

Department of Planning,  
Transport and Infrastructure

# Community Title Amendment Applications Preparation Notes

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**The following notes has been prepared on the assumption of anyone using these notes has an understanding of the requirements and preparation of Forms RTC and ACT.**

## **1 AMENDMENT OF SCHEME DESCRIPTION**

A request to file an Amendment of Scheme Description for a community scheme is lodged pursuant to a unanimous resolution of the corporation under section 31 of the *Community Titles Act 1996* (CTA) using Form LF2.

The amended Scheme Description must not be inconsistent with the By-laws and Development Contract, if applicable, of the Scheme.

If the Scheme Description being amended is for a:

- a) Primary Scheme - the amended description must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of any subsequent Secondary or Tertiary Schemes.
- b) Secondary Scheme - the amended description must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of the prior Primary or any subsequent Tertiary Schemes.
- c) Tertiary Scheme - the amended description must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of the prior Primary or Secondary Schemes.

If the above documents are inconsistent they must also be amended.

### **1.1 Affect of Amended Scheme Description being filed**

The CTA has not included a time frame for lodgement of the amended Scheme Description once the resolution has been passed. However, the amended Scheme Description does not take effect until they are filed with the plan (section 31(5)).

Upon the amended Scheme Description being filed, this becomes the current Scheme Description for the community scheme. As a consequence of this, the amended Scheme Description:

- a) Must be prepared in accordance with the requirements for Scheme Description set out in the CTA,
- and
- b) Must include all details relating to the Scheme Description and not just those parts being amended.

## 1.2 Required to be produced with the request

The following **must** accompany the Form LF2:

- a) A copy of the amended Scheme Description certified in accordance with Form No. 4 of Schedule 1 of the *Community Titles Regulations 2011* (CTR).
- b) A copy of the resolution, certified to comply with the Registrar-General requirements under section 31(4) of the CTA.
- c) Fee required by Regulations.
- d) Consent of parties required under section 32 of the CTA.

## 1.3 Preparation of Form LF2

### 1.3.1 Heading

Cross through the inapplicable.

### 1.3.2 Instrument Affected

Insert the number of the previous Scheme Description being amended.

### 1.3.3 Plan No.

Insert the number of the plan the Scheme Description relates to.

### 1.3.4 Application to Registrar-General

The Application to the Registrar-General must be made by an officer<sup>1</sup> of the Community Corporation using the wording set out in Form No. 4 of Schedule 1 of the CTR.

#### **Wording to be used**

*I [Full name and address of person certifying] being an officer of Community Corporation No. .... Incorporated certify that—*

- (1) *in accordance with section 31 of the Community Titles Act 1996. Community Corporation No..... Inc. has by unanimous resolution at a duly convened meeting of the corporation held at ..... on ..... day of ..... [year] .....amended Scheme Description No. .... and a true copy of the scheme description as amended is attached to this certificate.*
- (2) *The persons whose consents are required by section 32 of the Community Titles Act have consented to the amendment.*

*Dated the                      day of                      20*

.....  
*[Signature of person certifying]*

**Note:** - The signature of the officer making the request need not be witnessed.

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<sup>1</sup> Appointed Presiding Officer, Secretary or Treasurer of the Community Corporation

## 1.4 Preparation of the Amended Scheme Description

The amended Scheme Description **must**:

- a) Be prepared in accordance with the Registrar-General's requirements for Scheme Description documents – see 1.4.1.
- b) Be endorsed by the relevant planning authority (section 30(4) of the CTA).
- c) Include those matters set out in section 30(1) of the CTA.
- d) Not be inconsistent with the filed LF dealings
- e) Must not be lodged in duplicate or triplicate.
- f) The amended Scheme Description must be certified as having been correctly prepared in accordance with the CTA by the person preparing the Scheme Description or by an officer of the Community Corporation. The required form of certification as set out in the CTR

*Certified correctly prepared in accordance with the requirements of the Community Titles Act 1996 by the person who prepared the document/an officer of the community corporation (strike out whichever is not applicable).*

Signature of person certifying]

*(Full name of certifying party and address printed below)*

### 1.4.1 The Registrar-General's requirements

The Registrar-General's requirements for the amended Scheme Description are:

- a) Compliance with the requirements as set out for Scheme Description in 6.2.1 of the Community Title Applications preparation notes.
- b) Must be certified – see 1.4.2.

### 1.4.2 Certifications

Must be certified correct in accordance with Form 10 of the CTR.

To comply with the requirements of section 31(5) of the CTA, the officer making the application must also certify that the amended Scheme Description is a copy of the Scheme Description referred to in the application to the Registrar-General.

The certification as set out in Form No. 4 of Schedule 1 of the CTR is:

*This is the copy of the scheme description referred to in the attached certificate*

.....  
[Signature of person certifying]

## 1.5 Copy of the Resolution attached

Pursuant to section 31(4) of the CTA, the Community Corporation is required to provide evidence to the Registrar-General of the amendment being made pursuant to a unanimous resolution of the corporation. The required evidence to be attached to the LF2 form is a copy of the relevant resolution, in the form of a copy of the minutes, certified by the officer making the application.

### 1.5.1 Certification

The Registrar-General's required form of certification is:

*This is the copy of the resolution of the corporation referred to in the attached certificate*

.....  
[Signature of person certifying]

## **1.6 Consents**

Pursuant to section 32 of the CTA, certain parties are required to consent to the amendment.

### 1.6.1 Consenting parties

Consents to the amendment are required from:

- a) At the time of lodgement of the amendment any unregistered:
  - Transferee of a community lot in the plan.
  - Mortgagee or lessee of a community or development lot in the plan.
- b) Any registered mortgagee or lessee of a community or development lot in the plan.
- c) The transferee of a development lot in the plan, where the transfer has been lodged between the passing of the resolution and lodgement of the amendment to scheme description. Where there is no transferee then the consent is required from the owner of the development lot.
- d) An owner of a Community Lot in the plan who at the time of passing the resolution was not an owner of the lot.

Where a primary lot has been divided by a secondary plan and a primary scheme description is being amended, see section 32(2) of the CTA for required consents.

Where a secondary lot has been divided by a tertiary plan and the scheme description being amended is for either the primary or secondary plan, see s 32(2) of the CTA for required consents.

### 1.6.2 Completion of Consent form

Form B1 Annexure is to be used for consents complying with the following requirements:

- a) Top part of the form completed to in accordance with Notices to Lodging Parties No. 134.  
  
Land: CP ....  
Applicants: Community Corporation No. .... Inc.  
Dealing: Request for Amendment of Scheme Description .....
- b) Stating the consenting parties' full name, address and nature of estate or interest.
- c) Including reference to "consenting to the amendment to Scheme Description.
- d) Execution rules pursuant to Section 267 and 268 of the RPA apply.

For an example of the wording to be used for the above a), b) and c), see Annexure A.

## ANNEXURE A

## **ANNEXURE FORM B1 – CONSENT AMENDMENT TO SCHEME DESCRIPTION**

FORM B1 (Version 1)  
GUIDANCE NOTES AVAILABLE

Attach to inside left hand corner

**PRIVACY COLLECTION STATEMENT:** The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

To be completed by lodging party		Office Use Only
<b>ANNEXURE to LF</b>	dated <b>12.7.16</b>	<b>NUMBER</b>
over Certificate of Title Volume: <b>6033</b>	Folio: <b>33</b>	

Land: CP 65231  
Applicants: Community Corporation No. 65231 Inc.  
Dealing: Request for Amendment of Scheme Description 8912345

Simone Jones of 23 Goodall Avenue Adelaide 5000 owner of development Lot 23 consents to the amendment to Scheme Description 8912345



## 2 VARIATION OF BY-LAWS

A request to file a Variation of By-Laws for a community scheme is lodged using Form **LF2** pursuant to:

- a) A special resolution under section 39(1) of the CTA.
- b) A unanimous resolution, where the variation affects the value of voting rights under section 87(2) of the CTA.
- c) An Order of Court under section 38 of the CTA.

The variation must be lodged within 14 days of the resolution being passed, or the making of the Order of Court (section 39(2) of the CTA). For variations lodged pursuant to an order of court, the Registrar-General has the power to extend the period for lodgement under section 39(3) of the CTA.

If the variation of by-laws is lodged 14 days after the resolution being passed a new resolution is required and the dealing will need to be temporarily withdrawn and lodged within 14 days of new resolution.

The varied By Laws of a scheme must not be inconsistent with any Scheme Description and Development Contract for that scheme.

If the By-Laws being varied are for a:

- a) Primary Scheme - the varied By-laws must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of any subsequent Secondary or Tertiary Schemes.
- b) Secondary Scheme – the varied By-Laws must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of the prior Primary Scheme or any subsequent Tertiary Schemes.
- c) Tertiary Scheme they must not be inconsistent with the Scheme Description, By-Laws or Development Contract, if applicable, of the prior Primary and Secondary Schemes.

If any of the above documents are inconsistent they must also be amended.

### 2.1 Affect on Variation of By-Laws being Filed

The varied By-Laws only come into operation once they are filed with the plan (section 40(2) of the CTA). Upon the varied By-Laws being filed, these become the current By-Laws for the community scheme. As a consequence of this the varied By-Laws:

- a) Must be prepared in accordance with the requirement for By-Laws set out in the CTA, and
- b) Must include all details relating to the By-Laws and not just those parts being varied.

## 2.2 Required to be produced with the request

The following must accompany the Form LF2:

- a) A copy of the varied By-Laws certified in accordance with Form No. 5 of Schedule 1 of the CTR.
- b) A copy of the resolution, certified in accordance with Form No. 5 of Schedule 1 of the CTR (sections 39(1) and 87(2) of the CTA)  
or,  
a sealed copy of the Order of Court (section 38 of the CTA).
- c) Fee required by Regulations.

## 2.3 Preparation of Form LF2

### 2.3.1 Heading

Cross through the inapplicable.

### 2.3.2 Dealing Affected

Insert the number of the By-Laws being varied.

No dealing number is to be shown if the By-Laws being varied is for a Strata Plan that has adopted the CTA, pursuant to the filing of a Lodgement of Resolution filed with the plan, and there has been no previous Variation of By-Laws lodged.

### 2.3.3 Plan No.

Insert the number of the plan the By-Laws relate to.

### 2.3.4 Application to Registrar-General pursuant to a Resolution

The Application to the Registrar-General must be made by an officer<sup>2</sup> of the Corporation using the wording set out in Form No. 5 of Schedule 1 of the CTR.

### **Wording to be used**

*I [Full name and address of person certifying] being an officer of Community Corporation No. .... Incorporated certify that —*

- (a) *the copy of the by-laws attached to this certificate is a true copy of the by-laws as varied by special/ unanimous (strike out whichever is not applicable) resolution of the corporation on the ..... day of ..... [year] .....; and*
- (b) *the copy of the resolution attached to this certificate is a true copy of the resolution referred to in paragraph (a).*

*Dated the                      day of 20*

.....  
*[Signature of person certifying]*

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<sup>2</sup> Appointed Presiding Officer, Secretary of Treasurer or the Community Corporation

**Note:**

- If section 87(2) of the CTA applies, use “unanimous” not special.
- The signature of the officer making the request need not be witnessed.
- Where a strata scheme has adopted the CTA for the purposes of the above certification the corporation’s name is Community Corporation and not Strata Corporation.

**2.3.5 Application to Registrar-General pursuant to an Order of Court**

The following is the type of wording that may be used when applying to the Registrar-General to vary the By-laws pursuant to an Order of Court:

*I [Full name and address of person certifying], being an officer [or member] of Community Corporation No. .... Incorporated notify you that:  
by Order of the [insert name of Court] Court of ..... dated the  
..... day of ..... (year) By-Laws No. .... have  
been varied; and a copy of the Order together with a true copy of the by-laws as varied  
is attached and certified as required by section 39(5) of the Community Titles Act 1996.*

*Dated the ..... day of .....*

*.....  
[Signature of person certifying]*

**Notes** - The signature of the officer making the request need not be witnessed.  
A copy of the Court Order will need to be attached also

**2.4 Preparation of Varied By-Laws**

The varied By Laws:

- Must be prepared in accordance with The Registrar-General’s requirements for By-Laws documents (see 2.4.1).
- Must include those matters set out in section 34(2) of the CTA.
- May include those matters set out in section 34(3) of the CTA.
- Must not be inconsistent with the filed LF documents.
- Must not be lodged in duplicate or triplicate
- The varied By-Laws must be certified as having been correctly prepared in accordance with the CTA by the person preparing the By-Laws or by an officer of the Community Corporation. The required form of certification as set out in the CTR is:

*Certified correctly prepared in accordance with the Community Titles Act 1996 by the person who prepared the document/an officer of the community corporation (strike out whichever is not applicable)*

*[Signature of person certifying]  
(Full name of certifying party and address printed below)*

### 2.4.1 The Registrar-General's requirements

The Registrar-General's requirements for varied By-Laws are:

- a) Compliance with the requirements set out for By-Laws in 7.1.1 of the Community Title Applications Preparation notes.
- b) Must be certified – see 2.4.2.

### 2.4.2 Certification

Must be certified correct in accordance with Form 10 of the CTR.

To comply with the requirements of section 39(5) of the CTA, the officer making the application must certify that the varied By-Laws is a copy of the By-Laws referred to in the application to the Registrar-General. The form of certification as set out in Form No. 5 of Schedule 1 of the CTR is:

*This is the copy of the by-laws referred to in the attached certificate*

.....  
[Signature of person certifying]

## **2.5 Copy of the Resolution attached**

Pursuant to section 39(5) of the CTA a copy of the resolution, in the form of a copy of the minutes, certified by the officer making the application is to be attached to the LF2 form.

### 2.5.1 Certification

The certification as set out in Form No. 5 of Schedule 1 of the CTR is:

*This is the copy of the resolution of the corporation referred to in the attached certificate*

.....  
[Signature of person certifying]

## **2.6 Varying By-Laws for a scheme adopted the CTA**

Where a Strata Scheme has adopted the CTA the articles (by-laws) may be varied. The articles of the strata are considered by-laws once the Lodgement of Resolution is filed. The date of passing the resolution varying the By-Laws must be after the date the Lodgement of Resolution was filed with the plan, as the Corporation is not capable of utilising the provisions of the CTA until the Lodgement of Resolution is filed.

### 3 VARIATION OF DEVELOPMENT CONTRACT

A request to file a Variation of Development Contract for a community scheme is lodged under section 50 of the CTA, using Form LF2. The variation is made pursuant to an agreement between the developer<sup>3</sup> and Community Corporation, with the Corporation's agreement being authorised by a special resolution.

The Community Corporation must lodge the variation within 14 days of the resolution being passed (section 50(5) of the CTA).

Pursuant to section 50(1)(a) of the CTA any variation of a Development Contract must not be inconsistent with:

- a) The Scheme Description and By-Laws for the related scheme
- b) For a Secondary and Tertiary schemes the Scheme Description and By Laws of the previous scheme(s).

If the variation is inconsistent with the above documents these must also be amended.

#### 3.1 Affect on Variation of Development Contract being Filed

The varied Development Contract only comes into operation once it is filed with the plan (section 50(3) of the CTA).

Upon the varied Development Contract being filed, this then becomes the current Development Contract for the community scheme. As a consequence of this the varied Development Contract:

- a) Must be prepared in accordance with the requirements for Development Contract set out in the CTA,
- and
- b) Must include all details relating to the Development Contract and not just those parts being varied.

#### 3.2 Required to be produced with the request

The following **must** accompany the Form LF2:

- a) A copy of the varied Development Contract certified in accordance with Form No. 6 of Schedule 1 of the CTR.
- b) A copy of the resolution, certified to comply with the Registrar-General requirements under section 50(8) of the CTA.
- c) The fee required by Regulations.

#### 3.3 Preparation of Form LF2

##### 3.3.1 Heading

Cross through the inapplicable.

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<sup>3</sup> See s 46 of the CTA for definition of developer for the purposes of development contracts.

### 3.3.2 Dealing Affected

Insert the number of the Development Contract being varied.

### 3.3.3 Plan No.

Insert the number of the plan the Development Contract relates to.

### 3.3.4 Application to Registrar-General

The Application to the Registrar-General must be made by an officer<sup>4</sup> of the Community Corporation using the wording set out in Form No. 6 of Schedule 1 of the CTR.

#### ***Wording to be used***

*I [Full name and address of person certifying] being an officer of Community Corporation No. .... Incorporated certify that the copy of the development contract attached to this certificate is a true copy of the contract as varied pursuant to section 50 of the Community Titles Act 1996 by agreement made on the ..... day of ..... [year] .....between the developer and the corporation.*

*Dated the                      day of                      20*

*.....  
[Signature of person certifying]*

**Note:** - The signature of the officer making the request need not be witnessed.

### **3.4 Preparation of the Varied Development Contract**

The varied Development Contract:

- a) Must be prepared in accordance with the Registrar-General's requirements for Development Contract (see 3.4.1).
- b) Must include those matters set out in section 47(2), (3) and (4) of the CTA.
- c) Must not be inconsistent with the filed LF documents.
- d) The varied Development Contract must be certified as having been correctly prepared in accordance with the CTA by the person preparing the Development Contract or by an officer of the Community Corporation. The required form of certification as set out in the CTR is:

*Certified correctly prepared in accordance with the Community Titles Act 1996 by the person who prepared the document/an officer of the community corporation (strike out whichever is not applicable).*

*[Signature of person certifying]  
(Full name of certifying party and address to be printed below)*

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<sup>4</sup> Appointed Presiding Officer, Secretary or Treasurer of the Community Corporation

### 3.4.1 The Registrar-General's requirements

The Registrar-General's requirements for the varied Development Contact are:

- a) Compliance with the requirements set out for Development Contact in 8.3.1 of the Community Titles Applications Preparation notes.
- b) Must be certified – see 3.4.2.

### 3.4.2 Certification

Must be certified correct in accordance with Form 10 of the CTR.

To comply with the requirements of section 50(7) of the CTA, the officer making the application must certify that the varied Development Contact is a true copy of the Development Contact referred to in the application to the Registrar-General.

The certification as set out in Form No. 6 of Schedule 1 of the CTR is:

*This is the copy of the development contract referred to in the attached certificate*

.....  
[Signature of person certifying]

### **3.5 Copy of the Resolution attached**

Pursuant to section 50(8) of the CTA, the Community Corporation is required to provide evidence to the Registrar-General of the agreement to vary the Development Contact being authorised by a special resolution.

The required evidence to be attached to the LF2 form is a copy of the resolution, in the form of a copy of the minutes, certified by the officer making the application (see 3.5.1).

### 3.5.1 Certification

The Registrar-General's required form of certification is:

*This is the copy of the resolution of the corporation authorising the agreement to vary the development contract*

.....  
[Signature of person certifying]

## **4 TERMINATION OF DEVELOPMENT CONTRACT**

A request to file a Termination of a Development Contact is lodged, pursuant to section 50(1) of the CTA using Form TD. The termination is made pursuant to an agreement between the developer<sup>5</sup> and Community Corporation, with the Corporation's agreement being authorised by a special resolution.

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<sup>5</sup> See s 46 of the CTA for definition of developer for the purposes of development contracts.

The Community Corporation must lodge the termination of the Development Contact within 14 days of the resolution being passed (section 50(5) of the CTA).

The Termination of Development Contact only comes into operation once the termination is filed with the plan (section 50(4) of the CTA)

Pursuant to section 50(1)(b) of the CTA, any termination of a Development Contact must not be inconsistent with:

- a) The Scheme Description and By-Laws for the related scheme.
- b) For a Secondary and Tertiary schemes the Scheme Description and By-Laws of the previous scheme(s).

If the termination is inconsistent with the any of the above documents then these must be amended.

#### **4.1 Required to be produced with the request**

The following must accompany the Form TD:

- a) A copy of the termination agreement certified in accordance with Form No. 7 of Schedule 1 of the CTR.
- b) A copy of the resolution, certified to comply with the Registrar-General requirements under section 50(5) of the CTA.
- c) The fee required by Regulations.

#### **4.2 Preparation of Form TD**

##### **4.2.1 Development Contract**

Insert the number of the Development Contact being terminated.

##### **4.2.2 Community Plan**

Insert the number of the plan the Development Contact relates to.

##### **4.2.3 Application to Registrar-General**

Insert in the appropriate space:

- a) The full name and address of the officer<sup>6</sup> applying on behalf of the Community Corporation for the termination of the Development Contact.
- b) Plan number relating to the Development Contact
- c) Location and date of the meeting.
- d) The full name and address of the developer
- e) The number of the Development Contact being terminated.

**Note:** - The signature of the officer making the request need not be witnessed.

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<sup>6</sup> Appointed Presiding Officer, Secretary or Treasurer of the Community Corporation



### 4.3 Agreement for Termination

The agreement to terminate the contract must be signed by the developer and the Community Corporation. Execution by the corporation:

- a) Should state that it is pursuant to a special resolution,
- and
- b) the Corporation's seal affixed in accordance with section 73 of the CTA

The developer's execution should conform to RPA execution and witnessing provisions.

#### 4.3.1 Copy of Agreement

Pursuant to section 50(5) of the CTA, a copy of the termination agreement, attached to the Termination of Development Contract is to be certified by the officer making the application on behalf of the Corporation. The form of certification as set out in Form No. 7 of Schedule 1 of the CTR is:

*I [Full name and address of person certifying] being an officer of Community Corporation No. .... Incorporated certify that the copy of the agreement to terminate development contract ..... attached to this certificate is a true copy of the agreement entered into pursuant to section 50 of the Community Titles Act 1996 on the .... day of .....[year]..... between the developer and the corporation*

*Dated the                      day of                      20*

*.....  
[Signature of person certifying]*

### 4.4 Copy of the Resolution attached

Pursuant to section 50(8) of the CTA, the Community Corporation is required to provide evidence to the Registrar-General of the agreement for Termination of Development Contract being authorised by a special resolution.

The required evidence to be attached to the Termination of Development Contract is a copy of the resolution, in a form of the minutes, certified by the officer making the application on behalf of the Community Corporation (see 4.4.1).

#### 4.4.1 Certification

The Registrar-General's required form of certification is:

*This is the copy of the resolution of the corporation authorising the agreement to terminate the development contract*

*.....  
[Signature of person certifying]*

## **5 AMENDMENT TO LOT ENTITLEMENTS (AP2)**

Form AP2CP is lodged for the purpose of amending only the Schedule of Lot entitlements for a deposited community plan.

The application is made:

- a) by the Community Corporation pursuant to a unanimous resolution of the corporation under section 21 of the CTA  
or
- b) in pursuance of an Order of Court under section 59 of the CTA.

For the purpose of these notes only section 21 applications will be looked at as section 59 requirements can only be determined by viewing the court order.

### **5.1 Required to be lodged with the Application**

The following must accompany the application:

- a) A new schedule of lot entitlements certified correct by a land valuer – the Lot entitlement schedule may be refused if certified correct more than 6 months prior to the application being lodged.
- b) Evidence of the application being made pursuant to a unanimous resolution.
- c) Fees required by regulation.
- d) Consents, if applicable.

### **5.2 Form AP2CP Preparation pursuant to s 21 of the CTA**

The Form AP2CP form must be certified correct for the purposes of the RPA.

#### 5.2.1 Heading

Cross through the inapplicable section number.

#### 5.2.2 Associated Dealing Affected (if amending a prior application)

Where the lot entitlements have been amended previously insert number of prior application.

#### 5.2.3 Application to the Registrar-General

Insert the number of the community plan and the address of the Corporation. The local council must consent to any change of address for the Corporation. The consent is to be in the form of a letter attached to the application signed by an authorised officer of the council.

Cross through (2) where the application is not pursuant to an Order of Court.

In (3) insert the number of the plan.

#### 5.2.4 Execution by Community Corporation

Execution by Community Corporation is to be:

- a) Dated.
- b) Executed by Community Corporation under seal, with the seal affixed in accordance with the formalities set out in section 73 of the CTA.

#### 5.2.5 Certifications

Practitioners will need to fully comply with the new legislative requirements and give certifications regarding:

- Verification of Identity;
- Evidence retention; and
- Correctness and compliance of the dealing with relevant legislation and any Prescribed Requirements

#### 5.2.6 Consents

To satisfy the requirements of section 21 of the CTA, consents are required from:

- a) At the time of lodgement of the amendment any waiting:
  - Transferee of a community lot in the plan.
  - Encumbrancee (e.g. mortgagee or lessee) of an affected<sup>7</sup> community lot in the plan.
- b) Any registered encumbrancee of an affected community lot in the plan.
- c) An owner of a Community Lot in the plan who at the time of passing the resolution was not an owner of the lot.

Where the Community Corporation making the application is a:

- a) Primary corporation and a primary lot in the scheme is divided by a secondary plan - see section 21(5)(a) of the CTA for the required consents.
- b) Primary corporation and a primary lot is divided by a secondary plan and a secondary lot divided by a tertiary plan – see section 21(5)(b) of the CTA for the required consents.
- c) Secondary corporation and secondary lot is divided by tertiary plan – see section 21(5)(b) of the CTA for the required consents.

**Note:** The owner of a Development Lot has no Lot entitlement and is not a member of the Corporation. Consents are therefore not required from any registered or waiting transferee(s) or encumbrancees of a Development Lot.

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<sup>7</sup> An affected lot is one where the change in the relative value of the lot entitlement is greater than  $\pm 10\%$

#### 5.2.6.1 Completion of consent form

#### 5.2.6.2 Consenting Party

Show the consenting party's full name (including ACN or ABN) and address

#### 5.2.6.3 Nature of Estate or Interest held

Insert estate or interest held by consenting party e.g. Mortgagee

#### 5.2.6.4 Operative Clause

Insert the number of the plan relating to the amended Schedule of Lot entitlements.

#### 5.2.6.3 Execution

Must be dated and the execution and witnessing provisions of s267 and s268 of the RPA apply.

#### 5.2.7 Annexures

Where there is insufficient room for the necessary text, an Annexure Form B1 can be used and must comply with the requirements set out in Notice to Lodging Parties No. 134.

#### 5.2.8 Evidence of a Unanimous Resolution

Pursuant to section 21(3) of the CTA, the Corporation is required to provide evidence to the Registrar-General of the amendment being made pursuant to a unanimous resolution of the Corporation.

The required evidence to be attached to the AP2 form is a copy of the relevant resolution, in the form of a copy of the minutes, certified by an officer<sup>8</sup> of the Corporation.

#### **Certification**

The Registrar-General's required form of certification is:

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

.....  
[Signature of person certifying]

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<sup>8</sup> Appointed Presiding Officer, Secretary or Treasurer of the Community Corporation

## 6 AMENDMENT TO DEPOSITED COMMUNITY PLANS

The CTA introduced three types of applications to amend the boundaries of a deposited Community Plan:

- a) AP4 – the division of a development lot pursuant to a Development Contact creating lots within the plan (section 58 of the CTA) –see Annexure B.

Annexure B is an example of a community plan where in the initial plan Lots 1 and 2, Development Lot 13 and Common Property were created. The plan was then amended, pursuant to a Development Contact, to divide the Development Lot 13 into Lots 3, 4 and 5 and additional Common Property. The effect of the amendment is that the plan now comprises Lots 1, 2, 3, 4 and 5 and Common Property.

- b) AP5 – where land is added or removed from the community plan. (sections 52 and 57 of the CTA) – see Annexure C.

Annexure C is an example of land being removed from a community plan. In this example Lot 3 is to be removed from CP 33003. Lot 3 is to become Allotment 32 in a DP and the CP 33003 to comprise Lots 1, 2 and 4 and Common Property.

- c) AP3 – for all other amendments e.g. changes to internal boundaries of common property or lots and lot entitlement (sections 52 and 59 of the CTA) – see Annexure D.

Annexure D is an example of a re-adjustment of boundaries between lots for which there is no division of a development lot or change to the extent of the community plan.

### 6.1 Amending a plan that has adopted the CTA

When amending a plan that has adopted the CTA pursuant to a LR filed with the plan the resolution agreeing to the amendment cannot be passed and the AP document lodged in the LTO until the LR has been filed with the plan, as it is not until the LR is filed the:

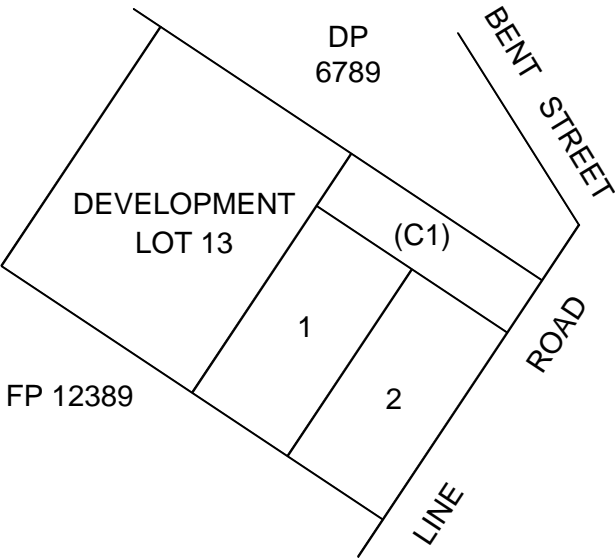
- a) Scheme is subject to the CTA
- and
- b) The corporation is a Community Corporation.

Note: When a Form AP3 is lodged over titles which have adopted the CTA and the former strata plan showed an encroachment(s). Encroached titles are to be included in the land description and mode of issue in the document so as the encroachment note on those titles will be updated with the amended community plan reference.

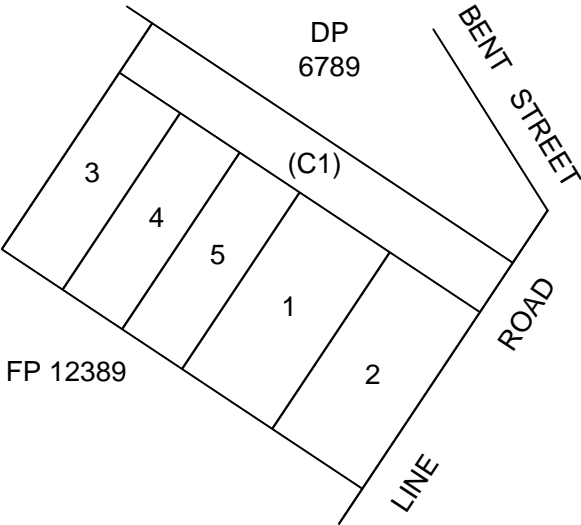
**ANNEXURE B**

**AP4 - AMENDMENT PURSUANT TO A DEVELOPMENT CONTRACT**

EXISTING COMMUNITY PLAN



AMENDED PLAN

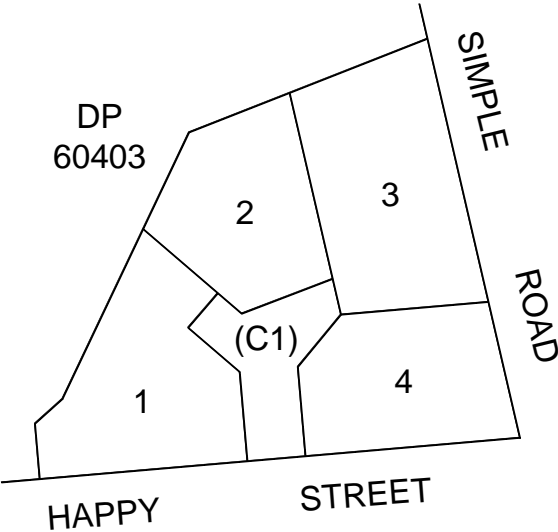


**ANNEXURE C**

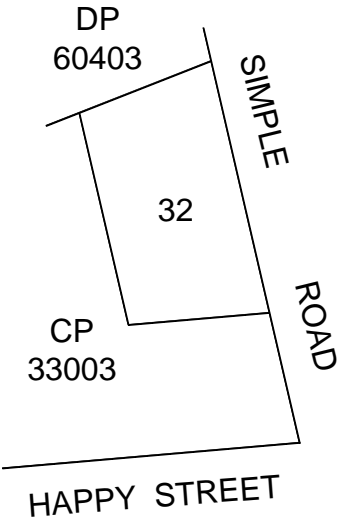
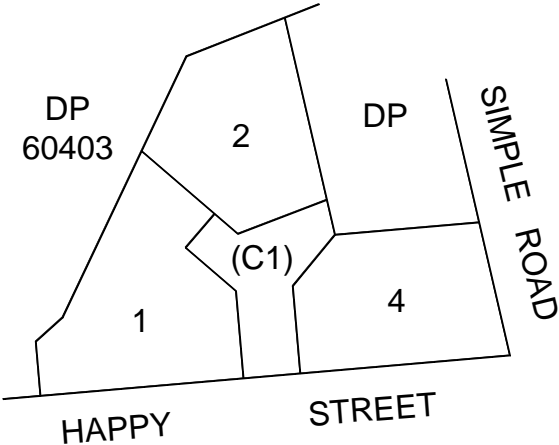
**AP5 – ADDITION OR REMOVAL OF LAND**

**DP BEING LODGED**

**EXISTING CP 33003**



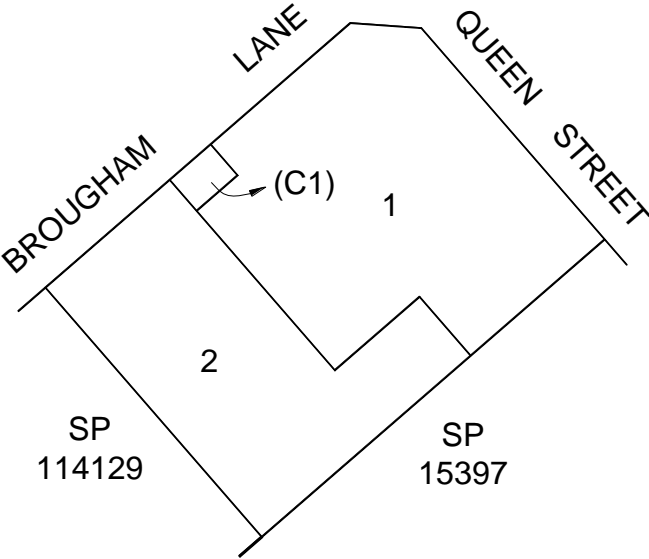
**AMENDED CP 33003**



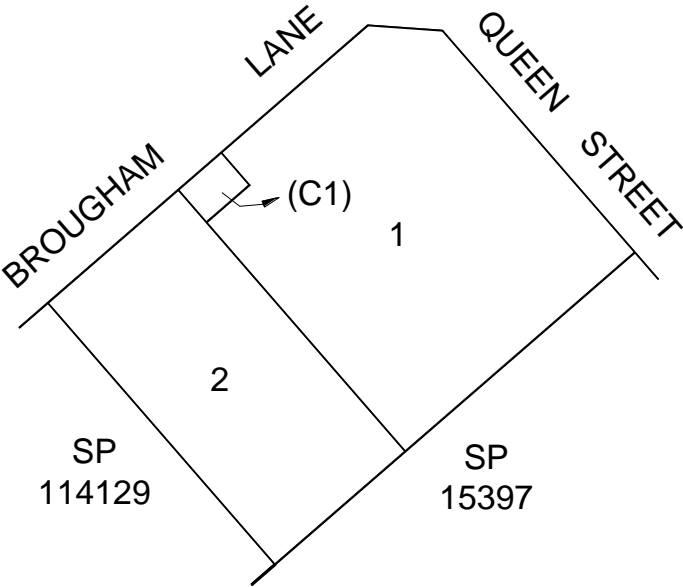
**ANNEXURE D**

**AP3 – RE-ALIGNMENT OF BOUNDARIES**

EXISTING COMMUNITY PLAN



AMENDED PLAN





**For the purpose of the following notes it is assumed that the amended community plan has been lodged**

## **7 AP3 FORMS**

Form AP3 is lodged for the purpose of amending a deposited community plan, where the amendment does not involve:

- the division of a development lot pursuant to a, Development Contact or
- the addition or removal of land from the community plan.

The CTA provides for the application to be made by:

- a) The Community Corporation pursuant to an unanimous resolution of the corporation (section 52(1)(a)(i) of the CTA)
- or
- b) Lot owners, providing the requirements set out in section 52(1a) of the CTA have been satisfied and the Community Corporation has been notified of the application (section 52(1)(a)(ii) of the CTA)
- or
- c) Order of Court (section 59 of the CTA).

For the purpose of these notes only section 52 applications will be looked at as section 59 requirements can only be determined by viewing the court order.

### **7.1 Types of Amendment**

Any amendments **must not be inconsistent** with any LF documents<sup>9</sup> filed with the plan or for any secondary and tertiary plans, LF documents filed with the prior primary or, if applicable, secondary plans. If inconsistent, these documents will need to amended/varied prior to the AP3.

Section 52 of the CTA provides for the following to occur as part any amendment:

- Creation of additional new easements, private and service.
- Extinguishment and variation of existing easements.
- Adjustment of registered interests.
- Additional encroachments.
- Vesting of additional roads, reserves, etc.
- Variation as to the appurtenance of an easement without the consent of the servient-registered proprietor– as described in 4.2.14 of the Community Title Applications Preparation notes.

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<sup>9</sup> LF documents are By-Laws, Scheme Description and Development Contract.

### 7.1.1 Applicant - Community Corporation

The types of amendment provided for in the CTA where the applicant is the Community Corporation are:

- a) The creation of additional lot(s), including a development lot for future development, and common property.
- b) Adjustment to lot boundaries, community or development, and the common property.
- c) Changes to Service Infrastructure.
- d) Modification to buildings and structures shown on a plan.
- e) Alteration to lot entitlements resultant from the plan amendments (if required).

### 7.1.2 Applicant - Lot Owners

The type of amendment provided for in the CTA where the applicants are lot owners is an adjustment of boundaries between lots providing the amendment is not contrary to the scheme description, by-laws and development contract and there are no changes to the:

- Number of lots in the plan.
- The plan's common property.
- Boundaries of the community parcel.
- Aggregate of the lot entitlements for the lots affected by the amendment.

## **7.2 Plan lodged with the Application**

In accordance with section 52(4)(f)(i) of the CTA, a community plan is to be amended by the use of a substitute plan or substitute and/or additional sheets of the plan.

## **7.3 AP3 Application**

The AP3 Application and the accompanying amending plan are taken to be a "single instrument" for the purposes of the RPA (section 53 of the CTA).

The application:

- a) Must be lodged within 12 months of the date of the Development Assessment Commission's (DAC) Certificate.
- b) Must be assessed for stamp duty prior to being lodged in the Lands Titles Office (LTO).
- c) Is a priority document (section 53(1) of the CTA) and withdrawal of the document, requires the consent of the AP3's applicants and consenting parties (section 53(2) of the CTA).
- d) Certifications apply in relation to verification of identity, retaining evidence and that the document is correct and compliant.
- e) Is a composite type document. Only the completed pages should be included. All pages forming the application must be consecutively numbered e.g. Page 1 of 10, etc.

## 7.4 Required to be lodged with the Application

The following must accompany the application:

- a) LF document(s), lodged before or after the application such as:
  - Variation to By-Laws
  - Amendment to Scheme Description
  - Variation to Development Contact
  - New Development Contact where a development lot is created.
- b) Fees required by regulations.
- d) A schedule of Lot entitlements but only where the relative value<sup>10</sup> of the lot entitlements has changed (-see Note) or if the numbers of lots change i.e. a lot is added or removed from the scheme.

**Note:**

- If the relative value of the Lot entitlements has not changed then a certificate<sup>11</sup> from a Land Valuer to that effect must be attached to the AP3.
  - The Schedule of Lot Entitlements may be refused if certified correct more than 6 months prior to the application being lodged (section 52(5) of the CTA). The schedule of Lot Entitlement no longer forms part of the plan but are annexed to the plan. The Lot Entitlement Sheet accompanies the document when initially lodged and the amending document when changed.
- e) A certified copy of the resolution agreeing to the amendment but only where the relative value of the Lot entitlements has changed – see 7.7.

## 7.5 AP3 Form Preparation

### 7.5.1 Heading

Cross through the inapplicable section number.

Insert the:

- Community plan number
- Development number

### 7.5.2 Land Description

Insert the title reference for all of the titles affected by the amendment this includes:

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<sup>10</sup> Relative value means the percentage of a lot's lot entitlement in relation to the whole scheme.

<sup>11</sup> Certificate **must** be in the format set out in Form No. 3 of the *Community Titles Regulations 1996*.

- The land in the community plan affected by the amendment.
- Note: The Deposited Community Plan will disclose the original titles being divided below a heading of “Subject Title Details”. On the amended plan next to the heading “Other Titles Affected” will be the current titles affected by the amendment to the Community Plan. It is suggested that the original deposited Community Plan be viewed in comparison with the Amended Community Plan to determine the change in title details.
- CT's Affected by the creation and variation of easements or rights of way
- CT's Affected by the extinguishment of easements or rights of way
  - Except if the extinguishment is as described in section 52(3a) CTA. (refer Notice To Lodging Parties 158 point 3.)
  - Except where the dominant titles right is automatically extinguished by Section 90E of the RPA
- To determine if an amended community plan is creating, varying or extinguishing easements the Amended Community Plan will show a note in the annotations panel “Easements A and B affected by AP.....”
- Land affected by any additional encroachments.

### 7.5.3 Applicants

Insert the full name and address of the applicants. See also 7.1.1 and 7.1.2 to determine who qualifies as an applicant.

If the applicant is the Community Corporation and their address has changed from that appearing on the Common Property title. The change of address must be authorised by the local council either by inclusion of the address in the DAC Certificate or by a letter attached to the application signed by an authorised officer of the council.

### 7.5.4 Application to the Registrar-General

#### In (1)

- Insert the number of the 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.
- Note: If a new Schedule of Entitlements is being lodged it no longer forms a numbered sheet of the plan.

#### In (2)

If the application is not being accompanied by a new Schedule of Lot entitlements, cross through (2). Note: a new lot entitlement sheet may only be lodged to disclose a change in lot entitlement. If there is no change to the lot entitlement the application is to have a certification from a land valuer as set out on a form No. 3 of the CTR.

#### Certify in (3)

In (3) the inapplicable is to be struck through.

Option (a) is to be retained where the amendment either:

- i. Affects the boundaries of the lots or common property, or
- ii. creates new lots.

and the existing scheme description is accurate (also see 7.6).

(b) is to be retained, where the scheme description is inaccurate so as an amended or new (where there is no existing description) scheme description, endorsed by the relevant development authority, is to accompany the application. The amended or new description is to be lodged as a separate document after the AP3. Consents are required in accordance with section 32 of the CTA including all registered mortgagees.

(c) is to be retained if no scheme description is to be lodged as the amended plan:

- Comprises no more than 6 lots.
- Comprises no development lots.
- The lots are being used primarily for residential purposes.

#### Acknowledgement in (4)

(4), affirms the transactions occurring (if any) in the “Details of Transactions” and that titles will issue in accordance with the mode of issue.

#### Affirmation in (5)

If the applicant is the Community Corporation retain (a) and cross through (b). Where the applicants are lot owners cross through (a) and retain (b).

#### Application in (6)

Unless the application is pursuant to an order of court cross through (6).

### 7.5.5 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 the lots, common property (do not use C, C1, C2 etc as a land identifier for the common property), public roads, reserves
- Affected by an encroachment
- Affected by the creation, variation or extinguishment of an easement (excluding extinguishment by section 52(3a) of the CTA) and Easement in Gross.

For further information on the completion of the Schedule of Mode of Issue for Community Plans, see Community Title Applications Preparation notes.

### 7.5.6 Details of Transactions

Show only the transactions affecting the Applicants e.g. creation, extinguishment or variation of an easement, vesting of land. For example where a vesting of land occurs from the lot owner to the community corporation for monetary consideration disclose this in the details of

transactions e.g. *vesting of land from Tom Graham to Community Corporation No. 23451 Inc. to form common property.*

Transactions affecting only Lot owners, who are not applicants, are to be shown in the Lot owner's consent form. If there are no transactions affecting the applicants cross through the details of transactions panel.

Note:

The Amendment provisions:

- i. Allows for the vesting of a Lot in the "crown"<sup>12</sup>
- ii. Allows for a Lot to be vested in one of the owners of that land where they own the land with someone else jointly or in shares.
- iii. Does not allow for the vesting of a Lot in a third party, other than those referred to in i. above.

Consideration / Value is to be shown for Stamp Duties purposes against all transactions whether or not the applicant is the benefiting party.

#### 7.5.7 Schedule of Easements

Only non-service easements (private easements) to be created on the amended community plan are to be included in the Schedule of Easements panel. The annotation panel on the plan will include "Easement(s) .....Affected by AP....."

If no private easements are to be created (by the amended plan), diagonally cross through the panel and cross through the lines relating to short and long form easements. Do not use terms such as N/A, Not Applicable etc.

Where only a short or long form easement is to be created (by the amended plan), the inappropriate clause is to be crossed through.

Short form easements are not to be set out in full as the plan displays the appropriate short form wording that translates to full easement shown in the 5<sup>th</sup> and 6<sup>th</sup> schedules of the RPA.

Long form easements are to be set out in full where there is no short form clause appropriate for the easement to be created. The easement note on the plan will show "Long" below the easement column of "Form". If no long form easements are to be created (by the amended plan), diagonally cross through the panel.

#### 7.5.8 Execution by applicants

The execution must be:

- a) Dated.
- b) Executed by the applicants. Where the applicant is a Community Corporation, the corporation must affix their common seal in accordance with section 73 of the

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<sup>12</sup> "Crown" – see section 55(2)(b) of the CTA.

CTA e.g. common seal may only be used in the presence of any two officers of the Corporation i.e. presiding officer, treasurer, and secretary both of whom must sign the document. In the circumstance where the applicants are lot owners they execute the AP3 and are subject to the requirements of s267 and s268 of the RPA.

## CERTIFICATIONS

Practitioners will need to fully comply with the new legislative requirements and give certifications regarding:

- Verification of Identity;
- Evidence retention; and
- Correctness and compliance of the dealing with relevant legislation and any prescribed requirements

### 7.5.9 Consenting parties

Consent forms are to be completed by:

- a) Registered interests of the lots and common property being amended.
- b) Registered proprietor of any lots being amended, who are not the applicants.
- c) The appropriate parties where there are-
  - Easements being created, extinguished or varied.
  - Encroachments – for requirements see 4.3 in Community Title Applications Preparation notes.
- d) Parties affected by changes to the relative value of a lot entitlement – see 7.7.

Where the name of a consenting party differs to that on a CT, a change/correction of name by separate application must be lodged prior to the AP3.

#### 7.5.9.1 Completion of AP3 consent form

The consent form is to be completed as for the ACT consent form, except that in the Certificate of Consent in (1):

- Insert the number of the Community Plan being amended in (a).
- Cross through (b), if there is no change to the Schedule of Lot entitlements.

Any effect on the estate or interest of the consenting party must be shown in the Effect on Estate or Interest column. In the case of there being no effect, “NIL” must be shown. Generic wording is included within the effect on estate or interest which is to be struck through when inapplicable and additional wording added when necessary.

For example where a registered interest is to be adjusted and there are no easements to be extinguished, varied or created then that statement should be struck through. Adjustment includes extension, discharge or surrender of a registered interest.

### 7.5.10 Statutory Encumbrances

Section 53A of the CTA provides for the variation and termination of statutory encumbrances<sup>13</sup>. This includes land management agreements, heritage and native vegetation agreements but excludes forest property agreements.

Where as part of an amendment to a community plan any land, including a reserve, public road, common property, service or private easement is not to be subject to the statutory encumbrance, the encumbrance must be terminated or varied as part of the application.

For requirements in relation to variation and termination of statutory encumbrances see 8.4 in Division Applications under Part 19AB Preparation notes.

### 7.5.11 Appurtenance of Easements

Section 52 (3a) of the CTA provides for the appurtenance of an easement to be reduced without the consent of the servient proprietor, so long as the easement remains appurtenant to other land. When this is to occur, reference to the reduction in the appurtenance is to be included in the consent form's Statement of Effect for the dominant land's consenting party and in the AP3's Details of Transactions e.g. extinguishment of right of way as set out on the accompanying plan.

### 7.5.12 Common Property and Leases

Upon amendment to a community plan any new common property is vested freed of all estates and interests except statutory encumbrances<sup>14</sup>, registered leases and any interest in the lease. To extinguish the lease, and any interest in the lease, over the common property the lessee and lessor and their registered interests are to consent to the surrender of the lease over the common property by the inclusion of reference to the surrender in their consent form's Statement of Effect panel. Where the statutory encumbrance is not to remain over the common property see 7.5.10.

### 7.5.13 Annexures

Where there is insufficient room in for the necessary text, an Annexure Form B1 can be used and must conform with the requirements set out in Notices to Lodging Parties No. 134.

## **7.6 Scheme Description**

Pursuant to section 52(4) of the CTA, if the scheme description will be inaccurate as a result of the amendment a copy of the Scheme Description appropriately amended in accordance with Part 4 of the CTA and endorsed by the relevant planning authority must accompany the AP3.

Where the Scheme Description is not inaccurate in the Application to the Registrar-General, clause (3)(a) is to be retained and a copy of the existing Scheme Description re-endorsed by

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<sup>13</sup> - see section 3 of the CTA for the definition of statutory encumbrances.

<sup>14</sup> See section 3 of the CTA for the definition of "statutory encumbrances".



the relevant development authority is to be lodged with the AP3. The copy of the Scheme Description is required to be re-endorsed by the relevant development authority.

The old development number at the top of the page must be struck through and the new DAC number pertaining to the amended community plan shown at the top of each page

### **7.7 Amending the Schedule of Lot Entitlements**

If the Schedule of Lot Entitlements is to be amended, then the AP3 is to be accompanied by:

- Consents using Form AP3 consent form, from the parties described in 5.2.6
- Evidence of the application being made pursuant to a unanimous resolution – see 5.2.8.
- The new Schedule of Lot Entitlements

## **8 AP4 FORMS**

Pursuant to section 58 of the CTA, Form AP4 is lodged for the purpose of amending a deposited community plan in accordance with a Development Contract filed with the plan.

The application is to be made by the developer, being the registered proprietor of a Development Lot, to divide their Lot. If only part of the lot is divided then the balance of the Development Lot must be shown as a new Development Lot.

Any amendments must not be inconsistent with any LF documents<sup>15</sup> filed with the plan or any prior primary or secondary plans. If inconsistent, these documents may need to amended/varied as part of the series.

Section 58 of the CTA provides for the following to occur as part any amendment:

- Creation of additional new easements, private and service.
- Extinguishment and variation of existing easements.
- Adjustment of registered interests, but only in relation to the creation of private easements.
- Additional encroachments.
- Vesting of additional roads, reserves, etc.

### **8.1 Plan lodged with the Application**

In accordance with provisions in the CTA, the community plan is to be amended by the use of a substitute plan or substitute and/or additional sheets of the plan.

### **8.2 AP4 Application**

The AP4 Application and the accompanying amended plan are taken to be a “single instrument” for the purposes of the RPA.

The application:

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<sup>15</sup> LF documents are By-Laws, Scheme Description and Development Contract.

- a) Must be lodged within 12 months of the date of the DAC Certificate (section 58(4a) of the CTA).
- b) Must be assessed for stamp duty prior to being lodged in the LTO.
- c) Is a priority document and withdrawal of the document, requires the consent of the AP4's applicants and consenting parties.
- d) Certifications apply in relation to verification of identity, retaining evidence and that the document is correct and compliant.
- e) Is a composite type document. Only the completed pages are to be included. All pages forming the application must be consecutively numbered e.g. Page 1 of 10, etc.

### **8.3 Required to be lodged with the Application**

The following must accompany the application:

- a) LF document(s), lodged before or after the application such as Amendment to Scheme Description or Variation to Development Contract or Termination of Development Contract.
- b) Fees required by regulations.
- c) A schedule of lot entitlements. The schedule of lot entitlements may be refused if certified correct more than 6 months prior to the application being lodged (section 58(3)(f) of the CTA). The schedule of lot entitlement no longer forms part of the community plan but are to be annexed to the plan. The relevant schedule is to be lodged as an attachment to the appropriate application.

### **8.4 AP4 Form Preparation**

#### 8.4.1 Heading

In the heading show the:

- CP number
- Development number.

#### 8.4.2 Land Description

Insert the title reference for all of the titles affected by the amendment this includes:

- The title for the development lot affected by the amendment.
- Land affected by the creation, variation or extinguishment of an easement or right of way. (excluding extinguishment by section 52(3a) of the CTA)
- Land affected by any additional encroachments.

#### 8.4.3 Applicants

Show the name and address of the registered proprietor of the development lot being divided.

Where the name of the applicant differs to that on their title, a change/correction of name by separate application must be lodged prior to the AP4.

#### 8.4.4 Application to the Registrar-General

In (1)(a) - insert the numbers of the relevant Development Lot and Development Contract.

In (1)(b) - insert the number of the Community plan being amended and cross through the inapplicable and if required show the relevant sheets numbers being replaced or added in the form of 3 of 4 or 5 of 10.

Certification in (2) affirms the transactions occurring (if any) in the “Details of Transactions”.

Note: The creation of more common property is not a transaction and should not be included in the Details of Transactions.

#### 8.4.5 Schedule of Mode of Issue

For information on the completion of the Schedule of Mode of Issue for Community Plans, refer to Community Title Applications Preparation notes.

#### 8.4.6 Details of Transactions (Applicants only)

In this panel show only the transactions affecting the development lot e.g. granting, extinguishment or variation of an easement.

If there are no transactions this panel is to be crossed through by a diagonal line across the panel.

Consideration/Value is to be shown for Stamp Duties purposes against all transactions whether or not the applicant is the benefiting party.

Note:

The Amendment provisions under section 58 of the CTA does not allow for:

- Partitioning
- Vesting of a lot in a third party.

#### 8.4.7 Schedule of Easements

Only private easements are to be included.

#### 8.4.8 Execution

The execution must be:

- a) Dated.
- b) Executed by the applicants in accordance with execution and witnessing provisions of s267 and s268 of the RPA.

#### Certifications

Practitioners will need to fully comply with the new legislative requirements and give certifications regarding:

- Verification of Identity;
- Evidence retention; and

- Correctness and compliance of the dealing with relevant legislation and any prescribed requirements

#### 8.4.9 Consenting parties

Consents are not required from the registered interests of the development lot being divided due to there being up front disclosure (via the Scheme Description and Development Contract) of the amendment.

However, consent forms are required where there are:

- Encroachments – for requirements see 4.3 in Community Title Application Preparation notes.
- Easements are extinguished, varied or created appurtenant to or over land outside of the parcel.

Where the name of a consenting party differs to that on a CT, a change/correction of name by separate application must be lodged prior to the AP4.

#### 8.4.10 Completion of the AP4 consent form

The AP4 consent form is to be completed as for the ACT consent form, except that in the Certificate of Consent in (1) insert the number of the Community Plan being amended.

#### 8.4.11 Statutory Encumbrances

CTA provides for the variation and termination of statutory encumbrances<sup>16</sup>. This includes land management agreements, heritage and native vegetation agreements but excludes forest property agreements.

Where as part of a division or amendment any land, including common property, reserve, public road, service or private easement is not to be subject to the statutory encumbrance. The encumbrance must be terminated or varied as part of the application.

For requirements in relation to variation and termination of statutory encumbrances see 8.4 in Division Applications under Part 19AB Preparation notes.

#### 8.4.12 Common Property and Leases

Upon amendment to a community plan any new common property is vested freed of all estates and interests except statutory encumbrances<sup>17</sup>, registered leases and any interest in the lease. To extinguish the lease, and any interest in the lease, over the common property the lessee and lessor and their registered interests are to consent to the surrender of the lease over the common property by the inclusion of reference to the surrender in their consent form's

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<sup>16</sup> - see section 3 for the definition of statutory encumbrances.

<sup>17</sup> See section 3 of the CTA for the definition of "statutory encumbrances".

Statement of Effect panel. Where the statutory encumbrance is not to remain over the common property see 8.4.10.

#### 8.4.13 Annexures

Where there is insufficient room for the necessary text, an Annexure Form B1 can be used and must conform with the requirements set out in Notices to Lodging Parties No. 134.

#### 8.4.14 Changes to Lot entitlements for existing Lots

Section 58 does not provide for the amendment to lot entitlements for existing lots. Where the relative value<sup>18</sup> of the lot entitlements for the existing lots to the sum of the lot entitlements for the existing Lots has changed, an AP2 must be lodged to change the entitlements for the existing lots prior to the AP4.

What this means for example if a plan prior to its amendment has a Schedule of lot entitlements of:

Lot no.	Lot Entitlement	Relative Value
1	50	25%
2	50	25%
3	50	25%
4	50	25%
Lot entitlements sums to 200		
Dev Lot 5	0	0

Note: The Lot entitlement for a development lot is always zero.

Development Lot 5 is then divided to create lots 6, 7 and 8 by 2 different plans Plan A and Plan B.

Plan A the outcome of Schedule of Lot Entitlements is:

Lot no.	Lot Entitlement	Relative Value regarding existing Lots
1	50	25%
2	50	25%
3	50	25%
4	50	25%
Lot entitlements sums to 200		
6	50	Not Applicable
7	50	Not applicable
8	50	Not Applicable

<sup>18</sup> "Relative value is the percentage of a Lot's entitlement to the aggregate of the plan's lot entitlements.

Plan B the outcome of the Schedule of Lot Entitlements is:

Lot no.	Lot Entitlement	Relative Value regarding existing Lots
1	75	37.5%
2	25	12.5%
3	50	25%
4	50	25%
Lot entitlements sums to 200		
6	50	Not Applicable
7	50	Not applicable
8	50	Not Applicable

In the existing plan the relative value for Lots 1, 2, 3 and 4 in relation to each other was 25% and in Plan A it is also 25%. With Plan A there is no requirement to lodge an AP2 to change the lot entitlements for the existing lots as there is no change to the relative value of the lot entitlements for these lots.

With Plan B the relative value for Lot 1 has changed from 25% to 37.5%. Due to this change in the relative value, an AP2 must be lodged before the AP4 to amend the Lot entitlements for the scheme.

## 9 AP5 FORMS

Form AP5 is to be lodged to amend a primary community plan where the extent of the divided land (community parcel) is being changed by the addition, of portion of an allotment, or removal of land. The application is made pursuant to the provisions of sections 52 and 57 of the CTA and Part 19AB of the RPA.

Where the whole of an allotment is to added to the community scheme an AP3 is the appropriate form

Part 19AB provisions do not apply where the amendment results in a transfer of land between primary community plans.

The CTA provides for the following to occur as part of any amendment:

- Creation of additional new easements, private and service.
- Extinguishment and variation of existing easements.
- Adjustment of registered interests.
- Additional encroachments.
- Vesting of additional roads, reserves, etc.

- Variation as to the appurtenance of an easement without the consent of the servient-registered proprietor– as described in 4.2.14 of the Community Title Applications Preparation notes.

### 9.1 Amendment and LF documents

Any amendments **must not be inconsistent** with any LF documents<sup>19</sup> filed with the plan or any prior primary and secondary plans. If inconsistent these documents will need to be amended/varied prior to the AP5.

### 9.2 Plan(s) lodged with the Application

In accordance with sections 52(4)(f)(i) and 57(2)(c) of the CTA, the following plans are to be lodged with the application:

- Amended community plan in the form of a substitute plan or substitute and/or additional sheets of the plan  
and, if land is being removed or portion of an allotment added to the community parcel,
- a new deposited plan.

Pursuant to provisions of the Development Act, separate DAC Certificates are required for the amended community plan and the new deposited plan.

#### 9.2.1 Fees to be paid when lodging a DP with an amended CP

When lodging a DP with an amended Community Plan the fees to be paid for the:

- a) Plan - are the fees applicable for the plan examination, deposit and Survey Act Levy (if applicable) for the DP i.e. no plan examination fee is incurred for the examination of the amended community plan.
- b) Document - is the document examination applicable to the RTC i.e. No document examination fee is incurred for the AP.

Fees are still required to be paid for all of the new titles issuing as shown in the Mode of Issue except for the common property, public road, reserves, etc. these are issued free of cost.

### 9.3 AP5 Application

The AP5 Application and the accompanying plan(s) are taken to be a “single instrument” for the purposes of the RPA.

The application:

- a) Must be lodged within 12 months of the earliest date of any DAC Certificate.
- b) Must be assessed for stamp duty prior to being lodged in the LTO.

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<sup>19</sup> LF documents are By-Laws, Scheme Description and Development Contract.

- c) Is a priority document (section 53(1) of the CTA) and withdrawal of the document requires the consent of the AP5's applicants and consenting parties (section 53(2) of the CTA).
- d) Certifications apply in relation to verification of identity, retaining evidence and that the document is correct and compliant.
- e) Is a composite type document. Only the completed pages are to be included. All pages forming the application must be consecutively numbered e.g. Page 1 of 10, etc.

#### **9.4 Required to be lodged with the Application**

The following **must** accompany the application:

- a) LF document(s), lodged before or after the application such as:
  - Variation to By-Laws
  - Amendment to Scheme Description
  - New Development Contract where a development lot is created.
- b) Fees required by regulations.
- d) A schedule of Lot entitlements but only where the relative value<sup>20</sup> of the lot entitlements has changed (-see Note).

**Note:**

- If the relative value of the Lot entitlements has not changed then a certificate<sup>21</sup> from a Land Valuer to that effect must be attached to the AP5.
  - The Schedule of Lot Entitlements may be refused if certified correct more than 6 months prior to the application being lodged (section 52(5) of the CTA).
- e) A certified copy of the resolution agreeing to the amendment but only where the relative value of the Lot entitlements has changed – see 9.6.

#### **9.5 AP5 Form Preparation**

##### **9.5.1 Heading**

In the heading show the development and plan numbers for all of the plans accompanying the application.

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<sup>20</sup> Relative value means the percentage of a lot's lot entitlement in relation to the whole scheme.

<sup>21</sup> Certificate must be in the format set out in Form No. 3 of the CTR.



### 9.5.2 Land Description

Insert the title reference for all of the titles affected by the amendment this includes:

- The parcels in the community plan affected by the amendment.
- If applicable the land in the accompanying DP.
- Land affected by the creation, variation or extinguishment of an easement or right of way.
- Land affected by any additional encroachments.

### 9.5.3 Applicants

Show the full name and address of the applicants.

The applicants for an AP5 are:

- a) the Community Corporation  
and, if land is being added or portion of Allotment in the accompanying DP removed from the community parcel,
- b) the Registered proprietor of that land.

If the address of the Community Corporation is different from that appearing on their title this must be authorised by the local council either by inclusion of the address in the DAC certificate or by a letter attached to the application signed by an authorised officer of the council.

**Note:** The registered proprietor of a lot not affected by the addition or removal of land is a consenting party and not an applicant.

### 9.5.4 Application to the Registrar-General

Application in (1)

Insert the number of the community plan being amended and cross through the inapplicable, and if required show the relevant sheet numbers being replaced or added in the format of 3 of 4 etc.

Application in (2)

If the application is not being accompanied by a new Schedule of Lot entitlements, cross through (2).

The applicants certify in (3)

In (3) the inapplicable is to be struck through.

Option (a) is to be retained where the amendment either:

- iii. Affects the boundaries of the lots or common property, or
- iv. creates new lots.

and the existing scheme description is accurate (also see 7.6).

(b) is to be retained, where the scheme description is inaccurate so as an amended or new (where there is no existing description) scheme description, endorsed by the relevant

development authority, is to accompany the application. The amended or new description is to be lodged as a separate document after the AP3. Consents are required in accordance with section 32 of the CTA including all registered mortgagees.

(c) is to be retained if no scheme description is to be lodged as the amended plan:

- Comprises no more than 6 lots.
- Comprises no development lots.
- The lots are being used primarily for residential purposes.

Application in (6)

If the application is not accompanied by a DP, cross through (6).

#### 9.5.5 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 the lots, Common Property (do not use C, C1, C2 etc as a land identifier for the common property), Public Roads, Reserves
- Affected by an Encroachment
- Affected by the creation, variation or extinguishment of an easement (excluding extinguishment by section 52(3a) of the CTA) and Easement in Gross.

For further information on the completion of the Schedule of Mode of Issue for Community Plans, see Community Title Applications Preparation notes.

#### 9.5.6 Details of Transactions (Applicants only)

Show any transactions occurring, affecting the applicant's interest on amendment of the community plan and if applicable on deposit of the DP (e.g. granting, extinguishment or variation of an easement, vesting of land between applicants.)

#### **Note:**

The Amendment provisions:

- i. Allows for the vesting of a Lot in the "crown"<sup>22</sup>
- ii. Allows for a Lot to be vested in one of the owners of that land where they own the land with someone else jointly or in shares.
- iii. Does **not** allow for the vesting of a Lot in a third party, (other than those referred to in i. above.

Consideration/Value is to be shown for Stamp Duties purposes against all transactions whether or not the applicant is the benefiting party.

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<sup>22</sup> "Crown" – see section 55(2)(b) of the CTA.

### 9.5.7 Schedule of Easements

Only private easements are to be shown

### 9.5.8 Execution

Execution must be:

- a) Dated.
- b) Executed by applicants for:
  - i. The Community Corporation. in accordance with the prescribed formalities, under section 73 of the CTA, for affixing the Corporation's common seal.
  - i. Other applicants, in accordance with execution and witnessing provisions of s267 and s268 of the RPA.

### Certifications

Practitioners will need to fully comply with the new legislative requirements and give certifications regarding:

- Verification of Identity;
- Evidence retention; and
- Correctness and compliance of the dealing with relevant legislation and any prescribed requirements

### 9.5.9 Consenting parties

Consent forms are to be completed by:

- a) Registered interests of all the parcels being amended in the Community Plan and, if applicable, the Deposited Plan.
- b) Registered proprietor of any lots being amended
- c) Registered proprietor and registered interests of land outside of community parcel and if applicable the DP. This occurs where there are-
  - i. Easements being created, extinguished or varied.
  - ii. Encroachments
- d) Parties affected by changes to Lot Entitlements – see 9.6.

Where the name of a consenting party differs to that on a CT, a change/correction of name by separate application **must** be lodged prior to the AP5.

#### 9.5.9.1 Completion of the AP5 consent form

The AP5 consent form is to be completed as for the ACT consent form, except that in the Certificate of Consent in (1):

- insert the number of the Community Plan being amended in (a)

- If there no new Schedule of Lot Entitlements, cross through (b)
- (c) is to be crossed through if there is no DP.

#### 9.5.10 Statutory Encumbrances

Section 53A of the CTA provides for the variation and termination of statutory encumbrances<sup>23</sup>. This includes land management agreements, heritage and native vegetation agreements but excludes forest property agreements.

Where as part of an amendment to a community plan any land, including a reserve, public road, common property, service or private easement is not to be subject to the statutory encumbrance, the encumbrance must be terminated or varied as part of the application.

For requirements in relation to variation and termination of statutory encumbrances see 8.4 in Division Applications under Part 19AB Preparation notes.

#### 9.5.11 Appurtenance of Easements

Section 52 (3a) of the CTA provides for the appurtenance of an easement to be reduced without the consent of the servient proprietor, so long as the easement remains appurtenant to other land. When this is to occur, reference to the reduction in the appurtenance is to be included in the consent form's Statement of Effect for the dominant land's consenting party and in the AP5's Details of Transactions e.g. extinguishment of right of way as set out on the accompanying plan.

#### 9.5.12 Common Property and Leases

Upon amendment to a community plan any new common property is vested freed of all estates and interests except statutory encumbrances<sup>24</sup>, registered leases and any interest in the lease. To extinguish the lease, and any interest in the lease, over the common property the lessee and lessor and their registered interests are to consent to the surrender of the lease over the common property by the inclusion of reference to the surrender in their consent form's Statement of Effect. Where the statutory encumbrance is not to remain over the common property see 7.5.10.

#### 9.5.13 Annexures

Where there is insufficient room for the necessary text, an Annexure Form B1 can be used and must conform with the requirements set out in Notices to Lodging Parties No. 134.

### **9.6 Amending the Schedule of Lot entitlements**

If Schedule of Lot Entitlements is to be amended then the AP5 is to be accompanied by:

- a) Consents on an AP5 consent form from the parties described in 5.2.6.
- b) Evidence of the application being made pursuant to a unanimous resolution – see 5.2.8

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<sup>23</sup> - see section 3 of the CTA for the definition of statutory encumbrances.

<sup>24</sup> See section 3 of the CTA for the definition of "statutory encumbrances".