's intent legal. So no like for like for Fulvio.

I presume that by relevant agencies you refer to Landgate. I did not make a submission during the original request by Landgate to do so because, like 99% of strata owners, I could not believe possible that the government was considering termination by a 50% majority that would lead to compulsory acquisition of a 25% minority. After a few articles in the Post Newspaper by award winning journalist, David Cohan, I was asked by Landgate to attend a very fruitful meeting with Sean Macfarlane and another lady by the name of Alison on the last leap year day (29 February 2016). During this meeting we spoke about our Singapore experience, the need to use the UNSW report of December 2015 as a reference because it was the only study on the subject of strata termination in an Australian context, the need to cater for dissenting long term strata home owner occupiers with a like for like replacement bought on an off the plan basis, the need to prevent a forced sale when the mortgage was higher than the fair market price, the need for a tiered termination threshold based on size, the need not to force occupiers out of their homes until actual redevelopment started, the need to enforce both a dead valuation of the whole strata land (land value = redevelopment sales revenue less building cost less development costs less selling costs less developer's overheads/profit) shared in accordance to an alive valuation (based on relative value of each lot) and others that are now in the Bill. I can only speak highly of Sean Macfarlane. He showed the empathy and competence that would make a good advocate for vulnerable owners in case you want to have one. He promised that I would be invited to provide more feedback on the termination part of the draft Bill as it progressed especially since we agreed that the Seapines could be used as a pilot study before finalising the Bill but Landgate never invited me back. This was probably due to the criticism, printed in the Post Newspaper on a number of occasions, that I made about the undue influence of the 7 property industry lobby groups on the Bill to the detriment of dissenting long term strata home owner occupiers that live in existing fit for purpose strata title schemes that are not allowed to have a competent developer lead collaborative approach for the redevelopment of their strata land because the strata company is controlled by a minority of speculators that own the majority of lots. The current Minister of Lands refused to meet me despite multiple requests and the short meeting with 1 of her advisers was such a complete waste of time that I gave up on her: too busy for me I presume. If this was not the public service but a private business then there would be a case to answer for innocently misleading the vast majority of strata home owners into believing that Part 12 was only about preventing 1 holdout blocking the majority from redeveloping their unsafe or derelict strata building and to safeguard them from an unfair possible future termination.

1.5
Q: Have you been offered any compensation or other consideration in exchange for agreeing to any termination proposal? If so, please provide details, including any commentary on its adequacy.

A: I never received a legally binding offer to purchase my home. I never received a properly drafted offer or other consideration in exchange for agreeing to any termination proposal. After the proponent bought 11 units in 2003 and 2004, I received a 1 page Heads of Agreement based on an Information Memorandum of

not even 2 pages to become an investor in the redevelopment of the Seapines so that I could buy back into it by vesting my home for a consideration of $670,000. I considered it unprofessional let alone financially inadequate so I refused to sign it. This turned out to be a good decision not only because Unit 8 next door was sold soon after for $820,000 in February 2006 but mainly because there was evidence that the new proponent could not be trusted. In fact Dr Shelley Craddock, an investor in the Seapines via a sub-syndicate lead by the proponent, successfully sued the proponent in the Supreme Court for bad investment advice (Justice Rene Le Miere presiding). Only 2 units were bought by the proponent in 2006 and 2007. During this period there was a lot of coercion via real estate agents and other means (see letter of 28 February 2007) to sell for $1,000,000 plus $100,000 for beachfront townhouses on Marine Parade. I refused to even consider it because the beachfront Marine Parade townhouses were 27% more expensive than those at the back when all the units in the complex were put on the market back in 1992. In 2008, 3 of my owner occupier neighbours at the back decided that they had enough of the bullying and sold just before the GFC for $1,000,000. They did not get paid until 2014 after a long legal action was settled out of court with actual payout undisclosed due to confidentiality agreements. Just before the GFC, a potential redevelopment competitor with links to a real developer was quickly bought out of the 39 square metre laundry that is located underground in the back lane next to the rubbish bins for $1,544,000 because he was seen as a threat. The laundry is now derelict with its value as a going business concern wiped out. The proponent described it as a 1 off strategic investment because after this purchase the remaining owners would have no other option but to sell to the proponent as there would not be any other possible buyer because she would control the strata company. This turned out to be the case because when an owner that needed money sold his beachfront unit in December 2014, he only managed to be paid $965,000 from the proponent. At the 26 August 2013 AGM, which I did not attend, the proponent promised a 200% return on investment and threaten to take Carolyn Milton-Smith to the District Court if she refused to sell. The $1,000,000 offer was made again in a letter on 28 January 2015 which was reduced to $850,000 in another letter on 11 June 2015. This $850,000 offer was only considered by an investor that owns a unit on the back lane that asked for $1,200,000 as his share of rezoned (not absolute beachfront part of) strata land but it was refused. The proponent said that $850,000 is above the fair market value of a 40 year old depreciated, 1 bedroom, 1 bathroom, 1 car bay unit. There is no doubt that this Bill has reinvigorated the proponent as you can read from the veiled threats based on misleading information in this letter from the proponent of 19 January 2016. On Tuesday after our AGM the proponent with a new member of the speculators' syndicate, Sam Barnett, that I am told tricked a farmer in Kalbarri to sell well below market price, gave an unsigned written offer of $1,100,000 with settlement on 21 January 2019 to 2 owners that stayed behind. An agreement has been signed between the proponent and an associate to buy 2 units at $1,600,000 but this more realistic market price has not been offered to owners outside of the speculators' syndicate. So owners outside the syndicate are offered $1,100,000 regardless of whether they are beachfront townhouses or not while owners inside the syndicate are offered $1,600,000 in secret side agreements. It is facts like this that make owners that are not part of the speculators' syndicate not trust the proponent and block termination from proceeding. I am certain that I will be cheated by the proponent on any like for like replacement deal. This is why I will only sell to this proponent until I am forced by the SAT to do so. All the owners are saying that, as long as she remains the proponent, termination will only happen if the SAT forces it. This is fine for the investors at the Seapines with huge capital gains but a travesty of justice for an owner occupier like myself with a solatium capped at 10%.

An adequate compensation needs to be based on rezoned strata land value shared in accordance to relative value of each lot. The Seapines rezoned land value is $50,000,000 now in a depressed market up to $70,000,000 at the peak of the market. The current valuation of $50,000,000 is based on 2 calculation methods.

1) Seapines (2,529 sq.m) is a 40% better site for redevelopment than 120 Marine Parade (September 2018 sale at $8M for 561 sq.m) because of access on 3 sides rather than only 1 tiny 1, an extra storey aboveground and 2.5 extra storeys underground, lower construction costs per sq.m, etc

2) Sales $125M (10,000 sq.m: 38 dwellings 4,500 sq.m, 42 hotel rooms 1,300 sq.m, 7 shops 1,100 sq.m, 145 parking 2,100 sq.m) less Building Cost $42M less Professional Fees $7M less Financing $5M less Builder's Contingency $5M - Developer's Contingency $5M - Developer's Profit & Overheads $11M =

$50,000,000. So adequate compensation would be $50,000,000 shared according to the relative value of each lot as follows:
- restaurant $2,600,000
- 10 Marine Parade units $2,100,000 each
- 16 other units $1,600,000 each
- laundry $800,000. In my case the valuation based on highest and best use ($2,100,000) is nearly twice the proponent's offer because she does not want to pay for the uplift in Cottesloe beachfront rezoned land value. These valuations for each lot should be the total compensation payable including capital gains tax, GST, duty, conveyancing, removal expenses, business disruption and solatium as applicable with investors with big capital gains being advantaged over principal home owners with solarium capped at 10%.

1.6 Under the current law, namely section 51 of the Strata Titles Act 1985, an owner can apply to the District Court to deem a resolution to terminate a scheme is unanimous where the resolution is supported to the extent necessary for a special resolution (ie not unanimous).
1.6.1
Q: Have there been any applications to the District Court under section 51 for an order that a resolution to terminate the scheme be deemed unanimous?

A: No. This question has already been answered elsewhere but let me add that even the Minister has admitted in Hansard that the case about cheap transportable homes that was used by Landgate as justification for the need to safeguard owners against termination was extreme. Red herring would be a better term because it was 1 case in 54 years of strata law operation in W.A. where there are probably 250,000 strata titled properties. The Minister argued that as strata schemes are getting older then there would be a need for safeguarding owners but I have not seen any proper study to justify this claim. Even a 1,000 fold increase in termination ala is still insignificant compared to the total number of strata properties to justify privatising compulsory acquisition camouflaged as termination by a majority in order to safeguard strata owners.

1.6.2
Q: If not, are you aware of reasons why no application has been made by those in favour of terminating the strata scheme?

A: Yes. This question has already been answered elsewhere but let me add that in the real world any proposal to terminate strata titles schemes has an almost 0 probability of succeeding under the current law. This is because it will probably end up in the Supreme Court because of the high value of most strata properties. Under the current law forcing owners to sell by terminating a strata scheme is difficult even for deep pockets because it is so risky since most Supreme Court judges in their right mind will not turn back 803 years of common law and, most importantly, the loser in the Supreme Court pays all costs acts as a de-facto safeguard barrier; this is unlike the SAT where non-vulnerable owners pay their own costs. Unfortunately the SAT will be more easily accessible, cheaper and quicker thus allowing repeated termination attempts; and more predictable and less concerned about setting a precedent undermining long established common law because of this Bill; especially since this Bill does not even have a Statement of Principles to guide the SAT to guarantee that a non-unanimous termination results in an outcome with a public benefit.

1.7
Q: Please give a summary of your views on the processes for termination of strata titles schemes proposed by Part 12 of the Bill (pages 259 to 292). Do you believe that it is a fair and suitable mechanism?

A: Yes, I believe that it is a fair and suitable mechanism for terminating new strata titled schemes if some minor improvements are made. For example the termination threshold percentages should be set by the developer in conjunction with local government before any lots are sold and the scheme is

registered. Home buyers will then choose to pay a premium for strata schemes that guarantee that they will not be forced to sell their home until they want to because it is at the end of its life cycle. Strata investors will then pay a premium for strata property that they know can be terminated before the end of its life cycle to take advantage of the uplift in land value from rezoning or tax payer funded infrastructure. A termination threshold that changes with age of the building should also be an option for developers and local government to set; for example 100% up to 10 years old, 95% for 10 to 20 years old, 90% for 20 to 30 years old, 85% for 30 to 40 years old, 80% for 40 to 50 years old, 75% for over 50 years old.

No, I do not believe that it is a fair and suitable mechanism for terminating existing strata titles schemes unless significant changes are made, transitional provisions introduced and it is unanimous unless the strata building is no longer fit for purpose. I believe that a strata titles scheme termination is a private matter that strata owners should settle amongst themselves. Government should not interfere except by facilitating the process for unanimous termination. Most importantly it should not interfere by tilting the balance of power in favour of investors and a proponent that controls the strata company in a fit for purpose strata scheme at the expense of long term home owner occupiers as it is manifestly evident in this Bill. For example if I was an investor rather than a principal home owner my capital gains payable by the proponent at termination would be 21% of the fair market price. This is far in excess of the 10% solatium cap that the Minister wants in order not to incentivise home owner occupiers to hold out. Instead this Bill incentivises strata investors to hold out.

1.8
Q: Do you believe a termination proposal should continue to require unanimous approval of all lot owners?

A: Yes. It will be a travesty of justice if unanimous approval of all lot owners was not the case for existing fit for purpose strata titles schemes controlled by the proponent as it is in my case.

I believe that for existing strata schemes, termination should continue to require unanimous approval of all lot owners except:
A) when 1 or probably 2 or possibly 3 owners want to stop the majority despite there being a need beyond any reasonable doubt for renewal because the strata building is no longer fit for purpose since owners can no longer afford fruitless spiralling costs in order to maintain it; and
B) in those exceptional circumstances mentioned by the Minister (mushroom farmer) or shadow Minister (developers buying into old strata to prevent a redevelopment that will spoil the view from their investment). At all other times, termination should remain unanimous because it is a private matter of profit for strata owners to deal amongst themselves using a suitable mechanism facilitated by government that is fair.

I believe that for new strata titled schemes, the government can legislate a termination scheme that is not unanimous because owners will know what their obligations are, as long as this legislation has sufficient regard to the rights and liberties of individuals. Without implementing the changes that I have suggested in my submission, this Bill has sufficient regard only for the property rights of a group of strata investors at the expense of individual strata home owner occupiers' rights and liberties. Especially the 803 year old liberty to enjoy one's own home as if it was one's own castle without fear of being forced to sell to favour someone else unless there was a manifestly evident public need to do so.

1.9
Q: Are you aware of other examples in Cottesloe as well as in the wider community where strata termination proposals have not been able to proceed due to the failure of the proponents securing the unanimous approval of lot owners and, if so, what are your views on the reasons why termination has not occurred?

A: I do not have all the facts so I do not want to discuss any other specific examples in this forum; except for 1 where the termination proposal has been successful because it is relevant in understanding why others have not been able to proceed. At 120 Marine Parade a unanimous termination has worked well for all owners. Here $8,000,000 was paid yesterday for the whole block sale of the 6 apartments and shop that sit on the 561 square metres of strata land. It was possible because the owners were able to agree amongst themselves since there was no speculator forcing them to sell at the depreciated market price of their unit without consideration for the uplift in rezoned land value. Unlike the Seapines, at 120 Marine Parade there was no speculator-cum-proponent-cum-'L' plated developer acting as a middle man so that she could double her money by flipping the whole land to a developer or more by land banking until the market peaks or even more when the State government does her a favour for no prid pro quo to the local community by imposing more storeys on the Cottesloe beachfront. The owners of the strata titles scheme at 120 Marine Parade were able to obtain a fair market price because the land was sold on a competitive tender basis that received many offers. At 120 Marine Parade they controlled the selling process; in my case this Bill puts a proponent that controls the strata company in control. This Bill creates a market of only 1 willing buyer and no willing sellers. Generally there are 6 reasons for why termination proposals have not been successful:
1) Lack of trust in the proponent.
2) There is no termination proposal template that all owners can trust to follow, even if there is 100% support for termination, that can be reviewed by a trusted authority. Part 12 of this Bill with amendments should overcome this.
3) Strata schemes where there is at least 1 of either a single parent with children or a downsizing 55 to 70 year old owner that has lived in his strata home for at least 10 years and just does not want to sell. This is related to the need to consider ontological security (a stable mental state derived from a sense of continuity in regard to the events in one's life). Interestingly my own experience is that over 70 year olds living in existing fit for purpose strata schemes are strongly in favour of termination if they can have a like for like because of their increasing need for disabled access which is not available in old strata schemes.
4) Proponent's greed leading to a significant mismatch between proponent offered alive valuation and owners only accepting dead valuation unless forced to sell by changed personal circumstances (eg last sale at the Seapines). This is related to speculation which Part 12 will unintendedly exacerbate as already described in my submission. This is particularly true in Cottesloe perhaps because owners in a wealthy and highly educated suburb are more aware that property only goes up in value because land appreciates while building only depreciates.
5) Greed from 1 or probably 2 or possibly 3 holdouts, which Part 12 will overcome, who are more likely to be strata investors than strata home owners.
6) Other reasons that also apply to strata titles schemes owned by 1 person, for example Ocean Pines, such as not enough incentive to redevelop compared to more politically favoured sites such as the Seapines where the State overruled Local government.

1.10
Q: What would you suggest are the best ways a proponent secure the unanimous approval of lot owners for the termination of a strata scheme, including adequate compensation and communication?

A: According to the UNSW report of December 2015 "Renewing the Compact City: Economically viable & socially sustainable approaches to urban development" the best approach for redeveloping strata schemes is a **developer lead collaborative approach** not a speculative approach. So the best way for a proponent to secure the unanimous approval of lot owners for the termination of a strata scheme is:
1) To build trust by being open, accountable and transparent in all communications with both owners and the local community.
2) To offer fair compensation that is based on the whole strata land value calculated in accordance to its highest and best use as a rezoned redevelopment site shared in accordance to the current relative value of each lot.
3) To offer like for like replacement on an off the plan buy back basis to dissenting long term strata home owner occupiers that is acceptable to them.
4) To show the leadership of a competent developer with a long track record in delivering quality projects on time of a similar size and cost.

5) To communicate data from recent similar projects showing buyers satisfaction and references from happy like for like replacement owners.
6) To provide a sustainable design that stems from an architectural competition that is to the satisfaction of the local community.

1.11
Q: Do you have any suggested changes to the current law that you believe would better facilitate the termination of strata titles schemes than the current law, including any amendments to proposed Part 12 of the Bill?

A:
In my submission I have suggested 10 amendments to the proposed Part 12 of the Bill. In summary:
1) MANDATE LIKE FOR LIKE TO BE OFFERED TO DISSENTING LONG TERM STRATA HOME OWNER OCCUPIERS [refer to s183(9)(b), s183(11), s183(12)(e)]
A Transitional Provision is required in this Bill so that for existing strata schemes, especially those that are still fit for purpose, a like for like replacement bought on an off the plan basis should not be just an option for the proponent to make but rather a choice of the dissenting long term strata home owner occupier to have.
2) LIMIT ABUSE OF POWER BY A PROPONENT THAT CONTROLS A STRATA COMPANY [refer to s174(2), s176(1)(a), s178(2)(b), s181(2), s181(3), 181(4)(c), s189(1)]
A Transitional Provision is required in this Bill to stop a proponent passing or blocking all Ordinary Resolutions because she controls the strata company by virtue of owning more than 50% of units. Such a Transitional Provision need not be complicated:
- s174(2) & s176(1)(a) require only a change from Ordinary (50% for) to Special (50 for, 25% not against) Resolution
- s178(2)(b) requires the addition of "an owner of a lot in the strata title scheme"
- s181(2) delete "by ordinary resolution".
In s181(3) define reasonable opportunity as "3 months".
3) MANDATE SAT TO ALLOCATE UNIT ENTITLEMENTS TO STRATA TITLE SCHEMES WITHOUT THEM BEFORE A TERMINATION VOTE WHEN STRATA COMPANY IS CONTROLLED BY PROPONENT [refer to s183(12)(b), s195(2)(e), s204(a)]
A Transitional Provision is required in this Bill to empower the SAT to allocate fair and equitable unit entitlements according to the current relative value of each lot in old strata schemes before a termination vote when the strata company is controlled by a proponent especially if she has bought most of the lots with inferior aspect and views or are otherwise of lower relative value to the dissenting owners'.
4) REMOVE INCONSISTENCY WITH PRINCIPLES OF NATURAL JUSTICE [refer to s179]
s179 allows the SAT to order the forced sale of a long term home owner occupier that has not been classified as a vulnerable owner, based solely on 1 only termination infrastructure report and 1 only termination valuation report that have been commissioned and paid for by the proponent. This is inconsistent with the principles of natural justice. **The Bill needs to empower the SAT to have another set of independent termination infrastructure and valuation reports from professionals that have been chosen, briefed and commissioned by the dissenting owners or by the SAT on their behalf and paid by the proponent in those forced sale cases when there are no vulnerable owners.**
5) CHANGE TERMINATION THRESHOLD FOR STRATA SCHEMES UNDER 10 YEARS OLD FROM 90% TO 100% [s182(7)]
6) USE A TIERED TERMINATION THRESHOLD BASED ON SCHEME SIZE [s182(7)]
Implement the recommendation in the UNSW report for a tiered voting threshold based on scheme size starting at a minimum of 80% as follows:
- 5 to 9 lots = 80%
- 10 to 19 lots = 85%
- 20 & over lots = 90%.

7) REMOVE 10% SOLATIUM CAP FOR DISSENTING LONG TERM STRATA HOME OWNER OCCUPIERS IN EXISTING FIT FOR PURPOSE STRATA SCHEMES THAT ARE CONTROLLED BY THE PROPONENT [s183(10)(b)]

8) DO NOT ENCOURAGE LAND BANKING [s183(17)(d)]

The Bill should require that all necessary preconditions be in place so that redevelopment proceeds immediately after forced sale with bond based penalties for non-compliance or that the strata be maintained fit for purpose until actual demolition and construction starts.

9) REPLACE OWNER'S FINANCIAL POSITION WITH A SIMPLER "NO WORSE OFF" TEST THAT IS STRICTLY LIMITED TO THE STRATA TITLE PROPERTY [s183(10)(2)]

Owner's financial position should be replaced by a precise "no worse off" test that is clearly limited to the strata title property concerned so that a proponent can calculate the extra cost of termination when the outstanding debt amount in a statement from the registered mortgagee is higher than fair market value in the termination valuation report.

10) ADD A STATEMENT OF PRINCIPLES FOR PART 12 IMPLEMENTATION TO ENSURE THAT THERE IS A PUBLIC BENEFIT

Implement the recommendation in the UNSW report to include a statement of principles that reflects the broader policy aims of strata renewal in the Bill to ensure that non-unanimous termination is in the public good. A Statement of Principles for this Bill may be to provide 1. a process to facilitate the renewal of buildings that are no longer fit for purpose; and 2. more affordable housing within the existing urban area not land banking.

Fulvio Prainito BE MBA PCertArb IntPE(Aust)
Registered Practising Engineer (Queensland #10858)

Legislation Committee

From: Fulvio Prainito
Sent: Thursday, 27 September 2018 8:26 AM
To: Legislation Committee
Subject: Strata Titles Amendments Bill 2018 - Fulvio Prainito 27 September 2018 - Closing Statement

CLOSING STATEMENT

Part 12 of this Bill is an incentive to bad proponents like the one in my strata title scheme. It is a bully Bill more than boot a granny Bill because it gives overwhelming power to a proponent that controls a strata company. Its safeguards in reality can only work with good proponents that this Bill effectively shuts out in my strata scheme or in cases of unanimous termination. This Bill favours the rights of investors over the liberties of people to enjoy their own home without fear of being forced to sell as a favour to someone else. It favours investors over home owner occupiers with its defacto capital gains tax refund and 10% solatium cap provisions. This Bill does not even have a statement of principles to guarantee that the forced sale of a principal home is in the public good despite the State interfering in what is essentially a private matter. It is discriminatory because it allows speculators to compulsory acquire home owners for profit at lower thresholds compare to shareholders in similar companies. I'm out of time so I will stop here to say that if this Bill is passed as it is without the grandfathering that I begged for in my opening statement then it will become a blemish on the social justice record of this government.

Fulvio Prainito BE MBA PCertArb IntPE(Aust) Registered Practising Engineer (Queensland #10858)