

Practice note 21: Owner's consent

17 July 2018

Introduction

The purpose of this practice note is to provide guidance in determining whether correct owner's consent has been provided with a Priority Development Area (PDA) development application under the *Economic Development Act 2012* (the Act).

Section 82(1)(b) of the Act requires any PDA development application to contain, or be accompanied by, the consent of the owner of the relevant land, other than to the extent the application is for operational work. However, the exception from requiring owner's consent for operational work does not extend to amendment applications in accordance with section 99(5) of the Act. Therefore, amendment applications for operational work must be supported by owner's consent.

The owner of the land is to be confirmed by a title search submitted with the PDA development application. Generally, title searches should be no more than one month old at the time of lodgement, however there may be circumstances where older title searches are acceptable.

It is not the responsibility of the assessment manager to check the accuracy and authenticity of ownership or consent details. The responsibility for ensuring that the information contained in a development application, including the owner's consent is true and accurate, lies with the applicant. However, the assessment manager may choose to examine the information supplied in greater detail where considered necessary.

The following information outlines the different owner's consents which may be required.

Owners consent from an individual

If the owner of the land is an individual(s), the consent of all individual(s) listed on the title search is required. The owner's consent should state the full name(s) and include the signature(s) of the individual(s).

Owners consent from a company

If the owner of the land is a company, the company must consent to the development application. The owner's consent is required to be signed in accordance with section 127 of the *Corporations Act 2001* (Commonwealth), which requires the company ACN to be accompanied by one of the below:

- i) the names, titles and signatures of two company directors
- ii) the name, title and signature of a company director and the company secretary, or
- iii) where the company has only one director, the name, title and signature of that director, in conjunction with a company search document which provides evidence that the company has only one director (i.e. sole director).

Power of attorney

Owner's consent from an individual or company may be provided by another person if power of attorney has been granted authorising that person to sign on the owner's behalf. A copy of the power of attorney is required to accompany the owner's consent to confirm that the power of attorney applicable to the signing of the consent.



Body corporate

Owner's consent over land subject to a community titles scheme (CTS) may require consent from the owners of individual unit(s) in the CTS or from the body corporate. Consent from both parties may also be required.

Owner's consent from individual unit owners in the CTS is required to be provided as per the requirements for owner's consent for an individual or company. Owner's consent from every unit included in the description of the land must be provided.

For a body corporate, owner's consent must be provided in accordance with the relevant requirements for a body corporate to make a decision under the *Body Corporate and Community Management Act 1997*.

Evidence of the body corporate's decision to provide land owner's consent for the lodgement of the development application is to be provided with the PDA development application, and is to include:

- i) the body corporate's seal, and two signatures of body corporate committee members, one of which must be the chairperson, and
- ii) one of the following:
 - a. full body corporate: a copy of body corporate meeting minutes which include a decision to provide land owner's consent for the development application (i.e. minutes of a meeting where a motion is passed by ordinary resolution to provide the consent), or
 - b. body corporate committee: a copy of a motion passed by resolution by the body corporate committee, at either a meeting or via flying minute, to provide land owner's consent for the development application.

Alternatively, the body corporate's consent can be provided through a signed letter of consent from each lot owner covered by the body corporate.

Easements

An easement is an interest in land that creates certain rights and obligations. Under section 82(1)(b) of the Act, consent from the owner of the *relevant land* must be provided. Schedule 1 of the Act defines *relevant land* as:

- a. *for a PDA development application—the land the subject of the application, or*
- b. *for a PDA development approval or a development approval under the Planning Act—the land the subject of the approval.*

Therefore, the consent of the owner for all land the subject of the application must be provided. This includes the consent of the owner of land over which there is an easement which benefits the adjoining owner/applicant. For example, a development which proposes apartments over a lot owned by the applicant, with access to the apartments via an existing access easement on an adjoining separately owned lot, the application must be accompanied by owner's consent from both lot owners.

For clarity, it is confirmed that the *excluded premises* provisions of the *Planning Act 2016* are not relevant to land owner's consent requirements under the *Economic Development Act 2012* (i.e. under the *Planning Act 2016* the excluded premises provisions would result, in the above example, owner's consent from the owner of the lot over which the easement is located not being required where the proposed use of the easement is consistent with the terms of the easement).

Easements in gross

An easement in gross is an easement where there is a burdened lot only and are typically used by public utility providers and local governments for drainage, water, sewer and electricity supply.

The entity in whose favour the easement is created is not the registered owner of the land and hence the consent of the entity is not required.

Government owned land

For state owned land, the following outlines who consent must be provided from:

- i) for land subject to a reserve or a deed of grant in trust, the owner is the trustee, and not the state government. Therefore, owner's consent is required to be provided from the trustee, and
- ii) for state land the subject of a lease, owner's consent from the relevant state government department is required, rather than the head lessee.

When reviewing owner's consent from any government entity, the owner's consent should state that the person signing is acting under delegation in providing the consent.

Road reserves

For roads under the control of a local government, consent is provided from the Department of Natural Resources, Mines and Energy.

For roads under the control of the state government, consent is provided from the Department of Transport and Main Roads.

Currency of the consent

The land owner's consent is to be a current document relevant to the development being proposed. It is recommended that the consent has an execution date that is within 12 months of the date of the PDA development application being lodged.

Relevance of the consent

The owner's consent is to be specific to the application and include details of the type of application being made (e.g. a Development permit for a Material change of use for Office).

Consents which purport to provide generic owner's consent to all development applications over the lot should not be accepted.

References to legislation in owner's consent is to specify the correct legislation under which the consent is being granted (i.e. the *Economic Development Act 2012*).