



Landgate

Discussion Paper

Strata Titles Act

Tenure

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Section 1: Background

There is pressure for reform resulting from demographic change including increased population growth, an aging population and changes in household composition, to provide a range of tenure options to support medium and high-density living.

The Australian Bureau of Statistics' projections suggest that the State's population could increase from 2.5 million currently to at least 3.5 million and possibly more than double to 5.4 million by 2056. It is estimated that by 2031, around 35 per cent of total residential development in the Perth and Peel region will be infill, often using strata title as a means to subdivide and develop upon the land.

In recent government policy documents, the need for more flexible development options has been identified, to support for example mixed-use developments, urban infill, increased density of housing and more community living. Strata developments, and the legislative framework that underpins them, are recognised as key enablers to support this growth.

Stakeholders consider that the tenure changes will contribute to better, more appropriate and sustainable developments and will equip developers and decision-makers with options for effectively implementing State and local government moves towards affordable housing, mixed uses and higher quality and more vibrant housing options in infill areas. This is a key planning and design issue. The changes could promote housing affordability by making supply and diversity more flexible.

1.1 Overview of the Strata Reform Process

Approach

Landgate's target is to complete the major consultation activities in the first half of 2014 and to generate a consolidated Strata Reform Package paper that includes the tenure and management proposals. Instructions for drafting the Bill should be finalised by late 2014, permitting the introduction of the Bill into Parliament in 2015.

Due to the extensive nature of the reform, the topic has been divided into four streams of discussion which will be consolidated at the end of the process to provide the overall input to the recommended legislative changes. The streams are:

- Tenure.
- Strata Management.
- Strata Managers.
- Dispute Resolution.

Tenure comprises three components:

- New forms of tenure.
- Termination of strata schemes.
- Disclosure by developer and vendor.

Section 2: Introduction to Tenure Reforms

Problem Statement

The current Act does not provide:

- Community titles to permit land developments of sufficient size and complexity as to require multiple management layers.
- Flexible alternatives for developments that include a variety of uses, or mixed use buildings.
- For leasehold strata title over freehold land or State land.
- For simplified staged development for existing and new strata schemes.
- A framework for mixing strata and survey-strata schemes in a development, with the sharing of some common property facilities and infrastructure among schemes.

Objective of Tenure Reforms

The objective of this reform is to expand the number of subdivision and development options available to land developers, to provide development flexibilities currently available in other States, to facilitate appropriate sequencing of developments and to provide a framework for improved governance of large developments.

High Level Stakeholder Requirements

1. The ability to easily permit land developments of sufficient size and complexity to require multiple management levels for a variety of uses such as retail, residential and hotel-type facilities.
2. The ability to permit a single building containing a mix of retail, residential and office areas, with the different uses being accommodated in separate strata schemes.
3. The ability to permit the owner of freehold land to retain ownership of the land and to enter into a long-term lease arrangement with a developer, authorising the developer to undertake a strata development on the site, with proprietors of leasehold units receiving leasehold certificates of title .
4. Determine the appropriate level of detail required in developer disclosure for future staged strata and survey-strata schemes.

2.1 Tenure Reform Overview

Landgate has been requested by stakeholders to generate tenure reforms, to expand the number of subdivision and development options available to land and project developers, and to facilitate design and development opportunities currently available in other States.

The tenure reform requirements requested by stakeholders include the following:

Community Title Schemes

To provide, where appropriate, for subdivision and developments of sufficient size and complexity as to require multiple management layers, including a “community corporation” and various subsidiary schemes, and to facilitate a mix of strata and survey strata schemes

that share some common facilities or infrastructure. The final management level will be constituted by strata/ survey-strata schemes. The new tenure framework should support developments that include a variety of uses such as retail, residential and hotel-type facilities.

Mixed use developments in a layered building

This reform should provide for example a single building containing a mix of retail, residential and office areas, with the different uses being accommodated in separate strata schemes. The community plan will create a community corporation to manage the building, including operation of common infrastructure, to liaise with external authorities and to facilitate the interaction of the various strata companies within the building.

Leasehold Strata Schemes

This will provide for the owner of freehold land to enter into a long-term lease arrangement with a developer, authorising the developer to undertake a strata development on the site. Where used for example in a retirement village context, the developer may construct the building on the land, register a strata plan, sub-lease the apartments and either manage/ operate the resulting village or obtain leasehold titles for the apartments and sell them, divesting itself of any interest in the scheme.

Staged Strata Developments

Under this option, stakeholders request Landgate to introduce changes to the disclosure requirements for staged strata schemes. This will permit an expanded list of “minor changes” that depart from the disclosed developer intention. The legislation will apply to future strata schemes.

Section 3: Community Title Schemes

3.1 Definition of a Community Title Scheme

A community title scheme is a mix of several strata and/ or survey strata schemes within an integrated development. Each strata and survey strata scheme within the overall scheme can be developed and sold sequentially under an appropriate process for staging the construction of the project. Each strata and survey strata scheme may have its own dedicated common property and its own Management Statement containing by-laws appropriate to the development. In addition, there may be community infrastructure that can be operated or accessed by all residents in the community title scheme. In recognition that a community title scheme, where appropriate, may be on a larger scale than strata and survey-strata schemes, a community corporation, similar in nature to a strata company, will manage the community property and the implementation of the community by-laws applicable to all residents.

Some limitations in the existing regulatory framework restrict the ability to implement community title schemes. For example, community schemes may be planned for implementation over a 10-year period but, under planning legislation, subdivision approval is for a maximum of 4 years and development consents are also limited in duration. The law also does not currently permit multiple strata and survey-strata schemes to be mixed in a development with an umbrella community corporation. The inability to permit multiple strata and survey-strata schemes to share common facilities has forced developers to use extensive easements and contractual arrangements in recent developments to achieve similar ends, but this approach has limitations. For example, the current restrictive staged development provisions encourage developers to attempt to bind incoming purchasers to agree to uncertain future developments and this may impact the marketability of developments.

Community title schemes will not replace strata and survey-strata schemes, which will continue to provide an appropriate tenure and housing model for smaller subdivision and developments. However, community title will provide an alternative approach for larger-scale and more complex projects.

In order to provide more certainty for large developments and to clarify developer and consumer rights and obligations, the amendments will address:

- **Longer-term development framework** - Stakeholders request a tenure framework to facilitate larger developments, with an extended development period. The concept offers potential planning, design and development opportunities, and will permit more sophisticated design and development outcomes.
- **Mixing strata and survey-strata in one development** - The reform will permit community title schemes to include a number of strata and survey-strata schemes

with an over-arching or umbrella community corporation to manage the shared facilities.

- **Multiple schemes to share common facilities or infrastructure** - The law does not currently facilitate the sharing of common facilities among adjoining strata schemes. A “community title scheme” will be ideal for this arrangement, permitting community property in addition to the existing common property concepts in the Strata Titles Act. Community property may be used by all subsidiary schemes. However, the subsidiary schemes may also create their own common property facilities and these will not generally be accessible by other members of the wider community scheme.
- **Simplify mixing uses** - It will simplify mixing land uses, permitting different use areas in separate subsidiary schemes, each with its own management statement and management arrangements, with an umbrella strata company to interact with external authorities etc. and to manage the shared facilities.
- **A more flexible approach than that applying to existing staged strata developments** – the new law will permit “community lots” and “community development lots” to be defined at the outset, to be progressively divided by subsidiary scheme plans and re-subdivision plans during the development cycle. Although each subsidiary scheme will be a member of the community corporation, it will also be self-sufficient, with its own common property and facilities. This approach is likely to simplify the current disclosure regime applying to staged strata developments, taking into account experience in other States.
- **A development statement setting out developer covenants** - The developer will be required to lodge a Development Statement with each community plan, providing some indication of the likely construction and facilities to be provided and, if staged, the sequence and timing of the staging and the infrastructure and facilities to correspond to the respective stages. This will attempt to provide a level of clarity for the decision-makers and certainty for consumers.
- **Theme developments** – In some community schemes it will be important to establish a theme for the development. This may be an architectural or landscaping theme, or a shared principle all residents will commit to [such as an over-55 retirement complex, commercial centre, alternate energy development or agricultural theme in a rural location, etc.]. The theme will guide development and use of lots and decision-making by the community.¹

After 23 years’ experience of community title developments, Land and Property Information in NSW² notes that:

“The tiered system of the community schemes legislation makes it an attractive subdivision option for developers intending to stage the delivery of larger projects. A community plan can be used as a master plan to divide the parcel into development lots representing proposed future stages. As

¹ See Schedule 2A Clause 4 and 5 of the Strata Titles Act 1985. These may assume a greater role in the community title amendments

² Landgate’s equivalent in NSW

each stage nears completion it can be subdivided by a neighbourhood plan, strata plan or community plan of subdivision to create lots ready for sale. The developer can continue work on the remaining community development lots with minimal impact on, or interference from, the owners of lots bought in the earlier stages. The developer is bound by the development consent granted by the local consent authority. Any changes to that consent would be subject to the usual procedures of the Environmental Planning and Assessment Act 1979.”³

Terminology

The term “community titles” is used in different ways in other States and among stakeholders, so a level of agreement on how the term is to be used in WA is important. In Queensland South Australia and NSW, a community scheme includes common property as a distinguishing feature, but that will not be required in WA. The proposed WA law will use the term “community title scheme” to indicate that multiple levels of management are created. A “community lot” will indicate an intention to subdivide the community lot by a subsidiary strata scheme etc. A “community development lot” indicates an intention to subdivide the development lot by community plans of re-subdivision in stages, to create additional community lots.

The paper also uses “community corporation” or the generic “owners corporation” instead of “primary survey–strata company” as the management body established in a community titles scheme.

3.2 Recommendations

At the conclusion of the consultation process, an integrated discussion paper bringing together tenure and management reforms will be provided, with a set of detailed recommendations for amendment of legislation.

3.3 Initiation of a Community Scheme

A community scheme will be initiated where a consolidated green title lot is subdivided by a community plan, creating two or more community lots and community development lots, and possibly creating community property lots and establishing a community corporation. The simplest scenario is where the community scheme will contain only two levels of management. More complex schemes may require three levels of management.

Two Levels of Management

In this option, the community lots will be divided by strata plans or survey-strata plans to create the second/ final management level. Each strata company will be a member of the community corporation. This may be suitable in, for example, a development containing 200 lots. Where the community lots are divided by strata and survey-strata schemes, these are referred to as subsidiary schemes.

³ *“Preview of Proposed Changes to the Community Land Development Act”, Land and Property Information Sydney, NSW, presented to the Australian College of Community Title Lawyers, 2012*

Three Levels of Management

In a development with three levels of management, a community lot is divided by a secondary community plan to create secondary community lots and establishing a secondary community corporation. In this case the secondary community scheme is a subsidiary scheme. The third and final tier is created when the secondary community lots are subdivided by strata plans and/ or survey-strata plans. In this case, the strata and survey-strata schemes are subsidiary schemes of both the secondary community scheme and the community scheme. Three tiers may be suitable in, for example, schemes containing 500 lots and mixed uses.

Development Process

The 4 April 2014 draft of this discussion paper proposed that all community development lots should be disclosed in the community plan. This followed the approach taken in the NSW community titles legislation. There are some attractions in requiring this for all community developments:

- The proposed subdivision pattern for the whole development will be available at the outset.
- The unit entitlement of community lot and aggregate unit entitlement will be available up-front.
- A degree of certainty is available for early purchasers into the community scheme.
- The process of subdivision and development approval and the design of utilities is simplified.

However, some stakeholders consider the inability to increase community lots in subsequent stages will prove to be overly inflexible and a better outcome can be achieved if a long-term project can adapt to market factors.⁴ This Paper therefore includes provision for the staged creation of community lots.

Community plans defining lots by survey may therefore initiate a development as follows:

- **Non-staged creation of community lots** – the community plan will create two or more community lots or two or more community lots and a community property lot. The community lots will be divided sequentially by subsidiary schemes over the life of the development. Although the implementation of the subsidiary schemes occurs in stages, this is not a “staged community scheme,” as the creation of community lots occurs at the outset.
- **Staged community scheme** – the community plan may create one or more community lots and one or more community development lots, with optional community property. The community lots are lots for division by subsidiary schemes and the community development lots are lots intended for later subdivision by a community plan of re-subdivision to create additional community lots. In this context the community scheme is a “staged community scheme,” as the creation of community lots occurs progressively.

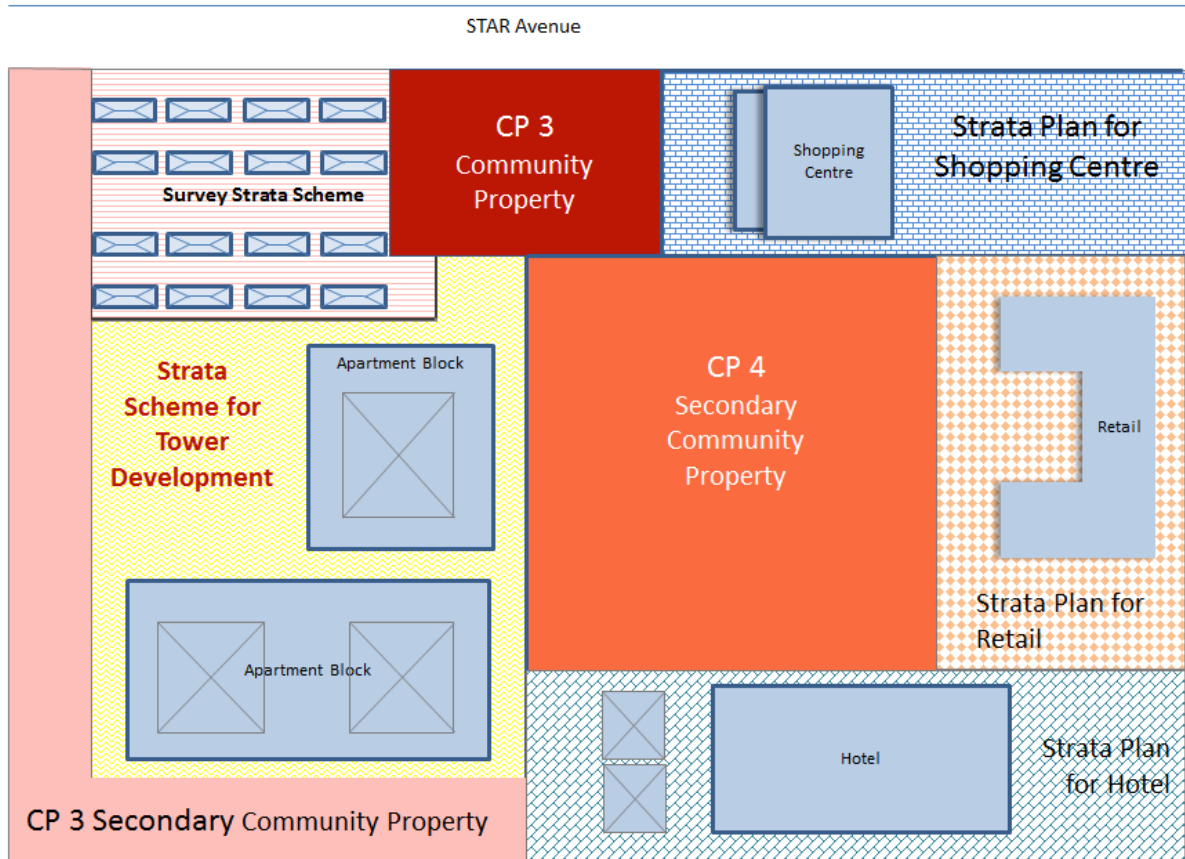
⁴ The NSW community title law initially required community lots to be created at the outset and this permitted subsidiary schemes to be registered without the consent of the community corporation. Not only has this proven to be too restrictive but also it has resulted in some undesirable consequences. Amendments are proposed in NSW

Section 4: Sample Community Schemes

4.1 Sample Development 1 - All community lots created at the outset

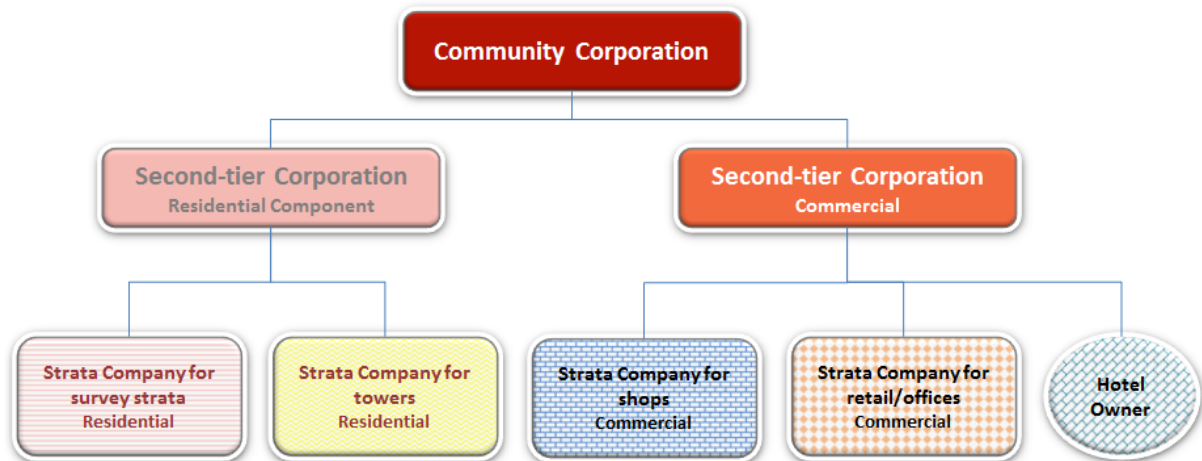
Figure 1 illustrates a sample long-term community scheme where the community lots are created at the outset. The sample development will ultimately contain residential buildings, detached dwellings or villas, a shopping centre, a second retail/ office complex and a hotel/ short-stay component. In the example, although the project could be implemented with only two management levels, for illustration purposes three management tiers are used. It is recognised that there will occasionally be situations where the developer considers the overall development to be of sufficient size and complexity as to warrant three management levels. Figure 1 illustrates the intended development upon completion:

Figure 1: A Sample Community Scheme



The intended hierarchy of management in the sample community scheme can be illustrated as follows:

Figure 2: Sample Hierarchy of Management – three management levels



A developer initiating this development would initially consolidate all land into a single lot in a deposited plan and then approach WAPC to approve subdivision of the freehold lot under the Strata Titles Act to initiate a community titles scheme, as shown in *Figure 3*:

Figure 3: Sample Community Plan Creating Two Community Lots



The legislation will require the application for subdivision approval and the lodgment of the community plan for registration by Landgate to be accompanied by a Development Statement, which will form part of the community scheme. Consultation concerning previous versions of this discussion paper has indicated that the Development Statement concept is supported by stakeholders, as it will avoid the confusion that arises from putting development covenants into the Management Statement – a document currently intended to contain by-laws to regulate the day-to-day operations of the completed scheme. The likely content and effect of the Development Statement are discussed below.

In considering the proposed community title scheme, the decision-maker would take into account on-site and off-site planning and development issues raised by the proposal and

impose relevant conditions of approval.⁵ For example, if land is required to be ceded in respect of a road-widening, a condition to this effect may be imposed as part of the approval to the proposed subdivision.

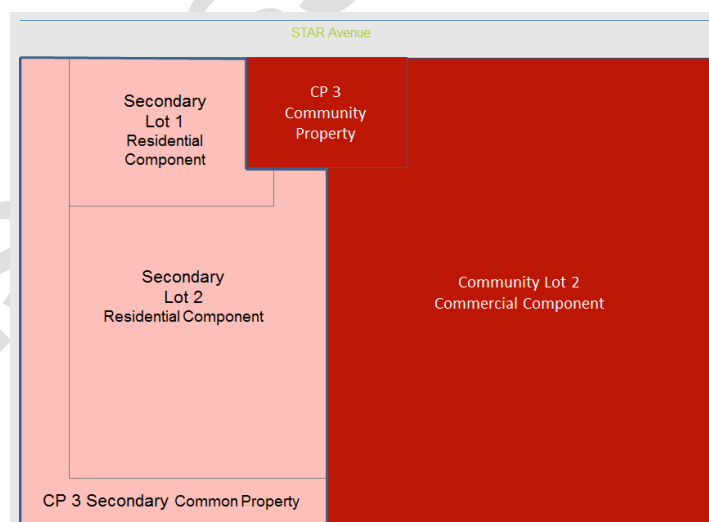
Landgate is discussing with Planning agencies the option of giving the Development Statement some of the status and effect of a Local Structure Plan, an instrument commonly used to complement Local Planning Schemes for subdivision and development of larger sites. If this concept is supported, the subdivision and development approval provisions applicable to community title schemes may make some aspects of the Development Statement binding on decision-makers.⁶ This approach may also obviate the need for Local Development Plans [formerly referred to as “Detailed Area Plans”] to be required by WAPC as a condition of subdivision approval. See further comments under planning issues below.

The developer will also require development approval. In considering the development application [DA], the decision-maker will consider provisions of its operative planning schemes and the terms of the Development Statement approved by WAPC.

Following approval of the community plan and the corresponding Community Development Statement by WAPC, which will occur after the applicable conditions of approval of the proposal have been fulfilled in the same way that freehold subdivision occurs, the community plan may be registered by Landgate. Upon registration, the community corporation is created and certificates of title for community lots will issue in the name of the owner of the parcel [see sample title in [Appendix C](#)].

In the example, the next step may involve lodging a subdivision of the community lot allocated for residential development, as shown in [Figure 4](#).

Figure 4: Sample Secondary Community Plan Creating another Level of Management



Secondary Community Plan

Designating the plan referred to in [Figure 4](#) as a “secondary community plan” creating “secondary community lots” indicates that the developer intends three levels of

⁵ An appeal right exists. The approval is valid for only 2-4 years and this may place a restriction on developers.

⁶ Note that the current disclosure of development intention in staged strata developments is not binding on WAPC and a warning to this effect is set out on the Management Statement.

management, with the secondary community lots to be subdivided by strata plans and/ or survey-strata plans.

An application for subdivision approval for the secondary community plan is lodged with WAPC. A development approval may also be required unless it was obtained for the secondary scheme at the outset.

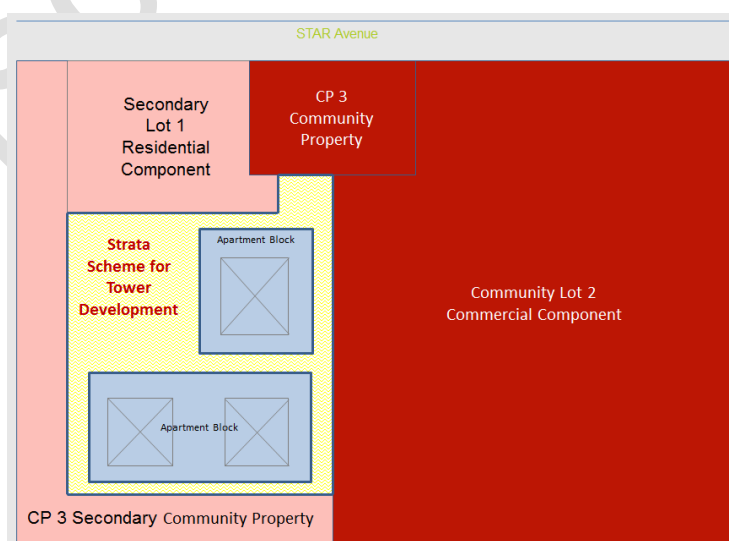
The following are noted in relation to the Secondary Community Scheme:

- Lodgment of a Development Statement with the Secondary Community Plan is expected to be optional, particularly as the Community Development Statement for the underlying community plan may contain all relevant detail. However, the decision-maker may call for a Secondary Community Development Statement if inadequate information is available in relation to the secondary community scheme.
- If the Community Development Statement is given some status as a planning instrument, as discussed above, the decision-maker will only approve the development on the secondary community lot if it is consistent with the registered Community Development Statement.
- In approving the subsidiary subdivision, WAPC is in effect certifying that the plan is consistent with the Development Statement.
- If the proposed development upon the secondary community lot deviates from the Community Development Statement, an amended Development Statement must first be approved by WAPC and must accompany the DA.

If the process is implemented, the consent of the community corporation to the registration of the secondary community plan will not be required.

In the sample scheme, the final management tier is created upon subdivision of a secondary community lot by a strata plan. As illustrated in *Figure 5*, the strata plan initiates three buildings in a single strata scheme. Note that the strata scheme may be completed in stages under the Strata Titles Act (as amended by the tenure concepts described below):

Figure 5: Sample Final Layer of Development over a Secondary Community Lot



It is likely that the next steps [not illustrated in this paper] would include:

- A survey-strata plan dividing Secondary Lot 1 in the residential component.
- Creation of the Secondary Community Scheme in the commercial component.
- Strata schemes progressively dividing the secondary community lots in the commercial component.

The completed development is shown in *Figure 1*.

Decision not to permit unlimited management levels

In earlier drafts of this discussion paper, it was initially planned to permit unlimited management layers. Stakeholders have not identified any likely development scenarios that require four or more management tiers. Input was obtained on whether a maximum of three management levels should be provided for, following the NSW and South Australian model. A review of NSW developments indicated that, in over 600 community schemes that have been undertaken in the last 25 years, only 38 of these have three management tiers and the balance have two. Some comment was received on the complexity of managing three-level schemes. For this reason, the legislation will provide initially for two or three levels of management.

The examples in *Figure 1* to *Figure 5* above, create three tiers of management:

- Tier 1 – community corporation.
- Tier 2 – Two secondary community corporations
- Tier 3 – Various strata companies.

Action with Community Lots

Community lots may:

- *In developments where only two management levels are proposed*, be subdivided by a strata or survey-strata plan as the second and final management level. It is expected that plans creating subsidiary schemes will be able to dedicate roads and reserves etc. The unit entitlement of the community lot is applied to the subsidiary association.
- *In developments where three management levels are proposed*, be subdivided by a secondary scheme. The unit entitlement of the community lot applies to the secondary community scheme.
- Be consolidated into a larger community lot.⁷
- Be converted into community property⁸;
- Possibly be severed from the scheme by a severance application.⁹
- Be subdivided by a community plan of re-subdivision making minor changes¹⁰ to the boundaries of community lots. Since the changes are minor and do not require the Development Statement to be amended,¹¹ the consent of the community association

⁷ See section 9 of the Strata Titles Act 1985 [WA] and section 12 of the Strata Schemes (Freehold Development) Act 1973 [NSW]

⁸ See section 10 of the Strata Titles Act 1985 [WA – consent authority approval and resolution without dissent]

⁹ See below concerning possible amalgamation of secondary community lots to reconstitute a community lot

¹⁰ Lot areas are not increased or decreased by more than 10% and no change in the Development Statement is required. This adds some flexibility in changing the subdivision design.

¹¹ The Registrar of Titles will determine if the changes are minor, as per existing processes

is not required. If community property is subdivided, the consent of the community association is required.

It is noted that each of these variations to a registered community scheme will require WAPC approval and either certification that they are consistent with the registered Development Statement or variation thereof. It should be noted that the developer may, where consistent with the project design, leave one or more but not all community lots in single ownership without subdividing them to create a subsidiary scheme.

See further discussion below that addresses how changes can be made to a functioning community titles scheme.

4.2 Sample Development 2 - Staged Creation of Community Lots

In the next example, showing a different development scenario, community lots are intended to be created in stages.

Figure 6: Developer's Intention in Staged Example

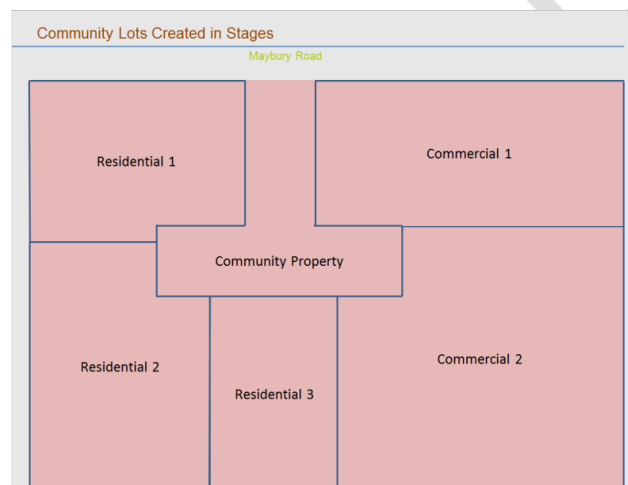
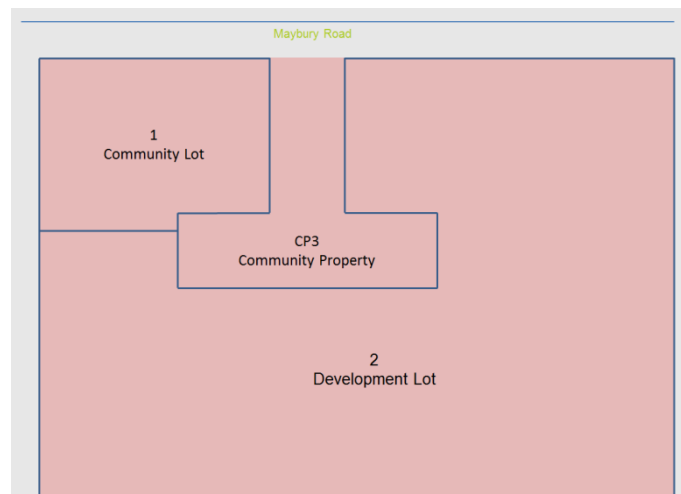
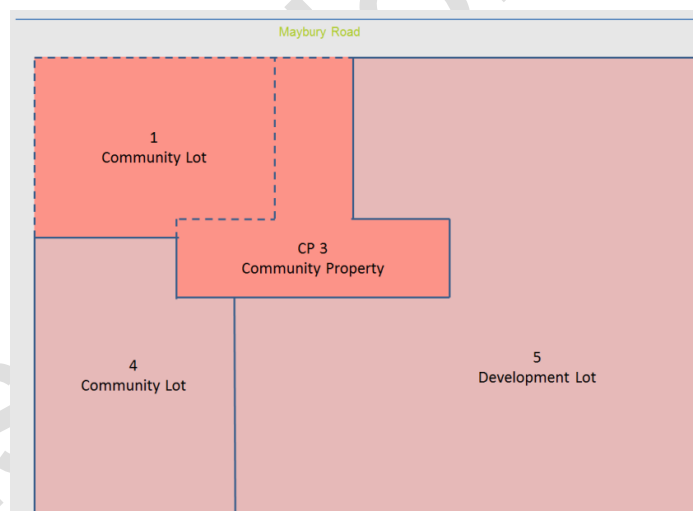


Figure 6 indicates that the overall intention of the developer is to create five community lots, three for residential schemes and two for commercial activities. However, the initiating community plan shown below in Figure 7 creates one community lot, a community property lot and a community development lot. A Community Development Statement will accompany the community plan through the subdivision approval process and will also be approved by WAPC.

Figure 7: The Community Plan Creates a Development Lot for staged subdivision

Consistent with the description above, the community lot may now be subdivided by a subsidiary scheme such as a strata plan (not illustrated) and the community development lot may be subdivided by a community plan of re-subdivision, to create additional community lots, as shown in *Figure 8*:

Figure 8: Community Plan of Re-subdivision creates another Community Lot

In *Figure 8*, community lot 4 is created by a community plan of re-subdivision dividing former community development lot 2 and approved by WAPC. The consent of the community corporation will not be required to the community plan of re-subdivision if it is disclosed in the Community Development Statement and accepted by WAPC as consistent with the community development statement.

Community development lot 5 will be subdivided by a further community plan of re-subdivision to create additional community lots. As per previous plans, WAPC will endorse the re-subdivision plan as being consistent with the development statement. A possible sequence is shown below in *Figure 9* to *Figure 11*.

Figure 9: Another Community Plan of Re-subdivision

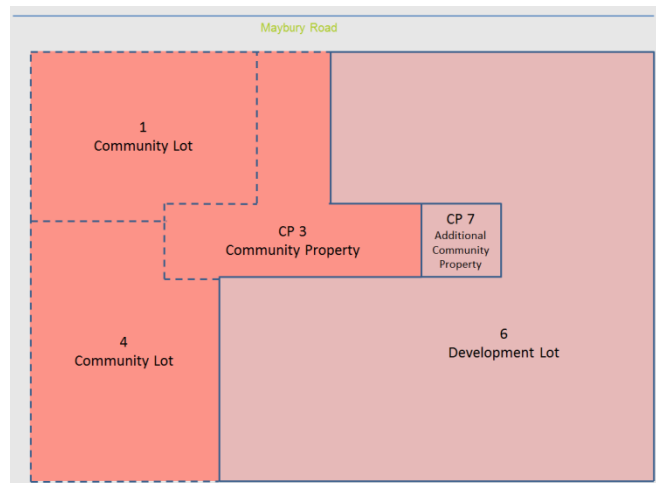
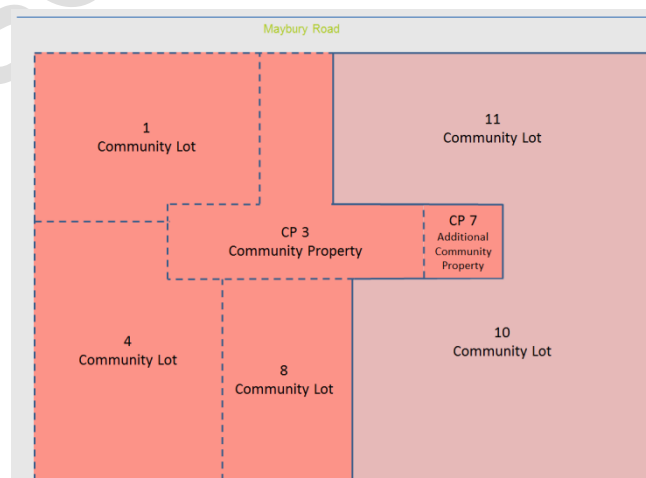


Figure 10: Creating additional Community Lot



The final re-subdivision plan to create the last community lots is illustrated in *Figure 11*:

Figure 11: Final Community Plan of Re-subdivision



These will then be subdivided by subsidiary schemes as the development progresses.

Action with Community Development Lots

During the development period, community development lots may, with the concurrence of the WAPC, be altered or amended as follows:

- **Be subdivided by a community plan of re-subdivision.** This plan may:
 - Create additional development lots or development lots and community property – the unit entitlement of the former development lot is apportioned among the new lots.
 - Create additional community lots or community lots and community property.
 - Create community lots and community development lots, or community lots, community development lots and community property.
 - Dedicate land as a road, reserve etc.
- **Be consolidated into a larger community development lot** - two or more community lots or community development lots may be consolidated into a single community lot or community development lot. It is expected that if the plan of consolidation is signed by WAPC and certified as being consistent with the Development Statement, the consolidation can proceed without consent from the community corporation. The unit entitlements of the former lots will also be amalgamated. If an amendment to the Development Statement is required, procedures are set out below.
- **Be converted to community property** – procedures will be similar to those applying to consolidation of lots.
- **Be severed from the scheme**¹² – a severance application by the owner of the community lot will require:
 - A restructure of the unit entitlements of the schemes affected – the scheme and any schemes of which it is a subsidiary.
 - A plan illustrating the new community parcel. The consent of WAPC must be endorsed on the plan.
 - Possibly a variation of the Management Statement.
 - A plan identifying the severed lot as a lot in a deposited plan. The consent of WAPC must be endorsed on the plan.
 - Consent of (i) the community corporation by special resolution to a variation of the community development statement; OR alternatively, (ii) the endorsement by a SAT order confirming that the severance is in the interests of the existing owners within the scheme and may occur notwithstanding the provisions of the community development statement. The order may need to take into account whether the

¹²A community lot may be severed from a community scheme. A secondary community lot may be severed from the secondary scheme and community scheme upon application by the owner of the lot and the relevant owners corporations. Replacement sheets of the relevant plans and schedules of unit entitlement are required. The plan to sever the land is a deposited plan defining the new identity of the severed lot. It must be approved by WAPC. Upon registration, the land ceases to be a community lot or secondary community lot and becomes a lot in the deposited plan. As an alternative to consent by the owners corporations, the SAT may grant an order for severance or termination.

severed lot continues to be bound by or benefit from the existing development approval.

The consent of the community corporation to the new plans will not be required (except as stated) if the action is endorsed by WAPC. Its consent to an amendment of the Community Development Statement may be required.

In general terms, the unit entitlement of the former community development lot is apportioned among the new lots. There is ongoing discussion with stakeholders as to whether a revised schedule of unit entitlements should be provided in the legislation. Stakeholders are familiar with the progressive restructuring of unit entitlement currently applying to the staged development of strata schemes. However, it is generally disclosed at the outset before the stages are constructed. This revised schedule will be particularly relevant where common property is created by community plans of re-subdivision or changes in land use occur throughout the development, as this may not be anticipated by the valuer preparing unit entitlements at the outset. This is discussed further below.

The proposed law will also address the following developer-initiated changes during the development period:

- **Adding land to a community title scheme** – it is possible that land that was not able to form part of the consolidated green title lot at the time of subdivision approval of the community plan [because for example a required signature or registration process is outstanding] may subsequently be added to the community parcel as a community lot, community development lot or community property. If the addition is disclosed in the Development Statement and the new Plan consolidating the adjoining land within the community parcel is approved by WAPC, certifying that it is consistent with the Development Statement, then the consent of the community association will not be required.
- **Amending the Development Statement** – the Development Statement is a critical document, impacting the rights of the developer and purchasers into the scheme and also impacting the subdivision and development decision-makers, lot valuations, the allocation of unit entitlements etc. There will be occasions where amendment is required and impacts will be significant. The topic is considered in more detail below.
- **Amending the Service Diagram** – see detail below concerning the use of the service diagram as a tool for creating implied easements.

4.3 Common property

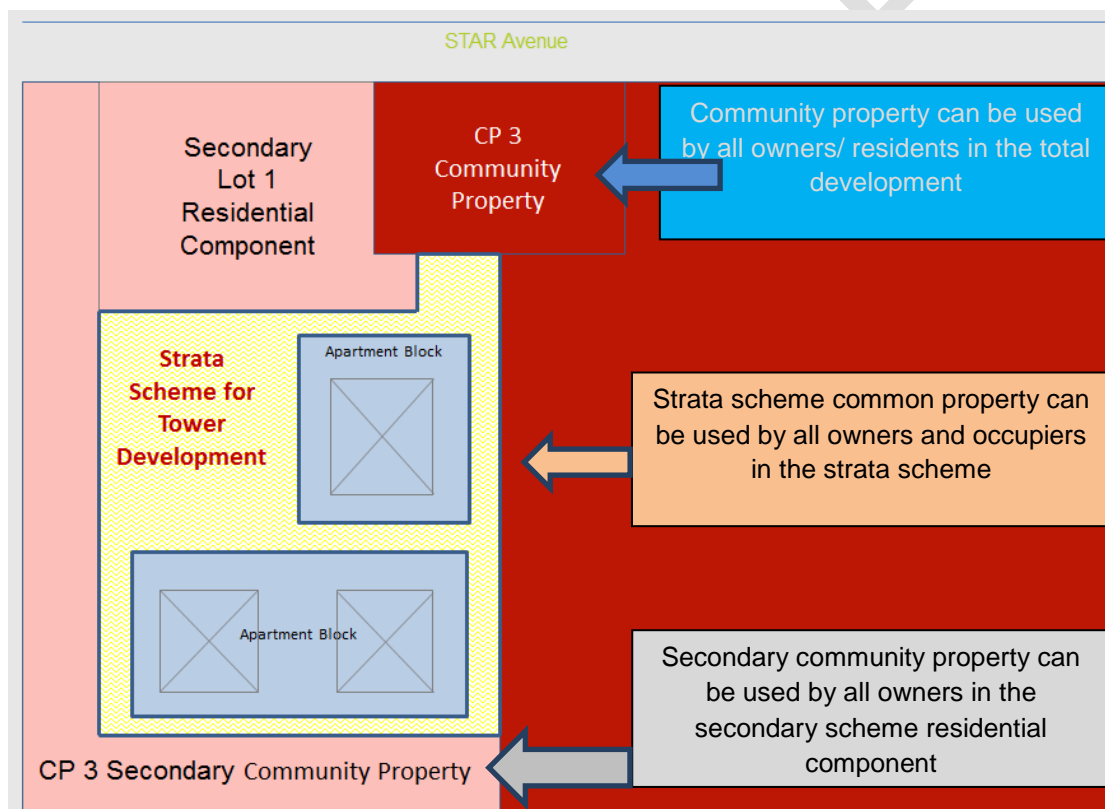
Stakeholders have indicated that optimal flexibility will be retained if common property is optional at all levels of a community scheme. This contrasts with other States, where common property is generally a fundamental part of community titles. The lack of common property means that some developments may be similar in appearance to green title developments and this could confuse buyers. This will require attention in the vendor disclosure provisions. It is expected that titles for lots in a community scheme and in

subsidiary schemes will indicate that the land is within a community scheme and a secondary community scheme (see sample titles in *Appendix C* and *Appendix D*].

Some confusion has arisen during consultation meetings concerning the right to use common property. It is intended that:

- “Community property” may be used by the owners/ occupiers of all community lots and the owners/ occupiers of lots in subsidiary schemes subdividing community lots.
- Secondary community property created within a secondary community scheme can be used by the owners/ occupiers of the second-tier development lots and any subsidiary scheme created by subdividing secondary community lots. It cannot be used by other owners of community lots or by the subsidiary schemes created by subdividing other community lots.
- Strata or survey-strata common property created where a strata or survey-strata plan divides a community lot or secondary community lot may be used by the owners/ occupiers of the strata/ survey-strata lots but not by any other scheme in the development (unless contractual rights are created).

Figure 12: Who can use common facilities?



4.4 Planning and Subdivision Issues

In undertaking long-term developments, key issues include:

- Obtaining subdivision and development certainty for the whole or a substantial part of the intended development period.

- Capacity for developers and planners to respond to changing planning and development contexts and variable markets, so developments are able to be completed in a timely way.
- Undertaking ongoing stages of a development without major conflicts between the developer and the Community Corporation, by having clear statements of where the developer requires the consent of the corporation.
- The developer is able to provide some binding promises to residents of what will be developed over the life of the scheme:
 - Purchasers of lots in the scheme will have some indication of what will happen during the course of the development.
 - Purchasers should understand what development actions can be compelled and which actions may not eventuate.
 - The focus is not on providing a guarantee that all facets of the development will be completed but on providing clarity to consumers of what is warranted and what is optional.

It is important that the interface between planning, subdivision and plan registration systems is appropriately addressed before the legislation is drafted, to simplify eventual implementation. Landgate is actively consulting the Department of Planning [DoP], to assist DoP to develop an appropriate response to the concepts, including amendments to planning policies where required, to support the implementation of large, long-term developments of the nature envisaged by the concepts and to clarify impacts on the existing delegation arrangements with local government.

It is expected that community plans proposing surveyed lots will be processed under sections 22-27 of the STA in a similar fashion to survey-strata plans. However, it is acknowledged that existing application processes that are effective for survey-strata plans may require fine-tuning to deal with proposals of a larger scale and longer duration anticipated in community title schemes. It is likely that the decision-maker will require a large community scheme to have a structure plan. Landgate is reviewing with DoP the relationship between structure planning and the new Development Statement described in this Paper. Discussions will address whether, in addition to having similar content to a Structure Plan, the Development Statement should be given some of the status and effect of a Structure Plan, or if it will simply be a consumer protection instrument [not binding on the decision-maker but having components enforceable by early purchasers].

As a guide:

- A proposed Development Statement must accompany the proposed community plan when it lodged with WAPC for consideration.
- The Commission will review and approve the Development Statement, if consistent with relevant planning policies, practices and intentions.

- At the time of signing the subdivision approval for the community plan, the Commission will sign the Development Statement, certifying that the subdivision proposal is not inconsistent with the current planning scheme.¹³
- The Commission will have discretion to give the subdivision approval an extended validity period. The expiry date of the subdivision approval will be set out in the Development Statement. The Development Statement is thus effective during the validity period.
- The registered Community Development Statement will be binding on subdivision and development decision-makers during the validity period.
- Where during the validity period:
 - A plan for a subsidiary scheme is presented for subdivision approval;
 - A community plan of re-subdivision of a community development lot is presented for subdivision approval; or
 - A DA is lodged for approval to develop a subsidiary scheme,

then the application shall be endorsed by the decision-maker as being consistent with the Development Statement.

- Where during the validity period an application is lodged that is not consistent with the registered Development Statement, the decision-maker may require a new Development Statement [or a variation of the registered Development Statement] to be registered.
- If the planning scheme is amended or replaced during the validity period, it will have no effect on the Development Statement, as existing rights continue until the end of the validity period.
- If after expiry of the validity period, the subdivision has not been carried out or the development is not substantially commenced, a new approval will be required. The question of the consent of the community association to the registration of the new or amended Development Statement is addressed below.

Subdivision Approval

Consistent with established practice, community plans defining lots by survey will require WAPC subdivision approval,¹⁴ similar to survey-strata plans.¹⁵ As described above, the corresponding Community Development Statement will also require WAPC approval.

¹³ DoP is also considering if the Development Statement, once approved by WAPC: (i) should be a GUIDE to approving authorities in considering the various downstream stages of development; (ii) should BIND approving authorities during the development period.

¹⁴ Section 5B provides that a strata or survey-strata plan lodged for registration shall be accompanied by a certificate by the WAPC (i) for a strata plan, if required under section 25(10) and (ii) for a survey strata plan, under section 25B(2). Section 25(1) provides that every strata plan/ re-subdivision/ consolidation for a strata scheme shall be accompanied by a

Where a community scheme is underway, a community lot may be subdivided by a Secondary Community Plan. Secondary community plans are also expected to require WAPC subdivision approval. Although lodgment of a Secondary Community Development Statement will be optional, if there is insufficient detail in the approved Community Development Statement to address development details in the secondary scheme, WAPC may call for a Secondary Community Development Statement addressing issues in the secondary scheme.

The final layer of development, the strata plans and survey strata plans, will be processed according to existing principles in the Act. These require WAPC approval in the case of survey-strata plans, and typically (built) strata plans are delegated to the local government for approval.¹⁶

Possible consequential amendments to strengthen land tenure and planning interface include:

- Giving WAPC the discretion to allow a longer period in which the subdivision approval of a community plan will be valid.
- Recognising the power of the Commission to impose conditions on the subdivision approval. Conditions may relate to any aspect of the planning and development of the site; for example, access, the provision of infrastructure and utilities, provision of shared facilities, landscaping etc.
- Permitting the Commission to:
 - impose a condition requiring specific provisions, standards, additional detail or clarity to be inserted into the Community Development Statement;
 - require the developer, in the Community Development Statement, to set out or follow a particular sequence in which various stages of the development will be implemented.
 - require the developer to specify in the Development Statement when infrastructure, shared facilities and services will be constructed or landscaping completed as part of the sequencing of the development;
 - require the subdivision and development to be undertaken in accordance with the Community Development Statement;¹⁷
 - to take into account the need for public access to or across some or all parts of the community property;
 - Assess an appropriate allocation for or contribution to public open space or other facilities or amenities ordinarily required, consistent with established planning policies and practices, and the development of that land to an appropriate standard, in addition to whatever private open space or amenities may be proposed.

certificate given by WAPC unless exempted by regulation. This application is required prior to construction of the building unless WAPC agrees otherwise

¹⁵ Section 5B(1) requires a strata plan to be accompanied by a certificate where required under section 25(1) and in the case of a survey-strata plan, under section 25B(2). Section 25B confirms that survey strata plans require approval by the WAPC. Every survey strata plan/ re-subdivision/ consolidation shall have endorsed on it a statement that the approval of the Commission required under section 25B(1) has been granted. Section 135 of the Planning and Development Act prohibits subdivision without WAPC approval. See Section 162.

¹⁶ See WAPC (December 2013) Planning Bulletin 110/2013 – Guidance on the processing of built strata title applications

¹⁷ This is relevant where the Development Statement does not bind the approving authorities

Consultation with planning agencies has identified that it is desirable that the legislation introducing community title tenure provide clarity on situations where such arrangements may be approved, to ensure a clear distinction is maintained between community title schemes and strata/ survey-strata schemes. Some potential restrictions are as follows:

- A community title scheme should not be proposed where conventional or other land tenure arrangements would be preferable or necessary in order to achieve planning and development outcomes.
- Community title schemes should only be approved where the intention is to create multiple management levels where a single strata scheme with one management level is ineffective.
- A community lot will not be used for the construction of a single dwelling.
- It is expected that the final tier of development of community lots will be a number of strata schemes and/ or survey-strata schemes, which will provide for lots for separate use and disposition, such as dwellings, shops, office and industrial units.
- Community title schemes may not include green title lots, although they may cede land for public purposes, road or reserves etc.

Development approval

Development approval will usually be obtained following subdivision approval. In relation to the initial Community Plan, stakeholders have indicated that some will obtain a development approval for the complete development at the outset, in order to obtain a level of certainty about the whole development cycle. In some circumstances, especially for large-scale or more complex projects, it may be appropriate to obtain the approval on a stage by stage basis. It is expected that the decision-maker can only grant development approval to the extent of the disclosure in the Community Development Statement.¹⁸

These issues are still being addressed and the outcome will determine to what extent the Community Development Statement should operate as a binding contract between the developer and purchasers into the scheme.

Sale of Community Lots

Once the community plan has been endorsed by WAPC,¹⁹ registered by Landgate and titles for community lots and community development lots issued, the original developer may choose to on-sell one or more of the community lots or community development lots to another developer. The incoming developer will then be bound by the binding parts of the Community Development Statement and will have the benefits of the existing development approval.

Consumer protection

Stakeholders have been requested to find a balance between the need for developers undertaking a long-term development to have some flexibility to adapt to changing market conditions and the need for initial purchasers into the scheme to have a level of certainty about benefits and obligations arising from participating in the development. Some

¹⁸ Development approval expires after 2 years unless there has been 'substantial commencement' of the project. Subdivision approval is generally current for 3-4 years, after which it expires.

¹⁹ After conditions of approval have been fulfilled, in a similar process to that for conventional subdivision

safeguards have been requested by stakeholders, by setting up a disclosure regime in the initial documentation lodged with the Community Plan. Others claim that the rights of proprietors in community title schemes to limit or control the development options on property within the scheme should be equivalent to the rights of green title owners.²⁰

Some have raised the concern that, by facilitating large long-term developments, the legislation will expose consumers to increased risk of buying into a scheme that is not completed in a timely way. This necessitates, some claim, a tight contractual arrangement that requires developers to set out the full details of the proposed development in advance and ensures developers are tied to the development until the final building is completed. Some respond that a tight contractual arrangement increases the risk of incomplete developments, especially if the initial development concept becomes non-viable as a result of market movements, adversely affecting early purchasers who may as a result never receive promised shared facilities.

Various approaches to consumer protection have been considered in previous versions of the discussion paper, including:

- Making disclosure of the detail of the development compulsory.
- Permitting disclosure that is non-binding.
- Removing the need for any disclosure to buyers into the scheme.

The options will not be repeated in this version. The reforms will seek to implement the following features:

- Provide a subdivision, development approval and titling framework that permits community schemes to be implemented in manageable, discrete stages, subject to conditions imposed by decision-maker.
- Provide developers with a degree of certainty that long-term developments can be carried through to completion, which in turn permits developers to provide a level of certainty to initial purchasers into the scheme.
- Permit the original proprietor to sell community lots or community development lots to another developer who is subject to the same contractual arrangements and the same flexibilities.
- Provide clarity to buyers of what construction is “guaranteed” and what is optional, at the discretion of the developer.

It can be seen from the above discussions that:

- The Community Development Statement is a critical document from the perspective of consumer awareness.
- The role of the Community Development Statement is still uncertain. However, it will either:
 - Operate as a form of planning instrument i.e. have status and effect for the purpose of decision-making as well as implementation and governance of the community title scheme; or

²⁰ Subject to the capacity of proprietors in community schemes to adequately protect themselves by public liability insurance.

- Form a contract between developer and consumer.

Landgate has taken into account the disclosure regime operating in some other states. It should be noted that no State provides a model that is easily transferable to WA. *Appendix B* contains a Table providing a guide to approaches in four States.

The Community Development Statement will contain the prescribed information and be in a format approved by the Registrar of Titles. The specific contents of the development statement are still under review.

The approved form of development statement is expected to provide for:

- **Compulsory information** – this may include:
 - Information, warnings and notices to be prescribed.²¹
 - Provisions required by an approving authority as part of the development approval process.
- **Optional information.** This includes:
 - *Warranted developments* - This describes development aspects to be delivered by the developer. Inclusion is optional but, if included, the commitments are binding on the developer to undertake and on proprietors to permit.
 - *Authorised proposals* - This item lists potential developments, or ‘permissible development options.’ The developer is authorised but cannot be compelled to carry them out. Although the developer has the choice of whether to carry out the authorised development items, the proprietors/ community corporation cannot prevent the developer from carrying them out.
 - *Table of contributions that will operate during the development period* – the aim is to provide some flexibility to the developer to reduce contributions to the maintenance of shared facilities during the development period. In relation to strata schemes, there is currently power to include in a Management Statement a section 42B by-law that provides a basis for levying contributions other than in accordance with unit entitlement. A “contribution schedule” included in the Community Development Statement (i) will operate as a section 42B by-law, and (ii) will only apply during the development period. Section 42B will also apply to Community Management Statements.²²

²¹ These may include: (i) a statement alerting buyers that the authorised proposals may not be completed; (ii) a statement of the impact of the community development statement on WAPC and local government; (iii) the period of validity of the subdivision approval; (iv) a certificate by WAPC that the contents are consistent with planning instruments at the date of approval of the subdivision plan; (v) subdivision conditions required by WAPC.

²² Although this may seem to benefit the developer at the expense of the early consumers by permitting the developer to avoid contributions to the maintenance of common facilities, it should be recognised that permitting the developer to reduce contributions that would otherwise be payable on the unit entitlement attributable to ownership of the balance of the community lots and development lots, encourages the developer to construct and provide shared facilities up front, with the initial development, in order to improve marketability. To the extent that developer-funded facilities are provided at the outset, the risk to consumers of non-performance is reduced. The NSW paper comments [at page 5]:

“In some instances the arrangement may be appropriate. Construction of community facilities may be intended to be carried out at a later stage of the development keeping the community expenses to a minimum during the early stage

To provide sufficient flexibility for planning long-term community title schemes, it is suggested that the legislation specifically empower the developer to include in the warranted developments or authorised proposals the following powers:

- *Power to add adjoining land into the community title scheme as a development lot or as community property.* This could occur for example where the purchase of land intended to form part of the scheme has not been completed at the date of lodgment of the community plan.²³ Such a provision will be binding on the community association to permit but will not be binding on the approving authority to approve.
- *Power to create additional community property* – this could occur where a community development lot is subdivided and where a later stage requires additional community property in the form of access to future stages.²⁴

The effect of disclosure in the Community Development Statement will be to dispense with the need for the consent of the Community Corporation [see section 18 of the STA for existing provisions].

The disclosure of warranted developments and authorised proposals outlined above is similar to that applying in staged strata developments in NSW. The extent of disclosure in NSW is controlled by the developer, who will consider at the outset how to balance the needs for flexibility and marketability. In the NSW commentary on the strata and community titles laws, Bugden and Allen²⁵ comment on this approach:

“In preparing a development [statement] it is important for the developer to strike an appropriate balance between warranted developments and authorised proposals. A contract that contains little or no warranted developments and mostly authorised proposals, although providing maximum flexibility for the developer, may well prove to be unmarketable, as purchasers will understand that the developer cannot be compelled to carry out authorised proposals. Conversely, a contract that contains substantially warranted developments ... may pose unacceptable risks for the developer and result in later attempts by the developer to amend the development contract.”

In a recent paper evaluating the community titles legislation,²⁶ LPI commented on the issue of balancing the warranted developments and authorised proposals. It noted:²⁷

of the development. In some schemes, however, extensive community facilities may have been provided at the outset. In such a case the developer will be responsible for payment of a disproportionate amount of the expenses for, possibly, many years until a larger proportion of the scheme is complete.” See “Preview of Proposed Changes to the Community Land Development Act”, Land and Property Information Sydney, NSW, presented to the Australian College of Community Title Lawyers, 2012

²³ This power is proposed to be added to the NSW community title laws

²⁴ This will avoid the problem encountered in NSW where the later common property is created within a subsidiary scheme and then the subsidiary scheme grants exclusive use to the community corporation.

²⁵ Paragraph 2-930 Strata Development Contract, in the CCH NSW Strata and Community Titles Commentary, Bugden and Allen [Bugden and Allen]

²⁶ “Preview of Proposed Changes to the Community Land Development Act”, Land and Property Information Sydney, NSW, presented to the Australian College of Community Title Lawyers, 2012

²⁷ “Preview of Proposed Changes to the Community Land Development Act”, Land and Property Information Sydney, NSW, presented to the Australian College of Community Title Lawyers, 2012, at page 4

“It is proposed to formalise the current provisions [in the community title law] so that they mirror the strata legislation and require the developer to classify proposals as either “warranted development” or “authorised proposals.”

“It is not proposed that the legislation will require a developer to provide any specific amount of warranted development or authorised proposals. The development contract could be comprised completely of warranted development, completely of authorised proposals, or a combination of both. The degree of binding promises that a developer will need to give will depend on market forces. On this basis, the more warranted disclosures that are made the easier it will be to sell lots in the early stages of the development and the higher the selling price will be.”

Amending a registered Development Statement

Once a Community Development Statement has been registered, it will affect various aspects of implementation of community developments. DoP is considering making the content of the development statement binding on subdivision and development decision-makers. If so, any deviation from the development statement will require an amendment to be registered. It may be appropriate in such circumstances to require the consent of the community corporation to the amendment.

4.5 Management of community schemes

Various aspects of the management of community title schemes need to be considered:

Management provisions to mirror those currently in the Act

A Community Corporation incorporated upon registration of a community plan will be a similar entity to a “Strata Company” under the existing Act, with similar functions and procedures. Its name will be “Community Corporation ...” [insert the number of the community plan].²⁸ The “members” of the community corporation will be:

- The proprietors of the community lots and community development lots.²⁹
- Where a community lot has been subdivided by a subsidiary scheme, the owners corporation for the subsidiary scheme. The subsidiary scheme may be:
 - A secondary community scheme.
 - A strata scheme.
 - A survey strata scheme.

Each “member” may:

- Vote in Community Corporation meetings. Subsidiary owners corporations are expected to appoint a representative to vote in meetings of the Community Corporation, on specific agenda items as directed.
- Contribute to Community Corporation costs according to the unit entitlement of the community development lot owned/ subdivided by a subsidiary scheme.

²⁸ See section 32 STA – a body corporate with perpetual succession

²⁹ Note the approach in South Australia where the owners of development lots are excluded from membership of the community corporation and therefore cannot vote at meetings.

Subsidiary Schemes

Subsidiary schemes are expected to have their own management statements and these must be consistent with the community management statement.³⁰

Subsidiary schemes will participate in meetings of the community corporation and will pay contributions levied by the community corporation on its members as per current Strata Titles Act processes applying to proprietors. Unit entitlement will be used to define contributions to costs,³¹ voting value etc.

Council of proprietors

A community scheme will have a council of members. The existing STA Schedule 1 by-law 4 permits the council to include 3-7 members. It has been found in NSW community schemes that this number is inadequate in some cases. The amendments should require the Management Statement to set out appropriate governance processes for the community, including ensuring the number of council members permits adequate representation of its members.

Management Statement sets out by-laws

The concept of the Management Statement empowers the developer to design at the outset an appropriate management regime for the total development, with appropriate by-laws, operating guidelines, maintenance schedules and cost-sharing for common facilities, etc. The Schedule 1 and Schedule 2 by-laws will apply but may be modified or excluded by the Management Statement, as per existing processes.

This approach requires the Management Statement to be drafted thoughtfully, as there are limitations on the power of the strata company to subsequently change the original by-laws. This approach is preferred to the option of prescribing various model by-laws for a range of development options. It is recognised that care taken at the outset to formulate operating procedures may reduce downstream disputes among owners/ occupants.

The Community Management Statement will contain by-laws for the management of the complete scheme, the use of community property areas etc. It may address for example building security, access, use of loading docks, maintenance of the common areas and shared facilities. If any services (lifts, road, parking etc.) service only the retail and/or residential components, exclusive use may be given to those development lots.³²

The Management Statement may also contain guidance on sequencing meetings of the community corporation with subsidiary owners corporations and internal dispute resolution processes.³³

³⁰ NSW legislation confirms that if the management statement of a subsidiary scheme is contradictory to the community management statement, then the community management statement prevails. This adds some protection, for example, where community development lots are sold and another developer wants to change an established theme in the community management statement.

³¹ Subject to section 42B by-laws

³² The concept of "restricted property" in the NSW community titles legislation may be followed, permitting (i) rights to be granted to groups of owners/ occupiers and (ii) different groups having different rights at different periods of the day.

³³ The issue with sequencing is that the Act specifies in section 49 that within 3 months after the registration of the strata/ survey-strata plan, the original proprietor ... shall ... convene and hold a meeting. See also Schedule 1 By-law 11(1) requiring general meetings of the strata company to be held not more than 15 months from the date of the last annual general

It is expected that the proposed legislation will include changes to by-law provisions:

- Section 42(2a) currently requires new by-laws to be designated as Schedule 1 or Schedule 2 by-laws. This may be relaxed for community management statements.
- Schedule 1 and 2 will be amended to apply to community corporations and subsidiary community corporations.
- A new Schedule 2B or equivalent will highlight possible specific items that may be addressed in a Community Management Statement. These may include for example:
 - Schedule 1 By-law 4(3) will in its application to community schemes permit the Community Management Statement to allow for more than 7 members to be appointed to a council of members/ proprietors.
 - Schedule 1 By-law 11(5) may be amended by the Management Statement to allow the 14-day notice of meeting to be revised, to permit the proper sequencing of meetings for the community corporation and its subsidiaries.
 - How voting etc. is to take place if attendance need not be in person.
 - The creation of Restricted Property by-laws.
 - Access rights requested by service providers.
- In recognition of the introduction of Community Development Statements, Clause 8 of Schedule 2A will be removed and placed in a new schedule that makes specific provision for Development Statements.

Engaging a strata manager

The introduction of community schemes for land and building developments and other reforms discussed in this Paper add novel concepts to the Act. Since there is potential for more complex management issues, it is recognised that there is increased potential for engaging strata managers to manage community schemes. The separate discussion paper on strata managers may include express recognition of the right to enter into contracts with strata managers, require strata managers to maintain trust accounts, etc.

Insurance and liability

The laws will require the Community Corporation and subsidiary owners corporations to take out the usual insurance and public liability cover. Although the Act currently includes a minimum level of public liability cover, this applies to non-community schemes. In some larger developments, owners corporations may be misled by a minimum insurance requirement and inadvertently take out inadequate cover (the minimum cover), whereas in a mixed use development containing commercial and retail outlets, for example, a much higher amount of cover may be appropriate. Stakeholders are giving consideration to whether a separate minimum level should be prescribed for community schemes, with the requirement for schemes to take out insurance at an appropriate level in excess of the minimum, or if reference to a minimum level of cover should be removed from the Act, as in

meeting. This level of prescription may not permit subsidiary schemes to schedule their meetings after the notice of a meeting of the community corporation but before the meeting is conducted.

other states. Given the range and size of intended developments, the latter approach is preferred.

Insurance in a community scheme

The impact of insurance liability in a community scheme with multiple management levels is being evaluated. Stakeholder input is requested, to ensure consensus on the potential liability of subsidiary owners' corporations and individual proprietors in community schemes. It is expected that, if the community corporation becomes liable for an event on community property, its members become jointly liable. In this situation, liability of the Community Corporation cascades to its member owners corporations in subsidiary schemes. In this context, the liability of each individual owner may not be limited by the unit entitlement of the owner's lot or its capital value. The impact of unlimited liability of subsidiary schemes needs to be examined and if possible a level of protection should be provided.

Some options for evaluation include:

- *limiting liability of the owners corporations* – stakeholders have not been able to provide a mechanism to achieve this.
- *ensuring subsidiary owners corporations can protect themselves adequately by appropriate insurance.* For example, the Act could expressly empower subsidiary owners corporations and strata companies to take out their own public liability cover to protect against liability flowing from events on community property (to cover the risk of inadequate insurance by the community corporation). Some may object to multiple insurance policies and increased costs, but the benefits may outweigh the cost.

Some public liability policies currently used in WA may limit the strata owner's public liability cover to events occurring on the proprietor's lot and not offer the individual proprietor protection against accidents occurring elsewhere in the building or scheme, even though the proprietor is part-owner of the building (as common property). This may leave the proprietor exposed in the event that the community corporation or strata company does not have adequate cover.

Approving authorities to be able to insert by-laws in Management Statement

Initial consultations have suggested the laws will be enhanced by permitting an approving authority or public utility to include in the management statement a restriction on use of lots within the scheme or a positive covenant binding on owners of lots. For example, these may address:

- noise buffering between lots.
- management of parking as a condition of parking concessions approval.
- a restriction prohibiting short-term stay or certain commercial uses.
- a requirement for the maintenance of community property.
- approving authority notices to proprietors in the scheme. Some local governments already use section 70A of the Transfer of Land Act 1893 for this purpose;³⁴ however, this approach is not appropriate if the notice is simply to alert the owner of land about an approved use on adjoining land.

³⁴ See also *Planning and Development Act, section 165*

- A service provider's need for a specific by-law or positive covenant requiring the community corporation to maintain private service pipes crossing land within the community scheme to which the provider's sub-meters are attached. This may reduce later disputes about who owns the pipes and who is responsible for maintenance. Rights of access for the purpose of reading meters etc. may be provided for.
- Easement rights under the statutory easement for services [see later] – to clarify or expand the rights.
- A possible limit on the number of occupants of lots.

If the intention of such restrictions imposed by approving authorities and utility providers is to bind, for example, the original developer and subsequent developers buying community lots or development lots from the original developer, this could be achieved by inserting the condition in the Development Statement. If the intention is to bind the community corporation and residents, it is appropriate to insert the requirement into the Management Statement. The reform may require any proposed amendment of such a by-law to be approved by the relevant authority.

By-laws set out in the Management Statement are intended to apply to owners within the scheme after the development period is completed. Conditions set out in the Development Statement are intended to bind the developer during the development period.

Disputes

The jurisdiction of the SAT will extend to disputes in community title schemes. It is expected that the accompanying management/ dispute reforms will simplify and streamline the dispute resolution provisions of the Strata Titles Act.

Utilities for community schemes

Various issues arise in relation to the provision and operation of utilities. These include:

- **Staged installation of services that will be sufficiently large to cope with the total development, not just the first stage** - the disclosure of the use and density³⁵ of development lots at the outset will be important to service providers. This will permit them to reduce problems by ensuring that the capacity of services provided at the outset is adequate to support subsidiary schemes. In relation to gas supply, Atco takes a flexible approach to the provision of services and meters, but consultation with Atco at the outset of a development is beneficial.
- **Services installed within community property and across lots** - issues include procedures for providing services, water mains, gas, electricity and meters in more complex schemes where large development lots do not have public road frontage. In relation to water supply, this is a challenge under existing policies and may require a form of "services corridor" to be considered.
- **The use of conventional easements and expanding the availability of implied easements** - The STA provides implied easements for services as between the

³⁵ The Water Corp will have access to the R-Codes and maximum density permitted by the zoning framework, but this may not be the developer's intention

proprietors of strata lots in relation to services already installed at the time of registration of the plan and this in effect reduces formality in creating and defining easements. This provides flexibility but at the cost of certainty. Services could be quite complex in a major staged or layered development. It will be important for purchasers / owners of lots in subsidiary schemes to know if service pipes cross their lots, so they are not damaged by construction and to ensure that access is not restricted. Buyers should be on notice of potential inconvenience occurring if access is required to their lots for the purposes of repair or maintenance. A similar approach in WA would require a service diagram to be lodged as part of the community plan or more preferably as part of the application to register the plan.

- **Providing a clear understanding for who is responsible for the maintenance of the service lines and meters etc.** - service providers indicate that confusion arises in current strata developments. This may be reduced by a clear statement of rights and duties in the Management Statement.
- **Providing access across scheme land for repairs and maintenance** – service providers may require an express right for access to maintain and repair to be set out in the Management Statement.
- **Effective metering of and billing for utilities** - For layered schemes incorporating a residential component, the use of a single meter for a whole strata scheme also needs to be minimised, although there is currently no prohibition on such an approach. The issue of using sub-meters in secondary community schemes needs to be considered and, where possible, the potential for sub-sub-meters in strata and survey strata schemes that comprise the third level of management needs to be reduced. The Water Corp will read the scheme's master meter and the lowest level of sub-meter only.
- **Clarity for purchasers of lots in subsidiary schemes** so they know where community scheme easements affect their lots.

The use of Smart Meters in large schemes where access is a problem needs to be reviewed by developers in consultation with the service provider. There is more flexibility in relation to wastewater drainage, as services and junctions can be installed within easements. Access to read meters and to repair utility property situated within a large scheme remains an issue.

Landgate is meeting with the providers of utilities as part of the consultation process.

The NSW experience – service diagrams

The NSW community title legislation requires that a sketch/ plan of the location of existing and proposed services within the community scheme be set out in the management statement. Section 36 of the Community Land Development Act 1989 [NSW] provides for statutory easements. It is triggered by lodgment of a service diagram as part of the Management Statement. This may cater for two possibilities:

- *Existing services* - If a service line is installed as part of the scheme at the time of registration of the management statement and is illustrated in the service diagram, the statutory easement operates from the time of registration of the plan.
- *Proposed services* – where the service is not yet installed, it may be illustrated as “proposed.” The easement will come into existence upon installation of the service and registration of a notice on the community plan that the service has now been installed within the location specified in the Management Statement. If the service is installed in another location, the implied easement does not come into being unless the community association by resolution without dissent agrees to registration of an amendment of the service diagram.

The statutory easement provisions will not prevent the use of the automatic easements to be created under section 5B of the STA or section 136A of the TLA and identified in the plan.

4.6 Valuation concepts

Valuation for unit entitlement

Valuation for community plans may follow existing procedures for survey strata plans. Section 5B of the Strata Titles Act requires that a strata plan or survey strata plan be accompanied by a certificate issued by a licensed valuer. It will certify that the unit entitlement of each lot reflects the value of the lot as a proportion of the aggregate value, plus or minus 5%.

Section 14 (2a) indicates that capital value is used for strata schemes and site value for survey-strata schemes. Applying site value for community plans removes difficulties if one of the community lots has been developed before plan lodgement. The unit entitlement of the community lot determines the vote value and contributions of the subsidiary association dividing the lot. The value of community lots and development lots is likely to be affected by the content of the Development Statement disclosing future intentions (the intended use of the lots etc. is relevant) and the Community Management Statement (indicating facilities available or restrictions on the enjoyment of lots, impact of a grant of exclusive use, etc).

Valuation for rating and tax purposes

This will follow existing concepts in the Strata Titles Act applicable to survey-strata schemes. Section 62 providing for rating on unimproved value should apply to community lots and development lots. The procedure is different to that applying to strata plans.³⁶ Each lot in a survey-strata plan is valued; however, the lots that are designated as common property are not liable to rates and taxes. Where part only of a lot is liable to a rate, the Valuer General (VG) will use the rental value of the lot to apportion liability of the part lot.

Valuation to consider obligations of lot proprietors

The situation is now arising in NSW community developments where the local government may support or encourage the use of community title schemes that include extensive community property for private access, private open space or recreational facilities. Query if some provision should be made for the local government to approve a rate reduction where

³⁶ In a strata plan the VG values the whole strata parcel as a single lot and then apportions value for rating each lot according to the unit entitlement set in the schedule of unit entitlements. The strata company is not liable for council rates.

its services within the community titles scheme are thereby reduced. Alternatively, the Valuer General could be specifically authorised to apply a discount to valuations for rating purposes because the owners within the scheme pay for services that are in other developments normally provided by the local government.

Building valuation for insurance

The Act currently does not require compulsory re-valuations of the building for the purpose of updating the building insurance policy. There have been some suggestions that this should be amended to require a new valuation every five years.

4.7 Title Aspects

The existing Strata Plan and Survey Strata Plan forms will be adapted for community schemes. Plans for community schemes will upon lodgment in Landgate simply take the next available Strata Plan number.

Community plans of re-subdivision will continue to apply existing concepts of replacement sheets.

Lot numbering will continue the existing convention, with each plan [including subsidiary plans] starting from lot 1; however, the Registrar of Titles will have a discretion to accept an alternate lot numbering system where appropriate to the development. Community property will be appropriately designated, using the CP prefix [or CCP for abundant clarity].

As part of the review of implementation aspects of the proposed laws, some consideration was given to vesting the community and secondary community property in the relevant owners corporation as trustee for its members and issuing a certificate of title for common property.³⁷ However, to date, stakeholders have not found that the advantages outweigh the disadvantages and so the status quo is preferred.

Titles for lots in strata and survey-strata schemes that are subsidiary schemes will be endorsed in the second schedule to the effect that the land forms part of a community scheme, appropriately cross-referenced. The first schedule of the titles will also refer to ownership of a share of common property in the strata/ survey-strata scheme and a share of the community property.

Section 29(2) and (3) of the South Australian Community Titles Act 1996 may provide a suitable model for the WA law clarifying the ownership of community property etc.:

(2) If a primary parcel has been divided into primary and secondary lots or primary, secondary and tertiary lots, the common property of the primary parcel is vested in fee simple as tenants in common in the owners for the time being of the primary and secondary lots or the primary, secondary and tertiary lots in shares proportionate to the unit entitlements of their respective lots.

³⁷ This had some attraction in simplifying the preparation of certificates of title for lots. For example, a certificate of title for a lot in a strata plan that is the final management tier of a layered scheme would include in the first schedule reference to a part share of (i) common property in the strata plan; (ii) secondary community property if relevant; and (iii) a share of the community property. If the common property in the community and second-tier schemes vests in the relevant strata company then the titles will be simpler.

(3) If a secondary parcel has been divided into secondary and tertiary lots, the common property of the secondary parcel is vested in fee simple as tenants in common in the owners for the time being of the secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.³⁸

The existence of the Community Management Statement and the Community Development Statement will not be endorsed on titles, as they will be displayed on the relevant plan form. Sample titles are set out in *Appendix C* and *Appendix D*.

4.8 Making changes to an established community

The following types of change may affect community schemes after the development is completed:

- **Termination of community title schemes** – the Strata Titles Act provides two processes for terminating schemes:
 - sections 29C-31 - Termination by the strata company upon unanimous resolution
 - Court order by upon application by a proprietor etc. – section 31.

Similar provisions will apply to community title schemes. However, these will include the following concepts:

- A community corporation may by special resolution decide to terminate the community scheme where all subsidiary schemes have already been terminated.
- A secondary community scheme may decide by special resolution to (i) terminate where all its subsidiary associations have been terminated; or (ii) to amalgamate with another secondary community scheme.
- A strata company that is a subsidiary scheme may decide to terminate. Alternatively it may resolve by special resolution to amalgamate with another strata scheme that is a subsidiary scheme in the same community or secondary community scheme.
- A survey-strata company that is a subsidiary scheme may decide to terminate. Alternatively it may resolve by special resolution to amalgamate with another survey-strata scheme that is a subsidiary scheme in the same community or secondary community scheme.

The termination provisions of the STA are being reviewed in a separate discussion paper and these concepts may be considered as part of that review of termination provisions.

- **Reducing management levels** – the issue has been raised of whether community schemes will generate developments that are unduly complicated by unnecessary levels of management. This may occur in the initial years of implementation, where stakeholders are coming to grips with the development flexibilities. However, residents may find themselves in a situation where the site could operate more effectively with fewer levels of management. For example, consideration is being

³⁸ *The owner's interests are inseparable from the interest in common property, so that a dealing with the lot automatically deals with the interest in the common property. A community corporation is authorised to enter into transactions affecting common property on behalf of lot proprietors.*

given to whether a three-management-level scheme can revert to two management levels. This would require power for the secondary community scheme to merge with the community scheme. This concept includes:

- The secondary community corporation may by special resolution resolve to merge with the community corporation.
- The community corporation may resolve by special resolution to accept the merger request.
- WAPC approves the merger and the revised tenure arrangements, as reflected in the various plans reflecting the new status of lots
- Secondary lots become community lots and secondary common property becomes primary common property, possibly subject to exclusive use by the former members of the secondary scheme.
- Subsidiary schemes of the secondary community scheme become subsidiary schemes of the community corporation.
- Obligations of the terminated secondary community corporations vest in the community corporation.

This has highlighted the value of a mechanism for amalgamating some or all of the subsidiary schemes with the parent community scheme. This may operate as a more flexible alternative to termination.³⁹

- **Reallocation of unit entitlements** – The possible need for a re-assessment of relative values and reallocation of unit entitlements during or upon completion of the scheme is being reviewed. The need for a re-allocation may occur in the following circumstances:
 - Land is added to a scheme as community property or as a community or development lot.
 - Land is severed from the scheme.
 - A lot is converted to community property.
 - Land within the scheme is appropriated by the State.

³⁹ *The issue has been raised as a potential reform in the NSW discussion paper at page 8. It is proposed that: "Following amalgamation, the subsidiary association being amalgamated will be wound up. All association property and any other assets or liabilities will vest in the parent community scheme. Lots in the former subsidiary scheme will become lots in the community scheme. No changes will, however, be made to the boundaries of the former lots or the interests recorded on the folios for the former lots. In circumstances where amalgamation would be feasible the amalgamation would result in streamlining of the management arrangements and a reduction in the duplication of expenses for items such as insurance and service charges leading to savings in both time and money. In view of the potential benefits to individual lot owners it is intended to keep the amalgamation process as simple as possible so that potential amalgamations are not deterred by excessive costs and unnecessary formality. "Only subsidiary precinct or neighbourhood schemes would be able to amalgamate with the relevant parent community or precinct scheme within which they form part. It will not be possible for a subsidiary strata scheme to amalgamate. A strata plan is not a plan of survey and relies upon the position of buildings to identify the boundaries of lots and common property within the building. A strata lot generally comprises the air space within a lot while the strata body corporate retains ownership of the outside structure of the building, which is deemed to be common property. It would be inappropriate for a community scheme to take over responsibility for the structure of a subsidiary strata building."*

- The valuer allocates unit entitlement at the time of preparation of the community plan but the use of lots changes from that originally considered by the valuer, thus impacting relative values.

At this stage of the consultation process, it is expected to provide that a Community Corporation may [by special resolution] where it considers that the unit entitlement does not reflect relativities because of changes within the scheme, lodge a revised schedule supported by a valuer's certificate.⁴⁰

Some stakeholders find the concept of a reallocation of unit entitlements upon completion of a layered scheme to be attractive. Some suggest this should occur on a regular basis for the life of all strata developments (for example, every five years). Although this has some advantages, the approach needs to be balanced with the potential for this approach to create uncertainty and conflict.

- **Amendment to the Management Statement** – it is expected that existing processes for amending a management statement will apply to the community management statement. Schedule 1 by-laws require a resolution without dissent to amend, and Schedule 2 by-laws require a special resolution.
- **Taking Order affecting the community** - the appropriation of the whole or part of a community parcel must be provided for in the legislation. Similarly land in a subsidiary scheme may be taken for a road widening or other public purpose.

The type of resolution

The STA permits various changes in a strata scheme provided the changes are supported by a unanimous resolution by the strata company. However, for community schemes, the unanimous resolution requirement may frustrate the ability of a community corporation to act in the interests of the majority of members. In addition, although a community scheme may include hundreds of lots, it may only have 2-3 "members." The difficulty in obtaining resolution in "small" community corporations is to be considered.

Stakeholder input is requested on whether the WA law should specify a special resolution for some or all of the changes to a community scheme. For example, termination of the community scheme by 75% of members may be controversial.

4.9 Other issues arising

During the consultation process, stakeholders have raised the following issues:

Conversion of Existing Registered Schemes to Community Schemes

Stakeholders have indicated that there are developments where conversion of existing adjacent strata schemes is anticipated and request the law to provide provisions permitting

⁴⁰ In the NSW strata legislation [Section 28QAA of the Strata Schemes (Freehold Development) Act 1973], if at the conclusion of the development scheme, the body corporate considers that the schedule of unit entitlement does not apportion the unit entitlement so as to reflect the market value of the lots in the strata scheme, it may lodge a revised schedule of unit entitlements, supported by a special resolution and a valuer's certificate

conversion to a community title scheme. It is expected that the amendment will permit two or more adjacent strata schemes to convert to a community scheme. However, instead of first consolidating the strata schemes into one green title lot and terminating the strata schemes, a simpler process will be provided, and the following is provided for review by stakeholders:

A community plan is required, showing the new parcel boundary. The community lots to be divided by the various strata schemes will be defined and unit entitlements apportioned based on the land value of the lots. The following are noted:

- Community property illustrated in the plan shall be allocated from within the former strata parcels.
- A Community Management Statement is required.
- Replacement sheets are required for the strata schemes, showing the new parcel boundaries.
- Management statements are required for the strata companies that will form part of the community title scheme.
- If unit entitlements within the strata schemes requires restructuring, revised schedules supported by valuers certificates are required.
- WAPC consent to the new tenure arrangements is required to be endorsed on the community plan.
- The converting strata companies resolve by special resolution [or resolution without dissent] to convert and accept the new parcel boundaries, the schedule of unit entitlements and the management statement.
- The consent of enrolled mortgagees is required.
- A disposition statement is required for each converting strata scheme reflecting the old and new lot descriptions.

The proposed law should provide that upon registration of the various documents⁴¹:

- The old schemes are terminated.
- The community corporation is created.
- The new strata schemes are incorporated under the new strata plan numbers.
- The community lots in the accompanying community plan are now divided by the strata plans.
- The assets and liabilities of the terminated strata schemes vest in the corresponding new strata schemes.
- Old titles are replaced by new titles according to the registered disposition statements.
- Former common property of a converted strata scheme that is community property in the new community plan vests in the community subject to liabilities to be specified in the disposition statement.

Streamlining Conversion of Tenure of Two Lot Schemes/ Small Strata Schemes

As the content of WAPC's R-Code for lot sizes for green title lots is similar to that relating to group dwellings, there is scope for moving towards a streamlined process for an administrative conversion of strata /survey strata schemes with five lots or less to green title.

⁴¹ *The community plan, the strata plans and the management statements*

This would make a substantial contribution to the simplification of strata living and has merit, although a range of other issues may arise, e.g. access of lots to public roads, easements for services and disposition of any common property.⁴² However, it is not proposed that the tenure reforms should wait for consensus to be reached on this issue. It is noted that the STA already provides for termination of a strata scheme and re-subdivision into green title lots.⁴³

Facilitating Shared Property in a Green Title Context

The stakeholder proposal, that lots in a subdivision that included a shared utility lot should remain as green title and operate without a strata company and without management restrictions or interventions, was evaluated. The owners of the lots in the subdivision would share the ownership of the utilities lot and would be responsible for contributing to maintenance, repair etc. It has been decided not to address this concept as part of the community title tenure reform package.

⁴² Refer WAPC Planning Bulletins No. 52/2009 and 110/2013 for further information relating to planning decision-making in relation to strata titling.

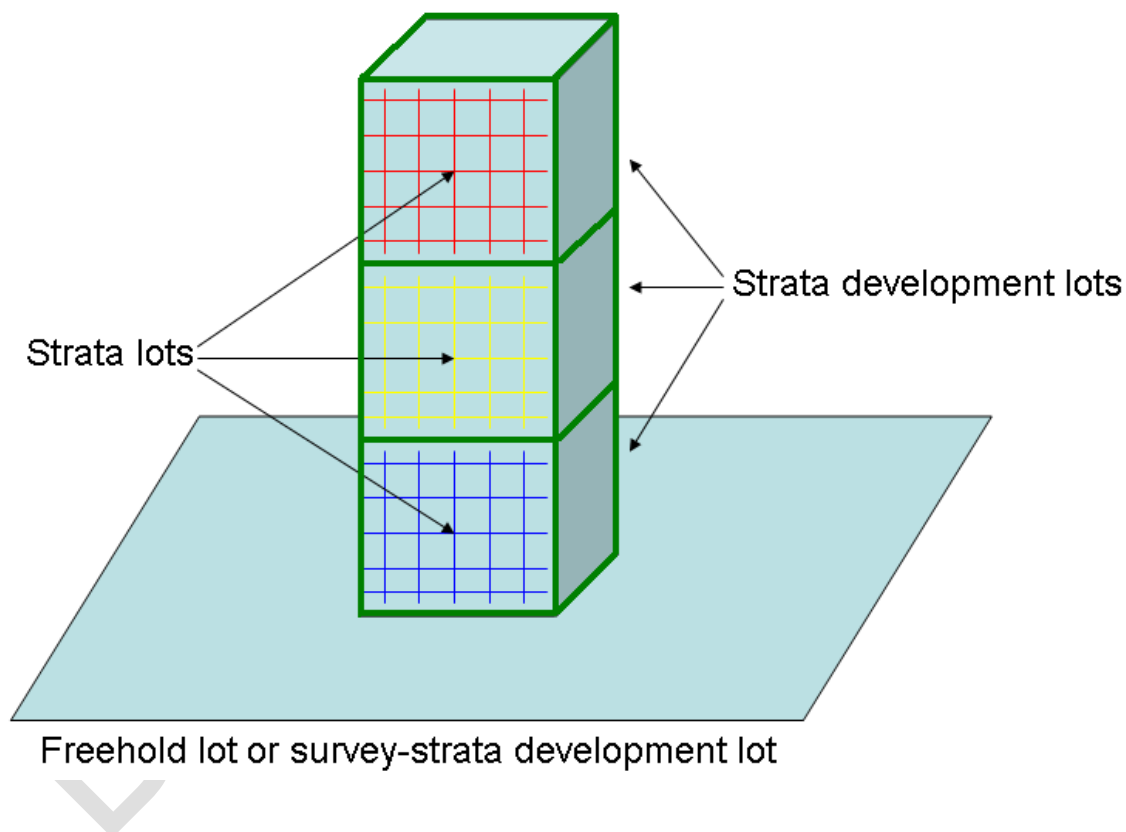
⁴³ STA sections 30-30A. But see also STA Part 3 Division 3 re conversion of strata scheme to survey-strata

Section 5: Mixed Use Development in Layered Buildings

A second proposal is that a layered or community title scheme may be undertaken within a building. This requires the Strata Titles Act to be amended to facilitate multiple strata schemes in a single building, with potential for each scheme to have a different use.⁴⁴ The changes seek to address the problems highlighted by stakeholders: where uses are mixed in a single strata scheme, there is a risk that one use area can secure enough votes to outvote another use area and significantly interfere with that use. Different uses operating in different strata schemes is the preferred outcome, in that such a corporate structure clarifies the respective relationships and obligations of the participants and reduces potential for disputes.

For example, the building in *Figure 13* may be intended for retail outlets on the lower floors, residential units in the upper levels and offices in the middle levels.

Figure 13: Multi Strata Schemes in a Single Building



5.1 Mixed use in a non-layered scheme under the existing Act

The current Act contains some elements that support mixing uses in a single strata scheme, including:

⁴⁴ No use can be approved by local government if it is prohibited by the operative local planning scheme.

Management Statement

An option available to the developer is to lodge with the strata plan a Management Statement containing an expanded set of by-laws (including variations of Schedule 1 and Schedule 2 by-laws). The Management Statement permits the standard by-laws to be restructured in a way that suits the particular development, including the rules applicable in each “use” in the development.⁴⁵ These rules control the day-to-day management of the scheme.

Section 42(8) exclusive use by-laws

The section provides the right to make a by-law granting specific use rights or special privileges in relation to any part of common property. For example, one owner can be granted exclusive use of an area that can only be used by that owner. To support mixed use in a single strata scheme, it is helpful if these rights can be given to groups of owners such as to the owners of retail lots. Some stakeholders have requested a clearer framework for granting exclusive use or special use rights to groups of owners or occupants, and the “restricted common property” concept used in NSW may be adopted.

Section 42B by-law varying contributions

This provides the power to make a by-law setting a method for determining contributions to levies according to use, as an alternative to unit entitlement. For example, the retail component may contribute more to the cleaning/maintenance of shared access areas, entrance foyers etc. because it generates a high volume of the traffic through these areas. Repairs to lifts on common property but used exclusively for residential owners on upper floors, may be funded exclusively by the residential owners.

These elements will continue to apply, so that the existing option of mixed use operating within a single strata company will be retained. The provisions may also be strengthened in due course by the introduction of positive covenants, currently being considered in Landgate. Stakeholders are helping to assess if other changes to the Act can facilitate the use of the existing non-layered approach for mixed use developments.

5.2 Mixed use building in a community scheme

Stakeholders require an additional option to mixed use in a single strata scheme. The existing Act may work in a small or less complex mixed use development but a layered scheme in a building development is attractive for the larger developments, where it is difficult to simply rely on by-laws as the tool for managing the range of complex issues that may result from mixing uses. It would frustrate mixed use schemes if, for example, the owners of residential units could unnecessarily or arbitrarily limit retail operations. The principal option requested by stakeholders for facilitating mixed use developments is to permit a layered or community scheme to be created over the building. *Figure 14* shows the concept to be initiated by a community plan, creating three community lots in a building, intended to permit the three separate uses within an existing building:

- *Community Lot 1 - Retail shops on the ground floors* – in the example, the intention is that this will ultimately be divided by a strata plan.

⁴⁵ Including setting the theme, building construction materials, use, size of buildings etc.

- *Community Lot 2 - Offices* above the retail area – in the example, this lot is intended for division by a strata plan.
- *Community Lot 3 - Residential apartments at the top of the building* – ultimately to be divided by a strata plan to create apartments.
- *Community property*. A community plan creating cubic space lots in a building will use a floor plan rather than a survey. In a built strata context, the common property is not shown as a lot but is simply the residue of the community parcel remaining after community lots in the building are defined.

It should be noted that, as an alternative, one or more community lots may be kept in single ownership and not be divided by a strata plan.

The development may proceed as follows:

Step 1 – Land to contain the building is consolidated into a single green title lot. The usual planning and pre-building approvals continue to apply to such developments.

Step 2 – The developer constructs the building. The application for plan approval is then lodged with local government⁴⁶ under delegation from WAPC, seeking approval of a community plan creating a layered scheme over the building and defining the community lots in the building.⁴⁷ The initial community plan creates three community lots and community property. A Development Statement must accompany the application for subdivision approval. It will provide an overview of the development and where appropriate set out a description of warranted developments and authorised proposals. The community plan when lodged in Landgate for registration will be accompanied by a building approval certificate or an occupancy certificate.⁴⁸

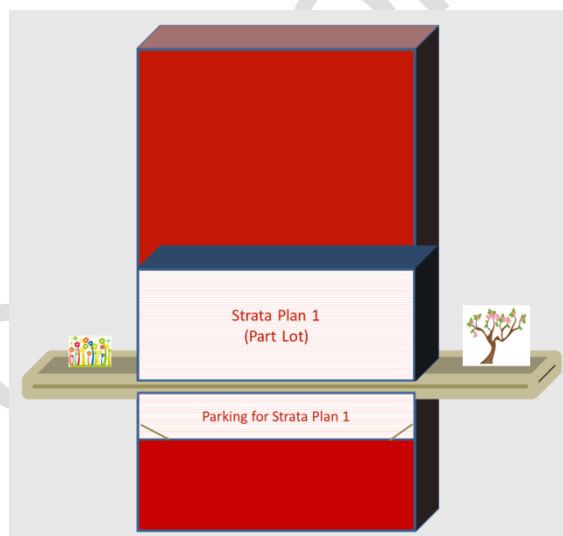
⁴⁶ At this stage of the consultation process it is expected that the current delegation by WAPC of the approval of subdivisions in a building to local government will apply to layered buildings.

⁴⁷ The 2010 discussion paper stated that development lots in a building must be created by a strata plan, whereas all layered schemes creating non-building lots must be created using survey information. For this reason, community plans must be enabled by the reform to provide for two methods of lot definition – (i) by survey, for non-cubic space lots; and (ii) by using a floor-plan and by reference to a building where cubic space lots are to be created.

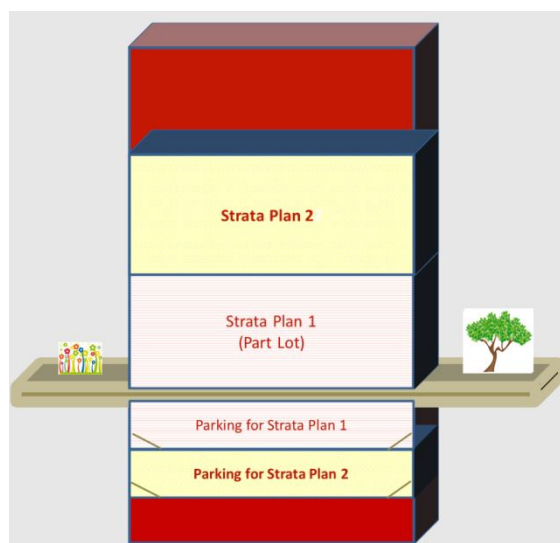
⁴⁸ The management statement and development statement also form part of the package lodged for registration. See section 5B(2) of the Strata Titles Act

Figure 14: Community Plan for a Building Proposing Mixed Uses

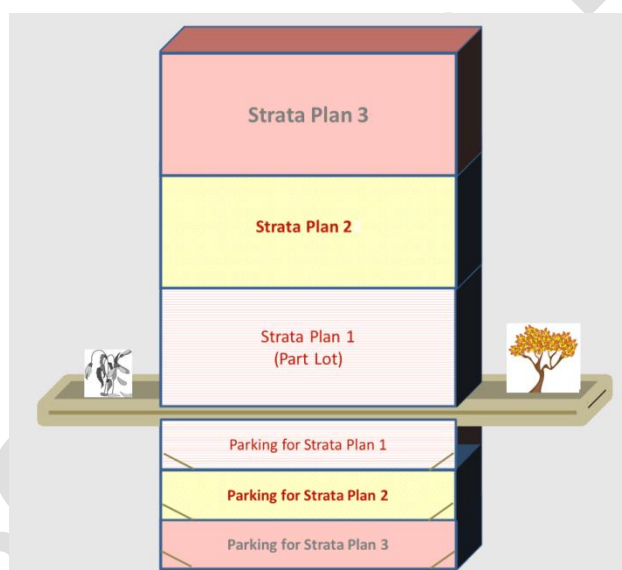
Step 3 – lodge a strata plan subdividing community lot 1 in the building, as shown in *Figure 15*. The strata plan will be accompanied by the building approval certificate and the management statement.

Figure 15: Community Lot in a Building is divided by a Strata Plan

Step 4 – lodgment of the second strata plan, as shown in *Figure 16*.

Figure 16: Second Strata Plan Divides Community Lot 2

Step 5 – lodgment of the third strata plan, as shown in *Figure 17*:

Figure 17: Third Strata Plan Divides community lot in Building

How should the community plan define the community lots in a building?

Stakeholders considered whether community lots should be defined in:

- a building plan;
- a survey strata plan; or
- in a traditional subdivision, as in NSW (described below).

The preferred stakeholder option involves using a building strata plan rather than defining the community lots by survey.

The building plan provisions of the Strata Titles Act require lots within or partly within a building to be defined as cubic space by reference to an existing structure, and the residue of the parcel constitutes common property. This form of lot definition will apply existing

concepts in the Act and Regulations, including Regulation 37AA, which anticipate that the shell of the building and the floors between the community lots will be community property. This will require the applicant developer to take care in determining areas that are to be community property (such as common access, parking and entrances, and potentially lift and stair wells) to benefit the whole scheme. Land or building areas intended to form common property within a subsidiary strata scheme (such as parking areas for the retail customers) will initially be shown in the community plan as part of the community lot for the appropriate subsidiary strata scheme⁴⁹ and become strata common property upon registration of the strata plan.

Strata Schemes dividing the Community Title Scheme Lots

When a strata plan is lodged over one of the community lots, it constitutes the final level of management of that lot. As indicated, it may create common property exclusive to that strata scheme, including for example walls and floors between apartments, foyers in the strata scheme and common access ways to parking areas used by the strata scheme. The developer of each strata scheme will generally lodge a Management Statement, setting rules for the subsidiary scheme.

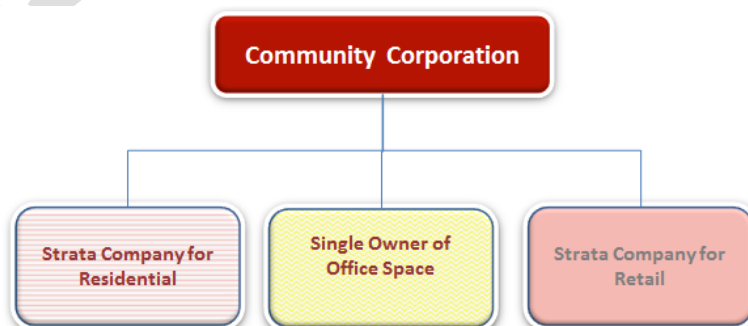
In *Figure 18* the Community Corporation may have three members:

Figure 18: Members of the Community Corporation if three strata plans registered



If however the office space is kept in single ownership rather than being subdivided by a strata plan, the management structure is as shown in *Figure 19*.

Figure 19: Members of the Community Corporation if only two strata plans registered



⁴⁹ Query if the whole building should be community property, with subsidiary strata companies only controlling the management of common property exclusive to that strata scheme [by exclusive use]. This approach will permit a standard level of maintenance for the whole building and simplifies insurance issues.

5.3 Planning aspects

In a layered building, two or more community lots and community property may be created by a community plan defining lots by use of a floor-plan.

DoP has requested Landgate to provide clarity on situations where community title subdivision within a building will be approved, to ensure a clear distinction is maintained between community schemes and strata schemes. Some potential restrictions are as follows:

- The land over which the community plan for a layered building is registered must be:
 - *a whole green title lot* – in this case, the plan creating the layered building is a community plan; or
 - *a community lot or community development lot in a registered community plan* – in this instance the plan creating the layered building will be a secondary community plan and the secondary community corporation that is created to manage the layered building will be a member of the community corporation for the total development.
- Community plans for a layered building may not be used to create airspace lots.
- A community title scheme in a building will not be used to provide for the staged construction⁵⁰ of a building.
- The scheme cannot include green title lots within the building.

A Community Plan creating lots in a layered building must, when lodged for subdivision approval, be accompanied by a Development Statement setting out a description of the community scheme, including the nature of community property and the anticipated ownership of the structure of the building.

Subdivision Approval

The WAPC has largely delegated its powers for built strata plans to Local Government⁵¹ and this may continue for the community plan that creates the lots within a building for later strata titling. The individual strata plans dividing the community lots will continue to be approved by Local Government.

Development approval

It is expected that the development approval will be obtained from local government for the whole development at the outset. However, it is difficult to envisage all possible development scenarios using this tenure option, particularly if multiple buildings will exist in the layered scheme.

Building approval certificate issues

Earlier consultation papers proposed two different approaches:

⁵⁰ To be distinguished from staged fitout and release for sale

⁵¹ In May 2009 WAPC delegated to local government the power to issue a certificate of approval under section 25 of the STA except where the built strata creates vacant lots [such as a staged vertical subdivision] or proposes vacant air stratas in multi-tiered strata scheme developments [horizontal developments].

Option 1

The developer applies initially to divide the building into community lots and then, stage by stage, proceeds with applications for the approval of strata plans;

Option 2

Permit an application for the approval of the community plan and approval of all strata plans to be made at the same time.

In both options it was anticipated that construction of the building would already be completed, so that no problems would be encountered with issuing building approval certificates under the Building Act 2012. The first option is less limiting on developers. Subject to the requirement to obtain a building approval certificate with each plan, it may not be necessary for the legislation to select either option 1 or option 2.

Once the community plan is registered, the following action may subsequently occur:

- Subdivision of a community lot by a strata plan.
- Amalgamation of community lots prior to subdivision by a strata plan.
- Subdivision of a community lot by a community plan or re-subdivision – to create additional community lots or additional community lots and community property.
- Amalgamation of one or more strata schemes, by special resolution.

5.4 Valuation concepts

Valuation for unit entitlement

The community plan creating community lots in a building for subsequent subdivision by strata plans will be accompanied by a valuer's certificate. This will allocate unit entitlements to the three community lots based on an assessment of the capital value of the lots (see Section 14(2a)).

Valuation for rating and tax purposes

This will follow existing concepts in the Strata Titles Act applicable to strata schemes, permitting the Valuer General to make available the unimproved value of the whole parcel (the value of the underlying parcel in its unimproved or natural state) and the value is then apportioned according to unit entitlement). Gross rental value of each separate strata lot is also available and is used by most local governments.

5.5 Management aspects

By-laws

The community plan, when lodged for registration by Landgate, must be accompanied by a community management statement to regulate the management of the building. Each strata scheme must also have a management statement to regulate its internal activities. It is proposed to retain flexibility for developers to use the Management Statement to write by-

laws suitable for the particular development, rather than attempting to prescribe the standard Management Modules for a mixed use building.

Insurance and liability

The legislation will specifically require the community management statement to clearly state the ownership of the various parts of the building and the insurance obligations for the building. The legislation will not attempt to restrict the manner of defining lots in the building, and it is therefore anticipated that the nature of ownership of the parts of a building will be different in different plans. The management statement must however clearly explain the nature of rights and obligations. The insurance obligation for damage to buildings may in general terms rest with the community corporation. Subsidiary strata companies may also need to insure their parts of the building, depending on how the ownership of the parts of the building is divided among the schemes. Consideration may be given in the Management Statement to requiring the building policy to be in the joint names of the community corporation and its members, particularly if this will facilitate lower premiums. Consideration is being given to requiring the mixed use building to be valued every 5 years for insurance purposes.⁵²

Services and Utilities

The Water Corp anticipates that the basic approach by developers will be separate metering of each lot and common property areas in the layered building. Alternatively there will be a master meter for each community lot and sub-meters for lots in the strata schemes. Similarly, Atco would require gas servicing and metering to be determined in conjunction with preparation of the community plan.

Disclosure and consumer protection

A mode of disclosure similar to that discussed for community schemes will be applied to layered buildings. The building will, however, already be constructed; the developer will already have made important decisions concerning the number and type of apartments in each subsidiary scheme, building density, uses, the extent of and facilities on common property, etc., and because the development is substantially completed, disclosure of these items in the Development Statement should be simpler than for other community plans.

5.6 Other options

Separate Strata Schemes in a Building without a Layered Scheme

An option currently undertaken in NSW and Queensland and considered but initially discounted here, is to permit strata of part of a building or multiple strata schemes in a building without using community titles and layers of management. This approach would have generated:

- separate strata schemes in a building without an umbrella management body; and
- a possible mix of strata schemes and green title lots in a building.

If this option were pursued, the management arrangements would be regulated by a Building Management Statement. A stratum plan development in NSW is an example of

⁵² see Section 85 of the Strata Schemes Management Act 1996 NSW

such an approach, permitting a building to be subdivided into “stratum lots” by a conventional plan of subdivision, with lots defined by survey. “Green Titles” are issued for the lots in the building. In the *Figure 13: Multi Strata Schemes in a Single Building* context, the building would be divided into three stratum lots, one for the retail area, one for the commercial/office area and one for the residential component. Since the plan is a conventional deposited plan, common property will not be created in the first plan. Therefore the plan may need to create easements for access or designate such areas as part of the appropriate “stratum lot.” This adds complexity to the initial plan, as it may require 3-D definition of lots and extensive easement rights.

Any one or all of the stratum lots can then be subdivided by strata plans. When the first strata plan is lodged, it must be accompanied by a Strata Management Statement regulating the management of the whole building.⁵³ The requirements of a Strata Management Statement are set out in the NSW Act.

The NSW approach adds some management flexibility, as the management provisions of the Strata Titles Act do not apply to the building but only to individual strata schemes in the building. There is no unit entitlement concept applicable to the initial stratum lots in the building and the formula for apportioning costs among stratum lots is set out in the Building Management Statement. Meetings of stratum lot owners can operate less formally than strata company meetings. Liability of strata lot owners is limited to their own strata scheme. However, it is likely the initial plan defining lots and documentation creating easements between the lots will be more complex.⁵⁴

Another advantage of the NSW approach is that a part of the building may be subject to a leasehold strata scheme (see option 3 below). However, the NSW law does not permit a leasehold scheme within a layered scheme. At this stage, the WA reforms will not permit a leasehold strata plan over a development lot in a layered scheme.

Planning agencies do not support such an approach, as it raises a range of complexities relating to the content and operation of planning and development controls, which in WA are largely predicated upon reference to cadastral boundaries. Stakeholders generally prefer the concept of layered buildings.

One Plan and Approval Process

The stakeholder-preferred approach to layered buildings will, in the sample development shown in *Figure 14*, require four plans and approval processes to complete the building.⁵⁵ A faster approach is to permit one plan to create the layered scheme and all strata schemes.

⁵³ *The Strata Management Statement replaces the Building Management Statement*

⁵⁴ *With this type of development, the initial “stratum plan” will try to include in each stratum parcel all parts of the building that the particular part of the building will need for its proper operation. For instance, the residential area may have designated lifts not used by the commercial and retail lots. In that case, the whole lift shaft could be included in the “residential stratum parcel,” along with areas for garbage storage and basement parking. The development may thus include non-contiguous part-lots.*

This approach is quite popular in NSW for mixed uses and for schemes where there is some public use in a building and the relevant authority does not want to be part of a strata scheme. For instance, a public library may have residential development above. It also facilitates strata schemes to be built over for example railway stations. In another example, a building may contain a residential strata scheme and a hotel lot, with the hotel lot owned by the hotel operator and not subdivided further. [Advice from LPI NSW]

⁵⁵ *The community plan and three strata plans*

This would be a complex approach and has not been developed by stakeholders. This approach would apply some of the features of the Victorian Subdivision Act 1988 in relation to a plan creating both Unlimited Owners Corporations and Limited Owners Corporations. However, since no problems have been experienced in the NSW context arising from the use of four plans, the stakeholder-preferred option will be implemented.

Lodging a plan for a layered building over land in a community scheme

Stakeholders have requested further clarity on the process where the layered building is to be situated within an ongoing community scheme. The following apply:

- A community lot or a community development lot can be divided by a plan creating lots within a building. In this context, the plan creating the lots in the building will be a secondary community plan and the lots within the building, to be divided by strata plans, will be secondary community lots.
- Because of the restriction of community schemes to three management tiers, a secondary community lot in an existing community scheme cannot be divided by a plan creating lots within a building for further division by strata plans.

Section 6: Leasehold Strata Schemes

The third proposal for a flexible tenure framework that facilitates additional development options, and potentially facilitates more affordable housing, is to introduce a form of leasehold strata title.⁵⁶ This option may be limited to freehold land,⁵⁷ and if so, if the State wishes to use the concept (for increased housing options), it will first obtain a “green title.”⁵⁸

However, some sensitive or strategic sites where the State may wish to use the concept, such as on land adjacent to State infrastructure, may not be suitable for freehold title or conditional grants under the Land Administration Act 1997. Further consultation will be undertaken on this point.

Strata Plan over the fee simple interest contrasted

Land owner-developers already have the option of creating apartments in a strata scheme registered over the fee simple title [the current practice]. A strata company is created upon registration of the plan and the owners of the strata lots are members, as per existing practice. The developer as owner of all strata lots may choose to lease all apartments on long-term leases. The lessee acquires a secure and long-term right to occupy the land, and the document received to confirm the tenure is a lease. In a long-term lease arrangement, the developer as the owner of all strata lots and as the lessor of all apartments is the sole member of the strata company. Therefore the developer/ lessor has responsibility to manage the building.⁵⁹ The owners of a long lease of a strata unit can apply to Landgate for a leasehold certificate of title, but this rarely occurs. Potential transactions with the lease include a mortgage of the lease interest, a sub-lease or a transfer of the lease.

Strata plan over leasehold interest

Leasehold strata title will, with some variations, build on the above general concepts by permitting in effect the registration of a strata plan over a leasehold interest and permitting long-term leases of leasehold strata apartments to automatically receive leasehold strata titles. Stakeholders have suggested that the legislation should follow the NSW procedure,⁶⁰ where no title is issued for the fee simple of the strata apartments.

Stakeholders have discussed the likely marketability of the product and, although widespread use is not envisaged at the outset, stakeholders consider that it provides another

⁵⁶ In NSW, this is becoming popular where it is intended to develop the airspace over an existing structure [e.g. railway, church, historic site]

⁵⁷ In NSW, when the legislation was first introduced, it was restricted to government-owned land. It has since been amended so that all Torrens land can be the subject of a leasehold strata scheme.

⁵⁸ For example, by subdividing a lot in a Crown Land Title to create a “green title” lot above an existing building or infrastructure it wishes to retain.

⁵⁹ But if a strata leasehold option is selected, the building maintenance responsibility may pass to the strata company.

⁶⁰ The explanatory note at the start of the NSW Strata Schemes [Leasehold Development] Act 1986 states as follows: “**Note.** The purpose of this Act is to allow land to be subdivided by means of a strata scheme in cases where the owner of the land does not wish, or is unable, to part with ownership of the land. Under a leasehold scheme, the owner of the land that is the subject of the scheme retains an estate in fee simple in the land. The purchaser of each lot that is created under the subdivision obtains a leasehold interest, rather than a freehold interest, in the lot. The scheme of subdivision provided for in this Act is an alternative to that provided for by the Strata Schemes [Freehold Development] Act 1973, but many of the provisions governing the two types of schemes are the same.”

tenure option and housing choice. It will be attractive for landowners who have a long-term perspective and prefer to retain ownership of the land and to enter into occupation upon the expiry of the leases after, for example, 99 years. Land vested in the State, government agency, church, university or subject to a grant that prohibits sale may be suitable for this form of development. It also has some attraction for private landowners who wish to permit a developer to construct a strata building and to sell leasehold interests, without being actively involved in the maintenance of the building.

6.1 Advantages of leasehold strata title

The following advantages have been identified:

- It provides another tenure option.
- It facilitates long-term leases for apartments, whereas at the moment shorter-term leases may be the norm.
- Issuing a leasehold certificate of title instead of a long-term lease will make the tenure easier to transfer.
- Financing the purchase of a leasehold interest will be simplified by the issue of a leasehold strata certificate of title, as titles are recognised by lending bodies. Also the power of sale of mortgagees is clearly established.
- It may remove the requirement for lessor's consent on some actions – for example, some lessors retain the power to approve a sub-lease or a transfer of the lease. This operates as a restriction on alienation and may weaken the power to sell, mortgage etc. Such a restriction will not apply to leasehold titles.
- In some cases lessors overly control the lessees. In a leasehold strata scheme a leasehold strata company will be interposed between the lessor and lessees, to provide an element of independence for owners of leasehold apartments. Unit owners will be members of the strata company. A method for equitable contributions to costs will be in place. Expenditure of funds on maintenance will be controlled by the strata company not the owner of the fee simple parcel. A process for dispute resolution will be provided.
- Local government rates and land tax liability will be specifically addressed, removing uncertainty that can exist in a leasehold environment.
- It determines the duration of the scheme, as all leases expire on the same date.

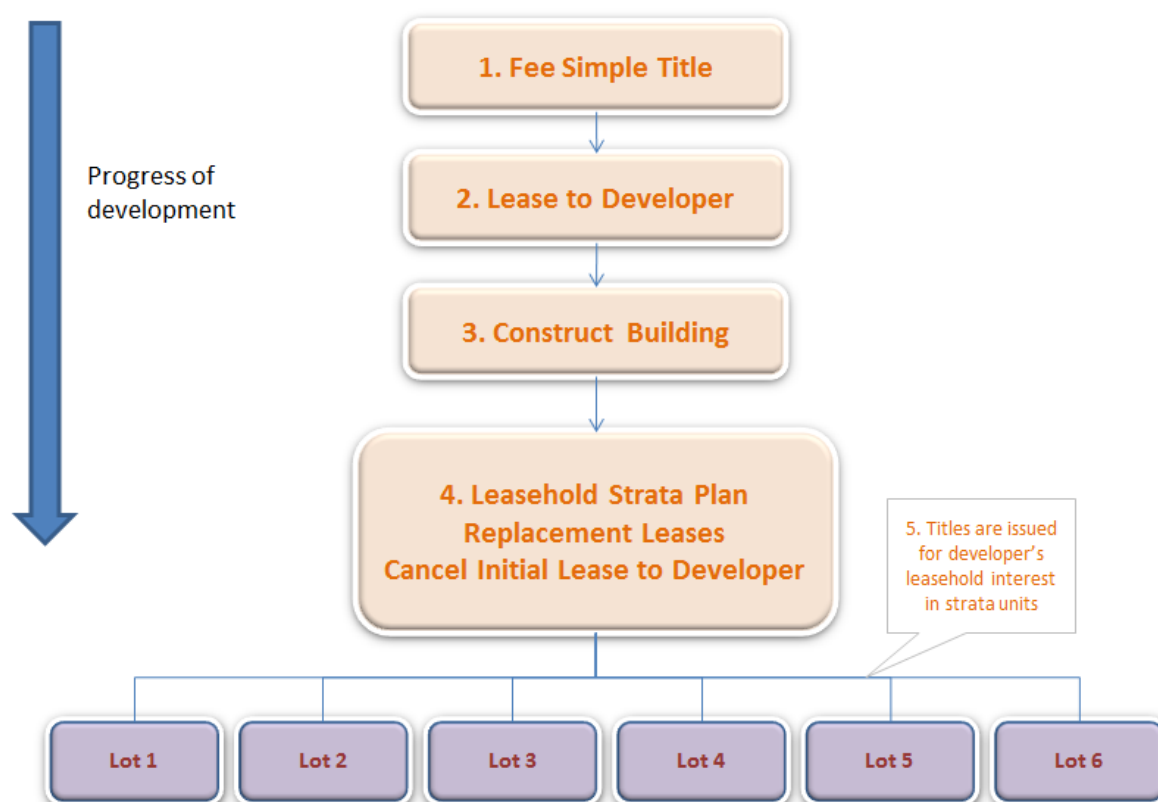
NSW Legislation

The NSW law provides two options for initiating a leasehold strata scheme:

Option 1: Land is leased to a Developer

Where the land is leased to a developer, the lease permitting construction of the building and registration of the strata plan is registered against the freehold title. The sequence is illustrated in *Figure 20*.

Figure 20: Lease to Developer to Undertake Strata Development



In NSW, when the strata plan is lodged (Step 4 in *Figure 21*), it is accompanied by replacement leases from the registered owner (lessor) to the developer (lessee), for each lot in the plan.⁶¹ A lease of the common property is also lodged, with the registered owner as the lessor and the projected strata company as lessee. The leases are expressed to commence on the date of registration of the plan and expire on the same date as the leases being replaced.⁶² The application to register the strata plan is in effect a request to issue certificates of title for the leasehold interest rather than for the fee simple interest in the strata units.

As part of the process for registering the strata plan, the freehold title endorsement of the initial lease is cancelled and reference is made on the freehold title to lodgement of the strata plan and replacement leases. In this way, the leasehold rights of the developer are now defined in terms of the strata lots and common property. Leasehold titles are issued for the lots in the strata plan, in the name of the developer as lessee of all strata units.⁶³ No titles will be issued for the fee simple interest in the units. A sample leasehold strata title is set out in *Appendix E*.

⁶¹ The lease is expressed to be in substitution for the first lease and will expire at the same time as the first lease. If the leases contain rights of renewal, the renewal terms must be identical, so that the leasehold interests all terminate on the same date.

⁶² If the leasehold development is staged, the developer also receives a lease of the lots intended for subsequent development.

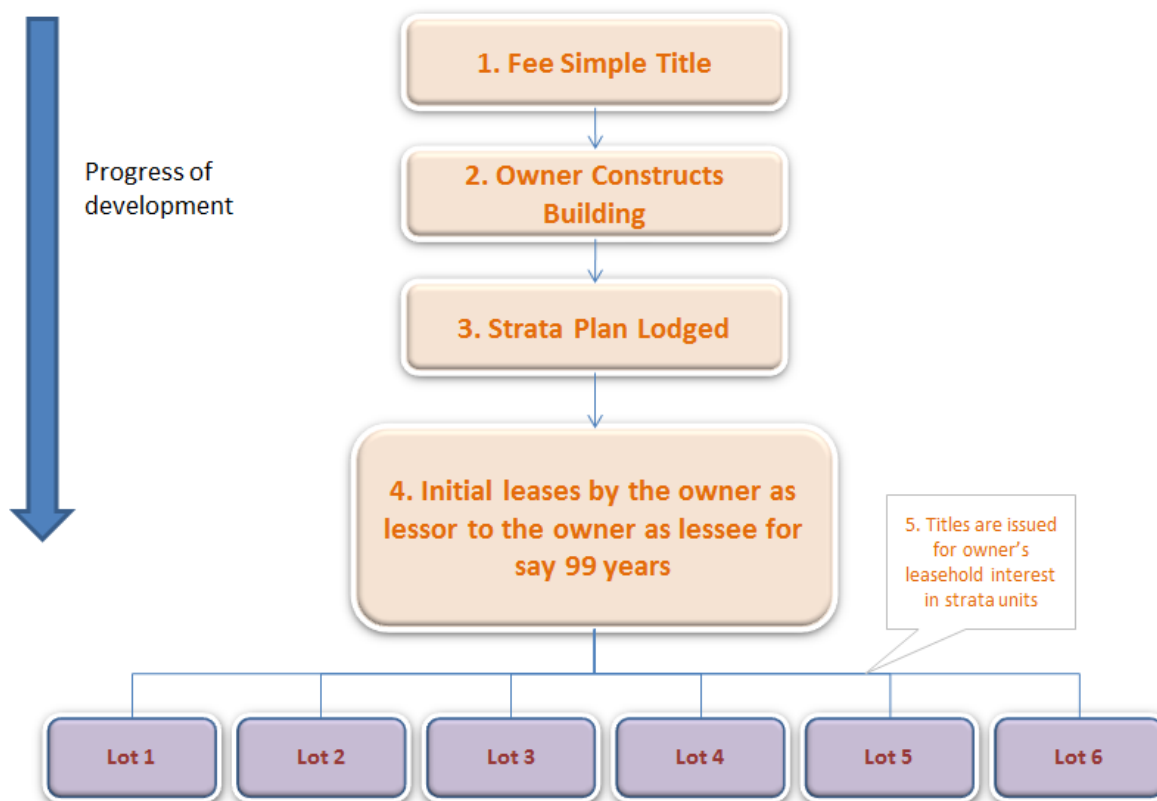
⁶³ See section 8(2) of the NSW Strata Schemes [Leasehold Development] Act 1986. "As soon as practicable after the registration of the strata plan the Registrar shall create folios of the Register for the leasehold estates in the lots and for the leasehold estate in the common property ... record the replacement leases in a manner to preserve the priority of the lease and any mortgage thereof..."

Once the titles have issued for the developer's leasehold interest, the developer is in a position to sell the leasehold units.

Option 2: the Owner Undertakes the Strata Development.

Where the owner undertakes the strata development the sequence of events varies slightly, as shown in *Figure 21*:

Figure 21: Owner Undertakes Strata Development



As there is no developer, and the owner wishes to obtain titles for the leasehold interest, leases are required to trigger the leasehold strata concepts. Leases by the owner as lessor to the owner as lessee will accompany the strata plan [steps 3 and 4 above occur simultaneously], along with a request to issue titles for the leasehold interest. In this situation, the owner now receives certificates of title for the leasehold interest in the strata units and is in a position to sell the leasehold units.

6.2 Leases generally

For ease of planning, management and termination of schemes, all leases of lots and common property will have a common expiry date.⁶⁴ The leases may contain an option to renew or a right in the lessor to grant new leases. This requires some analysis, as the NSW law requires a renewal of all of the leases or none. The strata company is empowered to vote for renewal of all leases without a unanimous resolution. However, if some lessees do not take up the leases, the new leases become leases by the owner as lessor to the owner as lessee, and the affected units are now available for re-sale by the lessor.

⁶⁴ All encumbrances and charges affecting lots also expire on the date of the lease.

Upon expiration of all leases on the common expiry date, the leasehold tenure and rights over that tenure expire and the strata units and common property re-vest in the original proprietor. Alternatively the strata scheme can be terminated and leasehold titles cancelled. The liabilities of the strata company are not assigned to the lessor/owner of the freehold title. In this regard, the strata company continues to represent the lessees immediately prior to lease expiry.

Stakeholders have reviewed the concept from the perspective of “built strata” but it is possible the concept could apply to survey-strata, and so the legislation will have general application. NSW elected to set the leasehold strata law in a separate leasehold Act⁶⁵ but at this stage WA is giving consideration to including leasehold schemes in the existing Strata Titles Act.

Management of the leasehold strata scheme

A strata company comes into being and exists for the duration of the lease. The lease determines the relationship of the owner of the fee simple in the strata units (the lessor) with the lessees. The Management Statement and by-laws define the rights and obligations within the strata scheme. The strata company will have functions and powers similar to those applying to freehold strata schemes. Its members will be defined as lessees of the strata units, or as proprietors of the leasehold strata units. The owner of the leasehold title for the apartment will therefore be a member of the strata company and will have rights and obligations similar to those applying to freehold strata lots. The management statement, by-laws, management and dispute provisions of the Act will be extended to the leasehold strata companies.

The responsibility to maintain the building will generally be shifted from the lessor to the lessees represented by the strata company. This obligation is expected to be stated in the lease of the common property and the management statement, which should provide consistent provisions concerning building use and maintenance. The management statement may include a by-law requiring each owner/occupier to comply not only with the management statement but also with the terms of the leases.

Insurance aspects

If the WA law follows the NSW model, then the obligation to insure the building for damages/public liability will rest on the strata company (See section 83 of the Strata Schemes Management Act 1996).

6.3 Valuation concepts

Valuation for unit entitlement

It is expected that unit entitlement for a leasehold strata title will reflect the same process as for strata plans. In addition, unit entitlement for leasehold survey strata title will follow processes applying to survey strata plans.

⁶⁵ NSW originally enacted a separate leasehold Strata Titles Act in 1986, to operate alongside the Strata Titles Act 1973. It subsequently amalgamated the management provisions of the two acts into a single act, leaving three acts in place: (i) Strata Schemes (Freehold Development) Act (ii) Strata Schemes (Leasehold Development) Act 1986 (iii) Strata Schemes Management Act 1996. In addition it has the Community Land Development Act 1989 and the Community Land Management Act 1989

Valuation for rating and taxes

Similarly the valuation concepts generally applicable to strata and survey strata schemes will be applied. It is expected that council rates will be payable by the owners of leasehold interests (lessees). Since the owner of the fee simple has a reversion interest of minimal value, it is expected that that owner will be exempt from rates for the duration of the leasehold scheme. Full rates are expected to be paid by leasehold unit holders until the expiry of the lease, notwithstanding that the value of the leasehold asset diminishes as the lease approaches expiry. Similarly, liability for land tax is likely to apply to leasehold strata lots and not to the fee simple lot.

6.4 Planning concepts

The original long-term lease of the green title lot to the developer will require WAPC approval if it exceeds 20 years.⁶⁶ It is expected that the replacement leases to accompany the strata plan, being leases of parts of the building, may be exempt from WAPC approval. The 'replacement lease' of the common property should be expressly exempted from approval in the amendment.

If a leasehold survey-strata plan is to be registered, approval is expected to remain with WAPC.

6.5 Conveyancing and consumer protection

Conveyancing concepts

Vendor disclosure may include a copy of the lease of the lot and the management statement, resulting in a lengthy contract.

Standard transfer and mortgage forms are likely to be used to transfer or mortgage a leasehold strata title, appropriately amended to refer to the leasehold interest.

The liability for rates and stamp duty on the transfer of a leasehold apartment are to be set out in the amendment. Currently, transfers of lease are exempt from stamp duty but it is expected that transfers of leasehold titles will be liable. Leasehold strata apartments are expected to be subject to rates and land tax, subject to the various exemptions and discounts applied to rates and land tax.⁶⁷ The fee simple lot is expected to be exempt from rates and land tax.

The owner of the fee simple land affected by the leasehold strata scheme will have the power to sell the fee simple title for the land affected by the strata scheme. However, there will be no right to separately sell the fee simple interest in the leasehold apartments.

Some changes may be required to the form of Offer and Acceptance to apply to the sale of leasehold interests.

⁶⁶ *Planning and Development Act section 136*

⁶⁷ *Exemptions from land tax for the principal residence; seniors discounts for land rates*

Consumer education

Buyers of leasehold strata apartments have their interests recorded in a leasehold certificate of title. The transaction may appear to be similar to the purchase of a normal freehold strata apartment but the buyer's interest is leasehold and continues only to the end of the lease. It is thus a diminishing asset and may not have a right of renewal. Buyers will need education so that the peculiarities of the leasehold option are made clear at the time of purchase.

6.6 Title aspects

When a leasehold strata plan is lodged over a green title lot, the plan will be endorsed on the green title. The title will not be cancelled upon registration of the plan but will remain current for the duration of the strata leasehold arrangement. Certificates of title will issue for the leasehold interest in the apartments but not for the fee simple interest, which remains in the green title.

A separate plan numbering series will not be used for leasehold strata plans. Instead, the next available strata plan number will be allocated. The current strata plan forms will be used but the plan type will be shown as a leasehold strata plan.

Landgate generally does not record the expiry dates of leases in the register but refers the searcher to the lease. It may become necessary to change this in relation to leasehold titles, so that the end date of the leasehold scheme is clear to searchers. The status of options to renew needs to be taken into account in any new practice.

It is not proposed to permit a leasehold strata plan to be undertaken within a layered scheme.

A sample leasehold strata title is set out in [Appendix E](#).

6.7 Action with a registered leasehold scheme

The following should be provided for in the legislation:

- ***The amendment is expected to permit the lessor and lessees to convert a leasehold strata scheme to a freehold strata scheme*** - this will require WAPC approval, endorsement by the leasehold strata company by unanimous resolution, acceptance by the owner of the freehold estate and approval by holders of registered interests in the affected land.
- ***Termination of a leasehold scheme before expiry of the leases*** – This could occur:
 - By order of the SAT upon application by the owner of the fee simple based on an ongoing breach of lease requirements
 - By application to Landgate by the leasehold strata company for termination, based on a unanimous resolution.⁶⁸
 - With the consent of WAPC.

⁶⁸ The consent of the lessor may be required.

- **Exercise of option of renewal** – This will include the following:
 - 75% of existing strata leasehold owners apply to the lessor for exercise of the option to renew
 - *In relation to the 75%*, the lessor shall grant the lease extension to the 75%. The exercise of the option shall be recorded on the lessees' leasehold titles.
 - *In relation to the 25%*, the lessor shall grant an extension to the lease and in this instance the lessor shall be recorded on the leasehold title as the lessee. The lessor is thus empowered to transfer the leasehold apartments to new purchasers.
 - Thus the extension of the lease applies to all units or to no units. The termination date continues to be the same for all leases.
 - WAPC approval of the initial lease of land to the developer includes recognition of the option to renew and so no further endorsement by WAPC is required.

- **Termination of the strata scheme on expiry of the leases** – aspects to be considered in the lease and Management Statement include the rights and obligations at the end of the lease to remove lessees' improvements. In some cases, it may be appropriate for the improvements to simply vest in the lessor. In other cases the lessor may prefer removal of the improvements, retaining the right to remove fixtures and fittings at the cost of the lessee. Upon expiry of the lease, the strata scheme is terminated, the strata company ceases to exist and all obligations of the former strata company vest in and accrue to the former strata proprietors in shares equal to the unit entitlement.

- **Grant of new leases by the lessor to the existing lessees** – the provisions are expected to be similar to those applying to the exercise of an option to renew. The requirement of the WAPC consent to new leases is being considered. Since the leases are new leases of part of an existing building, consent may not be required.

6.8 Conversion of an existing lease arrangement to leasehold strata title

Stakeholder input is invited on whether there are existing developments that have been prepared in anticipation of the eventual enactment of leasehold strata title legislation, and that will benefit from enactment of conversion provisions. General principles expected to impact such applications include:

- The need for WAPC consent;
- A joint application by the lessor and all lessees acting together; and
- Approval of the conversion by all holders of registered interests in impacted land.

Section 7: Staged Strata Developments

7.1 How staged development works currently

Under the existing Act, a developer wishing to undertake a staged strata scheme will generally proceed as follows:

- Construct the first building and apply to register the strata plan. It will define lots in the first building and may retain a residue lot for the future buildings. The strata plan will be accompanied by a management statement setting out:
 - Plans for each stage of the development [see STA Schedule 2A item 8].
 - Unit entitlement for each stage of the development. This generally restructures the unit entitlement for lots stage by stage. For example, the unit entitlement of lot 1 created in the first stage may be changed by each successive stage. The anticipated final unit entitlement of lot 1 upon completion of the development must also be disclosed at the outset.
- Upon registration of the plan, titles are available for the lots, and sales can be completed. Funds may be available for the second building.
- The developer implements the project in stages. When the second building is completed and the Building Act certificate is available, the strata plan of re-subdivision may be lodged for registration in Landgate. It includes a schedule of the restructured unit entitlements. The Registrar of Titles will review the subdivision plan to ensure compliance with the disclosure in the Management Statement. If the plan varies then the Registrar will call for the consent of the strata company, supported by a unanimous resolution. Upon registration, titles for the apartments in the second building are available for the settlement of sales.
- Each stage follows a similar process.

The problems flagged by stakeholders

Problem 1 – difficulties arising from including developer covenants in the Management Statement

Stakeholders have indicated that confusion arises from trying to mix in the Management Statement:

- By-laws for the day to day management of the scheme, which operate as an enforceable obligation over the life of the strata development. These are generally brief and concise.
- Developer covenants with the strata company, that are relevant only during the development period. These can be lengthy, up to 100 pages.

Stakeholders have endorsed the implementation of a Development Statement for community schemes, for the purpose of setting out developer covenants. The proposal is to extend these to staged strata developments.

Problem 2 – complex disclosure and consent provisions

Feedback from some developers indicates that there is a general unwillingness to embark on staged developments because of the complexity of procedures in the existing Act. These require the developer to determine up to 10 years in advance the most marketable use of the lots left for later development. Developers are constrained by sections 8, 8A, Schedule 2B and Regulations 36 and 37 of the Act to provide detailed disclosure at the outset of the scheme. This includes:

- The intended number and size of lots.
- Unit entitlement of the lots and aggregate unit entitlement for the scheme.
- Building location and building footprint.
- Building finish etc.
- Detailed floor-plans.

During the course of the development, the market may change or relevant planning instruments including the Local Planning Scheme may impact the site, especially if the relevant subdivision and development approvals have not been or cannot be obtained at the outset, permitting or forcing changes upon the developer. Any deviation from the disclosed strata scheme currently requires the consent of the strata company by unanimous resolution.⁶⁹ This is a major constraint, and is often difficult to obtain, as with each stage the developer loses voting power and the risk of a dissenting vote increases. If the developer is not able to respond appropriately to market or planning control changes, the development may stall, adversely impacting participants.

Should the amendment change the rights of existing registered owners?

In relation to existing registered schemes, stakeholders have requested changes to regulations to permit minor variations to disclosure in existing registered schemes without the need for a unanimous resolution by the strata company to authorise the changes.

This may for example permit the following action:

- i. changes in the unit entitlement of lots from that disclosed in the management statement by up to 10%,⁷⁰ without altering the aggregate unit entitlement;
- ii. an increase or decrease in the number of apartments to be constructed as disclosed in the management statement, by up to 10%;
- iii. changes in the physical location of the building (deviating in a minor way from the building footprint disclosed in the management statement).

Some concerns have been raised with this approach:

- Retrospective application of the laws diminishes the rights of existing strata proprietors in the scheme and may generate strong objections.

⁶⁹ See sections 8 and 8A of the STA

⁷⁰ It is possible that stakeholders will seek to increase the deviation from 10% to a higher amount.

- Minor changes may still have a significant impact on the utilities and services and impact the amenity of the development. For example, headwork contributions and plans may be adversely affected if more users than originally planned occupy the site.
- No process has been presented by stakeholders ensuring that existing owners will be protected during the process.

These concerns make it unlikely that the changes can be successfully pursued for strata schemes already registered.

Applying the concept to future strata schemes

However, the general approach recommended by stakeholders has merit if introduced for future schemes. This will result in a regulation change applicable to future schemes, expanding the “minor variations” that do not require strata company consent.

Problem 3 – Can disclosure for future schemes be simplified?

Stakeholders have also suggested a new disclosure regime for future staged developments to avoid the problems listed in option 1. The more flexible disclosure approach contemplated for community schemes could apply here. This will empower the developer to specify the “development lots” in the first strata plan and to lodge a development statement setting out:

- the warranted developments, and
- the authorised proposals, as described above for community title schemes.

The community title amendments are expected to be more flexible than the current staged strata disclosure requirements:

- It is not necessary to disclose all intentions at the outset. Some development options can be made in binding form [warranted developments] and some can be made in the form of options or alternatives [authorised proposals] that are more of a guide for purchasers rather than actual commitments.
- The documentation is different – developer disclosure and covenants will be set out in the Development Statement.
- Designate development lots – lots intended to be the location of staged development are designated as development lots.
- Changes may be approved by special resolution.

Two options for staged development of strata schemes are therefore being considered:

- There is an argument that processes that are already underway should be retained, as stakeholders are familiar with them, and developments partially planned at the time of commencement of the legislation may be well-advanced in applying the existing processes and will be adversely impacted by a major change in direction.

Under this approach:

- The developer lodges a strata plan that defines the lots in the existing building and includes a residue parcel as a single lot in the strata plan. The residue lot is intended to be the subject of various strata plans of re-subdivision.

- The current disclosure regime will be followed. However, this will be set out in the Development Statement and not in the Management Statement.
- The regulations will permit strata plans of re-subdivision to include an expanded list of minor variations, which may include:
 - changes in the unit entitlement of lots from that disclosed in the management statement by up to 10%,⁷¹ without altering the aggregate unit entitlement;
 - an increase or decrease in the number of apartments to be constructed as disclosed in the management statement, by up to 10%;
 - changes in the physical location of the building (deviating in a minor way from the building footprint disclosed in the management statement).
- Add another staged development option that mirrors disclosure in community schemes. This approach will have the following features:
 - The initial strata plan will trigger this option by designating one or more lots as “development lots.”
 - The Development Statement will set out the disclosure provisions. This will include warranted developments and authorised proposals as described in the Community Title part of this paper.

The three changes are being reviewed by stakeholders and Landgate invites comments on the suitability and adequacy of these proposals.

⁷¹ It is possible that stakeholders will seek to increase the deviation from 10% to a higher amount.

Appendix A. Features of the NSW Development Contract

The following notes includes extracts from the "Preview of Proposed Changes to the Community Land Development Act", Land and Property Information Sydney, NSW, presented to the Australian College of Community Title Lawyers, 2012.

It should be noted that this version of the discussion paper advances two approaches for the development statement. The content in the example below is more relevant to the scenario where the development statement forms a contract between the developer and the purchasers into the scheme.

It should also be noted that the NSW disclosure regime for community schemes is currently under review.

The NSW strata title regulations require the following to be disclosed in the Development Contract in relation to warranted developments in a staged strata scheme:

- The types of building proposed, the proposed use of the lots, the proposed height and density of the building and the building style
- Common amenities that will be provided
- The number of lots to be created
- Details of rights of access and construction required to undertaken the development
- Landscaping
- Building material and finishes
- Details of vertical staging and insurance during the staged development process
- The developer's contributions to operating expenses
- The expected development period, not to exceed 10 years
- The unit entitlement of strata development lots and this must be apportioned on re-subdivision of the development lots.⁷²

Adding land to a scheme

At present the NSW Community Land Development Act 1989 does not allow land to be added to a community or precinct scheme, even during the development stage where the developer may have had plans to add land after construction had commenced. This prohibition was intended to give purchasers who bought lots in the first stage of a scheme some guarantee of the final scale of the project. However, the prohibition impedes a developer's ability to properly plan and design a large, long-term project.

It is proposed to allow the development contract to be used as a device for adding land to a scheme. Where a development contract is used in this way, purchasers will be aware up front of the possibility that land may be added. This will balance the developer's need for flexibility during the development stage against the need for proper disclosure for purchasers.

⁷² *Strata Schemes (Freehold Development) Regulations 2012, Regulation 14. Note that these regulations relate to staged development of strata schemes not to community titles.*

A proposal to add land to a community or precinct scheme after registration of the initial community or precinct plan may be framed as either warranted development or as an authorised proposal. Where the developer is sure that the land will be added but timing constraints have made it impractical for the land to be included with the initial plan, the developer may choose to make the disclosure warranted development. It may be, however, that the developer is negotiating with a neighbour to purchase a piece of adjoining land or attempting to arrange the closure of an adjoining unused road. In those circumstances the disclosure would be made as an authorised proposal as there can be no guarantee that negotiations for the acquisition of the land will be successful.

The additional land may be intended to be used to expand the shared property within the scheme, to provide additional access or to provide more open space or facilities. Alternatively, the land may be intended to be developed as individual lots for sale as part of the community scheme.

The development contract must therefore identify whether the additional land is intended to be added to the scheme as association property, as a further development lot, or as an addition to an existing community or precinct development lot.

Creating additional community property

Community association property is created in the initial community plan but cannot be created in a community plan of subdivision. The method of staging a development using the community schemes legislation assumes that any additional association property that the developer wishes to create in future stages will be created as association or common property in a subsidiary scheme by registration of a neighbourhood plan or a strata plan.

In many situations it would be more convenient for future shared property to be created as community property so that it can be used and maintained by the community association. It is proposed to enable a development contract to identify land that will, or is proposed to be, created as community property on registration of a community plan of subdivision. By providing this option the developer will be able to structure a scheme so that it can be managed more efficiently after the development stage is complete.

The development contract will not enable existing association property to be subdivided.

Approved form of Development Contract

The approved form is set out below. Note that references in the document to vertical staging should not be taken as an indication that similar developments will be permitted in WA.

NSW FORM OF DEVELOPMENT STATEMENT FOR STAGED STRATA SCHEMES**Approved Form 15****Strata Development Contract****Warning**

This contract contains details of a strata scheme, which is proposed to be developed in *(insert number)* stages on the land described in it.

The developer is only bound to complete so much of the proposed development as is identified as "warranted development" in this contract. However the developer cannot be prevented from completing the balance of the proposed development identified as "authorised proposals" in this contract.

The schedule of unit entitlement may, on completion of the development, be revised in accordance with section 28QAA of the Strata Schemes (Freehold Development) Act 1973 or section 57AAA of the Strata Schemes (Leasehold Development) Act 1986.

The proposed development might be varied but only in accordance with section 28J of the Strata Schemes (Freehold Development) Act 1973 or section 50 of the Strata Schemes (Leasehold Development) Act 1986.

The proposed development might not be completed.

The vote of the developer is sufficient to pass or defeat a motion at a meeting of the owners corporation, or of the executive committee, if the motion is about a development concern. Development concerns are generally those things necessary to be done in order to complete the development in accordance with this contract. See sections 28N, 28O and 28P of the Strata Schemes (Freehold Development) Act 1973 or sections 54, 55 & 56 of the Strata Schemes (Leasehold Development) Act 1986.

During development of a further stage there may be disruption to existing occupants due to building and construction activities.

This contract should not be considered alone, but in conjunction with the results of the searches and inquiries normally made in respect of a lot in a strata scheme.

The strata scheme might be part of a larger development that also includes non-strata land. If this is the case then this will be disclosed at item 2. In these types of development a document known as a 'Strata Management Statement' will govern the relationship between the strata and the non-strata parts of the development, and you should consider that document in deciding whether to acquire an interest in the strata scheme.

Description of Development**1. Description of Land**

Title details of the land, which is to be developed.

2. Description of any non-strata land that is to be developed along with the strata scheme

(i). Title details.

(ii). Insert the following statement when applicable

'A strata management statement will govern the relationship between the non-strata land and the strata scheme. A copy of the strata management may be obtained from the Registrar-General if the strata plan, to which this strata development contract relates, has already been registered. If it has not yet been registered then a copy of the draft strata management statement is annexed. It should be noted that a provision of the strata development contract is void if it is inconsistent with any provision of the strata management statement'.

3. Description of any Land proposed to be added to the Scheme

- i. *Title details.*
- ii. *Disclose whether the land will become common property, a further development lot, an addition to an existing development lot, or a combination of these categories.*
- iii. *Indicate whether the addition of the land is a warranted development or an authorised proposal.*

4. Description of Development Lot or Lots

Identify the lots in the Strata Plan that are Development lots.

5. Covenants implied in Strata Development Contracts by the Strata Schemes (Freehold Development) Act 1973, Strata Schemes (Leasehold Development) Act 1986

(i) Warranted Development

The developer agrees with the other parties jointly, and with each of them severally:

- that the developer must carry out the development (if any) described and identified as “warranted development - proposed development subject to a warranty” in the strata development contract and
- that the developer must carry out any such development in accordance with the covenants set out and implied in the contract.

(ii) Permission to carry out warranted development and authorised proposals

The parties, other than the developer, jointly and severally agree with the developer that the developer is permitted to carry out, in accordance with the covenants set out or implied in the contract:

- the warranted development (if any) and
- such other development as is described and identified as “authorised proposals - proposed development not subject to a warranty” in the contract.

(iii) Owners Corporation expenses

The developer agrees with the owners corporation that the developer will pay the reasonable expenses incurred by the owners corporation:

- in repairing damage to the common property caused in carrying out the permitted development, except damage due to normal wear and tear and
- for any water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone service used in carrying out that development and
- for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision
- for any amounts due under any strata management statement that are connected with the carrying out of the permitted development.

(iv) Standard of development

The developer agrees with the other parties that:

- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths and
- heights of buildings, other structures and works and the density of development,

in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies.

(v) Unauthorised use of the parcel

The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:

- to the extent necessary to carry out the development permitted to be carried out by the strata development contract or
- to such other extent as may be specified in the contract.

(vi) Restoration of common property

The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

(vii) Restoration of development lot

The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

For the purposes of this covenant, "damage" does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out.

(viii) Additional covenants for vertical staged development

If the contract permits development to be carried out within a development lot that is wholly or partly directly above or below a part of the parcel that is not a development lot, the developer agrees with the other parties:

- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise and
- to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided to such other parts of the parcel as are capable of being sheltered or of enjoying that support and
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity with an insurer approved for the purposes of Part 4 of Chapter 3 of the Strata Schemes Management Act 1996 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development.

6. Warranted Development - proposed development subject to a warranty. Development that the developer may be compelled to carry out.

Each stage must be numbered consecutively beginning with Stage 2 (Stage 1 is the original plan). The sub-headings, (i) – (xi) must be utilised for each stage of warranted development. If there is no warranted development, indicate this in lieu of the sub-headings.

(i) Description of Development

Describe the development that will be carried out. Indicate the type of buildings proposed, proposed uses of the lots in the buildings, the proposed building style and the height and density of the buildings - reference may be made to the concept plan.

(ii) Common Property Amenities

Describe any common property amenities that will be provided - eg. swimming pool, tennis courts, barbecue area.

(iii) Schedule of Commencement and Completion

Completion of this item is optional

Specify when the building and related works are to be physically commenced and when the building and works will be fit for use and/or occupation by a lot owner.

(iv) Schedule of Lots

Indicate the number of lots to be created in this stage. Do not identify the lot numbers.

(v) Working Hours

Completion of this item is optional

Set out details of working hours subject to the standard laid down by the consent authority.

(vi) Arrangements for Entry, Exit, Movement and Parking of Vehicles to, from and on the parcel during development and Permitted Uses of Common Property and Development Lots during development

Set out details of access and construction zones and accompanying rights over common property and development lots during this stage of development.

(vii) Landscaping

Briefly describe the manner in which it is proposed to landscape the parcel in this Stage.

(viii) Schedule of Materials and Finishes

Indicate building materials and finishes.

(ix) Vertical Staging

If vertical staging is taking place

- *provide a description of the development*
- *indicate insurance details.*

(x) Contribution to Common Property Expenses

Indicate whether the developer's liability for common property expenses is to be determined by unit entitlement or provided details of differences.

(xi) Proposed By-Laws, Management Agreements, Covenants, Easements or Dedications

Indicate any which will be registered in this stage.

7. Authorised Proposals - proposed development not subject to a warranty.

Development that the developer is permitted to carry out, but not compelled to carry out.

Each stage must be numbered consecutively beginning with the next number after the stages in warranted development. If there is no warranted development, begin with Stage 2 (Stage 1 is the original plan). The sub-headings, (i) – (xi) must be utilised for each stage of warranted development. If there are no authorised proposals, indicate this in lieu of the sub-headings.

(i) Description of Development

Describe the development that is proposed - indicate the types of buildings proposed, proposed uses of the lots in the buildings, the proposed building style and the height and density of the buildings - reference may be made to the concept plan. It is not necessary to be specific - for

example it may be proposed that up to 20 one and two bedroom units be provided in a building of up to 6 storeys. The developer may vary the mix in accordance with market conditions.

(ii) Common Property Amenities

Completion of this item is optional

Describe any common property amenities that will be provided - eg. swimming pool, tennis courts, barbecue area.

(iii) Schedule of Commencement and Completion

Completion of this item is optional

Specify when the building and related works are to be physically commenced and when the building and works will be fit for use and/or occupation by a lot owner.

(iv) Schedule of Lots

Indicate the maximum number of lots to be created in this stage - eg. up to 20 lots.

(v) Working Hours

Completion of this item is optional

Set out details of working hours subject to the standard laid down by the consent authority.

(vi) Arrangements for Entry, Exit, Movement and Parking of Vehicles to, from and on the parcel during Development and Permitted Uses of Common Property and Development Lots during development

Completion of this item is optional

Set out details of access and construction zones and accompanying rights over common property and development lots during this stage of development.

(vii) Landscaping

Completion of this item is optional

Briefly describe the manner in which it is proposed to landscape the parcel in this stage.

(viii) Schedule of Materials and Finishes

Completion of this item is optional

Indicate building materials and finishes.

(ix) Vertical Staging

If vertical staging is taking place

- *provide a description of the development*
- *Indicate insurance details.*

(x) Contribution to Common Property Expenses

Indicate whether the developer's liability for common property expenses is to be determined by unit entitlement or provided details of differences.

No application in WA anticipated

(xi) Proposed By-Laws, Management Agreements, Covenants, Easements or Dedications

Indicate any which may be registered in this stage.

8. Date of Conclusion of Development Scheme

Set out the date by which all warranted development and authorised proposals must be completed - this date must not be more than 10 years from the date of registration of this contract.

9. Concept Plan

Annex plans and drawings on approved form 15A illustrating separately the sites proposed for and the nature of the buildings and works that would result from the carrying out of each of the warranted development and the authorised proposals including:

- (i) the location of buildings proposed to be erected or retained on the parcel*
- (ii) elevations and sections of those buildings and their external finishes and heights*
- (iii) perspectives of those buildings*
- (iv) the proposed finished levels of the land in relation to roads and those buildings*
- (v) any additional land that may be added to the scheme*
- (vi) any vertical staging.*

Signatures, Consents, Approvals

Signature / seal of developer

Signature / seal of each registered mortgagee, chargee, covenant chargee and lessee of the development lot.
.....

Signature / seal of each registered mortgagee and chargee, of a lease of the development lot.
.....

Certificate of Approval

It is certified:

- a) That the consent authority has consented to the development described in Development Application No..... and
- b) The carrying out of the proposed development described as "warranted development" and "authorised proposals" in this strata development contract would not contravene;
 - (i) Any condition subject to which the consent was granted; or
 - (ii) The provisions of any environmental planning instrument that was in force when the consent was granted except to the following extent: (fill in if applicable)

Date:

Execution of consent authority

This is the approved form referred to in

Section 28C(1) Strata Schemes (Freehold Development) Act 1973

Section 43(1) Strata Schemes (Leasehold Development) Act 1986

The italicised text above this line is for instructional purposes and should not be reproduced as part of the final document.

Discussion Draft

Appendix B. Disclosure regime in other States

#	Disclosure process	Comments
1	NEW SOUTH WALES	
	Community title	<ul style="list-style-type: none"> The provision of a development contract is optional. At first glance, this approach appears to provide maximum flexibility for developers. However, some constraints already exist in the legislation: <ul style="list-style-type: none"> Community lots must be defined at the outset. Community property must be defined at the outset and cannot be varied over the course of the scheme. Unit entitlements must be set at the outset Services for utilities etc must be disclosed at the outset. This approach has not proved to be sufficiently flexible and so the disclosure regime applying to staged strata schemes is to be applied to community schemes in an imminent amendment [see below].
	Staged strata developments -	<ul style="list-style-type: none"> If a “development lot” is designated, signifying that a staged development is underway, lodgment of a development contract is compulsory. The development contract may specify: <ul style="list-style-type: none"> Warranted developments – binding commitments. Authorised proposals – development options that may be implemented without strata company interference but that cannot be enforced by the strata company. This approach appears to work successfully.
2	QUEENSLAND	
	Layered scheme	No compulsory disclosure
3	VICTORIA	
	Staged developments	<ul style="list-style-type: none"> Staged developments require lodgment of a Master Plan describing the development The master plan sets out: <ul style="list-style-type: none"> the lots, common property reserves, easements and restrictions applying in the first stage. Reference to any permit or planning scheme provision that will regulate the development of future stages
4	SOUTH AUSTRALIA	
	Community schemes creating community lots	<ul style="list-style-type: none"> All community plans require a Scheme Description to be lodged. It must: <ul style="list-style-type: none"> Identify lots, Specify the standard of the building or other improvements envisaged; Identify development lots as areas where the project is to be undertaken in stages Include a brief description of the nature and scope of the development to be undertaken in each stage and the time for completion of each stage Include disclosure of developments contracted to be made on common property Refer to development approval conditions
	Community	<ul style="list-style-type: none"> A Development contract must be registered


#	Disclosure process	Comments
	Schemes that also create development lot	<ul style="list-style-type: none"> • The development contract operates as a contract binding the developer.. It must: <ul style="list-style-type: none"> ○ Set out the developer's obligations ○ Attach draft plans for subsequent stages showing the likely boundaries of lots ○ Where construction of a building is warranted, include the location of the building design, dimensions, materials of construction etc., pictorial representation of the building ○ Include the landscaping design • The scheme must be implemented in accordance with the contracted arrangements. • Variations require the consent of the community association

This Table is still under development.

Appendix C. Sample title for community lot

Note that sample titles are provided for review purposes and are not necessarily in final form. Stakeholder feedback is requested.

	REGISTER NUMBER N/A
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WESTERN AUSTRALIA

RECORD OF CERTIFICATE OF TITLE

UNDER THE TRANSFER OF LAND ACT 1893 AND THE
STRATA TITLES ACT 1985

VOLUME	FOLIO
5000	001

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.


 REGISTRAR OF TITLES
 

LAND DESCRIPTION:

LOT 1 ON COMMUNITY PLAN 99900
TOGETHER WITH A SHARE IN ANY COMMUNITY PROPERTY AS SET OUT ON THE COMMUNITY PLAN

REGISTERED PROPRIETOR:
(FIRST SCHEDULE continued overleaf)

JOE BLOGGS
BETTY BLOGGS
BOTH OF 1 MAIN STREET, SOMEWHERE
AS JOINT TENANTS

(A P123455) REGISTERED 30 SEPTEMBER 2030

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE continued overleaf)

1. THE LAND IS WITHIN A COMMUNITY SCHEME UNDER THE STRATA TITLES ACT 1985 – SEE COMMUNITY PLAN 99900.
2. INTERESTS NOTIFIED ON THE COMMUNITY PLAN AND ANY AMENDMENTS TO LOTS OR COMMUNITY PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT 1985.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk do not appear on the current edition of the duplicate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----


STATEMENTS:

The statement set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF THE LAND:	COMMUNITY PLAN 99900
PREVIOUS TITLE:	35-53A.
PROPERTY STREET ADDRESS:	1-5 REDCLIFFE STREET, EAST CANNINGTON.
LOCAL GOVERNMENT AREA:	CITY OF CANNING.

Appendix D. Sample title for a lot in a subsidiary scheme



	REGISTER NUMBER N/A
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WESTERN  AUSTRALIA

RECORD OF CERTIFICATE OF TITLE
UNDER THE TRANSFER OF LAND ACT 1893 AND THE
STRATA TITLES ACT 1985

VOLUME FOLIO
2500 101

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.


REGISTRAR OF TITLES 

LAND DESCRIPTION:

LOT 1 ON SECONDARY COMMUNITY PLAN 99953
TOGETHER WITH A SHARE IN ANY SECONDARY COMMUNITY PROPERTY AS SET OUT ON THE SECONDARY
COMMUNITY PLAN AND A SHARE IN ANY COMMUNITY PROPERTY AS SET OUT IN THE COMMUNITY PLAN

REGISTERED PROPRIETOR:
(FIRST SCHEDULE continued overleaf)

BILL SMITH
CAROL SMITH
BOTH OF 50 MAIN STREET, SOMEWHERE
AS JOINT TENANTS

(A P123500) REGISTERED 30 NOVEMBER 2030

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE continued overleaf)

1. THE LAND IS WITHIN A COMMUNITY SCHEME – SEE COMMUNITY PLAN 99990 AND A SECONDARY COMMUNITY SCHEME – SEE SECONDARY COMMUNITY PLAN 99953.
2. INTERESTS NOTIFIED ON THE COMMUNITY PLAN AND ANY AMENDMENTS TO LOTS OR COMMUNITY PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT 1985.
3. INTERESTS NOTIFIED ON THE SECONDARY COMMUNITY PLAN AND ANY AMENDMENTS TO LOTS OR SECONDARY PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT 1985.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk do not appear on the current edition of the duplicate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statement set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

Appendix E. Sample leasehold strata title

		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">REGISTER NUMBER 1/SP65135</td> </tr> <tr> <td style="text-align: center;">DUPLICATE EDITION 1</td> <td style="text-align: center;">DATE DUPLICATE ISSUED 30/12/2030</td> </tr> </table>	REGISTER NUMBER 1/SP65135		DUPLICATE EDITION 1	DATE DUPLICATE ISSUED 30/12/2030
REGISTER NUMBER 1/SP65135						
DUPLICATE EDITION 1	DATE DUPLICATE ISSUED 30/12/2030					
WESTERN	AUSTRALIA					

RECORD OF CERTIFICATE OF LEASEHOLD TITLE

UNDER THE TRANSFER OF LAND ACT 1893 AND THE STRATA TITLES ACT 1985

VOLUME **666** FOLIO **001**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.



 REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 1 ON LEASEHOLD STRATA PLAN 68034
TOGETHER WITH A SHARE IN ANY COMMON PROPERTY AS SET OUT ON THE LEASEHOLD STRATA PLAN

REGISTERED PROPRIETOR:
(FIRST SCHEDULE continued overleaf)

JOE BLOGGS
BETTY BLOGGS
BOTH OF 1 MAIN STREET, SOMEWHERE
AS JOINT TENANTS OF A LEASEHOLD ESTATE CREATED BY LEASE..... EXPIRING.....
(A P123667) REGISTERED 30 DECEMBER 2030

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE continued overleaf)

1. INTERESTS NOTIFIED ON THE STRATA PLAN AND ANY AMENDMENTS TO LOTS OR COMMON PROPERTY NOTIFIED THEREON BY VIRTUE OF THE PROVISIONS OF THE STRATA TITLES ACT 1985.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk do not appear on the current edition of the duplicate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statement set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF THE LAND:	SP68034
PREVIOUS TITLE:	1225-951
PROPERTY STREET ADDRESS:	1-5 REDCLIFFE STREET, EAST CANNINGTON.
LOCAL GOVERNMENT AREA:	CITY OF CANNING.

END OF PAGE 1 – CONTINUED OVER

Appendix F. Stakeholder Group Engagement List

Organisation

Department of Planning
Landcorp
Department of Housing
Office of State Revenue
Treasury
Water Corp
Urban Development Institute of Australia
Property Council of Australia
Surveying and Spatial Sciences Institute
Planning Institute WA Division
WALGA
City of Bayswater
City of Perth
City of Rockingham
City of Swan
City of Stirling
City of Belmont
City of Canning
City of Armadale
City of Rockingham
Law Society WA
Ernst & Young
Consumer Protection
Atco Gas
Australian Property Institute
Department of Lands
Building Commission
Department of Commerce
Fini Group

Appendix G. Changes since last Version

1. **Staged creation of community lots** – following on from developer representations, the paper has been expanded to incorporate processes for the staged creation of community lots. This applies lessons from the review of community titles practice in NSW.
2. **Re-introduction of the concept of “development lot.”** Where a staged development is proposed, the initiating plan will designate the lots to be staged as “development lots.” This will be used where there will be staged creation of community lots.
3. **Development Statement to be compulsory in all community plans** – the concept of community schemes now makes the lodgment of a Development Statement compulsory, to provide disclosure of the developer intention. It will be used for staged and non-staged community schemes. However, the content of the disclosure will be left largely in the hands of the developer
4. **Expanded disclosure options in the Development Statement** – the Paper adds more detail on the use of “warranted developments” and “authorised proposals” in Development Statements. In general terms, if a development proposal is disclosed in a list of potential development options in the Development Statement, the consent of the community corporation is not required. The consent of the community corporation will be required to any undisclosed development option. The developer can decide the extent to which warranted developments and authorised proposals will be used.
5. **Application of the new disclosure provisions to non-layered strata schemes** – staged strata schemes that are stand-alone developments and not within a community scheme may have the option of following the disclosure regime being formulated for community title schemes. Two options are provided to stakeholders in this discussion paper.
6. **Review of the potential use of green titles in buildings** – this option, discussed in previous versions, is not seen by stakeholders as a preferred outcome and has been eliminated as an option.
7. **Confirmation that the staged development of a building is not envisaged in the reforms** – As a result of discussions with Planning, local government and stakeholders, it has been found that the NSW model of using stratum plans is not a preferred outcome for WA. Instead, layered buildings is the preferred option. The existing Building Act certification process will be required for community plans initiating a layered building
8. **Confirmation that the laws will not permit the creation of airspace lots** – Similarly, although airspace lots may be created elsewhere [for example in NSW stratum plans], Planning is not in general terms in a position to approve subdivisions creating airspace strata lots.
9. **Interface with the existing planning laws is more fully articulated** – the paper reflects the current status of the dialogue with representatives of Planning in relation to the interface between development and planning.
10. **Eliminate option of using one plan to create multiple strata schemes** - In a layered building, the law will not endeavour to permit a single plan to create the layered scheme and the subsidiary schemes.
11. **Community schemes to be limited initially to three tiers** – this is expected to limit the IT impacts and complexity initially and should provide adequate flexibility to implement schemes currently envisaged by stakeholders. In 25 years of community schemes in NSW there have been less than 40 developments with three management levels.
12. **Eliminate the option of a stand-alone strata scheme containing both strata and survey-strata lots** – this has been found by Planning to add complexity and a strata plan can achieve the same outcome with minimal complexity.

13. **Clarification of processes for making changes to a community titles scheme** – the Paper includes more detail on incorporating changes during the development period. These may include for example:
- How to sever a lot from a scheme.
 - How to amalgamate strata companies and schemes.
 - Adding adjoining land to the development.
 - Amending a registered Development Statement.
 - Changes once the development period has been completed.
14. **Converting existing schemes to community title** – processes are now set out in the paper for review by stakeholders.

Discussion Draft