

# NOTICE TO SURVEYORS T4/2005 REGISTERING INTERESTS OVER LAND

# **Background**

The introduction of SmartRegister has removed sketches of the land, and sketches of any interests and notifications affecting the land, from the certificates of title. Reliance is now on the deposited, strata and survey-strata plans to depict spatially the parcels and any new or old spatial interests such as easements, covenants and notifications.

In March 2001 Notice to Surveyors T1/2001 was issued by the Registrar of Titles requiring surveyors to lodge "Easement Only" plans to support the documents for certain types of easements. The lodgement fee was waived for these types of plans.

It is now appropriate to extend that principle to other types of interests that affect only part of a lot to remove sketches from documents and enable automatic updates to the Spatial Cadastral Database. This is primarily because we are moving to a digital system which has a more accurate spatial definition of the land. See **Table 1** for a list of the major registrable interests to which this notice refers.

This notice is produced as advice about the new requirements to be introduced on **4 July 2005**.

The procedures for using deposited plans as the spatial definition for the many types of interests over land are based upon the principles that have already been adopted for carbon rights, carbon covenants and tree plantations as per Notice to Surveyors T6/2004 dated 17 August 2004.

# Elements of the new policy

#### 1. No sketches in documents

The principle is that documents containing sketches defining the spatial extent of interests that are to be registered will not be accepted.

The following types of interests are the only exceptions:

- Caveats (including absolute caveats),
- Freehold leases,
- Management body leases and non-LAA leases over Crown land, and
- Simple 'bore' easements between neighbours are exempt from requiring a deposited plan (DP) to define the position of the bore.

However, deposited plans for the spatial definition of these types of interests will generally be accepted if the parties to the interest wish to lodge them.

It is preferred that freehold leases of three-dimensional space within buildings are not spatially defined on deposited plans but described by words and/or sketches in documents.

It is acceptable for "drawings" to be included within the documents, as long as they don't purport to define the area of land affected by the interest. A drawing can be any type of graphic deemed necessary to be included in the documents by the parties to the interest.

Sketches that have been approved by the Survey Advice Officer and endorsed by the parties to the interest prior to 4 July 2005 will continue to be accepted indefinitely.

#### 2. Documents to refer to DP

The principle is that the documents are only to refer to the DP number, with no reference to editions/versions.

It is essential that the DP is In Order for Dealings (IOFD) before the documents are lodged. This allows the registered proprietor to sign off on an 'IOFD' version and keep a copy of that plan. DLI will ensure that any changes to the plan after it is lodged have a proper audit trail. DLI business processes will ensure that any changes of a 'material' nature and that involve 'dimensional' and/or 'positional' aspects have appropriate authorisation.

Simultaneous lodgements, documents with plans, are unacceptable because:

- this is inconsistent with the accepted approach for subdivisions,
- any problems with the DP are likely to affect the priority of the documents, and
- the parties to the easement can't see a validated DP before lodging the documents.

#### 3. Lodgement fees for Interest Only plans.

Interest Only plans will incur the normal fee for lodging a deposited plan to recover the costs of processing the deposited plans.

#### 4. New interest - existing DP

The principle is that a new interest can be accepted that refers to an existing DP that defines a suitable area of interest.

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. A DP will be required if there is any doubt in the spatial definition of the Area of Interest (AOI) by description. An example of an acceptable land description is as follows:

"as to the portion of land labelled ... on Deposited Plan ... "

If the conveyancer or surveyor is in any doubt about how to describe the spatial extent of the interest then a deposited plan should be lodged.

#### 5. New interest - existing DP; retired interest

The principle is that a new interest can be accepted that refers to an existing DP where the relevant area of interest defined on that DP has been retired in SmartPlan.

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. It must refer to the subject land on an existing DP.

#### 6. New interest - existing SmartPlan (SMP)

The principle is that a new interest can be accepted that refers to a severance polygon existing in SMP defined by a compilation of surveys.

This situation most commonly occurs in rural areas where a road was surveyed through a large parcel, but occurs in any case where some land was excised in the past from a parcel and for which a balance lot was not shown on a plan. There is no single plan that defines the severances, but the compilation of boundaries is achieved in SmartPlan. The situation can also occur in more modern surveys where parts of a lot can be "severed" by the lines from easements etc. Interests can potentially be registered over these "severances".

The land description in the documents must be clear and unambiguous to be acceptable to the Registrar of Titles. A DP will be required if there is any doubt in the spatial definition of the AOI by description.

If the conveyancer or surveyor is in any doubt about how to describe the spatial extent of the interest then a deposited plan should be lodged.

The following is an example of an acceptable description:

"as to the portion of land within Certificate of Title Volume ... Folio ... bounded by ...".

#### 7. Initial Interests Table.

Interest Only plans are to include an "Initial Interests Table" to list all the interests, whether one or many, which are expected to be registered initially over the areas of interest depicted in the interest only plan. Any other interests existing on the subject land parcel would NOT be brought forward on this plan. The document number will be entered by DLI against each listed interest at the time of registration. All subsequent actions concerning interests and the areas of interest, such as surrenders, new interests using the DP, etc will be listed in the amendment schedule. Any changes to the DP, other than of administrative status, will cause an increment in the version number.

### Requirements for deposited plans

Deposited plans are to be prepared generally in accordance with the requirements for "Easement only" plans as described, with examples, in the Survey and Plan Practice Manual 2003. However, there are some important variations that have now been adopted for "Interest only" plans. The manual is in the process of being updated and should include these provisions by the implementation date.

The Survey and Plan Practice Manual 2003 is available as a free download from

http://www.landonline.com.au/PracticeManualsList.asp?product\_group\_id=62 and from Landgate Survey Channel (look in Publications/Manuals)

Template files of the deposited plan forms in several common computer aided drafting (CAD) and exchange formats are available as a free download from Landgate Survey Channel (look in Publications/Specifications/Guidelines/Plan Forms).

Deposited plans shall be of Type "Freehold" or "Crown" depending upon the tenure of the subject land. The Purpose shall be "Interest". The "Plan of" section shall be in the form of "Easement/Notification/etc and/or other interest over Lot ... on DP...". The current certificate of title volume and folio numbers should appear on the plan either in the heading or within the graphics. The graphic area shall contain the notation "For Interest Purposes Only".

As shown in the attached **example A**, it will generally be sufficient for the position of the area of interest to be defined by coordinates. The coordinates must be expressed in terms of a standard map grid maintained by DLI eg MGA94, PCG94. It will be necessary to ensure that the coordinates of the interest polygon and the coordinates used for plotting the boundaries are compatible. Compatible coordinates are those where the accuracy of each set of coordinates is similar and compatible with the relative positions of the relevant entities. If they are not compatible, it will be necessary to provide proof that the interest polygon is completely within the subject land. This can be achieved in the following ways:

1. by making a geodetic connection to a nearby, verified boundary point, or

2. by re-establishment of nearby boundaries and connection to the interest polygon.

If case 1 applies, the upgraded boundary coordinates must be shown on the plan. If case 2 applies, the connection from the boundary to the interest polygon must be shown by dimensions, and the interest polygon must be defined by dimensions (see **example B**). Belt planting of trees can be accommodated by using coordinates as illustrated in **example C**.

Interest Only plans are to include an "Initial Interests Table" (see **examples A-D**) to list all the interests, whether one or many, which are expected to be registered initially over the areas of interest depicted in the interest only plan. Any other interests existing on the subject land parcel would NOT be brought forward on this plan. The document number will be entered by DLI against each listed interest at the time of registration. All subsequent actions concerning interests and the areas of interest, such as surrenders, new interests using the DP, etc will be listed in the amendment schedule. Any changes to the DP, other than of administrative status, will cause an increment in the version number.

Interest Only plans that support documents for the amendment of an existing interest are to depict the outcomes of the changes on sheet 1 as shown on **example D-1**. The extents of the portions of the original interests that are to be extinguished or surrendered are to be depicted on subsequent sheets of the plan as shown on **example D-2**.

The deposited plans will be subject to a legal audit by DLI as part of the plan registration process to ensure that the affected land is correctly, clearly and unambiguously defined. Examination procedures in DLI will ensure that the plan is consistent with the registered instrument.

Deposited plans lodged in support of a registered interest will incur the general fee applicable to plans not requiring deposition with the Western Australian Planning Commission.

# Requirements for CSD files

CSD files are to be created generally in accordance with the CSD User Guide at Appendix 9 of the Survey and Plan Practice Manual 2003. However, the following details concerning the creation of polygon records are not included in the current version of the user guide.

Polytype: This is to be entered as "Easement" or "Easement or Interest" or "Interest" depending on the application used and the version of that application.

Polyident1: The text strings are to be used exactly as shown in Table 1 as appropriate. CSD Editor now contains a drop-down list to select the relevant interest. Interests not on the list are to be entered as succinctly as possible while retaining clarity and consistency.

Polyident2: This attribute is to contain the lot number of the affected land.

Please also refer to the attached screen prints of examples from applications in current use.

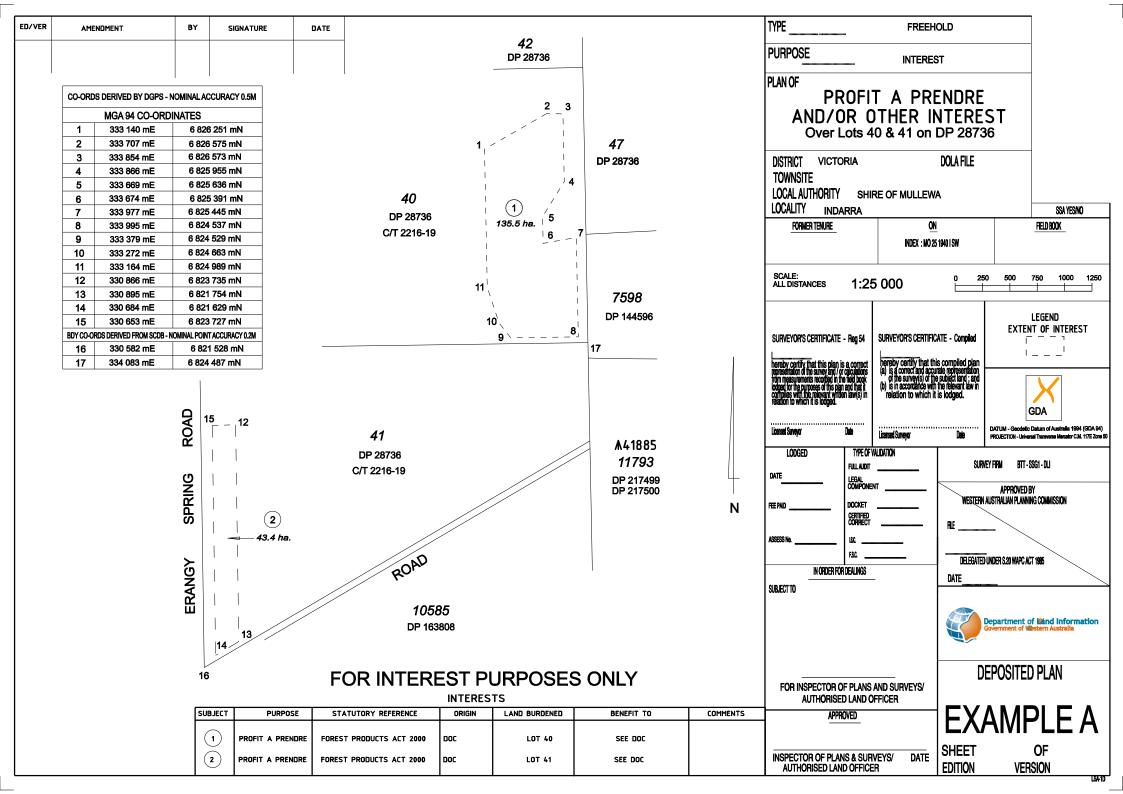
| Carbon Covenant - Benefit          |
|------------------------------------|
| Carbon Covenant - Burden           |
| Carbon Right                       |
| Caveat                             |
| Contaminated Site                  |
| Covenant – LAA 15                  |
| Easement - doc                     |
| Easement - LAA 144                 |
| Easement in Gross – LAA 195        |
| Easement Public Access LAA 195/196 |
| Easement STA 5D                    |
| Easement TLA 136C                  |
| Easement TLA 167A                  |
| Easement TP&D 27A Reg 5            |
| Easement TP&D 27A Reg 6            |
| Easement TP&D 27A Reg 7            |
| Easement TP&D 27A Reg 8            |
| Easement TP&D 27A Reg 9            |
| Lease                              |
| Memorial                           |
| Notification                       |
| Profit a prendre                   |
| Restrictive Covenant – Benefit     |
| Restrictive Covenant – Burden      |
| Tree Plantation                    |

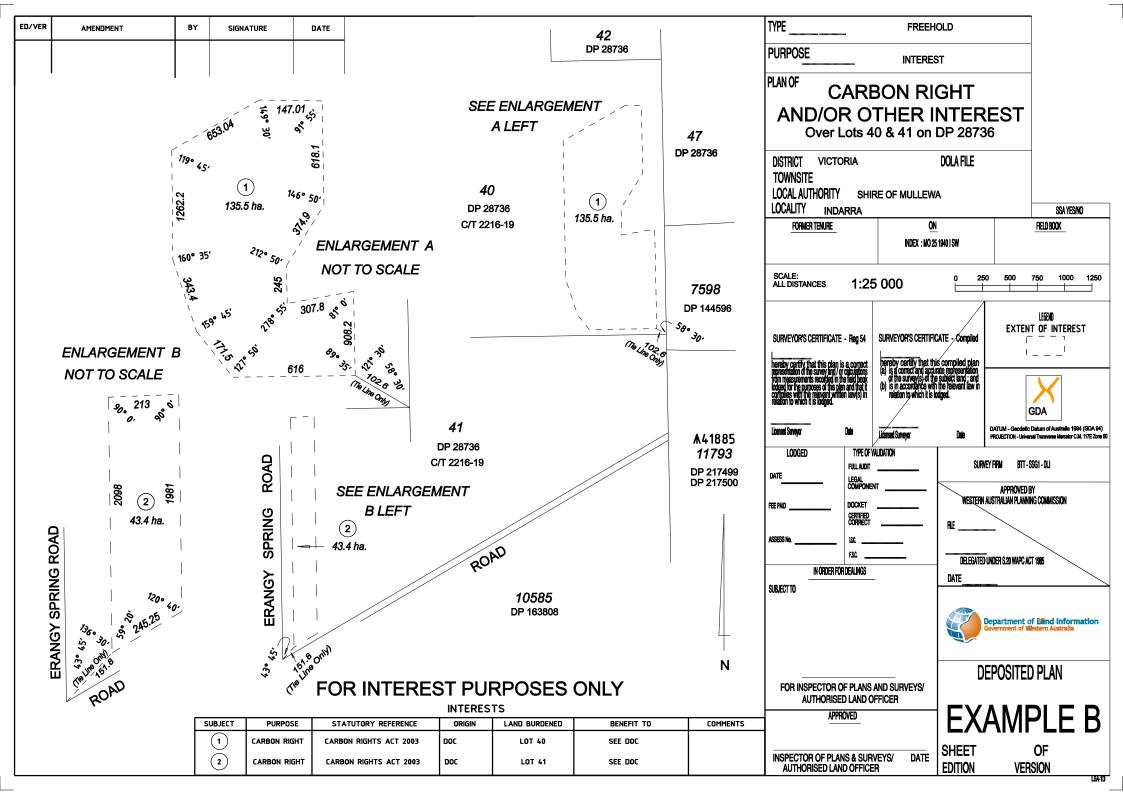
#### Table 1

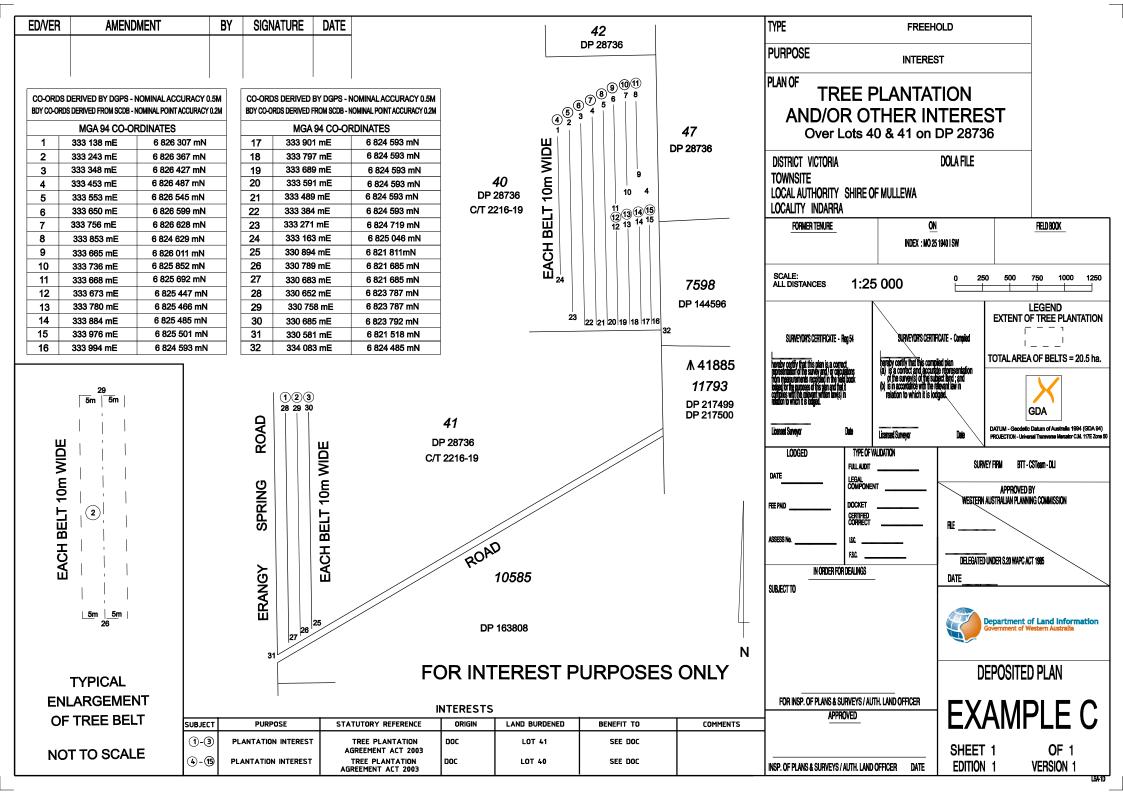
The Survey Advice Officer at DLI can be contacted (telephone 9273 7044; e-mail peter.joyce@dli.wa.gov.au) for any queries about creating the CSD files.

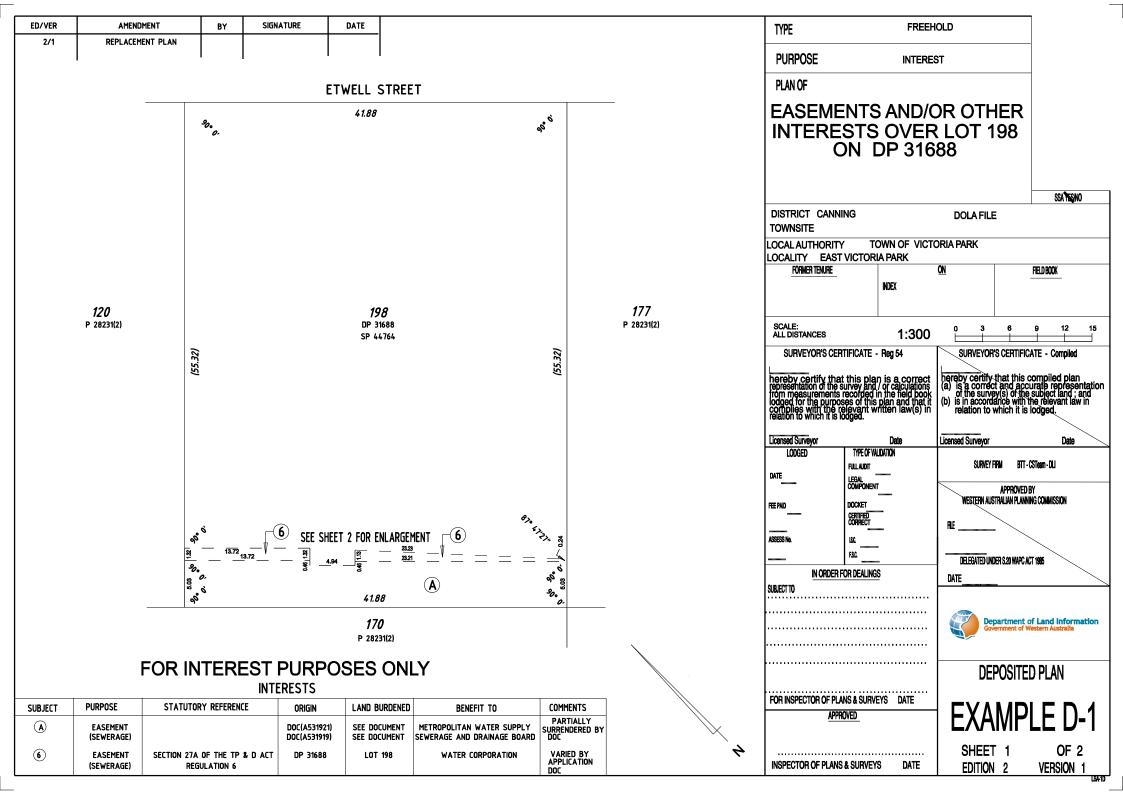
MAX VAN WEERT
ASSISTANT REGISTRAR OF TITLES
A/MANAGER REGISTRATION SERVICES BRANCH

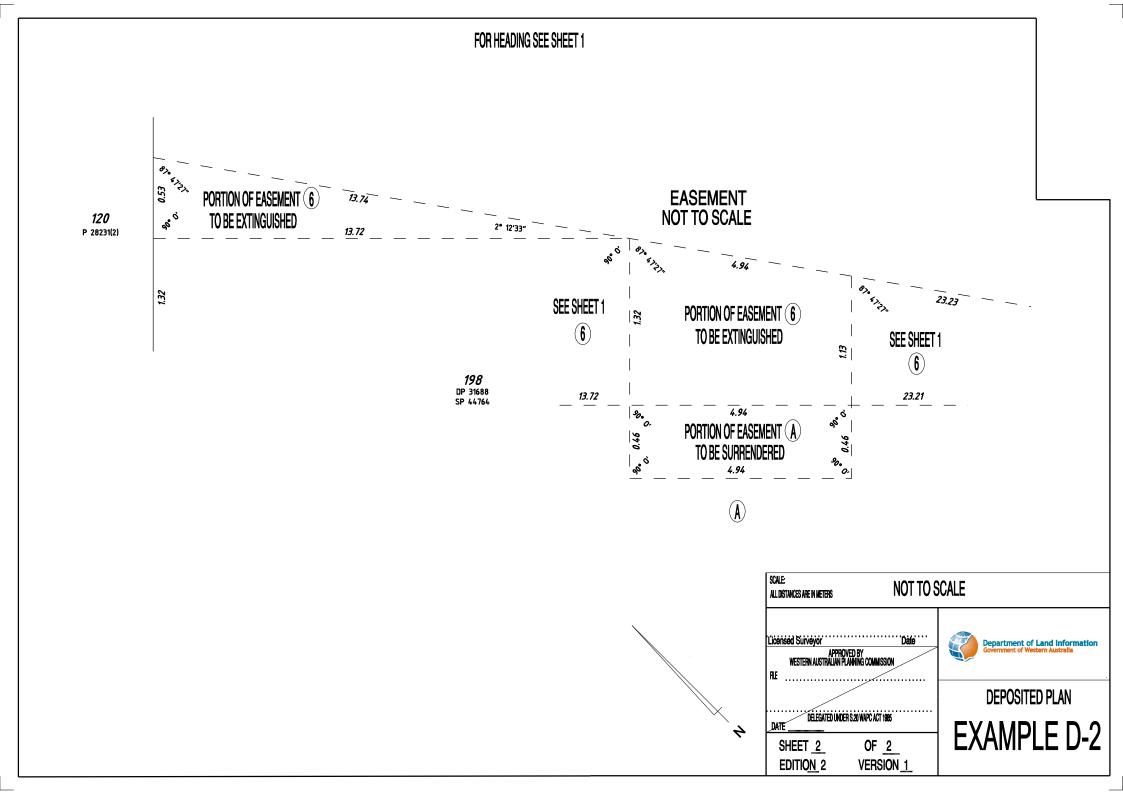
25 May 2005











# Capture

