



NOTICE TO SURVEYORS T4/2006

THE PLANNING AND DEVELOPMENT ACT 2005

MATTERS AFFECTING SURVEYS AND PLANS

The *Planning and Development Act 2005* (P&D Act) received Royal Assent on 12 December 2005 and the main provisions will commence on 9 April 2006. Incorporated into the new Act are many of the provisions formerly within the *Town Planning and Development Act 1928* (TP&D Act). The P&D Act also consolidates provisions in the *Western Australian Planning Commission Act 1985* (WAPC Act) and the *Metropolitan Region Town Planning Scheme Act 1959* (MRTPS Act) as well as automatic dedications of roads from the *Local Government (Miscellaneous Provisions) Act 1960* (LG (MP) Act).

The following three provisions of the P&D Act will not commence on 9 April 2006. These provisions require supporting regulations which will be prepared in liaison with key stakeholders following the commencement of the P&D Act:

Section 149 Conditions on rural land (tied lots);
Section 150 Conditions on road access; and
Part 13, Division 3 Infringement Notices

Provisions of the P&D Act that are of most relevance to surveys and plans are briefly described in this notice. **Table 1** at the end of this notice shows a summary of the relevant cross-references between the P&D Act and the superseded acts.

Section 6 Act does not interfere with public works

(Replaces section 32 of TP&D Act)

This is essentially a re-formatted version of section 32 TP&D Act that clarifies the circumstances of its use. Also note that a 'public work' is defined in section 4 P&D Act. Practices for acquisition plans exempt from WAPC approval will continue as they were for section 32.

Section 145 Endorsement of WAPC Approval on plans

(Generally reflects section 20AA of TP&D Act)

Subsection (2) extends the subdivision approval period to 4 years but only for subdivisions creating more than 5 lots. The subdivision approval period for subdivisions of 5 lots or less remains at 3 years. Subsection (3) confirms the practice of staged subdivisions.

Section 146 No title without endorsement of WAPC Approval

(Reflects and extends section 20(2) of TP&D Act)

This section extends 20(2) TP&D Act by imposing time limits on the Registrar when issuing titles.

Owners of land the subject of plans that were endorsed with the approval of the WAPC before the commencement day (9 April 2006) will have 5 years after that day in which to lodge an application for new titles.



Owners of land the subject of plans that are endorsed with the approval of WAPC after 9 April 2006 will have 2 years in which to lodge an application for new titles.

Note that this section also introduces statutory time periods within which the WAPC must deal with a request for endorsement. Subsection (5) requires the WAPC to deal with a request under subsection (1) (b) within a period of 30 days after the day on which the request is made (and submitted with the prescribed fee and required clearances and correctly completed application form (Form 1C)).

Strata plans already have a mechanism in place to trap those that have 'lapsed' valuer's certificates. **All** plans will now be given a status of 'expired' after the expiration of the appropriate time span with respect to the endorsement of WAPC approval. For example on 9 April 2011 a plan that has been endorsed with WAPC approval before 9 April 2006 and made in order for dealings but which has not been dealt on will change to an expired status. Such a plan is not cancelled, but the status will warn of the inability of the Registrar of Titles to issue certificates of title for lots on that plan.

The IOFD date is the most reliable and relevant field currently in SmartPlan (SMP) and so for most subdivisions DLI will be able to make plans in order for dealings as at the date it is endorsed as approved by WAPC. Plans subject to deferred final marking or deferred referencing will now need the Initial Survey Certificate (ISC) to be lodged before DLI will send the plan to WAPC for endorsement.

Exceptions will be Special Survey Area (SSA) subdivisions in which the Final Survey Certificate (FSC), survey sheets and e-FB are lodged after the WAPC approval has been endorsed. SMP is currently being amended to more effectively use the date on which plans are endorsed with the approval of WAPC.

Note that subsection (1) (c) specifies that any conditions noted on the plan must be complied with at the time the certificate of title is created or registered.

Section 149 Conditions on rural land (tied lots)

This is a new provision, the purpose of which is to enable tied lots to be created as part of the subdivision process where the lot is for a particular agricultural purpose and the landowner has existing agricultural land that the transferred lot will be worked in conjunction with as part of the one agricultural enterprise. This section will not commence until regulations and business processes have been developed; this will involve consultation with key stakeholders. It is likely to impact SmartPlan, SmartRegister and CSD files. It is expected that regulations will be made and gazetted before the end of this year.

Section 150 Conditions on road access

This is a new section that provides for the imposition of a statutory covenant restricting or prohibiting access from a portion of land to a road abutting the portion of land. It will not commence until regulations and business processes have been developed. It is likely to impact SmartPlan and CSD files. It is expected that regulations will be made and gazetted before the end of this year and will replace the need for TLA 129BA restrictive covenants for restricting road access.

Section 152 Certain land to vest in the Crown

(Replaces section 20A TP&D Act)

This section extends 20A TP&D Act by adding 'a public purpose specified in the condition and related to a subdivision' to the allowable purposes for vesting lots, opening up the use of section 152 to public purposes provided such purposes relate to the subdivision.

Also, section 152 provides for new processes for vesting lots on ALL plans that allows for automatic creation of a Crown Land Title for the subject land. Changes to both SmartRegister and SmartPlan have been implemented. Consequently, dual numbering of Strata Plans with vesting lots will no longer be required. Plan practices will continue as they were for section 20A.

Section 165 Record of conditions on title

(Reflects section 12A TP&D Act)

This section provides WAPC with power to cause a notification of hazards and other factors seriously affecting the use or enjoyment of land to be recorded on title. Except for the statutory reference there will be no change to the current procedures for notifications under section 12A.

Section 166 Encroachments

(Reflects section 25 TP&D Act)

Except for the statutory reference there will be no change to the current procedures for initiating a subdivision in cases where a building encroaches upon land the property of another owner to the extent of not more than one metre.

Section 167 Easements

(Replaces section 27A TP&D Act)

Although essentially similar to 27A TP&D in that it sets out provisions governing statutory easements created by notation on plans, section 167 extends the previous provisions by providing for easements to be made in favour of a holder of a licence under a written law for the purpose of supplying a utility service (under sub-section (1) (b) (v)), such as telecommunication companies. This amendment reflects national competition policy principles.

However, the existing easement regulations under section 27A TP&D Act, which will remain in force under transitional provisions as if they were regulations under section 263 P&D Act, do not prescribe rights, powers and privileges for such utilities. Consequently, easements under (1) (b) (v) will not be possible until new regulations have been made and gazetted.

Section 167 can also be used to create automatic easements on strata plans that don't require WAPC approval.

Table 2 at the end of this notice lists the easement types relevant to the P&D Act that are now valid for inclusion in CSD files. All other aspects are the same as for easements under 27A TP&D Act.

Surveyors and cartographers who use CSD Editor can obtain an 'auto-update' file to update the interest types to those in **Table 2**. Send a request to plan.reg@dli.wa.gov.au and the file will be e-mailed to you. Users of other CSD creation programs will need to enter the relevant string into Polyident1 of the polygon record.



Section 168 Roads

(Reflects section 295(5) of LG (MP) Act and section 28 TP&D Act)

This section provides that land on a plan, including a strata/survey-strata plan, shown as a new road is dedicated as a road. The requirement in section 295(5) for roads to be over 6 metres in width has been removed. There will be no change to current procedures – other than the new statutory reference. Roads on deposited plans (DPs) and survey-strata plans will be captured automatically via the CSD file but roads on built stratas will need to be captured manually by DLI i.e. surveyors do not need to provide a CSD file for built stratas.

Transitional provisions

By virtue of certain transitional provisions in the amending legislation, in conjunction with the *Interpretation Act 1984*, the following policy will apply.

Plans lodged before 9 April 2006 will be expected to refer to the laws and regulations in force at the time of lodgement. For example, easements under section 27A TP&D Act. If they are processed before 9 April 2006 the provisions of the TP&D Act will apply. If they are processed after 9 April 2006 the provisions of the P&D Act will apply. For example, easements under section 167 P&D Act will be created and shown as such on the new certificates of title. These plans will **not** be amended to refer to the P&D Act.

Plans lodged after 9 April 2006 must refer to the relevant sections of the Planning and Development Act 2005 and the supporting regulations. For example, easements under section 167 P&D Act. However, it is recognized that it may not be possible for plans that have been certified by the surveyor before 9 April 2006 to be amended before lodgement, and so DLI auditors will amend the statutory references on these plans. When they are processed the provisions of the P&D Act will apply. For example, easements under section 167 P&D Act will be created and shown as such on the new certificates of title.

Amendments to the statutory references as described above will not be considered a breach of standards until after 30 June 2006. As from 1 July 2006, any plans that use superseded statutory references will be requisitioned in accordance with the accepted breach severity levels for incorrect notations on plans.

Enclosed with his notice is a reference table for interests and notifications that has been updated to include the provisions of the P&D Act.

Amendments to the Survey and Plan Practice Manual, the Strata Titles Manual, and the Land Titles Registration Practice Manual with respect to the P&D Act are scheduled to be available on 1 July 2006.

BRUCE ROBERTS
REGISTRAR OF TITLES
31 March 2006



Abbreviations:

P&D Act; P&D
TP&D Act
WAPC Act
MRTPS Act
LG (MP) Act
TLA

Planning and Development Act 2005
Town Planning and Development Act 1928
Western Australian Planning Commission Act 1985
Metropolitan Region Town Planning Scheme Act 1959
Local Government (Miscellaneous Provisions) Act 1960
Transfer of Land Act 1893

NEW ACT	OLD ACT	OLD ACT
Section in P&D Act	Section in TP&D Act	Section in LG(MP) Act
6	32	
145	20AA	
146	20(2)	
152	20A	
165	12A	
166	25	
167	27A	
168	28	295(5)

Table 1

Easement P&D 167 Reg 5
Easement P&D 167 Reg 6
Easement P&D 167 Reg 7
Easement P&D 167 Reg 8
Easement P&D 167 Reg 9

Table 2

REFERENCE FOR INTERESTS AND NOTIFICATIONS BOX AS DEPICTED ON DEPOSITED PLANS

SUBJECT	PURPOSE	STATUTORY REFERENCE	ORIGIN (No Brackets)	LAND BURDENED	BENEFIT TO	COMMENTS	GENERAL COMMENTS
(A)	IMPLIED EASEMENT	SEC 167A OF THE TLA	P 4455	ROW	LOTS 20 & 21 (FORMERLY LOT 1 ON P4455)		Only shown if over Part of the LUS.
(B)	EXPRESSED EASEMENT		DOC T1775/1894	ROW	LOTS 20 & 21 (FORMERLY LOT 1 ON P4455)		
(M)	MINERAL RESERVATION	SEC 15 OF THE PWA		LOT / S			Only shown if over part of LUS. Not captured in CSD file. Plotted, not dimensioned on DP.
(N)	MINERAL RESERVATION		DOC T12665/1947	LOT / S			
(5)	EASEMENT (DRAINAGE)	SEC 167 OF THE P & D ACT, REG 5	THIS PLAN	LOT / S	LOCAL GOVERNMENT (eg, City of Swan)		Reg 5 - Coloured orange.
(6)	EASEMENT (DRAINAGE) (SEWERAGE) (WATER SUPPLY)	SEC 167 OF THE P & D ACT, REG 6	THIS PLAN	LOT / S	WATER CORPORATION (or other licensee under the Water Services Licensing Act 1995)	THE PART OF EASEMENT 6 TO THE WATER CORPORATION BOUNDED BY POINTS G, I, K & H HAS AN UPPER HEIGHT LIMIT OF 8 METRES.	Reg 6 - Coloured Blue. Same two easements over one lot are the same then show as "6A" and "6B" in SUBJECT. "EASEMENT" to be shown in the Heading.
(7)	EASEMENT (ABOVE GROUND ELECTRIC)	SEC 167 OF THE P & D ACT, REG 7	THIS PLAN	LOT / S	ELECTRICITY NETWORKS CORPORATION (or other holder of a license under the Electricity Industry Act 2004)		Reg's 7, 8 & 9 - Coloured Yellow.
(8)	EASEMENT (UNDERGROUND ELECTRIC)	SEC 167 OF THE P & D ACT, REG 8	THIS PLAN	LOT / S	ELECTRICITY NETWORKS CORPORATION (or other holder of a license under the Electricity Industry Act 2004)		167 Easements require application to "VARY" or "EXTINGUISHMENT".
(9)	EASEMENT (GAS)	SEC 167 OF THE P & D ACT, REG 9	THIS PLAN	LOT / S	ALINTAGAS NETWORKS PTY LTD (or other holder of a license under the Energy Coordination Act 1994)		When a 167 easement is brought forward the beneficiary must remain the same as it was, even if it has since changed. Eg SECWA
(B)	EASEMENT (RIGHT OF FOOTWAY) (WATER SUPPLY PURPOSES) (DRAINAGE) (GAS SUPPLY) (PARTY WALL RIGHTS) (EAVES & GUTTERS) (SEWERAGE) (MOTOR VEHICLE PARKING) (TRANSMISSION OF ELECTRICITY BY OVERHEAD CABLE) (TRANSMISSION OF ELECTRICITY BY UNDERGROUND CABLE) (TRANSMISSION OF TELEVISION SIGNALS BY UNDERGROUND CABLE)	SEC 136C OF THE TLA.	THIS PLAN	LOT / S	LOT (on or outside the plan) or LOCAL GOVERNMENT or PUBLIC AUTHORITY		No document is required to support these 13 schedule 9A TLA short form easements, although a document can be lodged in support if desired. No Benefit to private corporations, eg, Telstra. "EASEMENT" to be shown in the heading. 136C easements require application to "MODIFY" or "DISCHARGE"
(C)	RIGHT OF CARRIAGE WAY	SEC 136C OF THE TLA.	THIS PLAN	LOT / S	LOT (on or outside the plan) or LOCAL GOVERNMENT or PUBLIC AUTHORITY		
(D)	EASEMENT (RIGHT OF SUPPORT)	SEC 136C OF THE TLA.	THIS PLAN & DOC	LOT / S	LOT (on or outside the plan)		Document required to be lodged with easements <u>not</u> of Schedule 9A TLA, Short form type. If two easements over one lot are the same then show as "A and B" in SUBJECT and on graphic
(R 1040 A)	EASEMENT (RIGHT OF SUPPORT)	SEC 136C OF THE TLA.	THIS PLAN & DOC	LOT 1040	LOT 1039		"EASEMENT" to be shown in the heading.
(R 1040 B)	EASEMENT (RIGHT OF SUPPORT)	SEC 136C OF THE TLA.	THIS PLAN & DOC	LOT 1040	LOT 1041		
(R)	RESTRICTIVE COVENANT	SEC 136D OF THE TLA	THIS PLAN & DOC	LOT / S	LOTS	EXPIRY DATE ./. /. LIMITED IN HEIGHT TO 30m AHD	Restrictive Covenant <u>to be</u> shown in the heading.
A to B	RESTRICTIVE COVENANT	SEC 129BA OF THE TLA	DOC	LOT / S	PUBLIC or LOCAL GOVERNMENT	RESTRICTION OF ACCESS	Restrictive Covenants require application to "MODIFY" or "REMOVE" Restrictive Covenant <u>not</u> shown in the heading.
(E)	EASEMENT	ENERGY OPERATORS (POWERS) ACT 1979	DOC	LOT / S	ELECTRICITY NETWORKS CORPORATION		Easements require application to "PARTIALLY SURRENDER" or "SURRENDER"
(F)	EASEMENT	SEC 195 OF THE LAA	DOC	LOT / S	LOCAL GOVERNMENT OR PUBLIC AGENCY		Easements not shown in Heading.
(P)	EASEMENT (PUBLIC ACCESS)	SEC 195 & 196 OF THE LAA	DOC	LOT / S	LOCAL GOVERNMENT OR PUBLIC AGENCY and THE PUBLIC AT LARGE		Easement over crown land. Not Shown in the heading
(H)	EASEMENT	SEC 144 OF THE LAA 1997	DOC	LOT / S	AS DESCRIBED ON DOC		Easement requires application to "VARY" or "CANCEL"
EASEMENTS, COVENANTS & OTHER INTERESTS above the Dotted Line							
VESTINGS, NOTIFICATIONS & MEMORIALS below the Dotted Line							
LOT 812	PEDESTRIAN ACCESS WAY (PAW)	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
LOT 813	RIGHT OF WAY (ROW)	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
LOT 814	RESERVE FOR WATERWAY	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
LOT 815	RESERVE FOR WATER SUPPLY	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				Section 167 Reg 6, 7, 8 & 9 easements can encumber vesting lots. All other interests must be removed or referred to DPI/LAMS.
LOT 816	RESERVE FOR DRAINAGE	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
LOT 817	RESERVE FOR FORESHORE MANAGEMENT	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
LOT 818	RESERVE FOR RECREATION	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				Lot number need not be a Crown PI any more.
LOT 819	RESERVE FOR RECREATION AND CONSERVATION OR PROTECTION OF THE ENVIRONMENT (any one or combination of)	VESTS IN THE CROWN UNDER SEC 152 OF THE P & D ACT	THIS PLAN				
	NOTIFICATION	SEC 70A OF THE TLA	DOC	LOT / S		eg. WATER CORPORATION RESTRICTION TO LANDFILL DESIGN GUIDELINES	Notifications not shown in the heading.
	NOTIFICATION	SEC 165 OF THE P & D ACT	DOC	LOT / S		eg. MOSQUITO BREEDING AREA LAND SUBJECT TO AIRCRAFT NOISE MARKET GARDENS MIDGIES	
	MEMORIAL	SEC 67B OF THE WATER AGENCIES POWER ACT	THIS PLAN	LOT / S	WATER CORPORATION		Memorials require application to "PARTIALLY WITHDRAW" or "WITHDRAW"
	MEMORIAL	SEC 62D OF THE WATER BOARDS ACT 1904	THIS PLAN	LOT / S	WATER CORPORATION		
	MEMORIAL	SEC 30B OF THE SOIL & LAND CONSERVATION ACT 1945	DOC	LOT / S	COMMISSIONER OF SOIL & LAND CONSERVATION	AS TO PORTION ONLY - REFER TO DOC	This comment only used if unable to define area on DP
	MEMORIAL	CONTAMINATED SITES ACT 2003	DOC	LOT / S	DEPARTMENT OF THE ENVIRONMENT		Memorials not shown in the heading.
	MEMORIAL	SEC 56(1) OF THE HERITAGE OF WA ACT 1990	DOC	LOT / S	HERITAGE COUNCIL OF WA.		