

Introducing National Electronic Conveyancing

What is e-conveyancing?

Electronic conveyancing (or e-conveyancing) describes the process of performing settlements online, removing the need to physically attend settlements. E-conveyancing has been on the national agenda for some time and, after a long wait, the first roll out is expected to occur in the second half of 2013. Once the system is fully operational, it will be possible to conduct settlements, including lodgement of all relevant dealings, online.

E-conveyancing will make use of paperless titles and will incorporate Landgate's Verification of Identity Practice. It is envisaged that lawyers and settlement agents will be required to verify their client's identity at the beginning of the transaction, and then obtain an authority to conduct the settlement. This may potentially reduce the need to arrange for physical execution of transfer documents.

E-Conveyancing will be implemented gradually via a series of staged releases, allowing time for users to become accustomed to the new system. The first rollout, which is expected to occur in the second half of 2013, will be for stand-alone mortgages only. There will be further releases in 2014 enabling multiple parties to conduct settlements and transfers.

Some amendments to the Landgate Manual and existing laws may be required to accommodate changes to the prevailing settlement process. However, the law and the fundamental principles applying under the Torrens System will remain unchanged.

Following the introduction of e-Conveyancing, it will likely remain possible to conduct a settlement in the traditional manner. In New Zealand, e-conveyancing was introduced gradually starting in the late 90s and became compulsory from February 2009.

What is 'PEXA'?

PEXA stands for 'Property Exchange Australia'. PEXA is a web-based channel which will facilitate the preparation and settlement of e-conveyancing transactions, including the electronic lodgement of Landgate documents (and equivalent State or Territory land registry documents). PEXA will be a secure site; only registered subscribers such as lawyers, conveyancers and financial institutions will be able to use the system.

Benefits of e-conveyancing

Some benefits of e-Conveyancing are:

- The ability to conduct any number of settlements at the same time.
- Reduction in costly manual processes and paperwork.
- Greater transparency with parties able to see the status of documents in the transaction.
- Reduced failure rate – using online pre-lodgement verification enables parties to verify information before proceeding to settlement.
- Obtaining client authority ahead of time may reduce the need to arrange execution of transfer documents.
- Efficiency – settlement and lodgement will occur at the same time.

Watch for updates on the introduction of e-Conveyancing in future editions of Real Estate Matters!

Development Assessment Panels – the good, the bad and the here to stay

Development Assessment Panels (**DAP**) were introduced into planning legislation in Western Australia in 2011.

A DAP is an independent decision-making body which determines certain development applications in the place of the original decision maker, being the local government authority and/or the Western Australian Planning Commission. DAPs are comprised of independent technical experts and elected local government representatives.

The panels were introduced to improve the planning system by providing more transparency, consistency and reliability in decision-making on complex development applications.

Perhaps as an indication of their success, there have only been a handful of reviews of DAP decisions which have proceeded to a hearing in the State Administrative Tribunal, and only one to the Supreme Court.



Case Note - *Hamersley v Bartle* [2013] WASC 191

The Supreme Court recently handed down its decision in *Hamersley v Bartle* [2013] WASC 191, providing some useful guidance on DAP process and procedure.

Facts

On 8 March 2013, the Metro West Joint Development Assessment Panel (**MWJDAP**) granted conditional approval for the construction of a four-story office building in Subiaco (**March Approval**). Prior to the issue of the approval, the applicant lodged amended plans to address some initial concerns of the City of Subiaco.

Following the issue of the March Approval, an application was made and approved on 15 August 2012 by the MWJDAP, for a second set of amendments (**August Approval**).

The applicant sought a writ of certiorari and declarations that the March Approval and August Approval were invalid.

Grounds

The applicant contended that the March Approval and August Approval were made in excess of the MWJDAP jurisdiction on grounds that:

- 1 the amendments were not advertised; and
- 2 the actions of the MWJDAP (under regulation 17) were invalid, in that it exceeded the regulation-making power provided in the *Planning and Development Act 2005* (**PD Act**).

Determination of the Court

The Applicant failed to make out any of its grounds

The Court found that the March Approval and August Approval were not invalid. A narrow construction of the City of Subiaco's Town Planning Scheme was considered unacceptable. The Applicant's construction would have resulted in considerable unnecessary inconvenience in the planning process; it would be inconsistent with the long-held position in Western Australia that it is open to a proponent to amend plans for a development after an application is lodged, but before a decision is made, provided that the amended plans do not constitute a different proposal in substance from the original application.

Regulation 17 is not invalid

The Court found no reason to conclude that a regulation made in order to provide for an efficient and effective land use planning system in the context of the operation of DAPs could not be made pursuant to the general power in s 263 of the PD Act.



Squire Sanders Comment

While this case provides some interesting and useful comments and guidance, DAP practice and procedure remains relatively unchallenged judicially. What is currently occurring in practice may be open to interpretation and challenge. The very nature of DAP matters means that substantial amounts of money are at stake. If you have a proposal that may be eligible to be determined by a DAP, or a current matter before a DAP, and you are uncertain or have any queries about the process or procedure, please contact the Squire Sanders Regulatory Team for assistance.

DEC to split into new environment departments

Earlier this year, the State Government announced that the Department of Environment and Conservation will be split into two new departments – a Department of Parks and Wildlife and a department of environmental regulation (yet to be named). The Department of Parks and Wildlife will be responsible for marine, parks and wildlife preservation, whilst the department of environmental regulation will focus on regulation, licensing and appeals.

Minister for Environment, Albert Jacob, has explained that the purpose of the split is to allow the Department of Parks and Wildlife to focus solely on conservation, protection and promotion of WA's land and marine parks and reserves.

It is expected that the Department of Parks and Wildlife will form later this year. Due to the complexities of establishing the new department of environmental regulation, it will continue to operate under the banner of the Department of Environment and Conservation for the short term.

Granny Flats & High Rise – Changes to the Residential Design Codes in Western Australia

The R-Codes provide the basis for the control of residential development and subdivision throughout Western Australia.

Following an extensive period of stakeholder engagement, the Department of Planning has instigated a set of amendments to the R-Codes (2013). The amendments aim to address emerging design trends, promote sustainability, improve clarity and highlight assessment pathways to facilitate better residential design outcomes throughout Western Australia. Recent publicity on this amendment has been flagged as commitment to increased urban density through (in part) the better utilisation of granny flats and multi-family developments.

The Department of Planning has released guidance documents and is undertaking an education programme to ensure stakeholder familiarisation and preparation ahead of their implementation. The R-Codes (2013) will take effect upon publication in a special edition of the Government Gazette on Friday 2 August 2013.

Watch out for details about the specific amendments to be implemented in future editions of Real Estate Matters.



Meet our team:

Q&A with Lindsey Pheloung-Beck
(Associate)

Practice Areas: Real Estate, Environmental,
Safety & Health, Mining

2013 Mahla Pearlman Australian Young Environmental Lawyer
of the Year

Q: Where would you be working if you weren't a lawyer?

A: Anywhere involving a beach with lots of sunshine, doing
anything. Possibly a dive shop on a Pacific Island.

Q: What was the last movie that made you cry?

A: Hmmm. The last one was on a plane, but I don't remember
what it was. The last one to make an impression was Gran
Torino.

Q: The #1 song played on your iPod is?

A: Of Monsters and Men 'Little Talks'. Although I don't really
have one song; it's more the entire album.

Q: Describe the perfect breakfast.

A: Perfectly poached eggs, buttered toast, something with
goats cheese, avocado ... and a good coffee.

**Q: If you were stranded on a desert island what 3
things would you want with you?**

A: A flint, a way to contact friends and family and a supply
of good wine to watch the sunset with. I would also say a
transportation device - except then, technically, you wouldn't
be stranded.



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