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| Land Use Victoria  Customer Information Bulletin 192 October 2019 |
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Phase out of Plan Acceptance counter services – Reminder

The ‘over the counter’ service for plans under the *Subdivision Act 1988* is being discontinued. Instead, these can be lodged electronically using the SPEAR Electronic Lodgment Network (ELN) service. Also, the existing ‘drop-off box’ service will continue for paper lodgments.

Since May 2019, the counter service has been progressively reduced and **from 1 November 2019, counter services will cease.**

No reduction of service standards will be experienced by customers. Please refer to Customer Information Bulletin 190 for further details.

# SPEAR Electronic Lodgment Network - additional transactions available

The SPEAR Electronic Lodgment Network (SPEAR ELN) allows lodging parties to lodge their plan-based dealings electronically. The SPEAR ELN now has over 160 registered subscribers lodging applications under the *Subdivision Act 1988*. In line with Land Use Victoria’s 100% electronic lodgment strategy, the following additional transactions are now available for lodgment in the SPEAR ELN.

*Transfer of Land Act 1958*

* Survey-based applications - sections 15, 26P, 60, 98CA, 99 and 103(2)
* Creations/notifications/acquisitions of easements - sections 45\*, 72 and 88(2)
* Crown Grants and Crown Leases – section 8(2)
* Requests to Waive Survey

\*Section 45 is currently limited to a single Signer for both the receiving and relinquishing parties. The ability to invite a second signatory to sign for one of the parties will become available soon. Customers will be advised in a future bulletin when this is available.

*Local Government Act 1989*

* Vesting of a closed road in council - section 207D
* Road exchange - section 207E

*Subdivision Act 1988*

* Change lot entitlement/liability - section 33(1)
* Removal of accessory lot/notice of restriction - section 38 and 38A
* Amend scheme of development - section 38B and 38C

*Major Transport Projects Facilitation Act 2009*

* Request Action by the Registrar - section 259

Customers are encouraged to register to become SPEAR ELN subscribers. Information about how to register, obtain a digital certificate or contacting the SPEAR Service Desk is available on the SPEAR website.

[www.spear.land.vic.gov.au/spear](http://www.spear.land.vic.gov.au/spear) > [Lodging parties](https://www.spear.land.vic.gov.au/spear/pages/lodging-parties/about-lodging.shtml) > [How do I get started?](https://www.spear.land.vic.gov.au/spear/pages/lodging-parties/how-do-i-get-started.shtml)

Residual documents

Land Use Victoria and PEXA continue to develop new residual documents. All new documents undergo testing prior to release. Due to the complexities of the remaining 27 documents, Land Use Victoria did not release any new documents for the 1 October 2019 mandate.

Land Use Victoria will advise industry when new Residual Documents and enhanced functionality of existing documents becomes available.

For available residual documents, customers should refer to two resources**:**

1. **Land Registry transactions available for electronic lodgment** - this document provides information on all available ELN transaction types in PEXA, SYMPLI and SPEAR.
2. **Guide to residual documents** – this document provides all details of supporting documents and specific requirements for each residual document.

Both resources are on the website: <https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/electronic-lodgment/key-documentation>.

# Lodging plans and plan-based applications

The following information on current practice is provided for surveying and conveyancing practitioners to ensure applications can be lodged efficiently.

Compiled plan for a Creation of Easement

Plans supporting creations of easements must show existing easements when the new easement being created overlaps or crosses an existing easement. For complex creations of easements, the Land Use Victoria may request a compiled sheet plan for title diagram purposes.

Survey-based Applications

## Section 60 Applications

The following processes are being implemented to assist reducing deficient adverse possession applications

### **Critical Deficiencies**

# Many adverse possession applications do not meet fundamental requirements.

# From 1 December 2019, any lodged adverse possession application found to be ‘critically deficient’ will be rejected and fees forfeited. Critical deficiencies are:

# Application does not accord with *s*ection 7, 7A, 7AB, 7B or 7Cof the *Limitation of Actions Act 1958*

# Affected land is in the name of Roads Corporation or any of its predecessors

# Application is lodged without survey but does not meet non-survey guidelines

# Survey provided is out of date – i.e. survey was undertaken more than two years ago.

# Applicant does not have 15 years accrued possession (including, where applicable, deeds of assignment from prior possessors).

# If land is identified as a road, an easement of carriageway, right of way, etc. and a letter from council is not produced stating the subject land is not a road within the meaning of the *Road Management Act 2004*.

# Statutory declarations from all applicants and at least one disinterested witness not produced.

# The Adverse Possession Section 60 checklist has been updated to include a declaration by the legal practitioner/applicant that the minimum lodging requirements have been met. It is available [here](https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/transfer-of-land/adverse-posession-forms) and at [www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees](https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees)>Transfer of Land Act>Adverse possession.

# The guides listed below provide more information on adverse possession. They are available [here](https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees/transfer-of-land/adverse-posession-forms) and at [www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees](https://www.propertyandlandtitles.vic.gov.au/forms-guides-and-fees)>Transfer of Land Act>Adverse possession.

# *Guide to adverse possession*

# *Guide to evidence supporting an adverse possession*

### Strips and slivers

# From 1 December 2019, Land Use Victoria will require deeds of assignment of possessory rights for small strips and slivers, unless the survey was certified prior to that date. If applicants do not have 15 years possession of the claimed land in their own right, deeds of assignment of possessory rights must be produced.

## Survey-based application stoppages

# All requisitions must be addressed in the time frame specified in the requisition notice and all requisitions should be responded to at the same time. Requests for extensions will not be considered. If a requisition cannot be satisfied within the time frame specified, then the application should be withdrawn and relodged only when all requisitions can be satisfied.

## Excess land included in Plans of Subdivision/Consolidation and Boundary Plans

# Excess land can be included in a Plan of Subdivision/Consolidation or a Boundary Plan.

# Consistent with the survey requirements for *Transfer of Land Act* applications, plans that include excess land must be based on a survey completed no more than two years prior to lodgment.

# When including excess land, the surveyor must:

# Check title/deed history to ensure that no other folios or general law land are affected.

# Provide sufficient survey information to readily identify the excess land.

# Include only what has been exclusively occupied for at least 15 years.

# Report on the age (must be at least 15 years or on the same alignment as prior mature occupation), condition and history of the occupation.

# Boundary plans (BP) are not recommended where the sole purpose is to take up excess land. Instead, an application should be made to amend land in a folio under Section 103 of the *Transfer of Land Act 1958*.

# BPs, however, often incorporate minor amendments to land in a folio and some of those amendments can include excess land.

# A BP is not given effect in the Register until the subsequent plan of subdivision is registered. If the subsequent plan of subdivision is not registered within 2 years of the date of survey, the BP may be considered invalid and the survey will need to be updated. The initial lodgment of the BP will be redundant.

# Application under section 14 *Transfer of Land Act 1958* - lodgment process

## Electronic Lodgment

# Applications under section 14 *Transfer of Land Act 1958* must be lodged using PEXA if a provisional folio created under section 23 *Transfer of Land Act 1958* exists. Additional documents that are required to be submitted in PEXA are:

# Legal Practitioner’s certificate – in accordance with Schedule 5A *Transfer of Land Act 1958*

# Search of Title conducted under section 26J *Transfer of Land Act 1958*

# Signed Checklist

# Chain of Deeds or certified copy of them are to be delivered to Land Use Victoria through the Plan Acceptance drop off box on Level 1, 2 Lonsdale Street, Melbourne.

## Paper Lodgment

## A section 14 application not relating to a provisional folio must be lodged in paper. The documents to be provided are:

## Application

# Legal Practitioner’s certificate – in accordance with Schedule 5A *Transfer of Land Act 1958*

# Search of Title conducted under section 26J *Transfer of Land Act 1958*

# Signed Checklist

# Chain of Deeds or certified copy of them

# Paper applications and supporting documents should be delivered to Land Use Victoria through the Plan Acceptance drop off box on Level 1, 2 Lonsdale Street, Melbourne. No pre-lodgment check is undertaken.

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# Contact us

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