

1,2Part 39 – High-density Development Easement

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1,2Part 39 – High-density Development Easement

General Law

[39-0000]

As part of urban densification and urban renewal, one type of development is the creation of small lot subdivisions, where lot sizes are much smaller than traditional development lot sizes, typically 70m² to 450m². The size of these lots necessitates unique architectural solutions to provide suitable living spaces. Part 6 Division 4AA of the *Land Title Act 1994* provides for the registration of statutory easements over lots, containing buildings (terrace type houses) with shared common walls. These easements are now referred to as high-density development easements.

These lots are being created as standard format lot subdivisions rather than community title schemes under the *Body Corporate and Community Management Act 1997* and therefore the statutory easement provisions in Part 6A Division 5 of Land Title Act for community titles schemes do not apply.

Purpose of High-density Development Easement

[39-0010]

The purposes for high-density development easements are limited to one or more of the following:

- (a) support;
- (b) shelter;
- (c) projections;
- (d) maintenance of building close to boundary;
- (e) roof water drainage.

Creation of High-density Development Easement

[39-0020]

High-density development easements may only be created over 2 small adjoining lots, and only if—

- a) any of the following applies—
 - (i) a wall of a building situated on 1 of the adjoining lots is also a wall of a building situated on the other adjoining lot, and the wall is on the common boundary of the 2 adjoining lots;
 - (ii) a wall of a building is situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on the same foundation and the foundation is on the common boundary of the 2 adjoining lots;
 - (iii) a wall of a building situated on 1 of the adjoining lots is adjacent to a wall of a building situated on the other adjoining lot, each wall is constructed on a

separate foundation and each foundation is adjacent to the common boundary of the 2 adjoining lots; or

- b) a relevant development approval, under which a requirement for a circumstance mentioned in paragraph (a)(i), (ii) or (iii) applies as a condition, applies to both adjoining lots.

Each lot to which a high-density development easement relates is benefitted and burdened by the high-density development easement to the extent necessary to give effect to the purposes for which the high-density development easement is created.

High-density development easements are not required to be identified on a plan of survey. The size and location of a high-density development easement is limited to the size and location of the structures, and to the extent necessary to give effect to the high-density development easement.

A high-density development easement may not be limited wholly or partly in height or in depth.

A person may grant a high-density development easement to himself/herself as owner of both the lots (s. 86 of the *Land Title Act 1994*).

A high-density development easement may not be amended (s. 91 of the *Land Title Act*).

Currency of High-density Development Easement

[39-0030]

High-density Development Easement to take effect in the future

A high-density development easement that is to take effect at some future time cannot be registered. Under the provisions of s. 85B of the *Land Title Act 1994*, on registration of a high-density development easement, a high-density development easement is created.

Practice

Creation of High-density Development Easement

[39-2000]

High-density development easements are created by a grant of high-density development easement under the provisions of Part 6 Division 4AA of the *Land Title Act 1994*.

High-density Development Easement Created by Grant

[39-2010]

Under s. 82 of the *Land Title Act 1994*, high-density development easements are created upon the registration of a Form 39 – High-density Development Easement.

A high-density development easement may only be created by registering a high-density development easement and the high-density development easement must state the purpose/s of the high-density development easement referring to specific provisions of Part 6 Division 4AA of the *Land Title Act*, and identify the affected land.

A high-density development easement from a person to himself/herself created by registering a high-density development easement cannot include covenants.

Lodgement fees are payable and a duty notation is required.

Consent to High-density Development Easement by Lessee [39-2020]

In view of the provisions of s. 184(1) of the *Land Title Act 1994*, a new high-density development easement requires the consent of every affected lessee of any lot affected by the high-density development easement. The consent must be given on a Form 18 – General Consent and be deposited with the Form 39 – High-density Development Easement.

Merger of a High-density Development Easement within a Lot [39-2030]

If the Registrar creates a single indefeasible title for a number of lots and those lots comprise both the lots the subject of a high-density development easement, the high-density development easement is extinguished by virtue of s. 87(b) of the *Land Title Act 1994*.

Similarly, if lots subject of a high-density development easement are amalgamated into one lot by survey, on creation of the indefeasible title for the amalgamated lot the high-density development easement is extinguished by virtue of s. 87(b) of the Land Title Act.

Modification or Extinguishment of a High-density Development Easement by Surrender

By Order of the Court [39-2040]

Section 181 of the *Property Law Act 1974* enables the court to modify or extinguish a high-density development easement. The court has power to:

- (a) order any person to execute any instrument/s in registrable form to give effect to the order; and
- (b) order the production of any deed or other instrument relating to any land.

If the court orders that the applicant is to execute instrument/s for giving effect to the order, the Registrar's requirements in the following cases are set out below:

- (a) If the court order modifies some or any of the purposes and therefore the statutory provisions applying to the high-density development easement, then a Form 14 – General Request to register the order of the court is lodged, together with a copy of the order.
- (b) If the court order is for the full surrender of the high-density development easement, then a Form 40 – Surrender of High-density Development Easement is lodged. A copy of the court order is required if any person authorised by the court, other than the registered proprietor of the lots, has executed any instrument.

For information about depositing supporting documentation see [60-1030].

See also part 40 – Surrender of High-density Development Easement.

Forms

General Guide to Completion of Forms [39-4000]

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

Duty Imprint

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1. Registered Owners	Lodger (Name, address, E-mail & phone number)	Lodger Code (if any)
DAVID JOHN TYSON	BROWN & CO	
MICHAEL WAYNE SMITH	34 QUEEN STREET BRISBANE QLD 4000 info@browns.com.au (07) 3224 5398	

2. Lot on Plan Descriptions of Affected Land	Title Reference
LOT 3 ON SP123456	15432099
LOT 6 ON SP134567	16253266

3. Consideration
\$1.00

4. Purpose/s of High-density Development Easement
<ul style="list-style-type: none"> ● Support (section 95 Land Title Act 1994) ● Shelter (section 96 Land Title Act 1994) ● Projections (section 96A Land Title Act 1994) ● Maintenance of building close to boundary (section 96B Land Title Act 1994) ● Roof water drainage (section 96C Land Title Act 1994)
Note: rule through if purpose is not applicable

5. Grant/Execution

The registered owners identified in item 1 reciprocally grant the High-density Development Easement over the land identified in item 2, for the purpose/s stated in item 4, and covenant with each other in terms of Division 4AA of the Land Title Act 1994.

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

<i>P L Fish</i>signature		
PETA LAUREL FISHfull name		
SOLICITORqualification	21 / 12 / 2017 Execution Date	<i>David J Tyson</i> Registered Owner's Signature
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)		
<i>P L Fish</i>signature		
PETA LAUREL FISHfull name		
SOLICITORqualification	21 / 12 / 2017 Execution Date	<i>Michael W Smith</i> Registered Owner's Signature
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)		

Guide to Completion of Form 39

General

[39-4010]

A Form 39 – High-density Development Easement is used when a high-density development easement is granted under Part 6 Division 4AA of the *Land Title Act 1994*.

Item 1

[39-4020]

Insert the full name of the parties to the high-density development easement as shown on the current title search, i.e. the registered owners of both lots affected by the high-density development easement. If the registered owner is a tenant in common, all tenants in common must join in one high-density development easement and not grant high-density development easements individually.

Item 2

[39-4030]

Lot on Plan Descriptions of Affected Land

Insert the lot on plan descriptions of the affected land.

Item 3

[39-4040]

Insert the monetary or other consideration.

Item 4

[39-4050]

The inapplicable purposes must be deleted by being ruled through.

Item 5

[39-4060]

All registered owners of the lots the subject of the high-density development easement must execute as required. Separate executions are required for each registered owner, even if they are the same for both lots.

See also Part 61 – Witnessing and Execution of Instruments or Documents, esp ¶[61-3000] *ff*.

Case Law

[39-7000]

Nil.

Fees

[39-8000]

Fees payable to the titles registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see the current Land Title Regulation.

Cross References and Further Reading

[39-9000]

Part 40 – Surrender of High-density Development Easement

Part 61 – Witnessing and Execution of Instruments or Documents *ff*

Notes in text**[39-9050]**

Note ¹ – This part does not apply to water allocations.

Note ² – This part does not apply to State land.