

FW: Representation - DA 2022 / 00059



Flinders Council
To: Development Services

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Wed 8/02/2023 8:52 AM

 Surveyor General - Title Boundaries on Plans_Redacted.pdf
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From: Richard Barnes <rwbarnes73@gmail.com>
Sent: Tuesday, 7 February 2023 8:00 PM
To: Flinders Council <office@flinders.tas.gov.au>
Subject: Representation - DA 2022 / 00059

Dear Sir/.Madam

I am writing to submit a representation for the DA 2022 / 00059.

I note the plans, which show a real property interest, are not certified, signed nor endorsed by a registered land surveyor or someone working under their supervision. As you would know, there is advice from the Surveyor General in relation to this, see attached.

I see no evidence on the plans of any compliance with the advice the SG has provided to Councils.

regards
Richard Barnes

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Department of Natural Resources and Environment Tasmania

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Dear

DEPICTION OF TITLE BOUNDARIES ON DETAIL SURVEY PLANS

The Office of the Surveyor-General has recently sought legal clarification in relation to aspects of the *Surveyors Act 2002* (the Act) that pertain to the legality of depicting title boundaries on detail survey plans often used as the basis for site plans required in support of development applications.

The Act regulates who is authorised to survey the location of legal interests in real property and subsequently depict their location on a document or plan. Known as “land surveying”, the execution of a survey that shows the location of a property boundary in relation to other features is restricted to individuals who have demonstrated they have the necessary specialised skills and knowledge. In Tasmania these individuals are described as registered land surveyors and are indicated by the ‘Land’ specialist competency in the [Surveyors Register: https://surveyor.nre.tas.gov.au/ext/](https://surveyor.nre.tas.gov.au/ext/)

Section 3 of the Act includes the following definition:

“survey means the definition, redefinition, measurement, interpretation, marking or documentation of the geographic position, dimension, extent or relativity of points, lines and things on, above or below the surface of the earth, for any purpose authorised by any Act;”

Section 16 of the Act states that:

Only registered land surveyors to survey land or practise as land surveyors

- (1) A person who is not a registered land surveyor must not carry on business or hold himself or herself out as a land surveyor or registered land surveyor.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

- (2) **A person who is not a registered land surveyor, or acting directly under the supervision of a registered land surveyor, must not survey land** (my emphasis).

Penalty: Fine not exceeding 200 penalty units.

- (3) A person who is not a registered land surveyor must not give a certificate that under any law is required to be given by a registered land surveyor.

Penalty: Fine not exceeding 200 penalty units.

- (4) In this section,

Survey includes deciding, for fee or reward, whether improvements are, or are not, within the boundaries of any land (my emphasis).

The advice received has led me to form the view that, unless a person is a registered land surveyor, or acting under the direct supervision of a registered land surveyor, they must not show title boundaries or legal real property interests in relation to other site features on any document or plan prepared to show the result of the survey. The fact that such documents or plans may sometimes include a disclaimer that indicates the title boundaries shown are 'approximate' or 'compiled' or 'are subject to final survey' does not derogate from the conclusion stated above.

In providing this advice, I am not referring to circumstances where a Council may use a variety of publicly available land related data sets to prepare GIS drawings for Council purposes. My advice relates specifically to survey work where boundary or title and other legal property interests are depicted on electronic or hard copy documents or plans produced to show the result of the survey.

I advise that I have written to all Councils, registered land surveyors and allied professions to advise them of these matters, including architects, building designers and builder associations.

The survey of land as defined in the Act is activity restricted to registered land surveyors in accordance with the legislative review conducted in all Australian jurisdictions in the 1990's, which re-enforced that it was in the public interest to maintain such a restriction based on the consequences of misinterpretation of property interests.


Councils should ensure that when they commission survey projects, any elements of the survey that require the depiction of title boundaries or other legal real property interests are executed by a registered land surveyor. Surveys not so executed may void the protection of any professional indemnity insurances in place, and may fail to provide Councils with protections in the event of a dispute.

In that regard, I also advise that if any subsequent site construction elements are required to be set out in relation to property boundaries, whether or not the property boundary is to be marked, such set out works must be conducted by a registered land surveyor, or under the direct supervision of a registered land surveyor, as the set out requires the boundary to be surveyed. This is particularly important for construction elements that have a statutorily defined relationship, or minimum offset, to a property boundary or other legal property interest such as an easement.

I request that you ensure this advice is disseminated to relevant Council officers.

I note that this advice has been forwarded to the Local Government Association of Tasmania and I would be happy to discuss this matter in more detail at a suitable forum should that be desired.

Yours sincerely



Michael Giudici
SURVEYOR GENERAL

15 November 2022