



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D/PLC/RIC:CBsh190623

19 June 2023

Ms Kiersten Fishburn
Acting Secretary
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

By email: information@planning.nsw.gov.au

Dear Ms Fishburn,

Planning certificate fees

The Law Society of NSW writes to bring to the Department's attention the issue of the cost of planning certificates required for conveyancing transactions involving multi-lot parcels of land. This issue, outlined in more detail below, is long-standing and disproportionately impacts owners of rural land, but can have implications for transactions involving various other land types, such as development sites, and strata sales where the residence and the car space are on separate titles.

We have previously raised this issue during Department consultations on periodic reviews of legislation, most recently in 2021.¹ However, this issue continues to be a matter of concern for our members.

Historically, this issue arose as the result of inconsistent application by councils of the relevant planning certificate provisions. Subsections 10.7(1) and (2) of the *Environmental Planning and Assessment Act 1979* currently provide:

(1) A person may, on payment of the prescribed fee, apply to a council for a certificate under this section (a planning certificate) with respect to *any land* within the area of the council.

(2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a *planning certificate* specifying such matters relating to the land to which the certificate relates as may be prescribed (whether arising under or connected with this or any other Act or otherwise) (emphasis added).

In applying these provisions in the past, some councils charged a single fee where the land is contained in a single rating notice, irrespective of whether that land consists of multiple lots. Other councils charged a fee calculated on a per lot basis, even though the land may be rated at a single address. Still others charged multiple fees calculated according to the number of

¹ Letter from the Law Society of NSW to the Department of Planning, Industry and Environment dated 22 September 2021 (see page 5): <https://www.lawsociety.com.au/sites/default/files/2021-09/Ltr%20to%20DPIE%20-%20Proposed%20Environmental%20Planning%20%26%20Assessment%20Reg%202021%20-%202022.9.21.pdf>.

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valuations issued. Where multiple planning certificates were produced, it was often the case that the substantive content was identical.

The problem appears to have been exacerbated now that applications for certificates are required to be made via the NSW Planning Portal. We are informed that the Portal is calibrated to issue certificates by reference to a single folio identifier, even though a single address may be comprised of multiple folio identifiers.

It is costly, as well as inefficient, to attach copies of multiple certificates to contracts for sale to comply with vendor disclosure obligations. Multiple certificates attract multiple fees, adding significantly to the cost of contract preparation.

Proposed solution

We suggest that, to avoid this cost burden for affected landowners, one approach would be to prescribe a fee for the issue of a single planning certificate, irrespective of the number of lots covered by the application. An alternative approach would be to prescribe a basic application fee, and a further per lot fee based on the number of lots covered by the certificate. If the information in the certificate is the same across the parcels (apart from lot number and title details), we consider that the additional fee should be nominal.²

If you have any questions about this submission, please contact Sonja Hewison, Policy Lawyer, at sonja.hewison@lawsociety.com.au or on (02) 9926 0213.

Yours sincerely,



Cassandra Banks
President

² We note that amendment of cl 9.7, [Schedule 4](#) of the *Environmental Planning and Assessment Regulation 2021*, under [s 290](#), would be required to give effect to these suggestions.