

Strata Titles Act Reform Team
Landgate
stratatitlesactreform@landgate.wa.gov.au

13 February 2014

STRATA TITLES ACT REFORM

Thank you for the opportunity to comment on the Strata Titles Act Reform Consultation Paper, October 2014.

The Property Council of Australia welcomes the participation in the Strata Titles Act reform process underway in WA. The reform process represents the most significant tenure reform in WA since the introduction of Strata Titles Act 1985. It addresses a number of fundamental deficiencies in the existing land tenure system, particularly for large scale mixed use property development projects. The tenure reforms proposed in the paper are also designed to facilitate a broader mix of housing types, including high density living required by WA's strategic city plans like Directions 2031.

The Property Council of Australia is the peak industry group that represents the property development, management and investment sectors. Property Council members are directly affected by the proposed reforms to the Strata Titles Act in the Consultation Paper. Numerous Property Council members are currently involved or plan to be involved in development projects that would be significantly improved by the tenure reforms. The Property Council was instrumental in advocating for the tenure reform proposals in the Paper and it is our assessment that appropriately designed tenure and broader strata reforms as outlined in this paper would create major new development opportunities in WA.

In preparing this submission we canvassed our members to test the likely effectiveness of the proposed reforms in delivering the development and operational improvements promised by the reforms in the Paper, including:

- expanding the range of subdivision and development options currently available to developers
- providing design and development flexibilities currently available in other States;
- facilitating appropriate sequencing of developments; and
- providing a framework for improved management of large strata / community title developments.

The outcome from our discussions with members and other industry stakeholders is that the proposed reforms in large measure, achieve all of the above objectives. The key reforms outlined in the Paper, including: the introduction of community titles; leasehold strata schemes; easier pathways for mixed use development and staged development; and termination of old strata schemes by majority vote of owners are enthusiastically welcomed.

However our review of the proposed reforms has also found industry concern with some planning and disclosure innovations in the Paper that would create difficulties for strata development, including the introduction of a new mandatory planning approval processes,

the mandatory developer disclosure document, and the 24 hour advance notice of vendor disclosure preceding a strata sale.

In addition to commenting on proposed strata reforms in the Paper the Property Council is also taking this opportunity to make additional reform recommendations, including the application of leasehold strata schemes to Crown land and reforms to limit settlement risk in off-the-plan strata sales.

The Property Council is recommending that strata laws need to be reformed to prevent purchasers exiting off-the-plan strata purchase contracts for non-disclosure that has not materially prejudiced buyers.

Attached are more detailed comments on the reform proposals in the Paper that are relevant to our industry representatives. The comments are sorted according to the proposal numbers in the Paper.

The Consultation Paper outlines an ambitious and effective program to transform WA's antiquated strata laws and to reform the State's tenure legislation. The Property Council welcomes further opportunities to discuss the matters contained in this submission with a view to introducing the major tenure and strata reforms proposed in a timely fashion. The Property Council also welcomes an early opportunity to discuss the concerns raised in this submission.

Yours sincerely,



Lino Iacomella
Deputy Executive Director

Property Council of Australia

Mezzanine Level Australia Place
15-17 William Street
Perth WA 6000

P: +61 (8) 9426 1200

F: +61 (8) 9226 2865

ABN 13 008 474 422

E: wa@propertyoz.com.au

www.propertyoz.com.au

STRATA TITLES ACT REFORM SUBMISSION

2. Tenure Reform: Overview

The Property Council supports and endorses the introduction of Community Title Schemes, Mixed use Developments in a community title building, Leasehold strata schemes and Staged Strata Development.

3. Tenure Reform: Community title schemes

The Property Council supports and endorses the introduction within a Community Title Scheme framework of Community Corporations, Community Lots and Community Development Lots.

Proposals 1 – 14: The Property Council supports these proposals.

3.4 Proposed Development Statement.

The introduction of community development statements for community title schemes is a major innovation in the planning for strata property development in WA, and the usefulness of separating development statements from management statements is recognised. Development statements would also complement the existing need for structure plans for development applications utilising community title schemes. However community development statements would also represent an additional layer of planning process and cost to a developer.

The benefit of community development statements are recognised for large scale and complex community title scheme developments, such as packaging development information related to intricate layering of strata schemes. This would facilitate the processing of development applications. However this may not be necessary for all development applications utilising community titles, particularly smaller projects that would be adequately served by the existing structure planning process.

Proposal 15: The Property Council does not support community development statements being compulsory for every community title scheme.

Recommendation: The Property Council recommends that community development statements are introduced but only on a voluntary basis and at the discretion of the development proponent.

Proposal 16: The Property Council supports the proposal that community development statements must be approved by WAPC before being registered with Landgate.

Proposal 17: The development statement will set out the detailed land use and development controls and developer covenants for the intended community title scheme. It will provide details of the planning, design and implementation of the proposed development, including infrastructure, facilities and amenities to be provided.

The Property Council is cautiously supportive of this proposal, see comments below.

The Property Council would be concerned if the proposed development statement results in a significant additional level of costly process in property development. It is concerning that the description of the development statement in Proposal 17 does not align with the description in section 3.4.1 of the Consultation Paper. The Property Council agrees with the latter description, that the development statement will provide searchers with general information about the development that will occur within the scheme, sequencing of development stages, facilities to be provided etc.

Recommendation: The proposed development statement should contain high level information to provide the reader with the general intentions of a project, particularly a staged development.

Proposal 18. The development statement may be in the form of text, maps, plans, tables, diagrams, sketches, specifications, schedules etc., as appropriate and required by WAPC

Proposal 19. That upon approval by WAPC a development statement is given status as if it were a planning instrument. It must be given due regard by planning and development decision-makers

Proposal 20. Upon registration in Landgate, the development statement becomes binding on the developer and decision-makers. All subsequent subdivision and development in the community parcel must be consistent with the development statement.

Proposal 21. WAPC should be given the power to accept or reject a proposed development statement or to approve it subject to relevant and reasonable terms and conditions relating to any aspect of the planning, design and development of the site

Proposal 22. WAPC should have the power to reject a proposed community title scheme if it is not a suitable tenure arrangement for the development having regard to relevant planning considerations or if multiple management levels are not intended

Proposal 23. The exercise of a discretionary power by WAPC in its decision-making would give rise to the right of an applicant to seek review by SAT

Proposals 18 – 23: The Property Council supports these proposals.

3.5 Staged creation of Community Lots.

One of the most important reasons for the tenure reform initiatives is the facilitation of staged creation of community title developments. Two options are provided in the Paper for the staged creation of community lots, including Option 1 – creating all community lots in the community plan; and Option 2 – creating community lots in stages.

Recommendation: The Property Council endorses and strongly supports Option 2 – permit the community plan to create community lots and a “super lot” known as a community development lot for later re-subdivision.

3.5.3 Community lots may be developed or altered

Proposal 24. The amendments should clearly set out processes for changing or subdividing community lots

Proposal 25. The amendments should indicate where a new plan or replacement sheets of an existing registered plan are required

Proposal 26. WAPC approval of any new plan or replacement sheets is required

Proposal 27. WAPC should approve the plan etc. if consistent with the development statement

Proposal 28. If the change is inconsistent with the development statement, an amendment of the development statement must be considered by WAPC

Proposal 29. Before WAPC can approve a change of the development statement, the consent of the community corporation is required.

Proposals 24 – 29: The Property Council supports these proposals (see recommendation below).

Recommendation: The Property Council notes that the nature of ‘consent’ in Proposal 29 is not defined. The Property Council would support this proposal where consent is defined as requiring only a simple majority of the community corporation.

3.6.2 Restructuring unit entitlement where change alters relative values.

Proposal 35. Permit a community corporation to decide to restructure unit entitlements based on valuation of the lots as this is a fair way to deal with the issue.

Proposal 35: The Property Council supports this proposal. See recommendation below.

Recommendation: The amendment should also clarify the form of decision making by a community corporation in restructuring unit entitlement. The Property Council proposes that a simple majority in a community corporation would be sufficient.

3.6.3 Options for reallocating unit entitlement

Proposal 36. The amendment should specify a process for revising unit entitlements. Two options are available:

Proposal 37. Option 1 – the community corporation accepts reallocation by a private valuer.

Proposal 38. Option 2 – the community corporation accepts the Valuer General’s roll as the basis for an equitable reallocation of unit entitlements.

The Property Council supports Option 2.

Proposal 39. The SAT jurisdiction to approve a revised schedule of unit entitlements should apply to community title schemes.

The Property Council supports this proposal.

4. Tenure Reform: Mixed use development in a community title building

The Property Council strongly supports the tenure proposal in the Paper to enable community title schemes within a building. The amendment would facilitate multiple strata schemes in a single building, with potential for each scheme to have a different use. A layered building allows different uses operating in different strata schemes within the building, to each maintain and control its own common facilities. The paper has correctly assessed that this initiative clarifies the respective relationships and obligations of the participants and reduces potential for disputes. It is also recognised that the usual planning and pre-building approvals would continue to apply to such developments and the building must be constructed before an application for subdivision approval of the community plan is lodged with Landgate. Mixed use development in a community title building is a priority reform.

Proposals 67 – 85: The Property Council supports these proposals.

5. Tenure Reform: Leasehold strata schemes

The Property Council strongly supports the introduction of leasehold strata title in WA as outlined in the Paper. Our canvassing of industry participants found that leasehold strata schemes will unlock development on land where the proprietors wish to continue ownership but have a preference for another entity to take on the development responsibility. Examples include freehold land owned by educational institutions and churches.

The Paper limits the introduction of leasehold strata titles to freehold land and Crown land is excluded. However, the greatest application of leasehold strata titles would be on Crown land where typically the government proprietor wants to develop the land for a community benefit like housing in regional areas, but it may also have a statutory requirement to retain ownership.

A typical project would involve the Crown or a relevant authority granting a long term lease over Crown land to a developer for the construction of an apartment building or hotel. In much the same way as with strata projects over freehold land, the developer will seek to sell leasehold interests in each to investors with sales off-the-plan before construction commences or is completed.

The absence of leasehold strata legislation over Crown land has, to the detriment of the community, contributed to the under-development of community land such as waterfront property. If the State is concerned to regulate the leasehold subdivision of a particular site on Crown land, it could do so by placing the appropriate covenants in the lease granted to developers in respect of that site. The State could expect to receive significant ongoing revenue from strata lessees in the form of annual land tax and transactional stamp duties. Local government will also benefit from additional rates revenue. Local communities should also expect to benefit from the building investment and employment generation. A leasehold strata framework would also enable the development of community sensitive riverside or regional land while enabling the State to continue to have a degree of control over this land, as well as facilitating affordable development.

Proposals 86 – 105: The Property Council supports these proposals. See recommendation below.

Recommendation: Extend the introduction of leasehold strata schemes to Crown Land.

6. Tenure Reform: Staged strata development

A major initiative in the Paper that is strongly supported by the Property Council is the introduction of a raft of measures to support staged development of community title projects. The development industry also welcomes similar provisions to facilitate greater staged development in projects utilising existing strata scheme frameworks. These initiatives, in the Paper, are accompanied by changes to disclosure provisions, including the removal of developer covenants from management statements and the creation of a new Developer Disclosure Document. The development industry recognises the significance of proper disclosure however there is also concern that the creation of a Developer Disclosure Document may expose developers to greater settlement risk by providing buyers with more avenues to exit purchase contracts for inadvertent non-disclosure of development matters that are of no material interest to a purchaser.

Proposals 106 – 107: These proposals are not supported by the Property Council in their current form. See recommendation below.

Recommendation: The current provisions requiring developer covenants to be contained in the management statement should be retained. This should be accompanied by additional provisions to limit notices to purchasers of changes in developer covenants to matters of genuine material interest to purchasers. The Property Council would like to consult further with Landgate on achieving an appropriate form of disclosure that would enable the better staging of strata development in existing strata frameworks.

7. Vendor disclosure

The Property Council welcomes the review of vendor disclosure of strata information and the intention to make the disclosure regime more meaningful and effective for purchasers.

Proposals 112: The Property Council supports the proposal to incorporate generic and specific information currently spread over two separate forms (Form 28 and Form 29) into a single disclosure form to make it more understandable.

Different disclosure form for each type of sale

The creation of four separate disclosure forms applicable to strata title property transactions (Proposal 113) is excessive. Two disclosure forms, one for original owner and one for non-original owner is sufficient. A tick box on the front of each form to identify a strata or survey strata would provide sufficient clarity for purchasers.

Proposals 113: The Property Council does not support this proposal. See recommendation below.

Recommendation: Property Council recommends that only two disclosure forms be created for original or non-original owners with the type of strata denoted with a tick box.

7.3.3 Move key information into the disclosure form

Proposals 114: The Property Council supports the proposal that some of the information currently found in the attachments to the disclosure form be incorporated in a basic way into the body of the form: the unit entitlement of the lot; the aggregate (total) unit entitlement for the scheme; the number of lots in the scheme.

7.3.5 Electronic disclosure

Proposal 117: The Property Council supports the proposal to allow vendors to provide disclosure in soft copy (electronic) format.

7.3.6 Disclosure incorporated into the contract of sale

Proposal 118: The Property Council supports the proposal for the vendor to include the disclosure details in the contract of sale rather than via the prescribed disclosure form(s).

7.4 Timing of the disclosure

The Property Council does not support the introduction of a mandatory pre-contractual disclosure period under which disclosure must be provided to the purchaser in a set number of days prior to contracting. While we recognise that this is proposed as a workable alternative to a cooling-off period, the similarities between the two arrangements mean that it does not overcome the negative aspects of implementing a cooling-off period. It would relegate strata purchases to a level below 'green title' purchases. The proposal would create significant disruption in the buying and selling of strata, particularly in a strong market when consumers are queuing to purchase properties.

The Property Council does not support the proposal to introduce a mandatory pre-contractual disclosure period under which disclosure must be provided to the purchaser a set number of days prior to contracting (for example 24 hours prior to signing the offer).

7.5 Notifiable variations

The additional disclosure requirements proposed to be placed on a vendor in an established scheme and the disclosure requirements to be placed on an original proprietor (developer) are onerous and unnecessary.

We question the level of interest from buyers in the level of planning detail proposed to be mandatorily disclosed and whether they possess the technical knowledge to understand it. Instead, it would seem that by including plans, planning approval documents and reviews of those documents, the likelihood of proper disclosure not occurring is increased for no material benefit. As a result, the avoidance of a contract on spurious grounds will be made easier. The resulting increased settlement risk will make it harder for developers to secure the financing necessary from banks for developments to proceed, which will have an impact on the pipeline and viability of development projects.

Proposal 119: The Property Council does not support that there be an additional disclosure obligation describing any registered changes to the development disclosure document.

Proposal 120: The Property Council does not support where a lot is sold off-the-plan the vendor will be required to notify the purchaser of a change to the subdivision approval, development approval, and any review of those approvals.

7.6 Termination of the contract

See discussion in 6.0 and 7.5.

Proposal 121. The Property Council does not support the proposal that the purchaser's right to avoid the contract be expanded to include the vendor's failure to disclose a copy of the development disclosure document, where applicable, and provide details of any registered variation to the development statement.

Proposal 122. The Property Council does not support the proposal that the vendor disclosure must be provided at least 24 hours prior to contracting the purchaser will have an additional termination right where the disclosure is not provided in accordance with this

Having the situation such that a purchaser is able to avoid a contract on the grounds that the registered plans reveal that an apartment on the other side of the building to their own will have a balcony slightly larger than the original plans show, not only makes a mockery of the contractual process, but poses significant risk for the property sector during downturns in the residential market. At such times, purchasers may seek to exit contracts executed in good faith on any ground that can be found, which jeopardises the completion of development projects. During a downturn for the market this places incredible strain on the property sector and will result in smaller developers being forced out of business.

Recommendation: The Property Council calls for a requirement that in the circumstance where a purchaser is attempting to avoid a contract due to non-disclosure by the original proprietor, the non-disclosure has, or is likely to have, an adverse on the purchaser's use or enjoyment of the strata lot.

8. Management of strata schemes

No comment.

9. Dispute Resolution

No comment.

10. Termination of strata schemes

The Property Council welcomes the proposal to introduce new provisions for the termination of strata schemes.

Buildings have a natural lifecycle and require regular rejuvenation and renewal. In order to engage in the process of renewing a building or site, it is typically necessary to terminate the existing strata scheme where one is present. Without the ability to easily rejuvenate and renew, buildings are being pushed past their realistic lifespan. Further, some strata titled buildings were conceived prior to good design principles becoming commonplace. Without the capacity for renewal, these buildings represent eyesores which are destined to remain indefinitely on the urban landscape.

Under the current *Strata Titles Act*, terminating a strata scheme requires the unanimous resolution of every proprietor of lots in a strata scheme or, in certain circumstances, an order of the District Court.

This is an incredibly onerous requirement. One dissenter can frustrate the decision of all other owners within a building, meaning that it does not undergo the renewal that it needs. It is for this reason that changes are made to the current termination of strata scheme provisions in the *Strata Titles Act*.

The Property Council strongly supports the new measures proposed in the Paper for the termination of strata schemes.

10.4.1 Principles to assist a SAT decision on termination of a scheme

The State Administrative Tribunal already has jurisdiction for applications relating to certain aspects of the *Strata Titles Act*, such as with the reallocation of unit entitlements (s 16) and to make specific orders relating to the resolution of disputes (pt VI div 3). To transfer jurisdiction for termination matters from the District Court to the State Administrative Tribunal is therefore a prudent consolidation of powers. Further, it would reduce the demand on the capacity of the District Court and should have the advantage of making the process of making an application relating to termination of a scheme a simpler and less costly exercise for owners.

The Property Council supports the use of principles (including that ending the scheme is just and equitable, objections are unreasonable and that ending the scheme is necessary) by SAT to assist decisions being made on the termination of strata schemes. This will provide consistency to the decisions reached and will ensure fair and just outcomes are reached.

Proposals 192 and 193: The Property Council supports these proposals.

10.5 Terminating a scheme of 10 or more lots by majority vote

The Property Council of Australia strongly supports the proposed changes to enable terminating a scheme of 10 or more lots by majority vote, based around the age of the scheme.

Enabling a majority rather than unanimous resolution once a scheme passes 15 years of age will enable buildings in Western Australia to be more easily renewed when necessary, ensuring the longevity of use for sites and preventing the emergence of unsound and unsightly buildings.

The current system dissuades owners from seeking renewal options and can leave strata schemes locked up without hope of rejuvenation.

With the prevalence of ageing strata title schemes in Western Australia, it is crucial that the new process for majority vote be put in place.

The proposed thresholds are consistent with international practice and mirror the *Unit Titles (Termination of Units Plan and Schemes) Act* amendments made by the Northern Territory Government.

Proposals 194 – 203: The Property Council supports these proposals.

10.5.3 Termination in community title schemes

The Property Council of Australia supports the new process of majority votes being made available in the case of termination a community title scheme or leasehold strata scheme. It is crucial that consistency is fundamental to the reforms of the *Strata Titles Act*. For this reason, it is essential that where consent is required by a higher scheme for termination (as outlined in proposal 207) that the process for majority votes is applied at that scheme level also.

Proposals 204 – 207: The Property Council supports these proposals where the consent required by a higher scheme for termination follows the new process of majority votes.

10.6 Consequences of the resolution to terminate the scheme

The Property Council of Australia supports the proposals for the consequences of the resolution to terminate a scheme. A single model for dealing with the consequences of a resolution to terminate a scheme for situations that do not fall within terminating a scheme of 10 or more lots by majority vote will provide ease for owners seeking to terminate schemes and ensure a consistency of outcomes in circumstances where a resolution to terminate is made.