

# Development assessment – owner’s consent

This fact sheet outlines the requirements for when owner’s consent is required for a development application.

## Summary

The *Sustainable Planning Act 2009* (SPA) makes it mandatory for the owner of the land to which a development application relates to consent to the making of the application.

The development application must contain or be accompanied by the owner’s written consent. Alternatively, the applicant may make a declaration as part of the application that the owner has given written consent to the making of the application (see Application details—IDAS form 1).

A template for the provision of the consent as an attachment to the application is available at <http://www.dilgp.qld.gov.au>

## When is the owner’s consent required?

The owner’s consent is only required for the following development applications:

- application for a material change of use of premises
- application for reconfiguring a lot
- application for work on land below high-water and outside a canal as defined under the

*Coastal Protection and Management Act 1995*, or

- application for work on rail corridor land as defined under the *Transport Infrastructure Act 1994*.

However, there are some exceptions to the above rule. Even if an application is one of the types described above, the owner’s consent to the making of the application is not required to the extent that:

- the land has the benefit of an easement and the development is not inconsistent with the terms of the easement. In this situation, the consent of the owner of the servient tenement is not required
- the land is acquisition land and the application relates to the purpose for which the land is to be taken or acquired.

## Who is the owner of the land?

For the purposes of SPA, ‘owner’ of land means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for the land if it is let to a tenant at a rent. The term ‘land’ is defined to include any estate in, on, over or under land.

In most instances, the registered property owner is the owner of the land for the purposes of SPA and must consent to the making of the application, if required.

## When there are multiple owners

If there are multiple owners of the land to which the application relates and the owner's consent is required under SPA, the consent of each owner must be obtained. For example, if the application relates to one lot, but that lot is owned by a number of people, the consent of each of those persons is required. If the application relates to a number of lots and each lot is held by a different person, the consent of each of those persons is required.

## When the owner is a company

If the owner's consent is required and the owner of the land is a company, the company must consent to the application. The *Corporations Act 2001* (Commonwealth), section 127 details how a company may execute a document.

## When the development site includes an easement

An easement is an interest in land that creates certain rights and obligations. These rights and obligations fall into two categories:

- the land that has the easement located on it is called the 'burdened lot' or 'servient tenement'. The easement may restrict how the owner of the land can use the land subject to the easement. For example, the easement may prevent any structures being built on the land. It can also allow another party to use the land consistent with the terms of the easement
- the land advantaged by the easement is called the 'benefited lot' or 'dominant tenement'. It provides another party, other than the registered proprietor, with benefits and rights to use the easement.

If a development application is lodged for land that benefits from an easement, and the development is consistent with the terms of the easement, the burdened lot owner's consent is not required.

A person (grantee) who benefits from an easement is not an owner for the purposes of SPA. 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.

However, the 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 SPA. This applies equally for an easement in gross.

## Easements in gross

Generally, for an easement to exist there must be a benefited and a burdened lot. The exception to this is the case of an easement in gross (where there is a burdened lot only) granted to public utility providers, for example, local governments and electricity providers. The following easements are usually easements in gross:

- drainage or water reticulation
- water supply
- electricity transmission.

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

## Other ownership arrangements

If the owner's consent is required under SPA and the land is:

- leased, the lessors of the land must give the owner's consent
- state-owned land that is leased or subleased, including under the Land Act 1994, the state as the lessor of the land must give owner's consent
- state land subject to a reserve or deed of grant in trust under the Land Act 1994 and
  - is subject to a state lease, the state must give owner's consent; or
  - within a trustee lease and the proposed use is consistent with the purpose of the trustee lease, the trustee can give owner's consent; or

- is not subject to a lease (state or trustee), the state and, if there is a trustee, the trustee must give owner's consent.

## Power of attorney

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 is required to accompany the consent.

## Recent changes to requirements for evidence of resource entitlement accompanying a development application

Recent changes to SPA have streamlined the development application process for applications involving a state resource by decoupling the SPA application process from the allocation or entitlement process required under other legislation.

The change enables an application to apply for a state resource allocation or entitlement prior to, concurrently with, or following the development application process. It does not mean that the development, if approved, can progress without the necessary resource entitlement.

This will make the development assessment process more efficient for both the application and the assessment manager, as the development application can be accepted by the assessment manager and progressed without waiting for the evidence of an allocation or entitlement to the state resource.

Previously, if evidence of an allocation or an entitlement to the resource was required, then owner's consent was not also required to be sought through a separate process. As a result of the changes to the resource entitlement provisions, owner's consent is now required at the time of lodgement for all relevant applications (including those involving state owned land) in order for the application to be properly made.

This change commenced on the assent of the *Sustainable Planning and Other Legislative Amendments Act (No.2) 2012* (SPOLAA (No.2) 2012) on 22 November 2012. However, it applies only to development applications made after commencement. Applications made prior to this date must provide evidence of the allocation or entitlement if relevant, to be properly made.

A summary table of state resources with relevant legislation and the responsible agency for considering owners consent for the resource is provided at the bottom of this fact sheet. It is recommended that the applicant contact the responsible agency also to determine any allocation requirements of a state resource required for a development.

## Who is responsible for ensuring the owner's consent?

It is not the responsibility of the assessment manager or a private certifier to check the accuracy and authenticity of ownership details. The responsibility of ensuring that the information contained in a development application, including the owner's consent is true and accurate, lies with the applicant.

## Confirmation of details in the acknowledgment notice

The assessment manager should reiterate to the applicant in the acknowledgement notice (if required) that the assessment manager relies on the truth and accuracy of the information provided in the application form and accompanying information when assessing and deciding the application

If an acknowledgment notice is not required, the assessment manager may choose to issue a statement to the applicant advising them the same information.

## Further information

Further fact sheets on related matters are available on the department's [website](#).

## State resource – relevant legislation and responsible state agency

Under recent changes to the *Sustainable Planning Act 2009* to streamline the development application process involving a state resource, the requirement to provide evidence of resource entitlement when lodging an application was removed. Owner's consent from the state agency responsible for the state resource is now required for a development application to be deemed properly made.

As a guide, the following table provides a list of the State resources requiring owner's consent, its respective legislation and the relevant state agency responsible for the resource and considering owner's consent for development applications.

It is recommended that the applicant also contact the relevant state agency to determine any allocation requirements of a state resource before a development can commence.

State resource	Relevant legislation	State agency responsible for issuing owner's consent
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 (excluding quarry material taken under the <i>Forestry Act 1959</i> )	<i>Land Act 1994</i>	The agency administering the land (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 or deed of grant in trust under the <i>Land Act 1994</i> , if the title holder is not, or does not represent, the State (excluding quarry material taken under the <i>Forestry Act 1959</i> )	<i>Land Act 1994</i>	Department of Natural Resources and Mines (DNRM)
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> )	<i>Land Act 1994</i>	DNRM
Land subject to a permit to occupy or licence (excluding quarry material taken under the <i>Forestry Act 1959</i> )	<i>Land Act 1994</i>	DNRM
Land subject to an estate in fee simple by the State	<i>Land Act 1994</i>  <i>Transport Planning and Coordination Act 1994</i>	The agency administering the land (e.g. if the freehold is administered by the State of Queensland (represented by the Department of Health), then the Department of Health would provide owner's consent.  If for a transport purpose under the Transport Infrastructure Act then Department of Transport and Main Roads (TMR) provides consent

State resource	Relevant legislation	State agency responsible for issuing owner's consent
Unallocated State land (excluding quarry material taken under the <i>Forestry Act 1959</i> )	<i>Land Act 1994</i>	DNRM except where involving tidal works listed below.  Tidal works in a canal, then no owner's consent is required.
		If involving tidal works for a structure for residential use adjoining private land such as: <ul style="list-style-type: none"> <li>• private jetty</li> <li>• pontoon</li> <li>• boat ramp</li> </ul> then the Environment and Heritage Protection (EHP) provides owner's consent
		Note: DNRM is responsible for providing owner's consent for tidal works involving fisheries activities such as: <ul style="list-style-type: none"> <li>• aquaculture</li> <li>• works in a Declared FHA</li> <li>• constructing or raising a waterway barrier works</li> <li>• removal, destruction or damage of marine plants</li> </ul> The Department of Agriculture, Fisheries and Forestry (DAFF), however, considers allocation of the resource (e.g. a resource allocation authority)
Land administered under the <i>Nature Conservation Act 1992</i>	<i>Nature Conservation Act 1992</i>	National Parks, Recreation, Sport and Racing (NPRSR)
Land administered under the <i>Forestry Act 1959</i> (excluding quarry material taken under the <i>Forestry Act 1959</i> )	<i>Forestry Act 1959</i>	NPRSR
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	<i>Forestry Act 1959</i>	DAFF
Land that is a road (other than a State-controlled road) or stock route	<i>Land Act 1994</i>	DNRM
State-controlled road	<i>Transport Infrastructure Act 1994</i>	TMR
Work on rail corridor land as defined under the <i>Transport Infrastructure Act 1994</i>	<i>Transport Infrastructure Act 1994</i>	TMR
Quarry material in tidal water that is unallocated State land	<i>Coastal Protection and Management Act 1995</i>	EHP

State resource	Relevant legislation	State agency responsible for issuing owner's consent
Water or quarry material in a watercourse or lake under the <i>Water Act 2000</i>	<i>Water Act 2000</i>	DNRM
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, as owner's consent will need to be provided by the owner of the land)	<i>Forestry Act 1959</i>	DAFF
A dam that must be failure impact assessed	<i>Water Supply (Safety and Reliability) Act 2008</i>	Department of Energy and Water Supply (DEWS)