

NOTICE TO SURVEYORS T1/2001

EASEMENT PLANS

The removal of easement sketches from Certificates of Titles has required a review of procedures associated with the lodgement of easement sketches in documents.

“Easement Only” plans (using the “deposited plan” format – refer Notice to Surveyors T1/2000) are to be lodged by surveyors where;

- a new easement in gross is to be created in a deed,
- an existing easement in gross is to be modified by a deed, and
- a private easement being created or modified by a deed is of sufficient complexity that it requires a survey for its spatial extent to be defined.

A simple private easement that does not require a survey may still be described by a sketch in a document provided it (the sketch) is unambiguous and meets DOLA’s registration requirements for easement sketches.

It is not possible to create a short form easement under Part IVA of the *Transfer of Land Act 1893*, or an automatic statutory easement under section 27A of the *Town Planning and Development Act 1928*, on an “Easement Only” plan.

The “Easement Only” plans are to be regarded as subsidiary to the parent deed. Where a deposited plan is lodged it is important that the deed does NOT include a sketch of the easement. It must refer to the lodged deposited plan. The process is similar to the current process under Part IVA of the *Transfer of Land Act 1893* where a deed is used in conjunction with an easement or covenant depicted on a subdivisional plan.

It is essential that the easement deed firmly links to the “Easement Only” deposited plan. Plans can be lodged before deeds are prepared to allow the relevant plan number to be referred to in the deeds. Alternatively, plan numbers may be pre-allocated by DOLA to allow for preparation of the deed(s) and simultaneous lodgement of the deed(s) and plan(s). It is strongly recommended that the lodgement of plans be closely aligned to the signing of the deed to allow for any last minute changes.

Surveyors should allocate version numbers to plans to provide traceability on any changes made to plans as a result of re-negotiations between the parties before registration of the deed. It is critical that the plan’s version number be specified in the signed deed. All parties should retain a copy of the signed deed and a copy of the final version of the “Easement Only” plan.

If required, an “Easement Only” plan may be initialled by the owner at the time of signing of the deed but generally this is seen as an unnecessary step.

Where extensive easements in gross are being created, surveyors are to avoid preparing plans with more than 4 sheets. In such cases the project should be divided into manageable parts.

Surveyors are to sign the Regulation 54 certificate on "Easement Only" plans. The certification only applies to the position and extent of the easement; it does not relate to the position of the asset or structure within that easement.

All unnecessary boxes in the title block (ie. "Former Tenure", "Western Australian Planning Commission" and "In Order For Dealings") are to be struck through by a single line. The plan "Approval" box may be struck through where the survey is in accordance with the regulations and no approval under regulation 26A is required. "Easement only" plans are to be lodged in the normal manner and surveyors are to lodge CSD files (that conform with the requirements set out in the Survey and Plan Practice Manual) with such plans. It is essential that plans be lodged before, or simultaneously with, the associated deed. This will allow the two documents to be brought together for examination and registration.

No fee is charged for the lodgement of an "Easement Only" plan. Easement Plans will be shown on the Survey Index Plans and the normal search fees for plans will apply. Normal lodgement and search fees will apply to deeds.

Where an easement is completely cancelled only a deed of surrender is required. A plan of the easement is NOT necessary.

Subject to the criteria listed in the second paragraph, if an easement is to be partially surrendered or modified spatially a new "Easement Only" deposited plan and a new deed are required. The plan must show the "outcome" of the change, being the remaining interest in the land.

The attached plan examples indicate the new requirements.

IAN HYDE
REGISTRAR OF TITLES

29 March, 2001
Att.