Alan Atkins, [redacted]. *Date: 1st. Sept. 2020*

Mr. Ivan Dean,MLC
Legislative Council
Civic Square, ***LAUNCESTON. Tas. 7250.***
Dear Ivan,

Many thanks for giving me your time to discuss the ***TasWater enquiry*** *& your review of my draft submission. Although our development of Strata Lots at Bridport has been on-going far longer than desired, Council have remained supportive since* ***1987,*** *based on their original* ***Approval No. 12/87.***

A good arrangement was interrupted when ***TasWater*** *decided to charge on the basis of Units of Entitlement around* ***2016****, as outlined in the submission.*
Units of Entitlement were never intended in the ***Strata Titles Act*** *to be used other than as an internal management instrument within the Body Corporate, & certainly not where a development is ongoing over an extended period, as in our case.*

Having our development eventually settle down as coming under the then ***Strata Titles Act*** *has given us no end of grief over the years as its original intent was related to the vertical separation of an existing (single) building, & much less towards single separately titled residential Lots in an almost conventional subdivision layout.*

We stand by our view that ***TasWater*** *should not be using the* ***Strata Titles Act*** *(& its many revisions) in this way.*

In support of my submission, I have attached copies of submissions (including our own) of the proposed review of the ***Strata Titles Act 1998****, being undertaken by Mr. Craig Pursell of the* ***DPIPWE.*** *Doubtless, changes to the Strata Titles Act 1998 will come before the Legislative Council in the not too distant future, following the review.*

Although not mentioned in our submission, we spent considerable effort in negotiating with ***TasWater*** *to try to obtain a fair & equitable outcome, without success, ultimately referring us to the* ***Tasmanian Economic Regulator.*** *A good hearing from them but not prepared to move on the existing 2 year review arrangement.*
We then approached the ***Ombudsman,*** *again a good & sympathetic hearing, but not prepared to challenge* ***TasWater.*** *We then approached the* ***Minister for Local Government****, then Mr. Peter Gutwein, (& our local member). A good hearing, but again, not prepared to intervene.*

Thus you might appreciate our view that maybe ***TasWater*** *should come under Parliament & ratepayer scrutiny, & not avoid thus under the* ***Economic Regulator*** *umbrella & now it seems also by the joint arrangement with partners* ***UGL Engineering, CPB Contractors ,*** *supported from* ***WSP Australia*** *& the* ***Capital Delivery Office (CDO)*** *.*

*Thus the question becomes.....can 525,000 people support financially & sustain what is becoming a very large & unaccountable non-****GBE*** *conglomeration.*
Many thanks

Alan Atkins.....*Alan Atkins.*

Alan Atkins, [redacted] *Date: 25th. Aug. 2020*

.....

INQUIRY INTO TASWATER OPERATIONS.

To: The Secretary,
Legislative Council Select Committee - TWT
Legislative Council, Parliament House, Hobart. 7000

PREAMBLE

In preparing this submission , from a ratepayer perspective, I advise having read the ***2017 Legislative Council Select Committee FINAL REPORT*** *on* ***TasWater Ownership,*** *& while respecting the Committee's findings, following many impressive submissions, I remain disappointed that the Government were unable to prove their case, as I believe* ***Taswater*** *is nowhere near accountable enough in all aspects of their operations.*

The provision of essential water & sewerage services should not, in my view, be a "for profit" or even "semi-private" function & control, but fully accountable to the ratepayers & to the Parliament .

Providing a Dividend to Local Government seems to me to be counter-productive when it is the ratepayers who are being charged (possibly excessively) & providing the funds to create the excess to allow this dividend . Some sympathy might be afforded ***TasWater,*** *for it is Local Government that have left so much essential infrastructure in such a neglected state that so much cost in involved in an ongoing basis for upgrading.*

Taswater *have a privileged position in establishing their own pricing & collection structure as for local government rates & taxes. The suggestion that the Economic Regulator has a critical overview role is not supported, if my experience is anything to go by, in fact suggesting a more subservient or "rubber stamp" position.*

WATER PRICING POLICY. .....*over*.....

Target water charges for 2019/20 and 2020/21 are as follows:

Water Connection Size	Fixed Water Target Charge	Limited Supply Fixed Water Target Charge	Fire Service Target Charge
20mm	$342.96	$308.64	$85.72
25mm	$535.00	$481.48	$133.72
30mm	$771.64	$694.44	$192.88
32mm	$877.96	$790.16	$219.48
40mm	$1,371.84	$1,234.64	$342.96
50mm	$2,143.48	$1,929.12	$535.84
65mm	$3,621.64	$3,259.44	$905.40
75mm	$4,822.00	$4,339.80	$1,205.48
80mm	$5,487.36	$4,938.60	$1,371.84
100mm	$8,574.00	$7,716.60	$2,143.48
150mm	$19,291.48	$17,362.32	$4,822.84
200mm	$34,296.00	$30,866.40	$8,574.00
250mm	$53,587.48	$48,228.73	$13,396.87

https://www.taswater.com.au/Your-Account/Water-and-Sewerage-Charges

WATER PRICING POLICY

"Fixed water charges for full service customers are based on the property's metered water connection". (TasWater release charges 2019/20.)

(1). Bridview Park** (Bridport) Strata Titled residences (Lots) are connected to the Municipal water supply network via individual 20mm unmetered connections. An arrangement established with **Council Approval No. 12/87** in **1987.
***TasWater 's** charter requires a metered supply to each customer to ensure "user pays" to avoid uneven distribution of costs, as applies to the adjacent residences in **Bridview Place**, & all other residences in Bridport. Thus this is what we contend **TasWater** should provide.*

***(2).** When we established **Bridview Place** (next street) in the **1970's**, a 100mm water main was installed in the street from Elizabeth Street to service each residential Lot (block) with a 20mm connection. This 100mm water main was in due course taken over by Council.*

***(3).** When we established **Bridview Park** in **1987** a similar arrangement was undertaken, with a 100mm water main from Elizabeth Street was installed to service the (proposed 30 Lot residential development). This 100mm water main, though an extension of the Elizabeth Street supply has not needed to be taken over by Council, as along with the common roadway, is maintained by members via their Body Corporate.*

***(4).** Municipal fees & charges were struck once each Lot (residence) was approved by **Council** & the **Recorder of Titles**. As had been the arrangement since **1987**.*

***(5).** In **2002,** when **Dorset Council** began installing water meters in Bridport, the Council, established a water service charge on **Bridview Park** residences of $205 p/a for an unmetered supply, having seen it as Stratum units, under the Strata Titles Act.*

***(6).** When we approached Council in **2002**, they agreed that each Title be metered separately (see attached letter.) Each Title was & can still be separately metered from each individual 20mm connection.*
Unfortunately, when offered meters,(at the time) members took what they then saw as the cheaper option & chose to continue paying for an unmetered supply. At that time, there were some 9 or 10 owners. Today there are some 20 owners, with a potential for a further 10.

***(7).** All residences having a municipal water connection should have a metered supply, whether planning Approval was under the **Local Government Act 1962**, or the **Conveyancing & Law of Property Act**. Either way, fairness & equity should apply.*

***(8). TasWater** has existing guidelines that require fair & equitable outcomes, as does the **Strata Titles Act** for Body Corporate governance.*

WATER PRICING POLICY .....cont'd.

(9). *This has had a very unsettling & disruptive effect on Body Corporate members, with the extra work imposed on our honorary Secretary, leading to her stress & disillusionment & ultimate resignation.*

Certain other owners have failed to acknowledge the unfairness & inequity in the new arrangement, & see an opportunity to apply the same unfairness & inequity to Body Corporate fees & charges, happy to have someone else meet some 40% of their water service & usage charges, & now, potentially 40% of Body Corporate fees & charges.

(10). *This situation needs resolving for a fair & equitable outcome, by charging fees at* ***Bridview Park*** *on the basis of each having a 20mm metered connection with appropriate service & usage charges against each established residence, & should not include non existing residences.*

(11). ***TasWater*** *should insist on each owner having a meter fitted, supplied by* ***TasWater.*** *Resistance is likely while the current "cosy" arrangement exists, with someone else paying some 40% of the fees, regardless of the amount of water used.*

(12) *Fitting a meter on a Municipal water main in the street & charging some 20 customers for a 100mm connection & total consumption is a most in-appropriate arrangement & unfair on the honorary Body Corporate secretary. Using Units of Entitlement as a basis for water service fees & consumption in this instance, at least, does not produce a fair & equitable outcome.*

(13). *Ownership & usage of these residences varies from owner-occupiers, to absentee owners, holiday home type usage, investment ownership & rental occupancy. Some have large gardens & some none at all.*
The Body Corporate are responsible for the common driveway & common water main by virtue of the original Council Planning Scheme conditions. (No. 12/87).

In conclusion, may I ask , what is left in a democracy, & our way of life, if fairness & equity are pushed aside for the sake of expediency.

Yours etc.

.....

Alan Atkins. former director of Atkinsfield developments. Pty. Ltd.
Licensed Plumber to the Bridview Park Residential Resort development phase.

.....

Sharon Philpot, Director, Atkinsfield Developments Pty. Ltd.
Owner of Lot 30. "Balance Land".

HISTORY

Bridview Park was established by our family company Atkinsfield Developments Pty. Ltd. in 1987, following approval by the (then) Scottsdale Council (No.12/87) for 30 residential dwellings on the resort site in accordance with the conceptual drawing submitted with the original application.
The still incomplete scheme was not converted into a ***staged development scheme*** *when the* ***Strata Titles Act*** *was enacted in 1998 & consequently is still being progressively developed on a market driven basis as required. The "staging" concept was established with Council as being the development of each Lot, which required an approved building & survey Title acceptable & approved by the* ***Recorder of Titles.***

Council rates & charges were applied following the approval process. This arrangement has applied for 28 years, until "discovered" by ***TasWater*** *in around* ***2016*** *when learning of the existence of Units of Entitlements, confirmed by the Titles Office, but in so advising, failed to explain that Units of Entitlement were a "moving target" in an ongoing Stratum development, to be allocated by the developer, with the Bridview Park allocation based on "General" Units of Entitlement once a Lot (residence) is approval, with the "Balance" Units of entitlement retained for "Special" (future) allocation.*

At some stage after the establishment of ***TasWater*** *in* ***2013****, staff must have decided (most likely in conjunction with the Economic Regulator) to charge water service costs on the basis of Units of Entitlement, rather than individual connection arrangements & individual consumption & usage.*

Thus, without communicating with either ourselves (as developer) or owners (even via the Body Corporate) ***TasWater*** *proceeded to install a single meter in Elizabeth Street by intercepting the existing 100mm Elizabeth Street supply (installed in 1987 by the developer) & charging on the basis of the (then) approx. 190 "General" Units of entitlement on the 19 established residential Lots, with the balance of 110 "Special" Units of Entitlement charged to Atkinsfield Developments Pty .Ltd. as the owner of Lot 30 which contains the sites of the remaining undeveloped & thus non-existing Lots.*
Note that Lot 30 had been paying for one 20mm water connection & one sewerage connection up to that point. Bridview Park residences share the sewerage main with Bridview Place infrastructure..

This one decision by TasWater has exposed a very unfair & inequitable arrangement whereby Lot 30 is paying around 40% of the overall water service & usage charges

LATE NOTE IN RESPECT OF THIS SUBMISSION.

A review of the ***Strata Titles Act 1998*** *is now underway. A copy of initial submissions is attached, with many Local Government comments relative to our issue & our assertion that* ***TasWater*** *has mis-used the Units of Entitlement provisions in the* ***Strata titles Act 1998.***

.....

DORSET COUNCIL

Sept 2002

Our Ref: WATER SUPPLY/FEES AND CHARGES

9th September 2002

Mr. Alan Atkins
Atkinsfield Developments Pty Ltd
2 West Street
LAUNCESTON 7250

Dear Mr Atkins.

Re: Bridport Water Charges – Bridview Park

Thank you for your letter concerning the manner in which stratum units are charged for water at Bridview Place Bridport.

The charges, which have been applied, are consistent with other stratum developments in the Municipality where for legal and practical reasons water meters cannot be used.

However, given the comments and suggestions in your letter, would you please provide a water reticulation plan indicating meter locations, bearing in mind that each title must be able to be metered separately and that all water usage is metered. A quotation to install meters would also be appreciated.

Please contact either myself (63526542) or Mr Larry Smith (0419 522540) if you have any queries.

Yours faithfully,

Guy Jetson
Executive Officer - Finance

PO Box 21 Scottsdale Tasmania 7260 DX 72006
Telephone 03 6352 6500 Facsimile 03 6352 6509

TRADE WASTE.

Trade waste connections to Municipal Sewerage Systems have long been within the requirements of Standards Australia and ***THE NATIONAL PLUMBING & DRAINAGE CODE (AS3500)*** *& have required the application to, & approval of Local Government Councils.*
Stormwater connections & discharges have long been ***PROHIBITED DISCHARGES.***
Trade waste tankers discharging to sewerage treatment plants would have needed Council approval, but obviously should never have been under ***AS3500.***

While it is understandable for ***TasWater*** *to clamp down on (presumably) unauthorised & inappropriate trade waste discharges from private property, particularly to protect waste water treatment plants that are now there responsibility, seemingly regardless of the cost to the property owner, the reality of stormwater run-off, silt, rubbish & vegetation from the streets also needs much closer scrutiny.*

This is particularly necessary in Launceston where some 4,000 sealed, side entry pits are connected to the "so called" combined drainage system.
As with any silt trap or trade waste fixture, regular maintenance, cleaning & re charging are necessary, even for minimal functional effectiveness.

How will ***TasWater*** *convince the* ***Launceston City Council*** *to greatly increase the frequency of cleaning out & recharging of these sealed pits. ??????*

While the Council have increased the number of street sweeper vehicles in recent times, access to the gutters remains an issue due to street vehicle parking.

The Council need to go back to the 2 man street sweeper pit suction operation to clean & recharge these pits, with at least 2 vehicles in continuous regular operation.

This would greatly reduce the issues for ***TasWater*** *in operating the treatment plant, reduce silt & other rubbish from the pipelines & the Tamar River Basin, plus reduce wear & tear on the pump station equipment.*

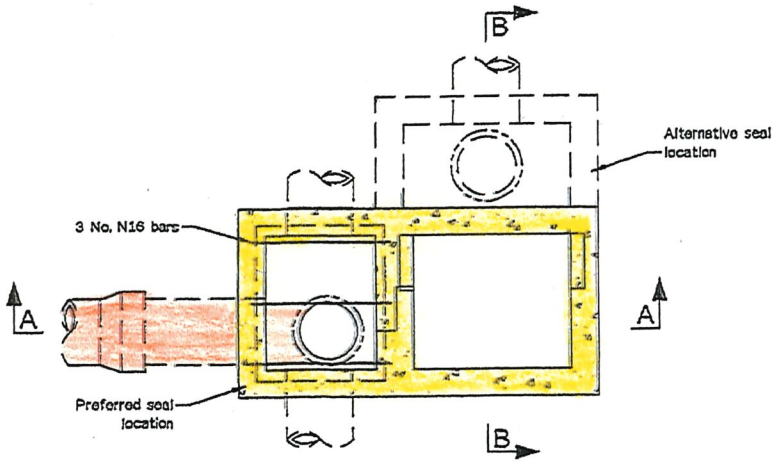
The Council are receiving an excellent dividend from the ***TasWater*** *operation, so much more funding should be directed to this pit cleaning requirement.*

Ultimately, this "combined" drainage system will need to be separated, with revision of sizing & capacity to meet a growing city's most basic requirement.

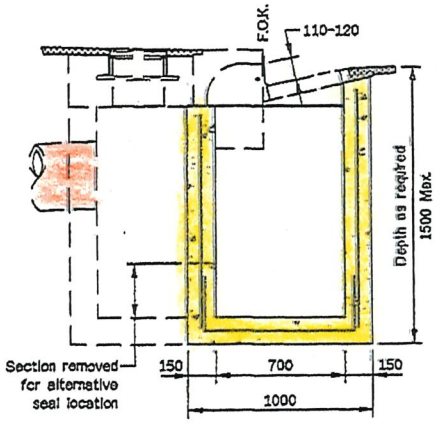
This division of responsibility for drainage in Launceston will need to change.

COPY

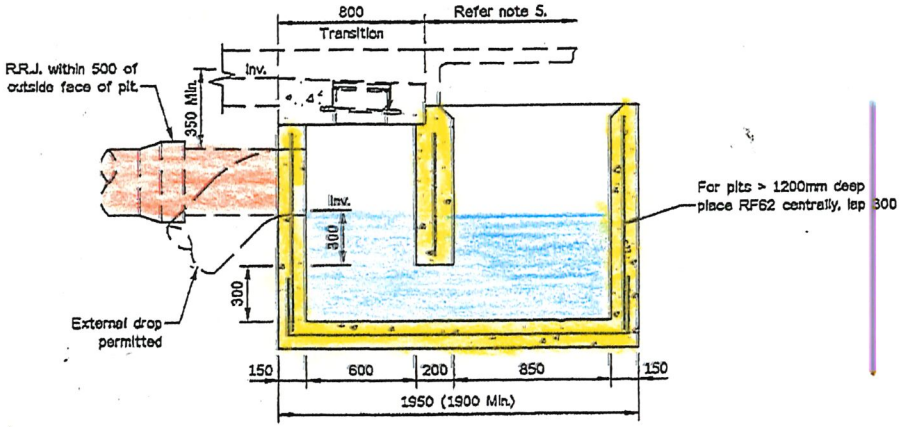
GARFIELD ST.



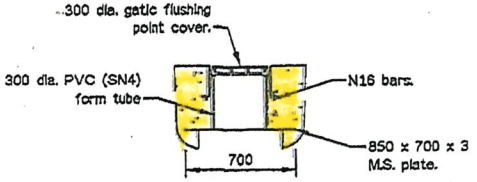
PLAN
(KERB AND LINTEL NOT SHOWN)
SCALE 1 : 25



SECTION B-B
SCALE 1 : 25



SECTION A-A
(BAR NOT SHOWN)
SCALE 1 : 25



TYPICAL SECTION
FLUSHING POINT COVER
AND SURROUND DETAIL
N.T.S.

NOTES

1. Concrete - N20 grade.
2. Minimum grade for outlets 1 in 100.
3. Transition kerb depth from 140 - 190mm.
4. Fit lintels with 20 dia. rod.
5. Refer Sheets:
   - S-06 for hydraulic performance curves
   - S-07 for grate details
   - S-10 and S-11 for lintol details

SCALES: AS SHOWN (All scales are correct at A3)	REFERENCES	DRAFTING	R. Hawley Drawn	VALIDATED	Manager Hydraulics Assets	©2012 This drawing and the information it contains is, and remains the property of the Launceston City Council, and may only be used for the purpose of which it was intended. Reproduction of this drawing or its content in any format other than printed hard copies is strictly prohibited. It is the users responsibility to ensure this drawing is the current version. The current version can be downloaded from: www.launceston.tas.gov.au	LAUNCESTON CITY COUNCIL
XRef File: 7600-S-09.dwg			Checked		Director Infrastructure Services		

STANDARD DRAWING
SIDE ENTRY PITS
SEALED PIT CONSTRUCTION

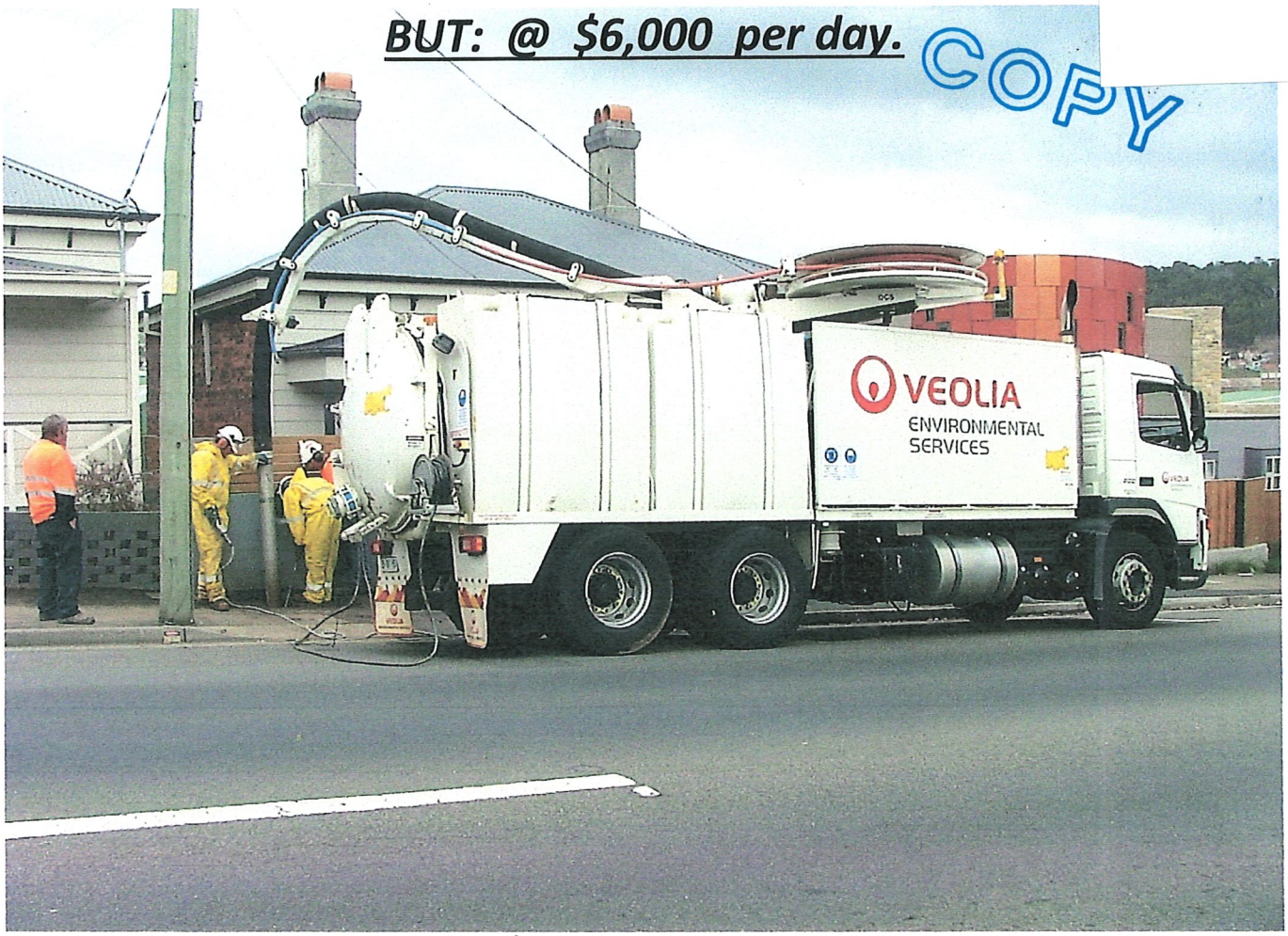
Town Hall St John Street, Launceston Tasmania 7250
Ph 03 6323 3000 Fx 03 6323 3001 Email council@launceston.tas.gov.au

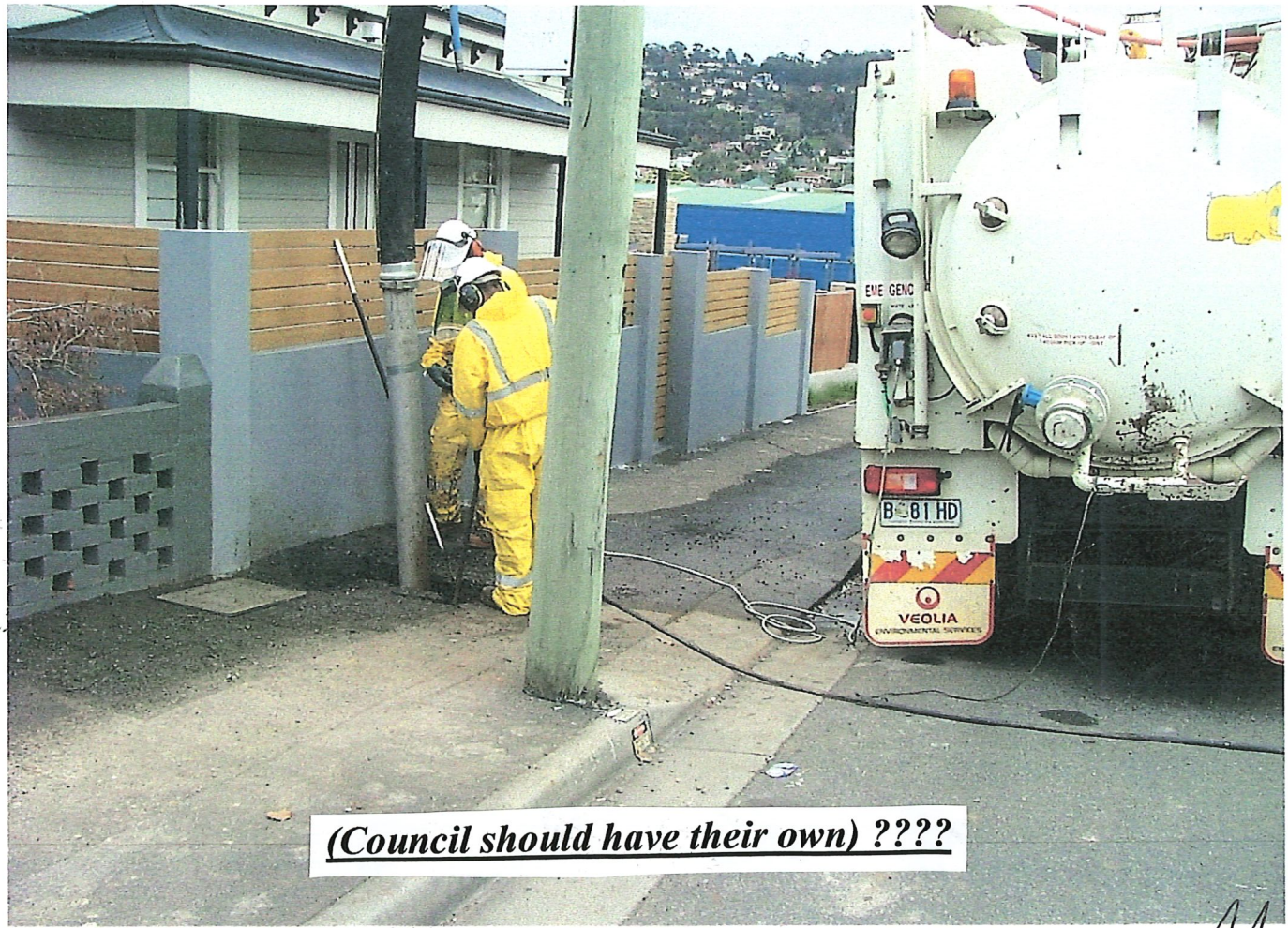
ISSUE DATE	DWG No.	DRGS No.
01-07-2005	7600	S-09

THE IDEAL GUTTER AND PIPE CLEANING VEHICLE.

BUT: @ $6,000 per day.

COPY





(Council should have their own) ????

WATER METERS

Traditionally, water authorities throughout Australia, have installed water meters above ground & within the property boundary.
This was to enable meter readers to readily identify the meter, & allow ease of actually reading the meter.. The downside was the high risk of physical damage, unsightliness , & the risk of frost.

***TasWater**, in their wisdom, & with the best of intentions, undertook a major & costly replacement of water meters with "remote read" meters, using private sub-contractors, and presumably to also relocate them underground in dedicated meter boxes.*

This undertaking, unfortunately , did not include an offer to include ***Bridview Park*** *residences at Bridport. Such would have been the ideal arrangement.*

However, as I understand it, the "remote read" meters have failed in their prime function, leaving the meter readers to find the meter box, lift the lid, kneel down & clean & read the meter & record it, then bend down & replace the lid on every connection. An operation now far more difficult & time consuming than the original above ground arrangement.

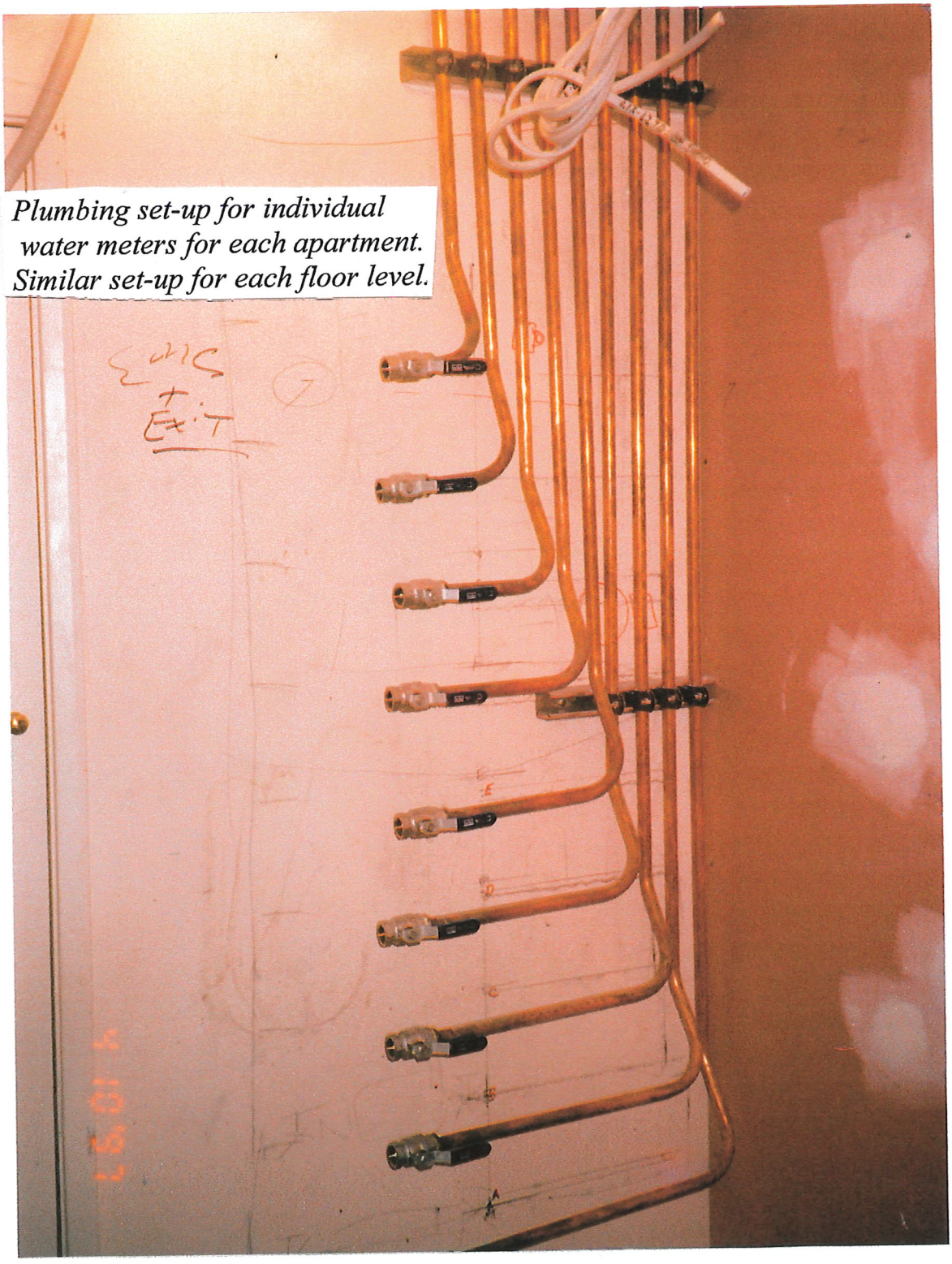
This is indeed unfortunate for ***TasWater.*** *It is to be hoped that a suitable "remote read" meter system can be found. Then all water connections, whether flats, houses apartments or commercial properties will be fitted with "remote read" meters, regardless of Title Registration arrangements.*

More than 20 years ago in the Melbourne CBD, we were involved in refitting an office building to be converted to residential apartments, & the fitting of a water meter was a logical & necessary requirement. *(see over).*
Bulk metering of individual residential properties is fraught with administrative headaches.

.....

Alan Atkins.
licensed plumber.

Re-development of old office building at 406 Lonsdale Street, Melbourne to 132 "student accommodation units". July-December 1997.



Plumbing set-up for individual water meters for each apartment. Similar set-up for each floor level.

Local Government Association Tasmania

Our Ref:ME:CA

24 June 2020

Mr Craig Pursell
Review of the *Strata Titles Act 1998*
Land Tasmania
DPIPWE
GPO Box 44
HOBART 7001

Email: Craig.Pursell@dpipwe.tas.gov.au

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

Katrena Stephenson
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.

Planning Institute Australia

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

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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

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

Strata development should only be facilitated with in 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, particular 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, polices 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 substantially 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

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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.

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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.

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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.

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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.

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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)

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Alan Atkins of: Atkinsfield Developments Pty. Ltd. 2 West Street, LAUNCESTON. Tas. 7250 Date: 30/08/20
Developers of ***BRIDVIEW PARK RESIDENTIAL RESORT.*** *Elizabeth Street, BRIDPORT.*
Email:patatkins@bigpond.com mob:0407 427 445

Mr.Craig Pursell,
Review of the Strata Titles Act 1998
Land Tasmania. DPIPWE.
GPO Box 44
HOBART Tas. 7001 *Email: Craig.Pursell@dpipwe.tas.gov.au*

Dear Craig,

We have just learnt of your role to review the Strata Titles Act 1998 & the ensuing Discussion Paper. We have also read the contribution of Katrena Stephenson, the Chief Executive Officer of the Local Government Association of Tasmania.

We began what we thought was to be a 30 unit medium density residential Grouped Housing project at Bridport in 1987, following Planning Approval by the then Scottsdale (Dorset) Council. "STAGED" being the operative word inclusion that none of us at the time really knew what that meant.

When the first "STAGE" of 4 residences prepared by the Surveyor, was submitted to the Titles Office for Registration, this was rejected, with a response letter from the Recorder of Titles which was to haunt & require our defending through to the present day. (A copy available, dated 22nd Aug. 1988).

While the letter explained the need for Units of Entitlement to be decided from the outset, including provision for all potential flats (later defined as Lots), we made the critical mistake of not defining the total area for "Common Property" at the outset, in the process, misunderstanding that part of the letter which stated....."Only flats, not common property, are defined on a stratum plan. Everything that is not part of a flat is common property. With hindsight, what should have been defined with the Unit Entitlement requirement was to define the "General" U of E as applying upon the registration of each "flat" (Lot), with the balance at any given time being "Special", in this case for future "flats' (Lots).
This has now been well defined in ***Division 5 - Unit Entitlements (16)*** *in the present Act.*

Being a regional area, the ongoing development needed to be "market driven", but none of us envisaged it to be still in a development phase some 32 years later. Council have remained supportive over the period in staying with the original Planning Approval (No. 12/87).

Perhaps our experiences might be of some value in your review process, if only to ensure what not to do..... like adapting the then Strata Titles Act 1984 from "single building" provisions & adapt it to free standing single Titled residences set out in almost normal subdivisional layout, as it was was always going to present varying interpretative expectations. The original concept being adapted by Ralph Campbell Smith for "Rutherglen" at Hadspen in the early 1980's.

A major dissatisfaction & unsettlement within the ***Bridview Park Body Corporate*** *has recently occurred with* ***TasWater*** *charging water service & consumption fees based on total Unit Entitlement numbers, rather than existing & approved lots. Thereby charging for Lots (& connections) that don't exist.*

With self interest now coming to the fore, some owners are pushing for the developer to pay Body Corporate fees on the same basis, despite a 1991 Body Corporate decision that fees be based on Lots (residences). It did'nt need to be spelled out even than as being the only fair & equitable outcome. TasWater, in this decision, have overlooked even their own guidelines of what are fair & equitable outcomes.

In conclusion, for now, may we say that many of the shortcomings of issues that surfaced originally, have largely been covered in later revisions of the ***Act,*** *except perhaps defining better the difference between a single building stratum and a subdivision type residential development.*
We liked most of what the ***LGAT*** *has submitted for discussion.*

Regards.....A. Atkins.....signed: Alan Atkins, fmr. Director