

Queensland



**TOWNSVILLE
BREAKWATER
ENTERTAINMENT CENTRE
AMENDMENT ACT 1997**

Act No. 19 of 1997

Queensland



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PART 4—FIRST AMENDMENT AGREEMENT

Queensland



**Townsville Breakwater Entertainment Centre
Amendment Act 1997**

Act No. 19 of 1997

**An Act to amend the *Townsville Breakwater Entertainment Centre Act*
1991**

[Assented to 15 May 1997]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Townsville Breakwater Entertainment Centre Amendment Act 1997*.

Act amended

2. This Act amends the *Townsville Breakwater Entertainment Centre Act 1991*.

Amendment of s 2 (Objects of Act)

3. Section 2—

insert—

‘(g) to authorise the Council of the City of Thuringowa and the Council of the City of Townsville to vary the joint venture with the trustee to enable the upgrading of the Townsville Breakwater Entertainment Centre.’.

Amendment of s 3 (Definitions)

4. Section 3, definition “**Townsville Breakwater Entertainment Centre**”, after ‘site’—

insert—

‘and includes the centre as upgraded from time to time’.

Amendment of s 4 (Powers conferred on Local Governments)

5.(1) Section 4(1)—

insert—

‘(ab) any upgrading of the buildings on the site; and’.

(2) Section 4(1)(b), “operation or ownership”—

omit, insert—

‘operation, ownership or upgrading’.

Amendment of s 6 (Agreements have force of law)

6. Section 6, ‘the joint venture’ to ‘for the purposes of this Act;’—

omit, insert—

‘the joint venture in terms set out in schedule 1, part 1, 2, 3 or 4’.

Amendment of s 9 (Contribution by State)

7. Section 9—

insert—

‘(2) The Treasurer may contribute to the purposes of the joint venture, out of amounts appropriated by Parliament, a further amount of not more than \$11.5 million for the upgrading of the Townsville Breakwater Entertainment Centre.’.

Insertion of new s 14A

8. After section 14—

insert—

‘Adjustment of interests as tenants in common

‘14A.(1) This section applies if, after the commencement of this section, a joint venturer makes a further contribution under the agreement set out in schedule 1, part 1 as varied by the agreement set out in schedule 1, part 4.

‘(2) The respective interests of the joint venturers in the site must be adjusted under the agreement as varied.’.

Amendment of sch 1

9. Schedule 1, after part 3—

insert—

‘PART 4—FIRST AMENDMENT AGREEMENT

THIS AGREEMENT is made the day of 1997

BETWEEN

(1) **PERPETUAL TRUSTEES QUEENSLAND LIMITED** (ACN 009 656 811) a company duly incorporated and having its registered office at 10th Floor, Riverside Centre, 123 Eagle Street, Brisbane, in the State of Queensland as trustee of the Breakwater Island Trust (hereinafter called “the Trustee”)

AND

(2) **BREAKWATER ISLAND LIMITED** (ACN 010 271 691) a company duly incorporated and having its registered office at Ground Floor, Garden Square, 643 Kessels Road, Upper Mount Gravatt, in the State of Queensland (hereinafter called “the Manager”)

AND

(3) **COUNCIL OF THE CITY OF TOWNSVILLE** a local government duly constituted under the provisions of the Local Government Act 1993 and having its Public Office at Administration Building, Walker Street, Townsville in the State of Queensland (hereinafter called “the Townsville City Council”)

AND

(4) **COUNCIL OF THE CITY OF THURINGOWA** a local

government duly constituted under the provisions of the Local Government Act 1993 and having its Public Office at 86 Thuringowa Drive, Thuringowa Central in the State of Queensland (hereinafter called “the Thuringowa City Council”)

WHEREAS

- A. The Trustee, the Manager, the Townsville City Council and the Thuringowa City Council are parties to an agreement dated the 13th day of December 1991 (hereinafter called “the Participation Agreement”) in relation to the Townsville Breakwater Entertainment Centre.
- B. The Government of the State of Queensland has agreed to make a grant to the Townsville City Council and the Thuringowa City Council to enable the upgrading of the Townsville Breakwater Entertainment Centre.
- C. Legislation has been enacted by the Parliament of the State of Queensland facilitating the upgrading of the Townsville Breakwater Entertainment Centre.
- D. The parties have agreed to enter into this Agreement to vary the Participation Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises the parties hereto do covenant and agree as follows:

1. LEGISLATION

The parties acknowledge the Townsville Breakwater Entertainment Centre

Amendment Act 1997 has been enacted by the Parliament of Queensland to facilitate this Agreement.

2. VARIATION OF PROVISIONS OF PARTICIPATION AGREEMENT

The Participation Agreement is hereby varied as follows:

2.01 the following words are inserted in Clause 1.07 after the word “Agreement”:

“and as upgraded in accordance with the update Plans and Specifications”;

2.02 the following words are inserted in Clause 1.13 in lieu of the words “set out in”:

“determined by”;

2.03 Clauses 1.19 to 1.23 inclusive are renumbered 1.20 to 1.24 respectively;

2.04 a new Clause 1.19 is inserted as follows:

“1.19 “update Plans and Specifications” means the plans and specifications dated 23 April 1997, signed by the Joint Venturers, and entitled the Townsville Breakwater Entertainment Centre Update Plans and Specifications.”;

2.05 the following words are inserted at the end of Clause 3.05:

“PROVIDED THAT in the event that any further contributions to the capital of the Joint Venture are made by the Joint Venturers other than in the proportion of their respective participating interests the proportions in which the Joint Venturers shall thereafter share in

the profits or losses of the Joint Venture shall be adjusted accordingly to reflect each Joint Venturer's overall contribution to the capital of the Joint Venture as a percentage of the total capital contributions to the Joint Venture.”;

2.06 a new Clause 4.04 is inserted as follows:

“4.04 In the event that the participating interest of any of the Joint Venturers is adjusted by 0.5% or more in accordance with Clause 3.05 the shares of the Joint Venturers shown on the deed of grant referred to in Clause 4.01 shall be adjusted to reflect the participating interests of the Joint Venturers.”;

2.07 Clause 5.06 is deleted;

2.08 Clause 5.07 is renumbered Clause 5.06 and the words “in accordance with Clause 5.06” are deleted therefrom;

2.09 a new Clause 23 is inserted as follows:

“23. FURTHER CONTRIBUTIONS

23.01 The parties acknowledge that the Government of the State of Queensland has agreed to make a grant to the Townsville City Council and the Thuringowa City Council being an amount of not more than \$11.5 million to enable the upgrading of the Townsville Breakwater Entertainment Centre.

23.02 The Townsville City Council will contribute an amount being $\frac{5}{7}$ (five-sevenths) of the total amount granted by the Government of the State of Queensland to the Townsville City Council and the Thuringowa City Council in cash by way of further capital contribution to the Joint Venture.

23.03 The Thuringowa City Council will contribute an amount being $\frac{2}{7}$ (two-sevenths) of the total amount granted by the Government of the State of Queensland to the Townsville City

Council and the Thuringowa City Council in cash by way of further capital contribution to the Joint Venture.

23.04 The cash capital contributions referred to in Clauses 23.02 and 23.03 shall be made by the Councils as to the sum of \$3.5 million within seven (7) days from the date of this Agreement being an amount of \$2.5 million from the Townsville City Council and an amount of \$1 million from the Thuringowa City Council, and as to the balance of \$8 million in sufficient time to enable payment of the amount referred to in Clause 24.05 and progress payments up to an amount of \$8 million for the upgrading of the Entertainment Centre in accordance with the update Plans and Specifications. The sum of \$3.5 million shall be invested by the Committee of Management and used to pay the remaining progress payments in excess of the amount of \$8 million after the sum of \$8 million has been used to pay progress payments.”;

2.10 a new Clause 24 is inserted as follows:

“24. UPGRADING OF ENTERTAINMENT CENTRE

24.01 The Joint Venturers shall cause the Entertainment Centre to be upgraded in accordance with the update Plans and Specifications.

24.02 Each of the Joint Venturers accepts and approves the upgrading of the Entertainment Centre in accordance with the update Plans and Specifications and in particular the Townsville City Council agrees that no town planning requirements other than those incorporated in the update Plans and Specifications will be imposed by the Townsville City Council. The Townsville City Council agrees that no further development of any land owned by the Trustee in its capacity as trustee of Breakwater Island Trust will be in any way affected by the imposition of any carparking requirements relating to the Entertainment Centre.

24.03 The Joint Venturers shall ensure that an appropriate system of contract administration is instituted and maintained in respect of the upgrading of the Entertainment Centre incorporating the requirements if any of the Government of the State of Queensland

and shall ensure that all progress claims are certified by a quantity surveyor approved by the Joint Venturers prior to payment.

24.04 In the event that the further capital contributions to be contributed by the Townsville City Council and the Thuringowa City Council are insufficient to enable the upgrading of the Entertainment Centre in accordance with the update Plans and Specifications each of the Joint Venturers hereby agrees that if the Joint Venturers are unable to agree how such shortfall in funds is to be met then notwithstanding Clause 5.06 of this Agreement the Joint Venturers shall contribute in the proportion of their respective participating interests the funds required for the upgrading of the Entertainment Centre in accordance with the update Plans and Specifications.

24.05 The Joint Venture shall from the cash capital contributions referred to in Clauses 23.02 and 23.03 pay to the Trustee as operator of the Entertainment Centre an amount of \$150,000 in relation to the decommissioning and recommissioning of the Entertainment Centre necessary to allow the Entertainment Centre to be upgraded in accordance with the update Plans and Specifications.”

3. BREAKWATER ISLAND TRUST

- 3.1 The Trustee enters into this Agreement only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Agreement can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- 3.2 The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust, including seek the

appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

- 3.3 The provisions of this Clause 3 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- 3.4 It is acknowledged that the manager of the Trust is responsible under the trust deed establishing the Trust for performing a variety of obligations relating to the Trust, including under this Agreement. No act or omission of the Trustee (including any related failure to satisfy its obligations under this Agreement) will be considered fraud, negligence or breach of trust of the Trustee for the purpose of paragraph 3.3 of this Clause 3 to the extent to which the act or omission was caused or contributed to by any failure by the manager or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the manager or any other person.
- 3.5 No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of paragraph 3.3 of this Clause 3.
- 3.6 The Trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless the

Trustee's liability is limited in the same manner as set out in paragraphs 3.1 to 3.2 of this Clause 3.

4. CASINO CONTROL ACT

This Agreement is subject to the Trustee obtaining within three (3) months from the date hereof the consent of the Minister for the time being charged with the administration of the Casino Control Act 1982 to the entry into this Agreement by the Trustee and to the performance of all obligations by the Trustee pursuant to this Agreement failing which this Agreement will cease and determine in which event none of the parties hereto will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement or in anticipation of the coming into force of this Agreement.

5. COST

The parties shall each pay their own costs of and incidental to this Agreement.

6. GENERAL

Except as herein expressly varied or as otherwise absolutely required by strict and necessary implication by reason of this Agreement the terms and conditions of the Participation Agreement shall in all respects remain in full force and effect and without limiting the generality of the foregoing the provisions of Clause 8 of the Participation Agreement apply in respect of the upgrading of the Entertainment Centre in accordance with the update Plans and Specifications. Any words and phrases not defined herein which are defined in the Participation Agreement shall have the same meaning herein as such words and phrases bear in the Participation Agreement.

Townsville Breakwater Entertainment Centre
Amendment

No. 19, 1997

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the dates hereinafter set forth.

THE COMMON SEAL of PERPETUAL)
TRUSTEES QUEENSLAND LIMITED)
is affixed in accordance with its articles of)
association on the day of 1997)
in the presence of:)

A Justice of the Peace

GIVEN under the Common Seal of)
BREAKWATER ISLAND LIMITED)
this day of 1997 by)
authority of the Board of Directors in the)
presence of)
a Director thereof and)
the Secretary thereof and in the presence of:)

A Justice of the Peace

