

Alpine Resorts

Discussion Paper



Registration of leases
Strata titles for leases



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Alpine Resorts Coordinating Council

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Introduction from the Alpine Resorts Coordinating Council

Victoria's alpine resorts are managed by Alpine Resort Management Boards. Boards have the power to grant leases of resort land with the approval of the Minister for Environment. New leases are granted in accordance with the Government endorsed Alpine Resorts Leasing Policy, which was released in 2002.

As part of the consultation process for the development of the Alpine Resorts Leasing Policy a number of issues were raised, including: certainty and confidence in the market; the need to attract investment; the need to protect the interests of all leasehold parties and financiers; and the need to provide simpler documentation.

The policy has satisfied many of these concerns by addressing the term of tenure, ownership of improvements, and establishing the basis of obtaining a new lease. However, the need for registration of leases and a strata title scheme for leases were also raised. These were identified as desirable to enable simpler documents, to reduce costs related to document preparation and conveyancing, and to provide for strata titles, including common property.

The Alpine Resorts 2020 Strategy, released in 2004, recognises the challenge of providing an attractive environment for long-term investment in Victoria's alpine resorts. One of the agreed actions in that strategy is to pursue the capacity to register leases and provide strata titles for leases.

As part of implementing the 2020 strategy, the Alpine Resorts Coordinating Council set up a project group in May 2004 to consider the issues of the registration and strata titles for leases.

The project group was asked to investigate and provide options on lease registration and strata leasing issues raised by lessees, apartment owners and other parties with interests in the alpine resorts.

This first section of this discussion paper gives a summary of the present ownership mechanisms used in alpine resorts.

The second section outlines a straightforward system for registration of leases and subleases, although there are conditions that will have to be met before registration can occur. If a lease complies with these conditions, it is proposed that the choice will be left to the lessee whether to register the existing lease. In future, new leases will be registered as they are granted.

The third section provides models for strata leasing schemes that offer similarity with the system existing for freehold land. It also compares the subleasing and company share arrangements that already exist within the resorts with new schemes that offer benefits to lessees, apartment owners and financiers that parallel those provided in the freehold property market.

This paper is supported by a detailed background paper, which covers the issues in more depth and gives greater context to the topics. We encourage you to also read that paper should you wish to become more familiar with the matters considered and the proposals. A copy of the background paper is available on www.arcc.vic.gov.au or by phoning (03) 9637 9642.

We invite you to review this paper and to make a written submission on the issues raised. Please see page 9 for further details on where to forward your submission.

Andrew Fairley
Chair

SECTION 1

Current ownership mechanisms

There are six alpine resorts in Victoria: Falls Creek Alpine Resort, Lake Mountain Alpine Resort, Mount Baw Baw Alpine Resort, Mount Buller Alpine Resort, Mount Hotham Alpine Resort and Mount Stirling Alpine Resort. Land in these alpine resorts is Crown land (i.e. held in public ownership) that is permanently reserved under the *Crown Land (Reserves) Act 1978*, with the exception of three small parcels of freehold land within the Mount Hotham Alpine Resort. Other than these freehold parcels, land tenure for developments in alpine resorts is by way of Crown lease. There are approximately 400 Crown leases, concentrated at Falls Creek, Mount Buller and Mount Hotham. The lessees of those leases may choose, with the consent of the relevant Alpine Resort Management Board, to sublease parts of the leased land. The subleases might be for apartments within the development or perhaps for separate commercial operations, such as shops. There are approximately 1500 subleases in the alpine resorts.

Registration of leases

Apart from some registered leases and subleases at Mt Hotham, alpine leases are not recorded in Victoria's Land Titles Register. A separate title has been created for each of the small number of registered leases, but there is no separate title for the registered subleases.

Ownership of apartments in alpine resorts

The strata titles system of apartment ownership that is available for freehold developments through the *Subdivision Act 1988* is not available for leased land. As a result, the ownership of apartments in the alpine resorts and the management of owners' rights and obligations to each other and the head lessee are arranged differently to freehold developments.

Current ownership mechanisms for apartments in alpine resort developments are:

- the apartment holder has shares in the head lessee company. The shares give the exclusive right to use the nominated apartment, but there is no sublease;
- the sublessee has shares in the head lessee company and also has a sublease giving the exclusive right to use the nominated apartment;
- the sublessee has a sublease from the head lessee company giving the exclusive right to use the nominated apartment, but has no shares in the head lessee company.

These arrangements for apartments may occasionally be accompanied by other agreements, such as general management agreements and subsidiary contracts for cleaning.

SECTION 2

Registration of leases

Victoria's Land Titles Register holds certificates of title, plans of subdivision and other property documents that comprise the State's official land and property records. Certificates of title show ownership details. The Government guarantees the accuracy of this record of ownership. The reliability of recordings in the Land Titles Register means that the registration of transactions is attractive to those dealing with interests in land, whether as vendor, purchaser or lender. Apart from some registered leases and subleases at Mt Hotham Alpine Resort, the alpine leases and subleases are not registered in the Land Titles Register.

Features of lease registration for alpine leases and subleases

Registration offers the benefits of certainty, transparency, clarity of land and property description, the ability of others such as mortgagees to register their interest on the lease or sub-lease, and greater protection of that interest. The registration system is familiar to conveyancing practitioners and lawyers and accepted by financial institutions. Once a lease is registered, simple standard forms and processes govern common transactions such as transfers.

As a result of recent investigations and consultation with the Land Titles Office, the following registration scheme for leases is proposed:

- all leases (including sub-leases) may be registered provided they meet the necessary conditions and survey requirements, except leases granted by the former State Electricity Commission of Victoria at Falls Creek Alpine Resort, which will require special legislation. The conditions and survey requirements are detailed in the background paper;
- each lease must be current and in the same form as originally granted in order to be registered;
- a head lease must be registered before a sublease can be registered, and the sublease must have at least three years left to run;
- if registration of an existing lease is required, but the lease does not meet the necessary conditions, then a new lease will need to be obtained under the current leasing policy;
- all new leases will be registered, but registration of new subleases will be voluntary;
- registration of existing leases and subleases will be voluntary.

Once registered:

- each lease will be given a separate title;
- subleases will be recorded on the head lease title. Separate titles for subleases will be able to be created in the future. However, the timing of that is not yet settled;
- transfers and mortgages of the lease or sublease can also be registered.

The ability to register leases may satisfy the requirements of some lessees and sublessees for improved certainty and clarity in their dealings with leasing in alpine resorts.

However, registration will not resolve disputes, such as those that arise over maintenance responsibilities and costs in shared areas. Further, registration does not provide a means for developers to create bodies corporate or common property arrangements.

Section 3 considers models that address these areas of concern and provides an alternative framework for governance of apartments in developments.

SECTION 3

Strata leasing schemes

The injection of capital and increased commercial development in the alpine resorts over the past five years, together with their revitalisation, has provided impetus to pursue the further development of a special leasing system for Crown land in alpine resorts that caters to all types of developments, including strata developments.

Background to the freehold strata system

The freehold strata system is well accepted and understood by developers, surveyors, financiers, lawyers, and conveyancers.

The *Subdivision Act* 1988 governs the creation of separate apartment titles for freehold land and the creation of bodies corporate and common property.

A body corporate allows apartment owners to come together to make decisions about the management of the development and their relationship with each other. Its powers include repairing and maintaining the common property, ensuring insurance is appropriately maintained, and raising the necessary funds. Apartment owners become members of the body corporate and own a proportional share in the common property. When an apartment is transferred to a new owner, the share in the common property is automatically transferred.

The *Subdivision Act* 1988, and therefore the systems in place for bodies corporate and common property in freehold developments, is not available to those investing in leasehold developments in alpine resorts.

Strata leases for alpine resorts

A strata leasehold scheme must be as closely aligned to the *Subdivision Act* 1988 as possible if it is to be readily adopted by practitioners in land and property transactions. The scheme also needs to be cost efficient and easily understood. This approach takes advantage of existing knowledge and experience and enables future changes to the freehold provisions to flow through to leasehold developments. It ensures that familiar concepts, rights and processes will apply.

The main features of a strata leasing scheme to be developed for alpine resorts are that:

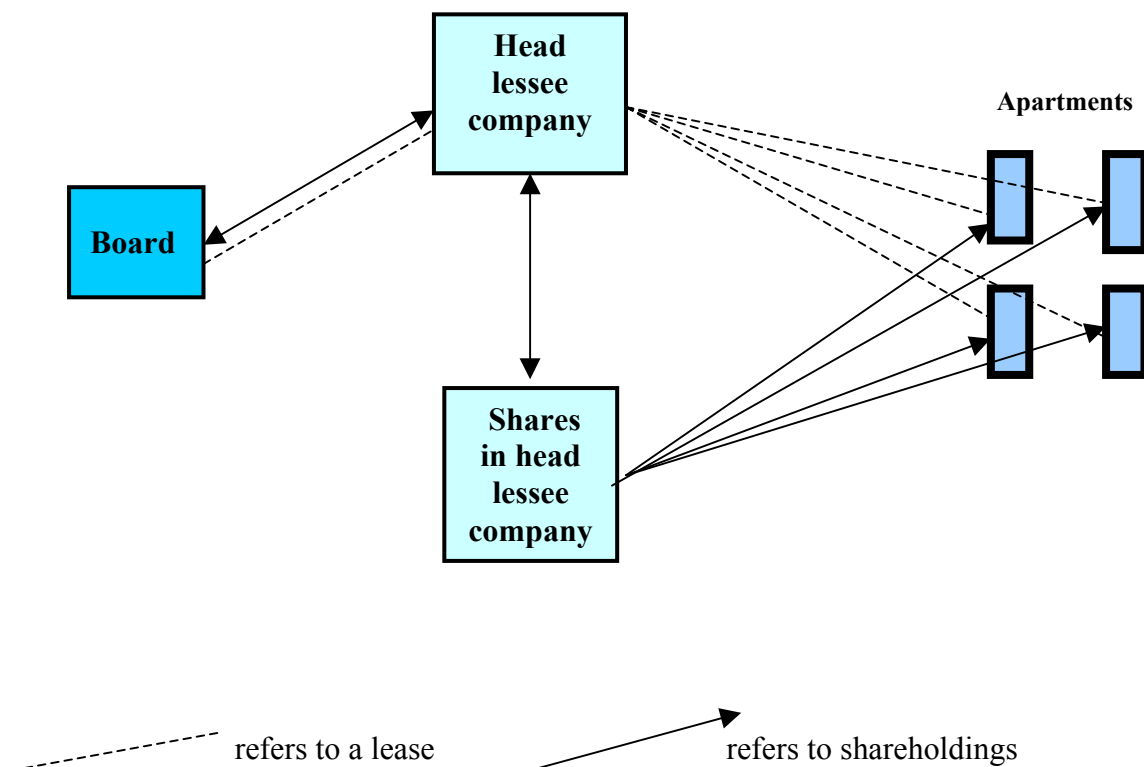
- the scheme will be available, but not compulsory. The developer will choose at the outset whether to use the company share/sublease structure (the current scheme) or the new strata leasehold scheme;
- new legislation to allow the *Subdivision Act* 1988 to apply to alpine leases will be required;
- a new form of lease may be required;
- the head lease must first be registered;
- the model is suitable for the voluntary conversion of existing developments;
- all relevant consents will need to be obtained and lodged including the head lessee, mortgagees and caveators;
- a plan in accordance with the *Subdivision Act* 1988 showing apartments, any car parks and commercial areas (“lots”) and any common property must be lodged for registration;

- upon plan registration, titles to the lots in the name of the head lessee and for the common property in the name of the body corporate will be created;
- the need for Alpine Resort Management Boards to deal with only one entity per development must be substantially met;
- the need for lot owners to be responsible for and empowered in the management of the development must be met;
- the relationship between rights and obligations under the lease compared with the powers and duties of the body corporate and its members must be legislatively defined.

A strata leasehold scheme will require the development of special legislation and could be available in 2006. The costs of the schemes will vary for different parties; developers' costs will be different to those of a lot owner.

The current schemes for apartment developments in alpine resorts

For new apartment-style developments, the relevant Alpine Resort Management Board grants a lease to a company and that lessee (the head lessee) then grants subleases for the apartments. The sublessee must also own shares in the head lessee company.



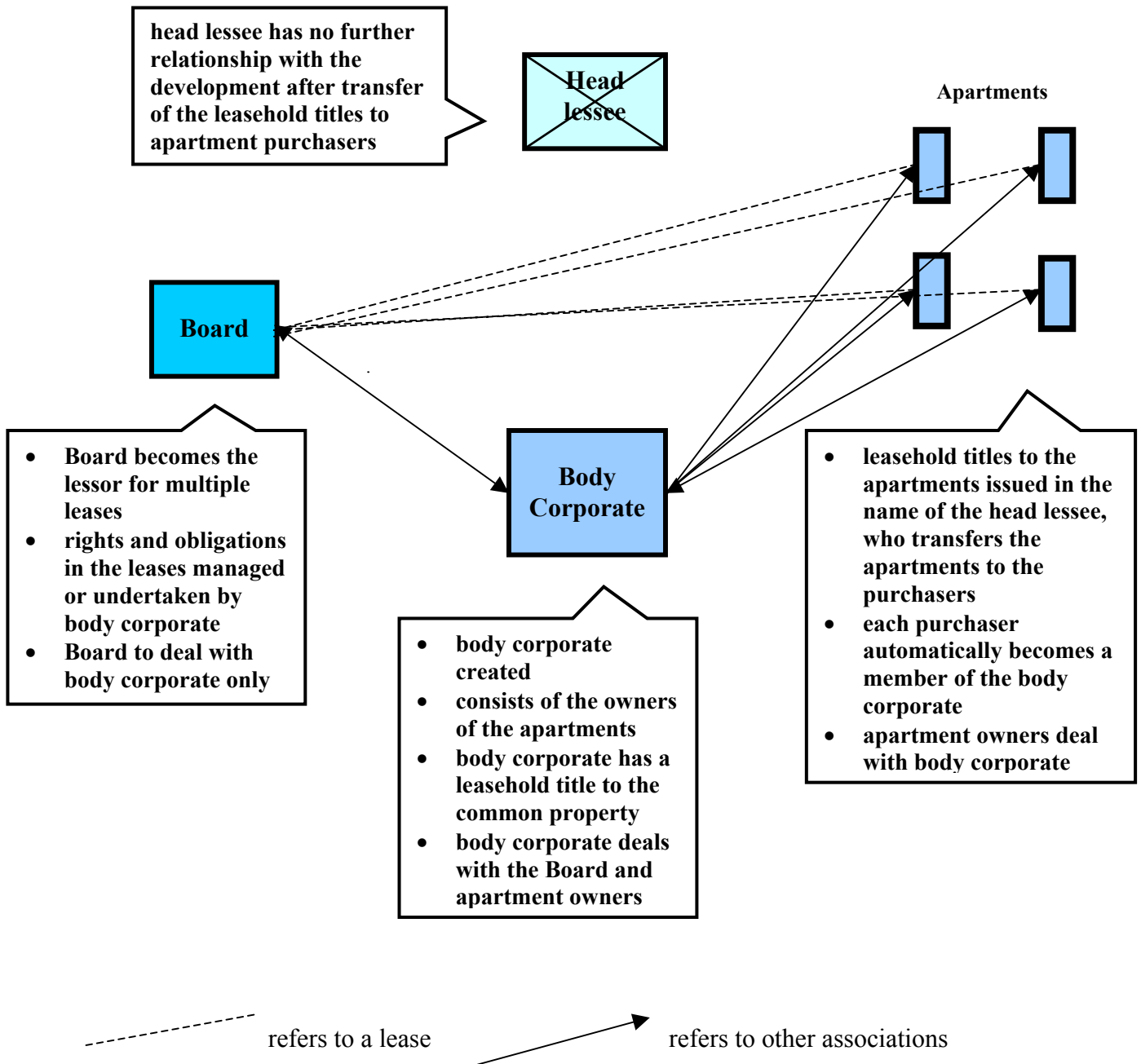
Earlier, but still current, schemes consist of:

- the head lessee granting a sublease, but no share ownership; or, alternatively,
- no sublease is granted but the apartment owner has shares in the head lessee. Those shares give the right to exclusive occupation of that apartment.

New models for apartment ownership in the alpine resorts

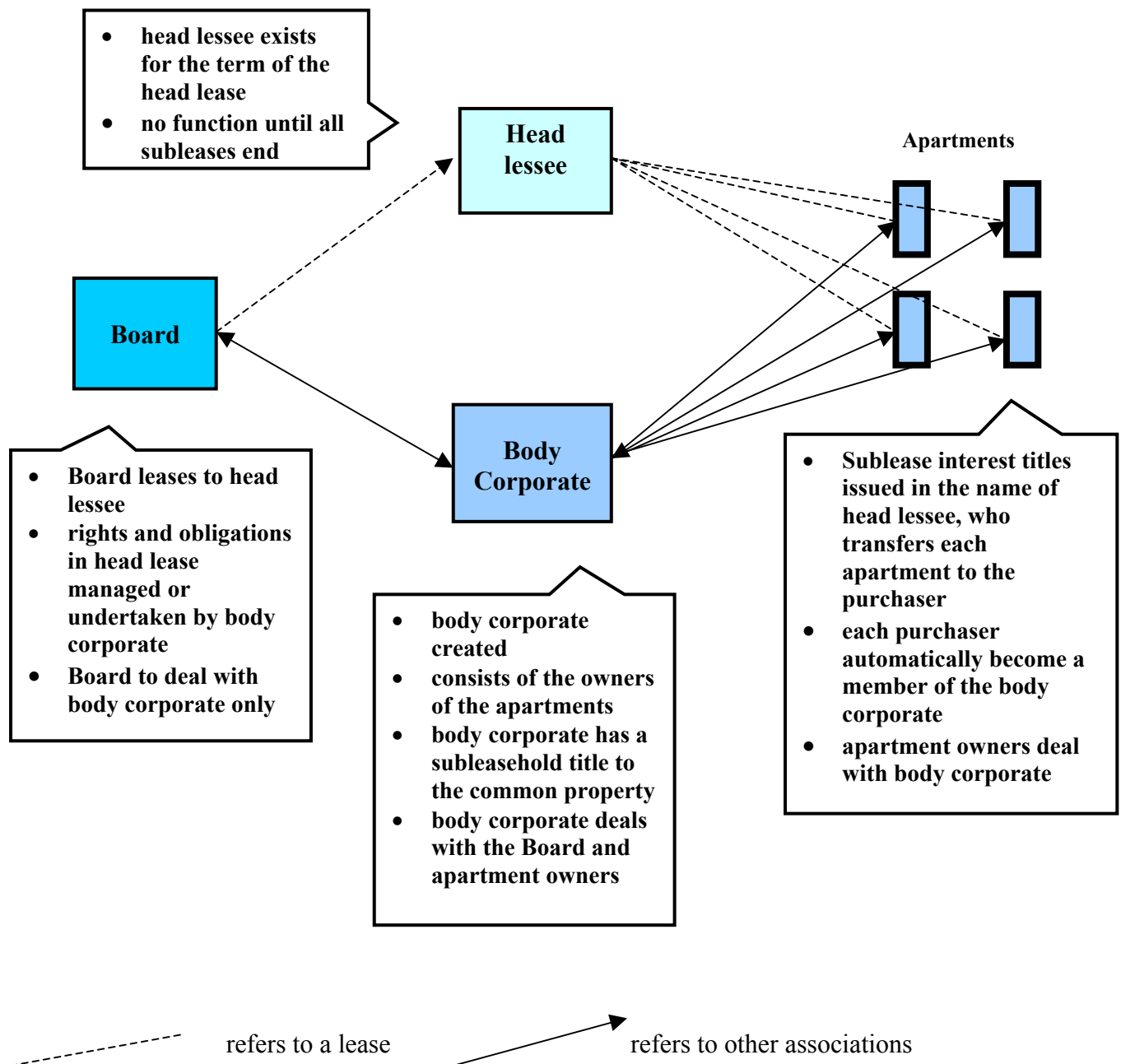
Model 1

This proposal resembles the freehold system. In effect, it collapses the head lessee/sublessee structure and does away with continuing the lease to the head lessee. It provides that the relevant Alpine Resort Management Board leases the apartments directly while only being obliged to deal with the body corporate. The body corporate and the apartment owners obtain a leasehold title rather than a subleasehold title.



Model 2

This model more closely resembles the present scheme than Model 1. It mirrors the existing structure of the head lease and subleases while using the body corporate structure for the sublessees to operate in. It does not allow for a direct lease relationship between the relevant Alpine Resort Management Board and the apartment owners. This model requires the continuing existence of the head lessee. It is the sublease interest that is subdivided by plan registration, not the lease interest.



Costs of models

Both strata models will impose costs and fees on various parties. These will include costs in developing a new strata lease model, additional costs of the initial subdivision process if the developer chooses to use a strata lease model, and possibly additional ongoing costs. For example, Alpine Resort Management Boards may have a greater ongoing involvement with apartment owners in strata leasehold developments than the present company head lessee model. These costs are yet to be assessed, but may become relevant in evaluating the models.

Conversion of existing developments

Conversion of existing developments to a strata leasehold scheme will be voluntary and will require the consent of the head lessee, sublessees, the relevant Alpine Resort Management Board and others with an interest in the land. Conversion will need special legislation to set out its requirements and effects.

Because of the consent requirement, conversion will not always be straightforward and may have limited take up. In addition, it will take some time to collect all the relevant consents and documents.

Conversion steps will include:

- the head lease from the Alpine Resort Management Board is to be registered;
- a plan of subdivision in a form similar to *Subdivision Act* 1988 format (at least) showing the apartments is to be lodged for registration along with all required consents;
- legislation to provide for the various titles to issue, the exact provisions of which will depend on whether Model 1 or 2 becomes available.

Comparison of the current scheme and the models

	Separate registered title to apartment must be created	Reduced conveyancing costs	Simplified documents	Formal subdivision process required	Head lessee company removed	Access to body corporate dispute resolution	Special company share or other arrangements unnecessary	Alpine Resort Management Board deals with one entity only	Ability to create body corporate, common property
<p>Current scheme</p> <p>Board as lessor to head lessee, sublessees hold shares in the head lessee</p>	✗	✗	✗	✗	✗	✗	✗	✓	✗
<p>Model 1</p> <p>Board as lessor to multiple lessees managed through body corporate</p>	✓	✓	✓	✓	✓	✓	✓	✓	✓
<p>Model 2</p> <p>Board as lessor to head lessee, sublessee/Board relationship managed through body corporate</p>	✓	✗	✗	✓	✗	✓	✗	✓	✓

SECTION 4

Next steps

You are invited to respond

Your response to this discussion paper is sought by **17 December 2004**.

Lessees, sublessees, those with a right to occupy alpine apartments and interested individuals and organisations are encouraged to make a written submission. Your input is important in helping us to achieve the appropriate outcomes for apartment owners in alpine resorts.

Preparing and forwarding submissions

There is no set format and submissions can be made in electronic, written or printed format. Submissions might range from a short letter outlining your views in relation to some or all of the matters or a more substantial document covering a range of issues. You should give reasons for your opinions and, where possible, provide supporting evidence. When preparing your response you may wish to comment in particular on the following issues and proposals:

- Do you see a benefit in introducing registration for all new leases?
- Do you see a benefit in having a new strata title scheme?
- Of the two strata models proposed, which is your preferred model?

Please note that the content of your submission may be made public unless your document is marked confidential. Your name and address (street or email) will not be published. Submissions should be forwarded to:

Alpine Resort Leasing
Registration and Strata Project
Crown Land Management
17/570 Bourke Street
Melbourne 3000

or by email to arcc.contact@dse.vic.gov.au
or by fax to (03) 8636 2788

Public forums

Public forums will be held. Details of dates and locations will be published on the Alpine Resorts Coordinating Council website: www.arcc.vic.gov.au.

A final paper will be prepared

A final report, including any recommendations, will be prepared in March 2005.

More information

Further information is available:

- Alpine Resort Leasing Policy: www.arcc.vic.gov.au
- Background Paper: www.arcc.vic.gov.au
- Bodies corporate generally: www.consumer.vic.gov.au (see Homes and Renting)
- The *Subdivision Act* 1988 and body corporate regulations www.dms.dpc.vic.gov.au