

NOTICE TO SURVEYORS T5/2000

SCHEDULE OF INTERESTS AND NOTIFICATIONS

Under SmartRegister plans prepared by surveyors will have an increased role as the plan will be used to provide the graphic for the title. Deposited plans will need to mirror (reflect) the Register. It will therefore be necessary for surveyors to bring forward all existing easements and other interests of a spatial nature (excluding mortgages and leases) onto new plans. This change has been outlined in SmartRegister presentations to the survey industry over the past year.

To assist in identifying all the interests on a plan surveyors are to now show the details in a “schedule of interests/notifications”. The schedule is to contain a dividing line where all interests/notifications being brought forward are listed chronologically above “the line” and all new interests/notifications are to be shown below “the line” together with any interests being modified. A parent title under SmartRegister will contain all the “live” interests affecting that title in the Second Schedule. Surveyors will need to identify the best source for the spatial information of each interest and accurately plot the interests on the plan and include the item in the “schedule of interests/notifications”.

The heading of the schedule should always be “INTERESTS AND NOTIFICATIONS” regardless of whether it may contain only interests or notification(s).

Implied rights-of-way (refer Section 167A of the *Transfer of Land Act 1893*) that have not been extinguished must be brought forward onto new plans and listed in the schedule of interests/notifications. The lots within the subject of the plan that have an implied benefit of the easement are to be shown in the schedule under “Benefit To”.

Where a Part IVA of the *Transfer of Land Act 1893* “Short Form” easement is being **created on a new plan of subdivision** (with or without an instrument) its purpose must be described as per the relevant easement type listed in Column 1 of Schedule 9A of the *Transfer of Land Act 1893*. Rights of carriage-way created under Section 136(C) of the *Transfer of Land Act 1893* must be described in the “schedule of interests/notifications” as “Rights of Carriage-way”. Any Part IVA easements that do not use Schedule 9 or

Schedule 9A must be described in the “**schedule of interests/notifications**” as “Easement” only.

The *Town Planning and Development (Easement) Regulations 1983* require Section 27A easements on plans to be labelled with the appropriate regulation number within a circle and the associated purpose shown. It is preferred that all **other** easements be labelled with a capital letter. The use of labels like “E-1”, “E-2” etc is also acceptable. The labels used in the graphic area of the plan are also to be shown in the “**schedule of interests/notifications**”.

Easements that are **created** in documents and depicted on plans must be referred to in the schedule as “Easement” only.

Easements/Restrictive Covenants created pursuant to legislation must include a reference within the schedule to the section of the Act (or Regulation) under which they are created.

Where Instruments are used to define a "term", an expiry date should be specified in the “comments” column.

Where a parcel of land is being subdivided, it is important for the surveyor to ensure that the **burden of existing** easements and covenants that affect that parcel of land (ie. **within the subject of the plan**) are shown in the schedule. A surveyor must not seek to interpret or modify the endorsement that is shown on the existing title and instrument that is being referred in the schedule on the plan.

It is only necessary to bring forward (into the schedule) a **benefit to land within the plan** if that benefit has a spatial nature that needs to be depicted on the plan. An example of a situation where a plan would need to show a benefit over land inside the plan is where a new lot contains land that was formerly within two previous lots and only one of those former lots had a benefit that is to be brought forward. Implied easements under Section 167A of the Transfer of Land Act 1893 are also an example of a situation where the benefit needs to be shown in the schedule and the appurtenance of the private right-of-way needs to be depicted on the plan.

It will not be necessary to bring forward onto the schedule any **benefit to land outside the plan** created by existing easements and covenants where the burden of the easement or covenant affects land inside the proposed plan. A reference is to be made in the schedule to the relevant parent document. Where subsisting benefits are associated with easements and covenants in gross, the beneficiary (as recorded in the original document or plan) must be shown.

If an existing easement or covenant burdening land outside the plan is being **modified**, in a spatial manner, by a document to be lodged with the plan, and a benefit (of a spatial

nature) inside the plan needs to be identified, the benefit of that easement or covenant needs to be shown in the schedule on the plan (below “the line”).

Table 1: Interests to include in Schedule

TYPE	WHERE	SHOW ON SCHEDULE	COMMENTS
Existing Burden	Inside Plan	Yes	
Existing Burden	Outside Plan	No	Refer to original plan or document if necessary
Existing Benefit (Burden Inside)	Inside Plan	Only if Spatial Element in graphic (ie. sketch in paper title, document or previous plan)	
Existing Benefit (Burden Inside)	Outside Plan	Only if Easement or Covenant in Gross	Refer to original plan or document if necessary
Existing Benefit (Burden Outside)	Inside Plan	Only if Spatial Element in graphic (ie. sketch in paper title, document or previous plan)	Eg. Benefit to only part of new lot. S167A Implied Easements also
Existing Benefit (Burden Outside)	Outside Plan	N/A	
New/Modified Burden	Inside Plan	Yes	
New/Modified Burden	Outside Plan	N/A	
New/Modified Benefit (Burden Inside)	Inside Plan	Yes	
New/Modified Benefit (Burden Inside)	Outside Plan	Yes	
New/Modified Benefit (Burden Outside)	Inside Plan	Only if Instrument Lodged with Plan	Would require a plan for land being burdened as well
New/Modified Benefit (Burden Outside)	Outside Plan	N/A	

The schedule of interests/notifications can be placed anywhere within the graphic area of a plan. Where plans contain many interests/notifications it may be advisable to place the schedule on a separate sheet for that plan. A link should be shown in the schedule to the plan sheet(s) that shows the relevant interest and/or affected lots.

Notifications under Section 70A of the *Transfer of Land Act 1893* and Section 12A of the *Town Planning and Development Act 1928* are to be included in the schedule. Lots burdened by the notice are to be shown but the “benefit to” column is to be left blank.

Land vesting in the Crown under Section 20A of the *Town Planning and Development Act 1928* is to be noted at the end of the schedule.

Surveyors should avoid overcrowding of the graphic area of a plan as DOLA has to also place certain statutory endorsements on the plan and overcrowded plans are more difficult to comprehend. In some situations it may be worth placing all the graphic representations of the easements and covenants on a separate sheet of the plan, together with the schedule of interests/notifications.

Where easements, covenants and notifications (either new or existing) affect only a portion of a lot being created, the plan must show sufficient dimensions to unambiguously identify the land affected.

The attached plan examples indicate the new requirements.

IAN HYDE
REGISTRAR OF TITLES

29 December, 2000
Att.