CONVERSION OF DEEDS REGISTRATION TITLES TO TORRENS TITLE -
A REVIEW OF THE SITUATION IN N.S.W.

L.C. Holstein and I.P. Williamson*
School of Surveying
University of New South Wales
P.O. Box 1
KENSINGTON, N.S.W. 2033
AUSTRALIA

ABSTRACT

There are approximately 90,000 deeds registration titles (Old System titles) remaining in New South Wales. This article examines the benefits and means of converting these titles to the system of registration of title (the Torrens system). The various options available to the Government to convert the titles within existing constraints are considered; particular attention is given to the role of title boundaries, the survey of those boundaries and cadastral mapping in general in the conversion process. Procedures adopted in New Zealand, South Australia, Tasmania and England to perform a similar conversion are reviewed. The advantages and disadvantages of a "dealings driven" and a "plan driven" approach are considered. The recommended direction for N.S.W. is based upon a "limited as to parcels" concept being utilised for the converted titles.

* During 1982 and 1983, the authors were members of a Working Group within the Registrar General's Office of N.S.W. investigating the conversion of the remaining deeds registration titles in the State.
HOLSTEIN & WILLIAMSON: CONVERTING LAND TITLES IN N.S.W

1. Introduction

The primary objective of this article is to suggest some means of converting the remaining 90,000 or so deeds registration titles (Old System titles) in New South Wales (N.S.W.) to the registered titles system (Torrens titles). The proposal is to be generally considered within the existing resources of the Registrar General's Office (R.G.O.). The major recommendations are directed at introducing a "limited as to parcels" title.

A secondary objective is to examine the conversion process with particular emphasis on title boundaries, the survey of those boundaries, and cadastral mapping in general.

2. Current Considerations and Constraints

Ninety-five percent of all freehold tenure land in N.S.W. is held under the Torrens title system. There are approximately 2.2 million Torrens titles and approximately 90,000 Old System titles in the state. This estimate is based on the 1980-82 Volume of Business of the R.G.O., for dealings in the Torrens and Old System titles systems.

A new course of action is necessary to convert these remaining 90,000 titles, as they are generally unsuitable for conversion using "qualified" titles under Part 4A under the Real Property Act, 1900. This method requires a suitable survey plan, which is not always available.

N.S.W. has made a commitment to the Torrens system and has done so for 120 years. It is highly desirable that all land parcels have title under this system. This includes not only Crown lands and tenures, roads, parks etc., but land vested in state departments and agencies. In other words all land in the state should be in the Torrens register. The legislative action for the conversion of Crown land tenure "titles" and Western Lands tenure "titles" has already been taken. However, the actual conversion is proceeding slowly on a selective basis.

The Registrar General's Office is subject to the N.S.W. State Government's general financial restraint policies current in 1983. This means generally that no new staffing posts and hence no new projects may be commenced. This policy directly affects the title conversion programme. In a period when the volume of business is not high, the R.G.O. should, however, be undertaking title conversion. The result would be an increase in office efficiency and a great benefit to land administration in general, as well as making the long-term goal of a land information system for N.S.W. a possibility. Regrettably, in the short term, title conversion must take place within the existing resources of the R.G.O.

The complete conversion of all Old System titles in the State will require an efficient and complete cadastral surveying and mapping system. Such a system is not available in N.S.W. at the present time. Consequently, the present title conversion programme must recognise this deficiency and work
within this constraint, with the knowledge that a complete cadastral system will never be achieved under the present circumstances. The title conversion programme should highlight the existing situation and make recommendations on how the system may be improved in the long term (also see WILLIAMSON, 1982).

3. Basic Considerations of a Registration of Title System

Legislation for title registration is not basic law; it is not substantive. It is an efficient bookkeeping system that facilitates conveyancing. It is a system of record, not of land tenure, and is readily adaptable to any form of land tenure. Many tenures may be handled at the one time as long as the tenure systems are accepted by society. A change to a Torrens title is not of immediate concern to a proprietor holding a secure tenure with a clear chain of title deeds. Bearing this in mind, the basics of a Registration of Title system are examined. WHALAN (1982), SIMPSON (1976) and DOWSON AND SHEPPARD (1956) have addressed these basics and may be referred to for more detailed information.

The qualities of a Registration of Title system are:

1. The title document must give an unambiguous record of the following three items of title:
   
   (a) the parcel(s) of land affected;
   
   (b) the nature of the rights of the proprietor and others with interests over that parcel; and
   
   (c) the persons involved with the title, estates and interests.

2. The title depends on the act of registration of a dealing or instrument and not upon the documentary instrument itself. The dealings only support the title until they are superseded.

3. An efficient records system must be maintained and kept up-to-date, secure, and purged of dead material. This applies not only to the title documents and dealings but also to the mapping of the land parcels in question.

4. The system should be controlled by central government, though its day-to-day activities may be decentralised.

5. It is an advantage, though not essential, that the state guarantees the contents of the title document.

6. The administrative processes of bringing land into the system should be kept separate from the running of the system.
It is within these qualities that any changes to the present "ordinary" and "qualified" certificates of title, as issued in N.S.W., should be considered.

4. Why Convert?

The question may be asked as to why conversion from deeds registration to registration of title is desirable in N.S.W. To justify such a conversion, Torrens and others have used the catch words and phrases: security, simplicity, accuracy, expedition, cheapness, suitability to circumstances, and completeness of record (see SIMPSON, 1976, p.17). These are used as headings below. Further, the benefits of conversion are given to both the title holders (including users) and for the State (including the administrators of the title system).

4.1 Title Holders' and Users' Benefits

4.1.1 Security

(a) The State guarantees the estates and interests listed on an "ordinary certificate of title". The system does not guarantee the mathematical description of boundaries, although it can be claimed that the State guarantees the "bounds" of a title, i.e. the abutalls, monuments, etc. A person deprived of title by the system may be entitled to compensation. A "qualified title" will enjoy this same benefit after six years or more from the date of issue. If a "limited as to parcels" title concept is introduced into N.S.W., it would be similar to the "ordinary title" in the State's guarantee of estates and interests when the qualification "qualified title" is removed but it would be still "limited as to parcels".

(b) It is generally easier and cheaper to raise a loan on Torrens title land than on Old System land as the mortgagee has the additional security of the State guarantee.

(c) The "ordinary" and "qualified" certificates of title give the security of an unambiguous parcel location and definition. The proposed "limited as to parcels" title would not give this security until a survey was undertaken at some time after the issue of the title.

(d) On a transfer of a title, the purchaser has confidence that he/she is dealing with the vendor.

(e) There is no State guarantee of Old System title. The purchaser is dependent upon his/her solicitor proving that they are dealing with the person who has best title to that property.
4.1.2 Simplicity

(a) The Torrens system, as compared with the Old System, is simpler in operation. For example:

(i) the title document is contained on one leaf (two sides) and contains a description of the parcel, a diagram, estate and interests and proprietors. It shows the current situation on one document;

(ii) it uses single, standard dealing forms. The recent popularity of "do-it-yourself" conveyancing kits demonstrates this apparent simplicity; and

(iii) the system is more comprehensible to the public.

(b) The system is based on a permanent entity being the land parcel rather than a person (vendor/purchaser). This allows for easier searching via cadastral maps and unique parcel identifiers.

(c) Torrens titles have simple indices and are easy to search. They are more understandable to the public. Upon the computerisation of the Torrens register, searching will be even easier.

4.1.3 Accuracy

(a) The information shown on a search copy of a Torrens title is certified correct by the Registrar-General.

(b) As all the information is on the one document or record, it is less likely that errors will be made (e.g. missed documents, easements and covenants). It is recognised, however, that there are many over-riding statutory interests that affect the register.

4.1.4 Expedition

(a) Simple dealings forms speed up conveyancing. Simple title documents and records speed up the searching process.

(b) Compared with Old System titles, Torrens titles are more suitable to computerisation, allowing for an even more expeditious "book-keeping" system.

(c) Upon computerisation, searching time per parcel will be considerably reduced. Further, computerisation will also allow the public access to unregistered dealings.

4.1.5 Cheapness

(a) Solicitors' scale of fees charges to their clients for a Torrens system transaction are approximately 50% less than an equivalent Old System transaction as a result of less responsibility by the solicitor, less work and less searching time. Fees for "qualified certificates of title" are similar to Old System fees.
(b) The "State-guarantee" of Torrens titles gives title holders access, at very inexpensive rates, to an "insurance scheme" that safeguards many of their rights as proprietors. This is in stark contrast to the system operating in the U.S.A., where "title insurance" must be purchased privately by the landholder.

4.1.6 Suitability to circumstances

(a) The Torrens system has a user popularity and acceptance in Australia. Torrens titles are advertised as a positive feature to prospective purchasers.

(b) Aspects of the Torrens system are similar to the registration and transfer of a motor vehicle with which the public is very familiar. The Torrens system is thus not an unfamiliar concept to most people.

4.1.7 Completeness of record

The users of the system have confidence that the title document or record reflects the complete up-to-date situation for that title. There is no need to look elsewhere. One has to accept the present system's inability to deal with "overriding interests".

4.2 The State's and the Administrators' Benefits

4.2.1 Security

The State guarantee of title promotes confidence in land dealing, not only for the proprietor but also for the mortgagee. This brings about a solid background for a sound economy and a good basis for growth in productivity in both primary and secondary industry.

4.2.2 Simplicity

(a) Simple title forms promote ease of conversion to computer storage as well as for microfilming.

(b) The entire Old System register must always remain open as long as there remains one Old System title. This register will always get bigger if even one title remains.

(c) Torrens titles are indexed to the land parcel and this allows for simple unique identifiers (e.g. lot and plan number) to be used.

(d) The parcel based system used with the Torrens system could allow for a continuously up-dated cadastral charting map to be maintained by the R.G.O.

(e) Storage problems are fewer with Torrens titles; old certificates of title can be cancelled and, if desired, removed.

(f) The simple title forms allow government agencies to search the Torrens Register for their purposes with ease. These agencies include the Australian Taxation Office, the N.S.W. Land Tax Office, Local Government bodies, the Valuer General's Department, and the utility authorities.
4.2.3 Accuracy

(a) The accuracy of record required to ensure reliability for "guarantee" purposes allows other government agencies to acquire accurate information for land tax purposes, rates, etc. The content of a deeds dealing is not checked before registration.

(b) Upon conversion and computerisation, a new, even higher, level of data accuracy and integrity will be enjoyed.

4.2.4 Expedition

(a) The Torrens system uses simple forms for the title document and dealings. This expedites the processing of dealings and facilitates checking.

(b) The system is significantly easier to computerise (MILLBURN, 1982). This computerisation will reveal new advantages such as:

(i) computer-assisted searching;
(ii) near automatic production of certificate titles;
(iii) more efficient record management;
(iv) computer-assisted registration of dealings on an overnight basis;
(v) minimising future increases in staff; and
(vi) lessening the need for office space expansion.

(c) Staff training for the Torrens system is considerably less than for the Old System.

4.2.5 Cheapness

(a) The R.G.O. has been a self-funding government office for a number of years, based on the principle of the user paying a fair price for services rendered.

(b) It could be said that the "annual fee" for a State guarantee on one's title is $5. This is based on the R.G.O.'s registration fee of $30 and the average duration between the transfer of a parcel being seven years.

(c) At a State level, there is an immeasurable amount of searching saved, especially in repeated searching of the same deeds each time a property is conveyed.

4.2.6 Suitability to circumstances

(a) As mentioned above, N.S.W. has made a commitment to the Torrens system and has done so for 120 years. Ninety-five percent of all freehold tenure land in N.S.W. is held under this system, leaving
approximately 90,000 titles to be converted. This number will not decrease unless a definite course of action is taken.

(b) There are several other title systems operating in N.S.W., including the Crown land tenure titles and the irrigation system titles. The Torrens system is the most successful as regards "user-friendliness".

4.2.7 Completeness of record

When all land in the state of N.S.W., including freehold, Crown land tenure titles and irrigation parcels, are held in the Torrens system, many benefits accrue to the state, such as:

(a) more efficient land administration;

(b) more efficient charting of land parcels;

(c) the total system is more suitable to form the basis of a land information system (L.I.S.);

(d) providing a sounder basis upon which to protect the environment, especially within the terms of the new N.S.W. Environmental Planning and Assessment Act, 1979; and

(e) all parcels in the state would be subject to the same legislation thus simplifying many administrative procedures.

5. Present Position in N.S.W.

5.1 Title Types

Under the Real Property Act, 1900 the Registrar General (R.G.) has the power to issue an "ordinary certificate of title" after a successful primary application or after the subdivision of an existing Torrens title. About 500 primary applications are processed each year by the R.G.O. It is estimated that there are 2.2 million Torrens titles in N.S.W.

Under Part 4A of the Act, the R.G. has the power to issue "qualified certificates of title". The qualification relates to the title and not to the parcel. Typically, the title is based on a single deed held for an existing lot on a suitable current plan registered in the R.G.O. It has been estimated that there are 60,000 such titles in existence in 1983. A reasonable plan of survey is mandatory for the issue of a qualified title.

In 1976, Part 4B of the Real Property Act was enacted to cope with those parcels for conversion that did not have suitable plans of survey defining them. The title would be issued qualified (as to title) and limited (as to boundaries) with the limitation being removed upon a satisfactory survey plan being lodged upon the first transfer for value. Part 4B has not been used to date, for the reasons outlined in section 5.6.
The stage has been reached whereby suitable parcels for conversion under the provisions of Part 4A are becoming fewer and the conversion rate is accordingly slowing down. The main reason for this is that many of the remaining plans showing parcels do not satisfactorily define the boundaries to the expected standard. The expected standard appears to have been derived from R.G.O.'s administrative practice of requiring "suitable plan of survey". This plan will usually have the characteristics of a full plan of survey in the manner of a deposited plan of survey that would be lodged in 1983. However, during the last decade, the R.G.O. has relaxed this requirement considerably.

5.2 Survey Requirements

A survey for title purposes is in two distinct phases: the actual field definition of the parcel by survey, and the description (graphically or otherwise) of that parcel definition. The role of the field survey is to locate and identify the parcels in question and also to demarcate or define such parcels. The role of the survey plan is to graphically describe the parcels so marked in the field as far as the location and definition are concerned. The underlying objective is to ensure the same land is not included in two titles, and to avoid gaps and overlaps. Problems or difficulties usually occur not in the ground definition but in the graphical or verbal description of that definition.

An essential requirement is that the survey description (graphical or otherwise) be adequate to enable the parcel to be identified unambiguously. In other words, the parcel can be identified relative to its neighbours. This is necessary to allow the parcel to be charted (mapped) on a suitable map to avoid the same land being included in the two titles. It is unusual for overlaps to happen physically on the ground, but not unusual in the description.

It should be stated that, if a legal boundary was permanently marked in the field by either natural or artificial means, then an adequate and acceptable description in N.S.W. would be a scaled plan showing the boundaries and describing the bounding features. Distances would not be necessary. They are useful for other purposes, particularly compiling the cadastral map, but not essential in describing the boundary. (This is consistent with the principle of "monuments over measurements"). This omission of distances only applies, however, if the boundary is well marked. The reality is that original boundary marks are often removed and need to be replaced. Consequently, distances are necessary within the present system to assist in the replacement of the monuments and for administrative purposes.

5.3 Boundaries of Old System Land

Boundaries of Old System parcels should be defined in exactly the same manner as parcels having a Torrens title. The boundary definition principles apply equally. However, in most cases there are no survey marks of any nature defining the Old System boundary. Consequently, long established occupations are usually deemed to represent the legal boundary, since occupations are considered to be the best evidence of where the boundary was originally marked. If the parcels have been well marked and referenced, with such monuments clearly in evidence, the boundaries are as "fixed" as in a recent survey. Old System land is
subject to the N.S.W. Limitations Act, 1969 for both whole and part parcels. The Torrens legislation specifically excludes part parcels from claims by adverse possession. On Old System land, it is possible for "fixed" legal boundaries to become unused by adverse possession. The de facto boundary may become the legal boundary after a claim by proper adverse possession.

Upon the sale of Old System land, it is usual for a metes and bounds description of the parcel to be included in the conveyance. Further, in N.S.W., it would appear that about 34% of these parcels are not lots on a survey plan available in the R.G.O. The deeds description for a parcel at the time of sale is then important. Upon a compulsory conversion without a new survey, the new Torrens title should give no more or no less than the deeds description in the conveyance drafted at the time of purchase.

5.4 Mapping Old System Titles Surveys

Because it has never been compulsory to register all Old System deeds, some Old System subdivisions have not been lodged in the R.G.O. Further, as the Old System uses people as its recording entity and not land parcels, it is difficult to locate parcels of Old System land on the R.G.O. maps. It is also difficult to map Old System deeds dealings, as they are written descriptions. Custom persists in the use of written descriptions in Old System deeds and in the Government Gazette in N.S.W., as compared with graphical descriptions in use in Victoria.

The R.G.O. maps do show by hatching or colour, land that is under the Real Property Act, 1900, though this is not always obvious. It is possible for land to appear to be Torrens title land on the R.G.O. charts but, in fact, be Old System.

5.5 Boundaries of Torrens Title Parcels

While it would appear that the mathematical description of boundaries is guaranteed in N.S.W. by s.42(1)(c), s.124(e) and s.126(1)(d) of the Real Property Act, 1900, in practice this is not the case, as evidenced by the following court decisions: James v. Stevenson (1893) AC 166; Dempster v. Richardson (1930) 44 CLR 576; and Hamilton v. Iredale (1903) 3 S.R. (N.S.W.) 535 (also see MOORE, 1968).

The majority of parcels held under Torrens title have been shown on a Deposited Plan (D.P.), have a graphical abutments description and location, and have bearings and distances along the boundary lines according to the Survey Practice Regulations, 1933, the Real Property Act Regulations, 1970, and the Conveyancing Act Regulations, 1961. The boundaries are regarded as being "fixed", especially if permanently marked by stable monuments. As noted in section 5.3 above, they may not move by claims under the adverse possession provisions of the Real Property Act, 1900.

It is usually not difficult to map Torrens parcels from a D.P., though this is not continuously undertaken by the R.G.O. Notes are made in the map margin referring to an uncharted D.P. The N.S.W. Central Mapping Authority's cadastral map sheets show the cadastral pattern as at the date of compilation. Subsequent changes are usually indicated by notes by the R.G.O. Any organisation which requires the current cadastral pattern must copy the latest D.P.s, the map, and plot the changes themselves.
5.6 Boundaries of Limited Certificates of Title under Part 4B of the Real Property Act, 1900

The provisions under Part 4B of the Real Property Act, 1900 have never been used by the Registrar General. Nevertheless, Part 4B introduces the concept of "occupational boundaries" in trying to solve the "suitable plan" problem. It failed for several reasons:

1. It introduced a new boundary concept.
2. It was complicated.
3. It generated much letter writing, decision making and record keeping for a short term process. It is labour intensive.
4. It forced a survey upon the vendor upon sale of the property who will gain nothing from that survey (s.28X(1) and s.28Z).

In order to discover whether any boundaries are not satisfactorily defined and to record a caveat under s.28T (4)(a), a survey is almost always needed. Similarly under s.28U, upon the adoption of an occupation boundary, a survey is all but necessary. With the benefit of hindsight, it would appear that the administrators of the Act had no clear idea of how they would use Part 4B because they never overcame the problem that they needed a new survey before it could be made to work. This, of course, worked against the overall purpose of this part of the Act.

6. Compulsory Conversion in Other Jurisdictions

It is instructive to examine selected jurisdictions that have been successful, or are having some success in their compulsory conversion programmes, from deeds registration to a registration of title system. From such an examination, principles may emerge by which N.S.W. might benefit. Jurisdictions examined include New Zealand, South Australia, Tasmania and England. Some of the points raised in this section have been alluded to by FRANCIS (1973), WILLIAMSON AND HOLSTEIN (1978) and ZWART (1980).

6.1 New Zealand

Using the provisions of the New Zealand (N.Z.) Land Transfer (Compulsory Registration of Titles) Act, 1924 (now Part XII of the Land Transfer Act, 1952), the District Land Registrars were given the power to bring all freehold land under the Act. This they achieved in 25 years.

6.1.1 Determining who has best title

At the time of the titles conversion (1925-1950), the District Land Registrars had the legislative backing to use similar methods to those subsequently adopted in South Australia (see section 6.2). It is assumed that, in order to find who had the best title, the title records would
have to be searched until a suitable conveyance was discovered. A "limited as to title" and "limited as to parcels" certificate of title would then have been issued. The local government rating records would have also been available to assist in this process.

6.1.2 Gaining a suitable plan in New Zealand

The Act gave the possibility of not only the qualification "limited as to title" being placed upon the title, but also the option of placing "limited as to parcels" upon the title, the latter limitation being used when the parcel under consideration was not the subject of a plan of survey. This meant that no action could be taken against the Crown for an error or omission in the description of the parcels of land (s.209). This opened the way for the best available plan to be used for compulsory registration without a special survey being obtained. The District Land Registrar's minutes were set forth, giving the defects of the title (but not of the parcel which, when rectified, meant an ordinary certificate could issue. The "limited as to parcels" qualification was removed upon the receipt of a suitable survey plan. No time limits or property value restrictions were placed upon the operation. The need for a survey was therefore effectively postponed until the user required one.

6.1.3 Systematic conversion

The process was carried out in a systematic manner on an area by area basis. As the land administration in N.Z. was split into twelve Land Districts, each Registrar had a manageable area with which to deal. N.Z. always had the policy of daily updates of its cadastral maps and the deed system land consequently would have been quite obvious on its maps.

In the years after 1924, parcels were converted compulsorily nearly always "limited as to title" and, if the parcel definition was doubtful, "limited as to parcels". The "limited as to title" was lifted automatically after twelve years (s.204), whereas the "limited as to parcels" qualification remained until a full survey was undertaken. The N.Z. Practice Handbook states at clause 1.2.2 that "boundaries of a limited (as to parcels) title cannot be marked or determined without a full survey for removal of limitations".

There are still many thousands of "limited as to parcels" titles in New Zealand; there is virtually no Old System land, save for forgotten access strips and the like.

6.1.4 Conclusion

In summary, New Zealand converted using the following provisions:

1. By introducing the "limited as to title" (qualified title) concept, this meant that no guaranteed titles were issued until twelve years had expired after issue.

2. By relaxing the requirement for an immediate full precise survey by introducing the "limited as to parcels" concept, the survey was therefore postponed until the proprietor's situation demanded he or she needed one.
3. The conversion process was then carried out in a systematic compulsory manner, area by area.

6.2 South Australia

This state commenced its systematic compulsory conversion programme in 1945 under the Real Property (Registration of Titles) Act, 1945. The Act was based upon New Zealand's 1924 legislation, with the major difference being that the South Australian (S.A.) Registrar General was required to give notice of his/her intention to convert (s.4(1) and s.6(1) Real Property Act).

6.2.1 Determining who has best title

The names of the current proprietors are gained from the records of the local government body and the Crown Tax Office and the search is made forward or backward, depending on the circumstances.

The Registrar General is bound to give notice of the conversion as required by the Act.

6.2.2 Gaining a suitable plan in S.A.

The Act enables ordinary titles to be issued as if a primary application had been made for titles to be issued "..... limited as to description of land or as to title, or as to both description of land and title" (as. 8 and 9).

Therefore, the Registrar General has the provisions to convert all alienated land without further survey. Section 22 protects the Registrar General against damages in this regard: "No action for the recovery of damages shall lie against the Registrar General by the registered proprietor of land comprised in any certificate of title limited as to description of land, or by any other person by reason of any error or omission in the description of the land comprised in that certificate of title".

Up until 1977, about 2000 limited certificates of title had been issued (RAY, 1977) but apparently very few of these (less than 2%) limited as to description. The process was described by Ray as: ".... the Principal Drafting Officer will use all data which he can find to assist in identifying the land. Upon this data he determines whether the land is sufficiently identified so as to dispense with a survey, or, whether he requires a fully certified survey to be submitted". It may be observed that, while S.A. has the necessary legislation to postpone a full survey, it does not take a "business risk" approach to the task of conversion, which means S.A. may still be converting some remaining Old System parcels in the year 2000.

6.2.3 Systematic conversion

S.A. adopted a systematic approach to its conversion. It started at the borders of the State and worked inwards toward Adelaide. This "plan driven" system utilised "parish" plans (in fact, their District Council areas) and for each plan area a list of parcels of Old System was compiled by the searchers.
6.3 Tasmania

Tasmania has about 40,000 Old System titles left to convert. It has used the following statutes to compulsorily convert Old System land to Torrens title. Some of these Acts are:

3. Conveyancing and Law of Property Act, 1884 (s.84D).
5. Forestry Act, 1977, s.4 (12N).

At present, Tasmania is converting at a rate of about 1600 titles per year, mostly driven under the Deceased Persons' Estate Duties Act, 1978.

6.3.1 Determining who has best title

Tasmania takes action mainly with a conveyance. Therefore, this would provide the basis for the name of the current owner for notices and for the issue of title. The Land Titles Act, 1980 allows the issue of either an "ordinary" or "qualified" certificate of title.

6.3.2 Gaining a suitable plan in Tasmania

In several Acts, the Recorder is given the power to dispense with a full survey (for the time being) and accept the deeds description. The deeds description may be actually photocopied or typed onto the Torrens title and a plan or sketch compiled from various sources to supplement the verbal description. It is stated that the plan or sketch is "... by way of illustration only" (s.32(4) Land Titles Act, 1980). The Acts (e.g. Homes (Movable Dwelling Units) Act, 1976 and Forestry Act, 1977) have similar provisions to absolve the Recorder of liability for land description errors if the land is described by a metes and bounds description. These provisions are:

"(i) Where by this paragraph the Recorder is required to bring any land under the Land Titles Act, 1980, and no survey such as he could require under section 162 of that Act is available, the land may be described on the certificate of title by means of a description by metes and bounds instead of by reference to a plan.

(ii) Where, in any certificate of title registered pursuant to this paragraph, land is described by means of a description by metes and bounds -

(a) no action shall be brought against the Recorder or the assurance fund constituted under the Land Titles Act, 1980 by reason or in respect of any difference between the area of the
land or the position or dimensions of the boundaries stated in
the certificate of title and the actual area, position, or
dimensions as found by measurement on the ground;

(b) a solicitor who acts for any party taking or proposing to
take any estate or interest in the land from the registered
proprietor of the certificate of title is not under any duty to
check that the description in the certificate of title agrees
with the description in the antecedent document of title; and

(c) upon such evidence of boundaries as he deems sufficient,
the Recorder may cancel the certificate of title and replace it
by a fresh certificate of title describing the land in
accordance with that evidence."

Section 32 of the Land Titles Act, 1980 also gives similar powers to the
Recorder.

In effect the need for a full survey is postponed.

6.3.3 Sporadic approach in Tasmania

The conversion is being driven by several provisions. It is a "dealings
driven system" rather than a "plan driven system".

The Deceased Persons' Estate Duties Act, 1978 conversion process was
responsible for 625 conversions in 1981-82, while the Land Titles Act
instigated about 180. In 1983, if the land value is more than $40,000,
then a full primary application is necessary to convert, otherwise a
qualified title may be issued. It has been suggested that some
proprietors undervalue the value of their land in order to get a qualified
title and, consequently, free conversion.

6.4 England

The compulsory registration of title system in England now operates in
areas where nearly 75% of the population live. It is planned to extend
this to the whole of the country by 1985 (Crane, 1981). In 1979, there
were about 417,000 first registrations and 2.25 million transactions on
the register.

6.4.1 Best title in England

The system of conversion in England is driven by dealings on the latest
sale. It is not activated by the Land Registrar but by the vendor or
purchaser. The difficulty of discovering the owner does not arise as
he/she is by law forced to apply for title conversion upon a transfer.
6.4.2 Gaining a suitable plan in England

English titles are based on topographical maps produced at a scale of 1:1250 for urban areas and 1:2500 and 1:10,000 for rural areas. In many cases, an abstract from the map is made, and perhaps supplemented with additional graphical data, and attached to the title. Before registration in an area is made compulsory, the topographical maps for that area are revised.

The boundary concept in England is very similar in nature to New Zealand's "limited as to parcels" system. The boundaries on a property are most likely well known by the owners and may be fenced and subject to the Limitations Act. To define them precisely, a visit to the property by a solicitor and surveyor would be necessary, but this is hardly ever undertaken. The description of those boundaries is only to illustrate what will be found on the ground.

6.4.3 Systematic/sporadic conversion

The system followed in England is that areas are declared compulsory by an Order in Council and thereafter transfers in that area must be registered within two months of sale. The "user pays" principle applies and the consequences of non-registration are the possible loss of the estate or interest not so registered. It is a "dealings driven system" within defined areas. It would appear that the Land Registrar would be bound to register every suitable title delivered to him and would employ appropriate staff to handle the workload.

7. Basic Problems and Alternatives

From an analysis of the "Basic Considerations of Registration of Title", as described above in Section 3, and of the procedures used in other jurisdictions given in Section 6, it is apparent there are three major problems in compulsory conversion. They are:

1. To discover who has the best title to the parcel under consideration and whether to issue an ordinary, qualified or possessory certificate of title to that person. In a compulsory programme a name and address must be found for issue of notice and of title.

2. Gaining a "suitable plan" of the parcel under consideration that shows the location and definition of the parcel. The parcel must be able to be plotted on a cadastral map.

3. How to activate the system of compulsory conversion, and whether to use either a systematic or sporadic process or both, to "drive the system". These have been labelled the "plan driven approach" and "dealings driven approach", respectively.
7.1 Type of Title

The original Part 4A programme was capable of issuing qualified certificates of title only. It is quite obvious that, with 60,000 qualified certificates issued, the title holders are satisfied and it is satisfactory to the R.G.O. for many reasons. The R.G.O. is not required to search back to the root of the title, not required to guarantee title until at least six years or more have passed, and generally not required to lift the qualification until a dealing is received. This is a most satisfactory situation. It may be observed that the Registration of Title system does not definitely require the guarantee of title for its successful operation. The part 4A programme has, however, operated well in N.S.W. considering the 60,000 qualified titles already issued.

In 1976, the Act was amended to allow the R.G. to issue an ordinary folio under the Part 4A provisions (s.28EA). N.S.W., like many jurisdictions, is therefore able to issue ordinary certificates under its compulsory provisions. Others able to do so include South Australia, Tasmania, Victoria, England, New Zealand and the A.C.T. The provisions in N.S.W. are used for the issue of Torrens titles for N.S.W. State Government departmental land and Commonwealth land. These titles should be sensibly issued "ordinary" as far as title is concerned and, if necessary, "limited as to parcels" if a suitable plan of survey is not available.

7.2 Determining Who Has Best Title

Discovering who has the best title to the parcel, the subject of the conversion, is a function of the system being used to "drive" the conversion programme, and of the amount of searching the R.G.O. is able financially and deems necessary, to undertake. For a qualified title, it is common to accept one recent deed (mortgage or conveyance) as evidence of a person's title. In a "retained deed" environment, this deed is easily acquired and, consequently, the person with the apparent "best title" is automatically determined. This approach also determines to whom notices should be delivered and the title issued.

This is not the case with the "plan driven approach", where a suitable deed must be requested from the proprietor after a search in the R.G.O. and Land Tax Office for the name of the current proprietor. This request may well be ignored for many justifiable reasons.

With the "qualified" title legislation available, it is not necessary to undertake any more searching if a satisfactory deed and satisfactory statement of title are obtained.

Notice and publicity are two supporting features of a "qualified" title. Notice to the person with the apparent best title serves many purposes, one benefit being that person(s) have the opportunity to assist by either replying or by their inactivity, implying problems with the title and thereby stopping its issue.
7.3 Gaining a Suitable Plan

The successful compulsory conversion schemes have all dispensed with the need for a precise survey to be carried out before registration. They either postpone the survey until the owner's circumstances demand it, as in New Zealand, or permanently, as in England. In both New Zealand and England, charting is very important, as is a diagram illustrating the parcel on the title. This is one of the basic considerations mentioned in section 3.

In South Australia, the process has been proceeding at a steady rate for 38 years and demonstrates, perhaps, the consequences of a most careful approach to both title and survey aspects. Cadastral mapping has obviously been important in South Australia as they have always used a "plan driven approach". In South Australia, they have not used their "limited as to description" provisions regularly, preferring to investigate and, if necessary, rectify each parcel's survey as it is being registered.

Tasmania, in some instances, includes the written deeds description with a sketch or diagram on the title. A survey plan is not always available in the Registrar General's Office. The provisions for limiting the liability of the Registrar General if a deeds description is used are clear and sensible. The Tasmanian provisions seem to be working but the administration appears to be adopting a careful view of the conversion process.

It is apparent that the New Zealand provisions have worked well in practice.

The question arises that, if the registered proprietor cannot afford the expense of a new survey and the N.S.W. R.G.O., is forced to accept the deeds description, perhaps other sources for a diagram might be used.

As many quasi-government organisations in N.S.W. involve themselves with cadastral mapping, it is important to examine what they have available. These organisations are:

1. Metropolitan Water Sewerage and Drainage Board.
2. Hunter District Water Board.
5. The Valuer General's Department.
7. Local Government Councils.
8. Sydney and Prospect County Councils.
It is also useful to contemplate the use of the Central Mapping Authority's 1:4000 scale orthophoto series for this purpose.

Consideration should be given to the requirements for a parcel description within a "limited as to parcels" title. It would appear that, in such a case, only a sketch of the parcel is required. This sketch, however, should preferably look like the land described in the deeds description as used in the latest deed. This will surely limit the use of pictorial data from many of the above sources. Whatever the case, the legislation and the diagram should clearly state that the sketch is "for illustrative purposes only", that it may be superseded by another plan or sketch, and that the sketch does not restrict, govern, control or enlarge the deeds description. (See Tasmania's Land Titles Act, 1980, s.32(4) - s.32(6)).

7.4 Methods of Driving the Conversion System

In the jurisdictions inspected above, two main methods of driving the conversion process are used. They are the "systematic" and "sporadic" approaches. In N.S.W., the R.G.O. has called these the "plan driven" and "dealsings driven" approaches, respectively.

It is apparent that the method used is dependent on local conditions, such as: the importance and currency of charting; the methods that have been adopted for voluntary primary applications (be they systematic or sporadic); and the history of land settlement.

The N.S.W. R.G.O.,'s office has traditionally run in a "user demand" environment. Primary applications have been voluntary and therefore each is isolated from the next application. Subdivisional conversions have been on an isolated basis as have other parts of the Part 4A conversion programme. It would appear that the office is probably set-up for the isolated approach, suggesting a "dealsings driven approach" to drive the conversion programme under consideration. Many "methods of accelerating conversion" are given by GRIFFITH (1974).

England converts on a conveyance compulsorily submitted to the Land Registrar for that purpose while, in Tasmania the Recorder takes action on a conveyance registered under the deeds registration system.

The following are arguments for and against both "systems".

7.4.1 Arguments for a "dealsings driven approach"

1. Upon a conveyance, a "new" proprietor is on the scene and their title has been proved by a recent search. Their solicitor, and possibly a mortgagee, have professionally taken a responsible risk with the title and therefore the Registrar General is more confident in accepting the new owner as having the best title to the property under consideration. In the 60,000 Part 4A conversions to date, no court actions have resulted.

2. Arising from Point 1, the "dealsings driven" approach does not force an owner to consider doing something with the land that he or she did not intend at the present time. Problems are not "stirred up"
that possibly would not have arisen if time was let to run. Only those who are dealing with their land will have title converted.

3. As the State is not undertaking a full search of the title, but accepting one deed only, the financial burden of a search is left to the individual. The State's role and cost is therefore less. The State also appears to be less bureaucratic.

4. A search is not necessary to ascertain who is the owner for notices and for the issue of title.

5. A reasonable and recent property description may be available with the conveyance or mortgage, and perhaps an identification survey may be available to assist with the charting of the lot and in the drawing of a sketch, if necessary.

6. It would take advantage of the fact that each property is sold, on average, once every seven years, with some taking as long as 25 years to "turn over". With about 40 suitable parcels in deeds being registered every day, it means, theoretically, that in one year about 10,000 parcels may be available to convert (based on November, 1982 figures). Statistically, it should be possible to convert the vast majority in 25 years.

7. Less skilled staff may undertake the conversion when performed in this manner.

8. In the short-term, it appears to be the cheaper approach. It involves less searching and does not involve the expense of finding an owner.

9. The N.S.W. R.G.O. is organised for this method of conversion.

7.4.2 Arguments against a "dealings driven approach"

1. It is an isolated approach and therefore none of the benefits of proximity are available to speed the conversion process. These apply not only to title aspects but particularly to the survey aspects.

2. It creates a charting problem in that much searching for the appropriate chart on different charts of N.S.W. is required for the same day's lodgements.

3. As it is not a systematic approach, it means there will be parcels of Old System land all over the State not converted even after 25 years of Old System conversion.

4. A conversion programme should convert all land onto the register. As N.S.W. State owned land is not subject to dealings, it would not be converted under a "dealings driven" system. A separate conversion programme would have to be undertaken for this land.

5. Under this system, it is highly likely that the R.G.O. will never convert all Old System titles.
7.4.3 Arguments for a "plan driven approach"

1. Map by map searches could be undertaken to convert all non-Torrens system parcels of land to Torrens titles. This could include freehold Old System titles, Crown land tenure titles, State departmental and corporation land, irrigation tenures, and state reserves. Once completed, the area is free of Old System land.

2. In order to complete the Register, a "plan driven" approach will have to be undertaken sooner or later in order to achieve a "complete" Torrens Register. It is only with a complete Register that a true land information system can be introduced into N.S.W.

3. Benefits occur from working in the same area thoroughly. The same Crown Grants, same charts, same plans of survey are used, if any are available. The person undertaking the task would build up a considerable amount of useful local knowledge that would help in other title conversions.

4. One may choose to convert in areas where the best charts are available, and plan the up-grading of the maps where poor mapping exists. The process may be carried out in conjunction with the upgrading of the cadastral maps.

5. Arising out of point (4), the R.G.O. may consider the cadastral maps to be so inadequate in one area that a complete re-survey and mapping may be undertaken. This would be warranted, especially if many Old System parcels were present in the area.

6. Whole areas where some particular economic venture is being contemplated or undertaken would be able to be converted upon demand (e.g. The Hunter Valley).

7.4.4 Arguments against a "plan driven approach"

1. By implication, the method demands the existence of good maps before the conversion can take place. Mapping is not satisfactory in N.S.W.; it is a problem and demands attention. A complete review of cadastral mapping procedures should be undertaken before commencement.

2. It is an expensive approach as far as staff resources are concerned, seeming to cost in the short-term at least twice as much as a "dealings driven" system.

3. It is a "State-pays" system which has never been the policy in N.S.W. The state will have to make a small investment if it desires a complete Torrens register.

4. It demands skilled staff able to search from any starting point in a chain of title. It also needs skilled staff to be able to interpret old charts and plans, and deeds descriptions.
5. The R.G.O. must search to find the current owner and, once found, an attempt must be made to find his/her address via the Valuer-General’s records, the Land Tax office, or the electoral rolls. In N.S.W., this is difficult and time consuming.

6. The owner is forced to do prove their title to the land when he/she may not be ready. The State is acting as a catalyst and it may “stir-up” trouble where none exists at present. Time may resolve any difficulties which exist but are not immediately apparent.

8. Recommendations

8.1 Continue with the Qualified Title Approach

The success of the Part 4A approach is obviously acceptable to the R.G.O. and the public; it should continue. The present Part 4A system allows the conversion based on either a deed or upon subdivision.

It is flexible, well known and should remain in its present form. It is apparent that there is little public use of the provisions that allow the issue of ordinary titles under Part 4A, but it is quite obvious that there will be occasions when an ordinary title will be issued with a “limited as to parcels” qualification (e.g. Government land). No court actions have arisen out of the 60,000 such titles issued to date.

8.2 Legislate for a “Limited as to Parcels” Qualification

It is recommended that N.S.W. implement legislation for a “limited as to parcels” qualification as set out below:

1. The primary purpose considering present fiscal constraints is to bring the parcel onto the Torrens register with a minimum of expense, at the R.G.O.’s convenience, and with minimum risk to the R.G.O. This means giving the proprietors of the Old System parcels no more or no less legally, after conversion, than they had before. The advantages flow to both parties after the limitation and qualification are lifted.

2. The underlying aim of the “limited as to parcels” qualification is to postpone the need for a survey until such time as the proprietor or future proprietors deem it necessary. The R.G.O. will accept any dealing, save for some subdivisions and for strata development, without the removal of the qualification. No new boundary type is being created, nor new situations other than that existed at the time of conversion. The title, after the “qualification” has been removed, will guarantee proprietors of estates and interests, but will not guarantee the parcel and boundary information.

3. The survey will still be needed in time, but not on conversion and not until the proprietor or future proprietor requests it or is developing the property in such a way that a full survey is necessary. The survey profession is not being disadvantaged nor will
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it be advantaged. Nothing is happening save for the parcel being
placed into a different but more efficient book-keeping system.
Society, in general, will benefit. The State will certainly benefit.

It is desirable that the use of the Deeds Register for land be
discouraged. This can be assisted by copying the deeds description
(if possible) onto the new folio of the Torrens register. Also,
easements, covenants, Crown grant limitations and other interests
should be shown on the new folio as far as is practicable.

A sketch or diagram of the parcel is necessary on a plan that is able
to be referred to in the title folio, which will, of course, be
issued within the computer-assisted title system. It is important
that a sketch be done, as one of the major differences between Old
System and Torrens titles is that Old System indexes on people;
Torrens on the parcel. Neither, for many good reasons, use street
addresses. The best index for a parcel is a graphical one. Charting
is therefore mandatory. It is tempting to consider not having a
sketch or plan at all. Although it is possible, this would be
counter productive for many obvious reasons, the main one being its
use as the main index to the Torrens system.

The legislation must protect the R.G.O. from any action when using
this qualification in a manner similar to Tasmania's provisions (see
especially s.32 Land Titles Act, 1980). It is clearer and more
useful than New Zealand's s.201 and s.209, Land Transfer Act, 1952.

To remove a "limited as to parcels" qualification, a full survey
should be required. This would be similar to a survey for a primary
application. To all intents and purposes, it should be no different
to any other survey carried out under the Survey Practice
Regulations. The R.G.O. should be flexible in allowing residue lots
to remain "limited as to parcels", if necessary. In New Zealand, the
survey plan for removal must show all abutments, the current titles
and proprietors, and if possible, their consent to the boundary
definition would be attached to the plan report. It is at this time
that problems of parcels and part possession of parcels are resolved.

The relationship between the sketch or plan and the deeds description
should be resolved firmly, bearing in mind that a qualification
applies and that mistakes are able to be corrected as discovered.
The plan or sketch must not be able to override the deeds
description, whether contained on the Torrens title or left in the
design system (see s.32(5) Tasmanian Land Titles Act, 1980). Tasmania
uses the words "... and being more particularly described in
Conveyance ... ."

It is apparent that, out of the 41 deeds submitted daily to the
R.G.O., which are suitable for conversion (i.e. separate parcels of
alienated land), 15 will not have unique identifiers. If it is not
possible to immediately compile a deposited plan from the deeds
description, thus achieving a unique identifier, the deed should not
be retained, even though this is against one of the conversion
principles - convert all suitable deeds. If the plan drawing delayed
the issue of the converted title, the deed may become out of date and
the title issued to the wrong person. The figures used in this paragraph were obtained from an R.G.O.'s Working Party project that used five days of dealings in November, 1982.

8.3 Adopt a "Dealings Driven Approach"

It is recommended that a sporadic approach, the "dealings driven system", be adopted to drive the conversion programme for the following reasons:

1. In the present economic conditions, this approach offers the best return for the least outlay. Staffing costs of such a project would be less than for a "plan driven approach".

2. The history of the R.G.O., in all its dealings, has been to utilise a sporadic approach in most matters. The pace at which it works depends on the demands placed on it by the users. The Office has been set up to cope with this demand.

3. Both systems have the same parcel description problems, with perhaps the "dealing driven approach" offering the most potential in that the description may be more recent and may be accompanied by an identification survey.

4. The system demands less searching than the "plan driven approach", and recourse to other organisations' records of ownership will usually not be necessary.

5. With the recommended system in a retained deed environment, the R.G.O. has, in one step, captured the latest deed, the new and old owners' names, their addresses for notices via the electoral roll (or via their solicitors), a possibility of obtaining, if required, an abstract of title and an identification survey, possibly a discharge of mortgage and a new mortgage, and possibly an investigated up-to-date parcel description that might mention the current easements and covenants. The "plan driven system" offers none of these advantages.

6. The system is not seen as being bureaucratic in that the initial action is being taken by the vendor/purchaser or mortgagor/mortgagee. The R.G.O. acts upon their action of registering a deed. The proprietors are in action with their land and it comes as no surprise that a government agency wishes to register a transaction in a slightly different way than they may have expected.

7. It is estimated that it would take about 25 years to convert the vast majority of the remaining Old System titles if every Old System dealing of land was converted on a daily basis.

It is recommended that dealings registered for Crown land tenure "title" are also converted under the same programme since:

1. Such dealings in N.S.W. number about 16 per day and most have unique identifiers.
2. The appropriate legislation is in existence, with the only hold-up being the machinery to undertake the task.

8.4 Prepare for a Parallel "Plan Driven System" Approach

It is recommended that, in more favourable economic times, a system be implemented of systematically inspecting every cadastral map and plan in the State, with a view to placing all parcels onto the Torrens register. The "dealing driven system" would, of course, still be operating.

Before commencing such a project, the machinery for converting all land should be available, be it Crown land, State government departmental land, reserves, parks, railway land and roads.

The justification for such an approach is as follows:

1. In order to capture every parcel and hopefully close the deeds registration books for land purposes, it would seem that a systematic plan driven conversion is eventually necessary. By this process, the capture of land held in families and dormant land would be achieved.

2. The process would improve the State's cadastral mapping and, in fact, could be undertaken with a general upgrading of the whole cadastral mapping programme in the State. The benefit of this would be an up-to-date map showing the current cadastral pattern at all times, best executed in a digital cadastral database maintained by the R.G.O. If it was done once in the R.G.O., then other agencies, such as the Metropolitan Water, Sewerage and Drainage Board, the Sydney County Council, Telecom, and the community as a whole, would not have to undertake the same task as at present.

3. The adoption in the future of a parallel "plan driven approach" involving the conversion of all land would aid the introduction of a state-wide land information system (L.I.S.).

8.5 Publicity and Notice to Proprietors

8.5.1. Publicity

The new provisions for the "limited as to parcel" qualification would not need wide public publicity, but wide professional publicity.

The publicity given to the Part 4B provisions in 1976-1977 appear to have achieved little public response. Further, as the R.G.O. has the power to act, and not the public, as well as the fact that it is "dealing driven" system, wide publicity is not necessary.

Three groups of professionals should be notified and informed. They are solicitors, estate agents and surveyors. The solicitors are the most important. They should be encouraged, with all Old System dealings, to submit as much information as possible to aid in the conversion. The lodgement of an "identification survey", if available, should be encouraged and mentioned on a revised deeds lodgement form.
8.5.2 Notice to proprietors

It is recommended that a method be found to allow conversion of a title without receiving a reply from a s.28E notice under the Real Property Act, such notice being used to inform a proprietor that the R.G.O. wishes to issue a "qualified" title for the respective parcel. This will allow conversion to take place on all deeds received and on all deeds investigated. No searching of title should be wasted because of the lack of return of a notice.

New Zealand, in its conversion programme, did not have to give notice. The Queensland R.G.O. has provisions whereby lack of reply to notice means that the title is issued in the name of the Queensland Public Curator and the local limitation of actions comes into effect, with certain extensions possible.

A compromise is to issue the title in the name associated with the latest deed but, because of the lack of return of notice, the title should be sent to the Public Trustee and the action recorded in the deeds register. The R.G.O. is protected by the conditions for removal of the "qualified" title caution being able to be removed after a period of six years or more upon the receipt of a suitable dealing. The time, perhaps, may be able to be extended in those circumstances, as in Queensland.

8.6 Carry Out an Investigation into Cadastral Mapping

It is recommended that the R.G.O. instigate an inter-departmental investigation into the improvement and rationalisation of cadastral mapping in the State of N.S.W. The Inter-Departmental Land Information System Committee would be a very worthwhile vehicle for such an investigation.

The aim should be to coordinate efforts in cadastral mapping between the Registrar General's Office, Crown Lands Office, Central Mapping Authority, Metropolitan Water, Sewerage and Drainage Board, Sydney County Council, Prospect County Council, Hunter District Water Board, Telecom and the local councils. If N.S.W. is to have an efficient state-wide L.I.S., there must be only one organisation carrying out and updating cadastral mapping. This organisation is logically the Department of Local Government and Lands, which is responsible for the checking of plans, their storage, and, indirectly, their content.

9. Summary

The importance of the two parts of a Torrens register has been stressed throughout this paper:

1. The title aspects of the land.
2. The parcel or survey aspects of the land.
The primary index for the Torrens system is parcel based. The new computer-assisted register will have a parcel based identifier and it will be the main index medium.

The need for a "limited as to parcels" qualification is necessary in N.S.W., and it should be applied in a manner similar to New Zealand, together with some of the provisions as used in Tasmania.

The importance of cadastral mapping and charting has been mentioned many times through this article. It is essential that the R.G.O. continue to recognise its importance and that steps be taken to ensure that it is carried out in a more satisfactory manner. Duplication in cadastral mapping is extensive in N.S.W. and there is great scope for savings to be effected. The public has a right to expect a more cost effective programme.

In these times of economic difficulties, it is apparent that the best way to drive a compulsory conversion programme is to use a "dealings driven system". This should ensure, if all daily dealings are converted, that the vast majority of the 90,000 remaining Old System titles are converted in 25 years.

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