

# Part 18 – General Consent

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## Part 18 – General Consent

### General Law

[18-0000]

There are a number of circumstances in which the law requires the consent of a third party to a transaction to be given before that transaction can be registered. These circumstances are set out below. However, there are several cases in which the practice of the Registrar requires consent to be obtained (which may be in addition to the circumstances in which consent is required by law), and these can be found below under the heading 'Practice'.

Form 18 – General Consent has been provided specifically for the purpose of recording consents to instruments by parties not directly involved in the transaction. All consents are to be provided in Form 18 unless there is specific provision in a law requiring a consent in some other form.

The law requires consent to be obtained in the cases set out below.

### Lease

#### Mortgagee's Consent

##### Grant of Lease

[18-0010]

Section 66 of the *Land Title Act* 1994 provides that, for a lease that is executed after registration of a mortgage to be valid against a mortgagee, the consent of the mortgagee must be obtained.

However, a lessee may elect not to seek the consent of a mortgagee, with the result that the lease, whilst valid against others, will not be valid against that mortgagee.

It should be noted that the Registrar is not charged with ensuring that consent is obtained. If the consent of a registered mortgagee is not deposited with a lease, it will be registered without question on the assumption that the lessee does not intend to seek that consent.

##### Amendment

[18-0020]

Section 66 of the *Land Title Act* 1994 also provides that for an amendment of lease executed after the registration of a mortgage of the fee simple or water allocation to be valid against the mortgagee, the mortgagee must consent to the amendment before its registration.

The Registrar is not charged with ensuring that consent is obtained.

##### Surrender

[18-0030]

Section 69(2) of the *Land Title Act* 1994 provides that a surrender of a lease cannot be registered without the consent of every mortgagee of the lessee.

## Sub-Lessee's Consent

[18-0040]

Section 69(2) of the *Land Title Act* 1994 requires all sub-lessees to consent to any surrender of the head-lease.

## Local Government's Approval

### <sup>1</sup>Lease of Part of Land

[18-0050]

Since proclamation of the *Integrated Planning Act* 1997 on 30 March 1998 all approvals required under the *Land Title Act* 1994 or other Acts must be in accordance with that Act.

Local Government approval is required to:

- a lease of part of a lot in a building unit plan or group title plan or part of the common property regardless of the term (ss 8 and 22 of the *Building Unit and Group Title Act* 1980). This applies to those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act* 1997 which are:
  - (a) the *Integrated Resort Development Act* 1987; or
  - (b) the *Mixed Use Development Act* 1993; or
  - (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act* 1980; or
  - (d) the *Registration of Plans Stage 2 (H.S.P. (Nominees) Pty. Limited) Enabling Act* 1984; or
  - (e) the *Sanctuary Cove Resort Act* 1985;
- a lease of part of land for a term exceeding ten years (inclusive of further terms/s pursuant to option/s to renew); or
- a lease of any part of a building that includes **part** of the land outside the building for a term exceeding ten years (inclusive of further terms/s pursuant to option/s).

(s 65(3A) of the *Land Title Act* 1994 and s 3.7.1A of the *Integrated Planning Act* 1997).

However, local government approval is not required for a lease of part of a lot in a lower plan under the *Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Act* 1980 or the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty Limited) Enabling Act* 1984.

The lease must be lodged within six months of the date of the local government's approval (s 3.7.6 of the *Integrated Planning Act* 1997).

¶[18-0060] and ¶[18-0070] deleted

## Easement

### <sup>1</sup>Mortgagee's Consent

[18-0080]

Section 90(3) of the *Land Title Act* 1994 provides that the surrender of an easement requires the consent of any mortgagee of the benefited land. However, a surrender under a law about bankruptcy does not fall within this requirement.

## **<sup>1</sup>Local Government's Approval**

**[18-0090]**

The Registrar does not require deposit of local government approval to an easement that gives access to a road if the easement is executed on or after 30 March 1998. Similar easements executed prior to that date are subject to the *Local Government (Planning and Environment) Act 1990* and local government approval must be deposited (s 5.12(11) of the *Local Government (Planning and Environment) Act 1990*).

The above requirement will remain applicable until the transitional provisions of the *Integrated Planning Act 1997* no longer apply (s 6.1.25 of the *Integrated Planning Act 1997*).

See also part 9 – Easement, esp ¶[9-2080].

## **<sup>1</sup>Lessee's Consent**

**[18-0100]**

Subsections 90(3) and (4) of the *Land Title Act 1994* require that all lessees of a lot that enjoy the benefit of the easement must consent to the surrender of that easement. Similarly, the consent of every lessee of a lot burdened by an easement is required to grant that easement if it affects the leased area.

## **Building Management Statement**

### **<sup>1</sup>Mortgagee's Consent**

**[18-0110]**

Section 54H(3) of the *Land Title Act 1994* provides that the extinguishment of a building management statement requires the consent of all registered mortgagees of lots to which the building management statement applies.

### **<sup>1</sup>Local Government Approval**

**[18-0120]**

Local government approval is not required to a building management statement.

### **<sup>1</sup>Lessee's Consent**

**[18-0130]**

The lessee's consent is not required to a building management statement.

## **Profit a prendre**

### **<sup>1</sup>Mortgagee's Consent**

**[18-0140]**

The mortgagee's consent is not required to a profit a prendre.

### **<sup>1</sup>Local Government Approval**

**[18-0150]**

Local government approval is not required to a profit a prendre.

## <sup>1</sup>Lessee's Consent

[18-0160]

The lessee's consent is not required to a profit a prendre.

## Subdivision or Amalgamation of a Water Allocation

### Mortgagee's Consent

[18-0170]

Section 128A(8) of the *Water Act* 2000 provides that the subdivision or amalgamation of a Water Allocation requires the consent of all registered mortgagees.

## Legislation

[18-1000]

### Application of the *Land Title Act* 1994 to the *Water Act* 2000

Under the provisions of ss 150(1) and 151 of the *Water Act* 2000, subject to the exceptions provided in ss 150(2), 151(1) and (5) of the *Water Act* 2000, the *Land Title Act* 1994 applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act* 2000 an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act* 1994 and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act* 1994:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act* 2000; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

## Practice

[18-2000]

A Form 18 – General Consent cannot be lodged on its own. It must be attached to, form part of and be deposited with the relevant instrument.

### Mortgagee

[18-2010]

The practice of the Registrar will determine whether or not the consent of an existing mortgagee is required and the form that consent is to take.

## When Consent is Required

[18-2020]

Generally, the terms of the mortgage contract stipulate that any dealing with a lot or an interest in a lot which is subject to the mortgage will require the mortgagee's consent.

The Registrar does not always police the contractual arrangements of individuals, therefore if a person registers an interest without obtaining the necessary consent required by the contract, he/she does so at the risk of the interest being defeated by the party who is entitled to the consent.

However, the Registrar does require the formal consent of the mortgagee to be deposited with the following dealings:

- <sup>2</sup>a plan of sub-division (s 50 of the *Land Title Act 1994*), unless the Certificate of Title is deposited;
- <sup>2</sup>the surrender of the benefit of an easement where the mortgage is registered over the benefited lot (referred to as the dominant tenement) (s 90 of the *Land Title Act 1994*);
- surrender of a lease where the lessee's interest is mortgaged (s 69 of the *Land Title Act 1994*);
- <sup>2</sup>registration of a building units plan or group titles plan, unless the mortgagee lodges the Certificate of Title; or
- a subdivision or amalgamation of a Water Allocation (s 128A(8) of the *Water Act 2000*).

## How to Record Consent

[18-2030]

<sup>2</sup>In the case of a mortgagee's consent to a Form 19 – Application for Title, the consent should be endorsed on the Form 19.

In every other circumstance where consent is required pursuant to the *Land Title Act 1994* or another piece of legislation, consents are to be recorded on a Form 18 – General Consent.

<sup>2</sup>However, where the consent of a mortgagee is required, the deposit of the Certificate of Title by the mortgagee is taken as that mortgagee's consent and there is no need to deposit a Form 18.

The rationale behind this is that where a Certificate of Title is taken in the possession of a mortgagee, the mortgagee has control over voluntary actions in relation to that title. Accordingly, if the mortgagee deposits the Certificate of Title for cancellation, the mortgagee is obviously aware of and agreeable to the registration of the transaction in question.

<sup>2</sup>If no Certificate of Title has issued, then a Form 18 – General Consent will be required in all circumstances.

## <sup>1</sup>Local Government

[18-2040]

In most circumstances, the approval of the local government is to be in a Form 18 – General Consent. As approvals by local governments are not provided under an instrument, Item 3 of the Form 18 cannot be completed in full. The reference to dealing type and dealing number ought to be marked 'Not Applicable' or ruled through.

## <sup>1</sup>Lessee

[18-2050]

The dedication of land as a road or for other public use that is subject to a registered lease requires the consent of the lessee in a Form 18 – General Consent. However, if the whole of the leased area is being dedicated, a surrender of the lease must precede the plan.

## Forms

### General Guide to Completion of Forms

[18-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

<b>1. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
LOT 75 ON RP20478	STANLEY	BULIMBA	16494203

**2. Instrument/document being consented to**

Instrument/document type SURRENDER OF EASEMENT

Dated 17/10/2007

Names of parties EVELYN ALICE WAUGH and ROBERT JOHN WAUGH

**3. Instrument/document under which consent required**

Instrument/document type MORTGAGE

Dealing No. 700000203

Name of consenting party SUNPAC FINANCE PTY LTD ACN 123 456 789

**4. Execution by consenting party**

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

.....signature

.....full name

.....qualification

**Witnessing Officer**

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

20/10/2007

**Execution Date**

*A P Lincoln*

Sunpac Finance Pty Ltd by its duly  
constituted attorney Allan Peter Lincoln  
under Power of Attorney 700000222

.....

**Consenting Party's Signature**

**Privacy Statement**

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy see the department's website.

## Guide to Completion of Form 18

### Item 1

[18-4010]

#### <sup>2</sup>Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (eg ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

The entire panel of Item 2 must be completed. All information needed to complete Item 2 will appear on a search of the title.

eg	Lot on Plan Description	County	Parish	Title reference
	Lot 27 on RP 204939	Stanley	South Brisbane	11223078

#### Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. A water allocation has no reference to County or Parish, hence these fields are not completed. All plans referring to water allocations are Administrative Plans. Administrative Plan is abbreviated to AP as the prefix of the plan identifier.

### Item 2

[18-4020]

Insert type and date of instrument to which the consent is to be bound and the full names of both parties involved in the matter.

### Item 3

[18-4030]

Insert the type and dealing number of the instrument under which the consent is required (if applicable). Insert the full name of the consenting party.

### Item 4

[18-4040]

Execute as required.

### Duty

[18-4050]

There is no duty payable on a Form 18 – General Consent.

¶[18-6000] deleted

## Case Law

### Consent of the Local Government to a Lease of Part of the Land for More Than Five Years

#### *Re Lehrer and the Real Property Act (1861) 6 LGRA 122*

[18-7000]

In this case, in relation to New South Wales legislation, it was held that a lease of any part of a building erected on land, or of the whole of the building erected on land, will not be a subdivision and therefore will not require consent of the local government, unless a part of the land outside the building is also included in the lease.

#### *The Centre Pty Ltd v Thomas R Magnus Pty Ltd [1969] Qd R 452*

[18-7010]

The position taken in the above case was approved in Queensland in this case and in *Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd* (unreported, Supreme Court of Qld, Connolly J, 12 November 1987). The latter case went on appeal to the High Court, but this issue was not raised in the appeal.

#### *Benmar Properties Pty Ltd v Makucha* (unreported, Supreme Court of Queensland, Thomas J, 10/11/93)

[18-7020]

In this case, consideration was given as to whether, in obtaining the consent of the local government to a lease of part of the land, the applicant had to comply with the requirements of the *Real Property Act 1861* (predecessor to the *Land Title Act 1994*), in relation to registration of plans of subdivision.

The requirements in relation to registration of plans of subdivision are much more onerous than those that apply to lease plans. It was held that a plan of subdivision, as envisaged by the *Real Property Act 1861*, is not required in relation to the granting of a lease of part of the land. In the ordinary course, a simpler, less expensive survey plan will be sufficient.

In the case, the plan was sealed by the local government, but the endorsement of consent was made on the Form 35 – General Consent (predecessor to the Form 18). In the circumstances, the court found this to be adequate.

## Fees

[18-8000]

No fees are payable for the lodgement of a Form 18 – General Consent.

## Cross References and Further Reading

[18-9000]

Part 2 – Mortgage

Part 7 – Lease of Freehold or Water Allocation

Part 9 – Easement

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre or Building Management Statement

Part 19 – Application for Title

Part 49 – Water Allocations

## Notes in text

[18-9050]

Note <sup>1</sup> – This numbered section is not applicable to water allocations or the Water Allocations Register.

Note <sup>2</sup> – This paragraph or statement is not applicable to water allocations or the Water Allocations Register.