SUB-01 Subdivision

Version 2 – 23/08/2018

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1 General

The subdivision of land in its earlier stages involves the owner of the land to be subdivided with the Local Government, Government Instrumentality’s and the Western Australian Planning Commission (WAPC). All proposals by a landowner to subdivide land are first submitted to the WAPC. This Department acts as a referral office and central clearing house referring proposals to the Local Government and government instrumentality’s such as the Water Corporation, Western Power and Gas Corporation, who have an interest in the orderly development of land and provision of services.

Where an agency consents to the subdivision subject to certain conditions (e.g. the Local Government may agree subject to the construction of satisfactory roads and footpaths). The WAPC
ensures that those roads and footpaths have been constructed to the satisfaction of the Local Government before the final consent of the WAPC is endorsed on the survey.

Prior to July 2000, a small survey (up to 12 lots) was drafted on an A3 survey diagram (the diagram) form and a large survey (either more than 12 lots or a complex subdivision) was drafted on an A2 survey plan (the plan) form. As from 1st July 2000 all freehold subdivisional plans (A2 and A3) are referred to as Deposited Plans. For convenience plans, diagrams and deposited plans are called plans in this guide.

2 Lodgement of Plans

The registration system permits the surveyor to choose to lodge the new plan at Landgate before the completion of the roads and footpaths and before the final consent of the Western Australian Planning Commission is obtained.

Landgate uses this time to make a mathematical and legal check of the plan. Any boundary and area amendments required can then be pointed out to the surveyor for amendment and conveyancers may have early notice of any complications requiring conveyancing action before separate titles for the new lots can be created and registered.

No dealings on the plan can be accepted until the surveyor obtains the final clearances for the construction work and the formal approval of the Western Australian Planning Commission is endorsed on the plan. Delays in obtaining these clearances will of course delay the approval of the plan.

3 Lot Synchronisation for New Subdivisions

From 1 June 2010, after a successful trial period, Landgate customers commenced lodging deposited Plans and/or Strata/Survey-Strata Plans together with the documents required to issue new certificates of title.

Known as Lot Synchronisation (Lot Sync), this initiative reduces the processing time required to issue new certificates of title. Earlier document lodgement will allow parallel processing and different timing points when auditing the Plan and examining the documents. This provides an opportunity to all developers with Landgate also including into the process Plans not requiring Western Australian Planning Commission (WAPC) endorsement.

Using the Lot Sync process to lodge a Plan ensures certificates of title will be issued as close as possible to the WAPC endorsement date for the plan of subdivision, or the ‘In Order For Dealings’ date for Plans that do not need WAPC endorsement.

Lot Sync is voluntary and is intended as an alternative method for parties to lodge Plans and documents, it does not replace the current lodgement process. However, under reforms being introduced Landgate may at some time in the future only allow the Lot Sync process for the lodgement of subdivisional Plans.
4 Lot Sync Business Process

When lodging Plans using Lot Sync, all registration documents (except for the production of the duplicate certificate of title/letter of consent to subsequent lodgement) must be lodged within within ten (10) working days¹ of lodging the Plan. The duplicate certificate of title/letter of consent to subsequent lodgement must be produced prior to the Plan being placed ‘In Order For Dealings’.

If there is any non-compliance with the Lot Sync Rules the Plan will be removed from the Lot Sync process and the documents will not be examined until the Plan is ‘In Order For Dealings’.

¹ [Guide updated on 23/08/2018 to replace ‘five(5) working days’ with ‘ten (10) working days’]

5 Lot Sync Rules

Lodgement of Plans

- “Lot Sync” must be noted in the email subject heading when lodging the Plan and Surveyors Report.

- When a Strata/Survey-Strata Plan is lodged, strata forms 3, 7 and 26 must also be submitted at plan lodgement.

Lodgement of Documents

- All required registration documents, including the Application for Title, that are required to complete the issue of certificates of title by the Registrar of Titles must be lodged at Landgate within ten(10) working days² of the Plan lodgement. If the registration documents are not lodged at Landgate within this time, the Plan and document(s) will not be processed as Lot Sync.

- “Lot Sync” does not need to be noted on the documents.

- The lodging party must also submit a signed letter requesting that the lodgement date of the registration documents be amended to the same date that the Plan was placed ‘In Order For Dealings’.

Fees

- Under Lot Sync the normal lodgement fees for both Plans and registration documents apply.

- Any Plan and registration document errors will be subject to the normal requisition fees.

² [Guide updated on 23/08/2018 to replace ‘five(5) working days’ with ‘ten (10) working days’]

6 Plans Marked Subject to Examination

On payment of the required fee, a new plan is allocated a number and the following procedures are initiated:
- a copy of the plan, marked subject to examination is scanned on the Register 2000 image system and made available for searching. Persons searching these plans are cautioned that the plans may be altered during the examination process

and

- all affected titles and location or town lot indexes are noted with the plan type and number.

7 The Plan Examination Process

The plan is then examined for mathematical correctness, and legal correctness arising from the legal requirements of:

- the TLA and the Regulations for the Guidance of Surveyors practising under the Licensed Surveyors Act 1909

- the P&D Act

- the LAA;

- the Local Government (Miscellaneous Provisions) Act 1960

and

- the Local Government Act 1995

Following the examination, the Inspector of Plans and Surveys may either:

- approve the plan if the approval by the Western Australian Planning Commission is required and has been obtained

- endorse the plan 'In Order For Dealings' if the approval by the Western Australian Planning Commission has been obtained

- endorse the plan examined and sent to WAPC in which case the approval by the Western Australian Planning Commission is still to be obtained

or

- decline to endorse the plan as above and issue requisitions to the surveyor to take some remedial action in a process very similar to the stopped document process for dealings.

8 Plan Approval

The formal approval of a plan by the Inspector of Plans and Surveys is the point where the subdivision itself changes from a proposal or action into a legal reality. Unfortunately, occasions have arisen in the past that a plan has been approved, creating the new lots, but the titles have for a variety of reasons, remained unchanged. For example, it has not been unusual for two lots to be consolidated by the registration and approval of a plan, but the titles have remained unchanged,
causing later problems, especially where a building has been constructed across the former boundary.

To resolve these problems, the Inspector of Plans and Surveys has laid down a policy that plans will not be approved until the documents required to have the titles for the land amended to reflect the new boundaries have been lodged. Until that time, a plan, which is in all respects correct, will be marked ‘In Order For Dealings’.

Formal approval thus occurs when the Application for a New or Balance Title (available from the Land Titling Forms page) is lodged at Landgate for the creation and registration of the new titles for the lots on the plan. Until a plan is formally approved by the Inspector of Plans and Surveys, the new lots have no legal status, however the various rating authorities may commence to levy rates (charges) on the new lots from the time that final approval of the Western Australian Planning Commission has been given.

Once a plan has been approved by the WAPC, the application for new titles must be made within a prescribed period of time.

9 Where a Plan is shown examined and sent to WAPC

This notation indicates that the plan has been examined for correctness but the consent of the Western Australian Planning Commission (WAPC) has yet to be endorsed on it. The consent of the WAPC may be conditional upon the completion of the roads, drains and services by the developer and conveyancers should make their enquiries from the surveyor, not Landgate, to ascertain when the approval will be obtained.

10 Where a Plan is shown in Order for Dealings

When a plan is placed ‘In Order for Dealings’, the conveyancer should make a careful inspection of it, (or a search of it) to see what notes the auditor has made, either somewhere close to the graphics (sketch), or in the relevant panels on the form.

If no comments have been made, the plan may be 3 unconditional, and subject to SUB-02 Applications for New Titles Section 1 merely requires an application by the land owner on a Application for a New or Balanced Title, together with the production of the former duplicate titles (if any), for new titles to be created and registered. However, the 'In Order For Dealings' panel is a guide, and persons preparing documents for lodgement should satisfy themselves that no further requirements are needed to be met.4

On the creation and registration of the titles the status of the plan is changed from 'In Order For Dealings' to 'Approved', with an operative date being the same date that the application for new titles was lodged.

If comments are made by a plan auditor, they will fall into two categories:

- comments with internal impact that are an indication that on lodgement of a dealing, and formal approval of the plan, certain legal changes will occur, and action to record those changes will be made by Landgate staff, or
- comments with external impact that give notice to conveyancers that certain conditions must be met, usually by the lodgement of additional dealings.

3 [Guide updated on 23/08/2018 to replace 'is unconditional']

4 [Guide updated on 23/08/2018 to add new sentence]

11 Where a Plan is shown Expired

Section 146 of the Planning and Development Act 2005 places limits on the Registrar of Titles for the issue of new certificates of title, following approval of a Deposited Plan by the Western Australian Planning Commission (WAPC).

Owners of land the subject of plans that were endorsed with the approval of WAPC before the Planning and Development Act 2005 came into operation on 9 April 2006 will have had 5 years after that day in which to lodge an application for new titles. Owners of land the subject of plans that are endorsed with the approval of WAPC on or after the 9 April 2006 will have 2 years from the endorsed date in which to lodge an application for new titles.

11.1 Landgate’s SmartPlan System Status Change

For deposited plans that have been endorsed by the WAPC (i.e. status of WAPC Approved) that have not been dealt on within the required time frames as stated above, SmartPlan will automatically update their status to "EXPIRED" (this does not apply to strata/survey-strata plans).

11.2 Status of Expired Deposited Plan

If a plan has the "expired" status and the registered proprietor still wishes to proceed with the subdivision, then the owner will seek a new subdiisional approval from WAPC.

11.3 For Surveys Endorsed Before 9 April 2008

The owner had until 8 April 2011 to apply for new titles. After that date the survey’s status will be "expired" and if the owner wishes to proceed with the subdivision, a new application approval must be sought from WAPC. The normal subdiisional process will apply and the previously approved survey will be cancelled.

12 Comments with Internal Impact

12.1 Section 168 (1)(2) of P&D Act

Where a plan creates new roads, s.168 (1) & (2) of the P&D Act provides a method of automatic
transfer of the land in the road to the Crown, and dedication of the land for use as a legal, public road. This occurs on the formal approval of the plan by the Inspector of Plans and Surveys. Notice to conveyancers that the action will be taken on approval is given by noting on the plan Subject to s.168 (1)(2) of the P&D Act.

Note: Prior to the proclamation of the P&D Act on 9 April 2006 the above-mentioned provisions were set out in s.295(5) of the Local Government (Miscellaneous Provisions) Act 1960.

12.2 Section 167 of the P&D Act

Where a condition of approval to subdivide land is that easements be granted to either of the Local Government, the Water Corporation, Western Power or Gas Corporation then such easements may be set out on the new plan.

On approval of the plan by the Inspector of Plans and Surveys, easements in gross are created in accordance with the terms set out in the Town Planning and Development (Easement) Regulations 1983.

No consents are required from any mortgagee or other encumbrancer and the easement is created and shown on the new title created and registered for the separate lots on the subdivision.

If the easement later becomes unnecessary it may be removed by application of the grantee.

Note: Prior to the proclamation of the P&D Act on 9 April 2006 the above-mentioned provisions were set out in s.27A of the TP&D Act.

13 Comments with External Impact

13.1 Multiple Owners

Where any of the new lots created on the plan are in multiple ownership, i.e. they are in different names, or different shares and tenancies, the plan auditor places a comment on the plan subject to multiple owners. When this occurs, all the owners must sign the application for titles for the new titles. Transfers may be required for new titles to align tenancy or create common ownership of the resulting new lots.6

6 [Guide updated on 23/08/2018 to add new sentence]

13.2 Section 152 of the P&D Act

Where it is a condition of approval by the Western Australian Planning Commission that a lot(s) shown on a Deposited Plan is to be set aside for pedestrian accessways, rights of way, reserves for drainage or recreation etc., that lot(s) is automatically transferred to the Crown when the new titles for the subdivision are created and registered.

A Crown Land Title, in the name of the State of Western Australia, will be created and registered for each lot that is vested in the Crown. The Limitations, Interests, Encumbrances and notifications
panel of Crown Land Title will contain the following notation:

VESTED BY THE REGISTRAR OF TITLES UNDER SECTION 152 OF THE PLANNING & DEVELOPMENT ACT 2005 FOR THE PURPOSE OF ............

As a caution to conveyancers the plan auditor places a comment on the Plan - Subject to Sec 152 of the P&D Act.

The documents necessary to remove encumbrances such as mortgages and caveats on the land to be vested in the Crown must be lodged at the same time as the Application for a New or Balanced Title.

Easements and restrictive covenants may subsist on conversion to Crown Land.

Easements created under P&D Act s.167 are able to subsist on conversion to Crown land.

Access easements to adjoining land should not impede public use of Crown land but may subsist until alternative legal access is established.

CMS Gas Transmission of Australia easements that are not LAA easements are not acceptable and must be surrendered prior to conversion to Crown. Private CMS Gas Transmission of Australia easements may be replaced with an LAA easement.

Notifications under P&D Act s.165 or s.70A of the TLA may transition across to the Crown if still valid.

Some other interests or encumbrances over vesting land will be considered by the appropriate Regional Manager in the Department of Planning, Lands & Heritage on a case by case basis to determine whether it is acceptable to the Crown. The consent of the Regional Manager must be endorsed on the application to register the plan prior to lodgement. Those not acceptable must be removed prior to conversion to Crown land.

Note: Prior to the proclamation of the P&D Act on 9 April 2006 the above-mentioned provisions were set out in s.20A of the TP&D Act.

13.3 Approval of another Plan

Occasions sometimes arise, especially in newly developing areas, that the lots on a new plan will front onto roads that are not connected to the road network as an intervening road, although constructed, is on a privately owned land. The transfer to the Crown (and dedication as a public road) of the intervening road must occur before titles will be created on the new plan. As a caution to conveyancers the plan auditor will place a comment on the new plan:

"subject to the approval of plan........."

The documents necessary to create the intervening road must be lodged before (or at the same time) applying for titles for the new subdivision.

13.4 Closure of Private Road or Right of Way

When a new plan includes land that is part (or all) of a private road, the Registrar cannot include the road in the new lots. As a caution to conveyancers the plan auditor will place a comment on the new
plan:

"subject to the approval of plan........."

The documents necessary to transfer the ownership of the private road to the owners of the land in the subdivision, and the documents to remove the rights of any person entitled to use the private road or R.O.W. must be lodged before (or at the same time) applying for titles for the new subdivision.

13.5 Road Widening (P&D Action Section 168 (5))

Where any lots are separated from an existing public road by a strip of land marked on the plan as road widening, the owners of those lots will have no legal public road access until the land in the strip is transferred to the Crown or Local Authority (free of encumbrances) for dedicated road purposes.

An application to apply for a new title is not necessary. The transfer of the land to the Crown or Local Authority is the vehicle to approve the survey and create a new title for the land. The consideration panel of the transfer should contain the following words:

"In order that the land may be dedicated as a road pursuant to s.168 (5) of the Planning and Development Act 2005."

As a caution to conveyancers the plan auditor places a comment on the plan:

"subject to s.168(5) P&D Act 2005."

Note: Prior to the proclamation of the P&D Act on 9 April 2006 the above-mentioned provisions were set out in s.28 (1) of the T P&D Act.

13.6 Road Widening (P&D Act Section 168 (3))

Where a new subdivisional plan shows a strip of land between lots and a public road, the owners of the lots will have no legal public road access until the land in the strip is vested in the Crown and dedicated for road purposes. Formal approval of the new plan is withheld until a Application for a New or Balanced Title is lodged at Landgate for the creation and registration of the new titles for the lots on the plan.

As a caution to conveyancers the plan auditor places a comment on the plan:

"subject to s.168(3) P&D Act 2005."

Note: Prior to the proclamation of the P&D Act 2005 on 9 April 2006 the above-mentioned provisions were set out in s.28 (3) of the T P&D Act.

13.7 Land Administration Act 1997 (Section 87)

Where the land in a plan includes a portion of Crown land or the whole or part of a closed road, the plan auditor will place a comment on the survey:

"subject to the inclusion of Crown land or subject to closed road."
The owner of the land in the subdivision must arrange for the acquisition of the Crown land and the creation of either a title or a Closed Road (Ministerial) Order before (or at the same time) applying for titles for the new lots. The disposition of such land is under the control of the Department of Lands.

14 Compiled Plans

The proprietor of two or more complete lots may amalgamate those lots to form one new lot. The following procedure is recommended:

- obtain the written consent of the Western Australian Planning Commission to the proposed amalgamation
- obtain the services of a surveyor to draw the new survey plan
- register the plan at Landgate
- submit any necessary clearances to the Western Australian Planning Commission and obtain its written approval on the plan

and

- following the approval or change of status of the plan from subject to examination to in order for dealings, by the Inspector of Plans and Surveys, apply for a title to be created and registered for the amalgamated lot on a Application for a New or Balanced Title. Production of the relevant duplicate certificates of title (if any) is required.