



PROPERTY TENURE GUIDELINES

Provision of Network Connection Services

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1.0 INTRODUCTION

1.1 Purpose and scope of this document

In contestable connection services the designer and the developer have responsibility for identifying practical solutions that address Endeavour Energy's property tenure needs and demonstrating the proposal will comply with the general legal framework.

Endeavour Energy's MDI 0044 sets out the general standards for easements and property tenure rights.

The purpose of this document is to:

- (a) provide guidelines for the general application of MDI 0044 to contestable works,
- (b) explain Endeavour Energy's approach to specific property situations,
- (c) define responsibilities for both designers and developers in relation to property tenure in each type of contestable works project, and
- (d) explain the procedural framework for the creation of property tenure and the refund of property tenure bonds (if applicable) in each type of contestable works project.

1.2 Definitions and abbreviations

ARP project	Contestable works asset relocation project
Community land	Land subject to a subdivision under the <i>Community Land Development Act 1989</i> and includes community property, precinct property and neighbourhood property
Connection Policy	<i>Connection Policy Provision of Network Connection Services</i>
Constructor	Level 1 Accredited Service Provider
Crown Lands NSW	The government department within NSW Trade & Investment responsible for the management of crown land
Curtilage	Enclosed land around a house or other building
CWE/CWO	Contestable Works Engineer or Contestable Works Officer authorized to certify a design drawing that satisfies Endeavour Energy's requirements
Design drawing	Electricity network construction drawing
Designer	Level 3 Accredited Service Provider
Developer	Applicant for contestable connection services including the owner and development consultants engaged by the owner
Easement Agreement form	Form FPJ 5013 Agreement for Entry, Grant and Creation of Easement
Easement document	Any formal document to be entered into by Endeavour Energy and the land owner that sets out the terms of any type of property tenure to be completed, including RPA dealing and Section 88B.
Form FPJ 5010	Guidelines for Execution of Conveyancing Documents

LPI	Land & Property Information NSW – A division of the Department of Finance & Services responsible for land titling and plan registration in NSW
MCI 0006	Mains Construction Instruction MCI 0006 Underground Distribution : Construction Standards Manual
MDI 0028	Mains Design Instruction MDI 0028 Underground Distribution Network Design
MDI 0044	Mains Design Instruction MDI 0044 Easements and Property Tenure Rights
Network asset	Includes all transmission, high voltage and low voltage electrical equipment that is owned and operated by Endeavour Energy (including any earthing cables)
Definition plan	A plan of survey, compiled plan or sketch plan prepared by a registered surveyor that defines a property tenure site
Property Section	The Section within Property & Fleet Branch that is responsible for assessing and approving property tenure issues
PTB	Property tenure bond
Red line diagram	A diagram signed by a registered surveyor showing the actual location of the network assets in relation to the easement boundaries
Restriction	Restriction on the use of land
RPA dealing	A form under the <i>Real Property Act 1900</i> that includes Transfer Granting Easement, Restriction on the Use of Land by a Prescribed Authority, and Positive Covenant forms
SDI 104	Substation Design Instruction SDI 104 Specification of Requirements for the Location of Padmount Substations
SDI 105	Substation Design Instruction SDI 105 Indoor Distribution Substation Civil and Construction Requirements
Section 88B	Instrument accompanying a deposited plan that creates an easement, restriction on the use of land, positive covenant or right of access, under the provisions of Section 88B of the <i>Conveyancing Act 1919</i>

2.0 PROPERTY TENURE

The purpose of this section is to outline the general framework for property tenure and to avoid confusion in the use of terminology.

2.1 Property tenure defined

Property tenure is a legally recognised and spatially defined right to operate and maintain network assets on land other than a public road.

Satisfactory property tenure should ensure that the long term occupation and maintenance of network assets can be achieved whilst recognising the owner's right to optimise the use of their property.

Negotiating satisfactory arrangements for property tenure includes:

- identifying all owners affected by the project;
- communicating with the owner, even if the work will occur within an existing easement;
- satisfying any reasonable conditions requested by the owner; and
- ensuring a healthy relationship is maintained between the owner and Endeavour Energy.

The designer should take particular care if any of the proposed works requires entry onto land not owned by the developer, as an Accredited Service Provider has no special rights to enter such land without the owner's consent.

Negotiation of satisfactory property tenure is required in relation to the construction of new network assets, but may also be required for existing network assets.

2.2 Approval for alternative type of property tenure

The creation of an easement, restriction, right of access, or positive covenant is Endeavour Energy's preferred types of property tenure for most distribution and low voltage assets.

Any alternative type of property tenure will require approval from the Manager Primary Systems and the Chief Engineer. [See MDI 0044 Clause 6]

2.3 Types of property tenure

2.3.1 Easement

An easement provides Endeavour Energy with rights to use a defined part of the land, but not generally to the exclusion of others. An easement is:

- Defined by a written document that refers to a definition plan;
- Registered at LPI and recorded on the Certificate of Title; and
- Binding on any subsequent owners.

The creation of an easement is the preferred method of achieving property tenure for network assets.

2.3.2 Restriction on the use of land

A restriction prevents the owner from using a defined part of the land in a particular way, but does not provide any right of access or allow network assets to be installed for or by Endeavour Energy. A restriction is:

- Defined by a written document that refers to a definition plan;
- Registered at LPI and recorded on the Certificate of Title; and
- Binding on any subsequent owners.

2.3.3 Right of access

A right of access is a type of easement that provides Endeavour Energy with a defined right of entry within a property but does not allow equipment to be installed. A right of access usually incorporates the terms set out in the *Conveyancing Act 1919*. A right of access is:

- Defined by a written document that refers to a definition plan;
- Registered at LPI and recorded on the Certificate of Title; and
- Binding on any subsequent owners.

2.3.4 Positive covenant

A positive covenant requires the owner to carry out work, such as the maintenance of a fire wall or fire screen wall, associated with Endeavour Energy's network assets. A positive covenant is:

- Defined by a written document that refers to a definition plan;
- Registered at the LPI and recorded on the Certificate of Title; and
- Binding on any subsequent owners.

2.3.5 Deed of licence

A deed of licence allows Endeavour Energy to occupy or carry out certain activities on a parcel of land. A deed of licence is:

- Defined by a written document that does not require a definition plan;
- Is not registered at LPI nor recorded on the Certificate of Title; and
- Does not bind subsequent owners.

A deed of licence may be a satisfactory form of property tenure if the ownership and usage of the land is unlikely to change. The terms of a proposed deed of licence must be negotiated and agreed upon prior to certification of the design drawing.

2.3.6 Lease

A lease provides Endeavour Energy with exclusive occupancy of land or premises. A lease is:

- Defined by a written document that usually refers to a definition plan;
- Always limited by time;
- Usually registered at LPI and recorded on the Certificate of Title; and
- Binding on any subsequent owners.

As electricity equipment will remain in operation for many years, Endeavour Energy requires a lengthy term, usually 50 years. The terms of the lease must be negotiated and agreed upon prior to certification of the design drawing.

2.4 Requirements for land owned or managed by other government authorities

2.4.1 Roads

A public road may be under the control of the local council, Roads and Traffic Authority NSW or Crown Lands NSW (crown roads).

Public roads also include pathways and laneways if they are dedicated to the public under the *Roads Act 1993*.

A public road may be either formed or unformed and includes all land between the opposing front property boundaries.

If the road is formed, then the footpath or nature strip is part of the public road.

If the road is unformed, it is often called a paper road; however, it is still under the control of one of the three road authorities.

Although Endeavour Energy does **not** require easements in public roads, the developer is still required to submit details of proposed construction work to the relevant road authority for approval prior to the construction of any network assets.

2.4.2 Crown land

Crown land is managed by Crown Lands NSW. The local council may also be appointed as the administrator or trustee on behalf of the Minister for Lands.

Crown land may be subject to native title and Aboriginal land claims.

Crown Lands NSW will usually require easements to be acquired by Endeavour Energy by compulsory process and will require compensation to be paid.

See section 3.3 [*Creation by compulsory process*] for further information.

2.4.3 Sydney Water land

Sydney Water owns and manages properties such as pumping stations, waste water treatment plants and drainage reserves.

Sydney Water will grant easements over its land, but may require Endeavour Energy's standard terms to be modified and compensation may be payable.

2.4.4 Sydney Catchment Authority land

Sydney Catchment Authority owns and manages water catchment areas.

Sydney Catchment Authority will grant easements over its land, but may require Endeavour Energy's standard terms to be modified and compensation may be payable.

2.4.5 National Parks & Wildlife Service land

Land dedicated as wilderness area, national park, state recreation area, regional park, and nature reserve is managed by the NSW Office of Environment & Heritage.

Endeavour Energy is usually required to enter into a formal deed of easement under Section 153 of the *National Parks & Wildlife Act 1974* and compensation or an annual rent may be payable.

2.4.6 Forestry land

Land dedicated as state forest is managed by Forests NSW/Department of Primary Industries.

Forestry land may be subject to native title.

Forests NSW will grant a limited form of property tenure under an *Occupation Permit* and an annual rent may be payable.

2.4.7 Rail corridors

In 2002, Endeavour Energy entered into a *Master Access Deed* with Railcorp, covering all new and existing network assets located within any rail corridor. This deed defines a rail corridor as any land owned by Railcorp.

Network assets located within a rail corridor under the provisions of the *Master Access Deed* do **not** require easements.

Railcorp may also permit developers to install network assets in a rail corridor under an *Individual Access Deed* or *Deed of Release and Indemnity*. Any deed between the developer and Railcorp will need to provide for the transfer to Endeavour Energy of any new network assets installed by the developer.

Railcorp's process for third party works within the rail corridor is documented on its website, which includes the application form. Applications for rail corridor access should be submitted to the Rail Corridor Management Group in Sydney.

The country rail network has been leased to Australian Rail Track Corporation Ltd (ARTC). ARTC administers any rail corridor access applications outside the metropolitan area (for example, from Menangle southwards on the Melbourne line). The ARTC website should be consulted for contact information regarding proposed rail corridor access.

All proposed rail crossings must be approved by the Chief Engineer. [Refer to MDI 0028 Clause 2.2.1]

3.0 CREATION OF PROPERTY TENURE

An easement, restriction, right of access, or positive covenant must be created in favour of **Endeavour Energy**.

The owner should be given an opportunity to consider the terms of the proposed easement document and to obtain professional advice prior to the certification of the design and construction of any network assets.

In unusual situations, the owner may have specific site requirements that require an amendment to Endeavour Energy's standard terms. The details of any proposed amendment should be submitted to the Manager Primary Systems for submission to the Chief Engineer for approval, prior to certification of the design drawing.

Where more than one type of network asset has been constructed, some easement sites and easement terms may be merged to avoid more than one encumbrance on title, for example:

- If a short length of underground cable is connected to a padmount substation, the padmount substation easement site may be increased in size to incorporate the underground cable.
- If a pole stay or ground stay is connected to an overhead power line, the easement for overhead power lines may be increased in size to incorporate the pole stay or ground stay.

Property tenure can be created by three different methods, as set out below.

3.1 Creation by Section 88B

The most commonly used method of creation is by defining the relevant site on a plan suitable for registration as a deposited plan at LPI and preparing a Section 88B.

All Section 88Bs creating property tenure in favour of Endeavour Energy must be signed by an authorised officer of Endeavour Energy.

The Section 88B and the plan administration sheet must be signed by all owners and the mortgagee/s (if applicable) before lodgement at LPI. Any registered lessee and caveator must also provide its consent.

Property tenure is created upon registration at LPI.

Endeavour Energy has a number of standard easement terms for network assets. These terms can be inserted into the Section 88B by using the full text, or alternatively can be incorporated by reference to the LPI memorandum number:

- Easement for Padmount Substation – Memorandum number 9262886
- Easement for Underground Cables – Memorandum number 9262885
- Easement for Overhead Power Lines – Memorandum number 9262884

An appropriate sample clause for incorporating the terms of a memorandum into Part 2 of a Section 88B is:

Terms of easement numbered [XX] in the plan:

The terms set out in Memorandum No [9262884] registered at Land & Property Information NSW are incorporated in this document, subject to changing Integral Energy Australia to Endeavour Energy in Clause 5.1.

A Section 88B can only be used where a land title has been issued and usually cannot be used for crown land.

3.2 Creation by deed or RPA dealing

If the land is under the *Real Property Act 1900* (Torrens title) property tenure may be created using various prescribed RPA dealing forms, for example: Transfer Granting Easement, Restriction on the Use of Land by a Prescribed Authority, Positive Covenant. These forms are available from the LPI website.

If the land is not under the *Real Property Act 1900* (Old System title), a deed will need to be prepared instead.

All easement documents must refer to a definition plan that is either attached or has been registered separately (unless the whole parcel is to be affected). Easement terms should be inserted by using the full text, **not** by using the memorandum number.

All easement documents must be signed by the owner, Endeavour Energy and the mortgagee (if applicable). Consent from any registered lessee and caveator will be required.

All easement documents must be registered at LPI. Property tenure is created upon registration. Like creation under Section 88B, this method can only be used where a land title has been issued and usually cannot be used for crown land.

3.3 Creation by compulsory process

Acquisition by compulsory process is subject to the approval of the Minister for Energy. The power to acquire land and/or easements by compulsory process is set out in Section 44 of the *Electricity Supply Act 1995*. The procedure is set out in the *Land Acquisition (Just Terms Compensation) Act 1991*.

Compulsory acquisition should preferably be undertaken with the written consent of the owner, and hence the owner should be consulted in the same way as in any other property tenure negotiations.

In relation to crown land, Endeavour Energy must consider the possible existence of unextinguished native title. It is necessary to carry out additional searches and enquiries in an attempt to trace the native title owner.

The easement is created by publication of an acquisition notice in the *NSW Government Gazette*. The compulsory acquisition should also be recorded at LPI.

Due to the nature of the process, at least 12 months' notice may be required for the compulsory acquisition of an easement, unless the owner is willing to enter into a pre-acquisition agreement.

The applicant will be required to pre-pay the estimated cost of the compulsory acquisition, including Endeavour Energy's administrative time and compensation to owners, as determined by Endeavour Energy prior to certification of the design drawing.

Upon completion of the acquisition, Endeavour Energy will refund any over payment of costs. No interest is payable by Endeavour Energy on any refund.

4.0 EASEMENT DIMENSIONS

See MDI 0044 for minimum easement widths.

5.0 RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS

SDI 104 and MCI 0006 provide a number of safeguards for long-term public safety, such as the physical segregation of padmount substations from any adjacent buildings, metal clad buildings, metal fences and swimming pools.

In some situations, Endeavour Energy requires one or more restrictions to be created by registration on the title of the land to ensure appropriate segregation is maintained by both current and future owners.

5.1 Padmount substation restrictions

Subdivisions	Common earthing	Separate earthing
Urban residential URS	3m fire restriction ¹ 5m swimming pool restriction ²	3m fire restriction ¹ 4m metallic building/fence restriction ² 30m swimming pool restriction ²
Other urban UIS, UCS	3m fire restriction ¹	3m fire restriction ¹ 4m metallic building/fence restriction ²
Non urban residential NRS	3m fire restriction ¹ 5m swimming pool restriction ²	3m fire restriction ¹ 4m metallic building/fence restriction ² 30m swimming pool restriction ²
Other non urban NIS, NCS	3m fire restriction ¹	3m fire restriction ¹ 4m metallic building/fence restriction ²

¹ distance measured from plinth

² distance measured from substation easement

Connections of load, asset relocations and public lighting	Common earthing	Separate earthing
Urban (including high and medium density residential) UML, UCL, UIL, UUL, ULL, ARP, PLT	3m fire restriction ¹	3m fire restriction ¹ 4m metallic building/fence restriction ²
Non Urban NCL, NIL, NLL, NRL, ARP, PLT	3m fire restriction ¹	3m fire restriction ¹ 4m metallic building/fence restriction ²

¹ distance measured from plinth

² distance measured from substation easement

MDI 0044 Annexure 3 contains the standard terms for the following restrictions:

- Fire (3 metres)
- Swimming pools (5 metres and 30 metres)

- Metallic buildings and/or metal fences (4 metres)

5.2 Switching station restrictions

If a switching station is built in a padmount substation cubicle that has provision for a future transformer, the restriction requirements are in accordance with the table in section 5.1 [*Padmount substation restrictions*].

If a switching station is built in a standard square cubicle that does not have provision for a future transformer, the restriction requirements are as detailed in the table below.

All project types	Common earthing	Separate earthing
Urban residential land uses	5m swimming pool restriction²	4m metallic building/fence restriction ² 30m swimming pool restriction ²

² distance measured from switching station easement

5.3 Pole mounted substation restrictions

All project types	Common earthing	Separate earthing
All land uses	5m swimming pool restriction²	4m metallic building/fence restriction ² 30m swimming pool restriction ²

² distance measured in all directions from the high voltage earthing cables and rods

5.4 Sewer pumping station and water treatment plant

No registered restriction is required within these sites.

5.5 Positive covenant for protective fireproof wall and fireproof screen wall

If the developer is unable to provide a 3 metre fire clearance around a padmount substation, Endeavour Energy may allow the construction of suitable fireproof wall/s or fireproof screen wall/s to protect adjacent buildings and properties. If approved on the design drawing, the developer must:

- Show the location of the structures on the definition plan.
- Create a registered positive covenant for the maintenance of these structures.
- Provide written evidence from an architect or engineer confirming that the structures, as constructed, conform to the approved design drawing proposal in relation to the FRL (fire resistance level).

MDI 0044 Annexure 3 contains the model terms for positive covenants for these types of walls. These terms must be varied to suit each particular situation.

6.0 DEFINED RIGHTS OF ACCESS

Wherever possible, network assets should be located adjacent to a public road, with the easement boundary abutting the public road boundary.

Endeavour Energy has general access rights under its standard easement terms, however, there are special situations where a defined right of access will be required to ensure practical access to the new asset is permanently available.

This defined right of access must be suitable and trafficable to trucks for ongoing maintenance and repairs to all network assets.

The following are regarded as private access rights that are **not** equivalent to a public road:

- Internal roads
- Driveways
- Rights of carriageway – unless the right of carriageway legally benefits the lot on which the network assets are located

6.1 Indoor substations

Indoor substations should abut and be accessible from a public road. If the indoor substation is not abutting a public road boundary, or is not accessible from a public road, a defined right of access will be required.

If the indoor substation requires a personnel access route, the designer must show the location, width and height of the right of access on the design drawing. The right of access defining the route must be a minimum of 1 metre wide.

6.2 Vehicle access

The designer must consider headroom, turning circle and operating height requirements for trucks fitted with truck mounted cranes. The location, width and height of the right of access must be shown on the design drawing.

6.3 Padmount substations and switching stations

Padmount substations and switching stations should abut and be accessible from a public road. If the substation site is not abutting a public road boundary, a defined right of access may be required that is trafficable to trucks from the public road to the substation site.

The requirement for a defined right of access may be waived if the substation site is located:

- Within a large public institution where unrestricted access is generally available, for example, a public hospital or university campus.
- Within a commercial site that is accessible to the public during daylight hours, for example, a shopping centre car park or medical centre car park.
- Abutting a trafficable easement at least 4.5 metres wide in favour of Endeavour Energy.
- Within community property land in a community title development and the substation easement abuts an open access way shown in the community property plan.
- Within Common Property in a strata title development and the substation abuts the common driveway used by the lot owners.
- Within utility facilities, for example a sewage treatment plant or pumping station.
- Within public parks and reserves.
- Within public schools.
- Within any property if Endeavour Energy determines a defined right of access is not required.

If a switching station is located on the front property boundary, a defined right of access to a padmount substation located deeper within the property will not be required.

6.4 Underground assets

Endeavour Energy will require a defined right of access if there is an above surface asset, for example, distribution pillar, that is not accessible from:

- a public road abutting the lot on which the new asset is located; or
- a right of carriageway benefiting the lot on which the new asset is located; or

- a trafficable easement at least 4.5 metres wide in favour of Endeavour Energy that abuts the lot on which the new asset is located.

6.5 Overhead assets

Endeavour Energy will require a defined right of access to new overhead assets if the new assets are not accessible from:

- a public road abutting the lot on which the new asset is located; or
- a right of carriageway benefiting the lot on which the new asset is located; or
- a trafficable easement at least 4.5 metres wide in favour of Endeavour Energy that abuts the lot on which the new asset is located.

7.0 SUBDIVISIONS

Endeavour Energy will require the developer to create all necessary easements, restrictions, rights of access, and positive covenants.

The creation of property tenure is **not** required for any network asset located within a public road (unless it is a temporary road).

7.1 Service lines

Clauses 2.2.2 and 3.2.4 of the *Service and Installation Rules of NSW* state that service mains or consumer's mains crossing an adjoining property must have a suitable easement. Endeavour Energy requires this easement to adopt the standard terms in Schedule 8 of the *Conveyancing Act 1919* and benefit the lot being serviced (an inter-allotment easement).

Easements should be defined on the final plan of subdivision and be created in accordance with Section 88B.

7.2 Urban property tenure requirements

Endeavour Energy will require the creation of property tenure for:

- all new transmission, high voltage and low voltage assets; and
- all existing transmission, high voltage and low voltage assets located within the developer's land.

7.3 Non-urban/rural property tenure requirements

Endeavour Energy will require the creation of property tenure for:

- all new transmission, high voltage and low voltage assets;
- all existing transmission assets located within the developer's land;
- all existing high voltage assets located within the developer's land; and
- all existing low voltage assets that will be used to supply any adjoining land outside the subdivision.

7.4 Exception for existing network assets in a compiled lot

The creation of property tenure is **not** required for existing network assets within any lot in a subdivision that has two or more boundaries that do not need to be surveyed and where an exemption for compiled boundaries has been issued by LPI.

The purpose of this exception is to minimise the developer's survey expense associated with creating property tenure within a compiled lot.

7.5 Community title subdivisions

Community title is a type of shared property established by the *Community Land Development Act 1989* and characterised by:

- A corporate association that manages the shared property
- Association property comprising the land and facilities under shared ownership
- A management statement that explains how the shared property will be used and maintained

The *Community Land Development Act 1989* defines three types of shared property in three types of schemes:

- Community property in community schemes
- Precinct property in precinct schemes
- Neighbourhood property in neighbourhood schemes

Community land developments are created by a plan of subdivision and easements may be created in favour of public authorities under Section 88B.

Endeavour Energy will generally own and maintain all high voltage assets within the development. Endeavour Energy or the community title association may own and maintain the low voltage assets and/or public lighting network.

Endeavour Energy may request the inclusion of by-laws in Part 5 of the management statement covering the use of access ways and the ownership of low voltage assets. [Refer to MDI 0044 Clause 5.3]

Community title design drawings require the approval of the Overhead & Underground Mains Manager.

7.6 Developer's responsibilities

The developer must:

- Investigate the ownership of all land affected by the proposal.
- Consult any land owners that are not the developer and obtain their written agreement to enter and carry out any work on that land.
- If property tenure is required within land that is not owned by the developer, the developer must negotiate and register property tenure on this land prior to applying for design certification. In special circumstances Endeavour Energy may permit the design to be certified before the property tenure is registered subject to an assessment of risk and provision of suitable guarantees covering a default by the owner outside the subdivision.
- Comply with all terms agreed with any other land owners.
- Define the boundaries of all property tenure on the plan of subdivision.
- Submit the subdivision plan, plan administration sheet, Section 88B and red line diagram, for approval by Endeavour Energy.
- Register the plan and 88B instrument at LPI.

7.7 Designer's responsibilities

When applying for certification of the design drawing, the designer must:

- Identify the boundaries and ownership of any land affected by the project that is not owned by the developer and show this land on the design drawing.
- Identify all proposed property tenure sites on the design drawing, including dimensions and type.
- Provide evidence of registration of property tenure obtained by the developer outside the subdivision under Clause 7.6.

7.8 Issue of a Notification of Arrangement

Prior to the issue of any Notification of Arrangement, the details of any property tenure must be approved by the Property Section. The following documents will be required at this time:

- One copy of the final subdivision plan and plan administration sheet signed and dated by a registered surveyor. The plan must be a legible size and must not be marked **Preliminary** or **Draft**.
- One copy of the Section 88B.
- One copy of the community title management statement (if applicable).

A red line diagram may also be required.

The issue of the Notification of Arrangement will **not** be approved until:

- Endeavour Energy has approved the Section 88B and executed the original.
- Any easement to be created on land outside the subdivision that is **not** owned by the developer is registered.

8.0 CONNECTIONS OF LOAD

Endeavour Energy will require the developer to arrange for the creation of all necessary easements, restrictions, rights of access, and positive covenants.

The creation of property tenure is **not** required for network assets located on a public road (unless it is a temporary road).

Although section 7 applies generally to connections of load, there are additional property tenure requirements for:

- indoor substations – refer to section 8.3 [*Indoor distribution substations*]
- transmission assets – refer to section 10 [*Transmission Assets*]
- Defined rights of access between the network asset and a public road – refer to section 6 [*Defined rights of access*]
- Restrictions and positive covenants associated with padmount substations and switching stations – refer to section 5 [*Restrictions on the use of land and positive covenants*]

8.1 Urban distribution property tenure requirements

Endeavour Energy will require the creation of property tenure for:

- all new high voltage assets that will be used to supply the development;
- any new low voltage assets located on an adjoining lot that will be used to supply the development;
- all new consumers mains that are outside the lot occupied by the premises to be supplied (this may require an inter-allotment easement); and
- all existing network assets that will be used to supply a new network asset.

8.2 Non-urban/rural distribution property tenure requirements

Endeavour Energy will require the creation of property tenure for:

- all new high voltage assets; and
- all new low voltage assets installed on land **not** owned by the developer.

Endeavour Energy will **not** require the creation of an easement for an existing overhead power line if the power line is upgraded within the line of existing poles.

8.3 Indoor distribution substations

Endeavour Energy will require an easement for all indoor substations and associated cableways.

The boundaries of an easement for indoor substation should be defined by the internal face of the walls, ceiling and floor of the substation room and associated cableways. An easement for the cableway to the substation room may also be required.

These easements may need to be limited in height and depth. The survey plan will need to show any height and depth limitations as reduced levels (RLs) on Australian Height Datum.

A right of access may also be required to give Endeavour Energy staff, vehicles, and equipment unrestricted access to the indoor substation at all times – refer to section 6.1 [*Indoor substations*].

If the indoor substation is located within a separate building with its own walls and roof, a positive covenant is required to be created regarding repair and maintenance of this building.

An indoor substation that has been commissioned is a high voltage danger area. The substation room is a security area protected by security locking, hence, restricted access provisions apply. An authorised person from Endeavour Energy must accompany surveyors inside a commissioned indoor substation room at all times.

A surveyor requiring access to an indoor substation room should contact the Property Section, allowing a minimum of three days' notice to enable suitable arrangements to be made.

8.4 Property tenure procedure for distribution assets

- The designer submits a design drawing for certification with easement agreement form and PTB
- The CWE/CWO submits the design drawing and agreement form to the Property Section
- The Property Section approves all property tenure requirements
- The CWE/CWO certifies the design drawing
- The developer/surveyor pegs the property tenure sites in readiness for construction
- New distribution assets are constructed
- The developer finalises the survey
- The developer submits the final definition plan, easement document, and red line diagram for approval and execution by Endeavour Energy
- The definition plan and easement document are registered at LPI
- Endeavour Energy refunds the PTB

8.5 Developer's responsibilities

The developer is required to address these responsibilities in addition to any special requirements set out elsewhere in this document:

- Investigate the ownership of all land affected by the proposal
- Consult any land owner that is not the developer and obtain their written agreement to enter and carry out any work on that land
- Negotiate and create any property tenure required within land not owned by the developer
- Comply with all terms agreed with any other land owners
- Define the boundaries of all property tenure sites on a definition plan
- Submit the draft definition plan, easement document, and red line diagram for approval by Endeavour Energy
- Arrange for the original easement document to be signed by Endeavour Energy
- Obtain all relevant consents – eg: mortgagee, lessee, caveator
- Register the definition plan and easement document at LPI
- Notify Endeavour Energy of the registration to enable refund of the PTB

8.6 Designer's responsibilities

When applying for certification of the design drawing, the designer must demonstrate that a satisfactory form of property tenure can be achieved for the project by:

- identifying the boundaries and ownership of any land affected by the project;
- identifying the proposed property tenure requirements on the design drawing, including dimensions and type;
- submitting a completed Easement Agreement form; and
- lodging the appropriate PTB.

Designers should take particular note to identify parcels of land owned or managed by other government authorities. Some organisations have special property requirements and the designer must contact these organisations and obtain a letter confirming their specific requirements.

See section 2.4 [*Requirements for land owned or managed by other government authorities*] for further information.

8.7 Property tenure bonds

8.7.1 Payment of PTBs

The Endeavour Energy website, *Connecting to your network*, sets out the general framework for PTBs.

8.7.2 Easement Agreement form

If a PTB is required, the bond payer must sign an Easement Agreement form. If the bond payer does **not** own the land, the land owner must also sign this form.

The Easement Agreement form must be signed by each individual owner. If the owner is not an individual, the form must be signed by a legally authorised officer, attorney or delegate of the entity.

8.7.3 Ownership and refund of PTBs

If a PTB is paid by bank cheque, Endeavour Energy deems the right of refund belongs to the bond payer nominated on the Easement Agreement form if the source of the funds for the bank cheque is unknown.

If the PTB was provided as a bank guarantee, the original bank guarantee will be returned to the bank's customer or the bond payer.

Upon becoming aware of the completion of property tenure, Endeavour Energy will initiate refund of the PTB.

If the current postal address for the refund cannot be verified, the PTB will be retained until the bond payer contacts Endeavour Energy.

If the project is cancelled, Endeavour Energy will need to be informed in writing in order to initiate the PTB refund process.

8.7.4 Forfeiture of PTB

If a change in circumstances makes it impossible or impractical to complete the property tenure within the required six months period, the bond payer must contact the Property Section as soon as such a delay becomes apparent.

Endeavour Energy may deem the developer to have lost the right of refund if:

- the property tenure is not completed within six months of the network asset being commissioned, or
- the land changes ownership before the six months period has elapsed and the property tenure has not been completed.

If Endeavour Energy deems the right of refund to have been lost, it will notify the bond payer in writing.

If the right of refund is lost, the PTB is deemed to be forfeited and the ownership of the PTB is transferred to Endeavour Energy as compensation for the breach of the bond payer's agreement to complete the property tenure.

If a forfeited PTB was provided as a bank guarantee, Endeavour Energy will draw on the bank for the full amount.

8.7.5 Caveats

If completion of property tenure does **not** occur within the required six months period, Endeavour Energy may take steps to lodge a Caveat on the owner's title to protect Endeavour Energy's rights.

The cost of preparing and lodging a Caveat will be deducted from the PTB already paid by the bond payer.

LPI will remove the caveat if:

- Endeavour Energy lodges a signed Withdrawal of Caveat form; or
- the developer lodges a registrable definition plan and accompanying document, together with a letter signed by Endeavour Energy stating that the Caveat should be removed upon registration of property tenure.

8.8 Issue of a Compliance Certificate

Prior to the issue of any *Compliance Certificate*, the details of any property tenure must be approved by the Property Section. The following documents will be required at this time:

- One copy of the final survey plan and plan administration sheet signed and dated by a registered surveyor. The plan must be a legible size and must not be marked **Preliminary** or **Draft**
 - One copy of the Section 88B
- or
- One copy of the RPA dealing and definition plan

A red line diagram from a registered surveyor will also be required.

The Compliance Certificate will not be issued until Endeavour Energy has executed the Section 88B or RPA dealing.

9.0 ASSET RELOCATIONS

If network assets are being relocated as part of a subdivision project and a separate ARP project is not required, the property tenure requirements set out in section 7 [*Subdivisions*] apply to the project.

If network assets are being relocated under an ARP project, the property tenure requirements set out in section 8 [*Connections of Load*] apply to the project.

If network assets to be relocated include any transmission assets, an ARP project is required and the property tenure requirements set out in section 10 [*Transmission Assets*] apply to the project.

10.0 TRANSMISSION ASSETS

Due to the strategic importance of the transmission system, the standard property tenure procedure does **not** apply to transmission projects.

Endeavour Energy will require completion of property tenure for:

- all new transmission network assets; and
- all existing transmission network assets located within land owned by the developer.

If the developer is relocating a transmission line within its own subdivision development Endeavour Energy may allow the developer to connect the new transmission assets to the network without the creation of property tenure if the required property tenure will be created in the subdivision within a reasonable period of time.

The developer is not required to pay a PTB.

If the developer is required to create property tenure for a transmission asset before the asset is connected to Endeavour Energy's network the developer should plan to register the easement at least 14 days before the projected day of commissioning.

10.1 Additional requirements for transmission substations and switching stations

The purpose of this section is to ensure that new transmission substation assets are **not** connected to Endeavour Energy's network until either site ownership or a long-term lease is registered at LPI.

As this type of facility will generally include a free-standing building, vehicle parking, domestic power supply, staff amenities (such as a toilets and deluge showers), curtilage around the building and security gates, an easement is not acceptable.

Before the design is certified, the developer must negotiate the type of property tenure, whether freehold or leasehold. If a leasehold tenure is approved then the duration and lease terms must be agreed in principle.

The developer must arrange the preparation of a deposited plan showing the site of the freehold or leasehold area. The developer must then lodge the plan at LPI for registration.

This plan does **not** require local council consent, however, the notification provisions of *SEPP (Infrastructure) 2007* may apply in relation to any electricity substation development.

Upon registration of the plan, a RPA dealing will need to be prepared in accordance with negotiations, signed and consented to by all relevant parties, and lodged for registration.

Upon registration of the RPA dealing, the new transmission substation asset may be connected to the Endeavour Energy network.

10.2 Property tenure procedure for transmission lines

The purpose of the following procedure is to ensure that new transmission assets are **not** connected to Endeavour Energy's network until appropriate property tenure is completed.

- The designer submits a transmission proposal (Method of Supply).
- The CWE/CWO liaises with relevant Transmission and Planning sections.
- Transmission issues the Project Definition.
- The CWE/CWO liaises with the Property Section.
- The CWE/CWO issues Design Brief to the designer incorporating the Project Definition and property tenure requirements.

- If the developer does **not** own the affected land, the developer must submit evidence of concluded negotiations such as a written agreement signed by the owner agreeing to allow the developer to carry out work on their land and to grant any easement including compensation, easement location, easement dimensions, and easement terms.

Note: There is no prescribed form for this agreement and the developer should obtain appropriate professional advice regarding the management of any risks during construction – for example, what if the owner fails to grant the easement and the new works cannot be connected to the Endeavour Energy network.

- The designer submits a design drawing for certification.
- The CWE/CWO submits the design drawing to the Property Section.
- The Property Section approves the property tenure requirements on the design drawing.
- The CWE/CWO certifies the design drawing.
- The developer pegs the property tenure sites in readiness for construction and submits a draft definition plan and easement document to Property Section.
- New transmission network assets are constructed.
- The developer's surveyor verifies that transmission assets have been built according to the approved draft survey plan.
- The developer submits a copy of the final definition plan and the original easement document for approval and execution by Endeavour Energy.
- The definition plan and easement document are registered at LPI.
- The Contractor Inspector confirms that the property tenure requirements have been completed prior to arranging the outage for connection works. Transmission assets may then be connected to Endeavour Energy's network.

11.0 RELEASE OF PROPERTY TENURE

11.1 Release by Section 88B

All Section 88Bs releasing an easement in favour of Endeavour Energy under Part 1A must be signed by an authorised officer of Endeavour Energy.

Endeavour Energy's current execution clause must be added to the Section 88B. [Refer to form *FPJ5010* available from the Property Section]

It is **not** possible to release a restriction or a positive covenant under Part 1A of a Section 88B. This must be done by a RPA dealing.

11.2 Release by RPA dealing

All RPA dealings releasing property tenure in favour of Endeavour Energy must be signed by an authorised officer of Endeavour Energy.

