



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:PWib1270770

1 May 2017

Mr Brendan Jenkins
Director
Legal Division
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Jenkins,

Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017

The Law Society of NSW appreciates the opportunity to comment on the draft Environmental Planning and Assessment Amendment (ePlanning) Regulation 2017. The Law Society's Environmental Planning and Development Committee and Property Law Committee contributed to this submission.

The changes proposed to the *Environmental Planning and Assessment Regulation 2000* ("EP & A Regulation") aim to provide consistent and uniform requirements, combined into a single document to replace Schedule 1 and council checklists.

The changes require the use of standardised forms for development applications, applications for complying development certificates and construction certificates, as well as standard requirements for plans, maps, drawings and reports to be lodged with a development application.

The Law Society acknowledges that the NSW Planning Portal will play a key role in delivering the Government's commitment to faster and more streamlined processes and a simplified planning system. Online services will introduce a standard application process that is designed to address delays caused by poor quality or incomplete applications being submitted.

The Law Society notes that poor quality applications have been a major cause of delays in the past. There will still be the potential for these delays where, for example, drawings submitted are not drawn to scale. However, setting out all the requirements in one place, will assist and provide applicants with certainty that an application prepared in accordance with the Secretary's Requirements will be accepted.

The Law Society supports these changes to allow for online lodgement of development applications and to implement the use of standard forms and 'best practice' for all other types of applications.

Land owner's consent

A key change to the EP & A Regulation is that the land owner's signature, or signatures where there is more than one land owner, will not be required on the development application form when the standard development application form is used. Instead, a land owner who makes a development application will be required to declare that he or she is the owner of the land to which the application relates.

Where a development application is made by someone other than a land owner, that person will be required to make a declaration to the effect that they have the land owner's permission to submit a development application in respect of the land.

We note that knowingly providing a false declaration may constitute an offence under section 148B of the *Environmental Planning and Assessment Act 1979*¹ ("EP & A Act"). Subsection (2) states:

(2) The maximum penalty for an offence under section 125 arising under this section is a tier 3 maximum penalty.

The maximum penalty under a tier 3 offence is a penalty not exceeding, in the case of a corporation, \$1 million and, in the case of an individual, \$250,000.²

Rationale for change

The Discussion Paper notes that if the current system was maintained, applicants would be required to download the form, print it out, sign it, scan the document and then upload it into the online document system. This would make the process cumbersome and negate the benefits of working in an online environment.

Land owners, if they are not the applicant, will also receive notification from the council that an application has been lodged on their land.

The Discussion Paper also notes that under the current system, there is no process for verification of the signature on the application form. Applications submitted via the Planning Portal will require users to verify their identity when submitting the application.

Separate consent form

The Law Society remains concerned about the lack of provision for the land owner's consent to lodgement of these documents. We consider that the proposed declaration is not a sufficient protection from the potential for abuse of the proposed regime.

¹ The note to section 148B states: The *Crimes Act 1900* contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement—maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents—maximum penalty 2 years imprisonment or \$22,000, or both).

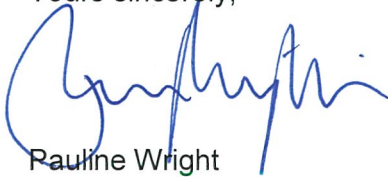
² Section 125C EP & A Act.

We suggest that the land owner's consent is easily obtained and does not constitute a burden for applicants. A consent form, with the land owner's signature, could be provided in a separate document that is uploaded to the Planning Portal with the other documents accompanying the development application. The consent form could also confirm, where applicable, that any necessary consent from the relevant owners corporation has been obtained.

We suggest that a separate consent form, if adopted, would minimise the risk for land owners and would not constitute a barrier to the proposed use of the NSW Planning Portal with its associated benefits.

Please do not hesitate to contact Liza Booth, Principal Policy Lawyer, on (02) 9926 0202 or by email at liza.booth@lawsociety.com.au if you would like to discuss this in more detail.

Yours sincerely,



Pauline Wright
President