



INFORMATION SHEET No 4

LAND DIVISIONS

LEGISLATIVE REQUIREMENTS

In South Australia, development approval must be obtained before land may be divided into separate allotments. This approval is required pursuant to the Development Act, 1993 and the Real Property Act 1886 and applies whether a boundary between neighbours is shifted, one or more allotments is created, or for large-scale developments of numerous allotments.

WHERE DO YOU START?

It is highly recommended that you contact the relevant officer of the local council, to discuss the merits of your application and planning requirements. Preparing a simple sketch plan of your ideas and providing a copy of the certificate of title can assist in discussions with Council's officer.

In general, the requirements for Land Divisions are contained in Council's Development Plan. Council officers will also be able to advise you of any likely requirements for construction or alteration to roads and drainage etc. Final conditions of approval are assigned by Council's Development Assessment Panel (DAP) and any information given by Council officers is for guidance only.

The existence of private easements or easements in favour of the council, SA Water Corporation or ETSA Utilities (not always indicated on the land title certificate) should be discussed at an early stage with the relevant authority.

Using an Agent

Although not mandatory, it is recommended that you choose to use an agent (eg licensed Surveyor or Town Planner) to investigate and prepare your Planning Application. An agent can provide professional advice on the planning procedure and likely planning requirements prior to lodging your application. An agent can arrange for professionally prepared plans of your application for lodgement purposes. An agent can lodge a

planning application on your behalf and also will be able to provide advice on Lands Titles Registration Office requirements.

LODGING AN APPLICATION

Land Division applications are lodged using the Electronic Development Application Lodgement and Assessment (EDALA) system. While it is possible to lodge an application yourself, Surveying Agents are familiar with lodging applications electronically from their offices via the EDALA system and can take a lot of the worry out of the process. Electronic applications enjoy advantages in the speed and efficiency of lodgement and distribution, and enable the Agent to monitor and assist the progress of applications.

The Development Plan

The Development Plan is a statutory document that sets out the planning policies for each council area (zone). The Development Plan describes the way land should be developed for different parts of the area, the types of development preferred and the policies and standards against which land division proposals will be assessed.

Policies cover a range of social, environmental and economic matters including planning, building, heritage and environmental protection. Such policies are set out in terms of word descriptions, zoning maps, diagrams and tables.

The Development Plan may be viewed or purchased at your local council or at the Department of Planning and Local Government, on the Level 5, Roma Mitchell House, 136 North Terrace, Adelaide, or via the web at: www.planning.sa.gov.au. If you elect to use the services of an agent, they should be able to advise you on the policies of the Development Plan.

THE APPLICATION

An application for land division must be lodged with the Development Assessment Commission and must be in the form prescribed by the Development Regulations comprising the following:

- completed Application Form;
- Plan of Land Division (2 copies);
- application fees;
- one copy of the current Certificate(s) of Title; and
- supporting documentation (where applicable).

INFORMATION SHEET No 4 (cont.)

The preferred method for lodging applications is the Electronic Development Application Lodgement and Assessment (EDALA) system. However, applications may be lodged in person at:

Department of Planning and Local Government,
Level 5, Roma Mitchell House, 136 North
Terrace, Adelaide
Phone: 8303 0601

Plan of Division

The plan of land division required for Planning Approval must be drawn to a reasonable drafting standard and in the format prescribed by Schedule 5 of the Development Regulations. Advice on the preparation of the plan may be obtained from the Development Assessment Commission. While any person may prepare the plan (creating 5 allotments or less), it is generally recommended an agent is sought due to the complex drafting requirements associated with legal identification of land and associated easements or encumbrances. Any structures including buildings, fences, power lines and any relevant topographical features (creeks, native vegetation, quarries etc) are required to be depicted on the plan. Plans creating more than 5 allotments must be vouched for (regarding accuracy of details) by a licensed surveyor.

Application Fees

Application fees are payable to the Development Assessment Commission as prescribed by Schedule 6 of the Development Regulations. A copy of this schedule is available from Planning SA upon request. Additional fees may be requested after the application has been further assessed depending on the location, nature and impact of the proposal. These additional fees can be for any required public notification, advertisement, and costs associated with referral of applications to other government agencies (eg Coast Protection Board or the Department for Transport, Energy and Infrastructure (DTEI)). A fee advice will be sent to the applicant or agent prior to a decision being made on the application if extra fees are applicable.

STAGED APPROVALS

Land Division applications are assessed in two ways. Firstly, the planning merits of the

application are assessed, and then the land division requirements are considered.

An application may be lodged in two stages by applying initially for the Development Plan Consent (planning assessment) only. Once this is approved by the decision-making authority a further application (on the same proposal) is made (within 12 months) by the applicant for the Land Division Consent and complete Development Approval. Applicants signify their intention in this regard by the amount of fees they pay when lodging their application with the Development Assessment Commission in the first instance.

However, the majority of applications are not staged in this manner and are lodged for all the consents required and the complete development approval.

THE ASSESSMENT PROCESS

Once an application is lodged with the Development Assessment Commission, it is receipted and given a development number, which should be quoted whenever an enquiry is made about the application. The application is forwarded to the local council and to any government agencies that may need to be consulted eg. SA Water Corporation, Coast Protection Board etc.

The extent of this consultation process depends on the location, nature and magnitude of the proposal. Most government agencies have 28 days (some agencies have longer) to provide comment to the Development Assessment Commission.

The local council is the relevant decision-maker for the majority of applications and will issue the planning decision in most cases. Schedule 10 of the Development Regulations defines the applications, which are to be determined by the Development Assessment Commission. In all cases, discussion with the council is recommended prior to lodging the application to determine whether council or the Commission will be the decision-maker.

When the council is the relevant decision-making authority for an application, the Development Assessment Commission is required to provide the council with a report (within two months of

INFORMATION SHEET No 4 (cont.)

the application being lodged) incorporating its land division requirements for inclusion in the Development Approval. The 'land division' requirements generally relate to any necessary road and/or drain construction, provision of water, sewer and power services, and open space.

Some types of land division are given public notice to either the neighbours or the public generally. For a small number of applications, objectors may seek to comment on an application. In some circumstances, an objector may even have appeal rights against an approval. The council or Commission staff will be able to advise you if there are objection rights available to neighbours or the public about your application.

Land Division requirements of the Development Assessment Commission may include an open space monetary contribution in lieu of a reserve area being provided and/or a financial contribution for water and sewer connections payable to the SA Water Corporation. Council will include both its and the Commission's requirements in the final decision.

RECEIVING AN APPROVAL

While most applications are approved, occasionally the council or Commission will refuse a proposal if it considers the application contrary to the Development Plan. Common examples include where the division is proposed in a rural area not intended for subdivision, or where the allotment size is considered too small for the land use envisaged. In most cases (but not all) appeal rights are available against a refusal. The council or Commission will advise you of the reason for any refusal, and of available appeal rights.

Development approval may include Development Plan conditions of consent and also land division requirements of the council and the Development Assessment Commission. These requirements generally relate to any necessary road and/or drain construction, provision of water, sewer and power services, and open space.

It is then the applicant's responsibility to comply with any planning conditions and/or land division requirements to the satisfaction of the

council and the Development Assessment Commission.

Once the Development Assessment Commission is satisfied that all the conditions and requirements have been fulfilled and council advises the Commission that its requirements are met, the Commission will issue the final Land Division Certificate of Approval, which may then be lodged with the Registrar General for deposit in the Lands Titles Registration Office.

In some circumstances, it is possible to enter into binding contracts supported by adequate security (eg cash bond or bank guarantee) for construction of roads and services. Where this form of contract is entered into, the Certificate of Approval can be issued prior to final construction of any roads or services.

HOW MUCH WILL IT COST?

There are a number of fees to be paid when dividing land. These are:

Application Fees

Discussed earlier

SA Water Corporation Fees

In many cases, there is a fee payable to the SA Water Corporation for the connection of the proposed allotments to water mains. The cost depends on the number of allotments proposed and the distance located from existing water mains. In the case of boundary adjustments between neighbouring properties where no additional allotments are proposed this fee is generally not applicable.

In addition, any internal pipe work servicing the existing allotments may need to be altered or relocated depending on the effect of the proposed allotment boundaries.

Open Space Contribution Fees

The Development Act requires 12.5% of the land within a proposed land division for urban sized allotments to be set aside as reserve, which vests free of cost in the local council for use by the general community. The design, size and location of reserve areas are generally negotiated with council during preliminary discussions on the proposal.

However, in the case of small land division applications where only several allotments are proposed, the areas of the land being subdivided usually make the provision of reserves impractical. In these circumstances a monetary open space contribution is payable to the

INFORMATION SHEET No 4 (cont.)

Development Assessment Commission instead of providing a reserve.

The amount payable is based on the number of additional allotments being proposed and the current rate prescribed by the Development Regulations, Division 3, 56.

The rate is changed on 1 July each year, based on the market value of land, as determined by the Valuer General.

Examples (based on three additional allotments proposed at 1 July 2011 rates):

Land within the Metropolitan Planning Area

\$6,150 (Current rate/additional allotment)
 x3 (No of additional allotments proposed)

\$18,450 (Total payable to DAC)

Land outside of the Metropolitan Planning Area

\$2,758 (Current rate/additional allotment)
 x3 (No of additional allotments proposed)

\$8,274 (Total payable to DAC)

This money is paid into the Planning and Development Fund, which is administered by the Minister for Urban Development and Planning and is used primarily to fund State and Local Government Regional and Metropolitan Open Space System programs for the enjoyment of the general community.

Agent's Fees

Fees to engage the services of an agent (licensed surveyor or conveyancer) to prepare the plan and application and to lodge them on your behalf may vary considerably and will depend on the surveying and drafting requirements for your particular proposal, the extent of services you require and your individual negotiations with appropriate agents.

Lands Titles Registration Office Fees

A schedule of the fees for the deposit of the plan and the issue of new Certificates of Title may be obtained from the Lands Titles Office.

Electricity Power Supply

The connection of or alteration to existing electricity power supply to the proposed allotments is not part of the statutory planning process but there may be implications for the existing registered proprietor or the prospective purchaser. It is possible this could impact on the

overall development costs associated with the land division proposal, particularly in rural areas. Enquiries should be directed to ETSA Utilities (Builders and Electrical Contractors Service - telephone 1300 650 014).

THE FINAL STEP

After receiving the final Land Division Certificate from the Development Assessment Commission, you (or your agent) may then lodge an application with the Registrar-General (Lands Titles Office) for the deposit of the plan of division and the issue of the new Certificates of Title.

This application must include the following:

- original drawing of the plan of division;
- current Land Division Certificate from the Development Assessment Commission;
- duplicate Certificate(s) of Title for the land; and
- any other documents which may be required to bring the division into effect (including additional documentation for Strata or Community Titles).

As mentioned previously, the original of the plan of division, must be of a high standard and drawn to strict requirements set out by the Real Property Act and Regulations and in the majority of cases, signed by a licensed surveyor. Enquiries may be made to the Lands Titles Office.

The above information is advisory and a guide only to give you a general understanding of the key points associated with the approval system. It is recommended that you seek professional advice or contact the Council office regarding any specific inquiries or for further assistance concerning the use and development of land. Being prepared can save you time and money in the long run.