Our Ref:ME:CA

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Review of the *Strata Titles Act 1998*
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Dear Craig

Review of the *Strata Titles Act 1998* – Discussion Paper

Thank you for providing the Local Government Association of Tasmania (LGAT) with an opportunity to make a submission on the *Review of the* Strata Titles Act 1998 *Discussion Paper*. LGAT provided the Discussion Paper to its member councils for comment.

The Local Government Association of Tasmania (LGAT) is the representative body of Local Government in Tasmania, with membership comprising all 29 Tasmanian councils. The core purpose of the Association is to:

- Protect and represent the interests and rights of Councils in Tasmania;
- Promote an efficient and effective system of Local Government in Tasmania; and
- Provide services to Members, Councillors and employees of Councils.

The Review

The *Strata Titles Act 1998* ('the Act') regulates the establishment of and sound ongoing administration of strata title developments. The aim of the review is to ensure that the legislative framework effectively supports strata developments and provides the appropriate balance between regulation and the rights of lot owners and tenants.

Strata title enables some efficient and compact ways of developing and managing land, however, in bringing people closer together in their ownership and use of land also carries complexities and risks, as well as shared responsibilities, such as in the management of

common property. To enable the benefits of strata title, the risks and responsibilities must be managed through legislative mechanisms.

Councils have a fundamental role in the regulation of strata title developments and are referred to throughout the Act in devoting functions and responsibilities, particularly to do with the establishment of strata schemes and enforcement of appropriate and compliant outcomes. Consequently, Local Government is the major partner of the Tasmanian Government in ensuring strata schemes are successfully and sustainably established in our communities.

In addition, councils have a range of experiences of when strata developments have gone awry or failed, leaving a legacy of substandard outcomes, particularly for lot owners. Gathering these case examples specifically from experienced council practitioners (and indeed other industry operators, such as developers and conveyancers) for analysis would be valuable for informing an effective review and practical improvements to the *Strata Titles Act 1998*. We suggest that Land Tasmania collate these specific cases that may point to deficiencies or failures of the Act to resolve.

As the review progresses, we urge you to consider the critical role councils play in successful strata outcomes and prioritise your active engagement with them. LGAT would be pleased to support your further consultation work with the sector.

Council Responses

In the timeframe provided, LGAT received responses from six councils, with several more showing strong interest but unable to meet the deadline due to a high workload in dealing with statutory planning matters. Most responses received were detailed and lengthy. Experience tells us this is a good response from busy councils, indicating the level of interest.

Although council responses were intricate, the major themes could be distilled as follows:

1. Generally supportive of a review of the Act;
2. A better range of enforcement pathways for councils before, or to avoid, going to court;
3. Reducing administrative and regulatory burden resulting from strata applications; and
4. Clearer definitions and guidance.

The main Areas of Focus of the Discussion Paper that councils addressed are discussed in the following sections and contribute to a sector view. Brief comments on the remaining Areas of Focus were provided by one council and are provided at **Appendix 1**.

Area 1 – Planning and Development of Strata Schemes

This is an area of high interest for councils as it requires significant council involvement and is demanding of resources.

One council noted that the planning and development requirements in the Act are generally adequate for new development seeking post construction division by strata if they comply with the *Land Use Planning and Approvals Act 1993* (LUPAA) planning permit conditions; however, the opposite can be said if division by strata is proposed for development completed prior to 1993.

For example, a block of flats can have issues with fire separation, fire protection and escape routes that may not conform to current code requirements. Another example involves the strata separation of a business site with a shop below and residence above. In this scenario, division, under s 31(3)(c) does not assist greatly, should the separation between floor levels, penetration of walls by services, smoke detection systems and the like be examined? Advice from building surveyors in these cases has been inconsistent and is limited only to matters contained in the *Building Act 2016.*

The requirements for staged strata schemes are particularly complex as there are many inconsistencies with building and planning regulatory approvals. There are also no clear criteria in the Act about how to treat a partially completed, but compliant development.

Council officers consider that the Act should just clearly state that the developer is either to finish the entire development and obtain completion certificates under the *Building Act 2016* before any strata titles are issued or, prepare a staged scheme with all of the requisite detail and plan their regulatory approval for each stage under the *Building Act 2016*, accordingly.

One council described the example of a staged development scheme of multiple 'visitor accommodation' buildings on a rural property. In this example, council found that there was no way to require the original development application to be adhered to in terms of design. The use of these buildings was also controversial with many being used as private shacks. This demonstrates how it can be difficult for councils to link a development application with staged development scheme outcomes.

Few councils referred to community development schemes in providing feedback to LGAT. One council commented that the only community development scheme they knew of failed because of underlying zoning requirements.

In relation to questions four, five, and six, councils understand that the division of land by strata was deliberately excluded from the Resource Management Planning System of Tasmania (RMPS) on the basis that land occupation was to be kept separate from land use.

However, it was felt that Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* should be separated partly into planning schemes and partly into legislation that deals specifically with all forms of land division outside the scope of the planning schemes, as not doing so may confuse matters.

In essence, councils believe there is some merit to splitting the approval process (establishment) and the administration provisions for strata schemes, or at least making the different roles very explicit. There is also merit in exploring the link between planning provisions and strata titles, including how this might be clarified.

Additional consultation with the sector would be required if changes were proposed where assessment and approval of strata developments became relevant under LUPAA to ensure the process is not overly burdensome.

Area 2 – Requirements for a Strata Plan

Although the need to ensure satisfactory private open space and vehicle parking in strata plans was raised by one council, others do not generally find any issues with the required items for a strata plan. Where the strata is complex, it would be useful for councils to be able to view the underlying floor and location plan. A further suggestion was that encumbrances such as easements or rights of way that appear on the underlying title should be shown on the strata plan.

Putting that aside, one council commented that the requirement to delineate buildings on the strata plan may be an area where the general unawareness of strata owners (see below comments) can become an issue, because they have to incur costs to amend the strata plan for any basic addition/outbuilding etc. which many are unprepared for.

Area 3 – Different Regulatory Frameworks

Strata schemes are often used to deliver affordable and social housing. However, the rights, responsibilities and complexities associated with affordable and social housing are not well communicated and are both expensive and difficult for people to manage.

Setting up the system so that it is easier for owners to navigate would be beneficial. It was suggested that perhaps there should be a regulated delay between first occupancy and strata titling to at least maintain occupation by that demographic for which the development was required in the first instance. Given the increased need for affordable and social housing, it was also suggested that densities need to be carefully considered.

Councils feel that there could also be merit in developing different regulatory models for different sizes/types of strata. Very different needs are associated with a high rise apartment building than with two detached dwellings, for example. Adopting rules similar to NSW (i.e. requirements based on the number of lots) was suggested by one council.

Although not directly a result of the Act and unlikely to be able to be addressed in the review, councils are noticing that some developments subsidised under State or Federal housing projects can, after strata titling, be sold on to persons not meeting the relevant criteria (based on socioeconomic position, age, disability, etc). This seems to contravene the purpose of the subsidies and undermine achieving affordable housing objectives. The point is made to recognise the concerns in the sector and to ensure the Tasmanian Government is aware of this occurring.

Area 4 – Management and Disclosure Statements

There seems to be some benefit in using a statement to establish what is common property, service infrastructure and respective maintenance responsibilities. For example, the configuration of some strata developments include an obvious sharing of driveways, less obvious is the sharing of underground sewer, stormwater, water, telco and power connections to other lots on the strata. It is quite likely that the owner of a strata title would not be aware of the latter unless due diligence had occurred at the purchase stage.

While the disclosure statement satisfactorily deals with time frames around staged development, it is suggested that relevant planning conditions be included in management plans or by-laws as a means of informing property owners of their obligations (i.e. surrounding common property, site landscaping, open space requirements and shared arrangements, especially shared car parking arrangements). One council felt that rules similar to NSW should be adopted and that penalties for non-compliance should apply where obligations are not met.

Such a mechanism could limit those situations in which a vacant strata lot is sold on to a new owner who applies (after settlement) to develop a building that is not in the form that was approved, only to later find that the lot has no infrastructure connections available because the original application had a shared component for the services.

Area 6 – Common Property

Some councils feel that the current definition of common property is adequate, whilst others see merit in providing a single, more comprehensive definition.

The definition of service infrastructure could also be better defined to be clearer about when the service infrastructure forms part of the common property, and when it belongs solely to a lot, for example: “Service infrastructure is common property when it is not within a lot, or when it is for the sole use of a lot”, or something similar.

Removing the requirement for common property is thought to result in subdivision by stealth. A small number of councils noted that developers consistently use the *Strata Titles Act 1998* to avoid the costs associated with subdivision, including:

a) Subdivision application fees;

b) Advertising/notice period costs;

c) Separate service connections for dwellings or separate access;

d) Public open space contributions; and

e) Construction and transfer of road costs.

These are all benefits for the developer; not for the future landowner, who will still pay market price for the product, or possibly more if it is not accurately marketed as strata title.

One council commented that to allow strata development without common property would be to directly contravene s 31(6) of the Act, namely, that "a council must refuse an application for a certificate of approval if the council reasonably considers that the proposal is for a subdivision within the meaning of the Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993".* Not requiring common property could also create issues with development previously approved under the Planning Scheme (e.g. visitor car parking, shared open space areas).

Common property and associated service infrastructure are integral to the creation of a strata lot. Rather than removing the need for common property in a two lot strata, it is suggested that the planning schemes be changed to allow, or even require, subdivision when there is no common property.

Area 7 – Activation of a Body Corporate

There is a general lack of organisation within strata bodies in Tasmania and an unawareness of rights and responsibilities by strata owners. This is initially because the strata body is created automatically upon creation of a strata title and although the Act requires the body corporate to meet/take actions there is no oversight of this.

In one council's experience, there are many, many owners of strata homes that have no idea of their rights and responsibilities under the Act or the costs and benefits to buying a strata lot as opposed to regular title. Councils are frequently called upon to help with issues in strata developments and often do so as a 'community service' even though there is no legislative responsibility.

Councils, therefore, believe there should be explicit requirements for body corporates to be active and for new owners to be added through the purchase process in a transparent way, noting that the developer should remain responsible until activation of the body corporate, including until all insurances etc. are in place.

Councils should not have to oversee the Annual General Meeting (AGM) and establishment of body corporates, it should be a role of State Government (e.g. DPIPWE). It was suggested by one council that requirements similar to NSW may be appropriate for determining the agenda items and documents presented at the first AGM.

The introduction of enforcement provisions are also welcomed where body corporates are not meeting their obligations under the Act. One council suggested that the threat of fines needs to be sufficiently high to encourage compliance and should perhaps be the same as QLD.

Area 18 – Compliance and Enforcement

Enforcement under the *Strata Titles Act 1998* is through the Supreme Court, this is resource intensive particularly for small councils. To reduce this burden and allow more enforcement action to be taken, an initial avenue through RMPAT is recommended. Indeed, councils clearly welcomed the potential to introduce quicker and simpler enforcement pathways before proceeding to court action as a means of more efficiently working towards compliant outcomes.

Other Comments

Strata Title vs. Subdivision

Section 31(6) of the Act states that council must refuse a strata certificate where it 'reasonably' considers that the proposal is for a subdivision. However, there are no assessment criteria to clearly distinguish them and often a strata scheme is applied for after shared services are installed.

The Act must clearly prescribe when the division of land is to be a standard subdivision or can be a strata scheme. Perhaps the most efficient indicator is shared access. If a scheme does not provide common land that is shared access, it should be a mandatory requirement that it be a subdivision.

Vacant Titles

This is a particularly difficult issue on which the State Government needs to determine a clear policy position. The Act contains contradictory statements which have resulted in very different approaches amongst councils. The contradictions in the Act allow for the certificate of approval to be used as leverage to force the absolute completion of unit development when no other type of development is subject to this type of 'persuasion'.

There is a requirement for developers to obtain a planning permit for development prior to issuing any certificate of approval for vacant titles, which clashes with other requirements for the issuing of building certificates. If the intention is to allow for vacant title release,

which can be a critical component of 'house and land' financial models, the State Government needs to be clear that this is acceptable and the permissions that need to be obtained in order for vacant titles to be issued.

Council officers consider that the planning permit is a reasonable indicator that development can be compliant. It is noted however that compliance with planning permits is a regular problem in regard to aspects of higher density development such as privacy screening, parking, sealing of trafficable areas, and stormwater detention.

If vacant titles (or partially completed developments) are supported by the State Government, the Act must include requirements for disclosure statements regarding the completion status of the development, under the *Building Act 2016* particularly, for any prospective purchasers.

Body Corporate Service Address and Lot Numbers

Councils have regard to the Australian Standards AS4819/2011 "Rural & Urban Addressing" when allocating addresses for each lot. However, it appears common for many surveyors and developers to adopt as the address for service of notices the pre-strata address.

In a majority of cases, the original site address ceases to exist upon registration of the strata plan because of the addition of "lot numbers". Neither the developer nor the surveyor appear to have any interest in ensuring the address for service of notice is an address that will continue to exist once the strata plan has been registered.

Another issue arises where the surveyor allocates lot numbers in a different sequence to the allocated unit address which creates potential for confusion. The solution appears to be to require councils to allocate lot numbers and to approve the address for service of notices.

Concluding Comments

LGAT agrees that the primary purpose of the Act should be to provide a simple framework, including by-laws, to regulate the planning and development of, and day-to-day administration of strata developments. It should also clearly set out rights and responsibilities of bodies corporate, lot owners, and strata managers and define what is common property and common infrastructure and who is responsible for its maintenance.

It seems appropriate that the reviews and legislative reforms undertaken in other states be considered during the development of this review and Discussion Paper. However, alignment with the Tasmanian Government's planning reform agenda and regulatory reform agenda is also essential to future proof the legislation and ensure the Act reflects a changing housing environment.

LGAT appreciates the opportunity to provide a submission on the Review of the *Strata Titles Act 1998* – Discussion Paper and looks forward to continued engagement with the sector on amendments to the Act. If you have any further questions in relation to this submission please contact Michael Edrich, Senior Policy Officer, Local Government Association on 6146 3751 or michael.edrich@lgat.tas.gov.au

Yours sincerely

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Chief Executive Officer

Appendix 1

One council provided the following comments for the focus areas not mentioned above. As they are the only council to comment on these areas, the comments are not considered a sector view but are still important for the Review.

Table 1. Additional Focus Area Comments.

Focus Area	**Council Comment**
Area 5 – Unit Entitlements	Market value at the time of the registration of the strata should be used as the basis for determining unit entitlements – or in the event of any substantial building permit work, revised values as determined by the Office of the Valuer General (OVG).
Area 8 – Meeting Procedures	The Act should permit (as per NSW requirements) the use of technology to facilitate meetings when agreed to by all lot members. Special resolutions should be required in the Act for the acquisition or disposal of common property.
Area 9 – Quorum	Quorum requirements should be contained in the body of the Act – the percentage requirements should be different depending on the number of strata lots in the strata scheme. In some circumstances, 50% may be an appropriate requirement. Alternatives for when a quorum is not present at the commencement of a meeting should be included in the Act as per NSW requirements.
Area 10 – Access to and Disclosure of Body Corporate	The current requirements for the provision of information are not adequate – it would be useful to extend the requirements to those adopted by NSW. The Act should specifically provide for the electronic provision of information. In addition, it is suggested that a body corporate should be able to charge a fee for the provision of information sought within a specific time (e.g. 10 days). Penalties should be included for non-compliance.
Area 11 – Roll or Register for the Body Corporate	With the advent of online resources such as the theLIST and LISTmap it would seem that there is an opportunity for this information to be presented and made available online via the LIST and upon payment of an appropriate fee. To make a body corporate duplicate what is potentially available for a fee via the LIST seems a waste of time and effort.

Focus Area	Council Comment
Area 12 – Insurance	Smaller strata schemes should be exempt from the requirement for the body corporate to take out insurance where buildings are separated and where a unanimous resolution of the body corporate has been obtained. It is suggested that everything needs to be insured and that a monetary penalty should apply for non-compliance.
Area 13 – Dispute Resolution	Each body corporate should be required to establish an internal dispute resolution process.
Area 14 – Strata Managers	Strata managers should be regulated and/or licensed in Tasmania, perhaps by amendment to the *Property Agents and Land Transactions Act 2016*.
Area 15 – Keeping of Animals	It would be much clearer if the provision regarding animals were in the body of the Act rather than the model by-laws. If moved to the body of the Act, it is suggested that the provision be that: 'The occupier of a lot must not, without the body corporate's written approval bring or keep an animal on the lot or the common property or permit an invitee to bring or keep an animal on the lot or the common property'.
Area 16 – Future Maintenance Schedules	A requirement for some strata schemes to have a future maintenance plan or schedule should be introduced (e.g. larger developments of perhaps 50 lots should have a maintenance plan for 10 years ahead).
Area 17 – Funds Established for Various Purposes	Whether funds are established or required for various purposes should depend on the complexity of the scheme.