

# Fact sheet: Development Assessment – Owner’s Consent

An overview for proponents about when development applications require an owner’s consent

**November 2020**

## Overview

This fact sheet outlines when a development application, change application or extension application (application) is required to be accompanied by owner’s consent under the *Planning Act 2016* (Planning Act). If the application is required to be accompanied by owner’s consent, an application cannot be accepted as ‘properly made’ without it.

## Who is the owner and when is owner’s consent required?

Under the Planning Act, the owner of premises means the person who:

- is entitled to receive rent for the premises (i.e. a building or other structure or land whether a building or other structure is on the land); or
- would be entitled to receive rent for the premises, if the premises were rented to a tenant.

The Planning Act (section 51) requires an application to be accompanied by the written consent of the owner of the premises, to the extent:

- the applicant is not the owner; and
- the application is for –
  - a material change of use of premises or reconfiguring a lot; or
  - works on premises that are below high-water mark and are outside a canal (as defined under the *Coastal Protection and Management Act 1995*, section 9); and
- the premises are not *excluded premises* (under the Planning Act, Schedule 2).

In most circumstances, the registered property owner will be the owner of the premises for the purposes of the Planning Act.

If power of attorney has been granted authorising another person to sign on the owner’s behalf, a certified copy of the power of attorney must accompany the consent.

Owner’s consent templates for an application are available at:

<https://planning.dsdmip.qld.gov.au/planning/resources>.

Although owner’s consent is not required under the Planning Act for building work applications, the *Building Act 1975* (Building Act) does impose obligations on applicants and private certifiers regarding consent of parties for certain building approvals. Details on requirements for easements and certain covenants is provided in this document.

## When the owner is an individual

If the owner of the land is an individual, the consent of the individual listed on the title document is required. The owner’s consent should state the full name and include the signature of the individual.

## When there are multiple owners

If there are multiple owners of the premises to which the application relates, the consent of each owner must be obtained.

For example, if the application relates to one lot, but that lot is owned by several persons, the consent of each of those persons is required. Similarly, if the application relates to several lots and each lot is owned by a different person, the consent of each of those persons is required.

## When the owner is a company

If the owner is a company, the company must consent to the application.

Consent may be given using the [company owner’s consent template](#) or by a letter, which is signed or sealed in accordance with the requirements of the *Corporations Act 2001* (Cwth), section 127, that provides the owner’s details, property details and details about the proposed development.

## When the development site includes a body corporate

An application over premises subject to a Community Title Scheme under the *Body Corporate and Community Management Act 1997* may require consent from:

- the owners of individual unit(s) in the Community Title Scheme and/or
- the body corporate, depending upon the premises that are the subject of the application.

Owner’s consent from individual unit owners in the Community Title Scheme 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 premises in the application must be provided.

Where the application includes common property, the body corporate’s consent to the application will be required. For a body corporate, evidence of the body corporate’s decision to provide owner’s consent must be provided in accordance with the relevant requirements for a body corporate under the *Body Corporate and Community Management Act 1997*.

## When the premise includes an easement

An easement is a set of rights and obligations for a person to use an area of a premises in a particular way (such as access to a property) even though the person does not own the premises. Generally, for an easement there will be a ‘benefited’ and a ‘burdened’ lot.

The premises on which the easement is located is called the ‘servient tenement’ or ‘burdened lot’. The easement may restrict how the owner of the burdened lot can use the land, for example by preventing structures being built on the land. It also may allow another party to use the part of the premises subject to the easement consistent with the terms of the easement.

Generally, if a development application is proposed on premises that includes an easement, and the proposed development is consistent with the terms of the easement, the owner of the burdened lot is not required to give owner’s consent.

A person (grantee) who benefits from an easement is not an owner for the purposes of the Planning Act. If a development application is lodged for land that is burdened by an easement, the grantee’s consent to the development application is not required.

A burdened lot owner will need to negotiate with the grantee regarding the easement arrangements if the proposed development will affect rights or obligations under the easement. The terms of the easement may also require permission from the grantee if a proposed development impacts on the easement, however, any permission required under the terms of the easement is not necessary for the purposes of the development application process under the Planning Act.

Similarly, for an ‘easement in gross’ the entity with the benefit of the easement is not the owner of the property, consequently, the consent of the entity to an application is not required.

An ‘easement in gross’ is an easement where there is a burdened lot only and is typically used by public utility and local government entities for drainage, water, sewer and electricity supply.

Additionally, section 65 of the Building Act requires a building development application (which may constitute an application under the Planning Act or Building Act) on land subject to a registered easement or certain registered statutory covenant, to have the consent (for the building work) of each registered holder of the easement or covenant.

This consent must be provided prior to any approval being issued. These provisions only apply for registered statutory covenants if the registered holder is the State, a statutory body representing the State, or a local government.

The section 65 provisions exclude a building development application for a class 1, 2, 3 or 4 building on land subject to a noise covenant if a building assessment provision is expressed to apply specifically for the reduction in a class 1, 2, 3 or 4 building of noise coming from outside the building.

## Other ownership arrangements

The following provides some other types of ownership arrangements and consent requirements:

- Leased land: owner’s consent must be obtained from the lessor of the land.
- State-owned land that is leased or subleased including under the *Land Act 1994*: owner’s consent must be obtained from the state as the lessor of the land.

- For state-owned land subject to a reserve under the *Land Act 1994*; and
  - is subject to a state lease: owner’s consent must be obtained from the state
  - within a trustee lease where the proposed use is consistent with the purpose of the trustee lease: owner’s consent must be obtained from the trustee.
- Land that is granted in trust under the *Land Act 1994*: owner’s consent must be obtained from the trustee.

There may be other ownership arrangements for which ‘ownership’ may need to be decided on a case by case basis and for which an applicant may need to seek its own legal advice.

Further information about owner’s consent requirements for state owned land is available at: <https://www.qld.gov.au/environment/land/state/owner-consent>

Table 1 below provides guidance on the responsible state government agency from which owner’s consent should be sought to make an application on state land or other resource. Applicants should contact the relevant state agency for advice to determine consent and any allocation requirements of a state resource before a development can commence.

## Currency and relevance of the consent

The owner’s consent is to be a current document relevant to the development being proposed. Assessment managers can advise of the acceptable timeframe between the consent being obtained and the development application lodged. The owner’s consent should be specific to the application and include details of the application being made. Generic owner’s consent intended to apply to all development applications over a property should not be accepted.

The applicant is responsible for ensuring the information contained in an application, including the owner’s consent, is true and accurate. It is not the responsibility of the assessment manager or a private certifier to check the accuracy or authenticity of ownership details.

## Disclaimer

The information in this publication is general and does not consider individual circumstances or situations. Where appropriate, independent legal advice should be sought, particularly as some ownership arrangements may require “ownership” to be decided on a case by case basis. Please refer to the following disclaimer which applies to this fact sheet: <https://www.qld.gov.au/legal/disclaimer>.

Table 1 Guidance on the responsible state agency

State land or other resource	State government agency responsible for giving owner’s consent or advice
Land subject to a lease (including a freeholding lease), or a reserve or deed of grant in trust under the <i>Land Act 1994</i> , if the title holder is, or represents, the state government (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	The agency administering the land under the <i>Land Act 1994</i> (e.g. if the land is held by the State of Queensland (represented by the Department of Health), then the Department of Health would provide owner’s consent.
Land subject to a lease (including a freeholding lease), or a reserve under the <i>Land Act 1994</i> (excluding land within a trustee lease), if the title holder is not, or does not represent, the state government (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	Department of Resources (DR).
Strategic port land, other than freehold land (i.e. a lease, reserve or deed of grant in trust under the <i>Land Act 1994</i> in the name of the Port authority) (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	DR.
Land subject to a permit to occupy or licence under the <i>Land Act 1994</i> (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	DR.
Land subject to an estate in fee simple by the state government.	The agency administering the land under the <i>Land Act 1994</i> . If for a transport purpose under the <i>Transport Infrastructure Act 1994</i> then Department of Transport and Main Roads (DTMR) provides consent.
Unallocated state land under the <i>Land Act 1994</i> (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	DR except where involving the following tidal works: <ul style="list-style-type: none"> <li>• Tidal works in a canal: no owner’s consent is required.</li> <li>• If involving tidal works for a structure for residential use adjoining private: Department of Environment and Science (DES).</li> </ul>
Land administered under the <i>Nature Conservation Act 1992</i> .	DES
Land administered under the <i>Forestry Act 1959</i> (excluding quarry material taken under the <i>Forestry Act 1959</i> ).	DES and Department of Agriculture and Fisheries (DAF)
Land administered under the <i>Forestry Act 1959</i> if the application involves quarry material to be sourced from State Forest, Timber Reserve or Forest Entitlement Area.	DAF
Land that is a road (other than a state-controlled road) or stock route under the <i>Land Act 1994</i> .	DR
State-controlled road under the <i>Transport Infrastructure Act 1994</i> .	DTMR
Work on rail corridor land as defined under the <i>Transport Infrastructure Act 1994</i> .	DTMR
Quarry material in tidal water that is unallocated state land ( <i>Coastal Protection and Management Act 1995</i> ).	DES
Water or quarry material in a watercourse or lake under the <i>Water Act 2000</i> .	DR
Quarry material taken under the <i>Forestry Act 1959</i> (excluding land held in fee simple where the quarry material is reserved to the state government, as owner’s consent will need to be provided by the owner of the land).	DAF
A dam that must be failure impact assessed ( <i>Water Supply (Safety and Reliability) Act 2008</i> ).	DR