

Information Bulletin No 35

July 1998

Guide to Preparing and Lodging a Primary Application

This bulletin provides guidelines for preparing and lodging a Primary Application at Land and Property Information New South Wales (LPINSW) under **section 14** of the Real Property Act 1900.

A Primary Application may be made in respect of land and/or entitlement to an existing easement, comprising Old System, Qualified or Limited title.

Note: This bulletin **does not cover** Resumption Applications by public authorities, pursuant to **sections 31A(2) or (3)** of the Real Property Act 1900 and should be read in conjunction with the following:

Information Bulletin No. 1 - 'A Guide to Plan drawing standards for Deposited Plans lodged at LPINSW'

Information Bulletin No. 14 - 'A Guide to the Creation or Release of Easements/Profits à Prendre, or Creation of Restrictions on the Use of Land and Positive Covenants, upon registration of a plan'

Information Bulletin No. 19 - 'Standards for the preparation of Dealings and Old System Instruments lodged for registration'

Information Bulletin No's 54 and 56 - 'Property Legislation Amendment (Easements) Act 1995'

Information Kit No. 1 - 'Lodging a Plan'

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1. What can be converted?

A Primary Application enables conversion of land to the provisions of the Real Property Act 1900 and is used for:

1.1 Old System/Qualified or Qualified Limited title

Applicants may claim an entitlement to an estate in fee simple in land based on documentary or possessory title.

1.2 Easements

Applicants may claim an entitlement to an easement based on documentary title.

Claims can only be made when:

- the land forming part or whole of the dominant tenement is the subject of the application and the easement is additional to the claim or
- the land forming part or whole of the dominant tenement is currently under full Torrens Title and is held by the applicant, who wishes to have the right entered as a notification on the existing title.

2. General Requirements

- 2.1 A Primary Application must be prepared on the approved form (20-0620) and be accompanied by the documents of title and other evidence, as outlined in paras. 3(J) and 4.
- 2.2 The Application must be completed clearly and legibly in permanent, dense, black or dark blue non copying ink.
- 2.3 Any alteration to the application prior to lodgment must be verified by the initial of the signatories to the document. Use of **correction fluid** or **erasers** is not permitted.

Note: Alterations made subsequent to lodgment also require verification by the Office of State Revenue.

- 2.4 If the space provided in the application is insufficient, additional sheets may be annexed. If an annexure is added, it must:
 - be clearly identified
 - make specific reference to the part of the application to which it refers
 - be attested to by a witness on the first and last pages
 - be of the same size, paper quality and colour as the Application. **Note:** The standards for preparation of annexures are set out in Information Bulletin No. 19.

3. Completing the Application

The following instructions relate directly to the marginal lettering on the Application form:

(A) Lodged by

Include the full name and postal address of the lodging agent even if an applicant is the lodging agent.

B) Applicant

Include the full name and postal address of the applicant.

(C) Description

Show the name of the suburb or locality, county and parish and reference to the current deed.

Land:

- reference to the latest deed in which the land is fully described
- any current parcel identifier and
- reference to a suitable plan of survey in which the land is defined.

Example of land description: “all that piece or parcel of land situated at Smythtown, County of Cumberland, Parish of Pitt being the land described in Deed Bk No. and shown in the plan lodged herewith/registered as DP

Land with appurtenant Easement or Easement only:

- the deed creating the easement should be disclosed and
- an adequate description of the easement’s location should be given and
- the site should be shown on the accompanying plan, if applicable, or reference made to the registered plan on which it is shown (eg. together with easement(s) created by Deed Bk.....No.....).

Note 1: *An application should include in Schedule Two the devolution of title for the servient tenement, from the date of creation of the easement to the date of the application.*

Note 2: *A claim to an easement, which is based on **possession/usage**, (ie. prescriptive easements) **will not** be accepted.*

(D) Registered Proprietor

The full name of the person(s) or corporation in whose name the certificate of title is to issue should be shown. If the name(s) differ from that on the deed, evidence of the change of name should be furnished.

(E) Tenancy

The tenancy in the Application should reflect the tenancy in the deed. Where the tenancy is not disclosed in the deed, the title(s) will issue to the applicant as tenants in common in equal shares. The shares **must be specified for tenants in common**.

(F) Statutory Declaration and Signatures

General - The Application must be signed by the applicant or the applicant’s representative - (see below) before a functionary prescribed by section 21(1) of the Oaths Act 1900. If signed outside New South Wales, delete reference to ‘Oaths Act 1900’ and substitute the act pertaining to a declarant in the locality in which it is signed. The full name and address of the declarant must be shown.

By an Attorney - The power of attorney must be registered in the General Register of Deeds at LPINSW. The execution must take the form, ‘[Name] attorney for the applicant pursuant to Power of Attorney Book Number’. Production of a power of attorney is not required.

By a Corporation - Where the applicant is a corporation, the Application must be signed by a natural person and not under seal. The declaration must be made by a representative of the corporation, eg director or secretary.

By a Solicitor on Behalf of the Applicant - A solicitor may make the declaration on behalf of an individual or a corporation.

The following clauses relate to the declaration:

Clause 1: Delete (a), (b) or (c), whichever is inapplicable.

Clause 3: Delete 'unoccupied' or 'occupied by the persons specified in Schedule One', whichever does not apply.

Clauses 4 to 7 & 9: The Registrar General must be informed immediately when any of the following occur subsequent to the date of the application, but prior to the creation of the title(s):

- any transaction affecting the land in this application
- any alterations made to buildings or fences.

Note: Any documents evidencing such transaction must be lodged.

Clause 10: The declarant is responsible for all information appearing on the form.

Clause 11: List all documents that cannot be located and/or produced after searches and inquiries have been completed.

Note 1: *Each page of the Application should be signed by the declarant and the attesting witness.*

Note 2: *Any alterations to the Application should be initialled by the applicant or their agent.*

(G) Consent of Mortgagee

Consent must be furnished for each subsisting mortgage. A consent may be lodged as an annexure to the Application.

Delete this section, if inapplicable.

(H) Particulars of Subsisting Interests - Schedule One

List all leases, mortgages, easements and other documents of the type referred to in clauses 4 to 7 of the declaration. Where the whole or any part of the land is occupied by persons other than the applicant, reference to the nature and duration of their tenancy should be shown.

(I) Location of Documents - Schedule Two

Separately list the item numbers for documents:

- to be lodged with the Application
- lost or destroyed
- permanently deposited at LPINSW, along with the deposited deed packet number
- produced at the Production Counter or
- to be produced at Customer Services Counter subsequent to the lodgment of the Application.

(j) Schedule of Documents - Schedule Two

Schedule Two should contain a full and correct list of separately numbered documents, of which the applicant has knowledge, relating to the subject land. These include:

Documentary Title - Where an applicant claims an estate in fee simple by virtue of a documentary title, Schedule Two should commence with:

- a “good root of title” at least thirty years old, or
- a later deed, which has already been accepted by the Registrar General in an earlier Primary Application or
- a conveyance by a resuming authority or
- a conveyance from a council under either s. 602 Local Government Act 1919 or s. 713 Local Government Act 1993.

Easement - Where the applicant claims the benefit of an easement, Schedule Two should contain reference to:

- the deed by which the grantor of the easement acquired title to the servient tenement
- the deed creating the easement and
- chain of title for the servient tenement from date of creation to date.

4. Possessory title claims

A Primary Application may be made, where title is claimed by possession adverse to the documentary owner, by proving facts sufficient to show the right of the owner to recover has been barred.

The Limitation Act 1969, which came into effect on 1 January 1971, reduced the limitation period from 60 years to 30 years against the Crown and 20 years to 12 years for anyone other than the crown.

Note: The Act does not apply retrospectively.

4.1 Evidence (see also para. 470 Baalman & Wells)

The Application must be supported by written evidence detailing the circumstances of the claim including:

- A list of the documentary title, to the date of the application, in Schedule Two of the Application.
- A statutory declaration detailing the name and address of the person(s), who may, by the documentary title, have an interest at law or in equity, in the subject land, at the date of the Application.
- A list of the devolution of the possessory title from the date of the claim to the date of the Application.
- Statutory declarations, by the applicant and as many disinterested witnesses as practicable. **see para. 4.2**
- The names and addresses of all tenants should be listed in Schedule One of the Application. All available leases and other documents evidencing a tenancy should be produced.
- A letter from the council indicating who:

- has been assessed for the purpose of rating and
- paid the rates during the period of possession.

4.2 Statutory Declarations supporting a Claim of Possession

4.2.1 The declarants should state:

- their full name and address
- their age
- their means of obtaining knowledge of the contents of the declaration, eg. 'I have lived next door to for 40 years...'
- to the best of their information and belief, the circumstances under which, and the time at which, the possession relied upon commenced
- detailed particulars of the manner and extent to which the land has been used and occupied
- detailed particulars of any acts of ownership upon which the possession is based
- detail the extent, full or partial, and manner in which the land has been enclosed or the boundaries marked since the time the claim of possession commenced
- the nature of any improvements existing on the land, eg. sheds, dwellings, internal fencing, pens, paddocks, gardens, dams
- the time when such fences and improvements were erected or constructed, and by whom
- whether they have heard of any claim adverse to the applicant or his/her predecessors in possession, ie. a claim over the land by some other person
- whether they know of any litigation with reference to the subject land ever having occurred, and if so, the nature and result of such litigation
- whether they are aware of any restrictive covenant, or easement affecting the subject land
- whether, to their knowledge, the applicant or their predecessors in possession have at any material time acknowledged the title of, or paid rent to any person, and
- that the disabilities referred to in the Limitations Act 1969 will not prohibit a possessory title being acquired against the persons interested in the land at law or in equity.

4.2.2 The declarations should make reference to a plan, which clearly identifies the land and indicates the nature of existing improvements and occupations erected thereon. The plan may be:

- a registered deposited plan of survey (include plan number) or
- an unregistered plan of survey, an identification survey plan or a sketch plan annexed to the declaration

4.3 Advertising

The Registrar General may require the applicant to advertise the Application in the *Sydney Morning Herald* and the local press. The form of notice will be provided for the applicant, who should arrange for the placement and payment for the advertisements. A statutory declaration and copy of the advertisements from the newspapers should be furnished to LPINSW, as evidence of the placement.

4.4 Ad Medium Filum Viae (to the middle line of a road)

Where the ownership of minerals under the road was not excluded from the Crown Grant, the minerals may vest in the adjoining owner. Since 1 January 1920 the rule is rebutted, where the fee simple of a public road is vested in the council. [ss 145(3) & 146(1)(c) Roads Act 1993]

A landowner, who claims entitlement to an adjoining road by virtue of the ad medium filum viae rule, may make application to the Registrar General to be recorded as registered proprietor of the land. Under this common law rule it is presumed that if a road bounds or passes through a property the title to the property extends to include the fee simple of so much of the traversing road enclosed within the property, or to include the fee simple up to the middle thread of the boundary road for the length of its frontage.

An applicant for title, which includes the site of a road is required to furnish:

- a letter from the local council confirming that the site is not a public road
- a statutory declaration by the registered proprietor that he/she is not aware any rebuttal of the presumed extension ad medium filum and
- a certificate by his/her solicitor or by some other qualified person stating that he/she has examined all relevant documents of title from the date of creation of the road, and has found nothing therein to indicate that the rule of construction has been rebutted. The documents searched should be listed.

Note 1: *The land being claimed should be **included** in the adjoining lot(s).*

Note 2: *Further information can be obtained from paras. 216, 219 and 317 of **'Baalman and Wells'** and paras. 4.5 and 7.46 of **'Legal Aspects of Boundary Surveying as apply in New South Wales'** - Hallmann.*

5. Stamp Duty

The Application **must** be presented to the Office of State Revenue, Stamp Duties Division, for assessment and marking.

6. Delivery of Documents lodged with the Application

After the issue of the certificate(s) of title, the Registrar General will return all documents, except documents specifically prepared in support of the Application.

7. Searches

Any searches in the applicant's possession should be lodged. Additionally where:

- **the Application is based on possession**, the search(es) should include the devolution of the documentary title (which may need to be traced from the Crown grant) and also include the result of searches against the applicant and his/her predecessors in possession (see para 4) or
- an **easement** is claimed and the land is not held under full Torrens title, the search(es) should include the devolution of title for the dominant and servient tenements, from the date of creation of the easement. **see para. 1.2**

8. Plan Requirements

All Primary Applications should be accompanied by a new plan of survey, unless exempted for the reasons set out in **para 8.1**. The plan should be lodged concurrently with the application and will be registered as a deposited plan. In addition to the fee for the primary application, the plan lodgment fees will apply. Where the plan includes Torrens Title land the certificate(s) of title must be listed on the plan lodgment form and lodged or produced. The normal requirements for council's approval and signatures on plans and section 88B Instruments apply to plans lodged with primary applications.

For more detailed information on plan lodgment see **Information Kit No. 1** on '*Lodging a Plan*' available from LPINSW.

8.1 Exemptions from new plans of survey

Subject to the Written approval of the Manager, Old System Plans Section, a new plan of survey is not required:

- where the subject parcel is a lot in a registered deposited plan of survey made within 12 years of the date of lodgment or the land is surrounded by registered deposited plans of survey made within 12 years of the date of lodgment. There must be no conflict between the surveys represented in these plans.
- where the subject parcel is a lot in a registered deposited plan of survey more than 12 years old and evidence is furnished that the land and adjoining lands are vacant and unfenced
- where the subject parcel is a lot in a registered deposited plan of survey more than 12 years old, the land is fenced and the consents of all adjoining owners to the plan and the position of the occupations/fencing shown thereon are furnished
- where the subject parcel is a lot in a registered compiled deposited plan based on a prior registered deposited plan of survey made within 12 years from the date of lodgment
- where the subject parcel is a lot in a registered compiled deposited plan and is surrounded by registered deposited plans of survey made within 12 years of the date of lodgment. There must be no conflict between the surveys represented in these plans.

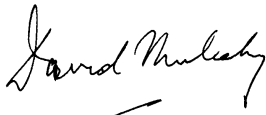
9. Lodgment

The Primary Application should be lodged at the Plan Lodgment Counter, ground floor of LPINSW and the prescribed fees paid. It should be accompanied by a deposited plan of survey. **See para. 8**

Other information to be lodged includes:

- all deeds and other documents evidencing the devolution of title from the selected commencing point and
- searches of the General Register of Deeds (including Causes, Writs and Orders) and
- other appropriate evidence.

Inquiries relating to dealings may be made in person at the Client Service Counter, ground floor, by telephone on 9228 6713 or fax 9223 9464. Inquiries relating to plans should be made at the Plan Support Counter, level 2, North wing, Land and Property Information, 1 Prince Albert Road, Queens Square, Sydney by telephone on 9228 6798 or by fax on 9221 4405.



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