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Dear Lucy

Discussion Paper: Planning and Development, Community Titles Act 2018

Thank you for the opportunity to provide feedback on the above Discussion Paper and thank you for agreeing to short extension to the public consultation period. 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 10.1% of Western Australia's Gross State Product, contributing \$27.8 billion annually to the Western Australian economy and \$270.5 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 205,100 Western Australians and 2.023 million Australians across the country.

General Comments

As explained by the Community Titles Bill, Explanatory Memorandum, the introduction of community titles is a necessary and important part of the Government's plan for more vibrant communities. As the Bill was introduced to Parliament, its Second Reading Speech highlighted *'the flexibility of these schemes will provide for a better, more cohesive mixed-use development, effectively incorporating shops and restaurants, offices and residential apartments... This legislation opens up the possibility of all sorts of innovative and creative spinoffs, leading to jobs and growth in the economy.'*

The Discussion Paper itself proclaims that community titles will facilitate innovation in the design and delivery of mixed-use and higher-density development. UDIA is also encouraged by the opportunities provided through the greater use of shared infrastructure which will further support the delivery of sustainable infrastructure and more innovative development outcomes. In order to achieve these desired outcomes, it is imperative that the development of community title schemes is an attractive development option for proponents of both built form and master-planned developments.

With this in mind, it is essential that the community title approval process is efficient and affords development proponents with appropriate levels of certainty to support investment decisions whilst also providing sufficient longer-term flexibility to react to changing market dynamics. Accordingly, the community titles approval process should not repeat, duplicate, or elongate the approval process; rather the community title approval process should seamlessly integrate with, or even replace parts of the existing planning approval framework.

To ensure that this is achieved, UDIA suggests that the full development approval process for community title schemes is prepared and, using different development scenarios or case studies (including both master-planned and built form communities), the proposed approval process is compared against an equivalent development scheme utilising existing forms of land tenure. This process could help identify and remove any unnecessary duplication from the community title-development approval process, thereby avoiding uncertainty and unnecessary delay.

Whilst it is important that the Community Titles Act and Community Development Statement provide appropriate levels of certainty, it is also important that they provide sufficient opportunity for flexibility and innovation; particularly for larger, or more complex schemes which may take several years to be fully developed. Therefore, the Institute suggests that the approval process modelling discussed above is extended to examine the practicability of enabling amendments to approved community title schemes.

Recommendation

- The full development approval process for community title schemes is prepared and, using different development scenarios or case studies, compared against timeframes and approval processes for existing forms of land tenure.

Specific Comments

Benefits of Community Title Scheme

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

The discussion paper captures a good sense of the circumstances in which community title schemes would be beneficial. However, in addition to the situations identified, UDIA suggests that community titles schemes may also be appropriate where land is in fragmented ownership, enabling development to occur that otherwise may not be realised.

Whilst UDIA understands that a community title scheme can only be created on a single lot, the process of preparing a scheme should support the amalgamation of lots. These pre-existing lots may then form logical tier 2 community schemes that could be further sub-divided. This would help support the Government's infill development objectives and enhance development outcomes by providing an attractive development option for scenarios that are currently complex and frequently result in poor quality development outcomes. For example, Development WA's WGV development is located adjacent to a significant number of lots held by the Department of Communities which have also been redeveloped. Using the governance frameworks that community title provides, infrastructure items such as the community bore could have been extended beyond the boundary of the WGV development and shared amongst the neighbouring development.

Similarly, enabling community title development to occur across lots under different ownership would provide an innovative infrastructure investment model that may be a more effective, efficient and transparent alternative to utilising a development contribution scheme.

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)?

With regards to statutory easements, the regulations should give careful consideration to existing planning conditions, project timing for clearance of conditions and creation of titles.

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

Short form easements or restrictive covenants associated with a community title could be accommodated in the regulations to include matters such as common community infrastructure/support/access.

Appropriate Form of subdivision

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

It is also important to recognise the existing differences in the development approval process for master-planned developments and built-form schemes. For example, development proponents of built-form schemes are likely to seek development approval ahead of land tenure and management plan approvals. The differences are driven by the need for certainty and minimising the amount of capital exposed to risk. It is important that the approval process recognises this by providing flexibility rather than adopting a 'one size fits all' approval framework with information requirements reflective of this. Nevertheless, in determining what information should be included in a community development statement, it is important that clear advice is provided to development proponents to avoid unnecessary issues and disputes arising in relation to content of a Community Development Statement (CDS).

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?

Given the wide range of possible benefits that community titles could provide, UDIA contends that there is likely to be very few circumstances where a community title would be inappropriate. At the larger development scale, Elizabeth Quay, Civic Heart, Claremont Quarter and Belmont Racecourse would all benefit from community title; similarly, community title would provide significant opportunity for the development precincts within East Wanneroo.

However, smaller schemes such as Development WA's 'WGV' and 'Kuntsford'; Yolk Property's 'The Amble'; and Stockland's Glendalough developments may also have benefited from the option of community title. Perhaps the key consideration should be whether community infrastructure and/or management regimes could be better provided using an alternative and more appropriate mechanism, rather than whether the form of land tenure is appropriate? Nevertheless, UDIA contends that the market's acceptance of community title should not be underestimated.

UDIA suggests that an analysis of the planning framework requirements would enable an assessment of whether or not subdivision would be possible. In circumstances that this was not so, careful consideration should be given to inserting the requirement for further planning work to be included in a CDS moving forward.

Community Development Statement

What level of detail should a Community Development Statement provide?

The Institute suggests that the content of community development statements should largely be driven by the market and the expectations of community title scheme owners. Recognising that community title schemes could be prepared for a range of development scenarios, CDS's should operate with flexibility in order to achieve the objectives of the Act and be dependent upon the circumstances and context of the planning framework that pertains to the lot. Flexibility is needed to enable situations where further planning is required (either a structure plan or local development plan) to be provided in the CDS where this is considered appropriate. Alternatively, in scenarios where community titles are sought post development approval, the level of detail provided in a CDS should be minimal, reflecting what has already been approved or is capable of being approved within the relevant planning framework.

A key factor in ensuring the take up of community titles will be ensuring that CDS's provide opportunities for the variation of schemes and the ability for bonuses to be applied (plot ratio/height).

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

The Institute would support the development of a model CDS, however the model should not mandate which provisions should be applied. UDIA suggests that the model provisions could significantly replicate the existing structure plan guidelines available on the DPLH website.

Are there any specific class of documents that should be referenced in a CDS?

References to documents outside of the CDS should be dependent upon the circumstances of each freehold lot and the planning framework applicable at the time of approval of the CDS. Clear guidance and advice are needed to clarify the implications of any amendments to documents outside of the CDS, given the requirement for development to be consistent with the CDS.

Should a CDS be able to modify the provisions of the R-Codes or local planning scheme?

A CDS should be able to modify the provisions of the R-codes in the same way that the existing planning frameworks allow for a variation or considerations such as 'due regard', in addition to providing opportunities for bonuses to plot ratio/height subject to an assessment.

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

The Institute would support the right to waive the requirement for a local structure plan or local development plan; furthermore, this provision should also be extended to waiving the requirement for a precinct plan. This should occur where the existing planning framework is sufficient to enable an assessment of the planning merits of a particular proposal. Similarly, where development approval has already been attained, no further planning work/approvals should be required.

Determination of a Community Development Statement

Careful consideration should be given to any CDS public consultation requirements. They should not repeat or duplicate any public consultation undertaken as part of a structure plan, local development plan, other statutory planning instrument, or as part of an approved development application. The Institute queries the need for further public consultation where a community scheme has a development approval and suggests that there should be no further public consultation where this is the case. For example, as part of a large multi-unit development, community consultation is likely to have occurred already at the structure plan and DA stage. As such the purpose of this consultation seems unclear, unnecessary and likely to confuse the community and undermine trust.

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

If consultation is undertaken as part of master-planned community CDS, this process should replace rather than replicate the current structure plan public consultation period. Where this is the case a timeframe of 60-90 days consistent with timeframes set out in the 'deemed provisions' of the LPS regulations for the preparation of structure plans would be appropriate.

Should advertising of an amendment to a CDS be waived?

Yes, in circumstances that the amendment is not significant or does not fundamentally change the development contemplated in the previously adopted CDS, or where the development is consistent with the provisions of a local planning scheme and does not require advertising.

Would you support the ability for the WAPC to agree to a shorter advertising period?

Yes, however this should become common practice where the consultation process replicates that of consultation undertaken at an earlier stage of the planning and development approval process.

Should approval be required under a CDS where development is normally exempt? For example: single houses, fencing.

No with clarity that development normally exempt from approval remains exempt within community schemes provided. Where development approval is required, clarity regarding the need for the signature of the owner as required on application forms by *Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 clause 62(2)* is also needed.

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?

The nature of modifications should be unlimited but premised on the basic concepts of planning merits and the merits associated with the particular development proposed. Conditions should have a proper planning purpose, a clear nexus to the development and be reasonable.

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

60 days.

Implementation of a Community Development Statement

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.

For large, and complex development schemes ten years is unlikely to be a sufficient period for development to be completed. Similarly, in regional areas, the pace of development may fluctuate dramatically between different years and therefore ten years may also be an insufficient development period. A scalable timeframe as suggested appears a logical approach. To provide clarity and certainty to all stakeholders involved, the extended development period should be made clear from the outset.

Should an extension to the development period require public consultation? If so, in what instances?

Where no changes, or very limited changes are proposed to be consistent with local planning scheme or structure plan requirements, a limited, shorter consultation period should be considered.

Integration of subdivision and development

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

This is likely to be dependent upon the circumstance of an individual development. For large built-from apartment and mixed-use development schemes, proponents are likely to continue to seek development approval ahead of subdivision approval. Perhaps the integration of subdivision and development approval may be more appropriate for medium density housing or on lots less than 100 square metres and where density bonuses can be achieved through innovative design of the built form.

What benefits could integration provide?

Providing that the integrated approvals process did not become more cumbersome, the benefits in relation to timing could be significant. However, decision makers are typically cautious and risk adverse and traditionally there has been a clear distinction between subdivision and development approval bodies, integrating these under our current statutory planning framework is likely to be difficult to achieve. If integration creates less certainty, this may jeopardise the opportunities that integration provides, which potentially includes enhanced built-form outcomes with more certain and transparent application of density and other design led bonuses.

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

The standard 60-90 days period should be sufficient to make a determination.

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

Through the WAPC acting as a single approval body.

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?

Ensuring that third party referral processes are efficient and effective and do not unreasonably stifle innovation or desired development outcomes. In order to deliver positive development outcomes, it is imperative that the decision maker balances all relevant planning considerations.

Clarity is also needed regarding the mechanics for assessment including ability to make submission/deputation to the WAPC (by a proponent, statutory agency and third party) in a transparent and open manner. Similarly, clarification of appeal rights in respect of the consideration of whether or not to assess a community development statement is also needed.

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

Yours sincerely



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