



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 21**

**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

***STRATA TITLES GENERAL AMENDMENT  
REGULATIONS (No. 4) 2006***

Presented by Mr Paul Andrews MLA (Chairman)

and

Hon Ray Halligan MLC (Deputy Chairman)

November 2006

# JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

## Date first appointed:

28 June 2001

## Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

### “3. Joint Standing Committee on Delegated Legislation

3.1 A *Joint Delegated Legislation Committee* is established.

3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.

3.3 A quorum is 4 Members of whom at least 1 is a Member of the Council and 1 a Member of the Assembly.

3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.

3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.

3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –

- (a) is authorized or contemplated by the empowering enactment;
- (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
- (c) ousts or modifies the rules of fairness;
- (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
- (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
- (f) contains provisions that, for any reason, would be more appropriately contained in an Act.

3.7 In this clause –

“adverse effect” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;

“instrument” means –

- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

“subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

## Members as at the time of this inquiry:

Mr Paul Andrews MLA (Chairman)

Dr Graham Jacobs MLA

Hon Ray Halligan MLC (Deputy Chairman)

Ms Jaye Radisich MLA

Hon Shelley Archer MLC

Hon Barbara Scott MLC

Hon Vincent Catania MLC

Mr Tony Simpson MLA

## Staff as at the time of this inquiry:

Kerry-Jayne Braat, Committee Clerk

Anne Turner, Advisory Officer (Legal)

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## REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### IN RELATION TO THE

#### *STRATA TITLES GENERAL AMENDMENT REGULATIONS (No. 4) 2006*

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## **1 BACKGROUND**

- 1.1 The *Strata Titles General Amendment Regulations (No. 4) 2006* (“**the Amendments**”), made pursuant to section 130 of the *Strata Titles Act 1985* (“**the Act**”), repeal Item 3 of Schedule 1 of the *Strata Titles General Regulations 1996* and replace it with a new fee structure.
- 1.2 The Amendments replace the former sliding scale method for calculating the application fee for a certificate of approval for a strata development under section 25(3) of the Act, where increments in fees occur in lot ‘blocks’ (see **Appendix 1**), with a method based on a fixed rate application fee of \$500 plus an additional fixed lot fee of \$50 for each lot of a strata development (see **Appendix 2**).
- 1.3 The Explanatory Memorandum accompanying the Amendments advised that the increase in application fees was to achieve recovery of the cost of providing the service associated with the application process.<sup>1</sup>
- 1.4 The Committee considered the Amendments at its meeting on Wednesday, 25 October 2006.

## **2 COMMITTEE’S CONCERNS**

- 2.1 The Committee was concerned at the significant fee increase which, on the information provided, appeared to go beyond cost recovery. For example:
  - the cost of providing the service of approving application fees for two lot strata developments was \$766.28. The new fee scale increased cost recovery from 25% to 78% by increasing the fee from \$195 to \$600; and
  - the average cost of providing the service of approving application fees for 30 or more lot strata developments was \$1,371. The new scale increased cost recovery from the provision of this service (for 100 lot developments) from 124% to 401% by increasing fees from \$1,705 to \$5,500.

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<sup>1</sup> Explanatory Memorandum to the *Strata Title General Amendment Regulations (No. 4) 2006* , 7 September 2006, p1.

- 2.2 This raised a question as to whether the fees were, in fact, a tax. The Committee noted that the Act did not authorise the imposition of a tax.
- 2.3 The Committee raised its concerns with the Department of Land Information (“**the Department**”) by letter dated 25 October 2006 (see **Appendix 3**).
- 2.4 The Department’s response, dated 10 November 2006 (see **Appendix 4**), was considered by the Committee at its meeting on Wednesday, 15 November 2006.
- 2.5 That response raised further issues for the Committee, which are set out in its letter of 15 November 2006 to the Acting Auditor General requesting him to undertake an audit of the cost recovery model on which the relevant fees are based (see **Appendix 5**).
- 2.6 On 16 November 2006, the Committee also wrote to the Department, and the Western Australian Planning Commission (“**the WAPC**”), notifying those bodies of its request of the Acting Auditor General (see **Appendix 6**).
- 2.7 The WAPC responded to the Committee, providing further information in its letter dated 21 November 2006 (see **Appendix 7**).
- 2.8 On 17 November 2006, the Acting Auditor General advised the Committee that he was unable to undertake the requested audit (see **Appendix 8**).

### **3 DECISION TO TABLE INFORMATION REPORT**

- 3.1 The Committee considered the Acting Auditor General’s letter, and the letter from the WAPC, at its meeting on Wednesday, 22 November 2006, when it resolved to refer its concerns to the Minister for Land Information for her response.
- 3.2 The issues arising in respect of the Amendments are issues of longstanding concern to the Committee.
- 3.3 However, the Committee was not of the view, on the information available to it on 22 November 2006, that it was appropriate to proceed with its motion of disallowance. Accordingly, the Committee resolved to remove its notice of motion of disallowance in order to provide the Minister for Land Information an opportunity to respond to its concerns.

- 3.4 The Committee further resolved to table this information report to Parliament to notify Members of the issues arising.



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**Mr Paul Andrews MLA**  
**Chairman**

**29 November 2006**





# APPENDIX 1

## SCHEDULE 1 FEES

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**Strata Titles General Regulations 1996**  
**Fees Schedule 1**

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- 3 The fees payable to the Commission on an application under section 25(3) for a certificate of approval under section 25 are to be in accordance with the following scale —

<b>Scale</b>	
<b>Number of allotments</b>	<b>Fee (\$)</b>
1	160
2	195
3	215

**Strata Titles General Regulations 1996**  
**Schedule 1     Fees**

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Number of allotments	Fee (\$)
4	255
5	295
6-10	350
11-15	400
16-20	465
21-25	530
26-30	610
31-35	685
36-40	765
41-45	840
46-50	920
51-55	985
56-60	1 075
61-65	1 155
66-70	1 230
71-75	1 300
76-80	1 390
81-85	1 455
86-90	1 545
91-95	1 610
96-100	1 705
101-125	1 785
126-150	1 895
151-175	1 980
176-200	2 075
201-225	2 235
226-250	2 515
251-300	2 995
Over 300	3 520

# APPENDIX 2

## STRATA TITLES GENERAL AMENDMENT REGULATIONS (No. 4) 2006

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Page 1

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Strata Titles Act 1985

### Strata Titles General Amendment Regulations (No. 4) 2006

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Strata Titles General Amendment Regulations (No. 4) 2006*.

**2. Commencement**

These regulations come into operation on 4 September 2006 or on the first Monday after the day on which they are published in the *Gazette*, whichever is the later.

**3. The regulations amended**

The amendments in these regulations are to the *Strata Titles General Regulations 1996*\*.

[\* Reprinted as at 21 April 2006.

For amendments to 21 August 2006 see *Gazette* 7 July 2006.]

**4. Schedule 1 amended**

Schedule 1 is amended by deleting item 3 and inserting instead —

“

3. The fees payable to the Commission on an application under section 25(3) for a certificate of approval under section 25 are an amount of \$500 plus a further amount of \$50 per lot.

”

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

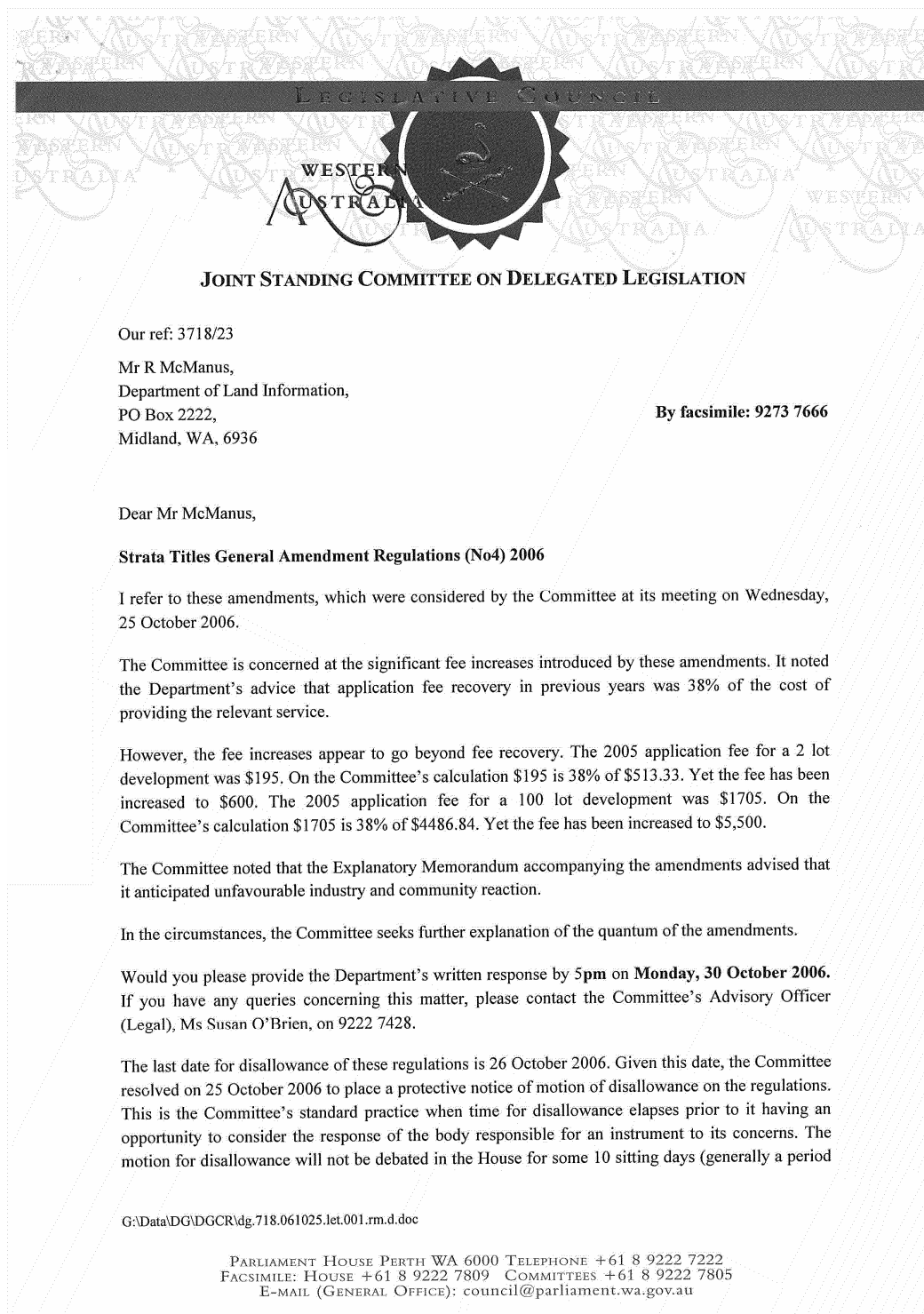
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# APPENDIX 3

## LETTER TO DEPARTMENT OF LAND INFORMATION

### 25 OCTOBER 2006



#### JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Our ref: 3718/23

Mr R McManus,  
Department of Land Information,  
PO Box 2222,  
Midland, WA, 6936

By facsimile: 9273 7666

Dear Mr McManus,

#### Strata Titles General Amendment Regulations (No4) 2006

I refer to these amendments, which were considered by the Committee at its meeting on Wednesday, 25 October 2006.

The Committee is concerned at the significant fee increases introduced by these amendments. It noted the Department's advice that application fee recovery in previous years was 38% of the cost of providing the relevant service.

However, the fee increases appear to go beyond fee recovery. The 2005 application fee for a 2 lot development was \$195. On the Committee's calculation \$195 is 38% of \$513.33. Yet the fee has been increased to \$600. The 2005 application fee for a 100 lot development was \$1705. On the Committee's calculation \$1705 is 38% of \$4486.84. Yet the fee has been increased to \$5,500.

The Committee noted that the Explanatory Memorandum accompanying the amendments advised that it anticipated unfavourable industry and community reaction.

In the circumstances, the Committee seeks further explanation of the quantum of the amendments.

Would you please provide the Department's written response by 5pm on **Monday, 30 October 2006**. If you have any queries concerning this matter, please contact the Committee's Advisory Officer (Legal), Ms Susan O'Brien, on 9222 7428.

The last date for disallowance of these regulations is 26 October 2006. Given this date, the Committee resolved on 25 October 2006 to place a protective notice of motion of disallowance on the regulations. This is the Committee's standard practice when time for disallowance elapses prior to it having an opportunity to consider the response of the body responsible for an instrument to its concerns. The motion for disallowance will not be debated in the House for some 10 sitting days (generally a period

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of some 2 months). In the event the Committee's concerns are addressed in the interim, the motion will be withdrawn.

Yours sincerely



Paul Andrews MLA

Chairman

25 October 2006

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# APPENDIX 4

## LETTER FROM DEPARTMENT OF LAND INFORMATION

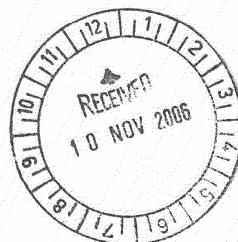
### 10 NOVEMBER 2006



Department of Land Information  
Government of Western Australia

Office of the Chief Executive

**PUBLIC**



Mr Paul Andrews, MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Parliament House  
PERTH 6000

Dear Mr Andrews

#### **STRATA TITLES GENERAL AMENDMENT REGULATIONS (No.4) 2006**

I refer to the letter dated 25 October 2006 from the Joint Standing Committee on Delegated Legislation (the Committee) regarding the protective notice of motion of disallowance on the Department of Land Information's (DLI) *Strata Titles General Amendment Regulations (No. 4) 2006* (the Amendment Regulations). The Committee has concerns regarding the calculation of costs for determining the fees for services pursuant to the Amendment Regulations.

DLI administers the *Strata Titles Act 1985* (the Act) and processes amendments to regulated fees covered by that Act. This includes submitting amendment regulations on behalf of the Western Australian Planning Commission (the Commission) under Section 25 and 25(3) of the Act. These sections allow and authorise the Commission to set and collect fees for an application for the certificate of approval for a strata development.

The Commission has sole responsibility for the level of fees and any related arguments in supporting documentation. DLI only provides an administrative conduit, to allow for any necessary regulation amendments, by the Commission, as covered by the Act.

Accordingly, I attach a response prepared by the Commission in replying to your concerns regarding the Amending Regulations.

I trust that the information provided satisfactorily addresses your queries. If you have any further queries, please contact Mr Roy McManus at DLI (facsimile 9273 7682), or Ms Robyn Barrow at the Commission (facsimile 9264 7720).

Yours sincerely

Grahame Searle  
**CHIEF EXECUTIVE**

10 November 2006

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Department for Planning  
and Infrastructure

**Report to Joint Standing  
Committee on Delegated  
Legislation**

Disallowance of Strata Fees (Strata Titles  
General Amendment Regulations (No.4) 2006

November 2006

Final



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## Executive Summary

This report addresses the letter dated 25 October 2006 from the Joint Standing Committee on Delegated Legislation (the Committee) regarding the calculation of costs for determining the fees for services pursuant to the Strata Titles General Amendment Regulations (No. 4) 2006 (the Amendment Regulations).

The Amendment Regulations included increases in the fees payable to the Western Australian Planning Commission (WAPC) with respect to the application fees (Form 24 applications) payable under Section 25 of the Strata Titles Act 1985 (STA). Form 24 applications create Strata titles that apply to a portion or part of a building.

This report provides the Committee with an explanation of the WAPC's cost recovery model and a further explanation on the quantum of the amendment. The Committee's concerns relate to an apparent over recovery in recently gazetted fees payable for applications made under Section 25 of the STA.

In 2005 the WAPC commissioned external consultants to develop a cost recovery model to provide the basis for progression toward full cost recovery. The study demonstrated that across all fees payable to the WAPC the recovery rate was estimated at 39%. In addition to Form 24, the fees that are payable to the WAPC include:

- Application for Approval of Freehold or Survey-Strata Subdivision (Form 1A);
- Application for Endorsement of Deposited Plan, Survey-Strata Plan or Strata Plan (Form 1C);
- Freehold or Survey-Strata Subdivision Amended Plan Application (Form 2A);
- Request for Reconsideration of WAPC Decision (Form 3A);
- Clause 42 and 47 Certificates;
- Application for Proposed Lease/Licence (Form 1B); and
- Application for Endorsement of an Executed Lease/Licence (Form 1D).

More specifically, the application fee payable for a 2 lot Strata application in 2005 was \$195. The cost recovery study concluded that the average cost of providing this service was \$766.28 for applications proposing between one to five lots. Based on this finding the \$195 fee recovered just over 25% of costs. The recent amendment takes the fee for the same proposal to \$600. For this category of application the recovery rate under the new fee structure is 78% of cost.

Similarly, the application fee for a 100 lot Strata application in 2005 was \$1,705. The study concluded that the average cost of providing this service was \$1,371 for applications proposing 30 lots or more. The recent amendment takes the fee for the same proposal to \$5,500 or 401% recovery rate compared to the average cost in this category. It should be noted that there is a large lot variance within this category and the recovery rate is in comparison to an average of these costs.

**Overall, the model reflects, under the recommended fee structure, the recovery rate of fees payable for (Form24) applications across all lot categories as being 92.7% in 2006/07.**

## Introduction

There are three common forms of title that occur in residential development in Western Australia:

- freehold;
- survey-strata title; and
- strata title.

The subdivision of green title and survey-strata land requires the approval of the WAPC. Strata titles that apply to a portion of a building or part or the whole of a building, together with appurtenant land, require approval of the local planning authority, or, in the case of larger or specific types of strata, of the WAPC.

Strata (also commonly referred to as "built" strata or "vacant" strata) has the meaning given to it under sections 4(1a) and 5 of the STA, and describes the boundaries of strata lots (or parts of a lot) as being fixed by reference to an existing building or part of a building.

The delivery of land use planning outcomes is enabled by two separate Acts, the *Planning and Development Act 2005 (PDA)* and associated regulations, and the STA and associated regulations. The WAPC is responsible for administering the PDA. The Department of Land Information is responsible for administering the STA. Certain functional aspects of the STA and its regulations are carried out by other agencies.

In particular, applications for a certificate of approval issued under Sections 25 and 25(3) of the STA for lodging a strata plan, plan of re-subdivision or consolidation (commonly known as Form 24<sup>1</sup>) are administered jointly by the Statutory Planning Division (the Division) of the Department for Planning and Infrastructure (DPI) and the WAPC. Schedule 1, Item 3 of the Principal Regulations stipulates the Section 25 application fees (the application fees) payable to the WAPC. Whilst DLI prepares all amendments to the *Strata Titles General Regulations 1996* (the Principal Regulations), the WAPC recommends and collects all fees with respect to Form 24 applications for Strata title.

The WAPC recommends fees in accordance with the *Financial Administration and Audit Act* and conducts an annual review of its fees and charges. Historically, the reviews have been limited to Consumer Price Index (CPI) increases. Appendix 3 sets out historical fees for applications for a strata plan, plan of re-subdivision or consolidation (Form 24)<sup>2</sup>.

## Cost Recovery Strategy

In 2005 the WAPC engaged the services of Ernst and Young to independently review its fees and charges for 2006/07 (including Form 24). The review demonstrated that overall revenue from fees was significantly under-recovering the cost of providing those services (estimated at 39% recovery in 2005/06). A cost recovery model was developed by Pracsys under subcontract to Ernst & Young which has provided the basis for a progression towards full cost recovery in 2006/07.

<sup>1</sup> Appendix 1

<sup>2</sup> Source - Fees and Charges Review 2006\_2006 Final Submission & Western Australian Planning Commission 2005/06 Budget Submission

The model was based on the Department for Treasury and Finance "Costing and Pricing Governments Outputs - Guidelines for use by Agencies". The model estimates the costs that can be directly and indirectly attributed to each product for which the WAPC recommends a fee (including Form 24 Applications).

The model reflects costs on an aggregate analysis of information available at the time of consultation. The methodology used for the current model is an input-based methodology which utilises a ground-up estimation of the costs. The basis of this model is the assessment of the time required by individuals to perform each activity associated with a particular product (such as Form 24) as defined in the model.

## Cost Recovery Model

The Pracsys model defines four (4) key activities for the basis of calculating labour hours. These key activities are defined as:

- GIS (Geographical Information System) - Capture of applications in the corporate GIS system which locates the application on the Cadastre and identifies relevant referral agencies;
- PO (Planning Officer) Assessment - Assessment of the application by suitably qualified Planning Officers of the Division. Assessment of subdivision applications (including Strata) is undertaken in accordance with the applicable legislation and WAPC policies; and
- DAUT (Delegated Authority) - Assessment by the relevant team leader who determines (approves or refuses) most applications on behalf of the WAPC under instruments of delegated authority.

The model estimates that the time effort required in the Division for applications for strata development (Form 24) is on average 55% of the effort required to assess an application for Approval of Freehold or Survey-Strata Subdivision (Form1A)<sup>3</sup>. This assumption is based from interviews with a staff member.

24		Labour estimate			Labour (Hrs) / Application			Labour Rate	
Built/Vacant Strata		Activity	Level		1-5 Lot	6-30 Lot	Over 30 Lot	03-04 Rate	
		GIS	2		0.1	0.1	0.1	\$	44.90
		PO Assessment	2-4		3.025	5.775	0	\$	49.81
		PO Assessment	5		2.475	3.85	11.55	\$	64.66
		DAUT	7		1.1	2.2	1.375	\$	86.31
		<b>Total</b>			<b>6.7</b>	<b>11.925</b>	<b>13.025</b>		

Table 1 - Labour Estimates Form 24

Table 1 above illustrates the estimated effort in hours to conduct each activity at the appropriate salary level per application. As an example, an application proposing between 1 and 5 lots/buildings requires on average 6.7 labour hours. Labour (Hrs) at each level is multiplied by the (hourly) labour rate to arrive at a labour cost of \$410 as illustrated below.

<sup>3</sup> Source: Financial Modelling Statutory Planning Final May 2004

24		Labour estimate	Labour (Hrs)	Labour Rate	Cost
Built/Vacant Strata	Activity	Level	1-5 Lot	03-04 Rate	03-04 Rate
	GIS	2	0.1	\$ 44.90	\$ 4.49
	PO Assessment	2-4	3.025	\$ 49.81	\$ 150.67
	PO Assessment	5	2.475	\$ 64.66	\$ 160.04
	DAUT	7	1.1	\$ 86.31	\$ 94.94
		Total	6.7	245.7	410.1

Table 2 Labour Rate by Activity Form 24

The direct labour cost of \$410.10 as identified by the model was the cost per application in 2003/2004. This cost is then scaled each year by actual and projected salary increases.

FY salary plus on-costs		Salary increase
2003-04		
2004-05		3.73%
2005-06		3.57%
2006-07		3.5%
2007-08		3.5%
2008-09		3.5%

Summary		2004-05			2005-06			2006-07	
Lots		Apps	Hours	Cost per app	Apps	Hours	Cost per app	Hours	Cost per app
1-5 Lot		142	951	\$ 425.45	142	951	\$ 440.62	951	\$ 456.04
6-30 Lot		180	2147	\$ 758.24	180	2147	\$ 785.28	2147	\$ 812.76
Over 30 Lot		29	378	\$ 902.48	29	378	\$ 934.67	378	\$ 967.38
Total		351	3476		351	3476		3476	

Subdivision process %	4.3%	5.1%	5.3%
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Diagram 1 - Scaled rate across (by salary increase) across financial years<sup>4</sup>

The model then identifies the total hours consumed per annum by multiplying the total number of applications received (Apps) by the average labour (Hours) in each lot category to arrive at a total of 3,476 hours in 2006/07. The model assumes nil growth in the number of Form 24 applications received and so multiplies 6.7 labour hours by 142 applications in the 1 to 5 lots category, 11.925 labour hours by 180 applications in the 6 to 30 lot category, and 13.025 labour hours by 29 applications in the over 30 lot category.

<sup>4</sup> The Salary increase rates were projected from information available at the time of consultation. Subsequently, salary rate increases of 4.5% and 4% were ratified for 2006/07 and 2007/08 respectively.

The total hours consumed by Form 24 applications in 2006/07 (3,476 hours) represents 5.3% of the total hours consumed for all subdivision applications received by the WAPC. This rate is then applied to a head count of personnel (as per the corporate structure) at each level and defined as the equivalent FTE rate.

24 Level	2004-05		2005-06		2006-07	
	4.3% FTE	of total effort Cost	5.1% FTE	of total effort Cost	5.3% FTE	of total effort Cost
2	0.35	\$ 32,396	0.42	\$ 40,099	0.43	\$ 43,181
2-4	0.86	\$ 59,446	1.03	\$ 73,582	1.07	\$ 79,237
5	0.36	\$ 38,326	0.43	\$ 47,439	0.45	\$ 51,085
6	0.03	\$ 4,154	0.04	\$ 5,141	0.04	\$ 5,537
7	0.13	\$ 18,141	0.15	\$ 22,455	0.16	\$ 24,180
<b>Total</b>	<b>1.73</b>	<b>\$ 152,463</b>	<b>2.07</b>	<b>\$ 188,716</b>	<b>2.16</b>	<b>\$ 203,221</b>

Table 3 - Equivalent FTE vs Cost per Activity Form 24

Accordingly, the total hours consumed at the equivalent FTE rate (in this case 5.3%) represents the total direct labour cost. For the Form 24 in 2006/07 the model calculates this to be 2.16 FTE or \$203,221 of labour cost within the Division.

Other direct labour costs from related areas within the DPI (Mapping and Geospatial Services, Contracts and Central Services, Secretariat, and Records Management) are calculated using the same method as described above.

Indirect costs include a portion of other activities relating to subdivision (such as Information Technology development, Schemes, Policy and Structure Plans). The Total Cost is the sum of all direct and indirect costs. In 2006/07, the total cost for a 1 to 5 lot strata development equals \$766.28.

24

		2005/06	
Base Fee		Ave per app	
1 to 5		219.79	
6 to 30		396.61	
30 +		1096.38	

	2006/07	2007/08	2008/09	
<b>Total Cost</b>				
1 to 5	766.28	786.21	807.25	
6 to 30	1265.94	1303.36	1342.50	
30 +	1371.14	1412.24	1455.18	
<b>Annual increase required</b>				
1 to 5	546.49	248.65%	19.93	2.60%
6 to 30	869.33	219.19%	37.42	2.96%
30 +	274.76	25.06%	41.10	3.00%
New structure				
\$500 base plus				
per lot 1 to 5	\$50	per lot 1 to 5	\$50	\$50
per lot 6 to 30	\$50	per lot 6 to 30	\$50	\$50
per lot 30 plus	\$50	per lot 30 plus	\$50	\$50

	2006/07		2007/08		2008/09	
<b>Surplus/deficit</b>	Ave per app	Subtotal	Ave per app	Subtotal	Ave per app	Subtotal
1 to 5	-\$243.40	-\$34,562.15	-\$263.33	-\$37,392.49	-\$284.36	-\$40,379.57
6 to 30	-\$249.56	-\$44,919.98	-\$266.98	-\$51,655.60	-\$326.11	-\$58,700.09
30 +	\$1,787.48	\$51,837.05	\$1,746.38	\$50,645.10	\$1,703.44	\$49,399.64
<b>Total</b>	<b>-\$76.76</b>	<b>-\$27,645.08</b>	<b>-\$109.41</b>	<b>-\$38,402.99</b>	<b>-\$141.54</b>	<b>-\$49,680.02</b>

<b>Cost Recovery</b>			
1 to 5	68.2%	66.5%	64.8%
6 to 30	80.3%	78.0%	75.7%
30 +	230.4%	223.7%	217.1%
<b>Total</b>	<b>92.7%</b>	<b>90.1%</b>	<b>87.5%</b>

Table 4 - Cost Recovery Summary Form 24

The base fee (2005/06) represents the average fee payable for an application within each applicable lot category. The annual increase required shows the variance between the base fee and the total cost in each lot category, and includes the percentage increase required to achieve cost recovery within that category.

## New Fee Structure

The new fee structure as recommended by Ernst and Young is represented in table 4 above (Surplus/Deficit and Cost Recovery). The recommended structure for a Form 24 application fee is a base rate of \$500 plus a per lot fee of \$50. Under this fee structure a 2 lot Strata application fee is \$600 (in comparison to \$195 in 2005).

The new fee structure takes the total cost recovery of Form 24 applications to 92.7% in 2006/07, and assuming a nil trend, to 90.1% in 2007/08 and to 87.5% in 2008/09. The fees and charges structure as recommended by Ernst and Young was approved by Cabinet on 19 April 2006.

As the new fees from 2006/07 are based on a cost recovery model, they are significantly different in structure and scale to previous CPI based increases.

## Consultation

WAPC fees are typically adjusted annually for inflation. The WAPC understands industry sensitivity to fee adjustments and industry concerns about the costs and timeliness of the application process. As part of the consultation process, the WAPC briefed and provided written communication to almost 500 industry groups, large property developers and local government authorities regarding the regulation amendments.

Industry groups included the Urban Development Institute of Australia, the Property Council of Australia (WA Division), the Institute of Spatial Sciences, the Planning Institute of Australia (WA) and the Housing Industry Association.

There was no adverse reaction, with the revised fee structure being generally well accepted by planning and associated industry groups.

## Appendix 1 - Form 24

### Form 24

Strata Titles Act 1985

Section 25(3)

Application to Western Australian Planning Commission for  
Certificate of Approval for a strata plan, plan of re-subdivision or consolidation

**Lodge at:**

Department for Planning and Infrastructure  
Albert Facey House  
469-489 Wellington Street  
PERTH WA 6000

\* Delete whichever does not apply

1. *City/Town/Shire of	<input type="text"/>
2. Name(s) of owner(s):	
Surname/Company Name	<input type="text"/>
Other Names (Mr/Ms/Mrs/Miss/Dr)	<input type="text"/>
Surname/Company Name	<input type="text"/>
Other Names (Mr/Ms/Mrs/Miss/Dr)	<input type="text"/>
Surname/Company Name	<input type="text"/>
Other Names (Mr/Ms/Mrs/Miss/Dr)	<input type="text"/>
3. Address in full	<input type="text"/>
4. Applicant's name in full (if owner, put "Self")	<input type="text"/>
5. Address for correspondence	<input type="text"/>
Telephone	<input type="text"/>
6. Indicate which of the following this application refers to:	
strata plan	Yes / No*
plan of re-subdivision for a strata scheme	Yes / No*
plan of consolidation for a strata scheme	Yes / No*
(referred to in this form as "the plan")	
7. Locality of property the subject of the plan (street, nearest street junction, suburb etc)	<input type="text"/>
8. Title particulars: *whole/part lot(s)	<input type="text"/>
Location(s)	<input type="text"/>
Deposited plan(s)	<input type="text"/>
Certificate(s) of Title	
Vol <input type="text"/> Folio <input type="text"/>	Vol <input type="text"/> Folio <input type="text"/>
Vol <input type="text"/> Folio <input type="text"/>	Vol <input type="text"/> Folio <input type="text"/>

Final November 2006

Page 9 of 11



9. State the number of lots and specify the lot number(s) on the plan that have, or are proposed to have, the following purposes—

Purpose or proposed purpose	Number of lots	Lot Number(s)
Residential		
Rural		
Industrial		
Commercial		
Retirement Village		
Other (please specify)		

10. State details of any restrictions to be placed on any lots on the plan

11. (a) Are there any existing buildings which form part of the strata scheme or proposed strata scheme the subject of the plan? If so, please specify

(b) Are there any proposed buildings approved for construction by the local government which will form a part of the proposed strata scheme the subject of the plan? If so, please specify

12. Is it proposed to create a vacant strata lot by registration of the plan?

Yes / No\* If yes, how many?

Signature(s) of owner(s)

Date

Date

(If signing on behalf of a company)

Date

Director/Secretary\*

Date

Director/Secretary\*

#### Notes

1. The following documents are to be attached to this application —

- in the case of a plan in respect of a building that is constructed or proposed to be modified or constructed, 2 copies of the plan, showing full particulars of the division of the property into lots or proposed lots;
- in the case of a plan in respect of any vacant strata lot, 6 copies of the plan, showing full particulars of the division of the property into lots or proposed lots;
- a sketch of all buildings that are constructed or proposed to be modified or constructed showing the location of water and sewerage pipes within the property; and
- evidence of any approval by the local government to the proposed modification of a building or to the construction of any proposed buildings.

2. A person who wishes to apply to the State Administrative Tribunal for a review of a decision of the Western Australian Planning Commission may do so under section 27 of the *Strata Titles Act 1985*.

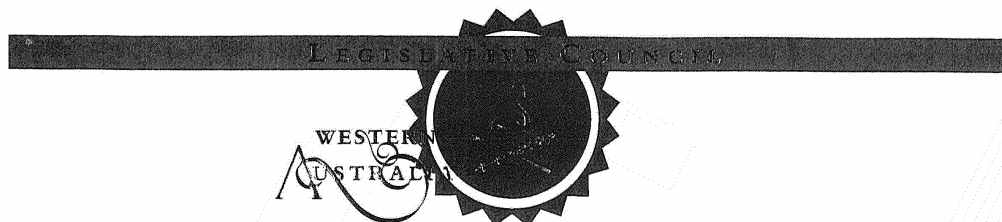
## Appendix 2 - Form 24 Historical Fees and Charges

Number of Lots	Application Fee 2002/2003	Application Fee 2003/04	% Inc/Dec	Application Fee 2004/05	% Inc/Dec	Application Fee 2005/06	% Inc/Dec
1	132	145	10%	150	3%	160	7%
2	165	175	6%	185	6%	195	5%
3	180	190	6%	200	5%	215	8%
4	215	230	7%	240	4%	255	6%
5	250	265	6%	280	6%	295	5%
6-10	295	315	7%	330	5%	350	6%
11-15	335	355	6%	375	6%	400	7%
16-20	390	415	6%	440	6%	465	6%
21-25	445	475	7%	500	5%	530	6%
26-30	515	545	6%	580	6%	610	5%
31-35	575	610	6%	645	6%	685	6%
36-40	645	685	6%	725	6%	765	6%
41-45	705	750	6%	790	5%	840	6%
46-50	775	825	6%	870	5%	920	6%
51-55	830	880	6%	930	6%	985	6%
56-60	905	960	6%	1,015	6%	1,075	6%
61-65	970	1,030	6%	1,090	6%	1,155	6%
66-70	1,035	1,100	6%	1,165	6%	1,230	6%
71-75	1,095	1,165	6%	1,230	6%	1,300	6%
76-80	1,170	1,245	6%	1,315	6%	1,390	6%
81-85	1,225	1,300	6%	1,375	6%	1,455	6%
86-90	1,300	1,380	6%	1,460	6%	1,545	6%
91-95	1,355	1,440	6%	1,525	6%	1,610	6%
96-100	1,435	1,525	6%	1,610	6%	1,705	6%
101-125	1,500	1,595	6%	1,685	6%	1,785	6%
126-150	1,595	1,695	6%	1,790	6%	1,895	6%
151-175	1,665	1,770	6%	1,870	6%	1,980	6%
176-200	1,745	1,855	6%	1,960	6%	2,075	6%
201-225	1,880	2,000	6%	2,115	6%	2,235	6%
226-250	2,115	2,250	6%	2,375	6%	2,515	6%
251-300	2,520	2,680	6%	2,830	6%	2,995	6%
Over 300	2,960	3,145	6%	3,325	6%	3,520	6%

## APPENDIX 5

### LETTER TO ACTING AUDITOR GENERAL 15 NOVEMBER 2006

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#### JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Our ref: 3718/23

Mr C Murphy,  
Acting Auditor General,  
Office of Auditor General,  
4<sup>th</sup> Floor, Dumas House,  
2 Havelock Street,  
West Perth, WA, 6005

By courier

Dear Acting Auditor General,

#### Strata Titles General Amendment Regulations (No 4) 2006

I refer to these amendments, which introduce a new scale of fees payable to the Western Australian Planning Commission ("the WAPC") for submitting an application for a certificate of approval for a strata title development under s 25 of the *Strata Titles Act 1985*. The *Strata Titles General Regulations 1996* previously provided a 'sliding scale' for fees, with increment brackets. The amendments provide a fixed rate application fee plus an additional fixed fee for each lot in a development.

The Committee seeks your assistance in determining whether the application fees represent cost recovery for provision of the relevant services or whether they represent cost recovery for the relevant Department, or WAPC, operating costs as a whole.

The Committee first considered these amendments at its meeting on 25 October 2006, when it was concerned by advice in the accompanying Explanatory Memorandum that revenue from application fees for 2005/6 represented 38% cost recovery yet application fees had been increased by some 323%.

The Committee wrote to the Department of Land Information on 25 October 2006 expressing its concern that fees appeared to have been increased beyond what was necessary to achieve full cost recovery. It received a response from that Department on 10 November 2006, enclosing a report prepared by WAPC to justify the fee increase. That report advised that:

- external consultants had been commissioned to "*develop a cost recovery model to provide a basis for progression toward full cost recovery*";
- "*across all fees payable to the Western Australian Planning Commission the recovery rate was estimated at 39%*";

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PARLIAMENT HOUSE PERTH WA 6000 TELEPHONE +61 8 9222 7222  
FACSIMILE: HOUSE +61 8 9222 7809 COMMITTEES +61 8 9222 7805  
E-MAIL (GENERAL OFFICE): council@parliament.wa.gov.au

- the average cost of providing the service of approving application fees for 1-5 lot strata developments was \$766.28. The new fee scale took cost recovery from 25% to 78%;
- the average cost of providing the service of approving application fees for 30 or more lot strata developments was \$1,371. The new scale took the provision of this service from \$1,705 to \$5,500 (for 100 lot developments) resulting in 401% cost recovery; and
- overall, the new fees took cost recovery across all categories of lots to 92.7%.

I have enclosed copies of:

- this amendment;
- relevant sections of the *Strata Titles Act 1985*;
- relevant regulations in the *Strata Titles General Regulations 1996* as they were prior to this amendment; and
- correspondence between the Committee and the Department, including the report from WAPC.

As you will observe, the WAPC's calculations as to cost recovery are very much based on hourly labour.

As you are aware, the Committee has a longstanding concern as to whether inefficient practices are built into cost recovery models. This raises questions of public accountability and, if occurring, militates against introduction of better practices.

At its meeting on 15 November 2006, the Committee resolved to request you to, at your earliest convenience, undertake an audit of the cost recovery model used by the WAPC with a view to advising the Committee whether:

- the new fees represent cost recovery for provision of the relevant services, rather than cost recovery for the operating costs of the WAPC and/or relevant Department;
- the cost recovery model used has given any consideration to efficient work practice; and
- the new fees represent cost recovery based on efficient work practices.

The Committee has a protective notice of motion of disallowance of this instrument on foot. The last opportunity that the Committee will have to withdraw this notice prior to debate is its meeting on 22 November 2006. In the circumstances, the Committee requests that you advise it in writing by **5pm on Friday 17 November 2006** whether you are prepared to undertake the requested audit.

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Delegated Legislation (Joint Standing Committee)

Page 3

If you have any queries in relation to this request, please contact the Committee's Advisory Officer (Legal), Ms Susan O'Brien, on 9222 7428. Ms O'Brien will be happy to provide you with any further documents or information that will assist you in responding to the Committee's request.

Yours sincerely



Hon Ray Halligan MLC

Deputy Chairman

15 November 2006

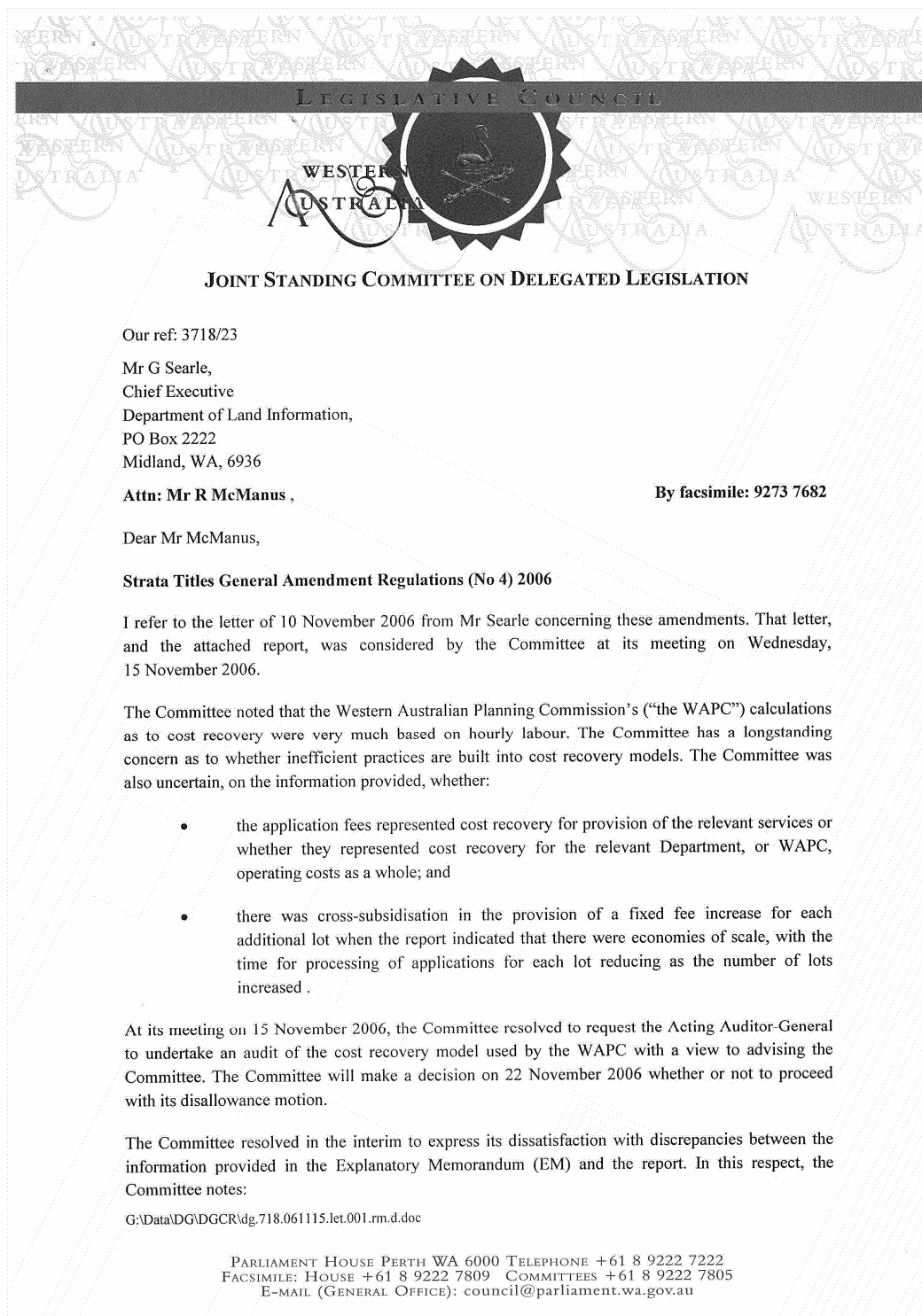
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# APPENDIX 6

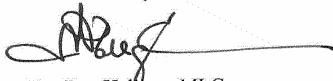
## LETTER TO DEPARTMENT OF LAND INFORMATION AND WAPC 16 NOVEMBER 2006



- the fee table provided in the EM did not comply with the Premier's Circular No 2005/06. It only provided a fee comparison for 3 fees. The fee table provided as Appendix 2 to the report is what was required by the Premier's Circular but with the additional information as to the quantum and percentage increases resulting from the amendment. This would give a far better understanding of the extent of these amendments;
- the report contains additional, relevant information concerning consultation that should have been included in the EM;
- the EM advises that cost recovery for the relevant fees is 38%; the report states that it is 39%;
- the EM did not advise that some existing fees resulted in over-recovery of costs and had, according to the report, been inflated to 401% of cost recovery; and
- while both the EM and the report advise that there was no adverse reaction to the fee increase in discussion with various stakeholders, the EM advises that it is anticipated that there will be moderate industry and community concern at the increase, whereas the report says that the increases have generally been well-accepted.

The Committee relies on careful, full and frank provision of information from Departments in order to perform the scrutiny role entrusted to it by Parliament. It is important that Departmental Officers preparing Explanatory Memorandums to the Committee take care to provide correct information. Where it subsequently becomes apparent that an error has occurred, or information comes to light that casts doubt on information previously provided, the Committee expects an explanation of those events.

Yours sincerely



Hon Ray Halligan MLC

Deputy Chairman

16 November 2006

CC: Ms R Barrow  
Western Australian Planning Commission

By facsimile: 9264 7720

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## APPENDIX 7

### LETTER FROM WAPC 21 NOVEMBER 2006

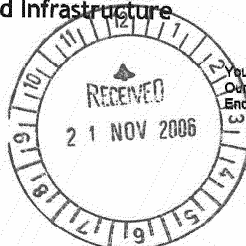
21. Nov. 2006 14:59

DPI 9264 7566

No. 2731 P. 2/4



Department for Planning and Infrastructure  
Government of Western Australia



Your ref: 3718/23  
Our ref: 902/01/01/0204PV4  
Enquiries: Robyn Barrow 9264 7693

(L)

Hon Ray Halligan MLC  
Deputy Chairman  
Joint Standing Committee on Delegated Legislation  
Parliament House  
Perth, WA, 6000

**PUBLIC**

Attention: Susan O'Brien

Dear Mr Halligan

#### **Strata Titles General Amendment Regulations (No. 4) 2006**

I refer to your letter of 16 November 2006 concerning these amendments and the report considered by the Committee at its meeting on Wednesday 15 November 2006.

Your letter indicates that the report did not provide sufficient information in relation to:

1. whether the application fees represented cost recovery for provision of the relevant services or whether they represented cost recovery for the relevant Department, or WAPC, operating costs as a whole; and
2. whether there was cross-subsidisation in the provision of the fixed fee increase for each additional lot when the report indicated that there were economies of scale, with the time for processing of applications for each lot reducing as the number of lots increased.

#### **1. Cost Recovery Model**

The rationale for adopting a cost recovery model is primarily to move to a user-pays system, in accordance with guidelines provided by the Department of Treasury and Finance (DTF).

The guidelines are contained in the DTF publication "*Costing and Pricing Government Outputs - Fourth Edition October 2001*". This methodology was adopted by WAPC and the Department for Planning and Infrastructure (DPI) on the basis that it most accurately reflects the circumstances in which these services are provided.

A review was conducted by Ernst and Young that averaged cost recovery in financial year 2006/2007 for Strata applications between 1 to 5 lots at 68.2%; for applications between 6 to 30 lots at 80.3%; and for applications greater than 30 lots at 230.4%. Historical data for the financial year 2003/2004 (on which the analysis was based) shows that 371 Strata applications were received in that year and that a total of 14 applications (less than 4%) proposed to create more than 30 lots.

Albert Facey House, 469 Wellington Street, Perth, Western Australia 6000  
Tel: (08) 9264 7777 Fax: (08) 9264 7566 [www.dpi.wa.gov.au](http://www.dpi.wa.gov.au)  
ABN 40 996 710 314

The cost-recovery model determined by Ernst and Young and used by the Western Australian Planning Commission (WAPC) to determine the fees is an input-based model that utilises a ground-up estimation of time required to perform individual tasks. This provides the basis for estimating the costs of provision of the relevant service. The model identifies nine distinct product classifications and applies this methodology to arrive at a direct cost for each distinct product, such as applications subject to the fee schedule in the above regulation amendment (Strata).

The cost-recovery model apportions indirect costs on a pro rata basis in accordance with an estimation of the direct resource used in the provision of the relevant service. The full cost is represented by the aggregation of direct costs, indirect costs and overheads and is independent to the whole operating costs of the Department or the WAPC.

Therefore, the existing model is geared towards the recovery of services as it attempts to determine the inputs used to provide the services.

## 2. Is There Cross-subsidisation?

In the case of Strata applications, the required assessment time and effort is influenced primarily by size, however it is also influenced to varying degrees by other factors such as, but not limited to, site-specific environmental considerations, existing infrastructure and local government scheme requirements. In this context it is necessary to estimate an average of time or effort required in the provision of such services. This approach can result in potential cross-subsidisation.

The DTF publication states that where the potential for cross-subsidisation is ambiguous, that is an output can not be sold to at least one client group at either above or below its incremental cost of supply, then *"there is no correct price that should be set and the final price outcome can be the result of equity considerations or reflect the characteristics of client groups."*

There are strong equity arguments for adopting a fixed fee increase for each additional lot. Whilst an apparent economy of scale can be achieved in the provision of services, the perception of inequity, and the fixed fee increase for each additional lot being a negligible portion of the cost of the lot needs to be considered.

Additionally, the model attempts to strike a balance between equity and economic efficiency. It is widely accepted that a targeted cost model (such as an Activity Based Costing model) results in greater equity and accuracy, however these models are more expensive and complex to maintain.

## 3. Explanatory Memorandum

In relation to point three in your letter in respect of discrepancies between the Explanatory Memorandum and the report, I wish to advise you that the rate of cost recovery for the relevant fees is 38% as stated in the Explanatory Memorandum and not 39% as stated in the report.

21. Nov. 2006 14:59

DPI 9264 7566

No. 2731 P. 4/4

I trust that the above information directly addresses the Committee's concerns in relation to the information provided in the report on the WAPC cost recovery model. The Committee's concerns in relation to the Explanatory Memorandum have been noted for the 2007/2008 fee submission to the Department for Treasury and Finance.

Yours sincerely



John Fischer  
A/Deputy Director General

21 November 2006


- 3 -



## APPENDIX 8

### LETTER TO ACTING AUDITOR GENERAL 17 NOVEMBER 2006

(D)



Western Australia

# PUBLIC

office of the

## AUDITOR GENERAL

3718/23


4th Floor Dumas House  
2 Havelock Street  
West Perth 6005  
Western Australia

Tel: 08 9222 7500  
Fax: 08 9322 5664  
Email: [info@audit.wa.gov.au](mailto:info@audit.wa.gov.au)

SERVING THE PUBLIC INTEREST

Our Ref: 4419

The Honourable Ray Halligan MLC  
Deputy Chairman  
Joint Standing Committee On Delegated Legislation  
Parliament House  
PERTH WA 6000



Dear Mr Halligan

**REQUEST FOR AUDIT - STRATA TITLES GENERAL AMENDMENT REGULATIONS (NO. 4) 2006**

Thank you for your letter of 15 November 2006, requesting the Acting Auditor General undertake an audit of the cost recovery model used by the Western Australian Planning Commission (WAPC).

I regret to advise that the Office is unable to meet your request within a timeframe that is suitable for the Committee. At this point, our resources are fully committed through to the second quarter of 2007, supporting an audit program across a range of different financial, social, environmental and legislative areas. In particular, the upcoming Christmas period presents significant resourcing challenges, when there is minimal staffing both in this Office and in audited agencies.

In addition to our resourcing issues, I also have concerns about the value that a further OAG performance examination would add to this area at this time. Whilst we strive to undertake our audit program in line with Parliament's priorities, not all requests can be accommodated at all times, and some investigations may be more effectively pursued through other Parliamentary or public sector forums.

This issue was recently recognised as part of submissions to the Public Accounts Committee Inquiry into the Auditor General Bill 2006. The previous Auditor General, Des Pearson, noted in his submission to the PAC that:

*Requests...(are) prioritised by the AG in view of the materiality of the matter, relevance to public interest, relation to existing audit priorities and availability of resources"*

(OAG Submission to Public Accounts Committee Inquiry into Auditor General Bill 2005, 27 January 2006)

However, we can continue to provide other forms of support to the Committee should it pursue its own investigations further. If you choose to ask WAPC or any other stakeholders to give evidence to the Committee on your specific queries with regard to its report, we would be happy to suggest specific lines of inquiry or potential questions. This is consistent with our role with some other Parliamentary Committees, notably the Public Accounts Committee and the Public Administration Committee.

Further, should you still have concerns about the veracity of the evidence presented by the WAPC, we can then consider the potential for further audit activity to test management's assertions.

Please feel free to contact me to discuss this matter further if you wish, or any other issues surrounding the continuing relationship between our Office and the Delegated Legislation Joint Standing Committee.

Yours sincerely

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

JOHN DOYLE  
ACTING AUDITOR GENERAL  
17 November 2006