



31 August 2018

The General Manager
Warrumbungle Shire Council
PO Box 191
COONABARABRAN NSW 2357

Attention: Kevin Tighe and Tracy Cain

Dear General Manager

Mandatory e-Conveyancing in NSW

The NSW Government has set a timeframe for the transition to electronic conveyancing (**e-conveyancing**) in NSW, in summary as follows:

1 July 2018	Standalone transfers and caveats must be lodged electronically
1 July 2019	All mainstream property transactions to be lodged electronically. No more paper Certificates of Title.

Local Government Legal (**LGL**) is pleased to advise that it is registered with the online platform that supports e-conveyancing, Property Exchange Australia (**PEXA**) and LGL Lawyers and Paralegals have completed the necessary training requirements.

Mandatory e-conveyancing through PEXA means there are several changes that Councils should be aware of.

1. Council Resolutions & Client Authorisation

Prior to e-conveyancing, in order for a Council to buy or sell property, the Council would often make a resolution for the Transfer of land document to be executed by affixing the Council seal.

Council resolutions regarding conveyancing transaction(s) should **no longer** refer to the Council seal being affixed. This is because in e-conveyancing a Council will **not** be able to access the electronic lodgement network to sign a registry instrument or document to effect a conveyancing transaction. Instead, e-conveyancing requires a Client Authorisation Form to be executed by a person authorised to act as Council's agent (e.g. the General Manager), which authorises Council's lawyer or conveyancer (the "Representative") to:

- (a) digitally sign documents on behalf of the Council for the conveyancing transaction(s); and
- (b) submit or authorise submission of documents for lodgement with the relevant land registry; and



- (c) authorise any financial settlement involved in the conveyancing transaction(s); and
- (d) do anything else necessary to complete the conveyancing transaction(s).

A copy of the Client Authorisation Form is available on the following website:
<https://www.arnec.gov.au/publications/forms>

A Client Authorisation Form can be:

- (a) a “Specific Authority” for a particular conveyancing transaction; or
- (b) a “Standing Authority” for relevant conveyancing transaction(s) that ends on revocation of the Client Authorisation or an expiry date (i.e. a transfer, mortgage, caveat, priority/settlement notice, discharge/release of mortgage, withdrawal of caveat, etc).

Accordingly, we recommend that Council incorporate the following as part of Council resolutions regarding conveyancing transaction(s):

“... and authorise the [General Manager / authorised position] to sign all documents associated with the conveyancing transaction, including a Client Authorisation Form to [Local Government Legal / Council’s lawyer] to effect the transaction.”

Council may also wish to resolve as follows to make a “Standing Authority” so that a Client Authorisation Form is not required to be signed for each conveyancing transaction:

“Authorise the [General Manager / authorised position] to sign a Client Authorisation Form to provide a Standing Authority to [Local Government Legal / Council’s lawyer] to effect the following conveyancing transactions:

- *transfers;*
- *lodgement and withdrawal of caveats;*
- *priority/settlement notices,*

when instructed in writing by [the General Manager / authorised position] to do so. The Standing Authority will continue until [revoked by Council / date].”

A “Standing Authority” once executed by the General Manager would then permit Local Government Legal / Council’s lawyers to electronically sign the nominated documents on Council’s behalf when instructed in writing by the General Manager / authorised position to do so.

2. Verification of Identity

E-conveyancing legislation now requires lawyers and licenced conveyancers to take reasonable steps to verify the identity of clients or their agents every two (2) years. This means that “Verification of Identity” (VOI) needs to be completed for the General Manager / authorised position who are authorised to execute documents (e.g. a Client Authorisation Form) on behalf of Council **before** an e-conveyance transaction can occur.

Accordingly, Local Government Legal / Council's lawyer representing a Council must:

- identify that the Council is entitled to deal in the land in question;
- have the Client Authorisation completed in the name of that Council;
- have the Client Authorisation signed by a person with a written delegation (e.g. a written Council resolution) to deal in land on behalf of that Council;
- sight and retain a copy of the instrument of delegation held by that person; and
- take reasonable steps to verify the identity of the person signing the Client Authorisation.

We therefore recommend that the General Manager / authorised position should complete the VOI process, which requires verification of identity during a face-to-face in-person interview between the Identity Verifier (e.g. a lawyer from Local Government Legal or a service provided by Australia Post) and the person being identified. Furthermore, at the face-to-face interview, the Identity Verifier must ensure that the person being identified produces original documents in one of the categories in the **attached** table, starting with Category 1.

3. Sale of land for unpaid rates and Transfer of land in payment of rates and charges.

The move to mandatory e-conveyancing has particular implications for transactions under s570 (the transfer of land in payment of rates and charges) and s713 (sale of land for unpaid rates and charges) of the *Local Government Act 1993*.

A party to a transaction will be required to be registered with PEXA. This means that it will no longer be possible for individual landowners whose land is being transferred to be unrepresented.

Council may be prepared for us to act for both parties, and pay both PEXA transaction fees (these fees are currently approximately \$126.00 per party). However, the land owner will still be required to pay the VOI application fee with an agent (eg Australia Post).

We look forward to continuing to assist the Council in its property transactions and the transition to e-conveyancing.

Please do not hesitate to contact us should you have any queries.

Yours faithfully,



Tony Pickup
Principal Lawyer