

Mr Alex Tay
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Dear Mr Tay

Local Government (General) Amendment Regulations 2019

Thank you for the opportunity to comment on the *Local Government (General) Amendment Regulations 2019*, which proposes amendments to the *Local Government (General) Regulations 2015* ("the regulations").

I note your advice under cover letter dated 31 October 2019 that the proposed changes are mechanical in nature and deal only with the content of 337 certificates, as opposed to the broader issues raised by the Law Society of Tasmania in its submission to the Review in October 2019.

The draft amendments have now been considered by the Society's Property & Commercial Law Committee ('the Committee'), which has made the following observations.

The list of questions that form the content of 337 certificates do contribute in large part to many of the issues raised by the LST in October 2019. For example, it is apparent that some practitioners and council officers do presently find the questions difficult to interpret and apply. Further to this, caution should be exercised to ensure that any amendment does not result in further delays to processing times of 337 certificates.

As noted in the October submissions, if a 337 certificate cannot be processed and made available to a purchaser for 3-4 weeks from the date of request, the 337 certificate is likely in many cases to be of little use as a mechanism of consumer protection, noting that many contracts will have either settled or become unconditional by this point.

Whilst acknowledging the need to amend the regulations in light of recent amendments to the *Building Act 2000* (Tas), *Building Act 2016* (Tas) and the LUPAA, the Committee is reluctant to support any amendment to the existing 337 certificate list of questions that might increase the complexity of the existing questions, and possibly lead to further delays in the processing time of 337 certificates.

To this extent, it notes that some aspects of the current list of questions in 337 certificates relate to matters which are in 2019 readily available on search through either the LIST, Iplan or directly through council websites. For example, the *Local Government (General) Amendment Regulations 2019* propose to substantially increase the questions posed in Item 13 "zoning". The Committee generally supports the inclusion of any matters that are not available on search, for example, the proposed questions (c) – (f). However it recommends that consultation be made with councils seeking comment in relation to the possible impact that including matters that are already available via other searches will have on the time it takes to process 337 certificates. If this was identified as a source of unnecessary delay, the Committee would generally support a model where 337 certificates were limited to matters not currently available to purchasers through other avenues.

For example, the proposed amendment to Item 12 (being described in r5 of the *Local Government (General) Amendment Regulations 2019*) seeks to add a note to Item 12 requiring that the council staff state the full name of the relevant planning scheme, the relevant Local Provisions Schedule, whether there are any applicable Special Local Provisions Schedule. Much of this information is available on search, and what is more, may potentially not be relevant to a majority of purchasers buying existing properties in established areas. Further, where a purchaser has plans to develop or change the use of a property, purchasers should be undertaking these enquiries themselves as part of purchase due diligence in any event.

The Committee accordingly recommends that prior to amendment of the regulations, full consultation be undertaken with Tasmanian local governments, in order to determine the likely impact of the proposal upon the ability of councils to respond to any additional burden posed by any expansion to the list of 337 questions. For example, caution ought be exercised to ensure that the proposed r33B does not place overly burdensome search requirements on councils.

The Committee notes that the proposed amendment to Question 20 relates to the *Mineral Resources Development Act 1995*. With respect to the use of notes, it cautions against their use in the manner proposed in relation to Question 20. Individual Committee members' experiences in legal practice have suggested that both notes and questions are presently missed or misinterpreted by council officers from time to time. In support of the Society's general aim of reducing the complexity and decreasing the processing time of 337 certificates, the Committee recommends that this note be more simply presented as a direct question.

Yours faithfully



FRANCESCA SATURNO
DEPUTY EXECUTIVE DIRECTOR