

Queensland



ANNO TRICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 53 of 1981

An Act to amend the Building Act 1975–1979 in certain
particulars

[ASSENTED TO 12TH JUNE, 1981]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Building Act Amendment Act 1981*.

(2) In this Act the *Building Act 1975–1979* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Building Act 1975–1981*.

2. Commencement of Act. (1) Section 1 and this section shall commence on the date this Act is assented to for and on behalf of Her Majesty.

(2) Except as is prescribed by subsection (1), the provisions of this Act shall commence on a date to be appointed by Proclamation.

3. Amendment of s. 3. Arrangement of Act. Section 3 of the Principal Act is amended by—

(a) omitting the words “PART V—OBJECTIONS, APPEALS AND REFERENCES AGAINST LOCAL AUTHORITIES’ DECISIONS” and substituting the words “PART V—OBJECTIONS AND APPEALS AGAINST LOCAL AUTHORITIES’ DECISIONS”;

(b) omitting the words “*Division IIIA—References to Minister Against Referee’s Determination Relating to Amenity of Neighbourhood or Aesthetics;*”.

4. Amendment of s. 4. Crown to be bound. Section 4 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:—

“(5) For the purposes of this section—

(a) the following shall be deemed to represent the Crown in right of the State within the limitations provided for in or under this paragraph (a), that is to say:—

(i) The Queensland Electricity Generating Board constituted under the *Electricity Act 1976–1980*, in respect of the erection of an electricity power station and its ancillary works on land declared by the Governor in Council, by Order in Council, to be land on which the board may erect such station or works in a capacity deemed to be representative of the Crown;

(ii) A Harbour Board constituted under the *Harbours Act 1955–1980*, the Port of Brisbane Authority constituted under the *Port of Brisbane Authority Act 1976–1979*, and the Gold Coast Waterways Authority constituted under the *Gold Coast Waterways Authority Act 1979–1980* in respect of the erection of a structure not being a building classified in Part 6 of the Standard Building By-laws;

- (iii) Any statutory body declared by the Governor in Council, by Order in Council, to the extent (if any) expressed in the order.
- (b) the expression “ the prescribed Minister ” means—
 - (i) in the case where a department of the Government of the State is responsible for the erection of the building or other structure in question, the Minister of the Crown for the time being administering that department; and
 - (ii) in the case where a board or an authority referred to in paragraph (a) or a statutory body specified in an Order in Council pursuant to paragraph (a) is responsible for the erection of the building or other structure in question, the Minister of the Crown for the time being administering the Act under which the board, authority or body is constituted.

5. Amendment of s. 11. Standard Building By-laws a complete code. Section 11 of the Principal Act is amended by adding at the end of the section the following subsections:—

“(3) A Local Authority shall not have power to make a by-law or to adopt a policy authorizing it to refuse an application for approval to the erection of a building or other structure on the ground that, in its opinion or in the opinion of its delegate, the building or other structure would adversely affect the amenity or likely amenity of its neighbourhood or the appearance of the building or other structure when erected would not be in keeping with the character of its neighbourhood.

(4) A by-law or policy, such as is referred to in subsection (3), made or adopted by a Local Authority and subsisting at the date of commencement of the *Building Act Amendment Act 1981* shall, in the case of a by-law, be inoperative and, in the case of a policy, be unlawful and of no force or effect.”

6. New Sections 12A et seq. The Principal Act is amended by inserting after section 12 the following sections:—

“**12A. By-laws Variation Sub-Committee.** (1) For the purpose of determining whether the Standard Building By-laws should be varied in respect of a building or other structure proposed to be erected, there shall be constituted a standing sub-committee of the Building Advisory Committee constituted under Part IV, which shall be called the By-laws Variation Sub-Committee.

- (2) The By-laws Variation Sub-Committee shall be constituted by—
 - (a) the chairman of the Building Advisory Committee;
 - (b) the member of the Building Advisory Committee who is the representative of Local Authorities; and
 - (c) a member of the Building Advisory Committee nominated by the Director of Local Government, from time to time as occasion requires, who shall be—
 - (i) in any case, a person with qualifications or experience appropriate to the matter of the application; and

- (ii) in the case of an application made to the sub-committee on behalf of the Crown in right of the State, a person employed by the Crown in right of the State.

(3) A member of the By-laws Variation Sub-Committee shall be paid such remuneration as may be prescribed:

Provided that a member of the sub-committee who is an officer of the Public Service of the State shall not be paid any remuneration on account of his attendance at meetings of the sub-committee during his ordinary hours of duty as such an officer but he shall be entitled to expenses as prescribed necessarily incurred by him in so attending.

12B. Variation of Standard Building By-laws. (1) Where a building or other structure proposed to be erected does not comply in all respects with the Standard Building By-laws, then, before an application is made to a Local Authority for its approval to such erection, application may be made to the By-laws Variation Sub-Committee for a variation of those by-laws in their application to that building or structure in the particular or particulars specified in the application.

(2) An application shall not be made under subsection (1) for a variation in any particular that, pursuant to the Standard Building By-laws, lies within the power of a Local Authority to approve.

(3) An application under subsection (1) shall be made in the prescribed form to the secretary to the Building Advisory Committee and shall be accompanied by the prescribed fee payable upon submission of the application to him.

12C. Determination of application to vary. (1) The By-laws Variation Sub-Committee, after considering an application made to it under section 12B (1) and after consulting upon the application with the Local Authority of the Area in which the building or structure to which the application relates is proposed to be erected, may—

- (a) approve the application;
- (b) approve the application subject to conditions; or
- (c) refuse the application.

(2) The secretary to the Building Advisory Committee shall, in writing, notify the sub-committee's decision on an application to the applicant and to the Local Authority of the Area in which the building or structure to which the application relates is proposed to be erected.

Such notification or notifications shall be given within 7 days from the date on which the sub-committee made its decision.

12D. Effect of variation. Where the By-laws Variation Sub-Committee has approved an application made to it under section 12B (1), with or without conditions—

- (a) the Standard Building By-laws shall, subject to the result of any appeal brought in respect thereof, be construed to apply in relation to the building or structure to which the application

relates, and to no further extent, as if they had been amended in accordance with the sub-committee's decision and, if that decision is subject to conditions, shall be so construed only if those conditions are satisfied; and

- (b) it shall not be competent to a Local Authority to refuse an application for its approval to the erection of the building or structure to which the sub-committee's decision relates on the ground that the building or structure does not comply with the Standard Building By-laws in the particular or particulars in which those by-laws are to be construed as if they had been amended.

12E. Appeal from sub-committee's decision. (1) An applicant aggrieved by a decision of the By-laws Variation Sub-Committee may appeal against that decision to the Building Advisory Committee.

(2) Every such appeal shall be instituted within 30 days after notification of the sub-committee's decision is given to the applicant by the secretary to the Committee, and not later, by lodging with such secretary a duly completed notice of appeal accompanied by the prescribed fee.

(3) A notice of appeal—

- (a) shall be in or to the effect of the prescribed form; and
- (b) shall specify the grounds of appeal and the facts and circumstances relied on by the appellant in support of those grounds.

12F. Procedure on appeal. (1) As soon as is practicable after receipt by him of a notice of appeal the secretary to the Committee shall, after consulting with the chairman of the Committee, appoint a time and place when and where the Committee will consider the matter of the appeal and shall notify the appellant thereof in writing.

(2) If at the time and place so appointed a quorum of the Committee is present, including at least four members of the Committee of whom none was a member of the sub-committee against whose decision the appeal in question is brought, the Committee—

- (a) shall enter upon consideration of the matter of the appeal; and
- (b) shall receive such representations thereon as are made to it by or on behalf of the appellant.

(3) If at the time and place so appointed or at any time and place to which the appeal is adjourned there is no appearance by or on behalf of the appellant (as permitted by section 49) it shall be taken that he does not wish to make any representations or, as the case may be, further representations on the matter of the appeal and the Committee may proceed to decide the appeal without further reference to the appellant.

(4) Upon its entering upon consideration of an appeal the Committee—

- (a) may adjourn the proceeding to such time and place certain as it considers necessary to a proper consideration and decision of the appeal;
- (b) shall be competent to give its decision on the appeal notwithstanding that a change or vacancy in its membership has occurred since the time of its entering upon such consideration; and
- (c) in respect of the decision appealed against—
 - (i) may confirm it;
 - (ii) may vary it as the Committee thinks fit; or
 - (iii) may quash it.

(5) The secretary to the Committee shall, in writing, notify the Committee's decision on an appeal to the appellant and where the decision has the effect of approving, with or without conditions, an application made to the By-laws Variation Sub-Committee under section 12B, the secretary shall also, in writing, notify the Local Authority of the Area in which the building or structure to which the application relates is proposed to be erected.

12G. Effect of Committee's decision. The decision of the Committee upon an appeal against a decision of the By-laws Variation Sub-Committee—

- (a) shall, subject to the right of appeal conferred by this Act, be final and binding;
- (b) shall be deemed to be the sub-committee's decision on the application in respect of which it made its decision appealed against; and
- (c) where it has the effect of approving such application, with or without conditions, shall have the effect prescribed by section 12D for a variation approved by the sub-committee.”.

7. Repeal of and new s. 30B. The Principal Act is amended by repealing section 30B and substituting the following section:—

“**30B. Powers of Local Authority.** (1) A Local Authority to which is made an application for approval to the erection of a building or other structure shall consider the application and in connexion therewith shall determine—

- (a) whether the building or other structure to which the application relates complies with the relevant provisions of the Standard Building By-laws, having regard to any variation thereof made under section 12C or 12F;
- (b) if such building or other structure does not so comply, the particulars in which it does not so comply.

- (2) Following its making the determination required by subsection (1) a Local Authority shall decide on the application and in so doing may—
- (a) approve the application;
 - (b) approve the application subject to reasonable conditions;
or
 - (c) refuse the application.

(3) The Clerk of a Local Authority shall, in writing, notify the Local Authority's decision on an application to the applicant and, where the decision has been made as the result of a direction of a referee given pursuant to section 35, the Clerk shall also, in writing, notify the referee.

Such notification or notifications shall be given within 7 days from the date on which the Local Authority makes its decision.

- (4) A notification given under subsection (3) shall state—
- (a) the grounds for the imposition of conditions to which a Local Authority's decision on an application has been made subject;
 - (b) the reasons for the refusal of an application by a Local Authority.”.

8. New s. 30C. The Principal Act is amended by inserting after section 30B the following section:—

“**30C. Application for preliminary decision.** (1) Before a person makes an application under section 30A to a Local Authority for approval to the erection of a building or other structure proposed to be erected, he may make application to the Local Authority for its decision as to the application of the Standard Building By-laws to any aspect of the design or method of construction of the building or other structure.

(2) An application under subsection (1) to a Local Authority shall be made in the manner prescribed from time to time in the Standard Building By-laws.

(3) The Clerk of a Local Authority shall, in writing, notify the Local Authority's decision on an application under subsection (1) to the applicant within 7 days from the date on which the Local Authority makes its decision.

(4) Where a Local Authority has given a decision on an application made under subsection (1) it shall subject to any alteration or reversal thereof upon a reference or appeal pursued to this Act be bound by that decision for the purposes of an application made to it under section 30A in relation to the building or other structure to which the firstmentioned application related.”.

9. New s. 30D. The Principal Act is amended by inserting after section 30C the following section:—

“**30D. Application of Act etc. to offshore buildings and structures.** (1) A person shall not, on foreshore abutting upon the Area of a Local Authority or in or over the waters superadjacent or adjacent to such foreshore, erect any building or other structure in respect of which the

Standard Building By-laws would require the approval of the Local Authority were the building or other structure to be erected within the Area, unless the approval of that Local Authority has first been obtained.

(2) A Local Authority may exercise in respect of an application for approval to the erection of a building or other structure proposed to be erected on foreshore or in or over the waters referred to in subsection (1) and in respect of a building or other structure being erected at such a site and in respect of the person for whom the building or other structure is being erected at such a site, all or any of the powers conferred on it by this Act or the Standard Building By-laws as if such site were within its Area."

10. Amendment of Part V heading. Objections, Appeals and References against Local Authorities' Decisions. The Principal Act is amended by, in the heading to Part V, omitting the words "**APPEALS AND REFERENCES**" and substituting the words "**AND APPEALS**".

11. Amendment of s. 31. Objection to decision under Standard Building By-laws. Section 31 of the Principal Act is amended by, in subsection (1), omitting from provision (c) the words "or other structure," and substituting the following words:—

"or other structure; or

(d) a decision on an application under section 30C,".

12. Amendment of s. 35. Powers of referee. Section 35 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1);

(b) adding at the end of the section the following subsections:—

"(2) Where an objection relates to an application for approval to the erection of a building or other structure in respect of which the Local Authority to whom it was made—

(a) has failed to make its decision; or

(b) has refused the application without making the determination referred to in paragraph (a) of section 30B (1),

the referee may, either before or after entering upon the determination, direct the Local Authority, in writing, to decide the application in accordance with section 30B within a time therein limited by the referee and, if he does so, shall notify the objector accordingly.

The referee may from time to time by notice in writing to the Local Authority extend the time within which the Local Authority is to comply with a direction issued by him to the Local Authority whereupon—

(a) the direction shall be construed as if the time as last so extended were limited therein in lieu of the time actually limited therein; and

(b) he shall notify the objector accordingly.

(3) Where a referee has exercised the power conferred on him by subsection (2) he shall, upon receipt by him of notification by the Clerk of the Local Authority concerned pursuant to section 30B (3), enter upon or continue with his determination of the relevant objection (in its amended form, where the objector has exercised his entitlement conferred by section 35A) in accordance with section 34 and this section.”

13. New s. 35A. The Principal Act is amended by inserting after section 35 the following section:—

“**35A. Amendment of notice of objection.** Where a referee has exercised the power conferred on him by section 35 (2) the objector is entitled to amend or add to the grounds of his objection, having regard to the decision of the Local Authority on his application, before the referee enters upon or continues with his determination of the objection pursuant to section 35 (3).”

14. Repeal of and new s. 37. Appeal to Committee against referee’s determination. The Principal Act is amended by repealing section 37 and substituting the following section:—

“**37. Appeal to Committee against referee’s determination.** Subject to this Act, an objector who or a Local Authority that is aggrieved by the determination of a referee on an objection made under section 31 may appeal against such determination to the Committee.”

15. Amendment of s. 42. Appeal to Local Government Court. Section 42 of the Principal Act is amended by in subsection (1), inserting after the words “brought against” the words “the decision of the By-laws Variations Sub-Committee on an application made to it or”.

16. Repeal of ss. 46A, 46B and 46C. The Principal Act is amended by—

- (a) omitting the heading appearing immediately before section 46A; and
- (b) repealing sections 46A, 46B and 46C.

17. Amendment of s. 49. Representation of parties. Section 49 of the Principal Act is amended by inserting between the word “before” and the words “a referee”, wherever the expression “before a referee” occurs, the words “the By-laws Variation Sub-Committee or”.

18. Amendment of s. 56. Demolition or repair of building etc. made dangerous by act of nature or other calamity. Section 56 of the Principal Act is amended by, in subsection (1), inserting after the word “abuts” the words “or to which it is adjacent or to users of adjacent land”.

19. Amendment of s. 71. Repeal of s. 39 of Local Government Act. Section 71 of the Principal Act is amended by—

- (a) adding at the end of the note appearing in and at the commencement of the section the words “. Fire Zones”;

(b) adding at the end of the section the following subsection:—

“(3) The Minister may, if requested by the Local Authority of an Area that contains a fire zone referred to in subsection (2), by notification published in the Gazette declare a part of the Area, defined in the notification, to be excluded from the fire zone constituted by it or of which it forms a part, and thereupon the defined part shall cease to constitute or to form part of that fire zone.”.

20. Amendment of s. 75. Ordinance 801 of City of Brisbane Ordinances inoperative. Section 75 of the Principal Act is amended by—

(a) adding at the end of the note appearing in and at the commencement of the section the words “. Fire Zones ”;

(b) adding at the end of the section the following subsection:—

“(3) The Minister may, in respect of land that is or is in a fire zone under subsection (2) if requested by Brisbane City Council, by notification published in the Gazette declare that land or part thereof, in either case defined in the notification, to be excluded from the fire zone, and thereupon the defined land shall cease to constitute or form part of that fire zone.”.