



Department of **Planning,
Lands and Heritage**



*We're working for
Western Australia.*

January 2020

Discussion Paper Planning and Development

Community Titles Act 2018



The Department of Planning, Lands and Heritage 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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Introduction

The *Strata Titles Amendment Act 2018* and the *Community Titles Act 2018* was assented to on 19 November 2018. The strata reforms provide owners, buyers and the development industry with a clear, transparent and accountable framework for creating and managing strata and community schemes.

The Community Titles Act 2018 introduces a new form of land tenure to Western Australia, community titles schemes.

A community scheme is the subdivision of a freehold parcel of land into tier 1 community title lots. This includes the registration of a Community Development Statement that defines the subdivision, development and staging of the land and how it will be implemented (either as tier 2 or tier 2 and 3).

It is anticipated that the new forms of land tenure will facilitate innovation in the design and delivery of mixed-use and higher-density development.

From a land use and planning perspective, community title is similar to strata title, however community titles has the added ability to:

- create separate schemes and/or allow development to occur, but for these proposals to be tied through the parent lot
- create more detailed by-laws that specify management responsibility and financial commitments
- share infrastructure, resources or facilities between the different schemes on the parent lot.

This Discussion Paper aims to generate stakeholder input into the processes underpinning the key planning and development provisions of the *Community Titles Act 2018*.

It should be read in conjunction with the *Community Titles Act 2018*

Your feedback will help inform the drafting instructions for the *Regulations for the Community Titles Act 2018*.



Feedback

The Western Australian Planning Commission (WAPC) and Landgate welcome feedback and input into how community titles may work in practice in Western Australia.

There are likely to be projects and proposals which would benefit from community titles schemes and we are actively seeking information on the practical application of this new legislation and what issues may benefit from being included in regulation and/or subsequent planning policy.

Questions are included throughout the Discussion Paper to prompt respondents to provide feedback on specific matters. General comments and suggestions are also welcomed.

Submissions and contact details

Written feedback and submissions can be made:

By email: StrataReform@dplh.wa.gov.au

Via the DPLH Citizen Space portal <https://consultation.dplh.wa.gov.au/>

By post: Strata Reform – Community Titles Schemes
Department of Planning, Lands and Heritage
Locked Bag 2506
Perth WA 6001

The submissions period closes at 5pm, Friday 28 February 2020.



What are community schemes?

Community schemes will provide for well-planned, larger-scale land subdivision and development projects by enabling a single freehold parcel of land to be subdivided into as many as three tiers. Forms of community schemes already exist in other states including New South Wales, South Australia and Queensland.

Community schemes are made up of individual community titles schemes that can be defined by land area, similar to existing survey-strata lots; or by cubic space referenced to a building, such as an apartment or unit.

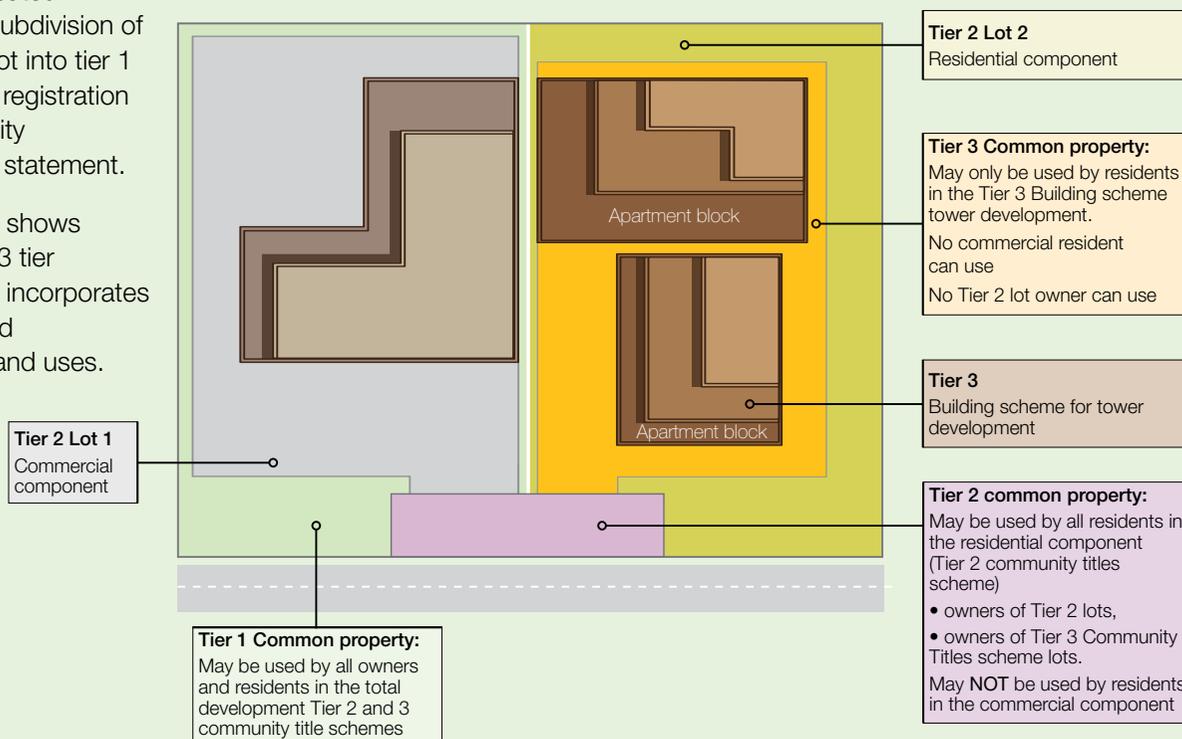
The two types of community titles schemes, community titles (land) schemes and community titles (building) schemes, can exist within the same community scheme, providing for a mix of development types, and land use within the scheme.

Each community scheme will have a Community Development Statement which will set out how the community scheme is to be subdivided and developed, including staging, and management.

Indicative scenario

A community titles scheme is created through the subdivision of the freehold lot into tier 1 lot(s) and the registration of a community development statement.

This example shows an indicative 3 tier proposal that incorporates residential and commercial land uses.



What is a community titles scheme?

Each individual scheme within a community scheme is called a community titles scheme.

There are up to three tiers of community titles schemes in a community scheme:

- a tier 1 lot can be subdivided by a tier 2 community titles scheme
- a tier 2 lot can be subdivided by a tier 3 community titles scheme
- a tier 3 lot cannot be further subdivided.

Each community titles scheme will have:

- its own community corporation established on registration of the scheme with the Registrar of Titles
- its own set of scheme by-laws, to govern the scheme.

The community titles scheme may have common property (although this is not a requirement) which the owners of the lots in that scheme own or can use exclusively and are solely responsible for maintaining. Owners in the subsequent tiers may also utilise the common property, that is:

- The owner of a lot in a tier 2 scheme has a share in the common property in that scheme and a share in the common property of the tier 1 scheme
- The owner of a lot in a tier 3 scheme has a share in the common property of the tier 2 scheme and a share in the common property of the tier 1 scheme.

Lots and lot boundaries

In each community titles scheme, there must be at least two lots or two lots and common property.

Community titles (land) scheme lot boundaries are defined by area in the same way that lot boundaries are defined in a survey-strata scheme under the *Strata Titles Act 1985*.

Lot boundaries in a community titles (building) scheme are defined by reference to cubic space and a building or structure on the scheme plan, in the same way that lot boundaries are defined in a strata scheme under the *Strata Titles Act 1985*.

Tiers

The tier 1 scheme will have a community corporation which is the overarching management body for the community scheme.

Each tier 2 and tier 3 scheme in the community scheme will have its own community corporation to govern and manage relationships and property in that community titles scheme.

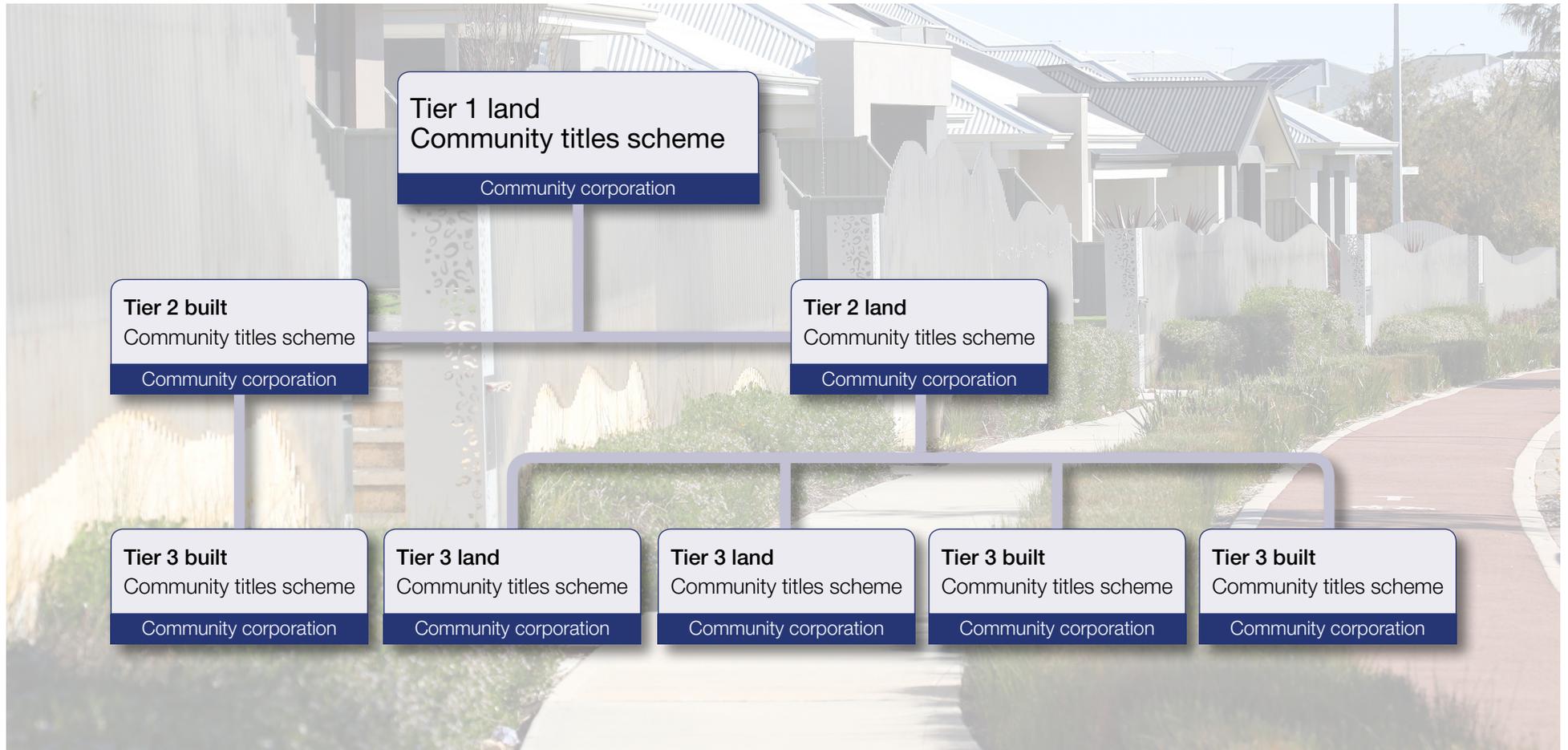
In accordance with Section 13 and 17, the community corporation for a tier 2 or tier 3 scheme will represent its members at community corporation meetings of the scheme to which the tier 2 or tier 3 scheme belongs.

Therefore, a tier 1 corporation is made up of owners of tier 1 lots, and for each tier 2 parcel that belongs to the tier 1 scheme, the tier 2 corporation for that community titles scheme (so tier 3 community corporations do not sit on tier 1 corporation).

A tier 2 corporation comprises the owners of the tier 2 lots, and for each tier 3 parcel that belongs to the tier 2 scheme, the tier 3 corporation.

A Community Development Statement will be prepared as part of the tier 1 scheme and will guide subdivision and development across all tiers.

Figure 1 - Indicative community titles scheme



How do community titles schemes differ from strata titles schemes?

Community titles schemes will not replace strata and survey-strata schemes, which will still operate under the *Strata Titles Act 1985*. Strata and survey-strata schemes cannot be combined with community titles schemes. Community titles schemes will not include leasehold schemes, however there is the ability to lease lots and common property, for example a clubroom within communal open space.

Like strata, each community titles scheme will include the registration of the following documents:

- a scheme plan approved by the WAPC
- a schedule of unit entitlements
- the scheme by-laws
- a scheme notice containing the name of the community corporation and address for service.

Additionally, there is a requirement to register an approved Community Development Statement, in respect of a tier 1 scheme plan.

Although this is a new form of strata, the normal development and subdivision approval processes will apply to land the subject of a community titles scheme.

The WAPC will determine the applications for subdivision and the relevant determining authority will determine applications for development approval (i.e. local government, Joint Development Assessment Panel or WAPC).



Benefits of community titles schemes

Community titles (land) schemes will allow for large-scale planned land developments with shared infrastructure and services, without complex easement arrangements and contracts.

Community titles (building) schemes will facilitate a mix of uses in one or more buildings on a parcel of land, for example, a single high-rise building that has residential, retail and commercial lots.

Community schemes do not have to be larger-scale land developments, although they do lend themselves to developments which require some flexibility with staging, as well as mixed-use buildings.

Community schemes will allow for:

1. Multiple tiers linked to the original landholding, which is not possible through strata.

This provides an opportunity for separate, autonomous community titles (land) and/or community titles (building) subdivision/development to occur, but for these proposals to be linked through the parent lot.

2. A degree of autonomy that cannot be accommodated in a strata titles scheme.

This will enable each scheme to have scheme by-laws which apply only to that scheme and maintenance costs can be more fairly shared between the different schemes. For example, owners of commercial lots will not need to pay for the maintenance of a swimming pool owned by and used only by owners of the residential lots. Similarly, owners of the residential lots will not have to pay for the maintenance of a public lobby owned by and utilised only for access to commercial lots.

3. Shared ownership of utility and sustainability infrastructure and amenities that may not be feasible for a single existing scheme to own and operate, for example a wastewater treatment plant or a clubroom facility.

The *Community Titles Act 2018* introduces statutory easements that facilitate the ability for lots to use and enjoy common property, including common property infrastructure, in a community scheme.

The application of Division 2 of the Act extends to large-scale common property infrastructure such as country clubs and swimming pools. Utility services may also be the subject of an easement, providing the community corporation and each owner of a lot, the entitlement to install and remove utility conduits and to examine, maintain, repair modify and replace utility conduits, if applicable (see section 56 of the *Community Titles Act 2018*).

4. Lots and common property in the scheme plan (section 38 of the *Community Titles Act 2018*) for a community titles scheme may contain, as required:

- short-form easements, (for example vehicle access easement, party wall easement or easement for utility services), or
- restrictive covenant, (for example for a right of way, protection of conservation vegetation or for development in bushfire prone areas).

Short-form easements or restrictive covenants run with the land and are binding on the owners of lots in the community titles scheme.

Questions for feedback

Are there any existing examples of land use, subdivision or development that may have benefited from the implementation of community title?

From a planning perspective, what issues do the regulations need to address to allow the effective implementation of statutory easements, particularly utility service easement(s)?

What class of short form easements or restrictive covenants would be appropriate to specify in the regulations?

Appropriate form of subdivision

In accordance with section 23 of the *Community Titles Act 2018*, the WAPC must determine that subdivision by a community scheme is an appropriate form of subdivision for the subject land.

In making this determination, the WAPC must consider:

- relevant State planning policies, the planning schemes or interim development orders in effect
- whether some other form of subdivision of the land, or no subdivision, would be more appropriate
- any comments received from local government, public authorities or utility service providers and the public.

In accordance with section 21(2)(a) the proponent must justify their application by providing a statement of grounds on why subdivision by community titles is an appropriate form of subdivision for the land; and a draft Community Development Statement. The WAPC may require additional information to assist in determination of an application.

If the WAPC decides that subdivision by community scheme is not an appropriate form of subdivision for the subject land, it must refuse the application and give the applicant written notice of the refusal and reasons for the refusal.

A Community Development Statement will be registered on registration of the tier 1 scheme documents. Tier 2 and 3 schemes will not have a separate Community Development Statement as the tier 1 Community Development Statement will define the tier 2 and 3 schemes.

Questions for feedback

What information should be included in a statement of grounds to the WAPC to determine if a community scheme is appropriate?

What factors should WAPC consider in determining if a community scheme is an appropriate form of subdivision? Are there any instances where a community scheme could not be considered a suitable form of subdivision? And if so what are these?



What is a Community Development Statement?

A Community Development Statement will set out the detailed land use, subdivision and development controls and developer obligations for a community scheme. It may also outline the purpose for which the land in the community scheme may be used; the staging and sequencing of subdivision and development; and other matters relevant to a community scheme including how amendments may be undertaken. This fulfils several purposes including:

- guiding decision-making by the WAPC and local government concerning subdivision and development applications
- providing a basis for investment and for the coordination and implementation of investment
- designing and coordinating detailed infrastructure and service provision, providing guidance on land requirements and costs
- providing clarity and certainty for owners and occupiers on what will be developed when.

Section 25 of the *Community Titles Act 2018* outlines the requirements that may be included in a Community Development Statement to guide subdivision and development of the land. This includes, but is not limited to, identifying:

- the number of tiers and the type of community titles schemes
- the number, size and arrangements of lots
- the requirements for restricted use conditions, restrictive covenants, open space, road dedication, cash in lieu and development contributions
- the limitations on the location and scale of improvements
- requirements for landscaping
- requirements for architectural and design themes
- staging and sequencing.

A Community Development Statement needs to be consistent with existing State planning policies, planning schemes or interim development orders. Depending on the form and scale of a Community Development Statement, matters may be addressed through both Community Development Statement provisions and scheme or local structure plan provisions, for example, the retention of significant vegetation.

In accordance with Section 20 the WAPC, in consultation with local government, may waive the requirement for a local structure plan, activity centre plan or local development plan, where a Community Development Statement is implemented. However, where an area incorporates multiple freehold (green title) lots, like an activity centre, a structure plan is likely to still be required to provide overall guidance.

Section 25 contemplates the development of model provisions that can be included in a Community Development Statement. The WAPC will have



regard for the development of model provisions and/or additional policy guidance to direct the development of a Community Development Statement.

At this point, the determination of a Community Development Statement will remain with the WAPC to ensure consistency in approaches and to address any initial issues that may arise from the new process. The WAPC may consider delegating this authority to other parties in the future.

A Community Development Statement will be registered as part of the creation of the tier 1 lots to create the community scheme. Once registered, the Community Development Statement will be binding and all development and subdivision will be required to comply with the Community Development Statement.

In this regard, all landowners will be aware of the subdivision, development and staging of the community scheme, in accordance with the approved Community Development Statement.

Questions for feedback

What level of detail should a Community Development Statement provide i.e. minimum lot sizes, building height, window treatments, permitted materials and colours?

Are there any other matters that should be considered or addressed in the Community Development Statement, in addition to the provisions of Section 25 of the *Community Titles Act 2018*?

Should there be model provisions to guide the development of a Community Development Statement? What elements should be addressed through model provisions?

Are there any specific class of documents that should be referenced in a Community Development Statement?

Should a Community Development Statement be able to modify the provisions of the R-Codes or Local Planning Scheme? If so, in what instances?

In what instances do you think the WAPC could waive the requirement for a Local Structure Plan or Local Development Plan?



Assessment process for Community Development Statement

A Community Development Statement must be approved by the WAPC prior to approval of a proposed tier 1 subdivision and the creation of the community scheme subdivision. The WAPC has 120 days to determine a Community Development Statement. In its determination, the WAPC will consider whether a community scheme is an appropriate form of subdivision for the land.

The WAPC will refer a draft Community Development Statement to local government, public authorities and service providers for consideration.

A Community Development Statement will be subject to public consultation (section 22) by the local government. An appropriate advertising period is considered necessary, given that a Community Development Statement may incorporate a complex range of matters, including built form, staging and land use provisions. The WAPC will consider all submissions received as part of its assessment of the proposed Community Development Statement.

A Community Development Statement will be assessed for consistency with State planning policies, local planning scheme or interim development orders.



Determination of a Community Development Statement

The WAPC may decide that subdivision by a community scheme is not an appropriate form of subdivision and may refuse a draft Community Development Statement in accordance with Section 23 and 24 of the *Community Titles Act 2018* if:

- the proposed community scheme conflicts with an applicable planning scheme or State planning policy
- the WAPC considers that conventional or other land tenure arrangements would be preferable or necessary to secure orderly and proper planning and development outcomes or the public interest
- the relevant local government and/or other public authority/built service provider do not support the Community Development Statement regarding relevant planning considerations
- it does not comply with required content or form or other circumstances that may be prescribed.

Under section 24, the WAPC may approve a Community Development Statement subject to conditions that include amendment, insertion or deletion of content or may approve a Community Development Statement with no conditions. The WAPC must refuse a Community Development Statement if it is not consistent with State planning policy, local planning scheme or interim development orders.

Under section 34 of the *Community Titles Act 2018*, an applicant can appeal to the State Administrative Tribunal for review of a decision of the WAPC to refuse a Community Development Statement, or to approve a Community Development Statement subject to conditions.

Questions for feedback

What period should apply for public consultation on a draft Community Development Statement or Community Development Statement amendment? Why?

A Community Development Statement is required to be advertised, however the advertising of an amendment to the Community Development Statement may be waived. In what instances would waiving the advertising requirements be appropriate?

Would you support the ability for the WAPC to agree to a shorter advertising period where it is of the view that it is warranted, for example, an amendment to the Community Development Statement that provides minimal variation to existing permitted provisions?

Should approval be required under a Community Development Statement where development is normally exempt? For example; single houses, fencing.

The WAPC can approve a Community Development Statement subject to conditions, including requiring modifications (Section 24(2)). What kind of modifications would be appropriate to form a condition of approval? Should there be a limit to the format/scale/number of modifications?

What time period is appropriate for applicants to undertake the modifications identified in an approval subject to conditions?

Implementation of a Community Development Statement

Once a Community Development Statement is approved a planning decision-maker must give due regard to the approved Community Development Statement and must approve a subdivision application that is consistent with the approved Community Development Statement.

The approval of a Community Development Statement will lapse after four years if it is not registered with a tier 1 scheme within that period (that is, if the parent lot is not subdivided and a community scheme created).

In accordance with section 26, the development period for a community scheme is 10 years (or some other period as fixed in the regulation), after

registration of the tier 1 scheme. During this time the Community Development Statement becomes binding. The WAPC may extend the development period for a community scheme if the application is made at least six months before the expiry of the development period and is accompanied by a copy of a special resolution of the tier 1 corporation approving the extension period.

During the 10-year development period, the registered Community Development Statement:

- binds developers, who cannot obtain development or subdivision approval if the application is inconsistent with the Community Development Statement

- binds planning decision-makers, who must approve a subdivision or development application that is consistent with the Community Development Statement
- notifies landowners of all subdivision and development proposed as part of the community scheme.

Once the development period lapses, a planning decision-maker must give due regard to the Community Development Statement when assessing a development or subdivision application.

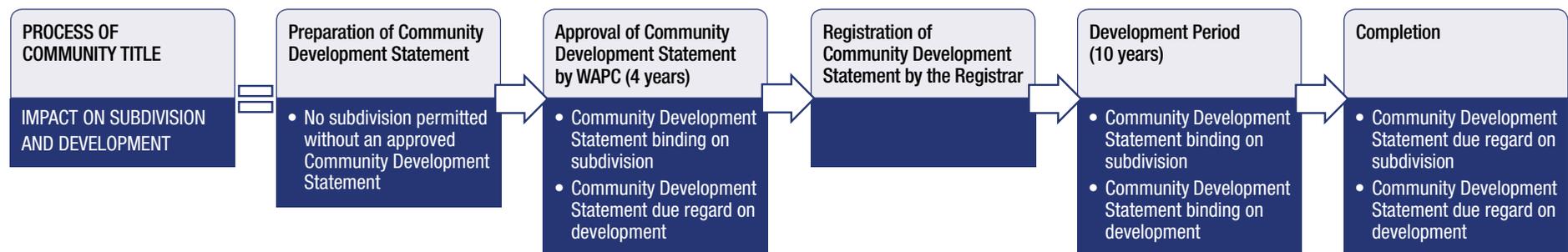


Figure 2 - Process of a Community Development Scheme and its impact on subdivision and development

Can a Community Development Statement be amended?

A Community Development Statement may be amended before it is registered with the tier 1 scheme by application by the developer to the WAPC.

After the Community Development Statement is registered with the tier 1 scheme plan, the community corporation for the tier 1 scheme must approve the proposal to amend the Community Development Statement by special resolution before an application is made to the WAPC.

The WAPC may require an amendment to the Community Development Statement where proposed development/subdivision is not consistent with the Community Development Statement or where an application is made after the development period for a community scheme has expired.

The WAPC has 28 days to consider an application to extend the development period of a community scheme.

Questions for feedback

- Is 10 years a sufficient development period for a community scheme? If, not, please provide an alternative period and the reasons for this i.e. more than 100 lots, extra five years.
- Should an extension to the development period require public consultation? If so in what instances?



Integration of subdivision and development

The *Community Titles Act 2018* includes provisions (Division 14 of the *Community Titles Act 2018*) which will result in the consequential amendment of the *Planning and Development Act 2005* (PD Act).

One of the consequential amendments is intended to replace the existing section 148 of the PD Act (which provides for the integration of development with the subdivision of a lot) and insert a new section, 164A.

The intent of the consequential amendment of the PD Act was to address shortcomings of the current section 148. A shortcoming of the current provision was that where a subdivision approval included a condition requiring a development approval to be obtained (demonstrating the lot was capable of development), there was nothing that required the development approval to be implemented.

Section 164A would apply where an application for subdivision approval or development approval has been received and the WAPC or responsible authority determines that the integration of subdivision and development approvals is necessary or desirable:

- due to the size of the lots and potential impact on the amenity of the locality, or
- for other reasons associated with the achievement of orderly and proper planning, and the preservation of the amenity of the locality.

Section 164A will facilitate a cohesive approach to planning and development in circumstances where subdivision and development should only be undertaken in conjunction with each other and will ensure that, in those circumstances, appropriate conditions for both the subdivision and development of the land are determined as early as possible.

Section 164A states that without limitation, integration of subdivision and development approvals will generally be necessary or desirable in the context of a community scheme within the meaning of the *Community Titles Act 2018*. However, the scope also extends to freehold and strata titles.

The new provision also provides for a development application to include a condition relating to subdivision, which will assist in situations where the applicant obtains a development application first. It is noted that implementation of this aspect requires the development of regulations.

If section 164A applies, the WAPC has the discretion to refuse to determine an application for subdivision approval until other applications for subdivision or development approvals are made. The WAPC may also refuse to unconditionally endorse a diagram or plan of survey with a subdivision approval for registration unless satisfied that:

- the diagram or plan of survey is an accurate depiction of the subdivision that has been prepared after completion of the works; and
- the subdivision and development has been undertaken consistently with the relevant approvals (including conditions) and

- the requirements of the *Building Act 2011* have been complied with for the development.

The proposed provision is considered essential for delivering the new forms of tenure and will provide greater clarity to industry and the community on how the provisions will be applied and implemented.

In most circumstances the WAPC delegates its development control function under any region scheme to the relevant local government.

Questions for feedback

When would it be necessary or desirable to integrate subdivision and development approvals?

What benefits could integration provide?

What is an appropriate timeframe to implement either subdivision or development to facilitate integration?

More generally, for freehold or strata development how can the integration of subdivision and development approvals be implemented?

Conclusion and next steps

As part of the broader strata reform project, the *Community Titles Act 2018* identifies a new form of land tenure for Western Australia that may assist in providing cohesive, large-scale development, or shared infrastructure and services, and facilitate the subdivision of buildings into more than one scheme.

The WAPC and Landgate are working together to prepare regulations which will guide the implementation of the *Community Titles Act 2018* and the processing of community titles applications.

Supporting information, that may include the form of policy, guidelines or fact sheets, is currently being developed.

The strata reform team can be contacted at any time to answer queries and provide clarification on any matters relating to community title, at: StrataReform@dph.wa.gov.au.

Questions for feedback

Are there any other planning and development related aspects of the *Community Titles Act 2018* that may be necessary or convenient to include in regulations?



Glossary

Term	Definition
Community scheme	All the community titles schemes within a community scheme.
Community development statement	Defined in section 3 (1) of the <i>Community Titles Act 2018</i> to mean a document approved as a community development statement by the Planning Commission under Part 3 Division 2. The Planning Commission must approve a community development statement for a community scheme before land can be subdivided by a community scheme.
Community titles scheme	Any individual scheme, at any tier level within a community scheme.
Tiers of scheme	Within a community scheme there can be up to three (3) tiers of community titles schemes.
Tier 1 scheme	The first community titles scheme to be created and provides the overarching governance for all the tier 2 and tier 3 schemes which eventually belong to it.
Tier 2 scheme	This scheme subdivides a tier 1 lot into lots and common property or just lots. A tier 2 scheme belongs to the tier 1 scheme.
Tier 3 scheme	The tier 3 level can be reached where a tier 2 lot is subdivided into a community titles scheme. The tier 3 scheme created belongs to the tier 2 scheme that is subdivided and to the tier 1 scheme first created.
Community corporation	Tier 1, tier 2 and tier 3 community corporations (strata companies).
Registration of a community titles scheme	Registration of scheme documents to create a community titles scheme that may be a tier 1, tier 2 or tier 3 scheme.
Registration of an amendment of a community titles scheme	Includes but is not limited to an amendment of a scheme plan which modifies a lot or common property or creates, modifies or discharges an easement or restrictive covenant that benefits or burdens a lot or the common property in a community titles scheme or an amendment of a schedule of unit entitlements or amendment to give effect to making, repealing or amending a scheme by-law.
Scheme documents	The scheme plan, scheme notice, scheme by-laws and schedule of unit entitlements.
Subdivision	Includes a change to the boundaries of a lot or to the boundary of a tier parcel by registration of a scheme plan or by registration of an amendment to an existing scheme plan by way of re-subdivision of lots or lots and common property, consolidation of lots, conversion of lots to common property and adding land to or removing land from common property. Land can be subdivided by registration of a community titles scheme or by registration of an amendment of a community titles scheme.
Tier parcel	A parcel of land subdivided by a community titles scheme. A parcel of land subdivided by a tier 1 scheme is referred to as a tier 1 parcel. A tier 1 lot subdivided by a tier 2 scheme is referred to as a tier 2 parcel. A tier 2 lot subdivided by a tier 3 scheme is referred to as a tier 3 parcel.
Related scheme	A community titles scheme is related to each community titles scheme to which it belongs or that belongs to it and the community corporations of the related schemes are related community corporations.