

Proposed reforms to the Strata Titles Act 1985 – Implications for local government.

By David Nicholson

Introduction and overview of proposed reform

The Western Australian State Government, in conjunction with Landgate, is seeking to overhaul the Strata Titles Act 1985 (WA) (STA) which governs the operation of strata titles in this state. These proposed amendments to the STA are not yet in the form of a draft bill, but a Consultation Paper released by Landgate in October 2014 outlines the intended reforms. The key aspects of the proposed reforms relate to:

- new forms of tenure being permitted;
- amendments to vendor disclosure requirements;
- changes to the way in which disputes relating to stratas are resolved;
- new regulation for the management of strata schemes; and
- altered mechanisms being created for the termination of strata schemes.

A notable feature of the proposed reforms is the creation of a new form of tenure, known as “community title”. This form of tenure enables three tiers of title – each individual strata lot, which, together with other strata lots comprises a strata or survey strata scheme. In large developments, each strata or survey strata scheme, together with other schemes, may also be part of a larger Community Title scheme.

While the intent of the reforms to better facilitate strata development is generally uncontested, the particular details of the reforms, and the manner in which they will impact local governments, is potentially problematic. The proposed reforms, if legislated in their current form, may adversely affect local government in a number of ways, as discussed further below.

Proposed reduction in rates

One significant potential impact of the proposed reform is that the ability of local governments to rate strata lots within a Community Title scheme may be reduced on the basis that a Community Title scheme will provide infrastructure and facilities which would otherwise be paid for by the local government (such as roads and open space in common property within a Community Title scheme). Accordingly, it is argued that the owners of lots within a Community Title scheme should be subject to reduced rates. This would clearly have a fiscal impact on local governments.

The rationale for reducing rates on lots within a community scheme provided in the Consultation Paper (p30) is that ‘the only service the local council may render is garbage collection’. This is incorrect and demonstrates a fundamental lack of understanding of the scope of services provided by local government. Such an assessment fails to adequately account for local governments carrying out numerous other governance functions within the district as a whole. It also does not account

for the additional burden on local government facilities and services resulting from the higher development density of a Community Title scheme.

Additionally, infrastructure (such as roads, open space or recreational facilities) maintained within a community title scheme may only be utilised by the owners of land within the scheme. Such infrastructure therefore cannot be equated with community infrastructure provided by a local government, which may be utilised by the public at large. If infrastructure within a community title scheme is to be utilised solely or predominantly by land owners within the scheme, then it is reasonable those owners should pay for the cost of maintaining such infrastructure. This in itself should not justify a concession in rates.

Any proposal for a reduction in rates should therefore be approached with considerable caution and certainly not on the flawed assumption that local governments are providing no more than garbage collection services to resident's community title schemes. As the area of community infrastructure maintained within a community title scheme is likely to be quite minimal in comparison to the district as a whole, any rate reduction to account for the maintenance cost of such infrastructure (if a reduction is justifiable) should arguably be incremental in nature.

Development Statement for Community Schemes

A community development statement will be required for a proposed community scheme in a building. The development statement must be considered by the WAPC, which may approve it subject to relevant and reasonable terms and conditions. Approval by the WAPC will give the development statement status and effect as if it were a planning instrument, which upon registration will bind subdivision and development authorities.

Given that a development statement will amend the substantive planning framework, and have similar effect to a local structure plan, it is of significant concern that the Consultation Paper does not propose any requirement for a development statement to be referred to local government for either consideration or approval.

If development statements are to take effect as a planning instrument, it follows that the determination and approval process should be similar to that required for a local structure plan; namely it should encompass requirements for consent to advertise, public submissions, consideration of submissions, interim approval by local government and final approval by the WAPC. As the authority responsible for development assessment, local government is also best situated to assess the consistency of a proposed development statement with local planning policies and planning schemes, particularly as the development statement once approved will constitute the principal framework for assessment of development applications within the community title scheme area.

Diminished role for local government

The lack of any apparent role for local government in the assessment and approval of development statements is symptomatic of a broader problem with the reforms, at least as presently proposed. Whilst the Consultation Paper provides detailed discussion of the functions, role and approval authority of the WAPC in respect of the reforms, there is a distinct lack of reference to the part that local governments will play in the reformed STA arrangement.

Although consultation with local government is a regular part of the WAPC approving any strata plan or survey-strata plan under the current legislation, the proposed new legislation does not require the approval of the local government for any

strata, survey-strata or community title. Whilst there has been significant discussion and consultation surrounding the functions, role and approval authority of the WAPC in respect of the reforms, there is a distinct lack of reference to the part that local governments will play in the reformed STA. By way of example, it is proposed that WAPC approval is required for the following, with no requirement for referral to local government:

- variations to a registered Community Scheme;
- altering and amending Community Development Lots in certain circumstances during the development period;
- to permit a longer period to be fixed for a development statement or community plan to be valid; and
- approval of a community plan

Whilst this does not preclude the delegation of authority to local government, it is considered that the role of local government needs to be more clearly defined at the outset. It is possible that local governments may be better placed than the WAPC to assess certain aspects of a Community Title Scheme. Community Title Schemes and in particular Development Statements, may address the provision of facilities, amenities and infrastructure, and have certain planning functions (such as providing for streetscapes, architectural and landscaping themes) which would otherwise be the role of the local government. Accordingly, it is appropriate that the local government has a significant degree of control in regulating the approval of Community Title Schemes, and also possibly the operation of those schemes, to ensure consistency with the local planning framework.

Conclusion

While it is accepted that reforms to the STA should be considered to facilitate innovative and improved use of land to provide higher density and affordable housing options, this should not be at the expense of the quality of those developments or the amenity of the surrounding areas. Inadequate consideration has been given to the importance of local government development controls and planning functions to ensure sound development outcomes in relation to community title schemes. The proposed reduction in rates for community title schemes reforms also appears to be based on flawed assumptions, which fail to account for the functions performed by local government in providing and maintaining high quality infrastructure, facilities and services throughout the district.

For further information in regard to the above, contact Sarah Rice on 9424 6228 or srice@mcleods.com.au. The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.