

October 2013

Local Government Amalgamations – Keep Calm and Carry On

On 30 June 2013, the State Government of Western Australia announced its preferred model to redefine the boundaries of the metropolitan local government areas in Perth, reducing areas from 30 to 14.

Reform, in some measure, is inevitable. Local governments, property owners and any party with an interest in land should have regard to assets and plan for the future boundaries.

Timing

On 4 October 2013, the metropolitan local governments were required to submit responses and alternative models to the Minister for Local Government (Minister). The Local Government Advisory Board (LGAB) will consider these submissions and submit its recommendations to the Minister in June 2014. The Governor's orders will be issued pursuant to the Minister's considerations by September 2014, in order to allow for the creation of the new local governments by mid-2015, and subsequent commencement in October 2015.

Eighteen proposals were received. These proposals will be evaluated, and rejected or modified, by the LGAB for progression to the Minister.

Legislative Changes

The *Local Government Act 1995* will be amended to facilitate the reform. This will include amendments to current poll provisions. Further, the LGAB membership and powers will be expanded. The Governor will have transitional powers to make regulations for local government if required.

Until new local planning schemes are prepared, local governments will be responsible for administration of local planning schemes. There is no current timeframe for the development of new town planning schemes. Transitional arrangements under the current regulations provide for the existing planning scheme to apply to a district impacted by an area change. Therefore, until new town planning schemes are defined, the only significant difference is that development applications will be assessed by different parties.

Considerations

This is really not a time to panic – the process has commenced and contingencies are in place to manage the government's expectations and responses. Other local government reforms have occurred nationwide, and voluntarily within Western Australia. No significant impact on ratepayers has occurred as a result of this process.

It is important to consider the following:

- (a) Development Assessment Panels will be re-established (post-July 2015) to accord with the new boundaries.
- (b) There will be no automatic adoption of any existing planning policies of abolished local governments. Consideration should be to the area which governs your property. If a particular planning policy is conducive with a potential future development, it may be beneficial to ensure a development application is submitted by mid-next year.
- (c) There is no detail currently provided about the continued operation of statutory development contribution plans and funds, particularly where a new local government will overlap or divide existing contribution areas. At present, therefore, it is important to ensure any developer contributions made are properly applied. A statutory authority is required to return such contributions if it is not utilised for the purpose it was collected.
- (d) Local governments should be undertaking audit processes of contracts and leases, assets, infrastructure, trust funds, reserve accounts and financial awards. Land owners and other associated parties need to consider how such an audit may affect their interests, both current and future.



REAL ESTATE MATTERS

R-Codes Update

The proposed amendments to the Western Australia Residential Design Codes (**R-Codes**) came into effect on 2 August 2013. We provide a brief overview of key changes.

Changes to minimum lot sizes

Part of the rationale behind the R-Code amendments was the changing social demands on the building and development industry. The minimum lot area for R20 single house or groups dwellings has been reduced to 450m². Minimum lots areas have also been reduced for R25-40 and R60.

Introduction of R80

A new R80 zone has been introduced with a minimum lot area of 380m² and a site area per dwelling of 100m². A minimum of 30% of the total site must be open space, with a minimum setback of 1m from the primary street. There are no minimum frontage requirements.

Evolution of 'the Granny Flat'

Previously, backyard residences known as 'Granny Flats' were only able to be used by family members of the primary dwelling. This restriction has been abolished. Such residences can now be occupied by any person, and are therefore able to be released on the rental market. The maximum floor space has also increased to 70m² and the Western Australian Planning Commission (**WAPC**) encourages creativity and innovation with the new ancillary accommodation clauses, such as developing areas above garages.

Public transport reduces parking requirements

Required car parking spaces can be reduced, if a proposed development is within 800m of a train line, or 250m from a public transport route.

Impact of amendments on subdivision

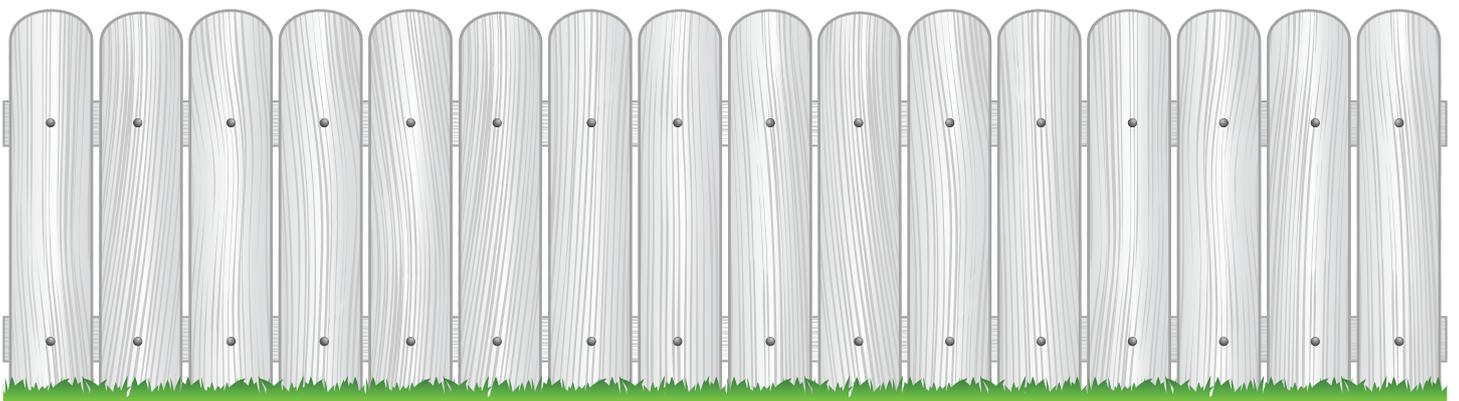
The R-Codes are not intended to prescribe subdivision design. The operational policy DC 2.2 provides for this instead. DC 2.2 has been updated but further amendments will be made at a date not yet specified by the WAPC. The only amendments of note being made to the DC 2.2 at present are changing references to lot sizes to reflect the amended R-Codes.

Designing for climate

R-Codes contain 'design for climate' provisions, including provisions relating to solar access on adjoining sites. The provisions require proponents to calculate potential overshadowing caused by the development on midday on the winter solstice (21 June). The maximum overshadowing limits for various density codes are expressed as a percentage of the adjoining site area.

Planning approval on small lots

The amended R-Codes have reduced the lot size area requiring development approval to 260m². This also applies to any single house lots created by a Local Development Plan or Local Structure Plan. Local planning policies cannot override this, but regard should be had to the provisions of Local Planning Schemes in the event of any inconsistency.



REAL ESTATE MATTERS

Scammer Arrested: Property fraud

A Nigerian man has recently been arrested over an attempt to fraudulently sell a Western Australian property.

In 2010, a property scam in Western Australia sent shudders through the property industry after a residential property was fraudulently sold under a scam run out of Nigeria.

Following the scam, conveyancing processes in Western Australia were overhauled and strict verification of identity procedures were introduced for property transfers in July 2012.

In the latest incident, a Mandurah based real estate agent became suspicious after receiving an email purporting to update a property owner's contact details, followed shortly thereafter by another email containing instructions to put the property on the market.

Having attending courses run by the Major Fraud Squad and the Real Estate Institute of Western Australia in the wake of the previous scams, the real estate agent recognised immediately that the emails raised red flags.

A plan was then hatched between the real estate agent, Western Australian Police, Australian Federal Police and

Nigerian and South African authorities, to continue a fake sales process in order to catch the scammer.

For 8 months the real estate agent kept up communications with the scammer, speaking regularly on the telephone and creating the appearance that the property sale was going ahead. During this time the real estate agent received copies of fake passports and forged documents, claiming to be from the Australian High Commission in Pretoria. After many attempts to draw out the scammer, Nigerian police eventually arrested the man in August as he attempted to collect a parcel containing the settlement documents.

The arrest comes as a welcome indication that the new identification regime is effective, whilst also acting as a reminder that agents, conveyancers and lawyers dealing with property transactions must remain vigilant.

Western Australian Police are investigating possible links between this and other attempted property scams in Western Australia.

Occupancy Permits – Information for owners and tenants

An occupancy permit is a permit issued under the *Building Act 2011* (WA) which specifies the authorised use and classification for a building, such as 'office' or 'retail'.

The legislation requires that the owner and occupiers of all buildings (except for single dwellings, sheds or pools etc.) completed after 2 April 2012 obtain occupancy permits before building spaces can be occupied and used.

Most buildings completed before 2 April 2012 will have a 'certificate of classification', which is an occupancy certificate issued under the old legislation.

Types of occupancy permits

The owner of a building may decide to have one occupancy permit for a whole building. This is generally done if the building is only used for one type of use, for example as offices. For most large buildings the owner may choose to obtain occupancy permits for different parts of the building, for example the ground floor retail premises and the upper floor offices. The owner may also obtain only occupancy permits for the common areas and leave it up to its tenants to obtain occupancy permits for each premises.

Change of use, fitout and renovations

Any renovations, fitout or minor building work completed after 2 April 2012 do not require a new occupancy permit to be obtained so long as the works do not involve a change of authorised use or classification. This means that an existing occupancy permit or certificate of classification can be relied upon for the purpose of occupancy. However, it is important to bear in mind that such works may still require a building permit.

If there is a change of use in one part of a building, with the use of the rest of the building remaining unchanged, then a new occupancy permit will need to be issued for the affected part of that building.

If new fit-out work is to be completed by a tenant, an occupancy permit will probably not be issued until the fit-out work is complete. Once the permit is granted for a particular use, only a change to the authorised use or classification for the premises would necessitate the need to apply for a new occupancy certificate.

REAL ESTATE MATTERS

What owners and tenants should look out for

If you are an owner or tenant, it is important to ensure that you have a copy of the occupancy permit for the building or your premises.

If you are building or moving to a new building, you may need to apply for a temporary occupancy permit when the fit out of your premises is complete so that you can commence trading. If you

are moving into an existing building you will need to consider whether your occupancy will mean that the building will have a different use or classification.

When considering fit-out works, renovations or moving into a building with an existing occupancy permit it is important to seek advice as to whether you will need to apply for a new occupancy permit or to alter your existing permit.

Darwin Update

The Darwin economy is going from strength to strength. The change in the sky-line is but one visible marker of the development of the town, as is the ever expanding suburban footprint and harbour projects visible on the horizon.

The key financial markers all point favourably to the Territory:

- the economy grew 4.4% in the last financial year, the second strongest growth in the country (after WA);
- the unemployment rate is one of the lowest in the country (after WA and ACT);
- the population growth rate is second only to WA; and
- the gross household income per capita is one of the highest in the country (after ACT and WA).

The effects of major gas projects are only just starting to be felt – but the full force of the INPEX Project, for instance, will not be felt for another couple of years. The key sectors of growth are in commercial construction and engineering (infrastructure

projects); both sectors grew by 29.1% and 33.1% from June 2012 to June 2013. These are positive signs, as is the fact that private business investment grew by a staggering 107% from June 2012 to June 2013.

As well as offshore projects, there are a very large number of onshore projects, with the recently announced deal between the Northern Territory's Power Water Corporation and Magellan Petroleum Corporation for the supply of up to 30 petajoules of gas for the domestic market. This deal underwrites the development of the Dingo Gas Field which is about 50 kilometres south of Alice Springs. The field was discovered in 1981 but was never fully developed, until now. This deal highlights the potential for new developments driven by market conditions.

It all points to exciting times and opportunities in the Top End of Australia.



REAL ESTATE MATTERS

Meet our team ...



Q&A with Fabio Fior (Of Counsel)

Practice Areas: Construction, Real Estate, Projects, Sourcing and Procurement

Q: What is the most interesting project you've worked on?

A: This would have to be the proposed development of the Canberra Technology City, which was a massive data centre development with an on-site gas co-generation facility. I acted for ActewAGL on the regulatory approvals, planning approvals and negotiations on the consortium construction of the facility. This project encountered huge, and very well organised and funded, community resistance to the gas fired power facility and considerable time was spent trying to deal with this. It taught me first-hand the power that minority interest groups can have.

Also, just before deciding to return to Darwin, I was the lead partner acting for the Australian Antarctic Division on the procurement of a new icebreaker to replace the Aurora Australis.

Q: How do you maintain your work-life balance?

A: We are a client service business and that is key – providing service to clients. However, I have always been a believer in finding the right balance.

I engage with my clients about realistic deadlines and expectations. If something is urgent, so be it, we work to meet the deadline together. But it's recognising that you can work flexibly too – and taking advantage of that ability. For me, with a young family it is very important to be there with them for dinner and bed time. However, when required, I'll switch on the laptop and do the urgent work afterwards.

Q: What's your favourite city in the world?

A: Castelfranco, in Veneto, Italy. It's a very small town where my Mum and Dad were born. It's a beautiful little town that originally started as a castled town – with the castle, complete with moat, still there as part of the city centre.

Q: If you weren't a lawyer, what would you be?

A: A developer. I like seeing things built and working on making that tangible, visible outcome.

Contacts



Carl Black
Partner
T +61 8 9429 7629
E carl.black@
squiresanders.com



Margie Tannock
Partner
T +61 8 9429 7456
E margie.tannock@
squiresanders.com



Mark Palermo
Senior Associate
T +61 8 9429 7557
E mark.palermo@
squiresanders.com



Lauren Barnett
Associate
T +61 8 9429 7530
E lauren.barnett@
squiresanders.com



Fabio Fior
Of Counsel
T +61 8 9249 7537
E fabio.fior@
squiresanders.com