

# Application for Cancellation of a Community Plan

*These Guidance Notes are of a general nature and are not intended to, and cannot, replace the advice of a Legal Practitioner or Registered Conveyancer.*

## GENERAL INFORMATION

- \* Form CS2 is to be used for the cancellation of a deposited Community Plan:
  - By the Community Corporation under section 64 of the *Community Titles Act 1996* (CTA), or
  - In pursuance of an Order of Court under section 67 of the CTA.
- \* Where the application is made pursuant to an Order of Court, a copy of the sealed court order must accompany the CS2.
- \* A Form CS2 cannot be used to cancel more than one plan.

Note: As documentation requirements for an amendment pursuant to an order of court are to be determined by viewing the order, the following notes relate to section 64 applications.

- \* Before a plan in a higher tier can be cancelled all schemes at a lower level associated with that plan must also be cancelled.
- \* Cancellation will result in one allotment being created for the community parcel and a title issued in the name(s) of the registered proprietor(s) for all of the lots in shares in accordance with the schedule of lot entitlement.
- \* If the plan being cancelled is a primary plan, a Filed Plan defining the allotment created by the cancellation will need to be lodged prior to the application.
- \* It must be noted that on cancellation all existing leases/underleases will be extinguished and therefore if required they must be granted again by the lodgement of the applicable documentation after the CS2.
- \* The CS2 must be assessed for stamp duty prior to being lodged in the LTO.
- \* If the name of a consenting party has altered an application amending their name should precede the CS2.
- \* Each page must be numbered consecutively, e.g. 1 of 10, 2 of 10.
- \* All handwriting must be in permanent, dense, rapid drying black or blue ink.

## EXPLANATION OF FORM

### Heading

Delete the inapplicable section number.

### Land Description

Insert the title reference for all the titles affected by the cancellation e.g. Whole of the land in CT Volume...Folio...

### Application to Registrar-General

Insert the full name and address of the Corporation.

In (1):

Insert the number of the community plan being cancelled.

- \* Retain (a) if the Community Corporation is making the application under section 64 of the CTA.
  - If pursuant to an Order of Court retain (b) and insert the relevant information.
- \* In (2) if:
  - No development lot exists in the plan, strike out (b).
  - A development lot exists with the plan, strike out (a) and complete Schedule of Lot Entitlements, including the development lot as one of the lots in the plan.

## Execution by Community Corporation

Must be dated

Execution by the Corporation must conform to the requirements for affixing of the common seal under Section 73 of the CTA.

## Schedule of Lot Entitlement

Schedule is to be completed and signed by a land valuer only where a development lot exists within the plan.

## Consent to the Cancellation of a Community Plan

Parties required to consent to the cancellation are set out in section 66 of the CTA.

### Consenting party

Show consenting party's full name, including if a company their ACN or ABN, and their address.

### Nature of estate or interest held

State the nature of the estate or interest held (i.e. Registered proprietor of C.T....., Mortgagee etc)

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

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

Show effect on the interest, if any, e.g. Extension of the appurtenance for easement (TG12369872) to the whole of Allotment 7 in FP 52345.

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

Insert consideration/value for stamp duty purposes.

### Consent to cancellation

In (1) insert the number of the community plan being cancelled.

Must be dated.

### Execution by consenting party

If the consenting party is a natural person who is signing in his or her own right, he or she must sign his or her usual signature in the place indicated on the form. A different format must be used where a person is not signing in his or her own right (e.g. He or she is signing as attorney for the consenting party.)

Pursuant to Section 267 of the *Real Property Act 1886* (RPA), the witness to consenting party's execution must be an adult (aged 18 years or over) who knows the consenting party personally or has satisfied him or herself as to the identity

of the consenting party. The witness cannot be a party to the instrument. The witness must sign his or her name and print his or her full print, address and business hours telephone number legibly beneath their signature.

Pursuant to Section 268 of the RPA, a witness is guilty of an offence if he or she does not know the person executing the instrument personally and has no reasonable ground on which to be satisfied as to the person's identity, OR knows or has reasonable grounds for suspecting that the person signing the instrument is not a party to the instrument or does not have the authority to sign on behalf of the party.

- *Maximum Penalty - \$5,000 or 1 year imprisonment.*

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

## CERTIFICATION

Any inapplicable certification statement(s) must be deleted.

Certification statements must be made by a prescribed person, being one of the following:

- a. A legal practitioner
- b. A registered conveyancer
- c. If the applicant is not represented by a legal practitioner or registered conveyancer – the applicant (i.e. self-represented party)
- d. If a party to an instrument is not represented by a legal practitioner or registered-conveyancer – that party (i.e. self-represented party)

All certifications apply where the Prescribed Person is a registered conveyancer or legal practitioner.

The first listed certification does not apply where the Prescribed Person is a self-represented party. Self-represented parties are only required to make certifications relating to retaining evidence to support the registry instrument or document and ensuring the registry instrument or document is correct and compliant with relevant legislation and any prescribed requirement.

Note: - An attorney or a body corporate cannot make certification statements.

The Registrar-General's [Verification of Identity](#) and [Verification of Authority](#) requirements must always be complied with.

Penalties of up to \$10,000 or 2 years imprisonment apply, where a prescribed person provides a false certification under section 273(1) of the *Real Property Act 1886*.

## SUPPORTING DOCUMENTATION LODGED WITH APPLICATION

Insert reference to supporting documentation that is required to be lodged with the application.

## NEW TITLE INSTRUCTIONS

Insert new title instructions for all new titles to be issued as result of the cancellation.

## ANNEXURE

It will be necessary to use an annexure sheet (Form B1) if there is insufficient space for the text or to complete the remaining executions.

An annexure sheet to an instrument must:

- a. be in the format of Form B1 and identified therein as an annexure to the parent instrument;
- b. be referred to in the body of the instrument where there is insufficient space;
- c. be affixed securely and permanently to the top left-hand corner of the instrument. The annexure and instrument must not be bound;

- d. comply with requirements in Form B1 Guidance Notes.

When an additional or inserted sheet being a *certificate, statutory declaration or writing* of a similar nature is intended to form part of an instrument ensure:

- a. it is affixed securely and permanently to the top left-hand corner of the instrument; and
- b. the printing or handwriting thereon is clear and legible and in permanent form.

The Registrar-General *may refuse* to accept for registration any instrument, annexure sheet or additional or inserted sheet that does not comply with the provisions of these standards.

FORM CS2 (Version 1)



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