

## Guidance Notes

# Application for Amendment of a Deposited Community Plan

*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.*

For additional information on the completion of this form and requirements see Land Services notes on Community Titles available at [www.landservices.com.au/property-professionals/land-division](http://www.landservices.com.au/property-professionals/land-division)

### GENERAL INFORMATION

- \* Form AP5 is to be used to amend a deposited Community Plan by adding portion of an allotment or removing portion or whole of an allotment from the community parcel pursuant to sections 52 and 57 of the *Community Titles Act 1996* (CTA) and Part 19AB of the *Real Property Act 1886* (RPA).

**Note:** Where the amendment:

- a. Is pursuant to a Development Contract, Form AP4 must be used.
  - b. Involves no changes to the extent of the community parcel, Form AP3 must be used.
  - c. Changes only the lot entitlements, Form AP2CP must be used.
- \* Any amendment to the deposited Community Plan is to be made pursuant to a unanimous resolution of the Community Corporation.
  - \* Where the amendment involves land being removed or portion of an allotment being added to a primary plan, a plan of division (DP) and the amended Community Plan must be lodged.
  - \* Apart from amending the community parcel, the Form AP5 provides for:
    - The creation of additional lot(s) (including a development lot for future development) and common property
    - Adjustment to lot boundaries (community or development) and the common property
    - Changes to service infrastructure
    - Modification to buildings and structures shown on the deposited community plan
    - Alteration to lot entitlements (if required).
  - \* At the time of lodgement of the AP5 with Land Services SA (LSSA) the State Commission Assessment Panel (SCAP) certificate(s), if applicable, must be current. Separate SCAP certificates are required for the amended community plan and for any DP.
  - \* The AP5 must be assessed for stamp duty prior to being lodged in the LSSA.
  - \* If the name of an applicant or consenting party has altered an application amending their name must precede the AP5, if applicable.
  - \* Where lot entitlements are:
    - a. To be changed, a land valuer's certificate, certifying that the schedule of lot entitlements is correct must be lodged with the AP5 (see Community Titles Regulations, Form No.2). The land valuer is to insert the community plan number on the lot entitlement sheet. The lot entitlement sheet is available on LTO Forms.
    - b. Not to be changed, a certification from a land valuer prepared in accordance with Form No. 3 of the Community Titles Regulations is to be attached to the AP5. Also refer to Notice to Lodging Parties 158.

- \* If a lot's lot entitlement changes by more than + 10% of the proportion of the aggregate of the lot entitlements for the plan. A copy of the unanimous resolution, being a copy of the minutes, certified by an officer of the Community Corporation must be attached to the AP5. The form of certification is:

*"This is a copy of the resolution of the corporation referred to in the attached application.*

.....

*[Signature of officer of the Community Corporation]"*

- \* 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

Insert the amended community plan and, if applicable, DP:

- Plan number
- Development Number

### Land Description

Include reference to all titles (e.g. Whole of the land in CT Volume ... Folio....) affected by the amendment this includes titles for:

- The parcels in the community plan affected by the amendment and the land in the accompanying DP, if applicable (if portion of certificate of title then describe precisely eg; Lot 1 in CP 60000 being portion of the land in CT Vol 5000 Folio 3)
- Land affected by the creation, variation, extinguishment of a right of way or easement
- Land affected by any additional encroachments.

### Applicant(s)

Insert the full name and address of the:

- Community Corporation
- Registered proprietor(s) of adjoining land for the land being added or removed from the community parcel.

Any change of address of the Corporation must be authorised by the local council either by inclusion in the DAC certificate or by letter attached to the AP5 signed by an authorised officer of the council.

### Application to Registrar-General

- \* In (1):
  - Insert the number of the community plan being amended
  - Cross through the inapplicable and, if required, show the relevant sheet numbers being replaced or added in the format of 3 of 4 or 5 of 10.
- \* If the Lot entitlements are not being changed, strike through (2).
- \* In (3), strike through the inapplicable. If (a) remains then a photocopy of the existing Scheme Description re-endorsed by the relevant development authority (eg; LGA Council) is required. If (b) remains a form LF2 with the appropriately amended scheme description in accordance with the CTA must be lodged.
- \* If a DP is not being lodged, strike through (6).

## Schedule of Mode of Issue

The Mode of Issue is to show the details for all of the new titles to be issued as a result of the amendment. This includes titles issuing for affected lots in the community plan, Common Property, Allotments in the DP, Public Roads, Reserves, Certificates of Title affected by any additional Encroachment or affected by the creation, variation or extinguishment of an easement and Easement in Gross.

### Parcel Identifier/CT reference

Insert the land description for all new titles being issued e.g. 1, Common Property, CT 5678/23,

### Full name, address and mode of holding

Show the full name, address and mode of holding (if required) of the proprietor(s) for the titles to be issued

### Estates or Interests

State all of the registered interests against the affected parcel after registration of the AP5.

The registered interests must be disclosed accurately and in the required order to indicate if the estate or interest covers all or portion of the land in the resultant parcels.

For example

L 5236421 (shop1 in F226425)  
AG 602389 of portion  
M 8245226

When no estates or interests exist, insert "Nil".

Note – Easements are not shown in this column.

## Details of Transaction(s) (Applicant(s) Only)

Set out the actions required to affect the applicant's interest on amendment of the community plan and, if applicable, deposit of the DP.

Consideration/Value to be included for stamp duty purposes

## Schedule of Easements created by Amendment of the Plan of Community Division and the Deposit of the Plan of Division

- \* Service (statutory) easements are not to be included.
- \* If only short form easements are to be created delete the long form statement. Similarly, if only long form easements are to be created delete the short form easements. If no easements are to be created strike through both.
- \* **SHORT FORM** – do not express in full, as the easement set out in the accompanying plan(s) will be created on the deposit of the DP and amendment of the deposited community plan. Note: - A short form easement is one set out with the exact wording as set out in the 5th and 6th schedules of the RPA.
- \* **LONG FORM** – set out the right in full when no short form clause is used on the plan. (The easement note on the plan will indicate the general purpose of the easement.)

## Certificate of Consent to the Amendment of a Deposited Community Plan

- \* Persons who must consent include:
  - a. Registered Proprietor(s) of the Lots affected by the Amendment (who is not an Applicant)
  - b. Registered interest(s) of the lots affected by the amendment and the land in the DP.
  - c. Registered proprietor(s) and registered interest(s) for any affected land outside of the community parcel and the DP e.g. existing easement's position being varied.

- d. Registered proprietor(s) of the land affected by a new encroachment as a result of the amendment.
- e. Registered interest(s) of any existing lot where the relative value of their lot entitlement in relation to the existing lots has changed more than + 10%.

\* If a lease is being extended, this should be defined precisely, the lease is to be over and separate consents forms will be required from the lessee and lessor.

### 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 CT, Mortgagee, etc)

### Statement of Effect on estates or interests of consenting parties

Insert Interest affected (e.g. CT 5678/23, M 34567812, L 6785892, etc.)

Show effect on the interest by selecting or striking through the statement(s) shown or if the statements do not cover the situation insert the applicable wording e.g. Amendment to Lot Entitlement for Lot 23. Note: If statutory encumbrance (e.g. Land Management Agreement) is adjusted additional certification is required. See NTLP 158.

If there is no effect insert NIL. Do not use N/A.

Insert consideration/value for stamp duty purposes.

### Consent to amendment

In (1) insert the number of the community plan being amended in (a). If there is no change to the Lot entitlements, cross through (b)

Must be dated.

## EXECUTION BY APPLICANTS AND CONSENTING PARTIES

If the party executing is the Community Corporation, the corporation is to affix their common seal in accordance with Section 73 of the CTA.

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 party).

Pursuant to Section 267 of the RPA, the witness must be aged 18 years or over and must know the executing party 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.*

If the party executing is a body corporate it may execute in any manner permitted by law.

## 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 3 certifications shown on the Form AP5 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 e.g. lot entitlement sheet, copy of unanimous resolution

## 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.



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