



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:JWgl081021

8 October 2021

Transitioning from Paper to Digital Survey Plans
Office of the Registrar General
McKell Building
2024 Rawson Place
HAYMARKET NSW 2000

By email: DigitalSurveyPlans@customerservice.nsw.gov.au

Dear Sir/Madam,

Transitioning from Paper to Digital Survey Plans – Discussion Paper

The Law Society of NSW welcomes the opportunity to participate in consultation on the above Discussion Paper. Thank you also for the additional consultation sessions provided, which were invaluable in assisting our understanding of the reforms. The Law Society's Property Law Committee has contributed to this submission.

Our responses to the Discussion Paper questions are contained in the attached comments table.

General comments

The move to digital survey plans is supported by the Law Society. It is a significant and fundamental reform, particularly with the focus on the data underpinning digital survey plans. There are a number of practical implications which will be important for our members, particularly in the context of preparing a contract for the sale of land for a vendor, and reviewing a contract in providing legal advice to a purchaser.

When acting for a *vendor*, a practitioner should be able to order “the plan” from NSW Land Registry Services (“LRS”) without knowing whether it is a digital or non-digital plan. The cost of obtaining the plan must be predictable and the same whether it is digital or non-digital. In our view, the *Conveyancing (Sale of Land) Regulation 2017* should be amended to make it clear which plan documents are required to be included in the contract for the sale of land as part of vendor disclosure.

When acting for a *purchaser*, the ability to rely on the Lot Diagram without interrogating the data underpinning that lot diagram is critical. In our view, supporting legislative amendments should make this clear. More generally, this would also assist in maintaining confidence in the register of plans.

The changes to the way s 88B instruments will be prepared via the LRS Connect portal are another key area that will impact legal practitioners. We would be pleased to work with you and LRS in relation to refining this process to ensure it is fit for purpose.

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The reforms outlined in the Discussion Paper will bring significant changes for our members, both conceptually and in practical terms. We would be pleased to work with you as the reforms are further developed, including assisting in communicating the changes to our members during implementation.

Any questions in relation to this letter should be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Warner', followed by a horizontal line extending to the right.

Juliana Warner
President

Encl.

Transitioning from paper to digital survey plans
Discussion Paper – October 2021
Law Society of NSW submission

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
3. Digital survey plans in practice		
3.2. Potential mandates and restrictions		
1.	What impact do you expect the potential mandates and restrictions will have on current practices? What supporting arrangements would help industry to adopt these changes? Please explain your answer.	<p>The mandates and restrictions will streamline processes and should provide welcome time savings, particularly through permitting referral and planning authorities to endorse plans with consent through the NSW Planning Portal.</p> <p>In relation to the form of consent, in our view the requirement for a wet signature should be minimised. An online digitally signed consent is preferred, with the ability for a registered surveyor to upload any third-party consent.</p> <p>An education program to inform legal practitioners of the new approach to plans and processes available through LRS Connect, particularly in relation to the creation of s 88B instruments would be beneficial. Minimum software requirements should also be made very clear to participating parties.</p>
2.	How long do you think surveyors and other parties would reasonably require to transition to each of these potential mandates and restrictions?	It is difficult to say but we suggest approximately six to nine months. We understand that not all surveyors currently use existing digital tools and may therefore require more time to transition. The timeframe will also be dependent upon any supportive legislative changes being required, such as changes to the <i>Conveyancing (Sale of Land) Regulation 2017</i> in relation to vendor disclosure.

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
4. Discussion of the proposed reform		
4.3. Plan documents		
3.	<p>Table 3 above identifies possible approaches for offline and online access (directly via the plan workspace) to plan documents by plan reviewers and contributors. How do you think each reviewing and contributing party should access or contribute to plan documents, and do you have any suggestions to improve the online proposal?</p>	<p>The role of the legal practitioner in Table 3 appears to be slightly different between the on-line and off-line approach, but we do not believe that this is intended. In our view, adopting a digital approach should not alter the existing co-operative approach between surveyors and legal practitioners when drafting documents such as a s 88B instrument. Each contributing and reviewing party should have the ability to access and edit plan documents. For documents created and edited online, it will be essential to be able to identify which party made a particular edit and when, and we understand that this will be the case.</p> <p>The creation of the section 88B instrument and other instruments using a shared editable document which is then uploaded is supported. The cross matching of the plan with the s 88B instrument will be helpful for all parties in minimising discrepancies between the plan and s 88B instrument, and reducing requisitions.</p> <p>As a practical matter, in our view it must be possible to export text from the initial PDF of the s 88B instrument generated in the plan workspace into a Word document for further drafting, particularly of Part 2 of the s 88B instrument. Once the document is settled in Word format, the content of the document should be able to be loaded back into the PDF of the 88B instrument in the workspace without losing any formatting. It may also be necessary to load the drafted 88B instrument back into the workspace mid-drafting, where, in the course of developing Part 2, it becomes apparent that changes are needed to Part 1, including the creation of new easements that will then need to be cross matched with the plan. It is therefore important that this process retain quite a degree of flexibility, otherwise potential efficiencies will not be achieved, and the process will be unduly restrictive.</p> <p>Creating Part 2 of an 88B instrument solely in a PDF format would not be user friendly, in our view. These documents are often extremely complex and can run</p>

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
		<p>for more than a hundred pages in length. To aid clarity, they require the full use of all the supporting functionality available in Word formatting, particularly a table of contents, revisions in mark-up, stylised headings and subheadings, and automatic cross-referencing of clauses. This degree of functionality is not widely available in the PDF format. We would be pleased to work with you and NSW Land Registry Services on further detailed requirements to ensure the new system works seamlessly for lawyers and surveyors.</p>
4.	<p>If contributing parties were able to access the plan workspace directly and input their contribution (like providing terms for a section 88B instrument), should that party be required to make any certification about their content? What would this certification look like?</p>	<p>In our view, no certification should be required for the contents of documents drafted by legal practitioners, as is presently the case. As mentioned above, it is essential to be able to identify who made which edits and when.</p>
5.	<p>Do you have concerns about verification of identity for contributing parties (like qualified valuers) in an online process? How could surveyors and alternate lodging parties ensure that contributors have been appropriately verified in an online environment?</p>	<p>We do not consider verification of identity is a relevant consideration when lodging plans and instruments. Two-factor authentication may be appropriate for some parties accessing the digital workspace if a further level of security is sought.</p>
6.	<p>In your experience, what impact will the requirement for administration sheets and section 88B instrument templates to be generated from the NSW LRS Connect workspace have on current practices?</p>	<p>Generally, practices will be streamlined and there will likely be beneficial time savings. However as raised above we have concerns with the use of a template in a PDF format unless detailed drafting can be done in Word format and then loaded into the PDF format without losing detailed formatting.</p>

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
4.4. Plan consents		
7.	It is expected that there will be a limited class of persons who can lodge plans as part of this reform (e.g. registered surveyors, surveying companies, Government agencies, lawyers). Should any other class of person be entitled to lodge plans? Do you have any concerns about this proposal and, if so, how do you think these could be addressed?	<p>The ability to lodge a plan should be limited to registered surveyors, surveying companies, government agencies and lawyers. No other groups should be permitted to lodge plans.</p> <p>We acknowledge that currently about 90% of plans are lodged by surveyors, but we believe it should also be open to government agencies and lawyers to lodge plans to provide additional flexibility and choice.</p>
8.	Do you support the proposal for lodging party attestations outlined in Part 4.4.2 above? If not, why not? Please explain your answer.	Yes, we support an attestation limited to “that the plan package is complete and ready for consent gathering”. This will assist with the orderly collection of consents.
9.	It is proposed that each consenting party must have been able to view the digital survey plan through an online visualisation service prior to providing their consent. Do you have any concerns with this approach? Can you suggest any other way of ensuring the consenting party actually accessed and viewed the information?	<p>Agreed as to the first question, and there are no concerns with this approach.</p> <p>Regarding the last question, the extent to which the consenting party actually pays attention to the documents they are consenting to is a matter for the consenting party. There is no need to ensure they have accessed and viewed the information.</p>
10.	Do you support the introduction of a single signature sheet to cover all the documents a particular consenting party needs to approve/endorse? If not, why not?	Yes, provided that if a plan and a suite of documents requires the consent of various parties to some, but not all, of the documents, the single signature sheet makes it clear which documents within the suite the party is consenting to. The consent cannot be a generic consent from the consenting party in respect of all the documents as this may include documents not requiring that party’s consent.

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
11.	<p>Consenting parties include registered proprietors, mortgagees, owners corporations/community associations, certifying authorities (including councils and registered certifiers), other authorities (eg government agencies or utility services providers) and other parties with an interest on title (like lessees). How do you think each type of consenting party should access plan documents (offline or online or directly via the plan workspace) in order to provide their consent?</p>	<p>Flexibility will be required as to the ways a consenting party can access the documents to provide consent. Parties that regularly provide consent, such as councils, registered certifiers and utility providers, should be able to access the documents online for the purpose of providing consent. For other third parties unfamiliar with the process, and who do not regularly need to provide consent, offline processes would be more appropriate in our view.</p>
12.	<p>Four options have been identified in Part 4.4.4 as ways that various consenting parties may be able to provide their consent. Which of these options do you consider to be best suited for each type of consenting party and why? Are there any other options which may be appropriate?</p>	<p>As the range of parties giving consent varies greatly, from certain bodies who do it routinely, to others (for example, lessees) who may only do it once, there should be maximum flexibility for giving consent.</p> <p>Scanning wet signatures and attaching them to the signature sheet is acceptable in our view. However, there should be no requirement to retain the original instrument as this undermines the efficiencies of the reforms without providing any significant benefit.</p> <p>Digital signatures would be acceptable, but they would need to be uploaded directly onto the workspace. A surveyor should not be able to do this on behalf of a consenting party.</p> <p>Online declarations would be acceptable for surveyors and valuers. Online declarations would not be acceptable for proprietors, lessees or mortgagees, who should “sign” their consent on the document.</p> <p>Creating a profile with NSW LRS Connect and providing consent directly to the workspace should be available so it can be used by parties that are required to give consent regularly (for example, banks).</p>

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
13.	Do you have concerns about verification of identity in the consent gathering process? How could lodging parties ensure that consenting parties have been appropriately verified in an online environment?	<p>Before the COVID-19 pandemic, the standard process was for the surveyor to post the plan, administration sheets and s 88B instrument to the relevant signatory and wait for that signatory to sign that documentation and post it back to the surveyor. The proposed electronic process does not differ substantial from the “paper” process, noting that verification of identity has never been part of the consent gathering process.</p> <p>However, it may be prudent for LRS Connect to have the ability to have a two-factor authentication process (for example, a code sent to a mobile number which needs to be entered before the signatory can sign the document electronically).</p>
14.	How should changes to plans and associated documents be managed in the consent gathering process if a consent has been given that may or may not be impacted by the change?	The onus should be on the lodging party to confirm that all parties who are impacted by the change have consented to the change. We note this is similar to the certification that needs to be made to hand amendments to paper dealings.
15.	How well are the temporary Conveyancing Rules provisions that allow documents to be signed electronically during the COVID-19 pandemic working? What improvements could be made, if any?	The changes are generally working well and supported. We expect that the changes will have more utility now that the relevant amendments have been made to the <i>Corporations Act 2001</i> (Cth) to allow companies to again sign electronically pursuant to s 127.
4.5. Plan examination		
16.	Do you support the introduction of a new digital plan examination stream? If not, why not?	The Law Society would be supportive of any initiative which sought to minimise plan requisition rates.

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
17.	Manual examination is still expected to occur where the requirements for the digital plan examination stream cannot be met. In what other circumstances would examination of the digital data not be sufficient and manual examination of surveyor drafted plans be required?	We consider that manual examination would still be required for part strata (stratum) plans, noting that these are particularly complex.
4.6. Registered plans		
18.	Do you support the proposal for digital survey plan data (that has met the prerequisites set out in Part 4.5.1) to be the legal point of truth for a registered plan? If not, why not?	Yes, provided that parties may rely on the visualisation of that data in the Lot Diagram. The legal point of truth must always be a document which is capable of being reviewed by third parties and which is publicly accessible. We understand that this function will be fulfilled by Lot Diagrams.
19.	Do you have any concerns about the proposal for Lot Diagrams to be the visualisation of examined digital plan data for general applications, like contracts for the sale of land?	No, and such a plan would be very useful for inclusion in a contract for the sale of land, subject to the surveyor drafted plan also being included.
20.	Is the information proposed to be shown on a Lot Diagram sufficient for most purposes? If not, what other information should be included?	Yes, it is sufficient in our view, and we have no suggestions for the inclusion of additional information.

NO.	QUESTIONS FOR DISCUSSION	COMMENTS
21.	Do you support the proposal to include both a Lot Diagram and surveyor drafted plan in the contract for sale of land, to ensure appropriate disclosure to purchasers? If not, why not?	<p>Yes, both are required in our view, as the surveyor drafted plan is necessary to give additional context and information about the property, particularly for the sale of strata title or community title property.</p> <p>We would be pleased to work with you regarding any amendments to the <i>Conveyancing (Sale of Land) Regulation 2017</i> to implement this change to vendor disclosure. This will be an important change to conveyancing practice and clearly articulated requirements for the preparation of contracts for the sale of land will be needed. In some circumstances only a surveyor drafted plan will be included in the contract, but in other circumstances a Lot Diagram and surveyor drafted plan will be included.</p>
23.	Do you support the proposal to place the Registrar General's seal on the Lot Diagram rendered from examined digital survey data and, where this is not available, on the surveyor drafted plan instead? Do you have any concerns about this approach, or other suggestions about the placement of the Registrar General's seal?	Yes, this will be an important indicator of whether the Lot Diagram or the surveyor drafted plan can be relied upon. It will also play a very practical role in clarifying the nature of the plan available for a particular property. For example, if a contract for the sale of land mistakenly included only a surveyor drafted plan without the Registrar General's seal, this would indicate to the purchaser's solicitor that the plan material included in the contract is incomplete.