

# Community Title Schemes

Community title schemes (community schemes) are a new form of strata scheme:

- where multiple sub-schemes exist under an umbrella community scheme
- each sub-scheme has its own strata company
- the strata companies all operate under an overarching community corporation.

Community schemes are ideal for:

- large scale strata developments which will be delivered over several stages
- integrated land developments (of strata and/or survey-strata lots) and single strata buildings with a mix of residential, retail and commercial uses.

Community schemes already exist in other states including New South Wales and Queensland. Community schemes will introduce new definitions, concepts, structures and processes to the Strata Titles Act 1985 (the Act).

## Overview

### Basic concepts within a community scheme

Every community scheme will have a Community Development Statement (CDS) which will set out how the community scheme will be subdivided and developed. The Western Australian Planning Commission must approve the CDS before the community scheme can be developed.

The community scheme may have its own community property (common property for the whole community), which every owner in the community scheme will jointly own. A member scheme within the community scheme may also have its own common property which the owners in that member scheme will jointly own.

The community scheme will have a community corporation which is the overarching management body. Each member scheme in the community will have its own body corporate to govern and manage relationships and common property in that particular member scheme. Each member scheme will have a representative to act and vote on its behalf at the community corporation.

[landgate.wa.gov.au](http://landgate.wa.gov.au)



The community corporation will have a Community Management Statement (CMS) which will set out the by-laws for the community scheme. Each member scheme will also have its own Management Statement which sets out by-laws that apply only to that member scheme.

## Creating a community scheme

A community scheme is created when a single building, or single parcel of land, is subdivided into community lots. A community lot can then be subdivided again into a member scheme. A lot in that member scheme can be subdivided into another member scheme. Each member scheme sits inside the original community scheme. The end product is a community of schemes with up to three levels of ownership and management.

## Benefits of community title

Community schemes will allow for large-scale planned land developments with shared infrastructure and services. Community schemes will also facilitate a mix of uses in a single building or development. For example, a single high-rise building that has residential, retail and commercial lots.

Creating a mixed-use building which contains multiple schemes will mean each member scheme can have by-laws which apply only to that scheme, and maintenance costs can be more fairly shared between the different schemes. The schemes will still get the benefit of an overall community corporation that is responsible for the building and by-laws governing all owners and occupiers.

The creation of schemes in a larger land parcel will allow for flexibility, greater or lesser density of development, and sharing and/or exclusive use of community property (common property in a community scheme).

Under the current *Strata Titles Act 1985*, sharing of common facilities and infrastructure by neighbouring schemes requires complex easement arrangements and contracts. Mixing of uses can also be achieved under the existing Act using a Management Statement that clearly states the different by-laws that apply to each use. However, there is often tension between the owners due to the failure to fairly share expenses and define rights of use.

## New terms will apply to community title

The Act will be updated to apply to community schemes

Most parts of the *Strata Titles Act 1985* (the Act) will be updated to apply to community schemes. Community title is still a form of shared ownership like strata title, but generally on a larger scale. The new Act will apply to community schemes but some new definitions will be added to make it clear what the differences are.

### List of terminology

Like strata title schemes, community schemes will have plans, body corporates, by-laws and common property. Because some rules will apply to community schemes but not strata title schemes and vice versa, new terms that only apply to community schemes will be introduced.

The following table shows the current strata terms and what terminology will be used in the new community schemes. For example, a strata scheme has a strata company and a community scheme will have a community corporation.

### Terminology for community schemes

Strata title scheme under the current Act	Community Title Scheme	Secondary Community Title Scheme	Community Strata / Survey-Strata Scheme
survey-strata scheme	community title scheme	secondary community scheme	community survey-strata scheme
strata scheme	community building scheme	secondary community building scheme	community strata scheme
strata company	community corporation	secondary community corporation	community strata company
strata plan	community building plan	secondary community building plan	community strata plan
survey-strata plan	community plan	secondary community plan	community survey-strata plan
strata / survey-strata lot	community lot	secondary community lot	community strata lot/ community survey-strata lot
common property	community property	secondary community property	common property

landgate.wa.gov.au

Strata title scheme under the current Act	Community Title Scheme	Secondary Community Title Scheme	Community Strata / Survey-Strata Scheme
management statement	community management statement	secondary community management statement	community strata / survey-strata management statement

## Additional definitions

- **Community scheme** Refers to both community schemes (survey plans) and community building schemes (building plans), including all the member schemes within the particular community scheme.
- **Member scheme** Refers to any secondary community scheme, secondary community building scheme, or community strata/survey-strata scheme which forms part of a community scheme.
- **Body corporate** Refers collectively to community corporations, secondary community corporations and community strata companies.
- **Special resolution** A new definition of special resolution will apply to community schemes. A special resolution in a community scheme requires 75 per cent of its members to vote in favour. The members of the scheme may be either lot owners or member schemes.
- **Subdivision versus re-subdivision** There is a difference between subdivision and re-subdivision. A strata scheme can be re-subdivided however a community scheme can be both subdivided and re-subdivided.
  - Re-subdivision adjusts the boundaries of the lots and common property on the plan. For example, to create new lots, remove lots or to adjust the boundaries of existing lots on that plan.
  - Subdivision on the other hand is where a new member scheme is created from an existing lot on the plan. For example, where a community lot is subdivided by a plan to create a community strata scheme. The community strata scheme is a new member scheme that sits inside the community scheme lot.

## A community scheme will have member schemes

### Member schemes

A community scheme will have one or more member schemes. A member scheme is a community strata/survey-strata scheme or secondary community scheme within the community scheme. Each member scheme will have its own plan, by-laws, body corporate and potentially common property.

landgate.wa.gov.au

## Each member scheme is created when the plan is registered

Each entity in the community scheme comes into existence when the plan relating to it is registered. For example:

- on registration of a community plan, a community scheme is created
- if the community scheme is subdivided by the registration of a secondary community plan, a secondary community scheme is created at the time of registration
- if a community scheme or secondary community scheme is subdivided by the registration of a community strata plan or community survey-strata plan, a community strata scheme or community survey-strata scheme is created.

## Member schemes will be responsible for managing their own common property and holding their own meetings

The community corporation will manage and control community property and enforce community by-laws. Each secondary community corporation or community strata/survey-strata company will have responsibility for common property in their respective scheme and enforce by-laws in their own scheme.

## There can be up to three levels in a community scheme

- A community lot can be subdivided by a secondary community scheme, or a community strata/survey-strata scheme.
- A secondary community lot can be subdivided by a community strata/survey-strata scheme.
- A community strata/survey-strata scheme cannot be further subdivided.

## The community corporation will consist of representatives from the member schemes

When the community plan is registered, the members of a community corporation are the owners of the lots. But when a community lot is subdivided by a community strata plan/survey-strata plan or secondary community plan to create a member scheme, the community strata company or secondary community corporation, becomes a member of the community corporation.

## Survey schemes can't be members of built schemes

A community scheme can contain a mix of strata and survey-strata. There are some limits on this though. Community building schemes can only contain strata schemes and lots.

A community scheme which uses survey boundaries (like a survey-strata plan) can be subdivided by a strata or survey-strata scheme. However a community title building plan which uses cubic space, where each lot is defined as a 3D space, (like strata) can only be subdivided by a community strata scheme. This is because a community title building scheme is within a building and it can't contain community survey-strata which must use survey boundaries.

## Not every community title lot must be subdivided to the same degree

Some lots in a community scheme may be subdivided to create two layers, while other lots in the same scheme are subdivided to create three layers. There is a maximum of three management layers permitted regardless of how many times the land is subdivided.

landgate.wa.gov.au

## How a community scheme will be managed

Every community scheme will have a community corporation

A community scheme is the overarching structure which covers all the land and lot owners in the parcel. Every community scheme will have a community corporation which is created when the community plan/ community building plan is registered. The community corporation is the body corporate that manages the by-laws (rules), common property, finances and other decisions of the community scheme.

Every member scheme will also have a body corporate

A community scheme can be subdivided into a secondary community scheme or a community strata or survey-strata scheme. Any member scheme in the community scheme will have its own body corporate. In a secondary community scheme it will be the secondary community corporation and this is created when the secondary community plan is registered. In a community strata or survey-strata scheme it will be the community strata company which is also created when the community strata plan/community survey-strata plan is registered.

A secondary community corporation will be responsible for managing the secondary community corporation lots and common property in that scheme. The body corporate for each member scheme will be responsible for managing the affairs of that particular member scheme, including the by-laws, common property and finances. If there is any conflict with the community corporation, then the community corporation will prevail, but this can be challenged at the State Administrative Tribunal.

Community schemes may have two or three levels of management

The more management levels in a particular community scheme, the more complex the scheme will be. It's anticipated most schemes will have only two levels to maintain simplicity.



Example of a community scheme with two levels



## Example of a community scheme with three levels



The community corporation is made up of lot owners and member schemes

The community corporation is comprised of:

- the owners of the community lots, and
- where a community lot has been subdivided by a secondary community scheme, the secondary community corporation, or
- where a community lot has been subdivided by a community strata / survey-strata scheme, the community strata company.

The secondary community corporation is made up of lot owners and member schemes

The secondary community corporation is comprised of:

- the owners of the secondary community lots, and
- where a secondary community lot has been subdivided by a community strata / survey-strata scheme, the community strata company.

The community strata company is made up of lot owners

The community strata company is comprised of the owners of the lots within that community strata or survey-strata scheme.

## Voting in community schemes

An ordinary resolution (more than 50 per cent vote) is required for a community corporation, secondary community corporation or community strata company to make a decision on a matter requiring a resolution, unless otherwise stated in the *Strata Titles Act 1985*.

Resolutions without dissent or unanimous resolutions will not apply in community title schemes.

Special resolutions will be required for specific actions within a community scheme such as amending a Community Management Statement. Special resolution in the context of community title schemes means a 75 per cent vote in favour of the motion.

## Seal of the community corporation

Under the current *Strata Titles Act 1985* the strata company typically has to affix their seal to various documents. This is being updated for all strata schemes, so the signatures of two council members can be used in place of the seal. This will also apply in community schemes as well as member schemes. There will also be the opportunity to apply the seal electronically to documents.

## Community management statements and member scheme management statements

### Every community scheme must have a Management Statement

Community Management Statements will be compulsory for all community schemes and each member scheme will have a separate Management Statement.

The Management Statement for each member scheme should be consistent with the Community Management Statements (CMS) or the Management Statements of any higher scheme. If there is any inconsistency the higher scheme's Management Statement prevails.

The CMS should also be consistent with the Community Development Statement (CDS). If it is not, the CDS prevails.

Any disputes about consistency of management statements may be resolved by the State Administrative Tribunal. This is further explained in the section called [Clearer and easier ways to resolve strata disputes](#).

## A Management Statement will be binding

A Management Statement will be binding on the scheme it is created for and any member scheme within that scheme.

This means it is binding on every lot owner, lessee, occupier (or other resident of a lot), and mortgagee in possession in that scheme.

Specific guidelines will be provided for management statements, including:

- the form which a management statement is to be in
- the matters which must be and cannot be included within the management statement
- the optional matters which may be included within the management statement
- how by-laws required by a public authority or local government may be provided for and amended

The model by-laws in the Act will not automatically apply to community title schemes but may be varied and adopted as required and reproduced, as part of the Community Management Statement.

landgate.wa.gov.au



## A Management Statement must include

- the scheme by-laws (for the control, management, administration, use and enjoyment of the lots or of the community property, secondary community property and common property)
- the control, management, use and maintenance of any other part of the community property, including any special facilities provided on the community property
- a statement of responsibilities for maintaining services in the building
- the storage and collection of garbage
- the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services
- the council constitution of the community corporation, or the secondary community corporations or community strata companies, which are members of the community corporation, including the election and the functions of the office-bearers of the council
- insurance of the community property
- meetings of the council
- the records of proceedings of the council.

## A Management Statement may deal with certain optional matters

- the hanging of laundry
- safety and security measures
- details of any exclusive use property or restricted use property
- the keeping of pets
- the obligation of the owner of a lot within the scheme not to interfere with the quiet enjoyment of another lot or the community property
- the control of unacceptable noise levels
- details of any business or trading activity to be carried on by the community corporation and the method of distributing and sharing any profit or loss
- the control or preservation of the essence or theme of the development under the scheme
- architectural and landscaping guidelines to be observed by lot owners
- agreements entered into for services or recreational facilities.

The Community Development Statement will be the document that controls the scheme development theme and the architectural and landscaping guidelines to be observed by lot owners.

## A Management Statement must not contain

A Community Management Statement (CMS) (or Management Statement for a member scheme) cannot contain by-laws which are unreasonable or oppressive.

A CMS must not include any prohibition or restriction that:

- affects the keeping of an assistance animal by a person with a disability who is an owner or occupier of a lot, or
- affects the use (on a lot or on community property) of an assistance animal by a person with a disability, or
- is based on race or creed, or on ethnic or socio-economic grouping

## Two management statements should not deal with the same subject matter

A member scheme Management Statement need not include anything already provided for by a higher scheme Management Statement or the Community Management Statement.

landgate.wa.gov.au

## Amending a management statement

Management statements for a community corporation, secondary corporation or community strata company may be amended by special resolution.

An amendment has no effect until it is registered at Landgate. The Registrar of Titles cannot accept lodgement of an amendment if more than three months has passed since the resolution was made.

## Landgate will not check or endorse the Management Statement

All management statements will include an endorsement that states:

- the contents of the Management Statement have not been checked by Landgate at the time of registration
- Landgate does not endorse the contents of the registered management statement
- Landgate will not police future variations of the Management Statement.

## A Lessee must comply with the Management Statement

Each lease of a lot within a community scheme will contain an agreement by the lessee for them to comply with the management statements applicable to the scheme. The owner or mortgagee in possession of a lot within a community scheme shall take reasonable steps to ensure every occupier or other resident of that lot also complies.

## Enforcement of a Management Statement

A community corporation, secondary community corporation and a community strata company will be able to enforce the management statements which apply within the community scheme in the same way strata companies may enforce by-laws. This includes empowering the corporation/company to apply to the State Administrative Tribunal (the Tribunal).

A community corporation, secondary community corporation or community strata company, can enforce Management Statement by-laws by serving notice on any person or body corporate bound by the statement in question. The notice must specify what by-law has been breached and request compliance. If the person or body corporate breaches the by-law again after notice has been served, the community corporation, secondary community corporation or community strata company can apply to the Tribunal for an order, and/or penalty against them.

If the breach of the by-law within the Management Statement is considered serious or has been persistent, an application can also be made to the Tribunal without serving notice.

## Community Corporation Functions

### The nature of the community corporation and member schemes

Each community corporation, secondary community corporation and community strata company:

- has perpetual succession, and may have a common seal
- is capable of suing and being sued
- is regulated by the *Strata Titles Act 1985* and the respective Management Statement, for that corporation or company

landgate.wa.gov.au

- is comprised of its owners.

## Powers and duties for community corporation and member companies

A community corporation and its members companies will have many of the same powers and responsibilities that strata companies have under the current *Strata Titles Act 1985* (the Act). The new powers and duties being introduced for strata companies will also apply to community corporations and member companies. There is further information available in the Improved Management section.

A summary of the powers and duties which will apply to a community corporation and member companies are:

- the powers and duties currently listed in the Act
- power to terminate service contracts
- duty to keep strata roll
- duty to supply information and certificates
- power to change address for service of notices on community corporation and subsidiaries
- power to change name of body corporate
- sufficient power to enter a lot and carry out work and repairs in a community scheme or a member scheme
- power to represent owners in proceedings
- authority to make, vary or discharge a contract
- power to enter into service contracts
- power to operate a business (for the benefit of owners)
- power to hold an intellectual property and trademarks
- duty to act reasonably in administering assets and community property of the scheme, enforcement of the Management Statement and carrying out all other functions.

## Powers and duties for community property

A community corporation, secondary community corporation and community strata company will have the power to:

- both manage and maintain community property within the relevant scheme and the assets of the scheme for the benefit of the owners
- improve and re-subdivide the community property in the relevant scheme provided they are acting reasonably, a special resolution is passed in favour, any developers in the scheme are notified, and it is consistent with the Community Development Statement. Any disputes over improvements or re-subdivision of the common property can be taken to the State Administrative Tribunal.
- install sustainability or utility infrastructure on community property. Specifically, they will be able to approve the financing and installation of the infrastructure, own and operate the infrastructure, hold income generated from the infrastructure to distribute to owners, and grant a right or easement in order to install, operate or maintain the infrastructure. Sustainability infrastructure is infrastructure that improves the environmental sustainability of the units or reduces the environmental impact by the lot owners. Utility infrastructure is the provision of services (such as electricity, water or gas).
- negotiate with local or state government to transfer community property.

Owners, mortgagees in possession, lessees, occupiers or other residents of lots within a community corporation, secondary community corporation or community strata company will have a duty not to:

- damage the community property
- use or enjoy the community property in a way that interferes with another's use or enjoyment

landgate.wa.gov.au

- obstruct the lawful use of community property.

## Enforcement of the Management Statement

The community corporation and member companies have the duty to enforce the management statements in the scheme. The community scheme and member companies must ensure the Community Management Statement is consistent with the Community Development Statement, and the member scheme management statements are consistent with these. They also have a duty to enforce the relevant Management Statement on any person or member scheme the Management Statement is binding on.

## Powers relating to enforcement of statutory duties

Strata managers, original owners and council members will owe certain statutory duties to the community corporation or member companies. A community corporation and member companies will have the power to enforce these statutory duties.

## The Community Corporation Meetings

### Community schemes will have representative voting

Community schemes will be quite large and may have hundreds of lots. Running a meeting with several hundred lot owners present would be difficult and expensive.

As a result, community schemes will use the representative voting model, where each member scheme will send one representative to vote at a meeting of the community corporation.

Each member scheme will have its own body corporate (secondary community corporation or community strata company) and council. A representative of the member scheme will attend the meeting of the community corporation or secondary community corporation, on behalf of the lot owners in that member scheme.

### Who may vote?

The following are entitled to vote at a meeting of a community corporation:

- the owners of community lots and the representative from a community strata company (where a community lot has been subdivided by a community strata / survey-strata plan)
- a representative from a secondary community corporation (where a community lot has been subdivided by a secondary community plan).

The following vote at a meeting of a secondary community corporation:

- the owners of secondary community lots within that secondary community scheme
- a representative from each community strata company which is a member of that secondary community scheme.

The following may vote at a meeting of a community strata company:

- the owners of lots within that community strata scheme or community survey-strata scheme.

### Voting power of each member scheme

There are two options for voting:

landgate.wa.gov.au

1. On a 'show of hands', each member scheme and lot entitled to vote, will have one vote.
2. If a poll vote is called, the member scheme and lots will have the same number of votes as the unit entitlement of their respective scheme/lot.

## The member scheme will instruct their representative how to vote

Each representative of a member scheme will be directed how to vote on an issue before they attend the meeting of the community corporation or secondary community corporation. Before the representative attends a general meeting on behalf of the member scheme, the member scheme will discuss the issue at their own general meeting and hold a vote. The member scheme will pass a resolution and the representative must vote in line with this resolution. If the representative doesn't vote as they were instructed by the member scheme, the vote they make will be invalid. The representative will also be under a general obligation to act and vote in the best interests of the member scheme they represent.

## Unfinancial lot owners may not be able to vote

A Management Statement in a community scheme may prohibit a lot owner from casting a vote if they have not paid their contributions (or other amounts owing to the body corporate). Such an owner is known as an 'unfinancial' lot owner.

A member scheme cannot be barred from voting on the basis of being unfinancial (if the member scheme owes contributions to the community or secondary community scheme the member scheme is part of).

## An original owner can't vote on a motion relating to building defects

An original owner (usually the developer) and people who are associates of an original owner, cannot cast a vote at meetings where the motion relates to building defects, as they may be partly responsible for the defects and could stop the strata company from fixing the problems.

## Meetings of member schemes will be sequenced

Each community scheme and secondary community scheme must give its member schemes sufficient notice of a general meeting. The notice must include detail of each of the agenda items and motions listed for that general meeting to ensure each member scheme has enough time to call its own general meeting and vote on the issues, before voting in the community scheme or secondary community scheme general meeting.

In a three tiered scheme the community corporation must give sufficient notice to any secondary community corporation about the intended general meeting. The secondary community corporation must give sufficient notice to the community strata company.

A motion cannot be passed unless the member schemes were given sufficient notice and time to hold a vote on the issue and direct their representative.

## Meetings can be held using modern technology

A Management Statement in a community scheme can specify the use of modern technology to hold and vote in meetings. Specifically voting may be conducted via electronic means, including email, skype and other forms of teleconferencing. Minutes and notices can also be distributed electronically.

landgate.wa.gov.au

The community corporation will then need to consider record keeping methods, but lot owners and member schemes will not be required to use electronic means if they chose not to. More information about electronically enabling bodies corporate can be found in the [Improved Management](#) section.

## Council members

### Number of council members and process for representation

For community schemes and their member schemes:

- there will be no maximum limit on the number of council members in a community corporation or secondary community corporation
- the Management Statement may set out the number of community council members and the process for representation by owners and member corporations or companies.

### Duties owed by council members

Council members will have a statutory duty to:

- act honestly and in good faith in the performance of their functions as a member of the council
- exercise due care and diligence in the performance of their functions as a member of the council
- not improperly using their position to gain, directly or indirectly, an advantage for themselves or for any other person
- disclose any conflict of interest in any matter considered by the council.

Council members can be removed from the Council, by order of the State Administrative Tribunal, if they breach any of these duties.

People who are not an owner of a lot within a community scheme cannot be council members.

## Contributions

### Reserve and administrative funds will be required

Community corporations, secondary community corporations and community strata companies will have to set up:

- an administrative fund (to pay for items like the control and management of the community or common property and insurance of that common property)
- a reserve fund (to pay for items which are not routine in nature, such as repair work to common property).

The amount to be put into administrative and reserve funds may be decided at a general meeting of the corporation or company by special resolution.

The money for these funds may be raised by levying member lots and member schemes in proportion to their unit entitlement. Community corporations and member companies may decide by special resolution to set an alternative basis for levying contributions.



## Common property in a community scheme

A new type of common property will be introduced called community property

Community property is the name given to common owned property in a community or secondary community scheme. It will be treated in a similar way to common property in a strata scheme. There will be some variations because of the layered structure of community schemes.

### Community property will be optional

Community property, and common property within a member scheme, will be optional.

### Each member scheme may have its own common/community property

There may be three levels of community and common property:

- the community plan – community property
- the secondary community plan – secondary community property
- the community strata/survey-strata plan level – common property

### Community property is co-owned by every lot owner

Every lot owner in a community scheme will own a share of the community property. Community property will be co-owned by the lot owners as tenants in common, in shares defined by the relative unit entitlements.

All owners and occupiers of land in a community scheme have a right to use community property, unless restricted by exclusive/restricted use by-laws.

### Lot owners' ownership of common or secondary community property

A lot owner in a member scheme will also own a share of the common property or secondary community property in their member scheme

The owner of a lot in a member scheme will own both a share of the common property in the member scheme and a share of the community property on the community plan.

For example, an owner in a community strata scheme which is part of a three layer community scheme will own:

- a share in the common property in their community strata scheme
- a share in the secondary community property of the secondary community scheme in which their community strata company is a member
- a share in community property in the community scheme.

All owners and occupiers of land in the member scheme have a right to use the community property or common property in the member scheme, unless restricted by exclusive/restricted use by-laws.

However, lot owners and occupiers in a community scheme won't have a right to use common property or secondary community property which is not part of their scheme, unless there is an agreement in place for them to do so.

## Common and community property ownership will be based on unit entitlement

Unit entitlement is the share a lot owner owns in a scheme, in comparison to other lots and is used to work out how much common property a lot owner owns. Because a community scheme has layers, a lot owner's share in the community scheme and member scheme will depend on what layer they are in.

- The owner of a community title lot will own a share in the community property in proportion to the unit entitlement of their lot. They won't own a share of common property in any member schemes.
- The lot owner in a member scheme will own a share of the common property in proportion to the unit entitlement of their lot. They will also own a share of the community property in proportion to the unit entitlement of their lot, which in turn is a portion of the unit entitlement of the community title lot their member scheme sits in.

This is consistent with the current Act where all owners own a share in the community property as tenants in common.

## Use of any common or community property will depend on ownership interest

Community property may be used by all owners and occupiers in the community title scheme. But common/community property in a secondary community scheme or member scheme can only be used by lot owners in that scheme. If an owner in a scheme has no proportionate share in common property or community property the owner will not have use rights unless granted in some other way (eg by easement, lease or licence).

## Acquisition of additional common or community property in a community scheme

A community corporation may acquire land next to the parcel by transfer or lease.

Only the community corporation will have the power to add connecting land to the community title scheme parcel, by way of transfer or lease.

A community corporation may acquire additional community property if the Community Development Statement (CDS) specifies it can do so. If the CDS does not allow for this, the CDS will have to be amended. Acquisition of additional community property will require the community corporation to agree to the acquisition by special resolution and the approval of the Western Australian Planning Commission.

## Transfer, lease, mortgage or license of common or community property in a community scheme

Community corporations, secondary community corporations and community strata companies will have powers to deal with the common and community property under their control and will be able to transfer, lease, mortgage or license common or community property in a community scheme.

## Who must consent to dealings with the common or community property?

If the land being transferred, leased or otherwise dealt with:

- is common property of a community strata/survey-strata scheme, the consent of the community corporation and any secondary corporation will be required for the transfer, in addition to the consent of the strata company

landgate.wa.gov.au

- is part community property of the community title scheme, the consent of the community corporation by special resolution will be required to authorise the transfer
- is secondary community property of a secondary community scheme or secondary community building scheme, the consent of that scheme's members will be required, plus the consent of the community corporation.

The Western Australian Planning Commission must approve every a transfer or mortgage of the common property, or the extension of a lease or license on the common property (that exceeds the prescribed period).

## Exclusive use and restricted use by-laws

A community corporation or member scheme will be able to make exclusive use and restricted use by-laws over the common or community property in the scheme they manage. Exclusive use by-laws and restricted use by-laws will not require The Western Australian Planning Commissions' approval.

## Encroachments

Where a plan, or plan of re-subdivision for a community scheme or member scheme, indicates an encroachment (where buildings encroach into adjoining land), the provisions of the Act, other than those relating to ownership and certification of title, apply to the encroachment as if it were common or community property.

## Unit entitlement in a community scheme

### Unit entitlement of a community title lot

In a strata or survey-strata scheme the unit entitlement determines how much an owner pays in levies (unless this is varied), what weight an owner's vote carries in a poll vote, and their share in the common property.

In a community scheme the unit entitlement of a community lot owner will dictate the levies they must pay to the community corporation (unless this is varied), their voting rights in a poll vote of the community corporation, and their share of the community property.

### Unit entitlement of a lot in a member scheme

The unit entitlement of a lot in a member scheme will determine the levies the lot owner must pay, their voting rights in meetings, and their share in the ownership of the common property in the member scheme.

A lot owner in a member scheme will also have rights in the community scheme, but their unit entitlement won't directly translate to their rights in the community scheme.

A lot owner in a member scheme won't vote directly in a community scheme meeting as the member scheme will hold a vote and a representative will attend the community scheme meeting. The unit entitlement of the community lot which the member scheme subdivides (sits within) will dictate how much that member scheme's vote is worth at the community title meeting. This means the lot owner's unit entitlement doesn't directly impact on the community corporation vote.

landgate.wa.gov.au

A lot owner in a member scheme will own a share in any community property. Exactly how much they own is calculated based on the unit entitlement of their lot in the member scheme multiplied by the unit entitlement of the member scheme within the community scheme.

For example, a lot in a member scheme may have a unit entitlement of 10/100 (10 per cent), and the unit entitlement of the member scheme in the community scheme may be 20/100 (20 per cent). This would mean the lot owners' share in the community property is 10 per cent of 20 per cent or 2 per cent. Because every lot owner owns the community property as a tenant in common, no lot owner can choose an area to use independently.

A lot owner in a member scheme will pay levies to the community corporation. How much they pay will be calculated based on the unit entitlement of their lot, as a portion of the levies the member scheme then pays to the community corporation. Note that levies in strata may be based on something other than unit entitlement (for example if one lot has exclusive use of some common property). This may also be the case in a community scheme. One member scheme may pay a larger portion of the community corporation levies.

In a community scheme, when a community lot is subdivided by a secondary community scheme or community strata/survey-strata scheme, the unit entitlement for that community title lot will be different to the unit entitlement in a single layer strata/survey-strata scheme.

- The voting rights which were attached to the community lot when voting at a community scheme level, now attach to the secondary community corporation or community strata/survey-strata company (as the case may be).
- The total of the undivided share of community property is split among the owners of the secondary community lots or community strata/survey-strata lots.
- The levies payable to the community corporation are also split among the owners of the secondary community lots or community strata/survey-strata lots (as the case may be).

The member scheme will have the same unit entitlements as the lot it was created from

For example, if a community lot has a unit entitlement of 25/100 in the community scheme and that community lot is subdivided into a community strata scheme, the community strata scheme's total unit entitlement in the community scheme is also 25/100.

When the community lot or secondary community lot is subdivided, the unit entitlement of the lot will be allocated to the member scheme:

- The share of community property and levies that apply to the community lot will be allocated among the owners of the lots on the secondary community plan or community strata/survey-strata plan, in the proportions set out in the Schedule of Unit Entitlement to the plan that subdivides the community lot.
- Voting rights in the unit entitlement of the community lot are allocated wholly to the secondary community corporation or community strata/survey-strata company.

However, it is not necessary for the total combined unit entitlement of the lots in a member scheme to have the same whole number total as the unit entitlement of the community lot or secondary community lot that was subdivided by the member scheme. This is to avoid the undesirable result of having fractions of units. Although in practice the collective unit entitlement may be the same.

The unit entitlement of the community lot or secondary community lot shown in the schedule to the plan does not cease to exist when the lot is subdivided by a member scheme. The member scheme

landgate.wa.gov.au

will be entitled to vote at meetings of the community corporation in the proportion that the unit entitlement of the community lot bears to the total combined unit entitlement of the community lots in the community title scheme.

## Revaluation of the scheme for the purposes of unit entitlement

Currently, to value lots within a strata scheme the valuer must access every lot. At initial allocation the licensed valuer will usually be in a position to access the lots. However, gaining access to all the lots in a strata scheme to establish fit out and finish of all the lots is problematic once the scheme is running. The meaning of capital value (in a residential strata scheme, community title building scheme, secondary community title building scheme or community strata scheme for the purpose of reallocation of unit entitlement) will be amended so the licensed valuer may assume a standard level of fit out and finish for those lots in the scheme if:

- the strata scheme is for residential purposes
- the licensed valuer has taken all reasonable steps to value all the lots in the scheme in accordance with capital value within the meaning of the *Valuation of Land Act 1978*
- the valuer has been unable to inspect one or more lots for their fit out and finish

The licensed valuer may need to supply evidence of what reasonable steps they took to access the lots before the Registrar of Titles will accept this form of valuation.

Lots in a survey-strata scheme, community title scheme, secondary community title scheme and community survey-strata scheme will still be valued on site value.

Reforms do not propose to change the way strata lots and survey-strata lots are valued for rating and taxing purposes.

## Implications to other schemes where one is amended

Amending the schedule of unit entitlements for the community title scheme or a member scheme may impact the schedule of unit entitlements for other member schemes. This requires the unit entitlements in any affected member schemes to be recalculated at the 'level' of the change. In order to avoid unnecessary work, the unit entitlements within the member schemes do not have to be changed, as the reallocation of entitlement at the community scheme level does not impact the individual proportions within the member schemes.

If the change to the unit entitlement affects any other schemes, a new schedule of unit entitlement will need to be lodged for those affected schemes.

## Reallocation of unit entitlement by special resolution

The schedule of unit entitlement for a community scheme or member scheme may be amended, provided:

- the community corporation or member company consents to the amended schedule by a special resolution and
- a licensed valuer has certified that amended schedule of unit entitlement and
- any other requirements as set out in the regulations are complied with.

The valuer's certificate for a member scheme won't certify the proportion in the [superior] scheme

The licensed valuer's certificate required to lodge the plan must be in the prescribed form, and must contain the same certification for a community lot, secondary community lot or community strata/survey-strata lot that is applied to a strata/survey-strata lot. However the licensed valuer is not required to certify the lot owner's proportion of unit entitlement in the community title scheme (and any secondary community title scheme).

## Subdivision and development of a community scheme

Subdivision and development of a community scheme may be by a sole owner and developer, or by multiple owners or developers. The parcel of land need not be wholly connected directly to it, provided it is held under a single title.

Land can be added to a community scheme

A Community Development Statement (CDS) may include reference to other land, if it is intended to acquire that land in future for the purposes of the community scheme. If land is added, it must either be consistent with the CDS or the CDS must be amended to reflect the additional land (along with the plan(s) and any relevant changes to the Community Management Statement).

The Western Australian Planning Commission will not approve a draft Community Development Statement if it includes a freehold strata subdivision or a leasehold strata subdivision.

## Community Development Statement

A Community Development Statement (CDS):

- will govern how the community scheme is going to be developed
- will govern how amendments to the scheme can be done in the future
- must be approved by Western Australian Planning Commission (the Commission) before being registered with Landgate

Purpose of a Community Development Statement

A CDS will set out the detailed land use, subdivision and development controls and developer obligations for a community scheme. It will fulfil several purposes for different parties, including:

- regulators, as the basis for ongoing decision making by the Commission and other decision-makers concerning applications for subdivision and development approval
- developers, as the basis of investment decisions and for coordination of implementation, especially in more complex developments involving multiple developers
- utility service providers, in designing and coordinating detailed infrastructure and service provision for the site
- architects, designers, landscapers and builders, in designing and undertaking development and construction in a thematic approach, if required
- body corporates in the scheme, in fulfilling their governance obligations, including internal reorganisation of a community scheme, and forecasting and managing financial commitments

landgate.wa.gov.au



- owners and occupiers of individual lots in the community scheme and member schemes, to provide clarity and certainty as to what will occur in different stages of the development.

## Content and format of a Community Development Statement

A CDS may be prepared by the owner of the subject land or their authorised agent. All community schemes and building schemes must have a Community Development Statement (CDS). Member schemes will not have a separate CDS. The CDS will be registered on the creation of the community scheme or community building scheme.

### Contents of a Community Development Statement

A Community Development Statement (CDS) will be a set of documents, plans, specifications and drawings that describes how a parcel of land under single ownership is proposed to be subdivided and developed to create a community scheme.

A community scheme may be based upon land subdivision and hence provide for multiple separate developments (existing and or proposed buildings), or be based on a single development (building or buildings) and the content of a CDS will vary accordingly.

A CDS, along with any other information that may be required by the Western Australian Planning Commission or Registrar of Titles, will contain the following information.

- location of the parcel
- proposed community subdivision
- number of proposed layers of management
- number of proposed lots in each layer – this may be a general number, range or yield as appropriate
- size/area of proposed lots in each layer
- intended land use of proposed lots
- development period
- arrangement of proposed lots
- staging, timing and sequence of subdivision and development
- location and provision of infrastructure, services, facilities and amenities in each proposed stage, community scheme or member scheme
- movement arrangements including access to transport and proposed roads, paths and car parking
- identification of any heritage features of the site and any proposals or measures to be taken in relation to their restoration or conservation
- location and scale of existing and proposed development
- existing and proposed ground and floor levels
- siting of existing and proposed buildings and development
- architectural and design themes and requirements
- existing and proposed vegetation and landscaping
- existing and proposed drainage and water features
- sustainability features
- land to be dedicated, ceded to, acquired or managed by a relevant authority (if applicable)
- land to be subject to restrictive covenants, easements or easements in gross (if applicable)

landgate.wa.gov.au

A CDS may include text, maps, plans, tables, diagrams, sketches, specifications, schedules and any official registers of value and ownership, and is to be in a form prescribed or required under the *Strata Titles Act 1985*.

The CDS may also reference relevant approvals, including those obtained under other Acts and provide for a schedule of amendments to the CDS. A CDS may incorporate reference interpretations set out by a relevant statute, subsidiary legislation or planning scheme, and a gazetted State Planning Policy or Australian Standard, or relevant requirements of such documents.

## The development period must be set out in the Community Development Statement

The Community Development Statement must predict a time, no later than 10 years from its registration, by the Registrar of Titles, as the 'development period' for completion of the entire community scheme.

## A Community Development Statement must be approved

The Community Development Statement is required to be prepared and approved by the Western Australian Planning Commission prior to approval of a proposed community plan.

## A Community Development Statement must be consistent

The Community Development Statement (CDS) must be consistent with the Local Planning Scheme in operation. The CDS cannot amend or be contrary to that Local Planning Scheme. The CDS must also be consistent with the [Community Management Statement](#).

# Preparation and consideration of a Community Development Statement

## Reviewing the Community Development Statement

Under the *Planning and Development Act 2005*, the Western Australian Planning Commission is the central planning decision-maker in the WA planning system; however local governments, Development Assessment Panels and the State Administrative Tribunal also have key roles. The role and responsibility for the consideration and approval of a CDS will primarily lie with the Commission, but the Commission will still have the power to delegate the decision per the current *Planning and Development Act*.

The Commission is to refer the CDS to the responsible local government, other agencies and utilities within seven days of receiving the CDS. The responsible local government and other entities are to provide their advice on the CDS within 28 days or a longer period as the Commission agrees.

The Commission and/or relevant local government may require the draft CDS to be advertised for public comment, and if so, comments received will be taken into consideration. The Commission can charge a fee for dealing with the application.

landgate.wa.gov.au

## Community Development Statement Conditions

The Commission may approve a CDS with conditions that include amendment, insertion or deletion of proposed content including:

- changes to or substitution of plans and designs
- specific requirements, standards, additional detail or clarity to be inserted into the CDS
- for the developer, to set out or follow a particular sequence in which various stages of the proposed subdivision or development will be implemented
- for the developer to specify when land will be ceded or dedicated, and infrastructure, landscaping, shared facilities and services will be constructed or completed as part of the sequencing of the development.

## When can the Commission reject a CDS?

The Commission may refuse a draft CDS if:

- the proposed community scheme does not comply with an applicable Local Planning Scheme
- the Commission considers that conventional or other land tenure arrangements would be preferable or necessary in order to secure planning and development outcomes or the public interest
- the proposed community scheme is inconsistent with orderly and proper planning
- the relevant local government and/or other entities do not support that CDS in regard to relevant planning considerations
- it excludes public housing from land in a zone under an Local Planning Scheme permitting residential development
- it does not comply with required content or form or other circumstances that may be prescribed.

## The State Administrative Tribunal will have the power to review decisions

If the Western Australian Planning Commission exercises a discretionary power in decision-making concerning a proposed Community Development Statement, a right of review by the State Administrative Tribunal will be available. Further information is available in the section that deals with 'Clearer and easier ways to resolve strata disputes'.

The approval of a CDS by the Commission will lapse after four years if not registered with an approved community plan at Landgate within that period.

## The status and effect of the Community Development Statement

The status and effect of a Community Development Statement will change depending on what stage it is in

The status and effect of a CDS will vary with its stage of preparation and according to the implementation of a proposed community scheme. As illustrated in the diagram below the key points are:

- approval of a CDS by the Western Australian Planning Commission
- subsequent registration of an approved CDS by the Registrar of Titles

landgate.wa.gov.au

- completion of subdivision and development of the community scheme.

## Status and Effect



After the Community Development Statement is approved relevant entities will take it into consideration

When reviewing an application for subdivision or development approval in respect to all or part of the proposed community scheme, the Commission, relevant local government and other entities will take the CDS into consideration providing it has been approved but not registered at Landgate. In this case the Commission may, as a condition of approval, require the CDS to be amended or replaced.

After the Community Development Statement is registered, it is binding

The Registrar of Titles is to give notice of registration of a CDS with a community plan to the Commission and relevant local government. Where a CDS has been registered with a community plan the registered CDS will have the following effect(s).

- The development period to obtain the relevant approvals and complete all the subdivision and development set out in a CDS begins.
- The CDS binds the community corporation(s) and community strata companies, and the owners and mortgagees of lots to complete the development and subdivision in accordance with the CDS and within the development period.
- During the development period the Commission and its delegates may not approve a subdivision or development application for land that is not consistent with the registered CDS.
- An owner of land may not apply for subdivision or development approval that is inconsistent with the registered CDS.
- The Registrar of Titles may register a lodged plan, without the consent of owners and interest holders in the community scheme, if it is accompanied by a certificate from the community corporation or secondary community corporation showing it is consistent with the CDS.
- A community corporation and secondary community corporation, if any, may not withhold its certificate if the secondary community plan, secondary community building plan or community strata/survey-strata plan is consistent with the CDS.

landgate.wa.gov.au

- The Registrar of Titles may not register a secondary community plan, secondary community building plan or community strata/survey-strata plan if it is not endorsed by the Commission showing it is consistent with the registered CDS or it is not accompanied by the certificates of the community corporation, and secondary community corporation, if any.

## The Commission's decision-maker will be bound by the Community Development Statement

The discretion of decision-makers in relation to subdivision and development applications in a scheme subject to a CDS is to be restricted. When determining an application for approval to subdivide land, the Commission shall give reasonable consideration to, and shall not make a decision inconsistent with, an approved CDS that relates to that land.

## After the development period, relevant entities will take the Community Development Statement into consideration

After the development period is complete (more information below) the Commission:

- will take the Community Development Statement into account when considering applications for subdivision and/or development approval for that land
- may require that a CDS is amended before considering an application, taking into account the scale and nature of a proposal and any recommendations of the relevant local government.

## Exemption of additional planning documentation when a Community Development Statement is in place

The Commission, in consultation with the relevant local government, may waive the need for a particular planning form such as a Local Structure Plan, Local Development Plan or Activity Centre Plan, in accordance with the Local Planning Scheme that is in operation, where a Community Development Statement has been prepared and approved by the Commission for the land.

## When does the development period end?

The development period ends when:

- any subdivision or development consent required for carrying out the entire community scheme, or any remaining stage or portion of the scheme, is revoked
- a community strata/survey-strata plan of subdivision is registered, which subdivides the last remaining un-subdivided community lot or secondary community or subdivides the rest of that lot after part of that lot is removed in accordance with the Community Development Statement (CDS)
- the time predicted by the CDS for concluding the development period arrives
- a notice stating the scheme which the CDS relates to has been completed and registered,
- by an order of the State Administrative Tribunal or
- the community scheme is terminated.

## Notifying the development period is complete

The original owner, or the last successor undertaking subdivision or development of a community lot or secondary community, is to notify the Registrar of Titles and the Commission when the community

scheme is completed. The Registrar of Titles may make an appropriate record of the notice in the Land Titles Register and/or on the registered plans.

## Amending a Community Development Statement

A Community Development Statement may be amended or replaced

The development period for a community scheme may be for a considerable length of time. Some flexibility is necessary to allow for changes to the planning, design and development of a community scheme in response to changed planning or other relevant factors. Amendments or replacements are subject to approval of the Western Australian Planning Commission.

What amendments can be made to a Community Development Statement?

Amendment to a Community Development Statement (CDS) may include:

- adding/separating land to and/or from a community scheme, including in relation to removing or taking of land
- any content of a CDS, including subjects relating to staging of a CDS and the development period.

Amendment of a CDS must be consistent with the Local Planning Scheme in operation. It cannot amend or be contrary to the Local Planning Scheme.

How an amendment is made to a Community Development Statement

Before any amendment can be lodged with the Western Australian Planning Commission (the Commission) the consent of the community corporation must be obtained. This requires endorsement from the community corporation by special resolution to the proposed amendment to a registered Community Development Statement.

Amendments to the CDS are effective when it is registered

A change to or replacement of the registered CDS will not be given effect until the community corporation has lodged the change or replacement CDS (or by order of the Tribunal) in the prescribed form and the Registrar has registered the change or replacement. This needs to be done within three months of the Western Australian Planning Commission (the Commission) approving the change or replacement, or the Tribunal ordering approval of the change or replacement.

The Registrar is to give notice of the registered change or replacement to the CDS to the Commission and relevant local government or other decision-makers.

## Planning Applications

Under the current *Strata Titles Act 1985* the proposal to strata title may come before or follow development on a site. In other words, the proposal may relate to an existing building, to an existing building and its site, or to vacant land. Approval to subdivide does carry an obligation upon the applicant to implement the proposal.

landgate.wa.gov.au



## Subdivision and development applications

In Western Australia, subdivision and development have separate meanings. Although related they are not interchangeable. Subdivision and development of a community title scheme may be by a single owner and developer, or by multiple owners or developers.

The subdivision and development may be in accordance with:

- a single (or coexisting) subdivision, and/ or
- a development application and approval, or
- multiple (not necessarily concurrent) subdivision and/ or development applications and approvals.

While subdivision of a site often comes before development, subdivision and development applications regarding a parcel of land may occur in any order.

While the Western Australian Planning Commission (the Commission) is the decision-maker for all applications to subdivide land, development applications may be decided by various decision-makers. In addition to the Commission, local government, Development Assessment Panels and the Metropolitan Redevelopment Authority constituted by the *Metropolitan Redevelopment Authority Act 2011*, also have roles in relation to exercising development control.

Decision-making around applications for subdivision and development approval is, in practice, largely discretionary. An applicant may make an application for approval at any time and the decision-maker is generally unrestricted when determining an application for approval, by either the content of a Local Planning Scheme or Local Structure Plan or the advice received on referral of an application.

All of these aspects lead to coordination and implementation problems, which are made more complex by the nature of a community scheme, where there may be shared ownership of the site, both during subdivision and development phases, and upon completion of the entire scheme.

## Subdivision and development applications in relation to community schemes

The process set out in the *Planning and Development Act* will apply to subdivision applications for a community title scheme. The application to the Commission, referral for advice and consideration of a proposed plan for subdivision of a community title scheme and for subdivision of community strata and survey -strata schemes, will apply to community title subdivision applications.

Separate approvals will be required for each proposed member scheme within a community title scheme, to ensure each proposed scheme is compliant with relevant approvals, and forms the basis for registration and issuing of titles for the respective schemes.

## Subdivision Applications

### No consent required when the subdivision is consistent with the Community Development Statement

During the development period, consent of the community corporation, constituent body corporates and owners in a community title scheme, is not required when lodging an application to subdivide land that is consistent with the registered Community Development Statement. The Western Australian Planning Commission will have the power to approve, approve with conditions, or refuse a proposed

landgate.wa.gov.au

plan of subdivision for a community title scheme. The Commission will also have the power to relate separate applications and approvals to each other.

## Body corporates will be advised whether the subdivision application was successful

During the development period, both the applicant and the community corporation or member schemes will be advised by the Commission of their decision to approve the subdivision or not.

## Considerations and decisions when a subdivision application is lodged

The Commission will refuse an application:

- when it has not approved a Community Development Statement (CDS) in respect to the parcel
- where a leasehold strata subdivision is proposed for a secondary or other lot within the proposed community title scheme
- where the intention is not to create multiple management levels
- that does not contain a number of community strata/survey-strata schemes which will provide lots for separate use and disposition
- where the proposal includes green title lots, although it may give up or dedicate land for public purposes, road or reserves etc.

The Commission may refuse an application to subdivide in situations where conventional or other land tenure arrangements would be preferable or necessary, to secure planning and development outcomes or in the public interest.

The Commission may take into account:

- the need for public access to some or all parts of the community property
- the requirement for public open space or other facilities or amenities
- the development of that land to an appropriate standard, in addition to whatever private open space or amenities may be proposed.

The Commission may require amendment or replacement of the approved CDS, when an approval of a CDS is current, but not yet registered, as a condition of approval in relation to all or part of the proposed community scheme.

## Conditions made after development has commenced

The Commission may grant a certificate unconditionally, or subject to conditions, when an application is made after construction or modification of a building has commenced. These conditions must be able to be applied without affecting the form or structure of the building.

## The terms and conditions of the subdivision approval should be fulfilled

The Commission may not endorse a community plan unless satisfied the terms and conditions of subdivision approval have been fulfilled and the plan is consistent with the Community Development Statement.

## Varying how long the subdivision approval is valid

The Commission will have discretion to vary the period in which the subdivision approval of a community plan will be valid, provided the duration does not extend beyond the development period set out by the Community Development Statement.

## Development Applications

Lodging a development application does not require the consent of the community corporation, member companies or the lot owners. During the development period, both the applicant and the community corporation or member schemes will be advised by Western Australian Planning Commission (the Commission) of their approval decision.

The Commission will have the power to approve, approve with conditions, or refuse a proposed development application for a community title scheme. The Commission will also have the power to relate separate applications and approvals to each other.

## Considerations and decisions when a development application is lodged

The Commission will refuse an application:

- when the land over which a proposed community building plan, secondary community building plan or community strata plan is not a whole green title lot or freehold lots are proposed within the building
- when vacant airspace lots are proposed
- when it comes before completion of staged construction of a building
- when a single dwelling is proposed on a proposed community or secondary lot
- where a leasehold strata subdivision is proposed for a secondary or other lot within the proposed community title scheme
- when it has not approved the Community Development Statement (CDS)
- where the intention is not to create multiple management levels or
- that does not contain a number of community strata/survey-strata schemes which will provide for lots for separate use and disposition

The Commission may refuse an application:

- in situations where conventional or other land tenure arrangements would be preferable or necessary to secure planning and development outcomes or the public interest

The Commission may take into account:

- the need for public access to some or all parts of the community property, secondary community property or common property having regard to orderly and proper planning
- the requirement for public open space or other facilities or amenities, consistent with orderly and proper planning, in addition to whatever private open space or amenities may be proposed

The Commission may require:

- when an approval of a CDS for the subject land is current but not yet registered, as a condition of approval of a proposed development in respect to all or part of the proposed community title scheme, amendment or replacement of the approved CDS.

## Conditions even where development has begun

In the case of an application being made after the start of construction or modification of a building, the Commission may grant a certificate unconditionally, or subject to conditions specified in the certificate which are capable of being complied with, without affecting the form or structure of the building.

## Building Approvals

Generally, building work cannot be undertaken without a building permit. A building permit will not be issued unless the applicant has obtained each authority required under the legislation.

An application can be made for either an occupancy permit or building approval certificate for registration of a proposed strata scheme. Building standards for an occupancy permit or building approval certificate for this purpose include 'the building licence or other approval that was granted in relation to the construction of the building, under the written law which applied at the time of its construction'.

## Plan requirements

### Community plans and community building plans

The current Act allows for two different kinds of plans; strata and survey-strata. Community schemes will also have two different kinds of plans.

1. Community plans will be similar to survey-strata plans. They will use survey boundaries and can include a common property lot.
2. Community building plans will be similar to strata plans. They will use 3D cubic space to define the lots and any portion of the plan which is not a lot will be community property.

The same requirements that apply to survey-strata and strata plans under the current Act will apply to community plans and community building plans respectively.

A community plan or community building plan must be accompanied by the following documents when lodged at Landgate:

- certificates given by a licensed surveyor and a licensed valuer
- the Western Australian Planning Commission's approval of the plan
- a Community Management Statement (CMS)
- a Community Development Statement (CDS), and
- an occupancy certificate or building approval (under the *Building Act 2011*) in the case of a community building plan.

These requirements will also apply to secondary community plans, secondary community building plans, community strata and survey-strata plans. However, there will be a slightly different process for the plan and the CDS.

landgate.wa.gov.au

## Consistent plans for a member schemes to allow registration

Secondary community plans and community survey-strata plans lodged for registration at Landgate must be endorsed by the Commission and be accompanied by certificates from the community corporation and secondary community corporation if any, to confirm the plans are consistent with the registered Community Development Statement.

## Making changes to a community scheme

### Variation of a community scheme when it is damaged or destroyed

Where a strata scheme is damaged or destroyed, the Act currently sets out for the District Court to make an order to vary the existing scheme or substitute a new strata scheme in its place. This will also apply to community title building schemes, secondary community title building schemes and community strata schemes. A body corporate, lot owner or mortgagee in the damaged scheme can apply to the Tribunal for an order to vary or substitute the scheme. The jurisdiction of the District Court under this section will be transferred to the Tribunal.

If a community scheme building is damaged or destroyed, one or more of the member schemes in that building may also have been damaged or destroyed. As a result the Tribunal will be able to order amendments be made to the plan, the schedule of Unit Entitlement for any damaged scheme including member schemes which are also damaged, and to the Community Development Statement.

### Variation of community scheme when part of it is taken or resumed

Where part of the land in a registered strata or survey-strata scheme is taken, currently the District Court can make an order to vary the existing scheme or substitute a new scheme in its place. This will also apply to community schemes and any member schemes in a community scheme. The jurisdiction of the District Court under this section will be transferred to the Tribunal. The Tribunal will be able to make directions to amend the plan and schedule of Unit Entitlement for any scheme that has been affected by the taking (including any member scheme), as well as the Community Development Statement. Where part of a lot is taken the acquiring authority must lodge a plan with the Registrar that defines the new boundaries of the scheme.

### Resumption of a community scheme

The Minister for Lands may take the whole of the land in a scheme within a community title scheme and declare the scheme for that parcel as terminated on the registration of the order.

### Re-subdivision in a community scheme

It will be possible to re-subdivide lots and community property in a community title scheme. However re-subdivision in a community title scheme requires different rules.

## Subdivision and re-subdivision

Only schemes which have not been subdivided can be re-subdivided

It will not be possible to re-subdivide a community lot or secondary community lot after the lot has been subdivided by a member scheme. However, it will be possible to re-subdivide a member scheme which has not been further subdivided. When a community lot is subdivided by a scheme, it is no longer possible for that community lot to be re-subdivided on the community plan. Instead the secondary community lots and/or community strata/survey-strata lots on the secondary community plan, or community strata/survey-strata plan may be re-subdivided.

If the community plan has community property it will be possible for the community property to be re-subdivided to create one or more lots. Similarly secondary community property and or common property will be allowed to be re-subdivided to create one or more lots.

Consents may not be required

If re-subdivision is allowed for in the Community Development Statement and the Western Australian Planning Commission endorses the plan of re-subdivision to that effect, the consent of owners, member schemes and interest holders to the re-subdivision will not be required.

Approval required for re-subdivision in a community scheme

Approval by the Western Australian Planning Commission (the Commission) of the plan of re-subdivision will be required in all cases. If the re-subdivision is not consistent with the Community Development Statement (CDS), the Commission may require the amendment of the CDS as a condition of approval for the community plan of re-subdivision.

Re-subdivision may impact the Unit Entitlement of member schemes

Re-subdivision may cause the unit entitlement of those lots to change and the proportion of unit entitlement that member schemes hold. When a community lot is re-subdivided to create more community lots in the community plan, this will impact the collective unit entitlement for the community title scheme and impact the unit entitlement of owners and member schemes.

Consolidation of lots in a community scheme

It will be possible to consolidate two or more lots in a community scheme or member scheme as long as the consolidation does not result in the scheme having only one lot. The Community Development Statement may need to be amended to enable the consolidation.

## Amalgamation of member schemes

Member schemes can amalgamate

It will be possible to amalgamate member schemes within the community scheme as long as the amalgamation does not result in the community scheme (or secondary community scheme) having only one member scheme and no other lots.

landgate.wa.gov.au



## Only schemes with the same type of plan can amalgamate

A member scheme which use cubic space to define lots, can only be amalgamated with another scheme with a plan that uses cubic space to define lots.

Similarly, a community survey-strata scheme or secondary community title scheme which uses a plan that defines lots with survey boundaries can only be amalgamated with another plan that also uses survey boundaries to define lots.

## Consenting to the amalgamation

Schemes which propose to amalgamate must pass a special resolution. They must consent to the plan of amalgamation, a revised schedule of unit entitlement, a new Management Statement to apply to the amalgamated scheme and amendment of the Community Development Statement. The community corporation as well as any secondary community corporations the member scheme(s) are part of, must also consent to the amalgamation.

All interest holders in a scheme must also consent to an amalgamation. Every interest holder will be given notice of this which they must respond to within 30 days. If an interest holder doesn't respond within 30 days their consent can be assumed. If an interest holder refuses their consent, the applicant can apply to the Tribunal for an order that consent has been unreasonably withheld and is deemed to be given.

## The body corporate for the amalgamated scheme is dissolved

When schemes are amalgamated the relevant community strata companies or secondary community corporations cease to exist. The rights, assets and liabilities of the amalgamated companies and corporations are vested in the new community strata company, secondary community corporation or community corporation. Amalgamation does not affect any outstanding liability that attaches to a particular lot, and (anything done in relation to a scheme) still applies unless it is inconsistent with the new Management Statement for the amalgamated schemes.

## The State Administrative Tribunal can order the schemes be amalgamated

An owner in a member scheme or the community corporation, that wants to amalgamate member schemes, may apply to the State Administrative Tribunal (the Tribunal). The Tribunal can order the schemes be amalgamated if it is just and equitable to do so. The Tribunal may also order the Community Development Statement and any Management Statement be amended as well as ordering that liabilities be dealt with.

## What is required in order to register an amalgamation?

The application for amalgamation must be accompanied by:

- a certificate from each of the schemes to be amalgamated that confirm appropriate special resolutions were passed
- the order of the Tribunal, if relevant
- a plan of amalgamation for the new scheme approved by the Western Australian Planning Commission (the Commission)
- a schedule of unit entitlement for the new scheme

landgate.wa.gov.au

- an amended Community Development Statement approved by the Commission
- a Management Statement for the new scheme
- consents of interest holders of amalgamated lots and duplicate certificates of title for the amalgamated lots, if any
- other plans and documents as may be prescribed.

The amalgamation is effective when it is registered with Landgate and new titles are issued for the lots.

Existing methods in the *Strata Titles Act 1985* for creating easements in respect to strata and survey-strata plans, will also apply to the creation of easements in relation to community schemes. The resolutions for easements required of the body corporate in a community scheme are special resolutions.

## Creation of statutory service easements

A new mechanism will be introduced

A new mechanism will be introduced to create and modify statutory service easements after a scheme plan has been registered. Service easements are easements created for the passage of services to lots and or common property or community property within a scheme.

An owner or body corporate may create a service easement that will benefit or burden a lot or community property in the scheme. If the easement burdens a particular lot, the owner and registered interest holders in that lot must consent to the easement, either through a written or deemed consent. If the easement burdens common or community property the body corporate must also consent by a simple majority vote.

The easement can also be modified if the party benefitting from the easement consents and if the easement burdens any lot or common property of a lot owner (and registered interest holders) or the body corporate consent to the modification.

The Strata Titles General Regulations will prescribe the terms and conditions of the easement, the liability for costs, the rights of access and what happens if the building the easement relates to is destroyed.

To register a new or modified statutory service easement, an 'interest only' deposited plan must be lodged, which shows the location of the easement, the lots or community property that will be benefitted or burdened, and a description of the easement. The easement will be recorded on the certificates of title and once the service is connected, a notification will need to be registered to record where that service has been installed.

## Other aspects of a community scheme

Insurance for Community schemes

- A community corporation and a secondary community corporation must insure, for replacement value, its community property and community corporation assets.

landgate.wa.gov.au

- Owners of lots on a community plan or secondary community plan may insure for buildings and public risk on their lot as the community corporation is not responsible. This is consistent with the insurance requirements applicable to survey-strata schemes.
- A community corporation and secondary community corporation must maintain public liability insurance for the community property and relevant assets for not less than \$20 million for a single event and at least \$20 million in a single period of insurance.
- Public liability insurance will cover damage to property, death, bodily injury and illness.
- There are to be no exceptions to the above requirements except where the State Administrative Tribunal makes an order or the community corporation has a Community Management Statement that provides for at least a comparable level of insurance and the insurance is in place.
- In the case of a community building scheme or secondary community building scheme, the community corporation or secondary community corporation will be deemed the owner of the building and must insure the building for its replacement value.
- The community strata company for a community strata scheme within the community building scheme or secondary community building scheme, is responsible for insuring common property in their scheme to full replacement value and is responsible for public risk arising in relation to the common property in that scheme. Community strata schemes have an insurable interest in their part of the building despite the ownership of the building by the community corporation.
- Relevant insurance conditions within the Strata Titles Act (the Act) will apply to community corporations, secondary community corporations and community strata companies.
- The Act will be amended to permit the community corporation/secondary community corporation/community strata company to recover (from a lot owner) an amount which fairly reflects the portion of the premium attributable to that lot owner's higher standard of fixtures and fittings.
- The community corporation is to obtain an independent valuation from a licensed valuer in respect to the building or buildings for which the community corporation is responsible at least every five years, and may recover the cost of the valuation from lot owners in proportion to their unit entitlement.
- Conditions of the Act will permit a lot owner in a community scheme, secondary community scheme and community strata/survey-strata scheme to insure concerning damage to his/her lot in a sum equal to the amount secured by mortgages.

## Rating and Taxing

The current rating and taxing rules for strata plans will apply to community strata plans, secondary community building plans and community building plans. The current rating and taxing rules for survey-strata plans will apply to community plans, secondary community plans and community survey-strata plans.

## Roads

Access ways in a community scheme, subject to the relevant approvals, may have the status of:

- privately owned by the community corporation, secondary community corporation or community strata company
- assigned to the relevant authority (for eg a local government)
- a mix of privately owned and assigned to the relevant authority.

## Disclaimer

These web pages have been prepared for the purposes of informing stakeholders and the community on the nature and scope of the proposed reforms to the legislation relating to strata title. Every effort has been made to ensure that the information presented in these web pages is accurate at the time of publication. Because these web pages avoid the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. The contents of these web pages should not be relied on as a guide for current or future legislation relating to strata title in Western Australia or in relation to current or future development proposals, commercial transactions or dealings in strata title.