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*Division Applications
under Part 19AB
Preparation Notes -
Easements*



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Division Applications under Part 19AB Preparation Notes - Easements

1. VARIATION/EXTINGUISHMENT OF EASEMENTS AND RIGHTS OF WAY

Under Part 19AB extinguishment of easements and rights of way are provided for by sections 90B, 90C, 90E, 223LE(4) and 223LF(2) of the Real Property Act 1886 (RPA) and variation by section 90B of the RPA.

For the purposes of Part 19AB, only extinguishment pursuant to section 223LE(4) and variation pursuant to section 90B are transactions and as such require an RTC to be lodged. For information on what is or is not a transaction, see Division Applications under Part 19AB Preparation Notes.

Extinguishment and variation to an easement or right of way can occur inside and outside of the “division”, providing the DAC Certificate shows the extinguishment or variation.

Note: Reference to easement includes right of way in the preparation notes

1.1 DEFINITIONS

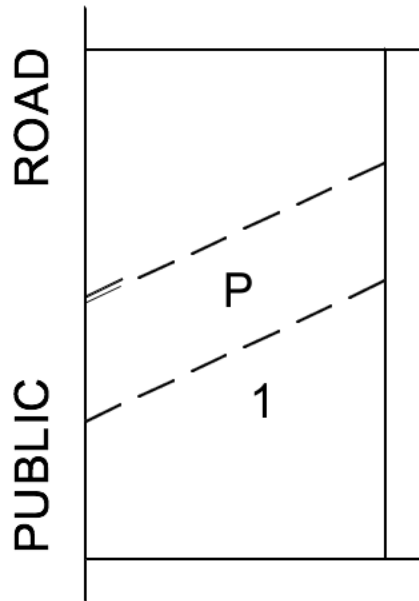
Servient land (land burdened) is the land subject to an easement or right of way – see Annexure A.

Dominant land (in favour of) is the land gaining the benefit of an easement or right of way

see Annexure A.

DEFINITIONS

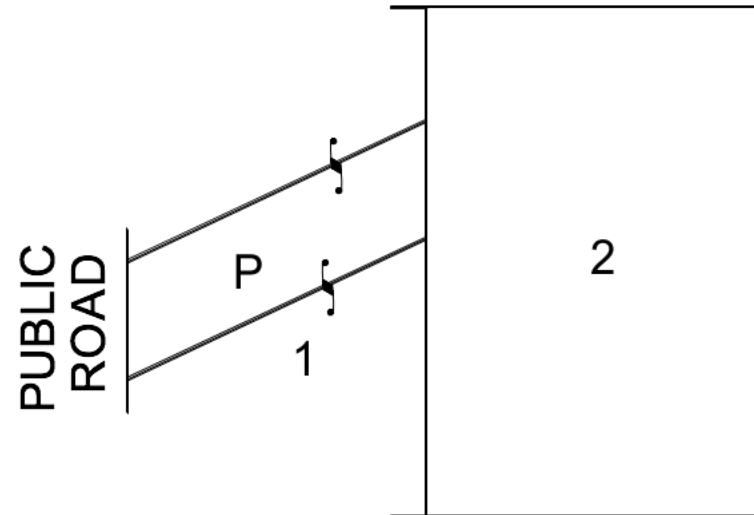
Servient Land (shown on plans as “Land Burdened”)



Easement clause on Title

Subject to

Dominant Land shown on plans as "In favour Of"



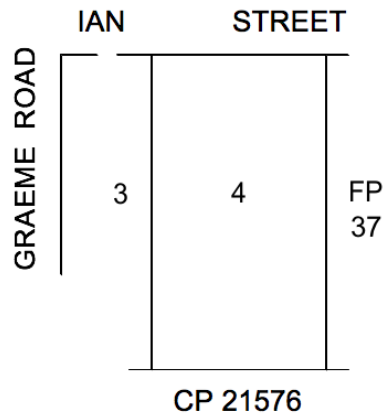
Easement clause on Title

Subject to

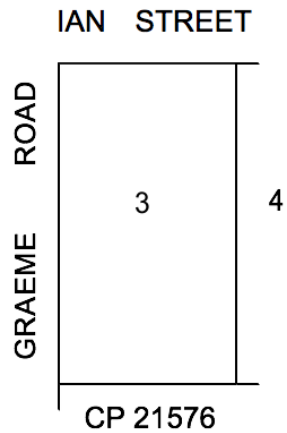
Division for the purposes of these notes means only the land being divided and does not include any redesignated land

WHAT IS DIVISION

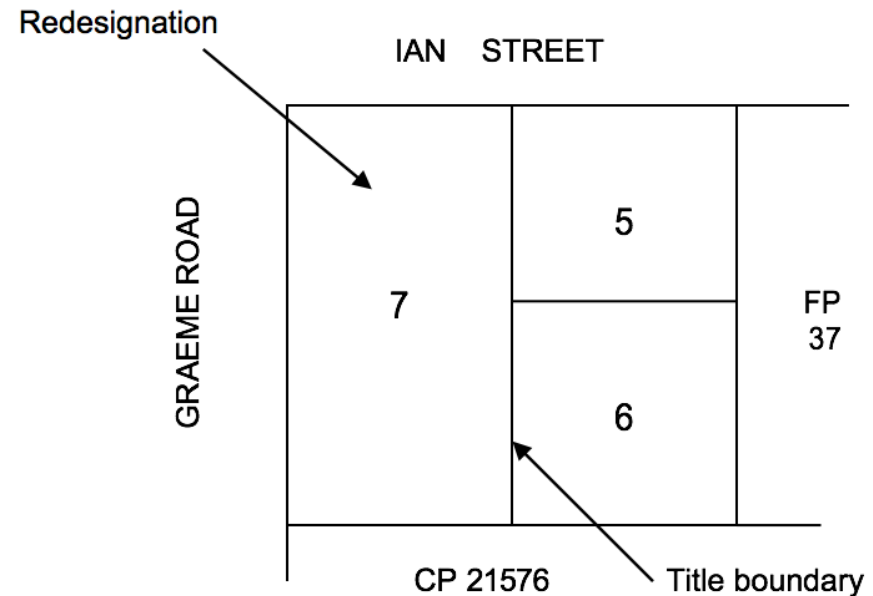
Certificate of Title Volume 5678 Folio 94



Certificate of Title Volume 5678 Folio 97



Plan



PLAN OUTCOMES

- The Division - CT 5678/94 divided into Allotments 5 and 6
- Not part of the division - CT 5678/97 redesignated as Allotment 7
- Plan Heading is "Plan of Division and Redesignation of Parcels"
- Plan Annotation Note is – "Allotment(s) 7 (CT 5678/97 do not form part of this Division"

1.1 APPROVED VERSION OF THE PLAN TO BE USED

The approved version of the plan should be viewed when preparing documentation and before lodging them in the LTO. The consequences of not using the approved version may result in:

- All parties being required to re-execute the document
- The incorrect document being lodged
- Additional transactions to comply with the requirements of the plan.

NOTE: - The Plan Presentation Guidelines allows information on plans to be displayed in different ways therefore the plan examples provided are only guides as to how the plan may appear.

2. EXTINGUISHMENT OF EASEMENT (INCLUDES RIGHT OF WAY) – SECTION 223LE(4)

Where as part of a land division an easement is to be extinguished, pursuant to section 223LE(4) of the RPA, the plan's easement details shows the current details of the easement with a status of "EXTINGUISHED".

2.1 DETAILS OF TRANSACTIONS

It is recommended the following wording to be used in Details of Transactions for an extinguishment:

"Extinguishment of easement(s) as set out on the accompanying plan"

Alternatively the specific details can be referred to but there may be a greater change of requisition if the alpha identifier or any other detail is changed.

2.2 CONSENTING TO AN EXTINGUISHMENT

Parties required to consent to an extinguishment under section 223LE(4) are the registered proprietor and registered interests of the:

- servient land (land burdened)
- dominant land (in favour of) or
- easement in gross/service easement

These are the same parties that would be required to consent for extinguishment under section 90B using form VE. Similarly the same principles apply, as for section 90B, i.e. partial discharges or extensions are not required to be lodged, as by consenting to the extinguishment the applicable interest is automatically extended or discharged.

Section 223LH (2a) of the RPA provides the consent in respect to the servient land is not required where an easement is extinguished only as regards part of the dominant land.

2.2.1 Dominant and Servient Registered Proprietors

The registered proprietors of the dominant and servient land consent to the extinguishment of an easement if they are:

- (a) The applicants, by way of a statement in the Details of Transactions referring to the extinguishment and by their execution of the RTC.
- (b) Not the applicants, by way of the completion of the consent form and the inclusion of a statement referring to the extinguishment in the form's Effect on Estate or Interest column. The completed consent form is to be incorporated as part of the RTC or RTU.

2.2.2 Registered interests

All registered interests consent to the extinguishment by the completion of the consent form and refer to the extinguishment in the form's Effect on Estate or Interest column. The completed consent form is to be incorporated as part of the RTC or RTU.

2.3 EXTINGUISHMENT OF A SERVICE EASEMENT

Annexure B shows an example of the extinguishment of a service easement. In this example the easement being extinguished, as shown by the plan's easement details, is:

- for drainage purposes
- over the land marked C within allotment 20 in DP 29903
- to the council for the area

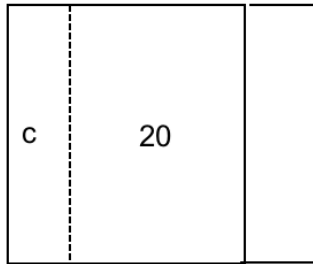


ANNEXURE B

EXTINGUISHMENT – SERVICE EASEMENT

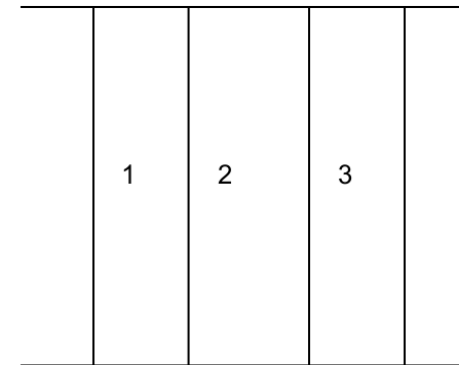
CT Volume 6000 Folio 1 (Servient title)

NORM STREET



Plan

NORM STREET



TITLE DETAILS

Land description Allotment 20 in DP 29903
Easement clause on CT

Subject to the easement for drainage purposes as provided for by section 223LG(2) of the Real Property Act 1886 over the land marked C

Registered Proprietor Dean Smith
Endorsement M 1234568A

PLAN OUTCOMES

- CT 6000/1 is divided into Allotments 1, 2 and 3
- Existing service easement for drainage purposes to be extinguished

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXTINGUISHMENT	20 IN D29903	SERVICE	EASEMENT(S)	C	FOR DRAINAGE PURPOSES	COUNCIL FOR THE AREA	223LG RPA



EXTINGUISHMENT – SERVICE EASEMENT

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of easement as set out on the accompanying plan	Nil

Council consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
Allotment 20 marked C on D29903	Extinguishment of easement as set out on the accompanying plan	Nil

Registered interest consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 1234568A	Extinguishment of easement as set out on the accompanying plan	Nil



2.3.1 Details of Transactions

For Annexure B the Details of Transactions the following could be shown:

Extinguishment of easement as set out in the accompanying plan of division

2.3.2 Consent Forms

Consenting Parties

For the service easement extinguishment example the consenting parties are:

- Mortgagee of M 1234568A.
- Authority entitled to the easement for drainage purposes, the local council.

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of easement as set out in the accompanying plan of division

2.4 EXTINGUISHMENT OF PRIVATE EASEMENTS

The following are examples of the extinguishment of private easements for which either a dominant title or an “in gross” title has been issued.

2.4.1 Extinguishment of an easement “in gross”

Annexure C is an example of an easement “in gross” being extinguished where the:

- Servient Land (Land Burdened) is CT 6555/1
- Easement in gross title is CT 6222/2
- Easement being extinguished is for drainage purposes, marked D on CT 6555/1 and has been created by TG 89123457.

When extinguishing an easement where an easement “in gross” title has been issued, the easement in gross title reference must be included in the RTC’s Land Description.

If not all of the easement in the “in gross” title is being extinguished, a balance easement in gross title is to be issued. In this situation the following would be required:

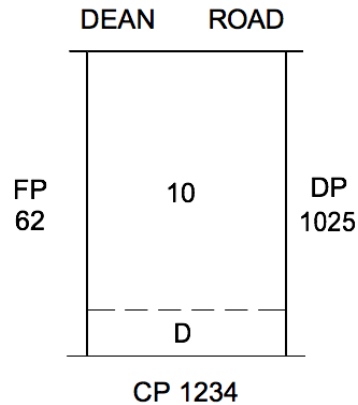
- Balance title and the relevant information included in the Mode of Issue
- New title fee paid for the balance title



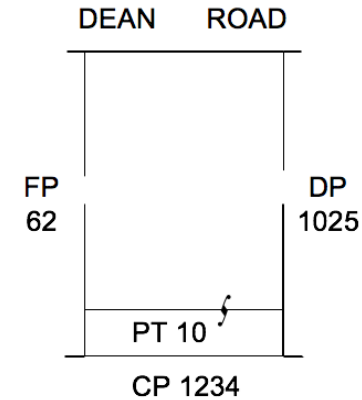
ANNEXURE C

EXTINGUISHMENT EASEMENT "IN GROSS"

CT Volume 6555 Folio 1 (Servient title)



CT Volume 6222 Folio 2 (Easement in gross title)



TITLE DETAILS

Land description Allotment 10 in DP 2356

Easement clause on CT

Subject to the easement over the land marked D for drainage purposes to the council for the area (TG 89123457)

Registered Proprietor Carmel Smith
Endorsement E 5678902

TITLE DETAILS

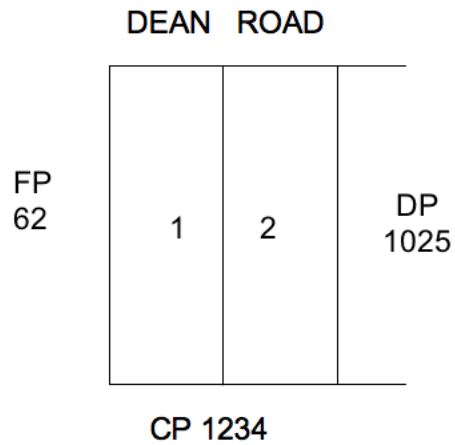
Land description Portion of Allotment 10 in DP 2356

Registered Proprietor City of Burnside
Endorsement NIL



EXTINGUISHMENT EASEMENT "IN GROSS"

PLAN



PLAN OUTCOMES

- CT 6555/1 is divided into Allotments 1 and 2
- Easement for drainage purposes (TG 89123457) to be extinguished

Title reference for easement in gross title

OTHER TITLE(S) AFFECTED CT 6222/2

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXTINGUISHMENT	10 in D2356	SHORT	EASEMENT(S)	D	FOR DRAINAGE PURPOSES	COUNCIL FOR THE AREA	TG 89123457



EXTINGUISHMENT EASEMENT "IN GROSS"

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of easement as set out on the accompanying plan	Nil

Council consent – holder of easement in gross title CT 6222/2

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6222/2	Extinguishment of easement as set out on the accompanying plan	Nil

Registered interest consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
E 5678902	Extinguishment of easement as set out on the accompanying plan	Nil

2.4.1.1 Details of Transactions

For the extinguishment of easement in gross example, the following to be shown in the Details of Transactions:

Extinguishment of easement as set out in the accompanying plan

2.4.1.2 Consent Forms

Consenting Parties

The consenting parties are:

- Encumbrancee of E 5678902 – servient registered interest
- City of Burnside the holder of the “in gross” title CT 6222/2.

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of easement as set out in the accompanying plan

2.4.2 Extinguishment of an easement (includes right of way) where dominant and servient land is within the division

Annexure D is of an easement or right of way being extinguished where:

- a) The dominant and servient land is comprised within the division AND
- b) the dominant and servient proprietors are the Applicants.

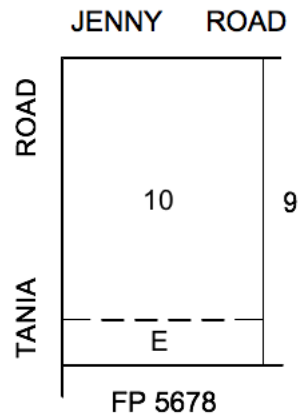
Note: - This is not extinguishment under Section 90C.



ANNEXURE D

EXTINGUISHMENT OF EASEMENT WHERE SERVIENT AND DOMINANT LAND WITHIN "DIVISION"

CT Volume 6000 Folio 1 (Servient title)



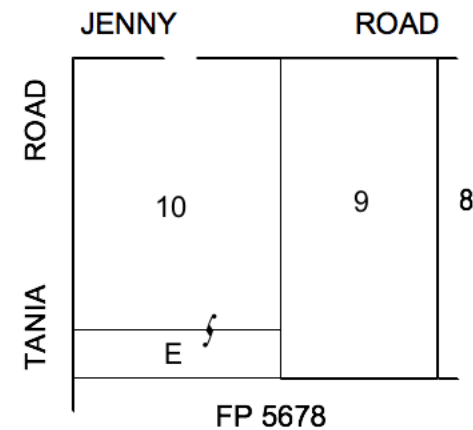
TITLE DETAILS

Land description Allotment 10 in DP 6789
Easement clause on CT

Subject to the easement over the land marked E (T 499999)

Registered Proprietor Dean Smith
Endorsement M 6789234

CT Volume 6555 Folio 2 (Dominant title)



TITLE DETAILS

Land description Allotment 9 in DP 6789
Easement clause on CT

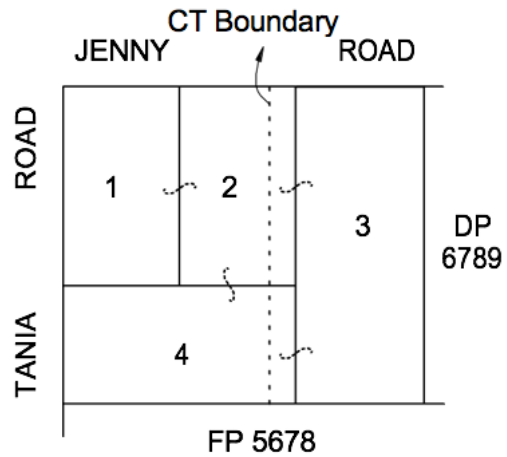
Together with the easement over the land marked E (T 499999)

Registered Proprietor Carmel Jones
Endorsement M 234567



EXTINGUISHMENT EASEMENT "IN GROSS"

PLAN



PLAN OUTCOMES

- CT 6000/1 and CT 6555/20 is divided into Allotments 1, 2, 3 and 4
- Existing easement (T 499999) appurtenant to CT 6555/20 to be extinguished

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXTINGUISHMENT	10 in D6789	LONG	EASEMENT(S)	E		9 IN D6789	T 499999



EXTINGUISHMENT EASEMENT "IN GROSS"

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of easement as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 6789234	Extinguishment of easement as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 234567	Extinguishment of easement as set out on the accompanying plan	Nil



2.4.2.1 Details of Transactions

The following to be used in the Details of Transactions:

Extinguishment of easement as set out on the accompanying plan

2.4.2.2 Consent Forms

Consenting parties

The consenting parties are:

- Mortgagee of M 6789234 – servient registered interest.
- Mortgagee of M 234567 – dominant registered interest.

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of easement as set out on the accompanying plan

2.4.3 Extinguishment of an easement (includes right of way) where the dominant land is outside of the division

Annexure E is an example of an easement being extinguished, where the servient land (CT 6222/1) is being divided and the dominant land (CT 6666/10) is outside of the “division”. As the dominant land is outside of the “division” the registered proprietor of CT 6666/10 is not an applicant.

As CT 6666/10 is outside of the “division” the following would be required in relation to that land:

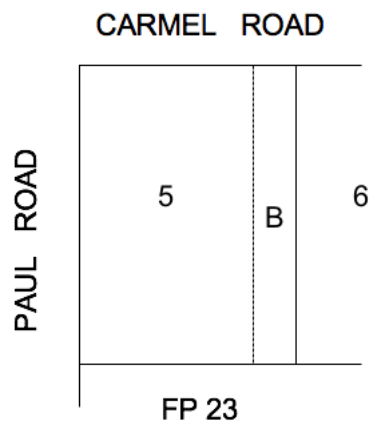
- CT 6666/10 to be included in the RTC’s Land Description.
- CT 6666/10 and its relevant details to be included in the Mode of Issue without reference to the free and unrestricted right of way that is being extinguished.
- New CT fee paid for the re-issue of CT 6666/10 freed of the free and unrestricted right of way.



ANNEXURE E

EXTINGUISHMENT OF EASEMENT WHERE SERVIENT AND DOMINANT LAND OUTSIDE "DIVISION"

CT Volume 6222 Folio 1 (Servient title)



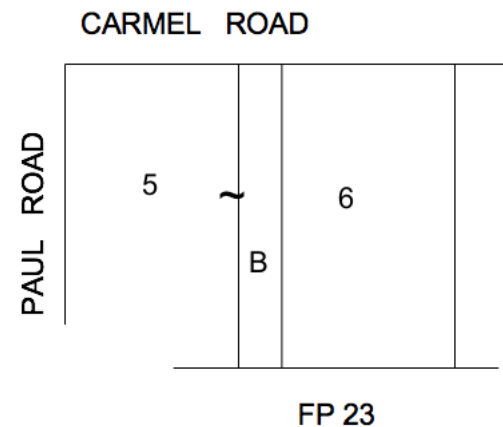
TITLE DETAILS

Land description Allotment 5 in DP 4567
Easement clause on CT

Subject to a free and unrestricted right of way over B

Registered Proprietor Tania Smith
Endorsement M 1234567

CT Volume 6666 Folio 10 (Dominant title)



TITLE DETAILS

Land description Allotment 6 in DP 4567
Easement clause on CT

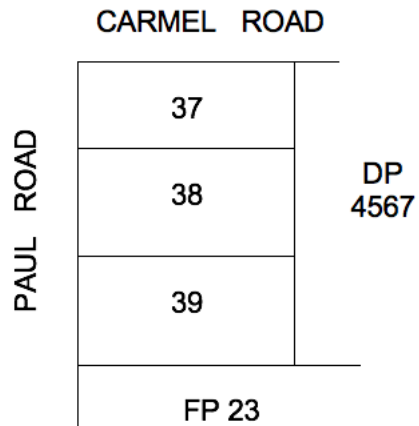
Together with a free and unrestricted right of way over B

Registered Proprietor Jenny Jones
Endorsement M 8234567



EXTINGUISHMENT OF EASEMENT WHERE DOMINANT LAND OUTSIDE "DIVISION

PLAN



PLAN OUTCOMES

- Servient title CT 6222/10 is divided into Allotments 37, 38 and 39
- Extinguishment of the existing free and unrestricted right of way appurtenant to land outside of the division CT 6666/10

Dominant title for land outside of the division

OTHER TITLE(S) AFFECTED CT 6666/10

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXTINGUISHMENT	CT 6222/1	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	B		CT 6666/10



EXTINGUISHMENT OF EASEMENT WHERE DOMINANT LAND OUTSIDE “DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 1234567	Extinguishment of right of way as set out on the accompanying plan	Nil

Dominant land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6666/10	Extinguishment of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 8234567	Extinguishment of right of way as set out on the accompanying plan	Nil



2.4.3.1 Details of Transactions

The following wording to be used in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.4.3.2 Consent Forms

Consenting Parties

The consenting parties are:

- Mortgagee of M 1234567 – servient registered interest.
- Jenny Jones the registered proprietor of CT 6666/10 (the dominant land).
- Mortgagee of M 8234567 – dominant registered interest.

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.4.4 Extinguishment of an easement (includes right of way) where the servient land is outside of the division

Annexure F is an extinguishment of an easement where the dominant land (CT 6222/10) is being divided and servient land (CT 6555/20) is outside of the “division”. As the servient land is outside of the “division” the registered proprietor of CT 6555/20 is not an applicant. In this example only CT 6222/10 is together with the free and unrestricted right of way therefore the servient right is being fully extinguished.

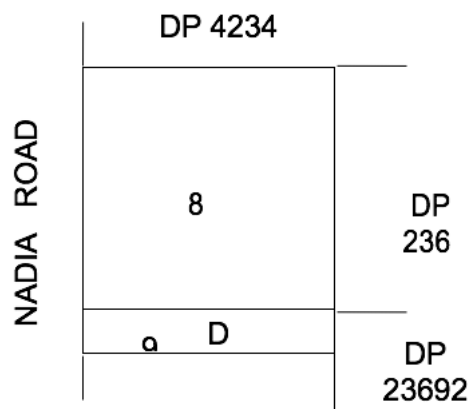
As the servient land (CT 6555/20) is outside of the “division” the following would be required in relation to that land:

- CT 6555/20 to be included in the RTC’s Land Description.
- CT 6555/20 and its relevant details included in the Mode of Issue without reference to the right of way being extinguished.
- New CT fee paid for the re-issue of CT 6555/20 freed of the right of way

ANNEXURE F

EXTINGUISHMENT OF EASEMENT WHERE SERVIENT LAND OUTSIDE "DIVISION"

CT Volume 6222 Folio 10 (Dominant title)



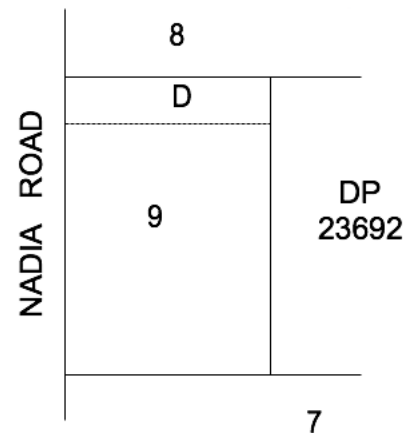
TITLE DETAILS

Land description Allotment 8 in DP 1234
Easement clause on CT

Together with a free and unrestricted right of way over the land marked D

Registered Proprietor Tania Smith
Endorsement E 4567890

CT Volume 6555 Folio 20 (Dominant title)



TITLE DETAILS

Land description Allotment 9 in DP 1234
Easement clause on CT

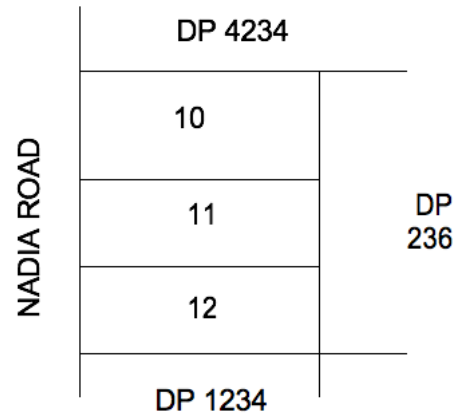
Subject to a free and unrestricted right of way over the land marked D

Registered Proprietor Jenny Jones
Endorsement M 5623456



EXTINGUISHMENT OF EASEMENT WHERE SERVIENT LAND OUTSIDE "DIVISION"

PLAN



PLAN OUTCOMES

- Dominant title CT 6222/10 is divided into Allotments 10, 11 and 12
- Extinguishment of the existing free and unrestricted right of way over land outside of the division

Servient title for land outside of the division

OTHER TITLE(S) AFFECTED CT 6555/20

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXTINGUISHMENT	9 IN D1234	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	D		8 IN D1234



EXTINGUISHMENT OF EASEMENT WHERE SERVIENT LAND OUTSIDE “DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of right of way as set out on the accompanying plan	

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
E 4567890	Extinguishment of right of way as set out on the accompanying plan	

Dominant land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6555/20	Extinguishment of right of way as set out on the accompanying plan	

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 5623456	Extinguishment of right of way as set out on the accompanying plan	



2.4.4.1 Details of Transactions

The following wording could be used in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.4.4.2 Consent Forms

Consenting parties

The consenting parties are:

- Encumbrancee of E 4567890 - Dominant registered interest.
- Jenny Jones the registered proprietor of CT 6555/20 (the servient land).
- Mortgagee of M 5623456 – servient registered interest.

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.5 Extinguishment of an Easement (includes right of way) in respect of part of the Dominant Land (section 223LH (2a))

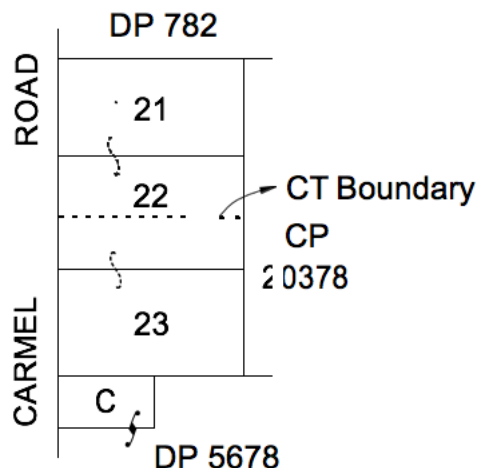
Annexure G is an example of an extinguishment in respect of part of the dominant land. The existing right of way marked C is being extinguished so as it is no longer appurtenant to the whole of the land in CT 6999/20 to being appurtenant to only portion of the land, being Allotment 23 in the plan.

Section 223LH(2a) of the RPA provides the consent of the servient proprietor and registered interests is not required provided the extinguishment is only as regards part of the dominant land and rights under the easement continue in respect of some other part of the dominant land.

ANNEXURE G

EXTINGUISHMENT OF EASEMENT WHERE SERVIENT LAND OUTSIDE "DIVISION"

PLAN



PLAN OUTCOMES

- CT 6888/6 and CT 6999/20 is divided into Allotments 21, 22 and 23
- Existing free and unrestricted right of way to be extinguished as appurtenant to Allotment 22

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXISTING	5 IN D5678	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C		23
EXTINGUISHMENT	5 IN D5678	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C		22



**EXTINGUISHMENT WITHOUT THE CONSENT
OF THE SERVIENT PROPRIETOR (s223LH (2a))**

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES	
EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
Extinguishment of right of way as set out on the accompanying plan	Nil



2.5.1 Details of Transactions

The following wording could be used in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.5.2 Consent Forms

Consenting parties

The consenting parties are:

Mortgagee of M 12389234A - Dominant registered interest

Effect on the Estate or Interest Column

The Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

2.6 Extinguishments not a Transaction

Not all extinguishments of easements and rights of way are transactions. As described in part 5 of the “Division Applications under Part 19AB Preparation Notes”, the following extinguishments are not considered to be transactions:

- a) Extinguishment of an easement where the dominant and servient land are comprised in the same allotment (Section 90C).
- b) Extinguishment of a right of way (does not include easements) over a Public Street or Road (Section 90E).
- c) Extinguishment of :
 - An easement over land vesting as a public road
 - An easement or right of way over land vesting as a reserve or similar open space (Section 223LF(2)(b)).
- d) Extinguishment of an easement or right of way where dominant land vests as roads or reserve (Section 223LF(6))

As the above extinguishments are not transactions, if an RTC is being lodged the above are not to be set out in the RTC’s Details of Transactions. When extinguishing an easement pursuant to section 223LF(2)(b), consents are required from the benefiting party of the easement and, where applicable, their registered interests with the applicable wording on the consent form.

2.6.1 Extinguishment under Section 223LF(2)(b)

Annexure H is an example of an extinguishment under section 223LF(2)(b) of the RPA



2.6.1.1 Consent Forms

Consenting parties

Shows an example of a 223LF(2)(b) extinguishment where the consenting parties are:

- Berri Irrigation Trust Inc. – Benefiting party of the easement and the holder of easement in gross title CT 5672/1

Effect on the Estate of Interest Column

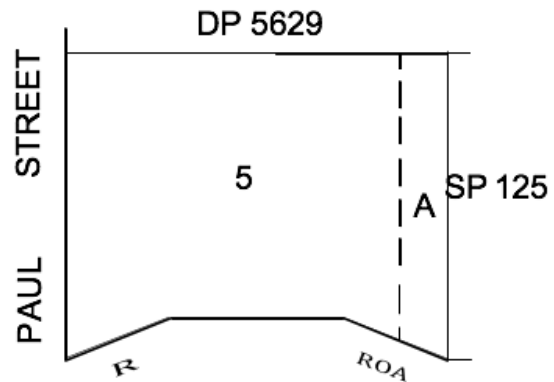
The following wording to be used in the Effect on the Estate or Interest column:

Extinguishment of easement as set out on the accompanying plan

ANNEXURE H

EXTINGUISHMENT EASEMENT OVER A RESERVE (SECTION 223LF(2)(b))

CT Volume 5672 Folio 2 (Servient Title)



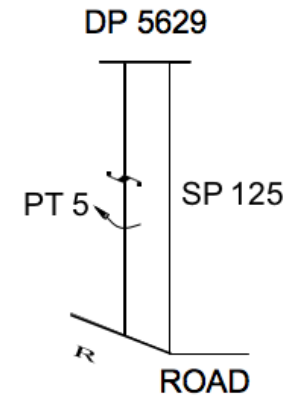
TITLE DETAILS

Land description Allotment 5 in FP 23
Easement clause on CT

Subject to the easement over the land marked A for drainage purposes (TG 8345721)

Registered Proprietor Carmel Smith
Endorsement E 5678902

CT Volume 5672 Folio 1 (Easement in gross))



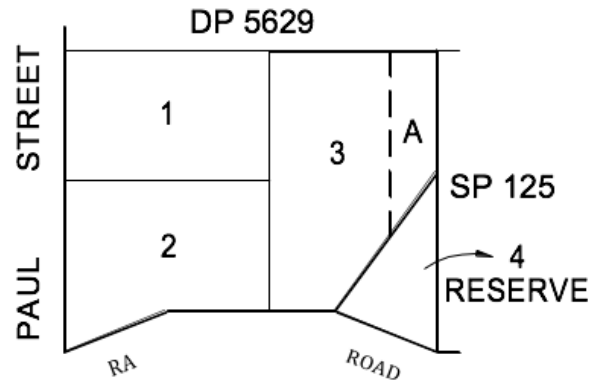
TITLE DETAILS

Land description Portion of Allotment 5 in FP 23

Registered Proprietor Berri Irrigation Trust Inc.

EXTINGUISHMENT EASEMENT OVER A RESERVE (SECTION 223LF(2)(b))

PLAN



PLAN OUTCOMES

- CT 5672/2 divided into Allotments 1, 2, 3 and 4 (Reserve)
- Allotment 4 is vesting in the council for the area as a Reserve
- Easement (TG 8345721) is being extinguished on deposit of the plan over the Reserve
- Portion of Allotment 3 marked A is to remain subject to the easement (TG 8345721)

Easement in gross title

OTHER TITLE(S) AFFECTED CT 5672/1

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXTINGUISHMENT	4 (RESERVE)	LONG	EASEMENT(S)	A IN F23		BERRI IRRIGATION TRUST INC	TG 8345721
EXISTING	3	LONG	EASEMENT(S)	A		BERRI IRRIGATION TRUST INC	TG 8345721



EXTINGUISHMENT EASEMENT OVER A RESERVE (SECTION 223LF(2)(b)

Registered Proprietor of easement in gross

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 5672/1	Extinguishment of easement as set out on the accompanying plan	Nil



3. VARIATION OF EASEMENTS (INCLUDES RIGHTS OF WAY)

Variation of easements, are dealt with in a similar manner to extinguishment. With variation, the position of the easement or the extent of the dominant land can be varied but the type of easement, covenants, conditions and the creation document cannot be changed.

In some cases (eg. where the dominant and servient land is within the division plan) it may be advantageous to extinguish the easement and then re-grant/create the easement.

Variation of easements is provided for under section 90B of the RPA.

3.1 PLAN

Where an easement is being varied either as to its position and/or appurtenance the plan's easement details shows the current details for the easement with a status of "VARY FROM" and the relevant details of the varied easement after deposit of the DP with a status of "VARY TO".

3.1.1 Position of the easement being varied or variation of the appurtenance

- To determine whether the position of an easement is being varied a comparison of the dimensions and location is to be made between the easement as depicted on the existing title(s) and plan and the new plan that includes "VARY FROM" and "VARY TO". The details in the "IDENTIFIER" column will assist.
- To determine whether the appurtenance of an easement is being varied a comparison of the extent of the appurtenance is to be made between the existing title(s) and plan and the new plan that includes "VARY FROM" and "VARY TO". The details in the "IN FAVOUR OF" column will assist.

3.2 DETAILS OF TRANSACTIONS

The following are examples of wording that can be used in the Details of Transaction when varying an easement:

Variation of easement(s) as set out in the accompanying plan of division

Variation of easement (T 123456) to the position marked N

Easement (TG 8345689) marked D is extended to be appurtenant to the whole of Allotment 15

The generic wording is recommended so as to assist in reducing requisitions if alpha identifiers are changed.

3.3 CONSENTING TO A VARIATION

The consenting parties to vary an easement are the same as those for the extinguishment of an easement.

3.3.1 Dominant and Servient Registered Proprietors

The registered proprietors of the dominant and servient land consent to the variation if they are:

- a) The applicants, by way of a statement in the Details of Transactions referring to the variation and by their execution of the RTC.
- b) Not the applicants, by way of the completion of the approved consent form and a statement in the Effect on Estate or Interest column referring to the variation. The completed consent form is to be incorporated as part of the RTC or RTU.

3.3.2 Registered interests

All registered interests consent to the extinguishment by the completion of the approved consent form and the inclusion of a statement referring to the variation in the form's Effect on Estate or Interest column. The completed consent form is to be incorporated as part of the RTC or RTU.

These are the same parties required to consent for extinguishment under section 90B using Form VE. Similarly the same principles apply, as for section 90B, i.e. partial discharges or extensions are not required to be lodged, as by consenting to the extinguishment the applicable interest is automatically extended or discharged

3.4 VARIATION OF AN EASEMENT WHERE THE DOMINANT LAND IS OUTSIDE OF THE DIVISION

Annexure I is an example of the position of an easement being varied, where the servient land (CT 6666/12) is being divided and the dominant land (CT 6666/10) is outside of the "division". As the dominant land is outside of the "division" the registered proprietor of CT 6666/10 is not an applicant.

By comparing the position of the right of way and by the wording of the plan's Easement Details it can be determined that: the:

- a) Position of the right of way has been varied from being portion of Allotment 6 in DP 7890 marked F to that of G on the plan.
- b) Appurtenance has not been changed, as by the "IN FAVOUR OF" column of the "VARY FROM" and "VARY TO" the right of way is to remain appurtenant to CT 6666/10.

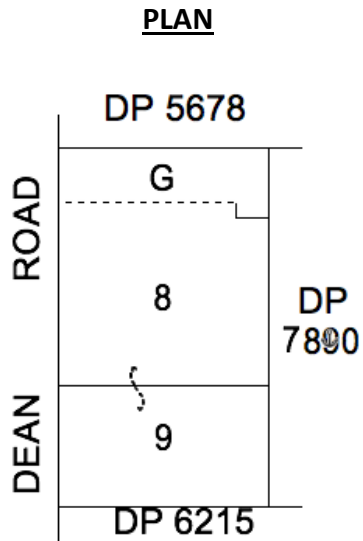
In this example the dominant land is not shown on the plan.

3.5 VARIATION OF A SERVICE EASEMENT

Annexure J is an example of the variation as to the position of a service easement. By the plan's easement details a service easement for drainage purposes to the council for the area marked H in DP 29903 is being varied to the position marked B on the plan.

ANNEXURE I

VARIATION OF EASEMENT WHERE DOMINANT LAND OUTSIDE DIVISION



PLAN OUTCOMES

- Servient title ct 6666/12 is divided into Allotments 8 and 9
- Variation of the existing free and unrestricted right of way to the position marked G on the plan

Dominant title for land outside of the division

OTHER TITLE(S) AFFECTED CT 6666/10

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
VARY FROM	6 IN D7890	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	F IN D7890		CT 6666/10
VARY TO	8	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	G		CT 6666/10



VARIATION OF EASEMENT WHERE DOMINANT LAND OUTSIDE “DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 8234567	Variation of the right of way as set out on the accompanying plan	Nil

Dominant land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6666/10	Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

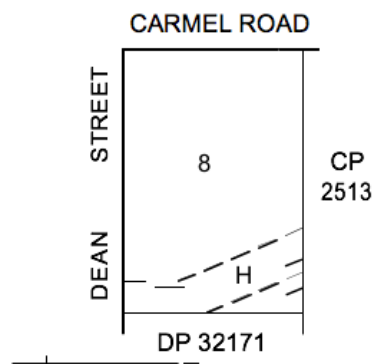
STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 2745679	Variation of the right of way as set out on the accompanying plan	Nil



ANNEXURE J

VARIATION OF SERVICE EASEMENT

CT Volume 6777 Folio 4 (Servient title)



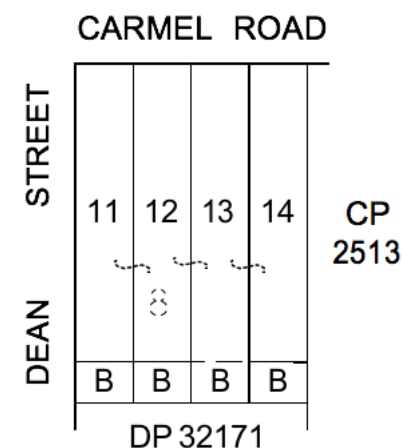
TITLE DETAILS

Land description Allotment 8 in DP 29903
Easement clause on CT

Subject to the easement for drainage purposes as provided for by section 223 LG(2) of the Real Property Act 1886 over the land marked H

Registered Proprietor Graeme Smith
Endorsement M 8123456

PLAN



PLAN OUTCOMES

- CT 6777/4 is divided into Allotments 11, 12, 13 and 14
- Variation of the existing service easement for drainage purposes to the position marked B on the plan

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
VARY FROM	8 IN D29903	SERVICE	EASEMENT(S)	H IN D29903	DRAINAGE PURPOSES	COUNCIL FOR THE AREA	223LG RPA
VARY TO	11.12.13.14	SERVICE	EASEMENT(S)	B	DRAINAGE PURPOSES	COUNCIL FOR THE AREA	223LG RPA



VARIATION OF SERVICE EASEMENT

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of easement as set out on the accompanying plan	Nil

Council consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
Service easement A on DP 29903	Variation of easement as set out on the accompanying plan	Nil

Registered interest consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 8123456	Variation of easement as set out on the accompanying plan	Nil



3.5.1 Details of Transactions

In example Annexure J the following wording could be used in the Details of Transactions:

Variation of easement as set out on the accompanying plan

3.5.2 Consent Forms

Consenting parties

In example Annexure J the consenting parties are:

- Mortgagee of M 8123456 – servient registered interest.
- Local council for the area, as shown on the plan as the party benefiting from the easement.

Effect on the Estate or Interest Column

For example Annexure T the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Variation of easement as set out on the accompanying plan

3.6 VARIATION OF “PRIVATE” EASEMENTS

The following examples relate to the variation of private easements where either a dominant title or an “in gross” title has been issued.

3.6.1 Variation of an easement “in gross”

Annexure K is an example of the variation as to the position of an easement or right of way in gross. By the plan’s easement details an easement for water supply purposes to the South Australian Water Corporation is being varied as to its position from portion of Allotment 10 in DP 2345 marked A to portion of Allotments 21, 22 and 23 marked B in the plan.

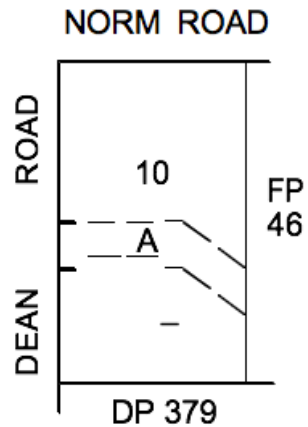
When varying the position of an easement for which an “in gross” title has issued the following are required in relation to this title:

- “In gross” title reference included in the RTC’s Land Description
- “In gross” title reference included on the plan “other titles affected”
- “In gross” title and its relevant details to be included in the Mode of Issue
- New title fees paid for the re-issue of the “In gross” title

ANNEXURE K

VARIATION OF EASEMENT "IN GROSS"

CT Volume 6222 Folio 5 (Servient title)



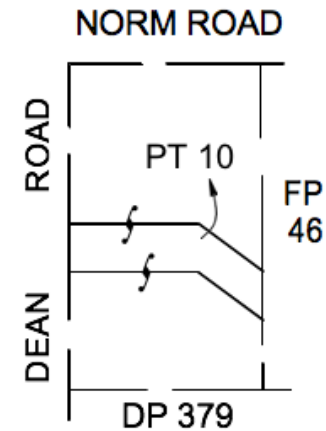
TITLE DETAILS

Land description Allotment 10 in DP 2345
Easement clause on CT

Subject to the easement over the land marked D for water supply purposes
to the South Australian Water Corporation (TG 12112222)

Registered Proprietor Tania Smith
Endorsement M 6789123

CT Volume 6999 Folio 1 (Easement in gross title)



TITLE DETAILS

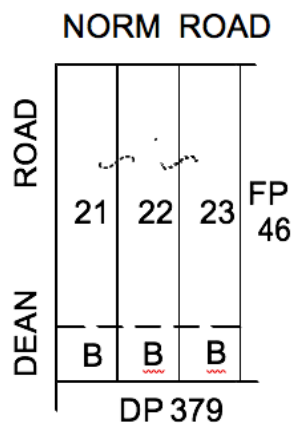
Land description Portion of Allotment 10 in DP 2345

Registered Proprietor South Australian Water Corporation
Endorsement NIL



VARIATION OF EASEMENT "IN GROSS"

PLAN



PLAN OUTCOMES

- CT 6222/5 is divided into Allotments 21, 22 and 23
- Variation of the existing easement for water supply purposes (TG 12112222) to be the position marked B on the plan

Title reference for easement in gross title

OTHER TITLE(S) AFFECTED CT 6999/1

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
VARY FROM	10 IN D2345	SHORT	EASEMENT(S)	A IN D2345	WATER SUPPLY PURPOSES	SOUTH AUSTRALIAN WATER CORPORATION	TG 12112222
VARY TO	21.22.23	SHORT	EASEMENT(S)	B	WATER SUPPLY PURPOSES	SOUTH AUSTRALIAN WATER CORPORATION	TG 12112222



VARIATION OF EASEMENT "IN GROSS"

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of easement as set out on the accompanying plan	Nil

South Australian Water Corporation – holder of easement in gross title CT 6999/1

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6999/1	Variation of easement as set out on the accompanying plan	Nil

Registered interest consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 6789123	Variation of easement as set out on the accompanying plan	Nil



3.6.1.1 Details of Transactions

For Annexure K the following wording could be used in the Details of Transactions:

Variation of easement as set out on the accompanying plan

3.6.1.2 Consent Forms

Consenting parties

In the example Annexure K the consenting parties are:

- Mortgagee of M 6789123 – servient registered interest
- South Australian Water Corporation, the holder of the “in gross” title CT 6999/1

Effect on the Estate or Interest Column

With Annexure K the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Variation of easement as set out on the accompanying plan

3.6.2 Variation of an easement where the dominant and servient land is within the division

Annexure L is an example of the variation as to the position of an easement where the dominant and servient land is comprised within the “division” and the dominant and servient proprietors are the Applicants.

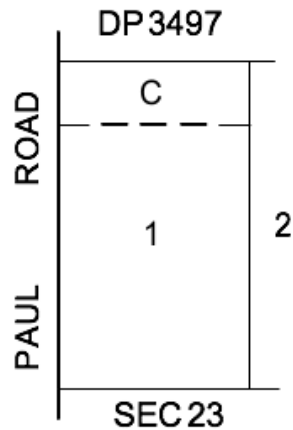
To determine what is involved in the variation, a comparison is required to be made between the Certificates of Title and the plan in Annexure L as to the position of the free and unrestricted right of way and the extent of the appurtenance referred to in the plan’s easement details. The outcomes of these comparisons are:

- a) The position of the free and unrestricted right of way has been varied to that marked D
- b) The extent of the appurtenance has been reduced to be appurtenant to only Allotment 5

ANNEXURE L

VARIATION OF EASEMENT WHERE SERVIENT AND DOMINANT LAND WITHIN “DIVISION

CT Volume 6888 Folio 3 (Servient title)



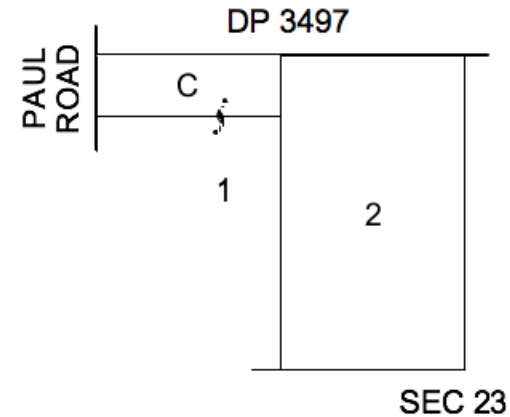
TITLE DETAILS

Land description Allotment 1 in DP 2500
Easement clause on CT

Subject to the free and unrestricted right of way over the land marked C

Registered Proprietor Dean Jones
Endorsement M 876543

CT Volume 6555 Folio 20 (Dominant title)



TITLE DETAILS

Land description Allotment 2 in DP 2500
Easement clause on CT

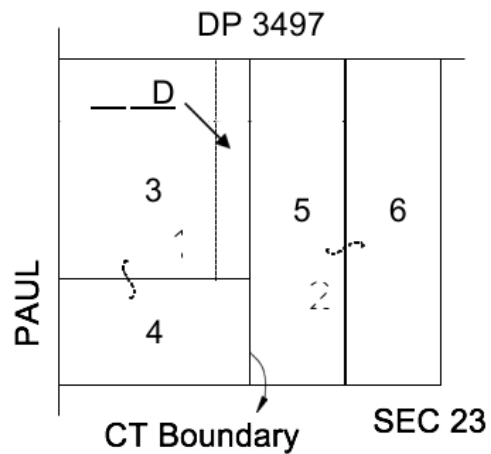
Together with a free and unrestricted right of way over the land marked C

Registered Proprietor Ron Smith
Endorsement M 654321



VARIATION OF EASEMENT WHERE SERVIENT AND DOMINANT LAND WITHIN DIVISION

PLAN



PLAN OUTCOMES

- CT 6555/20 and CT 6888/3 is divided into Allotments 3, 4, 5 and 6
- Variation of the existing free and unrestricted right of way to the position marked D and to be appurtenant to only Allotment 5

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
VARY FROM	1 IN D2500	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C IN D 2500		2 IN D 2500
VARY TO	3	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	D		5



VARIATION OF EASEMENT WHERE SERVIENT AND DOMINANT LAND WITHIN DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 876543	Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 654321	Variation of the right of way as set out on the accompanying plan	Nil



3.6.2.1 Details of Transactions

For Annexure L the following wording could be used in the Details of Transactions:

Variation of the right of way as set out on the accompanying plan

3.6.2.2 Consent Forms

Consenting parties

For Annexure L the consenting parties are:

- Mortgagee of M 876543 – servient registered interest
- Mortgagee of M 654321 – dominant registered interest

Effect on the Estate or Interest Column

For Annexure L the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Variation of the right of way as set out on the accompanying plan

3.6.3 Variation of an easement where the dominant land is outside of the division

Annexure M is an example of the position of an easement being varied, where the servient land is being divided and the dominant land is outside of the “division”. As the dominant land is outside of the “division” the registered proprietor of that CT is not an applicant.

By comparing the position of the right of way on Annexure M and by the wording of the plan’s Easement Details it can be determined that: the:

- a) Position of the right of way has been varied from being portion of Allotment 6 in DP 7890 marked F to that of G on the plan.
- b) Appurtenance has not been changed, as by the “IN FAVOUR OF” column of the “VARY FROM” and “VARY TO” the right of way is to remain appurtenant to CT 6666/10.

In this example the dominant land is not shown on the plan.

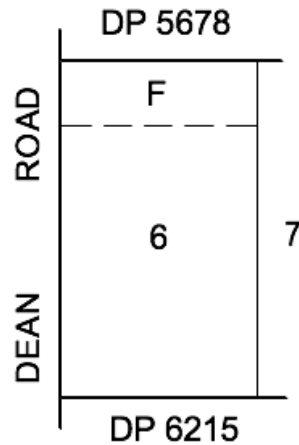
As the dominant land (CT 6666/10) is outside of the “division” the following would be required in relation to that land:

- CT 6666/10 to be included in the RTC’s Land Description
- CT 6666/10 and its relevant details to be included in the Mode of Issue, with the easement details referring to the varied right of way as shown on the plan
- New CT fee paid for the re-issue of CT 6666/10 with the varied right of way

ANNEXURE M

VARIATION OF EASEMENT WHERE DOMINANT LAND OUTSIDE DIVISION

CT Volume 6666 Folio 12 (Servient title)



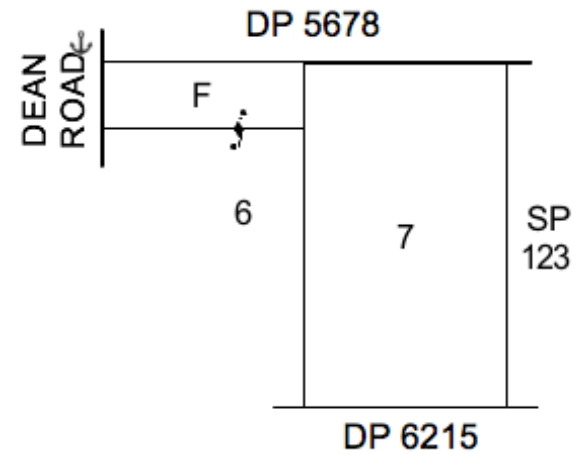
TITLE DETAILS

Land description Allotment 6 in DP 7890
Easement clause on CT

Subject to a free and unrestricted right of way over the land marked F

Registered Proprietor Tania Smith
Endorsement M 8234567

CT Volume 6666 Folio 10 (Dominant title)



TITLE DETAILS

Land description Allotment 7 in DP 7890
Easement clause on CT

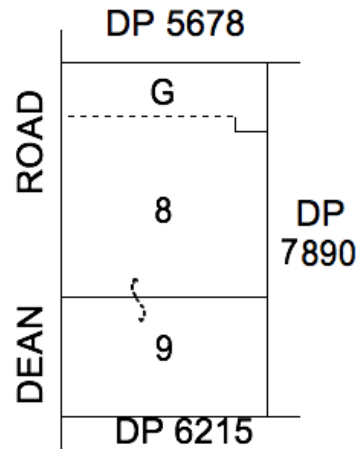
Together with a free and unrestricted right of way over F

Registered Proprietor Norm Brown
Endorsement M 2745679



VARIATION OF EASEMENT WHERE SERVIENT AND DOMINANT LAND WITHIN DIVISION

PLAN



PLAN OUTCOMES

- Servient title ct 6666/12 is divided into Allotments 8 and 9
- Variation of the existing free and unrestricted right of way to the position marked G on the plan

OTHER TITLE(S) AFFECTED CT 6666/10

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
VARY FROM	6 IN D7890	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	F IN D7890		CT 6666/10
VARY TO	8	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	G		CT 6666/10



VARIATION OF EASEMENT WHERE DOMINANT LAND OUTSIDE “DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 8234567	Variation of the right of way as set out on the accompanying plan	Nil

Dominant land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6666/10	Variation of the right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 2745679	Variation of the right of way as set out on the accompanying plan	Nil



3.6.3.1 Details of Transactions

For Annexure M the following wording could be used in the Details of Transactions:

Variation of the right of way as set out on the accompanying plan

3.6.3.2 Consent Forms

Consenting parties

For Annexure M the consenting parties are:

- Mortgagee of M 8234567 - servient registered interest.
- Norm Brown the registered proprietor of CT 6666/10 (the dominant land).
- Mortgagee of M 2745679 – dominant registered interest.

Effect on the Estate or Interest Column

For Annexure M the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Variation of the right of way as set out on the accompanying plan

3.6.4 Variation of an easement where the servient land is outside of the division

Annexure N is an example of where the position of an easement is being varied. In this example the dominant land (CT 6222/10) is being divided and the servient land (CT 6555/20) is outside of the “division”. As the servient land is outside of the “division” the registered proprietor of CT 6555/20 is not an applicant.

By comparing the position of the right of way on Annexure N and by the wording of the plan’s Easement Details it can be determined that the:

- a) Position of the right of way H has been varied to the position J as shown on the plan in Annexure N.

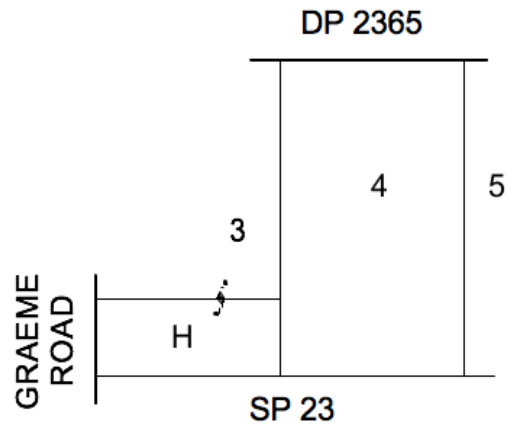
As the servient land (CT 6555/20) is outside of the “division” the following would be required in relation to that land:

- CT 6555/20 to be included in the RTC’s Land Description
- CT 6555/20 and its relevant details included in the Mode of Issue
- New CT fee paid for the re-issue of CT 6555/20

ANNEXURE N

VARIATION OF EASEMENT WHERE SERVIENT LAND OUTSIDE DIVISION

CT Volume 6222 Folio 10 (Dominant title)



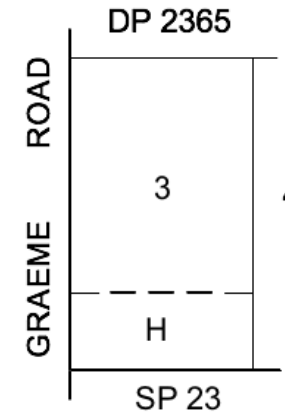
TITLE DETAILS

Land description Allotment 4 in DP 5678
Easement clause on CT

Together with a free and unrestricted right of way over H

Registered Proprietor Dean Jones
Endorsement E 4567890

CT Volume 6555 Folio 20 (Servient title)



TITLE DETAILS

Land description Allotment 3 in DP 5678
Easement clause on CT

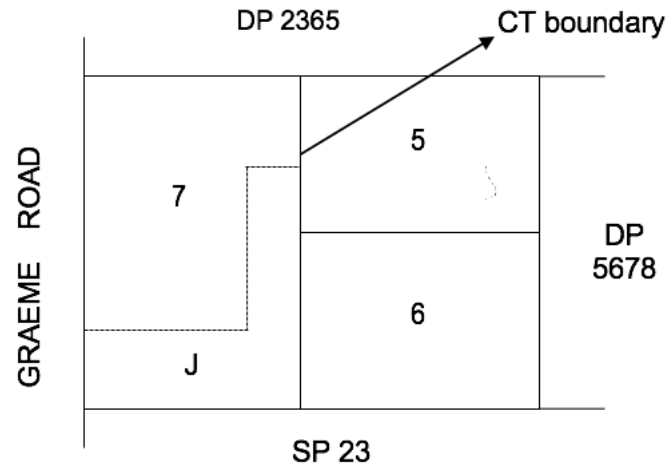
Subject to a free and unrestricted right of way over H

Registered Proprietor Jenny Jones
Endorsement M 5623456



VARIATION OF EASEMENT WHERE SERVIENT LAND OUTSIDE DIVISION

PLAN



PLAN OUTCOMES

- Dominant title CT 6222/10 is divided into Allotments 5 and 6
- Variation of the existing free and unrestricted right of way to the position of J
- Servient title CT 6555/20 redesignated as Allotment 7

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
VARY FROM	3 IN DP 5678	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	H		CT 6222/10
VARY TO	7	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	J		5.6



VARIATION OF EASEMENT WHERE SERVIENT LAND OUTSIDE DIVISION

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Variation of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
E 4567890	Variation of right of way as set out on the accompanying plan	Nil

Servient land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6555/20	Variation of right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 5623456	Variation of right of way as set out in the accompanying plan	Nil



3.5.4.1 Details of Transactions

For Annexure N the following wording could be used in the Details of Transactions:

“Variation of right of way as set out on the accompanying plan of division”

3.5.4.2 Consent Forms

Consenting parties

For Annexure N the consenting parties are:

- Encumbrancee of E 4567890 – dominant registered interest.
- Jenny Jones the registered proprietor of CT 6555/20 (the servient land).
- Mortgagee of M 5623456 – servient registered interest.

Effect on the Estate or Interest Column

For Annexure N the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

“Variation of right of way as set out on the accompanying plan of division”



4. EXTINGUISHMENT WITHOUT THE CONSENT OF THE SERVIENT REGISTERED PROPRIETOR AND THEIR REGISTERED INTERESTS

Section 223LH (2a) of the RPA provides, as part of a land division, for the extinguishment of an easement without the consent of the servient land registered proprietor and their registered interests. These provisions are only permitted where after deposit of the plan the easement remains appurtenant to the other land i.e. - the easement is not being totally extinguished.

When this is to occur, reference to the reduction in the appurtenance is to be included in the RTC's Details of Transactions and in the Statement of Effect for the dominant land consenting party's consent form.

4.1 EXTINGUISHMENT OF AN EASEMENT (INCLUDES RIGHT OF WAY) IN RESPECT OF PART OF THE DOMINANT LAND (SECTION 223LH (2A))

Annexure O is an example of an extinguishment in respect of part of the dominant land. The existing right of way marked C in Annexure O, is being extinguished so as it is no longer appurtenant to the whole of the land in CT 6999/20 and will be appurtenant to only portion of the land being Allotment 23 in the plan.

Section 223LH(2a) of the RPA provides the consent of the servient proprietor and registered interests is not required if the extinguishment is only as regards part of the dominant land and rights under the easement continue in respect of some other part of the dominant land.

4.1.1 Details of Transactions

For Annexure O the following wording could be used in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

4.1.2 Consent Forms

Consenting parties

For Annexure O the consenting parties are:

Mortgagee of M 12389234A - Dominant registered interest

Effect on the Estate or Interest Column

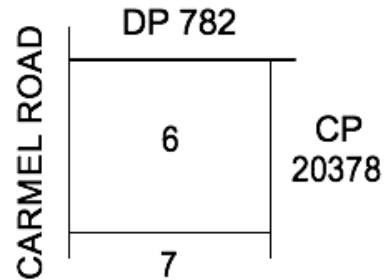
For Annexure O the Effect on the Estate or Interest column would have the same wording as in the Details of Transactions:

Extinguishment of right of way as set out on the accompanying plan

ANNEXURE O

EXTINGUISHMENT WITHOUT THE CONSENT OF THE SERVIENT PROPRIETOR

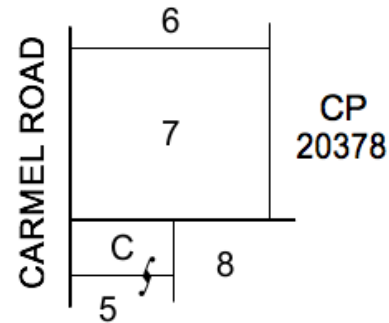
CT Volume
6888 Folio 6



TITLE DETAILS

Land description	Allotment 6 in DP 5678
Easement clause on CT	NIL
Registered Proprietor	Carmel Brown
Endorsement	NIL

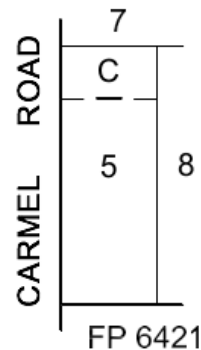
CT Volume
6999 Folio 20
(Dominant title)



TITLE DETAILS

Land description	Allotment 7 in DP 5678
Easement clause on CT	
Together with a free and unrestricted right of way over the land marked C	
Registered Proprietor	Ron Smith
Endorsement	M 12389234A

T Volume
6111 Folio 5
(Servient title)



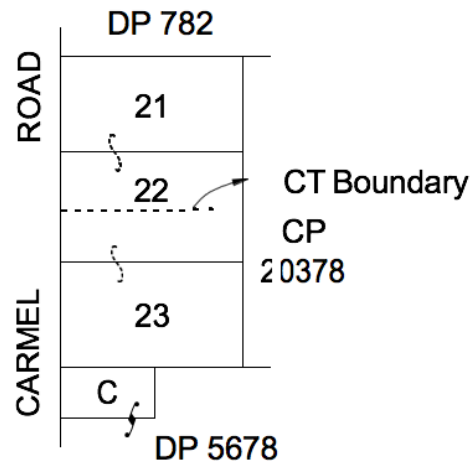
TITLE DETAILS

Land description	Allotment 5 in DP 5678
Easement clause on CT	
Subject to a free and unrestricted right of way over the land marked C	
Registered Proprietor	Tania Jones
Endorsement	NIL



EXTINGUISHMENT WITHOUT THE CONSENT OF THE SERVIENT PROPRIETOR

PLAN



PLAN OUTCOMES

- CT 6888/6 and CT 6999/20 is divided into Allotments 21, 22 and 23
- Existing free and unrestricted right of way to be extinguished as appurtenant to Allotment 22

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXISTING	5 IN D5678	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C		23
EXTINGUISHMENT	5 IN D5678	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C		22



**EXTINGUISHMENT WITHOUT THE CONSENT
OF THE SERVIENT PROPRIETOR (s223LH (2a))**

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Extinguishment of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 12389234A	Extinguishment of right of way as set out on the accompanying plan	Nil



5. LONG FORM EASEMENTS

If an easement annotation note varies from the “Short form” wording as set out in the 5th and 6th Schedules and Sections 89 and 89A of the RPA, the easement or right of way must be set out in full in the Schedule of Easements under the “Long form”.

Where the intention is to create a “long form” easement in a plan of division, the Easement details shows:

- Status - “NEW”
- Form - “LONG”
- Purpose – General description of the purpose of the easement.

5.1 HINTS FOR CREATING LONG FORM EASEMENTS

The following are some hints for creating long form easements:

- Use wording as set out in the 6th Schedule as a basis for the long form easement wording but changing to relevant wording and purpose.
- Reference must be made to the servient land i.e. unique identifier on the plan.
- Reference should be made to the dominant land or authority if an easement in gross title is to be issued.

5.2 COVENANTS

Although covenants are binding on the original parties providing they are separate parties (i.e. grantor and grantee are not the same party) they may not be binding on successors in title.

Covenants should not be included in easements without legal advice.

If covenants are to be included, the easement/right of way should be set out as a long form easement or right of way and the covenants set out on a B1 Annexure separated from the easement recital itself. It may be prudent for the parties to the covenants to initial each page of the covenants.

6. CREATION OF EASEMENTS INVOLVING LAND OUTSIDE OF THE “DIVISION”

Apart from the creation of internal easements, Part 19AB provides for the creation of easements (service and private) involving land outside of the “division”. The easements can be created over or appurtenant to land outside the division.

For an easement to be created under Part 19AB the DAC Certificate must show the easement to be created. If the DAC Certificate does not show the easement as a condition of the plan, separate documentation must be lodged after the RTC/RTU to create the easement and the plan must:

- (a) Include in the purpose of the plan - “and Easement”
- (b) Show a status of “PROPOSED” against the easement to be created after deposit of the plan in the plan’s Easement Details
- (c) Annotation panel of the plan to state “Easement (identifier) does not form part of the division”.

6.1 SERVICE EASEMENTS

Section 223LG provides for the creation of service easements over “any land” in a plan of division lodged under Part 19AB. This includes any redesignated parcel shown on the plan. As stated previously, the creation of service easements are not transactions, and as such no reference is to be made to their creation in the Details of Transactions if an RTC is lodged. But unlike service easements created over land being divided, certain parties are required to consent to their creation over the redesignated land.

In Annexure P a service easement is to be created over a redesignated parcel Allotment 13, which is the whole of the land in CT 6555/20. In regard to servient land, CT 6555/20, the following are required:

- CT 6555/20 must be included in the Land Description for any RTC or RTU
- New CT fee must be paid for the re-issue of CT 6555/20 subject to the new easement
- If an RTC has been lodged, the redesignated parcel is to be included in the Mode of Issue, subject to the service easement

6.1.1 Consent Forms

Consenting Parties

For Annexure P the consenting parties to create the service easement over the redesignated land are:

- Jenny Jones - servient registered proprietor.
- Mortgagee of M 5623456 - servient land registered interest.

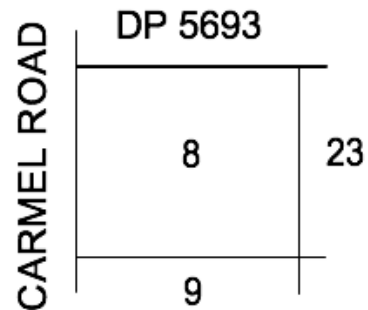
Effect on the Estate or Interest Column

Suggested wording for Annexure P in the Effect on Estate of Interest column show: Creation of easement as set out on the accompanying plan

ANNEXURE P

SERVICE EASEMENT OUTSIDE OF" DIVISION"

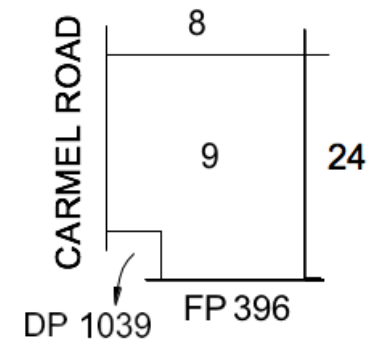
CT Volume 6222 Folio 10



TITLE DETAILS

Land description	Allotment 8 in DP 1234
Easement clause on CT	NIL
Registered Proprietor	Tania Smitth
Endorsement	M 4567890

CT Volume 6555 Folio 20



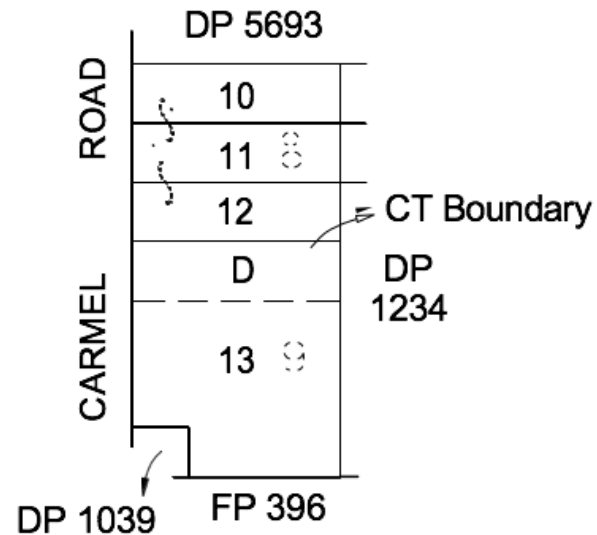
TITLE DETAILS

Land description	Allotment 9 in DP 1234
Easement clause on CT	NIL
Registered Proprietor	Jenny Jones
Endorsement	M 5623456



SERVICE EASEMENT OUTSIDE OF "DIVISION"

PLAN



PLAN OUTCOMES

- CT 6222/10 is divided into Allotments 10, 11 and 12
- CT 6555/20 redesignated as Allotment 13
- Creation of service easement over portion of Allotment 13 marked D

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
NEW	13	SERVICE	EASEMENT(S)	D	FOR DRAINAGE PURPOSES	COUNCIL FOR THE AREA	223LG RPA

ANNOTATIONS

ALLOTMENT(S) 13 (CT 6555/20) DO NOT FORM PART OF THIS DIVISION



SERVICE EASEMENT OUTSIDE OF "DIVISION"

Servient land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6555/20	Creation of easement as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 5623456	Creation of easement as set out on the accompanying plan	Nil



6.2 PRIVATE EASEMENTS AND RIGHTS OF WAY OVER LAND OUTSIDE OF THE “DIVISION”

Section 223LE(5) of the RPA provides for the creation of private easements over any land in a plan of division lodged under Part 19AB. Where private easements are to be created over redesignated land as a condition of the plan, they are generally held appurtenant to parcel(s) delineated in the same plan.

As stated previously the creation of private easements are transactions and as such require an RTC to be lodged.

Using Annexure Q as an example, a free and unrestricted right of way over the land marked J is to be created over a redesignated parcel being Allotment 7, which is the whole of the land in CT 6777/10. In relation to CT 6777/10 the following are required:

- CT 6777/10 to be included in the Land Description
- New CT fee paid for the re-issue of CT 6777/10 as Allotment 7
- The redesignated parcel is to be included in the Mode of Issue subject to the free and unrestricted right of way

6.2.1 Details of Transactions

In Annexure Q the right of way is being created appurtenant to Allotment 5 in the land being divided. Therefore as the applicant is the proprietor of the dominant land reference to the creation of the right of way is to be included in the Details of Transactions.

Suggested wording in the Details of Transactions for Annexure Q is:

Creation of the right of way as set out on the accompanying plan

6.2.2 Consent Forms

Consenting Parties

For Annexure Q the consenting parties are:

- Mortgagee of M 5671234 - dominant registered interest.
- Dean Jones - servient registered proprietor.
- Mortgagee of M 9672345 - servient registered interest.

Effect on the Estate/Interest Affected column

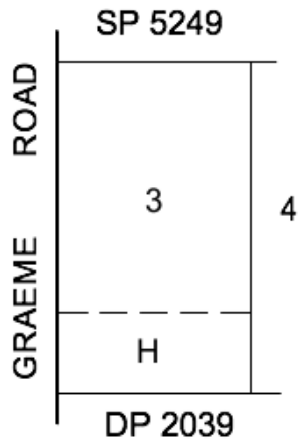
With Annexure Q, the suggested wording for the Effect on Estate or Interest column for:

- a) Mortgagee of M 5671234, the dominant registered interest, is -
Adjusted to cover the parcels as set out on the mode of issue
- b) Dean Jones, the servient registered proprietor show:
Creation of the right of way as set out on the accompanying plan
- c) Mortgagee of M 9672345, the servient registered interest, show:
Adjusted to cover the parcels as set out on the mode of issue

ANNEXURE Q

CREATION OF PRIVATE EASEMENT OUTSIDE OF "DIVISION"

CT Volume 6777 Folio 10



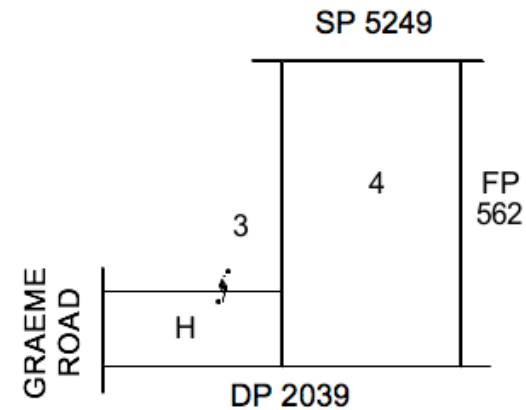
TITLE DETAILS

Land description Allotment 3 in DP 5678
Easement clause on CT

Subject to a right of way over the land marked H (T 123456)

Registered Proprietor Dean Jones
Endorsement M 9672345

CT Volume 6555 Folio 20



TITLE DETAILS

Land description Allotment 4 in DP 5678
Easement clause on CT

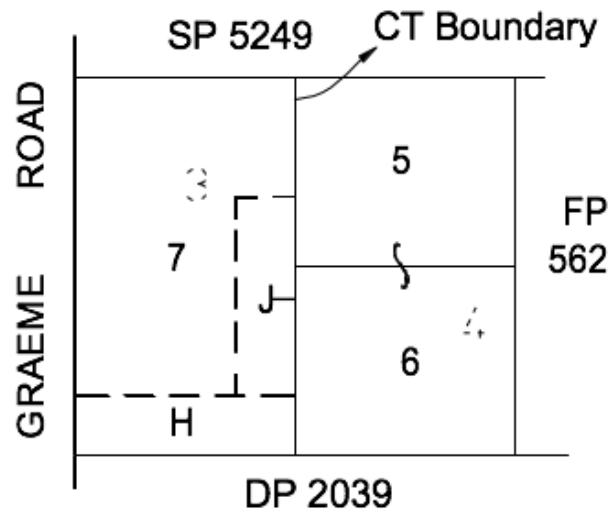
Together with a right of way over the land marked H (T 123456)

Registered Proprietor Paul Brown
Endorsement M 5671234



SERVICE EASEMENT OUTSIDE OF "DIVISION"

PLAN



PLAN OUTCOMES

- CT 6555/20 is divided into Allotments 5 and 6
- CT 6777/10 is redesignated as Allotment 7
- Creation of a free and unrestricted right of way over portion of Allotment 7 marked J appurtenant to Allotment 5
- Existing free and unrestricted right of way over H to remain appurtenant to Allotments 5 and 6

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXISTING	7	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	H		5.6
NEW	7	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	J		5

ANNOTATIONS

ALLOTMENT(S) 7 (CT 6777/10) DO NOT FORM PART OF THIS DIVISION



CREATION OF PRIVATE EASEMENT OUTSIDE OF "DIVISION"

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Creation of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 5671234	Adjusted to cover the parcels as set out in the mode of issue	Nil

Servient land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6777/10	Creation of right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 9672345	Adjusted to cover the parcels as set out in the mode of issue	Nil



6.3 PRIVATE EASEMENTS APPURTENANT TO LAND OUTSIDE OF THE “DIVISION”

Section 223LE(5) also provides for the creation of private easements over any part of the land being divided appurtenant to another parcel. The appurtenant land may include land within and outside of the plan.

The following relates to the creation of private easements appurtenant to land outside of the “division”. As stated previously the creation of private easements are transactions and as such require an RTC to be lodged.

Using Annexure R as an example, a free and unrestricted right of way over the land marked D is to be created appurtenant to CT 6555/20.

In relation to CT 6555/20 the following are required:

- CT 6555/20 to be included in the RTC ‘s Land Description
- New CT fee paid for the re-issue of CT 6555/20
- CT 6555/20 and it’s relevant details to be included in the Mode of Issue, showing the title together with the free and unrestricted right of way

6.3.1 Details of Transactions

As the right of way is being created over the land being divided reference to the creation of the easement/right of way is to be included in the Details of Transactions.

Using Annexure R, the suggested wording in the Details of Transaction is:

Creation of right of way as set out on the accompanying plan

6.3.2 Consent Forms

Consenting Parties

For Annexure R the consenting parties are:

- Ron Smith - dominant registered proprietor
- Mortgagee of M 654321 - dominant registered interest
- Mortgagee of M 876543 - servient registered interest.

Effect on Estate or Interest Column

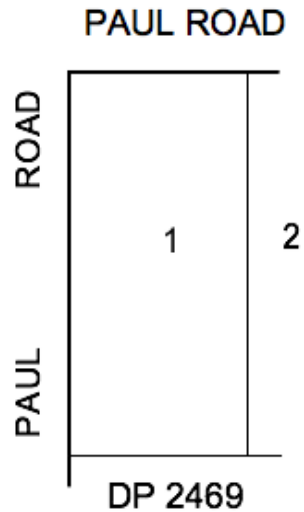
For Annexure R the following wording could be used in the Effect on Estate or Interest column for:

- (a) Ron Smith, the dominant registered proprietor is:
“Creation of right of way as set out on the accompanying plan
- (b) Mortgagee of M 654321, the dominant registered interest is:
Adjusted to cover the parcels as set out on the mode of issue
- (c) Mortgagee of M 876543, the servient registered interest is:
Adjusted to cover the parcels as set out on the mode of issue

ANNEXURE R

CREATION OF EASEMENT APPURTENANT TO LAND OUTSIDE OF “DIVISION”

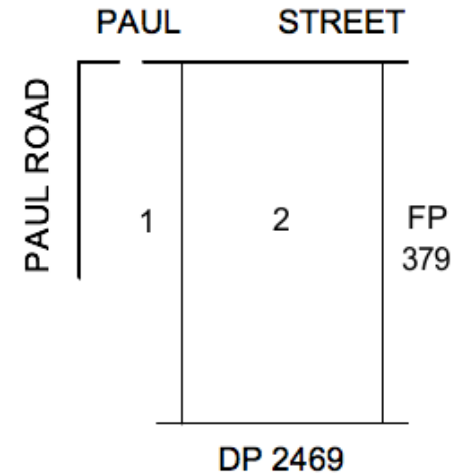
CT Volume 6777 Folio 10



TITLE DETAILS

Land description	Allotment 1 in DP 2500
Easement clause on CT	NIL
Registered Proprietor	Dean Jones
Endorsement	M 876543

CT Volume 6555 Folio 20



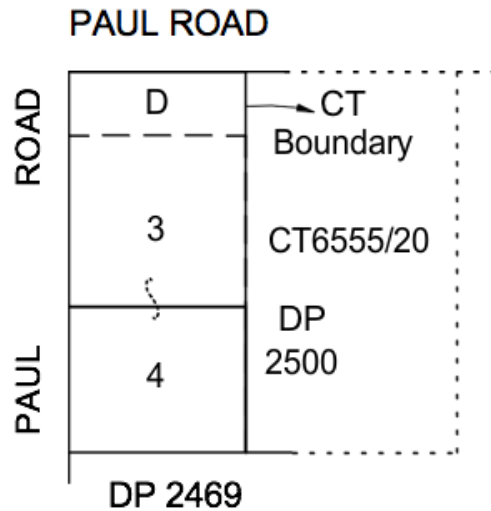
TITLE DETAILS

Land description	Allotment 2 in DP 2500
Easement clause on CT	NIL
Registered Proprietor	Ron Smith
Endorsement	M 654321



CREATION OF EASEMENT APPURTENANT TO LAND OUTSIDE OF "DIVISION"

PLAN



PLAN OUTCOMES

- CT 6777/10 is divided into Allotments 3 and 4
- CT 6555/20 is not included in the plan
- Creation of a free and unrestricted right of way over portion of Allotment 3 marked D appurtenant to CT 6555/20

OTHER TITLE(S) AFFECTED CT 6555/20

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
NEW	3	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	D		CT 6555/20



CREATION OF EASEMENT APPURTENANT TO LAND OUTSIDE OF “DIVISION”

Details of Transactions

DETAILS OF TRANSACTION(S) (Applicants only)	CONSIDERATION /
Creation of right of way as set out on the accompanying plan	Nil

Registered interest consent – servient land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 876543	Adjusted to cover the parcels as set out on the mode of issue	Nil

Dominant land registered proprietor consent

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
CT 6555/20	Creation of right of way as set out on the accompanying plan	Nil

Registered interest consent – dominant land

STATEMENT OF EFFECT ON ESTATES OR INTERESTS OF CONSENTING PARTIES		
ESTATE / INTEREST AFFECTED	EFFECT ON ESTATE OR INTEREST HELD OR CLAIMED	CONSIDERATION /
M 654321	Adjusted to cover the parcels as set out on the mode of issue	Nil



7. CREATION OF AN EASEMENT THAT IS NOT A CONDITION

Part 19AB provides only for the creation of easements that are conditions for a plan of division that is those shown with a status of “NEW” on the plan’s easement details.

As a matter of policy the LTO allows easements, which are not a condition of a plan of division, to be delineated on a DP. If a non-conditional easement is delineated in a DP the:

- Plan purpose includes the word “EASEMENT”
- Relevant easement has a status of “PROPOSED” on the plan’s easement details.
- Annotation panel includes “Easement (identifier) does not form part of the division”.

These easements must be created by separate documentation (eg. Grant of Easement) lodged after the RTU/RTC.

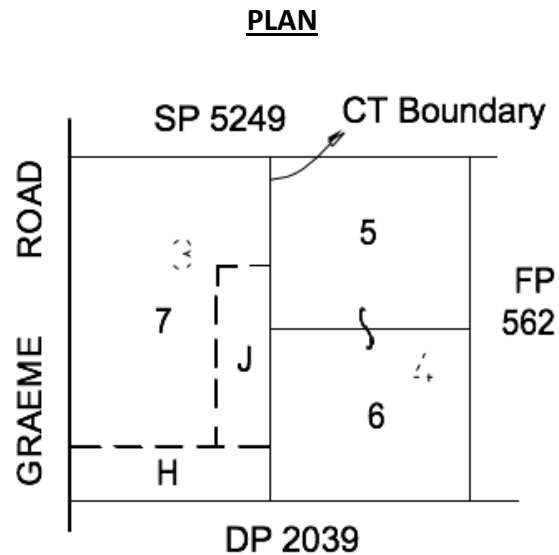
Annexure S is an example of a plan where the:

- (a) The plan purpose refers to “DIVISION AND EASEMENT”
- (b) Easement details refer to a proposed free and unrestricted right of way to be created over J appurtenant to Allotment 5

In Annexure S the right of way over J is to be created after deposit of the plan by separate documentation such as grant of easement using Form TG.

ANNEXURE S

CREATION OF EASEMENT NOT A CONDITION



PLAN PURPOSE

DIVISION AND EASEMENT

PLAN OUTCOMES

- CT 6555/20 is divided into Allotments 5 and 6
- CT 6777/10 is redesignated as Allotment 7
- Existing free and unrestricted right of way over H to remain appurtenant to Allotment s 5 and 6
- After deposit of plan create free and unrestricted right of way over portion of Allotment 7 marked J appurtenant to Allotment 5

EASEMENT DETAILS

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
EXISTING	7	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	H		5.6
PROPOSED	7	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	J		5

ANNOTATIONS

ALLOTMENT(S) 7 (CT 6777/10) DO NOT FORM PART OF THIS DIVISION

