SUB-02 Application for New Titles

Version 2 - 23/08/2018

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1 New Titles for Subdivisions

An application for a new title the subject of a single deposited¹ plan must be made on a Application for a New or Balanced Title form (s.166 of the TLA). Applicants must ensure that the plan is ²In order for Dealings before attempting to lodge their documents.

All the documents necessary for the approval of a plan marked In order for dealings must be lodged at the same time as the application. All the relevant duplicate certificates of title (if any) must be produced with the application or arrangements made for their production by the person holding them prior to presentation of the application.

Surveyors are required to include in plans lodged for the purpose of subdivision any residue land comprised in an affected title as a separate (balance) lot or lots.

The signatures of all the proprietors must appear on the application. No witness is required for signatures on the application unless a change in the address of the registered proprietor(s) is shown or if the application is being executed under a registered power of attorney.³

If such a change is required and the signatures not witnessed, then the application is acceptable if the third panel of the form, after the request for the title the subject of the new plan, is followed by the words:

".....such title(s) to show the current address of the applicant(s)."

Conveyancers should consider the effect of the creation and registration of separate titles for a subdivision on any encumbrances that may be registered or recorded on the title for the original (pre-subdivision) lot. As a basic rule, any encumbrancer who may be disadvantaged by the creation of the new subdivision must consent to the application.

Examples where consent will be required are:

- A mortgage in circumstances that the mortgage will, after creation of the subdivision, remain
registered over part only of one or more of the new lots, resulting in the restriction of the ability to exercise a power of sale.

- A caveat lodged protecting an unregistered instrument, which will become unregisterable on the creation of the new subdivision.

If the subdivision will breach the terms of a restrictive covenant, then the covenant must be modified or discharged.

1[Guide updated on 23/08/2018 to insert 'deposited']

2[Guide updated on 23/08/2018 to remove 'approved or' from 'approved or In order for Dealings']

3[Guide updated on 23/08/2018 to insert 'or if the application is being executed under a registered power of attorney']

2 Multiple Ownership Subdivisions

In the case of multiple ownership subdivisions, the repealing of Regulation 44 of the Licensed Surveyors (TLA) Regulations 1961 has allowed for plans to show land in multiple ownership.

Plans involving multiple ownership of a new lot created on the plan must have all the documents (i.e. partial transfers and consents necessary for the approval of the plan.

These must be lodged at the same time as the application to register the plan. New titles will be created in accordance with the single application (Application for a New or Balanced Title form) signed by all the affected owners. To facilitate the creation of the new titles in the right proprietorship, the application must specifically state which proprietor receives what lot (see LT RPM Form Examples - Example 8).

Note: Once a plan has been approved by the WAPC after 9 April 2006, s.146 of the P&D Act allows for the lodgement of the application (Form A6) within 2 years, otherwise the Registrar of Titles is not permitted to create and register the new titles created on the plan:

If an application for new titles is not lodged within the above-mentioned time period, the legal status of the relevant plan will be changed from In Order for Dealings to Expired. In this circumstance the Registrar of Titles is prohibited from creating and registering new titles for the lots shown on the plan.

2.1 Balance Titles

Where part of the land in a title is removed, either by transfer or application, that title is partially cancelled and the duplicate certificate is retained by Landgate (s.71A of the TLA). To obtain a title for the balance of the land the proprietor is required to apply (using a Application for a New or Balance Title form) for a balance title once a Deposited Plan drafted by a Surveyor has been lodged at Landgate. This plan is to be prepared at the proprietor’s expense. The practice rules, as to attestation set out in paragraph 6.2.1, apply.

Note: Part lots cannot exist in the Register. It is therefore necessary for surveyors to include in new subdivisional plans all land within the relevant titles and allocate lot numbers to all new parcels including PAW’s. Any residue land (balance) must be given a lot number.
3 Separate Titles

The proprietor of two or more complete lots (which also includes the whole of any part-lot as defined in s.21(1) of T P & D Act) in a title may apply (using a Application for a New or Balanced Title form) for the creation and registration of separate titles for each of the lots or part-lots without the consent of the WAPC. The existing duplicate certificate of title (if any) must be produced.

3.1 What is meant by a Part-Lot

Essentially, a part-lot as defined in s.21(1) of T P&D Act is a particular part of a former whole lot which remains and is shown on a plan or diagram of subdivision after that former whole lot has in some way been divided or reduced in size. It will normally (but will not necessarily be) specifically identified as a Pt-lot in any relevant certificate of title. Some common examples of what constitutes a part-lot for the purposes of s.21(1) of T P&D Act are as follows:

- Part-lots that come into existence as a result of small resumptions, road-widenings and creation of new roads. In these cases, there has previously been a whole lot, created on a plan or diagram approved by the WAPC, which has lost part of its area.

- Part-lots that arise when a new subdivisional plan or diagram was overlaid on an existing plan or diagram. When new titles are created and registered for the lots on the overlaid plan or diagram, one or more part-lots may be left in a title (this practice is no longer allowed).

- Part-lots that were created in the past when, prior to the introduction of planning laws as we now know them, owners of whole lots on a title sold a whole lot, coupled with one or more parts of whole lots. In these cases, the whole of the land transferred was described by a sketch on the relevant transfer.

- The original whole lots still existed, but they were divided into parts and those parts were contained in different titles. As those parts of lots are defined by being shown by a red marking in their original plan or diagram, they are also part-lots within the definition.

Where the existing certificate of title contains:

- an undefined portion of land

- a portion of a part-lot as defined under s.21(1) of the T P&D Act

or

- a part-lot that is not considered to be a part-lot under s.21(1) of the T P&D Act;

then the consent of the WAPC will be required to be endorsed on the application before a separate title for the undefined portion or part-lot may be created and registered.

If separate titles are issued for the whole lots and/or part-lots in a title and only one undefined portion remains as the balance of the land in the title, the proprietor may lodge an application for a balance title without the necessity of obtaining the consent of the WAPC.

4 Reversion to Crown Allotments
Once a Crown allotment has been superseded by the lodgement and registration of a new plan, it is not possible to revert back to the former Crown allotment.

5 Also see

-SUB-01 Subdivision