

29 January 2019

Sean MacFarlane
Senior Lawyer
Strata Titles Act Reform
Landgate
1 Midland Square, Midland WA 6056

Via email: StrataTitlesActReform@landgate.wa.gov.au

Dear Sean

Leasehold Schemes: Strata Titles Regulations Discussion Paper

Thank you for the opportunity to provide feedback in relation to the above *Discussion Paper*. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA is a membership based organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.7% of Western Australia's Gross State Product, contributing \$31.7 billion annually to the Western Australian economy and \$264.98 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 215,100 Western Australians and 2.044 million Australians across the country.

As part of the broader Strata Tiles Regulations consultation process UDIA welcomes the release of *Leasehold Schemes Discussion Paper* and acknowledges Landgate's efforts to engage with industry. WA's changing demographics and lifestyle preferences mean that the Strata Titles Regulations are critical to ensuring that development is able to respond to these evolving demands effectively.

In response to the questions posed by the discussion paper, UDIA offers the following feedback.

1.3 Expiry day for leasehold scheme

The Institute queries why shorter leaseholds have been restricted to government agencies only. If the intention of this provision (whilst not specified by the Act), is to enable the creation of affordable housing, then the regulations should set this objective out rather than restricting the use of the provision to government agencies. Affordable housing provision is not restricted to state government agencies and is provided by a range of organisations including community housing providers and increasingly commercial and institutional investors. Indeed, the provision offers developers and investors the opportunity to provide short-medium term affordable housing whilst waiting for the housing market to lift, infrastructure to be provided or planning schemes to be amended, to support more comprehensive development outcomes.

The Institute suggests that where an exemption is granted to register a leasehold scheme with an expiry of less than 20 years, then it should be assessed on its particular merits and no minimum period should be specified by the Regulations. In practice, a period less than 10 years would limit the available finance options to residential purchasers, however there may be commercial reasons for creating schemes with lifetimes of less than ten years. The Regulations should enable this opportunities to be realised.

1.4 Leasehold by-laws

Compensation for improvements to the lot

It is not clear who is appointed to determine the valuation of the improvements to lots, if this person needs to be suitably qualified and the process for challenging valuations. Rather than exclusively relying on a prescribed formula, the Regulations should allow the parties involved to come to an arrangement regarding how much compensation may be payable for improvements, whether this is included in the leasehold by-laws or by another agreement. To balance needs of both parties and prevent the 'gold plating of lots', the Institute suggests that the compensation formula should be capped at 25-30% of the value of the lot, unless otherwise agreed.

1.6 Limitations on powers of owner of a leasehold scheme

The Institute does not support restricting provisions within the regulations to government agencies only. The same reasons for the adoption of such provisions should apply to both government agencies and the private sector with equal measure. Instead of restricting the use of its provisions, the regulations should be outcome focused.

With regards to the dealings that require the consent of the designated owner of a leasehold scheme, the Institute suggests that the most efficient and effective option would be to require consent of the scheme owner for the transfer of lots. However, the Institute queries if additional requirements are placed on lot owners, will supporting provisions be adopted to ensure that owners comply with these requirements without any undue delay?

UDIA suggests that any restrictions on owners should be communicated through a notification on title which is direct and provides an unambiguous message to lot owners.

1.7 Content and form of a strata lease

Regulations relating to section 52(1)(b) should allow for an order of SAT for re-entry where lots, or common property within the scheme is endangering, or causing an unreasonable nuisance to other lot owners.

The Institute supports the suggested provisions that could be included within the statutory strata lease and would also support requirements for the lessee to insure the lot. Where the lot is within in a



'build-form' scheme, insurance should extend appropriately to include the full scheme and there may be circumstances where this may also be appropriate in schemes with detached dwellings.

The Institute is concerned that the use of the lot is considered a matter for the strata company and/or the relevant local government. Leaving these issues solely up to strata companies and local governments to resolve often leads to delays and/or a failure of enforcement. To improve oversight, consideration should be given to empowering the lessor and enabling the lessor to consider/manage a change of use.

Should the Department require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Should any further information be required in relation to the comments above, please contact Chris Green, Director Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tanya Steinbeck', is positioned above the printed name and title.

Tanya Steinbeck
Chief Executive Officer