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9 December 2020

Kelly Whitfield
Strata Titles Act Reform
Landgate
1 Midland Square, Midland WA 6056

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

Dear Kelly,

Draft Community Titles Regulations 2020

Thank you for the opportunity to provide feedback on the draft *Community Titles Regulations 2020*. 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.

Support for the draft Regulations

UDIA WA welcomes the release of the draft Community Titles Regulations and acknowledges the efforts made by Landgate with the support of the Department of Planning, Lands and Heritage to deliver these vital land tenure reforms. The Institute fully appreciates the complexities in preparing the 2018 Act and the draft Regulations whilst also delivering much needed reform of the Strata Titles Act concurrently. Whilst this has meant that the broader Strata reform program has taken several years and successive Governments to progress, UDIA congratulates Landgate and the Government for preparing a comprehensive set of draft Community Title Regulations.

The establishment of Community Titles is key to enabling the development industry to respond more effectively to WA's changing demographics, evolving lifestyle preferences and emerging environmental challenges by supporting greater innovation, and more diverse housing options. In particular, community titles will support the delivery of more sustainable development outcomes by enabling the introduction of innovative and efficient community infrastructure servicing arrangements whilst also supporting the delivery of enhanced mixed used developments that will more seamlessly integrate residential development with public transport, jobs and community services. This will greatly assist with housing affordability. Therefore, it is imperative that the Community Titles framework is robust and provides confidence to potential purchasers of community title property whilst also offering a flexible and attractive development framework to industry.

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COVID-19 has brought many difficult challenges and has highlighted the importance of ensuring that our built environment contains a range of infrastructure and services that supports all within our communities. As we begin to emerge from the economic challenges brought about by the virus, it is clear that a prosperous development industry is essential to our supporting the future prosperity of the entire community. Encouraging investment in our built environment is also essential to ensuring that urban form provides a range of housing choices and high-quality amenities that support the liveability of community. Prior to the onset of the virus, through the McGowan Government's 'Our Priorities' program, together with METRONET and the release of Design WA, the Government set out a clear agenda to increase infill development and provide greater housing choice. The establishment of Community Titles is essential to supporting these objectives and delivering enhanced development outcomes that respond to the emerging and future needs of our communities. However, without sufficient flexibility provided to those developing community schemes, particularly as many schemes will take many years to be fully developed, we are likely to see a slow and minimal uptake of community title schemes.

Whilst UDIA is strongly supportive of the draft Community Titles Regulations, the unfamiliarity of this form of land tenure amongst regulators, the development industry and our community, mean that unforeseen issues are likely to arise. Therefore, it is imperative that regular reviews of the performance and effectiveness of the Community Titles Act, Regulations and supporting policy controls are undertaken. As well as being undertaken frequently, it is important that these performance reviews are holistic, gathering feedback from all stakeholders involved, including the development industry. In addition to examining community schemes, these performance reviews should also seek to examine whether or not any developments suitable for community titles have been delivered using other forms of land tenure, and if so why.

Despite our support for the draft Regulations, and whilst the termination of any community scheme is likely to be several decades away, for similar reasons outlined in our submissions regarding Strata Tiles, we are concerned that the cost of terminating community titles schemes is very high and provides little certainty for the proponents of a termination. The more immediate concern regarding the uncertain and inefficient termination process, is that these requirements may prevent suitable development proposals, and in particular, more innovative and short-medium timeframe development proposals from coming forward. Whilst the UDIA does not wish to delay the adoption of the Community Titles Regulations, we encourage Landgate to undertake further consultation with all stakeholders including the development industry to develop effective regulations governing the termination of strata and community title schemes. Similarly, providing a pathway for the more efficient transition from an existing strata scheme to a community title schemes should also be considered.

Arguably one the greatest benefits that community titles provides over traditional 'green title' and strata forms of development is the opportunity to overcome development constraints with efficient and effective forms of governance to manage community infrastructure items. However, it is not clear

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if community titles will provide the opportunity to effectively to manage hazards beyond bushfires. UDIA contends that community titles provides an ideal opportunity to enable and leverage development that can support the delivery of infrastructure that better protect existing communities against hazards such as coastal inundation.

UDIA is also concerned that the distinction between greenfield/master-planned forms of development, and high density, mixed use development has not been clearly articulated. Given the significant differences between these forms of development, offering delineated approval pathways would help to streamline information and process requirements, ensuring that community titles is an attractive development proposition.

Recommendations

- UDIA strongly recommends that the Regulations and Act be reviewed within three years of the regulations coming into effect.

Specific Comments

Regulation	***Comment/Recommendation***
General comment	Many of the concepts within the Regulations match the Strata Titles (General) Regulations 2019 which have been in operation since 1 May 2020. This has practical benefits as: 1. there are similarities between community titles and strata titles that should be retained; and 2. many of the strata processes are currently working relatively well.
r12 Matters to which Planning Commission must have due regard b)	Clarity regarding the status of 'draft' policy or position statements would assist, similarly, UDIA also queries if there is any a policy and position statement and should there be any (unintentional) inconsistencies between a policy and position statement, which guidance takes precedence? 'Technical advice' received from 'any or person' needs to be more clearly defined. Regulation 12: It would be useful if the WA Planning Commission (WAPC) confirms what consultation will be done on the policy or position statement for community titles matters referred to in this regulation, and also when that policy or position statement will be released.
r13(1)(e)	Regulation 13(1)(e) conflicts with section 25(1)(b)(iv) of the Act which provides that the community development statement (**CDS**) may specify the limitations on the number, size or arrangement of lots.

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	The use of the term *limitation* enables the applicant for a CDS to specify a range of number of lots (for example, from 500 to 550 lots will be constructed within this community titles scheme, which is a sub-scheme within a community scheme). The CDS needs to retain a degree of flexibility for the developer. If the CDS becomes too narrow in specifying what can be developed and subdivided in a community scheme, developers will avoid using community titles. Regulation 13(1)(e) should continue to provide sufficient flexibility in the CDS by being amended to refer to *an upper and lower estimate of the number of lots in the area covered by the statement*.
13. Additional content to be included in statement (1) (f)	It is unclear what population impacts means ie. is population defined as the community within a scheme, or does this include the surrounding suburb(s) and/or local government area? UDIA recommends that more precise terminology is used if the intent is to describe the community profile that the development design is intended to support. However, despite this lack of clarity, the reason for including population impacts within a CDS is unclear and why this is captured within a planning/ management document rather than in a higher order planning document such as a scheme amendment?
R13(1)(h)	Regulation 13(1)(h) is too restrictive. Staging of a community scheme is likely to take at least a decade and the statutory period specified in the Act running from the approval of a CDS to the end of the development period can be up to 14 years. Making the developer choose exactly what stage vesting will occur 14 years before it will happen is counterproductive. Regulation 13(1)(h) should be amended to require the CDS to provide an estimate of which stage the vesting will occur.
r13(1)(j)(iii)	Regulation 13(1)(j)(iii) is restrictive and irrelevant. Identifying the person responsible for the costs associated with the infrastructure is not something that can be done through a crystal ball some 12 or 14 years before a community scheme begins its subdivision cycle and is irrelevant. If the CDS specifies that infrastructure is required for a particular stage, that infrastructure needs to be provided or the developer will not obtain subdivision or development approval.

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	Regulation 13(1)(j)(iii) should be deleted.
r13(2)	Regulation 13(2) is too restrictive and does not factor in the need for flexibility in a large subdivision site that will take many years to complete. Community scheme sites will generally be large scale sites involving significant development over an extended timeframe. Developers have expressed serious concern about locking a staging plan which contains no flexibility into a CDS, which will diminish the attractiveness of community titles as a development proposition. Many of the proposed community scheme projects are expected to extend well beyond ten years and involve significant development with multiple uses including office, retail, showroom, residential and hotel and tourism uses. These sites and development opportunities need to have a degree of flexibility to respond to changing market conditions and the CDS should allow for that flexibility by allowing developers to specify <u>options</u> for staging rather than a single staging plan. 1. The staging plan should: a. provide for an estimate of the sequencing of stages of development and subdivision; and b. enable the developer to specify several options (if they choose) of the staging of the subdivision and development of the site. 2. Regulation 13(2) should be amended to provide that the staging plan contains an estimate of the sequencing of stages of development and subdivision and will permit staging of the subdivision and development through a range of options.
r13(2)(c)	Staging plan reports should not be limited to providing information regarding bushfire management infrastructure, it should also include information regarding other hazards where relevant.
r14	Regulation 14 undermines the certainty that the CDS provides to developers and landowners within a community scheme. Certainty of what a developer can do on a site is critical and enables the developer to commit significant resources to developing and subdividing a large site. This has obvious economic benefits for the State and local community. Providing that the CDS incorporates wholly or partially the local planning scheme as in force from time to time means that the CDS could become

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	more restrictive if the local planning scheme is amended to prohibit uses of the land which were permitted at the time the CDS was approved. Regulation 14 should be amended to specify that each of the documents specified in regulation 14(1)(a) to (h) may be incorporated into the CDS as in force at the time the application for approval of the CDS was submitted to the WAPC.
Missing regulation	Missing regulation: Section 26(1) of the Act provides that the development period is 10 years or some other period if fixed in the regulations. There are a number of community schemes being contemplated by developers which will take at least 15 years to complete. The regulations should provide that the development period may be longer than 10 years where that longer period is agreed to by the WAPC and the person applying for approval of the CDS.
r15. Advertisement of application to extend development period for a community scheme (2)(a)	The regulations require local government to advertise applications 'as soon as reasonably practicable'. UDIA queries why a time period is not defined and suggests requiring local governments to advertise within a set timeframe would provide greater certainty to all stakeholders involved.
r41. Light and air easement	Clarity is needed regarding what constitutes unimpeded access for light and air easements. For example, is it considered to mean no overshadowing in the case of light or a setback of 1m for air?
r56. Fire restrictive covenant	UDIA queries the necessity of this provision noting that these are land use planning requirements contained in the local planning scheme regulations and planning policy framework. Furthermore, given that land uses and vegetation (and therefore BAL ratings) may change, the rigid nature of such covenants mean that lots are likely to be unnecessary burdened bureaucracy and leaves very little flexibility for managing development.
Division 2 — Terms and conditions that are taken to be implied in infrastructure contract.	
r63. Planning or other approval (2)	UDIA suggests that r.63 should be re-worded to reflect the fact that infrastructure/public works are exempt from requiring development approval.
r 67	Regulation 67 is a major departure from the concept of infrastructure contracts as provided under the Strata Titles (General) Regulations 2019 (**Strata Regulations**) and undermines the concept of the common property

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	infrastructure easement so that the easement has now become the equivalent of a short term licence. Providing that the community corporation can give 3 months notice to an owner requiring the owner to remove solar panels from the common property after the owner has obtained all of the approvals (including an ordinary or special resolution) to install that infrastructure on the common property undermines the certainty that owners and third parties need to have when they enter into an infrastructure contract. Regulation 67 should be deleted.
72. Obligations relating to infrastructure insurance	UDIA queries why infrastructure owners 'must obtain and maintain insurance', particularly where the infrastructure is of a low or nominal value. UDIA suggests that a replacement cost threshold should be used, and where infrastructure replacement costs fall below this threshold, the owner simply required to repair damage caused by fire, storm etc.
74. Obligation relating to removal of infrastructure	UDIA queries whether the obligation to remove infrastructure should only be required if they are directed to do so by the community scheme.
75. Minimum insurance for community titles scheme	UDIA queries why there is a minimum $10,000,000 insurance threshold, which may prevent development proposals that are highly suited to these forms of land tenure from coming forward such as, small scales mixed used developments and in particular regional development and mixed use-tourism development in regional areas. It is also unclear what the requirement "*for each community titles scheme in the community scheme"* means. Is the insurance requirement for the entire community scheme, or each tier within the scheme?
77. Expenditure on common property requiring special resolution	Further guidance as to how expenditure on common property is calculated would assist. It is not clear if the tier parcels are included in the calculation if the access to the common property is exclusive and limited to lot owners within a particular tier.
78. Budget variations that are authorised	Section 87(6)(a) of the Act refers to each "each lot or tier parcel in the community titles scheme" the regs should specify that the $500 limit refers to each lot within a a tier - $500 limit for a tier would be too low.
88. Limitations on scheme manager being appointed as proxy	Regulation 88(3) is too restrictive. Providing that a scheme manager can only hold an owner's proxy for one meeting or a for specified resolution is impractical. Furthermore, regulation 88(3):

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	a. will impose on owners and strata managers the additional burden of having to submit a new proxy for every meeting or resolution; and b. will make it more difficult to enable owner participation where an owner needs to rely on a proxy as a result of the owner's travel or work commitments. Regulation 88(3) should be deleted so that scheme managers are be able to act as proxy, unless a scheme decides to limit the appointment.
Missing regulation	The equivalent of regulation 91 from the Strata Regulations should be included within the Regulations. The definition of scheme manager is so broad that it can include any person who is authorised to perform a scheme function, including cleaners, builders and other people who are not performing the role of a strata or scheme manager. The Regulations should be amended to include a list of scheme functions that are excluded from the operation of the scheme manager provisions under Part 9 of the Act and Part 11 of the Regulations, including: a. the insertion of definitions equivalent to *repair or maintenance work* and *specialist work* as provided in regulation 90 of the Strata Regulations; b. the addition to the definition of *maintenance work* to include the management and control of the common property and personal property of the community corporation; and c. the insertion of the equivalent of regulation 91 of the Strata Regulations.
105. Information may be given by electronic means	UDIA strongly supports the provision of information via electronic means.
127. Independent vote counter	UDIA understands the importance of ensuring that voting is undertaken in a robust and impartial manner, however to ensure that termination costs are kept as reasonably low as possible, the regulations should enable the parties concerned to determine whether or not they wish to appoint an independent vote counter and therefore UDIA suggests adding the wording, 'unless all parties agree'.
136. Vulnerable persons (3)	UDIA fully supports ensuring that vulnerable persons are afforded suitable protections and it is essential that all vulnerable persons have access to robust advice and support services. However, it is also important that the

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	protections afforded to vulnerable persons are not abused to the detriment of all stakeholders involved. Therefore, UDIA queries how the examples given in r.136(3) are determined?
(5)	The definitions given in (5) are very broad simply being unemployed at a particular point in time, or having access to a government pension should not determine that a person is vulnerable.

UDIA also wishes to once again acknowledge Landgate for the comprehensive and ongoing industry engagement process that they have undertaken. In closing, the Institute wishes to reaffirm our support for the draft Community Titles Regulations, however to avoid any unintended consequences that the regulations may give rise to and to also ensure that the termination requirements are appropriate, we strongly encourage annual monitoring and reporting of the uptake of community titles.

Should Landgate 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

Tanya Steinbeck
Chief Executive Officer