

1 April 2022

Mr Robert Manning
Recorder of Titles
Department of Natural Resources and Environment Tasmania

Via email: lto@nre.tas.gov.au

Dear Robert

Review of the *Strata Titles Act 1998* - Targeted Consultation

Thank you for the opportunity to provide comment to the Review of the *Strata Titles Act 1998* Targeted Consultation.

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993* and is the representative body and advocate for local government in Tasmania. Councils may make direct submissions to this process to reflect their particular experience. Any omission of their issues in this submission should not be viewed as lack of support by LGAT for those specific issues.

LGAT has consulted its members, receiving two formal responses and some informal comments. Two council submissions are attached.

Our comments relate to the following matters:

- Issues Paper – Strata plan requirements
- Issues Paper – Common property and service infrastructure
- Issues Paper – The use of specialised regulatory frameworks in Tasmania

Councils have a fundamental role in strata title development with assessment and approval, one of the many responsibilities local government has in development regulation. This multifaceted role in development regulation gives councils an experienced and pragmatic view of strata development.

General

There are three main themes in council responses to the Issues Papers. These are:

- A critical need for clearer distinction between division of land by strata plan or by subdivision.

- A need for guidance material to support strata development and its regulation to reduce reliance on subjective judgement, confusion and contestation in applying strata title development.
- A need to manage or close the loophole of strata development being used to circumvent limitations, development standards, or other regulation required of subdivision.

Councils advise us that development proponents often view the division of land by strata plan under the *Strata Titles Act 1998* (STA) as an interchangeable and equivalent alternative to subdivision under the *Land Titles Act 1980* (LTA) where regulatory requirements on subdivision are undesirable. This may be minimum lot size, the infrastructure requirements, or the financial infrastructure contributions associated with lot subdivision. The purpose of the strata mechanism is not to create an unregulated, or poorly regulated, pathway to evade the development requirements of subdivision. Rather, the purpose of strata is to provide a useful additional format for the division of land where subdivision is inadequate to achieve the community's development objectives, as expressed in the applicable planning scheme. The vertical division of land is a prime example and origin of the method and term "strata" (layers). Subdivision cannot enable multi-storey multiple dwellings or offices, where planning instruments intend this form of higher density development.

Strata is also useful for horizontal division of land, where conditions of the parent lot or nature of the proposal mean that the subdivision format cannot achieve the development objectives of the planning scheme. For example, the dimensions of the land might require shared infrastructure, usually around connection to networks (such as driveway access to the road network, or water, sewerage, or electricity connection).

The two primary advantages of strata title over subdivision are vertical division of land and robust legal structures, including common property and body corporate, to facilitate shared management of shared infrastructure or assets. A disadvantage, as some may perceive, to strata title is the creation of body corporate. Establishing a body corporate is a cost, adds complexity, long-term maintenance burdens and obligations of strata title owners. A body corporate can be an excellent mechanism to facilitate a development outcome in circumstances where subdivision is insufficient yet relies on the willingness of parties to participate and contribute to its maintenance, where issues sometimes arise. Given these issues, it is prudent that strata be used when the benefits outweigh the costs. The simplicity of subdivision over the long term is preferred when strata is not required to achieve the development outcomes sought. However, more comprehensive guidelines to inform proponents and consumers of their development and purchasing decisions are needed to support this.

We recommend that the review includes a clear expressed purpose, or in the amended Strata Titles Act, to assist proponents and regulators to understand the role and rationale of strata titling as a development tool and to apply it appropriately. Clear guidance material must be published illustrating the differences, advantages and disadvantages of strata compared with subdivision, in order to support the legislation and the appropriate application of the right development tools.

Issues Paper – Common property and service infrastructure

Feedback from councils was clear that they are very strongly against exempting the requirement for common property from strata development. Common property is considered a fundamental distinction between subdivision and strata title. Strata without common property is essentially a subdivision layout. Permitting strata that resembles subdivision will open up highly significant regulatory loopholes, facilitating the bypass of subdivision requirements with unacceptable implications for the integrity of land use planning and infrastructure provision.

Councils report that exempting common property in strata division will open the way for creation of below minimum lot sizes. For example, section 109 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (LGBMP)] and bypass some, perhaps all, infrastructure contributions requirements (particularly, section 117 of LGBMP). Sections 31A and 50A of the STA obviate strata lots from the requirements of LGBMP for subdivision lots. Given the higher density development that strata supports and the intensified infrastructure demand of higher density development, these loopholes are dangerous and threaten to undermine councils' efforts to plan for their communities and deliver infrastructure effectively.

Councils report the need for a mechanism to ensure that strata development contributes equitably to the infrastructure networks it relies and imposes additional demand upon, including public open space, similar to the requirements in LGBMP.

In addition, the common property provided in strata plan proposals should be meaningful and not perfunctory. Perfunctory provision of common property, simply to enable strata titling and avoid the requirements of subdivision, should be prevented through clearly expressing the requirements to achieve strata titling. Again, this requires clear guidelines to express requirements, to distinguish from subdivision, and to ensure regulatory loopholes are eliminated.

Strata development should not replace subdivision as a land division method, but sit alongside it as a complementary tool in the land development toolkit. Councils were not able to provide examples of strata scenarios that did not have at least some shared infrastructure or management. Other scenarios that otherwise resemble subdivisions

should be treated as such. Exemptions to common property do not seem to have reasonable practical application, other than to obscure the distinction between strata and subdivision and avoid development requirements of subdivision.

Councils recognise that the proportion of common property required for strata development can vary according to the zone, or for the use type or development approved. Shared infrastructure should be completely contained within common property and not provided within strata title lot boundaries, to facilitate appropriate shared management via the body corporate. Body corporate documentation should be required to clearly express this requirement to manage and maintain the shared infrastructure.

Issues Paper – Strata plan requirements

The highest priority call from councils is for strata plan requirements to clearly articulate the points of difference between subdivision and strata plan division. As noted above, expressing the purpose of division of land by strata plan, particularly in comparison to the purpose of subdivision. Guidance material designed for councils and developers alike is needed to assist proponents in selecting the right development tool and applying it appropriately, and to make councils' assessment and informational tasks clearer and easier to explain to customers.

Councils do not support the use of strata to create vacant lots, which they see as the role of subdivision. Instead, the approved buildings should be constructed prior to any strata arrangements being approved.

The use of floor and location plans is supported for staged strata schemes. Not supported are strata divisions prior to buildings being constructed where floor and location plans may be used.

If developers require further certainty for their strata proposals prior to building construction, then a preliminary approval process or similar mechanism could be considered that gives concept-level approval.

Feedback indicated councils were supportive of using an array of supporting material and mechanisms to inform how strata title proposals are designed, prepared, submitted, assessed and decided upon. This includes subordinate legislation and statutory instruments such as Survey Directions.

Beyond legislation and statutory instruments used to hold requirements, guidance documents are needed to inform interpretation and application of requirements. Requirements that require interpretation and judgement to apply or meet opens the door

for variation, confusion, and contestation. Introduced requirements should be supported by guidance material to improve outcomes and reduce contestation in strata proposals.

Issues Paper – The use of specialised regulatory frameworks in Tasmania

Our consultation found no objection, and even a modest level of support, to the use of specialised regulatory frameworks. It was felt that specialised regulatory frameworks could help to simplify application of the STA, particularly for smaller, less complex proposals (smaller size or fewer lots), by targeting requirements and making them proportional to the needs of, and risks presented by, the development. There is a preference for the Queensland model due to flexibility, but primarily because it does the best job at differentiating between strata title and subdivision.

LGAT appreciates the opportunity to provide a submission on the Review of the *Strata Titles Act 1998* Targeted Consultation and looks forward to continued engagement with the sector on amendments to the Act. Please contact Michael Edrich, Senior Policy Officer at michael.edrich@lgat.tas.gov.au or 6146 3751, if you have any further questions in relation to this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dion Lester', is positioned above the printed name.

Dion Lester

CHIEF EXECUTIVE OFFICER

Encl. Individual council submissions

8 March 2022

Mr. Michael Edrich,
Local Government Association Tasmania
Via email: michael.edrich@lgat.tas.gov.au

Dear Michael,

Re: Request for feedback – Issues Papers – Strata Plans

Thank you for the opportunity to contribute to the targeted consultation undertaken by the Department of Natural Resources and Environment Tasmania (NRET).

The Break O'Day Council believes that at times the Strata Titles Act is used to create a division of land circumventing the subdivision restrictions which apply in certain Zones which might prohibit or limit subdivision. The Act has substantial fundamental weaknesses which need to be addressed, unfortunately this targeted review is avoiding the more difficult issues which Councils face on an everyday basis which is disappointing and reflects a missed opportunity with this review.

Nevertheless, the Break O'Day Council offers the following input on the subject of the targeted review.

The DNRET has issued three (3) issues paper titled:

- Issues Paper – Strata plan requirements;
- Issues Paper – Common property and Service Infrastructure, and
- Issues Paper – Specialised regulatory framework.

The Tasmanian Planning System clearly differentiates between the subdivision of land and the creation of strata lots. The State Planning Provisions exempt strata division from requiring a permit (clause 4.6.18) for the division by strata titles of lawfully constructed or approved buildings providing the use has achieved a planning permit. Despite strata division being exempt from requiring a planning permit from the Planning Authority (Local Government), the Strata Titles Act requires a strata plan to obtain a certificate of approval from the relevant Local Government prior to registering the scheme. As the relevant authority in issuing a certificate of approval, there are a number of issues facing local government in exercising the responsibility of determining a strata plan.

General Comment

Councils are being faced with proposed strata development in zones such as Environmental Management and Rural living zone where subdivision would otherwise be prohibited and Strata division proposals are being utilised to circumvent prohibited development under the Break O'Day Interim Planning Scheme.

Planning authorities across Tasmania are typically small organisations with limited staff and resources. The assessment and determination of strata plans can be resource intensive and can involve many iterations with respect to ensuring the submitted application is not a subdivision. The ability to recoup costs involved in being the relevant authority and assessing applications for a strata plan, needs to be considered further. A suggested response to this might be setting minimum state wide fees associated with strata applications to reflect the required resources and cost recovery for assessment.

Clause 31(6) requires Council to refuse an application for a certificate of approval if the council reasonably considers that the proposal is for a subdivision. The Break O'Day Council would appreciate further assistance from this review process, in ensuring that clear guidelines are developed to better inform applicants of what is required. This may be in the form of regulatory guidelines that inform the legislation and that includes diagrams to prevent confusion or misconception of the requirements. It is important that any guidelines, including diagrams, sets the expectation, in terms of land area, what is a 'strata lot', what is common property and how this differs from a subdivision. The Break O'Day Council has recently experienced the complications associated with this as a strata was proposed on a large lot zoned Environmental Living. In this instance the submitted strata plan demonstrated 'strata lots' that closer resembled a subdivision. This was further amended to increase the common property and reduce the strata lots, however the strata lots proposed continue to be quite large in land area. It is this Council's opinion that strata lot boundaries should be contained and limited to include the building/structures, access roads and infrastructure such as onsite wastewater infrastructure and any additional land area associated with the site is wholly contained within common land. If the use is a Residential use, it may also include private open space requirements for that zone. If the use is Visitor Accommodation e.g., then the strata lot boundary is confined to buildings, infrastructure and any planning scheme requirements to service each building. In other words, strata lots achieve a minimum strata lot size in terms of the use and development and common property is maximised. The Queensland approach in terms of Building format plans is probably closer to achieving this. Diagrams provided within regulatory guidelines could assist in interpretation.

Consideration needs to be given to the requirement for buildings to be constructed and completion certificates issued, prior to a certificate of approval for a Strata Scheme being issued. The Queensland approach of a subdivision via a development application providing for the creation of vacant allotments only is our preferred position. A Building Format Plan / Volumetric Format Plan (Strata Plan) approach requiring buildings to be constructed prior to a certificate of approval being issued, ensures that the strata lots created are purposeful and contained, whilst ensuring the common property is a significant feature and the lot continues to function as a whole with respect to the use and development. This would remove many contentious discussions as to whether the application is for a subdivision or strata scheme and remove any doubt of developers selling vacant lots to disguise the requirement for subdivision.

Requirements for a Strata Scheme should consider including the requirement for a Community Management Statement (CMS) which includes ability for council to impose a condition on a development for visitor accommodation or multiple dwellings that should a strata scheme be proposed in future, then certain things need to be contained within a CMS and they cannot be altered without the approval of the Planning Authority or Council.

This Council would be concerned with the proposal to consider allowing exemptions from the requirement to have common property without very clear guidelines. If considered, this should be limited to zones allowing for higher densities.

Providing exemptions will further exacerbate current issues in Council defending its determination as to whether a proposal is a subdivision or a strata scheme, particularly in relation to the provision of common land. Instead, this Council would prefer to see greater expectations and responsibility on applicants to demonstrate that the provision of common property has been maximised meaningfully and appropriately given the title, zone, use and development. Submitted strata plans should clearly identify and label common property. The Break O'Day Local Government area has a significant land area that is not serviced by TasWater and therefore the responsibility of waste water management and in some cases water supply should be the responsibility of the body corporate rather than individually designed waste water systems.

Issues Paper – Strata Plan Requirements

In the experience of the Break O'Day Council, in some cases, a proposal for a strata plan is considered by owners, to be an alternative to subdivision when the planning scheme doesn't provide for subdivision within the development standards of the Scheme. To this end, any improvements to the strata plan requirements should focus on clearly articulating the points of difference between a subdivision and a strata plan as well as providing certainty around the requirements for common property and the criteria that must be considered regarding "Value judgement".

Additionally, it is the opinion of this Council, that a Strata Plan should not create vacant lots with associated planning approvals only, instead and reiterated above the building should be constructed prior to any strata proposal being considered. It is the purpose of subdivision development standards to create vacant lots. Any publication of the Office of the Surveyor-General should clearly articulate the points of difference between Strata Plans and Subdivision and what constitutes common property and to what extent (meaningful common property).

To this end, the Break O'Day Council is supportive of the introduction of regulations and additional requirements being contained within something similar to Survey Directions, Tasmania.

Issues Paper – Common Property and Service Infrastructure

Common Property Exemptions

As indicated earlier, Council is not supportive of Common Property exemptions and considers the same to be a fundamental distinction between subdivision and strata title. Additionally, a requirement for the common property to be meaningful and assist in distinguishing between the two, is also important.

In relation to the focus questions, the Break O'Day Council is not supportive of exemptions for common property but instead accepts that the proportion of common property may alter dependent on zones and use and development approved. Strata plans should clearly identify all common property by labelling and separate plan. In some cases, associated Infrastructure included within common property, should not be contained within strata lot boundaries and should be completely contained within common property, recognising common property extends to the vertical plane. Infrastructure within common property should be the responsibility of the body corporate to maintain. Accompanying documentation should clearly articulate this.

In our opinion, there should be no deviation from the body corporate being responsible for service infrastructure on common property. It is important that clear distinctions between strata title and subdivision remain in place. Strata Title is a viable option for certain use and development within a title boundary and this option should clearly differentiate itself from subdivision in order to continue to offer land management options. Strata Title is a separate option to subdivision and there must be clear distinctions between the two land management options.

Issue Paper – The use of specialised regulatory frameworks

In terms of models preferred for Tasmania, the Queensland model most successfully differentiates between strata title and subdivision. This model more clearly articulates the distinction of subdivision providing for vacant lots and strata plans being applicable for approved and constructed development. This clear differentiation will allow Local Government to differentiate between the two with more confidence and authority and provides clear guidelines to the applicants with respect to differentiation.

A handwritten signature in black ink, appearing to read 'John Brown', with a stylized, cursive script.

John Brown
General Manager



7 March 2022

Michael Edrich

Local Government Association of Tasmania

Email: michael.edrich@lgat.tas.gov.au

Dear Michael

Re: Review of Strata Titles Act 1998

Thank you for the opportunity to comment in relation to the targeted consultation regarding review of the Strata Titles Act 1998.

Brighton Council makes the following comments in relation to the issues papers:

The use of specialised regulatory frameworks in Tasmania

In our experience, body corporate management of small lot strata's is rarely utilised, with many lot owners not knowing that a body corporate exists or understands the purpose of same.

The use of specialised regulatory frameworks could simplify the way the *Strata Titles Act* 1998 (STA) is applied in Tasmania, most particularly for small lot stratas. However, any changes to the regulatory frameworks should provide clarity for lot owners as to who is responsible for maintenance, insurance, etc of the common areas.

Common property and services infrastructure

Brighton Council is strongly against exempting the requirement for common property in strata developments.

Exempting common property in strata division applications will result in the creation of a subdivision with sub-minimum lot sizes contrary to Division 7 of the Local Government (Building and Miscellaneous Provisions) Act 1993 (LGBMP).

Further, allowing strata to be created through a subdivision layout will have ongoing impacts, in that the STA does not include a requirement for public open space contributions, or shared open space on the site. In contrast, Division 8 of LGBMP requires the provision of public open space or alternatively by way of cash in lieu for subdivision.

Recently, Brighton Council has experienced an increase in multiple dwelling applications by developers which do not provide suitable open space on site (either for lot owners or the public), and does not require developers to contribute towards provision of POS. This reduction in open spaces is amplified, given the consequent increase in population and resultant demand for POS. Accordingly, it is suggested that the Strata Titles Act be amended to include a similar provision relating to public open space contributions, as provided for in LGBMP.

Further, whilst an exemption may be considered, such as in the example where only a dividing fence is shared, it is extremely likely that most developments will need to create common property areas to accommodate planning scheme requirements. For example, a planning permit for multiple dwellings will undoubtedly require at a minimum shared vehicular access and visitor car parking.

Strata Plan Requirements

It is considered that a requirement for floor plans and location plan to be included in a strata application is unlikely to add anything significant as development approval together with necessary Building Act completions are required prior to the issue of strata. These documents are easily cross-referenced against the previously issued approvals. In the case of staged development schemes, however, floor plans and location plans would assist in the circumstances where construction has not yet commenced.

Please do not hesitate to contact Jo Blackwell (Senior Planner) by phoning 62687041 or email jo.blackwell@brighton.tas.gov.au or should you have any queries in relation to this response.

Yours sincerely,



David Allingham
MANAGER DEVELOPMENT SERVICES