



Submission to the Standing Committee on Legislation: Inquiry into the *Strata Titles Amendment Bill 2018*

Part 12: Termination of Strata Titles Schemes

25 September 2018

Contents

Executive Summary	3
A. Termination pathways.....	5
B. Summary of the proposed unanimous resolution process	6
C. Simplified process to terminate where all lots are owned by same person.....	7
D. Summary of the proposed majority termination process.....	8
E. Detailed explanation of the proposed majority termination process	10
F. Consultation	32
G. Expert advice.....	34
H. Best practice from other jurisdictions	35
I. Snapshot of the reform journey	36
J. Experience in other jurisdictions	37

Appendices

	Page
Appendix A: Strata Reform Consultation Paper - Extract on termination of schemes	1
Appendix B: Media campaign directing the public to comment on the Strata Reform Consultation Paper	017
Appendix C: Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes	018
Appendix D: List of stakeholders that Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes was released to	053
Appendix E: Written feedback from stakeholders to the Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes	055
Appendix F: Strata Titles Act Reform: Report on state of the strata sector in Perth and Peel Region	071
Appendix G: Advice from the City Futures Research Centre in response to the Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes	113
Appendix H: Advice of experts in valuation and compensation for compulsory acquisition	127
Appendix I: Detailed comparison of the majority termination of schemes models in WA, NSW, Singapore and the Northern Territory.	138

Executive Summary

Driver for reform

The first strata schemes in Western Australia were constructed over 50 years ago. Scheme buildings are ageing and many larger older buildings are costing owners substantial amounts in maintenance. Owners are now getting to the point in some schemes where they cannot afford to maintain these old buildings. Based on experience in other jurisdictions, termination and redevelopment of strata / survey-strata schemes will become increasingly common.

To protect the assets held by all strata owners, it is proposed that safeguards for the termination of a strata scheme will be introduced, as contained in Part 12 “Termination of strata titles scheme” inserted by clause 83 of Division 3, Part 2 of the *Strata Titles Amendment Bill 2018* (the Bill).

Current law

Before looking at the proposed safeguards, it is important to understand the current law for termination of schemes and dispel some of the myths about this part of the reforms.

Under the current Act there are three ways a strata titles scheme can be terminated.

Most people know that all owners can vote to terminate a scheme through a unanimous resolution: sections 30 and 30A of the *Strata Titles Act 1985* (the Act).

What most people don't know is that there are two other pathways to terminate a scheme.

One owner or one mortgagee can apply to the District Court for an order to terminate a scheme: section 31 of the Act.

One owner can apply to the District Court for an order (under section 51 of the Act) deeming that a special resolution is a unanimous resolution to terminate a scheme. Section 51A of the Act applies to two lot schemes and gives one owner standing to apply for an order deeming that a unanimous resolution to terminate has been passed.

The current Act does not provide adequate safeguards for owners in relation to the termination of a scheme as:

- a) there is no requirement for a detailed termination proposal to be prepared or even given to other owners before launching the District Court action
- b) there is no requirement for a vote before applying to the District Court
- c) there is no additional assistance and no safeguards for vulnerable owners to help them in responding to the District Court action and
- d) the Act provides no guidance to the District Court on whether it should terminate a scheme.

Safeguards proposed by the reforms

The majority termination process proposed in Part 12 will:

- a) introduce safeguards for owners
- b) establish a termination process that is transparent, reasonable and requires a vote, and
- c) require a full procedural and fairness review by the State Administrative Tribunal (SAT) to consider the interests of all owners the interests of other affected people including tenants and mortgagees.

Owners who object must be properly compensated and must not be any worse off financially if the termination were to go ahead. Vulnerable owners will be resourced so that they can receive independent advice and representation to respond to the termination proposal (paid for by the proponent).

Reforms the result of extensive consultation, expert advice and the application of best practice from other jurisdictions

Part 12 of the Bill was developed over several years through careful consideration of:

- a) consultation with the public and feedback from the public
- b) consultation with stakeholder groups including government, industry and community organisations and technical feedback from those groups
- c) expert advice provided by recognised specialists in the fields of majority termination, valuation and compensation for government taking of land
- d) an analysis of majority terminations operating in other jurisdictions and
- e) the application of best practice from those other jurisdictions, including consideration of lessons learnt in those jurisdictions.

Public engagement and feedback on the proposal to introduce reforms to the termination of schemes was generated through the *Strata Reform Consultation Paper* that was released for public comment, with the consultation phase open from 31 October 2014 to 16 January 2015. For the duration of this consultation phase, Landgate ran a media campaign to raise awareness of the strata reforms and call for feedback to the consultation paper. 1,160 comments were received in response to that Consultation Paper.

In January 2016 Landgate publicly released the *Strata Reform Position Papers* on Landgate's website. Those Position Papers contained over 100 pages of detail of the reforms. Landgate kept the public updated on the proposed reforms to termination of schemes by updating the Termination Position Paper on Landgate's website as the drafting on the Bill progressed. Members of the public were invited to provide feedback on the reforms through the dedicated strata reform email address.

Landgate released a *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* to stakeholder groups including government, industry and community organisations to obtain their feedback. Further improvements were made to the termination provisions of the Bill based on consideration of that feedback.

Landgate obtained advice on the *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* from the City Futures Research Centre at the University of New South Wales. The City Futures Research Centre are recognised as experts within Australia on majority termination of strata schemes and have conducted extensive research into the termination of schemes.

Landgate also sought the advice of experts in valuation and compensation for compulsory acquisition and that advice was used to formulate the valuation and compensation provisions in Part 12.

Landgate investigated how majority terminations were operating in other jurisdictions, sought advice from experts in majority terminations in those jurisdictions, identified the elements of those termination models that were working well and applied best practice from those jurisdictions to the WA model.

A. Termination pathways

Pathways under the current Act

Schemes can terminate under the current Act:

1. By unanimous resolution: sections 30 and 30A.
2. By order of the District Court on an application of one owner or one mortgagee: section 31.
3. By order of the District Court deeming that a special resolution to terminate is a unanimous resolution, on application of one owner: section 51. Section 51A of the Act applies to two lot schemes and gives one owner standing to apply for an order deeming that a unanimous resolution to terminate has been passed.

Pathways under the Bill

Under the Bill (section 182(7)), the following termination pathways will exist:

1. Schemes of 4 lots or less

Schemes with 2, 3 or 4 lots can only terminate by unanimous resolution.

2. Schemes of 5 lots or more

Schemes with 5 or more lots can terminate either:

- a) by unanimous resolution, or
- b) through the majority termination process.

Note that schemes can also terminate as a result of the government compulsorily acquiring the whole of the scheme: see section 196 of the Bill. Compulsory acquisition by the government will need to be undertaken through existing compulsory acquisition legislation: refer to the *Land Administration Act 1997*.

Sections 30, 30A, 31, 51 and 51A of the current Act will be repealed by clause 82 of the Bill.

Strata titles schemes statistics

Strata titles schemes statistics as at September 2018:

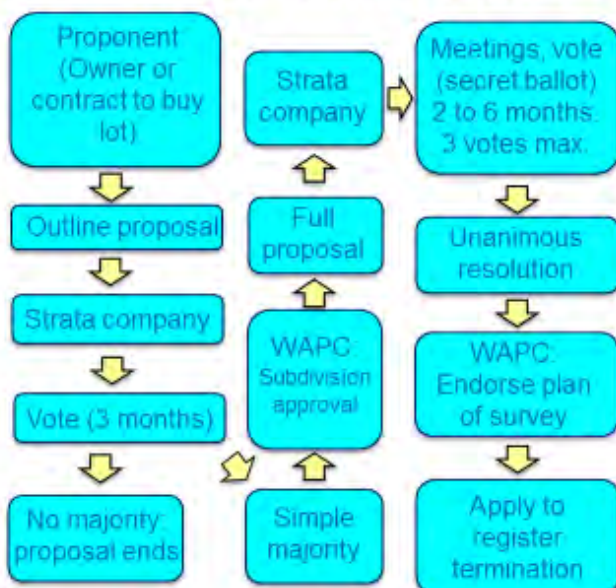
Category	Total
Total number of strata / survey-strata schemes	71,315
Schemes with 4 lots or less	59,084
Schemes with 5 lots or more	12,231
Total number of lots in all schemes	317,696
Total number of lots in schemes: 4 lots or less	146,670
Total number of lots in schemes: 5 lots or more	171,026

B. Summary of the proposed unanimous resolution process

A summary of the steps involved in the termination process by unanimous resolution is as follows:

1. An outline termination proposal must be prepared by the proponent.
2. The proponent must give the outline proposal to the strata company.
3. The strata company votes by ordinary resolution on whether the proposal should go any further.
4. The proponent then needs to obtain subdivision approval from the Western Australian Planning Commission (WAPC).
5. The proponent then needs to prepare a detailed termination proposal called a full proposal.
6. The proponent gives the strata company the full proposal and the strata company then serves the full proposal on all owners, registered mortgagees, people with an interest in the lots and occupiers of those lots and the common property.
7. All owners must be given 2 months before voting (which must be by secret ballot conducted by an independent person). 3 votes can be held.
8. If the full proposal is supported by all owners through a unanimous resolution, the proposal to terminate can proceed without the need for a SAT review.
9. The proponent then needs to obtain subdivision endorsement from the WAPC.
10. The proponent can then apply to register the termination.

Unanimous Termination Process



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C. Simplified process to terminate where all lots are owned by same person

When all lots in a strata titles scheme are owned by the same person, there is a simplified process to terminate the scheme provided in section 191 of the Bill. That owner of all the lots can apply to the Registrar of Titles to terminate the scheme (under section 193 of the Bill) if the following approvals of the WAPC have been obtained under Part 10 of the *Planning and Development Act 2005* (PDA):

- a) a plan of subdivision for the termination of the scheme has been approved (that is, for the parcel to cease being subdivided by a strata titles scheme); and
- b) a diagram or plan of survey has been endorsed with that approval.

D. Summary of the proposed majority termination process

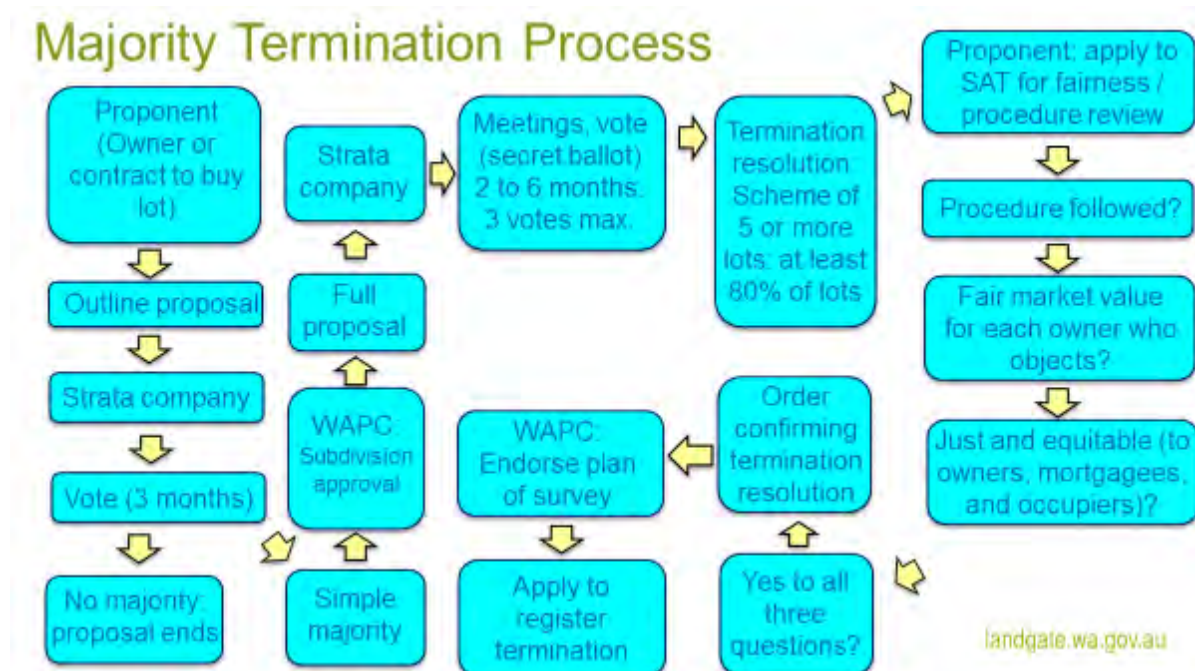
The majority termination process is more than just a vote. It is a whole process that must be followed and includes a fairness and procedure review by SAT and extensive safeguards for owners.

A summary of the steps involved in the majority termination process is as follows:

1. An outline termination proposal must be prepared by the proponent.
2. The proponent must give the outline proposal to the strata company.
3. The strata company votes by ordinary resolution on whether the proposal should go any further.
4. The proponent then needs to obtain subdivision approval from the Western Australian Planning Commission (WAPC).
5. The proponent then needs to prepare a detailed termination proposal called a full proposal.
6. The proponent gives the strata company the full proposal and the strata company then serves the full proposal on all owners, registered mortgagees, people with an interest in the lots and occupiers of those lots and the common property.
7. All owners must be given 2 months before voting (which must be by secret ballot conducted by an independent person). 3 votes can be held. If the full proposal is ratified by the required vote, the proponent can apply to SAT for a procedure and fairness review.
8. If SAT finds that the process to terminate has been properly followed, that each objecting owner will receive fair market value and will be no worse off financially if the termination proceeds and that the proposal is just and equitable, SAT can order that the proposal may proceed.
9. The proponent then needs to obtain subdivision endorsement from the Planning Commission.
10. The proponent can then apply to the Registrar of Titles to register the termination.

Below is a flowchart outlining the majority termination process.

Flowchart of majority termination process



E. Detailed explanation of the proposed majority termination process

There are a series of steps that must be followed to terminate a strata titles scheme through the majority termination process. There are also a set of safeguards throughout the process to protect owners. The steps and safeguards are detailed below.

Step 1. Prepare outline termination proposal – sections 173 and 175

1. A proponent (who must be an owner or a person who has an option to buy a lot within the scheme: section 173) may prepare an outline of the termination proposal (outline proposal) with the information listed in section 175 of the Bill.
2. The outline proposal must contain the sort of information that would help owners make an informed decision as to whether this outline proposal should be progressed into a full proposal, including:
 - a) the name of the proponent
 - b) the reasons for proposing the termination
 - c) general proposals for contracts to be offered to owners to acquire their lot
 - d) the general proposal of how the site will be redeveloped and what planning approvals will be required for that redevelopment
 - e) the stages and timeframes for the proposal to progress
 - f) an explanation of the process to terminate and the consequences of terminating
 - g) details of arrangements the proponent is required to make under the regulations to provide owners with funding to obtain independent advice and representation to respond to the termination proposal
 - h) other information required under the regulations.

Policy

The policy for step 1 is to ensure the outline proposal to terminate the scheme contains sufficient information about a preliminary termination proposal to enable owners to make an informed decision on whether that initial proposal (the outline proposal) should proceed. Only people who own a lot or who have a contract to buy a lot within the scheme can be a proponent of a termination proposal. This ensures that the proponent actually has an interest in the scheme (either as an owner or as a person with a contract to buy a lot in the scheme).

Step 2. Submit outline proposal to strata company and serve owners and mortgagees – section 174

1. The outline proposal can then be submitted by the proponent to the strata company: section 174(1).
2. The strata company must, within 14 days of the outline proposal being submitted to it, serve the outline proposal on the owners and registered mortgagees of each lot in the scheme: section 174(3).

3. The strata company must within 14 days of the outline proposal being submitted to it lodge a notification with the Registrar of Titles so that the Registrar can record that a termination proposal is current for the scheme: 174(3)(b). This is to ensure people who search the scheme documents can see if the strata company has been given an outline termination proposal.

Policy

The policy for step 2 is to:

- a) ensure all owners and all registered mortgagees for each lot in the scheme are notified that an outline proposal to terminate the scheme has been submitted to the strata company and
- b) ensure people who search the scheme documents (such as a prospective buyer or prospective mortgagee) can see if the strata company has been given an outline termination proposal.

The reason why occupiers are not served with an outline proposal is that the strata company could receive many outline proposals. There is no requirement for the strata company to progress with an outline proposal or even vote on the outline proposal. Notifying occupiers that an outline proposal has been submitted to the strata company is not relevant to occupiers because they do not vote on whether the outline proposal should proceed to a full proposal. In non-termination circumstances, occupiers are not required to be notified when an owner of a lot receives an offer to sell their lot. An outline proposal is much less significant than an offer to acquire a lot and several key steps must occur before an outline proposal takes on any further significance for an occupier. A more appropriate point to notify occupiers of a termination proposal is where a full proposal has been submitted to the strata company (this is provided for in section 178).

Safeguard: Proponent to pay strata company expenses associated with a proposed termination - section 189

1. The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and full termination proposal, making the subdivision applications and paying for the infrastructure and valuation reports.

2. If the strata company needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the strata company can require the proponent to pay certain expenses arising from a termination, such as serving notices on owners: section 189

3. The strata company can refuse to do things during the termination process (such as serve notices) until the proponent has paid the fees.

Policy

The policy for this safeguard is to ensure that the strata company (and therefore the owners) are not left out of pocket as a result of receiving and responding to termination proposals.

Step 3. Vote on outline proposal – section 176

1. The strata company does not have to hold a general meeting to vote on the outline proposal.
2. If a general meeting of the strata company is held and an ordinary resolution (a simple majority vote) is passed in favour of the outline proposal within 3 months of the outline proposal being submitted to the strata company, the proponent can proceed to the next step.
3. If the strata company does not pass an ordinary resolution in favour of the outline proposal within 3 months of the outline proposal being submitted to the strata company, the termination proposal comes to an end and the Registrar is to be notified by the strata company or the proponent.
4. The strata company can receive as many outline proposals as they want and can consider each proposal without the need to hold a general meeting. Step 3 provides a mechanism to allow the strata company to choose which outline proposal that the owners want to focus their consideration on.

Policy

The policy for step 3 is to:

- a) ensure that the strata company has the ability to choose which outline proposal should proceed and
- b) enable the strata company to block unreasonable or unrealistic termination proposals from going any further.

Safeguard: Enabling the strata company to stop outline termination proposals for a specified period – section 174(2)

1. An outline proposal to terminate the scheme cannot be submitted to a strata company:
 - a) during a period where the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end: section 174(2)(a)
 - b) during a period (not exceeding 12 months) where the strata company has, by ordinary resolution, prohibited termination proposals from being submitted to it: section 174(2)(b). Note there is no limit to how many times the strata company can hold a general meeting and pass an ordinary resolution to prohibit outline proposals from being submitted. In other words, a strata company could hold a general meeting every year to extend the prohibition on the submission of outline proposals for a further 12 months
 - c) during a period for which SAT has (on the application of the strata company) ordered that termination proposals are not to be submitted to the strata company: section 174(2)(c).

2. There may be situations where a person controls the majority of votes in a strata company and uses that voting power to prevent other owners from making an ordinary resolution to prohibit termination proposals being submitted to the strata company. If that happens and the strata company is being forced to consider new termination proposals on a regular basis, the owners who hold minority voting power have two options:

- a) one owner can seek to obtain an order from SAT to:
 - i. Bring an application on behalf of the strata company (section 198(1)) and
 - ii. Then apply to SAT on behalf of the strata company for an order to prevent termination proposals (outline or full proposals) to terminate the scheme being submitted to the strata company for any period, including, for example, 5 years, to enable those owners to live in peace if they are being pursued by a developer.
- b) one owner can apply to SAT under section 197 for an order that the ordinary resolution in support of the outline proposal is taken to have not been passed. SAT has the power to make such an order: section 200(2)(n). The basis on which SAT may make such an order will depend upon the facts (for example, having to consider and vote on yet another full proposal to terminate the scheme when the owners rejected a similar full proposal only a few months earlier) and whether those facts establish that the strata company has, in passing the ordinary resolution, fulfilled the strata company's objectives under section 119 of the Bill to not make a resolution that is oppressive or unreasonable.

Policy

The policy for this safeguard is to ensure that the strata company can stop outline proposals and full proposals to terminate from being submitted to it for a specified period. There are some schemes in WA that are located in prime redevelopment locations, however the owners in those schemes may not be faced with spiralling maintenance costs and they may simply not want to terminate. This safeguard gives those owners a useful mechanism to prevent termination proposals from being submitted to the strata company.

Step 4. Obtain planning approval: section 177

1. Subdivision approval is required because when a scheme terminates, all the lots and common property become a single lot.

2. This is regarded as a form of subdivision which requires approval from the Western Australian Planning Commission (WAPC).

3. The subdivision approval being applied for under section 177 is for the single lot (parcel) and not for the proposed redevelopment of the site by the proponent. The proponent must apply for the subdivision and development approval relating to the proposed redevelopment of the site separately (and this will likely be when the scheme has been terminated and the proponent owns the single lot).

4. If subdivision approval is given by the WAPC, the proponent may prepare a full termination proposal: section 178(1). If the WAPC does not approve the subdivision the termination proposal comes to an end.

5. An application for subdivision approval can only be made by the landowner or a person approved by the landowner. The ordinary resolution of the strata company to support the outline proposal is deemed as the owners of the land (the owners of the lots in the scheme) authorising the proponent to apply for subdivision approval: section 177(1)(b).

Policy

The policy for step 4 is to ensure that planning and development issues are appropriately dealt with before a scheme terminates. Consultation with the Department of Planning, Lands and Heritage (DPLH) and the Western Australian Local Government Association (WALGA) indicated that a problem currently exists where a strata / survey-strata scheme is terminated without consideration being given to planning and development issues that arise when land that was formerly subdivided into multiple lots becomes a single lot. Some of those issues relate to the provision of essential services to the site where the scheme is located and the need for easements in relation to those services. Heritage issues will also be dealt with when subdivision approval is sought.

Step 5. Prepare full proposal – section 179

1. The proponent prepares a full termination proposal which must contain detailed information (see section 179 of the Bill).
2. The full proposal must contain the following information:
 - a) The information contained in the outline proposal (the full proposal can differ from the outline proposal and the full proposal replaces the outline proposal: section 179(8))
 - b) The approved plan of subdivision
 - c) A detailed description of proposed contracts offered to each owner including:
 - i. contracts for the sale and purchase of lots;
 - ii. contracts for a like for like lot; and
 - iii. contracts for the owner to retain ownership of the land within the scheme and or a right to acquire a lot on the redeveloped site or an interest in the land within the scheme.
 - d) a detailed description of what is proposed to happen to every registered or recorded interest or estate in the lots and the common property
 - e) a detailed description of what is proposed to happen to the contractual rights of occupiers (such as leases) of lots or common property
 - f) a detailed description of the proposed subdivision and development of the land following termination (along with planning approvals required for that subdivision and development and to what extent that proposal is consistent with the relevant planning scheme)
 - g) details of the stages and timeframes proposed to progress the termination proposal including when vacant possession of the lots and common property will be required
 - h) any proposals to temporarily relocate owners of lots (including payments to arrange temporary relocation)
 - i) a statement from the strata company of its current assets and liabilities and any legal proceedings or pending legal proceedings the strata company is or proposed to be a party in
 - j) details of the steps that will be taken to wind up the strata company, including realising the assets and discharging or transferring the liabilities

- k) any other information required by the regulations. Please note that the regulations arising from Part 12 have yet to be fully consulted upon and the intent is that full consultation on the regulations required for Part 12 will be undertaken when the Bill has been passed. Undertaking extensive consultation on the regulations arising out of Part 12 of the Bill is premature when this Part of the Bill is the subject of an Inquiry by the Standing Committee on Legislation given that such inquiries in the past have typically recommended changes to the proposed Bill.
- l) A termination infrastructure report that includes:
 - i. a report on the state and condition of the buildings and infrastructure within the scheme, prepared by a structural engineer
 - ii. the scope of works reasonably required to repair or replace the buildings and infrastructure (likely to be prepared by a licenced builder), and
 - iii. a report on the estimated cost of the works required to repair or replace the buildings and infrastructure prepared by a quantity surveyor.
- m) a termination valuation report prepared and certified by a licensed valuer setting out the market value of each lot in the scheme. The regulations may prescribe how market value is to be calculated. The regulations will likely require that the market value is to be calculated taking into account recent sales history, the highest and best use the land can be put to and the owner's share of the common property (which is provided for by the owner's unit entitlement). Further consultation on this point will be undertaken.

Policy

The policy for step 5 is to ensure that the full proposal contains the information required by owners to make an informed decision on whether to terminate a scheme. In addition, the following should be noted about the policy that underpins step 5 and the full proposal:

a. Termination infrastructure report

The purpose of the termination infrastructure report is to provide owners with an expert assessment on the state of the buildings and infrastructure within the scheme and the estimated cost to repair and replace buildings within the scheme. This will assist owners in understanding the likely future costs of maintaining the scheme if they do not terminate. This report also provides SAT with an initial indication of the state of the buildings and infrastructure and the likely cost of repairing the buildings and infrastructure. Owners can obtain their own expert evidence to counter any information contained in the termination infrastructure report. Section 190 provides that the proponent is to pay money into a trust for owners who meet specified criteria to obtain independent advice. That independent advice could include an independent termination infrastructure report prepared by experts the proponent has not chosen. If owners give evidence before SAT indicating that the termination infrastructure report has been prepared to favour the proponent, this will likely result in SAT finding that the full termination proposal provided by the proponent contains information that is misleading. A finding that the full termination proposal is misleading is one of the factors the Tribunal must consider when answering the question of whether the termination proposal is just and equitable: see section 183(12)(a)(ii).

b. Termination valuation report

This report is meant to provide owners with an indication of the market value for their lot. Owners can obtain their own valuation to counter any information contained in the termination valuation report and any evidence indicating that the termination valuation report has been prepared to favour the proponent will likely result in SAT finding that

the full termination proposal provided by the proponent contains information that is misleading.

Step 6. Submit full proposal to strata company to serve the full proposal on specified people – section 178

1. The proponent may submit the full proposal to the strata company (provided this is done within 12 months of the strata company supporting the outline proposal by ordinary resolution: section 178(2)).
2. Note that the strata company can apply to SAT to prohibit any full proposal from being served on the strata company for a specified period: section 178(2)(b)
3. The strata company must serve the detailed proposal within 14 days on:
 - a) every owner
 - b) every registered mortgagee of a lot in the scheme
 - c) every caveator
 - d) every person whose interest (as a lessee, tenant or mortgagee) in a lot is recorded in the roll kept by the strata company and
 - e) every occupier of a lot or the common property in the scheme.
4. The strata company must lodge notification with the Registrar of Titles within 14 days that the full proposal has been submitted to it.
5. If the proponent modifies the full proposal, that modified full proposal must be submitted to the strata company and the strata company must serve the modified proposal on all of the people specified in section 178(4)(a) and also lodge notification with the Registrar of Titles within 14 days that a modified full proposal has been submitted to it: section 178(5).
6. If a general meeting has been called to vote on the full proposal, the modification must be submitted at least 14 days before that general meeting: section 178(6).

Policy

The policy for step 6 is to:

- a) ensure all owners, mortgagees who are registered (or who have notified the strata company), occupiers and caveators are notified that a full proposal to terminate the scheme has been submitted to the strata company and
- b) ensure people who search the scheme documents (such as a prospective buyer or prospective mortgagee) can see that the strata company has been given a full termination proposal.

The proponent has 12 months to submit the full proposal to the strata company after the strata company supports the outline proposal by ordinary resolution because:

- a. obtaining subdivision approval under section 177 could take several months
- b. the preparation of the full proposal will take several more months, including:
 - i. the requirement to prepare the termination infrastructure report and the termination valuation report.
 - ii. obtaining information from the strata company about the total assets and liabilities of the strata company and
 - iii. preparing specific offers for each owner.

Safeguard: Vulnerable owners will be provided with funding for advice and representation so that they can respond to the termination proposal: section 190

1. The proponent will be required under the regulations provided for in section 190 of the Bill to pay for owners who meet specified criteria (set out in the regulations) to obtain independent legal advice, legal representation, valuation advice and financial and taxation advice in connection with a termination proposal.
2. The regulations will likely specify that vulnerable owners are owners who meet the specified criteria and are therefore entitled to the funding to be paid by the proponent to obtain the independent advice and representation.
3. Section 190 has been drafted so that all owners could be the owners who meet specified criteria and are therefore entitled to be paid by the proponent to respond to the termination proposal.
4. The definition of owners who meet specified criteria and, in particular, vulnerable owners for the purpose of section 190 of the Bill is being developed in consultation with stakeholders, including community groups.
5. The reason for providing this definition in the regulations is that the concept of vulnerable changes over time as society's expectation change.
6. As a starting point, and subject to further consultation, the following criteria are proposed as being the basis on deciding whether certain people are vulnerable owners and therefore eligible for funding assistance under section 190:
 - a) Due to age, illness, trauma or disability, or any other reason, the owner has an impaired ability to fully understand or participate in the termination process, present their case or make an informed decision
 - b) The owner is financially disadvantaged to the extent that it would not be reasonable to expect them to pay for professional advice in response to the proposal.
7. The vulnerable owner funding under section 190 can be used to:
 - a) obtain a licensed valuer's report to counter any valuation evidence submitted by the proponent
 - b) pay for expert advice on the taxation and financial implications of the termination
 - c) pay for legal advice on the termination proposal and
 - d) pay a lawyer to represent the vulnerable owner in the SAT proceedings.
8. The regulations will provide how much money is to be set aside for each vulnerable owner

Policy

The intent of this vulnerable owner funding safeguard is to ensure that certain owners who would be at a disadvantage responding to a termination proposal have access to resources for additional assistance. This funding and assistance is aimed at ensuring that vulnerable owners are put on equal footing with other owners so that they can properly respond and if need be, effectively object to the termination proposal.

The definition of vulnerable owner is meant to be a wide definition to include a broad class of people.

Safeguard: Owners to have access to an independent advocate paid for by the proponent – sections 181(5), 189 and 190

1. Section 181(5) provides that the regulations may impose additional requirements about the process required for consideration of a termination proposal by a strata company. Those regulations could include a requirement that the strata company refer the proposal to, for example, an independent advocate.

2. Subject to further consultation, the regulations (referred to in section 181(5)) will specify that:

- a. a strata company must refer the full proposal to an independent advocate (the regulations will specify who can be an independent advocate)
- b. The independent advocate will:
 - i. review the full proposal and provide the strata company with an independent assessment of the full proposal
 - ii. arrange a briefing session (conducted on a multisensory basis to cater for people with disabilities) for owners to deliver the independent assessment of the full proposal
 - iii. assess which owners in the scheme are vulnerable for the purposes of section 190
 - iv. provide initial advice to vulnerable owners
 - v. refer the vulnerable owners to a panel of specialist advisers (lawyers, etc) who vulnerable owners can see to obtain advice and or representation as provided in section 190
 - vi. assist vulnerable owners in obtaining the funding provided by the proponent under section 190 to pay for the advice and or representation
 - vii. represent vulnerable owners in SAT if the proponent disagrees about who is or is not a vulnerable owner entitled to the funding under section 190 (to ensure vulnerable owners have access to funding to pay for expert advice and legal representation).
- c. The strata company will be required to pay the independent advocate for the services listed above.

3. The strata company can require the proponent to pay to the strata company the full cost of the independent advocate's services: section 189.

4. Landgate will also run an advice line explaining to owners what to do when they receive a termination proposal.

Policy

The policy for this safeguard is to ensure that vulnerable owners:

- a) are properly identified early in the process
- b) have access to the advice and representation specified in section 190 before the full proposal is voted on and before the termination proposal is being reviewed by SAT.

This proposed safeguard arose as a result of consultation with community groups on the definition of vulnerable owner for the purposes of section 190.

Step 7. Vote on the full proposal – section 182

1. A vote in favour of the full termination proposal is only effective if it is taken between two and six months after the full termination proposal was served.
2. If the vote to terminate is unanimous there is no need for a SAT review. The process for a unanimous termination continues at step 9, which is the subdivision endorsement from the WAPC.
4. Schemes with 2, 3 or 4 lots can only terminate by unanimous resolution.
5. For a scheme with 5 or more lots, if a vote is not unanimous and at least 80% of the lots vote in favour of the full proposal, the proponent can apply to SAT to undertake a fairness and procedure review under section 183. No majority termination can proceed without an order of SAT.
6. There can be only 3 votes conducted.
7. If three votes are conducted and:
 - a) The scheme has less than 5 lots and a unanimous resolution is not attained, the termination proposal comes to an end
 - b) The scheme has 5 or more lots and neither a unanimous resolution or a vote of at least 80% of lots is attained, the termination proposal comes to an end.
8. A full proposal can be modified by the proponent, but only 3 votes can be taken on a full proposal (whether it has been modified or not). The modification of the proposal does not restart the clock: a termination resolution must be attained between the period of 2 to 6 months of the full proposal first being submitted to the strata company otherwise the proposal comes to an end.
9. Voting is to be done by secret ballot to protect owners from coercion and bullying in relation to how they conduct their vote. Voting is tallied and counted by an independent person.
10. Voting is done by owners, not the first registered mortgagee of a lot: section 182(8) provides that section 126(a) of the Bill does not apply.
11. If the termination proposal has been passed, the proponent cannot modify it unless the modified proposal is supported by the same voting requirements.
12. The strata company must lodge a notification with the Registrar of Titles to confirm that the termination resolution is passed (including whether confirmation of the termination resolution is required by SAT).
13. The regulations may impose additional requirements about the process required for voting on a termination proposal.

14. Section 181 also provides:

- a. that 1 or more general meetings of the strata company must be convened to consider the termination proposal
- b. the owners may, by ordinary resolution, require the proponent to leave the meeting or, if the proponent is not an owner, be absent for the whole meeting
- c. All people who are required to be served the full proposal must be given a reasonable opportunity to make submissions to the proponent and the strata company
- d. The council of the strata company may:
 - i. discuss the full proposal with the proponent
 - ii. inform owners of those discussions
 - iii. make recommendation to owners about the proposal
- e. the regulations may impose additional requirements about the process for consideration of a termination proposal.

Policy

The policy for step 7 is as follows:

- a. Vote: The vote is taken according to lots, not by unit entitlement. Unit entitlement is considered if a termination resolution of 80% or more of lots is passed (where the scheme is 5 or more lots) when SAT reviews the termination proposal: section 183(12)(b).
- b. 2, 3 and 4 lot schemes can only terminate by unanimous resolution. This policy was agreed to by the government and the opposition during consideration in detail of the Bill in the Legislative Assembly. The policy is sound because:
 - i. It is easier for a proponent to acquire 2 to 4 lots (or make a deal with this smaller number of owners) and terminate a scheme with unanimous consent than trying to do this for a scheme with many lots
 - ii. The majority of the 1,185 schemes terminated by unanimous resolution as at 2015 were smaller schemes, indicating that smaller schemes are not necessarily difficult to terminate by unanimous resolution
 - iii. Small schemes are less likely to be at risk of having unsafe buildings as they are typically low rise and often semi-detached. As such they should be considered similar to one, two or three storey free standing homes and there are no current measures for such free-standing non-strata homes to be compulsorily acquired as a result of the condition of the buildings.
- c. The period of 2 to 6 months to vote on a full proposal: This period was set to allow owners sufficient time to obtain advice before voting (2 months) and also to allow the proponent sufficient time to modify the proposal two times after the first vote (noting that there can be only 3 votes conducted on any one proposal even if the proposal is modified).
- d. Limit on the number of votes that can be held: This was included as a safeguard to protect objecting owners from being bullied into supporting the proposal as a result of being forced to vote on more than 3 occasions.
- e. Independent person: the purpose of the independent person is to ensure that the votes are tallied by a person who is not connected with the owners or the

proponent. This was part of recommendations contained in the Renewing the Compact City report¹

- f. Secret ballot: A secret ballot was also part of the recommendations contained in the Renewing the Compact City report² and was based on protecting owners who opposed the proposal from being bullied by owners who want to terminate.
- g. Lodging notification with the Registrar: This ensures people who search the scheme documents (such as a prospective buyer or prospective mortgagee) can see that the strata company has passed a termination resolution in support of a full termination proposal (and whether or not the termination resolution requires the confirmation of SAT).
- h. The policy for the regulation making power in section 182(13) is that the regulations will provide further details of the secret ballot process and the requirements for an independent person who tallies the votes. Note that the regulations in NSW relating to the equivalent of an independent person (referred to as the returning officer) provide details that would be useful for the drafting of the regulations for this Bill: see Regulation 29 in the *Strata Schemes Development Regulation 2016* [NSW].

Step 8. Procedure and fairness review by SAT – section 183

1. If the full proposal attains the termination resolution (of more than 80% of lots in favour but is not a unanimous resolution) the termination proposal cannot proceed unless the proponent obtains an order from SAT confirming the termination resolution.
2. The proponent can apply to SAT for the confirmation but must do so within 28 days of the termination resolution being passed.
3. The proponent must serve notice of the application to SAT upon the strata company.
4. The strata company must (section 183(6)), within 14 days of being served with notice of the application, serve notice of the application on:
 - a. owners
 - b. occupiers of lots or common property
 - c. registered mortgagees
 - d. any other person SAT requires to be served
 - e. if the scheme is also a retirement village, the Commissioner under the *Retirement Villages Act 1992*.
5. The strata company must (section 183(6)) also provide SAT with:
 - a. a record of each vote on the termination resolution
 - b. minutes of all meetings of the strata company or the council of the strata company at which the termination proposal was considered
 - c. all written submissions made to the strata company about the termination proposal
 - d. the scheme plan, by-laws and schedule of unit entitlements and

¹ Troy, L, Easthope, H, Randolph, B, Crommelin, L and Pinnegar, S 2015, *Renewing the Compact City : Economically viable and socially sustainable approaches to urban redevelopment*, City Futures Research Centre, UNSW Australia

² Ibid

e. anything else required by the regulations.

6. The strata company must lodge a notification of the SAT application with the Registrar of Titles

7. Anyone who is required to be served with notice of the SAT application is entitled to appear and be heard or make written submissions to SAT

8. SAT can only make an order confirming the termination resolution if the proponent satisfies SAT of three key things, namely:

- a. the process required by Part 12 Division 3 has been complied with (this includes the requirements detailed in steps 1 to 7 above and the safeguards provided in section 189 (that the proponent must pay the costs of the process to the strata company) and 190 (that the proponent is to provide funding to specified vulnerable owners to respond to the proposal)
- b. every objecting owner will receive fair market value or a like for like exchange for the lot and
- c. the termination proposal is otherwise just and equitable having regard to the interests of:
 - i. owners
 - ii. the owner of the leasehold scheme
 - iii. occupiers of the lots and the occupiers of common property
 - iv. registered mortgagees
 - v. any person with an estate, interest or right recorded or registered in the Register.

9. In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, SAT must be satisfied that:

- a. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement and
- b. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme.

This means the objecting owner must be no worse off if the termination were to go ahead.

10. In considering the amount of compensation that would be payable under the *Land Administration Act 1997* section 241, SAT may also award an additional amount appropriate to compensate for the taking without agreement, but it may not be more than 10% of the amount otherwise awarded or offered unless SAT is satisfied that exceptional circumstances justify a higher amount.

11. Section 183(10)(b) clarifies how section 241 of the *Land Administration Act 1997* (LAA) applies in the case of calculating compensation payable for a termination, including that:

- a. the reference in section 241(2) of the LAA to public works is to be disregarded. In earlier consultation on the Bill stakeholders thought that section 241 of the LAA would prevent an objecting owner's lot from being valued according to the highest and best use of the lot. Disregarding section 241(2) of the LAA enables SAT to consider the highest and best use of the lot when assessing fair market value. An objecting owner will be entitled to be compensated for the uplift in value that their lot will experience because the site has been rezoned. This must be done because such a rezoning should be considered when assessing highest and best use for the lot.
- b. the reference in section 241(4) of the LAA to undertaking improvements after there is notice of intention is also to be disregarded. This means that if the objecting

owner makes improvements to the lot after the termination proposal has been served or even progressed to the SAT hearing in section 183, the owner is to be compensated for those improvements.

12. Without limitation, SAT must consider the loss or damage, if any, sustained by the owner by reason of any of the following (section 183(10)(c)):

- a. removal expenses
- b. disruption and reinstatement of a business
- c. liability for capital gains tax, goods and services tax or other tax or duty
- d. conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.

These are the types of expenses that should be paid for by the proponent to ensure that the objecting owner is no worse off financially if the termination proceeds. However, they are not the only expenses of an owner that should be paid by a proponent.

13. Fair market value is not set by the proponent. SAT assesses fair market value for each objecting owner according to that objecting owner's individual circumstances in accordance with section 183(9)(b), (10) and (11).

14. If the objecting owner is being offered a like-for-like replacement lot, SAT must consider:

- a. whether the value of the replacement lot is equivalent to the fair market value of the current lot and
- b. how the location, facilities and amenity of the replacement lot compares with the current lot.

15. Without limiting the factors that SAT can take into account when assessing whether the termination proposal is just and equitable, SAT must consider:

- a. evidence of any impropriety in the termination process including:
- b. evidence of proxy votes being exercised invalidly or votes being affected by undue influence
 - i. ii. evidence of false or misleading information in the outline or full termination proposal.
- c. the proportion of owner support for the termination by number of lots and unit entitlement
- d. the termination infrastructure report and options readily available to address problems identified in the report
- e. any arrangements to buy back into the subdivided land following redevelopment (essentially, what arrangements have been made for an owner to buy a new lot within a new scheme on the same site)
- f. the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers of lots or the common property, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.

16. If SAT is not satisfied that objecting owners will receive fair market value or that the proposal is otherwise just and equitable, SAT can order the termination proposal be modified to satisfy the fair market value and just and equitable tests. That order to modify the proposal:

- a. must not have the effect of being less advantageous to any owner of a lot (except in an owner's capacity as a proponent)

- b. without limitation, can include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or the common property.

17. In making an order to confirm a termination resolution, SAT can also make ancillary orders on specified conditions connected with the termination being met including (but not limited to):

- a. the owner of a lot must transfer the lot (and the owner will receive fair market value or a like for like exchange lot)
- b. the owner must deliver the duplicate certificate of title for a lot to the Registrar of Titles
- c. a person with an estate, interest or right over a lot of the common property that is registered or recorded in the Register must take steps necessary to discharge, withdraw or otherwise remove or bring forward the estate, interest or right
- d. the occupier of a lot or the common property must vacate the lot or common property.

18. SAT's powers under section 183 can be exercised only by a judicial member of SAT (or by the Tribunal constituted of a judicial member and other members).

19. As soon as practicable after the strata company is given notice of SAT's decision, the strata company must:

- a. lodge a notification with the Registrar of Titles of the decision of SAT and
- b. give written notice of the decision to each person entitled to receive notice of the application.

Policy

The policy for step 8 is detailed below.

1. The proponent is responsible for seeking an order of SAT to confirm the termination resolution (not the strata company and not objecting owners). The cost of applying and putting evidence to SAT to establish that the process has been followed, that each owner will receive fair market value and that the proposal is otherwise just and equitable should fall on the proponent.
2. The relatively short timeframe to apply to SAT is to ensure that the uncertainty owners and occupiers face with a termination proposal is mitigated.
3. The proponent does not have to proceed with the proposal even if a termination resolution has passed. Hence, the proponent does not have to apply to SAT.
4. The proponent has the burden of proving that the process has been followed, that each objecting owner will receive fair market value (or a like for like exchange lot) and that the proposal is otherwise just and equitable: section 183(9)
5. The phrase "otherwise just and equitable" means that SAT is to look beyond the amount of money objecting owners are being offered. Even if the proponent can show that the objecting owners are to receive fair market value, SAT still has to be satisfied that the proposal is otherwise just and equitable taking into account the interests of all the people listed in section 183(9)(c) and the matters listed in section 183(12).

6. The fair market value test set out in section 183 specifically takes into account the individual financial circumstances of each objecting owner, especially with the requirement that no objecting owner is to be worse off financially if the termination goes ahead.
7. The like for like replacement lot protection, when combined with the requirement that an objecting owner is to be no worse off financially and SAT's power to modify a termination proposal are a useful set of provisions that can ensure that objecting owners still have a home in the same suburb and are not financially out of pocket as a result of moving.
8. Requiring that an objecting owner is to be no worse off financially ensures that if a termination proceeds that objecting owner will be fully compensated by the proponent.
9. A like for like replacement lot is something a proponent can choose to offer to an objecting owner. However, If the objecting owner can give evidence to SAT that they need a like for like lot so that they are no worse off financially, SAT can modify the proposal (section 183(13)) to require the proponent to give the objecting owner a like for like lot and cover all taxes, moving costs and other transaction costs including discharging and re-registered a mortgage over the replacement lot.
10. An example of being financially worse off as a result of being paid a lump sum for a lot instead of being provided with a like for like replacement lot is where the objecting owner is a pensioner. If the pensioner were paid a lump sum by the proponent in exchange for their lot, they may lose their pension. In such a case, SAT could not order the termination proceed because the objecting owner who is a pensioner would be worse off financially as a result of the termination. SAT could order the modification of the termination proposal to require the proponent to:
- a. provide the objecting owner with a like for like replacement lot that would:
 - i. be in a nearby location
 - ii. have equivalent facilities
 - iii. have equivalent amenity and
 - iv. be equivalent to the fair market value of their current lot.
 - b. pay all of that owner's duties, taxes and moving costs
 - c. ensure that owner will not lose their pension if the termination resolution is confirmed by SAT.
11. Another example of when SAT may modify the proposal to require the proponent to provide a like for like replacement lot would be where the objecting owner owns a lot worth \$500,000 and has a mortgage registered against that lot for \$1 million. If the objecting owner were forced to sell their lot in exchange for a lump sum of less than \$1 million the objecting owner would be worse off financially as they would be required to pay the mortgagee the difference between the amount paid for the lot and the mortgage. SAT could not order such a termination to proceed, unless SAT made an order modifying the termination proposal so that the proponent:
- a. provide the objecting owner with a like for like replacement lot that would:
 - i. be in a nearby location
 - ii. have equivalent facilities
 - iii. have equivalent amenity and
 - iv. be equivalent to the fair market value of their current lot.
 - b. pay all of that owner's duties, taxes and moving costs
 - c. pay the owner's costs of discharging the mortgage over the current lot and any costs associated with the objecting owner mortgaging the replacement lot for the same amount.

12. A further example of when SAT may modify the proposal to require the proponent to provide a like for like replacement lot would be where the objecting owner owns a lot in a scheme within a suburb where there are no more old schemes. In such a case, if the objecting owner is paid a lump sum for their replacement lot, they would be unable to buy a lot within the same suburb with the lump sum. That objecting owner could show SAT that they will be worse off financially if the termination proceeds and they buy back into their current suburb. In such a case, SAT has the power to order the termination proposal be modified so that the objecting owner is provided with a like for like replacement lot in the same suburb (even though the replacement lot is worth more than the current lot) and all of the objecting owner's duties, taxes and moving costs are paid by the proponent.

13. The individual circumstances for each owner, whether those circumstances are financial or non-financial (including if that owner has specific mental health issues, other health issues or other physical requirements) are to be considered by SAT when it asks the question whether the termination proposal is just and equitable and in particular when SAT considers:

The benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interests (including owners) must be taken into account: section 183(12)(e)

14. The percentage of support for the termination proposal by unit entitlement is considered by SAT. For example, a termination proposal is supported by more than 80% of the lots, but if the same vote was taken using unit entitlement the support would be substantially less (in this example, 45% in favour and 55% against, by unit entitlement), SAT would have grounds to order the termination not proceed.

15. The following people may be heard during a SAT review of a termination resolution:

- a. owners
- b. registered mortgagees
- c. occupiers and tenants of lots and the common property
- d. people with an estate, interest or right registered or recorded in the Register.

16. In deciding whether the termination proposal is just and equitable, SAT must take into account the benefits and detriments of the termination for owners, occupiers, mortgagees and people with an estate, interest or right registered or recorded in the Register.

17. SAT was chosen as the forum to review the termination proposal because:

- a. SAT will be the one-stop-shop to resolve strata disputes
- b. Being the specialist forum for resolving strata disputes (referred to as scheme disputes in Part 13 of the Bill), SAT will develop the expertise to efficiently resolve strata disputes
- c. That strata expertise will be essential in reviewing a termination proposal.
- d. SAT is also recognised as being a more appropriate forum for people who are self-represented than the courts
- e. Orders under section 183 can only be made by a judicial member of SAT or by the Tribunal constituted of a judicial member.
- f. SAT routinely handles building defect claims under the Building Services (Complaint Resolution and Administration) Act 2001. The extent of repairs required for a scheme is one of the issues SAT must consider when asking whether the proposal to terminate is just and equitable: section 183(12)(c)
- g. SAT routinely makes determinations on the amount of compensation that should be paid under section 241 of the LAA

- h. SAT is well suited to holding effective mediations, which will be required to ensure termination proposals are appropriately modified.

18. The provisions of the *Residential Tenancies Act 1987* (RTA) apply to strata titles schemes. SAT must apply the RTA when making decisions in relation to termination. If a tenant has a fixed term residential lease, the termination cannot proceed while that lease is still running. SAT cannot order such a lease be terminated because an order to terminate a residential tenancy agreement can only be given by a court: see section 74 of the RTA. The reason why this is not expressly stated in section 183 of the Bill is because when legislation is drafted, there is no need to restate the law. If every piece of legislation restated the law in other legislation it would result in Bills running into the thousands of pages.

19. The reason for specifying that an owner may be paid up to 10% more for their lot to compensate for the taking without agreement was that this restates the position under section 241(8) and (9) of the LAA. If the amount payable to an owner above the fair market value is more than 10%, it encourages one owner to hold out to the detriment of other owners (who may well end up with less than the hold out) rather than moving towards a negotiated settlement. Note that SAT has full discretion to award up to 10% more than fair market value to an objecting owner. Exceptional circumstances might involve the fact that there are no other like-for-like lots in the area, so SAT increases the amount paid above fair market value so that the objecting owner can afford to buy back into the same neighbourhood.

Step 9. Request WAPC endorse the plan of survey - 184

1. If SAT orders that the termination resolution is confirmed, (or the termination proposal was supported by a unanimous resolution) the proponent then needs to request the WAPC endorse the plan of survey required to register the termination.
2. If the plan of survey is not endorsed, the termination proposal comes to an end.

Policy

In granting subdivision approval under section 177 of the Bill (for the proposal to terminate the scheme so that the multiple lots within the scheme become a single lot), WAPC may have imposed certain conditions. The policy for step 9 is to ensure that those conditions of subdivision have been complied with before the termination can be registered. If the subdivision conditions have not been complied with, WAPC may refuse to endorse the plan of survey and the termination proposal comes to an end

Step 10. Apply to the Registrar to register the termination – sections 185, 192, 193 and 194

1. Under section 185 the proponent can apply to the Registrar of Titles to terminate a scheme if:
 - a. WAPC has endorsed the plan of survey under section 184
 - b. the steps required to wind up the strata company:
 - c. under the termination proposal prior to the termination have been taken or
 - i. ii. under an order made under section 192 (for directions about winding up the strata company) prior to the termination have been taken

- d. the application is made within 12 months of the unanimous resolution to terminate or the SAT order confirming the termination proposal.

2. Under section 193 the application to a registrar of titles to register the termination of a scheme must:

- a. be made in an approved form
- b. be accompanied by the plan of survey endorsed with the approval of the WAPC
- c. be accompanied by evidence in an approved form that the requirements of the Act for termination of the scheme have been complied with
- d. be accompanied by a statement of how each item registered or recorded for the scheme in the Register is to be dealt with and disposition statement, instruments and other documents necessary for those dealings
- e. be accompanied by a fee.

3. The registration process for the Registrar of Titles to cancel the registration of the scheme and certificates of titles for the lots in the scheme is provided for in section 194. The scheme is terminated when the Registrar cancels the registration of the scheme.

Policy

The policy for step 10 is:

1. To ensure the assets and liabilities of the strata company have been properly dealt with before the application to register the termination of the scheme has been made.
2. To provide the proponent with sufficient time (12 months) to:
 - a. obtain the endorsement of the plan of survey as required under section 184
 - b. arrange all of the other terms of settlement (such as settling on the like for like replacement lots) and
 - c. ensure that the assets and liabilities of the strata company have been properly distributed or dealt with.
3. To ensure each item registered or recorded for the scheme in the Register is properly dealt with when the scheme is terminated.

Further notification requirements – sections 186, 187 and 188

1. The proponent must notify the strata company (and the owner of the leasehold scheme, if it is a leasehold scheme) if the proponent decides not to proceed with a termination proposal: section 186(1).

2. If the strata company is given notice that the proponent has withdrawn the termination proposal, the strata company must, within 14 days:

- a. serve notice of that withdrawal on:
 - i. on owners
 - ii. if the full proposal has been served, on the occupiers of lots and common property
 - iii. on registered mortgagees.
- b. lodge notice of the withdrawal with the Registrar of Titles. See section 186(2).

3. Section 187(1) provides the circumstances when a termination proposal cannot proceed further as:

- a. at the end of 3 months after the outline of the termination proposal has been submitted to the strata company, the requirements of section 176 have not been met (essentially that an ordinary resolution in support of the outline proposal having been passed)
- b. at the end of 3 months after the full proposal has been submitted to the strata company, the requirements of section 180 (the support of the owner of the leasehold scheme) have not been met
- c. at the end of 6 months after service of the full proposal by the strata company, a termination resolution has not been passed
- d. at the end of 12 months after a termination resolution that does not require the confirmation of the Tribunal has been passed, no application for termination of the strata titles scheme has been made to the Registrar of Titles
- e. the termination resolution requires confirmation of the Tribunal and —
 - i. the Tribunal makes a decision not to confirm the resolution; or
 - ii. at the end of 12 months after the making of an order under section 183 confirming the termination resolution, no application for termination of the strata titles scheme has been made to the Registrar of Titles.

4. Section 187(2) provides that the strata company must:

- a. lodge a notice with the Registrar of Titles that the termination proposal cannot proceed further and
- b. give written notice confirming the termination proposal cannot proceed further to:
 - i. the proponent
 - ii. the owner of the leasehold scheme and
 - iii. owners of lots.

5. Section 188 provides that the Registrar of Titles is to:

- a. record notices as a notification in the Register (of the termination proposal) and
- b. record a notice of withdrawal of a termination proposal as a withdrawal of all earlier notifications relating to that termination proposal.

Policy

The policy for these notification requirements is to ensure that:

- a. owners are kept informed of the status of the termination proposal
- b. people who search the scheme documents (such as a prospective buyer or prospective mortgagee) can see the status of the termination proposal
- c. appropriate notifications are recorded about the status of the proposal by the Registrar of Titles.

Safeguards for leasehold schemes

1. Leasehold strata titles schemes (leasehold schemes) will also be subject to the same termination pathways detailed above, however various processes and consents are adapted to leasehold schemes.

2. A leasehold scheme terminates:

- a. On the expiry day for a leasehold scheme or
- b. Where there is a termination proposal and the process referred to in Part 12 Division 3 is followed or
- c. if all the lots in the scheme are owned by the same person and the process referred to in Part 12 Division 4 is followed. This is provided in section 191 where a single owner terminates having obtained subdivision approval and the single owner is either the owner of the leasehold scheme or has obtained the written consent of the owner of the leasehold scheme to terminate).

3. Part 12 Division 3 provides that a leasehold scheme can terminate by unanimous resolution or, if the scheme has 5 or more lots, through the majority termination process (and subject to the SAT order confirming a termination resolution).

4. Part 12 Division 3 contains the following process and consent requirements specific to leasehold schemes:

- a. The proponent must submit the outline proposal on the strata company and the owner of the leasehold scheme: section 174(1)(b)
- b. The owner of the leasehold scheme may apply to SAT for an order that termination proposals not be submitted to the strata company / owner of the leasehold scheme for a specified period: section 174(2)(c)
- c. An outline proposal submitted to a strata company for a leasehold scheme requires both the ordinary resolution of the strata company and the consent of the owner of the leasehold scheme before the termination proposal can proceed to the next step: section 176(1)(b)
- d. The proponent must submit the full proposal on the strata company and the owner of the leasehold scheme: section 178(1)(b)
- e. The proponent must also give written notice to the owner of the leasehold scheme of the date on which the proponent submitted the full proposal to the strata company: section 178(3)
- f. A termination proposal cannot proceed further unless, within 3 months of the full proposal being submitted to the strata company, the owner of the leasehold scheme gives written notice to the strata company confirming the owner of the leasehold scheme supports the full proposal. The strata company must then notify the proponent of this support: section 180.
- g. The strata company must give written notice to the owner of the leasehold scheme if the termination resolution has passed: section 182(11)
- h. The proponent must serve the application to SAT under section 183 on the owner of the leasehold scheme: section 183(4)(b)
- i. The owner of the leasehold scheme is taken to be a party to the proceedings under section 183: section 183(5)
- j. a copy of the notice of support for the termination resolution given by the owner of the leasehold scheme must be given to SAT by the strata company: section 183(6)(c)(i)

- k. The modifications to a termination proposal ordered by SAT must not be less advantageous to the owner of the leasehold scheme, than the termination proposal without the modification (unless the owner of the leasehold scheme is the proponent): section 183(15).

Policy

The policy for these measures is to ensure that the owner of the leasehold scheme is fully informed and consents to the proposal to terminate the leasehold scheme.

F. Consultation

1. Public consultation and feedback

Public engagement and feedback on the proposal to introduce reforms to the termination of schemes was generated through:

- a. The Strata Reform Consultation Paper that was released for public comment, with the consultation phase open from 31 October 2014 to 16 January 2015. That consultation paper contained draft proposals to reform the termination of schemes. The Strata Reform Consultation Paper is contained in Appendix A.
- b. For the duration of this consultation phase on the Consultation Paper, Landgate ran a media campaign to raise awareness of the strata reforms and call for feedback to the consultation paper. Details of the media campaign directing the public to the Consultation Paper are contained in Appendix B.
- c. 1,160 comments from 154 participants were received in response to that Consultation Paper.
- d. In January 2016, Landgate publicly released the Strata Reform Position Papers on Landgate's website. Those position papers contained over 100 pages of detail of the reforms (including an entire Position Paper on Termination of Schemes) and were updated as the Bills were drafted.
- e. Members of the public were invited to provide feedback on the reforms as detailed in the Position Papers through the dedicated strata reform email address.
- f. Landgate kept the public updated on the proposed reforms to termination of schemes by updating the Termination Position Paper on Landgate's website as the drafting on the Bill progressed.

2. Consultation with government, industry and community groups

The Bill, including Part 12, is the result of extensive consultation over many years with State Government, industry and community organisations.

Landgate conducted briefings and meetings with government, industry and community group stakeholders to obtain their feedback on all elements of the strata reforms (including termination of schemes) from the period 2013 to 2018.

In March 2018 Landgate released a *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* to stakeholder groups including government, industry and community organisations to obtain their feedback. The *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* is contained in Appendix C. A list of the stakeholders that this *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* was released to is contained in Appendix D.

Stakeholders submitted written feedback to Landgate on the *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes*. A copy of that written feedback from stakeholders is contained in Appendix E.

Further improvements were made to the termination provisions of the Bill based on consideration of that feedback from stakeholders (to the Consultation draft of the Bill) and feedback from the public on the Termination of Schemes Position paper.

Landgate released the following consultation drafts of the *Strata Titles Amendment Bill* to stakeholders representing government, industry and community groups for comment on technical aspects of the Bill:

- a. Provisions to regulate strata managers (August 2016)
- b. Management provisions (January 2017)
- c. Dispute Resolution and Staged Development (February 2017)
- d. Seller Disclosure / Buyer Protection (April 2017)
- e. Termination of Schemes (March 2018)
- f. Complete (not final) draft of the *Strata Titles Amendment Bill*, including leasehold schemes (May 2018)

G. Expert advice

Specialist advice was sought from a number of experts in majority termination, valuation and compensation payable for compulsory acquisition of land by the State.

Landgate commissioned research by the City Futures Research Centre at the University of NSW in 2015 into the current state of the strata title sector in the Perth and Peel region with a view to gaining a better understanding of the age, composition and location of current strata schemes and information about schemes that had terminated. That research delivered: *Strata Titles Act Reform: Report on state of the strata sector in Perth and Peel Region*, which is contained in Appendix F. The findings of that report helped shape the model for termination of schemes.

Landgate obtained advice on the *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* from the City Futures Research Centre at the University of New South Wales. The City Futures Research Centre are recognised as experts within Australia on majority termination of strata schemes and have conducted extensive research into the termination of schemes. A copy of the written advice provided by the City Futures Research Centre in response to the *Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes* is contained in Appendix G.

Landgate sought the advice of experts in valuation and compensation for compulsory acquisition and that advice was used to formulate the valuation and compensation provisions in Part 12. A copy of that advice is contained in Appendix H.

H. Best practice from other jurisdictions

Landgate investigated how majority terminations were operating in other jurisdictions, most notably, Northern Territory, NSW and Singapore.

Landgate sought advice from experts in majority terminations in those jurisdictions, including advice on appropriate safeguards for minority owners from Professor Teo Keang Sood, (a professor in the Faculty of Law at the National University of Singapore and a member of the Strata Titles Boards of Singapore).

Landgate sought advice in formulating the core principles and procedures for majority termination of schemes from:

- a. the Commercial and Property Law Research Centre (CPLRC) at the Queensland University of Technology. The team at CPLRC were conducting research on behalf of the Queensland government into the majority termination of schemes and
- b. the City Futures Research Centre at the University of New South Wales (UNSW).

Landgate also considered the findings and the recommendations about the NSW majority termination of schemes process, contained in the City Futures Research Centre Report *Renewing the Compact City: Economically viable and socially sustainable approaches to urban redevelopment*³.

Landgate identified the elements of those termination models in other jurisdictions that were working well and applied best practice from those jurisdictions to the WA model.

A detailed comparison of the majority termination of schemes models in WA, NSW, Singapore and the Northern Territory is contained in Appendix I.

³ Troy, L, Easthope, H, Randolph, B, Crommelin, L and Pinnegar, S 2015, *Renewing the Compact City: Economically viable and socially sustainable approaches to urban redevelopment*, City Futures Research Centre, UNSW Australia

I. Snapshot of the reform journey

The current round of strata reforms began in 2013 and resulted in the development of a series of discussion papers released to industry and government stakeholders for comment.

An August 2014 a discussion paper on termination of schemes noted:

- a. that all of the 1,129 strata titles schemes terminated since 1970 were done so under the Act's unanimous resolution provisions.
- b. that strata schemes have a finite life determined by the age of the building, its capacity for refurbishment and the proprietors' capacity to pay for refurbishment and
- c. that the two existing mechanisms for a non-unanimous termination (sections 31 and 51 / 51A) were deficient.

The Strata Reform Consultation Paper released to the public by Landgate in October 2014 included a chapter on majority termination of schemes and proposed some elements adapted from the model of the draft Northern Territory majority termination legislation (enacted as the *Termination of Units Plans and Unit Titles Schemes Act 2014 (NT)*).

154 participants submitted 1,160 comments on proposals contained in the Consultation Paper. Approximately 5% of the comments related to the termination proposals. A five to one majority of that feedback supported the initiative of termination by majority vote. Feedback included that schemes of less than 10 lots should be governed by the same majority process and some comments emphasised the need to protect individual's rights.

In 2015 Landgate looked more closely at the Singapore and NSW majority termination models. Singapore had some good lessons to learn from because majority termination had been in operation there since 1999 and that legislation had undergone several rounds of amendments to refine the process. The majority termination proposals in the draft NSW legislation also had some good elements because of the efforts taken by the NSW government to apply the extensive research undertaken by the City Futures Research Centre at UNSW.

The proposed majority termination process under the former government contained elements from the NSW, Singapore and Northern Territory majority termination legislation.

With the election of the McGowan government, Landgate was directed to provide more safeguards for owners.

The current proposal for the termination of strata schemes contained in Part 12 of the Bill provides substantially better protection for owners, occupiers and people with a registered interest than the draft proposal which was presented to the public in 2014. On balance, Part 12 contains better safeguards for owners than the safeguards contained in majority termination legislation in other jurisdictions.

J. Experience in other jurisdictions

1. The experience in other jurisdictions that have majority termination is that majority termination has actually led to increase in the value of lots in older schemes where there is redevelopment potential.
2. In Singapore, where majority termination has operated for over 18 years, people actually buy a lot in a strata scheme when they hear a developer is interested in making a termination proposal because the offer the developer makes to terminate is usually very generous to owners of the lots.
3. In NSW, where majority termination has been in operation for 14 months, more terminations appear to be happening because people who are just holding out for big profits know that they should accept a generous offer rather than find themselves being ordered to do so by the court months later. Anecdotally, owners are being offered 50% to 100% more for their lot by a developer looking at redeveloping a site.
4. The safeguards in the majority termination process proposed for WA will protect people who should be protected (such as vulnerable owners) and the majority termination process will flush out the people wanting to profit by holding out at the expense of other owners who have been made a generous offer to exit a scheme where the maintenance costs are starting to spiral to unaffordable levels.

END

Strata Titles Act Reform

Consultation Paper

October 2014

Table of Contents

1	Introduction	1
2	Tenure Reform: Overview	5
3	Tenure Reform: Community title schemes	7
4	Tenure Reform: Mixed use development in a community title building Tenure	33
5	Reform: Leasehold strata schemes	42
6	Tenure Reform: Staged strata development	51
7	Vendor disclosure	55
8	Management of strata schemes	63
9	Dispute Resolution	77
10	Termination of strata schemes	93
11	Glossary	103
12	Appendix A – Disclosure Forms	112
13	Appendix B – Relevant Legislation	117

1 Introduction

This is a consultation paper which proposes a range of reforms to the *Strata Titles Act 1985* (WA). The proposals are subject to public feedback and this will be taken into account before a Strata Reform Package Paper, with recommendations is submitted to Government to consider.

What is the *Strata Titles Act 1985*?

The Strata Titles Act 1985 (the STA) is the legislation which sets out how land and buildings can be subdivided to provide for multiple owners holding individual titles, and co-owning any common property, within an overall 'strata scheme'. The STA also provides for the establishment of a strata company for the management of the scheme and rights and obligations of the proprietors of the individual lots within the scheme. The plan, titles, strata company and proprietor's rights and obligations together comprise a 'strata scheme'.

The primary focus of the proposals in this document to reform the STA is to

- Introduce new forms of strata title schemes, including community title and leasehold strata
- Support mixed use developments
- Introduce greater flexibility to support staged strata developments.

Some further proposals for amendments to the STA have been included that will substantially improve the:

- Quality and accuracy of information provided to buyers of strata titled property
- Way strata schemes are managed
- Resolution of strata title disputes
- Way strata title schemes can be terminated.

How will the reforms impact current strata ownership?

These reforms are not aimed at changing current strata owners' land titles and boundaries, but do aim to improve the way strata schemes work.

The proposals in this paper dealing with the new forms of title (community title and leasehold strata title) will not impact on current strata and survey-strata schemes (current schemes), except where all of the owners in existing schemes choose to take advantage of the new framework. It is expected that only a few existing schemes would make this choice.

Proposals under consideration for current schemes, include where proprietors in a scheme of 10 or more lots, may resolve to terminate the scheme on a majority vote, and the proposal that after the resolution to terminate the scheme is made a new plan of subdivision will be required with an election by the proprietors of the scheme on how the land is to be disposed of.

There will be an increased need for disclosure on vendors of strata properties and their agents. However this is balanced by the need for consumer protection and the fact that increased knowledge about what a purchaser is buying should have an indirect beneficial effect on the overall operation of strata schemes.

Contracting between strata companies and strata managers will be strengthened. Strata managers will lodge information at Landgate, standards of conduct will be set in a code of conduct, and strata managers will account for strata company funds and records.

Strata companies (the proprietors in a scheme) will also be given increased powers, to deal with matters electronically. This has potential benefits and cost savings for the proprietors in terms of access and speed of access to records, being able to vote without physically attending a meeting and receiving notices of meetings.

The provisions to clarify the roles and functions of strata managers, strata councils and strata companies should have a significant beneficial impact on the management of strata schemes.

The streamlining and simplification of dispute resolution with SAT becoming the “one-stop shop” for resolution of disputes outside of any internal scheme process should have a major beneficial impact on schemes.

What is being proposed?

Each chapter of this consultation document contains proposals to improve the STA and an outline of those chapters is as follows:

Community title schemes – Currently, the STA establishes that when a strata scheme is created, it is comprised of one strata company, which is subject to one set of by-laws. (By-laws set out the standards of behaviour, building maintenance and management arrangements within the strata scheme). This limits the flexibility of a strata title scheme to have varied arrangements for the common property, or to have by-laws that apply to some proprietors, but not others. This chapter will propose a structure for a community title scheme which creates multiple levels of management, allowing for multiple strata titled schemes on one land parcel under an overarching body corporate. The use of a ‘development statement’ to set out planning and development controls for a community title scheme is also proposed.

Mixed use developments in a layered building – Similarly, at present the STA does not allow multiple strata schemes in a single building. This chapter details how a community title scheme may be created in a building, facilitating different uses, such as for residential, commercial and retail purposes, each within their own strata scheme but operating under an overarching community corporation.

Leasehold strata – At present, some land owners may not be in a position to sell their land, but wish to have it developed; for example, this may be the case for institutions such as churches and universities. Leasehold strata would give the landowner the ability to enter into a long-term lease arrangement with a developer who is authorised to create a leasehold

strata scheme over the leasehold interest in the land. A purchaser of leasehold strata gets the benefit of a more cost effective way of buying an interest in land, which comes with the certainty of a title. This chapter proposes that leasehold strata certificates of title be issued for the leasehold lots.

Staged strata developments – At present, developers have limited flexibility for building a strata development over time, in stages. Within a strata development, they must set what each stage will include, and cannot vary much from this without needing unanimous agreement from proprietors in earlier stages. This chapter has proposals that include that minor changes in later stages of the development can be made without unanimous agreement from all existing proprietors in new schemes. Further, it is proposed that developer obligations be made clearer by separating them from the by-laws which dictate the day to day running of the scheme.

Vendor disclosure - The STA sets out that anyone selling a strata titled property must give certain information to a purchaser before the contract is signed. This vendor disclosure is important, as the purchaser must understand the implications of not only living in close proximity to others, but also having responsibilities, for example, in relation to levies and common property. This chapter contains proposals for more effective vendor disclosure arrangements, so that they give a better quality of information in a more user-friendly format. Additional vendor disclosure requirements are proposed for community title and leasehold strata titles.

Management - The STA sets out the management arrangements for strata schemes, such as how the members of a strata title scheme are to interact with each other in order to make decisions. This chapter sets out proposed changes to clarify the role and functions of strata companies, strata councils and strata managers. They will allow for the use of technology in meetings, voting and giving information to members and keeping records. They will also promote greater transparency and accountability in financial management of strata companies, and redefine how strata companies operate and interact with their members.

Dispute Resolution - When disputes in a strata title scheme occur, the STA sets out ways that these can be resolved. However, the dispute resolution provisions in the STA are too complex, limit the State Administrative Tribunal's (SAT's) power to resolve strata disputes consequently, this has resulted in a confusing framework, where strata disputes are heard in 4 different forums, to resolve disputes which is neither effective nor efficient. This chapter sets out proposals to simplify and streamline strata dispute resolution by making SAT the one-stop shop for disputes. It also proposes granting SAT the power to resolve disputes arising from community title schemes and leasehold strata title schemes.

Termination of Strata Schemes - Buildings do not last forever, and the STA sets out a process to terminate a strata scheme. Presently, for a strata scheme to be terminated, all of the strata proprietors of the strata scheme must vote unanimously for this to occur or a proprietor can apply to the District Court. In practice, it is quite difficult to achieve unanimous agreement, and under some circumstances, this could be unfair to the majority of proprietors. This chapter proposes a model for the termination of a scheme by a majority vote, based on the age of the building, where the majority is defined as a lesser percentage of proprietors for older buildings. There is protection for proprietors who object to the

termination. The changes also outline what occurs after termination, such as how the land is subdivided and the rights of ownership created.

The proposals in this paper are primarily directed towards amendment of the STA. Some consequential changes to related legislation will also be required as part of the proposed reforms.

CTAC amendments

Amendments to the STA were developed by the Community Title Advisory Committee (CTAC), a working group of key industry and government stakeholders. These have been included in this document for completeness. Because they cover a wide range of matters across the STA, they do not occur in one chapter, but are mentioned in the context where they are relevant, in particular the chapters on vendor disclosure, management and dispute resolution.

What is the reform process?

This consultation phase was preceded by targeted consultation throughout 2014 with a range of industry bodies, professional bodies, government agencies, members of the State Administrative Tribunal (SAT), practitioners and academic experts in strata. Those consulted are listed in **Appendix A**.

The reform proposals in this document are the outcome of that earlier consultation, research on the relevant legislation in Western Australia and other Australian States and Territories, Court and Tribunal decisions on the topics, consideration of discussion and position papers published by the other States and Territories, and consideration of Parliamentary Inquiries into the role of strata managers in Western Australia.

Why we need your feedback?

Your feedback from this consultation phase is important for Landgate to develop the package of reform proposals for the STA, with a view to a reform Bill being introduced in the spring session of Parliament in 2015. Your feedback is also important so that in developing the package of reform proposals a clear understanding can be gained about:

- The level of support (or otherwise) for each proposal
- The impact on current processes
- New costs, processes and system changes that may be required
- Cost savings from the streamlining and simplification of processes
- Improvements to the way that strata companies, strata councils, strata managers and others interact with each other
- Identification of any other proposals that may be required to implement the reforms.

Glossary

Please refer to the Glossary as a guide to the terms and expressions used in this document.

10 Termination of strata schemes

Strata schemes in practice have a finite life determined by the age of the building, its capacity for refurbishment and the owners' capacity to pay for that refurbishment. If a building becomes run-down, it will become harder to meet the insurance obligations under the STA, as insurers indicate that the cost of replacement of buildings increases if the building is not maintained to correct standards. The value of proprietors' interests in the scheme drops.

- Land zonings may increase density in an area so that it becomes an attractive option to redevelop existing schemes with a higher density
- The scheme may have become unworkable, for example where it was a themed development, most proprietors want to change and or remove the theme and some proprietors insist on keeping the theme
- The majority of proprietors may be keen to end the scheme but one proprietor disagrees and prevents the unanimity needed to terminate the scheme by unanimous resolution

For these and more reasons, one or more strata proprietors may wish to end, or terminate, an existing strata scheme, so that they can demolish existing structures and redevelop the land themselves or sell to a third party developer outright or in partnership or joint venture with one or more of the strata proprietors.

10.1 Existing process to terminate a scheme

Currently, the STA allows for schemes to be terminated in three ways:

1. A unanimous resolution by all the owners of lots in the strata scheme.
2. By order of the District Court, on application for termination made by the strata company, a proprietor or a registered mortgagee of a lot within a scheme (s31).
3. By order of the District Court to deem a resolution to be unanimous, (under s51) when there has been an attempt at a unanimous resolution which has failed, but gained sufficient votes to be considered a 'special resolution', (the definition of a special resolution varies according to the size of the scheme, but generally speaking it is more than 50% 'for', and less than 25% 'against'). A proprietor who voted in favour of the resolution may make the application. Under these circumstances the District Court may order that the resolution be deemed to have been passed as a unanimous resolution. In the case of a 2-lot scheme a proprietor may apply for termination of the strata scheme (under section 51A).

10.2 Why the need for change?

While either of these Court processes mentioned above would allow for the termination of a scheme without a unanimous resolution, the process is costly. Further, no guidance is given to the District Court on what factors to consider when dealing with an application by an

owner of a strata property, mortgagee or the strata company to terminate the scheme. The cost and uncertainty of outcome means that the Court option to end a scheme is rarely used.

The need for a unanimous resolution of owners to end the scheme means that the resolution is rarely obtained. Landgate records indicate that since 1970 only 1129 schemes have come to an end. This is in the context of there being more than 60,000 registered schemes.

At the moment a single owner can prevent sale or redevelopment of the land in the strata scheme against the wishes of the majority. There is an inherent tension between the owner's property rights conferred by the strata title and share in the common property and the fact that those property rights are part of a broader strata or community scheme of rights and obligations. There is an argument that democracy and a majority vote to terminate should prevail over the wishes of a dissenting minority.

Town planners and developers have asked for more flexible arrangements to end schemes to facilitate planning strategy of urban renewal and urban infill, especially where zoning arrangements are changed, to permit increased density and development around transport hubs. This is consistent with the Western Australian State Government's Affordable Housing Strategy. The Department of Housing is facilitating a whole-of-government approach to increasing the supply and diversity of affordable housing to low-to-moderate income households.

Further, Directions 2031 states "Over the past 30 years the metropolitan Perth and Peel region has experienced sustained growth and is now home to a population of approximately 1.65 million. There are a number of growth projections for Western Australia – including the Western Australian Planning Commission's "WA Tomorrow" planning forecasts and those produced by the Australian Bureau of Statistics. Based on the WA Tomorrow report (WAPC 2005) report, it is expected that by 2031 the estimated population will have reached 2.2 million, adding more than half a million new residents to the city. Planning for these extra residents, along with the housing, infrastructure, services and jobs they will require presents a significant challenge to Government. Creating a more flexible option for owners to end current strata schemes is one small part of a solution for achieving the infill targets set in Directions 2031. The objectives of the reform proposals for ending of strata schemes are to provide the additional flexibility requested and increased transparency and certainty in the process. The suggested proposals in this paper would apply to existing and new schemes.

Not all strata proprietors are opposed to terminating a scheme by majority vote. However strata owners' views on termination of their scheme are not uniform. This reflects the varied reasons why they live in, invest in or have office, retail or industrial premises in a strata community. They may be owner-occupiers benefiting from access to shared facilities or a particular community themed development; their home may be their castle and they consider that as owners no-one may take away their property rights; they may be elderly residents who may not want to leave the location/unit for any number of reasons including effort in moving, nearness to family and amenities or cost of finding equivalent accommodation in the location; they may be investors who do not want to be exposed to capital gains tax implications at the particular time or to have to deal with tenants required to exit the property; they may be superannuation funds seeking a return on investment; they may be concerned that by implementing an easier way to end the scheme financiers will consider that strata is a more risky asset to lend against; they may buy into a scheme to protect the amenity of a

nearby property or they may be agreeable to ending the scheme provided they get the right price for their lot or a lot in the new development.

In view of the broad range of reasons why people buy into strata and their reasons for staying as owner of that strata lot it is hardly surprising that there is no common view on when a scheme can be brought to an end and why the obtaining of unanimous consent is difficult to obtain.

10.3 What issues does this chapter deal with?

This termination chapter discusses two separate issues around termination:

1. The process of terminating a strata title scheme. This includes changing the voting criteria for termination of schemes with 10 or more lots so that a majority vote is sufficient to end the scheme (additional rules will apply to community title schemes)
2. The consequences of the resolution to terminate the strata title scheme. Clarification of how the scheme land is subdivided and what the ownership rights and obligations of the former strata owners and others are after the owners vote to end the scheme by unanimous resolution.

10.4 Process of terminating transferred to SAT from District Court

As previously mentioned, the current legislation gives the District Court power to order termination of the scheme under s31. Note that using this section does not require the proprietors of the scheme to vote on the termination of the scheme.

Section 51 (s51A for a 2-lot scheme) gives the District Court power to deem a resolution of the scheme to be unanimous if it meets the criteria for a special resolution. This is when an attempt at a unanimous resolution has failed, but enough proprietors have voted in favour to meet the criteria of a 'special resolution'. A proprietor who voted in favour of the application can apply to the District Court for the vote to be considered unanimous. It is proposed to transfer the District Court's powers under s31, 51 and 51A to SAT.

Please see further discussion of this proposal in the dispute resolution chapter of this paper "Transfer strata jurisdiction from District Court to SAT".

In the case of a primary or secondary scheme within a community title scheme any owner in a subsidiary scheme would be able to apply to SAT on the same basis (please see discussion of primary scheme, secondary scheme and subsidiary scheme in the tenure section of this paper. Chapter "Two or three management levels").

Termination of schemes by unanimous consent will remain.

10.4.1 Principles to assist a SAT decision on termination of a scheme

An application to terminate a strata title scheme by court order is rarely done. One reason for this is that there is no guidance provided to intending applicants as to what the court must

consider in deciding the application. Therefore applicants may find it difficult to determine what the likely outcome of their application may be.

It is proposed to provide standard principles are proposed to guide to SAT on factors to take into account when considering whether to order termination or, to deem a resolution to terminate unanimous. This should result in greater transparency and certainty in decision making for applicants and assist applicants to assess the likelihood of success of an application to SAT before they make such application. These principles would require that

- A. SAT must be satisfied on the following main factors:
 - That ending the scheme is just and equitable
 - Objections are unreasonable
 - That ending the scheme is necessary taking into account any factors that may be prescribed in regulations
- B. In making its decision SAT must also consider the following:
 - The extent to which owners suffer adverse consequences if termination is ordered or not ordered
 - The financial benefits and risks of the termination (and if applicable, any redevelopment)
 - The financial benefits and risks of the termination not being proceeded with and the redevelopment not proceeding
 - Whether there is some other order that could be made

In making its decision SAT must take into account any views expressed by the relevant local government body, WAPC, the views of the strata company and the owner or mortgagee of any lot in the scheme or if the scheme is in a community scheme, the strata company and the owner or any mortgagee of a lot in the primary or secondary scheme.

Proposal:

Proposal 192.	Jurisdiction for termination matters to be transferred from the District Court to SAT
Proposal 193.	SAT will apply principles in determining all decisions on ending schemes, including that ending the scheme is just and equitable, objections are unreasonable and that ending the scheme is necessary taking into account any factors that may be prescribed in regulations

10.5 Terminating a scheme of 10 or more lots by majority vote

The termination proposals outlined for schemes of less than 10 lots would also apply to schemes of 10 or more lots. It is proposed that schemes of 10 lots or more have an additional mechanism to end the scheme by majority vote. The number of proprietors required for the majority vote to pass will be tied to the age of the scheme.

Buildings have a finite life, and with greater age the repair and refurbishment costs may become onerous. Where an older building is no longer financially viable to maintain it may

not be feasible to continue the scheme. However both new and old strata title schemes must go through the same, arguably onerous, termination process.

The community impacts of ending the scheme must be identified, considered and managed. These include issues such as ensuring just value for proprietors, avoiding the displacement of elderly residents and tenants, the impact for rating and taxing authorities and protection of third party rights.

The proposal is to allow a majority vote for schemes which have 10 or more lots and are at least 15 years old. This is to reflect the reality that buildings have a finite life, and repair and refurbishment costs may impact more heavily on older schemes. A lesser percentage vote will be required as the age of the scheme increases.

Principles for determining age of a scheme would be provided. For example:

- If the scheme has a building and the date of substantial completion can be proved then that will be the age
- If that cannot be proved the date of approval of first occupancy will apply
- If that cannot be established the date of registration of the scheme will apply
- In a staged development age will be determined on the age of the first building in the scheme

10.5.1 The termination information statement

An owner of a lot, or an entity comprising more than one owner, must commence the process of termination by serving on the strata company, an information statement. In the case of community schemes, a strata company can do this. The proponent can commence the process to terminate a scheme by majority vote without first attempting to obtain a unanimous resolution.

The information statement must contain prescribed information about the proposed termination of the scheme and request that a strata company meeting be held to deal with the application. The information statement must contain the following:

- An explanation of the process
- A statement of rights concerning the sale of the lots, including the right of an objecting owner to sell his or her lot
- A statement about any proposed disposition of any property owned by the strata company
- A statement of what is to happen to common property
- Details about any redevelopment of the land (eg. plans, dates, costs, relocations, details of any future scheme, estimated value of any completed new scheme);
- Proposed entitlements for any new scheme
- Statement disclosing any arrangements with other persons (eg developers)
- Any other information that may be prescribed

10.5.2 Next steps

The strata company must serve a copy of the information statement on each owner and mortgagee of a lot that has given notice of the mortgage to the strata company.

The strata company is obliged to hold a meeting to deal with the proponent's proposal. This meeting must be held within 12 months but not less than 3 months after the information statement is given to the strata company.

If the strata company fails to comply with its notice and/or meeting obligations then an application may be made to SAT for orders directed to the strata company to ensure the notice is given and the meeting held.

Voting will be on the basis of 1 vote per lot.

If the required percentage of owners vote in favour of the proposal to terminate the scheme the resolution will be carried.

Within 14 days of the resolution the strata company must serve copies on each owner and mortgagee of a lot that has given notice of the mortgage to the strata company.

An owner who objected to the resolution or did not attend or vote at the meeting must do one of the following within the prescribed number of days of the resolution (proposed to be 182 days: approximately 6 months):

- Abandon the objection
- Sell the lot to a third party
- Commence the process of selling the lot to the proponent
- Apply to SAT objecting to the resolution

If the objector does not take any of the above actions the proponent may apply to SAT for an order for sale of the lot. SAT can fix the minimum price and the terms and conditions of sale after arranging for the valuation of the lot.

If the proponent does not achieve the required percentage vote then the proponent may apply to SAT for an order to end the scheme.

After a successful resolution to terminate the scheme a notice must be given to the Registrar of Titles. Upon recording by the Registrar of Titles an owner who supported the resolution and any subsequent owner of that lot is bound to maintain that support for 12 months. If there is a change of ownership before the recording that owner is treated as an objecting owner.

If the first attempt to obtain the majority vote is unsuccessful a second attempt may not take place for 6 months.

The scheme does not come to an end until the required documents are registered by Landgate. The documents cannot be registered until the period for objecting has lapsed and any decision on an application (by objector or proponent) has been made.

Proposal:

Proposal 194.	A scheme with 10 or more lots may resolve by majority vote to terminate the scheme
Proposal 195.	The process of termination by majority vote for a scheme of 10 or more lots is commenced by the serving of an information statement on the strata company, which sets out details of the proposed termination
Proposal 196.	<p>The percentage of proprietors that approve the termination for a scheme would be:</p> <ul style="list-style-type: none"> ○ 95% for a scheme aged 15 or more years but less than 20 years ○ 90% for a scheme aged 20 or more years but less than 30 years ○ 80% for a scheme aged 30 or more years. • The vote is on a 1 vote per lot basis
Proposal 197.	If the required majority is achieved, the resolution to terminate has been passed
Proposal 198.	Objecting owners may sell their lot to a third party, sell to the proponent of the process or seek review of the majority decision at SAT. SAT will apply principles in determining all decisions on ending schemes
Proposal 199.	If an objecting owner does none of the strategies outlined above, the proponent may apply to SAT for an order for sale of the lot to the proponent
Proposal 200.	SAT will have the authority fix the minimum price and the terms and conditions of sale after arranging for the valuation of the lot
Proposal 201.	If the vote fails the proponent can apply to SAT. The proponent cannot apply to SAT until after they have put the matter to a majority vote
Proposal 202.	Once one attempt to obtain a majority vote is unsuccessful, a second attempt may not take place for 6 months
Proposal 203.	The scheme does not come to an end until documents are registered by the Registrar of Titles against all the lots in the scheme and on the strata plan. The documents cannot be lodged with the Registrar of Titles until the period for objecting has lapsed

10.5.3 Termination in community title schemes

The proposed arrangements to terminate a scheme by majority vote will apply to community title schemes and leasehold strata schemes.

Even if the proposed changes do not go ahead for strata and survey-strata schemes, it is necessary to provide an effective method for owners to end the new schemes being introduced (i.e. community title and leasehold strata title).

Current ways to terminate a scheme (i.e. by unanimous resolution or application to the District Court (SAT under these proposals) will be available in community title schemes and leasehold strata schemes.

Special considerations apply in the termination of a community scheme.

Proposal:

Proposal 204.	Termination of the community title scheme or leasehold strata scheme will be available using the new process for majority vote
Proposal 205.	In the case of a primary or secondary scheme within a community title scheme SAT will have jurisdiction to terminate a scheme on application by the community corporation, a lot owner in the community corporation, (including a strata company) an administrator, or any owner in a secondary community scheme or tertiary scheme
Proposal 206.	Where there are different levels of management in a scheme, one level of the scheme cannot be brought to an end unless schemes which are subsidiary to that scheme are also ended
Proposal 207.	Any scheme that is a secondary or tertiary scheme requires the consent of the higher scheme to the termination

10.6 Consequences of the resolution to terminate the scheme

At present, the STA does not provide clear guidance as to what happens after the resolution to end the scheme is made. CTAC recommended changes to the current provisions in the STA to clarify what happens to the strata company when a strata scheme comes to an end (for example, what happens to owners' rights and any outstanding liabilities of proprietors and the strata company) and also to deal with how the land is subdivided after the resolution to terminate a survey-strata scheme.

The Department of Finance has raised concerns about the current laws not being clear on what happens to rating and taxing arrangements when a strata title scheme is terminated. The Water Corporation has requested that changes to a strata plan, for example reverting to freehold, should follow current subdivision processes, should ensure that owners have statutory access and/or protection of corridors / conduits for all services and service providers should be made aware of changes to ownership status, ownership and land descriptions.

To address these concerns, it is proposed to clarify what happens after the resolution to terminate the scheme is made.

10.6.1 Single model after resolution to terminate a scheme

The proposal is to provide a single model for dealing with the consequences of passing a resolution to terminate the scheme.

The aim is to clarify the subdivision and ownership rights of the former strata owners in the scheme and also to provide greater flexibility to owners. The proposed model will resolve questions about the way the land is subdivided and ownership of the land, satisfy concerns about notification of changes to land description and ownership for purposes of rating and taxing and what happens to memorials and charges lodged against owners' lots. It should provide a transparent process for owners of strata and survey-strata lots and satisfy concerns about how services such as sewerage, water and other utilities are to be dealt with.

When a resolution to terminate the scheme is made the following matters must be dealt with:

- the current way that the land is subdivided (the plan)
- the owners' titles to the land
- the owners' rights and obligations as co-owners of the common property
- the strata company established on registration of the scheme
- the rights and obligations of the strata company and proprietors and others in the scheme.

Model:

After the resolution to terminate the scheme is passed the strata company is required to lodge a notice of the resolution with the Registrar of Titles.

The strata company lodges a new plan of subdivision of the land approved by WAPC with the notice of the resolution.

The lot proprietors have several options on how the land is to be held after the scheme is terminated. They can:

- apply to have the land vested in them as tenants in common in proportion to their lot entitlement under the scheme
- apply to have the land vested in them in the manner specified in a disposition statement to be prescribed by the STGR, setting out their ownership in a manner consistent with the plan of subdivision
- direct the strata company to transfer the land to a third party

Proposal:

- | | |
|---------------|--|
| Proposal 208. | A single model for dealing with the consequences of a resolution to terminate a scheme will be adopted (This model does not apply to terminating a scheme of 10 or more lots by majority vote, as detailed earlier) |
| Proposal 209. | A new plan of subdivision is to be approved by WAPC and registered with Landgate with the notice of the resolution |
| Proposal 210. | The strata company lodges the notification at Landgate, with: <ul style="list-style-type: none">○ the duplicate certificates of title (if any) to the scheme lots○ discharges of encumbrances and withdrawals of caveat○ the new plan of subdivision of the land parcel approved by WAPC○ the application or transfer described above and disposition statement (if relevant) |
| Proposal 211. | The election to vest the land in a manner other than as tenants in common in proportion to their former unit entitlement will be accompanied by a certificate of a licensed valuer to determine the value of the interests created and disposed of as a result of the new plan of subdivision |
| Proposal 212. | The strata company and the rest of the scheme will cease to exist on registration of the documents at Landgate |

Appendix B: Media Campaign directing the public to comment on the Strata Reform Consultation Paper

The Strata Reform Consultation Paper that was released for public comment, with the consultation phase open from 31 October 2014 to 16 January 2015. For the duration of this consultation phase, Landgate ran a media campaign to raise awareness of the strata reforms and call for feedback to the consultation paper.

The media campaign directing the public to the consultation paper and calling for comment included advertisements in:

- a. state wide, suburban and regional newspapers
- b. newspapers targeted at seniors
- c. radio stations in metropolitan and regional areas
- d. digital media news sites including thewest.com.au and Perthnow
- e. real estate digital sites such as REIWA.com.au and realestate.com.au.

Advertisements were also placed on large-format digital television screens in public transport areas, where people wait for buses or trains.

Advertising directing the public to the Strata Reform Consultation Paper

Metropolitan	Regional
Newspapers	
The West Australian	The West Australian
Comment News	Albany Advertiser
Eastern Reporter	Augusta Margaret River Times
Fremantle Cockburn Gazette	Broome Advertiser
Guardian Express	Bunbury South Western Times
Joondalup Wanneroo Times	Busselton Dunsborough Times
Melville Times	Esperance Express
Midland Kalamunda Reporter	Geraldton Guardian
Southern Gazette	Kalgoorlie Miner
Stirling Times	North West Telegraph
Weekend Kwinana Courier	Northern Guardian
Western Suburbs Weekly	Pilbara News
Radio	
Mix 94.5	Albany - Hot FM Albany
Nova 93.7	Bunbury - Hot FM Bunbury
6PR	Port Headland - WAFM Port Headland
	Karratha - WAFM Karratha
	Broome - WAFM Broome
Other	
Adshel Superlites & Metrolite	
Various Cross Track promotions	
Video Wall City Link Tunnel	
Publication: The Senior WA	
Publication: Have-A-Go News	
Digital, reaching both metro and regional	
The West.com.au	Yahoo!7
PerthNow	realestate.com.au
reiwa.com	

WESTERN AUSTRALIA

**Strata Titles
Amendment Bill 2018**

This is a portion of a draft amendment Bill containing a proposal for termination of strata titles schemes for consultation purposes.

Confidential Consultation Draft

Confidential Consultation Draft

This is a portion of a draft amendment Bill containing a proposal for termination of strata titles schemes for consultation purposes.

Western Australia

Strata Titles Amendment Bill 2018

Contents

Part 2 — *Strata Titles Act 1985* amended

3.	Act amended	1
4.	Section 3 amended	1
5.	Part 5A inserted	1

Part 5A — Termination of strata titles scheme

70A.	Introduction	1
70B.	Outline of termination proposal	2
70C.	Content of outline of termination proposal	3
70D.	Ordinary resolution and support of owner of leasehold scheme required to proceed further	4
70E.	Approval of plan of subdivision	5
70F.	Full proposal	5
70G.	Content of full proposal	7
70H.	Support of owner of leasehold scheme required	11
70I.	Meetings and submissions	12
70J.	Vote	13
70K.	Confirmation of termination resolution by Tribunal	15
70L.	Endorsement of subdivision approval on plan	22
70M.	Appointment of administrator	22
70N.	Application for registration of termination	23

Contents

70O.	Registration of termination	25
70P.	Withdrawal of termination proposal	28
70Q.	Notice that termination proposal cannot proceed further	28
70R.	Notices received by Registrar of Titles	30
70S.	Costs of process	30
70T.	Arrangements for independent advice or representation for owners	31

Part 2 — Strata Titles Act 1985 amended

3. Act amended

This Part amends the *Strata Titles Act 1985*.

4. Section 3 amended

In section 3 insert in alphabetical order:

scheme building means a building shown on a strata plan and by reference to which lots are defined;

strata titles scheme means —

- (a) a freehold strata scheme; or
- (b) a leasehold strata scheme; or
- (c) a freehold survey-strata scheme; or
- (d) a leasehold survey-strata scheme;

5. Part 5A inserted

At the end of Part 5 insert:

Part 5A — Termination of strata titles scheme

70A. Introduction

- (1) The termination of a strata titles scheme involves a subdivision of land for which approval is required under the *Planning and Development Act 2005*.
- (2) The termination of a strata titles scheme may be proposed by a person (the *proponent*) who intends to apply for the necessary approval, whether or not the person is the owner of a lot in the strata titles scheme or, for a leasehold scheme, the owner of the leasehold scheme.

1 **70B. Outline of termination proposal**

- 2 (1) The proponent of a proposal to terminate a strata titles
3 scheme (a *termination proposal*) must submit an
4 outline of the proposal to —
5 (a) the strata company for the scheme; and
6 (b) if it is a leasehold scheme, the owner of the
7 leasehold scheme.
- 8 (2) However, an outline of a termination proposal cannot
9 be submitted to a strata company or owner of a
10 leasehold scheme —
11 (a) if an outline of another termination proposal
12 has been submitted to the strata company or
13 owner of the leasehold scheme and it is less
14 than 6 months since that proposal ceased to be
15 able to proceed further under this Part; or
16 (b) during any other period for which the Tribunal
17 has, on application by the strata company or the
18 owner of the leasehold scheme, prohibited
19 termination proposals being so submitted.
- 20 (3) A strata company to which an outline of a termination
21 proposal is submitted in accordance with this section
22 must, within 14 days after receiving the proposal —
23 (a) serve it on each person who is —
24 (i) the owner of a lot in the strata titles
25 scheme; or
26 (ii) a registered mortgagee of a lot in the
27 strata titles scheme;
28 and
29 (b) lodge with the Registrar of Titles notice of
30 receipt of the outline in the form approved
31 under the regulations.

- 1 (4) Any modification of an outline of a termination
2 proposal proposed by the proponent of the proposal
3 must be submitted and served in the same manner as
4 for the outline.

5 **70C. Content of outline of termination proposal**

- 6 (1) An outline of a termination proposal must —
- 7 (a) specify the name and address for service of the
8 proponent of the proposal; and
- 9 (b) identify the strata titles scheme proposed to be
10 terminated; and
- 11 (c) provide an explanation of the reasons for
12 proposing termination of the strata titles
13 scheme, including (without limitation), if the
14 difficulty of raising sufficient contributions for
15 repair of scheme buildings or infrastructure on
16 common property is a reason for the proposal, a
17 statement of that reason; and
- 18 (d) describe, in general terms, any proposals for
19 contracts to be offered to owners of lots in the
20 strata titles scheme; and
- 21 (e) describe, in general terms, what is proposed in
22 terms of subdivision, development and sale of
23 the land following termination of the strata
24 titles scheme; and
- 25 (f) indicate, in general terms, the stages and
26 timeframes for progress of the proposal if it
27 proceeds; and
- 28 (g) provide an explanation of the process for
29 termination of a strata titles scheme under this
30 Part in the form approved under the regulations;
31 and
- 32 (h) if, under the regulations, the proponent of the
33 proposal will be required to make arrangements

- 1 for the obtaining of independent advice or
2 representation for owners of lots affected by the
3 proposal, provide details of the proposed
4 arrangements; and
5 (i) include any other information required by the
6 regulations.
- 7 (2) This section does not limit the matters that can be
8 included in an outline of a termination proposal.
- 9 (3) An outline of a termination proposal must —
10 (a) be in the form approved under the regulations;
11 and
12 (b) comply with any requirements set out in the
13 regulations.
- 14 **70D. Ordinary resolution and support of owner of**
15 **leasehold scheme required to proceed further**
- 16 (1) A termination proposal can only proceed further if,
17 within 3 months after an outline of the proposal has
18 been submitted as required under section 70B —
19 (a) for a freehold scheme — the strata company
20 passes an ordinary resolution supporting
21 consideration of a full proposal; and
22 (b) for a leasehold scheme —
23 (i) the owner of the leasehold scheme gives
24 written notice to the strata company
25 supporting consideration of a full
26 proposal; and
27 (ii) the strata company passes an ordinary
28 resolution supporting consideration of a
29 full proposal.

-
- 1 (2) For a 2-lot scheme, an ordinary resolution is taken to
2 be passed supporting consideration of a full proposal if
3 the vote attached to 1 of the lots is cast in favour of the
4 resolution (regardless of the unit entitlement of the lot).

5 **70E. Approval of plan of subdivision**

- 6 (1) If the requirements of section 70D are met and a
7 termination proposal can proceed further —
8 (a) the proponent of the proposal can then make an
9 application under the *Planning and*
10 *Development Act 2005* Part 10 for approval of a
11 plan of subdivision for the proposal; and
12 (b) the owner of the land is taken to have consented
13 to the proponent making the application under
14 the *Planning and Development Act 2005*.
15 (2) The *Planning and Development Act 2005* applies to the
16 application subject to the following modifications —
17 (a) a reference to subdivision is to be read as
18 including a reference to termination of a strata
19 titles scheme;
20 (b) any other modifications set out in the
21 regulations.

22 **70F. Full proposal**

- 23 (1) If approval of a plan of subdivision is obtained as
24 referred to in section 70E, the proponent of the
25 proposal can then submit a full proposal for the
26 termination of the strata titles scheme to —
27 (a) the strata company for the strata titles scheme;
28 and
29 (b) if it is a leasehold scheme, the owner of the
30 leasehold scheme.

- 1 (2) However, a full proposal cannot be submitted to a
2 strata company or owner of a leasehold scheme —
3 (a) if it is more than 12 months since the
4 requirements of section 70D were met for the
5 proposal; or
6 (b) during any period for which the Tribunal has,
7 on application by the strata company or the
8 owner of the leasehold scheme, prohibited
9 termination proposals being so submitted.
- 10 (3) For a leasehold scheme, the proponent must give
11 written notice to the owner of the leasehold scheme of
12 the date on which the proponent submitted the full
13 proposal to the strata company.
- 14 (4) A strata company to which a full proposal is submitted
15 in accordance with this section must, within 14 days
16 after receiving the proposal —
17 (a) serve it on each person who is —
18 (i) the owner of a lot in the strata titles
19 scheme; or
20 (ii) the occupier of a lot or common
21 property in the strata titles scheme; or
22 (iii) a registered mortgagee of a lot in the
23 strata titles scheme;
24 and
25 (b) lodge with the Registrar of Titles notice of
26 receipt of the proposal in the form approved
27 under the regulations.
- 28 (5) Any modification of the full proposal proposed by the
29 proponent must be submitted and served in the same
30 manner as for the full proposal.

- 1 (6) However, a modification cannot be submitted within
2 14 days before the termination proposal is voted on at a
3 meeting of the strata company or before voting on the
4 proposal opens.

5 **70G. Content of full proposal**

- 6 (1) A full proposal for the termination of a strata titles
7 scheme must —
- 8 (a) include the material required to be included in
9 an outline of a termination proposal; and
- 10 (b) be accompanied by the approved plan of
11 subdivision for the proposal; and
- 12 (c) describe, in detail, what is proposed in terms of
13 contracts to be offered to owners of lots,
14 including —
- 15 (i) contracts for the sale and purchase of
16 lots before termination of the strata titles
17 scheme, including —
- 18 (I) the name and address of the
19 buyer; and
- 20 (II) the purchase price or a
21 description of how the
22 purchase price is to be
23 determined; and
- 24 (III) the terms and conditions of the
25 contracts for sale and purchase,
26 including proposed settlement
27 dates, or a description of how
28 those terms and conditions are
29 to be determined; and

- 1 (IV) any deductions proposed to be
2 made out of the purchase price
3 or a description of how those
4 deductions are to be
5 determined;
6 and
7 (ii) contracts under which the owner of a lot
8 acquires an interest in land in exchange
9 for the lot, including —
10 (I) the choices available to owners
11 or the basis for determining
12 those choices; and
13 (II) the interests in land proposed to
14 be acquired by the owners; and
15 (III) other terms and conditions of
16 the exchange;
17 and
18 (iii) contracts under which the owner of a lot
19 is to have an interest in the land on
20 termination of the strata titles scheme or
21 is to have a right or option for the
22 acquisition of an interest in the land
23 following its subdivision or
24 development;
25 and
26 (d) describe, in detail, what is proposed to happen
27 on termination of the strata titles scheme in
28 terms of the discharge, withdrawal, removal or
29 bringing forward of registered mortgages over
30 the lots and other estates and interests in a lot or
31 common property in the scheme that are
32 registered or recorded in the Register; and

- 1 (e) describe, in detail, what is proposed to happen
2 on termination of the strata titles scheme in
3 terms of the contractual rights of occupiers of
4 lots or common property in the strata titles
5 scheme; and
- 6 (f) describe, in detail, what is proposed in terms of
7 subdivision, development and sale of the land
8 following termination, including —
- 9 (i) plans for demolition; and
10 (ii) plans for subdivision; and
11 (iii) architectural plans for development; and
12 (iv) a description of the planning approvals
13 required;
- 14 and
- 15 (g) indicate, in detail, the stages and timeframes
16 proposed for progress of the proposal if it
17 proceeds, including expectations for when
18 vacant possession of lots and common property
19 will be required; and
- 20 (h) describe any proposals for the temporary
21 relocation of owners of lots, including any
22 payments proposed to be made to owners to
23 enable them to arrange temporary relocation;
24 and
- 25 (i) include —
- 26 (i) a statement of the assets and liabilities
27 of the strata company; and
28 (ii) a statement of how it is proposed to
29 realise assets, discharge liabilities and
30 dispose of any surplus assets; and

- 1 (iii) an explanation (in the form approved
2 under the regulations) about the
3 requirement for the appointment by the
4 Tribunal of an administrator of the strata
5 company if there are accrued or
6 accruing liabilities or surplus assets
7 when the strata titles scheme is
8 terminated;
- 9 and
- 10 (j) any other information required by the
11 regulations.
- 12 (2) A full proposal must incorporate a report (a
13 **termination infrastructure report**) comprised of —
- 14 (a) a report of a structural engineer on the state and
15 condition of each scheme building and the
16 infrastructure on the common property in the
17 strata titles scheme; and
- 18 (b) a report of a quantity surveyor estimating the
19 cost to repair or replace the scheme buildings or
20 infrastructure as reasonably required taking into
21 account the report of the structural engineer.
- 22 (3) A full proposal must incorporate a report (a
23 **termination valuation report**) prepared and certified
24 by a licensed valuer setting out, for each lot in the
25 strata titles scheme, a valuation of the amount of
26 compensation that would be required to be paid by an
27 acquiring authority under the *Land Administration*
28 *Act 1997* for acquisition of the lot.
- 29 (4) The valuation must be made as if—
- 30 (a) the land were being acquired by an acquiring
31 authority under the *Land Administration*
32 *Act 1997*; and

- 1 (b) a notice of intention to acquire had been given
2 under that Act to the owner of the lot on the day
3 on which the outline of the termination
4 proposal was submitted to the strata company;
5 and
6 (c) that Act were subject to any modifications set
7 out in the regulations.
- 8 (5) A person must, in preparing or certifying a termination
9 infrastructure report or termination valuation report,
10 comply with the requirements of the regulations.
- 11 (6) This section does not limit the matters that can be
12 included in a full proposal.
- 13 (7) The terms of a termination proposal set out in the full
14 proposal are in substitution for the terms set out in the
15 outline of the termination proposal and, consequently,
16 the outline ceases to be relevant once the full proposal
17 is submitted.
- 18 (8) A full proposal, including the termination infrastructure
19 report and the termination valuation report —
20 (a) must be in the form approved under the
21 regulations; and
22 (b) must comply with any requirements set out in
23 the regulations.

24 **70H. Support of owner of leasehold scheme required**

- 25 (1) A termination proposal for a leasehold scheme cannot
26 proceed further unless, within 3 months after the full
27 proposal is submitted to the strata company, the owner
28 of the leasehold scheme gives written notice to the
29 strata company that the owner supports the termination
30 proposal.

- 1 (2) A strata company must, as soon as reasonably
2 practicable, give written notice to the proponent of the
3 termination proposal of the receipt of a notice under
4 subsection (1).

5 **70I. Meetings and submissions**

- 6 (1) After receipt of a full proposal, 1 or more general
7 meetings of the strata company must be convened to
8 consider the termination proposal (unless it is a
9 proposal that cannot proceed further).
- 10 (2) The proponent of the termination proposal may be
11 present at, or must be absent from, the whole or a part
12 of a general meeting as allowed or required by the
13 owners of the lots in the strata titles scheme.
- 14 (3) The persons on whom a full proposal for the
15 termination of a strata titles scheme must be served by
16 the strata company for the scheme must be given a
17 reasonable opportunity to make submissions to the
18 proponent of the proposal and the strata company.
- 19 (4) The council of the strata company can also meet with
20 the proponent of the termination proposal to consider
21 the proposal with a view to negotiating with the
22 proponent and providing information or making
23 recommendations to the owners of the lots in the strata
24 titles scheme.
- 25 (5) The regulations may impose additional requirements
26 about the process required for consideration of a
27 termination proposal.

70J. Vote

- (1) A termination proposal must be put to the vote of the owners of the lots in the strata titles scheme (unless it is a proposal that cannot proceed further).

Note for this subsection:

The terms of the termination proposal are as set out in the full proposal and the terms set out in the outline of the proposal are not relevant: see section 70G(7).

- (2) A vote in favour of a termination proposal (a **termination resolution**) is only effective if it is made at least 3 months after, and not more than 12 months after, the date of service of the full proposal by the strata company under this Part.

- (3) The vote must be taken as follows —

- (a) 1 vote may be cast for each lot in the strata titles scheme;
- (b) the value of each vote is 1.

- (4) A record must be made of each vote identifying the lot for which it is cast.

- (5) Subject to this Part, the strata titles scheme can be terminated —

- (a) if the number of votes cast in favour of the termination proposal equals the number of lots in the strata titles scheme; or
- (b) if there are 2 lots in the strata titles scheme —
 - (i) at least 1 vote is cast in favour of the termination proposal; and
 - (ii) the Tribunal confirms the termination resolution;

or

- 1 (c) if there are 3 lots in the strata titles scheme —
2 (i) at least 2 votes are cast in favour of the
3 termination proposal; and
4 (ii) the Tribunal confirms the termination
5 resolution;
6 or
7 (d) if there are more than 3 lots in the strata titles
8 scheme —
9 (i) the number of votes cast in favour of the
10 termination proposal is at least 75% of
11 the total number of lots in the scheme;
12 and
13 (ii) the Tribunal confirms the termination
14 resolution.
- 15 (6) The following sections do not apply to voting on a
16 termination proposal —
17 (a) section 49G(1);
18 (b) section 49I;
19 (c) section 50(2).
- 20 (7) A vote may be taken on a termination proposal,
21 whether in the same or modified form, on more than 1
22 occasion.
- 23 (8) A termination proposal must not be modified in a
24 material particular by the proponent of the proposal
25 after it can proceed further having been supported as
26 required under this section unless the modification is
27 supported under the same voting arrangements as apply
28 to the termination proposal.

-
- 1 (9) A strata company must, as soon as practicable after a
2 termination resolution is passed —
- 3 (a) lodge with the Registrar of Titles notice of that
4 fact in the form approved under the regulations;
5 and
- 6 (b) give written notice of that fact to —
- 7 (i) the proponent of the termination
8 proposal; and
- 9 (ii) for a leasehold scheme, the owner of the
10 leasehold scheme.
- 11 (10) The notice must include a statement of whether or not
12 confirmation of the termination resolution by the
13 Tribunal is required.
- 14 **70K. Confirmation of termination resolution by Tribunal**
- 15 (1) If a termination proposal can proceed further only if the
16 Tribunal confirms the termination resolution, the
17 proponent of the proposal can apply to the Tribunal for
18 that confirmation.
- 19 (2) The application must be made within 28 days after the
20 date on which the termination resolution is passed or
21 within an extension of that period given by the
22 President of the Tribunal.
- 23 (3) The application must be accompanied by —
- 24 (a) the full proposal for the termination of the
25 strata titles scheme; and
- 26 (b) all written submissions made to the proponent
27 about the termination proposal; and
- 28 (c) any other material specified in the regulations.
- 29 (4) For the *State Administrative Tribunal Act 2004*
30 section 45(1)(b), the following persons are entitled to a
31 copy of, or notice of, the application —

- 1 (a) the strata company for the strata titles scheme;
2 and
3 (b) for a leasehold scheme, the owner of the
4 leasehold scheme.
- 5 (5) The strata company and, for a leasehold scheme, the
6 owner of the leasehold scheme, will be taken to be
7 parties to the proceedings.
- 8 (6) The strata company must, within 14 days after
9 receiving notice of the application —
- 10 (a) serve notice of the application on each person
11 who is —
- 12 (i) the owner of a lot in the strata titles
13 scheme; or
14 (ii) the occupier of a lot or common
15 property in the strata titles scheme; or
16 (iii) a registered mortgagee of a lot in the
17 strata titles scheme; or
18 (iv) a person whom the Tribunal requires to
19 be served with notice of the application;
20 and
- 21 (b) provide the following to the Tribunal —
- 22 (i) for a leasehold scheme, a copy of the
23 notice of support for the termination
24 resolution given by the owner of the
25 leasehold scheme under section 70H;
26 (ii) a record of each vote on the termination
27 resolution, identifying the lot for which
28 it was cast and the date on which it was
29 cast, and a tally of the votes;

- 1 (iii) minutes of all meetings of the strata
2 company or the council of the strata
3 company at which the termination
4 proposal was considered;
- 5 (iv) all written submissions made to the
6 strata company about the termination
7 proposal;
- 8 (v) the scheme plan, by-laws and schedule
9 of unit entitlements for the strata titles
10 scheme;
- 11 and
- 12 (c) lodge with the Registrar of Titles notice of the
13 application in the form approved under the
14 regulations.
- 15 (7) In addition to the parties to the proceedings, the
16 following persons are entitled to appear and be heard or
17 make written submissions to the Tribunal (as the
18 Tribunal determines) —
- 19 (a) the owner of a lot in the strata titles scheme;
- 20 (b) the occupier of a lot or common property in the
21 strata titles scheme;
- 22 (c) the registered mortgagee of a lot in the strata
23 titles scheme;
- 24 (d) any other person whom the Tribunal considers
25 has a proper interest in the matter.
- 26 (8) In proceedings for confirmation of a termination
27 resolution, the Tribunal can —
- 28 (a) make an order confirming the termination
29 resolution for a termination proposal (which
30 may be subject to the termination proposal
31 being modified in a specified manner as set out
32 in subsection (13)); or
- 33 (b) make a decision not to make such an order.

- 1 (9) The Tribunal can only confirm a termination resolution
2 if the proponent of the termination proposal satisfies
3 the Tribunal that —
- 4 (a) the process required by this Part has been
5 complied with; and
- 6 (b) under the termination proposal, the owner of a
7 lot in the strata titles scheme who does not
8 support the termination will receive fair market
9 value for the lot or a like for like exchange for
10 the lot; and
- 11 (c) the termination proposal is otherwise just and
12 equitable having regard to —
- 13 (i) the interests of the owners of the lots in
14 the strata titles scheme; and
- 15 (ii) if it is a leasehold scheme, the interests
16 of the owner of the leasehold scheme;
17 and
- 18 (iii) the interests of occupiers of the lots or
19 common property in the strata titles
20 scheme; and
- 21 (iv) the interests of registered mortgagees of
22 the lots in the strata titles scheme; and
- 23 (v) the interests of any other person with an
24 estate or interest in, or right over, a lot
25 or common property in the strata titles
26 scheme that is registered or recorded in
27 the Register.
- 28 (10) In determining whether an owner of a lot will receive
29 fair market value for the lot, the Tribunal must
30 consider —

- 1 (a) the amount of compensation that would be
2 required to be paid by an acquiring authority
3 under the *Land Administration Act 1997* for
4 acquisition of the lot, determined on the same
5 basis as for the valuation report; and
6 (b) the amount of any additional payment that
7 would be payable by an acquiring authority
8 under that Act for acquiring the lot without
9 agreement; and
10 (c) the full costs of the termination proposal to lot
11 owners taking into account the costs of
12 discharging mortgages or other interests,
13 relocation expenses, taxes, duty and any other
14 charges; and
15 (d) any other factor set out in the regulations.
- 16 (11) In determining whether an owner of a lot will receive a
17 like for like exchange for the lot, the Tribunal must
18 consider —
19 (a) whether the value of what is offered in
20 exchange is equivalent to the fair market value
21 of the lot (as set out in subsection (10)); and
22 (b) how the location, facilities and amenity of what
23 is offered in exchange compares to that of the
24 lot.
- 25 (12) Without limiting the factors that the Tribunal can take
26 into account under subsection (9)(c), the Tribunal must
27 consider the following —
28 (a) any evidence of impropriety in the termination
29 process, including, for example —
30 (i) evidence of proxy votes being exercised
31 invalidly or votes being affected by
32 undue influence in connection with the
33 termination resolution; and

- 1 (ii) evidence of false or misleading
2 information (whether by inclusion or
3 omission) having been included in the
4 outline of or the full proposal for the
5 termination of the strata titles scheme;
- 6 (b) the proportion of owners of lots in favour of
7 and against the termination proposal in terms of
8 numbers of lots and in terms of unit
9 entitlements of lots;
- 10 (c) the termination infrastructure report and options
11 reasonably available to address problems
12 identified in the report (including the extent to
13 which contributions would need to be increased
14 for implementation of an option);
- 15 (d) any arrangements for the owner of a lot in the
16 strata titles scheme to buy back into the
17 subdivided land following redevelopment;
- 18 (e) the benefits and detriments of the termination
19 proposal proceeding or not proceeding for all
20 those whose interests must be taken into
21 account;
- 22 (f) any other factors specified in the regulations.
- 23 (13) If the Tribunal is not satisfied of the matters set out in
24 subsection (9)(b) or (c) but would be satisfied of those
25 matters if the termination proposal were modified in a
26 specified manner, the Tribunal may confirm the
27 termination resolution subject to the termination
28 proposal being modified in the specified manner.
- 29 (14) Without limitation, the modifications may include a
30 requirement for the proponent to make a payment to a
31 party to a lease or tenancy agreement over a lot or
32 common property in the strata titles scheme that will
33 terminate as a consequence of the termination of the
34 scheme.

- 1 (15) The modifications must not have the effect of being
2 less advantageous to any owner of a lot in the strata
3 titles scheme, or, if it is a leasehold scheme, the owner
4 of the leasehold scheme, than the termination proposal
5 without modification.
- 6 (16) Subsection (15) does not apply to an owner in the
7 capacity of a proponent of the termination proposal.
- 8 (17) Without limiting other powers of the Tribunal to make
9 ancillary orders, if the Tribunal makes an order
10 confirming a termination resolution, it may also order
11 that, on specified conditions connected with the
12 termination being met —
- 13 (a) the owner of a lot in the strata titles scheme
14 must execute a transfer of ownership of the lot;
15 or
- 16 (b) if there is a duplicate certificate of title for a lot
17 in the strata titles scheme, the owner of the lot
18 must deliver the duplicate certificate of title to
19 the Registrar of Titles; or
- 20 (c) a person with an estate or interest in, or right
21 over, the whole or a part of the strata titles
22 scheme parcel that is registered or recorded in
23 the Register must take steps necessary for the
24 discharge, withdrawal or other removal, or for
25 the bringing forward, of the estate, interest or
26 right; or
- 27 (d) the occupier of a lot or the common property in
28 the strata titles scheme must vacate the lot or
29 common property.
- 30 (18) The Tribunal's powers under this section are
31 exercisable only by a judicial member.

- 1 (19) The strata company must, as soon as practicable after
2 receiving notice of the decision of the Tribunal on an
3 application under this section, lodge with the Registrar
4 of Titles notice of the decision in the form approved
5 under the regulations.
- 6 **70L. Endorsement of subdivision approval on plan**
- 7 (1) If a termination proposal can proceed further under
8 section 70J (including, if required, because the
9 Tribunal confirms the termination resolution under
10 section 70K) —
- 11 (a) the proponent of the proposal can then make a
12 request to the Planning Commission to approve
13 a diagram or plan of survey under the *Planning*
14 *and Development Act 2005* section 145; and
- 15 (b) the owner of the land is taken to have consented
16 to the proponent making the request under the
17 *Planning and Development Act 2005*.
- 18 (3) The *Planning and Development Act 2005* applies to a
19 request under subsection (1) subject to any
20 modifications set out in the regulations.
- 21 **70M. Appointment of administrator**
- 22 (1) Before an application can be made by the proponent of
23 a termination proposal for registration of the
24 termination of the strata titles scheme, the proponent
25 must apply to the Tribunal for the appointment of an
26 administrator of the strata company.
- 27 (2) Subsection (1) does not apply if the strata company has
28 no accrued or accruing liabilities and no assets when
29 the application for registration of the termination of the
30 strata titles scheme is made.
- 31 (3) An order of the Tribunal appointing an administrator of
32 a strata company is subject to the following conditions:

- 1 (a) a condition that the administrator provide a
2 report about the performance of the functions of
3 the administrator as required by the Tribunal;
4 (b) any other conditions imposed by the Tribunal.

5 **70N. Application for registration of termination**

- 6 (1) The proponent of a termination proposal can make an
7 application for registration of the termination of a strata
8 titles scheme if —
9 (a) the relevant approval has been obtained as set
10 out in section 70L; and
11 (b) if necessary, an administrator has been
12 appointed under section 70M.
13 (2) The application must be made within 12 months after
14 the termination resolution has been passed or, if the
15 proposal can only proceed if the Tribunal confirms the
16 termination resolution, after the Tribunal has made an
17 order under section 70K confirming the termination
18 resolution.
19 (3) An application for registration of the termination of a
20 strata titles scheme —
21 (a) must be made to the Registrar of Titles; and
22 (b) must be in the form approved under the
23 regulations; and
24 (c) must be accompanied by —
25 (i) evidence of the passing of the
26 termination resolution; and
27 (ii) if applicable, the Tribunal order
28 confirming the termination resolution;
29 and

- 1 (iii) for a leasehold scheme, evidence of the
2 support for the termination resolution
3 given by the owner of the leasehold
4 scheme under section 70H;
5 and
6 (d) must be accompanied by the diagram or plan of
7 survey endorsed with the approval of the
8 Planning Commission under the *Planning and*
9 *Development Act 2005*; and
10 (e) must be accompanied by either —
11 (i) a statement, verified as required by the
12 regulations, that the strata company has
13 no accrued or accruing liabilities and no
14 assets; or
15 (ii) a copy of an order of the Tribunal under
16 section 70M appointing an administrator
17 of the strata company;
18 and
19 (f) must be accompanied by —
20 (i) a statement of how each estate, interest
21 or right registered or recorded in the
22 Register against the scheme plan or a
23 certificate of title for a lot in the strata
24 titles scheme is to be discharged,
25 withdrawn or otherwise removed, or
26 brought forward, under the *Transfer of*
27 *Land Act 1893*, as appropriate according
28 to the nature of the estate, interest or
29 right; and
30 (ii) any instruments or documents necessary
31 to achieve that end;
32 and

-
- 1 (g) must comply with any requirements set out in
2 the regulations; and
- 3 (h) must be accompanied by the fee fixed by the
4 regulations.
- 5 (4) The diagram or plan of survey required for termination
6 of a strata titles scheme may be lodged with the
7 Registrar of Titles for assessment on payment of a fee
8 fixed by the regulations in anticipation of an
9 application for registration of the termination of the
10 strata titles scheme.
- 11 **70O. Registration of termination**
- 12 (1) The Registrar of Titles must, on an application made in
13 accordance with section 70N —
- 14 (a) register the termination of the strata titles
15 scheme; and
- 16 (b) cancel the certificates of title for the lots in the
17 strata titles scheme.
- 18 (2) The Registrar of Titles must take the action required
19 under this section in the manner that the Registrar of
20 Titles considers most appropriate for incorporation in
21 the Register under the *Transfer of Land Act 1893*.
- 22 (3) When the termination of a strata titles scheme is
23 registered —
- 24 (a) the strata company for the strata titles scheme
25 ceases to exist unless an administrator of the
26 strata company has been appointed under
27 section 70M; and
- 28 (b) if an administrator of the strata company has
29 been appointed under section 70M —

- 1 (i) the strata company continues in
2 existence until its accruing liabilities
3 have accrued, all of its liabilities have
4 been discharged and its surplus assets
5 distributed; and
- 6 (ii) the administrator is to be taken to
7 constitute the strata company; and
- 8 (iii) the only functions that the strata
9 company has are to realise its assets,
10 discharge or transfer its liabilities and
11 distribute any surplus assets in
12 accordance with the termination
13 proposal or an order of the Tribunal;
14 and
- 15 (iv) subject to an order of the Tribunal to the
16 contrary, the former owners of lots in
17 the strata titles scheme are —
- 18 (I) entitled to a share of the
19 surplus assets proportional to
20 the unit entitlements of their
21 respective lots immediately
22 before termination of the
23 scheme; and
- 24 (II) jointly and severally liable for
25 any liabilities exceeding the
26 assets of the strata company;
27 and
- 28 (III) liable to contribute to a share of
29 those liabilities proportional to
30 the unit entitlements of their
31 respective lots immediately
32 before termination of the
33 scheme;
- 34 and

- 1 (c) the scheme plan, by-laws and unit entitlements
2 schedule for the strata titles scheme cease to
3 have any effect; and
- 4 (d) the lots and common property that belonged to
5 the strata titles scheme cease to exist; and
- 6 (e) the land becomes a parcel of land that is not
7 subdivided by a strata titles scheme; and
- 8 (f) for a leasehold scheme — the person who was
9 the owner of the leasehold scheme immediately
10 before termination becomes the owner of the
11 parcel of land; and
- 12 (g) for a scheme that is not a leasehold scheme —
13 the persons who were owners of the lots
14 immediately before termination of the strata
15 titles scheme become the owners of the parcel
16 of land as tenants in common in shares
17 proportional to the unit entitlements of their
18 respective lots immediately before termination
19 of the scheme (or, if there was only 1 such
20 owner, the person becomes the owner of the
21 parcel of land).
- 22 (4) If 2 or more persons own a lot in a strata titles scheme,
23 or are the owners of a leasehold scheme, that is
24 terminated, the owners hold their share in the new
25 parcel of land as tenants in common or as joint tenants
26 in the same manner as they owned the lot or scheme
27 and, if they owned it as tenants in common, in the same
28 proportions as they owned the lot or scheme.

1 **70P. Withdrawal of termination proposal**

2 (1) If the proponent of a termination proposal makes a
3 decision not to proceed with the proposal, the
4 proponent must, as soon as reasonably practicable,
5 withdraw the proposal by written notice to the strata
6 company and, if it is a leasehold scheme, the owner of
7 the leasehold scheme.

8 (2) A strata company that receives written notice of the
9 withdrawal of a termination proposal from the
10 proponent of the proposal must, within 14 days after
11 receiving the notice —

12 (a) serve the notice on each person who is —

13 (i) the owner of a lot in the strata titles
14 scheme; or

15 (ii) if the full proposal for the termination of
16 the strata titles scheme has been served
17 by the strata company — the occupier
18 of a lot or the common property in the
19 strata titles scheme; or

20 (iii) a registered mortgagee of a lot in the
21 strata titles scheme;

22 and

23 (b) lodge with the Registrar of Titles notice of the
24 withdrawal of the proposal in the form
25 approved under the regulations.

26 **70Q. Notice that termination proposal cannot proceed**
27 **further**

28 (1) This section applies if a termination proposal cannot
29 proceed further for any of the following reasons —

- 1 (a) at the end of 3 months after an outline of a
2 termination proposal has been submitted to a
3 strata company, the requirements of section
4 70D have not been met;
- 5 (b) at the end of 3 months after a full proposal has
6 been submitted to a strata company, the
7 requirements of section 70H have not been met;
- 8 (c) at the end of 12 months after the date of service
9 of a full proposal by the strata company, a
10 termination resolution has not been passed;
- 11 (d) at the end of 12 months after a termination
12 resolution that does not require the
13 confirmation of the Tribunal has been passed,
14 no application for registration of the
15 termination of the strata titles scheme has been
16 made;
- 17 (e) the termination resolution requires confirmation
18 of the Tribunal and —
- 19 (i) the Tribunal makes a decision not to
20 confirm the resolution; or
- 21 (ii) at the end of 12 months after the making
22 of an order under section 70K
23 confirming the termination resolution,
24 no application for registration of the
25 termination of the strata titles scheme
26 has been made.
- 27 (2) If this section applies, the strata company must —
- 28 (a) lodge with the Registrar of Titles notice that the
29 termination proposal cannot proceed further in
30 the form approved under the regulations; and
- 31 (b) give written notice confirming that fact to —
- 32 (i) the proponent of the termination
33 proposal; and

- 1 (ii) for a leasehold scheme, the owner of the
2 leasehold scheme.

3 **70R. Notices received by Registrar of Titles**

- 4 (1) If a notice is lodged with the Registrar of Titles under
5 this Part —
6 (a) the Registrar of Titles must record the
7 notification against the scheme plan for the
8 strata titles scheme concerned; and
9 (b) in the case of a notice of withdrawal of a
10 termination proposal or a notice that a
11 termination proposal cannot proceed further, all
12 earlier notifications recorded in the Register
13 about the termination proposal are withdrawn.
14 (2) On registration of the termination of a strata titles
15 scheme, a notification recorded in the Register about a
16 termination proposal ceases to be relevant and is not to
17 be brought forward to the parcel of land that is no
18 longer subdivided by the strata titles scheme.

19 **70S. Costs of process**

- 20 (1) A strata company may charge the proponent of a
21 termination proposal reasonable fees to cover costs
22 associated with undertaking an activity under this Part.
23 (2) The fees must not exceed any limits imposed by the
24 regulations.
25 (3) Subject to the regulations, a strata company need not
26 undertake the relevant activity until the fees have been
27 paid.

- 1 (4) If the strata company undertakes the relevant activity
2 before receiving payment for the activity, the strata
3 company can recover the fees for the activity as a debt
4 owed to it by the proponent of the termination
5 proposal.

6 **70T. Arrangements for independent advice or**
7 **representation for owners**

- 8 (1) The regulations may require the proponent of a
9 termination proposal to enter into specified
10 arrangements for the owners of lots in the strata titles
11 scheme proposed to be terminated to obtain
12 independent advice or representation in connection
13 with the proposal.
- 14 (2) Without limitation, the arrangements may include a
15 requirement for the proponent of a termination
16 proposal to pay an amount to a trustee to be held in
17 trust for owners of lots who meet specified criteria to
18 obtain independent legal advice or representation,
19 valuation advice or reports or financial or taxation
20 advice in connection with the proposal.

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Appendix D - List of stakeholders the draft Strata Titles Amendment Bill 2018 – Termination of Schemes was released to

Confidential Consultation Draft - STA Bill Termination of Schemes

AICWA	Dion Dosualdo
Atkinson Legal	Mark Atkinson
Australian Property Institute	Kristy Anderson
Australian Property Institute	Matt Garmony
Bankers Association	Ian Gilbert
City of Belmont	Juliette Hammah
City of Perth	Dewald Gericke
CP Collaborative	Chiara Pacifici
Department of Commerce	Alison Foskett
Department of Commerce	Gerry Milford
Department of Commerce	David Hillyard
Department of Finance	Bill Sullivan
Department of Finance	Gary Thomas
Department of Housing	Ian Bowden
Department of Housing	Nicole Boujos
Department of Justice	Gavan Jones
Department of Justice	Maurice Spillane
Department of Water	Cale Ambrosini
Dept of Finance	Murray Hancock
Dept of Finance	Nigel Mills
Dept of Transport	Jane Millar
DLGSC	Sheryl Siekierka
DMIRS	Bob Stone
DMIRS	Paul Scalzi
DMIRS	Karine Broux
DMIRS	Susan O'Brien
DPLH	Sze-Hwei
DPLH	Vince McMullen
Housing Industry Association	John Gelavis
HSF (Lawyer)	Frank Poeta
HWLE (Lawyer)	Paul Wilson
Insurance Council	Kier Bielecke
Landcorp	Frank Marra
Landgate	Neil Witkowski
Landgate	Pepita Adams
Landgate	Michael Hannah
Landgate	Michael McCarthy
Landgate	Cary Spann
Landgate	Jodi Cant
Landgate	Bruce Roberts
Landgate	Liz Burke
Landgate	Mark Hebbard
Landgate	Jean Villani
Landgate	Susan Dukes
Landgate	Dione Bilick

Landgate
Law Society
Lend Lease
Local Government Planners Association
Local Government Planners Association
McLeods
McLeods
MRA
National Insurance Brokers Association
National Lifestyle Villages
Peter Groom Settlements
Property Council
Property Council
REIWA
SAT
SAT
SAT
SCAWA
SCAWA
Shelter WA
Slater Gordon
SSO
SSSI
SSSI
Treasury
UDIA
UDIA
URBIS
WAIS
WAIS
WALGA
WALGA
Water Corporation
Western Power

Murray Dolling
Mary Woodford
Matt Saunders
Chris Leigh
Ryan Hall
Denis McLeod
Fiona Grgich
Ryan Keys
Dallas Booth
Bill Marshall
Peter Groom
Lino Iacomella
Alix Rhodes
Craig Bradley
Michael Cardy
David Aitken
Kathleen Halden
Scott Bellerby
Kara Grant
Michelle McKenzie
Rachel Consentino
Michelle Payne
Gavin Hassett
Kerryn Stanes
Melina Snashall
Allison Hailes
Christopher Green
Ray Haeren
Alan Marsh
Eugene Brown
Chris Hossen
Vanessa Jackson
Ray Willis
Rod Hales



Strata Titles Amendment Bill 2018

Submission to Landgate Termination of Schemes

28th March 2018

Timeframes and General Comments

- We suggest close consideration be given to whether any of the timeframes for steps to be taken in the process be removed or timeframes abridged. While it is acknowledged that sufficient time must be allowed for planning processes to take their course and for lot owners to be able to properly consider and take advice on proposals for termination, the process as set out could potentially take many years to achieve termination.
- It is undesirable to have a prolonged process as people's ability to deal with their lot is hampered in the meantime. Parties suffer from the uncertainty that entails.
- In particular, some of the steps in the process are probably unnecessary and unwarranted in circumstances where the termination is proposed by or supported by the lot owners unanimously at a preliminary stage.
- Further, the provisions do not appear to easily accommodate the situation where the proponent for termination is the strata company itself or a single person with ownership of all lots in the scheme.
- There is no ability to terminate a scheme unless the requisite number of proprietors votes in favor of termination. There ought to be provision for SAT to order termination in exceptional circumstances even if the requisite majority vote is not achieved. For instance, if the buildings have been destroyed by cyclone, as was the case in *The Owners of Argosy Court Strata Plan 21513 v Wise* [2016] WADC 145. In that case, the requisite 75% majority would not have voted in favor of termination of the scheme and yet it was clearly desirable for the Scheme to be terminated.
- The draft Part is silent on the circumstances in which a decision of SAT could be appealed and by whom.
- The draft Part contemplates a requirement to pay compensation equal to or exceeding the compensation payable for compulsory land acquisition under the *Land Administration Act*. This basis for valuation includes heads of compensation over and above fair market value which may not be appropriate in the circumstances of the particular termination or the particular lot owner. For instance it is not clear why compensation provided for in Section 24I(8) of the *Land Administration Act* should apply where schemes are terminated.

Section 70G(2)

- The requirement in Section 70G(2) for a Structural Engineer's Report and quantity surveyor's report on each scheme building and the infrastructure will likely involve practical hurdles that will make satisfaction of this requirement very difficult, including gaining access to lots for the purpose of assessment. It is not clear what the purpose of this requirement is intended to achieve.

Section 70I and 70J

- There is ambiguity in Sections 70I and 70J. In section 70I it is not clear whether the exclusion of a proponent attending the meeting is by way of a vote of owners at the meeting, by way of consensus of the meeting, by opposition of one or more owners present.

- Similarly in Section 70J it is not clear if the vote of the owners is a vote at a general meeting convened for the purpose or some other means of voting.
- It is not clear that 70I(2)-(4) are intended to apply only to the process set out in section 70J or to the processes in 70D and 70J.
- The draft omits any obligation on the strata company to convene the meeting which is required under section 70D.

Section 70K

- Section 70K(9)(c)(3) and (5) require SAT to take into account interests of parties who have no right to receive details of the proposal. It is not clear how those interests, such as equitable mortgagees, can be considered.
- Section 70K(12)(e) appears to require SAT to consider the detriment of a proposal on all whose interest may be taken into account however that will be a difficult, if not impossible task, if all those parties have not made representations or lead evidence.
- Section 70K(13) and (14) enable SAT to require a modification to a proposal. This power should be limited to circumstances where a preliminary indication of such modification is given to the parties and all those interested with an opportunity for submissions to be made and evidence lead regarding such proposed modification in advance of a final decision.

Section 70M

- The requirement for the appointment of an administrator by the State Administrative Tribunal is overly onerous and not clearly justified. The strata company ought to have discretion as to whether to apply to SAT for the appointment of an administrator where circumstances necessitate or justify it.
- The conditions set out in Section 70M(2) would virtually never be present in reality. The section therefore effectively requires an administrator being appointed in all cases.



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29 March 2018

Mr [REDACTED]
Strata Titles Act Reform Team
Landgate
PO Box 2222
MIDLAND WA 6936

Dear Sir,

RE: CONFIDENTIAL CONSULTATION DRAFT STRATA TITLES AMENDMENT BILL – TERMINATION OF SCHEMES

Thank you for forwarding the proposed Termination Of Schemes to WAIS – The Western Australian Institution of Surveyors for confidential consultation.

The Bill makes reference to “the regulations”. WAIS considers it extremely necessary that a draft of the regulations be also provided for reference and comment when reviewing the draft Bill.

Although WAIS membership has supported subject to suggested amendment all of the previous Strata Amendment Bill 2018 the majority of the membership **OPPOSE** termination of the Strata Title Scheme as presented in the Bill for the following reasons.

1. The Bill is retrospective and places unreasonable and unnecessary pressure on registered proprietors of freehold strata lots who have purchased in smaller schemes with the reasonable intention of holding the property long term.
2. WAIS considers that licensed surveyors are the custodian of the titling system in Western Australia and when the public purchase a freehold strata title they should have security of title and not be unreasonably forced against their will to defend their position against a proponent who has bought into the scheme with the intention of redevelopment.
3. WAIS membership considers the State Administrative Tribunal is an inferior jurisdiction to make judgement on the removal of a freehold strata title against the registered proprietors will.
4. Section 10(a) of the Bill, page 19 refers to compensation via LAA 1997. Section 244 sets out the detail of how compensation is to be assessed. In general terms it is widely agreed by the development industry that the Western Australian legislation pertinent to land compensation is biased towards government. It is also widely agreed by the valuation profession that the Commonwealth government legislation for land acquisition based on Just Terms provisions and all the associated court precedent is a more generous and easier

to use. WAIS submits that Section 10(a), page 19 should be rewritten to define the method of compensation based on the just terms provisions of the Commonwealth legislation related specifically to freehold strata lots. WAIS submits that there needs to be substantial public interest test to be made by the proponent at his expense for a forced development with a possible reinstatement provisions for disabled or less articulate and / or aged citizens.

5. Section 70T is unacceptable to WAIS.

Section 70T(1) The regulations may require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal.

Section 70T(2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners of lots who meet specified criteria to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.

WAIS argues that the word “may” should be replaced with the word “shall” and states why haven’t regulations been released.

6. It is WAIS view that the termination clauses in the Bill have been poorly considered by Landgate and as a result are unfairly biased towards the development sector and will therefore receive strong adverse reaction from the public. This may in the long term result in the public shying away from strata titles tenure. In the short term negative public reaction will delay the process and unnecessarily jeopardise the positive aspects of the overall Bill.

Please do not hesitate to contact Alan Marsh, WAIS Member on mobile 0438 582 441 or via email: admin@surveyorswa.org.au to discuss these matters further.

Yours faithfully,



Wayne Stewart
WAIS President

WATER CORPORATION
RESPONSE TO LANDGATE
CONFIDENTIAL

ISSUE: Confidential consultation draft Strata Titles Amendment Bill – Termination of (Strata) Schemes

DATE: Thursday, 29 March 2018

Background

The consultation draft of the Strata Titles Amendment Bill 2018 (the STA Bill) relating to termination of schemes has been provided on a CONFIDENTIAL basis for the sole purpose of providing feedback to Landgate on its provisions.

This consultation draft STA Bill includes an extract of the draft provisions for the Termination of (Strata) Schemes. It does not relate to termination of Community Title Schemes under the Community Titles Bill 2018 (CT Act) to be provided at a future date.

Feedback on Termination of Schemes (Strata)

<u>Clause of Bill / Issue</u>	<u>Comments / Questions</u>
Strata Titles Act 1985 Part III — Variation, termination and conversion of schemes	<ul style="list-style-type: none">• <i>NEW</i> Part 5A — Termination of strata titles scheme 70A. Introduction (1) The termination of a strata titles scheme involves a subdivision of land for which approval is required under the Planning and Development Act 2005. <i>Will the current Part III — Variation, termination and conversion of schemes be;</i><ul style="list-style-type: none">o <i>replaced,</i>o <i>partly replaced, or</i>o <i>not changed,</i><i>by the <u>NEW</u> Part 5A — Termination of strata titles scheme?</i>
Part 5A — Termination of strata titles scheme	<ul style="list-style-type: none">• 70C. Content of outline of termination proposal Section 70C requires that a termination proposal include what is proposed in terms of subdivision, development and sale following termination of the scheme. <i>How do the owners go about a termination where the strata lots are all owned by the same persons and those persons have already taken action to demolish and rebuild the property;</i><ul style="list-style-type: none">a. <i>either before these amendments come into effect, or</i>b. <i>without following the termination process once these amendments come into effect?</i><i>Could there be a shortcut process that allows those persons to terminate the scheme, with the approval of any registered mortgagees, rather than having to go through the full process, including a meeting and vote?</i>

Part 5A — Termination of strata titles scheme

*Could the persons involved be able to make application for re-subdivision, if **that's the desired outcome?***

- 70E. Approval of plan of subdivision
- 70N. Application for registration of termination

Section **70E 'approval of plan of subdivision'** requires application under the Planning and Development Act 2005 Part 10 (to include reference to termination of a strata titles scheme).

Section **70N 'registration of termination'** requires application to the Registrar of Titles (to include diagram or plan of survey endorsed with the approval of the Planning Commission under the Planning and Development Act 2005)

Will the effective date of change be the date of;

- 'approval of plan of subdivision' by the Planning Commission as with subdivisions (70E), or**
- 'registration of termination' with the Registrar of Titles and issue of the new certificate of title for the property (70N)?**

Original cadastral lot

When a strata plan is terminated, it is envisaged that the land parcel will revert to the original cadastral lot (pre strata).

Redevelopment after termination of the strata plan would be treated in the usual way, against the original cadastral lot as would any new subdivision, strata plan, or community title.

We ask for your clarification that when a strata plan is terminated, the land parcel will revert to the original cadastral lot (pre strata).

Community Titles Bill 2018 - Part 2 — Community schemes

- 7. Community scheme

Section (1) Land may be subdivided by a community scheme if —

- it comprises the whole of a parcel of land; and
- the parcel of land is freehold land held in fee simple and comprised in a single certificate of title under the Transfer of Land Act 1893; and
- the parcel of land is not already subdivided under the Strata Titles Act 1985;
- the parcel of land is not a caravan park or camping ground within the Caravan Parks and Camping Grounds Act 1995.

Once the strata plan has been terminated, we assume that section 7(c) does not apply and the land maybe subdivided by a community titles scheme.

Communication to public authority / service utilities

*Can you please confirm this assumption?
Would a community titles scheme plan be approved under the Planning and Development Act 2005 while the termination of a strata titles scheme is awaiting registration (Section 70E)?*

Community Titles Bill 2018

- Division 2 — Community development statement
Section 22. Comments from local government and others
(1) Within 7 days after receiving an application for approval of a community development statement or an amendment of a community development statement, the Planning Commission must refer the application for comment to —
 - (a) each local government in whose district the land is situated; and
 - (b) each public authority that the Planning Commission considers has an interest in the matter.
- Part 10 — Termination (no provisions as yet)

While a new development has provisions to notify public authorities (service utilities) such as the Community Titles Bill 2018, termination of subdivisions such as Strata do not have any such provisions (Note: The Community Titles Bill 2018 does not have any Termination provisions as yet)

The first advice of any information of termination of strata to the Water Corporation comes from a customer that has received a (strata-based) bill from us. This creates a great deal of work to get records and billing correct, many are well past the actual termination.

Can a provision be made that would see a formal process for the Water Corporation (local government and other utilities that may have an interest in the matter) being advised of the strata termination application when lodged and/or approved (maybe also asking for comment)?

Can such a provision for a formal process also be included in the Community Titles Bill 2018 Part 10 – Termination, when drafted?

Mr [REDACTED]
Senior Lawyer
Landgate
1 Midland Square
MIDLAND WA 6056

23 April 2018

Dear [REDACTED]

Strata Titles Amendment Bill 2018: Termination of Strata Title Schemes

REIWA welcomes the opportunity to provide the real estate industry's perspective during the Strata Title Reform process.

REIWA would like to take this opportunity to congratulate Landgate on the level of safeguards incorporated into the draft Bill for the Termination of Strata Schemes to protect all parties throughout the process.

This legislation is critical in ensuring that development is not stifled, while also protecting the rights of owners and residents.

Approval thresholds

REIWA is generally supportive of the thresholds outlined in section 70 J (a-d). However, with the majority of strata schemes consisting of two to three lots, (one in two, for two lots, and two in three, for three lots) may deter people from buying into these strata schemes due to unfounded fear of termination.

It is therefore essential that the length and complexity of the SAT process it outlined to buyers to ensure them that only genuine cases will be considered following a thorough consultation period with owners, mortgagees and residents. This can be included in the disclosure statement upon purchase.

REIWA supports the approval thresholds provided there are no changes to the requirements for a proposal to be determined by an SAT in all cases of majority approval.

Grace periods

It is a concern of strata managers that properties in prime locations could be inundated with termination proposal from third parties, therefore, the grace period of six months, following an unsuccessful proposal is reasonable and will safeguard strata companies from being inundated with unwanted proposals.

However, REIWA members would like to see the ability for a strata company to increase that grace period by an ordinary resolution vote, following its initial implementation by the SAT.

In the interest of ensuring competition is maintained, some strata companies may wish to review more than one application at a time, the current Draft Bill does not hinder this but an inclusion to state that multiple proposals can be reviewed at a time would be preferable.

Also, the Strata Company should have the ability to waive or terminate, the six-month grace period, should the owners vote to say they still wish to receive proposals.

Voting

REIWA notes that following the strata company receiving the initial proposal, it can be passed by general resolution. This implies that only a Quorum attendance level is needed to pass the first stage. This could be cause for concern for any proponent, who may feel reluctant to financially invest in the next stage of the process, without assurance of a high level of engagement from residents and owners.

However REIWA members also understand that the requirement for 75 per cent approval rate of all owners, needed to pass the full proposal will be difficult to obtain, due to low meeting attendance rates.

Therefore, REIWA supports 70J (7) which enables more than one vote on any proposal which will provide an opportunity for a strata manager to ensure better attendance rates. It will also mean a worthwhile proposal isn't withdrawn simply due to lack of attendance at general meetings.

It will also offer the power to the owners to counter the proposals put forward by the proponent to be voted on again once changes have been made.

REIWA also supports provisions in the Draft Strata Titles Reforms Act 2018 that allows for electronic voting and e-attendance of general meetings.

Role of the SAT

REIWA supports that a majority termination is not possible without an order from the SAT. REIWA members agree that the SAT is the preferred mechanism for majority termination approvals.

REIWA supports the inclusion that the SAT is able to confirm a proposal subject to modifications. This will streamline the process, instead of rejecting the proposal and beginning the process again following the proposal being modified.

It is also pleasing that termination proposals will be dealt with under the general SAT guidelines, meaning owners will have an opportunity for legal representation, adequate consultation and disclosure to all parties and provisions for non-English speakers etc.

Residential Tenancies Act

REIWA supports that the draft Bill does not override the Residential Tenancies Act. A Termination proposal underway could have a significant negative effect on an owner's ability to secure tenants.

It is therefore reassuring that, if there is a termination, those that have already signed leases, will be able to remain for the tenure of the lease. This is particularly critical for commercial tenants and owners, who would have made significant long-term financial commitments.

REIWA does recognize that these existing leases, could act as a handbrake to development and it is imperative that measures are in place to ensure dummy tenancies are not used as a ploy to override the application process. The SAT would have to determine the legitimacy of the existing leases during the decision making process.

Management of Schemes during Termination Period

REIWA is concerned that the handling of the termination process falls outside what would have been stipulated in existing management contracts.

REIWA would suggest the inclusion of additional costs to be incurred to the proponent for both additional actions required by the property manager as well as a fee for the additional responsibilities imposed on the property manager, outside of the management contract.

Fair Value and Like for Like

REIWA supports the method of calculation of land values to be based on the values that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for the acquisition of each lot.

It is also pleasing to see the draft Bill accounts for additional costs including property taxes, moving costs and expenses incurred by the owner due to the termination process.

It is essential, however, that the legislation does not inhibit negotiations between parties to ensure the owners can get the best value for their properties, whether that be monetary or an exchange.

Like for like clauses are also supported by REIWA. This protection will ensure owners who object to termination are given a minimum of like for like, if opting for a trade.

Requirements of the full proposal (Section 70G)

REIWA members have concerns over sections, in terms of who is responsible for determining if the full proposal meets the requirements outlined in the Draft Bill.

Should a full proposal be unanimously voted in favour for, then it would come down to the strata company and owners to determine the FP meets the criteria, something each will likely be unqualified to do so.

Should a proposal pass by a majority, then the SAT would be responsible for determining if the proponent has met all criteria.

Tenants

REIWA supports that the rights of tenants have been protected and no termination can be concluded during a lease period.

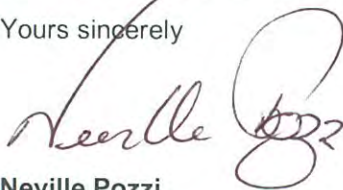
However, there are concerns that the stipulation for tenants to be notified when the full proposal is delivered to the strata company is too early and will unnecessarily spook tenants. This could lead to tenants deciding not to renew leases, causing financial harm to owners.

It is therefore recommended that tenants be notified once approval has either been granted by a unanimous vote of owners or determine by the SAT. This would, of course, have to take into account standard notice periods currently outlined in the Residential Tenancies Act, and dealt with in the same manner as an owner selling the property.

REIWA does support the disclosure of the ongoing termination proposal process to prospective tenants once the full proposal has been lodged onto the property's Landgate registration.

REIWA would like to thank you for the opportunity to provide feedback on the Draft Bill for the Termination of Strata Schemes. Should you wish to meet to discuss any of the ideas aforementioned please do not hesitate to contact REIWA Advocacy and Policy Manager Sadie Davidson on 08 9380 8241 or sadie.davidson@reiwa.com.au.

Yours sincerely



Neville Pozzi
CHIEF EXECUTIVE OFFICER

Comment Sheet

	Section	Comments
1.	cl. 4 Section 3 Amended	
2.	cl.5 Part 5A inserted	
3.	Part 5A Termination of strata titles scheme	
4.	70A Introduction	<p>(1) We initially wondered about the statement in s.70A(1) that “The termination of a strata titles scheme involves a subdivision of land for which approval is required under the <i>Planning and Development Act 2005</i>.” Particularly in respect of whether or not subdivision is required even if the terminated scheme ‘reverts’ back to the original freehold lot. We’d understood that such matters are currently dealt with internally at Landgate with no WAPC involvement. However, following a discussion with Landgate’s [REDACTED] it’s now our understanding that</p> <ul style="list-style-type: none"> i. Any termination of a strata scheme automatically ‘amalgamates’ the component elements of that scheme; ii. S4 of the P&DAct provides that “subdivision includes amalgamation”. iii. s135, ‘No subdivision etc. without approval’, of the P&DAct provides, at s.135(1)(b), that “A person is not to – amalgamate any lot with any other lot, whether within the same district or otherwise, without the approval of the Commission.” <p>Our ‘gap’ in understanding this matter now relates to the application of the term ‘lot’ in the above chain of definitions, noting that the P&DAct definition of lot “does not include a lot in relation to a strata scheme, a lot in relation to a survey-strata scheme, or a lot shown as common property on a survey-strata plan, as those terms are defined in the <i>Strata Titles Act 1985</i>”.</p> <p>Is Landgate able to further assist in our understanding of the above?</p> <p>(2) We have some concerns with the undefined nature of a ‘proponent’ given their potential powers. S.70A(2) currently provides that a person can be a proponent regardless of ‘whether or not the person is an owner of a lot in the strata titles scheme or, for a leasehold strata, the owner of the leasehold scheme’. It appears that absolutely anyone could lodge a termination proposal, thereby creating costs/workload for a strata company, strata manager, owners and the Registrar of Titles. In some circumstances i.e. unanimous agreement, it probably doesn’t matter who the proponent is. In other scenarios it might well matter. It’s not clear to us as to whether or not the person proposing the termination ought to have some sort of relationship to the scheme itself, or if that would potentially have unintended consequences in potentially excluding (or including) a person or a class of persons who ought (or ought not) to be able to be a proponent. (E.g., we don’t believe that the Housing Authority would be comfortable with a Housing tenant being able to be a proponent, and proposing the termination of a scheme that we had a residential tenancy property in?) We note that s.70N(3)(h) makes provision for the payment of a fee at the time of application for <u>registration</u> of termination. Could equivalent provisions be added in respect of the lodgement of an ‘outline of termination proposal’ and of a ‘full proposal’?</p>
5.	70B Outline of termination proposal	
6.	70C Content of outline of termination proposal	
7.	70D Ordinary resolution and support of owner of leasehold scheme required to proceed further	Are you able to elaborate on how you see the role of the Strata Manager in relation to providing any advice/opinion in the consideration of ‘outlines of termination proposals’ and ‘full proposals’? We ask that question in the context of proposed s.52A(3) which places some restrictions on the extent to which a strata manager may offer opinions on certain matters.
8.	70E Approval of plan of subdivision	
9.	70F Full proposal	
10.	70G Content of full proposal	s.70G(2) Is this necessary in all cases? What if the proposal is simply to demolish the building(s)?
11.	70H Support of owner of leasehold scheme required	
12.	70I Meetings and submissions	
13.	70J Vote	Subsection (6)(c) – should this just be ‘section 50’, as there is no current subsection (2)? Or is it intended as a reference to current s.50(2), which does not appear in the January 2018 iteration of the Amendment Bill?
14.	70K Confirmation of termination resolution by Tribunal	
15.	70L Endorsement of subdivision approval on plan	
16.	70M Appointment of administrator	
17.	70N Application for registration of termination	
18.	70O Registration of termination	
19.	70P Withdrawal of termination proposal	
20.	70Q Notice that termination proposal cannot proceed further	
21.	70R Notices received by Registrar of Titles	
22.	70S Costs of process	
23.	70T Arrangements for independent advice or representation for owners	
24.	General	Housing needs to be mindful that there is potential for us to be both a developer and an owner in respect of a scheme for which termination is proposed. In considering such matters, on a case by case basis, we’d need to consider the extent to which our ability to operate effectively might be compromised or restricted, to the detriment of our clients and/or strategic objectives. In such scenarios we’d need to consider the intended outcomes and our respective roles and responsibilities. Beyond the above, are you able to identify any prospective issues or matters which might arise from scenarios where a person was an owner and a developer re the same scheme?

29 March 2018

Strata Titles Reform Team
Landgate
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MIDLAND WA 6056

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

To whom it may concern

STRATA TITLES AMENDMENT BILL 2018: TERMINATION OF STRATA TITLE SCHEMES

Thank you for the opportunity to provide feedback in relation to the proposed section of the *Strata Titles Amendment Bill 2018, Termination of Strata Titles Scheme*. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the urban development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

UDIA strongly supports the reform of strata titles legislation and acknowledges Landgate's commitment to ensuring strata legislation is both contemporary and effective. The Institute greatly appreciates the opportunity to provide feedback on the draft Bill, however, because of the short period of consultation together with the confidential nature of the document, UDIA is only able to provide limited feedback on the draft Bill.

Whilst supporting the Bill and the proposed amendments that it sets out, the Institute does have a number of concerns regarding the content of the draft legislation. Therefore, UDIA offers a number of recommendations to address these concerns and ensure that the legislation delivers positive development outcomes that satisfy the diverse and evolving needs of our communities.

Resolution Thresholds and Tribunal Determinations

The Institute strongly supports the proposed lowering of the resolution thresholds by which a strata scheme can be terminated. This is a sensible solution that will help to overcome the existing barriers which prevent the redevelopment of strata schemes despite such proposals being widely supported by lot holders. Enabling and unlocking redevelopment opportunities for existing strata schemes is vital to achieving a number of State Government imperatives including increasing infill development, ensuring land is used efficiently to support housing affordability and advancing the development of the METRONET precincts.

The Institute is supportive of the proposed Tribunal assessment and determination of strata scheme termination proposals for two-lot and three-lot schemes where all parties are not in agreement. However, the Bill is unclear if a Tribunal determination is needed where all lots within a scheme support a termination. The Bill is silent on this issue for two and three lot strata schemes and s70J. d) refers to *'at least 75% of the total number of lots'* for schemes greater than three lots. To ensure that the Tribunal resources are used efficiently, the Institute recommends that where all lots support a proposed termination, then the Tribunal should not be required to determine the proposal and the draft Bill should make this clear.

Similarly, as a Tribunal determination is triggered where 50% of lots within a two lot scheme support termination and where the majority of lots (66%) within three lot schemes support termination, the Institute recommends that the threshold determination by the Tribunal for schemes greater than three lots should also be revised; allowing for a Tribunal assessment where the majority of lots support the termination of the scheme.

Although more pragmatic thresholds may be adopted for determining whether a scheme should be terminated, the Institute is concerned that the provisions of section 70K 15) may continue to prevent the termination of schemes. Greater clarity is needed regarding how the Tribunal will determine the impact of modifications to proposals, particularly as *'modifications must not have the effect of being less advantageous to any owner of a lot'*. Recognition needs to be given to the fact that the modification of proposals is likely to add additional costs to proposals which in turn will affect the considerations set out in section 70K 10) which include *'the full costs of the termination proposal to lot owners taking into account the costs of... any other charges'*. As such, the Institute recommends that section 70k 15) is amended to read *'modifications must not unreasonably have the effect of being less advantageous to any owner of a lot...'*

The Institute is also concerned that the Bill does not address whether a Tribunal decision can be appealed and the procedures involved in this process. The Institute recommends that this is addressed and an appropriate appeal process be established.

Uncertainty Surrounding Timeframes

The Institute queries the provisions of section 70B and why a proposal for the termination of a scheme cannot proceed within 6 months of a previous unsuccessful termination proposal. This is a significant period of time in which there will be a great deal of uncertainty for residents of strata schemes and proponents alike. This is compounded by the provisions of 70Q which mean the notice not to proceed with a termination may take up to 12 months. Whilst UDIA believes the intention of this provision may be to create certainty for lot holders, the proposed 6 month lock-out period for new proposals does not provide this, rather it simply elongates the process and therefore the length of time in which uncertainty persists. Therefore, the Institute recommends that the 6 month period in which a proposal cannot be submitted is removed. Maximum periods should also be placed on the length of time in which a Tribunal can determine that termination proposals cannot be accepted.

Uncertainty also surrounds the timeframes in which submissions can be made to proponents of termination proposals as section 70I (3) simply states that a 'reasonable opportunity must be provided'. To improve clarity and consistency in the application of the Bill, the Institute recommends that a prescribed number of days be identified for providing submissions to termination proposals. Similarly, clarity is also needed regarding the provisions of section 70H. 2) which states that strata companies must provide a receipt of notice of a termination 'as soon as practicable'; along with sections 70K 19) and 70P 1), which use the same terminology.

Conclusion

In closing, UDIA reiterates its support for the draft *Strata Titles Amendment Bill 2018* and the attempt to ensure the legislation is more representative of the majority of positions regarding the termination of strata schemes.

The Institute appreciates Landgate's efforts in engaging with the development industry on this issue. Should the agency require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Please do not hesitate to contact me at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely



Chris Green
Acting Chief Executive Officer



Never Stand Still

Built Environment

City Futures Research Centre

Strata Titles Act Reform

Report on state of strata sector in Perth and Peel Region

Dr Laurence Troy & Prof Bill Randolph

November 2015



UNSW
AUSTRALIA



Strata Titles Act Reform: Report on state of strata sector in Perth and Peel Region

By Laurence Troy and Bill Randolph,

City Futures Research Centre

UNSW Built Environment

UNSW Australia

www.cityfutures.net.au

Published by: City Futures Research Centre, UNSW Australia

First published November 2015

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This report is based on research funded by Landgate, Western Australian Land Information Authority.

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Contents

Executive Summary.....	v
Introduction.....	1
Methodology	2
Current Strata Data	
Termination Data	
Australian Bureau of Statistics Data	
Strata Schemes Profile	4
Existing Strata Schemes	
Terminated Strata Schemes	
Dwelling and Community Profile	26
Dwelling Profile	
Age Profile	
Household Structure	
Income	
Strata Market Profile: Residential Sales.....	30
Strata Renewal Drivers.....	31
Conclusion	35
References	36

List of tables

Table 1 Number of SCHEMES by scheme size and registration date for Greater Perth	4
Table 2 Number of LOTS by scheme size and registration date for Greater Perth	5
Table 3 Number of SCHEMES by land use and scheme size for Greater Perth	6
Table 4 Number of SCHEMES by land use and scheme age for Greater Perth	6
Table 5 Number of terminated SCHEMES by size and registration date for Western Australia	22
Table 6 Number of terminated SCHEMES by size and registration date for Greater Perth.....	22
Table 7 Number of cancelled SCHEMES by registration date and cancellation date for Greater Perth	24
Table 8 Tenure profile of dwellings in Greater Perth	26
Table 9 Age profile of persons by dwelling structure in Greater Perth (Place of Enumeration).....	27
Table 10 Household profiles in Greater Perth (counting dwellings)	29
Table 11 Household weekly income in Greater Perth (counting dwellings)	29

List of figures

Figure 1 Volume of strata schemes and strata lots by registration year for Greater Perth.....	5
Figure 2 Location of strata schemes by size of scheme	8
Figure 3 Location of strata schemes 2 to 10 lots in size	9
Figure 4 Location of strata schemes 10 or more lots in size	10
Figure 5 Location of residential strata schemes 2 to 10 lots in size	11
Figure 6 Location of residential strata schemes 10 or more lots in size	12
Figure 7 Location of non-residential strata schemes 2 to 10 lots in size	13
Figure 8 Location of non-residential strata schemes 10 or more lots in size.....	14
Figure 9 Location of strata schemes registered 1968 to 1979	15
Figure 10 Location of strata schemes registered 1980 to 1989	16
Figure 11 Location of strata schemes registered 1990 to 1999	17
Figure 12 Location of strata schemes registered 2000 to 2009	18
Figure 13 Location of strata schemes registered 2010 to August 2015	19
Figure 14 Location of strata schemes by land use zoning for	20
Figure 15 Number of schemes terminated by registration date for Western Australia.	22
Figure 16 Number of schemes terminated by age of scheme in years for Western Australia	23
Figure 17 Number of schemes terminated by termination date for Western Australia.....	23
Figure 18 Location of terminated strata schemes by size	25
Figure 19 Population of flats, units, apartments and attached dwellings age 65 years and over	28
Figure 20 Distribution of strata sale for 2014/2015 by scheme age for Perth and Peel Region.....	30
Figure 21 Distribution of strata sale for 2014/2015 by scheme size for Perth and Peel Region	30
Figure 22 Interquartile range of \$ per sq metre values by Statistical Area Level 2	33
Figure 23 SEIFA index of relative socio-economic disadvantage 2011 by SA2.....	34

Executive Summary

This report presents the outcomes of research commissioned by Landgate to assess the current state of strata title sector and residential population in the Perth and Peel region. It aims to provide a 'base line' level of understanding of strata title, where it is, what it represents and who it represents across the Perth and Peel Metropolitan Region.

The Greater Perth Statistical Area has 198,832 strata lots across 42,935 schemes as of August 2015 and shows a dispersed pattern across the metropolitan area. Unlike other Australian cities, where concentrations of strata title has followed waves of residential multi-unit dwelling construction, strata in the Perth context predominately represents smaller attached housing forms, and shows significant concentrations in suburban locations. A basic profile of the strata sector across the Greater Perth regions shows that:

- 34.1% of all schemes were registered prior to 1990.
- 55.8% of all strata titled properties are 2 lots in size.
- 28.1% of all schemes of between 3 and 5 lots in size.
- 89.3% of all strata schemes are residential or mixed use.
- 10.8% of all strata schemes are non-residential.
- 240 strata schemes have been terminated since 2010.

The tenure profile of higher density and attached housing categories in Greater Perth from the Australian Bureau of Statistics 2011 census shows that:

- 24.8% of higher density dwellings and 39.7% of attached dwellings are owner occupied.
- 39.3% of higher density dwellings and 30.3% of attached dwellings are privately rented.
- 8.8% of higher density dwellings and 8.6% of attached dwellings are public or community housing.
- 27.0% of higher density dwellings and 21.4% of attached dwellings are visitor only or unoccupied.

The profile of residents higher density and attached housing categories based on the 2011 census, suggest:

- 25 to 34 year olds represents the largest age grouping, accounting for 28.4% of residents in higher density dwellings and 21.9% of residents in attached dwellings.
- Over 65 year olds, represents the second largest age category, accounting for 15.7% of higher density dwelling residents and 17.3% of the attached dwelling residents.
- 50.9% of households in the higher density dwellings and 41.8% of households in attached dwellings are lone person households.

Introduction

Over the past 25 years, urban renewal has been a major driver of change and is increasingly seen as the mechanism through which a growing population is managed. Principally under the guise of urban consolidation or urban compaction policies, these policies look towards existing urban spaces to accommodate housing needs (Forster, 2006; OECD, 2012). The public face of this has often focused around large scale renewal projects such as East Perth and Subiaco Redevelopments in WA or Pyrmont Ultimo and Green Square in NSW. These projects have tended to focus on land vacated in the wake of changing patterns of production in urban economies, with industries either moving in favour of peripheral locations to meet their changing needs, or locating offshore.

These projects have played a pivotal role reordering urban spaces, however, in the Perth context some of these larger changes have masked gradual and piecemeal changes that have been occurring across urban areas, with single houses being replaced by two or three dwellings or multi-unit forms of housing. As many of the 'first wave densification' opportunities decline, increasing attention is being turned towards renewal of existing housing to provide additional accommodation demands over an extended period.

A common theme to most first wave densification, strata title has been the mechanism that has accompanied these urban form changes. This has created a complex web of title, interests and rights that sit across the urban landscape making future changes difficult. This in part is borne out of inherent tensions in strata which forces collective decision making (Randolph & Easthope, 2014) onto groups of people with individual property rights (Easthope *et al.*, 2013).

When strata title was introduced, it was an enormously effective mechanism through which individual title and ownership could be delivered to different dwelling types, and helped facilitate the expansion of a housing market into multi-unit housing. Whilst these changes were being led by land development interests (see Clark, 2002; Easthope *et al.*, 2013), this form of title is now being seen by the similar interests as a barrier to further urban development.

Major renewal projects have faced problems of land ownership fragmentation across larger areas, however there is a much more clearly defined role for government in acquiring and aggregating land in this context. These projects have been allowed to sit within a public interest sphere, whereas strata title firmly places similar conceptual problems within the private sphere, creating significant governance and legal challenges when trying to amalgamate different property interests. The challenge for strata title is how to enable effective urban renewal that recognises the diverse sets of interests, both in terms of legal property rights and socially defined housing interests, within what is a lived urban space.

It is in this context this report aims to provide a 'base line' level of understanding of strata title, where it is, what it represents and who it represents across the Perth and Peel Metropolitan Region. This report presents the outcomes of research commissioned by Landgate to assess the current state of strata title sector and residential population in the Perth and Peel region.

The report is separated in the four sections. The first outlines some methodological issues in assembling the data. The second overviews the location, size and type of strata title across the Perth and Peel regions. The third part provides a brief description of the population living in strata title, and the final section summarises the price profile of strata title sales for the 2014/2015 financial year.

Methodology

All figures presented in this report are based on population and land parcels that are within the Greater Perth Capital City area as defined by the Australian Bureau of Statistics 'Greater Capital City Area' geography. This aggregation represents the functional economic area of the Perth capital city region. The geography broadly matches the Perth Metropolitan Region Scheme and the Peel Region Scheme areas, with the exception of the eastern half of the Shire of Murray. The reason for using this geography is to align the reporting of census data with strata property title records. In any event, there are a few strata titled properties in the rural zones of the Shire of Murray.

There are three principal sources of data used in this report, each having some conceptual and methodological differences which need to be outlined in order for an informed comparison to occur. Each data source is outlined below:

Current Strata Data

Strata data has been compiled based on Landgate's property ownership database. All figures and tables are based on built strata plans and exclude all survey strata plans, with the exception of termination data. The rationale for this is the date of registration of survey strata plans does not necessarily reflect the date at which a structure was put on the land and survey strata plans do not necessarily require there to be a built structure on the strata subdivision. They have been excluded to avoid skewing the distribution of age profiles. While there are significant numbers of survey strata plans, built strata plans represent the dominant share of strata in Perth.

Scheme size has been derived by counting the number of unique lot records with the same strata number, and excluding any lots that can be identified as being common property, usually because it includes a 'CP' prefix. For this reason, it is possible that some schemes will be overestimated in size by one lot.

Strata lots that are situated outside the Greater Perth Statistical Area have been excluded from the analysis.

Termination Data

Figures presented on the termination of strata schemes are based on records since 2000/2001. The reason for this is that a new management system for strata records was implemented at this time and as a result, some of the attribution for schemes terminated prior was not updated. Because of this gap in particular attributes, some records of schemes terminated prior to 2000/2001 were not able to be extracted and analysed. According to Landgate, a total of 1,185 schemes have been terminated since the introduction of strata legislation in 1968, compared to 725 schemes reported on in this document. Despite this gap, the termination dataset does provide a snapshot into current processes and outcomes of termination.

Australian Bureau of Statistics Data

The dwelling and community profile data is based on the 2011 Census of Population and Housing. All tables have been separated according to dwelling type in order to capture the population subsets that are likely to live in strata buildings as compared to those on a single title. Flats, units and apartments of one, two, three or four or more stories are classified as 'Higher Density Dwellings' and represent a typology of 'multiple dwellings'. All semi-detached, row or terrace, or townhouse dwellings have been classified as 'Attached Dwellings' and represent 'grouped housing' typologies. The final category is 'Balance of Perth' and represents all other formal dwelling types, almost all of which are single houses.

Both higher density dwellings and attached dwellings are taken to represent strata stock in Perth for the purposes of identifying who lives in strata. It should be noted that this is an approximation and some population represented this way, may not live in a strata dwelling. Some reasons for this difference included:

- ABS records dwellings by building form and not land title.
- Not all attached housing types are strata titled. Similarly structured land subdivisions are visually identifiable through and inspection of the cadastre, with some being subdivided into single title lots, while others being strata subdivided, however ABS does not distinguish.
- Some lots on strata plans may not actually represent dwellings. For example mixed use dwellings have been assumed to be representative of residential dwellings, even though some will be for commercial use only.

It is estimated that there are approximately 157,017 residential strata lots in the Greater Perth Area, which compares to 164,081 dwellings in the higher density and attached dwelling categories.

Strata Schemes Profile

The strata profile has been separated into two parts, the first detailing various characteristics of current strata title property and second detailing the characteristics of schemes that have been terminated.

Existing Strata Schemes

The following tables show the breakdown of strata schemes and lots by registration date and scheme size and include all schemes within the Greater Perth area, but do not include survey strata lots. Table 1 shows the distribution of schemes by size and date of registration. More than 55% of all strata titled properties are 2 lots in size, while a further 28% are schemes of between 3 and 5 lots in size. When taking into consideration registration dates, the data shows that scheme registrations peaked in the 1990s in large part driven by the numbers of 2 lots schemes. In the large scheme categories of more than 50 lots, there has been an increasing number of registrations over time. There have already been 22 schemes registered in the five years to 2015 that are larger than 100 lots in size compared with 27 in the previous decade.

Table 2 outlines the number of lots registered by scheme size and decade. 14,620 or 34.1% of all schemes were registered prior to 1990. Due to the increasing proportion of larger scheme registrations, the difference in total lot registrations between the last three decades is less pronounced. Between 2010 and 2015 there were 3,518 lots in 2 lot schemes and 6,918 lots in schemes of 3 to 5 lots registered which accounts for nearly half of all registrations. The 3,562 lots registered in the 100 + lot category, which is the second highest group after 3 to 5 lots schemes. While it may yet be too early to tell, there appears to be a slight momentum shift towards larger schemes compared with the previous four decades.

Table 1 Number of SCHEMES by scheme size and registration date for Greater Perth

Registration Date	Scheme Size (Lots)							Total
	2	3-5	6-10	11-20	21-50	51-100	100+	
Pre 1970	11	5	13	21	9	3		62
1970-1979	3,712	589	604	364	155	38	10	5,472
1980-1989	5,245	1,924	1,182	496	178	53	8	9,086
1990-1999	8,705	3,981	1,030	414	180	31	6	14,347
2000-2009	4,529	3,496	788	367	193	70	27	9,470
2010-2015	1,759	2,056	379	153	89	40	22	4,498
Total	23,961	12,051	3,996	1,815	804	235	73	42,935

Table 2 Number of LOTS by scheme size and registration date for Greater Perth

Registration Date	Scheme Size (Lots)						Total
	2	3-5	6-10	11-20	21-50	51-100	
Pre 1970	22	20	105	340	264	233	984
1970-1979	7,424	2,252	4,848	5,408	4,684	2,584	28,592
1980-1989	10,490	6,958	9,236	7,142	5,341	3,372	43,818
1990-1999	17,410	13,991	7,661	6,001	5,635	1,996	53,498
2000-2009	9,058	12,079	5,829	5,262	6,014	5,010	47,106
2010-2015	3,518	6,918	2,905	2,224	2,910	2,797	24,834
Total	47,922	42,218	30,584	26,377	24,848	15,992	198,832

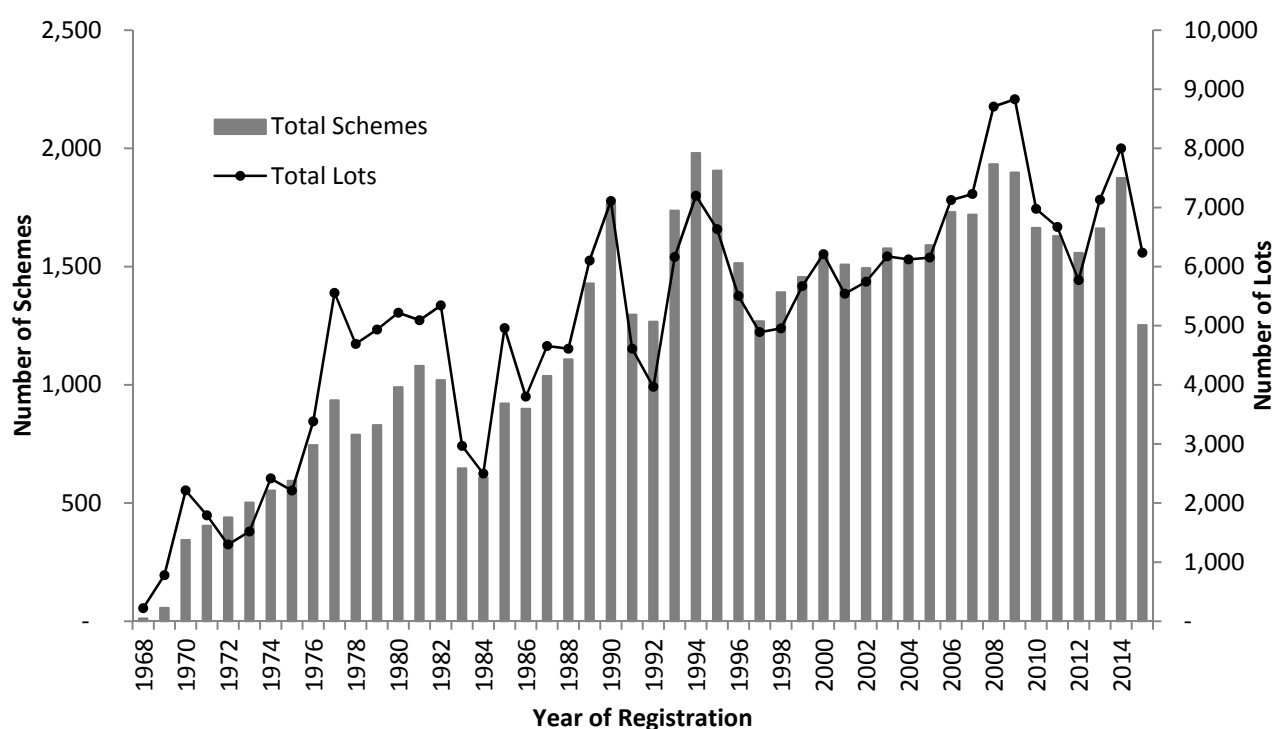


Figure 1 Volume of strata schemes and strata lots by registration year for Greater Perth

Figure 1 compares the number of schemes registered with the number of lots registered for each year since 1968, and the difference in the bars and lines outline the relative contributions smaller or larger lots make to the total volumes of strata over time. During the second half of the 1970s there was a spike in total lots registered, which indicates a relative increase in the registration of larger schemes. This relationship doesn't occur again until the 2008/2009 period, after which there was a decline in both numbers of schemes and lots, likely representing the delayed effects of the financial crisis of 2007/2008.

Tables 3 and 4 show the distribution schemes by land use, broken down by scheme and registration date respectively. 89.3% of all strata schemes are residential or mixed use with the remaining mix of non-residential schemes accounting for 10.8% of the total. Table 4 shows residential strata schemes peaked

during the 1990 to 1999 period, with the past five year indicating a similar volume of registrations compared with the 2000s. There were similar volumes of commercial strata registered in the 1990s and 2000s, however based on the five years to 2015, there appears to have been a declined in the numbers of registrations. Mixed use schemes peak in 2000-2009 period and there appears to be a reduction to 1990 levels in the current decade.

Table 3 Number of SCHEMES by land use and scheme size for Greater Perth

Land Use Zone	Scheme Size (Lots)							Total
	2	3-5	6-10	11-20	21-50	51-100	100+	
Residential	22,642	10,231	2,907	1,263	492	123	27	37,685
Mixed Use Residential	60	85	78	76	64	33	13	409
Rural Living	11	1	2	1	1			16
Other Residential	3	2		2	2			9
Commercial/Business	810	1,064	676	316	188	56	20	3,130
Industrial	308	508	261	96	19	2		1,194
Infrastructure/Public Uses	11	28	10	21	6	3		79
Recreation/Conservation	2	3	2	4				11
Rural	16	2		1				19
Special Zones	25	49	25	12	12	11	6	140
No Zone	1		3	2				6
Total	23,889	11,973	3,964	1,794	784	228	66	42,698

Note: variations in total figures between table 1 and this table due to null values in land use attribution for 237 schemes

Table 4 Number of SCHEMES by land use and scheme age for Greater Perth

Land Use Zone	Scheme Registration Date						Total
	Pre 1970	1970-1979	1980-1989	1990-1999	2000-2009	2010-2015	
Residential	58	5,150	8,031	12,744	7,832	3,870	37,685
Mixed Use Residential	1	32	91	88	152	45	409
Rural Living		3	6	6	1		16
Other Residential			3	2	3	1	9
Commercial/Business	3	192	732	965	946	292	3,130
Industrial		31	149	450	374	190	1,194
Infrastructure/Public Uses		5	17	35	17	5	79
Recreation/Conservation		2	7		2		11
Rural		4	10	2	3		19
Special Zones		2	8	21	62	47	140
No Zone						6	6
Total	62	5,421	9,054	14,313	9,392	4,456	42,698

Note: variations in total figures between table 1 and this table due to null values in land use attribution for 237 schemes

Figures 2 through 8 show the distribution of strata schemes by size and land use across the Greater Perth region. Figure 2 shows all strata schemes by size across Greater Perth, and it is immediately apparent that strata titled property is distributed right across the Perth region with notable concentrations outside the Perth central area. Specifically between Joondanna and Balga, Bicton to Ardross, Scarborough, and Victoria Park to Belmont.

Larger strata schemes (10 or more lots in size) are generally clustered in locations in or near the Perth CBD, along major corridors of Stirling Highway, Canning Highway, Albany Highway and major centres outside the CBD. These schemes only account for around 6.8% of the total number of schemes and are likely to account for most of the vertical strata subdivisions.

What is of more significance in terms of total stock and geographic coverage in the Perth context is the distribution of smaller strata schemes of less than 10 lots. While some will represent smaller apartment complexes, the distribution shown in Figures 3 and 5 indicate a form of dwelling consistent with more traditional suburban housing development. According to table 2, these schemes (10 lots or less in size) account for 93.2% of all strata schemes in the Greater Perth area.

Figures 9 through 13 show the distribution of strata schemes by decade of registration, which gives an indication of the location of schemes of similar age across Perth. Figure 9 shows the location of registrations between 1968 and 1979 and indicates the use of strata across the extent of the urban area of the time. Each of the following decades show similar coverage, spreading outward as Perth expanded. There were however considerable concentrations of registrations in inner ring suburbs suggesting a significant reworking of the built environment over time.

Since 2000, there appears to be a reduced level of strata registrations in the western areas and higher concentration in eastern zones, bound by Balga to the north, Midland to the east and Victoria Park to the south. This shift in activity could relate to a renewed focus on renewal of these areas during this time and a limitation on horizontal subdivision potential in western zones that were the focus on activity in previous decades.

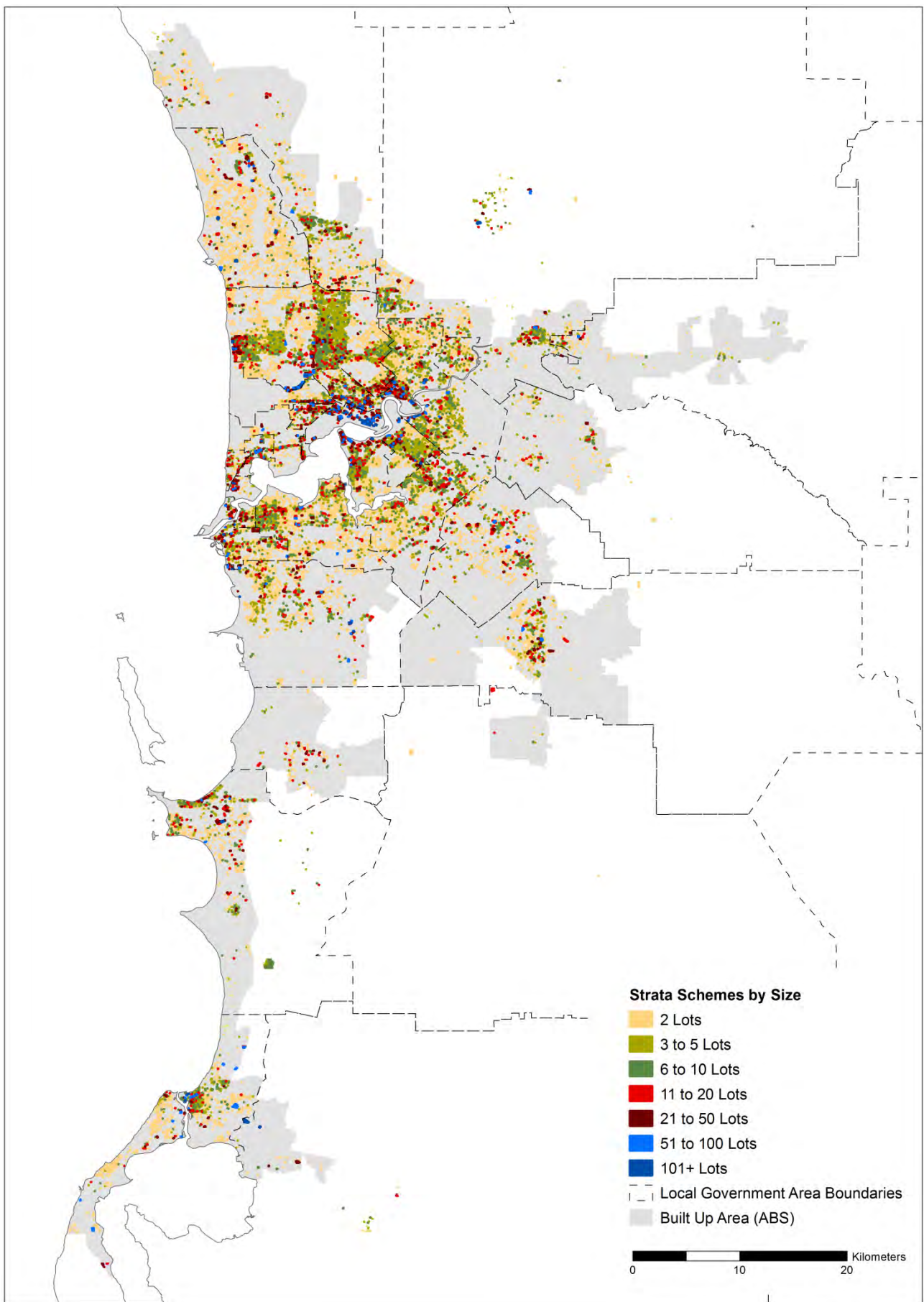


Figure 2 Location of strata schemes by size of scheme

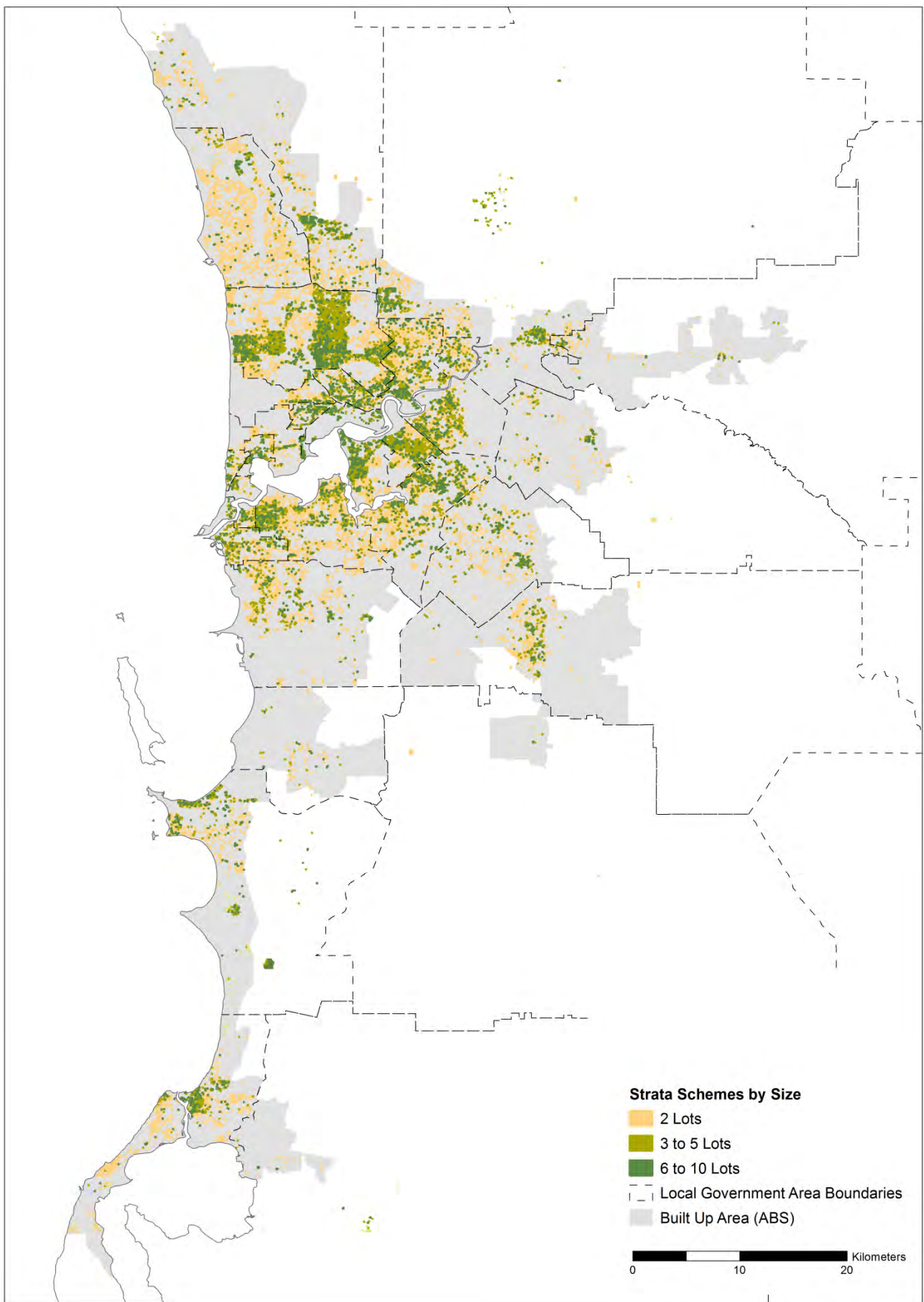


Figure 3 Location of strata schemes 2 to 10 lots in size

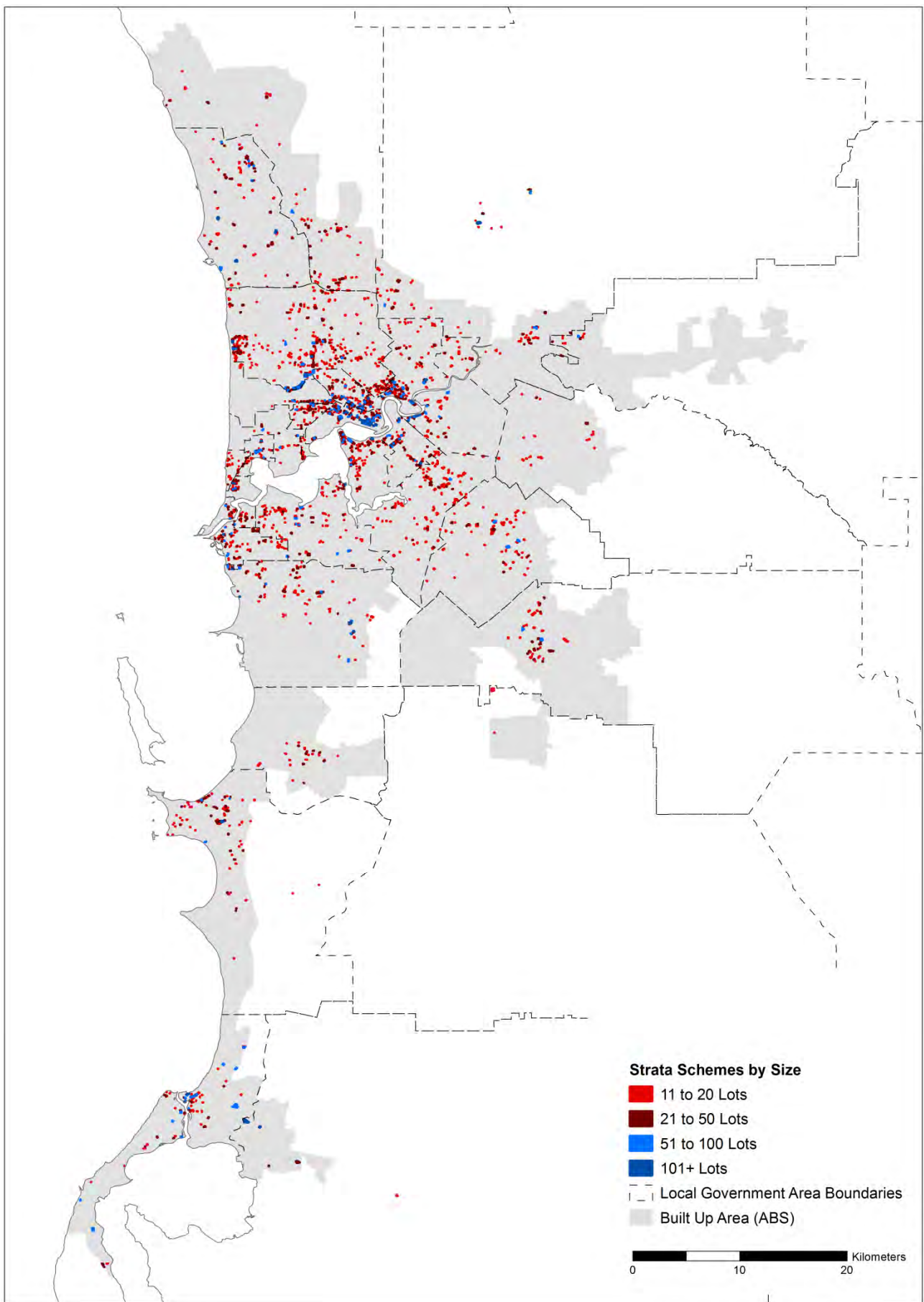


Figure 4 Location of strata schemes 10 or more lots in size

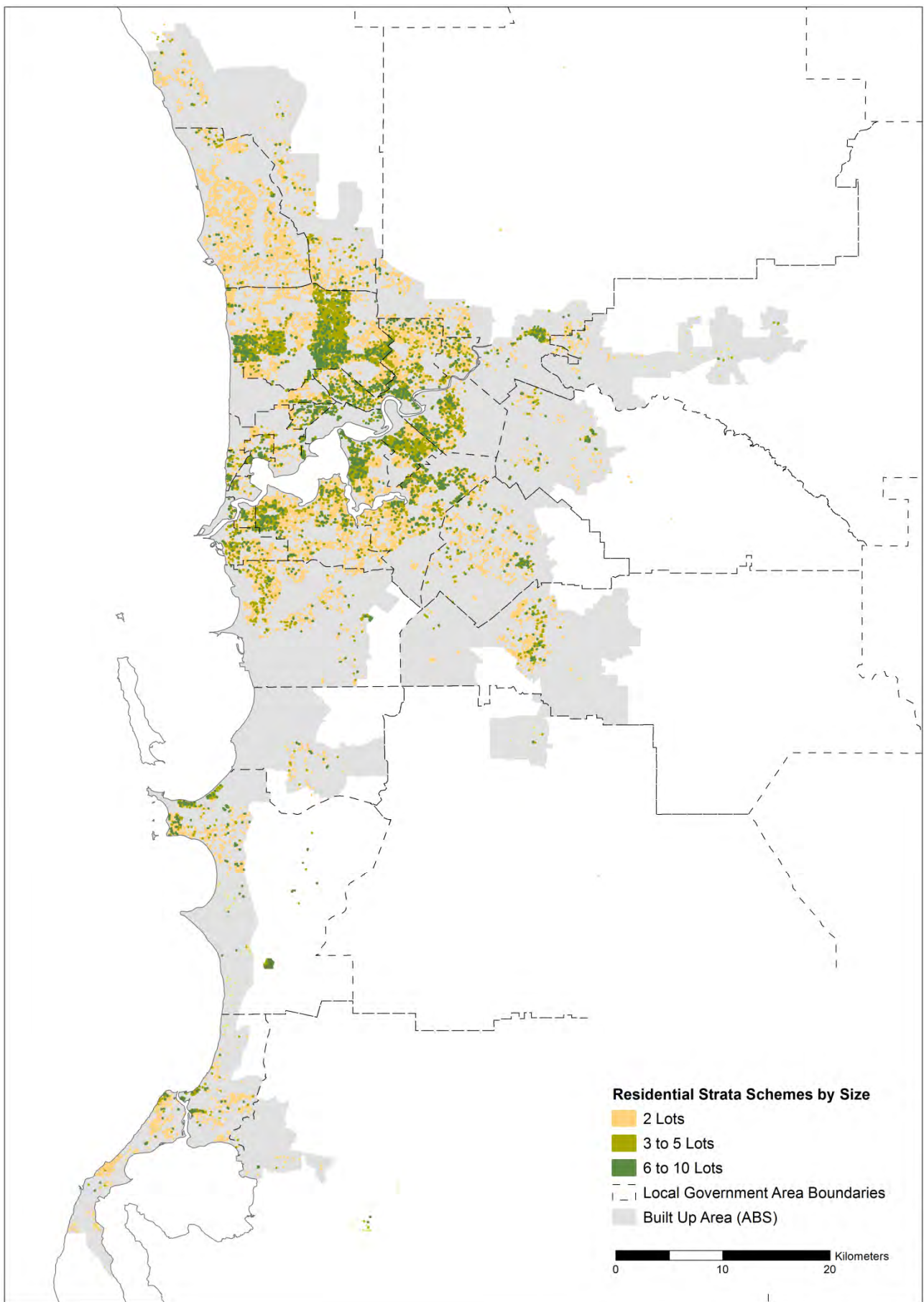


Figure 5 Location of residential strata schemes 2 to 10 lots in size

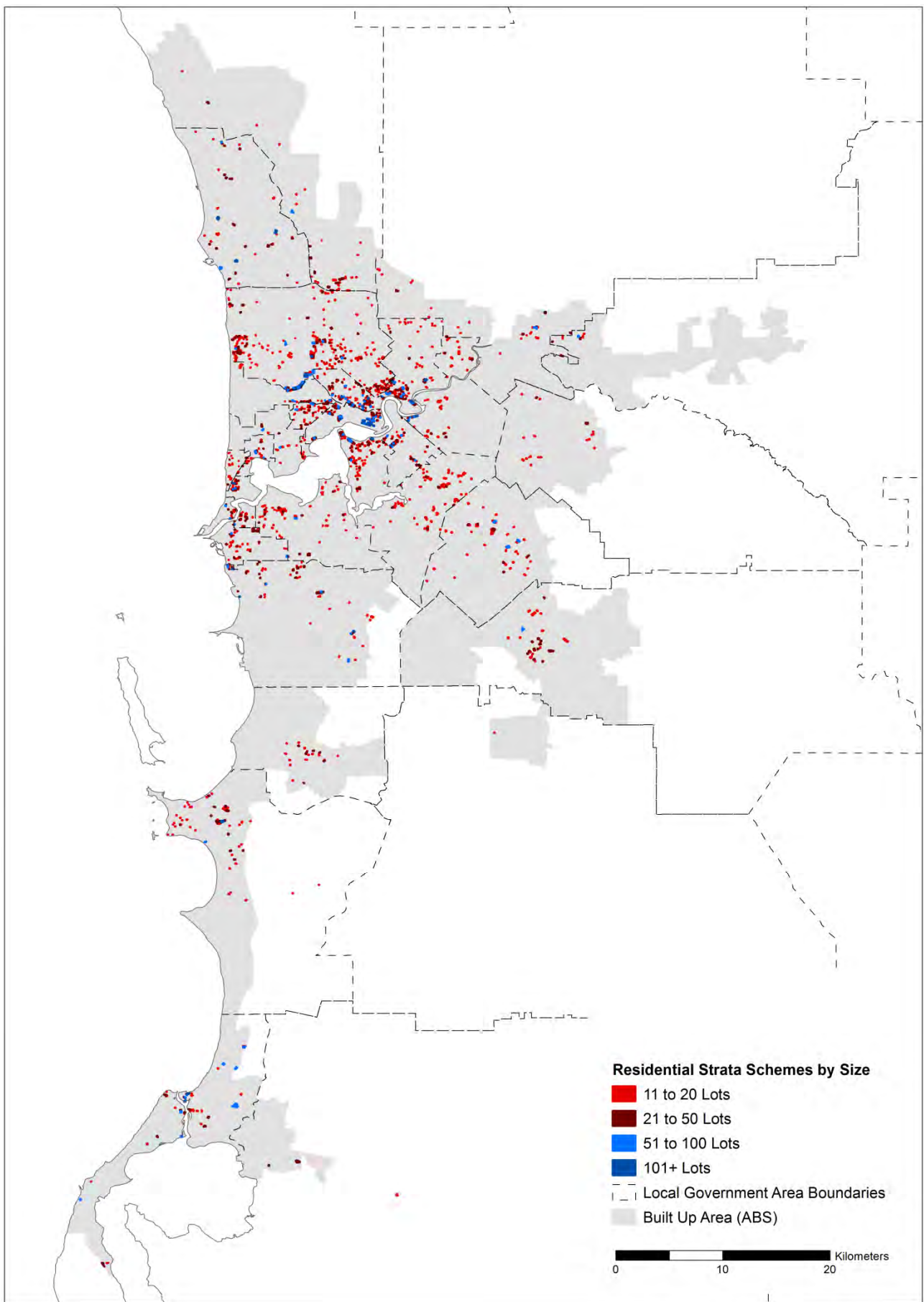


Figure 6 Location of residential strata schemes 10 or more lots in size

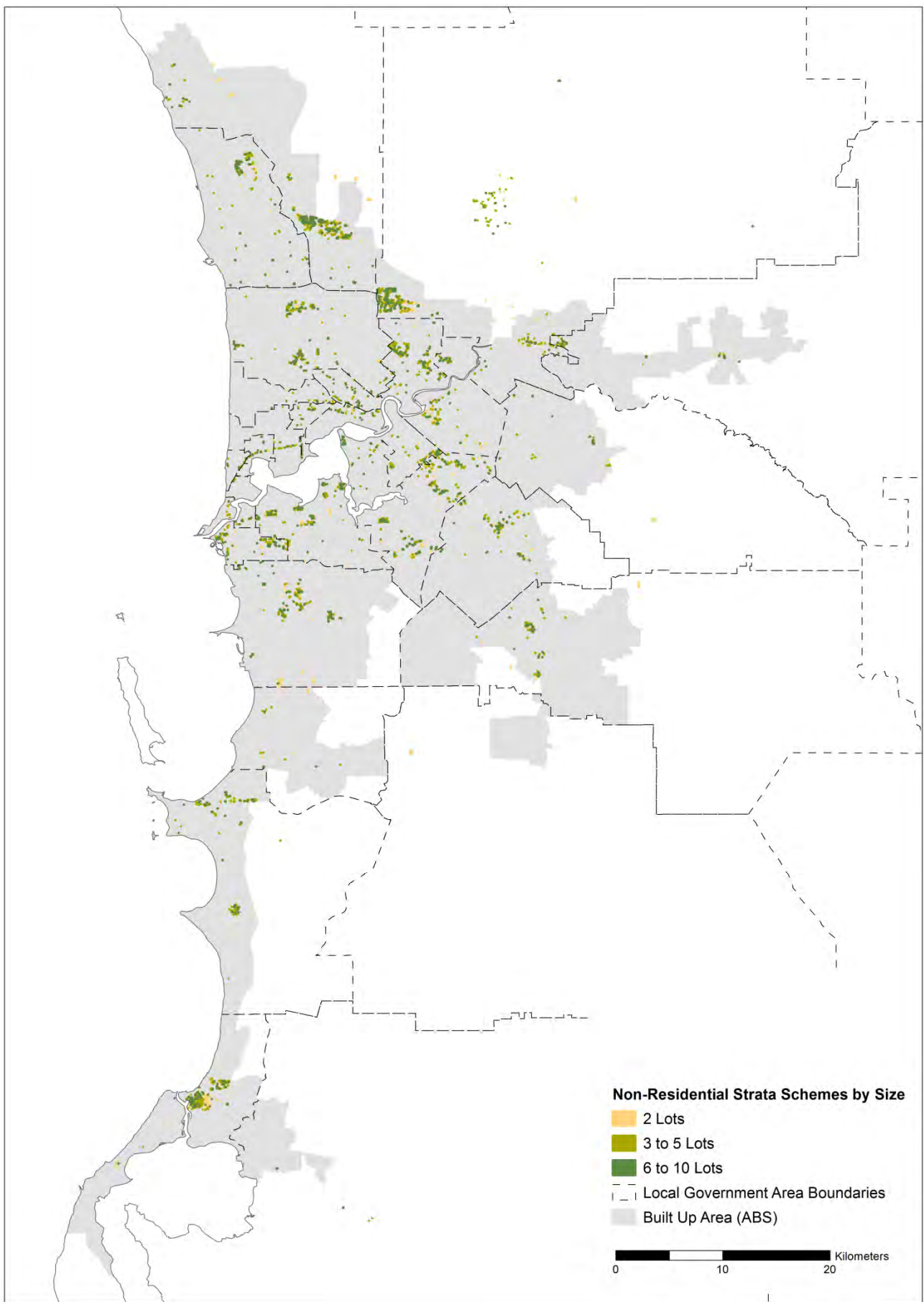


Figure 7 Location of non-residential strata schemes 2 to 10 lots in size

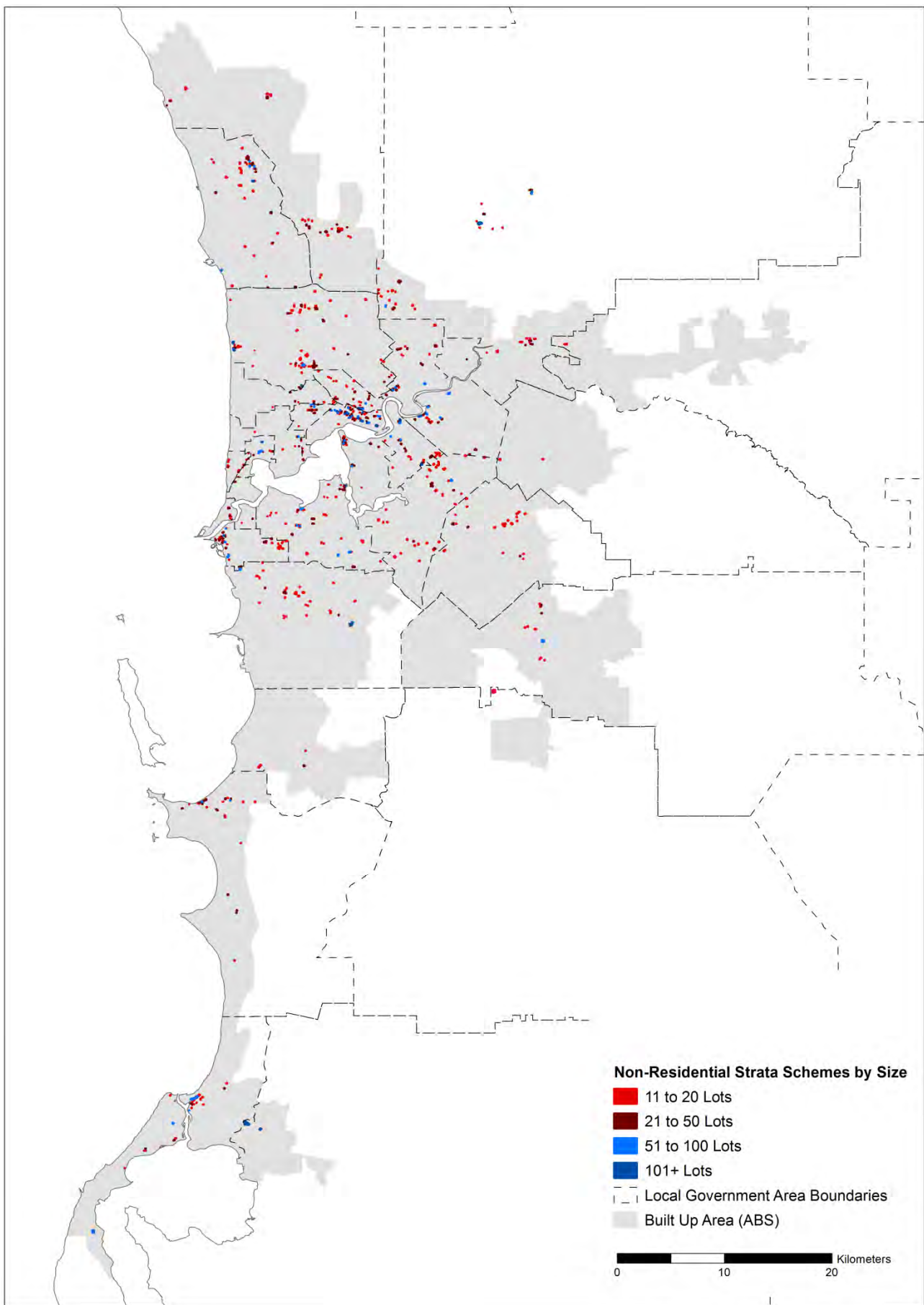


Figure 8 Location of non-residential strata schemes 10 or more lots in size

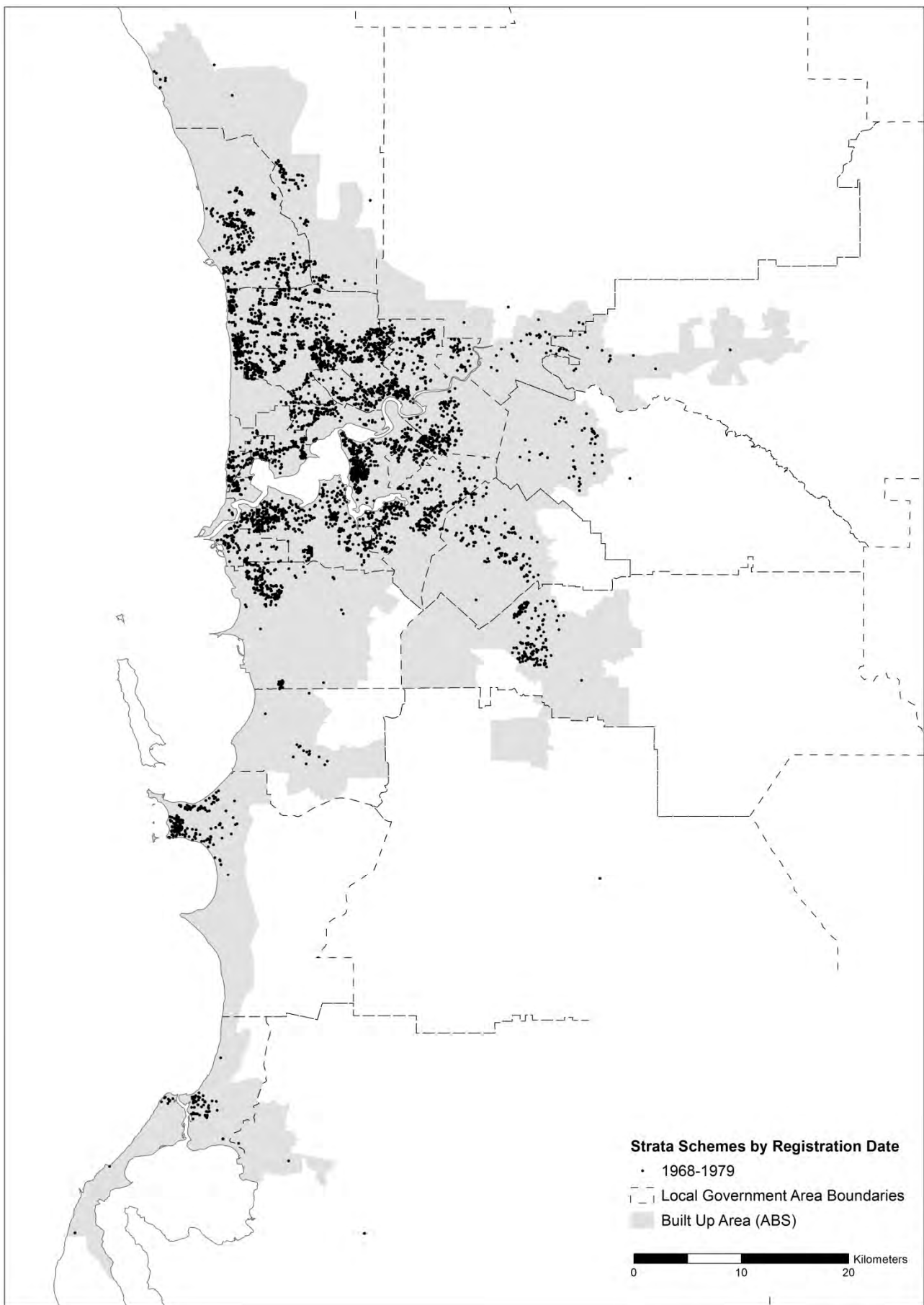


Figure 9 Location of strata schemes registered 1968 to 1979

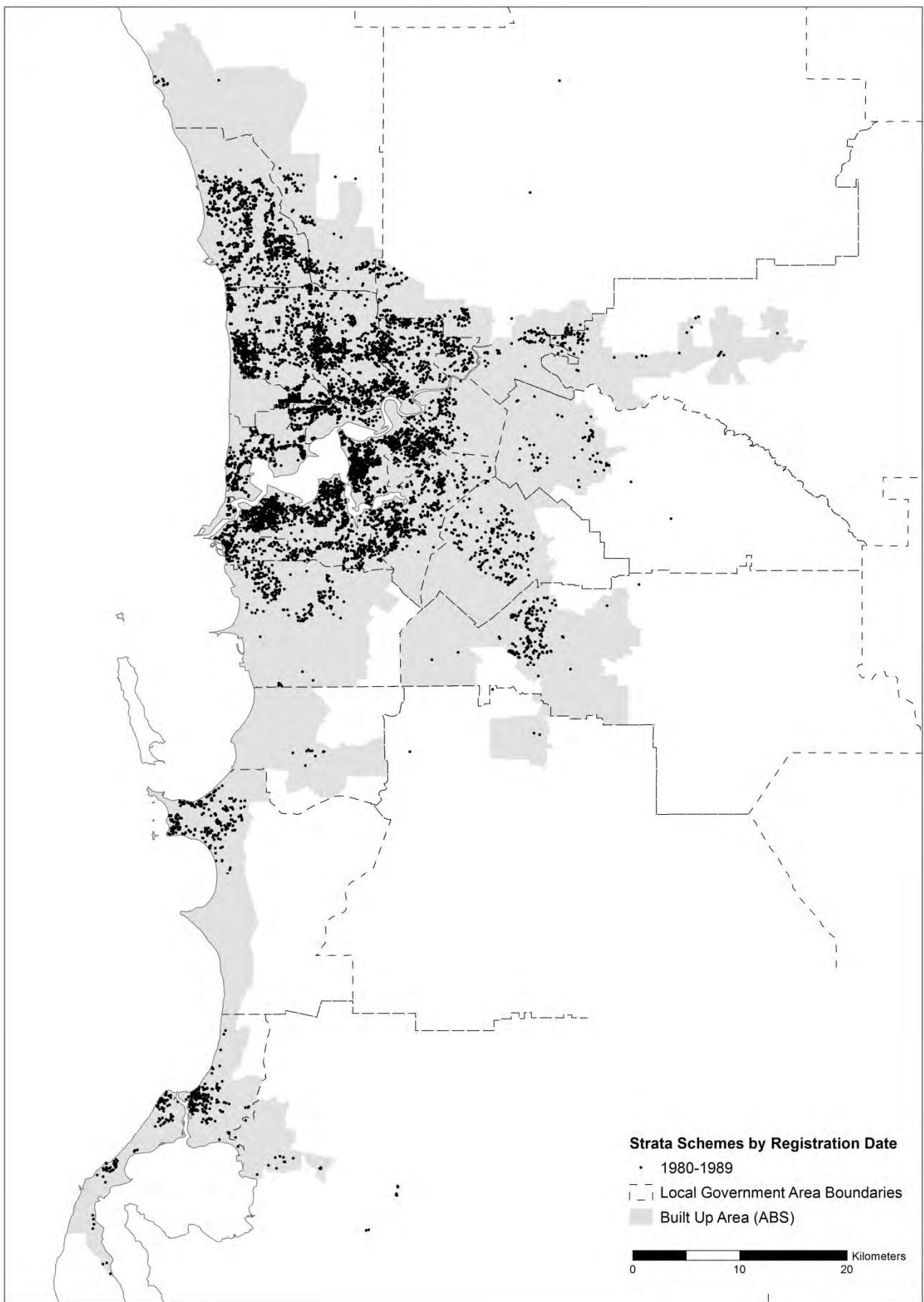


Figure 10 Location of strata schemes registered 1980 to 1989

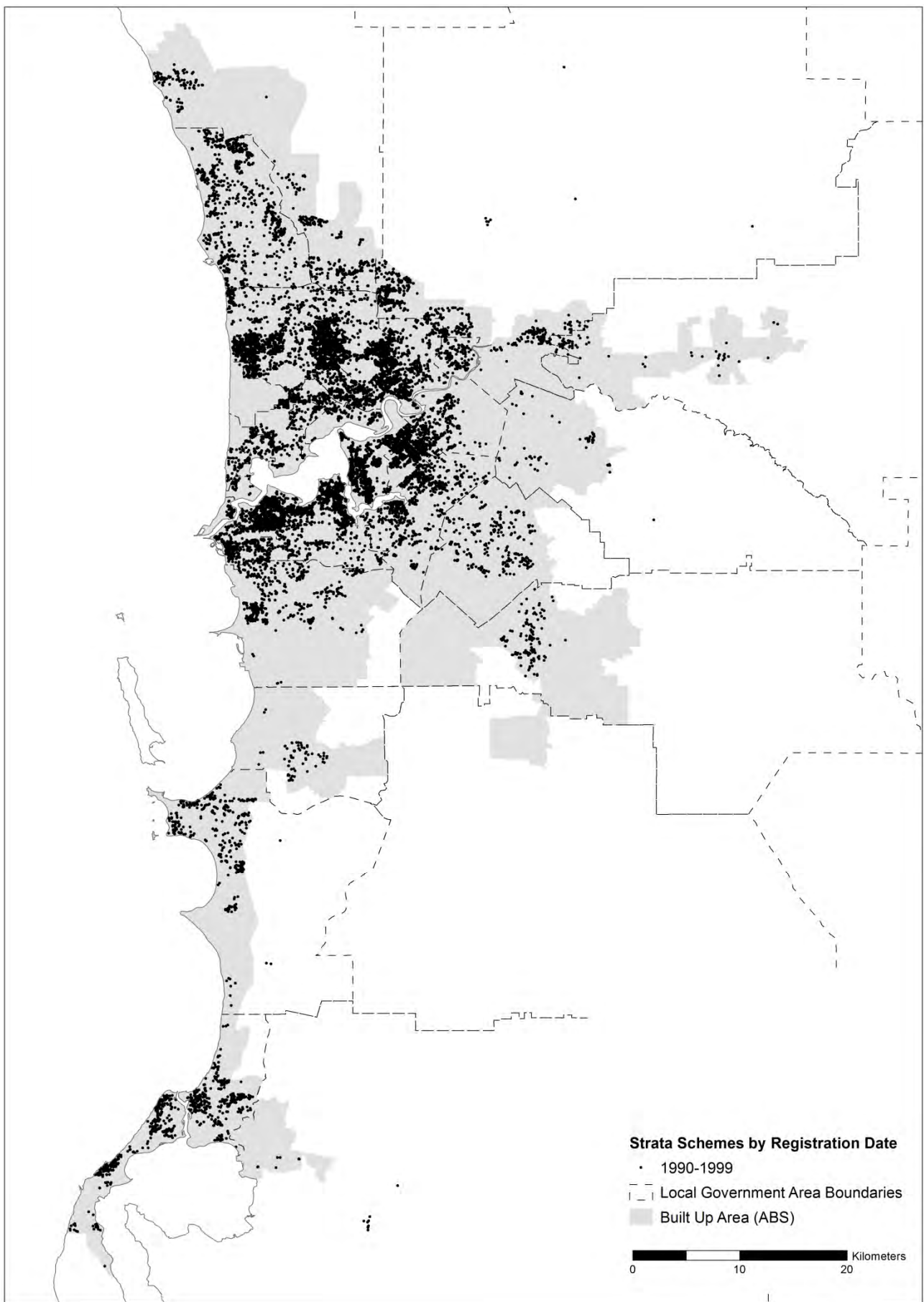


Figure 11 Location of strata schemes registered 1990 to 1999

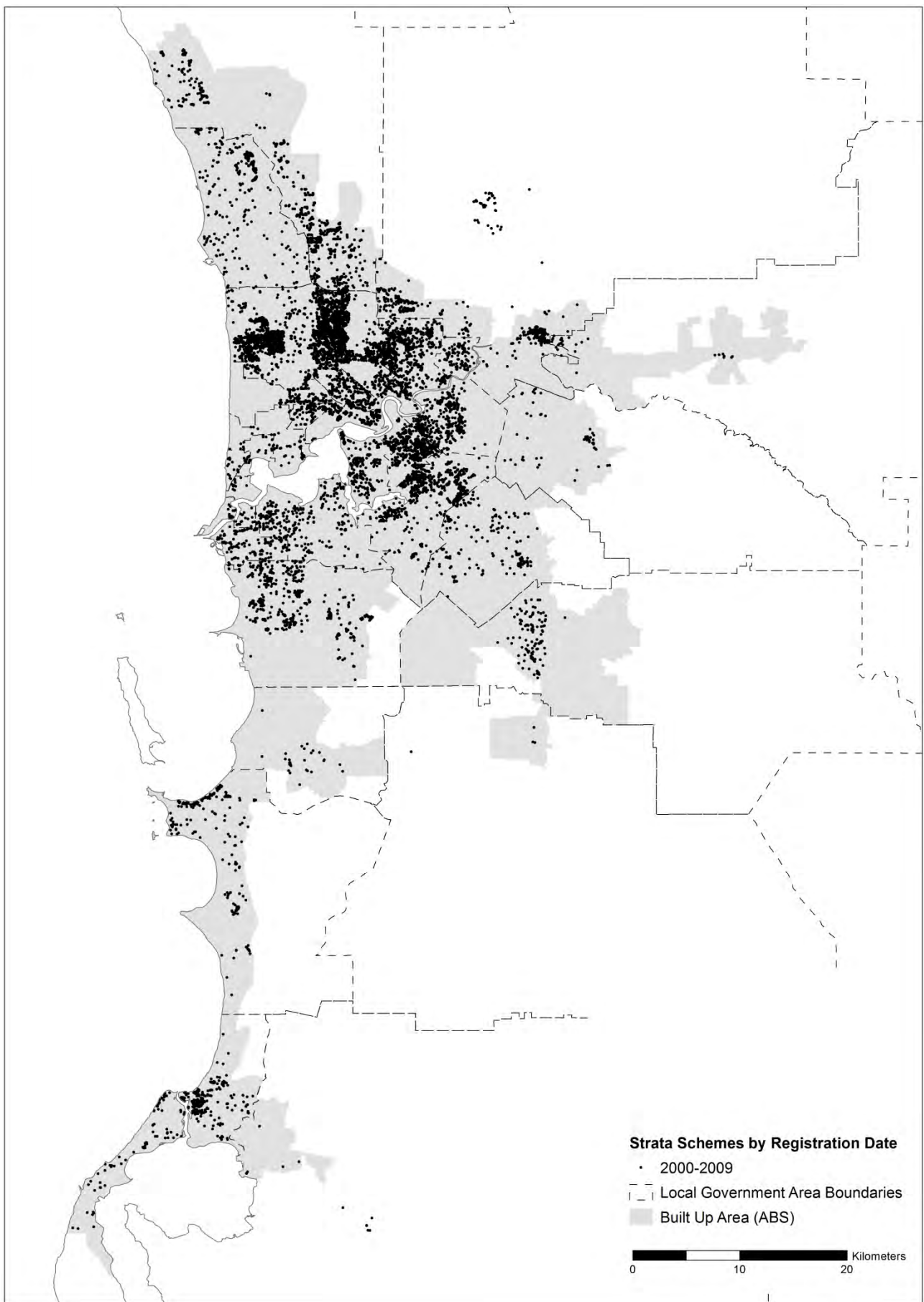


Figure 12 Location of strata schemes registered 2000 to 2009

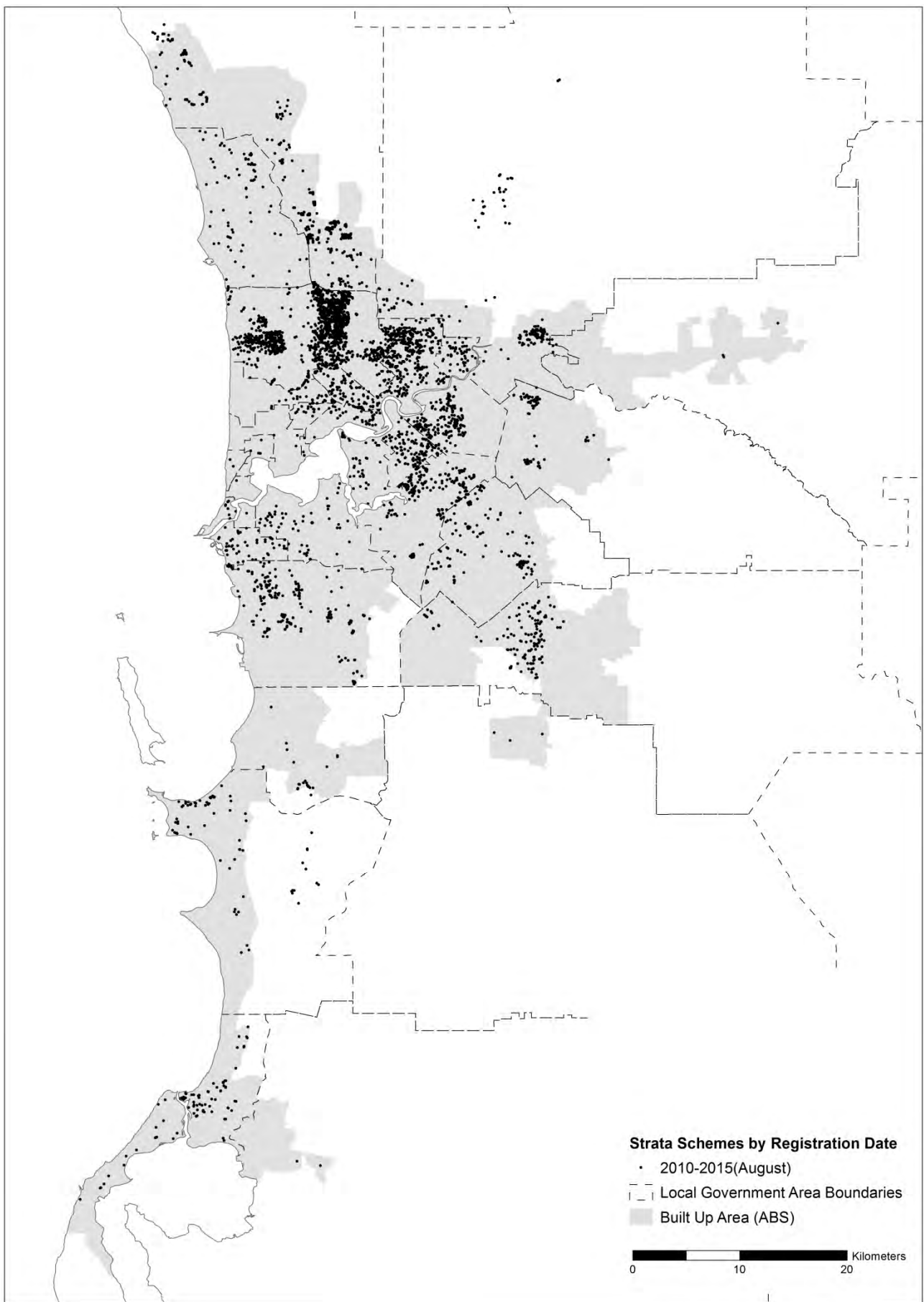


Figure 13 Location of strata schemes registered 2010 to August 2015

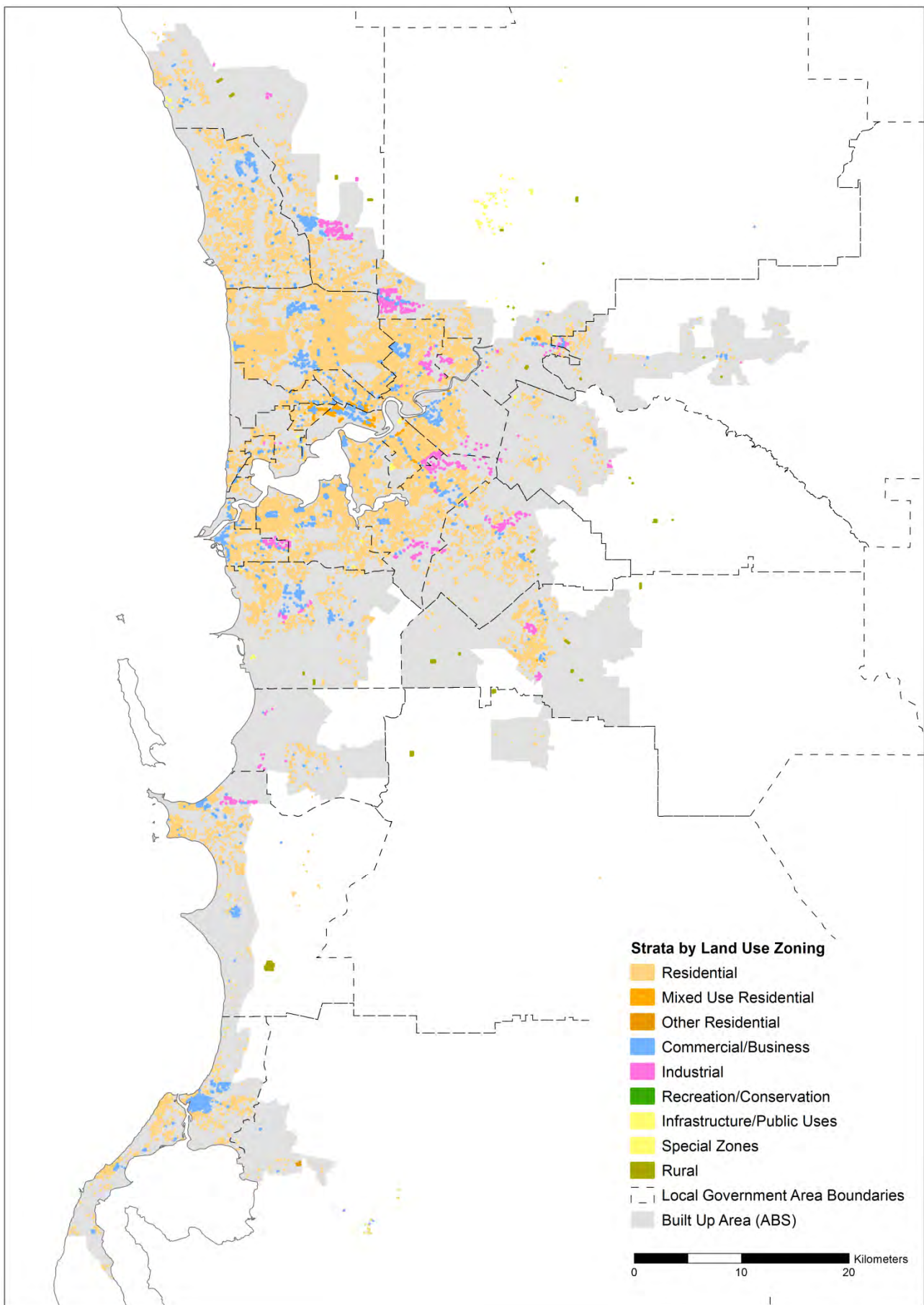


Figure 14 Location of strata schemes by land use zoning for

Terminated Strata Schemes

As indicated in the methodology, data reported in this section is based on schemes that have been terminated since 2000. This is due to a change in the data management system for strata schemes being implemented in 2001. A total of 1,185 strata schemes have been terminated in Western Australia, including 1,095 built strata and 90 survey-strata. Since 2000, around the time the new system was implemented, 725 schemes have been terminated and will form the basis of all tables and charts below.

Table 5 shows the number of schemes that have been terminated by scheme size and decade of registration for Western Australia. Table 6 shows terminations according to the same categories but for the Greater Perth region only. Two lot schemes comprise the bulk (75.7% for WA and 78.7% for Perth) of terminations since 2000. This is to be expected due the dominance of two lot schemes generally, and there being few owners required to give consent.

Terminations occurred in areas (Figure 18) where there are higher levels of registration activity, likely due to the relatively higher levels of renewal taking place through subdivision of existing property. Most of the larger scheme terminations have occurred in or adjacent to the Perth CBD and South Perth. Again these areas represent concentrations of larger strata schemes because of large office type developments or in the case of South Perth, some of the earlier larger multi-unit residential developments.

Figure 15 shows the number of schemes terminated by the year in which the schemes were initially registered. There are a higher proportion of schemes registered in 1970s that have been terminated compared with other time periods. This is also reflected in the age of the schemes at the time of termination, as shown in Figure 16. It is to be expected that there would be more older schemes that have been terminated, reflecting older buildings, however there were still reasonable numbers of schemes less than ten years in age that have been terminated. The rationale for this is not immediately clear and would need detail investigation of each scheme. However, that there are a number that were under ten years of age at termination suggests that the underlying drivers are not necessarily tied to age of the strata scheme or the building itself. It is likely that the local property market characteristics and the planning environment would play a key role in driving a termination process.

Table 7 shows the number of schemes that have been terminated by registration date and termination date, while figure 16 shows the number of schemes by year of termination. There were a total of 240 terminations, accounting for 20% of the total since 1968 since 2010, and a total of 611, accounting for 51.5% of the total, since 2000. What is evident by this table and chart is that termination has been occurring over the past 15 years despite the notional barriers within the legislation. However, what cannot be discerned from this data is whether this numbers would increase following a change in voting proportions.

Finally, figure 18 shows the geographic distribution by size of scheme, of terminations since 2000. There are clear clusters along the Swan River between Fremantle and Applecross, in or adjacent to the Perth CBD and along the coast north from Scarborough. Larger schemes tend to be concentrated in South Perth, West Perth and down the western side of Kings Park, which can be associated with the location of some of the early forms of multi-unit housing in the Perth region.

Table 5 Number of terminated SCHEMES by size and registration date for Western Australia

Registration Date	Scheme Size							Total
	2	3-5	6-10	11-20	21-50	51-100	100+	
Pre 1970	5							5
1970-1979	233	29	10	4				276
1980-1989	153	30	14	5	5	3		210
1990-1999	98	30	5	2	4		2	141
2000-2009	59	24	7			1		91
2010-2015	1	1						2
Total	549	114	36	11	9	4	2	725

Table 6 Number of terminated SCHEMES by size and registration date for Greater Perth

Registration Date	Scheme Size							Total
	2	3-5	6-10	11-20	21-50	51-100	100+	
Pre 1970	5							5
1970-1979	223	28	10	4				265
1980-1989	134	20	11	2	2			169
1990-1999	76	20	3		1		1	101
2000-2009	49	15	5			1		70
2010-2015		1						1
Total	487	84	29	6	3	1	1	611

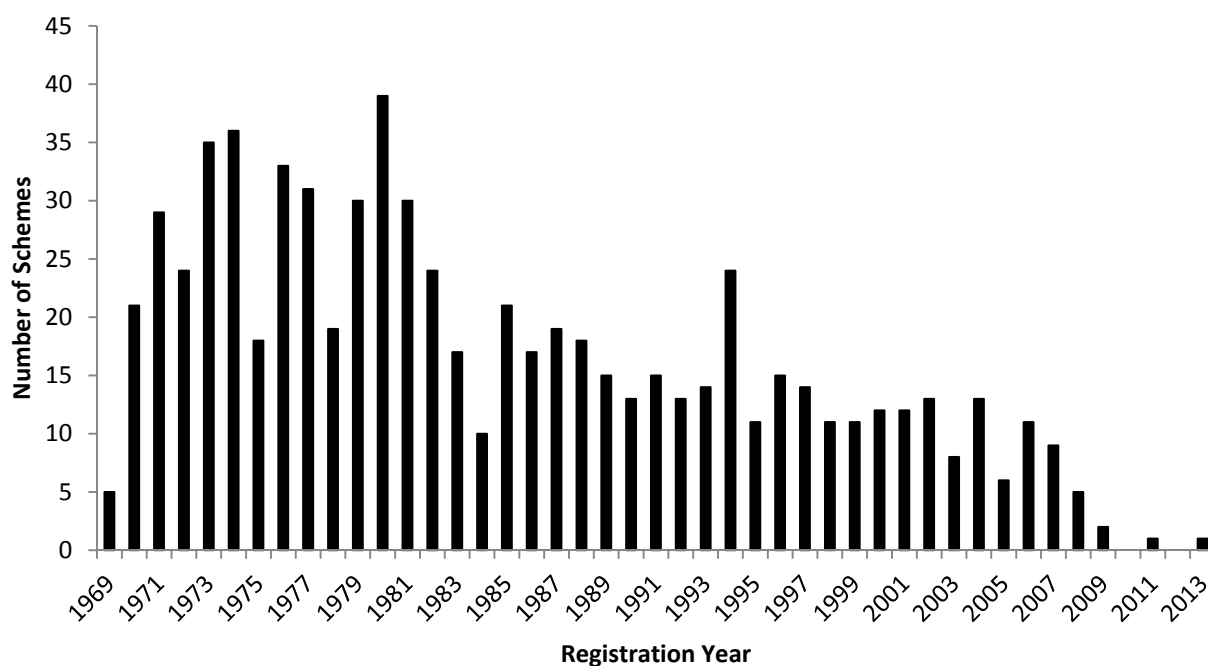


Figure 15 Number of schemes terminated by registration date for Western Australia.

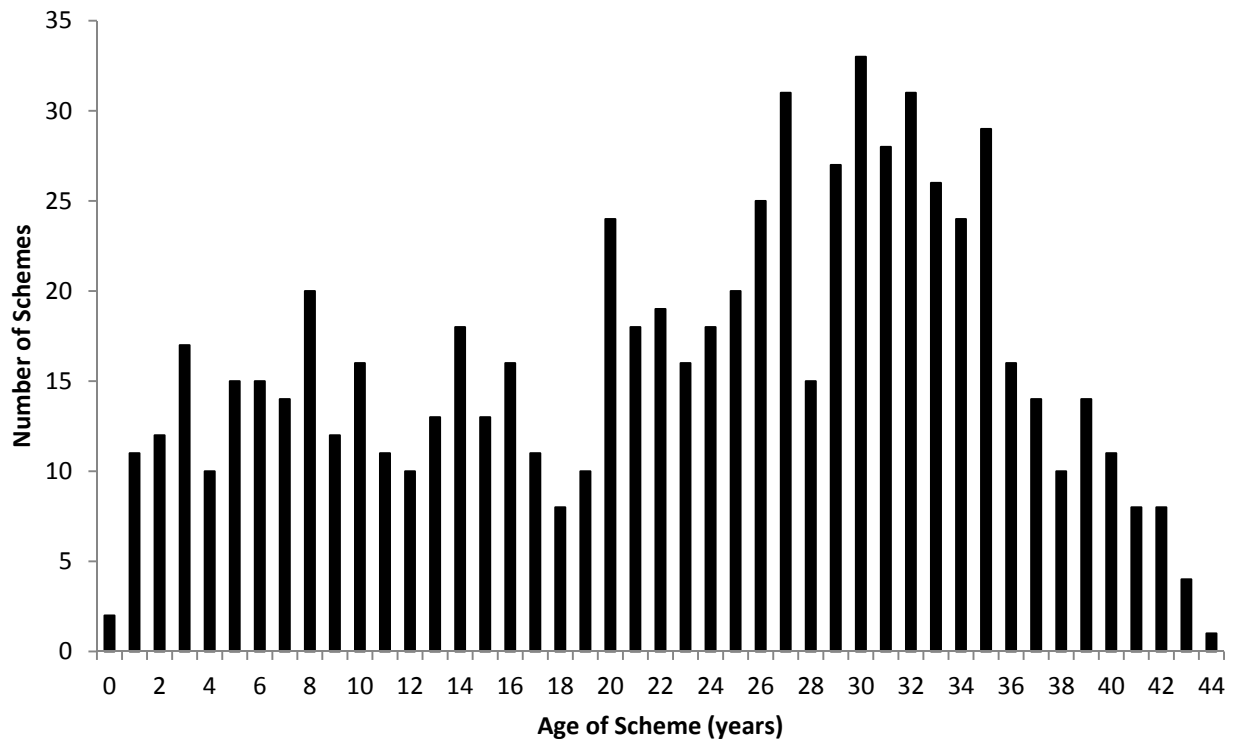


Figure 16 Number of schemes terminated by age of scheme in years for Western Australia

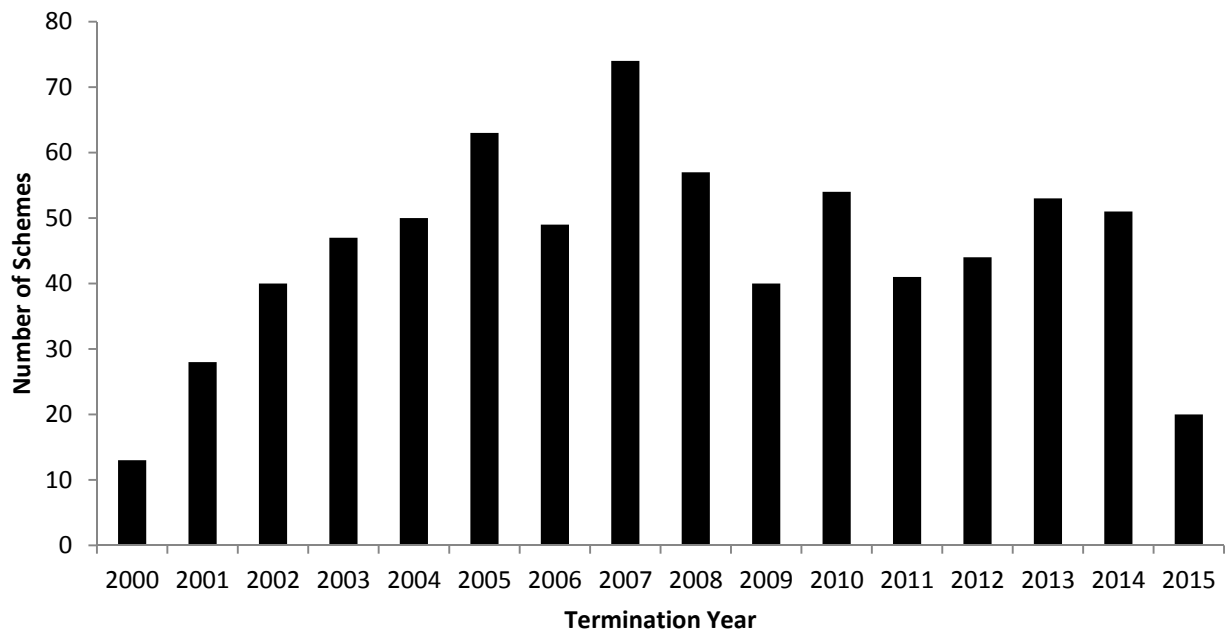


Figure 17 Number of schemes terminated by termination date for Western Australia

Table 7 Number of cancelled SCHEMES by registration date and cancellation date for Greater Perth

Registration Date	Cancellation Date			Total
	2000-2009	2010-2015	No Date	
Pre 1970	5			5
1970-1979	162	103		265
1980-1989	98	70	1	169
1990-1999	73	28		101
2000-2009	32	38		70
2010-2015		1		1
Total	370	240	1	611

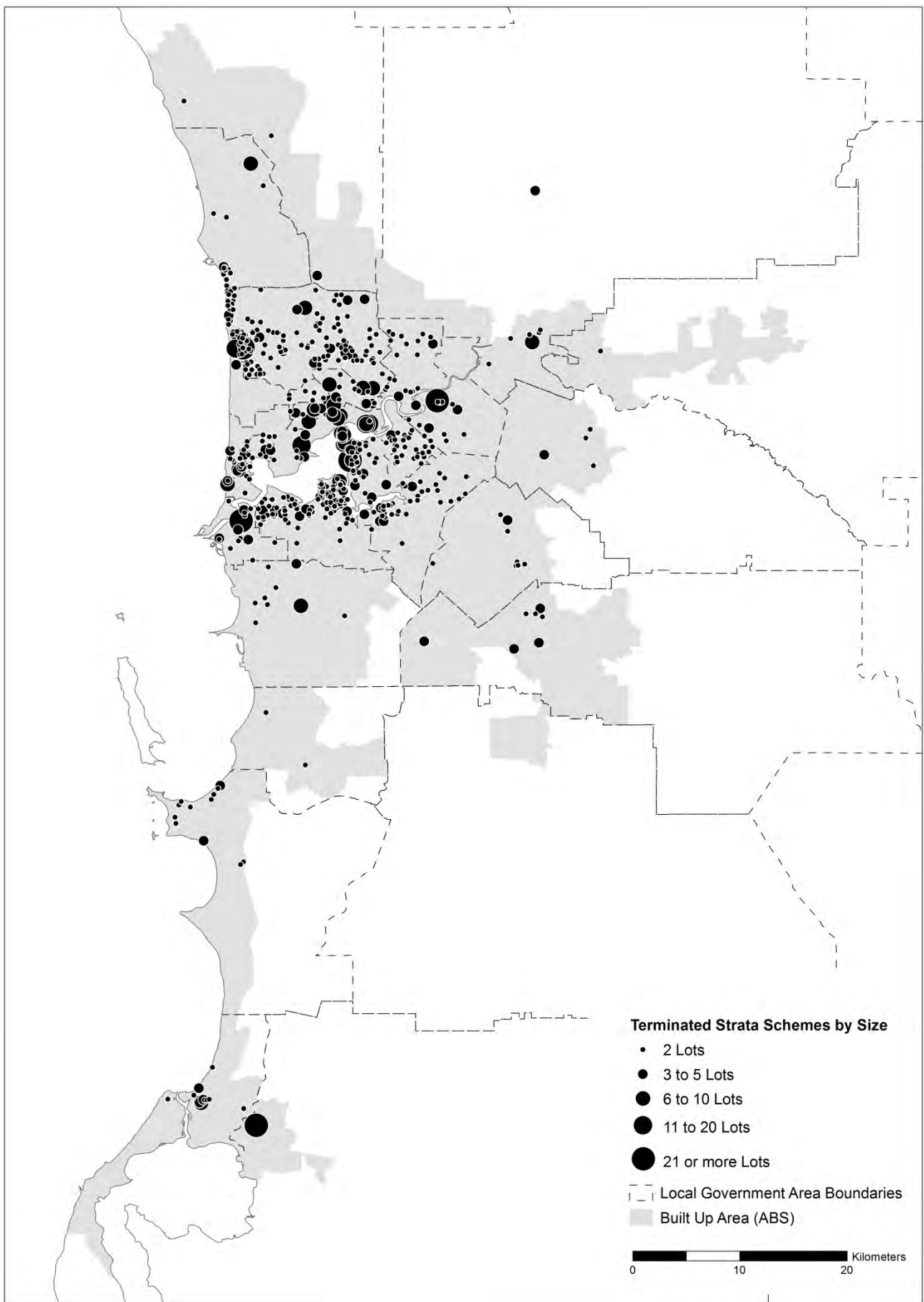


Figure 18 Location of terminated strata schemes by size

Dwelling and Community Profile

As noted in the methodology, census dwelling profiles are not strictly comparable to strata titled residential property, however it does offer a reasonable proxy for understanding both tenure characteristics of strata titled dwellings as well as resident population. The following tables are separated into two sections. The first details the dwelling tenure profiles, and the second details the population characteristics.

Dwelling Profile

Table 8 shows the breakdown of tenure by land lord type for three dwelling categories. The three categories represent the multi-unit strata housing, horizontal strata subdivisions, such as townhouse and semi-detached dwellings, while the last provides a comparison to the remainder of the Perth dwelling stock. The owner occupier rates are significantly lower in the higher density dwelling and attached dwelling categories, 24.8% and 39.7% respectively, compared with 68.2% in the separate housing market.

The difference is reflected in the levels of private rental in different dwelling categories which are 39.3% for higher density dwellings, and 30.3% for attached dwellings. When rental is combined with other tenure categories, excluding the public and community housing sector, a total of 66.3% of the higher density dwellings and 51.7% of the attached dwellings are under some form of investment oriented ownership.

Table 8 Tenure profile of dwellings in Greater Perth

	Higher Density Dwellings		Attached Dwellings		Balance of Greater Perth	
Owner outright	8,398	11.3%	16,476	18.3%	158,869	28.5%
Owned with a mortgage	10,051	13.5%	19,231	21.4%	221,450	39.7%
Private Rental	29,202	39.3%	27,208	30.3%	95,194	17.1%
Public Housing	5,439	7.3%	6,785	7.6%	8,772	1.6%
Community Housing	1,126	1.5%	903	1.0%	549	0.1%
Other Tenures (including Visitor only)	9,373	12.6%	8,702	9.7%	28,474	5.1%
Unoccupied	10,686	14.4%	10,501	11.7%	44,983	8.1%
Total	74,275	100%	89,806	100%	558,291	100%
<i>Investment Housing*</i>	<i>49,261</i>	<i>66.3%</i>	<i>46,411</i>	<i>51.7%</i>	<i>168,651</i>	<i>30.2%</i>

* Includes 'Private rental', 'Other tenures' and 'Unoccupied' categories

Age Profile

Table 9 shows the age profile of residents in the different dwelling categories. 25 to 34 year old cohort was the largest group in higher density dwellings and attached dwellings, accounting for 28.4% and 21.9% of the total population in those categories respectively. These figures compare with 12.8% for Greater Perth as a whole. Under 15 year olds accounted for 8.6% of higher density dwelling residents, and 12.7% of attached dwelling residents compared with 21.4% for the balance of Perth. The final difference in population distribution is the over 65 category, accounting for 15.7% of higher density dwelling residents and 17.3% of the attached dwelling residents, compared with 10.9% for the balance of Perth.

Figure 19 shows the distribution of persons age 65 years and over as a proportion of the total population in the higher density and attached dwelling categories by Statistical Area Level 1 (SA1). The coverage reflects the distribution of residential strata across Perth (see figures 5 and 6), however, there is no clear pattern to the location of older people. The inner Perth city and immediately adjacent zones, with the exception of the SA1 covering Kings Park, appear to have lower representations of the 65+ age cohort.

Table 9 Age profile of persons by dwelling structure in Greater Perth (Place of Enumeration)

	Higher Density Dwellings		Attached Dwellings		Balance of Greater Perth	
Under15	9,440	8.6%	19,747	12.7%	302,160	21.4%
15 to 24	16,722	15.3%	21,397	13.8%	204,629	14.5%
25 to 34	31,123	28.4%	34,003	21.9%	180,680	12.8%
35 to 44	13,959	12.7%	20,484	13.2%	208,776	14.8%
45 to 54	10,555	9.6%	16,552	10.7%	199,804	14.2%
55 to 64	10,535	9.6%	16,306	10.5%	160,021	11.4%
65+	17,184	15.7%	26,899	17.3%	153,055	10.9%
Total	109,518	100%	155,388	100%	1,409,125	100%

Note: higher density dwellings include flats, units and apartments, attached housing includes semi-detached, terrace and villas, and the balance of Perth includes all other dwelling categories.

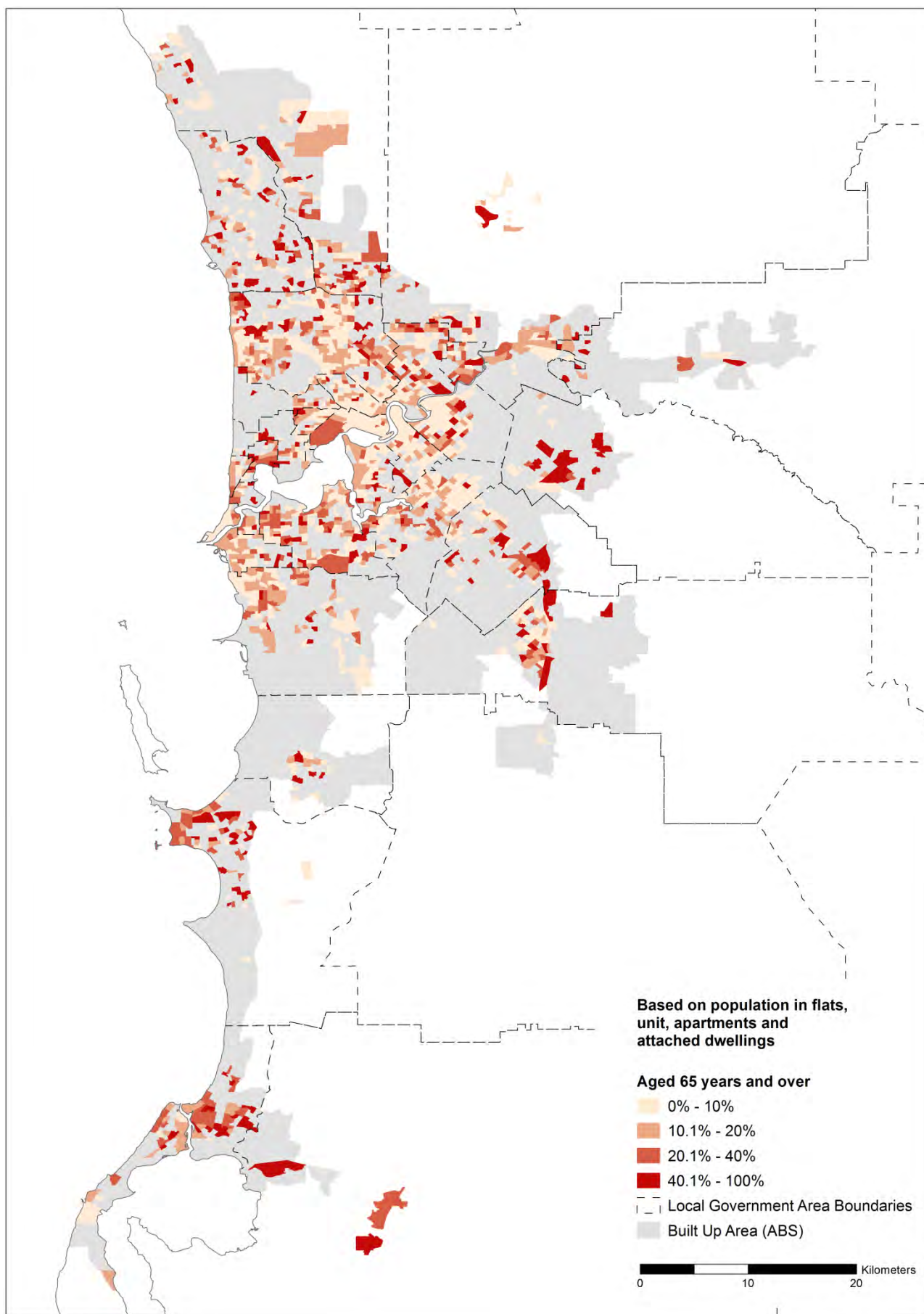


Figure 19 Population of flats, units, apartments and attached dwellings age 65 years and over

Household Structure

The population age profile reflects strongly in the household structure in the different dwelling categories. Table 10 shows the household composition break down, with lone person households being the stand out category. 50.9% of households in the higher density dwellings and 41.8% of households in attached dwellings are lone person households. This compares with only 17.6% for the balance of Perth. Similarly family households have a much lower representation in multi-unit and attached dwellings compared to the balance of Perth.

Table 10 Household profiles in Greater Perth (counting dwellings)

	Higher Density Dwellings		Attached Dwellings		Balance of Greater Perth	
Family Households (with Children)	9,230	16.4%	19,002	25.5%	247,530	50.1%
Family Households (without Children)	13,786	24.5%	18,847	25.3%	134,420	27.2%
Multiple Family Households	138	0.2%	339	0.5%	8,105	1.6%
Lone Person Households	28,604	50.9%	31,125	41.8%	86,782	17.6%
Group Households	4,454	7.9%	5,173	6.9%	16,993	3.4%
Total	56,212	100%	74,486	100.0%	493,830	100%

Note: Excludes visitor only households and other non-classifiable households.

Income

Table 11 shows the household income profiles with over representation in low income categories and under representation in higher income categories. The skew towards low household income bands reflects the dominance of lone person households, higher rates of over 65 age categories and higher rates of 25 to 24 age cohort, which can be expected to have lower incomes than 35 to 65 age cohorts.

Table 11 Household weekly income in Greater Perth (counting dwellings)

	Higher Density Dwellings		Attached Dwellings		Balance of Greater Perth	
No or Nil Income	1,137	1.5%	964	1.1%	4,541	0.8%
Under A\$400	9,592	12.9%	11,640	13.0%	33,880	6.1%
A\$400-799	10,529	14.2%	13,831	15.4%	66,628	11.9%
A\$800-1499	13,519	18.2%	16,310	18.2%	99,307	17.8%
A\$1500-2499	8,536	11.5%	12,192	13.6%	103,576	18.6%
A\$2500-3999	7,545	10.2%	10,628	11.8%	100,001	17.9%
A\$4000 and over	1,335	1.8%	2,253	2.5%	24,515	4.4%
Other*	22,015	29.7%	22,008	24.5%	125,884	22.5%
Total	74,208	100%	89,826	100%	558,332	100%

*Includes households with negative income, partial income stated, all income not stated and not applicable

Strata Market Profile: Residential Sales

Figure 20 shows this distribution of strata sales across the Greater Perth area by registration date of the scheme. There was a general increase in sales value favouring newer stock and a much wider spread of values. This change reflects both the likely age of the dwellings, and the geographic distribution of strata over time. As strata titled properties have expanded across the metropolitan region, it can be expected that they will sit across a wide variety of localised property markets.

Figure 20 shows the distribution of sales based on the size of strata schemes. Two lot schemes show both the highest median values and the larger spread of values. Two lot schemes in many parts of Perth will represent a part of the housing market equivalent to the detached housing market, and can be expected to achieve higher values. The value distribution for very large schemes shows that location and quality differentials in the units themselves play a significant role in the value of these units.

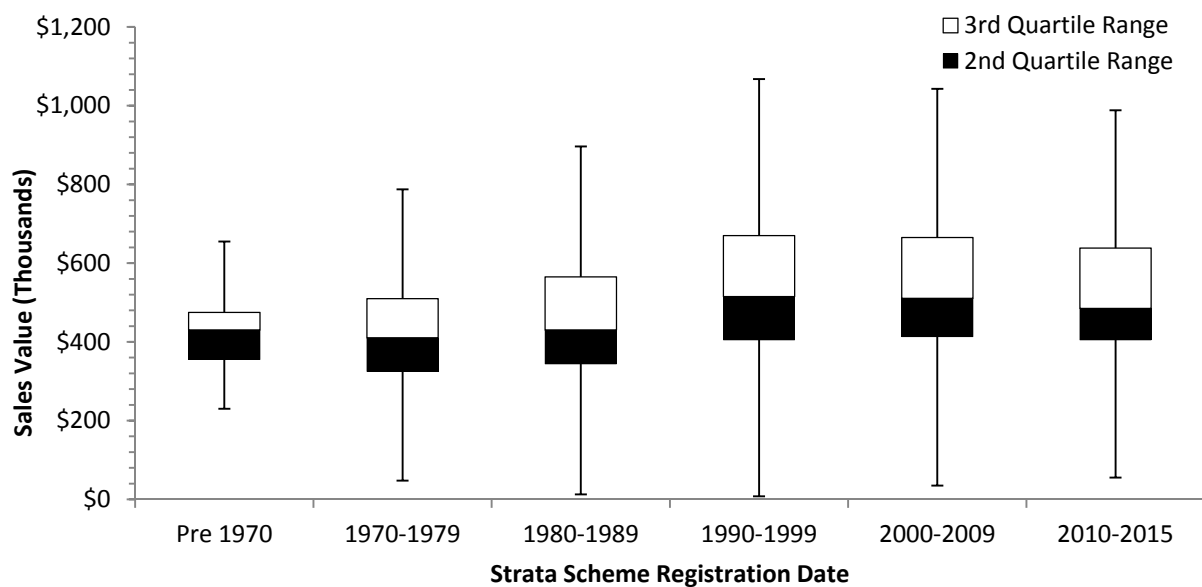


Figure 20 Distribution of strata sale for 2014/2015 by scheme age for Perth and Peel Region

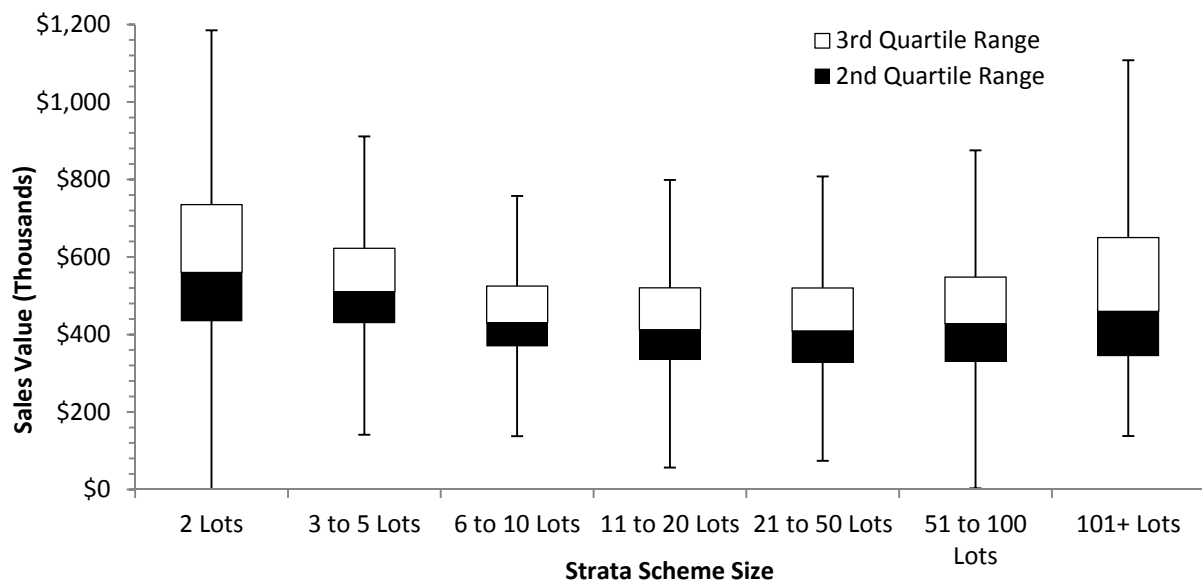


Figure 21 Distribution of strata sale for 2014/2015 by scheme size for Perth and Peel Region

Strata Renewal Drivers

Unlike other major urban renewal programs, strata renewal will be required to engage with almost exclusively privately owned subdivisions. While it is foreseeable that a Government agency such as Metropolitan Redevelopment Authority could play a leading role assembling fragmented strata titles, the underlying assumption is that renewal of strata dwellings will be predominantly a market led process. Under this scenario, the particularities of local housing markets will have the greatest effect on renewal feasibility, which is both determined by and determines the underlying socio-economic characteristics of an area. In previous research undertaken by City Futures (see Troy *et al.*, 2015), three outcomes associated with strata renewal in Sydney were identified. While this work was undertaken in the Sydney context, it did highlight particular drivers of market led renewal of strata titled dwellings, which are conceptually transferable across Australia. These three processes can be summarised as follows:

- **Gentrification:** Gentrification is likely to occur in existing higher value locations where there are significant price differences between old and new housing stock. The value gained through renewal is achieved through replacing old stock with more expensive new stock. While this value change is likely to occur in all areas, it is in locations where the difference is significantly large that it has the potential to contribute most to the feasibility of a renewal proposal. The outcome of a gentrification led process will not necessarily produce more dwellings, but will alter the underlying structure of the housing market, and likely reduce the availability of low value stock, leading to an overall gentrification of these locations.
- **Densification:** In locations where significant price differences do not exist between new and old stock, margins can be obtained through increasing the number of dwellings on a given site. In areas where there are significant difference between existing development and what is permitted under the planning framework, densification of dwellings will be the likely driver of change.
- **Residualisation:** The final scenario represents areas where renewal is not likely to occur because of the low values in the local housing market. These areas are likely to represent concentrations of people of low socio-economic status.

Figure 22 shows the interquartile range value of all residential strata sales in Perth for 2014/2015 based on price per square metre of internal floor area. In essence this diagram illustrates the potential for value uplift between low value or low quality stock and high value, higher quality new stock in a given SA2. Assuming that renewal activity would target low end properties because of the impact buyout cost would have on renewal feasibility, then profit margins are derived from a transition from low to high value. In areas where the difference is large, density increases become less important in terms of being a precondition to drive change.

The deep red colours in Figure 22 therefore represent areas where gentrification is more likely to be a driver or outcome of strata renewal and the area's most likely to be the immediate target for renewal. This is contrast to areas where some level of densification would likely be required to underpin a renewal process. Should planning changes be required to support density increase, then this would represent a scenario that is both more complex and more time consuming, affecting the feasibility of this scenario. Based on this analysis, areas such as Fremantle, Cottesloe, Claremont, Subiaco and North Beach show the greatest potential for renewal to occur under a market-led setting. While areas shaded lesser hues, represent zones that would likely require some form of density uplift as a key driver of change.

Figure 23, however, shows the distribution of SEIFA Socio-economic index of relative disadvantage deciles for each SA2. The darker areas represent high disadvantage, having direct bearing on the capacity for the

local population to afford newer, more expensive, housing. The combination of low variation in housing market prices and low incomes would create significant impediments to a market led process of strata renewal, thus making broad scale change less likely.

While these generalisations point to the likely drivers of renewal, it is not possible to predict if renewal will occur. In the absence of deliberate Government involvement, the local context of both the dwellings and the residents themselves will be central to outcomes. For example, the particular groupings of owners and their personal aspirations will have enormous bearing on whether renewal is a live proposition. Likewise the relationship between existing dwellings, land area and planning context will have enormous bearing on feasibility.

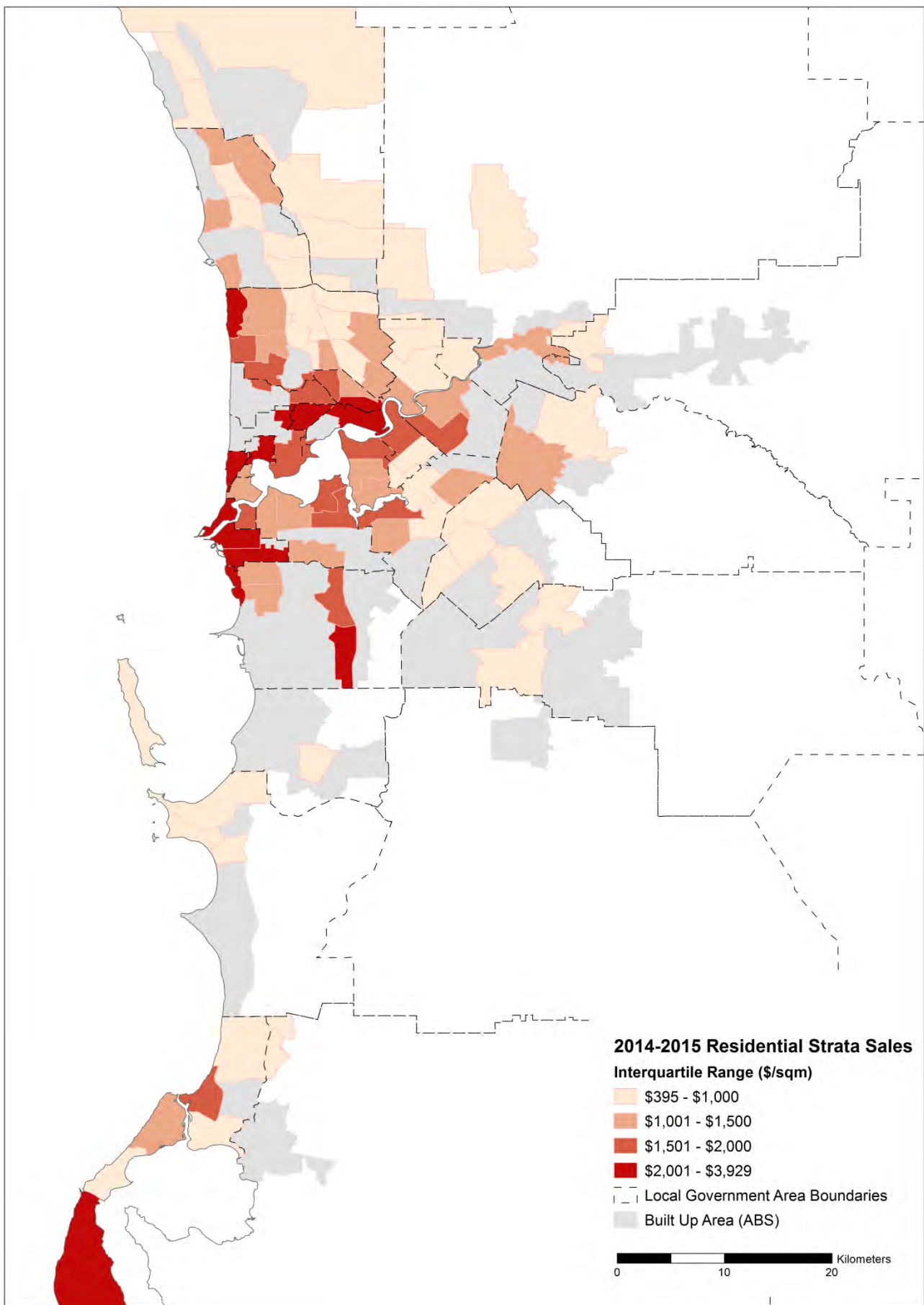


Figure 22 Interquartile range of \$ per sq metre values by Statistical Area Level 2
 (Note: only includes SA2 where over 30 strata property sales have been registered in 2014/2015)

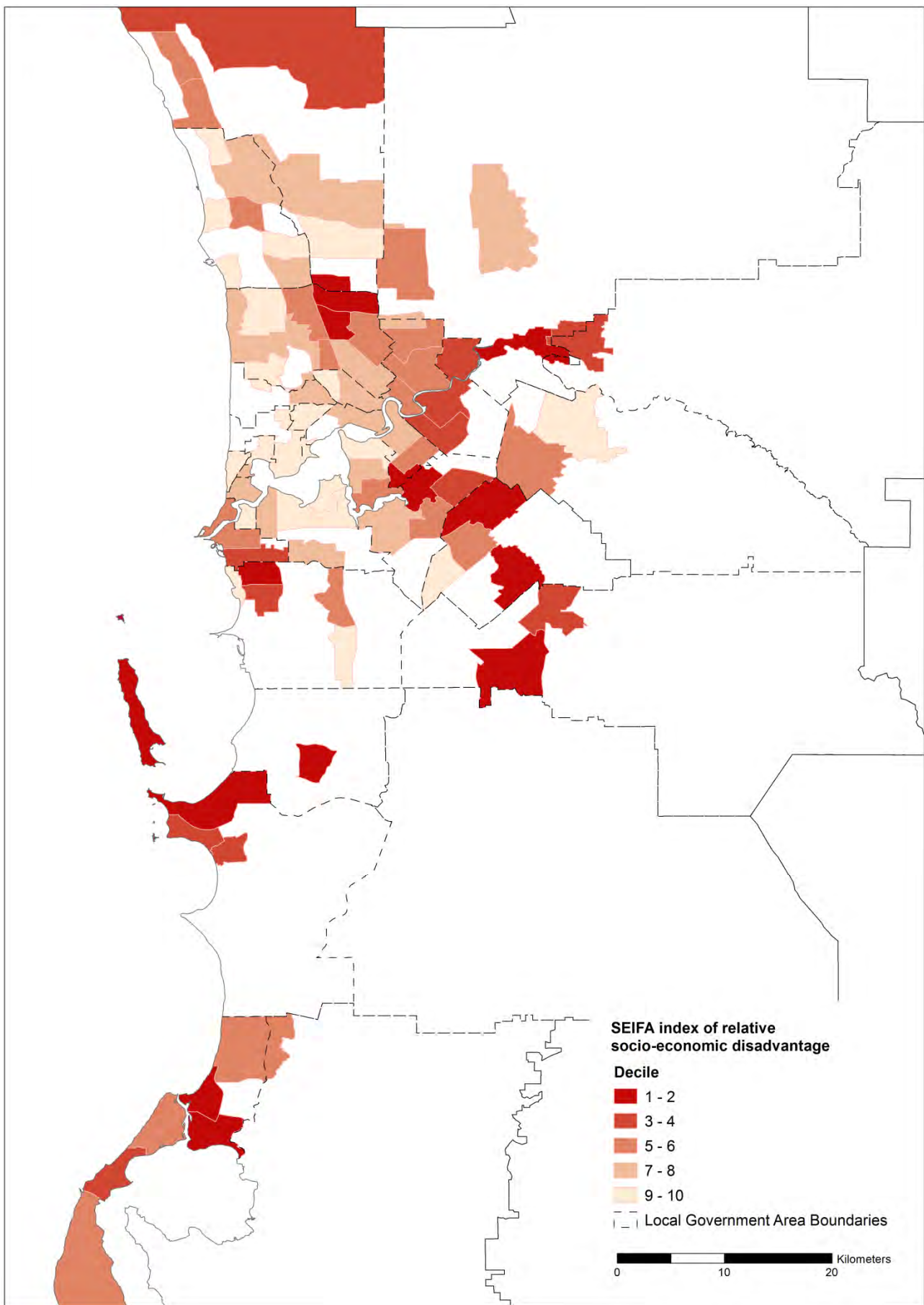


Figure 23 SEIFA index of relative socio-economic disadvantage 2011 by SA2
 (Note: only includes SA2 where over 30 strata property sales have been registered in 2014/2015)

Conclusion

The composition of residential scheme sizes indicates the different housing typologies in the make-up of strata in Perth. Unlike Sydney or Singapore where strata is predominantly associated with multi-unit, or multiple dwelling forms of housing (vertical subdivisions), strata in Perth is predominantly associated with grouped forms of housing (horizontal strata subdivisions). Based on these characterisations, there are three building typologies evident in Perth.

1. Horizontal detached housing strata (e.g. battle axe or estate subdivisions)
2. Horizontal attached housing strata (e.g. 6 units town house development)
3. Vertical multi-unit strata (e.g. residential apartment buildings)

The reason for highlighting these differences compared with other jurisdictions is that they are likely to raise a different set of issues when considering termination without the unanimous consent of all owners. For example, there are many strata lots that represent physically separated houses and it could conceivably be imagined that a mechanism could be put in place to dissolve strata title to create two separate land parcels. While the intention may be to dissolve strata in order to facilitate renewal, this may not always be the case, as noted in the Strata Titles Act Reform Consultation Paper in relation to 'themed' developments (pg 92) which indicates that the purpose of dissolution of a scheme is to remove requirements to adhere to a theme, rather than to force demolition of a building. It would seem that part of the rationale for terminating a scheme is to dissolve the legal entity without it necessarily resulting in the demolition of all of parts of the building stock it represents.

Multi-unit and attached housing on the other hand, would almost certainly require all dwellings to be vacated for a renewal process to occur. It is in this circumstance that issues of displacement may arise, particularly when vulnerable groups such as low or fixed incomes and or elderly are involved, and where there is the possibility of dissenting parties forming part of the outcome. The point here is to distinguish from strata that represents physical property, buildings and dwelling types that do cannot be functionally separated in an absolute manner, with strata that represents a legal separation in interests. This is an important contrast to other jurisdictions where the debate is primarily focused on a range of issues surrounding multi-unit dwelling types or vertical subdivisions, where the physical layout of the dwellings prohibits demolition due to its impacts on surrounding dwellings.

The market processes likely to drive termination will be substantially different in a multi-unit setting as compared with group dwellings and the scale of change required in a multi-unit context is potentially much larger. The flow on implications for displacement, housing affordability and local planning are amplified when termination and renewal of large multi-unit strata schemes area involved. Because of the complexity of the renewal at large scales, this will likely confine activity to a much narrower set of actors compared with 3 lot horizontal strata subdivisions.

In addition to the typologies outlined above, commercial or non-residential strata raise a different set of issues in relation to termination compared with residential units. There are often a range of social rights and meanings attached to concepts of home (see Easthope, 2004), which will play an integral role in how people will interact with a process that will see the demolition of their 'home'. Owners of commercial strata may bring a wide range of values to bear on a termination process, however is likely much less fraught by other social constraints. Understanding of the commercial implications of forced relocation of business activity will become much more central to termination proceedings. Non-residential strata accounts for approximately 10% of all schemes, meaning this is not an insignificant consideration in the context of legislative change.

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Appendix G: Written advice provided by the City Futures Research Centre in response to the Confidential Consultation draft of the Strata Titles Amendment Bill 2018 – Termination of Schemes

WESTERN AUSTRALIA

**Strata Titles
Amendment Bill 2018**



This is a portion of a draft amendment Bill containing a proposal for termination of strata titles schemes for consultation purposes.

Confidential Consultation Draft

2018-03-23 07:01:05

Recommendations that we made in NSW that we may want to revisit here:

- statement of principals
- strengthen confidentiality requirements for the voting process
- disclosure requirements for owners who control more than 20% of lots at the initial meeting & disclosure requirements for conflict of interest
- clarify how appeals process will work (if any?)
- clarify appropriate timing of valuations
- require the proponent to provide the plan in other languages if requested
- require that tenants be notified of key dates once the proposal has been approved

Will collective redevelopments be allowed at all? I can't tell - all seems to be based around the 'proponent' - ~~the~~ developer.

1 **Part 2 — Strata Titles Act 1985 amended**

2 **3. Act amended**

3 This Part amends the *Strata Titles Act 1985*.

4 **4. Section 3 amended**

5 In section 3 insert in alphabetical order:

6 **scheme building** means a building shown on a strata
n and by reference to which lots are defined;

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2018-03-23 06:59:33

Is this to be an opt-in part as in NSW - or
opt-out may be preferable?

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Understand the logic of this in reference
to the other act, but still somewhat
confusing in terms of language...

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strata titles scheme means —

(a) a freehold strata scheme; or

(b) a leasehold strata scheme; or

(c) a freehold survey-strata scheme; or

(d) a leasehold survey-strata scheme;

13 **5. Part 5A inserted**

14 At the end of Part 5 insert:

16 **Part 5A — Termination of strata titles scheme**

17 **70A. Introduction**

18 (1) The termination of a strata titles scheme involves a
subdivision of land for which approval is required
under the *Planning and Development Act 2005*.

(2) The termination of a strata titles scheme may be
proposed by a person (the **proponent**) who intends to
apply for the necessary approval, **whether or not the**
person is the owner of a lot in the strata titles scheme
or, for a leasehold scheme, the owner of the leasehold
scheme.

2018-03-20 21:27:43

Is this intended to let speculatively
approach owners corporations?

page 1

[Confidential Consultation Draft — Termination of strata titles scheme]

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2018-03-23 04:10:40

How long is it envisaged this outline will be - Relatively brief?

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7

Outline of termination proposal

The proponent of a proposal to terminate a strata titles scheme (a **termination proposal**) must submit an **outline of the proposal** to —



- (a) the strata company for the scheme; and
- (b) if it is a leasehold scheme, the owner of the leasehold scheme.

(2) However, an outline of a termination proposal cannot be submitted to a strata company or owner of a leasehold scheme —

- (a) if an outline of another termination proposal has been submitted to the strata company or owner of the leasehold scheme and it is less than 6 months since that proposal ceased to be able to proceed further under this Part; or
- (b) during any other period for which the Tribunal has, on application by the strata company or the owner of the leasehold scheme, prohibited termination proposals being so submitted.



2018-03-23 06:38:51

Doesn't this mean that only one developer can be proposing termination to a scheme at any time, with no competition?

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(3) A strata company to which an outline of a termination proposal is submitted in accordance with this section must, within 14 days after receiving the proposal —

- (a) serve it on each person who is —
 - (i) the owner of a lot in the strata titles scheme; or
 - (ii) a registered mortgagee of a lot in the strata titles scheme;
- and
- (b) lodge with the Registrar of Titles notice of receipt of the outline in the form approved under the regulations.

2018-03-20 21:27:11

So if the owners say no to a proposal from one developer they have to wait 6 months to try again?

Strata Titles Amendment Bill 2018

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What do / will the regulations say on this?

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for the obtaining of independent advice or representation for owners of lots affected by the proposal, provide details of the proposed arrangements; and



(i) include any other information required by the regulations.

(2) This section does not limit the matters that can be included in an outline of a termination proposal.

(3) An outline of a termination proposal must —

(a) be in the form approved under the regulations; and

(b) comply with any requirements set out in the regulations.

70D. Ordinary resolution and support of owner of leasehold scheme required to proceed further

(1) A termination proposal can only proceed further if, within 3 months after an outline of the proposal has been submitted as required under section 70B —

(a) for a freehold scheme — the strata company passes an ordinary resolution supporting consideration of a full proposal; and

(b) for a leasehold scheme —

(i) the owner of the leasehold scheme gives written notice to the strata company supporting consideration of a full proposal; and

(ii) the strata company passes an ordinary resolution supporting consideration of a full proposal.

[Confidential Consultation Draft — Termination of strata titles scheme]

- 1 (6) However, a modification cannot be submitted within
2 14 days before the termination proposal is voted on at a
3 meeting of the strata company or before voting on the
4 proposal opens.

5 **70G. Content of full proposal**

- 6 (1) A full proposal for the termination of a strata titles
7 scheme must —
- 8 (a) include the material required to be included in
9 an outline of a termination proposal; and
- 10 (b) be accompanied by the approved plan of
11 subdivision for the proposal; and
- 12 (c) describe, in detail, what is proposed in terms of
13 contracts to be offered to owners of lots,
14 including —
- 15 (i) contracts for the sale and purchase of
16 lots before termination of the strata titles
17 scheme, including —
- 18 (I) the name and address of the
19 buyer; and
- 20 (II) the purchase price or a
21 description of how the
22 purchase price is to be
23 determined; and
- 24 (III) the terms and conditions of the
25 contracts for sale and purchase,
26 including proposed settlement
27 dates, or a description of how
28 those terms and conditions are
29 to be determined; and

2018-03-20 21:36:48

**So are they only allowing a
collective sale approach
and not collaborative
redevelopment? Or could
the buyer be the owners as
tenants in common?**



- 1 (iii) an explanation (in the form approved
2 under the regulations) about the
3 requirement for the appointment by the
4 Tribunal of an administrator of the strata
5 company if there are accrued or
6 accruing liabilities or surplus assets
7 when the strata titles scheme is
8 terminated;

and

- (j) any other information required by the regulations.

- (2) A full proposal must incorporate a report (a **termination infrastructure report**) comprised of —

- (a) a report of a structural engineer on the state and condition of each scheme building and the infrastructure on the common property in the strata titles scheme; and

- (b) a report of a quantity surveyor estimating the cost to **repair** or replace the scheme buildings or infrastructure as reasonably required taking into account the report of the structural engineer.

- (3) A full proposal must incorporate a report (a **termination valuation report**) prepared and certified by a licensed valuer setting out, for each lot in the strata titles scheme, a valuation of the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for acquisition of the lot.

- (4) The valuation must be made as if—

- (a) the land were being acquired by an acquiring authority under the *Land Administration Act 1997*; and

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Sounds like a good idea. Is the purpose to give the courts more context under which to agree to the termination with less than unanimous consent?

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----- So this process isn't always about renewal - may sometimes be for upgrading purposes?

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- Is the purpose to help the courts determine if the money being offered to owners is sufficient? Who will actually do these valuations? Are there enough valuers? Is there a danger of developers hiring their own valuers for this process?

- 1 (2) A strata company must, as soon as reasonably
2 practicable, give written notice to the proponent of the
3 termination proposal of the receipt of a notice under
4 subsection (1).

5 **70L. Meetings and submissions**

- 6 (1) After receipt of a full proposal, 1 or more general
7 meetings of the strata company must be convened to
8 consider the termination proposal (unless it is a
9 proposal that cannot proceed further).
- 10 (2) The proponent of the termination proposal may be
11 present at, or **must be absent from**, the whole or a part
12 of a general meeting as allowed or required by the
13 owners of the lots in the strata titles **scheme**.
- 14 (3) The persons on whom a full proposal for the
15 termination of a strata titles scheme must be served by
16 the strata company for the scheme must be given a
17 reasonable opportunity to make submissions to the
18 proponent of the proposal and the strata company.
- 19 (4) The council of the strata company can also meet with
20 the proponent of the termination proposal to consider
21 the proposal with a view to negotiating with the
22 proponent and providing information or making
23 recommendations to the owners of the lots in the strata
24 titles scheme.
- 25 (5) The regulations may impose additional requirements
26 about the process required for consideration of a
27 termination proposal.

2018-03-23 06:57:14

What if the proponent is an owner of a lot in the strata scheme?

70J. Vote

- (1) A termination proposal must be put to the vote of the owners of the lots in the strata titles scheme (unless it is a proposal that cannot proceed further).

Note for this subsection:

The terms of the termination proposal are as set out in the full proposal and the terms set out in the outline of the proposal are not relevant: see section 70G(7).

2018-03-20 21:46:58

What's the purpose of the delay?

A vote in favour of a termination proposal (a **termination resolution**) is only effective if it is made at least 3 months after, and not more than 12 months after, the date of service of the full proposal by the strata company under this Part.

2018-03-20 21:47:43

Why no vote based on unit entitlements?

- (3) The vote must be taken as follows —

- (a) 1 vote may be cast for each lot in the strata titles scheme;
- (b) the value of each vote is 1.

A record must be made of each vote identifying the lot for which it is cast.

2018-03-20 21:48:24

By whom? It is important that this vote is secret and independently overseen.

- (5) Subject to this Part, the strata titles scheme can be terminated —

- (a) if the number of votes cast in favour of the termination proposal equals the number of lots in the strata titles scheme; or
- (b) if there are 2 lots in the strata titles scheme —
- (i) at least 1 vote is cast in favour of the termination proposal; and
- (ii) the Tribunal confirms the termination resolution;

or

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2018-03-23 04:59:57

Necessary? Isn't there already provision for a unanimous termination somewhere else?

2018-03-20 21:49:28

Why is the decision being made at the Tribunal and not in the courts?

- 1 (c) if there are 3 lots in the strata titles scheme —
2 (i) at least 2 votes are cast in favour of the
3 termination proposal; and
4 (ii) the Tribunal confirms the termination
5 resolution;
6 or
7 (d) if there are more than 3 lots in the strata titles
8 scheme —
9 (i) the number of votes cast in favour of the
10 termination proposal is at least 75% of
11 the total number of lots in the scheme;
12 and
13 (ii) the Tribunal confirms the termination
14 resolution.
- 15 (6) The following sections do not apply to voting on a
16 termination proposal —
17 (a) section 49G(1);
18 (b) section 49I;
19 (c) section 50(2).
- 20 (7) A vote may be taken on a termination proposal,
21 whether in the same or modified form, on more than 1
22 occasion.
23 (8) A termination proposal must not be modified in a
24 material particular by the proponent of the proposal
25 after it can proceed further having been supported as
26 required under this section unless the modification is
27 supported under the same voting arrangements as apply
28 to the termination proposal.

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2018-03-23 05:04:01

Why allow a revote on the same proposal? Wouldn't this create an incentive for hassling of lot owners to change their vote?



- 1 (iii) minutes of all meetings of the strata
2 company or the council of the strata
3 company at which the termination
4 proposal was considered;
5 (iv) all written submissions made to the
6 strata company about the termination
7 proposal;
8 (v) the scheme plan, by-laws and schedule
9 of unit entitlements for the strata titles
10 scheme;
11 and
12 (c) lodge with the Registrar of Titles notice of the
13 application in the form approved under the
14 regulations.

- 15 (7) In addition to the parties to the proceedings, the
16 following persons are entitled to appear and be heard or
17 make written submissions to the Tribunal (as the
Tribunal determines) —

2018-03-20 21:52:15
This is good - means
tenants can have a right of
appeal. 20
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- 24 (a) the owner of a lot in the strata titles scheme;
25 (b) the occupier of a lot or common property in the strata titles scheme;
26 (c) the registered mortgagee of a lot in the strata
27 titles scheme;
28 (d) any other person whom the Tribunal considers
29 has a proper interest in the matter.
30
31 (8) In proceedings for confirmation of a termination
32 resolution, the Tribunal can —
33 (a) make an order confirming the termination
resolution for a termination proposal (which
may be subject to the termination proposal
being modified in a specified manner as set out
in subsection (13)); or
(b) make a decision not to make such an order.

- 1 (9) The Tribunal can only confirm a termination resolution
2 if the proponent of the termination proposal satisfies
3 the Tribunal that —
4
- (a) the process required by this Part has been
5 complied with; and
6
- (i) under the termination proposal, the owner of a
7 lot in the strata titles scheme who does not
8 support the termination will receive fair market
9 value for the lot or a like for like exchange for
10 the lot; and
11
- (ii) the termination proposal is otherwise just and
12 equitable having regard to —
13
- (i) the interests of the owners of the lots in
14 the strata titles scheme; and
15
- (ii) if it is a leasehold scheme, the interests
16 of the owner of the leasehold scheme;
17 and
18
- (iii) the interests of occupiers of the lots or
19 common property in the strata titles
20 scheme; and
21
- (iv) the interests of registered mortgagees of
22 the lots in the strata titles scheme; and
23
- (v) the interests of any other person with an
24 estate or interest in, or right over, a lot
25 or common property in the strata titles
26 scheme that is registered or recorded in
27 the Register.
- 28 (10) In determining whether an owner of a lot will receive
29 fair market value for the lot, the Tribunal must
30 consider —

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2018-03-23 05:08:12

Why is this a different formulation of
value to what's outlined for the
proposal above?

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2018-03-23 05:09:10

This
is good - separates just and equitable
from price (unlike NSW) and explicitly
considers impact on tenants

- 1 (a) the amount of compensation that would be
2 required to be paid by an acquiring authority
3 under the *Land Administration Act 1997* for
4 acquisition of the lot, determined on the same
5 basis as for the valuation report; and
6 (b) the amount of any additional payment that
7 would be payable by an acquiring authority
8 under that Act for acquiring the lot without
9 agreement; and

2018-03-20 21:55:35

Perhaps costs incurred by
the owner in seeking expert
legal, taxation and other
advice. 14

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- (c) the full costs of the termination proposal to lot
owners taking into account the costs of
discharging mortgages or other interests,
relocation expenses, taxes, duty and any other
charges; and

- (d) any other factor set out in the regulations.



- 16 (11) In determining whether an owner of a lot will receive a
17 like for like exchange for the lot, the Tribunal must
18 consider —

- 19 (a) whether the value of what is offered in
20 exchange is equivalent to the fair market value
21 of the lot (as set out in subsection (10)); and
22 (b) how the location, facilities and amenity of what
23 is offered in exchange compares to that of the
24 lot.

- 25 (12) Without limiting the factors that the Tribunal can take
26 into account under subsection (9)(c), the Tribunal must
27 consider the following —

- 28 (a) any evidence of impropriety in the termination
29 process, including, for example —
30 (i) evidence of proxy votes being exercised
31 invalidly or votes being affected by
32 undue influence in connection with the
33 termination resolution; and

- 1 (ii) evidence of false or misleading
2 information (whether by inclusion or
3 omission) having been included in the
4 outline of or the full proposal for the
5 termination of the strata titles scheme;
- 6 (b) the proportion of owners of lots in favour of
7 and against the termination proposal in terms of
8 numbers of lots and in terms of unit
9 entitlements of lots;
- 10 (c) the termination infrastructure report and options
11 reasonably available to address problems
12 identified in the report (including the extent to
13 which contributions would need to be increased
14 for implementation of an option);
- 15 (d) any arrangements for the owner of a lot in the
16 strata titles scheme to buy back into the
subdivided land following redevelopment;
- 20 (e) the benefits and detriments of the termination
proposal proceeding or not proceeding for all
those whose interests must be taken into
account;
- 22 (f) any other factors specified in the regulations.
- (13) If the Tribunal is not satisfied of the matters set out in
subsection (9)(b) or (c) but would be satisfied of those
matters if the termination proposal were modified in a
specified manner, the Tribunal may confirm the
termination resolution subject to the termination
proposal being modified in the specified manner.
- (14) Without limitation, the modifications may include a
requirement for the proponent to make a payment to a
party to a lease or tenancy agreement over a lot or
common property in the strata titles scheme that will
terminate as a consequence of the termination of the
scheme.

2018-03-23 06:53:26

Perhaps add the independence of the
legal advice received by the owner?



- 1 (4) If the strata company undertakes the relevant activity
2 before receiving payment for the activity, the strata
3 company can recover the fees for the activity as a debt
4 owed to it by the proponent of the termination
5 proposal.

6 **70T. Arrangements for independent advice or
7 representation for owners**

2018-03-20 22:04:45

9
This seems like a good idea.

- 8 (1) The regulations may require the proponent of a
9 termination proposal to enter into specified
10 arrangements for the owners of lots in the strata titles
11 scheme proposed to be terminated to **obtain**
12 **independent advice or representation** in connection
13 with the proposal.



- 14 (2) Without limitation, the arrangements may include a
15 requirement for the proponent of a termination
16 proposal to pay an amount to a trustee to be held in
17 **trust for owners of lots who meet specified criteria** to
18 obtain independent legal advice or representation,
19 valuation advice or reports or financial or taxation
20 advice in connection with the proposal.



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2018-03-23 06:30:01

Likewise!

Appendix H: Advice of experts in valuation and compensation for compulsory acquisition



Our Ref
Your Ref

DM:SM:3500

13 April 2018

Confidential

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

By email: [REDACTED]@landgate.wa.gov.au

Dear [REDACTED]

Confidential Consultation Draft Strata Titles Amendment Bill 2018

I am sorry it has taken me so long to get my comments to you on the Bill, but I have had a nightmare two or three weeks when I have had hardly a minute to scratch myself.

I have had the time for a speedy reading of the Bill, and I know that probably does not do it justice. In ordinary circumstances, if I was commenting on behalf of a client on a draft written law, I would normally read it the first time to get a sense of what it is saying, then read it a second and perhaps third time in order to pick up all of the issues of relevance.

As I am already nearly two weeks out of time for comments on the draft Bill, I am going to offer you what I hope will be the benefit of my comments on a single reading of the draft. I am sure you will consider that the majority if not all of my comments are already covered, but if that is the case, there is no harm done by my sending the comments to you.

1 Cl.70A(1)

- 1.1 I note that it is provided in cl.70A(1) that the termination of a strata titles scheme involves a subdivision of land for which approval is required under the *Planning and Development Act 2005 (P & D Act)*. I am sure you will have taken note that a strata subdivision is not done under the P & D Act, but is rather done under the *Strata Titles Act (ST Act)*. In that regard, note in particular s.25 of the ST Act.
- 1.2 I appreciate that the idea is that if a strata scheme is terminated, then there will be a return to the pre-strata status quo, and presumably an assumption that the strata building/s will be demolished.
- 1.3 But what if the proposal for termination does not contemplate the demolition of the building? I know of some cases where buildings were approved with a very significant amount of plot ratio/floorspace that could not be repeated under current planning laws. A commercial example of that is the building on the south-western corner of the



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Confidential Consultation Draft Strata Titles Amendment Bill 2018

intersection of Barrack Street with St Georges Terrace, where a very significant plot ratio was achieved (I think about 9:1) which cannot be repeated under the present laws. As a consequence, any owner of that building is likely to retain what might be a relatively second-rate building, and to deal with changing circumstances, will prefer to gut the building internally and refit, but not attempting demolition which could result in a lesser planning/development outcome. The question I am raising is whether you have given consideration to the possibility that the termination proposal is essentially for the gutting of an existing building, and the rearrangement of the internal layout, with perhaps a different total of strata lots, and a different arrangement of strata lots.

- 1.4 If it hasn't previously been contemplated that the termination arrangements would cover that type of situation, I raise the question as to whether it might be worthwhile to cover that possibility.
- 1.5 If you do decide to cover that possibility, then it may be that the termination of the strata scheme, and the resubdivision, would be under the provisions of the Strata Titles Act, and not the P & D Act. I frankly don't know how that works. See 3.1 below.

2 Cl.70D

- 2.1 As to cl.70D which refers to ordinary resolution, and other following clauses which use the same term, I have to display my ignorance by not knowing whether, in the context of strata laws, the term 'ordinary resolution' has a special meaning. I assume that it is taken to mean a resolution passed at a meeting where the quorum requirement is satisfied, and where a resolution is passed by a majority of the members present at the meeting. If the term is intended to have some other meaning, a definition would be handy, but I again make the confession that I am conscious of my likely ignorance on that point.

3 Cl.70E

- 3.1 Again cl.70E makes reference to subdivision application under the P & D Act. If the subdivision proposal here contemplated is in the nature of an application for amalgamation of previously subdivided strata lots, then again I am not sure whether the P & D Act is the correct legislation to deal with a strata amalgamation. I note for instance that s.25(1) of the ST Act makes provision for approval not only of a strata plan, but also a plan of resubdivision or consolidation for a strata scheme. Once again the fact that I am making these comments on a quite superficial reading of the Bill means that I haven't gone to the trouble of working out whether the existing legislation contemplates the possibility of a consolidation of strata lots within an existing building for the purpose of the resubdivision of the building into new strata lots.
- 3.2 I mention incidentally that the term 'lot' in the P & D Act expressly excludes a lot in relation to a strata scheme.

4 Cl.70G

- 4.1 Reference is made in the last line of subcl.70G(3) to 'acquisition of the lot'. As explained below, it may be more appropriate to talk about compulsory taking of the lot. There is a potentially wide difference between compensation that might be negotiated on a consensual acquisition and the compensation that might be assessed on a compulsory taking. I am not sure which you intend to apply here.
- 4.2 In subcl.70G(4)(a), reference is made to land being acquired by an acquiring authority. I wonder whether you should say 'compulsorily acquired' or 'compulsorily taken', as compulsory acquisition has different aspects and consequences from an acquisition by agreement. For instance ordinarily, solatium would only be relevant under s.241(6) of the *Land Administration Act 1997 (LA Act)* in the case of a compulsory taking, and usually not in the case of an acquisition by agreement.
- 4.3 I note of course the reference in cl.70G(4)(b) to a notice of intention to acquire. Ordinarily, there would only be a notice of intention to acquire in the case of a compulsory taking, and therefore the reference to a notice of intention may be sufficient to indicate the fact that the reference to 'acquired' in subcl.(4) is necessarily to be taken as a reference to compulsory taking. I might make the point at this time that the term 'acquired' is in itself equivocal. If the intention was to refer to a compulsory acquisition situation, then the more appropriate word to use, rather than 'acquired', may be 'taken'.
- 4.4 Subcl.(4) seems to be an attempt to address the approach to be taken in the compensation valuation. I ask the question as to whether consideration has been given to the notional date of taking. The date of taking ordinarily sets the date of valuation, and there could be a wide variation in valuations given different valuation dates.
- 4.5 I put the question as to whether or not it is intended that the valuation of land will include a solatium element, but I notice that considerably more compensation detail is provided in cl.70K(10). Para.(b) in cl.70K(10) appears to be referring to the solatium allowance that would be made under s.241(8) and (9) of the LA Act, which is usually set at 10% of the compensation otherwise assessed. I will be making comment on cl.70K(10) below.
- 4.6 Is it intended that the valuer will ignore the proposal for termination in carrying out the valuation. In s.241(2) of the LA Act, a person valuing land for the purpose of assessing compensation is required to discount any increase or decrease in value attributable to the proposed public work. Maybe it would be appropriate for the point to be made in the context of this legislation that the valuer is to ignore the termination proposal.

5 Cl.70I

- 5.1 I notice that in subcl.(2) of cl.70I, the proponent of a termination proposal can only be present at a meeting of the strata company if allowed to do so by the owners of the lots in the strata titles scheme. Is the intention here to refer to a view expressed by **all** of the owners of the lots in the strata title scheme, or only by those owners present at the

Confidential Consultation Draft Strata Titles Amendment Bill 2018

general meeting? If the latter, then I suppose reference should be made to the type of resolution that would have to be passed by the owners in order to exclude or permit the presence of the proponent.

6 Cl.70K

- 6.1 I note in subcl.(9) a reference to 'fair market value'. There is a bit of a problem with that term, because it is a term appropriate to working out the value of the land component, but not ordinarily including all other components of compensation valuation that arise under s.241 of the LA Act. I am aware that there is an explanation of the intended meaning of 'fair market value' in subcl.(10), but I wonder whether the more appropriate course would be to use the term 'fair compensation', which avoids the possible confusion between the fair market value of the land component, and the fair compensation that might be assessed including the other elements contemplated in subcl.(10).
- 6.2 In para.(a) of subcl.(10), again there is a reference to 'acquisition of the lot'. I wonder whether it would be more appropriate to refer to compulsory taking of the lot, as that is more consistent with the allowance of solatium, which I take to be the subject of para.(b).
- 6.3 If para.(b) of subcl.(10) is intended to refer to what is usually called 'solatium', namely the component dealt with by subs.(8) and (9) of s.241 of the LA Act, then it may be appropriate to make reference to the additional compensation which would ordinarily be payable under subs.(8) and (9) of s.241 of the LA Act, or perhaps use the term 'solatium', so as to make the intent of para.(b) quite clear. There is the problem though that s.241 of the LA Act does not use the term 'solatium'.
- 6.4 I wonder whether the intent of para.(c) is to refer to the disturbance type loss which is intended to be covered by subs.(6) of s.241 of the LA Act. If that is the case, then you may want to leave the categories in para.(c) more open, and make it clearer that the intention is to refer to disturbance type losses of the kind covered by subs.(6) of s.241 of the LA Act, especially removal costs and reinstatement costs.
- 6.5 If you are intending by paras.(b) and (c) to refer to solatium and disturbance damages respectively, then I wonder whether it would be appropriate for you also to consider the severance damage element, ordinarily covered by subs.(7) of s.241 of the LA Act. I can imagine that a severance element may arise in a situation for instance where a family or some other group may see value in having ownership of a number of contiguous lots in a strata scheme. They may prefer to take compensation than participate in the revised scheme, and in that case they may lose the benefit that they might have seen in having ownership of a number of contiguous lots, where they could have the benefit of maintaining a close family relationship. This might for instance be of particular significance for persons with a cultural heritage where there is a tendency for the extended family to cluster together in their residential accommodation.

13 April 2018

Landgate

McLeods

Page 5

Confidential Consultation Draft Strata Titles Amendment Bill 2018

I apologise again for the quite hurried nature of the above comments. I regret that first of all I am late in making any comments at all, but further that I have not been able to give the more mature consideration to the draft that the circumstances justify.

I might add incidentally that on my reading of the draft Bill, it seems to generally speaking read quite well, and I haven't detected any other points that I would regard as faults, other than potentially those referred to above.

I can only hope that you will get some assistance from the above. If you consider that all the points made above are covered, then I suppose the least effect of my comments is to confirm to you that I don't have any useful comments to add to the work which has been done to date on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Denis McLeod', written in a cursive style.

Denis McLeod

Direct line: 9424 6201

Email: dmcleod@mcleods.com.au

From: Denis McLeod
To: [REDACTED]
Subject: RE: Request for feedback on a portion of the draft Strata Titles Amendment Bill - Confidential
Date: Friday, 27 April 2018 12:55:30 PM

Dear [REDACTED]

What you have sent appears to be a bold attempt at fair compensation.

Noting that I have only had an hour to think about your provisions, to me they seem to be good, with respect, but I mention the following as points that you may want your drafter to consider:

- 1 In subs.(10)(c)(iv), there may be merit in adding a provision to compensate the dispossessed lot owner for the conveyancing and possible stamp duty costs of acquiring a replacement property. Perhaps the passage at the end of the paragraph, 'interests' could be deleted and the passage 'interests, and costs for acquisition of a replacement property' or the like, could be added, if you are willing to cover that.
- 2 I wonder whether thought has been given to the possibility of an obligation to pay GST. Probably the acquisition of a strata lot in the circumstances you are dealing with would not be treated as a taxable supply under the GST regime, but the issue should perhaps be considered by your drafter. The issue may have relevance to a dispossessed strata lot owner who is registered for GST. Again you may not want to go that far.

Regards

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From: [REDACTED]@landgate.wa.gov.au]
Sent: Thursday, 26 April 2018 4:39 PM
To: Denis McLeod <dmcleod@mcleods.com.au>
Subject: Request for feedback on a portion of the draft Strata Titles Amendment Bill - Confidential

Hi Denis,

Thank you very much for your feedback on the Consultation draft of the Strata Titles Amendment Bill relating to termination of schemes.

As discussed today, could you please provide me with your feedback to the following portion of the draft Strata Titles Amendment Bill on a confidential basis?

(10) In determining whether an owner of a lot will receive fair market

value for the lot —

(a) the Tribunal must be satisfied that —

- (i) the owner will receive at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement; and
- (ii) the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme;

and

(b) in considering the amount of compensation that would be payable under section 241 of the *Land Administration Act 1997* —

- (i) that section is to be read as if the owner of the lot were the claimant and the proponent of the termination proposal were the acquiring authority; and
- (ii) no regard is to be had to any reference to proposed public works nor to the undertaking of improvements after there is a notice of intention; and
- (iii) an amount appropriate to compensate for the taking without agreement may be added to the award or offer (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount);

and

(c) without limitation, regard is to be had to the loss or damage, if any, sustained by the owner by reason of any of the following —

- (i) removal expenses;
- (ii) disruption and reinstatement of a business;
- (iii) liability for capital gains tax or other tax or duty;
- (iv) conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests.

I am hoping to relay this feedback to our drafter tomorrow.

Please feel free to contact me on [REDACTED] you have any questions.

Thank you for your support and I look forward to hearing back from you.

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From: Matt Garmony
To: [REDACTED]
Subject: RE: Confidential portion of draft Bill - request for feedback (please)
Date: Friday, 27 April 2018 9:54:25 AM

Hi [REDACTED]

My suggestions in red below.

I hope this helps.

Regards

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Licensed Valuer

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From: [REDACTED]@landgate.wa.gov.au
Sent: Thursday, 26 April 2018 4:36 PM
To: Matt Garmony <matt@garmony.com.au>
Subject: Confidential portion of draft Bill - request for feedback (please)

Hi Matt,

As discussed today, could you please provide me with your feedback to the following portion of the draft Strata Titles Amendment Bill on a confidential basis?

- (10) In determining whether an owner of a lot will receive fair market value for the lot —
- (a) the Tribunal must be satisfied that —
 - (i) the owner will receive at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement; and
 - (ii) the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme;
 - and
 - (b) in considering the amount of compensation that would be payable under section 241 of the *Land Administration Act 1997* —
 - (i) that section is to be read as if the owner of the lot were the claimant and the proponent of the termination proposal were the acquiring authority; and

- (ii) no regard is to be had to any reference to proposed public works nor to the undertaking of improvements after there is a notice of intention; and
 - (iii) an amount appropriate to compensate for the taking without agreement may be added to the award or offer (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount);
- and
- (c) without limitation, regard is to be had to the loss or damage, if any, sustained by the owner by reason of any of the following —
 - (i) removal **and relocation** expenses;
 - (ii) disruption and reinstatement of a business;
 - (iii) liability for capital gains tax or other tax or duty;
 - (iv) conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests.
 - v) **professional fees and property valuation advice on the offer and independent valuation expenses for alternative accommodation**

Could you please provide me with that feedback by 12 noon tomorrow?

Please feel free to contact me on ([REDACTED]) if you have any questions.

Thank you for your support and I look forward to hearing back from you.

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Appendix I: Detailed comparison of the majority termination of schemes models in WA, NSW, Singapore Northern Territory.

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
Relevant legislation	<u>Strata Titles Amendment Bill 2018</u> (Regulations not yet drafted)	<u>Termination of Units Plans and Unit Title Schemes Act 2014</u> and <u>Termination of Units Plans and Unit Title Schemes Regulations</u>	<u>Strata Schemes Development Act 2015</u> and <u>Strata Schemes Development Regulation 2016</u>	<u>Land Titles (Strata) Act</u>
Vote to proceed	80%	80% if 30+ years old 90% if 20 – 30 years old 95% If 15 – 20 years old	75%	80% 'shares', 80% area if 10+ years 90% 'shares' 90% area if less than 10 years s84A
Does each lot owner have the same value vote?	Yes, each lot has the same vote. The vote is taken according to lots, not by unit entitlement. Unit entitlement is considered if a termination resolution of 80% or more of lots is passed (where the scheme is 5 or more lots) when SAT reviews the termination proposal: section 183(12)(b)	No, the total percentage of the vote is based on unit entitlement.	Yes, the total percentage is based on number of owners in the scheme.	No. The vote is based on 'share values' or lot area, so lot owners who own a higher proportion of these may have more influence on the outcome. Note that Singapore has different types of schemes. In some schemes, proprietors own the land. In others, it's a leasehold. In some, it's a mix. The fundamental way of terminating and the percentages

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
				involved are basically the same.
A scheme of how many units can terminate by the majority process?	5 or more lots. Smaller schemes with 4 lots or less must terminate by unanimous resolution.	10 or more can use the majority vote termination process. Smaller schemes can apply to the Tribunal for an order to terminate.	4 or more lots (this is not explicitly said, but since 75% is the required vote, a scheme of 3 lots or fewer cannot attain the 75% vote if there is 1 dissenting owner.	No minimum size specified.
Compensation value for a dissenting owner is determined by...	<u>Land Administration Act 1997</u>	<u>Lands Acquisition Act</u>	<u>Land Acquisition (Just Terms Compensation) Act 1991</u>	<p>The compensation value is based on the collective sale price. There is no reference to the equivalent of the LAA or just terms legislation.</p> <p>The total sum ordered by the High Court for all the objectors is paid from the proceeds of sale and is not to exceed the aggregate sum of 0.25% of the proceeds of sale for each lot or \$2,000 for each lot, whichever is the higher. (That is, this</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
				is the additional money they get, above what others in the scheme get).
Review body	State Administrative Tribunal (SAT)	Northern Territory Civil and Administrative Tribunal.	Land and Environment Court.	The Strata Titles Board and then the High Court (before going to the High Court, the matter is heard by the Strata Titles Board, who will attempt to mediate between dissenting parties and those that support the sale. If the Board cannot resolve the matter, it goes to the High Court).
Does the proponent have to be an owner in the scheme?	Yes, or have an option to buy a lot in the scheme.	Yes. It may be one or more owners.	No. Any person may give a written notice for the collective sale or redevelopment of a strata scheme. s154	There is no need for a proposal to be made by an owner. A collective sales committee can be set up once 20% of owners agree to do so (or 25% of votes). This committee will have 3-14 members. Once established, it must seek professional advice from property consultants and lawyers, and obtain an

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
				independent valuation report. These form the basis of the development of a proposal which sets out how proceeds will be apportioned.
Is there a document before the full termination proposal?	Yes, an 'outline termination proposal'.	Yes, a 'draft notice of proposed termination'	Yes, a 'strata renewal proposal', either for collective sale, or redevelopment.	The Collective Sales Committee must prepare a collective sale agreement.
A summary of the preliminary termination proposal contains	The outline proposal must contain the sort of information that would help owners make an informed decision as to whether this outline proposal should be progressed into a full proposal, including: a. the name of the proponent b. the reasons for proposing the termination c. general proposals for contracts to be offered to owners to acquire their lot	* name and contact details of proponent * an explanation of the process for the termination * the rights of owners * any proposed disposition of property of body corporate * the reason for the proposed termination, description of proposal, including: * architectural plans * statement of approximate start and finish	Regulation 30: * a statutory warning * identifying details and any financial interests in any of the lots in the scheme, of the proponent. * A description and purpose * how it will be funded, * estimated cost of obtaining an order from the court to give effect to the plan, * whether owners can buy back into the development following the collective sale or redevelopment,	A sale and purchase agreement which specifies the proposed method of distributing the sale proceeds, whether in cash or kind or both s84A. It must state in the preface where the following is found in the document: * the reserve price for the development; * the apportionment method for the proceeds of sale; * the fees payable to the advocate and

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>d. the general proposal of how the site will be redeveloped and what planning approvals will be required for that redevelopment</p> <p>e. the stages and timeframes for the proposal to progress</p> <p>f. an explanation of the process to terminate and the consequences of terminating</p> <p>g. details of arrangements the proponent is required to make under the regulations to provide owners with funding to obtain independent advice and representation to respond to the termination proposal</p> <p>h. other information required under the regulations.</p> <p>An outline of a termination proposal</p>	<p>* estimated cost, including a plan for the financing</p> <p>* a proposal for how owners and tenants, would be dealt with during carrying out of the works. If applicable, after completion, relocation or payment</p> <p>* if applicable, a proposed scheme statement for the development land after redevelopment</p> <p>* an estimate of the value after redevelopment</p> <p>* disclosure of any arrangements with a person for any proposed redevelopment</p>	<p>If it is a collective sale:</p> <p>* the indicative sale price, how this was determined and the distribution based on current unit entitlements</p> <p>* if the proposal is for the redevelopment of the strata scheme:</p> <p>* settlement details for each lot owner,</p> <p>* how the redevelopment will be funded by the proponent,</p> <p>* details of any required planning approvals</p> <p>* in all cases, there will be an estimated timetable for the sale, including a completion date and when owners will be required to vacate premises</p>	<p>solicitor, marketing agent and others involved in the collective sale;</p> <p>* the amount of the compensation fund, if any;</p> <p>* the person entitled to any interest derived from moneys held by any stakeholder</p> <p>* the date of delivery of vacant possession of the lot or flat.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	must be in the approved form s.175 An ordinary resolution is required before this can be further developed into the full termination proposal.			
Any cost to the proponent to make the application for termination.	The proponent is required to prepare and pay for the outline and full proposal	Yes. 2,000 penalty units, currently worth \$2,360 (regulations) * the costs associated with a sale of a dissenting owner's lot, * the reasonable fees of the valuer preparing and distributing a valuation report due to a dissenting owner s13.	No cost quantified.	Yes, \$5,000 for an application to the Strata Titles Board (who must approve each proposal before it can go to the High Court)
Is there any form of review prior to the proposal being considered by the owners of the lots, that can stop it from proceeding?	The owners of the lots consider the outline proposal. An ordinary resolution is necessary to go to the next step, the preparation of a full termination proposal. The strata company does not have to hold a general meeting to vote on the outline proposal.	Yes, the 'schemes supervisor', appointed by the Minister. This role is a government appointed person with functions as per the <i>Unit Title Schemes Act</i> . The supervisor must do an initial review of the proposal, and if satisfied that it is sufficient to permit the owners to make an	Yes, the strata committee will only refer it to the owners corporation if it decides that it warrants further consideration. s158.	The Strata Titles Board was established to mediate and hear an en-bloc application (termination proposal). Where no objection is filed against the en-bloc application, the Strata Titles Board will fix a date for a hearing to determine that the en-bloc sale transaction is in good faith.

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>If a general meeting of the strata company is held and an ordinary resolution (a simple majority vote) is passed in favour of the outline proposal within 3 months of the outline proposal being submitted to the strata company, the proponent can proceed to the next step.</p> <p>If the strata company does not pass an ordinary resolution in favour of the outline proposal within 3 months of the outline proposal being submitted to the strata company, the termination proposal comes to an end and the Registrar is to be notified by the strata company or the proponent.</p>	<p>informed decision, issue an approval certificate to the proponent. They can also request more information. They may reject the application. The proponent may provide the requested information, or appeal to the Tribunal in relation to the requested information. The proponent can also apply to the Tribunal for an order having the same effect as an approval certificate. s10(5)(b). A draft notice of proposed termination becomes the notice of proposed termination when an approval certificate is issued, or if the Tribunal makes an order to the same effect.</p>		<p>Note that s84A(7C) directs that non-compliance with the termination process does not invalidate an application for a termination, unless it prejudices the interests of a person. The Board may make an order to rectify the non-compliance and award costs.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	The strata company can receive as many outline proposals as they want and can consider each proposal without the need to hold a general meeting. Step 3 provides a mechanism to allow the strata company to choose which outline proposal that the owners want to focus their consideration on.			
When does the strata company consider the proposal?	<p>When the strata company receives an outline termination proposal, it must serve it on all owners within 14 days.</p> <p>The strata company does not need to vote on an outline proposal.</p> <p>For a full proposal, all owners must be given at least 2 months before voting by secret ballot. Owners can vote 3 times. If the full proposal is ratified by</p>	<p>The proponent must serve a request on the body corporate as soon as practicable after receiving an approval certificate. The request will ask for a meeting to be held to vote on the termination proposal s11.</p> <p>Note that if the body corporate does not call the meeting, the proponent can apply to the Tribunal for an order that they do so.</p>	<p>The strata committee of the owners corporation must consider the proposal at one of their meetings. s157. Regulation 31 establishes that each owner will be informed that it has been decided to establish a strata renewal committee.</p>	<p>Once the collective sales committee has drawn up the sales agreement, individual owners can decide whether or not to sign it.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	the required vote, the proponent has to apply to SAT for a procedure and fairness review.			
Proposal Lapses	<p>If an outline proposal is not supported by an ordinary resolution, it lapses within 3 months. If the full termination proposal doesn't get enough support (more than 80%) within 6 months and with no more than 3 votes, it lapses.</p> <p>If SAT doesn't confirm the termination resolution, it lapses.</p> <p>If the proponent does not take the required action in the given timeframe, it lapses. (ie, takes too long to develop a full proposal, or doesn't apply to SAT to get the termination resolution confirmed or does not obtain subdivision approval or does not apply to have</p>	<p>If the schemes supervisor rejects the application. Or if the schemes supervisor has requested further information and this has not been provided in the time allowed. s10</p> <p>If the proponent doesn't lodge the required documents within 12 months of the body corporate lodging documents with Registrar-General. s19</p>	<p>Proposal lapses if:</p> <ul style="list-style-type: none"> * the strata committee decides it does not warrant further consideration, * the owners corporation decides it does not warrant further consideration by a 'strata renewal committee'. s159 * if owners corporation decides not to give it to owners for their consideration. * the proposal doesn't get the required support within 3 months * if owners corporation decides not to apply to the court to give effect to the proposal. s177 	<p>If the proposal does not gain the required level of support within one year.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>the termination registered within the time limit).</p> <p>The strata company can also prevent a full proposal from being served on the strata company by obtaining an order of SAT: section 178(2)(b) and this will likely result in the proposal lapsing.</p>			
Is there anything to stop the strata company from being harassed by receiving too many proposals?	<p>Yes, A termination proposal cannot be submitted to a strata company) during a period where:</p> <ul style="list-style-type: none"> * the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end; * the strata company has prohibited outline termination proposals from being submitted to it (by ordinary resolution) 	No.	<p>No. Once a strata renewal plan lapses, the strata renewal committee is dissolved. For a new strata renewal plan to be drawn up would require the convening of a new strata renewal committee – which needs a majority vote at a meeting of the strata scheme.</p>	<p>Once a proposal is defeated, 2 years must elapse to reset the trigger for the formation of a collective sales committee back to the original levels (20%, 20%).</p> <p>In any other case, the percentages increase to 50% of the management committee agree to form a new sales committee.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	* SAT has ordered that proposals (outline or full proposals) are not to be submitted to the strata company (on the application of the strata company, or of a single owner who has made an application on behalf of the strata company : see section 198(1)): s174(2) and s178(2)(b).			
Are important decisions made by committee?	Section 181 provides: a. that 1 or more general meetings of the strata company must be convened to consider the full termination proposal b. the owners may, by ordinary resolution, require the proponent to leave the meeting or, if the proponent is not an owner, be absent for the whole meeting c. All people who are required to be served the full proposal must be given a reasonable opportunity to make	No, the body corporate does not need to convene a special body to consider the termination proposal.	Yes, a “strata renewal committee”, must be formed (if the owners corporation decides to investigate the idea of terminating). The committee is not to have more than 9 members (1 being the Chair). s160	Yes, a collective sale committee acts jointly on behalf of the owners, members elected by the owners at a general meeting s84A(1A)(a)

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>submissions to the proponent and the strata company</p> <p>d. The council of the strata company may:</p> <ul style="list-style-type: none"> i. discuss the full proposal with the proponent ii. inform owners of those discussions iii. make recommendation to owners about the proposal. <p>e. the regulations may impose additional requirements about the process for consideration of a termination proposal.</p>			
Content of full proposal	<p>In addition to the information contained in the outline proposal, the following is required:</p> <p>a. The information contained in the outline proposal (the full proposal can differ from the outline proposal and the full proposal replaces the outline</p>	<p>Once the draft notice of proposed termination receives an approval certificate, it becomes the 'notice of proposed termination'. It does not require more information in it than the draft s10.</p>	<p>Strata renewal plan:</p> <ul style="list-style-type: none"> (a) a general overview (b) statement of the intended use of the strata parcel, (c) if a collective sale of the scheme: <ul style="list-style-type: none"> (i) the name of the purchaser or a proposal for marketing the parcel 	<p>Once the collective sales agreement has achieved the required percentage, the next step is for the sale committee to find a buyer through a public tender exercise where interested developers will submit their bids.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>proposal: section 179(8))</p> <p>b. The approved plan of subdivision</p> <p>c. A detailed description of proposed contracts offered to each owner including:</p> <p>i. contracts for the sale and purchase of lots;</p> <p>ii. contracts for a like for like lot; and</p> <p>iii. contracts for the owner to retain ownership of the land within the scheme and or a right to acquire a lot on the redeveloped site or an interest in the land within the scheme.</p> <p>d. a detailed description of what is proposed to happen to every registered or recorded interest or estate in the lots and the common property</p> <p>e. a detailed description of what is proposed to happen to the contractual rights of</p>		<p>for sale by public auction or tender, and</p> <p>(ii) the sale price (if known), or a minimum reserve price for the sale or details of the way in which a minimum reserve price for the sale is to be set, and</p> <p>(iii) the proposed completion day for the sale, and</p> <p>(iv) the proposed day on which the owners of the lots are to provide vacant possession of their lots, and</p> <p>(v) the details about costs and expenses to be deducted from the sale price, and</p> <p>(vi) any other terms and conditions that the strata renewal committee considers significant,</p> <p>(d) if the plan is for a redevelopment of the scheme:</p>	<p>Once a buyer has been found, application must be made to the Strata Titles Board for a sales order.</p> <p>An objecting party may appeal to the High Court.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>occupiers (such as leases) of lots or common property</p> <p>f. a detailed description of the proposed subdivision and development of the land following termination (along with planning approvals required for that planning and development and to what extent that proposal is consistent with the relevant planning scheme)</p> <p>g. details of the stages and timeframes proposed to progress the termination proposal including when vacant possession of the lots and common property will be required</p> <p>h. any proposals to temporarily relocate owners of lots (including payments to arrange temporary relocation)</p> <p>i. a statement from the strata company of its</p>		<p>(i) the name of the proposed developer, and</p> <p>ii) details of any planning approvals required before redevelopment</p> <p>(iii) an estimate of the period from start to completion and</p> <p>(iv) details of when owners of lots are required to provide vacant possession and</p> <p>(v) details of financing, and</p> <p>(vi) details of the terms of settlement and the amounts to be paid to each dissenting owner and</p> <p>(vii) details of the terms of settlement including the amount and timing of any payments made to the owner and, if the owner has a right to buy back into any future scheme, details of that right,</p>	

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	<p>current assets and liabilities and any legal proceedings or pending legal proceedings the strata company is or proposed to be a party in</p> <p>j. details of the steps that will be taken to wind up the strata company, including realising the assets and discharging or transferring the liabilities</p> <p>k. any other information required by the regulations.</p> <p>l. A termination infrastructure report that includes:</p> <p>i. a report on the state and condition of the buildings and infrastructure within the scheme, prepared by a structural engineer</p> <p>ii. the scope of works reasonably required to repair or replace the buildings and</p>		<p>(e) any other information prescribed by the regulations.</p> <p>If a strata renewal plan is for a collective sale of a strata scheme, the plan must provide for the purchase of each owner's lot at not less than the compensation value for the lot.</p> <p>(4) If a strata renewal plan is for a redevelopment of a strata scheme, the plan must provide for each dissenting owner's lot to be purchased at not less than the compensation value for the lot. s170</p> <p>Regulation 33 further specifies that it must contain:</p> <ul style="list-style-type: none"> * estates, interests, caveats that affect lots or common property. * current unit entitlements * report from an independent valuer 	

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	<p>infrastructure (likely to be prepared by a licenced builder), and</p> <p>iii. a report on the estimated cost of the works required to repair or replace the buildings and infrastructure prepared by a quantity surveyor.</p> <p>m. a termination valuation report prepared and certified by a licensed valuer setting out the market value of each lot in the scheme. The regulations may prescribe how market value is to be calculated. The regulations will likely require that the market value is to be calculated taking into account recent sales history, the highest and best use the land can be put to and the owner's share of the common property (which is provided for</p>		<p>including market value of the scheme (at its highest and best use) the compensation value of each lot.</p> <p>(d) if the strata renewal plan is for a redevelopment of the strata scheme, details of the proposed completion day for the purchase of each dissenting owner's lot and, if it is proposed that a dissenting owner will receive a payment for the lot on a day other than the completion day, what that day is.</p>	

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	by the owner's unit entitlement). Further consultation on this point will be undertaken.			
Can the scheme be terminated in any other way?	Unanimous resolution.	<ul style="list-style-type: none"> * Unanimous resolution. * Via the termination process, if the vote is not unanimous, but no objecting owner applies to the Tribunal. Part 4 * Via application to the Tribunal via the termination process, if an objecting owner applies to the Tribunal to consider whether the termination should be allowed. Part 5 	<ul style="list-style-type: none"> * Unanimous resolution. * By Application to the Supreme Court s143 * By application to the Registrar General s142. 	<ul style="list-style-type: none"> * Unanimous * By application to the Registrar-General * By order of a court, which can be made by * any proprietor * any mortgagee * the management corporation. <p>There are still guidelines the court must follow in terms of fairness and equity, but it is not the same as the collective sale process. s78</p>
Arrangements in terms of proceeds, for a non-dissenting owner.	As set out in the full termination proposal.	As per the draft notice of proposed termination s9, then if this is given an approval certificate, the notice of proposed termination s10(6). (Unit entitlement is not mentioned as a guiding principle).	<p>If the proposal is for a collective sale of a strata scheme, the amount must be apportioned according to UE.</p> <p>If the proposal is for a redevelopment of a</p>	<p>Flexible.</p> <p>Apportionment by share value, lot area or valuation. (valuation is often used in mixed development or commercial properties)</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
			strata scheme, the amount for a dissenting owner's lot must not be less than the compensation value of the lot. s171	
Who prepares the plan?	The proponent	The proponent.	The 'strata renewal plan' is prepared by the strata renewal committee . If the owners corporation decides to (the vote is special resolution), a copy of the plan can be given to each owner, s173	The collective sales committee prepares the terms and conditions of the collective sales agreement. Once this has been prepared, owners can start signing it.
Is there a vote?	Yes, by secret ballot.	Yes, at a meeting.	An owner indicates agreement with the sale by giving the 'returning officer' a 'support notice'. This is to be signed by each registered mortgagee or covenant chargee of the owner's lot. The returning officer must record the number of lots giving support, and provide this	There is a collective sales agreement. Once the required percentage has been achieved the document is considered to be 'executed'. There are 12 months in which this can occur, from the date of the first signature.

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
			information to any owner on request. s174. (Support notices may be withdrawn s175).	
How does an owner know if the required level of approval for the proposal has been attained?	At the meeting where the vote has been taken, the independent person will tally the votes from the secret ballot and announce whether the motion has been carried or not.	Yes, they will know at the meeting.	If the required level of approval has been obtained, the returning officer lets the secretary know. The secretary must inform all owners, and the Registrar-General within 14 days.	Once the sales agreement has been executed by achieving the required percentage, the owners supporting the sale have complex requirements to let all parties know, including: * affixing, on a conspicuous part of the building, information including the number of lots who signed, and the percentage this represents, within 4 weeks of execution of the document, and then at regular intervals * advertise in the 4 official languages the particulars of the proposed application in such local newspapers as approved by the Board

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
				* notice will be served on all proprietors of the application to the Board, which includes key documents relating to the termination.
After the required level of support is obtained, to progress the proposal	The proponent must apply to the Tribunal for an order confirming the termination resolution.	The termination proceeds unless an objecting owner applies to the Tribunal for review: s12(1)(c). If this doesn't happen, the proponent may apply to the Tribunal for an order for the sale of the objecting owner's unit to the proponent s12(3).	The owners corporation must resolve to apply to the court for an order to give effect to the proposal.	After a buyer is selected and the sale is agreed upon, an application is made to the Strata Titles Boards to seek approval for the en-bloc sale. Owners who do not consent to the en-bloc sale can raise objections. The Board is required to consider these objections before deciding on the outcome of the application for sale
Tenants	The strata company must serve the full proposal on all occupiers of lots and the common property. The strata company must (section 183(6)),	A draft notice of termination must include how any tenants will be dealt with s9. The Tribunal may make an order for the	The secretary is to give written notice of a decision to apply for an order to give effect to the proposal to each tenant in the scheme. s178	Not mentioned.

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>within 14 days of being served with notice of the SAT application, serve notice of the application on occupiers of lots or common property.</p> <p>SAT can only make an order confirming the termination resolution if the proponent satisfies SAT of three key things, including that the termination proposal is otherwise just and equitable having regard to the interests of occupiers of the lots and the occupiers of common property.</p> <p>Without limiting the factors that SAT can take into account when assessing whether the termination proposal is just and equitable, SAT must consider the benefits and detriments of the termination proposal proceeding or not proceeding for</p>	<p>termination of a tenancy, which may include compensation of the tenant s17.</p>		

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>owners, occupiers of lots or the common property, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.</p> <p>The following people may be heard during a SAT review of a termination resolution:</p> <ul style="list-style-type: none"> a. Owners b. Registered mortgagees c. Occupiers and tenants of lots and the common property d. People with an estate, interest or right registered or recorded in the Register 			
After a successful resolution to terminate, a dissenting owner must...	<p>The termination proposal always goes to SAT, so the dissenting owner does not need to take specific action, apart from giving SAT their point of view</p>	<p>... sell or apply to the Tribunal for an order s12.</p> <p>The objecting owner can:</p>	<p>... File an objection to the application to a court for an order to give effect to the strata renewal plan. This must occur with 21 days of receipt of notice that the</p>	<p>... <i>may</i> file an objection to either the Strata Titles Board or the High Court, but they do not have to. If they do not, these entities will make their decisions based</p>

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	<p>during SAT's consideration of the termination.</p> <p>The following people may be heard during a SAT review of a termination resolution:</p> <ul style="list-style-type: none"> a. Owners b. Registered mortgagees c. Occupiers and tenants of lots and the common property d. People with an estate, interest or right registered or recorded in the Register 	<p>* notify the proponent that they no longer object.</p> <p>* agree to sell the unit to either the proponent, mortgagee, body corporate or schemes supervisor, setting out the price at which they'd be willing to sell.</p> <p>* if the objecting owner and the proponent cannot agree on a price, the schemes supervisor will request a prescribed professional organisation to appoint a valuer to advise the value of the unit, using the <i>Lands Acquisition Act</i></p>	<p>application to the court is going to be made. A person who objects does not have to be party to the court proceedings. s180</p>	<p>on the evidence they have to hand – both must decide if the proposal was made in good faith, based on the sale price, method of distribution, relationships between purchaser and owners s84A(10). However, an objecting owner will not receive the special amounts under s84A(7A) if they did not lodge an objection.</p>
<p>Can the review body</p> <ul style="list-style-type: none"> * order mediation * approve the modification of the proposal 	<p>The Tribunal has extensive powers to mediate with parties. The Tribunal can modify the proposal.</p>	<p>Mediation is not mentioned. Section 17 sets out that the Tribunal may make any order it considers necessary in relation to the termination.</p>	<p>The court can order mediation or arrange a conciliation conference. The strata renewal plan can be further modified at these. s181</p>	<p>The Strata Titles Board deals with proposals where a strata is sold to a developer with less than 100% consent</p> <p>The Board can mediate between dissenting owners and the</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
				<p>applicant (for the termination)</p> <p>A dissenting owner can lodge an objection with the Board. When the matter goes to the High Court, they have to lodge their objection again s84A(4A)</p>
Review body must be satisfied...	<p>SAT can only make an order confirming the termination resolution if the proponent satisfies SAT of three key things, namely:</p> <p>a. the process required by Part 12 Division 3 has been complied with (this includes the requirements detailed in steps 1 to 7 above and the safeguards provided in section 189 (that the proponent must pay the costs of the process to the strata company) and 190 (that the proponent is to provide funding to specified vulnerable</p>	<p>That the termination</p> <ul style="list-style-type: none"> * is just and equitable * any objection is unreasonable * is necessary, taking into account anything prescribed by regulation. <p>The tribunal is to consider:</p> <ul style="list-style-type: none"> * adverse consequences to owners if the termination goes ahead – or doesn't. * financial benefits and risks * whether an order other than termination would be more appropriate; 	<ul style="list-style-type: none"> * The strata renewal plan being prepared in good faith * the process was properly followed. * for collective sale, that the proposed distribution of proceeds is at least the compensation value. * if for a redevelopment—the dissenting owner receives at least the compensation value, and at least what they would have got had they supported the proposal. 	<p>Elements to consider when concluding whether the transaction was, or was not in good faith are:</p> <ul style="list-style-type: none"> * the sale price * the method of distributing the proceeds * the relationship of the purchaser to any of the owners <p>The sale cannot go ahead if</p> <ul style="list-style-type: none"> * the sale and purchase agreement would require any dissenting owner to be a party to any ongoing

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>owners to respond to the proposal)</p> <p>b. every objecting owner will receive fair market value or a like for like exchange for the lot and</p> <p>c. the termination proposal is otherwise just and equitable having regard to the interests of:</p> <p>i. owners</p> <p>ii. the owner of the leasehold scheme</p> <p>iii. occupiers of the lots and the occupiers of common property</p> <p>iv. registered mortgagees</p> <p>v. any person with an estate, interest or right recorded or registered in the Register.</p> <p>In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, SAT must be satisfied that:</p>	<p>* any matter prescribed by regulation s17.</p> <p>Tribunal must take into account:</p> <p>* whether the scheme was functional.</p> <p>* whether the proponent before making the application, made a reasonable proposal other than for its termination;</p> <p>* if involving a sale of the development land – whether the proposed distribution of the proceeds is fair and reasonable</p> <p>* the interests of others who have registered interests.</p>	<p>* the terms must be just and equitable in all the circumstances. s182</p>	<p>arrangement in the development</p> <p>* if the collective sale committee does not consent to any order made by the High Court in relation to the money an objecting owner gets s84A(9).</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>a. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the Land Administration Act 1997 for taking of the lot without agreement and</p> <p>b. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme. This means the objecting owner must be no worse off if the termination were to go ahead.</p> <p>Without limiting the factors that SAT can take into account when assessing whether the termination proposal is just and equitable, SAT must consider:</p> <p>a. evidence of any impropriety in the</p>			

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	<p>termination process including:</p> <p>i. evidence of proxy votes being exercised invalidly or votes being affected by undue influence</p> <p>ii. evidence of false or misleading information in the outline or full termination proposal.</p> <p>b. the proportion of owner support for the termination by number of lots and unit entitlement</p> <p>c. the termination infrastructure report and options readily available to address problems identified in the report</p> <p>d. any arrangements to buy back into the subdivided land following redevelopment (essentially, what arrangements have been made for an owner to buy a new lot</p>			

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	<p>within a new scheme on the same site) e. the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers of lots or the common property, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.</p> <p>In considering the amount of compensation that would be payable under the Land Administration Act 1997 section 241, SAT may also award an additional amount appropriate to compensate for the taking without agreement, but it may not be more than 10% of the amount otherwise awarded or offered</p>			

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	<p>unless SAT is satisfied that exceptional circumstances justify a higher amount.</p> <p>Section 183(10)(b) clarifies how section 241 of the Land Administration Act 1997 (LAA) applies in the case of calculating compensation payable for a termination, including that:</p> <p>a. the reference in section 241(2) of the LAA to public works is to be disregarded. In earlier consultation on the Bill stakeholders thought that section 241 of the LAA would prevent an objecting owner's lot from being valued according to the highest and best use of the lot. Disregarding section 241(2) of the LAA enables SAT to consider the highest and best use of the lot</p>			

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>when assessing fair market value. An objecting owner will be entitled to be compensated for the uplift in value that their lot will experience because the site has been rezoned. This must be done because such a rezoning should be considered when assessing highest and best use for the lot.</p> <p>b. the reference in section 241(4) of the LAA to undertaking improvements after there is notice of intention is also to be disregarded. This means that if the objecting owner makes improvements to the lot after the termination proposal has been served or even progressed to the SAT hearing in section 183, the owner is to be</p>			

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	<p>compensated for those improvements.</p> <p>Without limitation, SAT must consider the loss or damage, if any, sustained by the owner by reason of any of the following (section 183(10)(c)):</p> <ul style="list-style-type: none"> a. removal expenses b. disruption and reinstatement of a business c. liability for capital gains tax, goods and services tax or other tax or duty d. conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property. <p>These are the types of expenses that should be paid for by the proponent to ensure that the objecting owner</p>			

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	<p>is no worse off financially if the termination proceeds. However, they are not the only expenses of an owner that should be paid by a proponent. Fair market value is not set by the proponent. SAT assesses fair market value for each objecting owner according to that objecting owner's individual circumstances in accordance with section 183(9)(b), (10) and (11). If the objecting owner is being offered a like-for-like replacement lot, SAT must consider:</p> <ul style="list-style-type: none"> a. whether the value of the replacement lot is equivalent to the fair market value of the current lot and b. how the location, facilities and amenity of the replacement lot 			

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	<p>compares with the current lot.</p> <p>Without limiting the factors that SAT can take into account when assessing whether the termination proposal is just and equitable, SAT must consider:</p> <p>a. evidence of any impropriety in the termination process including:</p> <p>i. evidence of proxy votes being exercised invalidly or votes being affected by undue influence</p> <p>ii. evidence of false or misleading information in the outline or full termination proposal.</p> <p>b. the proportion of owner support for the termination by number of lots and unit entitlement</p> <p>c. the termination infrastructure report and options readily available</p>			

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>to address problems identified in the report</p> <p>d. any arrangements to buy back into the subdivided land following redevelopment (essentially, what arrangements have been made for an owner to buy a new lot within a new scheme on the same site)</p> <p>e. the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers of lots or the common property, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.</p>			
Can the review body change the proposal?	Yes, If SAT is not satisfied that objecting owners will receive fair	No.	Yes, but only if the variation is minor and written agreement is	The High Court may increase the proceeds of sale for a proprietor

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	market value or that the proposal is otherwise just and equitable, SAT can order the termination proposal be modified to satisfy the fair market value and just and equitable tests. That order to modify the proposal: a. must not have the effect of being less advantageous to any owner of a lot (except in an owner's capacity as a proponent) b. without limitation, can include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or the common property.		given by each owner who supported the proposal. s182(3)	who filed an objection, if satisfied that it would be just and equitable to do so. The additional amount must be with the consent of the collective sale committee.
What orders may the review body make in regards to the termination?	SAT can only make an order confirming the termination resolution if the proponent satisfies SAT of three key things, namely:	* any order it considers necessary in relation to the termination, including: * an extension of time in which an application to the Tribunal must be	An order giving effect to a termination proposal may include directions about: * the termination of the scheme, for example, the day it occurs, and	The High Court or a Board may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section (in relation to the termination), and

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	<p>a. the process required by Part 12 Division 3 has been complied with (this includes the requirements detailed in steps 1 to 7 above and the safeguards provided in section 189 (that the proponent must pay the costs of the process to the strata company) and 190 (that the proponent is to provide funding to specified vulnerable owners to respond to the proposal)</p> <p>b. every objecting owner will receive fair market value or a like for like exchange for the lot and</p> <p>c. the termination proposal is otherwise just and equitable having regard to the interests of:</p> <p>i. owners</p> <p>ii. the owner of the leasehold scheme</p>	<p>made, or any other time limit in the Act;</p> <p>* providing for accommodation for occupiers of units;</p> <p>* providing for the sale of a unit of an objecting owner;</p> <p>* the formation of a new scheme after redevelopment</p> <p>* the control or disposal of the property</p> <p>* termination of a tenancy, which may include compensation of the tenant s17.</p>	<p>when vacant possession is to be given,</p> <p>* the winding up of the scheme</p> <p>* how liabilities are discharged</p> <p>* who is to contribute for the discharge of liabilities and the proportions.</p> <p>* how assets are to be distributed, and the proportions. s183</p> <p>Other, ancillary orders may be made to give effect to a strata renewal plan, for example in relation to the sale of an owner's lot and the distribution of assets.</p>	<p>may vary any term or condition upon or subject to which any such order has been made s84A(12)</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>iii. occupiers of the lots and the occupiers of common property</p> <p>iv. registered mortgagees</p> <p>v. any person with an estate, interest or right recorded or registered in the Register.SAT can also order the termination not proceed.</p> <p>If SAT is not satisfied that objecting owners will receive fair market value or that the proposal is otherwise just and equitable, SAT can order the termination proposal be modified to satisfy the fair market value and just and equitable tests. That order to modify the proposal:</p> <p>a. must not have the effect of being less advantageous to any owner of a lot (except in an owner's capacity as a proponent)</p>			

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	<p>b. without limitation, can include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or the common property. In making an order to confirm a termination resolution, SAT can also make ancillary orders on specified conditions connected with the termination being met including (but not limited to):</p> <p>a. the owner of a lot must transfer the lot (and the owner will receive fair market value or a like for like exchange lot)</p> <p>b. the owner must deliver the duplicate certificate of title for a lot to the Registrar of Titles</p> <p>c. a person with an estate, interest or right over a lot of the</p>			

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	common property that is registered or recorded in the Register must take steps necessary to discharge, withdraw or otherwise remove or bring forward the estate, interest or right d. the occupier of a lot or the common property must vacate the lot or common property.			
What does a dissenting owner get?	<p>* each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, SAT must be satisfied that:</p> <p>a. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the Land Administration Act 1997 for taking of the lot without agreement and</p>	<p>* An objecting owner who decides to sell the owner's unit to the proponent under this section must serve a written notice of intention to sell the unit on the proponent, the mortgagee, the body corporate and the schemes supervisor. If the proponent and the objecting owner do not agree on a price, then the proponent must apply to the schemes supervisor to resolve the matter. The scheme</p>	<p>* The regulations define market value as the amount for which the building and site would be sold by a willing but not anxious seller to a willing but not anxious buyer, taking into account the highest and best use of the land regulation 27.</p> <p>Note that the regulations can prescribe modifications to the <i>Land Acquisition (Just Terms</i></p>	<p>An amount sufficient to ensure that they don't incur a financial loss, also, not less than their mortgage.</p> <p>The High Court may order that the proceeds of sale for any lot to be received by an objector be increased if satisfied that it would be just and equitable to do so (with the consent of the collective sale committee.) s84A(7A). This increase will be paid from the proceeds of sale (not exceeding</p>

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	<p>b. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme. This means the objecting owner must be no worse off if the termination were to go ahead. In considering the amount of compensation that would be payable under the Land Administration Act 1997 section 241, SAT may also award an additional amount appropriate to compensate for the taking without agreement, but it may not be more than 10% of the amount otherwise awarded or offered unless SAT is satisfied that exceptional circumstances justify a higher amount.</p>	<p>supervisor will make arrangements for a valuer's report. The valuer must assess the value of the unit, using Schedule 2 of the Lands Acquisition Act in the same way as they would be used for an assessment of compensation payable for an acquisition of the unit under that Act. The objecting owner must execute a binding agreement to sell their unit at the price recommended in the report, or apply to the Tribunal for their case to be considered.</p>	<p><i>Compensation) Act 1991</i> or prescribe a different method of determining that value—the value of the lot determined in accordance with that method.</p>	<p>0.25% or \$2,000 for each lot, whichever is higher) s84A(7B)</p>

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	<p>Section 183(10)(b) clarifies how section 241 of the Land Administration Act 1997 (LAA) applies in the case of calculating compensation payable for a termination, including that:</p> <p>a. the reference in section 241(2) of the LAA to public works is to be disregarded. In earlier consultation on the Bill stakeholders thought that section 241 of the LAA would prevent an objecting owner's lot from being valued according to the highest and best use of the lot. Disregarding section 241(2) of the LAA enables SAT to consider the highest and best use of the lot when assessing fair market value. An objecting owner will be entitled to be compensated for the</p>			

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>uplift in value that their lot will experience because the site has been rezoned. This must be done because such a rezoning should be considered when assessing highest and best use for the lot.</p> <p>b. the reference in section 241(4) of the LAA to undertaking improvements after there is notice of intention is also to be disregarded. This means that if the objecting owner makes improvements to the lot after the termination proposal has been served or even progressed to the SAT hearing in section 183, the owner is to be compensated for those improvements.</p> <p>Without limitation, SAT must consider the loss or damage, if any, sustained by the owner</p>			

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	<p>by reason of any of the following (section 183(10)(c)):</p> <ul style="list-style-type: none"> a. removal expenses b. disruption and reinstatement of a business c. liability for capital gains tax, goods and services tax or other tax or duty d. conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property. <p>These are the types of expenses that should be paid for by the proponent to ensure that the objecting owner is no worse off financially if the termination proceeds. However, they are not the only expenses of an</p>			

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	<p>owner that should be paid by a proponent. If the objecting owner is being offered a like-for-like replacement lot, SAT must consider:</p> <ul style="list-style-type: none"> a. whether the value of the replacement lot is equivalent to the fair market value of the current lot and b. how the location, facilities and amenity of the replacement lot compares with the current lot. <p>If SAT is not satisfied that objecting owners will receive fair market value or that the proposal is otherwise just and equitable, SAT can order the termination proposal be modified to satisfy the fair market value and just and equitable tests. That order to modify the proposal:</p> <ul style="list-style-type: none"> a. must not have the effect of being less 			

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	<p>advantageous to any owner of a lot (except in an owner's capacity as a proponent)</p> <p>b. without limitation, can include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or the common property.</p>			
What final actions cause the termination to occur?	<p>If SAT confirms the termination resolution, the proponent then needs to obtain subdivision endorsement from the Planning Commission, after which they can apply to the Registrar of titles to register the termination.</p> <p>s193</p> <p>Under section 185 the proponent can apply to the Registrar of Titles to terminate a scheme if:</p>	<p>the necessary documentation is lodged, within 12 months, with the Registrar-General, who then terminate the scheme, by:</p> <p>* the proponent, if there was a vote which was not unanimous, but no owner lodged an objection with the Tribunal, or</p> <p>* the body corporate, if there was a vote which was not unanimous and an objector lodged an</p>	<p>If the court makes an order to give effect to the termination, each owner must sell in accordance with the order (as per the 'strata renewal plan')</p> <p>s184.</p>	<p>Lot owners must give vacant possession, as per the collective sales agreement.</p> <p>The sale will proceed to the new owner.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>a. WAPC has endorsed the plan of survey under section 184</p> <p>b. the steps required to wind up the strata company:</p> <p>i. under the termination proposal prior to the termination have been taken or</p> <p>ii. under an order made under section 192 (for directions about winding up the strata company) prior to the termination have been taken</p> <p>c. the application is made within 12 months or the unanimous resolution to terminate or the SAT order confirming the termination proposal. Under section 193 the application to a registrar of titles to register the termination of a scheme must:</p> <p>a. be made in an approved form</p>	<p>application with the Tribunal, and the Tribunal ordered that the termination could proceed s19.</p>		

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	<p>b. be accompanied by the plan of survey endorsed with the approval of the WAPC</p> <p>c. be accompanied by evidence in an approved form that the requirements of the Act for termination of the scheme have been complied with</p> <p>d. be accompanied by a statement of how each item registered or recorded for the scheme in the Register is to be dealt with and disposition statement, instruments and other documents necessary for those dealings</p> <p>e. be accompanied by a fee.</p>			
Any arrangement for a dissenting owner to get costs?	The objecting owner is to be no worse off financially if the termination proceeds. Applying such a test, SAT may order the objecting owner's	Some. The proponent must pay the costs relating to the objecting owner selling their unit, and associated with executing the	Yes, 'reasonable costs' incurred by a dissenting owner in the proceedings are payable by the owners corporation . The	The High Court or a Board may give a direction apportioning all reasonable costs and expenses incurred in connection with the sale of a dissenting

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	reasonable costs be paid for by the proponent.	agreement to sell s13(7)	owners corporation cannot levy a contribution for this. The regulations may prescribe other matters in relation to the costs of proceedings . s188	owner's lot to be borne by all or any subsidiary proprietors of the lots s84A(11)
Will the proponent cover any of the costs incurred by the strata company in responding to the proposal?	<p>Yes, 1. The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and full termination proposal, making the subdivision applications and paying for the infrastructure and valuation reports.</p> <p>2. If the strata company needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the strata company can require the proponent to pay</p>	<p>If the body corporate requests it, the proponent must reimburse them for the fee they paid to the Registrar-General to terminate the scheme. Part 4, s12(9)</p> <p>The proponent must pay the reasonable fees of the valuer, whose report was required because of an objecting owner lodging an application with the Tribunal s13(7)(b)</p>	<p>Maybe – but only if the strata renewal plan sets out that the proponent will provide monetary contributions towards the reasonable costs and expenses incurred by the strata renewal committee or owners corporation in:</p> <p>(i) preparing a strata renewal plan,</p> <p>(ii) obtaining specialist consultant reports,</p> <p>(iii) obtaining an order from the court to give effect to the plan,</p> <p>(h) if the proponent is to provide any monetary contributions, what (if any) security (such as cash, bond, bank</p>	<p>Costs will be apportioned as per the collective sales agreement. The Board and the High Court have some discretion to award deductions for stamp duty and associated costs, to all proprietors.</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>certain expenses arising from a termination, such as serving notices on owners: section 189</p> <p>3. The strata company can refuse to do things during the termination process (such as serve notices) until the proponent has paid the fees. s189.</p>		<p>guarantee) will be provided. Regulation 30.</p>	
When can another termination proposal be made?	<p>A termination proposal cannot be submitted to a strata company:</p> <ul style="list-style-type: none"> * during a period where the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end; * during a period where the strata company has, by ordinary resolution, prohibited termination proposals from being submitted to it; or * during a period for which the Tribunal has 	<p>It it's substantially the same, 26 weeks from the last vote.</p> <p>If it's not substantially the same, 26 weeks must elapse before the proponent applies for an approval certificate. (4)</p>	<p>If a termination proposal lapses, no substantially similar proposal can be made for 12 months. s190</p>	<p>If the proposal fails, for 2 years the percentages to consider a new proposal increase to 50%</p>

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	(on the application of the strata company) ordered that proposals are not to be submitted to the strata company.			
Does a valuation include 'highest and best use of the land'?	<p>Yes. The regulations will likely require that the market value is to be calculated taking into account recent sales history, the highest and best use the land can be put to and the owner's share of the common property (which is provided for by the owner's unit entitlement). Further consultation on this point will be undertaken.</p> <p>It is standard practice for a valuation of land take into account the uses that the land can be put to.</p> <p>The reference in section 241(2) of the LAA to public works is to be disregarded (section</p>	<p>Note that a valuation report is only required if an objecting owner has lodged an application with the Tribunal.</p> <p>If there is a valuation prepared, it is standard practice for to take into account the uses that the land can be put to</p>	<p>Yes. Regulation 27, 28 in relation to compensation value take into account highest and best use of the land.</p>	<p>It is standard practice for a valuation of land and property to take into account the uses that the land can be put to. Amongst the key documents that all proprietors get, is a valuation report by an independent valuer. It is likely that this takes into account the highest and best use of the land, not just the current use.</p>

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	183(10)(B). In earlier consultation on the Bill stakeholders thought that section 241 of the LAA would prevent an objecting owner's lot from being valued according to the highest and best use of the lot. Disregarding section 241(2) of the LAA enables SAT to consider the highest and best use of the lot when assessing fair market value. An objecting owner will be entitled to be compensated for the uplift in value that their lot will experience because the site has been rezoned. This must be done because such a rezoning should be considered when assessing highest and best use for the lot.			
Does the decision maker review that the process was properly followed?	Yes. the Tribunal must be satisfied that the	This is not explicitly mentioned in the legislation.	Yes, the Court must consider if the process was properly followed.	Yes, but there can be a failure of process which doesn't overturn the

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	process was properly followed.			application, as long as it doesn't materially affect the interests of any person.
What things must the decision-maker consider when determining whether the termination proposal is just and equitable?	<p>SAT must be satisfied that the termination proposal is otherwise just and equitable having regard to the interests of:</p> <ul style="list-style-type: none"> i. owners ii. the owner of the leasehold scheme iii. occupiers of the lots and the occupiers of common property iv. registered mortgagees v. any person with an estate, interest or right recorded or registered in the Register. <p>Without limiting the factors that SAT can take into account when assessing whether the termination proposal is just and equitable, SAT must consider:</p>	<p>That any objection to the termination or redevelopment by an owner of a unit in the development is unreasonable</p> <p>That the termination is necessary, taking into account any factors prescribed by regulation s17.</p>	<p>The court must be satisfied that the effects of the strata renewal plan are just and equitable in all the circumstances despite any difference between a valuation contained in the plan and any valuation that accompanied the application for an order to give effect to the plan.</p>	<p>* That any objector will not incur a financial loss</p> <p>* that the proceeds of sale for any lot are insufficient to redeem any mortgage s84A(7).</p> <p>"Loss" is defined as:</p> <p>* if the proceeds are less than the price paid for the lot</p> <p>But it isn't a loss if;</p> <p>* the gain from the sale is less than other owners get</p> <p>* the proceeds are less than the price paid if the owner had purchased the lot after a collective sale committee had signed a sale and purchase agreement to sell all the lots and common property to a purchaser s84A(8).</p>

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>a. evidence of any impropriety in the termination process including:</p> <p>i. evidence of proxy votes being exercised invalidly or votes being affected by undue influence</p> <p>ii. evidence of false or misleading information in the outline or full termination proposal.</p> <p>b. the proportion of owner support for the termination by number of lots and unit entitlement</p> <p>c. the termination infrastructure report and options readily available to address problems identified in the report</p> <p>d. any arrangements to buy back into the subdivided land following redevelopment (essentially, what arrangements have been made for an</p>			

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	<p>owner to buy a new lot within a new scheme on the same site) e. the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers of lots or the common property, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.</p> <p>If SAT is not satisfied that objecting owners will receive fair market value or that the proposal is otherwise just and equitable, SAT can order the termination proposal be modified to satisfy the fair market value and just and equitable tests. That order to modify the proposal:</p>			

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	<p>a. must not have the effect of being less advantageous to any owner of a lot (except in an owner's capacity as a proponent)</p> <p>b. without limitation, can include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or the common property.</p>			
Is an independent person involved in the process of collating the decisions of lot owners?	Yes. person who is independent of the strata company and the proponent must be appointed to tally and count the votes on the proposal	No.	Yes, the 'returning officer', who records the number of lots giving support, and provides this information to any owner on request.	Not an individual, but rather the Collective Sales Committee. No individual is supposed to be appointed to the Committee if they have a conflict of interest.
Statutory warning to consider the proposal carefully?	Not in the act. However, this is envisaged for the information that must be included in regulations.	No.	Yes. "This renewal proposal may have significant legal, financial and taxation consequences for you. It may also impact on the rights of your tenants, mortgagees, covenant chargees or caveators which may in	No.

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			turn have impacts on you. You should ensure that you understand your rights and obligations and how this proposal will affect you.”	
Will owners know what costs and expenses will be deducted from the sale price?	Yes, this would be set out in the termination proposal.	It is presumed that the schemes supervisor would not give an approval certificate to a proposal which did not outline this information – though this is not explicitly mentioned.	Regulation 32 establishes that the strata renewal plan must set out what costs and expenses will be deducted from the sale price for a collective sale.	This will be in the collective sale agreement. Further, the Strata Titles Board and the High Court have the power to allow for the following deductions (for all proprietors) * Stamp duty * Legal fees * Costs related to the privatisation of any designated land * Costs incurred pursuant to the collective sale which are to be shared by all, or as provided under the collective sale agreement.
Can the decision-maker’s decision be appealed?	Yes, to the Court of Appeal under section 105 of the <i>State Administrative Tribunal</i>	Yes, by the Supreme Court.	Yes, to the NSW Court of Appeal.	Yes, the Court of Appeal

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	Act 2004 that allows appeals from decisions of the Tribunal on questions of law, if leave to appeal is given.			
Additional protections for vulnerable owners?	<p>The proponent will be required under the regulations provided for in section 190 of the Bill to pay for owners who meet specified criteria (set out in the regulations) to obtain independent legal advice, legal representation, valuation advice and financial and taxation advice in connection with a termination proposal.</p> <p>The regulations will likely specify that vulnerable owners are owners who meet the specified criteria and are therefore entitled to the funding to be paid by the proponent to</p>	No.	<p>Not in the legislation or regulations.</p> <p>A Strata Renewal Advice and Advocacy Program has been established by Fair Trading to provide free advice and advocacy services to vulnerable lot owners. This is essentially an advice phone line.</p>	No.

Safeguard	WA (Proposed)	Northern Territory	NSW	Singapore
	<p>obtain the independent advice and representation.</p> <p>The vulnerable owner funding under section 190 can be used to:</p> <ul style="list-style-type: none"> a. obtain a licensed valuer's report to counter any valuation evidence submitted by the proponent b. pay for expert advice on the taxation and financial implications of the termination c. pay for legal advice on the termination proposal and d. pay a lawyer to represent the vulnerable owner in the SAT proceedings. 			