

Old System Information and Search Guide

Date of Publication March 2013

Copyright © March 2013

ISSN 2200-9698

Copyright in this document is held by Land and Property Information. Division 3 of the *Commonwealth Copyright Act 1968* recognises that limited further use of this material can occur for the purposes of fair dealing – for example study, research or criticism. However, to make use of this material, other than as permitted by the Act, please write to Land and Property Information.

Disclaimer

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Advice from a professional adviser (e.g. a solicitor or licensed conveyancer, as appropriate) should be sought if there is doubt as to the applicability of this information to individual circumstances.

Land and Property Information
1 Prince Albert Road
Queens Square
Sydney NSW 2000

T: 1300 052 637

T: + 61 2 9228 6666

www.lpi.nsw.gov.au

This is one of five publications detailing searching and access to land titling records. The other titles in this series include:

- *First Stop Guide to the Records of the Registrar General*
- *A Brief History of the Records of the Registrar General*
- *Torrens Title Information and Search Guide*
- *Searching the Registrar General's Maps and Plans*

Contents

1. Introduction	4
2. Land title systems in New South Wales	5
3. The first Crown grants	7
4. Early land transactions	9
5. The Grant Index and Grant Register	11
6. Searching the Crown grant index and registers	14
7. Register of Surrenders	17
8. The Vendors Index	18
9. The Old System Purchasers Index	24
10. Old System indexes: 1992 to present	25
11. Other Old System manual indexes	34
12. Using the indexes	36
13. The Mapping Index	37
14. Old System searching terms	38
15. Understanding deeds	42
16. Interpreting deeds	44
17. Official Searches	52
18. Other records used in Old System searching	53
19. Further information	54
20. Official Search report example	55
21. Abbreviations used in land and title documents	58
22. Useful links	64
23. Further reading	65
24. Bibliography	65

1 Introduction

This Information and Search Guide will help to explain the intricacies of Old System land title. It offers advice and tips on how to search the indexes and documents that have been registered with the Registrar General since New South Wales (NSW) was founded. Old System records are administered on behalf of the Registrar General by the Land and Property Information (LPI).

This guide specifically aims to:

- describe how Old System information has been recorded historically
- offer practical information on how to locate current and historical Old System information.

Old System land is the most complex of the three land titling systems in NSW and has many contradictions and curiosities. As such, this guide can only be regarded as a search companion and further consultation with Old System experts may be necessary if you are undertaking a complex search.

As much of the terminology is unique, you may find the Glossary of Terms and the LPI Acronym list in the *First Stop Guide* useful. For additional information, the Registrar General's Directions website provides a comprehensive glossary see <http://rgdirections.lpi.nsw.gov.au>.

2 Land title systems in New South Wales

A land title system can be defined as the means by which ownership of land is recorded, registered and transferred. In NSW there are three land titling systems:

1. Crown land
2. Old System title (or *common law*)
3. Torrens title (or *Real Property Act*).

Approximately 50 per cent of land in NSW is Crown land leasehold (Western and Central Divisions) and 99 per cent of the remainder is Torrens title (mainly Eastern Division). Only a small residue of Old System land remains, and efforts are underway to convert this to Torrens title.

Crown land

According to English Law the land of an acquired colony belongs to the reigning monarch. This land is known as Crown land and this presumption was applied to NSW when Captain Arthur Philip proclaimed the new colony on 7 February 1788. On this day all land was claimed as the possession of the reigning monarch King George III.

The legal basis of the Crown's proprietary interests in the new colony was the doctrine of terra nullius and there were no rights recognised of the indigenous population. An attempt by John Batman in 1835 to negotiate with tribal leaders for the purchase of land at what is now Melbourne, was quickly voided by the administration. A proclamation by Governor Bourke declared that the British Crown owned the entire land mass of Australia and that only the Crown could sell or distribute land.

Phillip was given the power and authority, among other things to grant Crown land to convicts whose time had expired or to members of the military wishing to stay on in the colony. The land grants were to be evidenced by a document bearing a seal of the Territory and, having been officially recorded by an officer appointed by Phillip, were to be good and effectual in law against the Crown.

From 1788 the Crown has managed the land in various ways ranging from free grant and freehold alienation, to short term leases and licences.

It is important to note that all land remains Crown land unless alienated by grant, sale or resumption.

Old System title

Since the registration of the first grant of Crown land in February 1792 until the introduction of the Torrens Title System in 1863, land ownership in NSW was based on the English common law system of title known as 'Old System'.

To offer land holders some degree of confidence in their transactions, a system of registration was introduced in 1802. While registration was not compulsory, the advantages were soon recognised and so began the system of registration and indexing of registered dealings still in use today.

Unlike Torrens title (which is guaranteed by the State) Old System land title is a matter of quality: the title is good, but only if a better one cannot be established. In its perfect form, Old System title is a chain of evidence (known as a chain of title or chain of deeds).

In order to establish land ownership the searcher must collect and examine an unbroken chain of documents from the original Crown grant up to the present day. This includes all dealings and legal happenings that could affect the estate or interest of the land in question.

In Old System a separate deed (legal document) is prepared every time land is dealt with, whether subdivided, sold, leased or mortgaged. This means, as time passes, the number of documents requiring safe storage increases and the more chance there is of documents being lost, damaged or destroyed.

In theory, determining proof of title (and therefore ownership) is established by possessing and presenting all the deeds relating to the land from the time of its first granting from the Crown. In practice, this is often difficult to achieve as it requires the time consuming task of finding, collecting and examining numerous deeds.

The *Conveyancing Act 1919* recognises the difficulties inherent in proving ancient title and introduced (with certain exceptions) a cut off period of 30 years 'good root of title' to prove ownership (see page 40 for more information).

Old System also presents considerable problems for land owners when land is subdivided (it was not mandatory to register plans of subdivision of Old System land prior to 1961), or when deeds have been lost. Problems can further be compounded if deeds have not all been registered.

There has never been a statutory requirement to register deeds and distance, time and government fees dissuaded many people from doing so. This is despite the fact that registered deeds hold more weight in the civil court over a disputed land claim. Various attempts to void unregistered deeds over the years have all failed.

In short, Old System land title is complicated, expensive, uncertain and is not guaranteed by the State.

Torrens title

The Torrens Title System was introduced in NSW on 1 January 1863 to combat the problems of uncertainty, complexity and cost associated with Old System title. It's named after its originator, Sir Robert Torrens, who adapted the merchant shipping registration system into a simple method for land conveyancing.

Sir Robert Torrens was a landing waiter in the Port of London before migrating to South Australia (SA) in 1839 where he became Collector of Customs, member of the Legislative and Executive Council, Treasurer, Registrar General and the third Premier of SA. He championed land reform in 1857 and helped develop the titling system that bears his name.

The system was so effective, it quickly spread to all the Australian States as well as New Zealand and has now been adopted in many countries around the world. Following its introduction, all land granted by the Crown has been subject to the provisions of the *Real Property Act 1862* which regulates the Torrens Title System.

Under the Torrens Title System the State maintains and, most importantly, guarantees the Torrens Title Register. Individual land transactions are mandatorily lodged with LPI using standardised forms (known as dealings) and the new owner is issued with a single document called a Certificate of Title (CT) which supports their ownership. The Torrens Title Register is maintained in the Integrated Titling System (ITS) by LPI.

A current Certificate of Title tells us the present state of the title. It contains:

- a land description of the land parcel(s) in the certificate
- a first schedule listing the owner or registered proprietor and the tenancy in which the land is held (the name in this schedule is guaranteed by the state government)
- a second schedule of all the registered interests affecting or benefitting the land e.g. mortgages, leases, rights of way.

Unlike an Old System deed, a Torrens title tells us the current state of ownership and lists any encumbrances affecting the land, additionally all the recordings shown on these titles are guaranteed by the State of NSW.

For more information on the Torrens Title System please refer to the *Torrens Title Information and Search Guide*.

3 The first Crown grants

Crown grants were issued as early as 1789 but doubts as to their validity (arising from the manner of sealing and lack of registration) brought about their re-call and re-granting. By the end of that year at least 85 grants had been made and Governor Phillip wrote of the need for a record to be kept.

The Territorial Seal did not arrive until September 1791, so the earliest grants had wax seals impressed with Governor Phillip's signet ring. By the end of 1791 Governor Phillip had charged David Collins, the Secretary of the Colony, with the responsibility of registering Crown grants.

Exceptions, reservations and conditions in Crown grants

Crown grants are normally issued subject to various exceptions, reservations and conditions and the title that develops from the grant will inherit these. These conditions are not written out in full on subsequent titles so if you need to investigate further you should consult the original Crown grant.

As a matter of convenience, the Registrar General always indicates on a Torrens title whether it is held subject to any reservations or conditions in favour of the Crown.

Exceptions

Typical exceptions have included reserves of gold, silver and other minerals; land below a specified depth; roads, railways, reserves and drift ways; and land within 30.48 metres (100 feet) of the mean high water mark of tidal water. (However a reservation of land within 30.48 metres from the mean high water mark is inappropriate when no abuttal or boundary to tidal water exists.)

Reservations

Standard reservations include the right to:

- construct roads, bridges, canals and railways on or through land
- take and remove indigenous timber and other natural produce of the land for the construction and repair of roads, bridges and other public works, and for naval purposes.

Conditions

Grants sometimes contain conditions which impose positive or negative obligations on the grantee and assigns. An example of the former could be the maintenance of a sea wall, while the latter may be illustrated by a condition that the land will not be used in such a way as to obstruct the view of a lighthouse.

Quit rents

Quit rents were a form of land tax imposed on freehold or leased land. Often nominal in quality (i.e. a peppercorn) they were imposed on Crown grants issued up to 1831 when the practice was discontinued.

Provision was made for redemption of those of monetary value already in existence by payment of 10 years rent. By the *Crown Lands (Amendment) Act 1964*, the requirement for redemption was abolished.

The first *registered* grant of Crown land was made to ex-convict James Ruse who was granted 'Experiment Farm', a 30 acre property at Rose Hill (near Parramatta). He was granted the land in 1789 but it was officially registered on the 22 February 1792. It is one of fifty grants to bear that registration date. Earlier dated grants were made on the Parramatta River and on Norfolk Island.

Reservations of gold and silver

In early grants, mines of gold and silver were reserved to the Crown. These minerals are classified as Royal metals and are, as such, presumed inalienable (or unable to be separated) from the Crown.

Reservations of coal

By Government Order in August 1828, the Crown in NSW was directed to reserve all mines of coal from Crown grants. This was revoked retrospectively from all Crown grants in January 1850 which (at that date) were not within any city, township or village. This proclamation followed the abolition in 1847 of the Australian Agricultural Company's (AACo) monopoly to mine coal in NSW.

The *Coal Acquisition Act 1981* came into effect in January 1982 and again vested all coal and shale in the Crown.

100 feet reservation (30.48 metres) from the mean high water mark (MHWM)

A reservation of 100 feet (30.48 metres) is an exception from the granting of a strip of land of that width on the landward side of the mean high water mark (as existing on the date of the grant).

The mean high water mark is the line between the high tides at ordinary spring and neap tides. When a grant is described with this as a boundary, the natural title boundary will advance or recede in time according to the rules governing accretion and erosion.

The landward boundary of the 100 feet reservation should not, theoretically, be affected by this movement and should (if possible) be established on the date of the grant.

Neap tide: when the difference between high and low tide is at its smallest. It occurs about every two weeks when the moon and sun are at 90 degree angles to each other (during quarter moons).

Spring tide: the period of maximum tidal ranges that occurs about every two weeks when the moon and sun are in line with each other and pull in the same direction (at the new and full moon).

Where this reservation is ineffective, that is, where there is no water frontage or where the water frontage is never tidal, the reference is disregarded, except to note the ineffective nature of the reservation.

Exceptions to Crown grants issued after the *Real Property Act 1862*

A few Crown grants and other Crown instruments (legal documents), not intended to be registered under the *Real Property Act 1862*, were made after 1862 and can be found in Special Grant Book No. 4 (Serial 199). These are mainly grants of Rescission of Reservations and Conditions (contained in earlier grants) but a few grants of land occurred. Grants found in Special Grant Book No. 4 have all been entered in the last grant index (of 1862).

4 Early land transactions

On 13 November 1800, Governor Philip Gidley King issued an order stating:

“That no claim for property be admitted by the Civil Court of Judicature, unless the parties enter into written agreements between each other, or enter them into books which will be kept for that purpose.”¹

The order was to be in force from 27 November 1800 and four special books were designated for that purpose.

Two were to be kept in Sydney (one at the Judge Advocate’s office and the other with Sergeant-Major Jamison for the military); one was to be kept in Parramatta and the other in Hawkesbury. Unfortunately none of these books is known to have survived.

The Old Register: The Register of Assignments and Other Legal Instruments

The first known records of land transactions held by the Registrar General can be found in the **Register of Assignments and Other Legal Instruments**. This was established in accordance with a general order issued in February 1802 by Governor King when he:

“Ordered and declared that no assignment of property will henceforth be considered legal unless regularly drawn up at the Judge-Advocate’s Office and duly registered.”²

The order also stated:

“Every person now holding assignments are to appear with them at the Judge-Advocate’s Office on Friday next, the 6th instant, to have them examined and registered, otherwise no cognizance of them will be taken by the civil court”³.

The first entry in the register is an assignment dated 3 February 1802 (by Surveyor General Augustus Alt) of ‘Heritage Farm’, to John Palmer entered on 6 March 1802; but the register also contains assignments and other legal instruments dating back to January 1794.

The nine registers that were created are now known as the Old Register and comprise the total recorded extracts or enrolments of dealings from 17 January 1794 to 15 May 1824.

On 18 January 1817 Governor Macquarie issued a proclamation which provided for the registration of all deeds and conveyances made and executed from and after 25 March 1817. He ordered that all deeds of property were to be registered and that any deed not registered after that date would be adjudged void. This proclamation resulted in the creation of the **Deed Register**.

Governor Macquarie’s proclamation, and all other attempts to void unregistered deeds, failed. Today, the *Conveyancing Act 1919* Sec 184(G) confers a priority according to deed registration and while certain deeds are required to be registered the, Act does not negate the right of an unregistered deed.

The Office of the Judge Advocate came to an end when a Charter of Justice was granted in 1823 by King George IV, and the Supreme Court of NSW was established in its place.

1 Historical Records of New South Wales HRNSW).IV.255; Historical Records of Australia (HRA).I.III.38, 761.

2 HRNSW.IV.696; HRA.I.III.473-474, 761.

3 Ibid

The *Registration of Deeds Act 1825* marked the commencement of the **General Register** and the start of the **Vendors Index** which is still in use today (see page 18).

Deeds were originally only recorded in the Vendors Index but in 1896 the **Old System Purchasers Index** was established (see page 24). Most registrations, since that time, have been dually indexed.

The term **General Register** is a term used to refer to all deeds indexed in the Vendors Index and Old System Purchasers Index.

5

The Grant Index and Grant Register

You can use the Grant Index to find a Crown grant reference number. This number is the one you need in order to locate a grant in the Grant Register.

The Grant Index

The Grant Index is a chronological record, in alphabetical order, of the surnames or company names of those who bought or received grants of land from the Crown up to and including 31 December 1862. The Grant Index briefly records the location, area, and portion or allotment numbers (if any) of the land granted and the Serial and Page numbers of the entry in the Grant Registers.

The Grant Registers

The Crown grants are bound together in the Grant Register books and are identified by a grant reference number. This number is made up of the **Serial** number of the bound book and the number allotted to each grant which is referred to as the **Page** number.

The serial number is located at the bottom of the spine of each grant register. The page number is usually located at the top right hand corner of the first page of each grant. On some grants the page number also contains the year of the grant (for example 57/789 means the year 1857 and the page number 789.)

The Grant Registers were originally grouped in various series such as Land Purchases, Town Purchases and Special Grants etc. They were given distinguishing letters or numbers in that series or referred to by the year of the grant e.g. 1861 Land Purchases.

In total, 15 indexes were compiled for the Registers of Land Grants and Leases. All indexes refer to the name of the grantee and the area of the land. Seven are typed in alphabetical order of surname and given names, quote the current serial number of the register and in all, except one case, the page.

The eight handwritten indexes are in alphabetical order as regards the initials of surnames only. They do not quote the current serial number and in at least one index refer to the page of the Grants Register in the Office of the Colonial Secretary, not the page number as presently bound. In these instances, reference should be made to the Supplementary Index which is located in the first few pages of each grant register. This index lists, in alphabetical order, all the grantees contained in that register. The page number of the grant is written next to the grantee's name.

SYDNEY DISTRICTS AS AT 1817

Settlement

Sydney

Bullanaming

Botany Bay

Bathurst

Meyrick

Oxley

Hunter Hill

Field of Mars

Present Suburbs Included

All Eastern Suburbs.

Botany, Mascot, Rosebery, Kensington, Redfern, Waterloo, Kings Cross.

Rockdale, Kogarah, Sans Souci, Blakehurst, Oatley, Kingsgrove, Croydon, Burwood.

- included Blacktown

Suburbs north of Middle Harbour

Thornleigh, Turramurra, Bobbin Head, Pymble

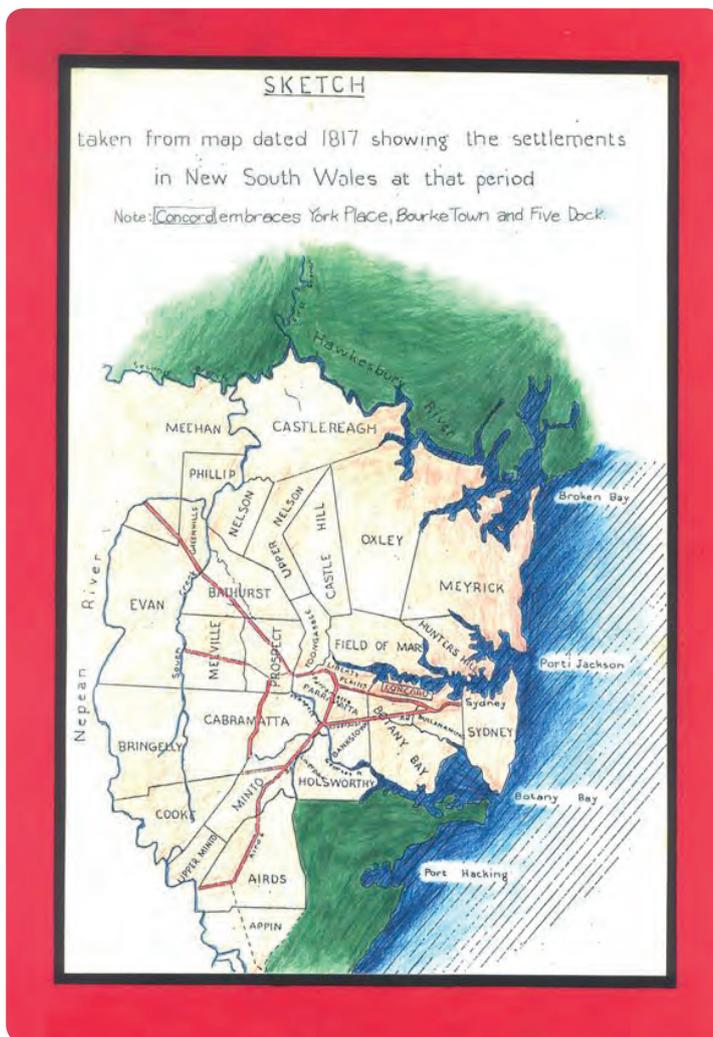
Between Middle Harbour and Lane Cove River north to approx. Chatswood.

Ryde, Gladesville, Hunters Hill, Denistone and Eastwood.

The current indexes cover the period from the first registered grant to James Ruse on 22 February 1792 to 31 December 1862. The *Real Property Act 1862* commenced 1 January 1863. Some of the index books contain duplicate dates.

The Grant Index comprises 15 books.

1. 1792 to 1826
2. 1792 to 1826
3. 1827 to 1831 – This book contains only town allotment grants (allotment is the technical term for the smallest parcel of land on a Town Map).
4. 1827 to 1830
5. 1830 to 1839
6. 1839 to 1847
7. 1847 to 1855
8. 1855 to 1856
9. 1856 to 1857
10. 1856 to 1857
11. 1858 to 1860 – This book contains only town allotment grants.
12. 1858 to 1860
13. 1861 to 1862
14. 1860 to 1862
15. 1860 to 1862



With the passing of the *Real Property Act 1862*, Crown Grants were registered under the Torrens System. A few grants and other Crown instruments, not intended to be registered under this Act are to be found in Special Grant Book No. 4 (Serial 199). They are mainly Grants of Rescission of Reservations and Conditions (contained in earlier grants) but a few grants of land occur. Grants found in Special Grant Book No. 4 have all been entered in the last grant index of 1862.

It appears that when the New South Wales Grant Indexes were compiled that all references to land granted in Van Dieman's land between 1800 and 1823 were purposely omitted but that some entries relating to those recorded in registers 2, 3, 3C, 4 and 4D have been subsequently added to the Grant Index.

The Old Form Torrens title on page 13 shows portion 22 is Volume 2889 Folio 131, as shown on the Parish Map schedule. The Old Form Torrens titles can be viewed at all the public terminals.

As noted on the title, the land was purchased from the Crown for £120. A grant was awarded on 22 October 1918 to James Kidd and Alfred Bond, which was signed off by the Governor at that time who was Sir Walter Edward Davidson.

Following the details of the Crown Grant shown on the first page an Old Form Title usually records dealings which affect the parcel. In this case, the title shows the land was transferred on 13 January 1923 to Agnes Fitzpatrick. If you look back at the Parish Map, A Fitzpatrick is noted as the grantee for portion 20 which is on the northern border of portion 22.

Current file number
Conditional Purchase
(CP) 1918/2148 Bega

Original selection as
Conditional Purchase
(CP)1862/1438 Bega

State of New South Wales. [LAND GRANT.]

REGISTER BOOK,
V. 2889, Fol. 131

GRANT OF LAND PURCHASED BY CONDITIONAL SALE WITHOUT COMPETITION.

George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, Emperor of India,
Do hereby declare that His Majesty's pleasure is that the said Land should be granted to the said James Hield and Alfred Edward Bond, both of Sydney, subject to the several and respective Reservations hereinafter mentioned: ALL THAT Piece or Parcel of Land in Our said State containing by Admeasurement one hundred and twenty acres situated in the County of Auckland and Parish of Tenthredinago, Portion XXII (22 of Block XXII) on the left bank of Tenthredinago Creek at the western end of the most westerly section boundary line of portion twenty of three hundred and twenty acres and one acre twenty four perches and fractional acres in the North by that boundary line bearing West fifty nine chains in the West by the section boundary line of that portion bearing South twenty chains in the South by the section boundary of portion XXI (21 of Block) of forty acres and a line in all bearing East sixty one chains to the left bank of the Tenthredinago Creek and in the East by that bank commencing at the point of commencement exclusively of a road fifty links wide fringing through this land in a northerly direction the area of which has been deducted from the total area.

As per plan in the margin hereto. With all the Rights and Appurtenances whatsoever thereto belonging. To Have unto the said James Hield and Alfred Edward Bond.

Witness Our Trusty and Well-beloved Sir Walter Edward Davidson, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Our Governor of Our State of New South Wales and its Dependencies, in the Commonwealth of Australia in England, in Our said State, this twenty second day of October in the sixth year of Our reign, and in the year of Our Lord One thousand nine hundred and eighteen.

W. E. Davidson
Governor.

Volume 2889 Folio 131 (Old Form Torrens Title)

Wales, this 11th day of November 1918.

No. 1 902681. TRANSFER dated 13th January 1923 from the said JAMES KIDD and ALFRED EDWARD BOND to AGNES HELEN FITZPATRICK wife of Louis John FitzPatrick of our Welsh Road, Greater, of the land within described. Probated 29th January 1923 and entered Oct. February 1923 at 12 o'clock noon.

W. E. Davidson
Registrar General.

The whole of this 875272 is being withdrawn from the said Book March 1963.

J. J. J. J.
REGISTRAR GENERAL.

Extract of Volume 2889 Folio 131, page 2

6 Searching the Crown grant index and registers

How to find a grantee's name

If you know the location of the land and you know it was originally granted as Old System but has since been converted to Torrens title by Primary Application (PA), you can trace the original grantee particulars by conducting a **History of Title Transactions** search through the LPI Online Shop <http://shop.lpi.nsw.gov.au>. Old Form and most New Form Torrens titles contain this information as part of the land description on the first page.

If the land is currently Old System or was converted to Torrens title by Conversion Action (CA), you will need to examine the paper reference map to discover the grantee's particulars. All paper reference maps have been scanned and filed as digital images. Access to these images is available through Historical Land Records Viewer (HLRV) in SIX website www.six.nsw.gov.au or through the public search terminals LPI, Queen Square, Sydney.

Current subdivision information and status is available through the Cadastral Records Enquiry (CRE) also known as the Property Location Map. This free search is available through the Online Shop under Specialised Searches.

The paper reference maps contain all or some of the following particulars:

- grantee's name
- date of the grant – generally if prior to 1863
- parish, county and portion number (portion is the technical term for the parcels of land shown on a parish map)
- town or village name
- allotment and section numbers (an allotment in a section is the technical term for a parcel of land shown on a town or village map)
- area (in acres or hectares).

The Volume and Folio shown in red for Portion 34 (see enlargement – page 15) is Vol 12947 Fol 146 was the title reference issued when the portion was alienated from the Crown.

The title reference for Portion 34 is 34/750532 (see the red stamp in the top left corner of the map for the administrative deposited plan (DP) number for each parish, county and town map).

The DP series numbered 750000, 758000 and 765000 series are administrative numbers not physical plans.

To order a copy of the subdivision plan you need to use the Crown plan number. For Portion 34 the Crown plan number is B4237–1765. (The small number 1765 is shown under the PARISH NUMBERS USED schedule.)

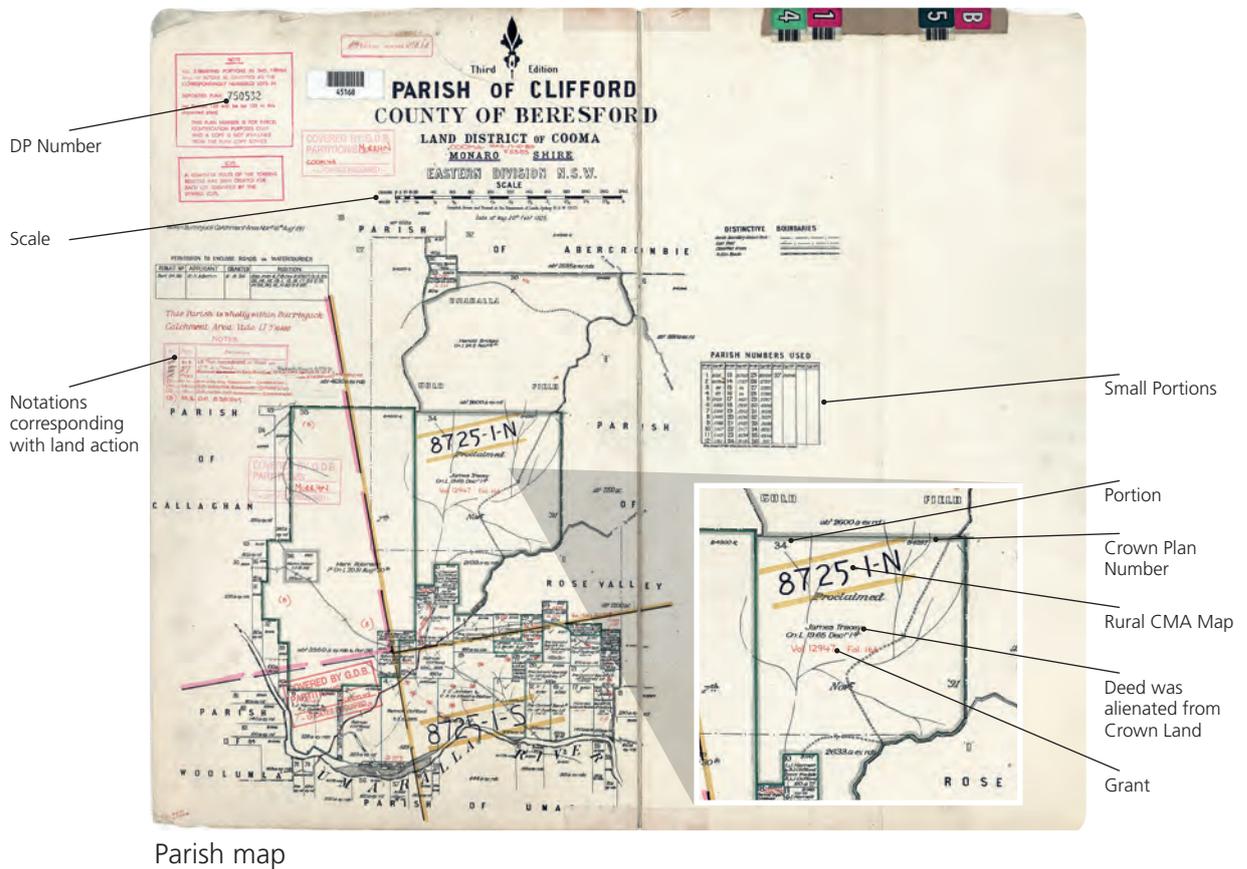
Parish maps also show the reference details (known as the Volume and Folio number) for Crown grants issued between the commencement of the *Real Property Act 1862* on 1 January 1863 and 1 October 1981. They also show a reference to 'First Titles' issued since that date.

PARISH NUMBERS USED

Ph No	Cat No	Ph No	Cat No	Ph No	Cat No	Ph No	Cat No	Ph No	Cat No
1	B105	13	B1760	25	B2735	37	B4316		
2	M178	14	1737	26	2722				
3	86	15	do	27	2723				
4	49	16	do	28	2786				
5	B109	17	1421	29	2787				
6	1060	18	1503	30	4386				
7	1069	19	1582	31	3078				
8	1146	20	1636	32	3129				
9	1148	21	1502	33	3676				
10	1147	22	2117	34	4237				
11	1149	23	1634	35	4300				
12	1761	24	2118	36	931				

The small No for this County is 1765 unless otherwise stated.

Small number



Parish map

How to find a grantee's name in the Grant Index

The Grant Index is held in a series of Register books in the LPI, Queens Square, Sydney office. Entries in the Grant Index are indexed in alphabetical order as regards surnames only. If there are several entries under the same grantee name you can use the area and location of the land to narrow your choice as to the correct grant.

The Grant Registers were originally grouped in various series such as Land Purchases, Town Purchases and Special Grants etc. They were given distinguishing letters or numbers in that series or referred to by the year of the grant e.g. 1861 Land Purchases.

Some of the early Grant Registers contain pages numbered from both ends of the book, resulting in a duplication of page numbers.

If you know the registration date of the grant you should start your search in the first grant index book(s) to include the same year as that date.

If you don't know the registration date of the grant you have two options.

1. You can search the first grant index book (1792 to 1826) and continue forwards until the relevant entry is found.
2. You can search the last grant index book (1860 to 1862) and search backwards until the relevant entry is found.

Serial numbers, page numbers and the Supplementary Index

Entries in the Grant Index will generally refer to a particular Grant Register by listing a **Serial** and **Page** number. Handwritten indexes (which are still in use) normally refer to the letter or number originally given to the relevant book and sometimes do not quote the page number of the grant.

In these instances, reference should be made to the **Supplementary Index** which is located in the first few pages of each grant register. This index lists, in alphabetical order, all the grantees contained in that register. The page number of the grant is written next to the grantee's name.

The serial number is located at the bottom of the spine of each grant register. The page number is usually located at the top right hand corner of the first page of each grant. In some grants the page number also contains the year of the grant (for example 57/789 means the year 1857 and the page number 789.)

Unfortunately the Grant Index is incomplete for the recording of page numbers. While all the serial numbers are recorded, some of the page numbers are missing.

7

Register of Surrenders

The Register of Surrenders is filed as Old System Register number 374. The register has been used to record copies of Memorials of Surrender to the Crown between the dates of 4 May 1833 to 22 February 1856.

Pages 2 to 320 of this register of 569 pages have been used to record copies of Memorials of Surrender plus an alphabetical index is bound at the front of the register while the remaining pages are blank. There are 119 entries in the alphabetical index, with some names relating to more than one page.

The surrenders are useful for various reasons. In one, the grantees' name is incorrectly spelt, so a surrender and reissue of grant in the correct name occurs. A lost grant and the Wills in a line of succession bring a surrender and reissue of a grant in the heirs' name, one is for compensation and for public purposes such as the watch house at Kissing Point.

Governor William Bligh's grant at Parramatta by Governor King of part of the Government domain was surrendered (pages 78-83) in return for compensation for the regranting of the land by Governor Macquarie to expand the town on the west and to house the female factory.

The Register was much travelled between the Supreme Court, the Colonial Secretary's Office and the Registrar General's Office as the responsibility for the Registering of Deeds fluctuated from office to office.

The first entry is entered at the Registrar's Office (Registrar of Deeds, Supreme Court) on 4 May 1833. Later entries document the changes in the office being responsible for the Registering of Deeds.

Page 87 entry 17 September 1842 is entered by the Registrar of the Supreme Court.

Entry page 97 of 23 August 1847 is received by William Carter, the first Registrar General (from 1843) and entered by the Colonial Secretary and Registrar.

Entry page 112 of 1 June 1849 is received by William Carter, the Registrar General and entered by the Colonial Secretary and Registrar.

With the abolition of the position of Registrar General on 31 December 1849 entry page 119 of 4 April 1850 is received by the Registrar of Deeds Supreme Court and entered by the Colonial Secretary and Registrar.

The last entry of 22 February 1856 is received by the Chief Clerk of the Supreme Court and Registrar of Deeds and entered by the Colonial Secretary and Registrar.

The office of the Registrar General was revived by Act 19 Victoria No 34 and the position re-established on 1 January 1856.

The Registrar General's Office (RGO) opened at 24 Castlereagh Street on 1 March 1856 and all subsequent surrenders were lodged and numbered as deeds if Old System land and as a dealing if Torrens title land.

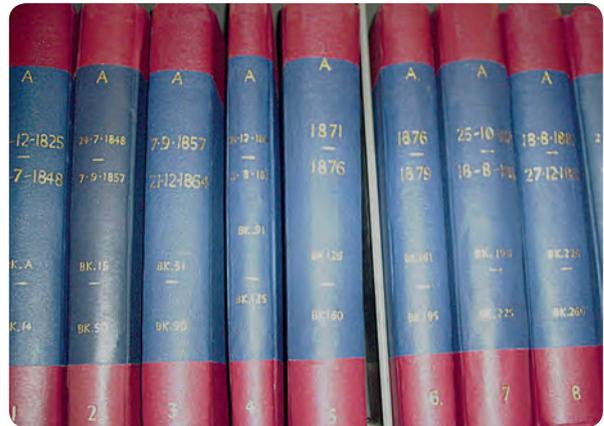
8 The Vendors Index

The *Registration of Deeds Act 1825* established a General Register of Deeds for recording all transactions with land. The operative index for these registrations is called the **Vendors Index**.

The index contains Old System transactions dating from the close of the Old Register.

Old System Vendors Index from 1825 -1986 is available on public terminals at LPI Queens Square, Sydney. This information should be available online through the HLRV late 2013.

Vendors Index entries from 1987 to 1992 are held in hard copy format LPI Queens Square, Sydney.



The Vendors Index

Initially, deed particulars were registered and indexed in large bound books which commenced on 12 December 1825 with **Book A**. The deeds were numbered serially so that A-257 means Book A, Number 257.

This unique reference enables you to easily locate the deed in the General Register of Deeds. The numeric series of cataloguing commenced 7 May 1842 with Book 1.

Entries are made in the Vendors Index under the name(s) of all persons granting or creating an estate or interest in land.

Searching the Vendors Index books (manual index)

Each index entry contains some or all of the following information:

- names of the parties to the deed
- type of deed (abbreviations are used to describe the deeds such as "C" for conveyance)
- book and number of the deed
- a summary of the land description(s).

Other transactions, not relating specifically to land, are also contained in the Vendors Index.

Index entries made between 1825 and 1992

Between 16 December 1825 and 2 November 1992, the Vendors Index was bound in books and numbered in chronological order.

Prior to 1 January 1898 the Vendors Index was compiled in alphabetical order as regards surnames only. From 1898 onwards, entries were indexed in alphabetical order by both surname and first name.

Index entries made between 1825 and 1904

Between 1825 and 1904, the Vendors Index was handwritten and some of the entries are difficult to decipher. To reduce the chance of missing important information you need to read both the name and land description. Over the years a few of the old indexes have been typed which improves their legibility.

The Vendors Index entries were spread across two pages. The left hand page shows the vendor's name(s), purchaser's name(s), type of deed and book and number reference. The right hand page contains a brief land description or other information.

Number 268

Book 756

Mortgage

Security Collateral with Bond.

Handwritten notes in the top left corner, including "1/16/1884" and "8. 4. 11".

This Indenture made the

13th day of September 1884

one thousand nine hundred and one BETWEEN

Mary W. Kilgob, Mary Mahony, and Ellen M. Muller of the County of St. Joseph, Missouri, West of day in the State of New South Wales, Queensland.

(hereinafter designated "the Mortgagor") of the one part and the BANK OF NEW SOUTH WALES (hereinafter designated "the Bank") of the other part

WHEREAS the Bank have granted to the Mortgagor a cash credit for Three hundred pounds secured by bond or obligation dated the 13th day of September

one thousand nine hundred and one in a sufficient penal sum and the Mortgagor hath agreed to execute these presents as a security collateral to the said Bond NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Mortgagor DOTH hereby appoint and also grant release and convey unto the Bank ALL THOSE the pieces or parcels of land messuages and hereditaments comprised in referred to or expressed to be conveyed by the deeds and documents particularised in the schedule hereto and to which the Mortgagor or may become entitled either at law or in equity for any estate or interest therein TOGETHER with all buildings actual or reputed easements rights and appurtenances and all fixtures tanks ranges stoves engines wood-presses pumps and machinery now or hereafter on the lands hereby mortgaged or any part or parts thereof AND all the estate right title interest claim and demand of the Mortgagor therein or thereto TO HOLD the said premises unto and to the use of the Bank for ever subject to the proviso for redemption hereinafter contained PROVIDED ALWAYS that if the Mortgagor shall duly pay to the Bank all moneys now owing or which shall at the option of the Bank be lent or advanced to the Mortgagor by the Bank upon the security of the said Bond or which shall become due or payable by him to the Bank either directly indirectly or contingently under or by virtue of the said Bond or these presents or any other securities held by the Bank from the Mortgagor or in any other manner whatsoever with interest thereon at the rate expressed or referred to in the said Bond (all which moneys are intended to be secured by these presents) then the Bank shall upon the request and at the cost of the Mortgagor re-convey the said mortgaged premises or such part thereof as shall then be vested in the Bank AND the Mortgagor hereby for himself his heirs executors and administrators covenants with the Bank and their assigns that the Mortgagor will well and truly pay and satisfy all and singular the moneys secured by the said Bond or by these presents AND FURTHER that the Mortgagor will at all times during the continuance of this security duly and punctually pay all rates taxes duties and assessments whether municipal parliamentary local or of any other description now or hereafter charged upon the said premises or any part thereof respectively or upon the owner or occupier in respect thereof or of any part thereof and also keep all messuages and buildings fixtures fences tanks dams wool-presses pumps ranges stoves engines plant machinery and premises comprised in or subject to this security in a good and tenable state of repair and in good working order AND also such of them as are of an insurable nature and the rent thereof insured against loss or damage by fire in the full insurable value thereof in some responsible insurance office in Sydney to be approved of by the Bank and in the name of the Bank AND will punctually pay all the premiums and sums necessary for effecting and keeping up the said insurances and hand to the Bank the policy or policies evidencing such insurance and the receipt for each and every such payment immediately after the same shall have been paid and in the event of loss the Bank shall alone have full power to make enforce settle and compromise any claim or claims in respect of any and every such insurance AND THAT the Bank and their agents and surveyors may at all times enter into and upon the said premises and view the state of repair and condition thereof AND give the Mortgagor notice of any defect in the repair or condition thereof when the same shall thereupon be amended by the Mortgagor accordingly And that if default shall at any time be made by the Mortgagor in keeping the said premises or any part thereof in good and tenable repair and in good working order (whether any notice of any defect shall have been given as aforesaid or not) or in effecting and keeping up such insurances as aforesaid or in handing over any such policy or receipt or in duly and punctually paying all such rates taxes duties and assessments as aforesaid it shall be lawful for the Bank if they shall think fit and according to the particular default to pay make do effect and keep up all such rates taxes duties assessments repairs and insurances as aforesaid AND THAT all moneys expended by the Bank for all or any of such purposes shall be debited and charged to the Mortgagor and shall be covered by this security and bear interest accordingly AND THAT such policy or policies of insurance as aforesaid (whether or not the same shall cover any other property of the Mortgagor not comprised herein) shall be held by the Bank as a further security for the payment of the moneys secured by the said Bond or these presents AND THAT all moneys received under or by virtue of any such policy of insurance shall at the option of the Bank be applied in or towards repairing or rebuilding the said premises or in or towards the payment of the moneys for the time being secured by the said Bond or by these presents AND THAT the Mortgagor will at his own cost and expense at any time or times during the continuance of this security when required by the Bank so to do execute and give to the Bank by way of collateral security to the said Bond a preferable lien or preferable liens on the then ensuing crop or crops of agricultural or horticultural produce on the lands hereby mortgaged every such lien to contain a power to sell an agreement to insure and such other conditions provisions and agreements and be in such form as the Bank shall think fit And that the Mortgagor will not during the continuance of this security without the written consent of the Bank previously had and obtained give any preferable or other lien on or over any such crop or crops to any other corporation or person AND FURTHER that the Mortgagor has power to appoint grant and release all the said premises free from encumbrances AND that the Mortgagor and all other persons having any interest in the premises will when thereunto required by the Bank at his or their own costs make do and execute to the Bank such further assurances of the premises hereby mortgaged or which shall from time to time be covered by this security for the entirety of his or their interest from time to time therein as the Bank may require for the purpose of further or better securing the moneys secured by the said Bond or by these presents AND THIS INDENTURE ALSO WITNESSETH that for the purpose of further securing the payment of the moneys intended to be secured by the said Bond or these presents the Mortgagor DOTH hereby appoint the General Manager the Inspector and each of the Assistant Inspectors and Managers for the time being of the Bank or any Branch thereof and also the assigns of the Bank jointly and severally to be the true and lawful attorneys and attorney irrevocable of the Mortgagor to demand sue for recover and receive from any insurance company or society all moneys payable

Vertical handwritten notes on the left margin, including "Kilgob", "Mahony", "Muller", and "BANK OF NEW SOUTH WALES".

Vertical handwritten notes on the right margin, including "211", "212", "213", "214", "215", "216", "217", "218", "219", "220", "221", "222", "223", "224", "225", "226", "227", "228", "229", "230", "231", "232", "233", "234", "235", "236", "237", "238", "239", "240", "241", "242", "243", "244", "245", "246", "247", "248", "249", "250", "251", "252", "253", "254", "255", "256", "257", "258", "259", "260", "261", "262", "263", "264", "265", "266", "267", "268", "269", "270", "271", "272", "273", "274", "275", "276", "277", "278", "279", "280", "281", "282", "283", "284", "285", "286", "287", "288", "289", "290", "291", "292", "293", "294", "295", "296", "297", "298", "299", "300", "301", "302", "303", "304", "305", "306", "307", "308", "309", "310", "311", "312", "313", "314", "315", "316", "317", "318", "319", "320", "321", "322", "323", "324", "325", "326", "327", "328", "329", "330", "331", "332", "333", "334", "335", "336", "337", "338", "339", "340", "341", "342", "343", "344", "345", "346", "347", "348", "349", "350", "351", "352", "353", "354", "355", "356", "357", "358", "359", "360", "361", "362", "363", "364", "365", "366", "367", "368", "369", "370", "371", "372", "373", "374", "375", "376", "377", "378", "379", "380", "381", "382", "383", "384", "385", "386", "387", "388", "389", "390", "391", "392", "393", "394", "395", "396", "397", "398", "399", "400", "401", "402", "403", "404", "405", "406", "407", "408", "409", "410", "411", "412", "413", "414", "415", "416", "417", "418", "419", "420", "421", "422", "423", "424", "425", "426", "427", "428", "429", "430", "431", "432", "433", "434", "435", "436", "437", "438", "439", "440", "441", "442", "443", "444", "445", "446", "447", "448", "449", "450", "451", "452", "453", "454", "455", "456", "457", "458", "459", "460", "461", "462", "463", "464", "465", "466", "467", "468", "469", "470", "471", "472", "473", "474", "475", "476", "477", "478", "479", "480", "481", "482", "483", "484", "485", "486", "487", "488", "489", "490", "491", "492", "493", "494", "495", "496", "497", "498", "499", "500", "501", "502", "503", "504", "505", "506", "507", "508", "509", "510", "511", "512", "513", "514", "515", "516", "517", "518", "519", "520", "521", "522", "523", "524", "525", "526", "527", "528", "529", "530", "531", "532", "533", "534", "535", "536", "537", "538", "539", "540", "541", "542", "543", "544", "545", "546", "547", "548", "549", "550", "551", "552", "553", "554", "555", "556", "557", "558", "559", "560", "561", "562", "563", "564", "565", "566", "567", "568", "569", "570", "571", "572", "573", "574", "575", "576", "577", "578", "579", "580", "581", "582", "583", "584", "585", "586", "587", "588", "589", "590", "591", "592", "593", "594", "595", "596", "597", "598", "599", "600", "601", "602", "603", "604", "605", "606", "607", "608", "609", "610", "611", "612", "613", "614", "615", "616", "617", "618", "619", "620", "621", "622", "623", "624", "625", "626", "627", "628", "629", "630", "631", "632", "633", "634", "635", "636", "637", "638", "639", "640", "641", "642", "643", "644", "645", "646", "647", "648", "649", "650", "651", "652", "653", "654", "655", "656", "657", "658", "659", "660", "661", "662", "663", "664", "665", "666", "667", "668", "669", "670", "671", "672", "673", "674", "675", "676", "677", "678", "679", "680", "681", "682", "683", "684", "685", "686", "687", "688", "689", "690", "691", "692", "693", "694", "695", "696", "697", "698", "699", "700", "701", "702", "703", "704", "705", "706", "707", "708", "709", "710", "711", "712", "713", "714", "715", "716", "717", "718", "719", "720", "721", "722", "723", "724", "725", "726", "727", "728", "729", "730", "731", "732", "733", "734", "735", "736", "737", "738", "739", "740", "741", "742", "743", "744", "745", "746", "747", "748", "749", "750", "751", "752", "753", "754", "755", "756", "757", "758", "759", "760", "761", "762", "763", "764", "765", "766", "767", "768", "769", "770", "771", "772", "773", "774", "775", "776", "777", "778", "779", "780", "781", "782", "783", "784", "785", "786", "787", "788", "789", "790", "791", "792", "793", "794", "795", "796", "797", "798", "799", "800", "801", "802", "803", "804", "805", "806", "807", "808", "809", "810", "811", "812", "813", "814", "815", "816", "817", "818", "819", "820", "821", "822", "823", "824", "825", "826", "827", "828", "829", "830", "831", "832", "833", "834", "835", "836", "837", "838", "839", "840", "841", "842", "843", "844", "845", "846", "847", "848", "849", "850", "851", "852", "853", "854", "855", "856", "857", "858", "859", "860", "861", "862", "863", "864", "865", "866", "867", "868", "869", "870", "871", "872", "873", "874", "875", "876", "877", "878", "879", "880", "881", "882", "883", "884", "885", "886", "887", "888", "889", "890", "891", "892", "893", "894", "895", "896", "897", "898", "899", "900", "901", "902", "903", "904", "905", "906", "907", "908", "909", "910", "911", "912", "913", "914", "915", "916", "917", "918", "919", "920", "921", "922", "923", "924", "925", "926", "927", "928", "929", "930", "931", "932", "933", "934", "935", "936", "937", "938", "939", "940", "941", "942", "943", "944", "945", "946", "947", "948", "949", "950", "951", "952", "953", "954", "955", "956", "957", "958", "959", "960", "961", "962", "963", "964", "965", "966", "967", "968", "969", "970", "971", "972", "973", "974", "975", "976", "977", "978", "979", "980", "981", "982", "983", "984", "985", "986", "987", "988", "989", "990", "991", "992", "993", "994", "995", "996", "997", "998", "999", "1000".

Handwritten signatures of Mary W. Kilgob, Mary Mahony, and Ellen M. Muller.

A deed from the General Register of Deeds Indenture of Mortgage – Book 756 No 268

under any policy of insurance held by the Bank and to give effectual discharges therefor and to settle and compromise any claim against any insurance company or society and to execute in the name of the Mortgagor any deed or other document and otherwise to exercise all the powers of an absolute owner in respect thereof with power for all or any of such purposes to nominate and appoint one or more substitute or substitutes agent or agents under or in place of the said attorney or attorneys and such nomination or appointment at pleasure to revoke AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the Bank at any time without any further consent on the part of the Mortgagor or any other person to let and demise the said mortgaged premises or any part thereof for such time not exceeding thirty years and upon such terms as the Bank shall deem reasonable either taking or not taking any fine or premium and either with or without the option to the lessee or lessees at any time during the currency of any such lease or at the determination thereof of purchasing the said mortgaged premises or any part thereof and either for purposes of occupation building agriculture grazing mining or for any other purpose whatsoever And with power to accept surrenders of leases either for the purpose of granting a fresh lease or leases or for any other purpose whatsoever And also to sell all or any part of the said mortgaged premises for cash or on credit either by public auction or private contract and either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise And with power to allow the whole or any part of the purchase money to remain on mortgage of the property sold or on any other security or without any security or in such other manner as to the Bank shall seem reasonable without being responsible for any loss occasioned thereby and with full power to buy in and rescind or vary any contract for sale and to re-sell without being responsible for loss and to compel the specific performance of any contract by suit in equity or otherwise and to execute assurances of the said premises and to do all other acts and things for completing any such lease or sale which the Bank may deem necessary and to give effectual receipts for any moneys paid to them by virtue hereof which shall exonerate the person or persons paying the same from all liability to enquire into the necessity or propriety of any such lease or leases sale or sales or whether any money remains due upon or whether any default has been made in payment of the moneys secured by the said Bond or by these presents and no such person or persons shall be affected by express notice to the contrary or by any irregularity in any such lease or sale PROVIDED ALWAYS that upon any lease or sale under the powers hereinbefore contained the premises hereby mortgaged or any part thereof may be leased or sold together with any other property whether real or personal under mortgage from the Mortgagor to the Bank and whether under the general law Real Property Act or otherwise by one contract at one rent or at one price or in any other manner that the Bank may deem expedient and that it shall be lawful for the Bank to subdivide the lands mortgaged hereby or by any security collateral with the said Bond or any other Bond or Bonds or concurrent herewith into subdivisions with or without right or rights of way and to lay out such ways and at the option of the Bank to lay out and dedicate or cause to be laid out and dedicated to the public use any part of the said lands as streets or roads either gratuitously or on payment by any public body or any person or persons and to grant rights of way or easements without being in any way liable for waste or damage in so doing PROVIDED ALWAYS and it is hereby agreed and declared that the Bank shall not exercise the powers of leasing and of sale hereinbefore contained or either of such powers unless default shall have been made in payment of some principal interest or other moneys by the said Bond or by these presents secured or intended so to be for the space of three days after the Bank shall have given notice in writing signed by any officer for the time being of the Bank to the Mortgagor to pay off such moneys or any of them or unless the Mortgagor shall have failed to observe or perform the covenants conditions and provisions in the said Bond or herein contained or some or one of them or unless the Mortgagor shall die or unless in the opinion of the General Manager the Inspector or any Assistant Inspector or Manager for the time being of the Bank or any Branch thereof the said mortgaged premises or any part thereof have become or may be likely to become deteriorated or lessened in value or unless some other circumstance shall exist or happen which in the opinion of any of the same persons shall make it necessary or desirable for the safety or security of the Bank to exercise the said powers or either of them and any such notice as aforesaid may be served either by delivering the same personally to the Mortgagor or by leaving the same at or sending the same through the medium of any post office addressed to the usual or last known place of abode or business of the Mortgagor in the said colony or elsewhere or by affixing the same upon some part of the land or premises hereby mortgaged or upon some building thereon or by advertising the same in the Government Gazette and any such mode of service as aforesaid shall in all respects be valid and effectual notwithstanding that at the date of such service the Mortgagor may be lunatic dead bankrupt or absent from the said colony and notwithstanding any other matter or event whatsoever AND IT IS HEREBY FURTHER AGREED AND DECLARED that the Bank shall be at liberty to deduct out of the rents or sale moneys when received by them as aforesaid all legal and other charges and expenses of every kind of or incidental to the execution of the powers and authorities aforesaid as well as all moneys secured by the said Bond or by these presents or intended so to be and shall pay any surplus to the Mortgagor And in applying any moneys towards satisfaction of the moneys secured by the said Bond or by these presents the Mortgagor shall be credited only with so much of the said moneys available for the purpose as shall be actually received in cash by the Bank such credit to date from the time of such receipt And all purchase moneys left outstanding on credit or otherwise shall until actually received by the Bank in cash be deemed a continuing unsatisfied part of the principal moneys secured or intended to be secured by the said Bond or by these presents and carry interest accordingly but any interest paid by the purchaser shall be set off *pro tanto* against the interest by the said Bond or by these presents secured And the Bank shall be at liberty from time to time without further authority than these presents to debit and charge the Mortgagor with all costs charges and expenses legal and otherwise which they shall or may incur sustain or be put to in connection with the account of the Mortgagor or this security or the mortgaged premises or any part thereof together with interest on all such moneys and that the same shall be covered by this security And further that these presents shall be a running and continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge hereof shall have been given to the Mortgagor AND THIS INDENTURE ALSO WITNESSETH that for the considerations aforesaid the Mortgagor doth hereby attorn and become tenant from year to year to the Bank of such part or parts of the said mortgaged premises as are now or shall from time to time during the continuance of this security be in the occupation of the Mortgagor at a clear weekly rental of *£ 15/-* payable to the Bank weekly in advance on every Monday but so that such rent shall be accepted or paid in or towards satisfaction of interest and any surplus thereof in or towards satisfaction of the principal and other moneys by the said Bond or by these presents secured PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the Bank at any time without giving any previous notice in that behalf to demand possession of and to enter upon and take possession of the said mortgaged premises whereof the Mortgagor has attorned tenant as aforesaid and upon such demand the tenancy created by the said attornment shall be determined and that neither the receipt of any such rent nor the tenancy created by this attornment shall render the Bank liable to account as Mortgagees in possession PROVIDED ALSO and it is hereby agreed and declared that notwithstanding anything in the Real Property Act or in any present or future amendments thereof expressed or implied to the contrary the Bank shall have and exercise the same rights of tacking and consolidating this security to and with any other securities given by the Mortgagor whether under the Real Property Act or not and now or at any time hereafter during the continuance of this security held by the Bank as the Bank would have if all such securities so given by the Mortgagor had been legal mortgages over properties held under the general law PROVIDED ALSO and it is hereby agreed and declared that nothing herein contained shall merge extinguish postpone lessen or otherwise affect any other security now or hereafter held by the Bank or any right or remedy which the Bank now or hereafter may have against the Mortgagor or any other person PROVIDED LASTLY and it is hereby agreed and declared that unless such interpretation shall be excluded by or repugnant to the context the expression "the Mortgagor" as hereinbefore used shall include his heirs executors

administrators and assigns and the expression "the Bank" shall include their assigns And words importing the singular number only shall include the plural number and words importing the masculine gender only shall include the feminine gender

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED

by the said Mary McKillop (SIGNED) Mary McKillop (SEAL)
in the presence of

J. K. Wilkinson
and by the said Mary Mahony (SIGNED) Mary Mahony (SEAL)
in the presence of

J. K. Wilkinson
and by the said Ellen W. Mullens (SIGNED) Ellen W. Mullens (SEAL)
in the presence of J. K. Wilkinson

SCHEDULE HEREIN REFERRED TO.

App. 26501PE

1896 7 May	<u>Conveyance</u>	Benjamin James and another to Miss E. A. Quigg of 200 sq ft or sq sec 2 of the Bridgewater Estate Canterbury - Reg 42-57 Book 578.
1901 21 Aug	<u>Conveyance</u>	Elizabeth Amy Nicholas 1 st part Benjamin James and another 2 nd part Mary W. Killop and another 3 rd part of above land Reg 42-587 Book 696.

Witness J. K. Wilkinson (SIGNED) Mary McKillop (SEAL)
Witness J. K. Wilkinson (SIGNED) Mary Mahony (SEAL)
Witness J. K. Wilkinson (SIGNED) Ellen W. Mullens (SEAL)

Index entries made between 1904 and 1971

Between 1904 and 1971, entries were shown on a single page. The pages were divided into the following headings:

- From Whom to Whom
- Book and No (number)
- Nature and Deed Description.

The Vendors Index is also the index for entries in the Miscellaneous Register between 1950 and 1976.

Index entries made between 1972 and 1992

Between 1972 and 1992 the format of the entries was changed to a more compact style. Deed details were written one after the other and not separated under headings.

Information from 1987 to 1992 in the Vendors Index are held in hard copy format LPI Queens Square Sydney.

Copies of the above deeds and associated documents are available for purchase over the counter from the Off-line Property Information Service, LPI, Queens Square, Sydney.

Images of all deeds registered with a book number 4000 and above are available through the Online Shop <http://shop.lpi.nsw.gov.au>.

Abbreviations used in the manual Vendors Index

The use of abbreviations and jargon in index entries is commonplace. Abbreviated words include:

- first or middle names
- localities, towns, sections, parishes, counties, streets, allotments, roads and rivers
- executors, trustees, administrators and attorneys.

Some terms are not easily recognised such as 'ux of' which stands for 'wife of' (see page 58 Abbreviations used in land and title documents).

Useful manual search information

Searching common surnames such as Smith or Brown (prior to 1898) is a slow and time consuming task because of the numerous pages of entries for each surname.

Vendors Index entries often contain the wording 'Also to Produce'. This means the deed contains a Covenant to Produce (see page 41) which is usually recorded in the second schedule of an Old System deed.

A covenant to produce is a list of the deeds to be produced and handed over at settlement. In searching terms the inclusion of a covenant to produce can make it easier to trace a chain of title back because it lists some or all of the prior deeds in the chain of title.

If it is not clear from the wording in an index entry whether a deed affects the land you are searching for, the deed itself must be inspected.

It is important to note that deeds are indexed by date of registration not execution. It is essential to search each name in a chain of title from the date of execution of the deed (when the interest was acquired) until the registration date of the next deed (when the interest was disposed).

If you find a mortgage in your search against a mortgagee, continue your search until you find a discharge or reconveyance of the mortgage, or until you find a deed by the mortgagee selling the land.

If a lease is found and the term has not expired, a search should be made against the lessee as well as the lessor.

When a mortgage has been discharged, the registration number of the discharge should appear underneath the original mortgage entry in the Vendors Index against the particulars of the mortgage. However, if you don't find this reference, don't automatically assume the mortgage has not been discharged.

You may find it becomes impossible to complete a search of the register without additional information. If, for example, one of the deeds in a chain has remained unregistered your search may come to a dead end unless the missing information is found elsewhere. If this is the case, you can often find records of deceased owners in the Probate Office. At other times the Registry of Births, Deaths and Marriages can provide missing links in a chain.

Other gaps may occur in the chain of title for various reasons including:

- vesting in heir-at-law or devisee (inheritor) through intestacy (when a person dies leaving no Will) or by Will, prior to the Probate Act 1890, and the Will not being recited in the subsequent conveyance
- conveyance by devisee as beneficial owner when no acknowledgment has been registered and the Will not recited
- conveyance by a married woman when the property was acquired when she was single and the recital of her marriage omitted
- conveyance by a council under the *Local Government Act 1919* for non-payment of rates
- conveyance made after a change of name and the change not being registered
- the title to the land is based on possession.
Conveyances in the chain of title should be inspected to see if the recitals in the deed indicate possessory title. If a deed mentions that the vendor is selling 'All their Right Title and Interest' in a parcel, this phrase is a good indicator that only the possessory title to the property is being sold.

Reasonable spelling variations of names and phonetic sounding of names should also be searched to help solve breaks in the chain of title.

9

The Old System Purchasers Index

The Old System Purchasers Index commenced on 1 July 1896 and is a manual index of persons acquiring or purchasing an estate or interest in land. The Old System Purchasers Index is held in hard copy format up to 1992 and electronically from then on.

Prior to 1908 the Old System Purchasers Index was compiled in alphabetical order as regards surnames only. After 1908, it was compiled in alphabetical order as regards first and surnames.

The Old System Purchasers Index is also compiled in chronological order.

The index contains details of:

- the type of deed
- the book and number of the deed
- a brief description of the property.

The index does not give names of the vendor parties to the deed. The deed itself must be inspected to obtain the names of the vendor parties.

You can use the Old System Purchasers Index to aid your search when there is a break in the chain of title, or when you know the purchaser's name but don't know the book and number reference.

A good method to bridge such gaps is to search backwards from the name of the present owner in the Old System Purchasers Index.

Often older deeds have a list of the previous deeds in the chain of title. This will be in the form of a covenant to produce or a 2nd or 3rd schedule to the deed.

The Old System Purchasers Index is compiled from the Vendors Index but is not as complete as it contains only references to owners of land.



Old System Purchasers Index

You should carefully inspect every deed you identify. It is important not to rely solely on the index entries for information. Because of their brevity, they can often be misleading. Another important reason to inspect the deed is because useful information, including deposited deeds and covenants to produce, may be noted on the deeds.

10 Old System indexes: 1992 to present

Automated Deeds Indexing System (ADIS)

After searching the paper records an Old System search is continued electronically.

The Automated Deeds Indexing System (ADIS) was implemented 2 November 1992 and allowed automated indexing and searching of all Old System registrations with the exception of Causes, Writs and Orders.

All registration copies of deeds were microfilmed from that date until March 1998 when the scanning and storing of the Documents began in the Document and Integrated Imaging System (DIIMS).

Deeds registered and indexed in ADIS were numbered in the series commencing Book 4000 onwards and can be purchased from the Online Shop <http://shop.lpi.nsw.gov.au>.

ADIS was redeveloped and incorporated as a component of ITS in May 2000.

Document and Integrated Imaging System (DIIMS)

In March 1998 the scanning and storing of deeds began in the **Document and Integrated Imaging System** (DIIMS). Images stored in DIIMS are derived from the documents that are lodged, examined, amended and registered at LPI and recorded in ITS.

Deed images numbered from book 4000 onwards are available through the Online Shop.

Cost to search the online indexes

Indexes relating to Old System land held in ITS that can be searched free of charge include:

- Deed Name Search
- Deed Number Search
- Resumption Search

Causes, Writs and Orders searches; and *Security Interests in Goods Act 2005* (SIGA) searches and copies of deed images require payment.

Every product and service in the Online Shop is identified with its cost or whether it's a free search.

Access the online deeds indexing system

You can access the Deed Indexes using the Online Shop <http://shop.lpi.nsw.gov.au> or by visiting the public terminals at the LPI, Queens Square, Sydney, office.

There are six options listed under Deeds in the Online Shop:

1. Deed Name Search
2. Power of Attorney Search
3. SIGS/CWO Results
4. Causes Writs and Orders
5. Security Interest in Goods
6. Deed Image

The Deed Name Search screen has combined the Deed Name Search and the Deed Number Search. Select the search you wish to perform.

The deed number search

The Deed Number Search shows the lodgment details of the deed and its current status. This search is based on the registered deed reference number (i.e. the Book and Number).

The result provides basic information regarding lodgment of the deed. Enter the Book and Number, complete the Security Question and click **Perform Search**.

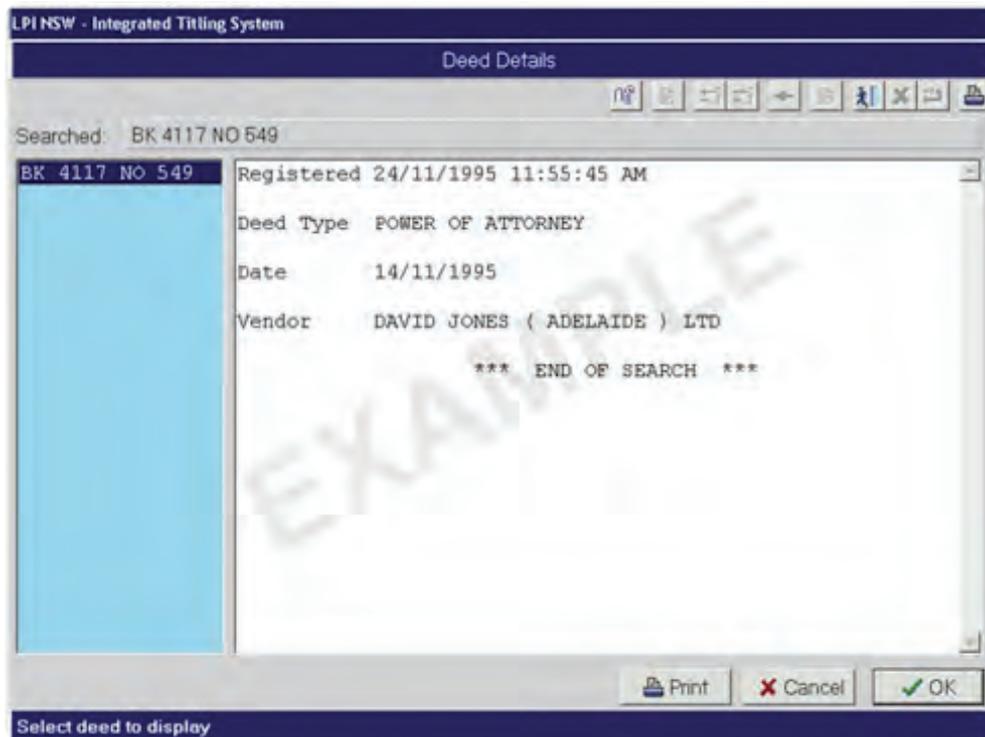
The screenshot shows the 'Deed Name Search' form in the LPI Online Shop. The form is titled 'Deed Name Search' and is also known as 'Deed Name Search & Deed Number Search'. It features a 'Free' badge and a description: 'The General Register of Deeds contains title deeds for Old System properties that may or may not have yet been converted to the Torrens Title system. Powers of Attorney, Changes of Name, and other deeds are also registered in this Register.' The form is divided into three steps: Step 1 (Enter Deed Details), Step 2 (Select Deed Occurrence), and Step 3 (Deed Search). In Step 1, the 'Deed Number Search' radio button is selected, and the 'Deed Number' field contains '4117-549'. There is a checkbox for 'I accept the LPI Online Shop's Terms & Conditions' and a 'Security Question' section with a CAPTCHA image showing the text 'rxbyb'. A 'Perform Search' button is at the bottom.

The screenshot shows the results page for the 'Deed Name Search'. The page is titled 'Deed Name Search' and is also known as 'Deed Name Search & Deed Number Search'. It features a 'Free' badge and a description: 'The General Register of Deeds contains title deeds for Old System properties that may or may not have yet been converted to the Torrens Title system. Powers of Attorney, Changes of Name, and other deeds are also registered in this Register.' The page is divided into three steps: Step 1 (Enter Deed Details), Step 2 (Select Deed Occurrence), and Step 3 (Deed Search). The results are displayed in a table format:

DEED INDEX DETAILS - DEED NUMBER SEARCH	
s.198 Conveyancing Act, 1919	
Search Date:	19/2/2013 9:06:09 AM
Deed:	BK 4117 NO 549
Registered:	24/11/1995 11:55:45 AM
Deed Type:	POWER OF ATTORNEY
Date:	14/11/1995
Vendor:	DAVID JONES (ADELAIDE) LTD

*** END OF SEARCH ***

Online Shop search of Deed Number Search of Book 4117 No 549



Queens Square public terminal Deed Number search of Book 4117 No 549

Deed name search

A 'Deed Name Search' is a search based on a name and is probably the most popular inquiry.

- Select **Exact Order** for names as exactly written.
- Select **Any Given Name** to search all possible name combinations.

You can also search the Old System Vendors and Purchasers Index using the 'Deed Name Search' application in ITS. Tick the 'Vendor/ Purchaser' box to get results. This inquiry relates to information registered from November 1992 onwards but information from 1987 to 1992 in the Old System Vendors and Purchasers Index will soon be accessible from ITS.

You can use the '%' symbol as a wildcard when entering names. For example: Peter can be written as Pet% and all variations will be shown in the result.

Private Name/Corporation Box

- Company and association names are entered in the 'Private Name/Corporation Name' field.
- You should also use this field and choose 'Any Order' for a personal name where the surname or order is not known.
- The terms: 'Mac' or 'Mc', 'and' or '&', 'Company' or 'Co' will be searched under both variations.
- If you are unsure if a name includes an apostrophe or 'The' at the beginning, include it in the search name and both variations will be searched.
- If you are unsure of punctuation or spaces in a name, include them in the search name and both variations will be searched.
- When searching a company name, do not enter the words 'Pty Ltd', 'Limited' etc.
- If the company name contains numbers (e.g. 123 Smith), enter the search name with the numbers. However, please note, it may be necessary to enter the numbers in words in order to get a result.

Enter deed details

When you have entered applicable information into the search fields, select Perform Search.

The screenshot shows the 'Deed Name Search' page on the SIX Spatial Information Exchange. The page is titled 'Deed Name Search' and also known as 'Deed Name Search & Deed Number Search'. It features a navigation menu on the left with options like 'Title Searches and Records', 'Specialised Searches', 'Deeds', 'Product List', 'Deed Name Search', 'Power of Attorney Search', 'SIGA/CWO results', 'Security Interest in Goods', 'Causes Writs and Orders', 'Deed Image', 'Land Values', 'Property Information', 'eNOS', 'Torrens Assurance Levy', 'Book Store', 'News', 'Newsletter Registration', and 'Search'. The main content area includes a 'Free' badge, a description of the General Register of Deeds, and a 'Related Products' section with 'Deed Image'. The search process is divided into four steps: Step 1 (Enter Deed Details), Step 2 (Select Name Occurrence), Step 3 (Select Deed to Retrieve), and Final (Deed Entry). Step 1 is currently active, showing fields for 'Deed Number Search' and 'Deed Name Search'. The 'Deed Name Search' section includes fields for 'Family Name' (at least 2 characters) and 'Given Name(s)' (at least 1 character). There are radio buttons for 'Exact Order' and 'Any Given Name', and an 'OR' option. A 'Name' field contains 'David Jones'. Below the name field, there are instructions for corporation and private names, and a checkbox for 'Any order for words in name, at most three words'. A checkbox for 'I accept the LPI Online Shop's Terms & Conditions' is also present. A 'Perform Search' button is at the bottom.

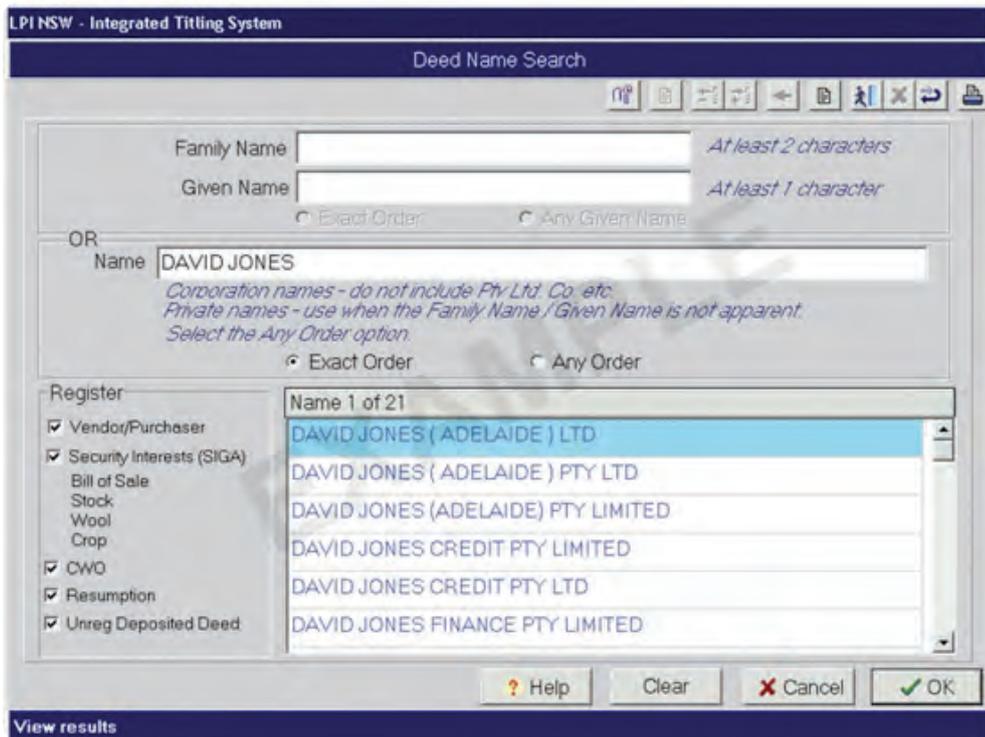
Online Shop Deed Name Search

Select name occurrence

All entries found under the name searched will be listed, however not all deeds shown in the results may be relevant. To review the particulars of each deed, just click on the entry.

The screenshot shows the 'Deed Name Search' page after the search has been performed. The page is titled 'Deed Name Search' and also known as 'Deed Name Search & Deed Number Search'. It features a navigation menu on the left with options like 'Title Searches and Records', 'Specialised Searches', 'Deeds', 'Product List', 'Deed Name Search', 'Power of Attorney Search', 'SIGA/CWO results', 'Security Interest in Goods', 'Causes Writs and Orders', 'Deed Image', 'Land Values', 'Property Information', 'eNOS', 'Torrens Assurance Levy', 'Book Store', 'News', 'Newsletter Registration', and 'Search'. The main content area includes a 'Free' badge, a description of the General Register of Deeds, and a 'Related Products' section with 'Deed Image'. The search process is divided into four steps: Step 1 (Enter Deed Details), Step 2 (Select Name Occurrence), Step 3 (Select Deed to Retrieve), and Final (Deed Entry). Step 2 is currently active, showing a 'Print Search' button and the NSW Land & Property Information logo. Below the logo, it says 'A division of the Department of Finance & Services'. The search results are displayed as 'Deed Name searched for: DAVID JONES'. A list of results is shown under the 'Name:' heading, including 'DAVID JONES (ADELAIDE) LTD', 'DAVID JONES (ADELAIDE) PTY LTD', 'DAVID JONES (ADELAIDE) PTY LIMITED', and 'DAVID JONES CREDIT PTY LIMITED'.

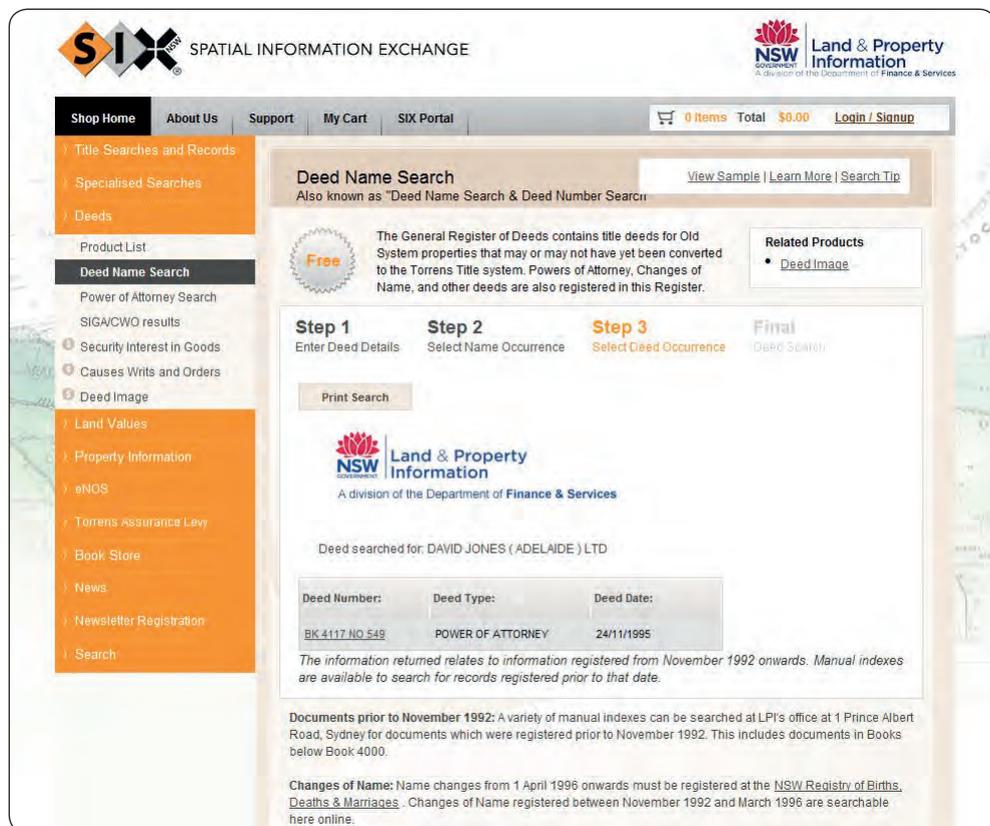
Online Shop Deed Name Search result



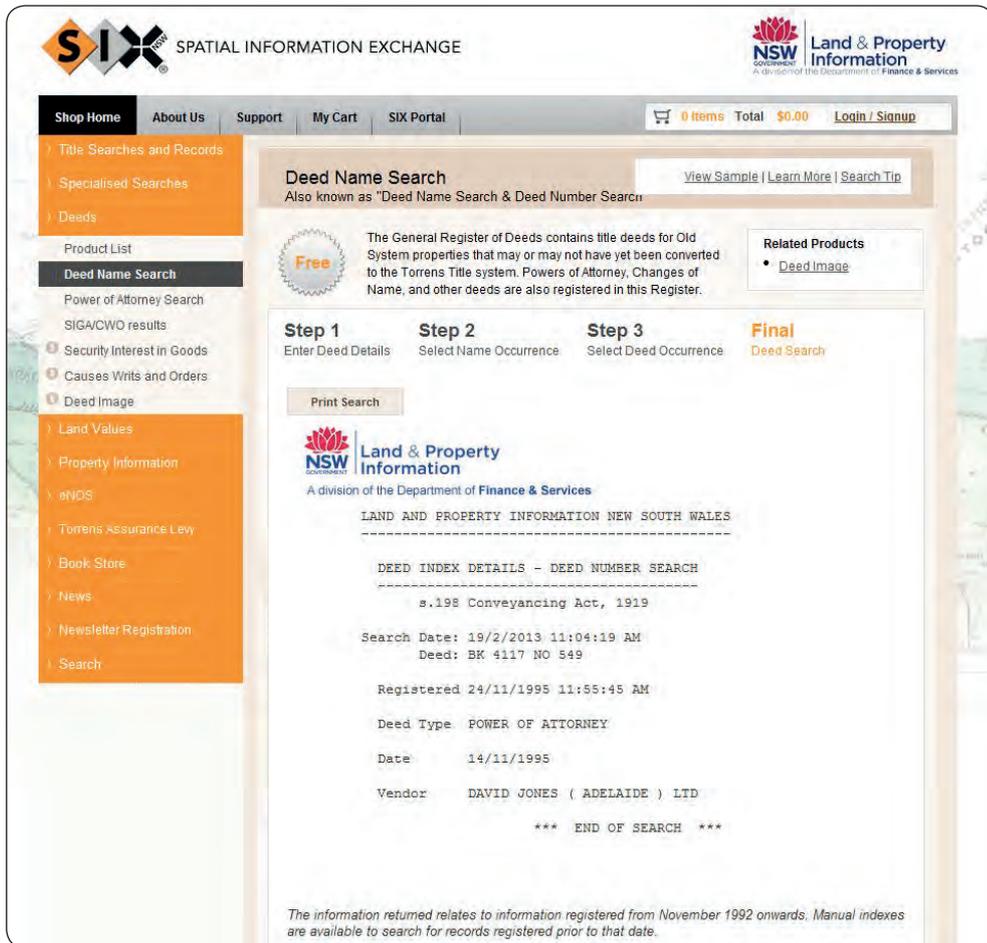
Queens Square, Sydney public terminal Deed Name search

Select deed occurrence

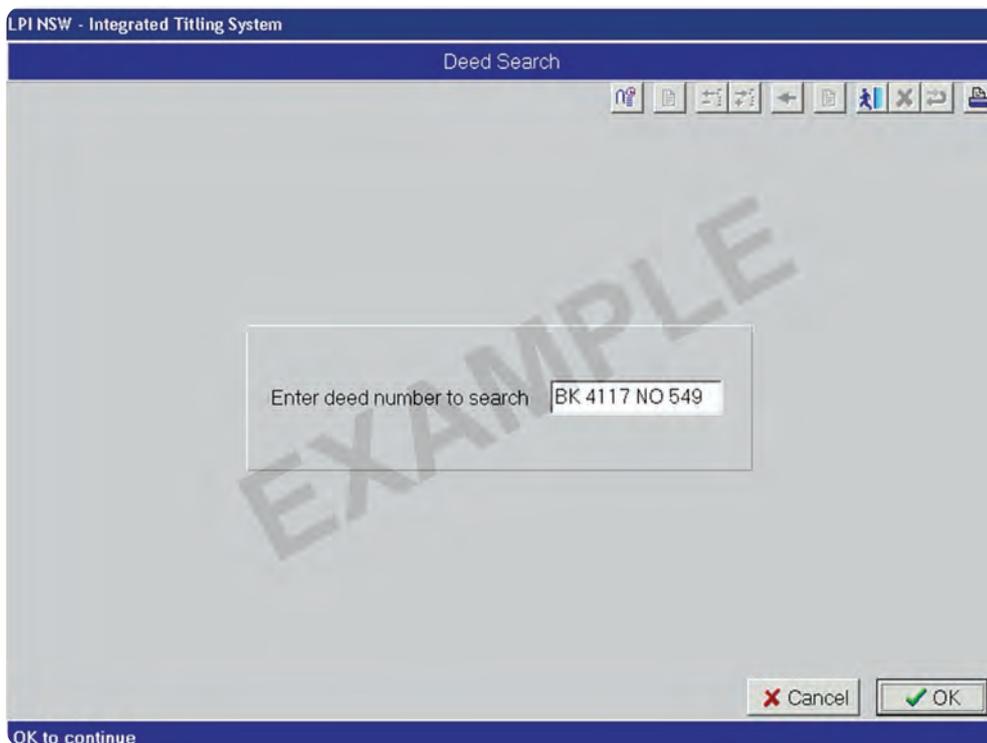
The details of the deed appear. To view particulars just click on 'Deed Number'. If there is insufficient information you will need to apply for a copy of the deed.



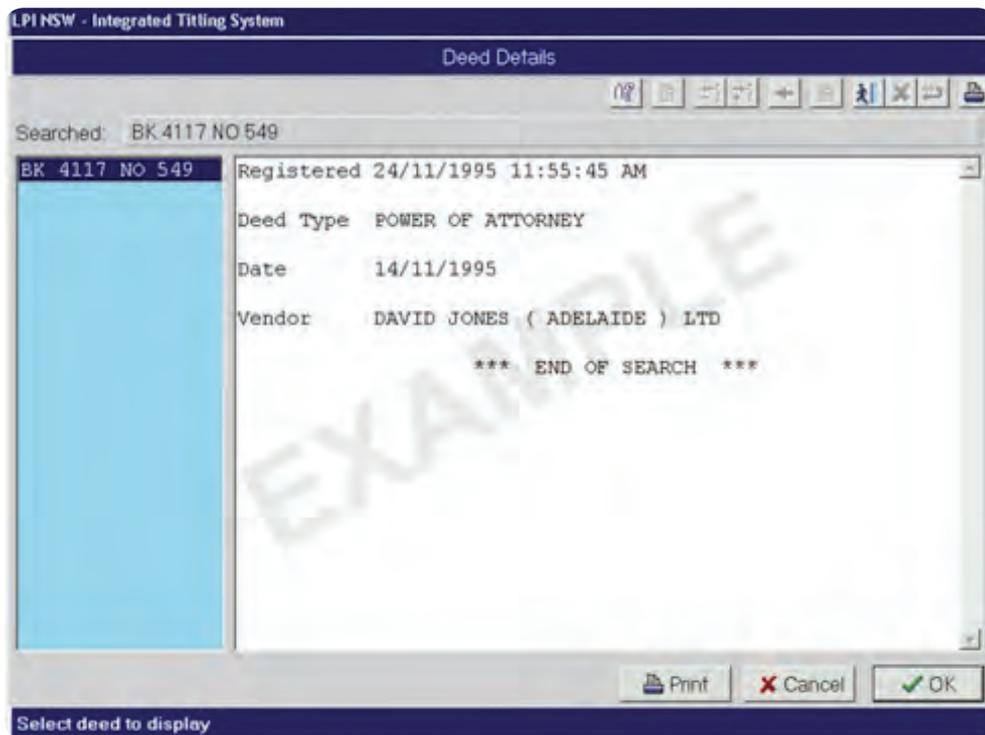
Online Shop Deed Name Search 'David Jones (Adelaide)' selected



Online Shop Details Deed Name Search 'Power of Attorney' selected



Queens Square public terminal Deed Number search of Book 4117 No 549



Queens Square public terminal result of Deed Number search of Book 4117 No 549

How to obtain copies of deeds

Microfilm (1992 – 1998)

Copies of documents registered in ADIS, Book 4000 to Book 4191 are available for purchase:

- over the counter from Property Information Delivery Services, LPI, Queens Square, Sydney
- from LPI's Online Shop <http://shop.lpi.nsw.gov.au>
- from approved information brokers www.lpi.nsw.gov.au

From DIIMS (1992 – current)

Deeds from Book 4000 are held in DIIMS and are available for purchase from:

- the Property Information Delivery Service, LPI, Queens Square, Sydney
- LPI's Online Shop <http://shop.lpi.nsw.gov.au>
- approved information brokers www.lpi.nsw.gov.au

Document Request Service

LPI's Document Request Service provides access to Deeds prior to November 1992 (that is, prior to Book 4000). If a record is not available online, the request is manually scanned and delivered to the customer's email account. This service allows you to order, purchase and receive your documents 2-4 hours after purchase during normal business hours (8.30am-4.30pm) or the next working day.

This service is available through the Online Shop for dealings, Crown plans, primary applications and Old System deeds.

Security Interests in Goods Act 2005 (SIGA)

This Act was designed to simplify and modernise the registration process for goods mortgages such as Bills of Sale, Stock Mortgages, Crop Liens, etc. SIGA repealed the *Liens on Crops and Wool and Stock Mortgages Act 1898* and the *Bills of Sale Act 1898*.

The Act was repealed with the commencement of the Commonwealth Personal Property Securities Register (PPSR) which commenced Monday 30 January 2012. The PPSR replaces existing State registers including LPI's Security Interests in Goods Register (SIGR), where bills of sale and agricultural goods mortgages relating to crops, stock, wool and aquaculture fish were previously registered.

SIGR continues to be available for search online, and images of SIGR deeds are available through the Online Shop <http://shop.lpi.nsw.gov.au>.

SIGA searches are available:

- over the counter from Property Information Delivery Services, LPI, Queens Square, Sydney
- from LPI's Online Shop <http://shop.lpi.nsw.gov.au>
- from approved information brokers www.lpi.nsw.gov.au

Search fees apply for SIGA searches and this fee applies whether a search result or no record result is returned.

Information provided in a SIGA Search will include details relating to Security Interests, Bills of Sale, Stock Mortgages and Crop and Wool liens registered after November 1992. Interests created prior to that date must be searched in the manual Vendors Index.

The Register of Causes, Writs and Orders (CWO)

The Register of Causes, Writs and Orders (CWO) was established under Part 23, Section 185 of the *Conveyancing Act 1919* and commenced on 1 July 1920 for the purpose of registering:

- any Writ or Order affecting land, issued or made by a court
- any claim to an interest in the land which is the subject of a lawsuit that is pending or incomplete
- any Order affecting the title to land, or restricting the right of dealing with or the user of land or any buildings thereon or creating a charge over land, made by the court
- any Charge upon land (not being in respect of a rate or tax) imposed by or under the provisions of any Act of Parliament
- any Order, Award, Determination or Notification made under the provisions of any Act of Parliament of the State or Commonwealth restricting the right of dealing with land or the user of land.

The register contains entries of writs, court orders and other interests affecting a parcel of land. All CWOs have been redundant against Torrens title land since 1972, that is they must be registered as a Torrens dealing against the nominated computer folio(s) to be effective.

The alphabetical index to the Register comprises the Register itself. Entries are made:

- in the name of the person whose land is affected, or where no owner's name is disclosed, under a short title of the Act under which the charge was imposed
- with the name of the Local Government area or of the parish and county in which the land is situated or of such of those particulars as are applicable.

Searching the Register of Causes, Writs and Orders

Copies of CWOs registered pre November 1992 are available on microfilm. Copies of CWOs registered after November 1992 are available from DIIMS.

CWO searches can be ordered:

- over the counter from Property Information Delivery Services, LPI, Queens Square, Sydney
- from LPI's Online Shop <http://shop.lpi.nsw.gov.au>
- from approved information brokers www.lpi.nsw.gov.au.

Search fees apply for CWO searches and this fee applies whether a search result or no record result is returned.

Customers can request to have parties in an Official Search searched in the Register of Causes Writs and Orders.

For more information on CWOs please see the Registrar's Directions <http://rgdirections.lpi.nsw.gov.au>.

Bankruptcy Orders

Bankruptcy Orders were also entered into the CWO register until 1970. All have now been removed and searches are made at the Federal Magistrates Court or the Federal Court of Australia which have concurrent jurisdiction under the *Bankruptcy Act 1966*.

Register of Resumptions (1930 – ongoing)

The *Conveyancing Act 1930* saw the introduction of the Register of Resumptions.

This register contains details of compulsory land acquisitions by the State, other authorities and the Australian government. Although not affected by this direction, the Commonwealth Government often registers its acquisitions in the register. Particulars are indexed under the heading of the relevant Local Government Authority.

Manual indexing of this information ceased in 1992 with the commencement of the Automated Deeds Indexing System (ADIS).

11

Other Old System manual indexes

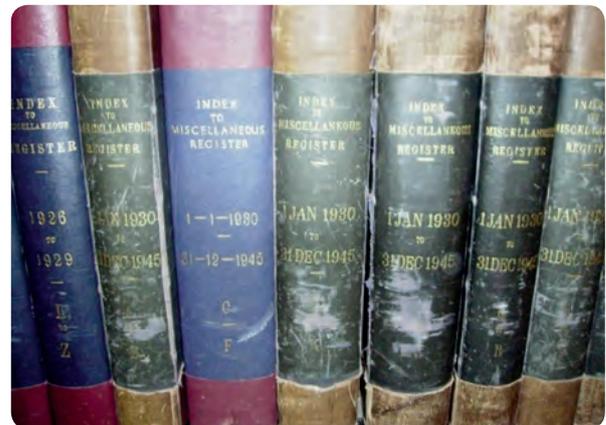
Index to the Miscellaneous Register

The Miscellaneous Register was introduced in accordance with the *Conveyancing Act 1919* (published in Government Gazette No. 126 of 2 July 1920). It was discontinued on 30 June 1976. The documents held in the Miscellaneous Register have their own series of numbers and are filed together in Miscellaneous Books.

This Register contains a wide variety of transactions, the most important of these for land title searchers are **Powers of Attorney**, **Changes of Name** and **Appointments of Receivers**.

From 1920 to 1950 entries were indexed in a separate Miscellaneous Index.

From 1950 to 1976 entries were indexed dually in both the Miscellaneous Index and the Vendors Index.



Index to the Miscellaneous Register

Index to the Register of Resumptions

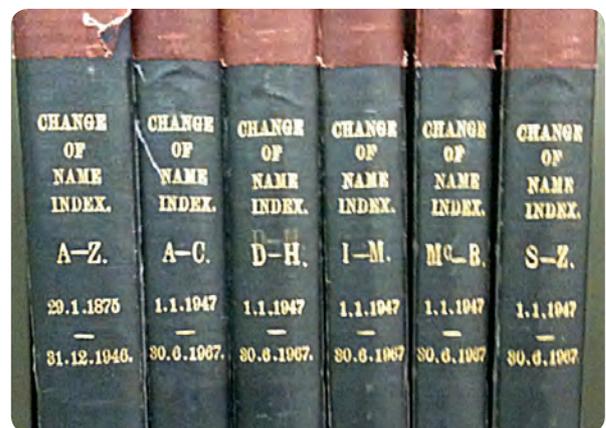
The Index to the Register of Resumptions recorded land resumptions by the Crown or other authorities. Land resumption can be defined as the taking back of land.

Index to Instruments (deeds) Evidencing Change of Name (1875 to 1967)

This index has unique entry numbers of 1 to 11,760.

The series of six index books relates to deeds evidencing changes of name recorded in the following record series:

- deeds enrolled between 29 January 1875 and 30 September 1925 with the Prothonotary (or officer) of the Supreme Court and transferred to the Registrar General on 1 October 1925 (Book 1 only)
- deeds enrolled in the then Bills of Sale Section during the period 1 October 1925 to 30 June 1967
- deeds registered in the Miscellaneous Register during the period 22 July 1942 to 30 June 1967 (earlier registrations were indexed only in the Index to the Miscellaneous Register).



Index to Instruments Evidencing Change of Name

Historical changes in registering changes of name

Deeds evidencing a change of name have been accepted from time to time in the following NSW registries and record series.

Supreme Court

Prior to 1 October 1925 (when the *Transfer of Records Act 1923* became operative), it had been a long established practice to enroll deeds evidencing changes of name in the Prothonotary's Office at the Supreme Court. The deeds enrolled in that Office up to 30 September 1925 were transferred to the Registrar General with other deeds and records covered by the provisions of the *Transfer of Records Act 1923*.

Equity Office

Deeds evidencing changes of name were also for a time (limited for the most part to the period 1914 – 1918) accepted for enrolment in the Equity Office and these records have not been transferred to the Registrar General. Since 1925, it has been the policy of the Equity Office not to accept enrolments of this nature.

General Register of Deeds (prior to 1 July 1920)

Although enrolment in the Supreme Court was the generally accepted method for the recording of deeds and deeds evidencing changes of name, registrations were effected occasionally in the General Register of Deeds prior to 1 July 1920 (when the *Conveyancing Act 1919* became operative).

Bills of Sale Section

Following the transfer on 1 October 1925 of the other deeds evidencing changes of name (which had been enrolled in the Prothonotary's Office); it became the practice for some years to accept for enrolment in the Bills of Sale Section, deeds and instruments of the same nature. In view of the facility for registration in the Miscellaneous Register, the practice was terminated on 30 June 1967 and, after that date the Miscellaneous Register was used exclusively until its closure in 1976.

Miscellaneous Register (constituted 1 July 1920)

Deeds evidencing changes of name were accepted for registration in the Miscellaneous Register from its inception on 1 July 1920.

All changes of names were registered in the General Register of Deeds and indexed inclusively in the Vendors Index from 30 June 1976 until 2 November 1992 when they were indexed in ADIS.

In April 1996 this function was transferred to the Registry of Births, Deaths and Marriages to comply with the *Births, Deaths and Marriage Act 1995*. The actual changes of names were given either a Miscellaneous Register number or in some instances a number which referred to microfilm cartridges held in the Property Information Delivery Service. The microfilm images are numbered in the series 1 to 11760 and 2299 and 3719 to 3722.

A small number of changes of names continued to be accepted in LPI from, 1996 to June 2002. LPI no longer accepts a change of name for registration in the General Register of Deeds. The Register, however, should be checked if a name can no longer be found in a chain of title search of the Vendors and Old System Purchasers Indexes.

12

Using the indexes

Under Old System a single conveyance does not automatically give the purchaser in that deed, good title to a parcel of land. The title depends upon the soundness of the chain of title that preceded it.

Example

You are researching the history of land which is held under Old System and you want to check the property's *Good Root of Title* i.e. the starting point from which title to Old System land may be considered acceptable (see page 40). This is usually a conveyance or mortgage which is at least 30 years old at the time of the search.

To undertake your search, you may consider searching backwards in the Old System Purchasers Index from the current owner. Start your search in the Vendors Index against the vendor's name in the deed chosen as your starting point. This shows the starting deed in your search (see page 55 for example Official Search). You then search the purchaser's name until sold.

You would then continue your search against the next purchaser in the same manner until the title is traced to the present owner. Finally, you would continue your search against the present owner to the present date.

If your research can prove an unchallenged chain of title that goes back over 30 years you can be reasonably confident the title is good.

Although LPI does not provide an official searching service for members of the public, LPI officers can provide general direction to assist those interested in searching LPI's records. Independent professional Old System searchers can also assist you with searching activities.

Due to the complexity of searching Old System records, it is highly recommended researchers consult with professionals when checking good root of title for conveyancing purposes.

Due to the complexity of searching Old System records, it is highly recommended researchers consult with professionals when checking good root of title for conveyancing purposes.

Useful tips to help record and write up your search

To maximise your search time (and to save you having to retrace your steps), you must record all the information as it appears in the Vendors Index so you don't miss any information.

- Make sure you inspect every deed that affects the land in question.
- Make a record of the execution and registration dates of the deed.
- Make a note of all entries affecting the land in question.
- Make a note of any discharge of mortgage numbers. Deeds by mortgagees are noted under the original mortgage entry in the Vendors Index. Discharge of mortgage numbers are recorded in the same place.

Due to the large volume of entries, mortgages by banks and other large financial institutions are not searched in the Vendors Index.

Where a lease is disclosed that affects subject land and the term has not expired, a search is made against the lessee. If the lease is expired, the entry is shown and the word 'Expired' is added under the entry. You don't need to search the lessee if the lease is expired.

Section 184(G) of the *Conveyancing Act 1919* confers priority according to registration. Therefore, the search should be continued to the date of registration and not to the execution date of a deed.

13 The Mapping Index

Old System searching and the Mapping Index

The maps and plans of the Registrar General serve to locate land for the purpose of establishing title, status and survey particulars. The Mapping Index contains current and historical subdivisional information.

The main reason for inspecting the Mapping Index is to establish the title system of the land being searched. If the land was converted to Torrens title the map will provide information on how the land was converted.

The Mapping Index also contains valuable historical information such as starting deeds which are often a suitable commencing point for a search.

Mapping Index resources

The most up to date charting information is available through the Online Shop <http://shop.lpi.nsw.gov.au> using the **Property Location Map**. This is also known as **Cadastral Records Enquiry (CRE)**.

You can also use the public search terminals at LPI, Queens Square, Sydney. The CRE records all subdivisional changes and electronic notations since September 2002. For current but earlier recorded information, an inspection of the images of Land Titles Office Charting Maps must be made. These images are available online in the Historical Land Records Viewer (HLRV) accessed on the SIX website www.six.nsw.gov.au.

The HLRV provides easy access to a vast resource of scanned maps and plans across NSW. The images available comprise the following historical reference map sets:

- Land Titles Office Charting Maps (manual charting ceased 6 September 2002)
- Crown Lands Regional Charting Maps (charting ceased at various stages up to December 2007)
- Crown Lands Status Branch Charting Maps (charting ceased 31 December 1990).

Parish Map Preservation Project

The Parish Map Preservation Project commenced in 1997 and has been using the latest computer technology to convert over 35,000 valuable old maps to digital images. The aim is to provide public access, in full colour, to an important historical archive in NSW and prevent the deterioration of the fragile originals.

More Mapping Index information

For more information on the Mapping Index, please see the search guide *Searching the Registrar General's Maps and Plans* on the LPI website www.lpi.nsw.gov.au.

14

Old System searching terms

The legal concept of 'land'

The term 'land' includes not only the surface area but the soil beneath it to the centre of the earth and the column of air above. It also includes all things growing on or affixed to the soil, such as crops, trees and buildings. It includes all minerals in the soil excepting those which, by law, belong to the Crown.

Land includes any incorporeal hereditaments (easements, rights of way etc) attached to the land.

Estates in land

In NSW the following kinds of freehold estates were imported from English common law:

- an estate in fee simple
- an estate tail
- an estate for life or life estate.

Estate in fee simple

An estate in fee simple is the most comprehensive and common type of estate known to the law. It is the most absolute in respect of the rights it confers. Ownership of an estate in fee simple is the nearest approach to owning the land itself.

A fee simple today confers an absolute right, both of alienation (*sale*) inter vivos (*during life*) and of devise under a Will. It means you can sell the land or Will the land on your death.

Example

Fitzwilliam leaves his estate in fee simple to Elizabeth in his will. When he dies, Elizabeth inherits the estate in fee simple.

Estates tail

The effect of an estate tail or entail was to keep a property within a family. Usually the property was passed to the eldest son, or if no son, shared equally among the daughters.

When the entailed owner died childless, there was a reversion in fee to the original grantor (creator) of the entail. A grant could also be specifically limited to a male succession by designating the estate as a fee tail male.

Example

Ben's estate is a fee tail male. Ben has five daughters so on his death the estate (being entailed away from the female line) goes to Ben's nephew Colin.

These estates were commonly used in England to confine the succession in real property to the direct lineal descendants of one family. The grant was made to a person and the heirs of his body, instead of to that person and his heirs (and assigns) as in the case of a fee simple disposition.

Estates tail are now of little more than historical interest, being virtually abolished by the *Conveyancing Act 1919* Section 19.

Life estates

It is possible for a person, from their freehold fee simple estate, to create an estate or estates of lesser duration. These are known as life estates.

The life estate occurs predominantly from the creation of a Will, where the person making the Will wishes to provide for a spouse for life.

Even though the ownership of the estate is for a limited duration, the life estate owner has the right to any benefits associated with the land, for e.g. the income derived from rent.

Example

Fitzwilliam may grant Elizabeth a life estate. Elizabeth can convey her estate to Mary who will hold it for the duration of Elizabeth's life only. This is a life estate 'pur autre vie,' or for the life of another. When Elizabeth dies, the land reverts back to Fitzwilliam or if he has already died, to the *owner in fee* or *Estate in Remainder*.

Estates in remainder

Regardless of the number of lesser estates created, there must always be a holder of the reversion or estate in remainder. This estate may be created by the deed granting the lesser interest or by separate disposition. It may be either a vested or contingent remainder.

Example

Fitzwilliam holds an estate in fee simple and wills a life estate for Elizabeth when he dies with Georgina nominated for the estate in remainder. When Elizabeth dies Georgina inherits the fee simple estate.

Joint tenants

The principal feature of a joint tenancy is *survivorship*. This means that on the death of a tenant, their interest cannot be passed by Will but accrues to the surviving tenant(s). During their life however, a tenant is free to sell their interest. This disposition would fracture the joint tenancy (to the extent of the interest severed) and create a tenancy in common.

The interests of joint tenants are equal and are created by the one instrument. Each tenant is held to the others in this partnership featuring survivorship i.e. the number of partners diminishes as death or dealing intervenes, until one is vested in total possession – or becomes a remaining tenant in common.

Example

Charles and Jane are joint tenants and either can sell their interest in the property while they are both alive. If Charles dies having not done this, then the estate goes to Jane.

Tenants in common

In a tenancy in common each tenant has a share in the entirety which does not accrue to partners on death. It may be disposed of during life or transmitted on death, either by Will or according to the laws governing distribution. The shares may be equal or unequal and may be created separately.

Example

Lydia, Kitty and Mary are tenants in common and each own one third of an estate. Lydia decides to sell her share and Mary decides to buy it. Now Mary owns two thirds of the property. When Kitty dies she Wills her share to Mary who then owns the estate in fee simple.

Possessory title

In contrast to the indefeasibility afforded to the owner of a Torrens title, at common law it is a matter of quality i.e. the title is good, but only if a better one cannot be established.

The common law has always regarded possession as prima facie (in the first instance) evidence of ownership in fee.

If a trespasser (or adverse occupier) is allowed to run an unmolested and uninterrupted course of possession they will, in time, effectively bar the rights of the documentary owner to recover the land.

The quality of this possession is a matter for lawyers and courts to consider. As a general rule, the activity must be sufficiently notorious to establish the occupier as owner in the eyes of the neighbourhood or of those whose concern it may be.

It should be so obvious that if the dispossessed owner walked past he could, on any occasion, readily assess that he was being displaced in title. It would not be sufficient, for instance, that the parcel was just fenced off.

A documentary owner does not lose title in any number of years merely by leaving his land idle. It requires another to exercise, as against and to the exclusion of the owner, acts of ownership in keeping with the general use of the area. Title can be made against the Crown in this fashion as well as against private ownership.

See the Registrar's Directions for more information <http://rgdirections.lpi.nsw.gov.au>.

Good root of title

In theory, to prove ownership of Old System land with absolute certainty it is necessary to trace, in an unbroken chain, all events and documents that have affected the land since the Crown grant.

In practice this type of search is usually impossible to investigate. This is even more difficult in England as the first grants were issued in 1066 or shortly afterwards.

To get around this, the English courts adopted a rule called Good Root of Title. This required an owner who wished to sell land to trace the title back in an unbroken chain to an acceptable documentary starting point of over 60 years. If such a starting point was found, the purchaser of a parcel of land could be reasonably confident that the title was sound.

The starting point of the good root of title in NSW has varied over the years. The *Conveyancing Act 1919* set the period at 40 years but this was dropped to 30 years by the *Conveyancing Act (Amendment) Act 1930* (see *Conveyancing Act 1919* Section 53 for more information).

In practice, it is unlikely that the good root of title will be exactly 30 years old. A vendors search may have to go well beyond the 30 year period to find the first suitable deed.

Good root of title definition

A good root of title is defined as a conveyance of the fee simple or a 1st mortgage by way of conveyance of the fee simple which:

- is at least 30 years old (see Sec 53 *Conveyancing Act 1919*)
- deals with the whole of the legal and equitable estate
- contains a description which clearly defines the land
- requires no extrinsic evidence to justify it (e.g. no other deed or instrument)
- is for valuable consideration
- contains nothing to cast any doubt on the title of the disposing party.

Limitation period

The 30 year period used to establish a good root of title should not be confused with the limitation period. If claiming possession, the period from which a person in possession may have established a bar against the documentary owner is 30 years against the Crown and 12 years against all others.

Link conveyance

The link conveyance links the manual Vendors Index with the electronic ITS. The last registered conveyance prior to 2 November 1992 is the Link Conveyance. The number of the link conveyance will always be in the pre Book 4000 series.

The Book and Number details of a link conveyance must always be shown on the last page of an Official Search after the Registrar General's seal.

Covenant to Produce

Some deeds contain a list of the documents that were to be produced and handed over by the vendor at settlement. This list is known as a Covenant to Produce. The list, in effect, is an abstract or recital of the previous title. In older deeds it was often a list of all the previous deeds in the chain of title. It may also appear in a second or third schedule to the deed

15

Understanding deeds

Conveyancing is the general term used to describe any transactions involving land. The transactions involving Old System land are evidenced by a document describing what has taken place.

For example, if this was a sale the document would describe who the parties to the sale were; the land involved; and any conditions affecting the sale. This document is generally called a deed. Each time a land transaction occurs in Old System title, a separate deed is drawn.

Different types of deeds

Conveyance

A Conveyance is the most common deed used to transfer land under Old System title. The main problem when it comes to reading historical deeds is the lack of any standard practice when they were drawn up.

The length, content and complexity of the recital (i.e. wording of the deed) was left to the discretion of the clerk who prepared it. This makes for fascinating, but time consuming, reading.

Despite the lack of standard practice, conveyances often contain the following information:

- the parties to a deed:
 - **Vendors** are also called “of the first part”
 - **Purchasers** are also called “of the second part”
- the amount of money paid by the purchaser to the vendor for the sale of the land
- the tenancy of the purchasers is stated (where applicable)
- a metes and bounds description of the land being conveyed (a metes and bounds description is a traditional method of land surveying in which the boundaries of land parcels are recorded in terms of direction and distance)
- references to the prior conveyances in the chain of title. In older deeds it was often a list of all the previous deeds in the chain of title. It may also appear in a second or third schedule to the deed.

All deeds contain a statement indicating the intention of the deed, commonly called the *Operative Words*. In a conveyance these words may be “*conveying as beneficial owner in fee simple.*”

Conveyances were usually prepared by the vendor’s solicitor. Clerks preparing deeds often made use of the wording in previous conveyances in the chain of title. Unfortunately this practice often led to errors being passed on from one conveyance to the next.

Conveyances have to be read thoroughly to ensure, among other things, that the vendor’s entire interest in subject land is being conveyed to the purchaser and not just a share.

Lease and release

Historically the lease and release was a device used to overcome problems in Old System conveyancing. A lease and release comprised two distinct deeds and was, effectively, a conveyance.

The freehold vesting in the purchaser was achieved by putting him into legal possession by a short term lease (usually 12 months) with a release dated the day after the execution of the lease vesting him with the reversion. By legislative reform only one deed was required which acted as a conveyance.

Confirmatory conveyances

Confirmatory conveyances are used to rectify errors in previous deeds. These conveyances state what the error was, where it occurred and what the correct wording should have been.

Conveyance of the equity of redemption

A conveyance of the equity of redemption is used when a vendor sells a parcel of land that remains subject to an existing mortgage. The new owner becomes the mortgagor as regards the outstanding debt that remains in the previous mortgage. The mortgagor's right to redeem the title to land at any time is called the mortgagor's equity of redemption.

Mortgages

At common law, a mortgage is a conveyance of the legal estate in land to secure a debt. That is, the mortgagor sells his land to the mortgagee. The mortgagor retains a 'proviso of redemption' otherwise known as an equity of redemption. If the mortgagor pays the debt the land will be reconveyed to the mortgagor.

The mortgagor is the party who borrows the money and is also known as the debtor.

The mortgagee is the party who lends the money and is also known as the lender.

Where the mortgagee releases only part of the land from the debt, he reconveys that part, without prejudice to his rights under the original covenant as regards the balance.

The usual manner of effecting a reversion of land is by statutory discharge. This applies to either a total or a final discharge; any partial discharges (up to the final) are still effected by Deed of Reconveyance. It should be noted particularly that this statutory form of discharge must be registered to be effective.

Leases

At common law a leasehold interest in land is classified as personal not real estate. It is merely a right of exclusive tenancy of land or premises for a particular period of days or years (which must be stated with certainty), subject to and with the benefit of numerous covenants and conditions (embodied in the deed creating the term), including covenants covering payments of rent.

Unless expressly forbidden by the deed, a lessee (person leasing the land) may transfer this interest in whole or part of the land and for the whole remainder or some lesser term. The transaction is called an assignment and if for a sub-term, is known as an under-lease or sub-lease.

Acknowledgements

A gift of real estate by a Will is called a Devise and the beneficiary is called the Devisee. To give effect to a gift of real estate under a Will, an executor or administrator is required to execute a conveyance or sign an Acknowledgement that the devisee of the Will of a testator is entitled to the estate or interest devised to them.

Before it can have legal effect, an acknowledgement must be registered in the General Register of Deeds.

16 Interpreting deeds

Lord Westbury said of early deeds:

*"They are difficult to read, disgusting to touch and impossible to understand"*⁴

Lord Westbury's language may seem a little strong, but his sentiment will probably be echoed by most researchers after a day spent reading Old System deeds.

There is no easy way to explain how to interpret the language of deeds. They appear to be written in what could be called 'legalese'. Many of the early deeds were also handwritten which makes them even more difficult to interpret.

The fact that there were no standard forms used in the preparation of deeds led to a multitude of variances in deed recitals and it would be impossible to relate them all here. Suffice to say that only with experience will a researcher become familiar with the peculiar nature of deed language.

Conveyances by executors of a deceased owner require particularly careful reading. A parcel of land may have changed ownership on several occasions without the registration of any intervening deeds.

For example:

- John purchased a parcel of land in 1880
- John died in 1920 leaving his wife a life estate and then following her death, the estate in remainder should go to his executor Bill Brown
- Bill Brown died in 1925 without registering any deeds, he left the parcel to his children, Peter and Harry, in equal shares
- Peter and Harry register a deed giving them ownership of the parcel.

The deed by Peter and Harry must recite how the ownership of the parcel has devolved from the estate of John onwards.

Land descriptions in deeds

As most deeds do not contain a diagram of the parcel being sold, you must be able to read and understand the land description contained in a deed. Often, the only way to know what a parcel of land looks like is to draw a scale diagram based on the description. This is known as a Deed Sketch.

Deed land descriptions are written using either imperial or metric measurements. The imperial measurements may be either in feet and inches or chains and links.

Land may be described in a deed as the whole or part of a:

- portion in a parish
- lot in a plan
- allotment in a section of a town
- lot in an estate.

Some descriptions do not contain any lot or portion numbers. They can be either a sequence of bearings and distances or just distances in a general direction.

4 Butt, P., Land Law 1996 3rd Edition, ibid para 1904

Metes and bounds

Conveyances generally contain metes and bounds descriptions of parcels of land. Metes are an expression of distance. Bounds set the limit to the sideways extent of a property line in a particular direction.

Example

In the description: *bearing NW 30 feet*, the bound is NW and the mete is 30 feet. The metes and bounds together set the limits for the land described.

The description may also give general details of where the land is located i.e. county and parish and/or locality information. The area of the land is also usually given.

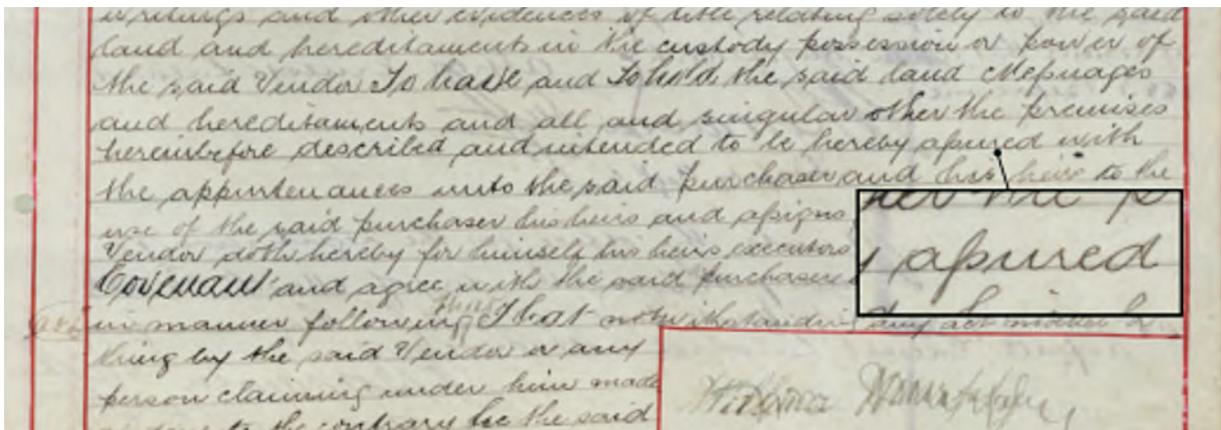
Interpreting the language of deeds

Interpreting and understanding deeds has been a problem since the early registrations.

These examples may help you understand the type of language used in deeds.

- As much of the wording in deeds appears to be superfluous, it is necessary to separate the relevant facts from the myriad of other information. Look out for the operative words that indicate the intention of the deed. In old conveyances and other deeds the operative clause usually started with *'this deed / indenture hereby witness'*.
- A conveyance may, for example, *'grant, bargain, sell, alienate, release, and confirm'* and then indicate that the purchaser was *'to have and to hold unto the use of (the purchaser) his heir and assigns forever'*.
- In a mortgage, the owner also conveys the fee simple to the mortgagee using a similar form of words with the added clause: *'subject nevertheless to the proviso of redemption.'* This gives the owner the right to redeem his property on payment of the mortgage.
- The form of the old 's' resembles the modern 'f' and was more likely to be used as one of a pair of 's's' or as both 's's' rather than as a single 's'. The word 'assured' (in Conveyance Book 264 No. 437), appears to be written as 'afsured':

This is not the only form of wording used to determine the intentions of a deed and you need to read the entire deed to determine any other effect the deed may have intended. Covenants and easements, for example, are usually recited at the end of the deed.



- A recital in Conveyance Book 702 No. 807 states: 'Whereas the said Vendor hath contracted with the Purchaser for the sale to him of the land described in the first schedule hereto in fee simple in possession and also his right title and interest in and to the land described in the second schedule hereto...'
- The use of the words 'in fee simple in possession' indicates the conveyance of the documentary title.
- The use of the words 'right title and interest' indicates the conveyance of a possessory title.
- However, there are circumstances where the use of the words 'right title and interest' may not necessarily mean that a possessory title is being conveyed.

Each deed must be read thoroughly, in order to ascertain the intention of the parties.

The following extract is from a conveyance that was registered in 1998 although the language used in the deed mirrors the style used in 1898.

Registered Bar Code — **BK 4229 NO 496**

Entered: Verified:

C.A. NUMBER: 76144

INDEX PARTICULARS
GENERAL REGISTER OF DEEDS

Date of the deed

Type of Deed	NATURE OF INSTRUMENT	DATE OF INSTRUMENT	REGISTRATION TYPE
(A)	CONVEYANCE	29-10-1998	GENERAL REGISTER
	ENTRY TYPE	FAMILY NAME	GIVEN NAMES
Vendor	V	MADDEW	OLIVE MAY
	P	FULLER	MALCOLM DAVID
	P	FULLER	SUSAN JANE
Power of Attorney			

Purchasers

LEAVE BLANK WHERE INSTRUMENT DOES NOT AFFECT OLD SYSTEM LAND				PRINCIPAL DEED
(C)	LOCALITY OF LAND	LINK CONVEYANCE - for Old System Land Book No.	Whole/Part	
1	PARISH ALEXANDRIA	3325	173	WHOLE
2				
3				

Previous Deed

LEAVE BLANK WHERE INSTRUMENT DOES NOT AFFECT OLD SYSTEM LAND			
(D)	CURRENT LOCAL GOVERNMENT AREA	PARISH	COUNTY
1	WOOLLAHRA	ALEXANDRIA	CUMBERLAND
2			
3			

(E)	FLOYD SIMPSON of 1 KING ST CONCORD WEST
certify that for the purposes of Section 184D(3) of the Conveyancing Act 1919 that:	
1. the registration copy is a true copy of the original and	
2. the above index particulars of the original instrument (and on the annexure(s)) are complete and correct.	
Signed:	Date: 11/3/99

Certification Section

Copy of Deed

N.S.W. STAMP DUTY \$2 PAID

12

THIS DEED made the 29 day of October One thousand nine hundred and ninety eight BETWEEN OLIVE MAY MADDEN of Bellevue Hill in the State of New South Wales, Widow (hereinafter called the "Vendor") of the one part AND MALCOLM DAVID FULLER and SUSAN JANE FULLER both of 79 Kambala Road, Bellevue Hill in the State of New South Wales, Company Director and Architect respectively (hereinafter called the "Purchasers") of the other part, as joint tenants.



WHEREAS the Vendor being seised for an estate in fee simple free from encumbrances in the lands and hereditaments hereinafter described has agreed to sell the same to the Purchaser for the sum of One Million Three Hundred and Five Thousand Dollars (\$1,305,000.00)

NOW THIS DEED WITNESSETH that in consideration of the sum of One Million Three Hundred and Five Thousand Dollars (\$1,305,000.00) paid by the said Purchaser to the Vendor, (the receipt whereof is hereby acknowledged) the said Vendor as beneficial owner doth hereby convey unto the said Purchaser in fee simple

ALL THAT parcel of land situate in the Parish of Alexandria County of Cumberland in the State of New South Wales forming part of Cooper and Levey's one thousand one hundred and thirty acres consolidated grant and also being Lot eleven Section one of the Bellevue Hill Estate Number two commencing at the western most corner of lot 12 being a point on the south eastern boundary of Rosslyn Street distant in a south westerly direction 603 feet 9 and 15/16th inches from its intersection with the south western boundary of Vivian Street and bounded thence by the south western boundary of lot 12 bearing south easterly 150 feet thence by the north western boundary of lot 6 bearing south westerly 50 feet thence by the north eastern boundary of lot 10 bearing north westerly 149 feet 10 and 15/16th inches to Rosslyn Street and thence by part of the south eastern boundary of that Street bearing North Easterly 50 feet to the point of commencement subject to the restrictive covenant in the said Conveyance Registered Number 329 Book 1138.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written.

SIGNED SEALED AND DELIVERED by)
the said OLIVE MAY MADDEN in the)
presence of:)

Olive M. Madden

Vendor

David Wagner
Solicitor
Sydney

SIGNED SEALED AND DELIVERED by)
the said MALCOLM DAVID FULLER in)
the presence of:)

David Fuller

Henry Bull

Purchasers

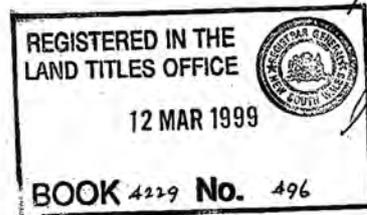
SIGNED SEALED AND DELIVERED by)
the said SUSAN JANE FULLER in the)
presence of:)

Susan Jane Fuller

Henry Bull

SAMPLE

Registered Date



LF 374

'This Deed made the 29 day of October One thousand nine hundred and ninety eight BETWEEN OLIVE MAY MADDEN of Bellevue Hill in the State of New South Wales, Widow (hereinafter called the "Vendor") of the one part AND MALCOLM DAVID FULLER and SUSAN JANE FULLER both of..... in the State of New South Wales, Company Director and Architect respectively (hereinafter called the "Purchasers") of the other part, as joint tenants.'

'Whereas the Vendor being seised for an estate in fee simple free from encumbrances in the land and hereditaments hereinafter described has agreed to sell the same to the Purchaser for the sum of One Million Three Hundred and Five Thousand Dollars (\$1,305,000.00)'

'NOW THIS DEED WITNESSETH that in consideration of the sum of One Million Three Hundred and Five Thousand Dollars (\$1,305,000.00) paid by the said Purchaser to the Vendor, (the receipt whereof is hereby acknowledged) the said Vendor as beneficial owner doth hereby convey unto the said Purchaser in fee simple'

'All That parcel of land situated in the Parish of Alexandria County of Cumberland in the State of New South Wales being Lot eleven Section one of the Bellevue Hill Estate Number two commencing.....to the point of commencement subject to the restrictive covenant in the said Conveyance Registered Number 329 Book 1138.'

- The date on the first line is the date the conveyance was signed by the parties to the deed. This is the Execution Date.
- Olive May Madden is selling the land described in the deed to Malcolm David Fuller and Susan Jane Fuller.
- Often the words 'Vendor' and 'Purchaser' are substituted by 'of the one part' and 'of the other part'.
- The capacities of these parties are usually defined in the sentence which begins with 'Now this Deed Witnesseth'.
- All deeds have operative words that indicate the intention of the deed. The words 'the said Vendor as beneficial owner doth hereby convey unto the said Purchaser in fee simple' are the operative words to look for to ensure that the vendor is conveying the documentary title to the purchaser and not a possessory title. The phrasing of these words may be slightly different in each deed.
- The words 'subject to the restrictive covenant' show the land was being sold subject to a restrictive covenant that was described in a previous deed in the Chain of Title. In order to find out the terms of the restrictive covenant, the previous deed needs to be inspected.

Deed references and the Mapping Index

Deed references were also recorded on maps and plans. The deed number, as opposed to the book number, came first for example 789-456 or No. 789 Book 456. When you are conducting a search we suggest you search both variations of deed references on the early maps and plans because charting practice was not always adhered to.

Dry trustees

A conveyance known as a '*limitation to user*' was developed by the legal profession to enable persons disqualified by the common law from owning land to enjoy the benefits of a vicarious ownership.

This was done through the intervention of a legal intermediary (or trustee) as the nominal legal owner. A common reason was to enable a married women to exercise control over her property which 'at law' belonged to her husband.

In time (except where some administrative responsibility continued in the trustee e.g. where a trustee is administering a deceased estate), the courts came to accept the beneficiaries' interests as a legal estate with the nominal (or 'dry') trustee passing from further title consideration.

The trap with the Dry Trustee on a deed is that they are not the owner.

Because dry trustees were only nominal owners you shouldn't search their names. Often it is unclear if a person mentioned in a deed is a dry trustee.

The phrase 'to have and to hold unto (X) for the use of (Y)' may precede the name of a dry trustee in a deed. In this form (X) may be well be a 'dry' trustee as the use of the estate is held for another person (Y).

Deposited deeds (DDs) and deposited deed packets (DDPs)

The client's copy of any document or deed can be lodged with the Registrar General for safe keeping as a deposited deed. The first *deposited deed* was received by the Registrar General on 17 December 1858 and the Deposited Deed Index was created.

An entry was made which included the date of the deed and the packet number. Originally all deposited deeds were indexed but only unregistered deeds were indexed between March 1957 and the commencement of ADIS on 2 November 1992.

Deposited deeds only exist in a hardcopy form. These documents are usually produced to the Registrar General as they are an accepted deed in an Old System chain of title and are likely to be referred to in the future for land development, Primary Application or subdivision.

The deeds and associated papers in deposited deeds typically include registered and unregistered deeds. Wills and probates etc. are lodged with the Off-line Property Information Branch.

All deeds registered pre ADIS (i.e. before Book 4000), were manually stamped with the deposited deed packet number. All deeds registered post ADIS (i.e. after Book 4000), are automatically indexed in ITS.

A search under the deposited deed number can be made in ITS, however only the following deeds are listed in ITS:

- deeds above Book 4000
- unregistered deeds
- probates and notice of death.

On lodgment of a deposited deed packet, a copy of the receipt of documents is bound in the Deposited Deed Index and can be viewed at LPI, Queens Square, Sydney.

This receipt lists all the documents being lodged including those not shown in ITS such as statutory declarations, birth, death and marriage certificates and solicitors abstracts of title etc.

Primary Applications (PAs)

In 1862, when the Torrens Title System was introduced into NSW, the *Real Property Act 1862* allowed for land held under the Old System to be converted to Torrens title. This application became known as a Primary Application. As this conversion would provide a guarantee of ownership by the State, barristers known as 'Examiners of Title' were appointed to investigate the title.

Early PAs were subject to intense investigation by the Examiners of Title. Reports to the Examiner were made by the chief draftsmen and others detailing any problems involved in the investigation.

Four main records have been kept including:

1. the Primary Application document itself (available on microfilm)
2. the Primary Application search – bound in books and held in the Old System search area
3. Search Sketches (i.e. a diagram of the land in the deeds affecting the application) if applicable
4. the Primary Application packet containing the examiner's report diagrams, correspondence and, sometimes, original deeds, both registered and unregistered, affecting the case.

Primary Application Searches (also known as 'Epitome of Title')

The searches prepared for these applications often started with the details of the original Crown grant and showed every entry listed in the Vendors Index against a name, regardless of where the land was situated. Because every entry found under a name was shown in the PA search, the names were said to have been *Searched Generally*.

Not all PAs show parties being searched generally. Some were stamped *Limited Search*. These searches were restricted to the land that formed the subject of the application. This remains the current practice.

PA searches were written in pencil and contained many abbreviations. This means reading one can be difficult and time consuming. Today the PA is usually typed.

Primary Application packets

When PAs are lodged, the application and all the associated documents are kept in a special packet. The information contained in the early PA reports can be very useful in Old System searches because they contain a schedule of the deeds that form the chain of title to the land in question.

PAs are also useful for searching lanes, roads and passageways. The examiners' reports are summaries of any relevant matters that were found during the investigation of the land.

Modern Primary Applications contain the following:

- the Primary Application document
- a working copy of the plan
- any evidence retained by LPI e.g. statutory declarations and the Primary Application Report.

Old PA packets are filed at the Government Records Repository (GRR) and are being progressively transferred to State Records as State archives. PA packets transferred to State Records can be inspected in the reading rooms at O'Connell Street, Kingswood.

The PAs stored at the GRR can be searched by lodging a request with the Off-Line Property Information Section, LPI, Queens Square, Sydney for their return and paying a retrieval fee.

17 Official Searches

Unlike searches compiled by private sector searching companies, an Official Search is a legal document prepared by LPI which may be used as evidence in a court of law. Official searches are conducted in accordance with the provisions of Section 197 of the *Conveyancing Act 1919*.

The Registrar General is directed in the paragraphs of the section to:

- conduct the search as requested
- prepare and file a certificate specifying the correct particulars of the result of the search
- issue an office copy of that certificate to the lodging party of the request.

Generally, an Official Search can be requested in writing, or on the form provided, for the following reasons:

- ownership
- search back to a good root of title
- search commencing from Book and Number or a set date
- continuation of an existing Official Search
- status of a road etc.
- search of the Register of Causes Writs and Order.

Official searches are usually made for either the removal of a qualification (caution) from a title, or the creation of a non qualified folio of the Torrens Register. For more information see our fact sheet *Old System conversion or removal of a caution via an Official Search* available on the LPI website www.lpi.nsw.gov.au.

The original Official Search is kept in LPI permanently. The Official Search number is added to the notations list on the electronic mapping system for the land. A small number of Official Searches were damaged or destroyed in April 2003, as a result of water flooding the storage area. Copies of Official Searches can be purchased from LPI, Queens Square, Sydney.

Previous Official Searches

All Official Searches are noted on the paper mapping system prior to September 2002 and in the electronic mapping system after this date. If an Official Search has already been prepared for a parcel of land, a searcher can rely on the information contained in this search (see page 20 for example Official Search).

Other records used in Old System searching

Old System Estate Plans Card Index

Registration of plans for subdivision of Old System land was not compulsory until 1961 so many plans from earlier years went unregistered. Over time, the Registrar General has collected many, but not all, of these Old System plans. Subdivisions were usually known by their estate name but over time have been re-filed and given plan numbers.

Often an estate may have several plans and an Estate Card Index was established to record them. You can refer to the index to research any plan numbers or numbers for the estate named in the deed reference.

Descriptions in deeds often refer to a parcel of land in a particular estate so it is very useful to obtain a map showing the layout of the estate. Early estate plans also often contain references to old deeds.

An electronic file of these Estate Cards can be searched at the public terminals at LPI, Queens Square, Sydney.

Conversion Actions and IVAs

To facilitate the rapid conversion of Old System land to Torrens title the concept of a qualified title was introduced in 1967 by part 4A (IVA) of the *Real Property Act 1900*. The conversions were not compulsory. On lodgment of any deed, a Statement of Title Particulars was handed over by the lodging party setting out brief details of the title.

A conversion action (known originally as an IVA after that part of the Act) was then used to issue a title. As there was minimal investigation, the title was qualified.

The qualification meant that according to the records of the Registrar General, the listed registered proprietor was the owner of the land in the title however, the State did not guarantee the title.

In 1976, under 4B (IVB) of the *Real Property Act 1900* the **limited title** was introduced. The limitation meant that the boundaries were unsurveyed and not guaranteed. A search would be made for a plan depicting the land and if a survey was thirty years old or less it would be used as a title diagram.

Later a diagram of the deed was drawn to identify the land and used as a title diagram to provide a reference for entry into the Torrens titling system. This was registered as a departmental plan, but because it wasn't a plan of survey, a limitation was placed on the title.

Information contained in Conversion Actions and IVAs may assist in finding a commencement point for a search. References to the last conveyance prior to the conversion action are noted in the minute papers. Often the qualification will indicate the book and number of the last conveyance.

19

Further information

Further information can be found on the Registrar General's (RGs) Directions website <http://rgdirections.lpi.nsw.gov.au> which provides an online guide to land title practice and procedures.

The RGs Directions provides comprehensive information about legislative and other requirements relating to the preparation of plans and documents intended for lodgment and registration with LPI's Titling and Registry Services group.

You can access detailed information about requirements for deposited plans, strata schemes, community schemes, water dealings, deeds and land dealings. You can also use the website to access LPI publications, forms, news about LPI land related products and services, changes to procedures, upcoming events, or to link to related websites and online services.

Although LPI does not usually provide general searching services, LPI officers can provide direction to assist those interested in searching LPI's records. Independent professional Old System searchers can also assist you with searching activities.

20 Official Search report example

The following example shows a simple search which is intended to show the order in which an Official Search Report is written. The more entries found, the longer and more complex the report becomes.

Certificate of Result of Official Search

Official Search No. 35723

Conveyancing Act 1919

Search Fees

Minimum	\$0.00
Extra fee	\$0.00
Total	\$0.00
Less fee paid	\$0.00

General Registry of Deeds

This is to certify that the list following contains particulars of all entries in the Indexes respectively referred to against the names and for the periods respectively indicated appearing to affect the title of the land described as:

ALL THAT piece or parcel of land situated in the Parish of Maitland and County of Northumberland in the State of New South Wales containing by admeasurement Forty Six acres One rood Nine and a quarter perches or thereabouts commencing at the South West corner of Portion Number Twenty Four bearing North 0 degrees twenty seven minutes West one hundred links from the North West corner of Portion Number Twenty Three (R P Application 11199) and bounded thence by the North side of a Road one chain wide bearing North eighty nine degrees forty two minutes one thousand six hundred and four point four-tenths links thence North eighty nine degrees four minutes East nine hundred and four point five-tenths links thence by a partly fenced line bearing North 0 degrees fifty one minutes West seven hundred and sixty three links thence by the South West side of the land resumed by the Crown for Water and Sewerage purposes bearing North forty six degrees twenty two minutes West two thousand three hundred and thirty nine point three-tenths links thence by a line bearing South eighty nine degrees and thirty two minutes West eight hundred and twenty three links thence by the East side of a Road one chain wide bearing South 0 degrees twenty seven minutes East two thousand three hundred and ninety three links to the point of commencement being part of Portion Twenty Four.

RG's
seal

The following is the first entry in the Search Report. After the land description a new page is usually started with the heading **Vendors Index**.

Official Search No. 35723		
Vendors Index		
Ball & Wilson Proprietary Limited		From: 22-12-1953 To: 13-1-1954
Book 2275 No. 274 Conveyance Dated 22-12-1953 Registered 13-1-1954	<u>The Shell Company</u> <u>Australia Limited</u>	Subject Land
<hr/> 		

Notes

Ball & Wilson Proprietary Limited is selling the subject land. The company is the Vendor. The search is shown from the execution date to the registration date of deed reference: Book 2275 No. 274.

The registered date is the date when the document was registered with LPI and is usually located on the last page of a deed (although in more recent deeds, the book and number and the registration date are located on the first page). The execution date can usually be found at the top of the first page of a deed. This date represents the day when the document was signed by the parties to the deed.

Entries are separated into three distinctive columns. The first column contains:

- Book and No.
- Type of deed
- Execution date
- Registration date
- Other information mentioned in the index, such as executors names.

The second column shows the names of the parties acquiring an interest in the subject land. In this case, The Shell Company of Australia Limited is the Purchaser.

The third column is used for the land description. The entire subject land is being conveyed in this deed, so the words 'Subject Land' are sufficient.

Entries are written as they appear in the Vendors Index. Abbreviations are expanded. For example, the abbreviation 'Psh' is written as Parish.

If no entries are found when searching a name, the entry is written as:

<u>The Shell Company of Australia Limited</u>	From: 22-12-1953
	To: Date
Nil	
Dated to 4 December 2002	
RG's seal	

Link Conveyance Book 2275 No. 274 at Maitland

The Shell Company of Australia Limited was searched in the Vendors Index from 22 December 1953 to 4 December 2002 and no entries were found which affected subject land. Some entries were found under the company's name, but none of those entries related to subject land.

If there are no entries recorded in the Vendors Index that affect subject land then the word 'Nil' is written, as shown.

Enter the Link Conveyance details together with the locality of Subject Land, after the Seal of the Registrar General on the last page of the search.

21

Abbreviations used in land and title documents

Abbreviations can appear in either upper or lower case.

A	Assignment
AACO	Australian Agricultural Company
ABC	Assignment for benefit of creditors
AC	Acres
ACCPT	Acceptance
ACKGT	Acknowledgment
ADMICES	Administratrices
ADMIX	Administratrix
ADMOR	Administrator
AGRMT	Agreement
AGTS	Agreement for sale
AL	Assignment for Lease
ALEXA	Alexandria
ALLOT	Allotment
Also to Pdce	Covenant to produce
A M	Assignment of Mortgage
A N T	Appointment of New Trustee
APPT	Appointment
ARP	Acres, Roods, Perches
ARRGT	Arrangement
ASSCE	Assurance
ASSGT	Assignment Assn Association
ATTY	Attorney
Bk	Bank or Book
BKG	Banking
BLK	Block
C	Conveyance
CCL	Council
C of E of R	Conveyance of Equity of Redemption
C E R	Conveyance of Equity of Redemption
C FOR S	Contract for Sale
CONT S	Contract for Sale
C S	Contract for Sale

CERT	Certified
Certn	Certain
CHGE	Charge
CNR	Corner
CO	County or Company
COMML	Commercial
COMMN	Commission
COMMR	Commissioner
COMPSD	Comprised
COMPSG	Comprising
CONFMN	Confirmation
CONSTG	Consenting
CONT	Contract
CONV	Conveyance
COVT	Covenant
CRK	Creek
C T	Certificate of Title
CUMBLD	Cumberland
DECD	Deceased
DECLN	Declaration
DEV	Defendants
DISG D	Disentailing Deed
DIS M	Discharge of Mortgage
DIST	District
DLGN	Delegation
DM	Discharge of Mortgage
D OF G	Deed of Gift
D OF PTN	Deed of Partition
D P	Deposited Plan
DSCBD	Described
E	East
EASMT	Easement
E D	Equitable Deposit
E M	Equitable Mortgage
ERN	Eastern
EST	Estate
EXOR	Executor

EXTRICES	Executrices
EXTRIX	Executrix
F C	Further Charge
FEOF	Feoffment (Conveyance)
FMLY	Formerly or family
FOL	Folio
FOLLG	Following
FUR CHGE	Further Charge
G L	General Lien
GNL	General
GRP	Group
GRT	Grant
GT	Grant or Great
HA	Hectare
HLDG	Holding
INC	Incorporated
INCRSE	Increase
INDMNFN	Indemnification
INDRE	Indenture
INSCE	Insurance
INST	Instrument or Interest
INTST	Interest
INVESTMT	Investment
JT	Joint or Joint Tenants
JTLY	Jointly
L	Lease
(L)	Litho Plan
L A	Letters of Administration
L & R	Lease and Release
LD	Land
LQR	Liquidator
LSE	Lease
M	Metre or Mortgage
M2	Square metres
MARR SET	Marriage Settlement
MCPTY	Municipality
MTGE	Mortgage

MTGEE	Mortgagee
MTGR	Mortgagor
N	North
N of A	Notice of Alienation (Transfer. of Conditional Purchase)
NORTHLD	Northumberland
NTL	National
NTHN	Northern
O	Order or application
O/C	Office copy
O CT	Order of Court
OFFL	Official
OPTN	Option
Ors	Others
ORWSE	Otherwise
(O S)	Old System
P (or Per)	Perch
P A	Power of Attorney or Primary Application
Partn	Partition
PCL	Parcel
PCPL	Principal
PPL	Principal
PDCE	Produce
PERMT	Permanent
PLTFFS	Plaintiffs
POR	Portion
POSTPT	Postponement
PPTY	Property
PREMS	Premises
PROB	Probate
PSH	Parish
PT	Part
PTS	Parts
PUB.TREE	Public Trustee
QUAL	Qualified
R	River
R & P	Release and Partition
RD	Road or Roods

RDS	Roads
REC	Reconveyance
RECTFN	Rectification
RECVR	Receiver
REDN	Reduction
REGD	Registered
REL	Release
REL OF D	Release of Dower
RENL	Renewal
RES	Resumption
RESMD	Resumed
RE-SUBDN	Re-Subdivision
RETG	Retiring
REVOCN	Revocation
RL	Residential
RLY	Railway
R P A	Real Property Act
RSVG	Reserving
RT	Right
S	South
SCTY	Security
SEC	Section
SETTLMT	Settlement
SQ	Square
STHN	Southern
SVGS	Savings
SUBDN	Subdivision
SUBDVD	Subdivided
SUBJ	Subject
SUBN	Supplemental
SURR	Surrender
SVLY	Severally
TRANS	Transfer
TFER	Transfer
TSFR	Transfer
T M	Transfer of Mortgage
TN	Town

TNSHP	Township
TRDG	Trading
TREE (S)	Trustee(s)
UL	Underlease
UX	Wife
VAR	Variation
VARN	Variation
VILL	Village
VOL	Volume
W	West
W D R	Western Division Road
WRN	Western

22

Useful links

LPI website

www.lpi.nsw.gov.au

SIX Maps

www.six.nsw.gov.au

Online Shop

<http://shop.lpi.nsw.gov.au>

Authorised Information Brokers

www.lpi.nsw.gov.au/land_titles/online_information/information_brokers

Baseline

This portal incorporates LPI's historical collections, cultural heritage sites and archival projects. The site has a number of FAQs relating to searching the records and archives of the Registrar General.

www.baseline.nsw.gov.au

Registrar General's Directions

An online guide to land title practice and procedures and requirements relating to the preparation of plans and documents intended for lodgment and registration with LPI.

<http://rgdirections.lpi.nsw.gov.au>

23

Further reading

Kass, T., *Jewels in the Crown – A History of the Bridge Street Plan Room and Crown Plans*, Department of Lands, 2008

Kass, T., *Sails to Satellites – The Surveyors General of NSW (1786-2007)*, Bathurst, Department of Lands, 2008

24

Bibliography

Butt, P., *Land Law* 1996 3rd Edition.

Hallmann's., *Legal Aspects of Surveying as apply in New South Wales*, Second Edition by Ticehurst F. K. Historical Records of New South Wales (HRNSW).IV.255; Historical Records of Australia (HRA).I.III.38, 761. HRNSW.IV.696; HRA.I.III.473-474, 761.

LBC Information Services.

The Institute of Surveyors, Australia INC New South Wales Division, 1994.

The Law of Real Property Second Edition W H Challis.

Land and Property Information
1 Prince Albert Road
Queens Square
SYDNEY NSW 2000
T: 1300 052 637
T: +61 2 9228 6666
F: +61 2 9233 4357
© March 2013 LPI (B) P13/10/012