THE LAW SOCIETY OF TASMANIA

NOTICE TO THE PROFESSION
NEIGHBOURHOOD DISPUTES ABOUT PLANTS ACT 2017

Property lawyers should note that the Neighbourhood Disputes About Plants Act ("**Act**") comes into effect **today, 1 December 2017**.

Of most immediate importance to property conveyancing are the provisions of Division 2 of Part 2 of the Act which deal with the responsibilities of land-owners and preparers of contracts in the circumstances of a sale or proposed sale of land – specifically:

- Subsection 16(1) provides that an owner of land must not, without reasonable excuse, fail to give to a purchaser prior to the entering into of a Contract of Sale, a copy of:

  (a) any application under the Act relating to the land together with any additional information filed with the Resource Management and Planning Appeal Tribunal; or

  (b) any order made under the Act in relation to the land.

  The penalty for a breach of this provision is a fine not exceeding 200 penalty units.

- Subsection 16(2) provides that an owner of land to which an application made under the Act relates must, as soon as possible after entering into a Contract of Sale in relation to the land, notify the Resource Management and Planning Appeal Tribunal that the purchaser is joined as a party to the application.
  The penalty for a breach of this provision is a fine not exceeding 200 penalty units.

- Subsection 17(2) provides that a breach of a land-owner's obligations under section 16(1) gives rise to a right for the purchaser of the land to terminate the Contract of Sale at any time before settlement occurs.

- Subsection 17(5) provides that where a Contract is terminated by a purchaser under subsection 17(2):

  (a) the owner of the land; and

  (b) the person, if any, who was acting for the owner of the land and who prepared the Contract of Sale in relation to the land;

  are jointly and severally liable to the purchaser for the reasonable legal and other expenses incurred by the purchaser in relation to the Contract of Sale, after the purchaser signed the Contract of Sale.

- Subsection 17(6) provides that subsection 17(5) does not apply in relation to:

  (a) an owner of land, if the owner of land did not know, or ought not reasonably be expected to know, that he or she had been given a copy of an application or order; or

  (b) a person who is acting for the owner of the land and who prepared the Contract of Sale in relation to the land, if that person did not know or ought not reasonably be expected to know, that the owner had been given a copy of an application or order.

- Subsection 18(1) provides that if:

  (a) an order is made under the Act in relation to land before the owner of that land enters into a Contract of Sale in relation to the land;

  (b) the owner of land fails to give the prospective purchaser of the land a copy of the order before the prospective purchaser enters into a Contract of Sale in relation to the land; and

  (c) the owner of land has not, before the day on which settlement occurs, carried out the work required under the order;

  the owner of the land remains liable to ensure that work required under the order to be carried out is carried out.

Because of the provisions of subsections17(5) and 17(6), a prudent practitioner should, prior to the preparation of a Contract of Sale, carry out a search of the database to be established and maintained by the Resource Management and Planning Appeal Tribunal. It is to be noted, however, that the Act requires the database to record an order within 14 days after the order is made, and so the database cannot be considered an accurate up-to-the-minute register of orders. Accordingly, a prudent practitioner should also, prior to the preparation of a Contract of Sale, enquire of the vendor as to the existence of any applications or orders affecting the land. It is a matter for each practitioner to consider whether or not an indemnity should be sought from the practitioner's client in that regard or other circumstances.

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