

REGISTRATION SERVICES

Customer Information Bulletin

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1 CONSENTS ON DISCHARGE OR MODIFICATION OF RESTRICTIVE COVENANTS AND EASEMENTS

Recently problems have arisen as to whose consents are required to support applications for discharge or modification of restrictive covenants or easements registered under the Transfer of Land Act (TLA).

Amongst other requirements, consents may be required under:

- TLA section 136J

“(i) from each person who has a registered interest in, or is a caveator in respect of, any land that is either burdened or benefited by the easement or restrictive covenant”

- TLA section 129B

“by all persons interested in the land affected by such covenant or agreement”

- TLA section 129BB

“each person who has a registered interest in any land burdened by the restrictive covenant”

These requirements for consent relate to interests in the “land”. They are not limited to persons with interests in that land who would be affected by the proposed change. For example, consents under section 136J, include



consents from persons with the benefit or burden of a different restrictive covenant or easement.

In some cases, particularly where there are many lots (for example, “burdened or benefited by the easement or restrictive covenant”), it may be more practical to apply to the Supreme Court under section 129C of the Transfer of Land Act.

Section 129C(1)(b) requires only the consents of “persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction”

As can be seen, consents under section 129C(1)(b) are required from a narrower range of persons than under sections 136J, 129B or 129BB. Each section and matter needs to be considered on its own provisions and facts and a decision made as to the best course of action to follow in obtaining a discharge or modification of an easement or restrictive covenant.

2 CONTENT OF CONSENTS

For some time DLI has been concerned that one-page consents purporting to be part of documents lodged at this office are executed separately from the documents to which they are then attached prior to lodgement. In many cases it is not essential that the consent be part of the principal document, as long as it is clear what the consent relates to when they are presented at DLI.

2.1 Proposed Practice Changes

Please be advised that in respect of documents lodged on or after 30 October 2005, in cases where the Commissioner of Titles or the Registrar of Titles are required to be satisfied that consents have been obtained (eg. under section 136J of the Transfer of Land Act), then the following requirements will apply. However documents currently being prepared should also follow this format.

2.2 Where there is a complete removal of an easement/ restrictive covenant

Each consent is to state in unequivocal terms what is to occur. For example:

(company name ACN) as mortgagee of Mortgage E000123 over Lot 650 on Deposited plan 34101 and being the whole of the land in Certificate of Title Volume 1000 folio 125 hereby consents to Discharge of Easement F12345

2.3 Where the consent relates to the modification of a registered document

Each consent is to state in unequivocal terms what is to occur. For example:

(company name ACN) as mortgagee of Mortgage E000123 over Lot 650 on Deposited plan 34101 and being the whole of the land in Certificate of Title Volume 1000 folio 125 hereby consents to the modification of Easement F12345 as follows

The modifications are to be set out in full, with each page, other than the signature page, initialed; or

The consent must have a copy annexed of the proposed application setting out all of the modifications. All pages of the copy Application must be initialed by the consenting person and his or her witness; or

If the consent page is part of the requesting document then the front page of that document (or its reverse side) is to be initialed by all the consenting parties and their witnesses.

3 CONSENT FORMS

The Lot on Deposited Plan number and the document number the subject of the consent requirement must be included in an appropriate place in the consent form. For example:

I, Bill Smith as proprietor of Lot 650 on Deposited Plan 34101 (being the whole of the land in Certificate of Title Volume 1211 Folio 16) hereby consent to the modification of restrictive covenant F23456 by the deletion of clause 20 of that restrictive covenant.

Consents are to be witnessed. The signature, names and addresses of all witnesses must be included in the consent document. Two examples of applications and consents to modifications (to which are annexed a copy of the application) are set out below. The wording and formats are intended as examples, Applications and consents need not follow the examples, but do need to comply with the above requirements.



BRUCE ROBERTS
REGISTRAR OF TITLES
A/MANAGER
REGISTRATION SERVICES BRANCH

3rd October 2005

Modification Consent (one of the burdened lots)

Registrar of Titles
Department of Land Information
1 Midland Square
MIDLAND WA 6936

Dear Sir,

Restrictive Covenant J100140

I, Fred Smith of 1 Marks Drive, Hillarys, being the registered proprietor of Lot 650 on Deposited Plan 34101 being the whole of the land in Certificate of Title Volume 2591 Folio 150 consent to the modification of Restrictive Covenant J100140:

- In accordance with the application made by Easy Developments Pty Ltd dated 30th May 2005, a copy of which is attached and marked "A".

OR

- As follows;
Clause 4 to read "shall not (except for Lot 601) erect a carport or garage outside the main roof of the residence" on page 2;
Clause 5 to read "shall not (except for Lot 601) display any 'For Sale' sign on the land"; and
(the other modifications)

Dated this 31st May 2005

Fred Smith

Witness signature

Print witness full name

Witness address

Witness telephone

Witness occupation

*NOTE: IF A BANK OR OTHER INSTITUTION IS CONSENTING THEN THIS CONSENT FORM MUST BE SIGNED UNDER THEIR SEAL OR BY THEIR AUTHORISED ATTORNEY.

IF ALTERNATIVE IN FIRST DOT POINT IS BEING USED, SIGNATORY AND WITNESS TO INITIAL THE ATTACHED COPY APPLICATION.

Modification Consent (all burdened lots)

Registrar of Titles
Department of Land Information
1 Midland Square
MIDLAND WA 6936

Dear Sir,

Restrictive Covenant J100140

I, Fred Smith of 1 Marks Drive, Hillarys being the registered proprietor of Lot 650 on Deposited Plan 34101 being the whole of the land in Certificate of Title Volume 2591 Folio 150, consent to the modification of Restrictive Covenant J100140:

- In accordance with the application made by Easy Developments Pty Ltd dated 30th May 2005, a copy of which is attached and marked "A".

OR

- As it applies to Lots 601 to 650 on Deposited Plan 34101 being the whole of the land in Certificates of Title Volumes 2591 Folios 101 to 150 inclusive as follows;

Delete "4. Shall not erect a carport of garage outside the main roof of the residence" on page 2; and

Delete "5. Shall not display any 'For Sale' sign on the land"
(and other modifications)

Dated this 31st May 2005.

Fred Smith

Witness signature

Print witness name

Address

Telephone number

Occupation

*NOTE: IF A BANK OR OTHER INSTITUTION IS CONSENTING THEN THIS CONSENT FORM MUST BE SIGNED UNDER THEIR SEAL OR BY THEIR AUTHORISED ATTORNEY.

IF ALTERNATIVE IN FIRST DOT POINT IS BEING USED, SIGNATORY AND WITNESS TO INITIAL THE ATTACHED COPY APPLICATION.