

Guidance Notes

Application for Extinguishment/Variation of Easement

These Guidance Notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner or Registered Conveyancer.

GENERAL INFORMATION

- * Form VE is to be used for the purpose of varying or extinguishing an easement pursuant to section 90B of the *Real Property Act 1886* (RPA) or section 41 of the *Roads (Opening and Closing) Act 1991*.
- * The VE must be assessed for stamp duty prior to being lodged in the Lands Services SA.
- * If the name of a proprietor or consenting party has altered an application amending their name must precede the VE
- * For requirements when making an application to the Registrar-General for the waiving of consents see Notice to Lodging Parties No. 103, 140 and 162.
- * If varying an easement/right of way a Filed Plan needs to be lodged.
- * If extinguishing an easement/right of way no plan is required.
- * Each page must be numbered consecutively, e.g. 1 of 10, 2 of 10.
- * All handwriting must be in permanent, dense, rapid drying black or blue ink.
- * Each page must be printed double-sided, where possible.

EXPLANATION OF FORM

Heading

Delete the inapplicable section and Act the application is being lodged under.

Servient / Dominant land description

Insert the relevant title reference e.g. Whole of the land in CT Volume _____ Folio _____

If NUA (Land not under the Real Property Act 1886), precisely describe the land e.g. Allotment 4 in DP 4236

Servient / Dominant Proprietor(s)

Full name and address required.

Consideration

Amounts must be expressed in words and figures.

Existing easement to be extinguished / varied

Describe the easement by accurately referring to its current description e.g. "an easement for drainage purposes over the land marked C on FP 12121 (TG 9876543)".

Operative Clause

Strike through the inapplicable options.

The desired option(s) is to be completed with sufficient detail to clearly identify the objective of this document.

Examples:

- a. Extinguish the easement(s) above described "appurtenant to Allotment 13 in FP 36945"
- b. Vary to the easement(s) above described to the position of "F on FP 34568"
- c. Extend the appurtenance of the easement to "the whole of Allotment 12 in DP 33489"

Consent – State Commission Assessment Panel

State Commission Assessment Panel (SCAP) certificate may be required in some circumstances – see Notice to Lodging Parties No. 119 No.5.2. Where either the servient or dominant has had titles issue as a result of a plan having had planning consent* and the easement being varied/extinguished/appurtenance extended is delineated on that plan the SCAP consent is required. The requirement for SCAP consent is required regardless as to whether the easement being dealt with was a requirement of plan deposit.

*planning consent includes a plan being approved under Section 51 of the Development Act 1993.

Consent to the Extinguishment / Variation of Easement

- * Parties required to consent to a VE are:
 - a. Registered interests of the dominant or servient land
 - b. Any party claiming to have an estate or interest in the dominant or servient land

Consenting party

- * Show consenting party's full name, including if a company their ACN or ABN, and their address.

Nature of estate or interest held

- * State the nature of the estate or interest held (i.e. Registered proprietor of C.T..., Mortgagee under M1234567, etc)

Consent to extinguishment/variation

- * Cross through the inapplicable option of extinguishment or variation.
- * Must be dated

Execution by consenting party

If the party executing is a natural person who is signing in his or her own right, he or she must sign his or her usual signature in the place indicated on the form. A different format must be used where a person is not signing in his or her own right (e.g. he or she is signing as attorney for the proprietor). If the party executing the consent is a body corporate, it may execute in any manner permitted by law.

Pursuant to Section 267 of the RPA, the witness must be aged 18 years or over and must know the executing personally or have satisfied him or herself as to their identity. The witness cannot be a party to the instrument. The witness must sign his or her name and print his or her full name, address and business hours telephone number legibly beneath his or her signature.

Pursuant to Section 268 of the RPA, a witness is guilty of an offence if he or she does not know the person executing the instrument personally and has no reasonable ground on which to be satisfied as to the person's identity, OR knows or has reasonable grounds for suspecting that the person signing the instrument is not a party to the instrument or does not have the authority to sign on behalf of the party. *Maximum Penalty - \$5,000 or 1 year imprisonment.*

Consenting parties may instruct a practitioner to execute on their behalf under client authorisation. Where consent forms exist for both execution by the consenting party and under client authorisation only the relevant consent form is required.

CERTIFICATION

Any inapplicable certification statement(s) must be deleted.

Certification statements must be made by the Certifier, being one of the following:

- a. A legal practitioner
- b. A registered conveyancer
- c. If the applicant is not represented by a legal practitioner or registered conveyancer – the applicant (i.e. self-represented party)
- d. If a party to an instrument is not represented by a legal practitioner or registered conveyancer – that party (i.e. self-represented party)

All certifications apply where the Certifier is a registered conveyancer or legal practitioner.

The first listed certification does not apply where the Certifier is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

Note: - An attorney or a body corporate cannot make certification statements.

The Registrar-General's [Verification of Identity](#) and [Verification of Authority](#) requirements must always be complied with.

Penalties of up to \$10,000 or 2 years imprisonment apply, where a prescribed person provides a false certification under section 273(1) of the *Real Property Act 1886*.

SUPPORTING DOCUMENTATION LODGED WITH APPLICATION

Insert reference to supporting documentation that is required to be lodged with the application.

NEW TITLE INSTRUCTIONS

Instructions must be completed for all new titles to be issued.

ANNEXURE

It will be necessary to use an annexure sheet (Form B1) if there is insufficient space for the text or to complete the remaining executions.

An annexure sheet to an instrument shall:

- a. be in the format of Form B1 and identified therein as an annexure to the parent instrument;
- b. be referred to in the body of the instrument where there is insufficient space;
- c. be affixed securely and permanently to the top left-hand corner of the instrument. The annexure and instrument must not be bound;
- d. comply with requirements in Form B1 Guidance Notes.

When an additional or inserted sheet being a *certificate, statutory declaration or writing* of a similar nature is intended to form part of an instrument ensure:

- a. it is affixed securely and permanently to the top left-hand corner of the instrument; and
- b. the printing or handwriting thereon is clear and legible and in permanent form.

The Registrar-General *may refuse* to accept for registration any instrument, annexure sheet or additional or inserted sheet that does not comply with the provisions of these standards.

FORM VE (Version 3)



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