

Queensland



ANNO TRICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

An Act to provide for the registration of certain plans each in respect of part of a building on certain land in Surfers Paradise in the State of Queensland; and for related purposes

[PASSED THIRD READING 21ST DECEMBER, 1983; ASSENTED TO 6TH JANUARY, 1984]

Preamble: Whereas H.S.P. (Nominees) Pty. Limited, a company duly incorporated in Queensland having its registered office at Paradise Centre, Cavill Avenue and Gold Coast Highway, Surfers Paradise in the said State, is the registered proprietor of an estate in fee simple of certain land situate in the County of Ward Parish of Gilston being land bounded by Hanlan Street, Gold Coast Highway and Cavill Avenue Surfers Paradise in the said State:

And whereas H.S.P. (Nominees) Pty. Limited is desirous of having plans registered under the *Building Units and Group Titles Act 1980* in respect of a certain building to be constructed or in the course of construction thereon each of which plans is not in respect of a whole building:

And Whereas no provision exists for the registration of such plans under the *Building Units and Group Titles Act 1980*:

And Whereas it is desirable to make provision for the registration of such plans and to provide for the consequences thereof:

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. This Act may be cited as the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*.

2. Application of Building Units and Group Titles Act 1980. Save to the extent that this Act is inconsistent with the provisions of the *Building Units and Group Titles Act 1980* in which case the provisions of this Act shall apply, the provisions of that Act which relate to the subdivision of land by the registration of building units plans and apply in respect of those plans shall apply in respect of the subdivision of parcel 3 by the registration of an upper plan and a lower plan pursuant to this Act and in respect of those plans as if those plans were building units plans under that Act and for those purposes references in that Act to building units plans, lots, common property, parcel, subdivision of land and body corporate shall be construed as references to upper plan or lower plan, lots, common property, parcel, subdivision of part of parcel 3 and a body corporate of the upper plan or lower plan respectively within the meaning of this Act.

3. Interpretation. In this Act and in all instruments purporting to be made or executed hereunder, unless the contrary intention appears—

(a) the terms used shall have the meanings respectively assigned to them in section 7 of the *Building Units and Group Titles Act 1980*;

(b) — “building” means the building constructed at the material time on parcel 3 the plans and specifications in relation to which have been approved by the local authority;

- “ common property ” in relation to the upper plan or the lower plan, means so much of parcel 3 comprised in that plan as from time to time is not comprised in a lot;
- “ local authority ” means the Council of the City of Gold Coast;
- “ lot ” means a lot shown as such on the upper plan or, as the case may be, on the lower plan;
- “ lower plan ” means the plan which—
- (i) is described in the title or heading thereto as a lower plan;
 - (ii) comprises that part of parcel 3 which part is below reduced level 15·797 metres on Australian Height Datum;
 - (iii) shows the part of the building comprised therein as divided into lots;
 - (iv) shows the common property comprised therein; and
 - (v) complies with—
 - (A) the provisions of section 4 of this Act; and
 - (B) the provisions of the *Building Units and Group Titles Act* 1980 relating to building units plans save to the extent that those provisions are inconsistent with this Act;
- “ parcel ” means—
- (i) in relation to the lower plan, the land comprised in the plan below reduced level 15·797 metres on Australian Height Datum;
 - (ii) in relation to the upper plan, the part of parcel 3 above reduced level 15·797 metres on Australian Height Datum;
- “ parcel 3 ” means that piece of land situated in the County of Ward, Parish of Gilston described as lot 4 on registered plan numbered 166140 or the balance of that piece that at the material time remains after the truncation of any part of that land;
- “ road ” means a road as defined in the *Local Government Act* 1936–1982;
- “ upper plan ” means the plan which—
- (i) is described in the title or heading thereto as an upper plan;
 - (ii) comprises that part of parcel 3 which part is above reduced level 15·797 metres on Australian Height Datum;
 - (iii) shows the part of the building comprised therein as being divided into lots;
 - (iv) shows the common property therein; and

(v) complies with—

(A) the provisions of section 4 of this Act; and

(B) the provisions of the *Building Units and Group Titles Act 1980* relating to building units plans save to the extent that those provisions are inconsistent with this Act.

4. Registration of upper plan and lower plan. (1) At any time before but not after 1 January 2004, the upper plan and the lower plan may be registered in the manner provided by or under this Act.

Each plan shall—

(a) delineate the external surface boundaries of the parcel and the location of the relevant part of the building in relation thereto;

(b) in the case of the lower plan, have annexed thereto a sheet containing a schedule of the easements referred to in section 6 (including a diagram or diagrams drawn to scale identifying the location and extent of those easements signed by the Town Clerk of the local authority and certified by a licensed surveyor registered under the *Surveyors Act 1977–1983*.

(2) The boundary between the parts of the building comprised in the lower plan and the upper plan shall be a horizontal plane through the centre of a floor of the building.

(3) Upon lodgement for registration of the upper plan and the lower plan, the Registrar of Titles shall allot thereto the numbers upper plan 3 and lower plan 3 respectively.

(4) The lower plan may define any boundary of a lot by reference to any structural element in lieu of walls.

(5) Subject to this section, the upper plan and the lower plan shall be registered as provided in the *Building Units and Group Titles Act 1980* in relation to building units plans.

(6) Upon registration of the lower plan, a part of a lot comprised therein may be leased without the approval of the local authority.

5. Support and services. (1) The easements implied between the proprietors of lots pursuant to section 15 of the *Building Units and Group Titles Act 1980* shall also be implied—

(a) in favour of the body corporate of the upper plan and the proprietors of lots comprised in that plan affected thereby and as appurtenant thereto; and

(b) as against the body corporate of the lower plan and the proprietors of lots comprised in that plan affected thereby and to which they shall be subject,

as if the parcel comprised in the upper plan were a lot referred to in paragraph (a) of that section and the parcel comprised in the lower plan were a lot referred to in paragraph (b) of that section.

(2) The easements implied between proprietors of lots pursuant to section 17 of the *Building Units and Group Titles Act 1980* shall also be implied between—

- (a) the bodies corporate of the upper plan and of the lower plan as if both bodies corporate were proprietors of lots; and
- (b) the proprietors of the lots of both plans as if they were the proprietors of lots,

in the one building units plan under that Act.

(3) In respect of each of—

- (a) the upper plan of parcel 3 and the lower plan of parcel 2;
- (b) the upper plan of parcel 3 and the lower plan of parcel 1;
- (c) the lower plan of parcel 3 and the lower plan of parcel 2;
- (d) the lower plan of parcel 3 and the lower plan of parcel 1;

the easements implied between proprietors of lots pursuant to section 17 of the *Building Units and Group Titles Act 1980* shall also be implied between—

- (e) each of the bodies corporate of the plans referred to in provision (a), (b), (c) or (d) as if in each case both bodies corporate were proprietors of lots; and
- (f) the proprietors of the lots of both plans referred to in provision (a), (b), (c) or (d) as if in each case they were the proprietors of lots,

in the one building units plan under that Act.

(4) The easements conferred by this section shall not be exercised by a body corporate or the proprietor of a lot in such a manner as unreasonably to prevent any proprietor from enjoying the use and occupation of his lot and common property.

(5) For the purposes of this section the expression “lower plan of parcel 2” and the expression “lower plan of parcel 1” means the lower plan 2 and the lower plan 1 each respectively registered pursuant to the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*.

6. Right of way. (1) There shall be implied in favour of the proprietor of each lot on the upper plan and as appurtenant thereto—

- (a) an easement or easements or right of way for and sufficient to allow the passage of the proprietor, his servants, agents, invitees and licensees to and from the parcel of the upper plan from and to a road through or by means of stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways through the common property of the lower plan and identified as easements in a sheet annexed to the lower plan;
- (b) an easement or easements of right of way sufficient to allow vehicles to pass to and from the parcel of the upper plan from and to a road through the common property of the lower plan over or by means of the roadways or ramps identified as easements for vehicular purposes in a sheet annexed to the lower plan.

(2) There shall be implied as against the body corporate of the lower plan and the proprietor of each lot comprised in that plan affected thereby and to which they shall be subject—

- (a) an easement or easements of right of way for and sufficient to allow the passage of the proprietor of a lot in the upper plan, his servants, agents, invitees and licensees to and from the parcel of the upper plan from and to a road through or by means of stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways through the common property of the lower plan and identified as easements in a sheet annexed to the lower plan;
- (b) an easement or easements of right of way sufficient to allow vehicles to pass to and from the parcel of the upper plan from and to a road through the common property of the lower plan over or by means of the roadways or ramps identified as easements for vehicular purposes in a sheet annexed to the lower plan.

7. Maintenance, repair and upkeep of stairs etc. (1) The stairs, escalators, lifts, ramps, passages, roadways, corridors and shafts in respect of which easements are implied pursuant to section 6 shall be maintained, repaired and kept in good order and condition by the body corporate of the upper plan or of the lower plan shown to have responsibility therefor in a sheet annexed to the lower plan.

(2) The costs of maintenance, repair and upkeep in respect of each such easement shall be borne by the body corporate of the upper plan and the body corporate of the lower plan respectively in the proportions set out in a sheet annexed to the lower plan.

A body corporate which incurs expenditure towards such costs may demand in writing (accompanied by receipts or invoices or copies thereof evidencing the expenditure in respect thereof) the amount that the other body corporate is liable to contribute towards those costs. The body corporate may recover any amount not paid within seven days of the demand as a debt due and owing to it.

(3) Where a body corporate is in breach of any obligation imposed on it under subsection (1) and fails to remedy that breach within seven days of notice to it by the other body corporate calling upon it so to do, that other body corporate may do all such things as are necessary or desirable to remedy that breach.

8. Ancillary rights. All ancillary rights and obligations necessary to make easements effective shall apply in respect of easements implied or created by this Act.

9. Destruction of or substantial damage to building. (1) Where the building or part thereof is destroyed or substantially damaged, the body corporate of the upper plan or of the lower plan may apply to the Court for relief pursuant to subsection (2).

(2) Upon being satisfied that the applicant is the body corporate of the upper plan or of the lower plan and that the building or part of the building has been destroyed or substantially damaged the Court may order—

- (a) that the upper plan and lower plan be extinguished and that parcel 3 be sold by public auction or private treaty and that the proceeds of sale be distributed between the proprietors of the lots of the upper plan and the proprietors of the lots of the lower plan in such proportions as the Court may determine to be just and equitable in all the circumstances of the case;
- (b) that the building or part thereof be reinstated or repaired and that the cost of such reinstatement or repair be borne by the bodies corporate of the upper plan and the lower plan in such proportions as the Court may determine to be just and equitable in all the circumstances of the case; or
- (c) that the interests of the proprietors of the lots of the upper plan or the lower plan be adjusted *inter se* to such extent as the Court considers just and equitable including by the transfer or vesting of the interest or interests of a proprietor of a lot to or in the proprietor of another lot with or without payment of compensation.

In the exercise of its powers under this subsection the Court may make such further or other orders, impose such terms and conditions and give such directions as it considers necessary or expedient.

The upper plan or lower plan shall not be extinguished otherwise than as provided in this section.

10. Bodies corporate. (1) The body corporate in respect of the upper plan shall be under the name “The Proprietors—(insert name endorsed upon the plan) Upper Plan No. 3”.

(2) The body corporate in respect of the lower plan shall be under the name “The Proprietors—(insert name endorsed upon the plan) Lower Plan No. 3”.

11. Insurance. (1) Each body corporate shall insure and keep insured that part of the building included in its plan under a contract of insurance providing in the event of that part of the building being destroyed or damaged by storm, tempest, fire, lightning, explosion or any other occurrence specified in the policy—

(a) for—

- (i) the rebuilding of that part of the building in the event of its destruction; and
- (ii) the repair of damage to or the restoration of the damaged portion of that part of the building in the event of its being damaged but not destroyed,

so that, in the case of destruction, that part is rebuilt or replaced and, in the case of damage, repaired or restored, in a condition no worse nor less extensive than its condition when new; and

(b) for the repayment of expenses incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

(2) The proceeds of any such contract of insurance shall not be used or capable of being used or paid to any person except for the purposes set out in provisions (a) and (b) of subsection (1) unless, in the case of destruction, that part of the building has been rebuilt or replaced or in the case of damage, that part of the building has been repaired or restored.

(3) If a body corporate fails to effect or maintain insurance in accordance with the requirements of subsection (1), the other body corporate in respect of parcel 3 may effect the insurance in the name of and may recover from the first mentioned body corporate the amount of any premium so paid by it as a debt due and owing to it by the first mentioned body corporate:

Provided that the other body corporate shall not effect such insurance unless the first mentioned body corporate fails to produce to or deliver to it a receipt, or other document issued or produced by an insurer, or a photostat copy thereof, evidencing the payment of a premium sufficient to effect or maintain such insurance within seven days of written demand in that regard being made by it to the first mentioned body corporate.

12. Valuation of lots for rating and land tax purposes. For the purposes of applying the provisions of Division 7 of Part IV of the *Building Units and Group Titles Act 1980* in respect of lots the subject of the upper plan or the lower plan, the unimproved value of the parcel in relation to that plan shall be—

(a) in the case of the upper plan, 45 per centum;

(b) in the case of the lower plan, 55 per centum,

of the unimproved value of parcel 3.