



RESPONSE TO INVITATION TO COMMENT

REVIEW OF STRATA TITLES ACT 1998

TASMANIA REGION SURVEYING AND SPATIAL SCIENCES INSTITUTE (SSSI)

Introduction

The Recorder of Titles has prepared an issues paper outlining a number of areas of interest for examination as part of a review of the *Strata Titles Act 1998*.

As a key stakeholder group, the Surveying and Spatial Sciences Institute (SSSI) were invited to facilitate discussion among members, and registered land surveyors who are not members, in order to compile a representative surveying industry response.

Industry representatives arranged for the discussion paper to be circulated and hosted an online discussion session where written and verbal views from surveyors and SSSI members were aired and collated.

This submission is the result of that forum and represents a consolidated view of practitioner surveyors. The format of the submission is to address the questions posed in the issues paper and provide commentary and examples where relevant.

Individual surveyors and practices may choose to make separate submissions and that has been encouraged.

Summary of the Discussion Paper

The *Strata Titles Act 1998* review discussion paper lists 18 key focus areas for review. At the end of each focus area a series of key questions are posed. These are designed to facilitate discussion on key topics within the focus area.

An initial review of the key focus areas has highlighted areas one to six of particular interest to Registered Land Surveyors in Tasmania. This submission concentrates on those areas.

Area One - Planning and development of strata schemes

Questions

1. Are the planning and development requirements in the Act effective?

Responses:

- No, over time some local governments have implemented their own internal policies which in some cases contradict and restrict the intent of the Strata Titles Act. The following ambiguous areas of the strata titles act have allowed Councils to reject the acceptance of stratas in line with their internal policies. The strata titles act is interpreted differently across municipalities across the state.
- Section 31. Application for, and grant of, certificate of approval, (3), (d) states that: Before issuing a certificate of approval, the council must satisfy itself – *(d) if the proposal relates to a lot without a building, that the proposal is capable of being carried into effect.* This item is ambiguous and should not be brought forward in any revisions to legislation.
- Also, Section 31, (6) states: 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 Part 3 of the Local Government (Building and Miscellaneous Provisions) Act 1993
- This item is ambiguous and should be removed from any future strata title legislation. This one point has created many issues for developers and landowners as some Councils have used this point to reject strata applications even though the proposal meets all the requirements of the Strata Titles Act.
- An alternative or possible preferable solution to removal would be clarification and a more stringent definition of subdivision. The ground for refusal is most often that there is no common property. A recognition that where services are unified then there exists, by default common property or a set of tick box items that identify the common property service items under the act may circumvent planners' refusals because the existence of common property is unambiguously identified.

2. What additional requirements, if any, should be included?

Responses:

- Consideration of a statutory timeframe for Councils to certify a strata plan. One southern Council in particular can take 2-3 months to certify a strata plan.

- Should a Council reject the certification of a strata plan they must clearly state their grounds of rejection as related to the Strata Titles Act. An applicant should be provided with a 'grounds of appeal' to contest such a decision. A panel of delegate experts including Land Surveyors, solicitors, and lands titles office staff perhaps could convene such a Strata Titles Appeal Board.
- A template/checklist of requirements for Staged Schemes to provide surety to Councils, developers and landowners. (See further comments on Disclosure Statements).

3. Are the current provisions in relation to community development schemes and staged development schemes easy to understand? If you find they are not, how do you suggest they be amended to provide further clarity?

Responses:

- More detail required for Staged Development schemes including a possible tick box checklist. It is suggested that Staged Strata requires more checks and balances in place to ensure that once buildings are built on vacant strata lots that the strata plans are updated to reflect these buildings on the strata lots. A location plan for every building constructed on a strata would be a logical inclusion into any measures.
- Identification of a set of provisions that if met as a minimum will enable stages to take place. This portion of the act could be designed to circumvent, or at least provide guidance for the council policies with respect to the act. The Launceston City Council's guidelines, for example were developed in the absence of firm guidance by the act and are quite positive in nature.
- guidelines on the minimum items of common property needed to support each stage of a vacant lot strata in the absence of a completed building. This could allow a vacant lot stage containing no buildings but a quality set of completed services and associated common property works.
- guidelines on how to establish and define building envelopes within lots rather than approved building footprints. Deemed to be of relevance with staged strata involving vacant lots, where purchasers have expressed desires to change the building design to suit particular needs and the existing process has proved unnecessarily onerous.
- For example: changes are requested that meet all planning requirements but are blocked because a particular representor does not like the colour.

4. Should the planning and development aspects of strata be dealt with in legislation separate from legislation dealing with strata scheme management?

Responses:

- Two views emerge. Either yes, separate to, or at the very least clearly separated within the Act.

5. Should the planning and development aspects of strata be contained in the same legislation as the planning and development requirements for a subdivision?

Responses:

- There is opportunity to have strata legislation embedded into the land titles act provided the same strata tools are available to enable division of property by strata where a division of land by subdivision is not possible. This is allied with a clearly defined set of differences between strata and subdivision.

6. Should a review of the planning and development aspects of the Act form part of a more comprehensive review of all legislation dealing with land development?

Responses:

- Possible. Several aspects of the Local Government, Building and Miscellaneous provisions act need revision. The act is silent for example, on what may be suitable authorisation, at Law, to enable existing encroachments to remain. Ie. An existing garage is over the boundary. The neighbour is prepared to grant an easement but there is nil clarity on what sort of easement is suitable. There were apparently elements contained within the building code of Australia that dealt with such encroachments that was omitted from recent amendments to the building code creating uncertainty as to how a Registered Surveyor can accommodate the encroachment other than by demolition or boundary adjustment, both of which can be unnecessarily expensive.

Area Two – Requirements for a strata plan

Questions

1. Are the current requirements for a strata plan adequate?

Responses:

- In essence, no. The requirements do not satisfy the complexity of some projects whilst entirely satisfying the needs of simple 2-3 unit strata subdivisions.
- Some highlighted Issues are:

Site Boundary Establishment and Internal Strata Title Boundary Re-establishment

- Many older stratas have been created over very old Torrens titles with little to no information as to how the strata title site boundaries have been established. This provides uncertainty as to the actual location of buildings on the site and also makes establishment of the internal strata boundaries extremely difficult (See comments further in this document with respect to location plans and digital strata plan lodgement.)
- Inclusion of a basic redefinition report could greatly assist but without the burden of the unnecessary costs associated with a full boundary redefinition. It would be reasonable to expect an accuracy commensurate with the offset of a feature from the boundary. It must be recognised that developers are, in many cases operating on small margins that have been greatly eroded by the bureaucratic red tape in recent years.

Common Property responsibility and issues

Cladding and external finishes

- Due to legal action over recent years there are strongly supported moves to make the exterior finishes of buildings: cladding, paintwork, structure and roofing, for example, the responsibility of the Body Corporate.
- Our current act which basically says that anything that is not identified within a lot is common property, has created significant issues with respect to the collection of maintenance funds. The deficiencies in the current set of registered plans has only become evident as the first round of major maintenance issues have arisen; about the 10-year mark since a development's completion.
- Practices have arisen that evolve around hatching the building or open property within a lot, as the case may be, in order to crudely identify the structures where the common property sits within a lot's footprint and encompassing the outer membrane of walls to the centre line etc.
- The resultant plans are extremely confusing and by the need to hatch elements that would have otherwise been left clear we are being robbed of a significant arsenal of tools to describe variation in vertical footprint, special unit entitlement areas, easements etc.
- The lay person, in many cases, would be totally confused by the resulting plan.
- The need for common property to encompass the wall is not necessary in the majority of cases.

- A possible remedy to these situations is proposing additional sheets that with a simple tick box arrangement identifies common property that is additional to that which is clearly excluded by the hard lot boundaries we traditionally use;
- Ie. Is the paintwork of the building common property Y/ N
- Is the cladding of the building common property Y/N if yes what is the cladding type at the time of registration?
- Is the external wall of a building from the underside of the cladding to the centre of the wall common property Y/N

Vertical Boundaries between floors and under roof

- It has been noticed that other states identify the different types of scenarios that exist between floors and we believe that Tasmania should introduce similar elements. There is a clear lack of definition of what is meant by the centre of floor, centre of ceiling, underside of ceiling, centre of ceiling space, underside of roof, top of roof and where lot jurisdiction ends, and common property starts.
- Definitions pertaining to the above should be incorporated into sheets and subsequently title plans if appropriate.
- Concerns have arisen due to regular queries about where the lot owners have the right to run services, especially in this digital age and if there is a suspended ceiling for example, is the ceiling the underside of the slab or floor to which it is attached or the underside of the suspended ceilings which can be easily removed.
- In which cases should the body corporate be responsible for a roof and in which cases the lot owner should be responsible for the entirety of the roof above their lot is a big question and we as a professional group are currently guessing the best solution without firm guidance.

Services

- The Act currently describes the services as common property or prescriptive rights within the act and nowhere is it stated definitively on the title.
- This has led to the misconception that there is no common property when lots are completely separate in a horizontal sense and appears to drive many of the failures in public planning policy, prejudices of local planners and inflexibility when it comes to the progressive development of strata communities.

- Several opinions have suggested there needs to be clearer statements of what services exist within the strata and which remain the responsibility of the body corporate on the title. This should be extended to reference the airspace above a lot.

2. Do they provide for proper boundary definition?

Responses:

- In most cases sufficient strata plan information is not provided to re-establish strata boundaries in the future. As strata developments age and fencing, buildings and other boundary features are modified or removed it will become increasingly difficult to re-establish strata boundaries. There should be greater requirements for additional measures to support descriptions, such as measures along the site boundary to structures intersecting at right angles.

3 What additional requirements should be introduced?

Responses:

- Site Boundary Identification Plan or location plan. Plan to show two radiations to each building on the strata plan with clear relationship to the site boundary. Site boundary clearly defined. Site boundary redefinition report sheet that is not as stringent as a repeg note set of SIOs but provides clear linkage between the boundary structures and the buildings.
- Redefinition of title boundaries where underlying survey cannot be easily reinstated or where land must be brought under the lands titles act. Perhaps a section on Strata Site Boundary re-establishment could be included within the Survey Directions Tasmania.

4. Should a location plan and floor plan be added to the requirements?

Responses:

- Consideration should be given to a requirement for a location plan for buildings tied to the clearly defined site boundary. Future required digital lodgement of strata plans will help aid in the re-establishment of strata boundaries. Potentially all buildings on the site should be tied spatially to the site boundary.

5. What role does the Council play in relation to the approval of strata plans and what role should it play if you believe it should be different?

- The Strata Titles Act needs to clearly define the role of the Council and not provide the council with areas of ambiguity which can be used to reject strata development where it meets the Strata Titles Act. Ie. Avoidance of Council internal policies subverting the intent of the Act.
- It should be made clearer to the planning authorities that their role only relates to ensuring that the building and site works are legal and approved and that the Strata Plans reflect these approvals in their layout.
- Providing a clear set of directives for the planning authority on how to interpret the strata titles act with respect to strata plan certification.
- A clear time requirement for the certification of Strata Plans for Councils is required.
- An avenue of appeal should be in place for a landowner/developer should a Council refuse to certify a Strata Plan.
- Council's should be required to provide a reason for refusal should a council fail to certify a strata plan. A Council should be liable for any costs that the developer/landowner has incurred should it be found that the Council unreasonably failed to issue a certificate of approval.
- Future proactive education of Local Government officers in relation to the new strata titles act and the local government's role in the certification of the strata plans.

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)

Questions

1. Should different rules apply to strata developments, based on the number of residential lots in the strata development, the use of the lots, or the configuration of the development?

Responses:

- Yes, a good example is that a 2 Unit Strata with no common property may not need an active body corporate, however it must be noted that any two unit strata that has internal services: Water, power, stormwater or sewer that connect to a single public utility connection point contains common property and must have a body corporate

that operates and is capable of repairing internal service problems. This fact is not routinely evident on strata plans and should be identified and boldly displayed on title.

- A possible checklist of rules on additional strata sheets or in a disclosure statement for every strata. This could have yes or no answers which would address the different types of strata development.

2. If you agree that different rules should apply based on size, use or configuration of the development, which rules should lots be exempted from and how is that exemption applied?

Responses:

- A set of opt in or opt out, Yes and No questions in the form of additional strata sheets or disclosure statements for each strata which address some of the key issues related to strata schemes.

3. Should Tasmania adopt a similar model to that in Queensland where regulatory modules have been developed for different types of strata developments?

Responses:

- For review, however we note that we do not want to overcomplicate the current strata titles act to a point where aspects of the act are never used or become very difficult to manage.

4. Given the increased need for affordable and social housing, moves towards increased density, inclusionary zoning, use of density bonus and the like (in Tasmania and in other jurisdictions), are there any considerations or specific provisions relating to social and affordable housing that should be considered?

Responses:

- A strata development is a community that should be capable of working together to allow individuals to live in harmony. If the social housing element works contrary to that possibility then perhaps it needs very careful consideration before it is locked into a law system that is not readily adapted to social needs

5. Should different rules apply to strata developments that are in part or whole designed to encourage and deliver social and affordable housing? What might this look like?

Responses: Nil

Area Four – Management or Disclosure Statements

Questions

1. Should a management statement or disclosure statement be required for all strata developments, and if so, what should that statement cover?

Responses:

- Yes, a well-structured disclosure statement is required to keep owners, developers and Councils informed. The disclosure statement needs to be relevant to the strata plan and final form of the strata development.

2. What additional requirements would you suggest be included in a disclosure statement or management statement for a staged development scheme and community development scheme respectively?

Responses:

- Greater flexibility to change the design of buildings in staged schemes in accordance with a new development application by the owner of a lot. In particular, a vacant lot within a staged scheme.

3. Should a statement be used to establish what is common property, service infrastructure and respective maintenance responsibilities?

Responses:

- Yes, a checklist/tick box list on additional strata sheets could be proposed to deal with and remove the current lack of knowledge with respect to services and common property.

4. Should a penalty apply for non-compliance?

Responses: Nil

Area Five – Unit Entitlements

Questions

1. What do you think should be used as the basis for determining unit entitlements?

Responses

- A list of acceptable methodologies could be developed. The current method of determining unit entitlement as a function of valuation has some merit but it is not equitable in all cases.
2. For what additional circumstances, if any, could a special unit entitlement be established?

Responses

- Any case where the maintenance of an area or costs associated with an area could be deemed to be tied to the usage. To properly assess the usage and costs takes experience and the question should be asked: should a body corporate manager with experience be appointed for a minimum statutory period once a strata achieves a prescribed number of body corporate members and at the discretion of the body corporate once that period expires. Maybe only one year is required.

Area Six – Common Property

Questions

1. Should the option of having no common property be introduced in Tasmania, and if so, how would this be implemented?

Responses:

- Yes, as stated above this could be introduced by additional strata sheets which could have a tick box approach for various items. However, it is considered that this should only be an option once it is confirmed that there are no shared services since this item should be a clear item of distinction between " subdivision".
2. Should the strata plan and associated management or disclosure statements include further definition and/or information regarding common property (i.e. describing further what it includes and excludes)?

Responses:

- Yes, the more these items are expressed clearly and concisely the better. There is a definite absence of information under the present system,
- As stated above this could be introduced as additional strata sheets and form part of the Strata Plans.

3. Is a single comprehensive definition of common property required? If so, what should it include?

Responses:

- Yes, the current definition of common property should be expanded to include a definition of vertical common property above and below the vertical extents of the strata taking the 'Infinite carrot' doctrine into account.

4. Are the current provisions clear as to when service infrastructure is common property? If it is unclear, what changes need to be made?

Responses:

- No it is not clear at all. There are references to services in the act which are not supported by understanding at the planning level, legal level and subsequently developer levels including the real estate agents.

From time to time Land Surveyors may be called upon to organise and attend meetings of the Body Corporate. Those Land Surveyors that find themselves practicing in these areas have been encouraged to provide a submission on focus areas seven to nine.

Area Seven – Activation of a Body Corporate.

Area Eight – Meeting Procedures.

Area Nine – Quorum.

Focus Areas Ten to Eighteen mainly deal with areas related to Management of Strata developments and the day to day running of the Body Corporate.

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

Area Eleven – Roll or register for the body corporate.

Area Twelve – Insurance.

Area Thirteen – Dispute Resolution.

Area Fourteen – Strata Managers.
Area Fifteen – Keeping of Animals.
Area Sixteen - Future Maintenance Schedules.
Area Seventeen – Funds established for various purposes.
Area Eighteen – Compliance and Enforcement.

Conclusion

Registered land surveyors and the SSSI are pleased to provide this submission which has been prepared in a constrained time frame, but which is generally reflective of the views of the surveying industry.

Practitioners would like continued opportunity to have input to ideas and scenarios that may be developed by the LTO as the submissions to the review are further assessed.
