

NOTICE TO SURVEYORS T6/2000

BALANCE LOTS

The introduction of SmartRegister requires surveyors to include in plans lodged for the purposes of subdivision, acquisition and amalgamation of Crown land with freehold land, any residue land as a separate (balance) lot or lots.

To meet this requirement it may be necessary to use several sheets for a single plan.

The Registrar or an authorized land officer may direct that the requirement to show a “balance lot” does not apply to a particular plan of Crown land. Such situations will be rare and most likely occur where Pastoral leases, State Forests and large reserves are involved.

MULTIPLE OWNER SUBDIVISIONS

The repealing of Regulation 44 of the *Licensed Surveyors (Transfer of Land Act 1893) Regulations 1961* has allowed for plans to show land in multiple ownership without the need for conveyancing action to bring the land into single ownership.

Plans involving multiple owners will require all the relevant transfer documents and consents pertaining to encumbrances to be lodged before the plan is approved. New titles will be issued in accordance with a single application (signed by all the affected owners).

SmartRegister amendments to the *Transfer of Land Act 1893* will allow for disposition statements to enable clarity in the allocation of encumbrances in land transfers.

A new plan feature for subdivisions of land involving multiple owners or titles is the inclusion of a “former tenure table” which clearly indicates the previous tenure of each lot (refer Notice to Surveyors T4/2000). The schedule assists in the preparation of the conveyancing documentation and new folio creation.

LAND ACQUISITIONS

Where an acquiring authority has reached agreement with the affected registered proprietors, the process can be treated in a similar manner to a normal subdivision. The plan would show the complete details of the residue parcels, which would be given a new parcel identifier (refer plan example 5). The application for titles, including the titles of the residue lots, would need to contain the signatures of all the registered proprietors of the subject land. The acquired lot(s) then transfer to the acquiring authority or the “State of Western Australia”. If the acquired land is to be a road, then another option would be road dedication.

It may be possible to allocate only one lot number to the whole of the acquired land. In this case the taking orders would refer to the relevant portions of the lot.

No partial approvals are permitted with acquisition plans affecting freehold land – the application for titles would need to include all lots shown on the plan.

Where an acquiring authority is unable to reach agreement with the registered proprietors there would be a need for the registration of a “Notice of Intention to Take” against the affected title. The plan would be prepared in the same manner as indicated by plan example 5. The registration of a “Taking Order” will cause the issue of titles to the acquiring authority for the acquired land. The “Taking Order” will also trigger the “automatic” creation of any balance titles but no duplicate titles for the balance lots will issue until applied for by the registered proprietors – no fees apply.

A Crown plan type must be used where Crown land is involved and it is intended that the land acquisition lead to road dedication or Crown easement creation. In this case there is a requirement for a Crown land title to be prepared for registration of the “Notice of Intention to Take” and the “Taking Order”. Where native title rights exist staged plan approval may be required.

It is no longer possible to show sole subject road dedications under section 28 of the *Town Planning and Development Act 1928* on survey plans if a residue (ie. part lot) is created. Such dedications will need to be carried out in the same manner as a normal subdivision with the residue land being allocated a unique parcel identifier. The section could still be used for sole subject road dedications where the subject is a whole lot or all of an existing part lot.

CROWN LAND AMALGAMATIONS

Section 87 of the *Land Administration Act 1997* provides for the amalgamation of Crown land with adjoining freehold (or leasehold) land. SmartRegister cannot accommodate some of the current practices under section 87 because the requirement for a “lot on plan” unique identifier is not necessarily maintained, and part Crown parcels are created in cases where only a portion of Crown land in a reserve is being amalgamated.

Amalgamations of road closures or pedestrian accessways (PAW’s) with adjoining freehold land are to be shown on freehold Deposited Plans. It is only necessary to show any residual road or PAW as a balance lot when the road or PAW is the subject of a Certificate of Title or Crown Land Title. The Registrar or an authorised land officer may authorise for a plan prepared for the purposes of closing a portion of private road or right of way under Section 52 of the *Land Administration Act 1997* to not show a balance lot for the residue road or right of way. The areas of closed road or PAW are to be depicted in an inset on the plan or on a separate sheet of the plan.

Amalgamations of portions of “Unallocated Crown Land” (UCL) with adjoining freehold land are to be shown on freehold Deposited Plans. Unless instructed otherwise by DOLA, **no balance lot of the residue UCL is to be shown on the plan.**

Amalgamations of portions of Crown reserves with adjoining freehold land are also to be shown on freehold Deposited Plans. The residue of the Crown reserve is to be shown as a balance lot, with a new lot number, shown on the plan but maintaining the reserve number. Alternatively, the reserve may be subdivided initially on a Crown plan with the portion to be amalgamated given a separate parcel identifier. The amalgamation is then carried out on a freehold plan.

Amalgamations of portions of Crown land with adjoining Crown leasehold land are to be shown on Crown plans.

Only the Freehold lots (the “outcome”) are to be included in the CSD files for plans prepared for Crown Land Amalgamations.

Where an applicant requires the Crown land to be part of a new subdivisional development, Part 6 Division 2 of the *Land Administration Act 1997* may be a more suitable option for the particular project. The development may be subjected to delays associated with actions on the Crown land,

particularly if native title rights need to be extinguished. Staged registration and/or approval actions may be necessary. The relevant Regional Manager at DOLA should be consulted on the most appropriate procedures for each individual situation.

ADVERSE POSSESSION CLAIMS

The plans for Possessory Title applications need to be prepared in the same manner as multiple owner subdivisions, with all portions of land uniquely identified on one plan. As the landowner adversely affected by a successful claim is unlikely to sign any documentation, balance title(s) automatically issue on registration of a sundry document or on direction from the Commissioner.

Where a successful claim adversely affects a strata/survey-strata scheme the procedures are more complex. A plan of re-subdivision for the strata/survey-strata scheme, paid for by the claimant, may be required (ie. the same as if a resumption had occurred).

The attached plan examples indicate the new requirements.

IAN HYDE
REGISTRAR OF TITLES

29 December, 2000
Att.