

# Development Control Policy 1.3

## Strata Titles

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## Background notes

- 1 This policy deals with those classes of strata title proposals which require the approval of the Western Australian Planning Commission (WAPC) and sets out the criteria to be used in the determination of applications for that approval. It does not apply to all strata title proposals, many of which are delegated to the relevant local government or exempt from needing WAPC approval.
- 2 The WAPC reconsidered and revised this policy in:
  - May 1998 to take account of the *Strata Titles Amendment Act 1995*. The affect of legislative changes on WAPC policy and practices was described in *Planning Bulletin 14 Amendments to Strata Titles Act May 1996*, and *Planning Bulletin 19 Strata Titles Amendment Act 1996 - Update on Policy and Practice February 1997*.
  - September 2003 to clarify the relationship of the WAPC's policy with the WAPC's policies on subdivision.
  - June 2009 to address the delegation of WAPC powers and functions to local government under section 25 of the *Strata Titles Act 1985* for 'built' strata applications, subject to exceptions and conditions, and to correct outdated legislative references.
- 3 Related policies are:

Development Control Policy 2.2 Residential Subdivision

Development Control Policy 2.3 Public Open Space in Residential Areas

Development Control Policy 2.6 Residential Road Planning

Development Control Policy 3.4 Rural Land Use Planning Policy

Guidelines for the Design and Geometric Layout of Residential Roads

# 1 Introduction

1.1 The use of strata titles in the State has developed from the fairly simple concepts of the *Strata Titles Act 1966*, when it applied solely to buildings and almost exclusively to multi-storey buildings by allowing title to parts of each floor (or stratum) level. The concept has been expanded to include vertical divisions between buildings, such as terraced housing and through the *Strata Titles Act 1985*, provided for the division of land and buildings. The *Strata Titles Amendment Act 1995*, changed the way the WAPC dealt with existing forms of strata, introduced a new form of strata title and provided new instruments for the management of strata schemes. In view of difficulties experienced by some landowners with the boundaries of strata lots and common property, and the requirements for insurance, the Strata Titles Act was amended further to simplify strata titles by the *Strata Titles Amendment Act 1996*.

1.2 There are very few forms of land and building divisions to which strata titles cannot be applied - examples of the variety of strata schemes considered by the WAPC since July 1985 are set out in appendix 1 of this policy.

1.3 The *Strata Titles Amendment Act 1995*, introduced survey strata lots. These lots consist of surveyed land boundaries (as against building parcels which occur with strata title subdivisions involving buildings only). On plan, a survey strata subdivision will have a similar appearance to a conventional subdivision although it may include 'common property' and have an ongoing relationship between the other lots created on the same survey strata plan.

Under regulation 15 of the Strata Title General Regulations 1996, WAPC approval for strata subdivision is not required when:

- i it relates to residential developments;
- ii it relates to a development containing no more than five dwelling units;
- iii each strata lot contains one existing dwelling unit;

- iv it relates to a land parcel which does not exceed 2,500 square metres in area; or
- v it relates to land within an urban zone and to development which conforms with an approved local planning scheme, or where no scheme exists, it relates to land within a gazetted townsite.

The appropriate local government is required by the Strata Titles Act to certify that a given strata plan is exempt from the need to obtain the approval of the WAPC.

1.4 The WAPC has delegated its powers and functions to consider built strata applications to local government. The instrument of delegation gazetted on the 9 June 2009 delegates to local governments and to members and officers of those local governments the powers and functions of the WAPC under section 25 of the *Strata Titles Act 1985* to determine applications for the issuing of a certificate of approval for a plan of subdivision, re-subdivision or consolidation, except those applications that:

- i propose the creation of a vacant lot;
- ii propose vacant air stratas in multi-tiered strata scheme developments;
- iii in the opinion of the WAPC as notified to the relevant local government in writing, relate to
  - a) a type of development; and/or
  - b) land within an area,

which is of state or regional significance, or in respect of which the WAPC has determined is otherwise in the public interest for the WAPC to determine the application.

1.5 While the range of uses for strata titles gradually has been expanded, the separate approval of the WAPC is no longer needed for the most common form of strata title. The purpose of this policy is to set out the policy requirements of the WAPC for those forms of strata titles that require its approval. The WAPC is conscious, however, that the provisions of the current Act offer scope for a range of innovative

uses for this form of titling, which may necessitate the modification or expansion of this policy from time to time.

## 2 Policy objectives

- To clarify the procedure for the issue of certificate of approval to strata title proposals.
- To establish criteria for the determination of applications for the certificate of approval to strata title proposals.
- To ensure a consistent approach in the principles of subdivision control with particular regard to the amenity of the neighbourhood.

## 3 Policy measures

### 3.1 General requirements

3.1.1 In its consideration of applications for certificate of approval, as required by section 25 of the *Strata Titles Act 1985*, the WAPC will apply the following criteria:

- a) The development proposed for strata titles is, or will be, in accordance with all relevant provisions of the local government local planning scheme.
- b) The proposed strata subdivision will not affect a subdivision of land in situations where the WAPC would not grant the approval required by section 135 of the *Planning and Development Act 2005*.
- c) The division by strata of the development is consistent with long-term planning goals and objectives for the area concerned.
- d) The proposal is consistent with the policies of the WAPC regarding subdivision, and in particular, the standards for roads, public open space and residential design.

3.1.2 Given the increased scope for the use of strata schemes, especially for land and buildings to be divided in a manner similar to that involved in conventional subdivision, it is inevitable that circumstances will arise where a strata scheme will be found to be acceptable only on conditions that affect the parent

land parcel, eg that land required for road widening or for public open space be ceded free of cost to the Crown. In these cases, because subdivision by strata scheme is not subdivision for the purposes of sections 135 and 136 of the *Planning and Development Act 2005*, it may be necessary to require a subdivision application to be submitted and approved by the WAPC to excise from the parent lot the land required for a public purpose with the result that the strata scheme will relate to the residual parcel.

### 3.2 Procedure for approvals

3.2.1 Section 25 (3) of the *Strata Titles Act 1985*, clearly contemplates that unless special circumstances exist, all certificate of approval applications be lodged prior to the commencement of any development whether it is a new proposal or it involves modification to or adaptation of an existing building. The WAPC expects that the tenor of the Act will be complied with.

3.2.2 The WAPC will consider all strata subdivision having regard to this policy and to advice received from the relevant local government and servicing agencies. The WAPC must be satisfied that all strata proposals comply with the provisions of the local government local planning scheme and that the lots proposed will be capable of development.

3.2.3 The WAPC is required to refer applications for a vacant strata lot to affected authorities as set out in section 142 of the *Planning and Development Act 2005*. The WAPC is responsible for the clearance of conditions, in the same way as for conventional subdivision.

3.2.4 The creation of survey strata lots will be dealt with under part 10 of the *Planning and Development Act 2005*, which means the full involvement and responsibility of the WAPC, to the same extent as with the creation of conventional lots. Accordingly, the WAPC is able to impose conditions, including the setting aside and vesting of reserves where appropriate.

3.2.5 With respect to dimensions and areas of proposed lots and their relationship to the *State Planning Policy 3.1 Residential Design Codes (Variation 1)* (R-Codes), the WAPC will treat applications for vacant strata or survey strata subdivision which

include common property on Residential zoned land as proposals to accommodate grouped dwellings and not single houses.

### **3.3 Vacant strata and survey strata title lots**

- 3.3.1 Strata schemes may show the creation of vacant strata title lots, provided that there is at least one building on any land parcel in the scheme. Alternatively, survey strata title lots consisting of surveyed land boundaries may be created and there may or may not be buildings on the land but the buildings do not form part of the strata scheme. This brings such schemes very closely in line with conventional freehold subdivisions. The WAPC believes that although the strata subdivision system is more flexible than freehold subdivision, there are considerations which will be applicable to both.
- 3.3.2 For vacant strata and survey strata lots there generally will be a need to consider full servicing (including water, sewer, drainage and fill, and provision of access to a constructed road) of each individual lot, particularly where lots are not already developed (and therefore not serviced), and where they may become distanced or separated from service connections by intervening lots in the same strata or survey strata scheme.
- 3.3.3 Consistent with legislation, policy and practice in respect of conventional subdivision, for a proposal involving more than a small number of lots, the WAPC may require a contribution towards the provision of public facilities, such as open space, school sites and the like. The WAPC may allow a maximum of 50 per cent of the total 10 per cent public open space to be provided as communal open space within the survey strata subdivision subject to the open space being useable and developed for general recreation purposes. The remainder of the provision may be provided outside of the subdivision or by way of cash-in-lieu. The WAPC will allow up to 20 per cent of the 10 per cent contribution to be in the allocation of a site for community facilities, which may include buildings, providing the site is credited towards the communal open space. Cash-in-lieu could be provided in the same manner as it is with conventional subdivision.

- 3.3.4 In the case of the creation of vacant strata subdivision or survey strata lots, the WAPC must be satisfied on a number of points:

#### **Residential**

- a) The proposed lot or lots will not result in any conflict with any statutory requirements or provisions of a local planning scheme, including residential densities applicable to the land involved.
- b) The proposal will not conflict with the government's sewerage policies.
- c) The proposed lot or lots will be provided with all appropriate public services, particularly a reticulated water supply and, where available, reticulated deep sewerage facilities. Where deep sewerage is not available and cannot be made available at reasonable cost, the WAPC will want to be satisfied that the soil conditions, water table levels and amount of land area available for on-site disposal of wastewater are appropriate for the effective operation of on-site wastewater disposal systems.
- d) The proposed lot or lots are of such a shape and size as to permit development in accordance with appropriate development standards and in the case of infill survey strata development, have a positive relationship to the prevailing street block pattern and the amenity of the surrounding residential properties. In the case of survey strata lots of less than 350 square metres in area, the WAPC may require information regarding the arrangement of existing and proposed buildings, fences, driveways and other development on the land to enable the relationship between the subdivision and development to be properly assessed in accordance with *Development Control Policy 2.2 Residential Subdivision*.
- e) The proposed lot or lots will have adequate access and will be able to accommodate car parking in accordance with the relevant standards. Driveways for survey stratas up to six dwellings should be designed in accordance with the R-Codes. Access ways for survey stratas in excess of six dwellings should be designed in



accordance with *Development Control Policy 2.6 Residential Road Planning* and the *Guidelines for the Design and Geometric Layout of Residential Roads*, with provision for the road pavement and verges for pedestrian access, landscape and public utilities. Verge widths may be reduced if acceptable alternative provision for pedestrian access, landscape and utility provision is made.

- f) In respect of larger schemes, that adequate road access will be available and that the scheme, if approved, complies with the standard requirements with respect to the provision of public open space. Also, the WAPC will ensure that any such strata scheme does not prejudice the proper overall planning of a locality, in particular the establishment of an effective road network to and within that locality.

#### **Non-residential**

- a) The proposed lot or lots will be capable of development in accordance with the provisions of the local planning scheme, including compliance with the appropriate development standards.
- b) The proposed lot or lots will be capable of being appropriately serviced, particularly with reticulated water and, if relevant, deep sewerage facilities. In the absence of deep sewerage, the WAPC will wish to satisfy itself that land areas and soil conditions are such as to ensure effective operation of on-site wastewater disposal systems.

3.3.5 In order to satisfy itself with respect to these matters, the WAPC may require the submission of concept or sketch plans showing a form of development which complies with all relevant development standards and requirements, and also may undertake consultation with other affected bodies. In the latter regard, while every endeavour will be made to determine each such application within the 40-day period prescribed for a decision, consultation may necessitate a longer period.

3.3.6 All strata schemes, particularly those involving the creation of vacant strata title lots, will be examined in a similar way as

conventional applications for subdivision (ie applications may be refused on planning grounds or approved subject to conditions relating to road construction, provision of services and/or public open space, and the draining and filling of land) to ensure consistency of approach and that the provisions of the Strata Titles Act are not used to circumvent the normal requirements of subdivision. However, since roads and services within a strata scheme are private, it is accepted that participants within any such scheme should have some flexibility in determining the standards that they require for those services, eg the width, alignment, parking and drainage of roads and driveways where these do not directly affect public facilities or other adjoining land.

3.3.7 There may be circumstances where the WAPC believes that a proposal to create vacant strata or survey strata lots is not acceptable, and that the subdivision should take the form of a conventional lot subdivision. In instances where it is proposed to create a large number of lots which could raise issues such as access for emergency services, public access and the distribution of public facilities, or where a proposal circumvents the normal requirements of subdivision, the WAPC may consider that the proposal should proceed as a conventional subdivision.

3.3.8 The WAPC may require the preparation of a management statement as a mechanism for introducing additional by-laws for a strata scheme at the time the scheme is registered. Management statements may be required by the WAPC as a condition of strata scheme or survey strata scheme approval where detailed ongoing management arrangements are required. Management statements may be of particular value in ensuring that standards of design and amenity are met.

3.3.9 The WAPC may impose conditions requiring preparation and enforcement of development guidelines by way of restrictive covenants under section 129A of the *Transfer of Land Act 1893* and/or construction to plate height in accordance with *Development Control Policy 2.2. Residential Subdivision*.

### 3.4 Strata titled caravan parks

The strata titling of caravan parks is precluded by the *Caravan and Camping Grounds Act 1995*. The WAPC will not grant any further approvals for the strata titling of caravan parks. Proposals for short-stay residential accommodation which do not fall within the definition of a caravan park may be approved for strata title. Such applications and developments will be assessed on their merits and having regard to the local government local planning scheme.

### 3.5 Strata titles in rural areas

The WAPC's *Development Control Policy 3.4. Subdivision of Rural Land* provides a framework for planning in rural areas. Emphasis is placed on rural strategies as a mechanism for rational decision-making for the future zoning, subdivision, strata titling and development of rural land. The general principles of the policy apply equally to strata schemes and conventional subdivisions. In considering proposals for survey strata subdivision, in combination with management statements and restrictions under section 6 of the Strata Titles Act, the appropriateness of subdivision of rural land in any particular area will remain a fundamental consideration for the WAPC. The nexus between land area (proposed lot sizes) and the agricultural activity applicable to the land, subject to an application to subdivide, is an important aspect of this consideration.

application within 40 days of receiving the application for built stratas, and 90 days for vacant lot stratas

#### 4.1.2 Survey stratas

Survey stratas are determined under part 10 of the *Planning and Development Act 2005*. An application for review is made to the State Administrative Tribunal under section 251 of this Act and must be lodged within 28 days of the date of the WAPC's determination. An application for review may also be lodged within 28 days of the WAPC's failure to determine a proposal within 90 days of the receipt of an application.

### 4.2 Reconsiderations

A request for reconsideration of a decision or conditions imposed on a vacant lot strata or survey strata may be lodged with the WAPC within 28 days of the decision.

## 4 Implementation of policy

### 4.1 Planning appeals

#### 4.1.1 Vacant and built stratas

Section 27 of the Strata Titles Act provides for an application for review against a decision of the WAPC to be made to the State Administrative Tribunal within 30 days of the receipt of that decision, or within 30 days of the expiration of the period in which a decision on an application is required to be made by the WAPC. Applications for review also are provided against a failure by the WAPC to notify the applicant of its approval of an

## Appendix 1 - Examples of strata title schemes

The following are representative of some of the strata schemes which have been considered by the WAPC since 1 July 1985:

### a) Conventional schemes

- i) The division of multi-storey residential buildings into dwellings usually referred to as home units.
- ii) The division of multi-storey office buildings into separate office suites.
- iii) The division of grouped housing projects into their component dwelling units.
- iv) The division of shopping centres and warehouse/showroom/factory-unit development into their component units.

### b) Extensions to conventional schemes

- i) The division of multiple and grouped housing projects but with allocation of land in the form of gardens, courtyards, car parking spaces or garages as part of the lots.
- ii) The division of grouped housing projects into lots only with no common property.
- iii) The division of office buildings, shopping centres and industrial complexes into their component units; each lot also containing service courts, parking spaces and loading facilities etc.

### c) New techniques and schemes

- i) The division of land into vacant strata titled lots with private roads and infrastructure, provided that there is at least one building on any parcel of land which is the subject of a strata scheme.
- ii) For equestrian centres, the division of land into strata lots with the exercise track, jumping area etc set out as common property.
- iii) The division of land associated with marinas for pens, clubrooms and storage areas.
- iv) The division of motels to create lots for each motel unit.
- v) The division of land into survey strata lots defined by surveyed land boundaries. No buildings need to be shown on the plan, although this type of strata can be used where there are existing buildings.