



1 December 2025

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Chair  
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Via Email: [TLA.Amendments@landgate.wa.gov.au](mailto:TLA.Amendments@landgate.wa.gov.au)

### **Response to Landgate – Consent Requirements for Easements and Restrictive Covenants**

Thank you for the opportunity to provide feedback on the Consultation Paper: Consent Requirements for Easements and Restrictive Covenants (the Consultation Paper). We understand that Landgate is seeking stakeholder perspectives on the issues and consideration on the options and is inviting feedback on the questions outlined in the Consultation Paper.

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in WA, with members across both private and public sector organisations. Our Vision is for 'Diverse living options in thriving, connected communities', and we strive to support this in working towards our Purpose of 'Great places + Housing choice = Better lives'.

As articulated to Officers in Landgate Registration Services last year, issues relating to consent requirements for creating, modifying and removing easements and restrictive covenants have had implications for the timely delivery of crucially needed housing supply. As such, we have been very keen to understand possible resolutions and the pathway forward and we welcome the release of the Consultation Paper.

We have reviewed the issues outlined in the Consultation Paper and sought input from our members, particularly in the context of survey practice and plan preparation, and from a legal perspective. Below, we provide a key recommendation, as well as responses to specific consultation questions. Within Attachment A we have also included examples provided by a UDIA WA member (MNG) of cases where issues have arisen due to either numerous consents being required or where the 're-interpretation' of the meaning of the 'land' has caused delays with creation and registration of new land titles.

#### **Key recommendation**

It is strongly recommended that Landgate give priority consideration to **Option 4** – new model for the consent requirements is produced to apply to both all creations, and all modifications / removals of easements and restrictive covenants.

We believe this option offers the most effective pathway to:

- Remove unnecessary layers of confusion, provide certainty and consistency in approach.
- Reduce time delays associated with additional consent requirements.
- Streamline processes relating to modification of Restrictive Covenants and Easements.



- Provide workable fallbacks (should consent not be given at all, or should objections be lodged), account for unintended consequences / procedural fairness and workable options for resolving roadblocks which previously would have put a stop on development.

Recognising the risks identified in the Consultation Paper for Option 4, we recommend that an interim measure be concurrently progressed to provide for the Registrar for Titles to be delegated authority to use their discretion to deal with adding or removing easements or restrictive covenants where the required consents cannot be obtained.

This would provide for appropriate transitional arrangements, supporting the ability for the Registrar to act in accordance with prior interpretations of the definition of “land” when it is reasonable to do so.

### **Responses to specific questions**

**Section 3.2, Question 7** – *“Should the affected land be considered as a whole, or just the distinctive area where an encumbrance and land intersect? i.e. is land considered wholly affected once just a portion of the land is affected by an encumbrance?”*

In the experience of our members, the application of the definition of ‘the land’ when considering consent requirements to be met in the context of a s136J application has evolved internally at Landgate.

Previously, the application of this definition was narrow and was considered to mean the distinctive area where an encumbrance and land intersect. The previous practice limited the number of consenting parties to only those that have an interest in the area affected by the relevant Restrictive Covenant or Easement.

More recently (over the past five years or so), a majority of the ‘issues’ our members have faced have been the result of the broadening of the interpretation of land internally within Landgate to mean the land wholly affected, which then required the direct involvement of all parties who have an interest in the whole of the land. This requirement, in certain instances, has led to outcomes that were not practical or pragmatic.

As such, it should just be considered for the distinctive areas where an encumbrance and land intersect.

**Section 3.4, Question 10** – *“What is the appropriate timeframe to provide ‘a person with a registered interest’ or ‘an interested person’ to respond to a notice of creation, modification or removal?”*

A timeframe for written objections should be stated / defined within the governing act to remove confusion, like those prescribed within the Community Titles Act (CTA) and Strata Titles Act (STA). For example: Where a written objection has not been received upon expiry of the 60-day period, **consent is deemed** to have been provided.

This would then provide a clear timely avenue for proponents to modify a restrictive covenant and deal with any issues that arise from that public advertisement. The ‘opt in’ 60 day approach would be better placed to remove the large percentage of registered interest holders or ‘lay people’ from



having to complete any complex legal forms or documentation without really having a true understanding of the issue and how it relates to their land.

**Section 3.4, Question 11** – *“Should there be an ability for the Commissioner of Titles, Registrar of Titles or other delegated authority to waive consent requirements, or use discretion when registering a plan or instrument?”*

Yes. There needs to be a practical approach or mechanism to deal with complex cases where the Commissioner of Titles, Registrar of Titles or other delegated authority can use their discretion to deal with adding or removing easements or restrictive covenants where the required consents cannot be obtained for reasons outside of the norm.

Evidence would need to be supplied such as proof showing redundancy of the encumbrance and that the removal of such encumbrance would have no substantive or material bearing on the interested parties.

**Section 5, Question 23** – *“Is the current model useable, fit for purpose and future proof? Why or why not?”*

The current practice is not considered to be ‘fit for purpose’, based on the examples highlighted in Attachment A and the issues our members have experienced since the interpretation of ‘the land’ changing – including timing delays and missing consents at dealing stage.

Consent should only be required where the subject easement / covenant intersects with the land in question, not all other adjacent parties. Consent should also only be sought from parties that are mentioned on the title of the subject land.

We trust our response is helpful. Should you require further information or wish to discuss this further, please contact Sarah Macaulay, Executive Director – Strategy & Policy at [smacaulay@udiawa.com.au](mailto:smacaulay@udiawa.com.au) or 9215 3404.

Thank you again for the opportunity to provide feedback.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tanya Steinbeck', is written over a light blue rectangular background.

Tanya Steinbeck  
**Chief Executive Officer**

*Attachment A – MNG case examples*



## Attachment 1: Case examples

### Background

MNG are a professional survey consultant for a range of landowners within the State of Western Australia. We operate primarily in the Perth Metropolitan region with vast experience in the broadacre greenfield land development market. We have a close working relationship with Landgate, Western Australian Planning Commission (WAPC), Department of Planning Lands and Heritage (DPLH) and various other government agencies.

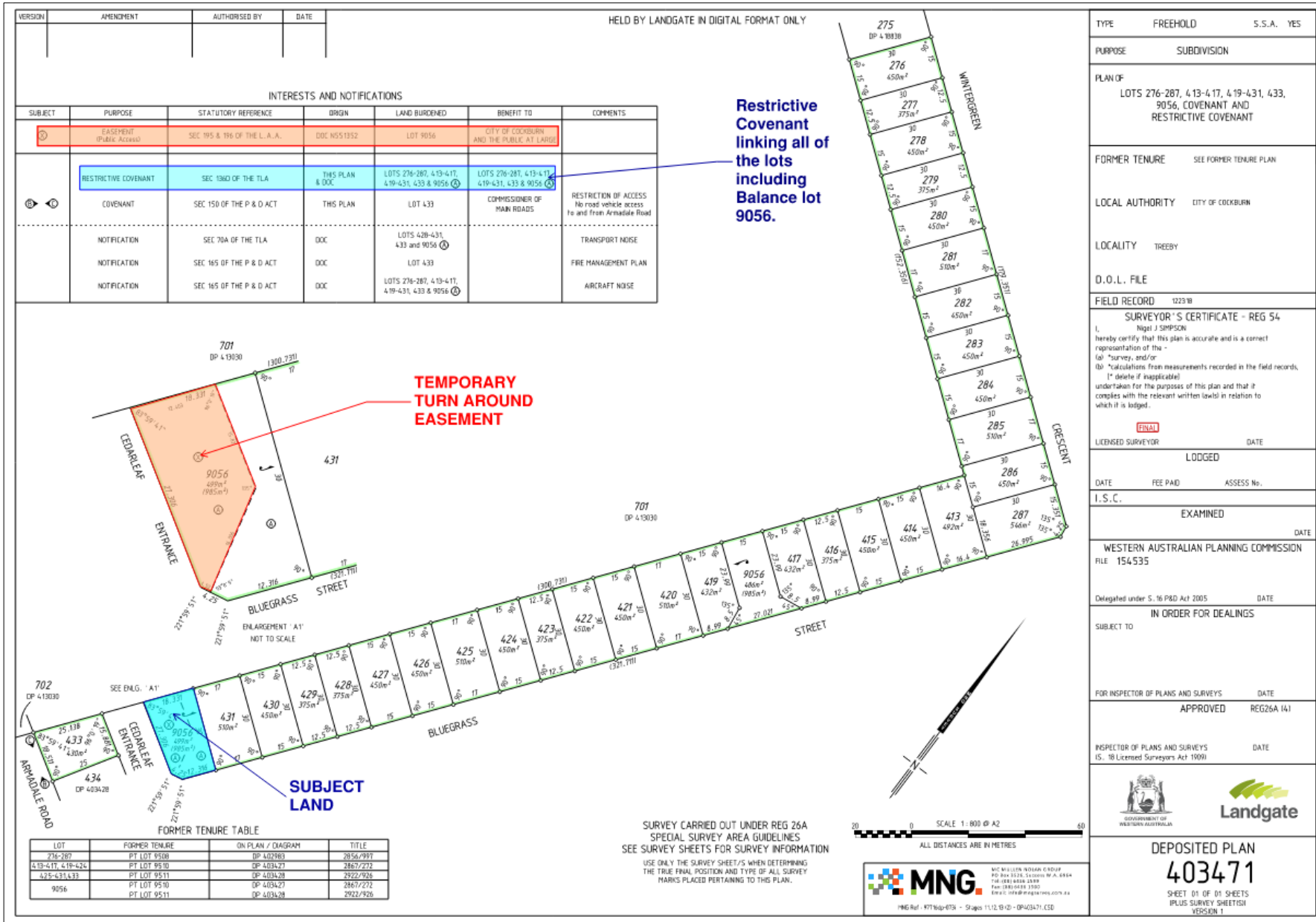
### Examples

We have included examples of cases where issues have arisen due to either numerous consents being required or where the ‘re-interpretation’ of the meaning of the ‘land’ has caused delays with creation and registration of new land titles.

Further information is available from Matt Jilley, Manager Land and Property Development on 0420 821 159 or via e-mail [matt.jilley@mngsurvey.com.au](mailto:matt.jilley@mngsurvey.com.au)

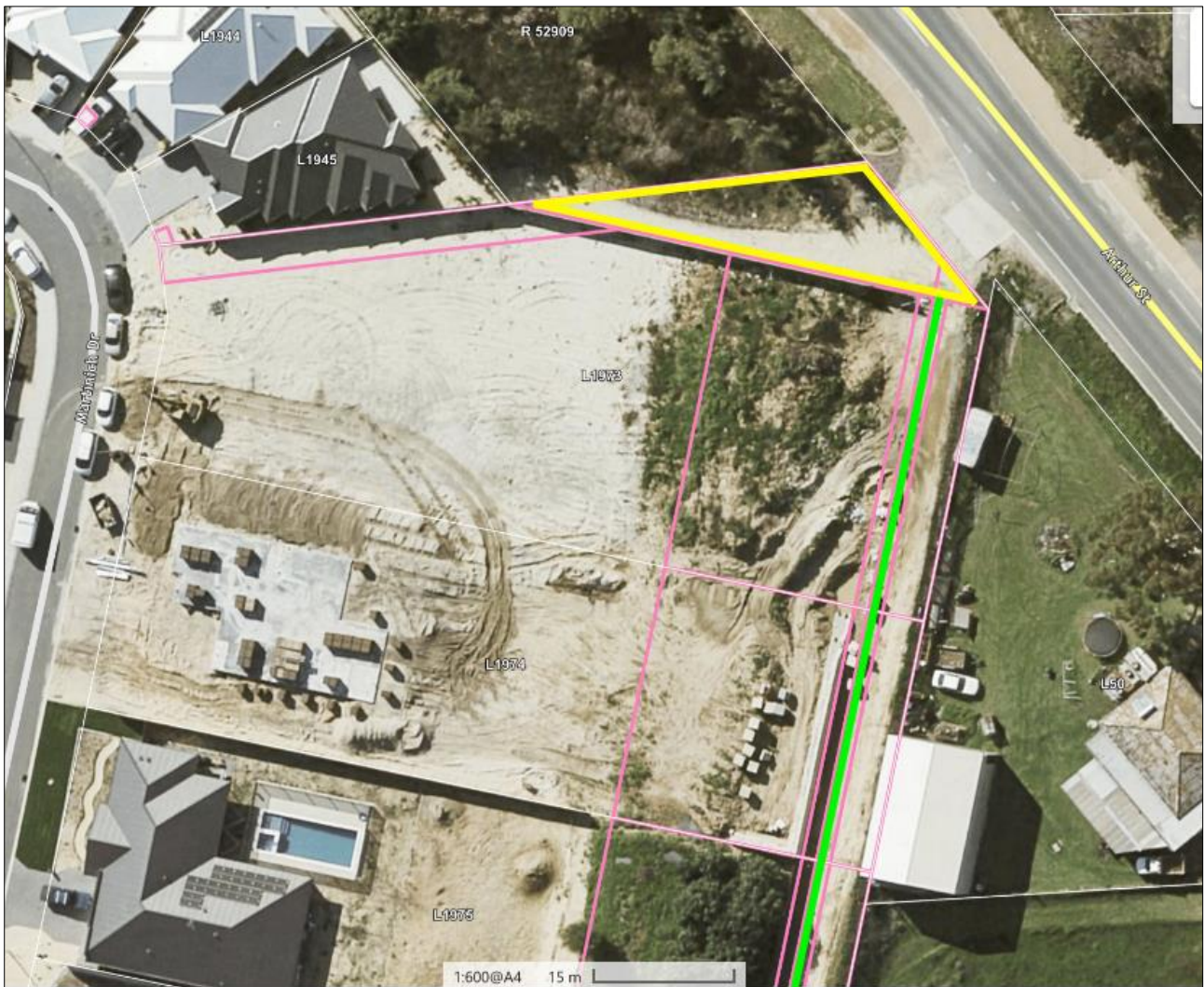
## Example 1

- When the parent Deposited Plan 403471 for Lot 432 was created (a Section 136D Restrictive Covenant ‘A’ was created over all lots, including a portion of balance lot 9056 (which will eventually become Lot 432) – as highlighted blue on the below.
- On the same Deposited Plan, a ‘temporary turn around easement’ was brought forward which is a public access easement (created under Section 195/196 of the Land Administration Act) onto a portion of balance lot 9056 labelled ‘X’ – as highlighted orange below.
- As the public access easement encumbers Lot 9056 which is also subject to the 136D Restrictive Covenant, we are required to obtain consent from all parties listed in the ‘BENEFIT TO’ column for the Section 136D. This includes all registered proprietors and their banks if there are mortgages on those titles.
- When DP403471 was prepared and titled, at that time, Landgate would have only required consent from the registered proprietor of lot 9056 and the interest holder of the public access easement, the local authority.
- This has now resulted in a stop for this developer, the subject lot 432 has been registered legally, created physically on the ground and serviced ahead of time (due to an expiring WAPC approval). The lot is unable to be sold as there is a now redundant temporary turning circle easement burdening the lot.
- The developer has opted to wait until the estate covenant expires in 2030 to enable removal of the easement and not require consent from the linked owners which is clearly a significant time delay.



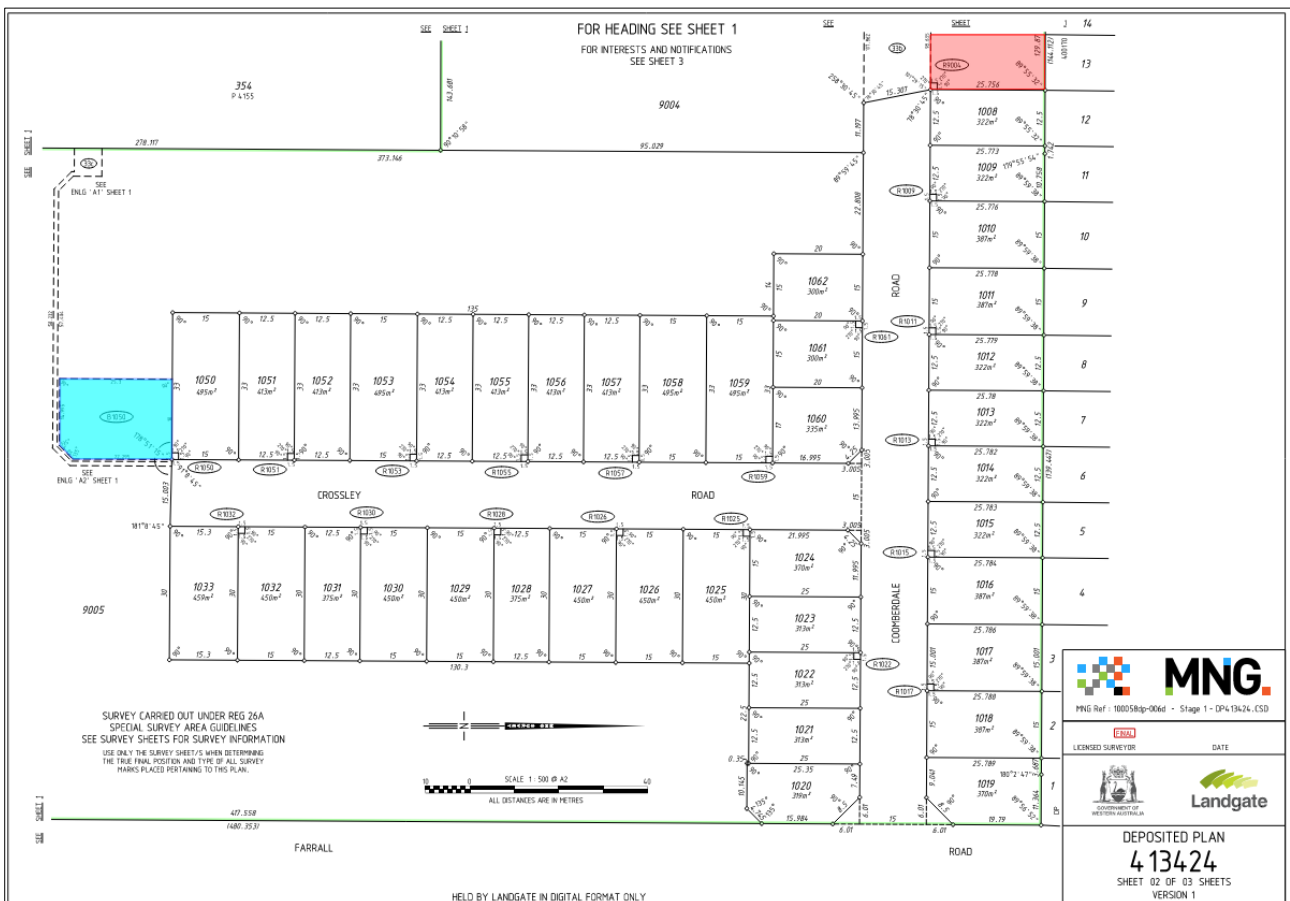
## Example 2

- The easement highlighted green and yellow is for a drainage easement (in gross) created under section 195 of the Land Administration Act. This easement was created on a balance lot and also ran further south. After that, a portion of the balance lot was subdivided creating the new residential lots south of the image area and the drainage easement was brought forward and encumbered these lots.
- We were then instructed by the Local Authority to create a drainage reserve over the triangular portion of the easement area coloured yellow. Department of Planning Lands and Heritage would not accept the drainage reserve with the Section 195 access easement in place. The newly created lots to the south were required to provide consent to modify this easement. These residential lots were also linked to other lots via a 136D Restrictive Covenant, therefore some 30 landowners, and their banks, also got tied into this action.
- Eventually, the Local Authority relented and permitted the easement to be retained over the freehold lot. Causing significant delays to the project.



# Example 3

- Lot 1008 on the image below is benefitted by an existing 'drainage' easement created on Deposited Plan 413424 that burdens the portion of balance Lot 9004 coloured red. As the drainage easement that burdens Lot 9004 is deemed a registered interest, the written consent of the registered proprietors, registered interests and caveators of the benefitting Lot 1008 will be required if a new section 136D Restrictive Covenant under the TLA is created over that portion of Lot 9004 coloured red when the new lot is created.
- Result: new lot shown in red (lot 1007) was excluded from the new 136D on DP422258
- This is the same requirement that exists over the portion coloured blue. The portion of Lot 9005 coloured blue is benefitted by an existing drainage easement that burdens abutting Lot 1050. As the benefit of the drainage easement over Lot 9005 is deemed a registered interest, the owner, registered interests and caveators of the lot burdened by the drainage easement must provide their written consent to the new section 136D Restrictive Covenant being created over portion of Lot 9005 coloured blue when the new lot is created.



# Example 4

- A new transformer site with a 129BA RC (Fire Separation) situated on Lot 9006 on DP422236 (shown red below).
- Existing Right of Carriageway easement (shown blue) which benefits neighbouring Lot 151 on D93196.
  - A strata complex sits on Lot 151 on D93196 (SP33238) (shown pink as an abuttal on this plan)
- The new transformer site 129BA required consent from all owners in the neighbouring strata complex even though in a practical sense the new 129BA is nowhere near the existing easement.
- One of the owners within the strata complex was away overseas and therefore unable to sign the document, this resulted in a delay to the issue of new titles for over 6 months.

