



Department of **Planning,
Lands and Heritage**



Draft

Operational Policy

1.11

Community schemes

February 2021

The Western Australian Planning Commission acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

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Published by the
Western Australian Planning Commission
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140 William Street
Perth WA 6000

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Publication date: February 2021
Operational date: February 2021
Content last reviewed: February 2021

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Draft

Operational

Policy 1.11

Community schemes

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1. Policy intent

This policy sets out the general principles and basic requirements that will be used by the Western Australian Planning Commission (WAPC) to:

- clarify the procedure for assessing and determining a statement of grounds and community development statement; and
- establish criteria for the consideration of a community development statement and the subsequent subdivision and development proposals.

as provided for by the *Community Titles Act 2018* (CT Act) and the *Community Titles Regulations 2021*.

2. Application of this operational policy

This policy applies to applications for community development statements, including the statement of grounds, to facilitate implementation of the CT Act through subdivision and development of single freehold lots held in fee simple within Western Australia.

The policy is complemented by the full range of policies under *State Planning Policy 1 State Planning Framework* that are concerned with the more detailed aspects of lot creation and development for particular land uses. The general principles should be read in conjunction with the relevant use-specific policy to give a comprehensive coverage of the WAPC's policy requirements for any land use.

This policy shall be applied in conjunction with the Community Schemes Guidelines (the Guidelines).

3. Community schemes in Western Australia

Community schemes is an opt-in form of land tenure that can apply throughout Western Australia. Land may be subdivided by a community scheme if, in accordance with section 7(1) of the CT Act:

- it comprises the whole of a parcel of land; and
- the parcel of land is freehold land held in fee simple and comprised in a single certificate of title under the *Transfer of Land Act 1893*; and
- the parcel of land is not already subdivided by a strata title scheme under the *Strata Titles Act 1985*; and
- the parcel of land is not a caravan park or camping ground within the meanings given in the *Caravan Park and Camping Grounds Act 1995*.

Subdivision in the form of a community scheme allows for up to three tiers of schemes to be created within a single scheme. One community development statement will guide all three tiers.

Unlike strata schemes under the *Strata Titles Act 1985*, the linking of multiple tiers to the original tier 1 scheme allows for separate, autonomous community titles subdivision to occur, while being linked through the parent lot.



Community schemes

There are two types of community schemes:

- community titles (land) schemes; and
- community titles (building) schemes.

These can exist within the same community scheme to provide for a mix of development types and forms.

The CT Act introduces a new planning instrument for community schemes, a community development statement. The intent of the community development statement is to guide the subdivision and development of land, including the proposed staging and sequencing of the development.

A community development statement must be approved by the WAPC prior to the approval of a proposed tier 1 subdivision. Once approved, its effect on planning approvals varies according to the type of application made and when it is made. In some cases, a community development statement has a binding effect on planning approvals, while at others it is to be paid due regard. This is set out in section 19 of the CT Act.

3.1 Statement of grounds and community development statement

The WAPC is responsible for determining whether a community scheme is an appropriate form/tenure of subdivision for a parcel of land.

As part of an application for approval of a community development statement, the applicant is required to provide a statement of grounds. This shall be provided as the executive summary of the community development statement.

The WAPC must determine the statement of grounds and the community development statement together.

A statement of grounds must identify why subdivision by a community scheme is an appropriate form of subdivision for the land. That is, why the tenure is appropriate compared to any other form, such as green title, strata or survey-strata.

A community development statement will define how the subject land may be subdivided and developed. The community development statement is to address matters outlined in section 25 of the CT Act, including the following:

- how the subject land may be subdivided and developed; and
- number of tiers proposed; and
- number of lots proposed at each tier; and
- whether each scheme is a community titles (building) scheme or community titles (land) scheme; and
- staging; and
- other matters as outlined in regulation 13 of the Regulations, and the Guidelines, to the satisfaction of the WAPC.

The content and level of detail provided in a community development statement should be appropriate to support the proposed community scheme and subsequent subdivision and development applications, where appropriate.

The effect a community development statement has on planning approvals is set out in section 19 of the CT Act. This section affords a weight or binding effect to the community development statement, according to the application type and timing of its submission.

1. Generally, a community development statement is binding on a subdivision application during:
 - i. the **approval period**. This is the period between the WAPC issuing approval of a community development statement and it being registered with the tier 1 subdivision. This period can last for a maximum of four years. Applications must be approved if consistent with the community development statement.
 - ii. the **development period**. This is a 10-year period following registration of the tier 1 subdivision (which may be extended).
 - Applications made any time before the final four years of the development period must be approved if consistent with the community development statement.



- Applications made in the final four years of the development period must not be approved if inconsistent with the community development statement.

Once the development period has ended, a community development statement is to be given due regard when considering subdivision applications.

2. A community development statement is binding on a development application:
 - i. During the ***development period***, applications made during the development period must not be approved if inconsistent with the community development statement.
 - ii. At all other times the community development statement is to be given due regard for development applications.

In determining a statement of grounds and community development statement, the WAPC must have regard to matters outlined in section 23 of the CT Act, the existing planning framework, State planning policies, local planning schemes and interim development orders.

4 Policy objectives

- 4.1 To ensure that a community development statement will facilitate subdivision and development that achieves orderly and proper planning and is consistent with planning frameworks and procedures.
- 4.2 To ensure that a community development statement is responsive to the characteristics of the site, including environmental features, sustainability principles and the local planning context.
- 4.3 To ensure that movement within, around and through a community titles scheme reflects appropriate transport standards for pedestrians, cyclists and vehicles in accordance with the existing locality.
- 4.4 To ensure that a community development statement appropriately identifies the provision of public utilities and infrastructure, connecting with the broader locality and existing networks, in a timely manner.
- 4.5 To promote a sense of place and conservation of places of Aboriginal and historical heritage significance in accordance with the existing locality.
- 4.6 To ensure that all development is complemented by adequate, well-located areas of public open space that will enhance the amenity of the development and provide for the recreational needs of the locality.
- 4.7 To ensure the timely, equitable and coordinated delivery of community infrastructure and facilities for land subject to a community title scheme, and broader locality.



5 Policy measures

5.1 General requirements

- 5.1.1 In its consideration of a community development statement and for amendments to a community development statement, the WAPC will apply the following criteria:
- The proposed community scheme is in accordance with all relevant provisions of the local planning scheme.
 - Subdivision by community scheme is consistent with long-term planning goals and objectives for the locality.
 - The proposal is consistent with the policies of the WAPC regarding subdivision and development, and in particular, the standards for roads, public open space and residential design.
- 5.1.2 In order to satisfy itself with respect to these matters, the WAPC may require the submission of technical reports and/or concept or sketch plans showing a form of development which complies with all relevant development standards and requirements. The WAPC may also undertake consultation with other affected bodies.

- 5.1.3 It is noted that the application of community scheme legislation does not remove a landowner/applicant's obligations under other legislation such as, for example, the *Environmental Protection Act 1986* or *Aboriginal Heritage Act 1972*.

Subdivision and development

- 5.1.4 Where subdivision and/or development provisions are proposed as part of a community development statement, the community development statement shall, in accordance with the applicable zone, density and planning framework that exists over the subject land, demonstrate that:
- the subject land is capable of subdivision and development including any site, environmental or soil characteristics, sites are appropriately serviced. This may be demonstrated through indicative lot layout or building envelopes. This is to ensure that any factors required to implement the subdivision or development are considered, such as for example, onsite effluent disposal (where proposed), tree retention, cut and fill;
 - the community scheme connects and provides for the integration with the existing or anticipated community;

- adaptable reuse and parking provisions are accommodated to ensure that development provided can cater for changing trends; and
- each tier and/or stage of subdivision is compliant with the planning framework and does not invalidate a current approval.

Staging

- 5.1.5 The community scheme staging plan should show each tier and the ultimate development outcome sought for the subject land.
- This may include the provision of temporary infrastructure until such time as further development occurs, such as temporary road or bushfire access routes or temporary water pump stations, pending subsequent subdivision and permanent infrastructure provision.
- 5.1.6 Given the potential for multiple tiers to be developed over an extended timeframe, the WAPC will generally require the ceding of land, provision of infrastructure, or contribution towards land and/or infrastructure as part of the tier 1 subdivision, to facilitate a more timely and equitable approach to development of the scheme. This should be demonstrated as part of a staging plan.



Infrastructure, utilities and servicing

5.1.7 The community development statement should:

- a) identify the required infrastructure, utilities and servicing needed to accommodate the community scheme which may include opportunities for enhancing the efficiency and effectiveness of existing infrastructure within the immediate locality;
- b) demonstrate the provision of onsite public or strategic infrastructure, land to accommodate infrastructure, or contributions to infrastructure, to facilitate the subdivision and development of the land, for example ceding of land and contributions to facilitate the provision of traffic signals; and
- c) identify the staging of infrastructure required at each tier or stage of subdivision, to cater for the proposed development; for example, temporary and permanent infrastructure.

5.1.8 The WAPC requires that each new lot is provided with an acceptable level of utility services, provided either by a public or a licensed private service provider. The level and standard of these will be determined by the WAPC in the context

of the intended use, the size of the lot, soil conditions, provisions of local planning scheme, and the *Government Sewerage Policy 2019*, together with the provisions of any other published policy that may be relevant.

Developer contributions

5.1.9 The community development statement should require that contributions or the ceding of land is provided with tier 1 subdivisions. Where land is to be ceded, it may be either transferred to the Crown at that time or be the subject of a separate legal agreement which ensures the transfer of a site at some future nominated time.

In limited circumstances the WAPC may consider the ceding of land at subsequent stages of the community scheme subject to:

- justification for delayed delivery, and
- a detailed staging plan being included within the community development statement clearly stating what contributions will be provided and when, and
- support from the local government. public authority or service provider.

5.1.10 Where developer contributions are in place for the locality, in accordance with *State Planning Policy 3.6 Infrastructure*

Contributions (SPP 3.6) and the relevant scheme provisions, they will be applied to each subdivision application within a community scheme. The requirement for infrastructure to be provided to serve the subject land and the development proposed by the community scheme, is in addition to any developer contribution requirements under SPP 3.6.

Environmental characteristics

5.1.11 The community development statement should:

- identify the environmental features; and
- identify proposed measures, including, but not limited to; requirements for appropriate protection, enhancement, buffers and management of environmental features such as wetlands, significant trees for retention or management of onsite water courses and air quality.

5.1.12 The management of environmental features including retention, ceding, revegetation or management, needs to be addressed in the staging plan.

Public open space

5.1.13 Public open space shall be provided for community schemes in accordance with *Development Control Policy 2.3 Public Open Space in Residential Areas* (DC 2.3).



Community schemes

- 5.1.14 Open space retained as a lot or common property within a community scheme may be considered to contribute towards communal open space for the purposes of the Residential Design Codes but will not contribute towards public open space provision in accordance with DC 2.3.
- 5.1.15 The WAPC may decide to take cash in lieu of setting aside land on advice from the local government. It is recommended that an applicant liaise with the WAPC and local government early in the application process to understand their public open space obligations.
- 5.1.16 Land or contributions required to be ceded for public open space are to be met entirely at the tier 1 subdivision stage.
- 5.1.17 The WAPC may, in limited circumstances, agree to land being ceded at a tier 2 stage subject to:
- justification for delayed delivery, and
 - a detailed staging plan included in the community development statement clearly stating what land will be ceded and when, and
 - support from the local government.
- 5.1.18 Public open space will be applied based on the entire scheme area regardless of whether it will be subdivided and developed as community titles (land) and community titles (building) lots.

- 5.1.19 The location of the land to be ceded to the Crown for the purpose of public open space is to ensure public access will be maintained.

Movement network

- 5.1.20 The street and lot layout shall be site responsive, providing safe and efficient movement for all modes of transport.
- 5.1.21 Road, pedestrian and cycling facilities including end-of-trip facilities, shall be provided in accordance with the existing planning framework based on anticipated vehicles per day for the scheme as a whole.
- 5.1.22 The movement network shall connect with the broader locality. Where roads are proposed to be retained in ownership by the community corporation (as a lot or common property) subdivision approvals will require that roads maintain public access in perpetuity, through the implementation of public access easements.
- 5.1.23 Where parking standards are to be included in a community development statement these standards shall be identified for the entire scheme. This may be demonstrated and allocated through the staging plan.

Historical heritage

- 5.1.24 The community development statement should:
- a) identify any site of significance and its value, and
 - b) identify proposed measures or opportunities to rejuvenate, protect and promote historical heritage features or assets.

Aboriginal heritage

- 5.1.25 The community development statement should:
- a) identify any site of significance and its value, and
 - b) identify proposed measures to protect significant natural, Aboriginal and cultural features, including sites and features, cultural, archaeological, ethnographic, geological, geomorphological, visual or wilderness values.



5.2 Extension of the development period

- 5.2.1 When assessing an application to extend the development period, the WAPC will have regard to the following matters, including but not limited to:
- existing planning scheme provisions and State planning policies and how they may have changed since the commencement of the development period;
 - the extent of subdivision and development already undertaken in the community scheme; and
 - any valid existing subdivision and development approvals that are yet to be implemented.
- 5.2.2 Where a community development statement has lapsed, the WAPC may consider whether amendment to the community development statement is appropriate, prior to consideration of an application to extend the development period, in accordance with regulation 17.
- 5.2.3 In determining an application to extend the development period the WAPC reserves the right to determine alternate timeframes than those proposed by the applicant.

Waiver of other requirements relating to plans or instruments

- 5.2.4 In accordance with section 20 of the CT Act the WAPC may, by instrument in writing, 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.
- 5.2.5 The WAPC will not waive the requirement for a structure plan where it is required by the local planning framework.
- 5.2.6 Where a community development statement has been approved and registered with the tier 1 subdivision, the WAPC may waive the requirement for other planning instruments.

6. Implementation

6.1 Community development statement

Procedures

- 6.1.1 An application for approval of a community development statement (or amendment to a community development statement) must be made to the WAPC in accordance with section 21 of the CT Act. That is, it must:
- be completed on the application form; and
 - include a statement of grounds; and
 - refer to section 3 of this policy and ensure the land is of a type not excluded from the application of the CT Act.
- 6.1.2 It is recommended that an applicant liaise with the WAPC, local government, public authorities and utility providers ahead of the lodgement of an application for a community development statement.



Manner and form of a community development statement

6.1.3 A community development statement is to be prepared in accordance with sections 21 and 25 of the CT Act, the Regulations and the Guidelines.

Assessment of a community development statement

6.1.4 In considering whether subdivision by a community scheme is an appropriate form of subdivision the WAPC must have due regard to:

- relevant State planning policies;
- planning schemes or interim development orders that have effect in the locality in which the land is situated;
- comments received during the consultation period; and
- any other matter of relevance including, but not limited to, local policy or position statements and technical advice and further information obtained from a local government or referral agency.

6.1.5 During the assessment of an application for community development statement or amendment, the WAPC may request additional information to

guide the consideration, assessment or determination of a community development statement.

6.1.6 If additional information is provided, further comment or technical advice may be sought from the local government.

Timeframes

6.1.7 The WAPC has **120 days** to assess and determine a statement of grounds and a community development statement.

6.1.8 This time period for assessment includes referral to the relevant local government(s) (**35 days**) in which the proposal is located as well as public authority or utility service providers (**28 days**).

6.1.9 During the referral period local governments will be required to advertise the community development statement for public comment (**14 - 21 days**) and to provide a copy of all submissions received to the WAPC.

6.1.10 Local government are not required to consider the submissions received as part of their referral response.

6.1.11 Subject to agreement with the applicant, additional time may be required in order to seek further information or technical advice in consideration of the proposal.

Public consultation

6.1.12 The WAPC will advise the local government of the applicable consultation period.

- Where a proposed community development statement or amendment proposes to clarify or expand on the planning framework it will be advertised for public comment for a maximum of **21 days**.
- Where a proposed community development statement or amendment proposes to adopt the existing planning framework without alteration either as amended or at a specified time, it will be advertised for public comment for **a maximum of 14 days**.

Determination

6.1.13 The WAPC may approve, approve subject to conditions or refuse a community development statement or amendment.

6.1.14 The WAPC may approve a community development statement or amendment, subject to modification as a condition of approval, where the modifications are minor in nature and do not materially impact on the provisions or overall intent of the community development statement. If the modifications are significant, a community development statement



or amendment may be refused and a new application may be required to allow for referral to agencies and public consultation.

6.1.15 Modifications to a community development statement that are considered minor in nature include:

- minor textual amendments which do not materially alter the intent of the community development statement
- minor mapping changes which do not materially alter the intent of the community development statement
- modifications which do not adversely impact on the amenity of the locality or restrict the use and enjoyment of the land
- modifications which do not impact on the provision of infrastructure (land, infrastructure, contributions).

Note: Supporting or technical information may need to be modified to support the required modifications.

6.1.16 Where a community development statement is approved subject to modifications, if the modifications are not addressed or undertaken as directed, or within the timeframe stipulated, the community development statement approval ceases to have effect, in accordance with section 24(4) of the CT Act.

Amendment to community development statement

6.1.17 An application to amend a community development statement may be made to the WAPC at any time after a community development statement has been approved, regardless of whether the community development statement has been registered (i.e. during the development period) or not.

6.1.19 Where a subdivision or development proposal is inconsistent with the community development statement, a determining authority may refuse an application or may request a development or subdivision application be withdrawn, until such time as a community development statement is amended to remove any inconsistency.

6.1.20 Where an amendment to a community development statement is proposed the WAPC will assess it in the same manner against the same policy provisions as a community development statement.

6.1.21 Where an amendment to the community development statement is approved during the development period, the WAPC will register the amendment with the Registrar of Titles in accordance with regulation 18.

6.2 Right of review

6.2.1 The applicant can apply to the State Administrative Tribunal for review of:

- a decision to refuse a community development statement
- a decision to approve a community development statement subject to conditions
- a decision to refuse to extend the development period of a community development statement
- a decision to extend the development period (i.e. less time than requested)
- refusal to approve an amendment or repeal of a scheme by-laws.

6.2.2 An applicant may lodge a written notice of default with the WAPC and make an application to the State Administrative Tribunal in accordance with section 34 of the CT Act and Part 14 of the *Planning and Development Act 2005*.

Cease to have effect

6.2.3 In accordance with section 27(1) of the CT Act, where a tier 1 subdivision application has not been determined and lodged with the Registrar of Titles for registration within four years of approval of the



Community schemes

community development statement by the WAPC, the community development statement will lapse.

6.2.4 In accordance with section 27(2) of the CT Act, where an amendment to a community development statement is not registered within four years of the approval of the amendment to the community development statement by the WAPC, the amendment will lapse.

6.2.5 Where the development period has expired by more than six months and where an application to extend the development period or an application to amend the community development statement has not been received, the WAPC may declare, on its own initiative, that the community development statement ceases to have effect, in accordance with section 27(3) of the CT Act.

6.3 Subdivision

6.3.1 Following the approval of a community development statement by the WAPC an application may be made for approval to subdivide within the community scheme to create a community titles scheme.

6.3.2 The WAPC is the determining authority for subdivision and the application is made under the *Planning and Development*

Act 2005, with the normal process being applied. This includes referral to local government, public authorities and utility service providers as required.

6.3.3 The community development statement is binding on subdivision proposals during the **approval period** and the **development period**. This means a subdivision may not be approved if it is inconsistent with the community development statement.

6.3.4 As with the normal subdivision proposal, appropriate consideration will be given to relevant State and local planning frameworks.

6.4 Development

6.4.1 In addition to the community development statement, when considering an application for development approval the provisions of the *Planning and Development Act 2005* (Part 10) are applied through the normal development application process.

6.4.2 A community development statement may reference any valid development approval.