

# **Greening Strata Title Schemes in WA:**

**Turning barriers into opportunities for individual owners to  
implement environmentally sustainable provisions in  
existing residential strata dwellings.**

**Author: Chiara Pacifici** *MSustStds (Curtin), GradCertPropInvest (Curtin)*

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# CONTENTS

|  |    |
|--|----|
| PART 1: Executive Summary .....  | 3  |
| PART 2: Introduction .....   | 5  |
| 2.1    The aims of this study: What it does and doesn't do .....   | 7  |
| 2.2    Terms of Reference.....   | 7  |
| PART 3: Regulations affecting existing residential Strata Title buildings .....  | 8  |
| 3.1    Western Australian Strata Titles Act 1985: Background .....   | 8  |
| 3.1.1    By-Laws: Section 42 of the 'Act' .....  | 9  |
| 3.1.2    Unit Entitlement .....  | 10 |
| 3.1.3    Voting Rights .....   | 10 |
| 3.2    Residential Design Codes (R-Codes).....   | 10 |
| 3.3    Local Government Planning Policy and R Codes .....  | 11 |
| PART 4: Proposed 'Sustainability Schedule' .....   | 12 |
| 4.1    The Sustainability Schedule: Energy, Water and Landscaping elements.....  | 12 |
| PART 5: Summary of Barriers and Solutions.....   | 14 |
| 5.1    Barriers which prevent the adoption of environmentally sustainable provisions in<br>existing residential strata title buildings in WA .....                     | 14 |
| 5.2    Solutions to barriers .....   | 14 |
| 5.3    Further considerations.....   | 15 |
| 5.3.1    'Silent areas' within the Act .....   | 16 |
| 5.3.2    Education and awareness .....   | 17 |
| 5.4    CASE STUDY: Incorporating environmentally sustainable provisions within a new<br>residential multi dwelling strata development (WA).....                        | 18 |
| PART 6: Opportunities .....  | 19 |
| 6.1    Proposed Reforms to the Strata Titles Act - A brief overview.....   | 19 |
| 6.2    Identifying an opportunity: Areas within the reforms where environmentally sustainable<br>provisions for existing residential dwellings could be included ..... | 19 |
| 6.3    The Queensland Experience: Sustainable housing codes .....  | 20 |
| 6.4    CASE STUDY: Ban the Banners: New covenant and body corporate by-law rules<br>(Queensland) .....   | 20 |
| PART 7: Recommendations .....  | 22 |
| PART 8: APPENDIXES .....   | 23 |
| ANNEXURE A – Proposed 'Sustainability Schedule'.....   | 23 |
| ANNEXURE B – Steering Committee.....   | 24 |
| ANNEXURE C – Schedule 1 and Schedule 2 by-laws .....   | 25 |
| ANNEXURE D – Schedule 2A - Management Statement.....   | 26 |
| ANNEXURE E – Management Statement for 14 Money Street, Perth .....   | 27 |
| ANNEXURE F – Definitions.....  | 29 |
| ANNEXURE G – References.....   | 31 |

# PART 1: Executive Summary

Western Australians who own existing strata title property are restricted in their capacity to introduce energy and water saving measures to their homes. This is because Western Australia's current strata title laws prohibit property owners from making improvements to the exterior and interior of the building unless certain voting rights such as a resolution without dissent<sup>1</sup> or special resolution<sup>2</sup> is passed by other owners in their strata title scheme. The choice of resolution or vote is dependant on the impact (minor or major) such improvement will have to the scheme. However many owners choosing to increase energy and water efficiencies to their home are therefore prevented from realising the financial and environmental benefits environmentally sustainable improvements can provide them.

The Western Australian Strata Title Act 1985<sup>3</sup> is currently under reform. A Land Tenure Committee administered by Landgate has been established to consider amending the current Strata Titles Act 1985 to include new management and community title provisions. This can include the creation of regulation modules and making management statements mandatory for all schemes. However, the current Act will continue to restrict the ability of householders to reduce growing energy and water costs unless environmentally sustainable provisions are included in these reforms or voting rights are amended to make such provisions easier to achieve.

To aid in this research, a Steering Committee<sup>4</sup> was formed that included representatives of relevant industry stakeholders and government departments, as well as academic experts. The committee's task was to identify barriers and opportunities to the greening of strata title buildings and to consider solutions that enabled the inclusion of environmental provisions within both the existing Act and the proposed reforms. The Steering Committee helped to identify possible solutions to this problem and all recommendations for greening WA strata title schemes will be put to government.

The goal of this report is to:

- identify barriers, solutions and opportunities related to the greening of existing strata title residential buildings in Western Australia and,
- provide recommendations for the inclusion of environmentally sustainable provisions in the form of a 'Sustainability Schedule'<sup>5</sup> in the WA Strata Title Act 1985, or in subsequent reforms.

This Report identifies a number of barriers that exist in the current WA Strata Titles Act that limit or prohibit the implementation of environmentally sustainable provisions in existing strata title schemes. A range of solutions have been proposed to help overcome these barriers. These include easing the stringency of

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<sup>1</sup> A "Resolution without dissent" requires a sufficient quorum to be present at the time a motion is presented at the meeting, and if one owner objects to a proposal on the day or within 28 days of the meeting, then the motion fails. (Unanimous resolution is required for two lot schemes, that is, duplexes.)

<sup>2</sup> A "Special resolution" must be supported by at least 50% of the lot proprietors and 50% of the aggregated unit entitlement agree, and not more than 25% of lots or 25% aggregated unit entitlement object to the proposal. This definition is only for 6 lots and above.

<sup>3</sup> The Western Australian Strata Title Act (1985) – [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/)

<sup>4</sup> See Annexure B – Steering Committee for Greening Strata Title Schemes in Western Australia

<sup>5</sup> See Annexure A – Proposed 'Sustainability Schedule'

voting requirements and including a Sustainability Schedule as a separate standard by-law within Schedule 1 by-laws or placed within a Management Statement in new schemes. This inclusion of a Sustainability Schedule will provide individual lot owners with options to retrofit to higher energy and water efficiencies within their homes. Including such a document would also aid to better inform owners of the opportunities available to them. The Sustainability Schedule would seek to work with existing provisions within the Act including Section 7 whereby request for improvements such as structural erections, extensions and additions may need to consider certain voting rights<sup>6</sup>.

The Sustainability Schedule has been designed as a document to outline a number of environmentally sustainable provisions such as energy, water and landscaping elements including energy efficiency measures, small scale energy generation systems, water conservation options and landscaping provisions that can be implemented by an individual unit owner (see Annexure A). It is not meant to be an exhaustive list and is an example of a number of retrofitting options that can be implemented in existing residential buildings.

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<sup>6</sup> Strata Title Act 1985, Part II, Division 1 - Creation of lots and common property  
Chiara Pacifici – Greening Strata Title Schemes in Western Australia

## PART 2: Introduction

This decade we are witness to a rare and unique alignment of political motivation and policy change aimed at improving the resilience, sustainability and efficiencies of buildings in Australia. This shift is occurring due to the growing collective interest by the greater community to act on climate change, reduce human induced greenhouse gas (GHG) emissions and future proof the built environment from both extreme weather events and increases in utility costs such as electricity and water.

Growing demand for action towards climate change has been researched and documented by both CSIRO and the Climate Change Institute. A CSIRO study<sup>7</sup> revealed that 75% of Australians want to reduce energy consumption in the home and implement a rapid response to climate change. In August 2010, the Climate Change Institute<sup>8</sup> published findings which identified that 82% of Australians believe the country should make 'medium' to 'very large' changes to address climate change, with 72% of Australians willing to support a plan to reverse rising pollution in the next 3 years.

As part of a broader plan to improve energy efficiency and help householders transition to a low carbon future, the Council of Australian Governments (COAG) along with the Commonwealth Government, have agreed to develop and implement a National Strategy on Energy Efficiency (NSEE). This landmark agreement complements the Australian government's energy efficiency initiatives, incentives and legislation which are aimed to speed up outcomes from energy efficiency measures and help householders prepare for a low-carbon economy. The Australian Government has stated, "Moving to a low-carbon economy will mean that consumers will be able to save money on their energy bills; will live in better and more comfortable greener buildings, and will contribute to reducing the nations impact on the environment" (Senator Penny Wong, BEMP Summit, June 2010).

The use of energy in residential buildings accounts for 13% of Australia's total greenhouse gas emissions. Improving the energy efficiency of our homes is seen as the 'low hanging fruit' to significant greenhouse gas (GHG) reductions. A number of federal, state and local government legislation, programs and initiatives aimed at residential buildings are currently being developed to encourage sustainability in housing, both in new buildings and in existing stock. Mandatory disclosure of the energy performance of existing residential buildings is one such legislation proposed by the Federal government and the Council of Australian Governments (COAG) sometime in 2012/2013. This will mean that every property will require a certificate identifying the energy performance<sup>9</sup> of the house upon sale or lease. The main objective of

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<sup>7</sup> CSIRO's Energy Transformed Flagship released a report in 2007 which investigated attitudes to household electricity consumption. The report considered people's willingness to accept alternative approaches to reducing domestic energy. The survey conducted with over 2000 households in Australia revealed that more than 75 per cent of Australians want to reduce energy consumption in the home and implement a rapid response to climate change.

<sup>8</sup> In August 2010, the Climate Change Institute commissioned both qualitative and quantitative market research on the attitudes of the Australia public on climate change and climate change solutions. Some of this research was conducted at the time of the Federal election.

<sup>9</sup> The star rating is based on the thermal performance of the building envelope and is likely to be rated in a range from 1 to 10 stars. However, the certificate could also include the disclosure of sustainability features that are not included in the star rating for example, renewable energy generation systems, rainwater/greywater systems, etc.

this certificate will be to inform consumers about the likely energy, water and greenhouse performance of a property<sup>10</sup>.

There are approximately 860,000 homes in Western Australia with around 250,000 of these dwellings being strata title or survey-strata dwellings<sup>11</sup>. Through mandatory disclosure many of these homes are likely to be identified as inefficient homes and new homes with higher star ratings will start to perform dramatically better than existing homes. There will be a need for governments both local and state, to help households 'Future Proof' their homes against rising energy and water costs as well as provide adaptation and mitigation planning for climate change events that will affect buildings.

In Australia, several reports have been published which provide an insight into energy use and greenhouse gas (GHG) emissions from multi-unit buildings. A NSW report published by Energy Australia<sup>12</sup> and the NSW Department of Planning Infrastructure and Natural Resources identified that high-rise dwellings emit the highest amount of GHG over low-rise, detached, townhouse or villa housing (Energy Australia, 2005). A study conducted in Victoria by George Wilkenfeld and Associates suggested that 'on average, a person living in a high-rise apartment accounts for twice the energy-related emissions of a person living in a house' (George Wilkenfeld and Associates, 2007).

Common areas in high-rise buildings usually require energy and water to operate amenities and maintain the building and can include common area lighting, hot water systems, air-conditioning, pool services and reticulation. Multi-unit buildings will likely have the greatest environmental and financial gains from retrofitting to higher efficiencies which was highlighted in a pilot project conducted by the City of Melbourne in 2007 and 2008. Findings from this study identified financial and greenhouse gas savings were greatest when retrofitting lighting services in common areas.<sup>13</sup> In Queensland, the government have introduced legislative changes which prevent body corporates and developers from banning energy efficient building materials, solar hot water systems and solar photovoltaic (PV) systems by amending the Body Corporate and Community Management Act 1997<sup>14</sup>.

In 2011, significant strata title reforms in WA are being considered and will likely incorporate community schemes that allow developers to create schemes within schemes. The timing of the reforms provides a unique opportunity for policy makers to incorporate environmentally sustainable provisions into the fabric of the Act either through Strata Company voting procedures for layered schemes or within new regulation modules. Incorporating environmentally sustainable provisions in these reforms will help owners and developers of new and existing strata title residential buildings move towards higher energy and water efficiencies.

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<sup>10</sup> Water and greenhouse gas (GHG) performance follow in the years after energy performance of the building is disclosed.

<sup>11</sup> As of August 2010 there were 57,269 registered Strata/Survey-Strata Plans (equal to the number of strata schemes), and as of December 2010 a total of 255,068 strata lots were registered (Source: Landgate, 2011).

<sup>12</sup> Energy Australia, 2005. *Multi Unit Residential Buildings Energy and Peak Demand Study*. Prepared by Paul Myors, Energy Australia, Rachel O'Leary and Rob Helstrom, NSW Department of Infrastructure, Planning and Natural Resources, October 2005.

<sup>13</sup> City of Melbourne 'Sustainable Living in the City' pilot project, 2008.

<http://www.melbourne.vic.gov.au/Environment/WhatCanIDo/Pages/SustainableLivingintheCity.aspx>

<sup>14</sup> Queensland Government 'Ban the Banners' initiative: <http://www.dlqp.qld.gov.au/resources/factsheet/sustainable-living/new-covenant-and-body-corporate-by-laws-factsheet.pdf>

## 2.1 The aims of this study: What it does and doesn't do

This study is an attempt to address the barriers faced by *individual property owners* and proposes amendments and additions to the Strata Title Act 1985 to incorporate environmentally sustainable provisions. The solutions put forward in this report do not take into consideration insurance issues and indemnification (both of the individual lot owner and the strata company), tax implications from capital improvements to the home, as well as the capacity to implement environmentally sustainable provisions outlined in the Sustainability Schedule due to aged building stock and accessibility. Due to the complexity of the Strata Titles Act 1985, it is important to acknowledge that this study does not detail legal implications for the proposed solutions contained herein. Legal counsel should be sought to verify and seek to resolve the challenges that could come from implementing the solutions proposed in this study. Extensive research will need to be assigned to all these areas.

The aim of this study is to identify a number of barriers and restrictions which exist for the *individual property owner* and does not detail the options available for the strata company as a whole entity. Further research to extend beyond the individual lot owner and cover barriers and opportunities for the whole strata company is highly recommended. Notwithstanding, investigations into other regulatory standards such as Building Codes and Heritage requirements which have not been included in this report will be required to fully understand the implications for the lot owner and the strata company. Funding to support this research is crucial and can provide significant outcomes for policy makers for both state and local government as well as key stakeholders. This research would also help to inform the Commonwealth government on adaptation and mitigation measures for existing buildings. The future for existing strata title buildings will depend heavily on the leadership and action provided by relevant government departments and industry stakeholders to build adaptation and resilience in our existing strata title buildings.

## 2.2 Terms of Reference

The terms of reference guiding this review are described below:

1. Review the WA Strata Title Act 1985 to identify the barriers to implementing environmentally sustainable provisions,
2. Review and identify any other regulation, legislation or policy that could affect existing strata or survey-strata buildings,
3. Investigate the reforms that are proposed for the WA Strata Title Act and identify opportunities that exist to implement environmentally sustainable provisions as part of the reforms,
4. Compare the WA Strata Titles Act 1985 with the QLD Body Corporate and Community Management Act 1997,
5. Seek feedback and opinion from the Steering Committee and relevant stakeholders about possible solutions,
6. Report to stakeholders and government on the recommendations which could help to overcome prohibitive areas within the law that restrict the inclusion of environmentally sustainable provisions in strata title buildings.

This report can be cited as Pacifici, C., 2011 *Greening Strata Title Schemes in Western Australia: Turning barriers into opportunities for individual owners to implement environmentally sustainable provisions in existing residential strata dwellings*. Curtin University, Perth.

## **PART 3: Regulations affecting existing residential Strata Title buildings**

A number of areas of federal, state and local government legislation, regulation and policy affect new and existing strata title and survey-strata title buildings. There are fewer requirements for existing strata buildings as many building standards and approvals relate to the design and construction stages. However, in addition to the WA Strata Title Act, regulations affecting existing strata title and survey-strata residential dwellings are included within local government planning and design codes, and state planning codes.

Many of the policy limitations differ across municipalities, as each local government has the choice to amend design and planning codes to suit its requirements. In this part (Part 3) of the report, regulations within the Strata Title Act 1985 and elsewhere that prescribe standards and approval processes for existing residential buildings are reviewed, with consideration of ways to implement environmentally sustainable provisions in existing strata title buildings. Heritage building requirements and Building Codes have not been detailed here, as they are part of the local government planning approval process.

### **3.1 Western Australian Strata Titles Act 1985: Background**

The Strata Title Act was introduced in Western Australia in 1966 to help govern the ownership, management and operation of strata lots, enabling owners within ‘community living’<sup>15</sup> schemes to understand their rights and responsibilities, not only in relation to their individual lots but also to common property.

Major reform of the Act in 1985 led to an expansion of strata title law and the adoption of further by-laws obliging owners to comply with rules, management decisions and functions of the strata company. The reforms also allowed owners to have direct ownership in land that would otherwise be common property. In these reforms lot owners were assigned a *unit entitlement*<sup>16</sup>, which is dependant on a certification of value by a licensed valuer.<sup>17</sup> Each lot owner has *voting rights*<sup>18</sup> that they can exercise for routine business, changes or amendments that may occur within the scheme from time to time, usually at general meetings.

Substantial further amendments to the Act in 1996 and 1997 provided opportunities for developers and individual owners to maximise economic returns on their investment in property. Amendments enhanced the disclosure of information to purchasers, and enabled the creation of survey-strata schemes. They also allowed owners in certain existing single tier strata title schemes to opt for a ‘merger’ or ‘conversion’ to

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<sup>15</sup> Community Living – ‘A place of usual residence be it a private or non-private dwelling as distinct from residential aged care, hospital or other type of institutional accommodation. Community settings include private dwellings and certain types of non-private dwelling, for example, retirement village accommodation’(Source: [www.aihw.gov.au/publications/aus/aw07/aw07-x04.rtf](http://www.aihw.gov.au/publications/aus/aw07/aw07-x04.rtf))

<sup>16</sup> As stated in the Strata Titles Act 1985, Section 14, ‘A unit entitlement in respect of a lot, means the unit entitlement of that lot shown on the schedule of unit entitlement registered with the Registrar of Titles’

<sup>17</sup> Prior to the 1985 reforms, a certified valuer was not required and it was left to the developer to assign the level of unit entitlement.

<sup>18</sup> The Voting rights for owners within a strata scheme can be found in the Strata Titles Act 1985, PART 1 – Preliminary, Sections 3AC, 3B, 3C. [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/)

survey-strata schemes, which gave owners more freedom and ownership over their individual lots and over land that would otherwise be common property.<sup>19</sup>

Another significant amendment to the Act at this time was the introduction of a *'Management Statement'* that enabled developers to create provisions, rules and obligations to suit the type of development other than (or in addition to) the standard Schedule 1 and 2 By-laws, which apply immediately upon issue of titles at Landgate<sup>20</sup>. The Management Statement is a document which itemises the by-laws for that strata scheme and can be created by the developer who may wish to 'value-add' design features into the development. These features can include environmentally sustainable provisions which can form part of the fabric of the development. Schedule 2A identifies the provisions and inclusions to the Management Statement. (Annexure D: Example of Schedule 2a - Management Statement)

### 3.1.1 By-Laws: Section 42 of the 'Act'

Standard by-laws apply to all strata and survey-strata title schemes in Western Australia and are found in Schedule 1 and Schedule 2 of the Act (see Annexure C: Schedule 1 and 2 by-laws). These by-laws set out owners' responsibilities and rights, as well as restrictions in community living schemes. However, existing by-laws can be repealed, amended or added to as identified in Section 42<sup>21</sup> of the Act. The current standard by-laws are as follows:

**Schedule 1** – 15 Standard by-laws identifying the duties, responsibilities and administration of the strata company. Any repeal, amendment or addition to Schedule 1 by-laws requires a 'resolution without dissent' (or unanimous agreement in complexes of two-lot schemes) at a general meeting of the strata company.

**Schedule 2** – 14 Standard by-laws identifying the behavioural provisions of owners and occupiers and maintenance procedures for the strata scheme. Any repeal, amendment or addition to Schedule 2 by-laws requires a 'special resolution'.

#### **Schedule 2A - Management Statement**

Unlike existing strata buildings, newly built strata title buildings have a special option which developers can adopt at the time of registering the strata plan and issue of titles at Landgate.<sup>22</sup> The developer can create a 'Management Statement' which specifies amendments or repeals to the standard Schedule 1 and 2 by-laws as well as additional by-laws which are to apply to a particular strata scheme from time of registration. These by-laws may include restrictions on the types of buildings that can be built on each lot, the activities that can be conducted on the lot and surrounding common land. Details of any environmentally sustainable provisions can also be included here. It is important to note that **a *'Management Statement' cannot be adopted into a strata title after the titles have been registered at Landgate.*** However, proposed reforms<sup>23</sup> to the 'Act' could allow for a Management Statement to be

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<sup>19</sup> This change requires certain voting agreements to be achieved.

<sup>20</sup> Landgate is otherwise known as Western Australian Land Information Authority.

<sup>21</sup> Section 42 of the Act empowers a strata company to, 'make by-laws, not inconsistent with the Act, for matters relating to the management, control, use and enjoyment of the lots and any common property' (Strata Titles Act, 1985).

<sup>22</sup> As a Statutory Authority, Landgate maintains the State's official register of land ownership and survey information and is responsible for valuing the State's land and property for government interest ([www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)).

<sup>23</sup> For more information on the proposed Reforms please go to Part 6: Opportunities, pg 17 of this report.

implemented to both new and existing strata title schemes and would include all documentation pertaining to the scheme, forming a package of information for the proprietor.

### 3.1.2 Unit Entitlement

Each lot is assigned a *unit entitlement* which is related to the value of each individual lot. A licensed valuer provides a certification of value and, based on this valuation, a nominal figure is assigned to each lot and registered on the strata plan. The unit entitlement distinguishes the voting rights of a proprietor, the undivided share of each proprietor in the common property and the proportion payable by each proprietor of contributions levied unless a Bylaw or order from the State Administrative Tribunal occurs (Strata Titles Act 1985, Section 14.1). The valuer indicates a number to the proportional interest that each owner has in the capital value of the buildings and the common property (shared community land). The unit entitlement 'weighs' the *voting rights* of proprietors under the Act<sup>24</sup>. The unit entitlement of survey-strata lots is calculated on the unimproved site value of the lots without taking into account the value of any buildings on the lots.

### 3.1.3 Voting Rights

As provided by in Section 14 of the Act, 'voting rights are proportionate to the unit entitlements of their respective lots' (Strata Titles Act 1985, Section 14). The voting procedures may need to consider the unit entitlement (poll vote) and are known as a vote by 'special resolution', 'resolution without dissent' or 'ordinary resolution'<sup>25</sup>. Current voting rights may prohibit any one individual lot owner from making any changes, amendments or additions to the exterior of their lot, including any environmentally sustainable measures, unless the required voting procedure is satisfied. The current procedure and description for voting procedures within a scheme can be found in Part 1 of the Strata Titles Act 1985.<sup>26</sup>

## 3.2 Residential Design Codes (R-Codes)

Residential Design Codes (R-Codes) provide a comprehensive guide for local government to control and standardise residential development. With consideration to environmentally sustainable provisions, the R-Codes include design elements that identify key guidelines aimed to 'optimise comfort and facilitate sustainable development'<sup>27</sup> in residential buildings.

Design element 6.10.2 covers the 'Incidental development requirements' aimed to ensure that 'adequate provision is made for incidental facilities serving residents' needs' (R-Codes, 2010). This covers external fixtures such as solar collectors<sup>28</sup> which are, 'permitted as of right; and other external fixtures that do not detract from the streetscape or the visual amenity of residents or neighbouring properties' (R-Codes,

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<sup>24</sup> Further information can be sourced in the following book authored by WA strata title consultant John Angus. (Angus, John H. 2010. Understanding Strata Titles: A guide to the management and administration of strata companies in Western Australia. 2<sup>nd</sup> Edition. Verbatim Publishing)

<sup>25</sup> An "Ordinary Resolution" is required where it is not specified in the Act to use either the Special Resolution or Resolution without Dissent, and requires support by more than 51% (a majority) of owners. This can be achieved through voting procedures at a general meeting or an extraordinary general meeting.

<sup>26</sup> The Voting rights for owners within a strata scheme can be found in the Strata Titles Act 1985, PART 1 – Preliminary, Sections 3AC, 3B, 3C. [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/)

<sup>27</sup> State Planning Policy 3.1: Residential Design Codes, 22 November 2010 update. WAPC.

<sup>28</sup> Solar collectors could cover solar hot water systems and solar power (PV) generation systems for residential housing.

2010). With the exception of solar collectors, external fixtures may still be subject to local planning policy provisions under the R-Codes framework.

Residential R-Codes mostly have a bearing on *new* residential strata titled buildings. However, should owners of an existing strata title scheme agree to develop common land and include environmentally sustainable aspects to this development, be it to buildings or the land, the residential design codes would apply, along with any local government planning or regulation codes.

### **3.3 Local Government Planning Policy and R Codes**

The local planning scheme is the overarching, statutory document that provides land use and development requirements within the local government's jurisdiction. The local planning scheme gives weight to the R-Codes by requiring that residential development conform to the provisions of the R-Codes, where applicable. A local planning policy strategy may contain specific requirements that relate to a particular area, however a policy can only vary, augment or replace certain provisions within the R-Codes, generally those relating to streetscape building design and incidental development (Landgate, R-Codes). Where there is no specific local planning policy, generally all the provisions of the R-Codes apply.

The local council can adopt a local planning policy to complement the Local Planning Scheme and include mandatory provisions for 'sustainable building design'. The City of Fremantle local planning scheme no. 4, gazetted in 2007, introduced split density coding – an incentive approach whereby the Council may grant a higher residential density coding for a portion of land providing that future development was designed in accordance with the Council's energy efficiency and sustainable schedule<sup>29</sup>. A local planning policy was adopted that detailed more specific building design requirements to complement this scheme provision.

The City of Belmont has a similar process where a developer can achieve a density 'bonus' or a higher R-Code for energy efficient development, allowing them the possibility to build more units. As part of the City's Local Planning Policy No.1 (under Local Planning Strategy 15), developers of land will need to meet solar design standards which can include northerly orientation of buildings, cross ventilation taking advantage of southerly breezes, wider eaves or verandahs, protection from direct summer sun to west and east facing windows and provisions that have a direct benefit to residents or the wider community such as rooftop gardens<sup>30</sup>.

Local planning policy and codes have a bearing on new developments as well as on additions or major alterations to existing buildings. Should an entire existing strata complex decide to develop the common land or make major changes to the entire complex, the local planning codes and regulations would apply to the approval process. This includes attention to heritage listing requirements or building code regulation.

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<sup>29</sup> City of Fremantle, Local Planning Policy No.2.2 – Split density codes and energy efficiency and sustainability schedule: [http://www.fremantle.wa.gov.au/files/1e4027c4-96a7-4136-a8c1-9dc600efee05/LPP\\_22\\_Split\\_Density\\_Codes\\_and\\_Energy\\_Efficiency\\_and\\_Sustainability\\_Schedule.pdf](http://www.fremantle.wa.gov.au/files/1e4027c4-96a7-4136-a8c1-9dc600efee05/LPP_22_Split_Density_Codes_and_Energy_Efficiency_and_Sustainability_Schedule.pdf)

<sup>30</sup> City of Belmont, Local Planning Policy No. 1 – Town centre density bonus requirements: <http://www.belmont.wa.gov.au/Services/Planning/Documents/14A%20Local%20Planning%20Policy%20No.%201%20Town%20Centre%20Density%20Bonus%20Requirements.pdf>

It should also be noted that developers set covenants over estates and property developments which could hinder owners from incorporating sustainable building materials, renewable energy technologies and environmentally sustainable provisions that help to reduce energy and water needs by occupants. This topic is important and state and local government could do more to ensure these types of restrictions are prohibited or lifted during approval process. The Queensland government has recently enacted changes to laws governing strata title developments banning developers and existing strata schemes from incorporating these types of restrictions which prevent more sustainable options being chosen by consumers and owners. More information regarding the Queensland initiative can be found in section 6.3 and 6.4 of this report.

## **PART 4: Proposed ‘Sustainability Schedule’**

A ‘Sustainability Schedule’ (Annexure A) is the recommended document to use for the inclusion of environmental sustainable provisions in existing strata title schemes. The three key areas or elements of sustainability where provisions can be itemised are 1) energy, 2) water and 3) landscaping.

### **4.1 The Sustainability Schedule: Energy, Water and Landscaping elements**

It is proposed that the Sustainability Schedule be added as a new by-law to Schedule 1 standard by-laws, for existing strata title schemes or placed within a Schedule 2A Management Statement<sup>31</sup> as a standard by-law for new schemes. The Management Statement forms part of the strata plan and outlines the provisions pertaining to the common property (land and buildings) and individual lots. The proposed Sustainability Schedule can be included to cover environmentally sustainable provisions including energy and water efficiencies for existing strata titled buildings.

These three ‘Elements of Sustainability’ can be standard elements adopted by all strata title schemes. This report proposes that the Sustainability Schedule could be adopted retrospectively from a nominated date or through an opt-in option. The opt-in option allows the individual lot owner to make the ultimate decision as to whether they wish to implement any of the standard prescribed features. These features can deliver the following outcomes:

- \* *Water – improved water use through water efficiency mechanisms or source substitution such as rainwater and storm-water harvesting for individual lots or common land facilities and amenities*
- \* *Energy – increased efficiencies in energy usage and incorporation of renewable energy sources (solar, wind, hydro) into individual lots and/or common land facilities or amenities*
- \* *Landscaping – promotion and inclusion of water wise gardens and native biodiversity, smart underground irrigation and the use of more environmentally sustainable materials.*

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<sup>31</sup> ‘Management Statement’ can only be applied to a strata title at the same time the Titles are registered at Landgate. The Management Statement may be the best place to house the proposed Sustainability Schedule. The Management Statement can provide individual strata title owners with the option to ‘opt-in’ to provisions prescribed in the Sustainability Schedule for new strata schemes. The Management Statement specifies by-laws which apply to the scheme and can cover elements of sustainability that are specific to lots or common land.

A Sustainability Schedule will be subject to conditions that will need to be met by the individual lot owner. The 'Schedule' is the proposed document which prescribes the elements listed above and details a number of provisions to the features including fixtures that can be implemented on to the lot by individual lot owners. It is not meant to be an exhaustive list and is an example of a number of retrofitting options that could be implemented in existing residential buildings. The proprietor has a choice to opt-in to any of the environmentally sustainable provisions.

Note: The Building Commission has the responsibility of all building and plumbing requirements for housing. Currently there is an intergovernmental agreement (IGA) for the operation of the Australian Building Codes Board which is responsible for developing and maintaining the National Construction Code (NCC) to which the Building Codes of Australia is now incorporated. It has been noted that the IGA commits each jurisdiction to 'avoid, where possible, variations to the NCC'. The implementation of the Building Act 2011 this year will reinforce the government commitment to the NCC IGA. This means that a consequential amendment to the *Planning and Development Act 2005* will ensure that building standards will prevail over local planning schemes where there is a conflict (see Part 15, s.168 of the Building Act 2011<sup>32</sup>). At the same time, the Building Commission has stated that they are not opposed to the implementation of sustainability in buildings, rather they support effective implementation of sustainability.

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<sup>32</sup> Building Act 2011: [http://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_12333\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_12333_homepage.html)  
Chiara Pacifici – Greening Strata Title Schemes in Western Australia

# PART 5: Summary of Barriers and Solutions

## 5.1 Barriers which prevent the adoption of environmentally sustainable provisions in existing residential strata title buildings in WA

The current Strata Titles Act 1985 prohibits property owners from making any environmentally sustainable improvement to the exterior of their lot unless resolution without dissent or unanimous agreement is passed by owners in the strata title scheme.<sup>33</sup> Owners are therefore prevented from installing external improvements such as solar power (PV) systems to roofs, or rain water tanks to the surface of the building, regardless of whether or not they have exclusive use<sup>34</sup> of the land. This is because unless otherwise identified, either through the Management Statement (by-law) or through changes to the actual strata title, the individual unit owners in strata schemes do not own this space<sup>35</sup>. Ultimately, one vote can be cast against the improvement requested by any owner in the scheme, and this can put an end to any energy or water efficiency measure.

This report highlights two main barriers which prohibit the incorporation of a 'Sustainability Schedule' into the current framework of the Strata Titles Act. These barriers include:

- 1 Voting rights – Current voting procedures and requirements in strata and survey-strata schemes can limit or prohibit a proprietor's ability to increase the energy and water efficiency of their particular lot. The 'resolution without dissent' provision is seen as the most obstructive barrier for individual unit owners to implement environmentally sustainable provisions.
- 2 Common property – Where the area outside of the building, including the surface of roof, exterior walls and courtyards, are not owned by the individual proprietor but are part of common property (regardless of exclusive use), the strata scheme has jurisdiction. Therefore voting rights control how this area is used and determine its use.

## 5.2 Solutions to barriers

There are a number of sections within the WA Strata Title Act 1985 and in proposed reforms being administered by review committees which could provide for opportunities to overcome the barriers identified in this report. These solutions are not prescriptive and require legal counsel to ensure their validity in specific circumstances. However the following solutions are proposed for consideration and are specifically for inclusion of environmentally sustainable provisions outlined in the Sustainability Schedule:

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<sup>33</sup> Resolution without dissent or special resolution requires support from owners in the scheme; if one owner objects to a proposal then the motion fails. This means that if one owner votes against the improvement and no resolution is sought through the State Tribunal Administrator, then no improvement can be made.

<sup>34</sup> It is important to note that even though 'Exclusive Use' or 'For Use' may be registered on the Strata Plan for an individual Lot, it does not provide ownership of the land or building and therefore owners cannot incorporate environmentally sustainable provisions in the land or building unless agreement is reached by the owners of the scheme/ strata company.

<sup>35</sup> Due to variations over time and dependant on the type of the scheme owners must consult the strata title plan to verify ownership.

**Solution 1: Amend the voting rights** – In order for individual lot owners to embrace and implement sustainability measures to their individual lots, changes to existing voting rights may need to be considered. A solution to overcome the barrier of voting rights is to soften the current voting requirements. This could be that no one vote can be cast against any of the provisions included in the Sustainability Schedule. Alternatively, a ‘resolution without dissent’ could be replaced with a ‘special resolution’ where this is supported by at least 50% of the lot proprietors *and* who collectively have at least 50% of the aggregated unit entitlement within the scheme agree, *and* not more than 25% of the lot proprietors *or* 25% of the aggregated unit entitlement object to the proposal. This alternative voting procedure could be for all schemes including single tier schemes to larger schemes.

This solution applies only to the inclusion of any or all of the environmentally sustainable provisions found in the Sustainability Schedule. This vote could be achieved at a general meeting or an extraordinary general meeting. Should the majority of owners reach an agreement using the ‘special resolution’ then the provision could be implemented as a standard by-law for any other owner who opts in to the provisions identified in the Sustainability Schedule. This change to voting rights is *specific to incorporating energy and water efficiencies and landscaping* identified in the Sustainability Schedule. The change to voting requirements outlined in Solution 1 is not intended to be adopted across other sections of the Act.

**Solution 2: Create a new by-law within Schedule 1 by-laws to incorporate the Sustainability Schedule as a standard for all existing strata schemes** – A new by-law could be created to include the Sustainability Schedule (see Annexure A) which outlines environmentally sustainable provisions that a proprietor can opt-in to should they choose to implement these features to their home. A new by-law (by-law 16) could be added to Schedule 1 by-laws. This by-law would be optional for each individual lot owner of a survey-strata and strata title schemes and would be dependant on the individual lot owner agreeing to the conditions in the Sustainability Schedule.

### 5.3 Further considerations

There are sections within the ‘Act’ which could be amended to incorporate the proposed Sustainability Schedule. Some further options and considerations are detailed below:

**Create a new model ‘by-law’ in Part IV of the Strata Title Act 1985** – A new model by-law could be inserted within the management provisions of the ‘Act’ in ‘Part IV, Management – Division 1 Strata companies’. This section of the Act governs the operation of strata schemes after they have been registered, and outlines the powers available for the strata company to create by-laws. A Sustainability Schedule outlining environmentally sustainable provisions and options available for the scheme could be included here as a by-law additional to the standard by-laws under this section of the Act. The Sustainability Schedule could be created in this section as ‘42D – By-law for environmentally sustainable

provisions – energy and water efficiencies<sup>36</sup> Owners would be given the discretion to opt-in and adopt any of the environmentally sustainable provisions identified in the Sustainability Schedule. This would be an expansion to the existing by-laws or form part of alternative Regulatory Modules that are proposed in the Reforms.

**Include the Sustainability Schedule in ‘Notifiable Information’ Part 5 (69) of the Act** – The proposed Sustainability Schedule could be provided at point of sale where information is required to be disclosed to the buyer. Part 5 of the Strata Titles Act (section 69A) requires that certain information be provided and the Sustainability Schedule can be included in this package. The aim is not only to outline the options available should an individual owner or the entire strata company wish to consider opting in to some or all of the environmentally sustainable provisions outlined in the schedule, but also to increase awareness of energy and water efficiency options available for unit owners of a strata title scheme. Voting rights and unit entitlement will need to be considered here and it is recommended that Solution 1, amendment to voting requirements, be adopted.

### 5.3.1 ‘Silent areas’ within the Act

A review of sections of the Strata Title Act has found that the Act is silent on any right or obligation to improve or upgrade the common property. The following sections of the Act are relevant as they may allow for the incorporation of environmentally sustainability features. There may be further sections which could allow for the inclusion of a Sustainability Statement, but this report is not intended to be a legal research document. Further legal advice is required in this area.

Examples of ‘silent areas’ within the ‘Act’:

Section 35 (1) c, obliges a strata company to maintain the common property. A special note to S.35 (1) (b) obliges the strata company to *‘manage for the benefit of all proprietors’*. This may be interpreted as obliging the strata company to manage the scheme and enhance the financial and environmental benefits by adopting higher energy and water efficiencies.

Section 36 empowers the strata company to *‘raise funds to fulfil its obligation’*. 36(1) obliges proprietors to contribute funds to satisfy whatever maintenance needs may exist. A fund could be created to help retrofit an aging strata complex to higher energy and water efficiencies for the benefit of all owners.

Section 37 may allow *‘the strata company to make an agreement with any proprietor or occupier of a lot for the provision of amenities or services by it to that lot or to the proprietor or occupier of that lot’*. This could allow individual lot owners to make agreement with the strata company to retrofit their building for the benefit of both individual lot owner and the entire complex with, for example, solar (PV) systems to generate electricity and reduce energy needs.

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<sup>36</sup> Strata Titles Act 1985, PART IV Management, Division 1 – Strata companies. – see Sections 42 or 43.  
[http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/)  
Chiara Pacifici – Greening Strata Title Schemes in Western Australia

### **5.3.2 Education and awareness**

It is important that managers of strata title companies are educated in the area of sustainability, especially on the benefits environmentally sustainable provisions are likely to have for both the entire complex and individual lot owners. Strata Community Australia in Western Australia (STC, WA), formerly the Strata Title Institute of Western Australia (STIWA), and its members including strata management agencies, have a significant role in the dissemination of accurate and reliable information on sustainability options for strata schemes. This knowledge can add value and reduce costs for strata companies. Good management services provided by these professionals will be paramount when it comes to retrofitting ageing strata title buildings to higher energy and water efficiencies. SCA (WA) can provide education and training to enhance this industry's knowledge, and this will have significant outcomes for lot owners as well as helping to build resilience in existing residential strata buildings.

## 5.4 CASE STUDY: Incorporating environmentally sustainable provisions within a new residential multi dwelling strata development (WA)



**Square One: 14 Money Street, Perth**

This property provides an exemplary case study for property developers as well as state and local government planning and policy officials. The multi dwelling complex won the 2010 Master Builders Award for Energy Efficiency and Sustainability. It is a mixed use strata scheme that is heritage-listed (Mackay Aerated Waters Factory, era 1928), and comprises 35 residential apartments and two commercial units. The environmental sustainable features include:

### **Water:**

*A rainwater harvesting and treated system (120,000 litres), individually metered to supply each lot with cold water for clothes washing machines, toilets and gardens.*

### **Energy:**

*A communal solar gas boosted hot water system supplying each lot, individually metered, and a 9.8 kW photo-voltaic (PV) solar system to power common facilities such as lifts, outdoor lighting and car park ventilation.*

*There is also provision for individual units to install approximately 1 kW photo-voltaic solar systems in designated roof area.*

### **Landscaping:**

*Approximately 75% of the water wise gardens are edible with herbs, fruit trees and vegetable plants, and native plants predominate throughout the development.*

When the titles were registered the developers lodged a Management Statement that outlined all of the sustainability elements incorporated within the building, including provisions pertaining to the common land and individual lots. These by-laws were created in addition to the Schedule 1 and 2 standard by-laws (Appendix E – Extract from Management Statement for 14 Money Street, Perth).

## **PART 6: Opportunities**

### **6.1 Proposed Reforms to the Strata Titles Act - A brief overview**

The WA Strata Title Act 1985 is currently under reform. At the time of writing this report, two committees have been set up to administer and work on these reforms and include the Community Title Advisory Committee (CTAC) and the Land Tenure Committee Working Group (within Landgate).

It is proposed that amendments to the strata title Act include new strata proposals such as regulation modules, mandatory management statements, definition of strata managers amongst other inclusions. The proposed reforms to the Act will allow for multiple changes under different tenures, and could incorporate energy and water efficiency provisions such as those highlighted in this report.

Currently, strata (high rise) and survey-strata (low rise) developments cannot be combined into one single overarching community scheme, and this limits developers' flexibility to implement management agreements to suit different uses and tenures within their developments. Only one scheme and management body can be established. However, the proposed reforms could provide flexibility for developers to layer their subdivisions and have schemes within schemes, with management arrangements that suit the different uses and tenures within the development.

There are aspects of the reforms that could embrace environmentally sustainable provisions, and these could be housed in 'Regulation Modules'.<sup>37</sup> It is proposed that these Regulation Modules will no longer include standard by-laws but will rather have 'Management Provisions' covering standard residential schemes, small residential schemes, high rise multiunit schemes, commercial schemes and short stay schemes. Further dialogue with Landgate and relevant administration bodies about these reforms will help to identify any further issues to be addressed in the greening of strata titled property. Note: By-laws will still exist and be recorded in the management statement.

### **6.2 Identifying an opportunity: Areas within the reforms where environmentally sustainable provisions for existing residential dwellings could be included**

It is proposed that current by-laws affecting the management, operation and regulation of strata title schemes be transferred into new 'Regulation Modules' to suit the design of a particular complex.<sup>38</sup> This may mean that standard model by-laws will supersede Schedule 1, 2 and 2A by-laws and that any new or modified by-laws may be listed in a Management Statement for that scheme.

An opportunity exists within these proposed changes to include a Sustainability Schedule as a standard provision within the Management Statement, and this would identify sustainability provisions for the scheme.

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<sup>37</sup> Discussions with Landgate about proposed reforms – 6<sup>th</sup> January 2011

<sup>38</sup> The types of complexes may include standard, small, high rise multi unit, commercial and short stay schemes.

Currently, the Strata Title Act only allows a Management Statement to be adopted by a new strata development, while existing schemes merely have the option of amending or adding by-laws (Schedule 1 and 2) on a scheme-by-scheme basis and under a restrictive voting procedure.

The proposed changes would mean that every strata scheme would have the Sustainability Schedule located in a Management Statement as part of a standard law. Items within the Sustainability Schedule could be adopted by individual unit owner if they chose to opt in to the implementation of energy and water efficiency measures in their homes at their discretion.

### **6.3 The Queensland Experience: Sustainable housing codes**

In 2010, the Queensland Government introduced new sustainable housing laws aimed at drastically improving energy and water efficiencies in residential dwellings. Extensive improvements to Queensland Buildings Laws, the Planning Act and Body Corporate and Community Title Laws have been implemented, focusing on energy efficiency and the overall sustainability of buildings.<sup>39</sup>

Under the Building Standards Framework, which extends beyond the scope of the Building Codes of Australia (BCA), the Queensland Department of Infrastructure and Planning (DIP) has added a 'Sustainable Buildings' section to the Queensland Development Code. This section is mandatory and ensures that (a) Class 1 and 2 buildings are energy and water efficient, (b) air conditioners are efficient, (c) electricity supplied to each meterable premises is able to be measured appropriately and (d) end of trip facilities such as bicycle parking and storage are available. Sections 4.1 and 4.2<sup>40</sup> outline these sustainable building requirements and provide performance standards and acceptable solutions to help developers and owners meet them.

### **6.4 CASE STUDY: Ban the Banners: New covenant and body corporate by-law rules (Queensland)**

On 1 January 2010, significant amendments were made to new and some existing covenants and body corporate by-laws within the Queensland Body Corporate and Community Management Act 1997. The purpose of these changes was to prevent the banning of energy and water efficiency features and environmentally sustainable fixtures to housing.

These new rules effect residential land estates and buildings from 1 January 2010 and lift restrictions to home designs in residential and unit complexes, usually set by developers, to allow for energy efficient

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<sup>39</sup> These laws are part of the Cleaner Greener Buildings initiative; ClimateQ: toward a greener Queensland <http://www.climatechange.qld.gov.au/pdf/factsheets/3planbuild-e1.pdf>

<sup>40</sup> Queensland Development Code – Sustainable Buildings -Section 4.1 and 4.2: <http://www.dlqp.qld.gov.au/resources/laws/queensland-development-code/current-parts/mp4-1-sustainable-buildings.pdf> <http://www.dip.qld.gov.au/resources/publication/MP-4.2-water-savings-targets-current.pdf>

design elements or sustainable building features. The Queensland Department of Infrastructure and Planning (DIP) had introduced these amendments to assist householders in reducing their carbon footprint by permitting them to implement sustainable features in their buildings. A number of design features are protected under the 'Ban the Banners' initiative and include the following:

- \* light roof colors, window treatments (e.g. tinting),
- \* smaller floor areas and a choice of a smaller number of bedrooms and bathrooms,
- \* types of materials and finishes for external walls and roofs,
- \* single garages, and
- \* appropriate location for solar hot water systems and photovoltaic cells to generate electricity.

A significant outcome of the 'Ban the Banners' initiative is that solar hot water systems and solar photovoltaic (PV) cells are no longer prohibited under by-laws or covenants for the sake of preserving the external appearance.

Note: There are certain requirements that need to be met before the installation of solar collectors and renewable energy solutions. The *lot owner would require exclusive use of the roof space* to be able to install the system. If exclusive use is not assigned on the strata plan, the lot owner would need to apply for exclusive use of the roof area through the strata company first and have a by-law detailing the purpose of the item and responsibilities of the lot owner. In Class 1 (1A) attached, detached or townhouse (single tier) buildings, the process is straight forward as the roof space is usually not shared between dwellings. However, for multi-unit complexes this can be complicated.

## **PART 7: Recommendations**

This Report identifies two main barriers that exist in the current Strata Titles Act 1985 which limit or prohibit the implementation of environmentally sustainable provisions in existing strata title schemes. A number of solutions have been offered to help overcome these barriers, including 1) recommendations to ease the stringency of voting requirements, and 2) the inclusion of a Sustainability Schedule as a new standard by-law in Schedule 1 for existing schemes and within a Management Statement for new schemes. The latter change will allow owners to retrofit to higher energy and water efficiencies within their homes without the need of a vote by the strata company.

A Sustainability Schedule is one way to incorporate sustainable features in strata titled or survey-strata lots, including energy efficiency and energy generation systems, water conservation measures and landscaping provisions. The Sustainability Schedule would provide a concise and prescriptive outline of the environmentally sustainable provisions that can be implemented by an individual lot owner.

The report highlights the challenges individual owners have with existing voting rights within strata title schemes and identifies a number of possible solutions that can be administered to the current Strata Title Act to help overcome these barriers. The Queensland government has sought to overcome some of these barriers by legislating a ban on restrictions within schemes including the voting out of environmentally sustainable provisions such as solar power (PV) generation systems. As a first step, it is recommended that government policy makers in Western Australia look to enact similar legislative changes to the Strata Title Act in order to overcome the barriers that exist for individual lot owners.

The implementation of a Sustainability Schedule, which may arise from changes or additions to current by-laws or in reforms to the WA Strata Titles Act, is an important step forward to greening strata title schemes. The Sustainability Schedule also acts as a guide enabling lot owners of existing strata title property to retrofit a number of energy and water efficient improvements to their homes.

It is recommended that the Western Australian government consider incorporating environmentally sustainable provisions by introducing a Sustainability Schedule in the current Strata Titles Act or in future reforms. It is also recommended that the Western Australian government adopt similar steps towards greener and more energy and water efficient residential buildings and consider the Queensland government initiative 'Ban the Banners'.

Energy and water efficiency improvements in strata buildings will ultimately lead to significant financial and environmental benefits for both owners and occupants. These improvements will help build resilience in existing residential building stock from severe weather events, future proof homes from rising energy costs and water shortages and move towards a reduction in greenhouse gas emissions from the residential sector.

# PART 8: APPENDIXES

## ANNEXURE A – Proposed ‘Sustainability Schedule’

### Sustainability Schedule

A proprietor may, subject to relevant consent, introduce any of the provisions outlined in this Sustainability Schedule but must adhere to the following conditional requirements:

A proprietor or occupier of a lot shall –

- a) be responsible for and indemnify the installation and maintenance of the affixed item,
- b) meet with the local authority design codes, planning codes, building permits and other regulatory obligations where applicable,
- c) meet any requirements in Section 42 and Section 7 of the Strata Titles Act where approval is needed by the strata company for any ‘major’ work which may affect other lots or common land in the scheme,
- d) hold insurance on the item separately to that of the building insurance,
- e) provide delineation of where item is to be fixed, specify risk and provide indemnification to all parties,
- f) have complete ownership and responsibility of the item unless otherwise agreed by the strata company,
- g) guarantee all work is undertaken and completed by a reputable, registered and capable trades person.

### ENERGY

- 1) (a) Insulation: Insulating material in roof, walls and floors shall be installed to a minimum R3 for roof insulation and R1.5 for wall or floor insulation, or higher R-value (where applicable),  
(b) Ventilators: Eave vents or whirlybirds affixed in the roof structure,  
(c) Solar Collectors and Renewable Energy solutions:
  - i) must obtain local council approval (where applicable) and structural engineers report confirming the solar collector will not adversely affect the structural soundness of the roof,
  - ii) Solar photovoltaic (PV) power systems must be no larger than roof area registered as exclusive use for the individual lot or where otherwise agreed alternative designated area allows,
  - iii) Installation must be made by a reputable and licensed supplier and installer,
  - iv) If special resolution is required, a separate agreement and by-law must be registered on the strata title scheme outlining the nature of the agreement, liabilities and any restrictions,
- (d) Re-circulating Hot Water Systems: systems must be installed by a reputable and licensed plumber,  
(e) Energy efficiency of lighting: to meet current National Construction Code/BCA standards  
(f) Gas connection: for individual use (cooking, HWS, other)  
(g) Air-conditioners or evaporative air-conditioners: with min 2.9 Energy Efficiency Ratio (EER)  
(h) External awnings: protecting glass from solar radiation and controlling heat gain where required (to be approved by local authority and must not adversely affect the structural soundness of the affixed area).

### WATER

- 2) (a) Rainwater tanks: of at least 2000 litres to be plumbed to the toilet, washing machine or gardens. Location must be specified. Must meet relevant regulatory requirements including Water Codes,  
(b) Grey water system: collect grey water from the laundry, bathroom and redirects it for garden and sub-surface irrigation. Must meet relevant regulatory requirements including Water Codes,  
(c) Water re-circulation device for hot water taps.

### LANDSCAPING

- 3) (a) Water-wise gardens: with use of local species, native plants or other suitable Australian and low-water using plants,  
(b) Irrigation: sub surface, water efficient irrigation system.

## **ANNEXURE B – Steering Committee**

The Steering Committee has met three times to discuss the research related to 'Greening Strata Title Schemes in WA', on 2 October 2010 and 21 February 2011, and the third and final meeting was held on 12 August 2011.

The Steering Committee meetings are held at Parliament House and organised by Lisa Baker MLA. The meetings are intended to facilitate an open dialogue with relevant stakeholders and industry specialists on the issues related to the strata title regulations. Discussions have identified barriers within the Strata Titles Act to the incorporation of environmentally sustainable provisions into strata schemes, and solutions to these barriers.

*The Steering Committee members are:*

Lisa Baker MLA – Member for Maylands

Chiara Pacifici – Research Associate at Curtin University Sustainability Policy (CUSP) Institute

Mayor of Fremantle – Brad Pettit represented by Brett Cammell – City of Fremantle, Planning Officer

Mayor of Bayswater – Terry Kenyon represented by Sally Palmer CR – Bayswater councillor

Mayor of Mandurah – Paddi Creevey

Prof Peter Newman – Curtin University Sustainability Policy (CUSP) Institute, Director

Ida Smithwick – Strata Title Institute of Western Australia (STIWA), Vice President

Damien Martin – City of Bayswater, Manager Planning Services

Peter Munday – Strata Title consultant and trainer

Ron Acott – Strata Title consultancy services

Eddie Row – Association of Building Sustainability Assessors (ABSA), Board member

Brenda Conochie – Environment House

Alex Bruce – BLC Energy Solutions, Sustainability Consultant

Daniel Colgan – Colgan Industries, Developer (14 Money Street, Perth)

Angela Heymans – Building Commission

## **ANNEXURE C – Schedule 1 and Schedule 2 by-laws**

The Schedule 1 and Schedule 2 by-laws can be found within the WA Strata Titles Act 1985. To download the *Schedule 1 and Schedule 2 by-laws* please go to the following link:

Schedule 1 - [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/sch1.html](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/sch1.html)

Schedule 2 - [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/sch2.html](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/sch2.html)

## **ANNEXURE D – Schedule 2A - Management Statement**

The Schedule 2A by-laws can be found within the WA Strata Titles Act 1985. To download the *Schedule 2A: Matters that may be provided for in management statement*, please go to the following link: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/sta1985173/sch2a.html](http://www.austlii.edu.au/au/legis/wa/consol_act/sta1985173/sch2a.html)

## **ANNEXURE E – Management Statement for 14 Money Street, Perth**

Below is an extract from the Management Statement for 14 Money Street, Perth which outlines the environmentally sustainable items included within the development and the prescribed restrictions and opportunities for unit owners.

*Management Statement – 14 Money Street, Perth, WA (Source: Landgate)*

**FORM 25**  
*Strata Titles Act 1985*  
Section 5C (1)  
**STRATA PLAN No. 54466**  
**MANAGEMENT STATEMENT**

(Name of original proprietors of land the subject of the plan)  
**MARTIN JAMES COLGAN AND DOROTHY ANNE COLGAN**

(Description of parcel the subject of the plan) **LOT 1 ON DEPOSITED PLAN 57661 BEING WHOLE OF THE LAND COMPRISED IN CERTIFICATE OF TITLE VOLUME 2682 FOLIO 970.**

This management statement lodged or to be lodged with a strata plan in respect of the above land sets out the by-laws of the Strata Company or amendments to the by-laws contained in Schedule 1 and 2 of the *Strata Titles Act 1985* that are to have effect upon registration of the strata plan.

**SCHEDULE 1 BY-LAWS**

**1. The Schedule 1 by-laws are amended, repealed or added to as follows:-**

The following by-laws added -

**16. THEME OF DEVELOPMENT**

- (1) The parcel has been developed as an inner city, mixed use strata scheme, comprising of 35 residential units and 2 commercial units. Lot 36 is to be used as an office and is permitted to be open for normal business hours. Lot 37 is to be used as a tea house/coffee shop/cafe. A grease trap may be installed in a suitable place within the common property.
- (2) The building is located on the site of the former Mackay Aerated Waters factory and part of the façade of the building is protected under the Heritage of Western Australia Act 1990.
- (3) Environmentally sustainable features included in the design of the building include: rainwater harvesting treated to a primary level individually metered to each lot and used to supplement the supply of cold water to clothes washing machines, toilets and gardens, a communal hot water supply from a solar gas boosted hot water system individually metered to each unit, photo-voltaic panels that supplement the communal power requirements of the development and provision for individual apartments to install a photo-voltaic system up to approximately 1kW in a pre-defined designated roof area.
- (4) The proprietors are advised of the proximity of the parcel to the Northbridge precinct that contains nightclubs, restaurants and after hour activities that generates noise and light associated with an inner city development.

**18. EXCLUSIVE USE OF AREAS ON THE ROOF FOR SOLAR PANELS**

- (1) The original proprietor has installed conduits from each lot to an individual location on the roof and has fixed a strut system to the roof to permit solar panels / photo-voltaic panels ("Panels") to be installed. The approximate area allowed for installing Panels to each lot is 1.6 metre long by 5 metres wide and will extend above the plane of the roof by approximately 0.1 metre high and are approximately indicated on Annexures "A" and "A1".
- (2) The proprietors of the respective lots are hereby granted exclusive use of those parts of the roof delineated and marked by the respective lot number on Annexures "A" and "A1" and shall at his, her or its discretion, and under the conditions set out in clause (3), install at his, her or its costs photo-voltaic panels for the purpose of generating electricity for their respective lot.
- (3) A proprietor wishing to install Panels shall –
  - (a) advise the council of owners and managing agent in writing of his, her or its intention to install the Panels;
  - (b) be responsible for all costs to install maintain, repair and replace the Panels;
  - (c) make good any damage to the roof or ceilings caused by the installation of the Panels to the satisfaction of the council of owners;
  - (d) use only qualified professional installers approved by the original proprietors and/or council of owners to install and connect the Panels, inverter and any other associated equipment required for the system;
  - (e) be permitted to install the Panels between 8.00am to 5.00pm weekdays.
- (4) The proprietor of a lot shall be solely responsible for the maintenance, repair and replacement of the Panels that are fixed to struts on the roof and the inverter located within its lot.
- (5) The strata company shall be responsible for any repairs and maintenance to the struts, conduits or other associated equipment located on common property. The strata company is not liable for the maintenance, repair and replacement of the Panels but, will be liable for any loss or damage relating to the struts, conduits or other associated equipment fixed to, or located on common property, and will ensure that the Panels and associated equipment and liability in respect of them and the roof is covered as part of the strata company insurance policy provided the Panels and all other associated equipment is installed as per the requirements of this clause.

## ANNEXURE F – Definitions

‘Act’ – Refers to the West Australian Strata Titles Act 1985, as amended.

‘BCA’ – Building Codes of Australia which has been incorporated into the National Construction Code (NCC)

‘Common Property’ –Common property is property which is jointly owned by all of the owners in the strata scheme and is not contained within any individual lot, as expressed in the Act.

‘Environmentally sustainable provisions’ – include energy and water efficiency measures and landscaping options for residential buildings

‘Elements of Sustainability’ – as proposed in the ‘Sustainable Schedule’, the three elements are energy, water and landscaping.

Re-circulating Hot Water Systems –A hot water circulator is a unit installed with the instantaneous gas hot water system. It recovers wasted water and sends it back into the system to be reheated or used later. The systems must be installed by a reputable and licensed plumber.

‘Landgate’ – Landgate is otherwise known as Western Australian Land Information Authority. As a Statutory Authority, Landgate maintains the State’s official register of land ownership and survey information and is responsible for valuing the State’s land and property for government interest ([www.landgate.wa.gov.au](http://www.landgate.wa.gov.au)).

‘Lot’ – means the strata title share shown on the Strata Plan (and is deemed to include the undivided share in the Common Property which is attached to each strata title lot.)

‘Regulation Modules’ –As advised by Landgate (January 2011), the proposed Regulation Modules may no longer include by-laws in the current framework but rather will have ‘Management Provisions’ covering standard residential schemes, small residential schemes, high rise multi unit schemes, commercial schemes and short stay schemes.

Resolution without dissent – As expressed in the Act - means a resolution that complies with sections 3AC and 3C and also has the meaning given by section 3CA.

‘Schedule’ – The proposed ‘Sustainability Schedule’ outlined in this Report.

‘Single Tier Strata Scheme’ – As expressed in the Act - single tier strata scheme means a strata scheme (a) in which no lot or part of a lot is above or below another lot; or (b) which comes within paragraph (a) except for any lot that has a permitted boundary deviation.

‘Strata Scheme’ – As expressed in the Act - A strata scheme means, ‘...(a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots; and (b), the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as

conferred or imposed by this Act or by anything done under the authority of this Act and as in force from time to time.

'Survey-Strata Scheme'— As expressed in the Act – A survey-strata scheme is, '(a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a survey-strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots; and (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as conferred or imposed by this Act or by anything done under the authority of this Act.

'Strata Plan' – has the meaning expressed in the Act as the meaning given by section 4(1a). A Strata Plan is used for multi, high- rise buildings. Strata plans define the lots in a strata scheme (areas owned individually) and common property (areas owned jointly by all lot owners in the strata scheme). Strata lots are limited in height and depth (the stratum of the lot).

'Survey- Strata Plan' – As expressed in the Act - A survey-strata plan has the meaning given by section 4(1b). A Survey-Strata Plan is used for low rise, single tier building construction and defines lots owned individually. No buildings are shown on a survey-strata plan, just the area (stratum) of the lot including its boundaries.

'Special Resolution' – As expressed in the Act – A special resolution means a resolution that complies with sections 3B and 3C and also has the meaning given by section 3CA of the Strata Titles Act 1985.

'Unanimous resolution' – As expressed in the Act – A unanimous resolution means (a) a resolution that is passed unanimously at a duly convened general meeting of the strata company (i) of which at least 14 days' notice specifying the proposed resolution has been given; and (ii) at which all persons entitled to exercise the powers of voting conferred under this Act are present and vote, either personally or by proxy; or (b) a resolution that is passed unanimously at a duly convened general meeting of the strata company by every person entitled to exercise the powers of voting conferred under this Act who is present and votes either personally or by proxy and agreed to, in writing signed by him, within 28 days after the day of the meeting by every other person who was entitled to exercise the powers of voting conferred under this Act at the meeting, or by every person who at the time of his signature was entitled to exercise those powers in place of such other persons.

'Unit entitlement' – As expressed in the Act – A unit entitlement in respect of a lot, means the unit entitlement of that lot shown on the schedule of unit entitlement registered with the Registrar of Titles.

## ANNEXURE G – References

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