

SUBMISSION TO GOVERNMENT OF
WESTERN AUSTRALIA, LANDGATE

CONSULTATION PAPER

STRATA TITLES ACT REFORM – OCTOBER 2014

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Thank you for the opportunity to submit comments on the Strata Titles Act Reform Consultation Paper (October 2014)

The Australian Property Institute (API) originally known as the Australian Institute of Valuers and Land Economists, was formed in 1926. Today, it represents the interests of approximately 9,000 property experts throughout Australia, and is the country's peak professional property organisation.

The API represents the interests of more than 750 property professionals in WA. The majority of API members are valuers including residential, commercial and plant and machinery valuers. The membership also includes property advisers, property analysts and fund managers, property lawyers, and property researchers and academics. The API has individual membership, not corporate membership.

API's primary role is to set and maintain the highest standards of professional practice, education, ethics and professional conduct for its members and the broader property profession. API has established numerous standards and guides contained in the Australia and New Zealand Valuation and Property Standards Manual prepared in conjunction with the Property Institute of New Zealand. API routinely consults with governments and government regulatory authorities on behalf of its members and makes submissions to them.

The Australian Property Institute – Western Australian Division provides the following comments in relation to the key issues and proposals detailed below (limited to those sections which are considered of relevance to our members)

J F N Murray – “*The Principles and Practice of Valuation*” Ed.3 (1961) p.74

“The task of a valuer is to ascertain values. The value of a property at a particular date is something to be discovered; the steps whereby such value is determined must be logical, and all evidence of value must be sought and carefully weighed. In the final analysis, the competence of the valuer is revealed by the fact that he is able to demonstrate the accuracy of his valuation and to show, if necessary, to the satisfaction of a court, that he has brought to bear upon the problem an intimate knowledge of all factors pertaining to the value of the land, and has reviewed and co-ordinated them with the degree of skill only to be obtained from a thorough training in his profession”

EXECUTIVE SUMMARY

This submission focuses on the Valuation perspective of the proposals in the Consultation Paper.

A repeating theme in the submission is the concern expressed by the API (WA) Working Group that the definition for “Calculation of Unit Entitlements” needs further attention.

It’s understood from enquiries made that similar concerns are being addressed by the Victorian Division of the Institute in a review of strata legislation in that jurisdiction.

The Consultation Paper proposes that the Strata Titles Act 1985 be reformed to introduce new forms of strata title schemes and to improve some aspects of the current Act. The Working Group believes that there are greater synchronisations required for current strata schemes and proposed new forms of strata, so existing problems are not inherited into new schemes.

COMMENTARY ON CONSULTATION PAPER PROPOSALS

SECTION 3.4.3 – Effect of a community development statement

- PROPOSAL 20
 - As the development statement will form an integral component of the documentation for the property, it is imperative that it is an inclusion on the Strata Plan (as an addendum).

SECTION 3.5.2 – Create community lots in stages

Staging should not include pre-determined Unit Entitlements (or see proposals 34-39 below)

SECTION 3.6 – Restructuring unit entitlements

- PROPOSAL 34 Yes, however clarity is needed to determine whether or how this should/could affect pre or existing sales in the development.
- PROPOSAL 35 Yes (as per proposal 34)
- PROPOSAL 36 Yes
- PROPOSAL 37 Yes – to be conducted at a point in time
- PROPOSAL 38 No - (This would be too dated and not reflect point in time)
- PROPOSAL 39 Yes

SECTION 3.11 – Valuation of Community Lots

PROPOSAL 59 – No this requires modification to incorporate the inclusion of ‘cubic space’ interpretation to capital value within a scheme. Refer to comments in relation to Proposal 58

SECTION 4.2 – Defining lots and community property

PROPOSAL 68

This definition highlights the need for the current Strata Titles Act 1985 to match the proposed definition for new forms of strata.

Proposal 68 seeks to define lots as “cubic space” and common property which follows existing procedures for built strata schemes. The current STA should identify cubic space for built strata or if required based upon a consistent level of fit out within a development and commensurate with the age of the building. This would alleviate importing problems which exist in the current Act into a complex community title situation. This definition requires more detailed consideration and consultation.

SECTION 4.6.1 – Valuation for unit entitlement

Valuation for unit entitlement – this paragraph states that the Valuer’s Certificate will allocate unit entitlements to the community lots based on an assessment of the capital value of the lots and that when individual strata plans are prepared, the unit entitlement will be allocated according to the existing provisions of the Strata Titles Act.

The document has a definition of capital value (see below). The API/REIA/PCA Glossary is also included as well as a definition from the API/PINZ Property Standards

Our submission is that there needs to a more defined meaning for capital value within a strata scheme for the purposes of Unit Entitlements. Clarification along the lines that cubic space is considered or, if necessary, based upon a consistent level of fit out within a development, commensurate with the age of the building.

This clarification is needed as there is uncertainty regarding the capital and market value definitions within a strata scheme.

Cubic space minimises the impact of change – which can occur on any given day and reflects the purpose of Unit Entitlement which is generally to manage the structural cubic space in a built strata scheme. In a built strata of say 2 lots and under a ‘capital value’ principal outside strata schemes- internal fit is considered and should be regarded, although for the purpose of determining Unit Entitlement this should not be the case.

If Lot 1 & 2 are identical in ‘all’ aspects other than say, fit out or leases the Entitlement should be 50/50 which is fair and reasonable. However if Lot 1 has a premium fit out and Lot 2 is standard the Unit Entitlement may be say 52/48 which bears no reflection on the purpose to which the Unit Entitlements are formed in the first place and is unjust for the purpose to which the UE is put within the Scheme.

Therefore when the unit entitlement is determined by a licensed Valuer, the Capital Value definition should be expanded to take into consideration the assessment of ‘cubic space’. The level of finish/fitout, that can be readily changed by and owner, should be ignored and an assumed consistent level of finish, relative to the age of the building, should be adopted; and the impact of any lease should be disregarded.

SECTION 4.6.2 – Building valuation for insurance

Revaluation every five years is a fair timeframe. Insurance company estimates upon renewal are generated from a “cost guides approach” and are likely to remain on target in short/medium terms below the estimated five year proposal.

SECTION 4.7 – Managing scheme utilities and services

“...shared services in a built strata building are generally defined by the STA as “structural cubic space” It is this definition which API wants to see carried through into unit entitlement assessments. This section supports the importance of defining ‘cubic space’ in built strata, the ratio of unit entitlements within a scheme and the purpose to which they are used. It is not just about the value as such – this element needs greater thought and discussion to understand what are the functions of unit entitlement and, as a result, determine the most fair and reasonable approach to define unit entitlement.

Public, Developers and Valuers perceptions must be consistent. The valuation methodology must be able to be relied upon. In some instances, there has been confusion between Capital Value and Market Value. As the strata lot is a cubic space, which does not change unless the strata plan is amended, then the assessment of the cubic space should be on the principal that the cubic space cannot change either; i.e. consistent level of finish/fitout for all lots.

SECTION 6.3 – Variations to disclosure in existing registered strata schemes

PROPOSAL 108 – this proposal will result in even greater complexity and confusion for consumers – with different standards to apply to different strata schemes. Existing and acknowledged problems in the Strata Titles Act 1985 are not being addressed, with some existing problems being inherited into the ‘reforms.’

GENERAL COMMENTS

It is important to know that there is a “point in time” when the unit entitlement must be valued. Subsequent change to the unit entitlement will impact on contractual arrangements.

All unit entitlements in any staged development or development statement are signed at a point in time by the valuer.

Refer to page 18 of consultation paper “the disadvantages of creating community lots in stages” (second dot point in table) “*subdivision and development for the whole development are not available from the outset, making it less certain that the total development package can be completed*” (fourth dot point in table). “*Unit entitlement is difficult to establish under this option. This requires the legislation to include a process for the reallocation of unit entitlements at the conclusion of the development. This adds expense for the purchases and could be a source of conflict.*”

This puts pressure on the valuation profession not to change unit entitlements at some point in the future – as a change will cause issues for buyers or current owners - and contracts can be ‘waived’ in the event the unit entitlements change. Mortgagees are also required to approve the unit entitlement change – therefore immense pressure is put on the valuation industry to make future prediction and uphold such a prediction.

The *Land Valuers Licensing Act 1978 – Land Valuers Code of Conduct*

Rule 2. A licensed valuer shall not —

2.1 produce a valuation statement that purports to predict future value or future values (see Rule 3);

3. Sub-rule 2.1 does not prevent a licensed valuer from —

- (i) forecasting income or outgoings using economic price prediction modelling, including discounted cash flows, to determine a present value; or
- (ii) making properly qualified forecasts.

The issue with a “point in time” is also highlighted at proposal 34 – proposing that unit entitlement be reallocated as the scheme progresses or at the end of the development process. This matter needs to be resolved prior to reforms progressing. Consideration required for current schemes as, again, we may inherit existing problems

MANAGEMENT STATEMENT

Mixed use developments should have cost centres or UE apportioned to specific use. Must be clearly defined in management statement.

VARIATIONS

Consideration to be given to allowing variations of +/- 5% in Unit Entitlement not enabling avoidance of a sale contract. Variations are needed to implement good developments, however provisions need to be in place that do not limit such changes. I.e. In the current STA an option exists for buyers to “opt out” of a contract based on unit entitlement changes. This limits variations and puts undue

pressure on Valuers to not change Unit entitlements when such changes in a development occur. This needs further consultation with respect to Contract Law in order to identify how the STA is currently limiting this Variation option and how this will be inherited.

CONVERTING OR TERMINATING

Clarification required of unit entitlement when converting from built to survey strata or when a scheme is terminated.

Definitions of boundaries are required. For example - with fencing or pre-assumed boundaries to form a fair / reasonable standard that should be adopted prior to conversion or termination. This requires more consultation as the current STA allows an opportunity for sitting owners to take ownership of common land that was never 'perceived' as part of the ownership and never purchased as such.

CONSULTATION PAPER GLOSSARY DEFINITIONS

The definitions contained in the Consultation Paper Glossary seem to be limited. A review of definitions in widely accepted professional property texts and legislation supports the comments made through the API's submission on the Consultation Paper Proposals.

VALUATIONS an estimation of the worth of something carried out by a valuer licensed under the land valuers licensing act 1978 (in some cases the valuer general).

The Consultation Paper definition is missing a key aspect which is detailed in **API, REIA and PCA Glossary of Definitions**

Valuation

- (a) The process of estimating value
- (b) The prediction of the value of an asset at a point in time, depending on the purpose for which the valuation is required.

Further definition can be found in [*Valuation of Land Act 1978 – Sect 4*]

value in relation to land means the assessed value, the capital value, the gross rental value, the site value, the unimproved value and a value determined or assessed under section 39(1) of the land or any one or more of those values; **to value** means to determine or assess those values or any one or more of them; and **determination of value** or **valuation** means a determination or assessment of those values or any one or more of them;

UNIT ENTITLEMENT

Is the value of the lot as a percentage of the value of the whole scheme. In a strata scheme this takes into account the value of the buildings, in a survey-strata scheme this is based on the unimproved value of the land. Unit entitlement establishes the voting rights of a proprietor, the undivided share of each proprietor in the common property and the proportion payable of each proprietor of contributions levied.

The Consultation Paper definition needs clarification of the basis on which unit entitlement is calculated – it should not be determined by pre-existing definitions – it needs to be defined by the purpose to which it is put.

The Strata Titles definition of a lot includes the following:

In relation to a strata scheme, means **one or more cubic spaces** forming part of the parcel to which a strata scheme relates, the base of each such **cubic space** being designated as one lot or part of one lot on the floor plan forming part of the strata plan, plan of re-subdivision or plan of consolidation to which that strata scheme relates, being in each case, but subject to Section 3AB, cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space except where:

The boundaries of the **cubic space** are fixed under section 3AB; or
The boundaries are not so fixed and that structural cubic space

Has boundaries described in accordance with the regulations; and
Is shown in that floor plan as part of a lot;

Lot, in relation to a survey-strata scheme, means land that is shown as a lot consisting of one or more parts on the plan for that scheme, but does not include:

A lot shown as common property; or
Land shown as being set aside for a road or reserve.

CAPITAL VALUE

Is the capital amount which an estate of (sic) fee simple in the land might reasonably be expected to realise [*Valuation of Land Act 1978 – Sect 4*]

The **API/REIA/PCA Glossary of Definitions** says:

The capital sum which a property might in ordinary circumstances be expected to realise at the time of valuation if offered on reasonable terms and conditions.

API/PINZ Property Standards says:

Capital Value is also referred to in rating and taxing legislation as Improved Value and applies to all parcels of land including vacant, improved or held in stratum. Such a value, unless specifically stated by the legislation, would not normally include any plant, machinery, tools, or other appliances that are not fixed to the premises in a way that would justify inclusion in the real estate under the law of fixtures.