

From: [REDACTED]
To: [Public Administration Committee](#)
Subject: Submission from Joondalup Urban Development Association Inc
Date: Tuesday, 30 July 2019 10:50:08 PM
Attachments: [REDACTED]

Please find attached a submission to the Public Administration Committee inquiry into Property Rights from our small incorporated associated that was formed because of the impact that the City of Joondalup's infill strategy is having on property rights of City of Joondalup homeowners. My contact details regarding the submission are: Dr Timothy Green, [REDACTED] [REDACTED] and my phone number is [REDACTED]

Kind regards,

Tim Green



To: Hon. Adele Farina MLC, Chair of the Standing Committee on Public Administration.

I wish to make a public submission to your committee specifically addressing terms (a) and (d) concerning the nature of property rights for homeowners in the City of Joondalup Housing Opportunity Areas (HOAs). These HOAs are areas of residential coding recoded by the City of Joondalup in 2016 under Amendment 73 of District Planning Scheme No. 2 (and reinforced under Local Planning Scheme No. 3).

These HOAs are not generally subject to a formal government encumbrance or resumption in the strictest legal definitions of those terms, but I respectfully ask the committee to consider this submission because a terrible injustice has occurred against ordinary homeowners in the HOAs that dramatically undermines their property right. Residents have been pursuing this issue through the channels available to us at Council, but with no meaningful result so far and no sign of one within the next one to two years at least.

1. The Property Right of Home Ownership in Perth

The saying 'safe as houses' and much of the prosperity Australians have derived from property has stemmed from the security that property rights give. Indeed, banks lend based on the 'security' of that property right. That confidence may be misplaced as the City of Joondalup, with the full support of the West Australian State Government, has cast serious doubt over the security of these property rights.

My argument rests on the idea that a property right is more than 'just' the boundary of a lot. Because land cannot be moved, the nature of the surrounding land is a more diffuse part of that property right. That is patently obvious after just a cursory examination of real estate economics. "Location, location" is a well-known catch cry which clearly indicates that it is the *neighbourhood* as much as the conventional property right that affects value. "Buy the worst house in the best street you can afford" also speaks to this more diffuse aspect of property rights in real estate. The very essence of residential coding goes to this: if two houses are built to the same plans, one adjacent to an industrial plant, one next to a park, the one next to the park will be more desirable and therefore attract a higher price and value. Proximity to positive value factors such as open space, parks, beaches and transport networks enhance value; proximity to negative value factors such as: bulky, ugly buildings, industrial land, noise or pollution will decrease value. Clearly, when an individual chooses to buy a property, the value of a property right is defined by more diffuse things than just the specifics of the purchased lot. The neighbourhood is also a factor determining that value and so changes in the neighbourhood have the clear and foreseeable potential to impact the value of property rights within it.

2. The impact of lot size on value when Recoding and Rezoning a Property Right

Rezoning of land from rural to residential or recoding from one residential density to a higher residential density has traditionally been welcomed by property owners because it is invariably a sign that demand outstrips supply. The 'unit' of property is divided in size and cost, but with no net loss to the property owner, who benefits from a greater number of saleable units and almost always increased unit price (in net terms, even if not in real terms). However, as the average lot size decreases, a new problem arises: the property value of one lot is increasingly impacted by the use of adjacent lots. With large lots, the property right of any one lot owner is clearly tied to just their lot holding. What takes place on an adjacent lot is very distant from most parts of their lot and so of little concern.

As lot sizes decrease, the use of adjacent lots becomes more of a factor in 'enjoying' the property right of a single lot. As we approach density codes of around R40 on blocks around 800m² and smaller, the only development that makes economic sense is lot-filling, develop-to-the-max, where the aim is to maximise the number of bedrooms and bathrooms that can be squeezed onto the lot.

With large lots of the old quarter acre block that drove Perth's property boom, recoding and subsequent subdivision offered a low-cost way for ordinary homeowners to develop their block. The land was already owned, the existing house could remain occupied during the build of a second or even third property. With smaller lots, this is rarely possible, the existing house must be demolished to make the subdivision possible, meaning the property owner has much greater costs if they want to redevelop, spread over a longer period of time, and therefore increasing the risk. Smaller lot sizes favour development by professionals, not by owner-occupiers, again, eroding the integrity of the property right when recoding to a higher density in established suburbs.

3. How erosion of a property right can result from recoding

Although there are rules that permit and control medium and high density development, they are the same rules that apply to greenfield sites. At a greenfield site, all owners are fully aware that they are purchasing into that density coding and there is the advantage of overall planning for the area. When infill is imposed over the top of a lower residential coding, there should be consideration of the impact new developments have on adjacent property owners, and especially the ability of those owners to enjoy their property in the form under which they bought it. Previously private backyards are no longer private. Unrestricted solar access becomes shadowed. Trees disappear and the environment gets hotter because of the Urban Heat Island Effect. A previously light-filled room becomes dark, and potentially less private. Traffic and noise increases, and so on.

For residents of the new property, the lot-by-lot nature of development constrains what can be built. Windows have views of fences or walls. Outdoor living space is small. It's hard to heat and cool the interior of the house passively. Parking is problematic. If the price is right, many people will accept these compromises as part of getting onto the property ladder but it is easy to see that these outcomes are not ideal. They are likely to lead to greater levels of unhappiness and depression, and quite probably greater consequent social problems. The very concept of a 'property ladder' implies temporary ownership, rather than a solid, life-long commitment to an investment.

I think we have reached a limit in Perth, where the need for smaller and smaller lots for higher density housing will now devalue the land. This is especially true if we look beyond the simple notion of value in monetary terms to consider a more rigorous economic concept of value which includes opportunity costs and benefits. When that is done: recoding of land becomes a clear case of winners and losers. Those that wish to enjoy their property right in the context which they bought it have that right eroded, because for them, subdivision brings a loss of privacy, increase in traffic and noise, increased shadowing, loss of exclusivity to local amenities. These losses may be offset against vibrancy, or additional services, but there are no guarantees, either that such services will be provided, or that they are services the original property owners want!

4. Complexity from the Nature of the Property Market and Moving

Recoding and rezoning create an additional difficulty because of the complex opportunity costs of realising property value at an unexpected point in time. Domestic mortgages are usually entered into over planning horizons of 20 to 30 years. Making changes to those planning horizons takes time, resources, and access to high quality information if one is to make good investment decisions. It is precisely to *avoid* those sorts of decisions that drives many people decide to buy a home in the first place. While most people understand it is primarily the land value that is the underlying basis for the soundness of a property investment, the house on the land, in any state of repair, represents the main utility derived from residential land purchases. Few people buy a property with the main aim of redeveloping it. The capital costs of redeveloping are considerable, especially for most home owners, who are unlikely to be able to develop their own lot without taking on enormous financial risk to fund the capital investment required. Finally, there are non-monetary costs to selling a home and moving: like relocating children to a different school, losing one group of neighbours and meeting others, discovering new shops and services and different commute times. Work, home, friends and family life are usually closely intertwined to form that vague concept of 'community'. Selling a property is highly disruptive even when it makes clear financial sense to do so. The intangible negative 'value' of that disruption will be weighed against the clearer economic value being lost, but that merely explains the loss, it does not justify it. We know too, from behavioural economics that

people are far more likely to avoid short term pain even when the long term gains are considerable.

5. Compensation for Devaluing of a Property Right

So I contend that to be equitable, any recoding or rezoning proposals should involve formal compensation. This is regularly done with other property rights (e.g. fishing rights), where a change of resource use is achieved by government buying out one group of property right holders in order to transfer that right to another group.

It seems clear that the value of a homeowners property right can be damaged through recoding – far less clear is the entity responsible for the damage, a fact that creates major problems when seeking any legal remedy.

When Government seeks to acquire large areas of land for public purposes as part of a greater good, it usually does so by paying recompense to the land owners. Re-coding should be no different. Any recoding will clearly adjust land values and although that will often (as has been the case historically) reflect increased values, where recoding results in a loss of value, some kind of compensation should be paid to those who have the value of their property right diminished through no fault of their own.

Even though there is likely to be no complaint from those whose property rights increase in value from recoding, it is easy to neglect corrections for CPI, interest payments and other holding costs which must be included to rightly assess capital gains from long-term investments if there is to have been true value added.

6. The Erosion of Property Rights in the City of Joondalup

There was no direct notification of the City of Joondalup's intention to recode most of the HOA lots from R20 to R40 and R60 – a change which was never consulted over because the original consultation was about changing from R20 to R30. There was very little advertising at all, of a decision that affects literally billions of dollars of private equity. That is not fair, and it is not equitable. It forces people to sell up and move out immediately or risk losing increasingly large values of their assets as the character of their neighbourhood changes. For some, those changes are potentially positive. Certainly, if done well, infill can bring some benefits for existing residents. But it is no exaggeration to say the the City of Joondalup's infill is being done extremely badly, and yet, so far as we can see, it remains legal. It is essentially legal confiscation of equity from thousands of residents like me, with transfer of that equity to commercial builders and developers. One can mount an argument that future residents gain some of that equity, but it is a weak argument in this case. The quality of homes being built is generally poor and there are no additional amenities being supplied. The relative attractiveness of the area will be further degraded as the amount of infill continues to increase, further disadvantaging the initial new residents who are paying a

premium for a neighbourhood character that will be continually eroded as more people move in.

Infill could be used as an opportunity to safely remove old asbestos fencing, to sink power lines, to improve street lighting and access ways, to provide excellent NBN services and additional sports facilities and open space. None of those things are being done in the City of Joondalup's infill areas. It is just death by a thousand cuts through more houses, cars and people with loss of vegetation, privacy and amenity.

7. The Bigger Picture

Not only are the City of Joondalup's HOAs an injustice for existing homeowners, but the issues they highlight also threaten the very concepts of infill and property rights in Australia. Australian property is already over-priced in global terms. While slow deflation of that bubble is a good thing, erosion of property rights through crude attempts at infill threatens to burst the bubble instantly. If government does not act swiftly to control the damage to property rights caused by infill when done by blanket, ad-hoc recoding, it seems likely that development will stall – either because of civil litigation for damages from adjacent property owners, or from outrage at the ballot box, or from an investor-driven property crash. Neither is a good outcome for society.

8. Conclusion

This is a Wicked Problem, and probably worse in the City of Joondalup than in any other LGA I am aware of because of their perverse and undemocratic insistence on meeting State government infill demands through the crude mechanism of their HOAs. There are too many vested interests in the status quo for the usual government mechanisms to drive any action based on the few thousand residents calling for action, and little opportunity to make the case as clearly as we can do to your committee. So I beg your committee to shine a light on this issue from the very highest levels of the State Government and begin an intervention to right this wrong and restore the value of our property rights.

In closing, I would be delighted to appear as a witness before the committee to answer any questions, or to clarify anything in this submission.

Thank you,

Dr Timothy Green, President of Joondalup Urban Development Association Inc.

