

19 June 2020

Mr Craig Pursell
Land Tasmania
Department of Primary Industries, Parks, Water and Environment
GPO Box 44
Hobart TAS 7001

via email : Craig.Pursell@dpipwe.tas.gov.au

Dear Mr Pursell,

RE: REVIEW OF THE STRATA TITLES ACT 1998

Thank you for the opportunity to provide a submission in relation to the abovementioned review. The following responses were compiled by PIA's Policy and Advocacy Subcommittee (PAC) in relation to this matter.

Area One - Planning and development of strata schemes

In relation to the mechanisms for regulation of subdivision, a clear legislative pathway is desirable. The existing framework of the *Land Use Planning and Approvals Act 1993* (LUPAA) is currently complicated through the inclusion of transitional provisions until such time as the planning reforms are complete. Furthermore, the legislative requirements for subdivision through Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, contribute to the complexity of determining requirements.

For example, the complexities as referred lead to confusion or misunderstanding of the planning and development requirements with respect to strata. These requirements are often flagged at the time an applicant makes a request to the relevant council to

endorse a certificate of approval for a strata plan rather than at the beginning of the process.

Therefore, for a review of the *Strata Titles Act 1998* to be effective, a clear understanding of the different processes regulating planning and development in relationship to strata must inform the outcomes. On this basis, it is considered that any changes related to the *Strata Titles Act 1998* should be prepared in context of a comprehensive review of all applicable legislation.

In response to your considerations:

1. There may be merit in providing for determination of compliance with planning permits prior to the submission of a Strata Plan by obtaining a certificate from the planning authority, similar to the Building Act 2016 process. In addition, clarity should be provided for building processes prior to the 2016 Act, which at present are not addressed.
2. It is suggested that a planning compliance certificate may be a suitable addition to the process. A time frame for determination may be a suitable inclusion.
3. No comment is provided.
4. No comment is provided.
5. Separate strata and subdivision legislation is less contentious than recognition that strata is a form of subdivision. Separate strata legislation can function effectively provided recognition of its status as subdivision.

Area Two – Requirements for a strata plan

We provide no comment to the terms of your considerations in this section. We would like to note that substantial changes are likely to complicate their implementation,

Area Three - Different regulatory frameworks depending on the number of lots, use of those lots and/or the configuration of the development (conjoined, high-rise or villas)

It is agreed that small lot strata developments should be viewed differently to larger options, preferably smaller freehold subdivision lots would be facilitated to diminish the requirements for administration of a strata plan. Particularly in the circumstances of affordable housing, creative alternatives should be explored to enable a diversity in

housing options, facilitate home ownership, and to reduce potential avenues for conflict.

Strata development should only be facilitated within urban environments and clear guidance should be provided to establish the need for a strata development. Strata schemes within low density and rural environments is not considered necessary nor appropriate. The use of strata schemes in non-urban areas needs to be considered in light of the opportunities provided under the State Planning Scheme provisions. Additional considerations are likely to be suitable where strata occurs outside of urban areas to ensure

Area Four – Management and Disclosure Statements

A Management Statement similar to the Western Australian precedence may facilitate the ability to implement better urban design outcomes, particularly through the development of strata development over a longer timeframe. However, any caveats and controls on development through the use of management statements should be consistent with the ability to deliver development and use consistent with planning standards, policies and land use strategies. In particular, it is suggested that management statements should make clear selected requirements of planning determination processes, including matters such as the following:

- Compliance with regulatory requirements for the use of individual stratum units, such as dwellings being used for Visitor Accommodation;
- Initial land management issues such as requirements for threatened species bushfire hazards or landslip issues

PIA(Tas) supports the MDS making clear requirements and obligations for common property, service infrastructure, respective maintenance responsibilities and other relevant matters.

PIA (Tas) makes no comment regarding penalties for non-compliance.

Area Five – Unit Entitlements

The issue of Unit Entitlement does not have a substantial impact on land use planning outcomes from strata developments, however PIA supports an outcome that recognises the importance of fairness in outcomes. Options related to entitlements as a proportion

of land values has the potential to impact on the ability to reasonably obtain a determination where valuations are needed to establish them.

Area Six – Common Property

If there is none or very little common property required in a strata development then a regular subdivision should be capable of being achieved. Alternatively, as per the response for Area Three complexities of smaller lot subdivision should be avoided to minimise the potential for conflict.

We suggest that the State clarify its claimed requirement that Strata schemes must include common property. In practice, it is not clear, and schemes are often registered with no common property aside from services.

We note that a comprehensive definition of common property is likely to benefit and provide clarity for all parties concerned. Similarly, we suggest that clearly setting out the rights and obligations on strata owners regarding common property is likely to benefit all parties to the strata.

Area Seven – Activation of a Body Corporate

The Management of a Body Corporate and its activation does not have substantial impact on land use planning outcomes. However, as previously outlined the obligations of smaller lot strata's should be minimised or ideally facilitated as subdivisions to diminish the requirement for a body corporate. Furthermore, the management of body corporates should ensure that in the circumstances of affordable/social housing that obligations are not overly onerous or complex; and that they ensure fairness to enable private ownership involvement in body corporate activity.

The terms of this section of the review do not significantly impact land use planning processes. Anecdotal evidence suggests that inactive body corporates are quite common in Tasmania and the periodic reporting of meeting and essential matters is likely to reduce this problem. The body receiving ought to be a statutory agency of State and be provided with enforcement mechanisms to address non-reporting or worse, lapsed body corporates.

Existing provisions of LUPAA require landowners' consent to applications for planning scheme amendments, which are potentially complicated by requirements to have all strata owners consent to the amendment. The ability for the body corporate to provide landowner consent with respect to LUPAA should be considered.

Area Eight – Meeting Procedures

As demonstrated by the recent adoption of electronic communication due to COVID-19 options for meeting procedures and adoption for resolutions have recently become a necessity. However, adoption of technological options should be verified with owners to ensure that there is equitable access for participation and decision making, particularly where residents may not have the means or ability to access appropriate technology.

Area Nine – Quorum

The construct of Quorums do not substantially impact on land use planning outcomes. However, the Victorian example appears to provide the clearest pathway forward for a Quorum and provides options where parties cannot attend, without requiring ongoing meetings. Any requirements for a Quorum should be determined with respect to the diversity of voter's ability to attend and participate at any meetings.

Area Ten – Access to and disclosure of body corporate records/information

Access to body corporate information does not substantially impact on land use planning outcomes. However, improved access to information is considered appropriate to transparency of the body corporates operation. The examples of other jurisdictions demonstrate that the extent of record keeping to be held, the potentially extensive sharing of information, and potential penalties could be a substantial management obligation.

Disclosure requirements for smaller strata schemes and management of body corporate has the potential to be overly onerous and demonstrates the potentially challenges in effectively managing smaller strata schemes. Furthermore, the diversity of capacity of owners to manage a body corporate should be taken be given consideration where access requirements are imposed.

We make no other comments on your considerations on this issue.

Area Eleven – Roll or register for the body corporate

A roll or register of the body corporate does not substantially impact on land use planning matters. Where title information is necessary for planning assessments it can be accessed through the LIST.

We make no specific comments on your considerations on this issue.

Area Twelve – Insurance

While not generally a land use planning issue, insurance should be determined with respect to the potential risks that landowners are exposed to. As demonstrated through the ongoing challenges with the quality of building construction in high-rise buildings in other Australian jurisdictions (in particular with combustible claddings) insurance of development is extremely challenging and requires careful consideration with regard to the particular circumstances of the development.

We make no specific comments on your considerations on this issue.

Area Thirteen – Dispute resolution

The preferred mechanism to minimise disputes with strata schemes is to avoid development of them where possible, as referred to in discussion of Area three. In the first instance owners are inclined to involve Council who do not have the jurisdiction to become involved in such civil disputes.

We note that it is not a land use planning issue but suggest that clear dispute resolution requirements for strata schemes are likely to benefit all involved parties.

It is understood that a dispute raised with RMPAT would require that in the first instance mediation is used. We submit that RMPAT's role is an effective mechanism to manage disputes.

Area Fourteen – Strata Managers

We make no specific comments on this issue.

Area Fifteen – Keeping of Animals

The increased prevalence of strata schemes for social and affordable housing has the potential to further exclude parts of the community from access to housing, or alternatively compromise their wellbeing and amenity. There are many reasons that pets are important to the wellbeing of individual's, not least of which is for therapy for a variety of conditions.

We note that it is not a land use planning issue but suggest that greater flexibility should be provided to the Act to ensure the rights of tenants and landowners to reasonable rights to keep a pet.

Area Sixteen – Future Maintenance Schedules

Future Maintenance Schedules seems a reasonable inclusion within a strata plan, especially with emerging requirements and conditions for development, such as Bushfire Hazard Management, protection of natural values and other relevant matters from planning and other regulatory regimes. A Maintenance plan inclusive of obligations from regulatory permit conditions is an opportunity for interested purchasers to be made aware of their obligations and owners to ensure compliance. It may be appropriate to include copies of the regulatory consents within these schedules.

While not a land use planning issue, we suggest that annual reporting on this issue should be mandatory.

Area Seventeen – Funds established for various purposes

No specific comments are appropriate to funding of strata schemes in relation to planning matters.

Area Eighteen – Compliance and Enforcement

Comments in relation to Compliance and Enforcement are consistent with those in relation to Areas Thirteen and Sixteen.

While it is not a land use planning issue, we suggest that the compliance ought to be through a State agency with the power to refer matters to RMPAT for resolution or the courts where RMPAT actions have failed.

If you would like to discuss the content of this submission further, please contact me on tas@planning.org.au

Yours sincerely,



Mick Purves
President
Planning Institute Australia (Tasmania)