

Subdivision Certificates for Deposited Plans

The *Environmental Planning and Assessment Amendment Act 1997*, which commenced on 1 July 1998, made important changes in relation to the approval and registration of deposited plans of subdivision.

The Act:

- transferred the control of subdivision from the *Local Government Act 1919* and Ordinance 32 to an amended *Environmental Planning and Assessment Act 1979*;
- introduced a system to enable accredited persons to certify plans of subdivision;
- inserted new provisions in the *Conveyancing Act 1919* to ensure that (subject to certain exceptions) dealings with land are made in terms of the "current plan" for the land.

Further, in order to ensure wider compliance with development controls, an expanded definition of "subdivision of land" was inserted into the Act.

Need for a Subdivision Certificate

Section 195C *Conveyancing Act 1919* stipulates that a **plan of subdivision** (other than one by the Commonwealth) cannot be registered unless it has been endorsed by a subdivision certificate issued under s. 109J of the *Environmental Planning and Assessment Act 1979*.

What constitutes a "subdivision"?

Section 195 *Conveyancing Act 1919* specifies a "**plan of subdivision**" as a plan that shows:

- the division of an existing lot into two or more new lots or
- the consolidation of two or more existing lots and their simultaneous redivision, along new boundaries, into two or more new lots or
- the dedication of an existing lot as a public road under s.9 of the *Roads Act 1993* or as a public reserve under s.49 of the *Local Government Act 1993*, or
- the setting aside of an existing lot as a drainage reserve under s.49 of the *Local Government Act 1993*.

This includes a plan of subdivision for lease purposes (within the meaning of s.23H) and any other plan that shows the division of land, but does not include a plan of consolidation, a plan of identification or a miscellaneous plan. For these plans, see "Miscellaneous plan and plan of identification" below.

Section 4B of *Environmental Planning and Assessment Act 1979* further provides:

- For the purposes of this Act, **subdivision of land** means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:
 - by conveyance, transfer or partition, or
 - by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- Without limiting subsection (1), **subdivision of land** includes the procuring of the registration in the Office of the Registrar General of:
 - a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*, or
 - a strata plan or strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.
- However, **subdivision of land** does not include:
 - a lease (of any duration) of a building or part of a building, or
 - the opening of a public road, or the dedication of land as a public road, by the

- Crown, a statutory body representing the Crown or a council, or
- (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
 - (d) a division of land effected by means of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or
 - (e) the procuring of the registration in the office of the Registrar General of:
 - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the *Conveyancing Act 1919*, or
 - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*."

It should be noted that plans prepared for the purposes of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* are not plans of subdivision within the meaning of s.195 *Conveyancing Act 1919* and are therefore not subject to the requirement for a subdivision certificate under the *Environmental Planning and Assessment Act 1979*.

Miscellaneous plan and plan of identification

The terms "miscellaneous plan" and "plan of identification" have been defined in s.195 of the *Conveyancing Act* to include certain types of plans (and other plans which may be added by regulation in the future). The purpose of this is to make it clear that the plans mentioned do not involve matters which might come within the extensive definition of "subdivision of land" in s.4B of the *Environmental Planning and Assessment Act 1979*. In other words, the object of these definitions is to indicate that development consent is not required in relation to certain matters.

By the *Conveyancing (General) Amendment Regulation 1998* the list of miscellaneous plans and plans of identification has been expanded. As a result, development consent is not required in relation to the following matters:

Miscellaneous plans

- the registration of a plan of proposed easement, profit à prendre or restrictive or positive covenant
- the registration of a plan creating or releasing an easement or profit à prendre
- the registration of a plan creating a restrictive or positive covenant
- the recording of a survey information only plan
- the registration of a boundary adjustment plan within the meaning of the *Community Land Development Act 1989*
- the registration of a plan showing the division of land by the erection of buildings and occupations before 1 July 1920.

Plans of identification

- the registration of a plan supporting a primary application (that is not a plan of subdivision)
- the registration of a redefinition plan
- the registration of an amendment plan
- the registration of a delimitation plan
- the registration of a plan showing resumed land and a residue parcel
- the registration of a plan showing land dedicated as road by proclamation or notice and a residue parcel
- the registration of a plan supporting a transaction or proposed transaction referred to in s. 23G of the *Conveyancing Act*.

The "Certifying Authorities" who can issue a Subdivision Certificate

A subdivision certificate may be issued in the case of subdivision:

- i) that is the subject of development consent, by the consent authority
- ii) that is not the subject of development consent, by the council
- iii) carried out by or on behalf of the Crown or a prescribed person, by the Crown or prescribed person or by any person acting on behalf of the Crown or prescribed person
- iv) of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority, by an accredited certifier (see *Environmental Planning and Assessment Act 1979*, s. 109D(1)(d)).

Matters to be considered in the issue of a Subdivision Certificate

A certifying authority must be satisfied as to the matters specified in s. 109J of the *Environmental Planning and Assessment Act 1979* before issuing a subdivision certificate.

One of the pre-conditions to the issue of a subdivision certificate by a certifying authority is the submission of a certificate of compliance from the relevant water supply authority in regard to the subdivision.

New rules for plans that do not have Council approval (“De Facto Subdivision”)

In the past, it was the practice of the Registrar General to register, without the endorsement of council’s approval, plans showing divisions of land by devise, road severance or the erection of buildings and occupations. This practice had its basis in the exceptions contained in the definition of “subdivision” in the *Local Government Act 1919*.

Any such plans of subdivision lodged on or after 1 July 1998 must now be endorsed with a subdivision certificate.

It should be noted that, under the *Conveyancing (General) Regulation 2003*, **development consent** is not required in respect of a plan showing a division of land effected prior to 1 July 1920 by the erection of structures (such as buildings, walls and fences) if:

- the various parts of the land so divided are separately rateable under the *Local Government Act 1993* and
- the structures that are currently on the land are in the same position as were the structures by which the division was effected

What constitutes a “current plan”?

Section 327AA was included in the *Local Government Act 1919* in 1970 to require that, subject to certain exceptions, **dealings with land be in terms of a parcel as defined in a “current plan”** (that is, the latest plan of the land on public record).

Schedule 2 of the *Environmental Planning and Assessment Amendment Act 1997* has carried the scheme of s.327AA of the *Local Government 1919* over to the *Conveyancing Act 1919* in a far more elaborate and inclusive form.

The aim of the amending legislation is to reinforce the requirement for a subdivision certificate to accompany deposited plans of divisions of land that are lodged for registration.

Under the legislative regime “current plan” is defined in s.7A of the *Conveyancing Act 1919* to mean a “Crown plan” or a “registered plan”, both of which terms are defined in s.7 of the *Conveyancing Act 1919*.

Also included in s. 7 of the *Conveyancing Act* is a definition of “existing lot”.

Existing lot means:

- a) a lot whose boundaries are shown in a current plan, or
- b) in relation to land that is not included in a current plan, any distinct lot or portion of land whose current boundaries are identified in the document or documents that evidence current legal interests in the land, whether comprising the whole of a parcel, or 2 or more parts of a parcel separated by land reserved or acquired for a road, railway or other like purpose.

Consequently, pursuant to s.23F of the *Conveyancing Act 1919* the Registrar General may refuse to register:

- the conveyance or transfer of part of an existing lot
- the lease of part of an existing lot
- the mortgage of part of an existing lot
- the partition of an existing lot

unless:

- the land to which the transaction relates is shown on a current plan and
- the boundaries of each part into which the land is divided as a result of the transaction follow the boundaries of an existing lot.

Furthermore, s.37 of the *Real Property Act 1900* provides that the Registrar General may refuse to register a dealing or instrument in the Register if the dealing or instrument contravenes s.23F of the *Conveyancing Act*.

The transactions which are excepted from the operation of s. 23F are specified in s.23G of the *Conveyancing Act 1919*.

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