

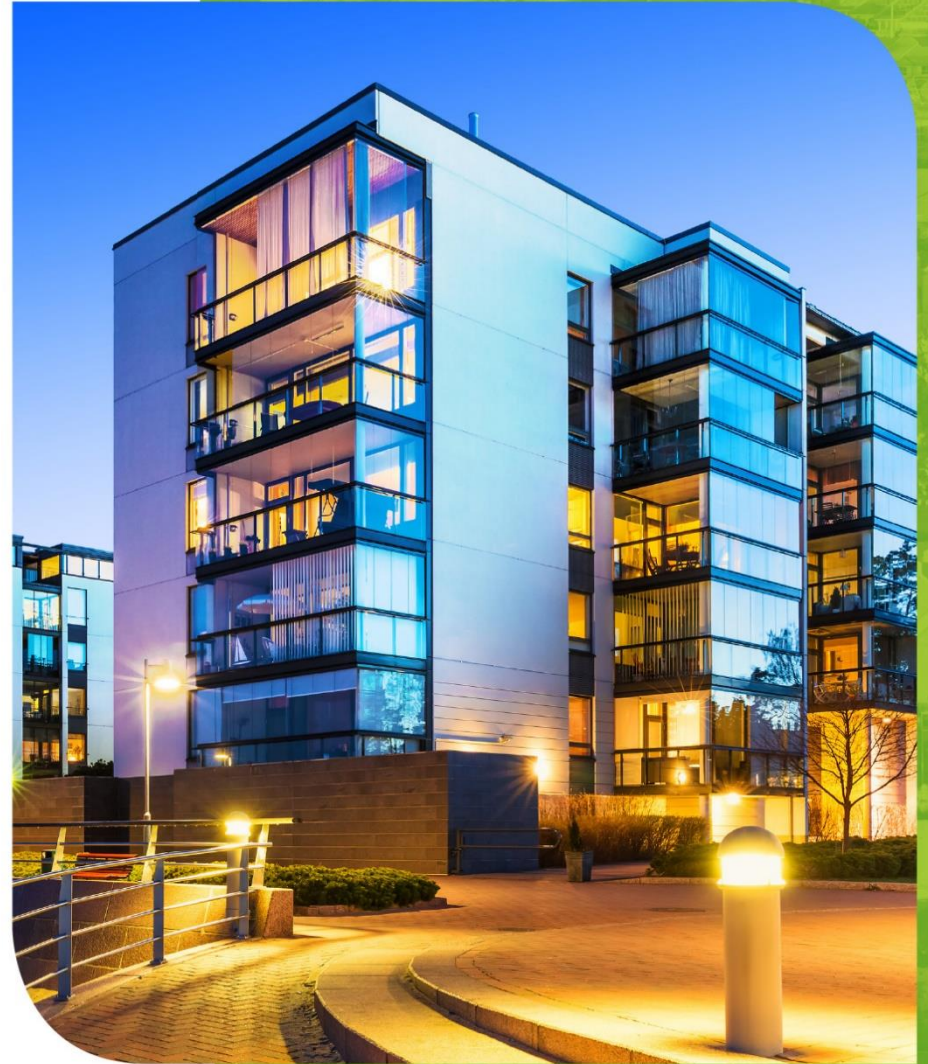


VE Documents

Variation or Extinguishment Of Easements or Rights of Way

2021

landservices.com.au





About our Land Services Team



John Ikonmopoulos is a Property Examiner within Land Services SA. He has over 24 years' experience in numerous areas of Land Information Services and has work on various projects. Current area of focus are examining division applications and studying to become a Registered Conveyancer.

Sandy Beaglehole is a Property Examiner within Land Services SA. She has over 37 years experience in numerous positions within Land Services SA and has spent the last 7 years as a Property Examiner.



Jaymie Heinrich is a Property Examiner within Land Services SA. She has over 17 years experience in numerous positions within Land Services SA and has just recently commenced in the role as a Property Examiner.

Contents

- Why is Land Services SA providing this service
- Definitions
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Why are we doing this?

- Assist in educating the industry by providing regular training updates
- Assist in reducing requisitions across your business
- Removing any areas of concern
- Setting your business up for success





Definitions – Part 1

Dominant Land –

this is the land that the Easement is in favour of

The title for Allotment 1 would have registered on its title

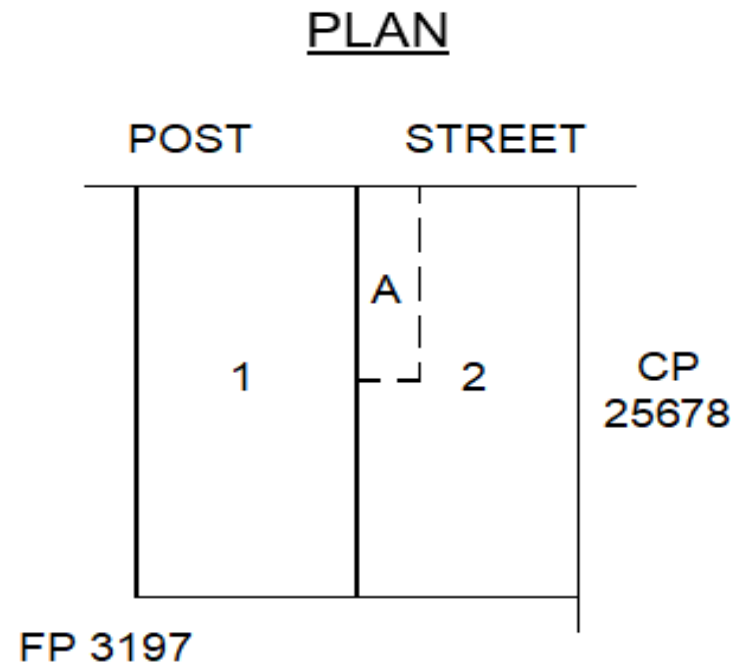
Together with an easement over the land marked A in D123432 (RTC 12203020)

Servient Land –

this is the land that the easement or right of way goes over

The title for Allotment 2 would have

Subject to an easement over the marked A in D123432 (RTC 12203020)



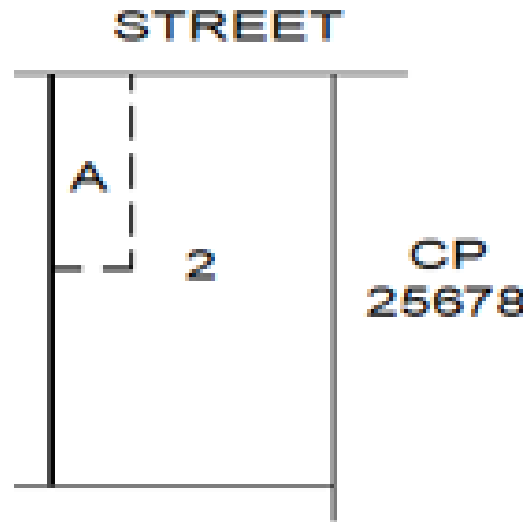


Definitions – Part 2

Easement in Gross Title

This is the Dominant authority being a Government body or Minister or other authority body that is entitled to hold an Easement in Gross title pursuant to Section 41A Law of Property Act.

An easement in Gross title will issue in the name of the authority eg South Australian Water Corporation over the land marked A over portion of Allotment 2



Service Easement

This is a Statutory easement that is created pursuant to 223LG of the Real Property Act. There is 4 different types of Service Easements for Sewerage, Water, Drainage or Electricity Supply purposes.

The title for Allotment 2 would show

Subject to Service Easement over the land marked A to South Australian Water Corporation (223LG RPA)

There will be **no** separate title issued for this.



VE – Variation or Extinguishment of Easement or Right of way

Pursuant to s 90B(1) of the Real Property Act the Registrar-General may on application:

1. **Vary** the position of, or extend or reduce the extent of, an easement over **servient land**
2. **Vary** an easement by extending the appurtenance of the easement to other land owned by the proprietor of the **dominant land**
3. **Extinguish** an easement or Right of Way.

A VE dealing cannot change the purpose, covenants or conditions of the easement, if these are to be varied then the easement will need to be extinguished and then regranted.



Panel form VE – Part 1

APPLICATION FOR EXTINGUISHMENT/VARIATION OF EASEMENT

* (Pursuant to Section 90B of the Real Property Act 1986)
* (Pursuant to Section 41 of the Roads (Opening and Closing) Act 1991)

* Strike through the inapplicable

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION (SERVIENT)

LAND DESCRIPTION (DOMINANT)

SERVIENT PROPRIETOR(S) (Full name and address)

DOMINANT PROPRIETOR(S) (Full name and address)

CONSIDERATION (Words and figures)

EXISTING EASEMENT TO BE EXTINGUISHED / VARIED (Describe precisely)

To the Registrar-General,

We, the *Servient / Dominant proprietor(s) above described, hereby request you to:

(a)* Extinguish the easement(s) above described

(b)* Vary the easement(s) above described to the position of

(c)* Extend the appurtenance of the easement(s) to

* Strike through the inapplicable

Page ____ of ____

Delete the inapplicable

Land Description (Servient) panel – insert the title reference for **the land that the easement is over**

Land Description (Dominant) panel – describe the land that is in **favour of the Easement**. Insert the title reference: -

1. For the land that the easement is in favour of
2. For the **Easement in Gross title** if the easement is in favour of an authority eg SA Water, Council therefore there will be an Easement in Gross Title
3. If the easement is a **Service Easement** therefore there is no title reference and **N/A or Not Applicable** would be shown in this panel

Existing Easement to be Extinguished/Varied – describe the easement that is affected, **the identifier** and **plan number** and the **creation document** eg

1. Easement A in DP123453 (RTC14302040)
2. Free and Unrestricted Right of Way C in FP204432 (TG 1430000)



Panel form VE – Part 2 - Operative clause

APPLICATION FOR EXTINGUISHMENT/VARIATION OF EASEMENT

* (Pursuant to Section 90B of the Real Property Act 1886)
* (Pursuant to Section 41 of the Roads (Opening and Closing) Act 1991)

* Strike through the inapplicable

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION (SERVIENT)

|

LAND DESCRIPTION (DOMINANT)

SERVIENT PROPRIETOR(S) (Full name and address)

DOMINANT PROPRIETOR(S) (Full name and address)

CONSIDERATION (Words and figures)

EXISTING EASEMENT TO BE EXTINGUISHED / VARIED (Describe precisely)

To the Registrar-General,

We, the *Servient / Dominant proprietor(s) above described, hereby request you to:

(a)* Extinguish the easement(s) above described

(b)* Vary the easement(s) above described to the position of

(c)* Extend the appurtenance of the easement(s) to

* Strike through the inapplicable

Operative Clause

To the Registrar-General

Strike through the inapplicable

Option (a) is to be retained where the **easement is being extinguished fully or partially.**

If the easement is being partially extinguished, the extent of the extinguishment must be described for example

(a) Extinguish the Easement(s) above described over the land marked A in FP 45677

If a full extinguishment, then NO plan required but if partially extinguished then the position will need to be shown on a Filed Plan

Option (b) is to be retained where the **position of the easement is being varied.** The new position of the easement must be described for example

(b) Vary the easement(s) above described to the position of G in FP 256789

A new Filed plan will need to be lodged to show the new position of the easement.

Option (c) is to be retained where the **extent of the appurtenance is to be varied.** The extent of the varied appurtenance must be described for example

(c) Extend the appurtenance of the easement to include the whole of Allotment 23 in DP 2345



Panel form VE – Part 3 – Outer Cover

SOUTH AUSTRALIA

APPLICATION FOR
EXTINGUISHMENT / VARIATION
OF EASEMENT

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID

STAMP DUTY DOCUMENT ID:

SERIES NO

PREFIX

VE

AGENT CODE

LODGED BY:

CORRECTION TO:

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION
(COPIES ONLY)

1.....

2.....

3.....

4.....

5.....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1.....

2.....

3.....

4.....

5.....

CORRECTION

PASSED

REGISTERED

REGISTRAR-GENERAL

To be assessed for Stamp Duty purposes and Stamp Duty Id number to be inserted

New title instructions panel to be completed.



Panel form VE - Consent Form

CONSENT FOR THE EXTINGUISHMENT / VARIATION OF EASEMENT	
CONSENTING PARTY (Full Name and Address)	
NATURE OF ESTATE OR INTEREST HELD	
I/We the consenting party consent to the within *extinguishment/*variation of easement. <small>* Strike through the inapplicable</small>	
EXECUTION BY CONSENTING PARTY	
DATED	
Signature of CONSENTING PARTY	Signature of CONSENTING PARTY
Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.	Signature of WITNESS - Signed in my presence by the CONSENTING PARTY who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$5000 or 1 year imprisonment applies for improper witnessing.
Print Full name of Witness (BLOCK LETTERS)	Print Full name of Witness (BLOCK LETTERS)
Address of Witness	Address of Witness
Business Hours Telephone No	Business Hours Telephone No
Page ____ of ____	

Consents of Registered Interests

Pursuant to s 90B(2) of the RPA **all persons with a registered interest or claim** to have an estate or interest **in the dominant or servient land must consent** to the extinguishment/variation of an easement.

Consenting parties include:

- Mortgagees
- Encumbrancees
- Lessees
- Caveators
- Lienors
- Applicant to an AG or AH
- Chargees

No consents are required for an AR (Retirement Village).

The effect of obtaining the consent is to extinguish or vary the interest over the dominant and servient land without the need to lodge separate documentation. For example if an easement appurtenant to land is being extinguished by obtaining the consent of the dominant mortgagee the mortgage is automatically discharged over the easement being extinguished.



State Commission Assessment Panel (SCAP) Consent

SCAP approval is required where the easement being extinguished or varied:

a) was created as a condition on plan of division with planning approval.

or

a) was not created as a condition, but has been shown, at a later stage on a deposited plan of division, which has planning approval.

Example of
SCAP consent



Note: See Notice to Lodging Party 119 also the easement/right of way could be depicted in an old plan or docket which has planning approval.



VE lodgement notes and Fees

- Where there is one dominant title and numerous servient titles as regards the same easement then this can be done in one VE document with one registration fee.
- Where there is one servient title and numerous dominant titles as regards the same easement then this can be done in one VE document with one registration fee.
- Where there is reciprocal party walls or rights of way then this can be done in one VE document with one registration fee.
- Where there is multiple easements created in the same granting document then this can be done in one VE document with one registration fee.

NEW TITLE FEES : When counting how many new titles to pay for in a series of documents, you only need to pay for each title once, regardless how many documents are lodged in series.



Example of extinguishment of Party Wall Rights

APPLICATION FOR EXTINGUISHMENT/VARIATION OF EASEMENT

* (Pursuant to Section 90B of the Real Property Act 1886)
* (Pursuant to Section 41 of the Roads (Opening and Closing) Act 1991)

~~* Strike through the inapplicable~~

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION (SERVIENT)

Firstly: The whole of the land in Certificate of Title Volume 5672 Folio 123
Secondly: The whole of the land in Certificate of Title Volume 5999 Folio 321

LAND DESCRIPTION (DOMINANT)

Firstly: The whole of the land in Certificate of Title Volume 5999 Folio 321
Secondly: The whole of the land in Certificate of Title Volume 5672 Folio 123

SERVIENT PROPRIETOR(S) (Full name and address)

Firstly: John Henry Smith and Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000
Secondly: Mary Jane Brown of 20 Rundle Road Adelaide SA 5000

DOMINANT PROPRIETOR(S) (Full name and address)

Firstly: Mary Jane Brown of 20 Rundle Road Adelaide SA 5000
Secondly: John Henry Smith and Henry Albert Smith of 1 Adelaide Road Adelaide SA 5000

CONSIDERATION (Words and figures)

No Monetary Consideration

EXISTING EASEMENT TO BE EXTINGUISHED / VARIED (Describe precisely)

Firstly and Secondly: Reciprocal Party wall rights over A and B in F58762 (TG 14534453)

To the Registrar-General,

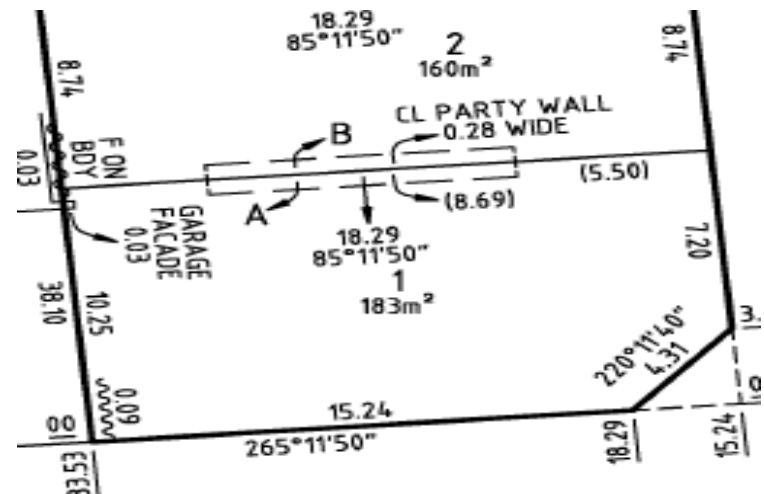
We, the *Servient / Dominant proprietor(s) above described, hereby request you to:

- (a)* Extinguish the easement(s) above described
- (b)* ~~Vary the easement(s) above described to the position of~~
- (c)* ~~Extend the appearance of the easement(s) to~~

~~* Strike through the inapplicable~~

Extinguishment of Party Wall Rights

To be shown as firstly and secondly.
Firstly would be as regards Party Wall right over A in the plan and secondly Party Wall right B.





Examples of VE document – Service Easement/Easement in Gross title

APPLICATION FOR EXTINGUISHMENT/VARIATION OF EASEMENT

* (Pursuant to Section 90B of the Real Property Act 1886)
* (Pursuant to Section 41 of the Roads (Opening and Closing) Act 1991)

~~* Strike through the inapplicable~~

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION (SERVIENT)

The whole of the land comprised in Certificate of Title Volume 5143 Folio 234

LAND DESCRIPTION (DOMINANT)

N/A

SERVIENT PROPRIETOR(S) (Full name and address)

John Brown of 6 Gouger Street Adelaide SA 5000

DOMINANT PROPRIETOR(S) (Full name and address)

The Corporation of the City of Adelaide of GPO Box 2252 Adelaide SA 5001

Extinguishment or Variation over a **Service Easement** – Land Description for the Dominant proprietor will show **N/A**

APPLICATION FOR EXTINGUISHMENT/VARIATION OF EASEMENT

* (Pursuant to Section 90B of the Real Property Act 1886)
* (Pursuant to Section 41 of the Roads (Opening and Closing) Act 1991)

~~* Strike through the inapplicable~~

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION (SERVIENT)

The whole of the land comprised in Certificate of Title Volume 5143 Folio 234

LAND DESCRIPTION (DOMINANT)

The whole of the land comprised in Certificate of Title Volume 5421 Folio 453

SERVIENT PROPRIETOR(S) (Full name and address)

Barbara Smith of 18 Eustace Street Newton SA 5000

DOMINANT PROPRIETOR(S) (Full name and address)

City of Onkaparinga of PO Box 1 Noarlunga Centre Sa 5168

Extinguishment or Variation with an **Easement in Gross** title – Land Description for the Dominant proprietor will show the Easement in Gross title reference



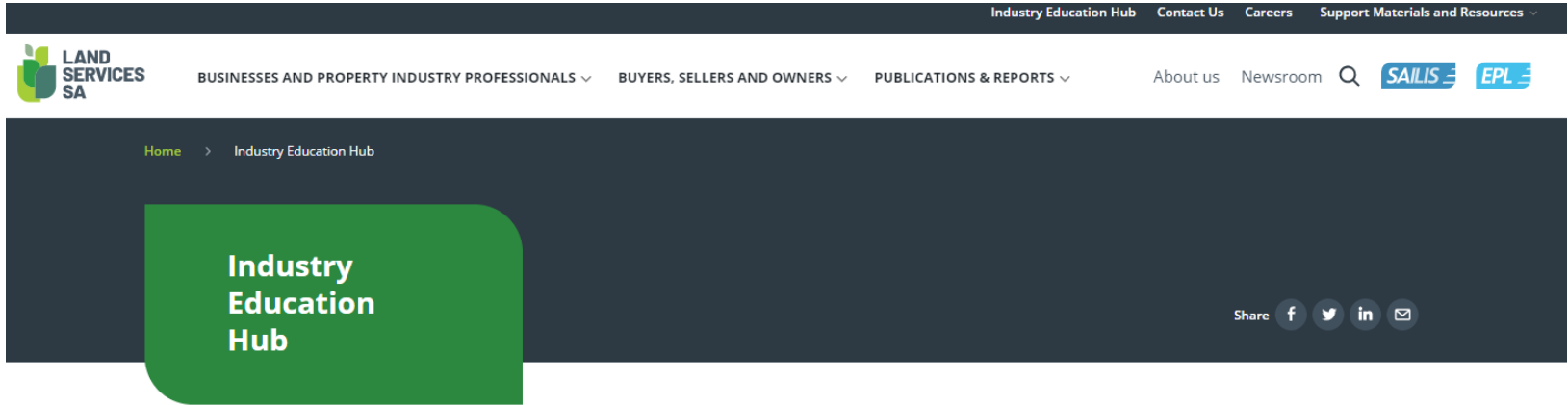
Check List and points to remember

- ✓ Stamp Duty to be assessed
- ✓ SCAP consent
- ✓ Fees, check the fee calculator on the Landservices SA website (pay for each title only once in the entire series)
- ✓ A Filed plan is not required for an extinguishment of easement/right of way.
- ✓ A Filed plan is required if the easement or right of way is being varied.
- ✓ Right Search – if you are wishing to make sure it is a full extinguishment then you will need to find the creation document and work through the parent titles to work out who has the right over the easement/right of way.

An aerial photograph of a suburban neighborhood, showing numerous houses with varying rooflines and colors, interspersed with lush green trees. The entire image is covered with a semi-transparent green overlay. A thin white vertical line is positioned to the left of the word 'Questions'.

Questions

Industry Education Hub



Hot Tip: Keep updated on LSSA's webinars and video's

Industry Education Hub

Land Services SA partner with the SA Government and relevant Industry Bodies to deliver a range of Educational Materials to support property industry professionals.

This webpage is dedicated to the publication of Industry Education Materials to assist conveyancing professionals. The first set of materials consists of a series of short training videos focusing on key requirements of eConveyancing in the lead up to 3 August 2020, the date set for mandating of eConveyancing in South Australia.

These videos have been published by topic to enable practitioners to select and watch videos relevant to them at their convenience.

eConveyancing Series

Training Video	Relevant Support Materials

An aerial photograph of a suburban neighborhood, showing numerous houses with dark roofs and lush green trees. The entire image is covered with a semi-transparent green overlay. On the left side, there is a vertical white line.

End