

This fact sheet outlines the administrative and procedural matters associated with the introduction of subdivision by a leasehold scheme as provided for within the *Strata Titles Act 1985* (as amended) (the Act). This fact sheet should be read in conjunction with:

- Western Australian Planning Commission (WAPC) [Operational Policy 1.3 – Strata Titles](#);
- WAPC [Fact Sheet: Strata - Form 15 Applications](#).

## What is a leasehold scheme?

Leasehold schemes are a type of strata subdivision introduced as part of the 2018 Strata Titles Reform. Section 8 of the Act identifies two categories for strata titles schemes as follows:

- (a) a freehold scheme (strata/survey-strata, not to be confused with a freehold 'green title' subdivision plan) or
- (b) a leasehold scheme.

The key difference between a leasehold scheme and a freehold scheme is that a leasehold scheme has a fixed term of between 20 to 99 years. Importantly, on conclusion of the term of the leasehold scheme, all the lots within the scheme and the strata leases for each of the lots all expire on the expiry day.

A [leasehold scheme](#) can be either a leasehold (strata) scheme (building) or a leasehold (survey-strata) scheme (land).

When considering a leasehold scheme, the determining authority is to have regard to the same planning considerations and processes associated with a Form 15 strata application or a Form 1A survey-strata application.

## Who is the determining authority?

Under the *Planning and Development Act 2005*, leasehold schemes are determined by the WAPC in accordance with the notice of delegation.

The WAPC will consider if leasehold (strata) applications should be delegated to local government in due course.

## What is the process for a leasehold application?

### Application process

The process to be followed is the same as the existing process for strata and survey-strata subdivisions. All leasehold applications are submitted to the WAPC for assessment and determination. Applications will be referred to relevant local governments and service authorities to inform the decision and any conditions should they be applicable.

## Form 1A and Form 15A

An application for a leasehold (survey-strata) scheme is to be made to the determining authority using a Form 1A Application for Approval of Freehold, Survey-Strata or Leasehold (Survey-Strata) subdivision (Form 1A). For a leasehold (strata) scheme, an application is made using the Form 15A Application for Approval of a Strata Plan, Leasehold (Strata) Plan, (Form 15A).

The form and conformance checklist are available on the WAPC's [website](#).

The Form 15A application should be submitted at the earliest opportunity (i.e. when the building permit has been granted). This is to ensure that the determining authority has sufficient time to consider any planning matters that may arise as part of the strata assessment. It also facilitates sufficient time to address any conditions that may be imposed as part of the Form 15A application process, prior to commencing site works.

## Assessment

The determining authority has 90 days to determine a Form 1A application for a leasehold (survey-strata) application, or a leasehold (strata) application that includes a vacant lot, in accordance with section 16(2) of the Act.

The determining authority has 40 days to determine a Form 15A application for leasehold (strata), with the ability to extend this period if both the determining authority and applicant agree to the extension.

An assessment report and recommendation should be prepared by the determining authority taking into account relevant WAPC policies, local and region schemes, comments from referral agencies, and any other relevant planning matter(s).

When considering Form 15A applications, the determining authority should give primary consideration to the consistency of the proposed leasehold (strata) lots with the corresponding development and building approvals.

The determining authority may approve the Form 1A or Form 15A with conditions, and those conditions may be imposed as if the proposal was an application under the *Planning and Development Act 2005*. Any conditions imposed must adhere to the validity of conditions test in that they must:

- be imposed for a planning purpose
- fairly and reasonably relate to the development for which the permission is given
- be reasonable, that is, be a condition which a reasonable planning authority, properly advised, might impose.

Conditions on the approval should not, however, repeat or attempt to address conditions that were inadvertently missed through the development application process.

A planning (scheme by-laws) condition may be applied. This is a condition that requires leasehold (strata) title scheme by-laws to include a condition that provides that planning approval from the WAPC, or the relevant local government, is required prior to the amendment or repeal of a scheme by-laws.

In general, non-standard conditions are discouraged, when the circumstance and requirements are adequately covered by model subdivision conditions included in the Model Subdivision Conditions Schedule.

## Determination

The determining authority is to issue a determination using the letter formats provided on the WAPC website.

Form 1A approvals for plans creating five (5) lots or less are valid for three (3) years after the WAPC grants approval. Where more than five (5) lots are proposed to be created, the approval is valid for four (4) years.

All Form 15A approvals are valid for two (2) years from the date shown on the determination notice. No extensions can be granted and where an approval has expired, a new application is required to be made with the determining authority.

Any conditions placed on the approval (including conditions of the associated development approval) must be complied with by the applicant prior to the expiry day.

## Form 1C and Form 15C Application

An application for a certificate endorsing the leasehold plan is required to be submitted to the determining authority prior to the expiry date for the Form 1A or Form 15A approval notice. The application is to include the following information:

- scheme notice and scheme plan
- scheme by-laws made under a planning (scheme by-laws) condition

- any by-laws for the postponement of the leasehold expiry day;
- an occupancy permit or building approval certificate granted under the Building Act.

The application should not to be submitted to the determining authority unless all works associated with the development, building, and strata approvals have been undertaken, including compliance with the respective conditions. The application form (Form 1C or Form 15C) and associated conformance information (detailed) is provided on the WAPC [website](#).

## Certification/Endorsement

Upon receipt of the required documentation and conformance checks, the determining authority must issue a determination on the proposal within 30 days. The determining authority should undertake the necessary steps (i.e. site visits, condition compliance assessment, referrals etc.) to ensure the conditions of both the subdivision approval and the associated development approval (if applicable) have been adequately addressed.

The determination is required to be in the format provided on the WAPC website and will consist of:

- endorsement of the Strata Plan
- non-endorsement of the Strata Plan.

## Right of review

Section 27 of the Act provides a right to apply to the State Administrative Tribunal for a review of a determination to refuse an application, or to impose conditions on the approval.

An application for review must be made within 28 days after which the determining authority issues a notice of determination, or after expiration of the prescribed period (90 days for leasehold survey-strata or vacant strata (leasehold) and 40 days for leasehold (strata)).

## Application Fees

Application fees for approval of the leasehold scheme and the certificate endorsing the leasehold plan are provided on the WAPC [website](#).

The fee for leasehold (strata) is all encapsulating and is required to be submitted at the Form 15A stage.

## Is a title issued for each leasehold lot?

For a leasehold scheme there is a separate title for the parcel (parent lot) and the owner of the leasehold scheme is the registered proprietor.

Each lot in a leasehold scheme receives a title, excluding common property.

## When does a leasehold scheme expire?

A leasehold scheme expires on a specified day (the expiry day for the scheme) being a minimum of 20 years, but not more than 99 years after registration of the scheme.

Through the leasehold by-laws, provision may be made for the postponement of the expiry day, however the period cannot exceed 99 years from the initial date of registration of the scheme.

A leasehold scheme can also be terminated where a termination proposal is presented.

## Postponement of expiry day for leasehold scheme:

Approval from the WAPC is required for the making, amendment or repeal of leasehold by-laws providing for the postponement of the expiry day for the scheme.

If a leasehold scheme does not have leasehold by-laws that provides for the postponement of the expiry day for the scheme, it cannot be postponed.

## Expiry of a leasehold scheme:

At least six months prior to the expiry of the scheme, the owner of the leasehold is to lodge a notice with the Registrar of Titles of the impending expiry. The expiry day for the scheme is to be noted on the scheme notice which is lodged with the Registrar of Titles.

A notice of expiry of a leasehold scheme must be made to the Registrar of Titles in accordance with section 193 of the Act and is to be accompanied by the diagram or survey endorsed with approval by the WAPC.

On the expiry or termination of a leasehold scheme the land will revert back to a freehold parcel.

## Further information

For further information on general matters set out in this fact sheet contact the Department of Planning, Lands and Heritage's land use planning teams at [info@dplh.wa.gov.au](mailto:info@dplh.wa.gov.au) or for specific proposals contact your relevant local government.

## Disclaimer

This fact sheet is intended as a guide only. It is not intended to be comprehensive or to cover particular circumstances.

Readers are advised to refer to the legislation, which is available on the Department of Justice, Parliamentary Counsel's Office [website](#), and to seek professional legal advice if they have specific legal questions in relation to their particular circumstances.