

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 SA notes on Community Titles available at www.landservices.com.au/property-professionals/land-division

GENERAL INFORMATION

Form AP3 is to be used to amend a deposited Community Plan pursuant to sections 52 or 59 of the *Community Titles Act 1996*(CTA).

Under section 52 of the CTA where the applicant is:

- a. The Community Corporation, the application must be made pursuant to a unanimous resolution of the corporation.
 - b. Community lot owners, the Community Corporation is required to have been notified of the application and the amendments to the plan must comply with the requirements set out in section 52(1a) of the CTA.
- * Where the application is made pursuant to an Order of Court, under section 59 of the CTA, a copy of the sealed court order must accompany the application.
 - * See also Notice to Lodging Parties No 141, 145, 157 and 158.

Note: Where the amendment:

- a. Is pursuant to a Development Contract, form AP4 must be used.
- b. Involves changes to the extent of the community parcel (site), Form AP5 must be used.
- c. Changes only the lot entitlements, form AP2CP must be used.

As documentation requirements for an amendment pursuant to an order of court are to be determined by viewing the order, the following notes relate to section 52 applications.

Apart from amending internal boundaries within the deposited Community Plan, the amendment may affect:

- The creation of additional lot(s) (including a development lot for future development) and common property
 - Changes to service infrastructure
 - Modification to buildings and structures shown on the deposited community plan
 - Alteration to lot entitlements (if required). If amended the new lot entitlement schedule is to be attached to the application
- * At the time of lodgement of the AP3 in the Land Services SA (LSSA), the State Commission Assessment Panel (SCAP) certificate, must be current.
 - * The AP3 must be assessed for stamp duty prior to being lodged in LSSA.
 - * If the name of an applicant or consenting party has altered an application amending their name should precede the AP3, if applicable.
 - * Where lot entitlements are:

- a. To be changed a new lot entitlement sheet certified by the land valuer must be lodged with the AP3. 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 AP3. Refer to Notice to lodging Parties No. 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 AP3. 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.

Heading

Delete the inapplicable section number.

Insert the amended community plan number and 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:

- The parcels in the community plan affected by the amendment.
- Land affected by the creation, variation, extinguishment of a right of way or easement.
- Land affected by any additional encroachments.

Applicants

Insert the full name and address of the applicants.

If the applicant is the Community Corporation, any change of address of the corporation must be authorised by the local council either by inclusion in the SCAP certificate or by letter attached to the AP3 signed by an authorised officer of the council.

Application to Registrar-General

- * In (1):
 - Insert the number of the community plan being amended
 - Strike 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 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.
- * In (5), (a) is to be retained if the applicant is the Community Corporation and (b) to be retained if the applicants are Community Lot owners.
- * If an application is made pursuant to an Order of Court, cross through (5) and complete the relevant information in (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, 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 AP3.

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 e.g. Granting, extinguishing or variation of an easement.

Consideration/Value to be included for stamp duty purposes

Schedule of Easements created by Amendment of a Deposited Community Plan

- * 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 easement statement. 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 by the 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 Real Property Act 1886 (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 (who is not an applicant) and interest(s) of the lots or common property affected by the amendment.
 - b. Registered proprietor(s) and registered interest(s) of any title affected by the variation/extinguishment of an easement.
 - c. Registered proprietor(s) of any title affected by an encroachment other than over land under the care and control of the local council.

- d. Registered proprietor(s), not being an applicant, and registered interest(s) of any existing lot where the relative value of their lot entitlement has changed by more than $\pm 10\%$.
- * If a lease is being extended, this should be defined precisely. Separate consents forms will be required from the lessee and lessor.
 - * See Notice to Lodging Parties (NTLP) 171 & 179 regarding deregistered encumbrances
 - * See NTLP 158, 161 & 179 regarding adjustment of statutory encumbrances

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, party to AG... 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 consenting party).

Pursuant to Section 267 of the RPA, the witness must be aged 18 years or over and must know the person 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 - \$5000 or 1 year imprisonment.*

If the party executing the Application 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 Form AP3 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

FORM AP3 (Version 2)



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