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# 1. INTRODUCTION

The *Planning for Paper Subdivisions Guidelines* ('the guidelines') are intended to assist stakeholders involved in the development of land held in paper subdivisions, using the process set out in Schedule 5 to the *Environmental Planning and Assessment Act 1979* NSW ('the EP&A Act').

The provisions in Schedule 5 to the EP&A Act establish a mechanism to overcome longstanding barriers to realise the development potential of paper subdivisions. The mechanism will be of use primarily where land has been zoned or is subject to a planning proposal under the EP&A Act to enable development, but where fragmented ownership and owners' lack of funding and development expertise make the development process difficult.

The use of this mechanism will only be appropriate in certain circumstances: where the land is held as a paper subdivision and it has been demonstrated to have development potential by an environmental planning instrument or planning proposal which facilitates development. The mechanism does not change the process required to rezone land or the merit assessment process for rezoning and development assessment of subdivision and construction development applications.

The guidelines should be read together with Schedule 5 to the EP&A Act and Part 16C (Paper Subdivisions) of the *Environmental Planning and Assessment Regulation 2000* ('the Regulation') which are available at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

The guidelines outline the following key issues:

- **What** are paper subdivisions.
- **Legislative provisions** for paper subdivisions.
- **Development plans** including guidance on preparation, content, adoption and amendment.
- **Ballot procedures.**
- **Accounting practices**, including the administration, collection and use of funds for a development plan.
- **Key acronyms** and definitions.

## 2. WHAT ARE PAPER SUBDIVISIONS?

'Paper subdivisions' denotes land comprising lots that have recognition only on paper and, in most cases, with no formed roads, drainage, reticulated water, sewer or electricity. Most paper subdivisions have existed for many years, some originating as long ago as the late 1800s or early 1900s. The land is likely to be largely undeveloped, often with little or no development potential under existing land use zonings. Lots typically range in size from 200m<sup>2</sup> to 20,000m<sup>2</sup> and are usually held in separate titles by multiple land owners.

Locations of paper subdivisions in NSW include:

- Riverstone and Marsden Park – in Blacktown City Local Government Area (LGA);
- Parts of Jervis Bay – Shoalhaven LGA; and
- South Buttaba Hills Estate – Lake Macquarie LGA.

Land use zoning and a lack of services have often prevented or limited development of paper subdivision land. However, land owners may have the expectation that, over time, their land will be rezoned for residential development. They may also assume that the infrastructure to facilitate rezoning and housing construction will be funded by government.

Normally, for land to become available for development, it needs to be appropriately zoned with a plan of subdivision and details of necessary infrastructure and subdivision works in place, and infrastructure and associated works funded and programmed for provision. For new development proposals, this work is normally coordinated by, or on behalf of land owners. The main difficulty in achieving the development of paper subdivisions is the large and diverse number of land owners involved who frequently have limited development expertise and access to funding to re-subdivide land to meet current subdivision standards.

The provisions in the EP&A Act and Regulation dealing with paper subdivisions have been introduced to provide a potential mechanism to help overcome these barriers to development.

### **3. PAPER SUBDIVISIONS LEGISLATIVE PROVISIONS**

Schedule 5 to the EP&A Act and the supporting provisions in the Regulation set out a mechanism which may be used for paper subdivision land. The current legislation can be viewed at the New South Wales Government NSW Legislation website at <http://www.legislation.nsw.gov.au>

#### ***3.1 Subdivision Orders and the relevant authority***

The provisions in the EP&A Act provide a mechanism for the Minister for Planning ('the Minister') to make a Subdivision Order. The Subdivision Order confers upon an authority specified functions to enable it to implement a Development Plan for land held in a paper subdivision.

Under clause 2, Schedule 5 to the EP&A Act, the Minister may designate in a Subdivision Order any of the following authorities as the relevant authority for the subdivision land:

- the corporation (meaning the corporation sole established under section 8 of the EP&A Act), or
- a local council, or
- UrbanGrowth NSW, or
- a development corporation established under the *Growth Centres (Development Corporations) Act 1974 NSW*, or
- any other body prescribed by the Regulation (Note: Currently, none are prescribed).

A Subdivision Order can empower the authority to manage the development and resubdivision of the land. Where the land can be developed using the existing lot pattern, a Subdivision Order will not normally be necessary or available.

### 3.2 Making a Subdivision Order

There are several key requirements, set out in clause 3(2) Schedule 5 to the EP&A Act, that must be met before the Minister may make a Subdivision Order, including the following:

- The land must be the subject of an environmental planning instrument or planning proposal that will facilitate the proposed planning purpose.
- A Development Plan must have been prepared for the land and contain matters specified in clause 6 of Schedule 5 of the EP&A Act.
- At least 60% of the land owners, and the owners of at least 60% of the total area of land the subject of the Subdivision Order, must have consented to the Development Plan.

An authority may request the Minister to make a Subdivision Order. A submission to the Minister requesting the making of a Subdivision Order should provide the following details:

- Title particulars of the subject land.
- Any studies prepared to inform the planning purpose and the development plan.
- Details of the planning purpose.
- Consultation with land owners and the local council.
- Reasons why the land cannot be developed for the planning purpose using the existing lot pattern.

The Minister will consider the following matters in making a Subdivision Order:

- The planning purpose.
- Details of the functions sought to be conferred and how they relate to the planning purpose.
- Proposed subdivision works to be undertaken by the relevant authority.
- Any conditions proposed to be attached to the exercise of the functions.
- Whether and how the planning purpose will promote and co-ordinate the orderly and economic use and development of the land.
- Whether the land has been subdivided and is held by more than one owner.
- Whether there is currently no or inadequate provision for subdivision works.
- Particulars of the environmental planning instrument or planning proposal applicable to the land and how it will facilitate the proposed planning purpose.
- Consultation undertaken with the relevant council.
- Details of a development plan prepared for the land.
- Any provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- Whether the requisite land owners' consents to the proposed development plan have been obtained.

The functions that may be conferred on an authority by a Subdivision Order may include powers to:

- Carry out subdivision works.
- Enter and deal with land (including to acquire land by agreement or compulsory process, or to dispose of land).
- Require payment of contributions.

The Regulation includes provisions for:

- The preparation, notification, adoption and amendment of Development Plans.
- Conducting ballots to seek land owners' consent to a proposed Development Plan.

- Reporting requirements to the Minister and councils.
- Information to be specified on planning certificates.

The Minister's issue of a Subdivision Order does not affect any other legal requirement to lodge a Development Application (DA) and obtain development consent under the EP&A Act for development of the land, or for the land to be rezoned to enable the development to proceed. Applicants need to address relevant environmental assessment matters under the EP&A Act through the rezoning and DA process, for example, biodiversity, bush fire, flooding, heritage, contamination, and compliance with relevant Commonwealth, State and local planning controls.

The following case study (source: UrbanGrowth NSW) of the Riverstone Scheduled Lands and UrbanGrowth NSW highlights the difficulties of ownership and development of paper subdivision land, and the potential benefits of the guidelines and associated legislative provisions.

**Case Study: Riverstone Scheduled Lands and UrbanGrowth NSW**

The Riverstone Scheduled Lands ('the scheduled lands') were originally subdivided in the late 19th century in a terrace style grid pattern following the establishment of the railway line to Richmond. Each lot is about 550 square metres, about 9 metres wide and 61 metres deep. The area was subdivided to support the Riverstone meat works.

Until the gazettal of the *County of Cumberland Planning Scheme* (June, 1951), there were no planning controls applicable to the area. Under the County of Cumberland Planning Scheme, the land was zoned for rural use and required a minimum area of 5 acres (2 hectares) for dwelling construction.

On 17 May 2010, the NSW Government finalised the rezoning of the Riverstone Precinct of the North West Growth Centre by amending *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

As a result, the majority of land within the precinct, including the scheduled lands in Riverstone and Vineyard, has been rezoned from general rural purposes to permit future urban development. The new zonings mean that Blacktown City Council can consider Development Applications for subdivision and housing, subject to the availability of urban services such as water, sewer and electricity.

A new Development Control Plan for the precinct, *Blacktown City Council Growth Centre Precincts Development Control Plan 2010*, was adopted by Planning and Infrastructure and came into effect on 19 May 2010.

An estimated 550 land owners share ownership of almost 3,600 narrow and small lots at Riverstone – creating a challenging task to plan and deliver services to develop the area. Although most of the scheduled lands have been rezoned to allow residential development, land owners face challenges before being able to build, including:

- The land ownership pattern is fragmented, making the coordination of urban infrastructure difficult. Orderly development of the area is unlikely to occur unless a large number of land owners work together to develop and build.
- Many of the existing lots are too narrow to accommodate standard homes.
- The area is mainly unserviced, without infrastructure such as water, sewer, underground electricity and urban roads needed for a new community.

UrbanGrowth NSW is working with local land owners to enable the development of a new residential community for the scheduled lands. Although UrbanGrowth NSW is not a landowner, it is acting as development manager to master plan and assist with the future development of the scheduled lands. UrbanGrowth NSW is working with the local landowner group, Planning and Infrastructure and Blacktown City Council to identify a model to facilitate the coordinated and viable development of the scheduled lands.

## 4. PREPARATION OF DEVELOPMENT PLANS

### 4.1 *Decision to prepare a Development Plan*

Under clause 6(1) of Schedule 5 to the EP&A Act a relevant authority must prepare a Development Plan for subdivision land or proposed subdivision land if requested to do so by the Minister or, may of its own initiative, decide to prepare a Development Plan.

The Regulation requires that:

- When an authority decides to prepare a Development Plan on its own initiative, it must give the Minister written notice of the decision (clause 268ZA(1)).
- When an authority decides to prepare a Development Plan, it must consult with any public authorities likely to be affected by the proposed Development Plan and the local council(s) for the area in which the land is situated (clause 268ZA(2)).
- The authority must consider any submissions made by public authorities when it prepares the Development Plan (clause 268ZA(3)).

**Figure 1** at **Appendix B** illustrates the process for preparing a Development Plan.

### 4.2 *Advising the Minister of a decision to prepare a Development Plan*

An authority is to provide the following information in its written notice to the Minister of its decision to prepare a Development Plan:

- Land to which the proposed Development Plan will relate.
- History of use of the land.
- Current use(s) of the land and a brief description of any improvements on the land.
- Proposed future uses.
- What (if any) services (e.g. reticulated water, sewerage, electricity etc) are available for the land.
- Any environmental planning instrument or planning proposal currently applying or proposed to apply to the land.
- Existing subdivision pattern of the land, total number of land owners, and how many (if any) existing lots are owned by a public authority.
- Types and extent of subdivision works expected to be required and (if possible) indicative costs for those works.
- The outcome of any preliminary consultation with land owners and occupants
- Indicative timetable for preparation of a Development Plan.

### ***Development Plans – adoption timing in relation to Subdivision Orders***

The Minister, in making a Subdivision Order (see section 3.2 above) will consider whether a Development Plan has been prepared for the land by the relevant authority (clause 3(2)(e) of Schedule 5 to the EP&A Act).

The relevant authority is responsible for preparing and adopting a Development Plan (clause 268ZJ Regulation and clause 6(1) of Schedule 5 to EP&A Act). A Development Plan is likely to be at the point of adoption (that is, still a draft if approved by landowners) when the relevant authority requests the Minister to make a Subdivision Order.

### **4.3 Content of a Development Plan**

The content of a Development Plan may vary depending on the authority proposing to implement it and the needs of the land to which it relates. Nonetheless, clause 6, Schedule 5 to the EP&A Act outlines the following requirements for a Development Plan:

- Proposed plan of subdivision for the land.
- Details of subdivision works to be undertaken for the land.
- Details of the costs of the subdivision works and the proposed means of funding those works.
- Details of development plan costs.
- Details of the proportion of costs to be borne by owners of the land and the manner in which the owners may meet those costs, (including details of any proposed voluntary land trading scheme, or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions).
- Rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated.
- Rules as to the distribution of any surplus funds after the completion of subdivision works for the land.
- Any other matters prescribed by the Regulation.

The Regulation (clause 268Z) also requires that the Development Plan include:

- The land value of the land as determined by the Valuer-General under the *Valuation of Land Act 1916*.
- If the development is to be staged, a description of the proposed stages.
- A proposed time table for subdivision of the land and the carrying out of subdivision works.

In respect of proposed future uses of the land, it is recommended that the relevant authority considers key assessment issues for future DAs for the land when preparing the Development Plan.

### **4.4 Preliminary consultation with land owners**

An authority that proposes, or is requested by the Minister, to prepare a Development Plan, should undertake preliminary consultation with the owners of paper subdivision land to which the Plan will apply as early as possible.

As a minimum, an authority should provide the following information to the land owners:

- What the paper subdivision legislation does and expected benefits of making a Subdivision Order and a Development Plan for the land.
- Roles of the relevant authority and land owners in the process.
- Estimated timeframes for preparing and implementing a Development Plan.
- Means of funding proposed subdivision works.
- Amounts to be paid by land owners.
- Timing of payments and possible mechanisms to compel payment.

The authority may consider providing land owners with conceptual alternatives for subdivision, including a preferred concept for the proposed subdivision land, to explain the implications of the proposed Development Plan and seek land owners' support. Any concepts should address and explain the environmental, hazard and urban design factors influencing the proposed subdivision design.

The authority should inform land owners of the environmental planning instrument or planning proposal applying to, or proposed to apply to the land, to facilitate the proposed planning purpose. Contact details for the local council or any other body responsible for the instrument or planning proposal should also be provided.

Where possible, the authority should conduct face-to-face meetings with land owners to discuss relevant matters. It is also important to remember that land owners may live some distance from the land. Owners should be given adequate time after meetings to provide feedback to the authority on the subdivision concepts, proposals for subdivision works and potential funding mechanisms for those works.

#### **4.5 Rules disapplying or modifying certain requirements of Land Acquisition (Just Terms Compensation) Act 1991 (NSW)**

Clause 7(4) Schedule 5 to the EP&A Act allows the rules in a Development Plan in respect of land acquisition powers to provide that any or all of the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) ('the Just Terms Act') do not apply to the determination of compensation under a Development Plan, or apply with modification as set out in the Development Plan.

This will enable a Development Plan to allow for the possibility of non-monetary compensation to a land owner for the compulsory acquisition of subdivision land (such as works-in-kind or other benefits accruing to other land held by the land owner) in lieu of monetary compensation only under the Just Terms Act. If the rules in a Development Plan provide for non-monetary compensation, the authority should explain how the relevant rules may affect the land owners' interests.

If the rules in a Development Plan disapply or modify application of the Just Terms Act, those rules must apply fairly to all land owners and be comprehensive enough to replace the relevant provisions of the Just Terms Act. The rules will need to identify the forms of compensation which may be provided (such as works in-kind or other benefits accruing to land held by the land owner) and the method of calculation of compensation.

It is important to note that the provisions of the Just Terms Act will be varied only if the Minister makes a Subdivision Order. In making a Subdivision Order, the Minister is specifically obliged to consider any provisions of the Development Plan that modify or disapply the provisions of Division 4 of Part 3 of the Just Terms Act (clause 3(2)(f) of Schedule 5 to the EP&A Act).

An authority may also consider the following when proposing rules that disapply or modify application of (part or the whole of) Division 4 of Part 3 of the Just Terms Act:

- How private agreements for acquiring land will be negotiated.
- How a voluntary land trading scheme may operate under the Development Plan.

#### **4.6 Notice of proposal to adopt a Development Plan and consent ballot**

If an authority proposes to adopt a Development Plan, the Regulation (clause 268ZB) requires that it must:

- Give a minimum 14 days notice before ballot papers are issued for the consent ballot.
- Publish a notice in a local newspaper and a daily newspaper circulating generally in NSW.
- Give written notice to the local council and display a notice on or in the vicinity of the land to which the Development Plan will apply, for not less than 28 days before the ballot closes.

- Make the proposed Development Plan publicly available.

#### **4.7 Adoption of a Development Plan**

Clause 268ZJ of the Regulation provides that a Development Plan is adopted if:

- the authority resolves to adopt the plan or takes such other action as is necessary to take the decision to adopt the plan, and
- the authority causes a notice of the adoption to be published in a local newspaper and a daily newspaper circulating generally in NSW within 28 days after the decision of the authority to adopt the plan.

Clause 3(2) of Schedule 5 to the EP&A Act requires that at least 60% of the total number of owners of the land, and owners of at least 60% of the total area of that land, consent to the Development Plan. A Development Plan cannot be adopted unless the authority is satisfied such consent has been obtained (clause 268ZJ(2)).

Once a Development Plan is adopted it may be gazetted. If a Development Plan is gazetted its validity cannot be questioned in legal proceedings unless they are commenced within 3 months of gazettal under clause 6(4) Schedule 5 to the EP&A Act.

Under clause 268ZJ of the Regulation, once a Development Plan is adopted by the relevant authority, the Development Plan will be "in force" for the purposes of clause 4(5) of Schedule 5 to the EP&A Act.

The Minister can make a Subdivision Order in accordance with clause 3 of Schedule 5. This does not require the Development Plan to have been adopted - only for it to have been prepared (clause 3(2)(e)), and for the Minister to have considered any provisions of the Development Plan which modify or disapply the Just Terms Act (clause 3(2)(f)), and for 60% of the total number of owners and for the owners of at least 60% of the total area of the land to have consented to the Development Plan (clause 3(2)(g)).

The adoption of the Development Plan is up to the relevant authority. The Development Plan can be adopted before or after a Subdivision Order is made and the timing of this will be a matter for the Minister and relevant authority. The timing of these processes will depend upon the circumstances relevant to the particular case.

**Figure 2 in Appendix B** illustrates an indicative process for implementing a Development Plan.

#### **4.8 Amendment of a Development Plan**

The Regulation (clauses 268ZK and 268ZL) sets out a process for the making of three different classes of amendment to a Development Plan: major amendments; minor amendments; and amendments which are neither, major nor minor.

**Major amendment** means an amendment to a Development Plan that is not a minor development and that:

- (a) in the opinion of the Minister, if adopted, would require an amendment to be made to the Subdivision Order relating to the land to which the Development Plan applies, or
- (b) amends provisions of the Development Plan that modify or disapply the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Minor amendment** means an amendment to a Development Plan that:

- (a) corrects an error or misdescription, or
- (b) consists of a minor realignment of the boundaries of lots in the proposed plan of subdivision that will not create additional lots or the opportunity for additional dwellings, or
- (c) alters to a minor extent the location of roads or services to be provided, or
- (d) varies the proportion of costs to be borne by one or more owners of the land by not more than 5% in any particular case.

Clause 268ZK of the Regulation sets out the process for the adoption of amendments to a Development Plan as follows:

A proposed amendment to a Development Plan is adopted by the relevant authority and comes into force (clause 268ZK), if:

- (a) the authority resolves to adopt the amendment or takes such other action as is necessary to take the decision to adopt the amendment, and
- (b) the authority gives written notice of the amendment to the Minister, the owners of the land to which the Development Plan applies, and each council in whose area the land is situated, within 28 days after the decision of the authority to adopt the amendment.

Additional requirements for major amendments include:

- Notice must be given in accordance with the requirements of clause 268ZB of the Regulation.
- The consent of at least 60% of the land owners, and the owners of at least 60% of the total area of land to which the Development Plan applies, must have consented to the amendment.

**Amendments other than major and minor amendments:**

For other amendments that are not major or minor, an authority must comply with the requirements of clause 268ZL, as follows:

- (a) Publish a notice in a local newspaper and a daily newspaper circulating generally in NSW.
- (b) Give written notice to any council in whose area the land is situated.
- (c) Display a notice on, or in the vicinity of the land to which the Development Plan applies during the submission period specified in the notice.
- (d) Make the proposed amendment publicly available.
- (e) Before adopting the amendment, consider any submissions received within the submission period specified in a notice given in accordance with the clause.

A notice under clause 268ZL(3) must specify the following:

1. The place, date and time at which the proposed amendment is available for inspection or the address of a website where it may be found.
2. The period (being not less than 28 days) during which submissions may be made to the authority about the proposed amendment.
3. The name, contact phone number and email address of the authority.

## 5. THE CONSENT BALLOT

### 5.1 Purpose of the consent ballot

The purpose of the consent ballot is for the authority to seek land owners' consent to the proposed Development Plan. Under clause 3(2)(g) of Schedule 5 to the EP&A Act, the

Minister may not make a Subdivision Order unless at least 60% of the total number of owners of the land the subject of the proposed Development Plan, and the owners of at least 60% of the total area of that land, have consented to the proposed Development Plan.

**Appendix C** provides a check sheet method which may be used by a returning officer in the counting of votes to enable straightforward calculation of 60% requirements. A ballot paper is required to list all land owned by the landowner. A landowner's vote is to be counted in accordance with the Regulation.

The consent ballot may be conducted by the authority or by an independent body (such as the Australian Electoral Commission) on behalf of the authority. Division 3 of Part 16C of the Regulation sets out detailed requirements for the ballot.

### ***5.2 Requirements of the Act and Regulation and best practice***

The Regulation requires the relevant authority to appoint a returning officer to conduct a consent ballot. A consent ballot is then required to be held to determine consent to a proposed development plan by owners of the land. The returning officer is required to prepare a voting roll.

The minimum voting period for a ballot of land owners on a proposed Development Plan is 28 days. Notification of the holding of the consent ballot should be published on the authority's website for the duration of the ballot and for at least 14 days preceding the despatch of ballot papers.

The Regulation requires the form of the ballot paper to be as determined by the authority and approved by the Secretary. An example of a possible form of ballot paper is at **Appendix D** of the guideline.

A ballot paper must be sent by mail to each person who owns land within the area covered by the Development Plan along with a statement about the place, date and time at which the proposed Development Plan is available for inspection or, the address of the website where it may be found. A statement relating to the ballot in the form approved by the Secretary must also be included. An envelope addressed to the returning officer should also be included. The reverse side of the envelope should be noted or printed with the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates together with a small envelope in which the ballot paper is to be enclosed.

Clause 3(3) of Schedule 5 to the EP&A Act provides that for the purposes of counting the votes and calculating whether the required percentage of owners consent to the Development Plan, that two or more owners of the same lot are to be treated as one owner. The Regulation also prescribes the method for vote counting and preparation by the returning officer of a statement relating to the ballot result.

A voting period longer than 28 days may be considered by the authority if it is likely a number of the people entitled to vote will take some time to receive their ballot papers (for example, those who may live overseas), if the number of people entitled to vote is large, if many of the lots are in multiple ownership or if there has recently been a high turnover of ownership. Similarly, in such circumstances, the authority may wish to give more than the 14 days notice required by the Regulation of a proposed ballot.

Explanatory material accompanying the ballot paper should outline the ballot process, including making clear that ballot papers received by the returning officer after the closing date for the ballot cannot be accepted. Inclusion of a summary sheet with the ballot paper material regarding the content and purpose of the proposed Development Plan may assist voters.

The explanatory material should also explain that a proposed Development Plan cannot be adopted unless at least 60% of the total number of owners of the land, and the owners of at least 60% of that land consent to the proposed plan. The Regulation prescribes a specific method for vote counting where a lot is owned by a group of co-owners depending upon whether all or a majority of the co-owners cast a formal vote in favour of the development plan.

Relevant authorities may provide general information to individuals on the Development Plan but they should also advise people (including potential buyers) to seek independent advice as to how the provisions of the Development Plan may specifically affect them and their land holding(s).

In the material despatched with the ballot paper, the authority should include its contact details for any enquiries about the proposed Development Plan, and of the returning officer for queries regarding the ballot process. It should be made clear that votes are to be returned by post and cannot be returned on-line.

The Regulation requires scrutineers are required to observe the ballot counting process. Scrutineers should not be a landowner or a relative of a landowner and it is appropriate to require scrutineers to sign a statutory declaration to this effect.

The authority must report the result of the consent ballot to the Secretary under clause 268ZH(1) of the Regulation, and should do so as soon as possible after the results are known.

If a consent ballot does not achieve the required (60%/60%) consent to a proposed Development Plan, the authority may carry out further consultation with land owners on options for amendments for a further ballot.

## **6. ACCOUNTING ISSUES**

### ***6.1 Accounts that should be kept***

The following guidance is provided on accounting matters:

- Purchase and sale by the authority of subdivision land or proposed subdivision land.
- Contributions land owners are required to make, and have made or not made, to meeting the costs of subdivision works.
- Payments made by the relevant authority from funds received for the carrying out of subdivision works.
- Compensation paid by the relevant authority for subdivision land it compulsorily acquires.
- Distribution of any surplus funds after the completion of subdivision works or immediately prior to withdrawal of an implemented Development Plan.
- Any other matter specified in writing by the Minister to the relevant authority.

The above matters should be included in end of financial year annual reports by the relevant authority to the Minister on implementation of the Development Plan. Clause 268ZP of the Regulation sets out reporting requirements.

The annual report should include details of the progress of land owners in meeting their share of subdivision works costs, and details of subdivision land compulsorily acquired in the preceding financial year, (including compensation paid for that land).

Under clause 10(1) of Schedule 5 to the EP&A Act the following are to be paid by the authority to a fund or funds approved by the Minister:

- A monetary contribution paid to a relevant authority by the owner of subdivision land for subdivision works and the Development Plan costs.
- Any money paid by the relevant authority to meet contribution amounts under the Development Plan in respect of land acquired by the authority.
- The proceeds of the disposal by the relevant authority of land acquired.

Under clause 10(2) of Schedule 5 to the EP&A Act, the following may be paid from any fund to which contributions or amounts are paid under that clause:

- Payments to persons or bodies for the provision of subdivision works.
- Payments in connection with the exercise of functions by the relevant authority for the planning purpose specified in the subdivision order.
- Payments for the whole or part of compensation payable under clause 7, Schedule 5 to the Act and any payments required to be made under the Just Terms Act.
- Payments for the distribution of any surplus funds after the completion of subdivision works and any other payments under clause 10, Schedule 5 to the Act.
- Any money required to meet the administrative expenses of the relevant authority in relation to its functions under the Subdivision Order.

## **6.2 Distribution of surplus funds after implementation of Development Plan**

Surplus funds comprise unspent and uncommitted money after the completion of subdivision works.

In establishing matters for consideration for distribution of surplus funds, the relevant authority should consider the entitlements of land owners to different amounts. Factors to consider include the proportions of total funding contributed by a landowner and the extent to which a landowner has benefited from the carrying out of the work to fulfil that purpose.

## **6.3 Some additional considerations**

Additional suggestions for good accounting practice by a relevant authority are:

- Establish accounts for each Development Plan, rather than part of a plan or two or more plans.
- Promptly record changes in land title and land descriptions as property transactions occur to ensure records are accurate.
- Obtain agreed sums for subdivision works from all relevant land owners before works commence, to avoid reallocation of funds committed for other purposes.
- Incorporate construction and approval costs (including contributions and levies payable under Division 6 of Part 4 of the EP&A Act) when preparing a budget for implementation of a Development Plan.
- Provide for contingency for costs variation.

- Distribute surplus funds on a per-square metre basis not a per-lot basis, as the lots may be of various sizes.
- Create separate accounts for any reimbursement of surplus funds after completion of subdivision works.

Note: Construction costs for subdivision works should be indexed against a recognised price indexing mechanism, such as the Consumer Price Index Implicit Price Deflator (For more information on that mechanism see *Australian National Accounts: Concepts*, Australian Bureau of Statistics, Cat. No. 5216.0, [www.abs.gov.au](http://www.abs.gov.au)).

## APPENDIX A: DEFINITIONS

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Department** means the Department of Planning and Environment.

**Development plan** means a development plan for subdivision land or proposed subdivision land.

**Environmental planning instrument** means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

**Minister** means the Minister for Planning.

**Paper subdivision** is not defined in the provisions. However, the provisions are only available to land that has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works.

**Planning proposal** means a document that explains the intended effect of a proposed environmental planning instrument and sets out the justification for making the proposed instrument under Part 3 Division 4 of the EP&A Act.

**Planning purpose** means the purpose for which a subdivision order is made.

**Relevant authority** for subdivision land means the authority designated by a subdivision order as the relevant authority for the land.

**Secretary** means Secretary of the Department of Planning and Environment.

**Subdivision land** means land subject to a subdivision order.

**Subdivision order** means an order by the Minister, which may be gazetted, that does all of the following:

- (a) declares specified land to be subdivision land.
- (b) specifies the relevant authority for the subdivision land.
- (c) specifies the purpose for which the order is made (the *planning purpose*).
- (d) specifies the functions (if any) under Schedule 5 to the EP&A Act conferred on the relevant authority.
- (e) specifies the conditions (if any) to which the exercise of those functions are subject.
- (f) specifies the subdivision works (if any) to be undertaken by the relevant authority in respect of the subdivision land.

**Subdivision works** means works for the following purposes:

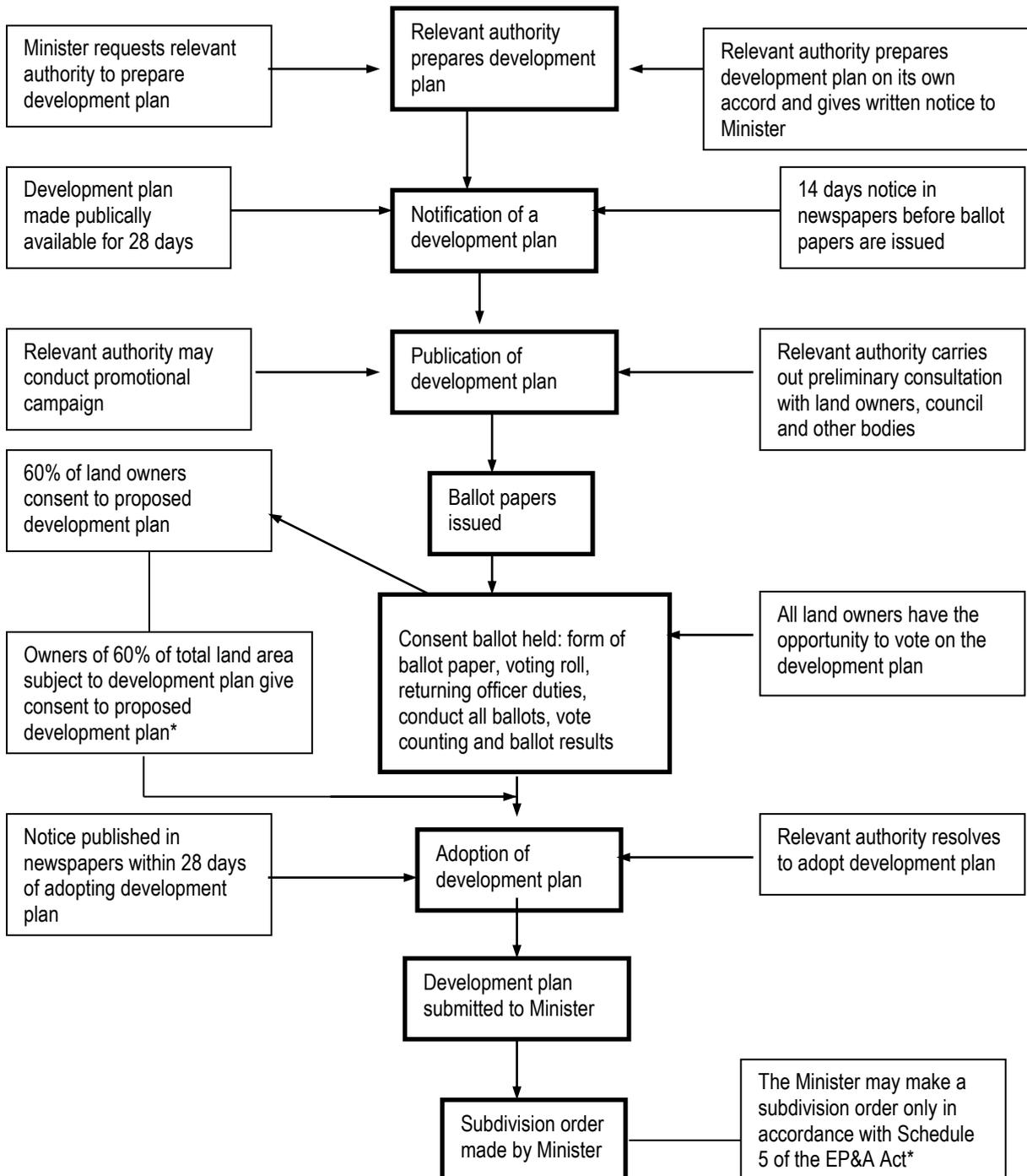
- a) roads.
- b) water supply, sewerage services and drainage.
- c) telecommunications.
- d) electricity supply.
- e) remediation of contaminated land
- f) demolition of a building or work if the demolition is required to carry out other subdivision works,
- g) gas supply.

***Voluntary contributions agreement*** means a voluntary agreement between a relevant authority and a person who owns subdivision land under which the owner is required to pay a monetary contribution to be used for or applied for subdivision works.

## APPENDIX B: DEVELOPMENT PLAN PROCESS DIAGRAMS

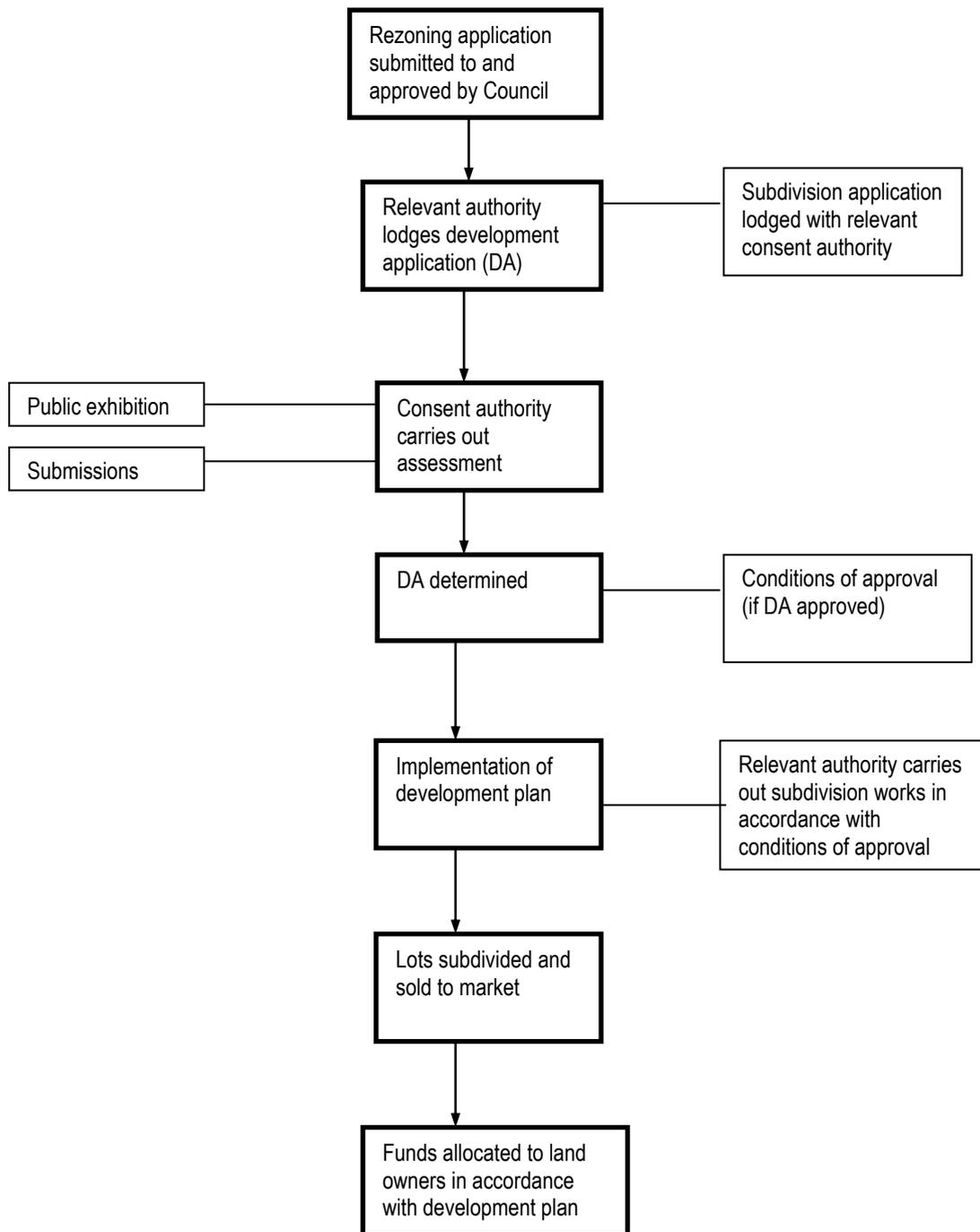
This appendix contains details on relevant aspects of a Development Plan. **Figure 1** illustrates the process for preparing a Development Plan for submission to the Minister. **Figure 2** provides an indicative guide for the implementation of a Development Plan.

**Figure 1: Process for preparing a Development Plan**



\* Note: the Minister cannot make a subdivision order unless at least 60% of the total number of owners of the land and the owners of at least 60% of the total area of that land have consented to the proposed development plan.

**Figure 2: Indicative guide for implementation of a Development Plan**



## **APPENDIX C: CHECK VOTE COUNTING METHOD**

The following tables provide an example counting method for use by returning officers, when counting votes made for consent ballots.

### **Voting roll (under cl.268ZD(1)(c)&(d)):**

<b>Owner</b>	<b>Lots</b>	<b>Lot Area</b>	<b>Total Area</b>
Person A	Lot 1	100 m <sup>2</sup>	500 m <sup>2</sup>
	Lot 4	400m <sup>2</sup>	
Person B	Lot 2	500 m <sup>2</sup>	500 m <sup>2</sup>
Person C	Lot 5	1425 m <sup>2</sup>	2485 m <sup>2</sup>
	Lot 18	160 m <sup>2</sup>	
	Lot 19	900 m <sup>2</sup>	
Person E	Lot 7	1500 m <sup>2</sup>	1500 m <sup>2</sup>
Company G	Lot 8	600 m <sup>2</sup>	600 m <sup>2</sup>
Company H	Lot 9	300 m <sup>2</sup>	300 m <sup>2</sup>
Person I	Lot 11	400 m <sup>2</sup>	400 m <sup>2</sup>
Person J	Lot 12	700 m <sup>2</sup>	2000 m <sup>2</sup>
	Lot 13	700 m <sup>2</sup>	
	Lot 14	600 m <sup>2</sup>	
Local Council	Lot 20	2000 m <sup>2</sup>	2000 m <sup>2</sup>
Co-owner Group CG1 Being Person A and Person B jointly	Lot 3	1600m <sup>2</sup>	1600 m <sup>2</sup>
Co-owner Group CG2 Being Person D and Person E and Person F jointly	Lot 6	500 m <sup>2</sup>	500 m <sup>2</sup>
Co-owner Group CG3 Being Person D and Company H jointly	Lot 10	450 m <sup>2</sup>	450 m <sup>2</sup>
Co-owner Group CG4 Being Person J and Person A jointly	Lot 15	1900 m <sup>2</sup>	1900 m <sup>2</sup>
Co-owner Group CG5 Being Person K, Person L, Person M and Person N	Lot 16	1700 m <sup>2</sup>	3500 m <sup>2</sup>
	Lot 17	1800 m <sup>2</sup>	

**Owner voting:**

<b>Number</b>	<b>Owner</b>	<b>Vote cast</b>		<b>Vote counted</b>
1	Person A	Yes		Yes
2	Person B	No		No
3	Person C	Yes		Yes
4	Person E	None – informal		-
5	Company G	No		No
6	Company H	Yes		Yes
7	Person I	Yes		Yes
8	Person J	Yes		Yes
9	CG1	Person A	Yes	No
		Person B	No	
10	CG2	Person D	Yes	Yes
		Person E	None – informal	
		Person F	Yes	
11	CG3	Person D	Yes	Yes
		Company H	Yes	
12	CG4	Person J	Yes	Yes
		Person A	Yes	
13	CG5	Person K	No	No
		Person L	No vote received	
		Person M	No	
		Person N	Yes	
14	Local Council	Yes		Yes

Total eligible voters: 14

Total yes votes counted: 8

Proportion: 8/14 = 57.8%

**Land area voting:**

Number	Owner	Vote counted	Lots	Lot Area	Total area Yes votes
1	Person A	Yes	Lot 1	100 m <sup>2</sup>	500 m <sup>2</sup>
			Lot 4	400m <sup>2</sup>	
2	Person B	No	Lot 2	500 m <sup>2</sup>	-
3	Person C	Yes	Lot 5	1425 m <sup>2</sup>	2485 m <sup>2</sup>
			Lot 18	160 m <sup>2</sup>	
			Lot 19	900 m <sup>2</sup>	
4	Person E	-	Lot 7	1500 m <sup>2</sup>	-
5	Company G	No	Lot 8	600 m <sup>2</sup>	-
6	Company H	Yes	Lot 9	300 m <sup>2</sup>	300 m <sup>2</sup>
7	Person I	Yes	Lot 11	400 m <sup>2</sup>	400 m <sup>2</sup>
8	Person J	Yes	Lot 12	700 m <sup>2</sup>	2000 m <sup>2</sup>
			Lot 13	700 m <sup>2</sup>	
			Lot 14	600 m <sup>2</sup>	
9	CG1	No	Lot 3	1600 m <sup>2</sup>	-
10	CG2	Yes	Lot 6	500 m <sup>2</sup>	500 m <sup>2</sup>
11	CG3	Yes	Lot 10	450 m <sup>2</sup>	450 m <sup>2</sup>
12	CG4	Yes	Lot 15	1900 m <sup>2</sup>	1900 m <sup>2</sup>
13	CG5	No	Lot 16	1700 m <sup>2</sup>	-
			Lot 17	1800 m <sup>2</sup>	
14	Local Council	Yes	Lot 20	2000 m <sup>2</sup>	2000 m <sup>2</sup>
<b>Total</b>				<b>18235 m<sup>2</sup></b>	<b>10535 m<sup>2</sup></b>

Total proportion of land area owned by consenting voters: 57.7%.

## APPENDIX D: EXAMPLE BALLOT PAPER

### **EXAMPLE BALLOT PAPER**

**Proposed Development Plan Name and No. [to be completed by the relevant authority]** \_\_\_\_\_

In black or blue ink, please clearly mark an 'X' in the relevant box.

YES – consent granted to Development Plan

NO – consent refused to Development Plan

*Land owner's name [to be completed by the relevant owner]* \_\_\_\_\_

*Lot and Deposited Plan numbers [to be completed by the relevant authority]* \_\_\_\_\_

*Name of any other co-owner of a Lot/Deposited Plan listed above [this is mandatory information]* \_\_\_\_\_

*Signature* \_\_\_\_\_

NOTE: If voting as a proxy or under a Power of Attorney, please attach details.