

Department of Planning,
Transport and Infrastructure

Lands Titles Office

Community Title Application Preparation Notes

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

1 BACKGROUND

On the 4th of November 1996 the *Community Titles Act 1996* (CTA) was introduced providing for two new types of division plans, Community Plans and Community Strata Plans.

Community Plans create lots where the extent of each lot is determined by measurements and is unlimited as to its height or depth. With Community Plans the lot owner owns everything on their lot - see Annexure A.

Community Strata Plans (- see Annexure B) create lots where at least one lot must exist above another and the extent of each lot is determined by reference to structures e.g. buildings, fences and walls. The buildings in a community strata plan are common property and therefore are owned by the Community Corporation.

Unless this document specifies otherwise Community Plans and Community Strata Plans are referred collectively as Community Plans.

2 THE PLAN

The purpose of a Community Plan is to define all Lots and Common Property, the service infrastructure (if any) and Lot Entitlements. Note that the showing of service infrastructure on Community Strata Plans is optional.

Community Plans refer to certain terms unique to these plans. The terminology is:

- a) Common Property identifier of **(C1)**, which is **used only** for land information purposes and is **not a legal parcel number** – see Annexure A and Annexure C.

- b) **Service Infrastructure**

Community plans, (that are not Community Strata Plans), are required to show the location of pipes used for the provision of services (e.g. Water Supply and Sewer System) – see Annexure A.

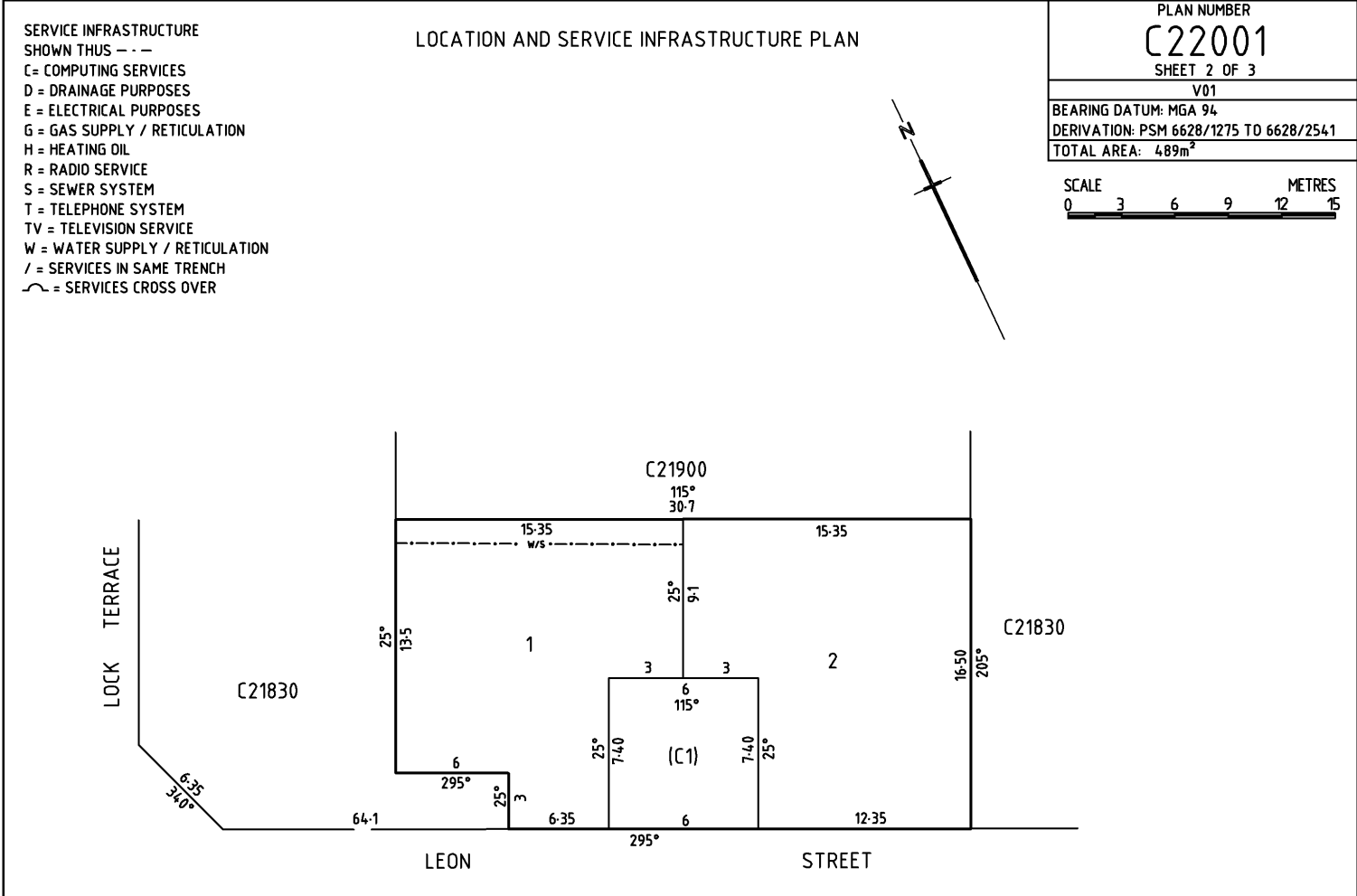
If the surveyor has not been able to determine the location of the infrastructure, a note to that effect is placed in the plan's annotations panel - see Annexure C.

- c) **Lot Entitlement Sheet**

The lot entitlement sheet, certified by a Land Valuer, is annexed to the plan and must be lodged with the relevant application - see Annexure D.

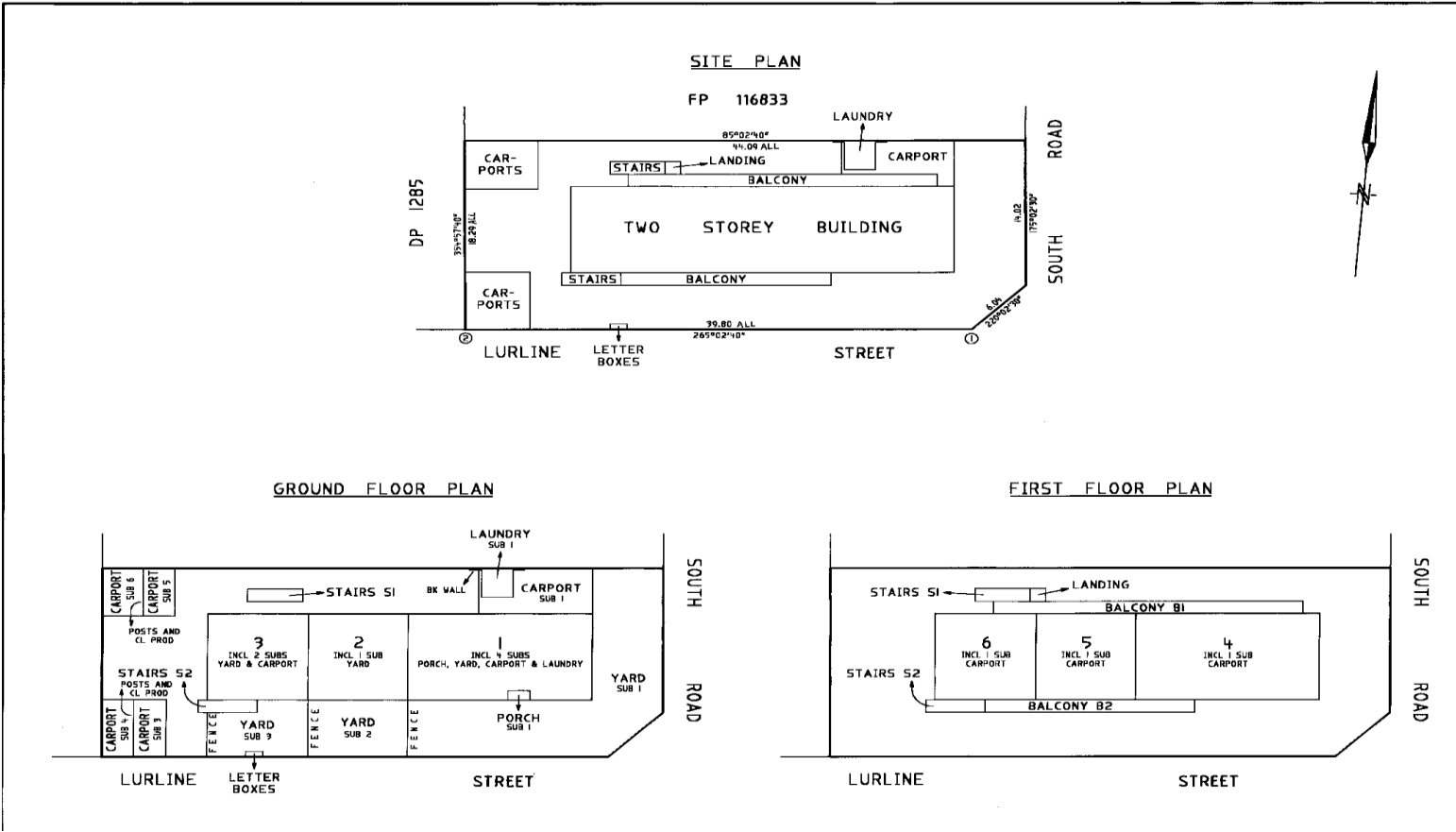
ANNEXURE A

COMMUNITY PLAN



ANNEXURE B

COMMUNITY STRATA PLAN- fixed by structures



ANNEXURE C

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
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ANNOTATIONS

THE COMMON PROPERTY IS DESIGNATED (C1) FOR LAND INFORMATION PURPOSES ONLY AND DOES NOT PROVIDE A LEGAL IDENTIFIER FOR THE COMMON PROPERTY

SERVICE INFRASTRUCTURE WAS NOT IN PLACE AT 24 / 08 / 2007

ANNEXURE D

LOT ENTITLEMENT SHEET

SCHEDULE OF LOT ENTITLEMENTS		
LOT	LOT ENTITLEMENTS	SUBDIVIDED
1	989	
2	977	
3	977	
4	977	
5	1213	
6	1225	
7	888	
8	888	
9	888	
10	978	
AGGREGATE	10,000	

COMMUNITY PLAN NUMBER
C42101
SHEET 1 OF 1

ACCEPTED

19/11/2015 *John Smith*
PRO REGISTRAR-GENERAL

DEV. No. 050 :C014 :15

CERTIFICATE OF LAND VALUER

I JOE MURRAY being a land valuer within the meaning of the Land Valuers Act 1994 certify that this schedule is correct for the purposes of the Community Titles Act 1996.

Dated the 10 day of October 2016

Joe Murray.....
Signature of Land Valuer

3 LF DOCUMENTS

The administration of a community scheme is provided for by not only the CTA but by the lodgement of “LF documents” that are filed with the plan. These documents are the:

- By-Laws - sets out the rules for the operation of the community scheme.
- Scheme Description - which describes the characteristics of the scheme and the nature and scope of any further development.
- Development Contract - describes in detail any further development of a community scheme and binds the developer to complete the development described in the contract.

The CTA requires that each new community scheme **must** have a set of by-laws filed with the plan. The lodgement and filing of the Development Contract and Scheme Description is required only in specific situations.

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

4 ACT APPLICATION

An Application for Community Titles (ACT) is lodged pursuant to section 14 of the CTA.

The Plan and Application are taken to be a “single instrument” for the purposes of the Real Property Act 1886 (section 18 CTA).

The Application:

- a) Must be lodged within 12 months of the date of the Development Assessment Commission’s (DAC) Certificate (section 14(6)).
- b) Must be assessed for stamp duty prior to being lodged in the Lands Titles Office.
- c) Is a priority document (section 18(1)) and withdrawal of the document requires the consent of the applicants and consenting parties of the ACT (section 18(2)).
- d) Must contain the certifications relating to verification of identity, retaining evidence to support the application and that the document is correct and compliant.
- e) Is a composite type document, with only the completed pages to be lodged. All pages forming the application must be consecutively numbered e.g. Page 1 of 10, etc.

4.1 Required to be lodged with the Application

The following **must** accompany the application:

- a) LF document(s), lodged after the application By-Laws, Scheme Description and Development Contract.

- b) Fees required by the *Community Titles Regulations 2011* (CTR). Fees required to be paid may be determined by using the LTO Fee Calculator available on the Land Services website
- d) Lot entitlement sheet, certified by a land valuer. The schedule of Lot entitlement no longer forms part of the community plan but is to be annexed to the plan. The relevant schedule is to be lodged as an attachment to the appropriate application.
Note: - The Schedule of Lot Entitlements may be refused if certified correct more than 6 months prior to the application being lodged.

4.2 Form ACT Preparation

4.2.1 Heading

In the heading show the:

- CP number, if known.
- Development number

4.2.2 Type of Scheme

New/Existing

Denotes whether the community plan is:

- An “Existing” scheme i.e. a building unit scheme completed prior to 22.2.1968, or
- A “New” scheme.

The inapplicable is to be struck through.

Primary, Secondary or Tertiary

Denotes the level of the community plan lodged.

The inapplicable is to be struck through.

4.2.3 Land Description

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

- The land being divided.
- 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
 - i) Except if the extinguishment is as described in section 16(3) of the CTA, (refer to NTLP 158 point 3).
 - ii) Except where the dominant title's right is automatically extinguished by section 90E of the RPA.
- Land affected by an encroachment (- see section 27 of the CTA).

Note: - If the land being divided is portion of the land in a title, the portion is to be described precisely e.g. Allotment 6 in DP 1227 being portion of the land in CT

4.2.4 Applicants

Only the full name (ABN/ACN if applicable) and address of the registered proprietors of the land being divided is to be shown. Note: Names and addresses must be consistent throughout the document e.g. applicant panel and mode of issue.

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

4.2.5 Address of Corporation

The postal address for the site as shown on the DAC certificate or if there is **no** postal delivery to the site, then a PO Box for local postal delivery for the exclusive use of the Community Corporation is to be inserted.

4.2.6 Application to the Registrar-General

Certification in (2)

The reference to transactions in (2)(a) relate to what is shown (if any) in the details of transactions affecting the applicant's interest.

The purpose of (2) (b) is for the applicant to certify that for a:

- i. Secondary plan, the Primary plan's Scheme Description and or By-laws do not prohibit the secondary division (section 14(7)).
- ii. Tertiary plan, the Primary and Secondary plans Scheme Description and or By-laws do not prohibit the tertiary division (section 14(8)).

(2)(c)'s purpose is for the applicant to certify that for the accompanying plan where a:

- i. Scheme Description has not been lodged due to the plan being a "small scheme" (section 15 CTA) and there is no future development to take place no scheme description is required to be lodged.
- ii. Development Contract has not been lodged due to there being no further development taking place on any lots or common property and pursuant to section 47 of the CTA no Development Contract is required to be lodged.

Request in (3)

LF documents not lodged with the Application are to be struck through.

4.2.7 Schedule of Mode of Issue

Any easements or rights of way shown on the plan are incorporated on the new title by the wording at the top of the mode of issue page. The Mode of Issue is to include the details for all of the new titles to issue as a result of the division. This includes titles:

- For the lots, **Common Property**, Public Roads, Reserves in the Community Plan. Do not use C, C1, C2 etc as a land identifier for the common property.
- Affected by the creation or variation of an easement or right of way and Easement in Gross
- Affected by the extinguishment of easement or right of way
 - i) Except if the extinguishment is as described in section 16(3) of the CTA, (refer to NTLP 158 point 3)
 - ii) Except where the dominant title right is extinguished by section 90E of the RPA.
- Affected by any Encroachment, (section 27 of the CTA)

Lot/Allotment numbers and Title references

The purpose of this column is to provide a land description for all titles to issue. Preferably Lot numbers should be shown in numerical ascending order.

For parcels in the plan, other than Public Roads and Reserves and Common Property, only the lot number is to be shown. With Public Roads, Reserves, etc the Allotment number together with the purpose in brackets is to be used.

When completing the Mode of Issue it is preferable to show information in the following order:

- Easement in gross titles
- Lot numbers in numerical ascending order.
- Reserve allotments listed separately as a new title will issue for each reserve
- Public Roads allotments are to be consolidated as one new title will issue for all roads.
- Common Property
- Balance titles to issue
- Encroached Titles

Where a title is to be issued for:

- a) Land outside of the plan, CT reference or the land description is to be used.
- b) An easement in gross, "Easement in gross over B" is to be shown.
- c) Pieces comprising a lot are to be disclosed as follows: "Lot Comprising Pieces 7 and 8"

Full name, Address and Mode of Holding

Show the full name and address and mode of holding (if required) of the proprietor(s) for all titles to issue.

For:

- a) A **new** primary scheme. Lots are to issue in accordance with the transactions shown in the details of transactions (if any) or as per existing ownership.
- b) A Secondary or Tertiary plan. All of the Lots are to issue in the same ownership as that of the parent primary or secondary Lot (section 23(1)(d)).
- c) An **existing** scheme. The community strata lots are to issue in the names of the persons who are entitled to occupation of the lots. (Schedule 1 Clause 3(4)(c)).

Estate and Interests

In the estate or interests column show the estates or interests to remain over the parcel of land. Show as "M 1234567". Also show any mortgages of leases or underleases.

For example Mode of Issue, see Annexure I.

ANNEXURE I

SCHEDULE OF MODE OF ISSUE		
Easement(s)/Right(s) of way as per accompanying plan and other titles affected		
PARCEL IDENTIFIER / CT REFERENCE	FULL NAME, ADDRESS AND MODE OF HOLDING	ESTATES OR INTERESTS
1 - 3	Grenfell Street Developments Pty. Ltd. of 101 Grenfell Street Adelaide SA 5000	M 11002233 AG 11223344
Lot Comprising Pieces 4 and 5	Grenfell Street Developments Pty. Ltd. of 101 Grenfell Street Adelaide SA 5000	M 11002233 AG 11223344
6 and 7	Grenfell Street Developments Pty. Ltd. of 101 Grenfell Street Adelaide SA 5000	M 11002233 AG 11223344
8 (Public Road)	City of Port Adelaide Enfield of PO BOX 110 Port Adelaide SA 5015	Nil
Common Property	Community Corporation No. 22334 Inc. of 17 Brougham Place Port Adelaide SA 5015	AG 11223344
CT 5666 / 27	Jack Dubanski of 15 Brougham Place Port Adelaide SA	M 11334455

4.2.8 Details of Transactions (Applicants only)

Show any transactions occurring, affecting the applicant's interest on deposit of the plan (e.g. granting, extinguishment or variation of an easement, vesting of land between applicants.) Names should not be abbreviated

If there are no transactions, diagonally strike through.

Note: The CTA:

- i. Unlike s223LE(3)(b) of the RPA the CTA does **not** provide for the vesting of a Lot in the Crown, an instrumentality of the Crown or an acquiring authority (unless the registered proprietor of the land divided by community plan)
- ii. Provides for partitioning under s 23(1) (c) of the CTA.

Consideration / Value is to be shown for Stamp Duties purposes against all transactions.

4.2.9 Schedule of Easements

Only private easements are to be included.

See Division Applications under Part 19AB – Preparation notes for further explanation on the completion of the Schedule of Easements

4.2.10 Execution by Applicants

Execution page is to be dated and must be signed by the applicants or by an attorney of the applicants. Execution rules pursuant to Section 267 and 268 of the RPA apply.

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

4.2.11 Consents of parties affected by the division

Consent forms are to be completed by:

- a) Registered interests of the land being divided. (e.g. mortgagee, a party to a land management agreement etc.)
- b) Registered proprietor and registered interests of land outside the division affected by the creation and variation of easements or rights of way. Except if the extinguishment is as described in section 16(3) of the CTA, - refer to NTLP 158 point 3 and where the dominant title's right is automatically extinguished by section 90E of the RPA.

- c) For an “existing scheme”, person(s) who have rights to occupation of the Lots.
- d) Registered proprietor and registered interests of land outside the division affected by encroachment – see Encroachments

One consent form should generally be completed per interest. Where there is insufficient space on the consent form a Form B1 Annexure is to be completed in accordance with NTLP 134.

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

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

See Division Applications under Part 19AB – Preparation notes for further information on the completion of consent forms.

4.2.11 Statutory Encumbrances

Section 15A of the CTA provides for the variation and termination of statutory encumbrances¹. This includes land management agreements, heritage and native vegetation agreements but excludes forest property agreements.

Where as a result of a community division, land including a Reserve, Public Road, Common Property 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 Division Applications under Part 19AB – Preparation notes.

4.2.12 Charges to the South Australian Co-operative Housing Authority and South Australian Housing Trust

When land the subject of a charge to the South Australian Co-operative Housing Authority or South Australian Housing Trust (SAHT) is being divided by a community plan, the charge is to be brought forward only against the lots, including any development lots and not against the common property, roads and reserves as the charge is not a statutory encumbrance.

Where as a condition of a plan of community division a private easement is to be created over or appurtenant to land subject to the above charge or land is to be vested,

¹ - see section 3 of the CTA for the definition of statutory encumbrances.

the consent to the community division by operation of s22 of *Community Housing Providers (National Law) (South Australia) Act 2013* adjusts the charge without the requirement for a partial discharge or extension of the charge.

4.2.13 Appurtenance of Easements

The CTA provides for the appurtenance of an easement to be reduced without the consent of the owner, and those with an interest, in the servient land providing the easement remains appurtenant to some other land.

When this is to occur, reference to the reduction in the appurtenance is to be included in the ACT's Details of Transactions e.g. *the free and unrestricted right of way over the land marked A appurtenant to lots 1 2 and 3 is to be extinguished.*

4.2.14 Common Property and Leases

Upon deposit of a Community Plan the common property is freed of all estates and interests except statutory encumbrances, 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.

4.2.16 Form B1

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 – see Annexure E.

ANNEXURE E

ANNEXURE FORM B1

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
ANNEXURE to ACT dated 12.7.16	NUMBER
over Certificate of Title Volume: 6033 Folio: 33	

Land: The whole of the land in CT 6003/23
Applicants: Samantha Cotts and Kevin Andrew Swan
Dealing: Application to deposit a plan of community division CP 652345

4.3 Encroachments

Where a community plan shows that any part of a building encroaches² over land not being divided and the encroached land is over land:

- a) Vested in, or under the control or management of council. The council must consent to the encroachment over the land. This consent is incorporated as part of the plan's planning process and shown by way of a statement on the DAC Certificate.
- b) In the situation where the encroached land is not held for the purpose of reserve, public road, walkway or other open space purposes the encroachment is to be treated the same as privately owned land i.e. Council to consent to the encroachment on a consent form
- c) Privately owned land, the registered proprietor of the land is to consent to the encroachment by completing a consent form. (Registered interests are not required to consent to the encroachment)

Example of wording to be used in Statement of Effect

"Consent to the encroachment over the land marked A in CP 23456".

Pursuant to section 27(2)(b) of the CTA any consents given in relation to the encroachment are binding on present and subsequent owners and occupiers of the land.

For an example of encroachment over land:

- a) Under the care, control and management of the local council – see Annexure F.

Annexure F is an example of an encroachment by a gutter over Dawkins Place, as shown in the plan's annotations panel. Dawkins Place is a public road as no reference has been made on the plan to it being a private road. The title reference for Dawkins Place is CT 4162/553 shown in the Other Title(s) Affected panel.

- b) Privately owned – see Annexure G.

Annexure G is an example of an encroachment by footing and wall over the private land lettered X, as shown in the plan's Annotations panel. The title reference for the private land is CT 6555/20 shown in the Other Title(s) Affected panel.

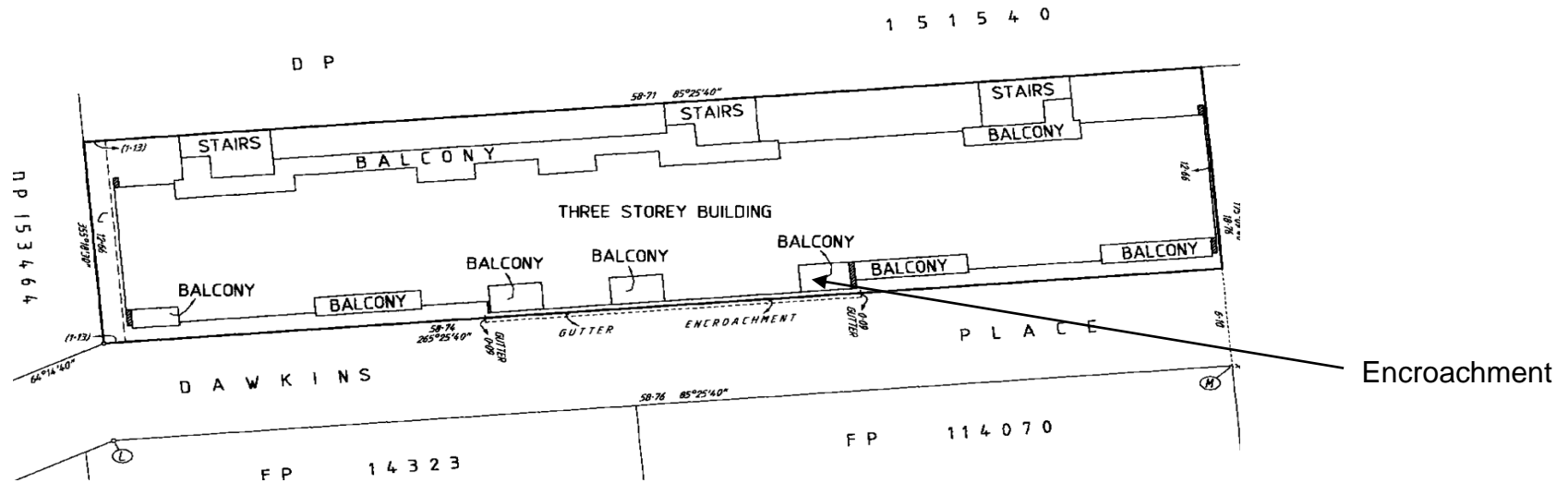
4.3.1 New title for encroached RPA land

Where the encroachment is over RPA land, irrespective of who owns the land, a new title is to be issued referring to the encroachment. As a new title is to issue for the encroached title the appropriate details for this title are to be included in the Mode of Issue. A new title fee is payable unless the title encroached upon is a road or reserve.

² See section 27(1)(b)(ii) and Regulation 6 for what is an encroachment.

ANNEXURE F

ENCROACHMENT OVER PUBLIC LAND



OTHER TITLE(S) AFFECTED CT 4162-553 title reference for the encroached land.

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
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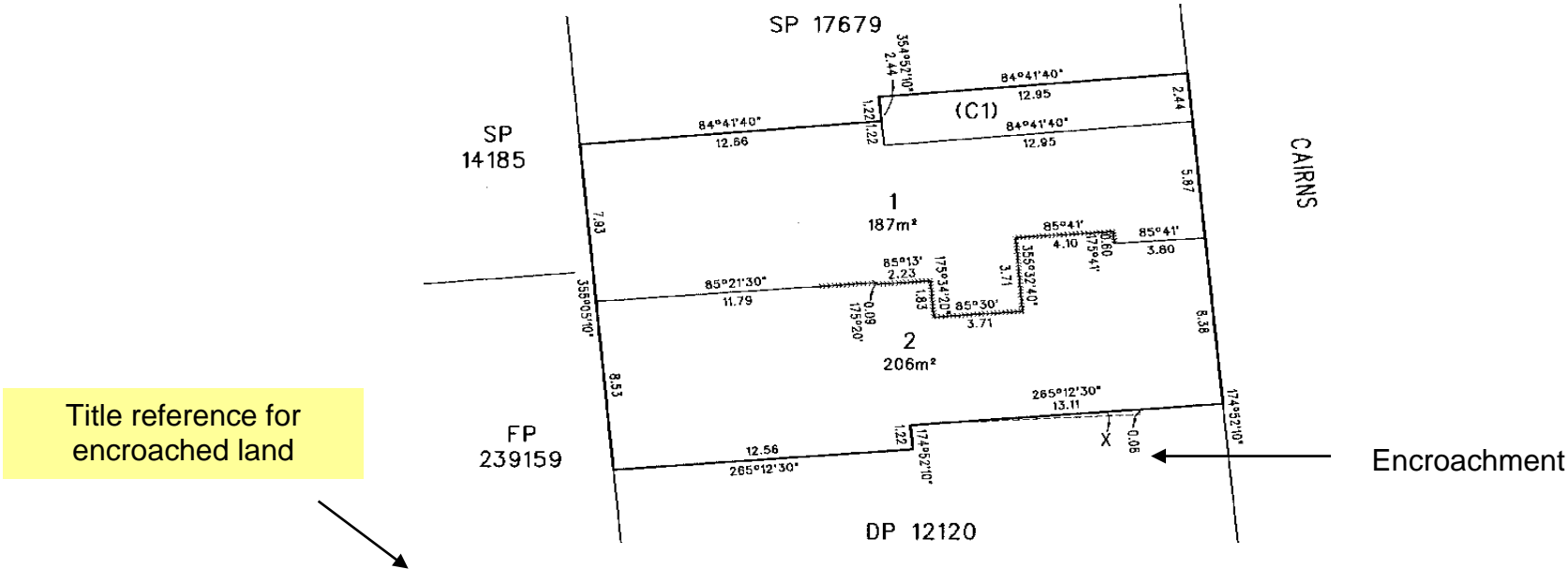
ANNOTATIONS

ENCROACHMENT OF GUTTER OCCURS OVER DAWKINS PLACE

- Encroachment note

ANNEXURE G

ENCROACHMENT OVER PRIVATELY OWNED LAND



OTHER TITLE(S) AFFECTED CT 6555/20

EASEMENT DETAILS:

STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF
--------	---------------	------	----------	------------	---------	--------------

ANNOTATIONS

ENCROACHMENT OF FOOTINGS AND WALL OCCURS OVER ADJOINING PRIVATE LAND LETTERED X

Encroachment note

5 “EXISTING” SCHEMES

Clause 3 of the Schedule to the CTA provides for the conversion of a “prescribed building unit scheme” (also known as an “existing” scheme) to a community strata plan in a manner similar to that provided in the Strata Titles Act to convert a building unit scheme to a strata plan.

An “existing” scheme is a building unit scheme completed prior to 22 February 1968 for which the units are considered to have been lawfully created and identified by a muniment of title, such as a moiety title, a lease, share certificate in a company, etc.

5.1 Parties to the application

To convert an “existing” scheme to a community strata plan an application, being an ACT, is to be made pursuant to Clause 3(2) of the Schedule to the CTA with the consent of:

- a) Predominant owners of the units, being the persons entitled to occupation of their units e.g. lessees, proprietors of company certificates.
- b) Registered interests of the land being divided.
- c) Any company formed to administer the scheme.

5.2 Muniments of title

Muniments of title establishing ownership of the units such as lessee’s and lessor’s copies of leases need not be produced (refer to NTLP No 158) however share certificates must accompany the application. If share certificates are lost then letters of evidence are required from the company directors. (Refer ACT 11050642 as an example.)

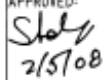
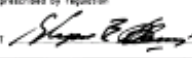
5.3 The Plan

To encourage unit holders in existing schemes to convert to community plans, no Open Space Reserve Fund fees are required to be paid when an “existing scheme” is converting to a community plan, providing the resultant plan is a community strata plan.

To provide for the conversion of “existing” single storey units and townhouses to community plans Clause 3(2a) of the Schedule to the CTA has provided for a single level community strata plan without the requirement for at least one lot to exist above another. There is still a requirement for boundaries to be fixed by reference to structures and to be limited as to height and depth – See Annexure H for an example of a single storey existing scheme where the height and depth is limited in accordance with section 19(4) of the CTA.

An existing scheme may also be lodged as a new scheme, but Open Space Reserve Fund fees **must** be paid and “New” scheme is to be shown in the ACT heading. The ACT will need to be completed the same as for a new scheme. For example including the vesting of land from one applicant to another to form a Lot.

EXISTING SCHEME**ANNEXURE H**

PURPOSE: PRIMARY COMMUNITY STRATA MAP REF: 6520/95/N LAST PLAN: F50473	AREA NAME: EXETER COUNCIL: CITY OF PORT ADELAIDE EMFIELD DEVELOPMENT NO: D40/C029/07/801/16163	APPROVED:  DEPOSITED/FILED: <div style="text-align: center; font-size: 1.5em; font-weight: bold;">C24618</div> SHEET 1 OF 3 V01																								
AGENT DETAILS: HENNING & CO. PTY. LTD. LICENSED SURVEYORS, CADASTRE HOUSE 109 GILLES STREET, ADELAIDE, 5000 PHONE (08) 8223 6146 FAX (08) 8223 6366 EMAIL: hennig@hennig.com.au																										
AGENT CODE: HENN REFERENCE: 13664 (13664.LCD) bch																										
SURVEYORS CERTIFICATION: I Sheryl Bryon HENNING, a licensed surveyor under the Survey Act 1992, certify that: (1) I am a member of the Institute of Surveyors of South Australia (2) I am a member of the Institute of Surveyors of South Australia (3) I am a member of the Institute of Surveyors of South Australia (4) I am a member of the Institute of Surveyors of South Australia (5) I am a member of the Institute of Surveyors of South Australia (6) I am a member of the Institute of Surveyors of South Australia (7) I am a member of the Institute of Surveyors of South Australia (8) I am a member of the Institute of Surveyors of South Australia (9) I am a member of the Institute of Surveyors of South Australia (10) I am a member of the Institute of Surveyors of South Australia Dated the 2nd day of NOVEMBER, 2007  Licensed Surveyor																										
SUBJECT TITLE DETAILS: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>PREFIX</th> <th>VOLUME</th> <th>FOLIO</th> <th>OTHER</th> <th>PARCEL</th> <th>NUMBER</th> <th>PLAN</th> <th>NUMBER</th> <th>HUNDRED / 1A / DIVISION</th> <th>TOWN</th> <th>NUMBER</th> <th>REFERENCE</th> </tr> </thead> <tbody> <tr> <td>CT</td> <td>5389</td> <td>460</td> <td></td> <td>ALLOTMENT 151</td> <td>363</td> <td>F</td> <td>17705</td> <td>PORT ADELAIDE</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / 1A / DIVISION	TOWN	NUMBER	REFERENCE	CT	5389	460		ALLOTMENT 151	363	F	17705	PORT ADELAIDE			
PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / 1A / DIVISION	TOWN	NUMBER	REFERENCE															
CT	5389	460		ALLOTMENT 151	363	F	17705	PORT ADELAIDE																		
OTHER TITLES AFFECTED: EASEMENT DETAILS: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>STATUS</th> <th>LAND BURDENED</th> <th>FORM</th> <th>CATEGORY</th> <th>IDENTIFIER</th> <th>PURPOSE</th> <th>IN FAVOUR OF</th> <th>CREATION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION																
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5.4 Effect on Existing Encumbrances

By operation of Clause 3(4)(b) of the Schedule to the CTA, upon deposit of a community plan any existing encumbrances (except statutory encumbrances e.g. Land Management Agreements) are extinguished. Substituted documents are required to be lodged, after the ACT, for those documents not evidencing occupation of a Lot. These provisions also allow a further Caveat to be lodged on the same grounds without the leave of the Court.

In the situation where a mortgage has been settled or the claim of a caveator has been satisfied and there is no intention of lodging a substitute mortgage or caveat. The mortgage **must** be discharged or caveat withdrawn by separate documentation prior to the ACT.

5.4.1 Consent form Statement of Effect Column

Where an encumbrance (e.g. lease, mortgage) is to be extinguished upon deposit of the community plan. A statement regarding the extinguishment is to be included in the encumbrancee's consent form Statement of Effect column. An example of such a statement is:

"Extinguished pursuant to Clause 3(4)(b) of the Schedule to the Community Titles Act."

5.4.2 Predominant owner

Pursuant to Clause 3(3)(a) of the Schedule to the CTA, all persons entitled to ownership of a unit must consent to the division by the completion of a consent form.

Estate or Interest

Show "Predominant owner of Lot ..." in the Estate or Interest Column.

Statement of Effect

Show "NIL".

Certificate of Consent

Show the interest held as "predominant owner of Lot".

5.5 Substituted Mortgages

Where a substitute mortgage is to be lodged the following statement is to be included in the mortgage:

"This mortgage secures the same monies as secured by Mortgage no..... and is in substitution thereof and which will be discharged upon deposit of a Community Plan over the above mentioned Certificate of Title pursuant to Clause 3(4)(b) of Schedule to the Community Titles Act."

5.6 Details of Transactions

Details of Transactions is to be completed only where as a condition of the plan:

- a) An easement is to be extinguished or varied.
- b) A private easement is to be created.

5.7 Issue of Certificates of Title

Pursuant to clause 3(4)(c) of the Schedule to the CTA, for an “existing” community scheme, the Lots in the plan are to issue in the name of the parties entitled to occupation of the unit under the old scheme as indicated in the Mode of Issue.

6 SCHEME DESCRIPTION

The purpose of the Scheme Description is to provide up-front notice to a prospective purchaser/mortgagee of a Lot by providing:

- The purpose for which the lots and common property for that scheme may be used.
- Specifying the standards of any building to be erected on a lot or common property.
- If a scheme is to be completed in stages or to be further developed the Scheme Description provides details on the parts to be developed, the nature and scope of the development and time frame for completion of the development.

6.1 When to lodge a Scheme Description

A Scheme Description **must** be lodged for every community division **except** where:

- a) A Plan of community division creates 6 lots or less with no development lot, **and**
- b) The lots in the scheme are used predominantly for residential purposes, **and**
- c) There is no requirement for any further development, including the construction of any buildings, on a community or development lot and or the common property after the deposit of the community plan.

6.2 Preparation of Scheme Description documents

Scheme Description documents **must**:

- a) Be prepared in accordance with RG’s requirements.
- b) Be endorsed by the relevant planning authority (section 30(4)).
- c) Must not be lodged in duplicate or triplicate
- d) Include those matters set out in section 30(1).
- e) **Not be inconsistent** with the By-laws and Development Contract (if any) of the scheme.(Sec 11(4))
- f) Where a secondary or tertiary scheme the scheme description must not be inconsistent with the Scheme Description and By-laws of the Scheme(s) of the secondary or primary Scheme (section 30(2)).
- g) Be certified as having been correctly prepared in accordance with the CTA by the person preparing the Scheme Description. The required form of certification as set out in the Community Titles Regulations 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 (strikeout whichever is not applicable)”

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

6.2.1 RG's requirements

The RG's requirements for Scheme Description are:

- a) Must have LTO fees paid.
- b) Scheme Description to be printed on both sides of A4 size paper.
- c) Any attachments, including plans, to be on A4 size paper.
- d) Must have an Index.
- e) All pages must be consecutively numbered in the format of Page 1 of 10, etc.
- f) Scheme Description to be attached to Form LF1.
- g) All pages of the Scheme Description, except any attachments, **must** have the following headers the top of each page - the terms of instrument header on the left hand side and the type of document and development number header on the right hand side –

TERMS OF INSTRUMENT NOT CHECKED BY LANDS TITLES OFFICE
--

Scheme Description Development no.
--

- h) Include the mandatory matters set out in the CTA for a Scheme Description.

6.3 Matters to be aware of when preparing Scheme Descriptions

6.3.1 Endorsement by Development Authority

The CTA requires that the relevant planning authority, usually the local council, to endorse every Scheme Description. The form of endorsement is set out in section 3(11) of the CTA. Persons signing on behalf of the authority should include their capacity and the name of the Authority e.g. Planning Officer, City of Holdfast Bay.

6.3.2 Development Authority Conditions

Where the development authority has approved the development subject to conditions, these conditions must be set out in full either by fully describing them in the document or by including reference to an attached copy of the conditions. Usually a copy of the council decision notification is annexed to the document.

6.3.3 Conditions fulfilled prior to deposit

If a Scheme Description is lodged, referring to the applicant or a lot owner being under an obligation to develop the common property or a lot **and** prior to the deposit of the accompanying plan the obligation is fulfilled, thereby not requiring a Development Contract. The Scheme Description:

- a) Is to be amended to reflect the fulfilment of the obligations, and
- b) Must be re-endorsed by the relevant development authority or alternatively by obtaining written confirmation from the council, to be attached to the Scheme Description, regarding the fulfilment of these obligations.

7 BY-LAWS

The CTA requires that every ACT lodged with the Registrar-General must be accompanied by a set of By-laws for the accompanying plan (section 14(4)(f)).

The purpose of the By-laws is to set out the rules for the operation of the community scheme by regulating the:

- Use and enjoyment of the common property.
- Purpose or purposes for which the lots may be used.
- Design, construction and appearance of the buildings on the common property and lots.
- Landscaping on the lots in regard to their establishment, care and maintenance.

7.1 Preparation of By-Laws documents

The By-laws document:

- a) Must be prepared in accordance with RG's requirements.
- b) Must include those matters set out in section 34(2) of the CTA.
- c) Must not be lodged in duplicate or triplicate.
- d) May include those matters set out in section 34(3) of the CTA.
- d) Must not be inconsistent with the Scheme Description of the scheme.
- e) Must not be inconsistent for a Secondary or Tertiary Scheme with the Scheme Description and By-laws of the previous scheme(s).
- f) Must be certified as having been correctly prepared in accordance with the CTA by the person preparing them. The required form of certification as set out in the Community Titles Regulations is:

“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 to be printed below)”*

7.1.1 RG's requirements

The RG's requirements for a By-laws document are:

- a) Must have LTO fees paid.
- b) By-laws to be printed on both sides of A4 size paper.
- c) Any attachments, including plans, to be on A4 size paper.
- d) Must have an Index.
- e) All pages must be consecutively numbered in the format of Page 1 of 10, etc.
- f) By-laws are to be attached to Form LF1.
- g) All pages of the By-laws, except any attachments, **must** have the following headers with the terms of instrument header on the left hand

Community Title Applications Preparation Notes

side and the type of document and development number header on the right hand side:

TERMS OF INSTRUMENT
NOT CHECKED BY
LANDS TITLES OFFICE

By-laws
Development no.

- h) Include the mandatory matters set out in the CTA for By-laws.

7.2 Exemption from certain requirements of the CTA

The CTA also provides for a Community Corporation to be exempt from certain requirements of the CTA for a 2 or 3 lot scheme only.

These exemptions are set out in:

- a) section 35(1) for a 2 lot scheme, and
- b) section 35(2) for a 3 lot scheme.

These exemptions **must** be set out in the By-laws of a 2 or 3 lot scheme to enable a corporation to be exempt from the requirements set out in section 35(1) or section 35(2),

7.3 Matters to be aware of when preparing By-Laws

7.3.1 By-laws to reflect the nature of the Scheme

Section 34(2)(c) of the CTA requires that the by-laws of a community scheme must regulate the use and enjoyment of the common property and should be prepared to reflect the nature of the scheme. For example where the Common Property is to be used for the purpose of providing access to Lot(s), the By-laws should provide for the use of the common property for that purpose.

7.3.2 Generic By-Laws

As referred to in 7.3.1 By-laws should be prepared to reflect the nature of the scheme. If using a “generic” set of By-laws, it is recommended that the lodging party prior to lodging the By-laws read these carefully to ensure they reflect the nature of the scheme e.g. by-law referring to the registered proprietor of a lot being responsible for the maintenance of a garden, where the scheme is commercial and no gardens exist will not be accepted.

7.3.3 Insurance

Pursuant to section 104(2) of the CTA the Community Corporation must insure itself for public liability insurance of at least 10 million dollars. Fidelity guarantee insurance is also a requirement as outlined in section 104 of the CTA and its regulations.

Section 103 of the CTA outlines the responsibility for buildings in relation to the common property. The buildings on a community strata scheme are common property and therefore, is the responsibility of the corporation to insure. Buildings on the lots in a non-

strata community scheme are the responsibility of the lot owners unless the by-laws authorise the community corporation to act as agent for the owners to arrange policies of insurance.

7.3.4 Delegation of functions

Pursuant to section 78A of the CTA a Community Corporation can delegate its functions to a member or employee of the corporation or to a member of a secondary or tertiary corporation within the same community scheme.

7.3.4.1 Body Corporate Managers

Section 78B of the CTA provides the requirements in relation to Body Corporate Managers.

7.3.4.2 Non-Enforceability of By-Laws

Pursuant to section 41 of the CTA a By-law is invalid to the extent that it is inconsistent with:

- The CTA and any other legislation.
- Any other LF documents filed with the plan and if applicable any LF document filed with prior and subsequent tiered plans.

For example: if the by-laws lodged for a 4 lot community scheme provided the corporation is exempted from the provisions contained within section 35(1). As these exemptions can only apply to a 2 lot scheme the by-law is invalid.

8 DEVELOPMENT CONTRACTS

The purpose of a Development Contract is to bind the developer of a community scheme to carry out any further development in accordance with the Scheme Description and, if applicable, place a lot owner under an obligation to develop a lot in a certain manner.

8.1 When to lodge a Development Contract

Pursuant to section 13 of the CTA a Development Contract **must** be lodged where a Scheme Description provides for the:

- a) Land to be divided in a subsequent stage for which a development lot is being created in the plan.
- b) Developer is to (or is likely to) erect buildings or other improvements on a development lot or the common property.
- c) Community lot is to be (or is likely to be) divided or otherwise developed in a particular manner or for a particular purpose (Section 13 CTA).

8.2 Parties to a Development Contract

For the purposes of section 49 of the CTA the parties to a Development Contract are considered to be the:

- a) Developer as defined under section 46 of the CTA.
- b) Owners and occupiers of a community lot.

- c) Community Corporation.
- d) Owner and subsequent owner of any development Lot(s).

8.3 Preparation of Development Contracts

Development Contract documents:

- a) Must be prepared in accordance with RG's requirements.
- b) Must include those matters set out in section 47(2), (3) and (4) of the CTA.
- c) May include standards of the work to be performed and the materials to be used (section 47(5)).
- d) Must not be inconsistent with the Scheme Description and By-laws of the scheme (section 48(1)).
- e) For a Secondary or Tertiary Scheme must not be inconsistent with the Scheme Description and By-laws of the previous scheme(s) (section 48(2) and (3)).
- f) Must not be lodged in duplicate or triplicate.
- f) Person preparing the Development Contract must certify them as having been correctly prepared in accordance with the CTA. The required form of certification as set out in the Community Titles Regulations is:

"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 to be printed below)"*

8.3.1 RG's requirements

The RG's requirements for a Development Contract are:

- a) Must have LTO fees paid.
- b) Development Contract to be printed on both sides of A4 size paper
- c) Any attachments, including plans, to be on A4 size paper
- d) Must have an Index.
- e) All pages must be consecutively numbered in the format of Page 1 of 10, etc.
- f) Development Contract to be attached to Form LF1.
- g) Development Contract to be signed by the developer, as defined under section 46 of the CTA.
- h) All pages of the Development Contract, except any attachments, **must** have the following headers - the terms of instrument header on the left hand side and the type of document and development number header on the right hand side –

TERMS OF INSTRUMENT NOT CHECKED BY LANDS TITLES OFFICE
--

Development Contract Development no.
--

- i) Include the mandatory matters set out in the CTA for the Development Contract.

8.4 Matters to be aware of when preparing Development Contracts

8.4.1 Pictorial representation

If the developer's obligations under a Development Contract include the:

- Construction or erection of buildings or other facilities, or
- Provision for landscaping.

The Development Contract must not only include a brief description of the nature of the obligations but also include a pictorial representation of the completed buildings or facilities (section 47(3)) and also where landscaping is to be provided, include a plan showing the design of the proposed landscaping (section 47(4)).

9. LODGEMENT OF RESOLUTION (LR)

Clause 2 of the Schedule to the CTA provides for a Strata Scheme to adopt the CTA.

For a Strata Scheme to adopt the CTA the Strata Corporation **must**:

- a) Resolve, pursuant to an ordinary resolution³, that the CTA and not the *Strata Titles Act 1988* (STA) will apply to the scheme, and
- b) Lodge with the Registrar-General a copy of the resolution, certified in accordance with the regulations⁴, which is to be filed with the plan. The approved form for this purpose is Form LR.

There is no specific time frame for lodgement of the resolution; however it does not take effect until filed by the Registrar-General with the plan (Clause 2(3) of the Schedule to the CTA). Upon filing the resolution with the plan the original certificates of title for the scheme are endorsed regarding the CTA and not the STA applies to the scheme.

9.1 Effect of Lodgement of Resolution being filed

Upon the Lodgement of Resolution (LR) being filed with the plan:

- a) The CTA and not the STA applies to the corporation and the strata scheme and any new dealings with the scheme must be in accordance with the CTA e.g. Application to amend entitlements (AP2) is to be lodged pursuant to section 21 of the CTA and not section 12 of the STA.
- b) The plan is taken to be a primary community strata plan and the units (including any unit subsidiaries) taken to be primary strata lots with the same boundaries as for the units. Note the plan is not amended and remains prefixed as a strata plan with the same number i.e. S1234.
- c) Common property vests in the owners of the lots (no stamp duty is payable Clause 2(3)(c) of the Schedule to the CTA).

³ See Schedule to the CTA for the definition of "ordinary resolution".

⁴ See Form No. 8 of Schedule 1 of the CTR

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- d) Strata Corporation continues in existence as a Primary Community Corporation.
- e) Articles of the strata continue as the By-Laws of the community scheme.
- f) Votes that may be cast in respect of each community lot will be in accordance with section 87 of the CTA **except** where before the filing of the resolution to adopt the CTA the number of votes for each unit was equivalent to their unit entitlement. (Clause 2(3)(f) of the Schedule of the CTA) Then the voting entitlements are unchanged until:
 - i. The now “lots” are solely or predominantly used for residential purposes then the entitlements become one per lot (s 87(1)(a) of the CTA)
OR
 - ii. The By-laws are amended to change the entitlement pursuant to the lodgement of a Variation of By-laws
- g) Officers of the Strata Corporation and, if there is a management committee the members of that committee, continue to hold office in the now Community Corporation.
- h) If an administrator of the Strata Corporation has been appointed, the administrator will continue to hold office.
- i) Money held by the Strata Corporation must be paid into the Community Corporation’s administrative or sinking fund according to the purpose for which the money will be used.

9.2 Required to be produced with the LR

The following must accompany Form LR:

- a) A copy of the resolution, being a copy of the minutes passing the resolution, certified in accordance with the CTR. (See 9.3.3)
- b) Fee required by Regulations.

9.3 Completion of LR form

9.3.1 Land Description

Insert the title references for all of the units and common property in the strata scheme.

9.3.2 Application to the Registrar-General

The full name and address of the authorised officer applying on behalf of the strata corporation is to be inserted, as well as the number of the strata plan in the corporation’s name.

In (1) insert the location and date of the meeting passing the ordinary resolution.

The request is to be dated and certified by the authorised officer.

Note:

- a) The signature of the authorised officer need not be witnessed.
- b) The authorised officer must be an officer⁵ of the corporation who is either a member of the corporation or a person appointed to attend and vote at a meeting on behalf of a body corporate being an owner of a lot in the scheme.

9.3.3 Certification

In accordance with CTA the following certification, being Form No. 8 of Schedule 1 of the CTR, is to be endorsed on the Form LR:

I [name and address of authorised officer] being an officer of Strata Corporation No.... Incorporated certify that the copy of the resolution attached to this certificate is a true copy of the resolution by which the corporation decided that the Community Titles Act 1996 and not the Strata Titles Act 1988 will apply to, and in relation to, the corporation and the strata scheme.

Dated the day of 20

.....
[Signature of authorised officer]

9.4 Copy of Resolution Certification

Pursuant to Clause 2(2) of the Schedule to the CTA a copy of the resolution, in the form of a copy of the minutes, certified by the officer making the application on behalf of the Corporation is to be attached to the LR form.

9.4.1 Certification

The required certification on a copy of the resolution as set out in Form 8 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 authorised officer]

⁵ Appointed Presiding Officer, Secretary or Treasurer of the Strata Corporation