

15 December 2020

Via email to [communitytitles@landgate.wa.gov.au](mailto:communitytitles@landgate.wa.gov.au)  
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To whom it may concern,

### Submission: Community Titles Regulations 2020

The Committee for Perth (Committee) is WA's leading think tank. With over 100 members covering more than 40 sectors, we thank you for the opportunity to make a submission on the proposed Community Titles Regulations 2020.

We offer our support for the introduction of community schemes into Western Australia through the Community Titles Act 2018 and associated Community Titles Regulations 2020. Community Titles provide an opportunity to facilitate more mixed use, innovative, quality and sustainable forms of land and property development that will better meet the future needs of Greater Perth and Western Australian residents.

It is therefore important that the draft Community Titles Regulations (2020) are finalised with some expediency. In doing so, there must be clarity for developers, government and future purchasers regarding the processes for the development and long term management of community schemes.

This submission has been prepared by the Committee with support and input by members of the Committee's Reshaping Working Group. It has been prepared following a briefing on the Community Titles Legislation by Kelly Whitfield, Director Legislation and Policy at Landgate. We would like to extend our thanks to Kelly for her time and that of her colleagues at the Department of Planning, Lands and Heritage.

The Committee has identified five key issues which we request are given additional consideration in finalising the draft Community Titles Regulations:

1. The process for preparing and required content of Community Development Statements.
2. Requirements for the referral of Community Development Statements to Local Authorities.
3. The capacity to retrospectively convert existing developments into community schemes.
4. Guidance for prospective buyers.
5. Consistency and alignment between regulations.

## 1. Community Development Statements

The purpose of a Community Development Statement and the information required to be provided within the statements is primarily outlined within the draft Legislation and associated Regulations. It is also noted that additional detail can be incorporated into Community Development Statements as part of the application if it is the preference of the developer and the Western Australian Planning Commission (WAPC). Despite this, it is also apparent that Community Development Statements represent a new planning instrument and application process that is complex, has the potential to conflict with or override existing processes and could generate uncertainty.

To address this the Committee would strongly support the preparation of WAPC guidelines to inform developers about the information that is required to be provided within Community Development Statements and the approvals process. It is our view that these guidelines will be a critical tool in the Community Titles implementation process and should be prepared and circulated prior to the proclamation of the Act. This will increase the capacity of the development community and government agencies to 'hit the ground running' in the development and assessment of proposals for community schemes.

The guidelines should outline/identify:

- the minimum requirements for Community Development Statements;
- information Community Developments Statements can contain (at the discretion of the applicant and the Planning Commission);
- additional information that can/may be requested by the WAPC;
- processes for amending Community Development Statements;
- issues to consider when developing a Community Development Statement, including enabling flexibility in design, yield and staging given that many of these developments will be staged over long timeframes;
- responsibilities for the provision of infrastructure identified within the Community Development Statement at each stage of the subdivision and development of the land by the community scheme, once again noting that these developments are likely to be staged over long time periods and that the cost and/or other requirements for infrastructure could change over this period, making it difficult for developers to accurately forecast infrastructure/delivery costs; and
- the process for scheme termination.

The Committee also notes that section 20 (1) of the draft legislation enables the WAPC to waive requirements for the preparation of particular plans or instruments under a planning scheme or interim development order for land that is or is proposed to be divided by a community scheme if satisfied that the preparation of the plans or instruments is not necessary taking into account the existence of a community development statement. It is our view that the Community Titles Regulations (2020) should provide additional detail and guidance regarding the plans or instruments that can be subject to a waiver and the circumstances in which a waiver is appropriate. This will assist in providing certainty to the development community, local authorities and the WAPC in regard to the waiver process.

## 2. Referral of Community Development Statements to Local Authority

The Committee acknowledges and respects the role of local government and the local community in providing input into and commenting on a Community Development Statement. However it is our view, in cases where Community Development Statements are consistent with state planning policy, local planning schemes, interim development orders

and other existing plans or instruments, the regulations should specify a maximum requirement for advertising and public comment.

In addition, consideration should be provided to cases where local schemes are not consistent with current State Planning Policies. While section 23 (3) of the legislation states that the WAPC must not make a decision that conflicts with a relevant State Planning Policy or a planning scheme or interim development order that has effect in the locality in which the land is situated, instances where local planning schemes have not been updated to reflect the intent of State planning policy may make this unachievable. The regulations should provide guidance regarding the policies, plans and instruments that should be given weight by government when this circumstance is encountered. The regulations and proposed WAPC guidelines should also provide direction and guidance to developers regarding the appropriate approach in cases where State Planning Policy and local planning schemes are not consistent. In addition, consideration should also be given to the potential for situations to arise where State Planning Policies and/or local planning schemes are amended and are no longer consistent with an approved Community Development Statement. Government needs to give consideration as to how does/should a Community Development Statement operate in this circumstance.

In regard to community consultation, research undertaken by the Committee has also established that the outcomes of major development projects can be significantly enhanced through comprehensive community consultation early in the development process. It is our view that, where developments are of a regional or sub-regional significance developers should be encouraged to consult with the community early in the development process.

WAPC guidelines for Community Development Statements should identify the level of community consultation that is recommended to be undertaken by the developer as part of the preparation of the Community Development Statement (based on the size, location and context of the proposal). Please refer to the report: *What We Thought Would Kill Us – Learnings and Recommendations* <https://www.committeeforperth.com.au/documents/final-report-wwtwku-learnings-and-recommendations> for additional guidance regarding appropriate levels of community consultation for major projects.

### **3. The capacity to retrospectively convert existing developments into community schemes**

The Committee understands that the capacity for existing developments to be retrospectively converted into a community scheme is limited to land or developments contained within a singular freehold title. While we understand the complexities of converting existing developments into a community title, this is an issue that is likely to be raised by existing property owners and it would be prudent to provide additional advice to owners regarding the process that would be required to achieve a conversion.

### **4. Guidance for managers and purchasers**

It is apparent that Community Title Schemes, and the management of Community Titles Schemes, will be complex. The Committee therefore supports the inclusion of regulations requiring minimum education qualifications for scheme managers.

The Committee would also support the development of guidance for scheme developers and managers. Priority should also be given to developing guidance for buyers who are considering entering into a contract for the sale and purchase of a lot or property within a Community Titles Scheme. This should outline the structure of the Community Title

Schemes, the roles and responsibilities of the community corporation, and the roles and responsibilities of individual property owners, including voting rights, and rights to oppose new development that is consistent with an approved Community Development Statement. This will assist to provide clarity to potential purchasers about this new form of tenure and help them to understand their responsibilities and rights prior to purchasing the property, with an aim to avoid future misunderstanding or conflict.

#### **5. Consistency/alignment between Community Titles and Strata Titles regulations**

The Committee for Perth recognises that effort has been made to align Community Titles and Strata Titles legislation in Western Australia. This is supported and we would also support alignment in the associated regulations.

In closing, we iterate our support and offer the above suggestions to improve and provide clarity to the introduction of these important enabling regulations.

Yours sincerely,



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