

## ZONING ISSUES FOR STRATA SCHEMES

Owners of strata units have certain responsibilities when it comes to the management and upkeep of not only their own unit, but the complex in general. Although not always understood, owners of a strata scheme have unlimited liability should something happen to the complex and it is underinsured. As such, it is critical to ensure that the insured reinstatement cost is up to date and covers all relevant factors.

In addition to the reinstatement cost of a building and other improvements on the site, there are various other factors which can influence the insurable amount which are not always taken into consideration. One of the main issues which arises is the potential for a unit shortfall, where the zoning of land has changed over time.

To elaborate, the zoning of the underlying land will dictate what, and how many units can be constructed on any residential site in WA. If a complex was approved and developed some years ago, there is no guarantee that what is built on the land will conform to current planning requirements and controls. For example, a complex may have had 10 units constructed in 1970, but the zoning has since changed and now only 5 would be permissible.

Under this hypothetical scenario, should the whole complex burn down or be struck by a meteorite, who would get the 5 units that are rebuilt? More importantly, what would happen to the 5 owners that have been rendered homeless?

Each council varies in how this would be handled, with some specifically making provision for this scenario within their planning schemes enabling greater discretion and increasing the likelihood of the development being rebuilt. However, many are silent on the issue which leads to a level of uncertainty. Whilst most councils will have an element of discretion available to them, there may also be public pressure from local lobby groups to NOT rebuild a development. If councils decide to approve something outside of their scope, this potentially leaves the decision subject to challenge.

When engaging a valuer to carry out a reinstatement cost estimate (also commonly referred to as an insurance valuation), the valuer should be instructed to assess the likelihood of a potential shortfall. Whilst this is potentially more complex and may require an expert planner, the valuer should be able to at least provide some indication.

In the instance that a potential unit shortfall does exist, then there are certain insurance policies which can be taken out to cover against loss of value as a result, which should be seriously considered.

Whilst it is not absolutely clear what would actually happen if a total loss were to occur where a development has a potential unit shortfall, it is clear that this is an issue for a significant number of developments throughout Western Australia.