



# **Integrated Resort Development Act 1987**

**Current as at 22 March 2016**





Queensland

# Integrated Resort Development Act 1987

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# Integrated Resort Development Act 1987

**An Act to provide for the approval of schemes of integrated resort development, to make provision to assist in the establishment, operation and management of approved integrated resort developments and for other purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Integrated Resort Development Act 1987*.

### **2 Definitions**

The dictionary in schedule 7 defines particular words used in this Act.

### **3 Minimum requirements for an approved scheme**

- (1) Subject to subsection (3), a scheme shall not be an approved scheme unless it provides for each of the following—
  - (a) a primary thoroughfare within the site on which there is to be a road;
  - (b) a secondary thoroughfare within the site on which there is to be a road;
  - (c) the division of the site into precincts specifying the name of the precincts, the intended development generally of each precinct and the permitted uses of the land within each precinct;

[s 3A]

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- (d) a schedule specifying the maximum number of lots into which each residential precinct may be subdivided;
  - (e) a schedule specifying the voting entitlements and the method of calculating the voting entitlements of members of the primary thoroughfare body corporate;
  - (f) a schedule specifying the voting entitlements and the method of calculating the voting entitlements of members of the principal body corporate.
- (2) Each of them the primary thoroughfare and the secondary thoroughfare may consist of more than 1 thoroughfare.
- (3) An application for approval of a subsequent stage must provide for at least—
- (a) the division of the site into precincts specifying the name of the precincts, the intended development generally of each precinct and the permitted uses of the land within each precinct; and
  - (b) a schedule specifying the voting entitlements and the method of calculating the voting entitlements of members of the primary thoroughfare body corporate.

### **3A References to standard module**

- (1) In this Act, the information included in square brackets after a section heading is a reference to a similar section of the *Body Corporate and Community Management (Standard Module) Regulation 2008*.
- (2) The brackets and information do not form part of this Act.



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## Part 2                      Scheme of integrated resort development

### Division 1                Approval of scheme

#### 4                      Application for approval of scheme

- (1) An application for a scheme to be an approved scheme shall be made to the Minister in the prescribed manner.
- (1A) However, on and from the commencement of the *Body Corporate and Community Management Act 1997*, no further applications for scheme approval may be made.
- (1B) For subsection (1A), to remove any doubt, it is declared that an application under division 2 to amend an approved scheme by varying the boundaries of the site of the approved scheme is not an application for scheme approval.
- (2) The applicant shall include with the application in respect of the scheme—
  - (a) the information and material specified in schedule 1, part A; and
  - (b) such of the information and material specified in schedule 1, part B as the Minister requires.

#### 5                      Minister to consider application

The Minister shall consider the application and—

- (a) shall consult any department of the Government, local government or statutory authority; and
- (b) may consult any person or body;

which or who, in the Minister's opinion, is likely to be affected by the scheme.

## **6 Variation of application**

- (1) An applicant may, with the consent of the Minister, vary an application at any time prior to a decision being made upon the application by the Governor in Council.
- (2) The Minister may, with the written consent of the applicant, vary an application at any time prior to a decision being made upon an application by the Governor in Council.

## **7 Decision on application**

- (1) The Governor in Council may—
  - (a) approve the scheme; or
  - (b) approve the scheme with modifications or subject to conditions; or
  - (c) refuse to approve the scheme.
- (2) If the Governor in Council approves the scheme, the chief executive must—
  - (a) notify the approval of the scheme by a gazette notice that specifies—
    - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and
    - (ii) the places where a copy of the approved scheme is available for inspection; and
  - (b) keep a copy of the approved scheme available for inspection at the office of the chief executive at Brisbane at all times during which the office is open for the transaction of public business; and
  - (c) note the approval on the plan of development; and
  - (d) send a copy of the approved scheme and the plan of development to the registrar of titles and the local government.

- (3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the approved scheme to the person.

## **8 Notation of approved scheme**

The local government and the chief executive must each make an appropriate notation of the approved scheme on—

- (a) relevant zoning maps; and
- (b) any relevant regulatory maps; and
- (c) any relevant development control plan maps.

## **Division 2 Amendment of approved scheme**

### **9 Application for amendment of approved scheme**

- (1) An application for amendment of an approved scheme may be made to the Minister by the primary thoroughfare body corporate or, if that body has not been incorporated, by the applicant.
- (2) To remove any doubt, it is declared that an application may be made under this division to amend an approved scheme by varying the boundaries of the site of the approved scheme.

### **10 Members to be notified of proposed amendment**

- (1) Before making the application, the primary thoroughfare body corporate must—
  - (a) give a written notice to each of the members of the primary thoroughfare body corporate and each of the members of the principal body corporate stating—
    - (i) the nature of the proposed amendment; and
    - (ii) a description of each lot to which the proposed amendment relates; and

- (iii) that a member may give the primary thoroughfare body corporate written submissions about the proposed amendment within a stated period (the *notification period*) of at least 30 business days after the notice is given; and
- (b) place, on the subject land, a notice stating—
  - (i) a brief summary of the nature of the proposed amendment and each lot to which the amendment relates; and
  - (ii) the notification period for giving written submissions about the proposed amendment; and
  - (iii) the name and contact details of a person authorised by the primary thoroughfare body corporate to give information about the proposed amendment.
- (2) The notice under subsection (1)(b) must—
  - (a) be of a type, and placed on the subject land in the way required, under schedule 2; and
  - (b) remain on the subject land during the notification period.

## 11 Requirements for application

The application must include—

- (a) a written statement confirming that—
  - (i) a written notice was given to the members under section 10(1)(a), including the days the notice was given; and
  - (ii) a notice was placed on the subject land under section 10(1)(b) and (2), including the period during which the notice was on the land; and
- (b) a copy of the notice given under section 10(1)(a); and
- (c) all written submissions given to the primary thoroughfare body corporate under section 10(1)(a)(iii); and

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- (d) other matters, if any, the Minister considers necessary for deciding the application.

## **12 Minister to consider application**

- (1) The Minister shall consider the application and any written comments included with the application and—
  - (a) shall consult any department of the Government, local government or statutory authority; and
  - (b) may consult any person or body;  
which or who, in the Minister's opinion, is likely to be affected by the amendment of the scheme.
- (2) The Minister must give the Governor in Council—
  - (a) the application; and
  - (b) a written notice stating details of the consultation, if any, under subsection (1), including—
    - (i) who the Minister consulted; and
    - (ii) the results of the consultation.

## **13 Decision on application**

- (1) The Governor in Council may—
  - (a) approve the amendment; or
  - (b) approve the amendment with modifications or subject to conditions; or
  - (c) refuse to approve the amendment.
- (2) If the Governor in Council approves the amendment, the chief executive must—
  - (a) notify the approval of the amendment by a gazette notice that specifies—
    - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and

- (ii) the places where a copy of the approved amendment is available for inspection; and
  - (b) keep a copy of the approved amendment available for inspection at the office of the chief executive at Brisbane at all times during which the office of the chief executive is open for the transaction of public business; and
  - (c) note the approval on any plan of development; and
  - (d) send a copy of the approved amendment and any plan of development each endorsed by the chief executive to the registrar of titles and the local government.
- (3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the amendment to the person.
- (4) The registrar of titles must note the amendment on the plan of development.

### **13A Minor variation of site boundaries**

- (1) This section applies to an application to amend an approved scheme by varying the boundaries of the site of the approved scheme.
- (2) The Governor in Council may approve the amendment only if—
- (a) the Governor in Council considers—
    - (i) the proposed variation of the site boundaries is of a minor nature; and  
*Example of a variation that may be of a minor nature—*  
a variation of part of a site boundary to realign it with a thoroughfare within the site
    - (ii) the total area of the site will not be materially changed because of the variation; and
  - (b) neither the aggregate number of the lots nor the aggregate voting entitlements under the approved scheme will be changed because of the variation; and

- (c) each affected land owner has given the owner's written consent to the variation.
- (3) If the Governor in Council approves the amendment, section 8 applies to the local government and chief executive for making an appropriate notation of the approved scheme as amended as if the reference in that section to the approved scheme were a reference to the approved scheme as amended.
- (4) In this section—
- affected land owner* means an owner of land that is outside the site and is proposed under the application to be within the site.

#### **14 Minor variation of precinct boundaries**

Where an application is made to the Minister pursuant to this division to amend an approved scheme by varying the boundaries of a precinct, the Governor in Council may approve the amendment if the Governor in Council considers the variation of the boundaries is of a minor nature notwithstanding that sections 10 to 12 have not been complied with.

### **Division 3 Effect of approval of scheme**

#### **15 Approved scheme regulates development etc. of site**

- (1) The approved scheme regulates the development and use of land within the site.
- (2) The approved scheme modifies any planning scheme in force in relation to the site to the extent the planning scheme is inconsistent with the approved scheme.
- (3) However, the approved scheme can not increase the uses permitted by the planning scheme.
- (4) The provisions of the Integrated Planning Act about reconfiguring a lot do not apply to the site.

- (6) Local laws made by a local government under any Act do not apply to the site so far as they are inconsistent with this Act or the approved scheme.
  - (7) Any land, building or structure may be used within a precinct without the consent of the local government for any of the purposes set out in the approved scheme as a permitted use in relation to the precinct.
  - (8) A person must not use land, or a building or other structure, within a precinct for a use that is not a use specified in the approved scheme as a permitted use in relation to the precinct.
- Maximum penalty for subsection (8)—200 penalty units.

## **16 Application of provisions of this Act**

- (1) Upon the approval of a scheme—
  - (a) the provisions of this Act other than part 6; and
  - (b) such other provisions of this Act as are specified in the approval of the scheme;shall apply in respect of the scheme.
- (2) The Governor in Council may vary provisions specified under subsection (1)(b).
- (3) If the Governor in Council varies the provisions, the chief executive must notify the variation by gazette notice.

## **Division 4 Revocation of approval of scheme**

### **17 Application for revocation**

- (1) The applicant may apply to the Minister for revocation of the approved scheme.
- (2) The application may be made only if no plan of subdivision has been registered under this Act.
- (3) However, the application may be made if all plans that have been registered have been extinguished under section 68.



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- (4) If all plans have been extinguished, the application for revocation must be made by all proprietors within the site.
  - (5) The Minister must consider the application and discuss it with the local government.

## **18 Revocation of approval**

- (1) The Governor in Council may—
  - (a) approve the revocation; or
  - (b) approve the revocation subject to conditions; or
  - (c) refuse to approve the revocation.
- (2) If the Governor in Council approves the revocation, the chief executive must—
  - (a) notify the approval of revocation by a gazette notice that specifies—
    - (i) the conditions (if any) to which the approval is subject; and
    - (ii) the places where a copy of the approved revocation is available for inspection; and
  - (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane at all times during which the office is open for the transaction of public business; and
  - (c) note the revocation on the plan of development; and
  - (d) send a copy of the approval to the registrar of titles and the local government.
- (3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the approval of the revocation to the person.
- (4) The registrar of titles must note the revocation on the plan of development.

## **19 Notation of revocation**

The local government and chief executive must each make an appropriate notation of the revocation of the approved scheme on—

- (a) relevant zoning maps; and
- (b) any relevant regulatory maps; and
- (c) any relevant development control maps.

## **20 Effect of revocation**

- (1) On revocation of an approved scheme—
  - (a) the provisions of this Act that applied because of the approved scheme no longer apply; and
  - (b) the provisions of the *Coastal Protection and Management Act 1995* or Integrated Planning Act prescribed for section 90 again apply.
- (2) Nothing in subsection (1) affects anything lawfully done before the revocation of the approved scheme.

# **Part 3 Staged integrated resort development**

## **21 Future development area**

- (1) An application under part 2, division 1 may identify an area (the *future development area*) in relation to which—
  - (a) provisional approval is sought; and
  - (b) a subsequent application will be made under part 2, division 1.
- (2) A future development area must contain freehold land or land intended to be freeholded.

- (3) Except in relation to land intended to be freeholded, an application under part 2, division 1 must not include a future development area unless the future development area is in a zone that permits a use that is not inconsistent with the intended use of other land mentioned in the application.
- (4) If an application under part 2, division 1 identifies a future development area the applicant must, in addition to providing the information and material required to be provided by part 2, division 1, provide such of the information and material set out in schedule 1, part A as relates to a future development area.

## **22 Decision on application**

- (1) An application for provisional approval in relation to a future development area is to be decided in the same way and at the same time as the application under part 2, division 1.
- (2) Section 8 applies to a provisional approval as if it were the approval of a scheme.

## **23 Revocation of provisional approval**

- (1) An applicant may apply to have the provisional approval in relation to all or part of the future development area revoked.
- (2) An application for revocation must not be made in relation to any part of the future development area that has been the subject of an application under section 26.
- (3) Before making an application under this section, the applicant must give written notice of the application to—
  - (a) the primary thoroughfare body corporate; and
  - (b) the principal body corporate;if these exist, inviting written comments from their members before a specified date (not less than 30 days from the giving of the notice).
- (4) A written application is to be made to the Minister and must include—

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- (a) a copy of the written notice given under subsection (3); and
  - (b) any written comments received by the applicant from the primary thoroughfare body corporate or the principal body corporate; and
  - (c) other matters that the Minister considers necessary.
- (5) The Minister is to consider the application and any written comments included with the application and—
- (a) is to consult any department, local government or statutory authority; and
  - (b) may consult any person or body;
- that, in the Minister's opinion, is likely to be affected by the revocation.

## **24 Approval of revocation**

- (1) The Governor in Council may—
- (a) approve the revocation; or
  - (b) approve the revocation with modifications or subject to specified conditions; or
  - (c) refuse to approve the revocation.
- (2) If the Governor in Council approves the revocation, the chief executive must—
- (a) notify the approval of the revocation by a gazette notice that specifies—
    - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and
    - (ii) the places where a copy of the approved revocation is available for inspection; and
  - (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane at all times

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during which the office is open for the transaction of public business; and

- (c) note the revocation on the plan of development; and
  - (d) send a copy of the revocation to the registrar of titles and the local government.
- (3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the approval of the revocation to the person.
- (4) The registrar of titles must note the revocation on the plan of development.

## **25 Notation of revocation of provisional approval**

The local government and the chief executive must each make an appropriate notation of the revocation on—

- (a) relevant zoning maps; and
- (b) any relevant regulatory maps; and
- (c) any relevant development control plan maps.

## **26 Application for subsequent stages**

- (1) A subsequent application may be made under part 2, division 1 in relation to all or only part of the future development area.
- (2) The future development area (whether all or part) that is the subject of a subsequent application under part 2, division 1 is in this Act referred to as a *subsequent stage*.
- (3) Subject to subsection (4), part 2, division 1 applies to an application for approval of a subsequent stage.
- (4) The applicant must include with the application for approval of a subsequent stage—
  - (a) the information and material set out in clauses 1 to 12, 15, 16, 17, 18 and 21 of schedule 1, part A; and
  - (b) such of the information and material set out in schedule 1, part B as the Minister requires.

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- (5) An application under this section may only be made if all necessary amounts have been paid to, undertakings given to, or securities lodged with, the local government under an agreement entered into between the applicant and the local government.
- (6) A person must not use construction works that have been undertaken in a future development area unless the works are situated in a subsequent stage that has been approved under part 2, division 1.  
Maximum penalty—200 penalty units.
- (7) Applications in relation to stages in a future development area may be made at any time and from time to time.
- (8) For the purposes of this Act, an approval of an application made under this section is taken to be an approval of a scheme.
- (9) For the purposes of part 5, the land in a subsequent stage is taken to be the site.

## **Part 4                      The site**

### **27            The site**

- (1) Subject to subsection (2), the site of an approved scheme consists of all land within the boundaries of the site set out in the approved scheme.
- (2) If the approved scheme is amended under part 2, division 2 by varying the boundaries of the site, the site of the approved scheme consists of all land within the boundaries of the site set out in the approved scheme as amended.
- (3) The site must consist only of freehold land and land intended to be freeholded.

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- (4) Despite any other Act or law, the site may include land mentioned in subsection (3) that is, or may become, inundated by water or subject to tidal influence.
  - (5) The boundaries of the site may enclose 2 or more parcels of land, but only to the extent that this is necessary because a road, railway, tramway or boundary watercourse that is not intended to be freehold divides the parcels.

## **28 Grant of unallocated State land**

- (1) The power conferred by the *Land Act 1994* on the Governor in Council to grant in fee simple any unallocated State land within Queensland includes, in relation to unallocated State land included or to be included as part of a scheme, power to grant the land in fee simple to an applicant, on payment of the amount that the Governor in Council determines, in priority to and to exclusion of all other persons.
- (2) Subsection (1) applies despite the *Land Act 1994*.
- (3) The power applies only to land—
  - (a) that is necessary to regularise the boundaries of the site and is required in relation to works to be carried out on the site; and
  - (b) that, following development of the site, is of a shape that can not reasonably be used otherwise than in relation to the site.

## **29 Site forms part of local government area**

- (1) If a part of the site is not within the area of any local government, the part forms part of the area of the local government to which application in relation to a scheme was made.
- (2) Subsection (1) applies despite any other Act.

## **Part 5                      Subdivision of site**

### **Division 1                      Initial subdivision of and dealing with land**

#### **Subdivision A                      Creation of initial lots and primary thoroughfare**

#### **30                      Plans to be lodged with local government**

- (1) After the approval of a scheme, the proprietor of land within the site shall lodge with the local government a plan or plans subdividing land within the site into—
  - (a) a lot or lots which comprises or together comprise the primary thoroughfare as provided for in the approved scheme; and
  - (b) lots which together comprise the balance of the land within the site.
- (2) A plan of subdivision creating an initial lot within a residential precinct lodged with a local government shall be accompanied by a schedule setting out in respect of each lot the maximum number of lots into which the lot may, in accordance with the approved scheme, be subdivided.
- (3) The applicant shall forward to the Minister a copy of each plan of subdivision (including, where appropriate, a copy of the schedule referred to in subsection (2)) lodged with a local government pursuant to this section.

#### **31                      Approval of local government**

- (1) A local government shall not approve a plan of subdivision lodged with it pursuant to section 30 unless it is satisfied that—



- (a) each lot has access to a dedicated road outside the site directly or through the lot or lots that comprise the primary thoroughfare, on which there is, or is to be, a road; and
  - (b) in respect of land within a residential precinct, the aggregate of the maximum number of lots into which each lot within the precinct may be subdivided equals the number specified in respect of that precinct in the approved scheme.
- (2) A local government shall not approve a plan of subdivision of land within the site unless—
- (a) the plan includes the subdivision of the site into a lot or lots comprising the primary thoroughfare; or
  - (b) a plan of subdivision subdividing the site into a lot or lots comprising the primary thoroughfare has been approved by the local government.
- (3) Upon compliance with the provisions of subsections (1) and (2), the local government may approve of the plan of subdivision and of the schedule accompanying the plan.
- (4) The approval of a plan of subdivision and of the schedule by the local government shall be by endorsement of its approval on the plan of subdivision and the schedule.
- (5) For the purposes of subsection (1)(a)—
- (a) if the site is on an island and there is no dedicated road adjoining the site—an initial lot is taken to have access to a dedicated road if the lot or the primary thoroughfare on which there is, or is to be, a road adjoins the foreshore; or
  - (b) if the site is remote and there is no dedicated road adjoining the site—an initial lot is taken to have access to a dedicated road if the Minister has advised the local government that the Minister is satisfied that there is appropriate access to the site.

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- (6) If an initial lot is taken to have access to a dedicated road under subsection (5), a lot is also taken to have access to a dedicated road if created by the subdivision of—
  - (a) an initial lot; or
  - (b) a lot created by the subdivision of an initial lot.
- (7) Subsection (6) has effect subject to the provisions of this Act that relate to access.

### **32 Registration of initial plan of subdivision**

- (1) The registrar of titles shall not register a plan of subdivision referred to in section 30 unless—
  - (a) where the plan of subdivision subdivides land in a residential precinct—it is accompanied by the schedule referred to in section 30; and
  - (b) the plan and the schedule (if any) have been endorsed with the approval of the local government.
- (2) The registrar of titles shall not register a plan of subdivision of land within the site unless—
  - (a) the plan includes the subdivision of the site into a lot or lots comprising the primary thoroughfare; or
  - (b) a plan or plans of subdivision subdividing the site into a lot or lots comprising the primary thoroughfare has or have been registered by the registrar of titles.
- (3) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make enquiries but may rely on the endorsement of the local government on the plan and the schedule under subsection (1).

### **33 Transfer of primary thoroughfare to primary thoroughfare body corporate**

- (1) Immediately upon the registration of a plan or plans of subdivision creating a lot or lots comprising the primary thoroughfare, the registered proprietor of any lot shown on the

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plan as primary thoroughfare shall lodge with the registrar of titles all documents necessary to transfer free of mortgage that lot or those lots to the primary thoroughfare body corporate.

- (2) The primary thoroughfare body corporate shall not be required to make any payment or provide any consideration for such transfer.
- (3) Nothing in this section shall operate to relieve the applicant of the applicant's obligation to effect at the applicant's expense the initial construction of the primary thoroughfare to a standard prescribed pursuant to section 89.

## **Subdivision B      Subdivision of initial lots**

### **34      Subdivision of initial lot**

- (1) The proprietor of an initial lot may subdivide it by a plan of subdivision into 2 or more initial lots.
- (2) The plan of subdivision must—
  - (a) be lodged with the local government; and
  - (b) in the case of the subdivision of an initial lot that is not within a residential precinct—be accompanied by a schedule setting out the voting entitlement that is to apply to each initial lot created by the plan; and
  - (c) in the case of the subdivision of an initial lot that is within a residential precinct—be accompanied by a schedule setting out the maximum number of lots into which each initial lot created by the plan may be subdivided.

### **35      Approval of local government**

A local government may approve a plan of subdivision that subdivides an initial lot only if it is satisfied that—

- (a) in the case of an initial lot that is not within a residential precinct—the total voting entitlement that is to apply to

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the new initial lots equals the voting entitlement that applies to the initial lot being subdivided; and

- (b) in the case of an initial lot that is within a residential precinct—the total of the maximum number of lots into which each initial lot may be subdivided, equals the maximum number of lots that applies to the initial lot being subdivided; and
- (c) each new initial lot has access to a dedicated road outside the site directly or through the primary thoroughfare on which there is, or is to be, a road.

### **36 Registration of plan of subdivision of initial lot**

- (1) The registrar of titles may register a plan of subdivision that subdivides an initial lot only if—
  - (a) in the case of an initial lot that is not within a residential precinct—it is accompanied by a schedule setting out the voting entitlement that is to apply to each initial lot created by the plan; and
  - (b) in the case of an initial lot that is within a residential precinct—it is accompanied by a schedule setting out the maximum number of lots into which each initial lot created by the plan may be subdivided; and
  - (c) the plan and the schedule have been approved by the local government.
- (2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local government's approval of the plan.

### **37 Notice of subdivision to primary thoroughfare body corporate**

On registration of a plan subdividing an initial lot that is not within a residential precinct, the proprietor of the new initial lots must give written notice to the primary thoroughfare body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the initial lot subdivided; and
- (d) the description of the new initial lots; and
- (e) the voting entitlement that applies to each new initial lot.

### **38 Notice of subdivision to principal body corporate**

On registration of a plan subdividing an initial lot that is within a residential precinct, the proprietor of the new initial lots must give written notice to the principal body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the initial lot subdivided; and
- (d) the description of the new initial lots; and
- (e) the maximum number of lots into which each new initial lot may be subdivided.

## **Subdivision C Amalgamation of initial lots**

### **39 Amalgamation of initial lots**

- (1) The proprietor of 2 or more initial lots within the same precinct may amalgamate the lots by a plan of amalgamation.
- (2) The plan of amalgamation must—
  - (a) be lodged with the local government; and
  - (b) in the case of the amalgamation of initial lots that are not within a residential precinct—be accompanied by a schedule setting out the voting entitlement that is to apply to the new initial lot; and

- (c) in the case of the amalgamation of initial lots that are within a residential precinct—be accompanied by a schedule setting out the maximum number of lots into which the new initial lot may be subdivided.

#### **40 Approval of local government**

A local government may approve a plan of amalgamation that amalgamates initial lots only if it is satisfied that—

- (a) in the case of initial lots that are not within a residential precinct—the voting entitlement that is to apply to the new initial lot equals the total voting entitlement that applies to the initial lots being amalgamated; and
- (b) in the case of initial lots that are within a residential precinct—the maximum number of lots into which the new initial lot may be subdivided equals the total of the maximum number of lots into which the initial lots being amalgamated could have been subdivided.

#### **41 Registration of plan of amalgamation of initial lots**

The registrar of titles may register a plan of amalgamation only if—

- (a) in the case of the amalgamation of initial lots that are not within a residential precinct—it is accompanied by a schedule setting out the voting entitlement that is to apply to the new initial lot; and
- (b) in the case of the amalgamation of initial lots that are within a residential precinct—it is accompanied by a schedule setting out the maximum number of lots into which the new initial lot may be subdivided; and
- (c) the plan and schedule have been approved by the local government.

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**42 Notice of amalgamation to primary thoroughfare body corporate**

On registration of a plan amalgamating initial lots that are not within a residential precinct, the proprietor of the new initial lot must give written notice to the primary thoroughfare body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the initial lots amalgamated; and
- (d) the description of the new initial lot; and
- (e) the voting entitlement that applies to the new initial lot.

**43 Notice of amalgamation to principal body corporate**

On registration of a plan amalgamating initial lots that are within a residential precinct, the proprietor of the new initial lot must give written notice to the principal body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the initial lots amalgamated; and
- (d) the description of the new initial lot; and
- (e) the maximum number of lots into which the new initial lot may be subdivided.

**Subdivision D Subdivision of initial lots by building units or group titles plan**

**44 Subdivision by building units or group titles plan**

- (1) An initial lot that is not within a residential precinct may be subdivided by a building units or group titles plan.

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- (2) A building units or group titles plan must be lodged with the local government.
- (3) A group titles plan must be accompanied by a statement by the proprietor of the initial lot—
  - (a) indicating whether or not it is proposed to subdivide any lot created by the group titles plan by the registration of a building units plan; and
  - (b) if it is proposed to do so—identifying the lot.
- (4) If—
  - (a) a group titles plan creates lots; and
  - (b) at least 1 of the lots is proposed to be further subdivided by the registration of a building units plan;the group titles plan must be accompanied by a schedule setting out, in relation to each lot proposed to be further subdivided, the maximum number of lots into which the lot may be subdivided.
- (5) Each lot on a group titles plan must have access to a dedicated road whether directly or through—
  - (a) the primary thoroughfare on which there is, or is to be, a road; or
  - (b) the common property.
- (6) A group titles plan must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan.

#### **45 Approval of building units or group titles plan**

- (1) A local government may approve a group titles plan and schedule only if—
  - (a) the plan is accompanied by—
    - (i) the statement mentioned in section 44(3); and



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- (ii) if applicable—the schedule mentioned in section 44(4); and
    - (iii) the diagram mentioned in section 44(6); and
  - (b) it is satisfied that each lot created has the access mentioned in section 44(5).
- (2) A local government may approve a building units plan that subdivides a group title lot only if it is satisfied that the group title lot has the access mentioned in section 44(5).
- (3) If the schedule accompanying a group titles plan indicates that it is proposed to further subdivide any lot created, the local government must endorse that fact on the plan.

#### **46 Registration of building units or group titles plan**

- (1) The registrar of titles may register a building units or a group titles plan only if the plan, and, if applicable, the schedule accompanying the plan, have been approved by the local government.
- (2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local government's approval of the plan.

#### **47 Subdivision of group title lot by building units plan**

- (1) If the statement accompanying a group titles plan identifies a group title lot that is proposed to be subdivided by way of a building units plan, the building units plan may be—
- (a) approved by the local government; and
  - (b) registered by the registrar of titles.
- (2) Section 10(1A) of the *Building Units and Group Titles Act 1980* does not apply to a subdivision by a building units plan mentioned in subsection (1).
- (3) Despite the *Building Units and Group Titles Act 1980*, the registration of a building units plan under subsection (1) has

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effect as if the subdivision by the plan were a subdivision of the original group titles plan.

- (4) If a building units plan subdivides a lot created by a group titles plan, a further body corporate is not created by registration of the building units plan.
- (5) For the purposes of the *Building Units and Group Titles Act 1980*, the body corporate created by registration of the group titles plan is taken to be the body corporate created by the registration of the building units plan.
- (6) Subsections (4) and (5) apply despite section 27 of the *Building Units and Group Titles Act 1980*.

#### **48 Subdivision of group title lot by group titles plan**

- (1) Before a group title lot is subdivided by a building units plan, it may be subdivided by a group titles plan.
- (2) Section 44(3) and (4) apply to the subdivision of a group title lot by a group titles plan as if it were the subdivision of an initial lot by a group titles plan.
- (3) The number of lots created by the subdivision of the group title lot by a further group titles plan, and then by a building units plan, must not exceed the number of lots indicated on the schedule mentioned in section 44(4) in relation to the subdivision of the initial lot by the group titles plan.
- (4) Sections 45 and 46 relating to approval by a local government and registration by the registrar of titles apply to a plan mentioned in this section.

#### **49 Lot entitlement if group title lot to be subdivided by a building units plan**

- (1) If a group titles plan creates a lot that is to be subdivided by a building units plan, then, in specifying the lot entitlement of the lot, regard must be had to the maximum number of lots into which the lot may be subdivided by the building units plan.

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- (2) Section 19(2) and (3) of the *Building Units and Group Titles Act 1980* does not apply to a group titles plan if a lot on the plan is to be subdivided by a building units plan.

## **50 Application of Building Units and Group Titles Act to subdivisions**

- (1) The following provisions of the *Building Units and Group Titles Act 1980* do not apply to a subdivision under this division—
- (a) section 10(1B);
  - (b) section 10(6)(b).
- (2) For the purposes of section 9(7) of the *Building Units and Group Titles Act 1980*, a plan of subdivision is taken to comply with the requirements mentioned in the subsection in relation to the subdivision if the plan complies with those requirements as modified by this Act.

## **Division 2 Subsequent subdivision of and dealing with land in residential precincts**

### **51 Plan of subdivision of initial lots**

- (1) A plan of subdivision subdividing an initial lot within a residential precinct shall be lodged with the local government.
- (2) A plan of subdivision subdividing land in accordance with subsection (1) shall be accompanied by a schedule setting out in respect of each lot (other than a lot shown as secondary thoroughfare) the maximum number of lots into which the lot may, in accordance with the approved scheme, be subdivided.
- (3) The person who lodges a plan of subdivision pursuant to subsection (1) shall forward a copy of the plan and of the schedule to the Minister and to the chief executive.

## **52 Approval by local government**

- (1) A local government shall not approve a plan of subdivision of an initial lot lodged with it pursuant to section 51 unless it is satisfied that—
  - (a) section 32 has been complied with; and
  - (b) each secondary lot has access to—
    - (i) a dedicated road outside the site; or
    - (ii) the primary thoroughfare, whether directly or through a lot or lots shown in the plan as constituting a secondary thoroughfare; and
  - (c) the aggregate of the maximum number of lots specified in the schedule accompanying the plan into which all the secondary lots thereby created may be subdivided does not exceed, and is not less than 85% of, the maximum number of lots into which the initial lot may be subdivided.
- (2) Upon compliance with the provisions of subsection (1), the local government may approve of the plan of subdivision and of the schedule accompanying the plan.
- (3) The approval of the plan of subdivision and of the schedule by the local government shall be by endorsement of its approval on the plan of subdivision and the schedule.

## **53 Registration of plan of subdivision of initial lot**

- (1) The registrar of titles shall not register a plan of subdivision referred to in section 51 unless it is accompanied by the schedule referred to in section 51 each of which has been endorsed with the approval of the local government.
- (2) Notwithstanding any other Act, for the purposes of the registration of a plan of subdivision referred to in section 51, a lot shall be taken to have access to a dedicated road if that lot adjoins—
  - (a) a dedicated road; or

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- (b) the primary thoroughfare, on which there is, or is to be a road; or
  - (c) a secondary thoroughfare, on which there is, or is to be a road.
- (3) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make enquiries but may rely on the endorsement of the local government on the plan and the schedule under subsection (1).

#### **54 Transfer of lots comprising secondary thoroughfare to principal body corporate**

- (1) Immediately upon registration of a plan of subdivision subdividing an initial lot or part of an initial lot, the registered proprietor of any lot shown on the plan as a secondary thoroughfare shall lodge with the registrar of titles all documents necessary to transfer free of mortgage that lot to the principal body corporate.
- (2) The principal body corporate shall not be required to make any payment or provide any consideration for such transfer.
- (3) Nothing in this section shall operate to relieve the applicant of the applicant's obligation to effect at the applicant's expense the initial construction of the secondary thoroughfare to the standard prescribed pursuant to section 89.

#### **55 Amalgamation of secondary lot**

- (1) The proprietor of 2 or more secondary lots within a residential precinct may amalgamate the lots by a plan of amalgamation.
- (2) The plan of amalgamation must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by a schedule setting out the maximum number of lots into which the new secondary lot may be subdivided.

## **56 Approval of local government**

A local government may approve a plan of amalgamation that amalgamates secondary lots only if it is satisfied that the maximum number of lots into which the new secondary lot may be subdivided equals the total of the maximum number of lots into which the secondary lots being amalgamated could have been subdivided.

## **57 Registration of plan of amalgamation of secondary lots**

The registrar of titles may register a plan of amalgamation only if—

- (a) it is accompanied by a schedule setting out the maximum number of lots into which the new secondary lot may be subdivided; and
- (b) the plan and schedule have been approved by the local government.

## **58 Notice of amalgamation to principal body corporate**

On registration of a plan amalgamating secondary lots that are within a residential precinct, the proprietor of the new secondary lot must give written notice to the principal body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the secondary lots amalgamated; and
- (d) the description of the new secondary lot; and
- (e) the maximum number of lots into which the new secondary lot may be subdivided.

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**59 Subdivision of secondary lots within residential precincts**

- (1) Except as provided by subsections (2) to (3D), a secondary lot within a residential precinct may only be subdivided by way of a building units plan or a group titles plan.
- (2) For the purpose of the subsequent registration of a building units plan or a group titles plan over a lot thereby created, a secondary lot within a residential precinct may be subdivided by a plan of subdivision creating—
  - (a) 1 or more secondary lots; or
  - (b) 1 or more secondary lots and a lot or lots constituting a secondary thoroughfare.
- (3) The provisions of this Act relating to the subdivision of initial lots and to the effect of such subdivision shall apply in respect of a subdivision pursuant to subsection (2) as if a secondary lot being subdivided were an initial lot.
- (3A) However, the aggregate of the maximum numbers of lots stated in the schedule accompanying the plan of subdivision must be the same as the maximum number of lots into which the secondary lot may be subdivided.
- (3B) The plan of subdivision may also include a lot or lots constituting a primary thoroughfare.
- (3C) The local government must not approve a plan of subdivision mentioned in subsection (3B) unless the primary thoroughfare body corporate has given written consent to the creation of the primary thoroughfare.
- (3D) Section 33 applies to the primary thoroughfare as if it had been created on a plan mentioned in the section.
- (4) A plan of subdivision of a secondary lot within a residential precinct pursuant to subsection (1) shall be lodged with the local government.
- (5) A group titled plan of subdivision lodged pursuant to subsection (4) shall be accompanied by a statement by or on behalf of the proprietor of the secondary lot whether or not it is proposed to subdivide any lot thereby created by the

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registration of that plan by the registration of a building units plan and, if so, identifying that lot.

- (6) Where a group titles plan creates lots which it is proposed to further subdivide the plan shall be accompanied by a schedule setting out, in respect of each such lot, the maximum number of lots into which the lot may be subdivided.
- (7) Each lot shown on a plan lodged pursuant to this section, other than on a building units plan, must have access to a dedicated road whether directly or through all or any of the following—
  - (a) the primary thoroughfare;
  - (b) a secondary thoroughfare;
  - (c) the common property shown on the plan.
- (8) A group titles plan lodged under subsection (4) must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on—
  - (a) the primary thoroughfare, or part of the primary thoroughfare, shown on the plan; and
  - (b) each secondary thoroughfare, or part of a secondary thoroughfare, shown on the plan.

## **60 Notice of subdivision to principal body corporate**

On registration of a plan subdividing a secondary lot that is within a residential precinct into secondary lots or secondary lots and secondary thoroughfare, the proprietor of the new secondary lots must give written notice to the principal body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the plan; and
- (c) the description of the secondary lot subdivided; and
- (d) the description of the new secondary lots; and
- (e) the maximum number of lots into which each new secondary lot may be subdivided.



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## **61 Approval by local government**

- (1) A local government shall not approve a group titles plan lodged with it pursuant to section 59 unless—
  - (a) it is accompanied by the statement prescribed by section 59(5) and the diagram mentioned in section 59(8); and
  - (b) each lot thereby created has the prescribed access; and
  - (c) the aggregate of the lots thereby created that are not proposed to be subdivided and the number of lots specified in the schedule into which lots are proposed to be subdivided does not exceed the maximum number of lots into which the secondary lot may be subdivided.
- (2) A local government shall not approve a building units plan lodged with it pursuant to section 59 unless—
  - (a) each lot thereby created has the prescribed access; and
  - (b) the aggregate of the lots thereby created does not exceed the maximum number of lots into which the secondary lot may be subdivided.
- (3) Upon compliance with the provisions of subsections (1) and (2), the local government may approve of a building units plan or a group titles plan and, where a group titles plan was accompanied by a schedule referred to in section 59(6), that schedule.
- (4) The approval of a building units plan or group titles plan and of the schedule (if any) by the local government shall be by endorsement of its approval on the building units plan or group titles plan and any schedule.
- (5) Where the statement accompanying a group titles plan indicates that it is proposed to subdivide any lot thereby created, the local government shall endorse that fact on the plan.

**62 Registration of building units plan or group titles plan over secondary lot**

- (1) The registrar of titles shall not register a building units plan or a group titles plan referred to in sections 59 and 61 unless the plan has been endorsed with the approval of the local government under its seal and, in the case of a group titles plan that has endorsed thereon the fact that it is proposed to subdivide a lot thereby created, unless it is accompanied by a schedule referred to in section 59(6) duly endorsed with the local government's approval.
- (2) Notwithstanding the provisions of any other Act, for the purposes of the registration of a building units plan or a group titles plan referred to in section 59 a lot shall be taken to have access to a dedicated road if that lot has the access prescribed in section 59(7).

**63 Subdivision of group titles lot by way of building units plan**

- (1) Where a statement accompanying a group titles plan lodged with the local government pursuant to section 59 indicates that a lot thereby created is proposed to be subdivided by way of a building units plan, such a building units plan may be approved by the local government and may be registered by the registrar of titles and for that purpose section 10(1A) of the *Building Units and Group Titles Act 1980* shall not apply.
- (2) The registration of a building units plan pursuant to subsection (1) shall, notwithstanding the provisions of the *Building Units and Group Titles Act 1980*, take effect as if it were a resubdivision of the original group titles plan.
- (3) Notwithstanding the provisions of section 27 of the *Building Units and Group Titles Act 1980*, where a secondary lot is subdivided by way of a group titles plan and a lot created by that group titles plan is subdivided by a building units plan pursuant to this section, the body corporate created by the registration of the group titles plan shall be deemed, for the purposes of applying the provisions of that Act, to be a body

corporate created by the registration of a building units plan as if the group titles plan were a building units plan.

#### **64 Subdivision of group title lot by way of a group titles plan**

- (1) Where a group titles plan lodged for the approval of the local government has been accompanied by a statement that it is proposed to subdivide a lot shown therein by the registration of a building units plan, the local government shall not approve a subsequent group titles plan subdividing that lot unless the plan is accompanied by a statement to the like effect.
- (2) A subdivision of a group title lot by way of a group titles plan is a resubdivision of the original group titles plan within the meaning of section 10 of the *Building Units and Group Titles Act 1980*.

#### **65 Application of Building Units and Group Titles Act to subdivisions**

- (1) The *Building Units and Group Titles Act 1980*, section 10(1B) and (6)(b), does not apply to a subdivision under this division.
- (2) For the purposes of section 9(7) of the *Building Units and Group Titles Act 1980*, a plan of subdivision shall be taken to have complied with the requirements of the *Local Government Act 1936* as modified by the *Building Units and Group Titles Act 1980* in regard to the subdivision if the plan has complied with those requirements as modified by this Act.

#### **66 Lot entitlements under Building Units and Group Titles Act 1980**

- (1) For the purposes of section 19(1) of the *Building Units and Group Titles Act 1980*, where a secondary lot in a residential precinct is subdivided by way of a group titles plan or a building units plan, the aggregate lot entitlement of the lots thereby created shall equal the maximum number of lots specified in respect of that secondary lot in the schedule that

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accompanied the plan of subdivision whereby that secondary lot was created.

- (2) The provisions of section 19(2) and (3) of the *Building Units and Group Titles Act 1980* do not apply to any subdivision under this division.

### **Division 3            Dealing with land outside residential precincts**

#### **67        Primary thoroughfare deemed to be dedicated road**

For the purposes of the subdivision of or other dealing with land within a precinct other than a residential precinct the primary thoroughfare, on which there is, or is to be a road, shall be deemed to be a dedicated road.

### **Division 4            Matters applying to subdivision generally**

#### **Subdivision A        Extinguishment of plans**

#### **68        Extinguishment of plan**

A plan registered under this Act may be extinguished—

- (a) after unanimous resolution of the relevant body corporate; or
- (b) if the Supreme Court makes an order extinguishing the plan.

#### **69        Order of Supreme Court to extinguish plan**

- (1) An application to extinguish a plan may be made to the Supreme Court by—
  - (a) the relevant body corporate; or

- (b) a proprietor of a lot; or
  - (c) a registered mortgagee of a lot.
- (2) In considering an application to extinguish a plan, the Supreme Court must have regard to the rights and interests of the proprietors as a whole.
  - (3) Subsection (2) does not limit the matters to which the Supreme Court may have regard.
  - (4) If the Supreme Court makes an order extinguishing a plan, it must also order—
    - (a) that the relevant body corporate be wound up; and
    - (b) that the land comprised in the extinguished plan, and any property of the body corporate, be vested in the proprietors of the lots in the shares that the Supreme Court considers appropriate.

## **70 Registration**

- (1) If the Supreme Court makes an order under section 69, the registrar of titles must take the action necessary to give effect to the order on lodgment for registration of a request to register the order.
- (2) If the relevant body corporate resolves to extinguish a plan, it must lodge with the registrar of titles—
  - (a) a request to extinguish the plan; and
  - (b) a copy of the unanimous resolution.
- (3) A request under subsection (1) or (2) may be registered only if every registered interest in the land the subject of the plan has been discharged, surrendered, withdrawn or otherwise disposed of.
- (4) On registration of a request under subsection (1) or (2)—
  - (a) the plan is extinguished; and
  - (b) the relevant body corporate is wound up; and
  - (c) the land comprised in the extinguished plan is vested—

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- (i) in the case of a building units plan—in the proprietors in shares proportional to the lot entitlements of the proprietors’ respective lots; or
  - (ii) in the case of a group titles plan or plans that create initial lots or secondary lots—in the proprietors in the shares agreed by the proprietors by unanimous resolution or in the shares ordered by the Supreme Court; and
- (d) all property of the body corporate is vested in the proprietors in the same shares as the land comprised in the plan is vested under paragraph (c).

## **71 Notification of local government**

The registrar of titles must notify the relevant local government on registration under section 70 of the request to extinguish the plan.

## **Subdivision B Boundary adjustment plans**

### **72 Boundary adjustment plan**

- (1) The boundary of an initial lot or a secondary lot within the site of an approved scheme may be adjusted by a boundary adjustment plan if—
- (a) the adjustment is minor and necessary to resolve a problem in relation to the management, development or subdivision of the site; and
  - (b) each proprietor, mortgagee and registered lessee of a lot the boundary of which is to be adjusted consents to the adjustment; and
  - (c) if the adjustment alters the boundary of primary thoroughfare or secondary thoroughfare—the adjustment is approved by the primary thoroughfare body corporate, or principal body corporate, by special resolution.

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- (2) A proprietor mentioned in subsection (1)(b) may lodge the boundary adjustment plan with the local government.
  - (3) The local government may approve a boundary adjustment plan only if it is satisfied that—
    - (a) the adjustment is minor and necessary to resolve a problem in relation to the management, development or subdivision of the site; and
    - (b) the consents mentioned in subsection (1)(b) have been given; and
    - (c) if applicable—the approval mentioned in subsection (1)(c) has been given.
  - (4) If the local government—
    - (a) refuses to approve a boundary adjustment plan; or
    - (b) fails to approve it within 40 days of receiving it;the proprietor that lodged the plan may appeal to the Planning and Environment Court.
  - (5) The Integrated Planning Act applies to an appeal under subsection (4) with any necessary modifications.

### **73 Registration of boundary adjustment plan**

- (1) The registrar of titles may register a boundary adjustment plan only if the plan has been approved by the local government.
- (2) The registrar of titles does not have to be satisfied of the matters mentioned in section 72(1) but may rely on the local government's approval of the plan.

### **74 Effect of boundary adjustment plan**

- (1) A boundary adjustment plan registered under this subdivision does not affect the voting entitlement that applied to any lot before registration of the plan.

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- (2) A registered mortgage, lease or other registered interest in a lot adjusted by the registration of a boundary adjustment plan—
  - (a) is not affected by the registration of the plan; and
  - (b) is taken to relate to the adjusted lot.

## Subdivision C Easements

### 75 Implied easements

- (1) Unless an easement is created for a particular service, there is implied—
  - (a) as belonging to any lot or common property within the site—an easement for the passage or supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are already existing) in or over the site to the extent to which the service is capable of being used in the enjoyment of the lots or common property; and
  - (b) as affecting any lot or common property within the site—an easement for the passage or supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are already existing) in or over the site to the extent to which the service is capable of being used in the enjoyment of lots or common property.
- (2) Subsection (1) does not affect easements belonging to and affecting lots in a plan created under the *Building Units and Group Titles Act 1980*.
- (3) If a multiple occupancy building is situated on 2 or more group title lots, the proprietor of a lot on which there is situated a part of the building that is intended for separate occupation is entitled to the right conferred by subsection (4).
- (4) In relation to any roofs, eaves, gutters, downpipes or foundations (the *building parts*) situated (wholly or partly)



over, on or under any adjoining lot, the proprietor is entitled to any shelter, drainage or support capable of being provided by the building parts in relation to the proprietor's lot.

- (5) The right created by subsection (4) is an easement to which the adjoining lot is subject.
- (6) The easement entitles the proprietor of the dominant tenement to enter the servient tenement and to maintain or replace any of the building parts.
- (7) If a building is on the boundary of a lot or so close to the boundary of a lot that maintenance or replacement in relation to the building is not able to be carried out without entering an adjoining lot, the proprietor of the lot on which the building is situated is entitled to enter the adjoining lot to carry out the maintenance or replacement.
- (8) The right created by subsection (7) is an easement to which the adjoining lot is subject.
- (9) The easement entitles the proprietor of the dominant tenement—
  - (a) to enter the servient tenement; and
  - (b) to maintain or replace any part of the proprietor's building.
- (10) An easement under this section must not be exercised by a proprietor in a way that unreasonably prevents another proprietor from enjoying the use and occupation of the other proprietor's lot or the common property.
- (11) If an easement under this section entitles a proprietor to enter an adjoining lot to effect maintenance or replacement work, the proprietor must give reasonable notice to the proprietor of the adjoining lot before entering to effect the work.
- (12) Subsection (11) does not apply if the work to be carried out is urgent.

## **76 Ancillary rights**

All ancillary rights and obligations that are necessary and reasonable to make an easement under this subdivision effective are conferred by this section.

## **77 Creation of easements by special resolution**

A primary thoroughfare body corporate or principal body corporate may by special resolution—

- (a) execute a grant of easement; or
- (b) accept a grant of easement; or
- (c) surrender a grant of easement; or
- (d) accept the surrender of a grant of easement.

## **Subdivision D Sequential plans**

### **78 Approval of sequential plans by local government**

- (1) If a number of plans are lodged with a local government at the same time, the local government may approve the plans if it is satisfied that access and other matters of which it must be satisfied will be effected if the plans are registered in the appropriate order.
- (2) In approving the plans the local government must give a certificate that specifies the number of plans approved by it and the date of approval of the plans.
- (3) In subsection (1)—

*plan* includes a plan creating initial lots or secondary lots and a group titles and a building units plan.

### **79 Registration of sequential plans by registrar of titles**

The registrar of titles may register the plans in the appropriate order only if the plans—

- (a) are accompanied by the certificate mentioned in section 78(2); and
- (b) have been approved by the local government.

## **Subdivision E Replacement schedules accompanying particular plans of subdivision**

### **79A Application of sdiv E**

This subdivision applies to a schedule stating the maximum number of lots into which a lot may be subdivided if the schedule accompanies a registered plan of subdivision creating an initial lot or secondary lot in a residential precinct.

### **79B Application to replace schedule**

The proprietor of the initial lot or secondary lot may apply to the local government for approval to replace the schedule with another schedule (the *replacement schedule*) that changes the number of lots into which the initial lot or secondary lot may be subdivided.

### **79C Approval of replacement schedule**

- (1) The local government may approve the replacement schedule only if—
  - (a) each proprietor and mortgagee of a lot for which the maximum number of lots is to be changed has given written consent to the change; and
  - (b) because of the change, the aggregate number of residential lots into which the residential precincts may be subdivided is the same; and
  - (c) an amendment of the scheme for the replacement schedule has been approved by the Governor in Council

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under section 13 after the commencement of this section; and

- (d) the replacement schedule is consistent with the scheme as amended.
- (2) If, for complying with subsection (1)(b) and (c), more than 1 replacement schedule needs to be given to the local government, the replacement schedules must be given to the local government at the same time.
- (3) The local government must approve the replacement schedule by endorsing its approval on the replacement schedule.

#### **79D Recording of replacement schedule**

- (1) The registrar of titles must not record the replacement schedule unless the local government has approved it.
- (2) The registrar of titles does not have to be satisfied about the matters mentioned in section 79C(1) but may rely on the local government's approval of the replacement schedule.

## **Part 6 Land subject to tidal influence**

### **80 Estate or interest in submerged land continues**

Where, as provided for in an approved scheme, land becomes inundated by water or subject to tidal influence, any estate or interest held in that land before the land became so inundated or subject is not affected by the inundation or becoming subject to tidal influence.

### **81 Subdivision of land**

- (1) A parcel of land within the site that—
  - (a) includes land that is submerged or subject to tidal influence and to which section 80 applies; and

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- (b) does not extend from the shore beyond the quay line, may be subdivided by way of a building units plan or a group titles plan.
  - (2) However, permanent above water access is provided from each lot on the plan of subdivision to the primary thoroughfare, on which there is, or is to be a road, or to a secondary thoroughfare, on which there is, or is to be a road, either directly or through common property of the parcel.
  - (3) For the purposes of subsection (2), above water access need not be access by road.

## **82 Construction of floating buildings and special buildings**

The construction of a floating building or a special building within the site is not—

- (a) the construction of a vessel, harbour works or other works of any kind; or
- (b) the placing of a pile or any other structure;

in, on, over, through or across land that is submerged or subject to inundation or tidal influence.

## **83 Tidal waters within jurisdiction of authorities**

If an area of the site becomes inundated with tidal water or subject to tidal influence, the banks and foreshores of the area are, to the extent that the area is beyond the quay line, taken to be within the jurisdiction of the authority that has jurisdiction over the adjacent banks and foreshores.

## **84 Obligation of authorities to maintain or undertake works**

An authority having jurisdiction over banks and foreshores of tidal waters is obliged to maintain or undertake works (including dredging) in relation to land within the site of an approved scheme, or tidal waters above land within the site of an approved scheme, only to the extent (if any) that it agrees in writing to accept the obligation.

## **85 Movement of vessels on tidal waters**

- (1) The proprietor of land within the site of an approved scheme has the right to restrict, regulate or prohibit the use or movement of vessels on, over, through or beneath tidal waters above the land if the waters are not beyond the quay line.
- (2) If the proprietor of land within the site permits the mooring of a vessel in waters above the land, the proprietor of other land within the site must not restrict or prohibit the movement of the vessel over the proprietor's land that is beyond the quay line to—
  - (a) the mooring; or
  - (b) another place in relation to which permission to moor the vessel has been given; or
  - (c) tidal waters outside the site.

## **86 Application of laws relating to design and construction etc.**

- (1) Laws relating to the design and construction, and standard of construction or materials, of buildings and other structures apply to floating buildings and special buildings, so far as the law may be sensibly applied, as if floating buildings or special buildings were constructed on land.
- (2) If the relevant joint committee established for the purposes of the Standard Sewerage Law or the Standard Water Supply Law considers that a standard determined under the Law can not sensibly be applied to a floating building, the committee may determine a different standard that is to apply having regard to the existing standard.

## **87 Statutory charges and valuation of land**

For the purpose of—

- (a) the assessment of rates, land tax and other statutory charges payable in relation to land; and

- (b) determining the value of land under the *Land Valuation Act 2010*;

any land within the site of an approved scheme that is or may be inundated by water or subject to tidal influence is to be taken to be land that is not, and never has been, inundated by water or subject to tidal influence.

## **88 Modification of powers of authorities**

- (1) An authority having jurisdiction over the banks and foreshores of tidal waters within the site of an approved scheme may not grant—
- (a) a lease in relation to a relevant area of the site; or
  - (b) a licence to use and occupy a relevant area of the site; or
  - (c) a permit to use and occupy a relevant area of the site.
- (2) Subsection (1) has effect despite any other Act.
- (3) In subsection (1)—
- relevant area* of a site means any foreshore, tidal lands or tidal waters within the site.

# **Part 7 Roads and canals on thoroughfares**

## **89 Construction of roads**

- (1) Roads constructed on the primary thoroughfare or on the secondary thoroughfare shall be constructed to a design and standard approved by the local government at the time of construction.
- (2) However, the Minister may direct that the local government approve of the design and standard.

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- (3) All roads on the primary thoroughfare and all roads on the secondary thoroughfare shall initially be constructed by the applicant at the applicant's cost in accordance with the requirements of the local government and to the satisfaction of that local government.

## **90 Construction of canals**

- (1) A canal may be constructed within the site of an approved scheme by the applicant at the applicant's expense.
- (2) A canal may be constructed only on—
  - (a) primary thoroughfare or secondary thoroughfare; or
  - (b) part of the site that will become primary thoroughfare or secondary thoroughfare.
- (3) The *Coastal Protection and Management Act 1995* and the *Integrated Planning Act*, other than the provisions of those Acts prescribed for this section, apply to the construction, operation and maintenance of a canal within the site.
- (4) The registrar of titles may register instruments of title dealing with land in any plan of subdivision to which the *Coastal Protection and Management Act 1995*, chapter 2, part 6, division 4, subdivision 3, applies even though a transfer surrendering to the State all land defined in the plan as the land on which the canal is to be constructed has not been registered in the land registry.

## **91 Maintenance of roads and thoroughfares**

- (1) The primary thoroughfare body corporate shall be responsible for the maintenance and reconstruction (including construction on relocation) of roads within the primary thoroughfare and of any other improvements on the primary thoroughfare.
- (2) The principal body corporate shall be responsible for the maintenance and reconstruction (including construction on relocation) of roads on the secondary thoroughfare and of any other improvements on the secondary thoroughfare.



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## **92 Maintenance of canals**

- (1) The primary thoroughfare body corporate is responsible for—
  - (a) the dredging and other maintenance of canals on the primary thoroughfare; and
  - (b) the maintenance of improvements relating to the canals on the primary thoroughfare.
- (2) The principal body corporate is responsible for—
  - (a) the dredging and other maintenance of canals on the secondary thoroughfare; and
  - (b) the maintenance of improvements relating to the canals on the secondary thoroughfare.

## **93 Additional works on primary thoroughfare**

- (1) At the request in writing of any member of the primary thoroughfare body corporate, the primary thoroughfare body corporate may undertake works on any part of the primary thoroughfare with a view to enhancing the amenity of land or the profitability of any business undertaking within the site.
- (2) Works that restrict vehicular access that is available immediately prior to the commencement of the undertaking of the works, to any part of the site shall not be undertaken unless each proprietor of the land comprising that part consents in writing to that restriction.
- (3) Works shall not be undertaken pursuant to this section unless—
  - (a) the local government approves those works; and
  - (b) all conditions of that approval (including conditions as to standards of construction) are complied with.
- (4) However, the Minister may direct that the local government approve those works.
- (5) The primary thoroughfare body corporate shall recover all costs of undertaking works pursuant to this section (including the costs incurred in obtaining the approval of the local

government and any other approvals required by law) from the member or members of the primary thoroughfare body corporate at whose request the works were undertaken.

- (6) Where 2 or more members of the primary thoroughfare body corporate are liable to pay the costs of undertaking works each shall pay an amount that bears to the total costs incurred the same proportion that the member's voting entitlements attributable to the land the amenity of which is sought to be enhanced or on which the business undertaking sought to be enhanced is carried on bears to the aggregate of such voting entitlements of all persons liable to contribute towards those costs.
- (7) The primary thoroughfare body corporate shall levy contributions in accordance with subsection (6) to recover the costs of undertaking the works and the provisions of section 109 with such modifications as may be necessary apply to and with respect to contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.
- (8) Nothing in subsections (5) and (6) shall prevent the primary thoroughfare body corporate from requiring the persons specified in those subsections to pay to the primary thoroughfare body corporate the whole or part of the expected costs of the completed works before the works are commenced or completed.
- (9) Any member of the primary thoroughfare body corporate who feels aggrieved by any levy imposed upon the member pursuant to this section may apply in writing to the Minister for a review of the levy.
- (10) The Minister after considering all the relevant information shall determine that member's liability and may adjust other members' liability accordingly.
- (11) The Minister's decision may be expressed as an amount or as a proportion of the total amount payable for works.

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**94 Leasing of land comprising primary thoroughfare**

No part of a primary thoroughfare may be leased without the prior approval of—

- (a) the primary thoroughfare body corporate given by special resolution within the meaning of section 101; and
- (b) the Minister.

**95 Dedication of thoroughfare as road**

(1) The primary thoroughfare body corporate, with the prior approval of—

- (a) the principal body corporate determined by special resolution within the meaning of section 138; and
- (b) 75% of members of the primary thoroughfare body corporate who are members by reason of being proprietors of land within the site that is not within the residential precincts which members have voting rights at meetings of the primary thoroughfare body corporate that aggregate not less than 75% of the aggregate voting rights of those members; and
- (c) the local government; and
- (d) the Governor in Council;

and subject to any reasonable conditions that the local government imposes, may dedicate in accordance with the *Land Act 1994* any part of the primary thoroughfare, that is a road, that adjoins a dedicated road to public use as a road.

- (2) The local government may impose a condition pursuant to subsection (1) that the primary thoroughfare body corporate pay to the local government an amount of money fixed by the local government with a view to the cost of constructing or maintaining the road.
- (3) A part of the primary thoroughfare that is dedicated to public use as a road pursuant to subsection (1) shall thereupon cease to be a part of the primary thoroughfare.

- (4) The principal body corporate, with the prior approval of—
- (a) the principal body corporate determined by special resolution within the meaning of section 138; and
  - (b) the local government; and
  - (c) the Governor in Council;
- and subject to any reasonable conditions that the local government imposes, may dedicate in accordance with the *Land Act 1994* any part of the secondary thoroughfare, that is a road, that adjoins a dedicated road to public use as a road.
- (5) The local government may impose a condition pursuant to subsection (4) that the principal body corporate pay to the local government an amount of money fixed by the local government with a view to the cost of constructing or maintaining the road.
- (6) A part of a secondary thoroughfare that is dedicated to public use as a road pursuant to subsection (4) shall thereupon cease to be part of that secondary thoroughfare.

## **96 Surrender of canal to the State**

- (1) The primary thoroughfare body corporate, with the prior approval of—
- (a) the principal body corporate determined by special resolution within the meaning given by section 138; and
  - (b) 75% of members of the primary thoroughfare body corporate who—
    - (i) are members because they are proprietors of land within the site, that is not within the residential precincts; and
    - (ii) have voting rights at meetings of the primary thoroughfare body corporate that aggregate not less than 75% of the aggregate voting rights of those members of the primary thoroughfare body corporate; and

(c) the local government; and

(d) the Governor in Council;

and subject to any reasonable conditions that the local government imposes, may execute a transfer surrendering to the State land on which a canal is constructed.

(2) The local government may impose a condition under subsection (1) that the primary thoroughfare body corporate pay to the local government an amount fixed by the local government for the preservation and maintenance of the canal.

(3) A part of the primary thoroughfare that is surrendered to the State under this section ceases to be a part of the primary thoroughfare on its surrender.

(4) The principal body corporate, with the prior approval of—

(a) the principal body corporate determined by special resolution within the meaning given by section 138; and

(b) the local government; and

(c) the Governor in Council;

and subject to any reasonable conditions that the local government imposes, may execute a transfer surrendering to the State land on which a canal is constructed.

(5) The local government may impose a condition under subsection (4) that the principal body corporate pay to the local government an amount fixed by the local government for the preservation and maintenance of the canal.

(6) A part of a secondary thoroughfare that is surrendered to the State under this section ceases to be part of the secondary thoroughfare on its surrender.

(7) If land on which a canal is constructed is surrendered, the provisions of the *Coastal Protection and Management Act 1995* or Integrated Planning Act prescribed for section 90 again apply.

## **97 Thoroughfares are roads under certain Acts**

- (1) For the purposes of the *Motor Accident Insurance Act 1994*, the roads on the primary thoroughfare and the roads on the secondary thoroughfare shall be roads.
- (2) For the purposes of the *Transport Operations (Road Use Management) Act 1995* (other than part 6) the roads on the primary thoroughfare and the roads on the secondary thoroughfare shall be roads within the meaning of that Act.

## **98 Powers etc. of inspectors and others on thoroughfares**

- (1) Notwithstanding any other provision of this Act or of any by-law or other decision made by the primary thoroughfare body corporate or the principal body corporate, any inspector or officer employed by the State or a statutory body (including the local government) or any other person authorised by a statutory body may enter and be upon any part of the primary thoroughfare or the secondary thoroughfare for the purpose of exercising the powers or authorities or performing the functions or duties as such inspector, officer or other person.
- (2) In respect of the primary thoroughfare and the secondary thoroughfare, the inspector, officer or other person, in addition to any powers, authorities, functions and duties vested in him or her by or under this or any other Act or law, shall have such powers, authorities, functions and duties that he or she would have under any Act or law if the primary thoroughfare and the secondary thoroughfare was a public place.
- (3) A person shall not obstruct the inspector, officer or other person, in his or her access to any part of the primary thoroughfare or of the secondary thoroughfare as provided in subsection (1).

## **98A Primary and secondary thoroughfares are public places for certain purposes**

A primary thoroughfare or secondary thoroughfare is a public place for the purposes of any law conferring powers or imposing functions on a police officer.

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## **99 Temporary closure of thoroughfares**

- (1) Subject to subsection (3), if the primary thoroughfare body corporate or the principal body corporate determines that any work is to be carried out on a primary thoroughfare or, as the case may be, a secondary thoroughfare which work is of such a nature as will or would require the temporary closure to some or all traffic on any road, the primary thoroughfare body corporate or, as the case may be, the principal body corporate shall give notice of intention to temporarily close the road at least 7 days prior to the closure by—
  - (a) public notice in a newspaper circulating in the site; and
  - (b) written notice given to each member of the primary thoroughfare body corporate or, as the case may be, the principal body corporate who is the proprietor of a lot access to which is likely to be affected by the closure.
- (2) The notice shall—
  - (a) identify the lots within the site access to which is likely to be affected by the closure; and
  - (b) specify the classes of traffic to be excluded; and
  - (c) identify the location of the road to be closed; and
  - (d) specify the period or periods of the closure; and
  - (e) specify the nature of the work being carried out.
- (3) The provisions of subsection (1) do not apply where the work to be carried out is of an emergent nature.

## **100 Occupier's right to use thoroughfares**

- (1) Subject to the application of any primary thoroughfare by-law or any secondary thoroughfare by-law, every person who lawfully occupies any land within the site has a right of way over the primary thoroughfare and that part of the secondary thoroughfare that is within the stage occupied by the person.
- (2) A primary thoroughfare by-law or a secondary thoroughfare by-law that, but for this subsection, would have the effect of unreasonably restricting access to or access from any land

within the site shall in respect of that land have no force or effect unless the person for the time being entitled to occupy that land consents in writing to that restriction.

## Part 8 Bodies corporate

### Division 1 Primary thoroughfare body corporate

#### 101 Interpretation

In this division—

*executive committee* means the executive committee of the primary thoroughfare body corporate constituted under this division.

*primary thoroughfare body corporate roll* means the roll referred to in section 117 to be maintained by the primary thoroughfare body corporate.

*proprietor*, in relation to land, means the person for the time being registered, or entitled to be registered, under the *Land Title Act 1994* as the owner of the land; and

in relation to land subdivided by way of a group titles plan or a building units plan, means the body corporate incorporated by the operation of section 27 of the *Building Units and Group Titles Act 1980*.

*special resolution*, for a general meeting of a primary thoroughfare body corporate, means a resolution which is passed at a duly convened general meeting of the primary thoroughfare body corporate by the members whose voting entitlements aggregate not less than 75% of the aggregate of all voting entitlements recorded in the primary thoroughfare body corporate roll.



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## 102 Primary thoroughfare body corporate

- (1) Upon registration of the initial plan or plans of subdivision, the proprietor or proprietors of the land within the site (excluding land within each residential precinct and land comprising the primary thoroughfare) and the principal body corporate shall by virtue of this Act be a body corporate under the name '(insert name of development specified in the approval of the scheme) Primary Thoroughfare Body Corporate'.
- (2) Until the incorporation of the principal body corporate, the proprietors of the land within the residential precincts shall be members of the primary thoroughfare body corporate in place of the principal body corporate.
- (3) When land, within the site (excluding land within the residential precincts) is subdivided by way of a group titles plan or a building units plan, the proprietor of that land—
  - (a) shall give notice in writing to the primary thoroughfare body corporate of the name and address for service of notices of the body corporate incorporated by the registration of that plan; and
  - (b) shall cease to be a member of the primary thoroughfare body corporate in so far as the proprietor was a member by virtue of being the proprietor of that land;and the body corporate created by the registration of that plan shall become a member of the primary thoroughfare body corporate.
- (4) The Corporations Act does not apply to or in respect of the primary thoroughfare body corporate.
- (5) The primary thoroughfare body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act and shall do all things reasonably necessary for the control, management and administration of the primary thoroughfare.
- (6) The primary thoroughfare body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in

accordance with the primary thoroughfare by-laws for the time being in force.

- (7) The primary thoroughfare body corporate may—
  - (a) sue and be sued on any contract made by it; and
  - (b) sue for and in respect of any damage or injury to the primary thoroughfare caused by any person; and
  - (c) be sued in respect of any matter connected with the primary thoroughfare which as proprietor it is so liable; and
  - (d) take such legal action as may be necessary to enforce the primary thoroughfare by-laws.
- (8) In any case in which work is carried out for the purpose of constructing or preparing the primary thoroughfare, upon registration of the initial plan of subdivision, the primary thoroughfare body corporate shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.
- (9) Nothing in subsection (8) shall relieve the applicant from the applicant's obligation to pay for the initial construction of the primary thoroughfare to the standard prescribed pursuant to section 89.

### **103 Member's nominee**

- (1) A member of the primary thoroughfare body corporate—
  - (a) being a subsidiary body corporate—shall at its annual general meeting and may from time to time thereafter; or
  - (b) in any other case—may from time to time;appoint a person to represent the member and to vote on behalf of the member at meetings of the primary thoroughfare body corporate.
- (2) The appointment of a person pursuant to subsection (1) shall not be effective until notification in writing signed by the

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member or, in a case referred to in subsection (1)(a), by the chairperson and secretary of the body corporate is received by the secretary of the primary thoroughfare body corporate.

- (3) The appointment of a person to represent a member at meetings of the primary thoroughfare body corporate shall continue until—
  - (a) notice of the appointment of another person to represent that member; or
  - (b) notice of the cancellation of the person's appointment;is received by the secretary of the primary thoroughfare body corporate.
- (4) A person appointed under this section by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.

## **104 Seal of primary thoroughfare body corporate**

- (1) The common seal of the primary thoroughfare body corporate shall be kept by such member of the primary thoroughfare body corporate or member of the executive committee as the primary thoroughfare body corporate determines or, in the absence of any such determination, by the secretary of the executive committee.
- (2) The common seal of the primary thoroughfare body corporate shall only be affixed to an instrument or document in the presence of—
  - (a) where the primary thoroughfare body corporate is constituted by 1 member or 2 members—that or those members as the case may be; or
  - (b) where the primary thoroughfare body corporate is constituted by more than 2 members—such 2 persons, being members of the primary thoroughfare body corporate or members of the executive committee, as the

primary thoroughfare body corporate determines or, in the absence of any such determination, the secretary and any other member of the executive committee;

who shall attest the fact and date of the affixing of the seal by their signatures.

- (3) However, where a member is a body corporate, the common seal affixed in the presence of a person nominated in writing by the body corporate for that purpose and attested by that person as provided in subsection (2) shall be deemed to have been duly affixed in the presence of that body corporate.

### **105 Address of primary thoroughfare body corporate**

The address of the primary thoroughfare body corporate for service of notices on it shall upon its incorporation pursuant to section 102 be the address of the applicant for service of notices on the applicant.

### **106 Meetings of primary thoroughfare body corporate**

- (1) Within 3 months after the incorporation of the primary thoroughfare body corporate, the applicant shall, in the prescribed manner, convene a meeting of the primary thoroughfare body corporate to be held within that period.

Maximum penalty—50 penalty units.

- (2) The agenda for a meeting convened under subsection (1) shall consist of the following items—
  - (a) to decide whether insurances effected by the primary thoroughfare body corporate should be confirmed, varied or extended;
  - (b) to decide whether any amounts determined under section 116(1)(h) or (2) should be confirmed or varied;
  - (c) where there are more than 3 members of the primary thoroughfare body corporate—to determine the number of members of the executive committee;

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- (d) to elect the chairperson, secretary and treasurer of the primary thoroughfare body corporate and other members of the executive committee;
  - (e) to decide whether to make by-laws regulating, controlling or prohibiting the passage through and conduct and activities of persons on or within all or part of the primary thoroughfare.
- (3) The meeting convened under subsection (1) shall be the first annual general meeting of the primary thoroughfare body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.
- (4) However, a person may be elected to 1 or more of those offices.
- (5) The applicant shall not fail or neglect to deliver to the primary thoroughfare body corporate at its first annual general meeting—
- (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates (other than certificates of title for lots), diagrams and other documents (including policies of insurance) obtained or received by the applicant and relating to the primary thoroughfare; and
  - (b) if they are in the applicant's possession or under the applicant's control, the primary thoroughfare body corporate roll, books of account and any notices or other records relating to the primary thoroughfare; and
  - (c) the budget showing the estimated expenditure of the primary thoroughfare body corporate in relation to the primary thoroughfare on an annual basis;

other than documents which exclusively evidence rights or obligations of the applicant and which are not capable of being used for the benefit of the primary thoroughfare body corporate or any of the members of the primary thoroughfare body corporate, other than the applicant.

Maximum penalty for subsection (5)—50 penalty units.

- (6) Schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act applies to and in respect of the first annual general meeting of the primary thoroughfare body corporate and voting at that meeting and schedule 2, part 2 to that Act in force at the commencement of this Act applies to and in respect of meetings of the primary thoroughfare body corporate, other than the first annual general meeting, and voting at those meetings.
- (7) However, the provisions in those schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 7, definition *ordinary resolution*.
- (8) The provisions of the schedules referred to in subsection (6) shall, for the purposes of subsection (7), be read and construed as if—
- (a) references therein to ‘aggregate lot entitlement’ were references to the aggregate of all voting entitlements specified in the approved scheme; and
  - (b) references therein to ‘body corporate’ were references to primary thoroughfare body corporate; and
  - (c) references therein to ‘by-laws’ were references to primary thoroughfare by-laws; and
  - (d) references therein to ‘council’ were references to executive committee; and
  - (e) references therein to a ‘lot’ were references to a parcel of land within the site; and
  - (f) references therein to ‘lot entitlement’ were references to the voting entitlement of a member; and
  - (g) references therein to the ‘original proprietor’ were references to the applicant; and
  - (h) references therein to a ‘proprietor’ were references to a member of the primary thoroughfare body corporate; and

- (i) references therein to the 'roll' were references to the primary thoroughfare body corporate roll; and
  - (j) references to particular provisions of the *Building Units and Group Titles Act 1980* (other than the provisions in those schedules) were references to corresponding provisions of this Act; and
  - (k) the principal body corporate were the proprietor of a parcel of land within the site and its voting entitlements where the voting entitlements of that parcel.
- (9) When an expression is substituted for an expression used in the *Building Units and Group Titles Act 1980* and referred to in subsection (8), the substituted expression shall, for the purposes of subsection (8), be read and construed in the same manner as the expression for which it is substituted is required to be read and construed.
- (10) If a meeting of the primary thoroughfare body corporate is not convened in accordance with subsection (1), the Minister may, pursuant to an application by the primary thoroughfare body corporate or any member of the primary thoroughfare body corporate appoint by order a person to convene a meeting of the primary thoroughfare body corporate within such time as may be specified in the order and the meeting convened by that person shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).
- (11) At any time after the meeting convened under subsection (1) has been held, the Minister may, pursuant to an application made to the Minister by a member of the primary thoroughfare body corporate, appoint by order a person, nominated by the member, who has consented to that nomination, if there is not an executive committee, to convene a meeting of the primary thoroughfare body corporate within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the other members of the executive committee, be deemed to be a first annual general meeting of the primary thoroughfare body corporate.

- (12) An order made under subsection (10) or (11) may include such ancillary or consequential provisions as the Minister thinks fit.
- (13) Notwithstanding subsections (6) to (9), where an order made under subsection (10) or (11) so provides—
  - (a) the person appointed to convene a meeting of the primary thoroughfare body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the primary thoroughfare body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (14) Notwithstanding that an order has been made under subsection (10) or that a meeting has been convened pursuant to any such order, the applicant remains liable to the penalty provided by subsection (1) for any failure to comply with that subsection.

## **107 Change of annual general meeting**

- (1) The primary thoroughfare body corporate may apply in writing to the Minister for approval to change the date of its next annual general meeting.
- (2) The primary thoroughfare body corporate may apply to the Minister to change the date of its next annual general meeting only if—
  - (a) the change of date proposed has been set out in a motion given to its members; and
  - (b) the motion for the proposed change of date has been carried by ordinary resolution of the body corporate.
- (3) The application to the Minister must be accompanied by—
  - (a) a copy of the motion; and
  - (b) evidence that it has been carried by ordinary resolution.



- (4) The Minister may approve or refuse the application and must advise the primary thoroughfare body corporate in writing of the approval or refusal.
- (5) If the application is approved, the new date of the annual general meeting is taken to be the anniversary of the first annual general meeting of the primary thoroughfare body corporate.

## **108 Voting entitlements**

- (1) Until land within a precinct, other than a residential precinct or the primary thoroughfare precinct, is subdivided, the proprietor of that land as a member of the primary thoroughfare body corporate shall have a voting entitlement as set out in the approved scheme in respect of that precinct.
- (2) Until the incorporation of the principal body corporate, the proprietor or proprietors of land within the residential precincts shall have the voting entitlement as set out in the approved scheme in respect of those precincts.
- (3) When the land comprising a precinct, other than a residential precinct or the primary thoroughfare precinct, is subdivided the voting entitlement for that precinct shall be apportioned by notice in writing by the proprietor of the land given to the primary thoroughfare body corporate amongst parcels thereby created and a proprietor of a parcel shall as a member of the primary thoroughfare body corporate have the voting entitlement apportioned in respect of that parcel.
- (4) In like manner the voting entitlement of a proprietor of land that is further subdivided shall be apportioned amongst the parcels thereby created and the proprietor of each parcel shall have the relevant voting entitlement so apportioned.
- (5) Immediately upon the incorporation of the principal body corporate—
  - (a) the proprietor or proprietors referred to in subsection (2) shall cease to have those voting entitlements; and

- (b) the principal body corporate shall have those voting entitlements.

## **109 Levies by primary thoroughfare body corporate on members**

- (1) The primary thoroughfare body corporate may levy the contributions determined by it in accordance with section 116(1)(h) and the amount (if any) determined pursuant to section 116(2) in respect thereof by serving on its members notice in writing of the contributions payable by them.
- (2) Contributions levied by the primary thoroughfare body corporate shall be levied and shall be payable, subject to this section, by the members of the primary thoroughfare body corporate in shares proportional to the voting entitlements.
- (3) In respect of a contribution levied under subsection (1), a proprietor of land is liable, jointly and severally with any person who was liable to pay that contribution when the proprietor became the proprietor of that land to pay such part of that contribution as was unpaid when the proprietor became the proprietor of that land.
- (4) A contribution levied under this section—
  - (a) becomes due and payable to the primary thoroughfare body corporate in accordance with the decision of the primary thoroughfare body corporate to make the levy; and
  - (b) if paid within 30 days after the date when it becomes due and payable—shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 116(2) (if any); and
  - (c) may be recovered, as a debt, by the primary thoroughfare body corporate in any court of competent jurisdiction.
- (5) Nothing in this section shall be construed to prevent the primary thoroughfare body corporate, in general meeting, either generally or in a particular case, determining that a

contribution may be reduced as provided in subsection (4)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.

## **110 Change of primary thoroughfare body corporate's address**

- (1) The primary thoroughfare body corporate may, in general meeting, decide that the address for the service of notices on the primary thoroughfare body corporate shall be changed.
- (2) Upon giving notice in writing to the Minister and notification by the Minister in the gazette of the change of address, the address for service of notices on the primary thoroughfare body corporate shall, notwithstanding any other provision of this Act, be the address so notified.

## **111 Power of entry**

- (1) For the purpose of carrying out—
  - (a) any work required to be carried out by the primary thoroughfare body corporate by a notice served on it by a public authority or local government; or
  - (b) any work referred to in section 116(1)(b);the primary thoroughfare body corporate may, by its agents, servants or contractors, enter upon any part of the primary thoroughfare for the purpose of carrying out the work—
  - (c) in the case of an emergency, at any time; or
  - (d) in any other case, at any reasonable time on notice given to any occupier of a lot likely to be affected thereby.
- (2) For the purposes of subsection (1)(d), an occupier of a lot, being a lot on a group titles plan or a building units plan, shall be taken to have been given notice if the notice is duly given to the body corporate incorporated by the registration of that plan.

- (3) A person shall not obstruct or hinder the primary thoroughfare body corporate in the exercise of its power under subsection (1).

Maximum penalty for subsection (3)—50 penalty units.

## **112 Maintenance of services within lots or common property**

- (1) If, because of an agreement with a local government, the primary thoroughfare body corporate is responsible for the maintenance and reconstruction (including construction on relocation) of any pipes, poles, wires, cables or ducts or anything that provides a service within the site, the primary thoroughfare body corporate may enter on any lot or common property—
- (a) to carry out works relating to the maintenance or reconstruction (including construction on relocation); or
  - (b) to inspect for the purpose of deciding whether works relating to the maintenance or reconstruction are required.
- (2) The primary thoroughfare body corporate must give notice of works to be carried out under subsection (1)—
- (a) if the works are on a lot—to the proprietor of the lot; or
  - (b) if the works are on common property—to the body corporate responsible for the control, management and administration of the common property.
- (3) If notice is given to a body corporate under subsection (2)(b), it must immediately notify the proprietors of lots who are entitled to use and enjoy the common property.
- (4) The notice must—
- (a) be in writing; and
  - (b) be given not less than 7 days before the works are to be carried out; and
  - (c) identify the part of the lot or common property to be affected by the works; and

- (d) specify the nature of the works to be carried out; and
  - (e) specify the estimated time that it will take to carry out the works.
- (5) Subsection (2) does not apply—
- (a) if the works to be carried out are urgent; or
  - (b) to an inspection for the purpose of deciding whether works are required.

### **113 Miscellaneous powers of primary thoroughfare body corporate**

The primary thoroughfare body corporate may do any of the following—

- (a) invest any moneys held by it in any manner permitted by law for the investment of trust funds or in any prescribed investment;
- (b) borrow moneys and secure the repayment thereof and of any interest in such manner as may be agreed upon by the primary thoroughfare body corporate and the lender;
- (c) enter into an agreement for the provision of amenities or services by it or any other person to any land or to the proprietor or occupier thereof;
- (d) enter into an agreement with the principal body corporate for the provision of amenities or services by the primary thoroughfare body corporate or any other person to any land within the residential precincts or to the proprietor or occupier thereof;
- (e) acquire and hold any personal property to facilitate the carrying out of its duties;
- (f) employ staff to perform its functions.

#### **114 Leases to primary thoroughfare body corporate**

- (1) For the purpose of providing access to the primary thoroughfare, the primary thoroughfare body corporate may take a lease—
  - (a) of a road closed in strata that joins or is to join the primary thoroughfare; or
  - (b) of a wharf or for the construction of a wharf that joins or is to join the primary thoroughfare.
- (2) The primary thoroughfare body corporate may take a lease of land for any other prescribed purpose.

#### **115 Community facilities on primary thoroughfare**

- (1) The primary thoroughfare body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within the site, on—
  - (a) the primary thoroughfare; or
  - (b) land leased by the primary thoroughfare body corporate under section 114(2).
- (2) The development or construction mentioned in subsection (1) must not start until authorised by the primary thoroughfare body corporate under a special resolution.
- (3) The primary thoroughfare body corporate must maintain the facilities.

#### **116 Duties of primary thoroughfare body corporate**

- (1) The primary thoroughfare body corporate shall—
  - (a) control, manage and administer the primary thoroughfare for the benefit of its members; and
  - (b) properly maintain and keep in a state of good and serviceable repair—
    - (i) the primary thoroughfare, including any improvements thereon; and

- (ii) any personal property vested in it; and
- (c) effect insurance in accordance with section 120; and
- (d) cause proper records to be kept of notices given to the primary thoroughfare body corporate under this or any other Act and of any orders made by a court and served on the primary thoroughfare body corporate; and
- (e) keep—
  - (i) for at least 10 years after their creation or receipt by or for the primary thoroughfare body corporate—
    - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
    - (B) proper books of account for amounts received or paid by the primary thoroughfare body corporate showing the items for which the amounts were received or paid; and
  - (ii) for at least 2 years after their creation or receipt by or for the primary thoroughfare body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and
- (f) cause to be prepared, from the books mentioned in paragraph (e), a proper statement of accounts of the primary thoroughfare body corporate in relation to each period—
  - (i) starting on the date of its incorporation or the day immediately after the date up to which the last statement was prepared; and
  - (ii) ending on the last day of the month that is 3 months before the start of the month in which the anniversary of the first annual general meeting happens; and
- (g) cause an annual general meeting of the primary thoroughfare body corporate to be held each year on or

- after the anniversary of the first annual general meeting but not later than 2 months after the anniversary; and
- (h) not later than 14 days after its incorporation and from time to time thereafter, determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums, rates or any other liability of the primary thoroughfare body corporate, other than amounts referred to in paragraph (l); and
  - (i) upon first determining the amounts referred to in paragraph (h), establish a fund into which shall be paid all amounts received by it, including the proceeds of the sale or other disposal of any personal property of the primary thoroughfare body corporate and any fees received by it under section 119 and into which may be paid any amounts paid to the primary thoroughfare body corporate by way of discharge of insurance claims; and
  - (j) from time to time, levy, in accordance with section 109, on each person liable therefor a contribution to raise the amounts referred to in paragraph (h); and
  - (k) pay any moneys referred to in paragraph (i) that are received by it and are not otherwise invested in accordance with section 113(a) into an account established in a financial institution in the name of the primary thoroughfare body corporate; and
  - (l) if the primary thoroughfare body corporate—
    - (i) becomes liable to pay any moneys that it is unable to pay forthwith; and
    - (ii) is not required under paragraph (j), to levy contributions to meet the liability;levy, in accordance with section 109, contributions to raise those moneys; and
  - (m) implement the decisions of the primary thoroughfare body corporate.



- (2) The primary thoroughfare body corporate from time to time may in respect of contributions determined in accordance with subsection (1)(h) or contributions referred to in subsection (1)(l) determine by special resolution, for the purposes of section 109, an amount being not greater than 10% of those contributions.
- (3) The primary thoroughfare body corporate shall not disburse any moneys from its fund, otherwise than for the purpose of carrying out its powers, authorities, duties and functions under this Act or the primary thoroughfare by-laws or meeting any liability referred to in subsection (1)(l).
- (4) A determination made by the primary thoroughfare body corporate under subsection (1)(h) may specify that the amounts to be raised shall be raised by such regular periodic contributions as may be specified in the determination.

## **117 Primary thoroughfare body corporate roll**

- (1) The primary thoroughfare body corporate shall prepare and maintain a roll in accordance with this section.
- (2) The primary thoroughfare body corporate shall record in the primary thoroughfare body corporate roll the following information—
  - (a) the voting entitlements of the proprietor of each parcel of land within the site (excluding land within the residential precincts);
  - (b) the voting entitlements of the principal body corporate;
  - (c) the total of the voting entitlements referred to in paragraphs (a) and (b);
  - (d) the name and address for service of notices on each member of the primary thoroughfare body corporate;
  - (e) the name and address of any person appointed (in writing addressed to the primary thoroughfare body corporate) by any member of the primary thoroughfare body corporate to represent that member at meetings of the primary thoroughfare body corporate.

- (3) The primary thoroughfare body corporate shall record and maintain in the primary thoroughfare body corporate roll a copy of the primary thoroughfare by-laws for the time being in force.

## **118 Notices to be given by proprietors**

- (1) The applicant and any person who, under this section, has given notice of an address for the service of notices on the applicant or other person must give notice in writing to the primary thoroughfare body corporate of an address or change of address for the service of notices on the applicant or other person.

Maximum penalty—4 penalty units.

- (2) After delivery to a transferee of any land within the site (excluding land within the residential precincts) of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the primary thoroughfare body corporate written notice which shall identify the land and—
  - (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (3) Where a transferor of any land fails to comply with subsection (2), the transferee of that land may give to the primary thoroughfare body corporate written notice which shall identify the land and specify the transferee's name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to the transferee.
- (4) After a person becomes, otherwise than as a transferee, the proprietor of land within the site (excluding land within the

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residential precincts) the person shall give to the primary thoroughfare body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—

- (a) by what right the person became entitled to the land; and
- (b) the person's name, in full, the address for the service of notices on the person and the date upon which the person became entitled to the land.

(5) Where—

- (a) the primary thoroughfare body corporate believes that a person may, under this section, give a notice to it; and
- (b) the primary thoroughfare body corporate has not received that notice;

the primary thoroughfare body corporate may serve a notice on that person specifying the capacity in which it believes the person is entitled to give the notice and requiring the person—

- (c) to state, within 14 days, whether or not the person is a person entitled to give a notice in that capacity; and
- (d) if the person is such a person, to give that notice.

(6) Where the primary thoroughfare body corporate has served a notice under subsection (5) on a person whom it believes to be a person entitled to give a notice to the primary thoroughfare body corporate under this section that person is not entitled to cast a vote at any meeting of the primary thoroughfare body corporate until the person gives the required notice.

(7) A vote cast at a meeting of the primary thoroughfare body corporate by a person on behalf of a member of the primary thoroughfare body corporate has no effect unless the primary thoroughfare body corporate has been given notice in writing specifying that the person is the nominee of the member.

(8) A notice referred to in subsection (7) may be included in any other notice that the member of the primary thoroughfare body corporate to which it relates is entitled under this section to give to the primary thoroughfare body corporate.

**119 Supply of information, certificates and copies by primary thoroughfare body corporate**

- (1) The primary thoroughfare body corporate shall, upon application made to it in writing by a member of the primary thoroughfare body corporate, by a member of the principal body corporate or by a proprietor of any lot on a group titles plan or building units plan or by a person authorised in writing by such member or proprietor and on payment of such sum as the primary thoroughfare body corporate may fix by resolution but not exceeding the reasonable cost to the primary thoroughfare body corporate, do such 1 or more of the following things as are required of it in the application—
- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the primary thoroughfare body corporate or a member of the executive committee;
  - (b) make the following available for inspection by the applicant or the applicant's agent—
    - (i) the primary thoroughfare body corporate roll;
    - (ii) the notices and orders referred to in section 116(1)(d);
    - (iii) the plans, specifications, drawings showing water pipes, electric cables or drainage, certificates, diagrams and other documents held by it relating to the primary thoroughfare;
    - (iv) the minutes of general meetings of the primal thoroughfare body corporate and of the executive committee;
    - (v) the books of account of the primary thoroughfare body corporate;
    - (vi) a copy of the statement of accounts of the primary thoroughfare body corporate last prepared by the primary thoroughfare body corporate in accordance with section 116(1)(f);

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(vii) every current policy of insurance effected by the primary thoroughfare body corporate and the receipt for the premium last paid. in respect of each such policy;

(viii) any other record or document in the custody or under the control of the primary thoroughfare body corporate;

(ix) the primary thoroughfare by-laws for the time being in force;

at such time and place as may be agreed upon by the applicant or the applicant's agent and the primary thoroughfare body corporate and, failing agreement, at the office of the primary thoroughfare body corporate at a time and on a date fixed by the primary thoroughfare body corporate under subsection (2);

(c) certify, as at the date of the certificate, in respect of any land in respect of which the application is made—

(i) the amount of any regular periodic contributions determined by the primary thoroughfare body corporate under section 116(1)(h) and (4) and the periods in respect of which those contributions are payable; and

(ii) whether there is any amount unpaid of any contribution determined under section 116(1)(h) and, if so, the amount thereof; and

(iii) whether there is any amount unpaid of any contribution levied under section 116(1)(l) and, if so, the amount thereof and the date on which it was levied; and

(iv) whether there is any amount unpaid of any contribution levied under section 131 and, if so, the amount thereof and the date on which it was levied; and

(v) the amount (if any) determined under section 116(2) in respect of any unpaid contribution referred to in this paragraph; or

- (d) furnish to the applicant or the applicant's agent a copy of the primary thoroughfare by-laws for the time being in force or any part thereof within a period of 21 days commencing on the day next after the date on which the application is received by the primary thoroughfare body corporate.
- (2) Where an applicant and the primary thoroughfare body corporate fail to reach an agreement referred to in subsection (1)(b) within 3 days after the receipt of the application by the primary thoroughfare body corporate, the primary thoroughfare body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9a.m. and 8p.m. on a date so specified, being a date not later than 10 days after the receipt of the application by the primary thoroughfare body corporate for the making of the inspection referred to in subsection (1)(b).
- (3) The primary thoroughfare body corporate shall permit any person to whom the primary thoroughfare by-laws are made available for inspection to make copies of or take extracts from those by-laws.

## **120 Insurance by primary thoroughfare body corporate**

- (1) The primary thoroughfare body corporate shall effect insurance—
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of damage to property, death or bodily injury happening on or in relation to—
    - (i) the primary thoroughfare; or
    - (ii) a road closed in strata leased under section 114(1);  
or
    - (iii) a wharf leased under section 114(1); or

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- (iv) land leased under section 114(2) and any improvements on the land;  
or the consequences resulting from such damage; and
- (c) against the possibility of the members becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the primary thoroughfare body corporate, pursuant to a special resolution, decides to insure.
- (2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of the amount prescribed by regulation or, if not prescribed, \$5000000.
- (3) The primary thoroughfare body corporate may insure any property in which it has an insurable interest.

## **121 Power for individuals to act for corporate members**

- (1) A body corporate (including the principal body corporate) may authorise an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the body corporate as member of the primary thoroughfare body corporate and may revoke the authority of an individual so authorised.
- (2) Where an individual exercises or performs a power, authority, duty or function that the individual is, by a member of the primary thoroughfare body corporate, authorised pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the member.
- (3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a body corporate which is a member.
- (4) A document under the seal of a body corporate purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

## **122 Voting rights**

- (1) Any powers of voting conferred by or under this division may be exercised—
  - (a) in the case of a member who is an infant—by the infant’s guardian; or
  - (b) in the case of a member who is for any reason unable to control the member’s property—by the person who for the time being is authorised by law to control that property; or
  - (c) in the case of a member which is a body corporate—by the person nominated pursuant to section 121 by that member.
- (2) Where the Supreme Court upon the application of the primary thoroughfare body corporate or of any member is satisfied that there is no person able to vote in respect of any voting entitlement or that the person able to vote can not be found, the court in its discretion may appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this division as the court shall determine.
- (3) The court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2) the court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.
- (5) The powers of the court under this section may be exercised by the registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.
- (6) In this section—



*registrar* means the registrar of the Supreme Court at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

### **123 Constitution of executive committee**

- (1) After the first annual general meeting of the primary thoroughfare body corporate, there shall be an executive committee consisting of a chairperson, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.
- (2) The chairperson, secretary and treasurer of the primary thoroughfare body corporate shall be members of, and be also respectively the chairperson, secretary and treasurer of, the executive committee.
- (3) However, a person may be elected to 1 or more of those offices.
- (4) Where there are not more than 5 members of the primary thoroughfare body corporate, the executive committee shall consist of each member (if any) who is an individual or the member's nominee, together with the nominee of each member which is a body corporate.
- (5) If there are more than 5 members of the primary thoroughfare body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the primary thoroughfare body corporate, as decided by the primary thoroughfare body corporate.
- (6) The members of an executive committee referred to in subsection (5) and the chairperson, secretary and treasurer shall be elected at each annual general meeting of the primary thoroughfare body corporate or, if the number of members of the primary thoroughfare body corporate increases to more than 5, at an extraordinary general meeting convened for the purpose.
- (6A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general

meeting of the primary thoroughfare body corporate must be conducted under schedule 3.

- (7) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—
- (a) is an individual who—
    - (i) is a member of the primary thoroughfare body corporate; or
    - (ii) has been nominated for election by a member of the primary thoroughfare body corporate; and
  - (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.
- (8) Notwithstanding the provisions of this section, the primary thoroughfare body corporate may determine that the holder of the office of secretary or treasurer of the primary thoroughfare body corporate shall not be a member of the executive committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the primary thoroughfare body corporate and of the executive committee but shall not be a member of the executive committee.
- (9) A member of the executive committee may, with the consent of the executive committee, appoint a member of the primary thoroughfare body corporate or nominee of a body corporate which is a member of the primary thoroughfare body corporate to act in the member's place as a member of the executive committee at any meeting of the executive committee and any member or nominee so appointed shall, when the member or nominee is so acting, be deemed to be a member of the executive committee.
- (10) A member of the primary thoroughfare body corporate or a nominee of a body corporate may be appointed under subsection (9) whether or not the member is a member of the executive committee.
- (11) If a person appointed under subsection (9) is a member of the executive committee the person may, at any meeting of the

executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.

- (12) Notwithstanding any other provision of this section, the executive committee may be constituted before the first annual general meeting of the primary thoroughfare body corporate.
- (13) The members of the executive committee constituted under subsection (12) (if any) and the chairperson, secretary and treasurer of the primary thoroughfare body corporate shall be elected at a general meeting of the primary thoroughfare body corporate and the provisions of subsection (7) and such of the provisions of schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act as applied by section 106 as they relate to the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and of members of the executive committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of the executive committee to be so constituted.
- (14) Schedule 2, part 2 of the *Building Units and Group Titles Act 1980* other than section 16(1) as applied by section 106 does not apply to or in respect of the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the members of the executive committee to be constituted under subsection (12).
- (15) The provisions of this division (other than subsections (1) to (6)) apply to and in respect of an executive committee constituted under subsection (12) and the members thereof.
- (16) Where there is no executive committee, the primary thoroughfare body corporate shall exercise and perform the powers, authorities, duties and functions of the executive committee.

### **123A Code of conduct for voting members of executive committee**

- (1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—
  - (a) a member of the executive committee; and
  - (b) entitled to vote at general meetings of the primary thoroughfare body corporate.
- (2) On becoming a voting member of the committee, the person is taken to have agreed to comply with the code of conduct.

### **124 Vacation of office of member of executive committee**

- (1) A person elected as chairperson, secretary or treasurer of the primary thoroughfare body corporate or as a member of the executive committee vacates the person's office—
  - (a) if, where the person was a member of the primary thoroughfare body corporate at the time of the person's election, the person ceases to be a member of the primary thoroughfare body corporate; or
  - (b) upon the receipt by the primary thoroughfare body corporate from the person of notice in writing of the person's resignation; or
  - (c) upon the election at a general meeting of the primary thoroughfare body corporate of another person to that office or as a member of the executive committee; or
  - (d) where the person is a member referred to in section 123(4) and the number of members of the primary thoroughfare body corporate increases to more than 3—upon the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the other members of the executive committee at the annual general meeting, or the extraordinary general meeting referred to in section 123(6); or
  - (e) if the person is absent without prior leave granted by the executive committee from 3 consecutive meetings of the

- executive committee of which due notice has been given to the person; or
- (f) if the person becomes bankrupt or compounds with the person's creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
  - (g) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
  - (h) if the person dies; or
  - (i) if the person is removed from office by ordinary resolution of the primary thoroughfare body corporate under division 5; or
  - (j) if the primary thoroughfare body corporate, pursuant to a special resolution, determines that the person's office is vacated.
- (2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the primary thoroughfare body corporate or another member of the executive committee, otherwise than by reason of the operation of subsection (1)(d) or (e), the primary thoroughfare body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of the person's predecessor's term of office.

## **125 Chairperson, secretary and treasurer of executive committee**

- (1) The chairperson shall preside at all meetings of the executive committee at which the chairperson is present and, if the chairperson is absent from any meeting, the members of the executive present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.

- (2) A person shall not exercise or perform any of the powers, authorities, duties, or functions of the primary thoroughfare body corporate or of the treasurer of the primary thoroughfare body corporate, being powers, authorities, duties or functions relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the primary thoroughfare body corporate, unless the person is—
- (a) the treasurer of the primary thoroughfare body corporate; or
  - (b) a person with whom the treasurer of the primary thoroughfare body corporate is required by an order of the executive committee to exercise or perform jointly that power, authority, duty or function, or who is enabling the treasurer to comply with the order.

Maximum penalty—50 penalty units.

- (3) The treasurer of the primary thoroughfare body corporate may delegate the exercise or performance of any of the treasurer's powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is specifically approved by the executive committee, to another member of the executive committee so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, the delegate shall be deemed to be the treasurer of the primary thoroughfare body corporate.
- (4) The executive committee may, by a notice in writing, served on the treasurer of the primary thoroughfare body corporate, order that the treasurer shall not exercise or perform any of the treasurer's powers, authorities, duties or functions that are specified in the notice, unless the treasurer does so jointly with another person so specified.
- (5) A person who has possession or control of—
- (a) any records, books of account or keys belonging to the primary thoroughfare body corporate; or
  - (b) the primary thoroughfare body corporate roll; or

- (c) any other property of the primary thoroughfare body corporate;

shall, within 7 days after service on the person of notice of a resolution of the executive committee requiring the person to do so, deliver those records, books of account and keys and that roll and other property to a member of the executive committee specified in the notice.

Maximum penalty for subsection (5)—20 penalty units.

## **126 Meetings of executive committee**

- (1) At a meeting of the executive committee more than half of the members of the executive committee constitutes a quorum.
- (2) Subject to this Act, the decision on any matter of the majority of the members voting on that matter shall be the decision of the executive committee at any meeting at which a quorum is present.
- (3) A decision of the executive committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the executive committee by not less than half of the total number of members of the primary thoroughfare body corporate, the sum of whose voting entitlements exceed half of the aggregate of all voting entitlements recorded in the primary thoroughfare body corporate roll, that the making of the decision is opposed by those members.
- (4) The executive committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.

## **126A Conflict of interest of executive committee member [SM, s 53]**

- (1) A member of the executive committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict

with the appropriate performance of the member's duties about the consideration of the issue.

- (2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the executive committee, the member is not entitled to vote on a motion involving the issue.
- (3) A person who holds the proxy of a member of the executive committee must disclose to a meeting of the executive committee the proxy holder's direct or indirect interest in an issue being considered, or about to be considered, by the executive committee if the interest could conflict with the appropriate performance of the proxy holder's duties about the consideration of the issue.
- (4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
- (5) A person who holds the proxy of a member of the executive committee must disclose to a meeting of the executive committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the executive committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- (6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

## **127 Executive committee's decisions to be decisions of primary thoroughfare body corporate**

- (1) In this section—  
*restricted matter* means—
  - (a) any matter relating to the striking of a special monetary levy on all members of the primary thoroughfare body corporate; and



- (b) any matter which seeks to alter the rights, privileges or obligations of members of the primary thoroughfare body corporate; and
  - (c) any matter which seeks to alter the annual monetary contribution of members of the primary thoroughfare body corporate; and
  - (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the primary thoroughfare body corporate pursuant to a special resolution or in general meeting of the primary thoroughfare body corporate; and
  - (e) any matter referred to in section 129 and specified in a resolution of the primary thoroughfare body corporate passed for the purposes of that section.
- (2) Subject to this Act, the decision of the executive committee on any matter, other than a restricted matter, shall be the decision of the primary thoroughfare body corporate.
- (3) Notwithstanding that the executive committee holds office, the primary thoroughfare body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on the body corporate by this Act.

## **128 Statutory restrictions on powers of executive committee**

- (1) Unless—
- (a) otherwise determined pursuant to a special resolution of the primary thoroughfare body corporate; or
  - (b) authorised by the Minister in an emergency; or
  - (c) consented to by such persons entitled to vote at a general meeting of the primary thoroughfare body corporate who represent an aggregate voting entitlement of not less than 75% of the aggregate of all voting entitlements recorded in the primary thoroughfare body corporate roll;

the executive committee shall not undertake expenditure.

- (2) In respect of any proposed expenditure which, under subsection (1), the executive committee is not entitled to undertake, the executive committee shall—
  - (a) submit the proposal for determination at an extraordinary general meeting of the primary thoroughfare body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
  - (a) in payment of any premium of insurance effected by or on behalf of the primary thoroughfare body corporate; or
  - (b) to comply with a notice or order served on the primary thoroughfare body corporate by any public authority or local government; or
  - (c) in discharge of any liability incurred in respect of an obligation of the primary thoroughfare body corporate authorised by the primary thoroughfare body corporate in general meeting.

## **129 Restrictions imposed on executive committee by primary thoroughfare body corporate**

The primary thoroughfare body corporate may in general meeting decide what matters or class of matters (if any) shall be determined only by the primary thoroughfare body corporate in general meeting.

### **129A Protection of executive committee members from liability**

- (1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without

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negligence in performing the person's role as a member of the committee.

(2) In this section—

*act done or omission made* does not include the publication of defamatory matter as mentioned in section 129B(1).

### **129B Protection of body corporate and executive committee from liability for defamation**

(1) This section applies if—

- (a) the executive committee publishes required material for a general meeting of the primary thoroughfare body corporate; and
- (b) the required material contains defamatory matter.

(2) Each of the following is not liable for defamation because of the publication—

- (a) the primary thoroughfare body corporate;
- (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.

(3) In this section—

*member of the committee* includes the body corporate manager acting under a delegation under section 130(2).

*prescribed motion* means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 175B(1);
- (b) a motion mentioned in section 175C(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for an approved scheme or part of an approved scheme under section 175N;

- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 175Y.

*required material*, for a general meeting of the primary thoroughfare body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.

### **130 Primary thoroughfare body corporate manager**

- (1) Subject to subsections (3), (5), (6) and (7), the primary thoroughfare body corporate may in general meeting and by instrument appoint a body corporate manager on such terms and conditions the primary thoroughfare body corporate determines.
- (2) The primary thoroughfare body corporate may delegate all or any of its powers to the body corporate manager.
- (3) The primary thoroughfare body corporate must not delegate to the body corporate manager its power to make—
  - (a) a delegation mentioned in subsection (2); or
  - (b) a decision on a restricted matter within the meaning of section 127.
- (4) If the instrument of appointment provides, a body corporate manager may exercise all or any of the powers of the chairperson, secretary or treasurer of the primary thoroughfare body corporate and the executive committee.
- (5) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal,

whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

- (6) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.
- (7) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—
  - (a) the appointment expires; and
  - (b) the person can not act again as the body corporate manager without a new appointment.
- (8) Nothing in this section prevents the reappointment of a body corporate manager after the term of appointment has expired.

### **131 Costs in proceedings by members against primary thoroughfare body corporate**

- (1) In any proceedings brought by any member against the primary thoroughfare body corporate, the court before which the proceedings are brought may order that any moneys (including costs) payable by the primary thoroughfare body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such members as are specified in the order and in such proportions as may be so specified, by the primary thoroughfare body corporate out of contributions levied for the purpose.
- (2) Where a court makes an order under subsection (1) the primary thoroughfare body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy.
- (3) The provisions of section 109 with such modifications as may be necessary apply to and in respect of contributions levied

under subsection (2) in the same way as those provisions apply to contributions levied under that section.

**132 Service of documents on primary thoroughfare body corporate, members and others**

- (1) A summons or other legal process may be served on the primary thoroughfare body corporate by leaving it with the chairperson or secretary of the primary thoroughfare body corporate or with any member of the executive committee.
- (2) A document other than a document referred to in subsection (1) may be served on the primary thoroughfare body corporate—
  - (a) by leaving it with any person referred to in subsection (1); or
  - (b) by post on the primary thoroughfare body corporate at its last address notified in the gazette.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by the primary thoroughfare body corporate, the executive committee or the secretary of the executive committee or a member or proprietor, lessee or occupier of land or of a lot may be served—
  - (a) by leaving it with some person apparently of or above the age of 16 years—
    - (i) where the person to be served is an occupier of land or a lot—at the land or lot; or
    - (ii) where an address for the service of notices on the person to be served is recorded in the primary thoroughfare body corporate roll—at the address so recorded; or
  - (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the primary thoroughfare body corporate roll, at the address so recorded; or

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- (c) in the case of a member—in any manner authorised by the primary thoroughfare by-laws for the service of notices on members.
  - (4) Notice under section 125(5) may be served on a person—
    - (a) personally or by post; or
    - (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the first mentioned person.

### **133 Power of primary thoroughfare body corporate to convene community meetings**

- (1) The primary thoroughfare body corporate may, at the request of any proprietor or occupier of land or of a lot within the site, convene a meeting in respect of any matter of interest to proprietors or occupiers of land or lots within the site.
- (2) Any proprietor or occupier of land or of a lot within the site may attend and vote at a meeting convened pursuant to subsection (1).
- (3) The chairperson of the primary thoroughfare body corporate shall preside at the meeting for the purpose of the election of a chairperson of the meeting and until the election of a chairperson.
- (4) A meeting convened pursuant to subsection (1) is not a meeting of the primary thoroughfare body corporate.

## **Division 1A Proxies for principal bodies corporate at general meetings of primary thoroughfare bodies corporate**

### **133A Application of div 1A**

This division applies to the appointment and use of a proxy to represent a principal body corporate that is a member of a

primary thoroughfare body corporate at a general meeting of the primary thoroughfare body corporate.

### **133B Appointment [SM, s 107]**

- (1) Subject to subsection (2), the principal body corporate may appoint a proxy to act for the body corporate at the general meeting.
- (2) The appointment of a proxy is effective only if the principal body corporate or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the primary thoroughfare body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the primary thoroughfare body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

### **133C Form of proxy [SM, s 108]**

A proxy under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the primary thoroughfare body corporate's financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this division, may be given to any individual; and



- (h) must appoint a named individual.

### **133D Use of proxy [SM, s 109]**

- (1) A member of the primary thoroughfare body corporate who is the proxy for the principal body corporate may vote both in the member's own right and also as proxy of the principal body corporate.
- (2) A vote by proxy must not be exercised on behalf of the principal body corporate at the general meeting—
  - (a) if the person appointed to represent the principal body corporate under section 103(1) is personally present at the meeting, unless the person consents at the meeting; or
  - (b) on a particular motion, if a written or electronic vote has been exercised on the motion on behalf of the principal body corporate; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- (3) A proxy may be exercised by—

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- (a) the proxy holder voting in a show of hands at a general meeting; or
- (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

### **133E Special provisions about proxy use [SM, s 110]**

- (1) The principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the body corporate's proxy for voting at the general meeting.
- (2) A proxy can not be exercised for the principal body corporate by—
  - (a) the original owner of an initial lot or secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a subsidiary body corporate of the principal body corporate.

### **133F Offence [SM, s 111]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of the principal body corporate, at the general meeting of the primary thoroughfare body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the principal body corporate.

Maximum penalty—100 penalty units.

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## **Division 2                    Increase in membership of primary thoroughfare body corporate**

### **134    Effect of subdivision in subsequent stage**

- (1) On registration of the initial plan or plans of subdivision in a subsequent stage mentioned in part 3—
  - (a) the proprietor or proprietors of land within the subsequent stage (excluding land within each residential precinct and land comprising the primary thoroughfare); and
  - (b) if a new principal body corporate is created in relation to the subsequent stage—the body corporate;  
become additional members of the primary thoroughfare body corporate for the site.
- (2) Until the incorporation of the principal body corporate, the proprietors of the land within the residential precincts are members of the primary thoroughfare body corporate instead of the principal body corporate.
- (3) If the proprietors of lots within a subsequent stage become additional members of an expanded principal body corporate, the body corporate continues as a member of the primary thoroughfare body corporate.
- (4) For the purposes of this division and part 8, division 1 on registration of the initial plan or plans of subdivision in a subsequent stage, the site comprises that stage and any earlier stage.

### **135    Meeting of primary thoroughfare body corporate**

- (1) The primary thoroughfare body corporate must, within 3 months of registration of the initial plan or plans of subdivision in a subsequent stage, convene and hold a meeting of the primary thoroughfare body corporate.

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- (2) Except to the extent that it is inconsistent with this division, section 106 applies to the meeting mentioned in subsection (1) as if it were the first annual general meeting.
- (3) For the purposes of setting the date for subsequent annual general meetings after the meeting mentioned in subsection (1), the meeting is taken to be the first annual general meeting.

### **136 Levies and funds**

- (1) The primary thoroughfare body corporate must, within 14 days after registration of the initial plan or plans of subdivision in a subsequent stage, determine the amounts mentioned in section 116(1)(h).
- (2) The fund of the primary thoroughfare body corporate existing at the time of registration of the initial plan or plans of subdivision in a subsequent stage, continues in existence.

### **137 Application of other division**

Except where inconsistent with this division, part 8, division 1 applies in relation to the primary thoroughfare body corporate after the registration of the initial plan or plans of subdivision in a subsequent stage.

## **Division 3 Principal body corporate**

### **138 Interpretation**

In this division—

*executive committee* means the executive committee of the principal body corporate constituted under this division.

*initial lot* means an initial lot within a residential precinct.

*initial lot entitlement*, in relation to an initial lot, means the maximum number (specified in the schedule that

accompanied the plan of subdivision) of group title lots or building unit lots into which that lot may be subdivided.

*nominee*, of a member of a principal body corporate, see section 140(1).

*principal body corporate roll* means the roll referred to in section 152 to be maintained by the principal body corporate.

*proprietor*, in relation to an initial lot or a secondary lot, means the person for the time being registered, or entitled to be registered, under the *Land Title Act 1994* as the owner of the land; and

in relation to a secondary lot subdivided by way of a group titles plan or a building units plan, means the body corporate incorporated by the operation of section 27 of the *Building Units and Group Titles Act 1980*.

*secondary lot entitlement* in relation to a secondary lot, means the maximum number (specified in the schedule that accompanied the plan of subdivision subdividing the relevant initial lot) of group title lots or building unit lots into which the secondary lot may be subdivided.

*secondary thoroughfare* means a lot on a plan of subdivision of a lot within a residential precinct and shown as constituting a secondary thoroughfare.

*special resolution*, for a general meeting of a principal body corporate, means a resolution which is passed at a duly convened general meeting of the principal body corporate by the members whose lots (whether initial lots, secondary lots, group title lots or building unit lots) have an aggregate lot entitlement of not less than 75% of the aggregate of all lot entitlements recorded in the principal body corporate roll.

## 139 Principal body corporate

- (1) Upon registration of the first plan of subdivision creating a lot or lots within a residential precinct, the proprietor or proprietors of all the land within the residential precincts shall by virtue of this Act be a body corporate under the name

‘(insert name of development specified in the approval of the scheme) Principal Body Corporate’.

- (2) When an initial lot is subdivided into secondary lots (whether or not lots for secondary thoroughfares are thereby created), the proprietor of the initial lot shall cease to be a member of the principal body corporate and the proprietor or proprietors of the secondary lots shall become a member or, as the case may be, members of the principal body corporate.
- (3) When a secondary lot is subdivided by way of a group titles plan or a building units plan, the proprietor of the secondary lot—
  - (a) shall give notice in writing to the principal body corporate of the name and address for service of notices of the body corporate incorporated by the registration of that plan; and
  - (b) shall cease to be a member of the principal body corporate in so far as the proprietor was a member by virtue of being proprietor of that secondary lot;and the body corporate created by the registration of that plan shall become a member of the principal body corporate.
- (4) Subdivision or resubdivision of a lot or of a lot and common property on a group titles plan by way of a building units plan or a group titles plan does not affect the membership of the principal body corporate.
- (5) The Corporations Act does not apply to or in respect of the principal body corporate.
- (6) Subject to this Act, the principal body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act or the development control by-laws and shall do all things reasonably necessary for the enforcement of the development control by-laws, the secondary thoroughfare by-laws and the control, management and administration of the secondary thoroughfares.
- (7) The principal body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in

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accordance with the principal body corporate by-laws (if any) for the time being in force.

- (8) The principal body corporate may—
  - (a) sue and be sued on any contract made by it; and
  - (b) sue for and in respect of any damage or injury to the secondary thoroughfares caused by any person; and
  - (c) be sued in respect of any matter connected with the secondary thoroughfares for which as proprietor it is so liable; and
  - (d) take such legal action as may be necessary to enforce the development control by-laws and the secondary thoroughfare by-laws.
- (9) In any case in which work is carried out for the purpose of constructing or preparing a secondary thoroughfare, upon registration of the initial plan or plans of subdivision, the principal body corporate shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.
- (10) Nothing in subsection (9) shall relieve the applicant from the applicant's obligation to pay for the initial construction of secondary thoroughfares to the standard prescribed pursuant to section 89.

#### **140 Member's nominee**

- (1) This section applies to a member of a principal body corporate for appointing a person (a *nominee*) to represent and vote on behalf of the member at meetings of the principal body corporate.
- (2) A subsidiary body corporate of the principal body corporate—
  - (a) must appoint a nominee at its annual general meeting; and
  - (b) otherwise, may appoint a nominee from time to time.

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- (3) A member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.
- (4) Subject to section 140A, a nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.
- (5) The appointment of a nominee has no effect until written notice of the appointment is received by the secretary of the principal body corporate.
- (6) A nominee appointed by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.
- (7) The appointment of a nominee for a member ends when the first of the following happens—
  - (a) the end of 1 year after the appointment;
  - (b) the secretary of the principal body corporate receives written notice of—
    - (i) the cancellation of the nominee's appointment; or
    - (ii) the appointment of another nominee for the member.
- (8) A written notice under subsection (5) or (7)(b) must be signed—
  - (a) for an appointment or cancellation made by a subsidiary body corporate—by the chairperson and secretary of the subsidiary body corporate; or
  - (b) otherwise—by the member.

#### **140A When original owner can not be nominee for subsidiary body corporate**

- (1) This section applies if more than 50% of the lots created by the registration of a group titles plan or building units plan



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subdividing a secondary lot are no longer owned by the original owner of the secondary lot.

- (2) The subsidiary body corporate created by the registration of the plan can not appoint as its nominee—
  - (a) the original owner; or
  - (b) an associate (an *ineligible associate*) of the original owner who is not 1 of the proprietors constituting the subsidiary body corporate.
- (3) If the original owner or an ineligible associate of the original owner is already a nominee for the subsidiary body corporate—
  - (a) a general meeting of the subsidiary body corporate must be held within 2 months; and
  - (b) if it is not sooner ended, the owner's or associate's appointment as the nominee ends at the next general meeting of the subsidiary body corporate.

#### **141 Seal of principal body corporate**

- (1) The common seal of the principal body corporate shall be kept—
  - (a) where the principal body corporate is constituted by the applicant alone—by the applicant; or
  - (b) where the principal body corporate is constituted by 2 or more members—by such member of the principal body corporate or member of the executive committee as the principal body corporate determines or, in the absence of any such determination, by the secretary of the executive committee.
- (2) The common seal of the principal body corporate shall only be affixed to an instrument or document in the presence of—
  - (a) where the principal body corporate is constituted by 1 or 2 members—that member or those members, as the case may be; or

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- (b) where the principal body corporate is constituted by more than 2 members—such 2 persons, being members of the principal body corporate or members of the executive committee, as the principal body corporate determines or, in the absence of any such determination, the secretary and any other member of the executive committee;

who shall attest the fact and date of the affixing of the seal by their signatures.

- (3) However, where a member is a body corporate, the common seal affixed in the presence of a person nominated in writing by the body corporate for that purpose and attested by that person as provided in subsection (2) shall be deemed to have been duly affixed in the presence of that body corporate.

#### **142 Address of principal body corporate**

The address of the principal body corporate for the service of notices on it shall upon its incorporation pursuant to section 139 be the address of the applicant for service of notices on the applicant.

#### **143 Meetings of principal body corporate**

- (1) Within 3 months after the incorporation of the principal body corporate, the applicant shall, in the prescribed manner, convene a meeting of the principal body corporate to be held within that period.

Maximum penalty—50 penalty units.

- (2) The agenda for a meeting convened under subsection (1) shall consist of the following items—
  - (a) to decide whether insurances effected by the principal body corporate should be confirmed, varied or extended;
  - (b) to decide whether any amounts determined under section 151(1)(h) or (2) should be confirmed or varied;

- (c) where there are more than 3 members of the principal body corporate—to determine the number of members of the executive committee;
  - (d) to elect the chairperson, secretary and treasurer of the principal body corporate and other members of the executive committee;
  - (e) to decide whether to make by-laws regulating, controlling or prohibiting the passage through and conduct and activities of persons on or within all or part of the secondary thoroughfares;
  - (f) to decide whether to make development control by-laws.
- (3) The meeting convened under subsection (1) shall be the first annual general meeting of the principal body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.
- (4) However, a person may be elected to 1 or more of those offices.
- (5) The applicant shall not fail or neglect to deliver to the principal body corporate at its first annual general meeting—
- (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates (other than certificates of title for lots), diagrams and other documents (including policies of insurance) obtained or received by the applicant and relating to the secondary thoroughfare; and
  - (b) if they are in the applicant's possession or under the applicant's control, the principal body corporate roll, books of account and any notices or other records relating to the secondary thoroughfare; and
  - (c) the budget showing the estimated expenditure of the principal body corporate in relation to the secondary thoroughfare on an annual basis;

other than documents which exclusively evidence rights or obligations of the applicant and which are not capable of being used for the benefit of the principal body corporate or

any of the members of the principal body corporate, other than the applicant.

Maximum penalty—50 penalty units.

- (6) Schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act applies to and in respect of the first annual general meeting of the principal body corporate and voting at that meeting and schedule 2, part 2 of that Act in force at the commencement of this Act applies to and in respect of meetings of the principal body corporate, other than the first annual general meeting, and voting at those meetings.
- (7) However, the provisions in those schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 7, definition *ordinary resolution*.
- (8) The provisions of the schedules referred to in subsection (6) shall, for the purposes of subsection (6), be read and construed as if—
  - (a) references therein to ‘aggregate lot entitlement’ were references to the total of the initial lot entitlements of the initial lots which have not been subdivided into secondary lots and the secondary lot entitlements of the secondary lots; and
  - (b) references therein to ‘body corporate’ were references to principal body corporate; and
  - (c) references therein to ‘by-laws’ were references to principal body corporate by-laws or development control by-laws; and
  - (d) references therein to ‘council’ were references to executive committee; and
  - (e) references therein to a ‘lot’ were references to an initial lot or a secondary lot; and
  - (f) references therein to ‘lot entitlement’ were references—

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- (i) in the case where a ‘lot’ is an initial lot—to the initial lot entitlement of that lot; or
  - (ii) in the case where a ‘lot’ is a secondary lot—to the secondary lot entitlement of that lot; and
  - (g) references therein to the ‘original proprietor’ were references to the applicant; and
  - (h) references therein to a ‘proprietor’ were references to a proprietor within the meaning of this division; and
  - (i) references therein to the ‘roll’ were references to the principal body corporate roll; and
  - (j) references to particular provisions of the *Building Units and Group Titles Act 1980* (other than the provisions in those schedules) were references to corresponding provisions of this Act.
- (9) When an expression is substituted for an expression used in the *Building Units and Group Titles Act 1980* and referred to in subsection (8), the substituted expression shall, for the purposes of subsection (8), be read and construed in the same manner as the expression for which it is substituted is required to be read and construed.
- (10) If a meeting of the principal body corporate is not convened in accordance with subsection (1), the Minister may, pursuant to an application by the principal body corporate or any member of the principal body corporate, appoint by order a person to convene a meeting of the principal body corporate within such time as may be specified in the order and the meeting convened by that person shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).
- (11) At any time after the meeting convened under subsection (1) has been held, the Minister may, pursuant to an application made to the Minister by a member of the principal body corporate, appoint by order a person, nominated by the member, who has consented to that nomination, if there is not an executive committee, to convene a meeting of the principal body corporate within such time as may be specified in the

order and a meeting so convened shall, for the purpose of the election of the chairperson, secretary and treasurer of the principal body corporate and the other members of the executive committee, be deemed to be a first annual general meeting of the principal body corporate.

- (12) An order made under subsection (10) or (11) may include such ancillary or consequential provisions as the Minister thinks fit.
- (13) Notwithstanding subsections (6) to (9), where an order made under subsection (10) or (11) so provides—
  - (a) the person appointed to convene a meeting of the principal body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the principal body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (14) Notwithstanding that an order has been made under subsection (10) or that a meeting has been convened pursuant to any such order, the applicant remains liable to the penalty provided by subsection (1) for any failure to comply with that subsection.

#### **144 Change of annual general meeting**

- (1) The principal body corporate may apply in writing to the Minister for approval to change the date of its next annual general meeting.
- (2) The principal body corporate may apply to the Minister to change the date of its next annual general meeting only if—
  - (a) the change of date proposed has been set out in a motion given to its members; and
  - (b) the motion for the proposed change of date has been carried by ordinary resolution of the body corporate.
- (3) The application to the Minister must be accompanied by—

- (a) a copy of the motion; and
  - (b) evidence that it has been carried by ordinary resolution.
- (4) The Minister may approve or refuse the application and must advise the principal body corporate in writing of the approval or refusal.
- (5) If the application is approved, the new date of the annual general meeting is taken to be the anniversary of the first annual general meeting of the principal body corporate.

#### **145 Levies by principal body corporate on members**

- (1) The principal body corporate may levy the contributions determined by it in accordance with section 151(1)(h) and the amount (if any) determined pursuant to section 151(2) in respect thereof by serving on its members notice in writing of the contributions payable by them.
- (2) Contributions levied by the principal body corporate shall be levied in respect of—
- (a) each initial lot which has not been subdivided into secondary lots; and
  - (b) each secondary lot;
- and shall be payable, subject to this section, by the proprietors of those initial lots and secondary lots in shares proportional to the initial lot entitlements or, as the case may be, secondary lot entitlements of their respective lots.
- (3) In respect of a contribution levied under subsection (1), a proprietor of an initial lot or a secondary lot is liable, jointly and severally with any person who was liable to pay that contribution when that proprietor became the proprietor of that initial lot or, as the case may be, that secondary lot, to pay such part of that contribution as was unpaid when the person became the proprietor of that lot.
- (4) A contribution levied in respect of an initial lot or a secondary lot under this section—

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- (a) becomes due and payable to the principal body corporate in accordance with the decision of the principal body corporate to make the levy; and
  - (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 151(2) (if any); and
  - (c) may be recovered, as a debt, by the principal body corporate in any court of competent jurisdiction.
- (5) Nothing in this section shall be construed to prevent the principal body corporate, in general meeting, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (4)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.

#### **146 Change of principal body corporate's address**

- (1) The principal body corporate may, in general meeting, decide that the address for the service of notices on the principal body corporate shall be changed.
- (2) Upon giving notice in writing to the Minister and notification by the Minister in the gazette of the change of address, the address for service of notices on the principal body corporate shall, notwithstanding any other provision of this Act, be the address so notified.

#### **147 Power of entry**

- (1) For the purpose of carrying out—
  - (a) any work required to be carried out by the principal body corporate by a notice served on it by a public authority or local government; or
  - (b) any work referred to in section 151(1)(b);the principal body corporate may, by its agents, servants or contractors, enter upon any part of the secondary thoroughfare for the purpose of carrying out the work—



- (c) in the case of an emergency—at any time; or
  - (d) in any other case—at any reasonable time on notice given to any occupier of a lot likely to be affected thereby.
- (2) For the purposes of subsection (1)(d), an occupier of a lot, being a lot on a group titles plan or a building units plan, shall be taken to have been given notice if the notice is duly given to the body corporate incorporated by the registration of that plan.
- (3) A person shall not obstruct or hinder the principal body corporate in the exercise of its power under subsection (1).
- Maximum penalty for subsection (3)—50 penalty units.

#### **148 Miscellaneous powers of principal body corporate**

The principal body corporate may do any of the following—

- (a) invest any moneys held by it in any manner permitted by law for the investment of trust funds or in any prescribed investment;
- (b) borrow moneys and secure the repayment thereof and of any interest in such manner as may be agreed upon by the principal body corporate and the lender;
- (c) enter into an agreement for the provision of amenities or services by it or any other person to any lot or to the proprietor or occupier thereof or to any parcel comprised in a building units plan or a group titles plan;
- (d) acquire and hold any personal property to facilitate the carrying out of its duties;
- (e) employ staff to perform its functions.

#### **149 Leases to principal body corporate**

- (1) For the purposes of providing access to the secondary thoroughfare, the principal body corporate may take a lease of—

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- (a) a road closed in strata that joins, or is to join, the secondary thoroughfare; or
  - (b) a wharf that joins, or is to join, the secondary thoroughfare.
- (2) The principal body corporate may take a lease of land for any other purpose prescribed by regulation.

### **150 Community facilities on secondary thoroughfare**

- (1) A principal body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within a residential precinct, on—
- (a) the secondary thoroughfare; or
  - (b) land leased by the principal body corporate under section 149.
- (2) The development or construction must not start until authorised by the principal body corporate by a special resolution.
- (3) The principal body corporate must maintain the facilities.

### **151 Duties of principal body corporate**

- (1) The principal body corporate shall—
- (a) control, manage and administer the secondary thoroughfare for the benefit of its members; and
  - (b) properly maintain and keep in a state of good and serviceable repair—
    - (i) the secondary thoroughfare, including any improvements thereon; and
    - (ii) any personal property vested in it; and
  - (c) effect insurance in accordance with section 155; and
  - (d) cause proper records to be kept of notices given to the principal body corporate under this or any other Act and

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of any orders made by a court and served on the principal body corporate; and

- (e) keep—
  - (i) for at least 10 years after their creation or receipt by or for the principal body corporate—
    - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
    - (B) proper books of account for amounts received or paid by the principal body corporate showing the items for which the amounts were received or paid; and
  - (ii) for at least 2 years after their creation or receipt by or for the principal body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and
- (f) cause to be prepared, from the books mentioned in paragraph (e), a proper statement of accounts of the principal body corporate in relation to each period—
  - (i) starting on the date of its incorporation or the day immediately after the date up to which the last statement was prepared; and
  - (ii) ending on the last day of the month that is 3 months before the start of the month in which the anniversary of the first annual general meeting happens; and
- (g) cause an annual general meeting of the principal body corporate to be held each year on or after the anniversary of the first annual general meeting but not later than 2 months after the anniversary; and
- (h) not later than 14 days after its incorporation and from time to time thereafter, determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums, rates or any other

- liability of the principal body corporate, other than amounts referred to in paragraph (l); and
- (i) upon first determining the amounts referred to in paragraph (h), establish a fund into which shall be paid all amounts received by it, including the proceeds of the sale or other disposal of any personal property of the principal body corporate and any fees received by it under section 154 and into which may be paid any amounts paid to the principal body corporate by way of discharge of insurance claims; and
  - (j) from time to time, levy, in accordance with section 145, on each person liable therefor a contribution to raise the amounts referred to in paragraph (h); and
  - (k) pay any moneys referred to in paragraph (i) that are received by it and are not otherwise invested in accordance with section 148(a) into an account established in a financial institution in the name of the principal body corporate; and
  - (l) if the principal body corporate—
    - (i) becomes liable to pay any moneys that it is unable to pay forthwith; and
    - (ii) is not required, under paragraph (j), to levy contributions to meet the liability;levy, in accordance with section 145, contributions to raise those moneys; and
  - (m) implement the decisions of the principal body corporate.
- (2) The principal body corporate from time to time may in respect of contributions determined in accordance with subsection (1)(h) or contributions referred to in subsection (1)(l) determine by special resolution, for the purposes of section 145, an amount being not greater than 10% of those contributions.
- (3) The principal body corporate shall not disburse any moneys from its fund, otherwise than for the purpose of carrying out its powers, authorities, duties and functions under this Act, the

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development control by-laws or secondary thoroughfare by-laws or meeting any liability referred to in subsection (1)(l).

- (4) A determination made by the principal body corporate under subsection (1)(h) may specify that the amounts to be raised shall be raised by such regular periodic contributions as may be specified in the determination.

## **152 Principal body corporate roll**

- (1) The principal body corporate shall prepare and maintain a roll in accordance with this section.
- (2) The principal body corporate shall record in the principal body corporate roll the following information—
- (a) in respect of each initial lot which has not been subdivided into secondary lots—the initial lot entitlement;
  - (b) in respect of each secondary lot—the secondary lot entitlement;
  - (c) the total of the initial lot entitlements and secondary lot entitlements referred to in paragraphs (a) and (b);
  - (d) the name and address for service of notices on each member of the principal body corporate;
  - (e) the name and address of any person appointed (in writing addressed to the principal body corporate) by any member of the principal body corporate to represent that member at meetings of the principal body corporate.
- (3) The principal body corporate shall record and maintain in the principal body corporate roll—
- (a) a copy of the development control by-laws for the time being in force; and
  - (b) a copy of the secondary thoroughfare by-laws for the time being in force.

### **153 Notices to be given by proprietors**

- (1) The applicant and any person who, under this section, has given notice of an address for the service of notices on the applicant or other person shall give notice in writing to the principal body corporate of an address or change of address for the service of notices on the applicant or other person.

Maximum penalty—4 penalty units.

- (2) After delivery to a transferee of an initial lot or a secondary lot of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the principal body corporate written notice which shall identify the lot and—
  - (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (3) Where a transferor of an initial lot or a secondary lot fails to comply with subsection (2), the transferee of that lot may give to the principal body corporate written notice which shall identify the lot and specify the transferee's name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to the transferee.
- (4) After a person becomes, otherwise than as transferee, the proprietor of an initial lot or a secondary lot, the person shall give to the principal body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—
  - (a) by what right the person became entitled to the lot; and
  - (b) the person's name, in full, the address for the service of notices on the person and the date upon which the person became entitled to the lot.

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- (5) Where—
- (a) the principal body corporate believes that a person is required, under this section, to give a notice to it; and
  - (b) the principal body corporate has not received that notice;
- the principal body corporate may serve a notice on that person specifying the capacity in which it believes the person is required to give the notice and requiring the person—
- (c) to state, within 14 days, whether or not the person is required to give a notice in that capacity; and
  - (d) if the person is so required, to give that notice.
- (6) Where the principal body corporate has served a notice under subsection (5) on a person whom it believes is required to give a notice to the principal body corporate under this section that person is not entitled to cast a vote at any meeting of the principal body corporate until the person gives the required notice.
- (7) A vote cast at a meeting of the principal body corporate by a person on behalf of a body corporate has no effect unless the principal body corporate has been given notice in writing specifying that the person is the nominee of the body corporate.
- (8) A notice referred to in subsection (7) may be included in any other notice that the body corporate to which it relates or any other person is entitled under this section to give to the principal body corporate.

## **154 Supply of information, certificates and copies by principal body corporate**

- (1) The principal body corporate shall, upon application made to it in writing by a member of the principal body corporate or by a member of a body corporate constituted by the registration of a group titles plan or building units plan (which last mentioned body corporate is a member of the principal body corporate) or by a person authorised in writing by such

member and on payment of such sum as the principal body corporate may fix by resolution but not exceeding the reasonable cost to the principal body corporate, do such 1 or more of the following things as are required of it in the application—

- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the principal body corporate or a member of the executive committee;
- (b) make the following available for inspection by the applicant or the applicant's agent—
  - (i) the principal body corporate roll;
  - (ii) the notices and orders referred to in section 151(1)(d);
  - (iii) the plans, specifications, drawings showing water pipes, electric cables or drainage, certificates, diagrams and other documents held by it relating to any secondary thoroughfare;
  - (iv) the minutes of general meetings of the principal body corporate and of the executive committee;
  - (v) the books of account of the principal body corporate;
  - (vi) a copy of the statement of accounts of the principal body corporate last prepared by the principal body corporate in accordance with section 151(1)(f);
  - (vii) every current policy of insurance effected by the principal body corporate and the receipt for the premium last paid in respect of each such policy;
  - (viii) any other record or document in the custody or under the control of the principal body corporate;
  - (ix) the development control by-laws or the secondary thoroughfare by-laws for the time being in force;

at such time and place as may be agreed upon by the applicant or the applicant's agent and the principal body



- corporate and, failing agreement, at the office of the principal body corporate at a time and on a date fixed by the principal body corporate under subsection (2);
- (c) certify, as at the date of the certificate, in respect of the initial lot or secondary lot in respect of which the application is made—
- (i) the amount of any regular periodic contributions determined by the principal body corporate under section 151(1)(h) and (4) and the periods in respect of which those contributions are payable; and
  - (ii) whether there is any amount unpaid of any contribution determined under section 151(1)(h) and, if so, the amount thereof; and
  - (iii) whether there is any amount unpaid of any contribution levied under section 151(1)(l) and, if so, the amount thereof and the date on which it was levied; and
  - (iv) whether there is any amount unpaid of any contribution levied under section 166 and, if so, the amount thereof and the date on which it was levied; and
  - (v) the amount (if any) determined under section 151(2) in respect of any unpaid contribution referred to in this paragraph;
- (d) furnish to the applicant or the applicant's agent a copy of the development control by-laws or the secondary thoroughfare by-laws for the time being in force or any part thereof within a period of 21 days commencing on the day next after the date on which the application is received by the principal body corporate.
- (2) Where an applicant and the principal body corporate fail to reach an agreement referred to in subsection (1)(b) within 3 days after the receipt of the application by the principal body corporate, the principal body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 a.m. and 8 p.m. on a date so specified, being

a date not later than 10 days after the receipt of the application by the principal body corporate for the making of the inspection referred to in subsection (1)(b).

- (3) The principal body corporate shall permit any person to whom the development control by-laws or the secondary thoroughfare by-laws are made available for inspection to make copies of or take extracts from those by-laws.

### **155 Insurance by principal body corporate**

- (1) The principal body corporate shall effect insurance—
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of damage to property, death or bodily injury occurring upon the secondary thoroughfare or the consequences resulting therefrom; and
  - (c) against the possibility of the proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the principal body corporate, pursuant to a special resolution, decides to insure.
- (2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of the amount prescribed by regulation or, if not prescribed, \$5000000.
- (3) The principal body corporate may insure any property in which it has an insurable interest.

### **156 Power for individuals to act for corporate proprietors**

- (1) A body corporate may authorise an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the body corporate as a member of the principal body corporate and may revoke the authority of an individual so authorised.

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- (2) Where an individual exercises or performs a power, authority, duty or function that the individual is, by a member of the principal body corporate, authorised pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the member.
  - (3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a body corporate which is a member of the principal body corporate.
  - (4) A document under the seal of a body corporate purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

## **157 Voting rights**

- (1) Any powers of voting conferred by or under this division may be exercised—
  - (a) in the case of a proprietor who is an infant—by the proprietor’s guardian; or
  - (b) in the case of a proprietor who is for any reason unable to control the person’s property—by the person who for the time being is authorised by law to control that property; or
  - (c) in the case of a proprietor which is a body corporate—by the person nominated pursuant to section 156 by that body corporate.
- (2) Where the Supreme Court upon the application of the principal body corporate or of any proprietor is satisfied that there is no person able to vote in respect of an initial lot or a secondary lot or that the person able to vote in respect of the lot can not be found, the court in its discretion may appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this division as the court shall determine.

- (3) The court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2) the court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.
- (5) The powers of the court under this section may be exercised by the registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.
- (6) In this section—  
*registrar* means the registrar of the Supreme Court at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

## **158 Constitution of executive committee**

- (1) After the first annual general meeting of the principal body corporate, there shall be an executive committee consisting of a chairperson, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.
- (2) The chairperson, secretary and treasurer of the principal body corporate shall be members of, and be also respectively the chairperson, secretary and treasurer of, the executive committee.
- (3) However, a person may be elected to 1 or more of those offices.
- (4) Where there are not more than 5 members of the principal body corporate, the executive committee shall consist of each member (if any) who is an individual or the member's nominee, together with the nominee of each member (if any) which is a body corporate.
- (5) Where there is 1 member only of the principal body corporate, the member may make any decision that a duly convened

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executive committee may make under this Act and such decision shall be deemed to be a decision of the executive committee.

- (6) If there are more than 5 members of the principal body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the principal body corporate, as decided by the principal body corporate.
- (7) The members of an executive committee referred to in subsection (6) and the chairperson, secretary and treasurer shall be elected at each annual general meeting of the principal body corporate or, if the number of members of the principal body corporate increases to more than 5, at an extraordinary general meeting convened for the purpose.
- (7A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the principal body corporate must be conducted under schedule 3.
- (8) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—
  - (a) is an individual who is—
    - (i) a member of the principal body corporate; or
    - (ii) a nominee of a member of the principal body corporate; and
  - (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.
- (9) Notwithstanding the provisions of this section, the principal body corporate may determine that the holder of the office of secretary or treasurer of the principal body corporate shall not be a member of the executive committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the principal body corporate and of the executive committee but shall not be a member of the executive committee.

- (10) A member of the executive committee may, with the consent of the executive committee, appoint a member of the principal body corporate or nominee of a body corporate which is a member of the principal body corporate to act in the member's place as a member of the executive committee at any meeting of the executive committee and any member or nominee so appointed shall, when the member or nominee is so acting, be deemed to be a member of the executive committee.
- (11) A member of the principal body corporate or a nominee of a body corporate may be appointed under subsection (10) whether or not the member or nominee is a member of the executive committee.
- (12) If a person appointed under subsection (10) is a member of the executive committee the person may, at any meeting of the executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.
- (13) Notwithstanding any other provision of this section, the executive committee may be constituted before the first annual general meeting of the principal body corporate.
- (14) The members of the executive committee constituted under subsection (13) (if any) and the chairperson, secretary and treasurer of the principal body corporate shall be elected at a general meeting of the principal body corporate and the provisions of subsection (8) and such of the provisions of schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act as applied by section 143 and as relate to the election of the chairperson, secretary and treasurer of the principal body corporate and of members of the executive committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of the executive committee to be so constituted.
- (15) Schedule 2, part 2 of the *Building Units and Group Titles Act 1980* other than section 16(1) as applied by section 143 does not apply to or in respect of the election of the chairperson, secretary and treasurer of the principal body corporate and the

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members of the executive committee to be constituted under subsection (13).

- (16) The provisions of this division (other than subsections (1) to (7)) apply to and in respect of an executive committee constituted under subsection (1) and the members thereof.
- (17) Where there is no executive committee of the principal body corporate, the principal body corporate shall exercise and perform the powers, authorities, duties and functions of the executive committee.

#### **158A Code of conduct for voting members of executive committee**

- (1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—
  - (a) a member of the executive committee; and
  - (b) entitled to vote at general meetings of the principal body corporate.
- (2) On becoming a voting member of the executive committee, the person is taken to have agreed to comply with the code of conduct.

#### **159 Vacation of office of member of executive committee**

- (1) A person elected as chairperson, secretary or treasurer of the principal body corporate or as a member of the executive committee vacates the person's office—
  - (a) if, where the person was a member of the principal body corporate at the time of the person's election—the person ceases to be such a member; or
  - (b) upon the receipt by the principal body corporate from the person of notice in writing of the person's resignation; or
  - (c) upon the election at a general meeting of the principal body corporate of another person to that office or as a member of the executive committee; or

- (d) where the person is a member referred to in section 158(4) or (5) and the number of members of the principal body corporate increases to more than 3, upon the election of the chairperson, secretary and treasurer of the principal body corporate and the other members of the executive committee at the annual general meeting, or the extraordinary general meeting referred to in section 158(7); or
  - (e) if the person is absent without prior leave granted by the executive committee from 3 consecutive meetings of the executive committee of which due notice has been given to the person; or
  - (f) if the person becomes bankrupt or compounds with the person's creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
  - (g) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
  - (h) if the person dies; or
  - (i) if the person is removed from office by ordinary resolution of the principal body corporate under division 5; or
  - (j) if the principal body corporate, pursuant to a special resolution, determines that the person's office is vacated.
- (2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the principal body corporate or another member of the executive committee, otherwise than by reason of the operation of subsection (1)(d) or (e), the principal body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of the person's predecessor's term of office.



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**160 Chairperson, secretary and treasurer of executive committee**

- (1) The chairperson shall preside at all meetings of the executive committee at which the chairperson is present and, if the chairperson is absent from any meeting, the members of the executive committee present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.
- (2) A person shall not exercise or perform any of the powers, authorities, duties or functions of the principal body corporate or of the treasurer of the principal body corporate, being powers, authorities, duties or functions relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the principal body corporate, unless the person is—
  - (a) the treasurer of the principal body corporate; or
  - (b) a person with whom the treasurer of the principal body corporate is required by an order of the executive committee to exercise or perform jointly that power, authority, duty or function, or who is enabling the treasurer to comply with the order.

Maximum penalty—50 penalty units.

- (3) The treasurer of the principal body corporate may delegate the exercise or performance of any of the treasurer's powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is specifically approved by the executive committee, to another member of the executive committee so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, the delegate shall be deemed to be the treasurer of the principal body corporate.
- (4) The executive committee may, by a notice in writing served on the treasurer of the principal body corporate, order that the treasurer shall not exercise or perform any of the treasurer's powers, authorities, duties or functions that are specified in

the notice, unless the treasurer does so jointly with another person so specified.

- (5) A person who has possession or control of—
- (a) any records, books of account or keys belonging to the principal body corporate; or
  - (b) the principal body corporate roll; or
  - (c) any other property of the principal body corporate;

shall, within 7 days after service on the person of notice of a resolution of the executive committee requiring the person to do so, deliver those records, books of account and keys and that roll and other property to a member of the executive committee specified in the notice.

Maximum penalty for subsection (5)—20 penalty units.

## **161 Meetings of executive committee**

- (1) At a meeting of the executive committee more than half of the members of the executive committee constitutes a quorum.
- (2) Subject to this Act, the decision on any matter of the majority of the members voting on that matter shall be the decision of the executive committee at any meeting at which a quorum is present.
- (3) A decision of the executive committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the executive committee by not less than half of the total number of members of the principal body corporate, the sum of whose initial lot entitlements and secondary lot entitlements exceed half of the aggregate of all entitlements recorded in the principal body corporate roll, that the making of the decision is opposed by those members.
- (4) The executive committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.

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**161A Conflict of interest of executive committee member [SM, s 53]**

- (1) A member of the executive committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.
- (2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the committee, the member is not entitled to vote on a motion involving the issue.
- (3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder's duties about the consideration of the issue.
- (4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
- (5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- (6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

**162 Executive committee's decisions to be decisions of principal body corporate**

- (1) In this section—  
*restricted matter* means—

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- (a) any matter relating to the striking of a special monetary levy on all members of the principal body corporate; and
  - (b) any matter which seeks to alter the rights, privileges or obligations of members of the principal body corporate; and
  - (c) any matter which seeks to alter the annual monetary contribution of members of the principal body corporate; and
  - (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the principal body corporate pursuant to a special resolution or in general meeting of the principal body corporate; and
  - (e) any matter referred to in section 164 and specified in a resolution of the principal body corporate passed for the purposes of that section.
- (2) Subject to this Act, the decision of the executive committee on any matter, other than a restricted matter, shall be the decision of the principal body corporate.
- (3) Notwithstanding that the executive committee holds office, the principal body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on the principal body corporate by this Act.

### **163 Statutory restrictions on powers of executive committee**

- (1) Unless—
- (a) otherwise determined pursuant to a special resolution of the principal body corporate; or
  - (b) authorised by the Minister in an emergency; or
  - (c) consented to by such persons entitled to vote at a general meeting of the principal body corporate who represent an aggregate lot entitlement of not less than 75% of the aggregate of all lot entitlements recorded in the principal body corporate roll;

the executive committee shall not undertake expenditure.

- (2) In respect of any proposed expenditure which, under subsection (1), the executive committee is not entitled to undertake the executive committee shall—
  - (a) submit the proposal for determination at an extraordinary general meeting of the principal body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property—submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
  - (a) in payment of any premium of insurance effected by or on behalf of the principal body corporate; or
  - (b) to comply with a notice or order served on the principal body corporate by any public authority or local government; or
  - (c) in discharge of any liability incurred in respect of an obligation of the principal body corporate authorised by the principal body corporate in general meeting.

## **164 Restrictions imposed on executive committee by principal body corporate**

The principal body corporate may in general meeting decide what matters or class of matters (if any) shall be determined only by the principal body corporate in general meeting.

### **164A Protection of executive committee members from liability**

- (1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a member of the committee.
- (2) In this section—

*act done or omission made* does not include the publication of defamatory matter as mentioned in section 164B(1).

## **164B Protection of body corporate and executive committee from liability for defamation**

- (1) This section applies if—
  - (a) the executive committee publishes required material for a general meeting of the principal body corporate; and
  - (b) the required material contains defamatory matter.
- (2) Each of the following is not liable for defamation because of the publication—
  - (a) the principal body corporate;
  - (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.

- (3) In this section—

*member of the committee* includes the body corporate manager acting under a delegation under section 165(2).

*prescribed motion* means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 175B(1);
- (b) a motion mentioned in section 175C(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for an approved scheme or part of an approved scheme under section 175N;
- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 175Y.

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*required material*, for a general meeting of the principal body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the executive committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.

## **165 Principal body corporate manager**

- (1) Subject to subsections (3), (5), (6) and (7), the principal body corporate may—
  - (a) in general meeting; and
  - (b) by instrument;appoint a body corporate manager on such terms and conditions as the principal body corporate determines.
- (2) The principal body corporate may delegate all or any of its powers and functions to the body corporate manager.
- (3) The principal body corporate must not delegate to the body corporate manager its power to make—
  - (a) a delegation mentioned in subsection (2); or
  - (b) a decision on a restricted matter within the meaning of section 162.
- (4) If the instrument of appointment provides, a body corporate manager may exercise all or any of the powers and functions of the chairperson, secretary or treasurer of the principal body corporate and the executive committee.
- (5) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

- (6) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.
- (7) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—
  - (a) the appointment expires; and
  - (b) the person can not act again as the body corporate manager without a new appointment.
- (8) Nothing in this section shall prevent the reappointment of a body corporate manager after the term of appointment has expired.

**166 Costs in proceedings by members against principal body corporate**

- (1) In any proceedings brought by any member against the principal body corporate, the court before which the proceedings are brought may order that any moneys (including costs) payable by the principal body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the principal body corporate out of contributions levied for the purpose.
- (2) Where a court makes an order under subsection (1) the principal body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy.
- (3) The provisions of section 145 with such modifications as may be necessary apply to and in respect of contributions levied under subsection (2) in the same way as those provisions apply to contributions levied under that section.



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**167 Service of documents on principal body corporate, members and others**

- (1) A summons or other legal process may be served on the principal body corporate by leaving it with the chairperson or secretary of the principal body corporate or with any member of the executive committee.
- (2) A document other than a document referred to in subsection (1) may be served on the principal body corporate—
  - (a) by leaving it with any person referred to in subsection (1); or
  - (b) by post on the principal body corporate at its last address notified in the gazette.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by the principal body corporate, the executive committee or the secretary of the executive committee or a member or proprietor, lessee or occupier of a lot may be served—
  - (a) by leaving it with some person apparently of or above the age of 16 years—
    - (i) where the person to be served is an occupier of the lot—at the lot; or
    - (ii) where an address for the service of notices on the person to be served is recorded in the principal body corporate roll—at the address so recorded; or
  - (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the principal body corporate roll, at the address so recorded; or
  - (c) in the case of a member—in any manner authorised by the by-laws for the service of notices on members.
- (4) Notice under section 160(5) may be served on a person—
  - (a) personally or by post; or

- (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the first mentioned person.

## **168 Establishment of committees**

Nothing in this Act shall prevent the principal body corporate from establishing by resolution in general meeting a committee to consider any matter referred to it by the principal body corporate and to report thereon to the principal body corporate or the executive committee.

## **Division 3A Proxies for general meetings of principal bodies corporate**

### **168A Application of div 3A**

This division applies to the appointment and use of a proxy to represent a member of a principal body corporate at a general meeting of the principal body corporate.

### **168B Appointment [SM, s 107]**

- (1) Subject to subsections (2) to (5), a person entitled to vote at the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) The principal body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution; or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- (4) A person must not hold—

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- (a) if there are 20 or more lots for which there are voting entitlements for the meeting—proxies greater in number than 5% of the lots; or
  - (b) if there are fewer than 20 lots for which there are voting entitlements for the meeting—more than 1 proxy.
- (5) The appointment of a proxy is effective only if the person or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the principal body corporate before—
- (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the principal body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

### **168C Form of proxy [SM, s 108]**

A proxy under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the principal body corporate's financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this division, may be given to any individual; and
- (h) must appoint a named individual.

### **168D Use of proxy [SM, s 109]**

- (1) A member of the principal body corporate (*member A*) who is the proxy for another member of the principal body corporate (*member B*) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at the general meeting—
  - (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- (4) A proxy may be exercised by—
  - (a) the proxy holder voting in a show of hands at a general meeting; or

- (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

### **168E Special provisions about proxy use [SM, s 110]**

- (1) A member of the principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the member's proxy for voting at the general meeting.
- (2) A proxy can not be exercised for someone else by—
  - (a) the original owner of a secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a subsidiary body corporate of the principal body corporate.

### **168F Offence [SM, s 111]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at the general meeting of the principal body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

## **Division 3B                      Accounts and audit**

### **168G    Application of div 3B**

This division applies to a principal body corporate for preparing a statement of accounts under section 151(1)(f).

### **168H    Accounts [SM, s 154]**

- (1) The statement of accounts may be prepared on a cash or accrual basis.
- (2) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) the total amounts paid to the fund established under section 151(1)(i) and the account established under section 151(1)(k);
  - (b) total contributions in arrears;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- (3) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the principal body corporate at the end of the financial year for which the accounts are prepared.
- (4) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the executive committee, identifying the total amounts paid to each member during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.

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- (5) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

**168I Audit [SM, s 155]**

- (1) The principal body corporate must have its statement of accounts for each financial year of the body corporate audited by an auditor.
- (2) The auditor to be appointed must be agreed to by ordinary resolution of the principal body corporate.
- (3) The motion for agreeing to the auditor to be appointed—
- (a) must be included in the agenda for the general meeting at which the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed.
- (4) Also, the body corporate may, by ordinary resolution—
- (a) resolve to have its accounting records audited for a particular period or a particular project; and
  - (b) appoint an auditor for the audit.
- (5) A member of the executive committee, the body corporate manager, or an associate of a member of the executive committee or body corporate manager, can not be appointed to audit the accounting records or the statement of accounts of the principal body corporate.
- (6) On finishing an audit of the principal body corporate's statement of accounts for a financial year, the auditor must give a certificate—
- (a) stating whether the statement of accounts gives a true and fair view of the principal body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the principal body corporate's financial affairs—identifying the deficiencies in the statement.

- (7) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- (8) In this section—  
**auditor** means—
- (a) a person who is a registered company auditor; or
  - (b) a person who—
    - (i) is a member of—
      - (A) CPA Australia and entitled to use the letters 'CPA' or 'FCPA'; or
      - (B) the Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or
      - (C) the Institute of Public Accountants and entitled to use the letters 'MIPA' or 'FIPA'; and
    - (ii) has a total of 2 years auditing experience, whether or not continuous.

## **Division 4                      Additional principal bodies corporate or increase in membership of existing principal body corporate**

### **169      Effect of subdivision of residential precinct in subsequent stage**

On registration of the first plan of subdivision creating a lot or lots within a residential precinct in a subsequent stage, the proprietors of all land within the residential precincts in that subsequent stage become either—

- (a) a body corporate under the name '(insert name of subsequent stage specified in the approval of the scheme) Principal Body Corporate'; or



- (b) additional members of an existing principal body corporate.

## **170 Procedure for increase in membership of existing principal body corporate**

- (1) The proprietor of land within the residential precincts in a subsequent stage may become additional members of an existing principal body corporate only if—
  - (a) details of the addition of members to an existing principal body corporate have been set out in a motion given to the members of the body corporate to which it is proposed to add members; and
  - (b) the motion for the proposed addition of members has been carried by special resolution of the existing principal body corporate to which it is proposed to add members; and
  - (c) the proposal to add members to an existing principal body corporate is—
    - (i) included in the application for approval of a subsequent stage; and
    - (ii) is approved as part of the approval of the subsequent stage.
- (2) If an application under section 26 that relates to a subsequent stage includes a proposal to add members to an existing principal body corporate, the application must be accompanied by—
  - (a) a copy of the motion for the addition of members; and
  - (b) evidence that it has been carried by special resolution of the existing principal body corporate; and
  - (c) details of the effect the addition of members to an existing principal body corporate is likely to have on existing members of the body corporate.

### **171 Meeting of expanded principal body corporate**

- (1) Within 3 months after registration of the first plan of subdivision creating a lot or lots within a residential precinct in a subsequent stage, the principal body corporate must convene a meeting.
- (2) Section 143 applies to the meeting with any necessary modifications.
- (3) For the purposes of setting the date for subsequent annual general meetings after the meeting mentioned in subsection (1), the meeting is taken to be the first annual general meeting.

### **172 Levies and funds of expanded principal body corporate**

- (1) Within 14 days after registration of the first plan of subdivision creating a lot or lots within a residential precinct in a subsequent stage, an expanded principal body corporate must determine the amounts mentioned in section 151(1)(h).
- (2) On registration of the first plan of subdivision creating a lot or lots within a residential precinct in a subsequent stage, the fund of the principal body corporate that is being expanded continues in existence.

### **173 Application of particular provisions to expanded principal body corporate**

Divisions 3, 3A, 3B and 5 apply, with any necessary modifications, to the expanded principal body corporate after the registration of the first plan of subdivision creating a lot or lots within a residential precinct in a subsequent stage.

### **174 Application of Act to new principal body corporate**

If a new principal body corporate is created in relation to a subsequent stage, this Act applies to the body corporate in relation to the subsequent stage for which it was incorporated.

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**175 Agreements with another principal body corporate**

A principal body corporate may enter into an agreement with another principal body corporate in the site in relation to—

- (a) the secondary thoroughfare including the improvements on the secondary thoroughfare; and
- (b) any personal property vested in the other principal body corporate.

**Division 5 Removal from office of voting members of executive committees for breach of code of conduct**

**175A Application of div 5**

This division applies to a primary thoroughfare body corporate or principal body corporate for removing a voting member of its executive committee for a breach of the code of conduct.

**175B Notice for breach of code of conduct [SM, s 34]**

- (1) If the body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
  - (a) that the body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;

[s 175C]

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- (d) that, if asked by the member, the body corporate will pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the body corporate;
  - (e) that the body corporate is to consider a motion to remove the member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (c) ends.
- (2) If asked by the member, the body corporate must pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the body corporate.

### **175C Removal of voting member at general meeting [SM, s 35]**

- (1) This section applies if—
- (a) the body corporate gives a voting member of its executive committee a notice under section 175B(1); and
  - (b) the period mentioned in section 175B(1)(c) for the notice has ended.
- (2) The body corporate must—
- (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in section 175B(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of—
    - (i) the notice; and
    - (ii) if the body corporate has received a response from the member under section 175B(1)(c)—the response.
- (3) The member may be removed from office, by ordinary resolution of the body corporate, at the next general meeting.

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## Part 8A                      **Conduct of body corporate managers, service contractors and letting agents**

### Division 1                      **Preliminary**

#### 175D    **Definitions for pt 8A**

In this part—

*caretaking service contractor*, for an approved scheme or part of an approved scheme, means a service contractor for the approved scheme or part who is also—

- (a) a letting agent for the approved scheme or part; or
- (b) an associate of the letting agent.

*letting agent authorisation*, for a letting agent, means an authorisation given by a primary thoroughfare body corporate or principal body corporate to the letting agent to conduct a letting agent business for an approved scheme or part of an approved scheme.

*management rights*, of a letting agent for an approved scheme or part of an approved scheme, means—

- (a) the letting agent business for the approved scheme or part, including the letting agent's authorisation; and
- (b) the business conducted by the letting agent under a service contract for the approved scheme or part, including the service contract; and
- (c) the letting agent's interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and
- (d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

*reviewable terms*, for a service contract, means the terms of the contract that provide for—

- (a) the functions and powers of the relevant letting agent as a service contractor; or
- (b) the remuneration payable to the relevant letting agent as a service contractor.

**review advice**, about a service contract, means written advice about whether the contract's reviewable terms—

- (a) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

**service contract** means a contract entered into with a person for the engagement of the person as a service contractor for an approved scheme or part of an approved scheme.

### **175E Meaning of *financier* for a letting agent's contract**

- (1) A person is a **financier** for a contract under which a letting agent is authorised by a body corporate if the letting agent and the person give written notice signed by each of them to the body corporate that the person is a financier for the contract.
- (2) A person stops being a **financier** for the contract if the person gives the body corporate a written notice withdrawing the notice given under subsection (1).
- (3) A notice under subsection (2) may be given without the letting agent's agreement.
- (4) However, a person is a **financier** for the contract only if—
  - (a) the person is a financial institution; or
  - (b) the person, in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person's security for supplying the finance; or
  - (c) at the time the person supplied finance for a business acquisition using a charge over the contract as the whole

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or part of the person's security, the person was a person to whom paragraph (b) would have applied.

### **175F Meaning of *letting agent* and *letting agent business***

- (1) A person is a *letting agent* for an approved scheme or part of an approved scheme if the person is authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the approved scheme or part.
- (2) A person conducts a *letting agent business* for an approved scheme or part of an approved scheme if—
  - (a) the person conducts, subject to the *Property Occupations Act 2014*, the business of acting as the agent of the owners of 1 or more lots included in the approved scheme or part; and
  - (b) the owners choose to use the person's services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the approved scheme or part.
- (3) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

*Examples of ancillary businesses or activities—*

video hire, linen hire, agency for tour operator

### **175G Meaning of *service contractor* for approved scheme or part**

A person is a *service contractor* for an approved scheme or part of an approved scheme if—

- (a) the person is engaged by the primary thoroughfare body corporate or principal body corporate to supply services to the body corporate for the benefit of the common property or lots included in the approved scheme or part; and

- (b) the person is not an employee of the primary thoroughfare body corporate or principal body corporate; and
- (c) the services do not include administrative services; and
- (d) the term of the engagement is at least 1 year.

*Examples of services that might be provided by a service contractor—*  
caretaking services, pool cleaning services

## **Division 2                      Codes of conduct**

### **175H Code of conduct for body corporate manager and caretaking service contractor**

- (1) The code of conduct in schedule 5 applies to—
  - (a) a body corporate manager appointed by a primary thoroughfare body corporate or principal body corporate in performing obligations under the person's appointment; and
  - (b) a caretaking service contractor engaged by the primary thoroughfare body corporate or principal body corporate for an approved scheme or part of an approved scheme in performing obligations under the person's engagement.
- (2) Compliance with the provisions of the code is taken to be a condition of the instrument of appointment or the contract providing for the person's engagement.
- (3) If there is an inconsistency between a provision of the code and a provision in the instrument of appointment or contract, the provision of the code prevails.
- (4) In this section—  
*instrument of appointment*, in relation to a person's appointment as a body corporate manager, includes a contract or other document relating to the appointment.



## **175I Code of conduct for letting agent**

The code of conduct in schedule 6 applies to a letting agent authorised by a primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for an approved scheme or part of an approved scheme.

## **Division 3 Required transfer of management rights for contravention of code of conduct**

### **Subdivision 1 Preliminary**

#### **175J Application of div 3**

- (1) This division applies for transferring the management rights of a letting agent authorised by a primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for an approved scheme or a part of an approved scheme.
- (2) However, this division does not apply to a letting agent for conducting a letting agent business or a part of a letting agent business for an approved scheme or part of an approved scheme for which a serviced strata arrangement or scheme under the Corporations Act is in operation.

#### **175K Effect of div 3 on other provisions**

The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

## **Subdivision 2      Transfer of management rights**

### **175L    Code contravention notice**

- (1) The body corporate must, if required by an ordinary resolution decided by secret ballot, give the letting agent a signed notice under this section (a *code contravention notice*).
- (2) The code contravention notice must state—
  - (a) that the body corporate believes the letting agent has contravened, or is contravening, a provision of the code of conduct for—
    - (i) letting agents; or
    - (ii) body corporate managers and caretaking service contractors; and
  - (b) the provision the body corporate believes has been, or is being, contravened; and
  - (c) details sufficient to identify the contravention; and
  - (d) a reasonable period within which the letting agent must remedy the contravention; and
  - (e) that the body corporate may, without further notice, give the letting agent a transfer notice if—
    - (i) the letting agent does not comply with the code contravention notice; or
    - (ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

### **175M    Grounds for requiring transfer**

The body corporate may require the transfer of the letting agent's management rights under this division only if the requirement is based on either of the following grounds—

- (a) the letting agent failed to comply with a code contravention notice;
- (b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—
  - (i) letting agents; or
  - (ii) body corporate managers and caretaking service contractors.

### **175N Requirement for transfer**

The letting agent must transfer the letting agent's management rights for the approved scheme or part if—

- (a) a ground under section 175M exists for the body corporate to require the transfer; and
- (b) the body corporate—
  - (i) by majority resolution decided by secret ballot requires the transfer; and
  - (ii) gives written notice of the requirement (the *transfer notice*) to the letting agent.

### **175O Transfer—letting agent's choice of transferee**

- (1) The letting agent must transfer the management rights—
  - (a) within the following period after the transfer notice is given to the letting agent—
    - (i) if section 175T does not apply—9 months;
    - (ii) if section 175T applies—11 months; and
  - (b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.
- (2) For deciding whether to approve a person under subsection (1)(b), the body corporate—

- (a) must act reasonably and as quickly as practicable; and
  - (b) may have regard only to the person's—
    - (i) character; and
    - (ii) financial standing; and
    - (iii) competence, qualifications and experience.
- (3) However, the body corporate must not—
- (a) unreasonably withhold approval of the person; or
  - (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to a request for the approval.

Maximum penalty for subsection (3)—50 penalty units.

- (4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

### **175P Giving financier copy of transfer notice**

When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for the contract under which the letting agent is authorised as the letting agent.

### **175Q Transfer—body corporate's choice of transferee**

- (1) If the letting agent does not transfer the management rights as required under section 175O, the letting agent must transfer the management rights—
- (a) to a replacement letting agent chosen by the executive committee of the body corporate and named in a written notice given by the committee to the letting agent; and
  - (b) at the price stated in the notice; and
  - (c) within the period, of at least 2 months after the notice is given, stated in the notice.

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- (2) The price stated must be 1 of the following—
- (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;
  - (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—
    - (i) conducted at the request of the body corporate; and
    - (ii) of which at least 60 days notice was given;
  - (c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.
- (3) The letting agent must pay the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

*Note—*

If the letting agent does not transfer the management rights as required under this section, it is a ground for giving the letting agent a remedial action notice under section 175Y.

## **175R Terms of service contract on transfer**

- (1) This section applies to a service contract (the *transferred service contract*) transferred to a person (the *transferee*) under section 175O or 175Q.
- (2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—
  - (a) the terms applying to the service contract under subsection (3); or
  - (b) if subsection (3) does not apply—the terms applying to the service contract immediately before the transfer (the *existing terms*).

- (3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—
  - (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 175V(1).

### **Subdivision 3 Replacement of letting agent authorisation and service contract**

#### **175S Replacement of letting agent authorisation and service contract in particular circumstances**

- (1) This section applies if the remainder of the term of the letting agent’s authorisation (the *transferred authorisation*), including any rights or options of extension or renewal, is less than 7 years when transferred to a person (the *transferee*) under this division.

*Example—*

A letting agent’s authorisation is given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired. The remainder of the term is therefore 20 years and this section does not apply.

- (2) On the transfer—
  - (a) the transferred authorisation and any service contract (the *transferred service contract*) forming part of the transferred management rights terminate; and
  - (b) the body corporate must—
    - (i) authorise the transferee to conduct a letting agent business for the approved scheme or part; and
    - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

- 
- (3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.
  - (4) Subject to subsection (3)—
    - (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
    - (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
      - (i) the terms applying to the transferred service contract under subsection (5); or
      - (ii) if subsection (5) does not apply—the terms applying to the transferred service contract immediately before the transfer (the *existing terms*).
  - (5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—
    - (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
    - (b) the body corporate gave the letting agent a copy of the review advice as required under section 175V(1).

## **Subdivision 4      Reviewing terms of letting agent’s service contract**

### **175T    Reviewing terms of service contract**

- (1) This section applies if—
  - (a) the letting agent’s management rights include a service contract; and
  - (b) when the body corporate passes the majority resolution mentioned in section 175N, the body corporate also passes, by ordinary resolution, a motion (a *review*

*motion*) that a review advice about the service contract be obtained.

- (2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

*Example of an independent appropriate person—*

a person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

- (3) The review advice must be based on the review criteria stated in section 175U.
- (4) This section applies to the contract even if the contract also provides for either or both of the following—
- (a) the letting agent's engagement as a body corporate manager;
  - (b) the letting agent's authorisation as a letting agent.

### **175U Review criteria**

- (1) The review criteria are each of the following—
- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;
  - (b) whether the reviewable terms impose conditions that—
    - (i) are unreasonably difficult to comply with; or
    - (ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;
  - (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;



- (d) whether the reviewable terms are appropriate for the approved scheme;
  - (e) the term of the engagement as service contractor and the period of the term remaining.
- (2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the approved scheme.

### **175V Giving copy of review advice to letting agent and prospective buyer of management rights**

- (1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.
- (2) If requested by a prospective buyer of the letting agent's management rights, the body corporate must give a copy of the review advice to the prospective buyer.

## **Subdivision 5 Disputes about transfer of management rights**

### **175W QCAT jurisdiction**

A dispute about the transfer, under this division, of a letting agent's management rights may be dealt with by QCAT under the QCAT Act.

## **Division 4 Disputes about contractual matters**

### **175X QCAT jurisdiction**

- (1) This section applies to a dispute about a claimed or anticipated contractual matter about—
  - (a) the appointment or engagement of a person as a body corporate manager or caretaking service contractor for an approved scheme or part of an approved scheme; or

- (b) the authorisation of a person as a letting agent for an approved scheme or part of an approved scheme.
- (2) A party to the dispute may apply, as provided under the QCAT Act, for an order of QCAT to resolve the dispute.

## **Division 5                      Termination of appointment, engagement or authorisation**

### **175Y Termination for failure to comply with remedial action notice [SM, s 131]**

- (1) A primary thoroughfare body corporate or principal body corporate may terminate a person's appointment as a body corporate manager or engagement as a service contractor if the person or, if the person is a corporation, a director of the corporation—
  - (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the appointment or engagement; or
  - (b) fails to carry out duties under the appointment or engagement; or
  - (c) contravenes—
    - (i) for a body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or
    - (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents.
- (2) Also, the body corporate may terminate a person's authorisation as a letting agent if—
  - (a) the person or, if the person is a corporation, a director of the corporation—

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- (i) engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or
    - (ii) fails to carry out duties under the authorisation; or
    - (iii) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (b) the person—
    - (i) has been given a transfer notice requiring transfer of the person's management rights; and
    - (ii) has not transferred the management rights as required under section 175Q.
  - (3) The body corporate may act under subsection (1) or (2) only if—
    - (a) the body corporate has given the manager, contractor or agent a remedial action notice; and
    - (b) the manager, contractor or agent fails to comply with the remedial action notice within the period stated in the notice; and
    - (c) the termination is approved by ordinary resolution of the body corporate; and
    - (d) for the termination of a person's engagement as a caretaking service contractor or authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.
  - (4) In this section—

***remedial action notice*** means a written notice stating each of the following—

    - (a) that the body corporate believes the person to whom the notice is given has acted—

- (i) for a body corporate manager or service contractor—in a way mentioned in subsection (1); or
  - (ii) for a letting agent—in a way mentioned in subsection (2);
- (b) details of the action sufficient to identify—
  - (i) the misconduct or gross negligence the body corporate believes has happened; or
  - (ii) the duties the body corporate believes have not been carried out; or
  - (iii) the provision of the code of conduct the body corporate believes has been contravened; or
  - (iv) if subsection (2)(b) applies, the contravention of the code contravention notice or the relevant provision of the code of conduct that was the ground for requiring the transfer of the person's management rights under section 175M;
- (c) that the person must, within the reasonable period of at least 14 days stated in the notice—
  - (i) remedy the misconduct or gross negligence; or
  - (ii) carry out the duties; or
  - (iii) remedy the contravention;
- (d) that if the person does not comply with the notice in the stated period, the body corporate may terminate the person's appointment, engagement or authorisation as a body corporate manager, service contractor or letting agent.

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## **Part 9                      By-laws**

### **Division 1                      Development control by-laws**

#### **176      Development control by-laws**

- (1) The principal body corporate, pursuant to a special resolution, may from time to time make by-laws regulating the quality of design and development within the residential precincts.
- (2) The development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the residential precincts.
- (3) A development control by-law may apply to all the residential precincts or to a particular precinct or part of a precinct specified in the by-law.
- (4) A development control by-law may repeal or amend an existing development control by-law.
- (5) A development control by-law shall have no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (6) A development control by-law shall not affect the operation of any other Act or law.
- (7) Without limiting the operation of any other provision of this Act, the development control by-laws for the time being in force bind the principal body corporate, the members of the principal body corporate and the proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier of a lot within the residential precincts to the same extent as if those by-laws had been signed and sealed by the principal body corporate, each member and each proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.

- (8) Notwithstanding the provisions of the *Building Units and Group Titles Act 1980*, a by-law made by a body corporate incorporated by the registration of a building units plan or group titles plan in respect of land within a residential precinct that is inconsistent with the development control by-laws shall to the extent of the inconsistency have no effect.

### **177 Minor noncompliance with development control by-laws**

- (1) At the request in writing of a member of the principal body corporate, the principal body corporate may permit the noncompliance by an affected person with a development control by-law in respect of the land or lot specified in the request.
- (2) However, the noncompliance must be of a minor nature.
- (3) Where noncompliance with a development control by-law has been permitted by the principal body corporate under subsection (1) there is not a failure to comply with that by-law by reason only of that noncompliance.
- (4) In this section—  
*affected person* means any of the following—
  - (a) the member of the principal body corporate making the request under subsection (1);
  - (b) the proprietor, mortgagee in possession, lessee or occupier of the land or lot to which the request relates.

## **Division 2 Primary thoroughfare by-laws**

### **178 Primary thoroughfare by-laws**

- (1) Subject to subsection (5), the primary thoroughfare body corporate, pursuant to a special resolution, for the purpose of the control, management, administration, use or enjoyment of the primary thoroughfare and any improvements thereon, may from time to time make by-laws and may in like manner amend or repeal those by-laws.

- (2) A primary thoroughfare by-law has no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (3) A lease of any land where access to a dedicated road is by way of the primary thoroughfare shall be deemed to contain an agreement by the lessee that the lessee shall comply with the primary thoroughfare by-laws for the time being in force.
- (4) Without limiting the operation of any other provision of this Act, the primary thoroughfare by-laws for the time being in force bind the primary thoroughfare body corporate, the principal body corporate and each proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier, of land, including lots, within the site to the same extent as if those by-laws had been signed and sealed by the primary thoroughfare body corporate, the principal body corporate and each proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (5) No amendment of or addition to a primary thoroughfare by-law shall be capable of operating to prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.
- (6) A primary thoroughfare by-law may apply to all the primary thoroughfare or to a particular part thereof specified in the by-law.
- (7) A primary thoroughfare by-law shall not affect the operation of any other Act or law.

## **Division 3                      Secondary thoroughfare by-laws**

### **179      Secondary thoroughfare by-laws**

- (1) Subject to subsection (5), the principal body corporate, pursuant to a special resolution, for the purpose of the control, management, administration, use or enjoyment of the

secondary thoroughfare and any improvements thereon, may from time to time make by-laws and may in like manner amend or repeal those by-laws.

- (2) A secondary thoroughfare by-law has no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (3) A lease of a lot or of any common property where access to the primary thoroughfare is through a secondary thoroughfare shall be deemed to contain an agreement by the lessee that the lessee shall comply with the secondary thoroughfare by-laws for the time being in force.
- (4) Without limiting the operation of any other provision of this Act, the secondary thoroughfare by-laws for the time being in force bind the principal body corporate, each member of the principal body corporate and each proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier, of a lot within the residential precincts to the same extent as if those by-laws had been signed and sealed by the principal body corporate, each member of the principal body corporate and each proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (5) No amendment of or addition to a secondary thoroughfare by-law shall be capable of operating to prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.
- (6) A secondary thoroughfare by-law may apply to all the secondary thoroughfares or to a particular thoroughfare or part thereof specified in the by-law.
- (7) A secondary thoroughfare by-law shall not affect the operation of any other Act or law.



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## Part 10                      Miscellaneous

### Division 1                      Resolution of particular disputes

#### 179A    Dealing with particular disputes under Building Units and Group Titles Act 1980

- (1) Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.
- (2) However, this section—
  - (a) does not apply to a dispute or matter mentioned in section 175W, 175X or 179B; and
  - (b) is subject to section 179C.

#### 179B    Dealing with matter relating to development control by-law

- (1) QCAT may deal with a matter relating to—
  - (a) the application of a development control by-law for an approved scheme to a person mentioned in subsection (2)(b) or (c); or
  - (b) a contravention or alleged contravention of a development control by-law for an approved scheme.
- (2) Each of the following persons may apply to QCAT, as provided under the QCAT Act, to deal with a matter under subsection (1) if the person has standing to make the application—
  - (a) the principal body corporate for the approved scheme;
  - (b) a subsidiary body corporate of the principal body corporate;

[s 179C]

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- (c) a proprietor or occupier of, or a person having an estate or interest in, a lot in a residential precinct in the approved scheme.
- (3) For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.

*Example—*

A proprietor of a lot in a residential precinct in an approved scheme alleges the amenity of the lot has been, or will be, adversely affected by development authorised under a development control by-law in an adjoining residential precinct in the scheme.

- (4) This section is subject to section 179C.

### **179C Internal dispute resolution processes to be used before application**

- (1) This section applies to—
- (a) a referee for deciding an application for an order under the *Building Units and Group Titles Act 1980*, part 5 relating to a dispute about a matter mentioned in section 179A; and
- (b) QCAT in deciding an application about a matter mentioned in section 179B.
- (2) The referee or QCAT must not decide the application unless the referee or QCAT is satisfied the applicant has made reasonable attempts to resolve the dispute or matter by using internal dispute resolution processes.

*Examples of internal dispute resolution processes—*

- the parties to a dispute communicating with each other
- the applicant writing to the executive committee for the relevant principal body corporate
- the applicant causing a motion to be presented for consideration at a general meeting of the relevant principal body corporate

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## Division 2                      Other matters

### 179D Associates

- (1) For this Act, a person is associated with someone else if—
  - (a) a relationship of a type to which this section applies exists between them; or
  - (b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.
- (2) This section applies to relationships of the following types—
  - (a) marriage, de facto relationship or civil partnership;
  - (b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;
  - (c) business partnership;
  - (d) the relationship of employer and employee;
  - (e) a fiduciary relationship;
  - (f) the relationship of persons, 1 of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;
  - (g) the relationship of a corporation and executive officer of the corporation;
  - (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.
- (3) Despite subsection (2)(e) and (f), the owner of an initial lot, secondary lot or a lot on a group titles plan or building units plan and a letting agent for an approved scheme or part of an approved scheme are not associated merely because of their relationship as owner and letting agent.

(4) In this section—

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

### **180 Applications to be accompanied by fees**

- (1) An application to the Minister for approval of a scheme shall be accompanied by a fee as determined by the Minister.
- (2) An application to a local government for any approval required pursuant to this Act shall be accompanied by the relevant application fee fixed from time to time by the local government.
- (3) Different amounts may be fixed or determined as application fees in respect of applications for different types of approval required under this Act or in respect of a particular application and may be fixed before or after the application is made.

### **181 Penalties paid to general fund or operating fund**

All penalties or other amounts recovered for an offence against section 15(8) or 26(6) are to be paid into the general fund or operating fund of the relevant local government.

### **182 Regulation-making power**

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) A regulation may be made with respect to any of the following matters—
  - (a) the preparation and approval of plans and documents for the purposes of this Act;
  - (b) the plans and documents that may be lodged under this Act in the land registry;

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- (c) the registration in the land registry of plans and documents;
  - (d) the fees to be paid in relation to the lodgment and registration in the land registry of plans and documents;
  - (e) the nomination and election of—
    - (i) the chairperson, secretary and treasurer of primary thoroughfare bodies corporate and principal bodies corporate; and
    - (ii) other members of the executive committees of primary thoroughfare bodies corporate and principal bodies corporate;
  - (f) the powers and functions of primary thoroughfare bodies corporate and principal bodies corporate.
- (3) A regulation may create offences and prescribe penalties of not more than 4 penalty units for the offences.

## Part 11 Validation

### 183 Declaration about resolution of disputes under Building Units and Group Titles Act 1980

- (1) This section applies to all acts, matters and things done before the commencement of section 179A for the resolution, under the *Building Units and Group Titles Act 1980*, part 5, of a dispute about the operation of this Act or the rights and obligations of persons under this Act.
- (2) To remove any doubt, it is declared that the acts, matters and things are taken to be, and always to have been, as validly done as if they were done after the commencement.

## **Part 12**                      **Transitional provisions for Resorts and Other Acts Amendment Act 2009**

### **Division 1**                      **Preliminary**

#### **184**      **Definitions for pt 12**

In this part—

*commencement* means the commencement of this section.

*effective day* means the day that is 6 months after the commencement.

### **Division 2**                      **Bodies corporate**

#### **185**      **Existing number of committee members may continue until effective day**

- (1) This section applies if—
  - (a) a primary thoroughfare body corporate or principal body corporate has more than 5 members; and
  - (b) the number (the *existing number*) of members of the executive committee of the body corporate is less than 5.
- (2) Despite section 123(5) or 158(6), the executive committee may continue to consist of the existing number of members.
- (3) This section stops applying at the beginning of the effective day.

#### **186**      **Deferred application of particular provisions**

The following provisions do not apply until the effective day—

- (a) sections 123A and 158A and schedule 4;

(b) part 8, divisions 1A, 3A, 3B and 5.

*Note—*

- sections 123A, 158A and schedule 4
- part 8, divisions 1A, 3A, 3B and 5

**187 Application of code of conduct for existing voting members of executive committees**

- (1) This section applies to a person who, before the effective day, was a voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate.
- (2) The code of conduct for voting members of the executive committee applies to the person only in relation to acts done or omissions made on or after the effective day.

**188 Auditing accounts for first annual general meeting after effective day**

- (1) This section applies if—
  - (a) before the effective day—
    - (i) a principal body corporate authorised a person to prepare a statement of accounts under section 151(1)(f) for adoption at the body corporate's annual general meeting; and
    - (ii) the person started to prepare the statement of accounts; and
  - (b) the annual general meeting has not happened.
- (2) Section 168I does not apply for auditing the statement of accounts for the period to which the authorisation relates.

**189 End of appointment of original owner of secondary lot as nominee for subsidiary body corporate**

- (1) This section applies if—
  - (a) before the commencement—

- (i) a subsidiary body corporate under a building units or group titles plan appointed as its nominee, under section 140, the original owner of the secondary lot subdivided by the plan or an ineligible associate of the original owner; and
  - (ii) the original owner ceased to own more than 50% of the lots; and
- (b) immediately before the commencement, the original owner or associate was still the nominee for the subsidiary body corporate.
- (2) Despite section 140A, the original owner's or associate's appointment as the nominee for the subsidiary body corporate ends when the first of the following happens—
  - (a) the beginning of the effective day;
  - (b) the secretary of the principal body corporate receives a written notice under section 140(7)(b) of—
    - (i) the cancellation of the appointment; or
    - (ii) the appointment of another nominee for the subsidiary body corporate.
- (3) In this section—

*ineligible associate* see section 140A(2)(b).

*subsidiary body corporate*, under a building units or group titles plan subdividing a secondary lot within a residential precinct, means the body corporate created by the registration of the plan.

## **Division 3                      Body corporate managers, service contractors and letting agents**

### **190      Deferred application of particular provisions**

The following provisions do not apply until the effective day—



- (a) part 8A, divisions 2, 3, 4 and 5;
- (b) schedules 5 and 6.

*Note—*

- Part 8A, divisions 2, 3, 4 and 5
- schedules 5 and 6

### **191 Application of code of conduct for existing managers and contractors**

- (1) This section applies to a person who, before the effective day—
  - (a) was appointed as the body corporate manager of a primary thoroughfare body corporate or principal body corporate; or
  - (b) was engaged as a caretaking service contractor for an approved scheme or part of an approved scheme.
- (2) The code of conduct for body corporate managers and caretaking service contractors applies to the person only in relation to acts done or omissions made on or after the effective day.

### **192 Application of code of conduct for existing letting agents**

- (1) This section applies to a person who, before the effective day, was a letting agent for an approved scheme or part of an approved scheme.
- (2) The code of conduct for letting agents applies to the person only in relation to acts done or omissions made on or after the effective day.

### **193 Existing term of appointment for body corporate manager**

- (1) This section applies if—
  - (a) before the commencement, a body corporate manager was appointed for—

- (i) a primary thoroughfare body corporate under section 130; or
  - (ii) a principal body corporate under section 165; and
- (b) the term of the appointment has not ended.
- (2) The term of the appointment ends on the day provided for in the instrument of appointment.
- (3) For subsection (2), the term of the appointment provided for in the instrument of appointment includes rights or options of extension or renewal provided for in the instrument of appointment.
- (4) This section applies despite sections 130(5) and (6) and 165(5) and (6).

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## **Schedule 1      Requirements for application for approval of scheme and provisional approval of future development area**

section 4

### **Part A**

- 1 The name of the proposed resort development.
- 2 The name, address and signature of each applicant.
- 3 The name, address, signature and written consent of each owner (other than the applicant) of land within the site and, if applicable, the future development area.
- 4 The name, address, signature and written consent of each owner of land (if any) outside the site that is proposed to be incorporated as part of the scheme.
- 5 The address of the site and other land (if any) proposed to be used as part of the scheme.
- 6 The real property description (including the area) of the land comprising the site and, if applicable, the future development area.
- 7 Confirmation that the land comprising the site and, if applicable, the future development area is freehold land or is intended to be freeholded.
- 8 The existing and proposed form of land tenure of land referred to in clause 4.
- 9 The local government area or areas in which is situated the site and, if applicable, the future development area and any other land proposed to be incorporated as part of the scheme.
- 10 Details of those matters or things for which approval or provision is required pursuant to any Act before approval of

the scheme or, if applicable, provisional approval of the future development area, may be granted.

- 11 Details of any canal or other artificial tidal waterway either constructed or proposed for construction within the site including details of applications and approvals (if any) under the *Coastal Protection and Management Act 1995*, the repealed *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009*.
- 12 Details of the financial capability of the applicant or proposed developer to implement the scheme and the method of funding the development.
- 13 A study report on the environmental impact of the scheme and, if applicable, the subsequent stages in the future development area.
- 14 A market feasibility study report of the scheme and, if applicable, the subsequent stages in the future development area.
- 15 Evidence of all undertakings given and agreements entered into by or between the applicant, the developer, the local government, a department of the Government or statutory authority and any other person whose interests would be affected by the proposed development and, if applicable, the proposed development within the future development area.
- 16 Details of a works program for implementation of the development together with an assessment of the number of people to be engaged in the carrying out of the works on the site and whether or not special provision is to be made to accommodate the construction workforce and permanent workforce in the locality.
- 17 The proposed precincts within the site, the names thereof and the proposed uses of the land to be permitted within each precinct.
- 18 A plan of the scheme of development which must include the following—
  - (a) a site plan and definition of the area including where appropriate metes and bounds descriptions and real property descriptions;

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- (b) identification on the site plan of the location and area of each of the proposed precincts (including the primary thoroughfare precinct) and their component parts;
  - (c) identification on the site plan of the relationship between the site and adjoining lands (if any);
  - (d) identification of lands (if any) outside the site which are proposed to be used in association with the establishment and operation of the proposed development together with evidence that those lands may be lawfully used for the purposes set out in the scheme;
  - (e) identification of proposed roads within the site and the access points to the site from roads outside the site (if any);
  - (f) existing and proposed easements and reserves;
  - (g) watercourse lines, flood lines, storm surge lines, waterholes and similar features (if any).
- 19 A plan of the future development area that is to include—
- (a) a site plan and definition of the area including where appropriate metes and bounds descriptions and real property descriptions; and
  - (b) identification on the site plan of the relationship between the future development area, the site and adjoining lands (if any); and
  - (c) identification of lands (if any) outside the future development area that are proposed to be used in association with the establishment and operation of the proposed development together with evidence that the lands may be lawfully used for the purposes set out in the scheme and proposed for the future development area; and
  - (d) identification of access points to the future development area from roads outside the future development area (if any); and
  - (e) existing easements and reserves; and

- (f) watercourse lines, flood lines, storm surge lines, waterholes and similar features (if any).
- 20 Details of the maximum number of residential lots into which it is proposed to subdivide the future development area.
- 21 Such other information as the Minister requires.

## Part B

- 1 In respect of any part of the proposed development that includes or comprises the use of a building or structure or part thereof which has a gross floor area exceeding 4000m<sup>2</sup> primarily for the purpose of shops, a study report including an assessment of the public need and demand for that development and a statement of the likely economic impact upon existing development of a similar nature or involving similar activities in the locality and in the estimated area of influence of the proposed development if the proposal were implemented.
- 2 An engineering or geotechnical report on infrastructure requirements to service the development and, if applicable, the future development area.
- 3 Details of the equivalent population proposed to be accommodated within the development and, if applicable, the future development area together with an assessment of the number of persons to be employed on the site to service the development specifying the methods used in making that determination.
- 4 Upon the plan of the scheme of development show—
  - (a) the contours of the site; and
  - (b) adequate geographical information relating to the site and adjoining areas; and
  - (c) drainage catchment areas.
- 5 On the plan of the future development area show—

- (a) the contours of the future development area; and
- (b) adequate geographical information relating to the future development area and adjoining areas; and
- (c) drainage catchment areas.

## **Schedule 2            Requirements for notices of proposed scheme amendments**

section 10(2)

### **1            Requirements for placing notice on subject land**

- (1) This section applies for placing a notice under section 10(1)(b) on subject land.
- (2) The notice must be—
  - (a) placed on, or within 1.5m of, the road frontage for the land; and
  - (b) mounted at least 300mm above ground level; and
  - (c) positioned so that it is visible from the road; and
  - (d) made of weatherproof material; and
  - (e) not less than 1200mm x 900mm.
- (3) The lettering on the notice must be—
  - (a) for lettering in a heading—at least 50mm in height and in a bold style; or
  - (b) for lettering in a subheading—at least 25mm in height and in a bold style; or
  - (c) for lettering not mentioned in paragraphs (a) and (b)—at least 25mm in height, of regular weight and in sentence case.
- (4) Each sentence in the notice must start on a new line.
- (5) If the land has more than 1 road frontage, a notice must be placed on each road frontage for the land.
- (6) The primary thoroughfare body corporate must maintain the notice from the day it is placed on the land until the end of the notification period stated in the notice.
- (7) In this section—

***road frontage***, for subject land, means—



- (a) the boundary between the land and any road adjoining the land; or
- (b) if the only access to the land is across other land—the boundary between the other land and any road adjoining the other land at the point of access.

## **Schedule 3      Election of executive committee members of body corporate**

sections 123(6A) and 158(7A)

### **1      Definitions for sch 3**

In this schedule—

*body corporate* means a primary thoroughfare body corporate or principal body corporate.

*candidate* see section 4(3)(a).

*eligibility category*, for a candidate, means the category of person mentioned in section 123(7) or 158(8) to which the candidate belongs.

*executive committee* means the executive committee of a primary thoroughfare body corporate or principal body corporate.

*executive member*, of an executive committee, means the chairperson, secretary or treasurer of the committee.

*ordinary member*, of an executive committee, means a member, other than an executive member, of the committee.

### **2      Election of members of executive committee [SM, s 15]**

- (1) Unless otherwise provided under this schedule, the election of a member of the executive committee of a body corporate must be by ballot.

*Note—*

See, for example, section 7 (Election of ordinary members of executive committee).

- (2) A ballot for membership of the executive committee must be a secret ballot unless the body corporate decides by ordinary resolution that the election be held by open ballot.

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- (3) The value of any vote able to be cast for a lot included in an approved scheme or a part of an approved scheme for choosing a member of the executive committee is the same as the value of the vote able to be cast for each other lot included in the approved scheme or part.

### **3 Nomination procedures for election of executive committee other than at first annual general meeting [SM, s 16]**

- (1) This section states how individuals are nominated for election at the body corporate's annual general meeting, other than the first annual general meeting, as a voting member of the executive committee.
- (2) The secretary must serve a notice on each member of the body corporate—
  - (a) inviting nomination for the members of the executive committee; and
  - (b) stating that a nominated person is not eligible to be a voting member of the executive committee if, when the members of the executive committee are chosen, the person owes a relevant body corporate debt in relation to a lot or lots owned by the person.
- (3) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year.
- (4) Nominations must comply with section 4 and must be given to the secretary by the end of the body corporate's financial year.
- (5) As soon as practicable after receiving a nomination under this section from a candidate for election, the secretary must forward written notice to the candidate acknowledging the nomination has been received.

### **4 Requirements for nominations [SM, s 18]**

- (1) Each member of the body corporate may nominate 1 person for election as a voting member of the executive committee.

- (2) A nomination must be made by written notice and—
- (a) if the nomination is from a member of the body corporate who is an individual nominating himself or herself—must be signed and dated by the member; or
  - (b) if the nomination is from a member of the body corporate other than a member to whom paragraph (a) applies—
    - (i) must be signed and dated by the nominated person; and
    - (ii) must be countersigned by the appropriate authorising person.
- (3) A nomination must contain each of the following details—
- (a) the family name and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;
  - (b) the position or positions the candidate is nominated for;
  - (c) the eligibility category for the candidate;
  - (d) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate's residential or business address; and
    - (ii) the name of the member who nominated the candidate;
  - (e) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a member of the executive committee.
- Example of a payment—*
- payment of the candidate's expenses for travelling to executive committee meetings
- (4) In this section—
- appropriate authorising person***, for a nomination from a member of the body corporate, means—

- (a) if the member is an individual—the member; or
- (b) if the member is a subsidiary body corporate—the person appointed by the member under section 103 or 140; or
- (c) if the member is a corporation other than a subsidiary body corporate—a director, secretary or other nominee of the corporation.

## **5 Conduct of elections for executive committee by secret ballot [SM, s 21]**

- (1) This section states how a secret ballot under this schedule must be held.
- (2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—
  - (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) the ordinary members of the executive committee.
- (3) Each ballot must be conducted separately.
- (4) However, the separate ballots mentioned in subsection (3) may, but need not, appear on the one document.
- (5) For each ballot, the secretary must, if satisfied the nominations comply with this schedule, state the names of the properly nominated candidates in alphabetical order of family name, showing—
  - (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if a candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate’s residential or business address; and

- (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, a candidate from the body corporate for the candidate carrying out the duties of an executive committee member.
- (6) The secretary must forward, with the notices for the annual general meeting—
  - (a) the ballot papers; and
  - (b) an envelope marked ‘ballot paper’; and
  - (c) either of the following—
    - (i) a separate particulars envelope;
    - (ii) a particulars tab that forms part of the ballot paper envelope but that a person may detach without unsealing or otherwise opening the ballot paper envelope.
- (7) To vote, a person must—
  - (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and
  - (c) place the ballot paper in the ballot paper envelope supplied by the secretary and seal it; and
  - (d) if a separate particulars envelope is supplied—place the sealed ballot paper envelope in the separate envelope and seal it; and
  - (e) complete the separate particulars envelope or particulars tab by signing and dating the envelope or tab, and inserting the following information on the envelope or tab—

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- (i) the name of the member for whom the vote is exercised;
  - (ii) the name of the person having the right to vote for the member;
  - (iii) the basis for the person's right to vote; and
- (f) give the completed particulars envelope with the ballot paper envelope enclosed, or the ballot paper envelope with the completed particulars tab attached, to the secretary, or forward the envelope to the secretary so that the secretary receives it, before or at the annual general meeting.
- (8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides; and
  - (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the particulars envelope, or the ballot paper envelope with particulars tab attached, for the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides.
- (9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

## **6 Conduct of elections for executive committee by open ballot [SM, s 22]**

- (1) This section states how an open ballot under this schedule must be held.
- (2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—

- (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) the ordinary members of the executive committee.
- (3) Each ballot must be conducted separately.
- (4) However, the separate ballots may, but need not, appear on the one document.
- (5) For each ballot, the secretary must, if satisfied the nominations comply with section 4, list the names of the properly nominated candidates in alphabetical order of family name, showing—
- (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate's residential or business address; and
    - (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of an executive committee member.
- (6) The secretary must forward the ballot papers, and an envelope marked 'ballot paper' self-addressed to the secretary, with the notices for the annual general meeting.
- (7) To vote, a person must—
- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members' positions—place a mark in each of the spaces opposite the names of



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- however many candidates the person wishes to vote for;  
and
- (c) sign each ballot paper the voter completes; and
  - (d) on each completed ballot paper, write the name of the member for whom the vote is exercised; and
  - (e) if the ballot paper is not completed at the annual general meeting—
    - (i) place the ballot paper in the ballot paper envelope supplied by the secretary; and
    - (ii) seal the envelope, and write on the back of the envelope the name mentioned in paragraph (d); and
    - (iii) give the ballot paper envelope to the secretary, or forward it to the secretary so that the secretary receives it, before or at the annual general meeting; and
  - (f) if the ballot paper is completed at the annual general meeting—give the ballot paper to the secretary before or at the meeting.
- (8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, and vote in the way this section provides; and
  - (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper and vote in the way this section provides.
- (9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

**7 Election of ordinary members of executive committee  
[SM, s 23]**

- (1) A person nominated as an ordinary member of the executive committee becomes an ordinary member of the committee under section 11 on the basis of the nomination unless it is necessary to have a ballot.
- (2) It is necessary to have a ballot for ordinary members of the executive committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the executive committee), plus the number of executive members of the executive committee, is more than the required number of members for the executive committee.

**8 Conduct of ballot—general requirements [SM, s 24]**

- (1) Any items of business about the election of members of the executive committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.
- (2) The election of members takes effect immediately after the close of the meeting at which they are elected.
- (3) The ballots for the positions on the executive committee for which ballots are required must be conducted in the following order—
  - chairperson
  - secretary
  - treasurer
  - ordinary members.
- (4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
- (5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.

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- (6) The secretary must pass any ballot papers, particulars envelopes and ballot paper envelopes for the ballot to the person chairing the meeting for counting.

## **9 Conduct of ballot—scrutiny of votes [SM, s 25]**

- (1) If a ballot for positions on the executive committee is an open ballot, the person chairing the meeting must—
- (a) confirm, by a scrutiny of the details on the back of each ballot paper envelope or each ballot paper itself, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) if a ballot paper is in a ballot paper envelope—take the ballot paper out of the envelope.
- (2) If a ballot for positions on the executive committee is a secret ballot, the person chairing the meeting must—
- (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) take the ballot paper envelope out of the particulars envelope, or detach the particulars tab from the ballot paper envelope; and
  - (c) place the ballot paper envelope in a receptacle in open view of the meeting; and
  - (d) after paragraph (c) has been complied with for all ballot paper envelopes, randomly mix the envelopes; and
  - (e) take each ballot paper out of its envelope.
- (3) The person chairing the meeting must record the count of votes in each ballot in the minutes of the meeting.
- (4) The person chairing the meeting may delegate a function under subsection (1) or (2) in relation to a ballot for a position on the executive committee to a person attending the meeting who is not a candidate for the position and who the person chairing the meeting considers has sufficient independence.

**10 Conduct of ballot—deciding executive member positions  
[SM, s 26]**

- (1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this schedule, must declare the person to have been elected unopposed.
- (2) If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—
  - (a) must invite nominations for the position at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are personally present or represented at the meeting;
    - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- (3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
- (4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for an ordinary member's position on the executive committee.
- (5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.
- (6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

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**11 Conduct of ballot—deciding ordinary member positions  
[SM, s 27]**

- (1) The positions of the ordinary members of the executive committee are decided only after the executive member positions on the executive committee are filled.
- (2) A person's nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the executive committee, even if the person's name appears on a ballot for ordinary members forwarded before the meeting.
- (3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is not more than the required number of members for the executive committee, the person chairing the meeting, if satisfied the nominations for the ordinary member positions comply with this schedule, must declare the candidates to have been elected as ordinary members.
- (4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is less than the required number of members for the executive committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all executive committee members to not more than the required number of members for the executive committee.
- (5) The person chairing the meeting—
  - (a) must invite nominations for the position or positions at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are personally present or represented at the meeting;
    - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.

- (6) A member of the body corporate may nominate, under subsection (5), not more than 1 person for all ordinary member positions for which nominations are invited.
- (7) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for a position on the executive committee.
- (8) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is more than the required number of members for the executive committee, the person chairing the meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.
- (9) The persons who receive the highest numbers of votes, in descending order until the executive committee numbers the required number of members for the executive committee, must be declared elected as the ordinary members.
- (10) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- (11) For the counting of votes for positions of ordinary members of the executive committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.

**12 Conduct of ballot—declaration of voting results [SM, s 28]**

- (1) The person chairing an annual general meeting must declare the result of an election.
- (2) When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.

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- (3) The number of votes cast for each candidate must be recorded in the minutes of the meeting.
  - (4) The voting tally sheet kept for the meeting must include, for each ballot that is an open ballot under section 6—
    - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected as informal; and
    - (b) for each vote rejected—the reason for the rejection; and
    - (c) the total number of votes counted for each candidate.
  - (5) The voting tally sheet kept for the meeting must include, for each ballot that is a secret ballot under section 5—
    - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected from the count before the enclosing ballot paper envelopes were opened; and
    - (b) a list of the votes taken out of ballot paper envelopes for counting, but rejected as informal; and
    - (c) for each vote rejected—the reason for the rejection; and
    - (d) the total number of votes counted for each candidate.
  - (6) The voting tally sheet may be inspected at the meeting by any of the following persons—
    - (a) a person who is a voter for the meeting;
    - (b) a candidate;
    - (c) the returning officer, if any, appointed by the body corporate for the meeting;
    - (d) the person chairing the meeting;
    - (e) a scrutineer appointed by a candidate under section 8.

## **Schedule 4      Code of conduct for voting members of executive committees**

sections 123A and 158A and schedule 7, definition *code of conduct*

### **1      Commitment to acquiring understanding of Act, including this code**

A voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member's role on the executive committee.

### **2      Honesty, fairness and confidentiality**

- (1) The voting member must act honestly and fairly in performing the member's functions as a voting member.
- (2) The voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

### **3      Acting in best interests of body corporate and persons with estate or interest in lots**

Unless it is unlawful to do so, the voting member must, in performing the member's functions as a voting member, act in the best interests of—

- (a) the body corporate; and
- (b) either—
  - (i) for a voting member of the executive committee of the primary thoroughfare body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the approved scheme; or



- (ii) for a voting member of the executive committee of the principal body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the residential precincts in the approved scheme.

#### **4 Complying with Act and this code**

The voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member's functions as a voting member.

#### **5 Conflict of interest**

The voting member must disclose to the executive committee any conflict of interest the member may have in a matter before the executive committee.

## **Schedule 5      Code of conduct for body corporate managers and caretaking service contractors**

section 175H and schedule 7, definition *code of conduct*

### **1      Knowledge of Act, including code**

A body corporate manager or caretaking service contractor appointed or engaged by the primary thoroughfare body corporate or principal body corporate must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions.

### **2      Honesty, fairness and professionalism**

- (1) The body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person's functions under the person's appointment or engagement.
- (2) The body corporate manager must not attempt to unfairly influence the outcome of an election for the executive committee of the body corporate.

### **3      Skill, care and diligence**

The body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's appointment or engagement.

### **4      Acting in body corporate's best interests**

The body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

**5 Keeping body corporate informed of developments**

The body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity carried out for the body corporate.

**6 Ensuring employees comply with Act and code**

The body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's appointment or engagement.

**7 Fraudulent or misleading conduct**

The body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's appointment or engagement.

**8 Unconscionable conduct**

The body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person's functions under the person's appointment or engagement.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person's superior knowledge relative to the body corporate
- requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary
- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the approved scheme

**9 Conflict of duty or interest**

The body corporate manager or caretaking service contractor for an approved scheme or part of an approved scheme must

not accept an appointment or engagement (the *second appointment or engagement*) if doing so will place the person's functions or interests for the approved scheme or part in conflict with the person's functions or interests for obligations under the second appointment or engagement.

*Example of a second appointment or engagement—*

an appointment as the body corporate manager or an engagement as a caretaking service contractor for another approved scheme

## **10 Goods and services to be supplied at competitive prices**

The body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

## **11 Body corporate manager to demonstrate keeping of particular records**

If the body corporate or its executive committee gives the body corporate manager a written request to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

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## **Schedule 6      Code of conduct for letting agents**

section 175I and schedule 7, definition *code of conduct*

### **1      Honesty, fairness and professionalism**

A letting agent for an approved scheme or part of an approved scheme must act honestly, fairly and professionally in conducting the letting agent's business under the letting agent's authorisation.

### **2      Skill, care and diligence**

The letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent's authorisation.

### **3      Acting in body corporate's and individual lot owner's best interests**

Unless it is unlawful to do so, the letting agent must, as far as practicable, act in the best interests of—

- (a) the body corporate that has given the letting agent's authorisation; and
- (b) individual owners of lots in the approved scheme or part.

### **4      Ensuring employees comply with Act and code**

The letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent's authorisation.

## **5 Fraudulent or misleading conduct**

The letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent's authorisation.

## **6 Unconscionable conduct**

The letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent's authorisation.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person's position as letting agent relative to the body corporate or the owner of a lot in the approved scheme
- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the approved scheme

## **7 Nuisance**

The letting agent must not—

- (a) cause a nuisance or hazard on the site; or
- (b) interfere unreasonably with the use or enjoyment of a lot in the approved scheme; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

## **8 Goods and services to be supplied at competitive prices**

The letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

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## Schedule 7      Dictionary

## section 2

***access*** means access by road.

***applicant*** means an applicant for approval of a scheme and includes the executors, administrators, successors and assigns of the applicant.

***approved scheme*** means a scheme approved or as amended for the time being by the Governor in Council pursuant to this Act.

***associate***, of a person, means someone else with whom the person is associated under section 179D.

***body corporate***, for schedule 3, see schedule 3, section 1.

***body corporate manager***—

- (a) of a primary thoroughfare body corporate—means a person appointed by the body corporate under section 130; or
- (b) of a principal body corporate—means a person appointed by the body corporate under section 165.

***building unit lot*** means a lot shown on a building units plan.

***building units plan*** means a building units plan within the meaning of the *Building Units and Group Titles Act 1980*.

***business precinct*** means a precinct, however described, identified in an approved scheme for the purposes of this Act as being a business precinct.

***canal*** has the meaning given by the *Coastal Protection and Management Act 1995*, section 9.

***candidate***, for schedule 3, see schedule 3, section 1.

***caretaking service contractor*** see section 175D.

***chief executive*** means the chief executive of the department.

**code contravention notice** see section 175L(1).

**code of conduct** means—

- (a) for a voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate—the code in schedule 4; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 5; or
- (c) for a letting agent—the code in schedule 6.

**development control by-laws** in respect of an approved scheme, means the development control by-laws in force for the time being pursuant to section 176.

**drainage** includes drainage for the product of rain, storm, soakage, a spring or seepage.

**eligibility category**, for schedule 3, see schedule 3, section 1.

**executive committee**, for schedule 3, see schedule 3, section 1.

**executive member**, for schedule 3, see schedule 3, section 1.

**financial year**—

- (a) for a primary thoroughfare body corporate, means a period in relation to which the body corporate is required under section 116(1)(f) to prepare a statement of accounts; or
- (b) for a principal body corporate, means a period in relation to which the body corporate is required under section 151(1)(f) to prepare a statement of accounts.

**financier**, for a letting agent's contract, see section 175E.

**floating dwelling** means a permanently moored floating dwelling constructed or to be constructed on a floatation system and which—

- (a) is or is to be supported by waters; and
- (b) is not intended for or usable in navigation.

**future development area** has the meaning given by section 21.



**group title lot** means a lot shown on a group titles plan.

**group titles plan** means a group titles plan within the meaning of the *Building Units and Group Titles Act 1980*.

**initial lot** means a lot shown on the initial plan of subdivision other than a lot that comprises the whole or part of the primary thoroughfare.

**initial plan of subdivision** means a plan of subdivision for the time being registered by the registrar of titles in accordance with section 32.

**Integrated Planning Act** means the *Integrated Planning Act 1997*.

**letting agent** see section 175F(1).

**letting agent authorisation** see section 175D.

**letting agent business** see section 175F(2).

**majority resolution**, for a duly convened general meeting of a primary thoroughfare body corporate or principal body corporate, means a resolution on a motion—

- (a) for which only 1 written vote may be exercised, other than by proxy, for each lot mentioned in the relevant body corporate roll; and
- (b) that is passed only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

**management rights**, of a letting agent for an approved scheme or part of an approved scheme, see section 175D.

**nominee**, for a member of a principal body corporate, see section 140(1).

**ordinary member**, for schedule 3, see schedule 3, section 1.

**ordinary resolution**, for a duly convened general meeting of a primary thoroughfare body corporate or principal body corporate, means a resolution that is passed by the members of the body corporate whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the relevant body corporate roll.

***original owner***, of an initial or secondary lot that has been subdivided by a building unit or group titles plan, means the person who was the registered owner of the lot immediately before it was subdivided by the plan.

***precinct*** means a part of a site identified in an approved scheme as a precinct.

***primary thoroughfare*** in respect of an approved scheme means the lot or lots that comprises or together comprise the primary thoroughfare as shown at the material time on the initial plan or plans of subdivision.

***primary thoroughfare body corporate*** means a primary thoroughfare body corporate incorporated by the registration of the first initial plan of subdivision registered in respect of an approved scheme.

***primary thoroughfare by-laws*** in respect of an approved scheme means the primary thoroughfare by-laws for the time being in force pursuant to section 178.

***primary thoroughfare precinct*** means a precinct identified in an approved scheme for the purposes of this Act as being a primary thoroughfare precinct.

***principal body corporate*** means a principal body corporate incorporated by the registration of the first initial plan of subdivision subdividing a residential precinct registered in respect of an approved scheme.

***quay line*** means a line identified in an approved scheme as a quay line for the purposes of section 81.

***relevant body corporate debt*** means a following amount owed by a person to a subsidiary body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law made by the subsidiary body corporate

- an amount owing to the subsidiary body corporate for lawn mowing services arranged by the subsidiary body corporate on behalf of the person

**replacement schedule**, for part 5, division 4, subdivision E, see section 79B.

**residential precinct** means a precinct, however described, identified in an approved scheme for the purposes of this Act as being a residential precinct.

**reviewable terms**, for a service contract, see section 175D.

**review advice**, about a service contract, see section 175D.

**road** means any way constituted to facilitate the traffic of vehicles usually passing on public roads.

**scheme** means a scheme of integrated resort development.

**secondary lot** means a lot (other than a lot constituting a secondary thoroughfare) shown on a plan of subdivision of an initial lot or of subdivision of a secondary lot but does not include a building unit lot or a group title lot.

**secondary thoroughfare** means the lot or lots that comprises or together comprise the secondary thoroughfare as shown on the plan or plans of subdivision subdividing lots within the residential precincts.

**secondary thoroughfare by-laws** means the secondary thoroughfare by-laws for the time being in force pursuant to section 179.

**service** means—

- (a) a service for—
  - (i) water, sewage or drainage; or
  - (ii) gas, electricity or oil; or
  - (iii) air conditioning; or
  - (iv) garbage; or
- (b) a service for television, telephone or another means of telecommunication; or
- (c) another service prescribed by regulation.

**service contract** see section 175D.

**service contractor**, for an approved scheme or part of an approved scheme, see section 175G.

**site** in respect of an approved scheme, means the site as determined pursuant to section 27.

**special dwelling** means a dwelling constructed or designed to be constructed on land and the foundations of which extend from land above high water mark to land below high water mark.

**special resolution**—

- (a) for a general meeting of a primary thoroughfare body corporate, see section 101; or
- (b) for a general meeting of a principal body corporate, see section 138.

**subject land**, in relation to an application for amendment of an approved scheme under part 2, division 2, means each precinct, or other land within the site, to which the application relates.

**subsequent stage** means a subsequent stage mentioned in section 26.

**subsidiary body corporate**—

- (a) of, or in relation to, a primary thoroughfare body corporate, means any of the following bodies corporate that are members of the primary thoroughfare body corporate—
  - (i) the principal body corporate;
  - (ii) a body corporate created by the registration of a building units plan or group titles plan; or
- (b) of, or in relation to, a principal body corporate, means a body corporate created by the registration of a building units plan or group titles plan that is a member of the principal body corporate.

**transfer notice**, for part 8A, see section 175N(b)(ii).

**voting member**—

- (a) of the executive committee of a primary thoroughfare body corporate—see section 123A(1); or
- (b) of the executive committee of a principal body corporate—see section 158A(1).

## 1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations
- 6 Table of renumbered provisions

## 2 Key

### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
<b>AIA</b>	= <b>Acts Interpretation Act 1954</b>	<b>(prev)</b>	= <b>previously</b>
<b>amd</b>	= <b>amended</b>	<b>proc</b>	= <b>proclamation</b>
<b>amd</b>	= <b>amendment</b>	<b>prov</b>	= <b>provision</b>
<b>t</b>			
<b>ch</b>	= <b>chapter</b>	<b>pt</b>	= <b>part</b>
<b>def</b>	= <b>definition</b>	<b>pubd</b>	= <b>published</b>
<b>div</b>	= <b>division</b>	<b>R[X]</b>	= <b>Reprint No. [X]</b>
<b>exp</b>	= <b>expires/expired</b>	<b>RA</b>	= <b>Reprints Act 1992</b>
<b>gaz</b>	= <b>gazette</b>	<b>reloc</b>	= <b>relocated</b>
<b>hdg</b>	= <b>heading</b>	<b>renu</b>	= <b>renumbered</b>
		<b>m</b>	
<b>ins</b>	= <b>inserted</b>	<b>rep</b>	= <b>repealed</b>
<b>lap</b>	= <b>lapsed</b>	<b>(retro</b>	= <b>retrospectively</b>
		<b>)</b>	
<b>notf</b>	= <b>notified</b>	<b>rv</b>	= <b>revised version</b>
<b>d</b>			
<b>num</b>	= <b>numbered</b>	<b>s</b>	= <b>section</b>

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>o in c</b>	= <b>order in council</b>	<b>sch</b>	= <b>schedule</b>
<b>om</b>	= <b>omitted</b>	<b>sdiv</b>	= <b>subdivision</b>
<b>orig</b>	= <b>original</b>	<b>SIA</b>	= <b>Statutory Instruments Act 1992</b>
<b>p</b>	= <b>page</b>	<b>SIR</b>	= <b>Statutory Instruments Regulation 2012</b>
<b>para</b>	= <b>paragraph</b>	<b>SL</b>	= <b>subordinate legislation</b>
<b>prec</b>	= <b>preceding</b>	<b>sub</b>	= <b>substituted</b>
<b>pres</b>	= <b>present</b>	<b>unnum m</b>	= <b>unnumbered</b>
<b>prev</b>	= <b>previous</b>		

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Reprint No.</b>	<b>Amendments to</b>	<b>Effective</b>	<b>Reprint date</b>
1	1994 Act No. 11	24 April 1994	29 April 1994
1A	1994 Act No. 49	18 November 1994	27 August 1996

## Endnotes

<b>Reprint No.</b>	<b>Amendments to</b>	<b>Effective</b>	<b>Reprint date</b>
1B	1997 Act No. 28	1 February 1997	22 May 1997
2	1997 Act No. 81	5 December 1997	5 December 1997
2A	1998 Act No. 13	30 March 1998	7 June 1998
2B	1999 Act No. 30	16 June 1999	6 July 1999
2C	1999 Act No. 42	1 December 1999	15 December 1999
2D	2000 Act No. 5	23 March 2000	31 March 2000
3	2001 Act No. 45	15 July 2001	3 August 2001
3A	2001 Act No. 71	28 February 2002	28 February 2002
3B	2001 Act No. 71	1 March 2002	1 March 2002
<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
3C	2002 Act No. 64	14 November 2002	
3D	2003 Act No. 6	4 March 2003	
3E	2003 Act No. 27	1 July 2003	R3E withdrawn, see R4
4	—	1 July 2003	
4A	2004 Act No. 53	29 November 2004	
4B rv	2005 Act No. 68	6 February 2006	
4C	2008 Act No. 5	13 March 2008	
4D	2009 Act No. 26	11 August 2009	
4E	2009 Act No. 48	1 December 2009	
4F	2009 Act No. 36	18 December 2009	R4F withdrawn, see R5
5	—	18 December 2009	



<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
5A	2010 Act No. 39	20 September 2010	
5B	2011 Act No. 46	23 February 2012	
5C	2012 Act No. 12	27 June 2012	
<b>Current as at</b>		<b>Amendments included</b>	<b>Notes</b>
23 September 2013		2013 Act No. 39	
1 December 2014		2014 Act No. 22	RA ss 44, 44A
22 March 2016		2015 Act No. 33	

## 4 List of legislation

### **Integrated Resort Development Act 1987 No. 23**

date of assent 23 April 1987  
 commenced on date of assent  
 amending legislation—

### **Integrated Resort Development Amendment Act 1991 No. 94**

date of assent 11 December 1991  
 commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2**

date of assent 2 July 1992  
 commenced on date of assent

### **Integrated Resort Development Amendment Act 1993 No. 46**

date of assent 30 September 1993  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 3 December 1993 (1993 SL No. 437)

### **Mixed Use Development Amendment Act 1993 No. 80 ss 1–2, 14**

date of assent 17 December 1993  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 11 February 1994 (1994 SL No. 39)

### **Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 24 April 1994 (1994 SL No. 132)

**Transport Infrastructure Amendment (No. 2) Act 1994 No. 49 ss 1–2, 6 sch 2**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

**Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

**WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1997 (1996 SL No. 442)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

**Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3 sch**

date of assent 5 December 1997

commenced on date of assent

**Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch**

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 30 March 1998 (1998 SL No. 55)

**Local Government and Other Legislation Amendment Act 1999 No. 30 ss 1, 2(4), 98 sch 3 pt 1**

date of assent 16 June 1999

commenced on date of assent (see s 2(4))

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2**

date of assent 23 March 2000

commenced on date of assent (see s 2(1)–(2))

**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Integrated Resort Development Amendment Act 2002 No. 64**

date of assent 14 November 2002

commenced on date of assent

**Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 s 1, pt 6**

date of assent 4 March 2003

commenced on date of assent

**Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2(2))

**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004

commenced on date of assent

**Natural Resources and Other Legislation Amendment Act 2005 No. 68 pts 1, 5**

date of assent 8 December 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 6 February 2006 (2006 SL No. 6)

**Local Government and Industrial Relations Amendment Act 2008 No. 5 ss 1–2(1), pt 4 div 3**

date of assent 6 March 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 13 March 2008 immediately after pt 3 commences (see s 2(1))

**Resorts and Other Acts Amendment Act 2009 No. 26 s 1, pt 3, s 5 sch**

date of assent 11 August 2009

commenced on date of assent

**Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2**

date of assent 22 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

**State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 ss 1, 2(6), ch 4 pt 10**

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (see s 2(6) and 2009 SL No. 251)

**Land Valuation Act 2010 No. 39 ss 1, 325 sch 1 pt 2**

date of assent 20 September 2010

commenced on date of assent

**Civil Partnerships Act 2011 No. 46 ss 1–2, pt 6 div 11**

date of assent 6 December 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 23 February 2012 (2012 SL No. 15)

**Civil Partnerships and Other Legislation Amendment Act 2012 No. 12 ss 1, 59(2) sch pt 2**

date of assent 27 June 2012

commenced on date of assent

**Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 43 sch 1**

date of assent 23 September 2013

commenced on date of assent

**Property Occupations Act 2014 No. 22 ss 1–2, 287 sch 2 pt 2**

date of assent 21 May 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2014 (2014 SL No. 250)

**Relationships (Civil Partnerships) and Other Acts Amendment Act 2015 No. 33 ss 1–2, 52(2) sch pt 2**

date of assent 17 December 2015

ss 1–2 commenced on date of assent

remaining provisions commenced 22 March 2016 (2016 SL No. 14)

## 5 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 6.

### Definitions

s 2 prev s 2 om 1993 No. 46 s 3 sch

pres s 2 amd 2004 No. 53 s 2 sch; 2009 No. 26 s 6

Note—s 2 contained definitions for this Act. Definitions are now located in schedule 7 (Dictionary).

**Minimum requirements for an approved scheme**

s 3 amd 1991 No. 94 s 4; 2004 No. 53 s 2 sch

**References to standard module**

s 3A ins 2009 No. 26 s 7

**Application for approval of scheme**

s 4 amd 1997 No. 28 s 295 sch 3; 2004 No. 53 s 2 sch; 2009 No. 26 s 8

**Decision on application**

s 7 sub 1993 No. 46 s 5

**Notation of approved scheme**

s 8 prev s 8 om 1993 No. 46 s 3 sch  
pres s 8 amd 1991 No. 94 s 5  
sub 1993 No. 46 s 6

**Application for amendment of approved scheme**

s 9 amd 2009 No. 26 s 9

**Members to be notified of proposed amendment**

s 10 sub 2009 No. 26 s 10

**Requirements for application**

s 11 sub 2009 No. 26 s 10

**Minister to consider application**

s 12 amd 2009 No. 26 s 11

**Decision on application**

s 13 sub 1993 No. 46 s 7

**Minor variation of site boundaries**

s 13A ins 2009 No. 26 s 12

**Approved scheme regulates development etc. of site**

s 15 prev s 15 om 1993 No. 46 s 3 sch  
pres s 15 amd 1991 No. 94 s 7  
sub 1993 No. 46 s 8  
amd 1998 No. 13 s 191 sch; 2009 No. 26 s 5 sch

**Application of provisions of this Act**

s 16 amd 1993 No. 46 s 9

**Application for revocation**

s 17 prev s 17 amd 1991 No. 94 s 6  
om 1993 No. 46 s 3 sch  
pres s 17 sub 1993 No. 46 s 10

**Revocation of approval**

s 18 sub 1993 No. 46 s 10

**Notation of revocation**

s 19 sub 1993 No. 46 s 10

**Effect of revocation**

s 20 amd 1991 No. 94 s 9  
sub 1993 No. 46 s 10  
amd 2004 No. 53 s 2 sch; 2009 No. 26 s 5 sch

**PART 3—STAGED INTEGRATED RESORT DEVELOPMENT**

**pt hdg** ins 1991 No. 94 s 10

**Future development area**

s 21 ins 1991 No. 94 s 10  
amd 2004 No. 53 s 2 sch

**Decision on application**

s 22 ins 1991 No. 94 s 10

**Revocation of provisional approval**

s 23 ins 1991 No. 94 s 10  
amd 1993 No. 46 s 11

**Notification of revocation**

s 23A ins 1991 No. 94 s 8  
om 1993 No. 46 s 10

**Approval of revocation**

s 24 ins 1993 No. 46 s 12

**Notation of revocation of provisional approval**

s 25 ins 1993 No. 46 s 12

**Application for subsequent stages**

s 26 ins 1991 No. 94 s 10  
amd 1993 No. 46 s 13; 2004 No. 53 s 2 sch

**The site**

s 27 amd 1991 No. 94 s 11  
sub 1993 No. 46 s 14  
amd 2009 No. 26 s 13

**Grant of Crown Land**

s 28 sub 1993 No. 46 s 14  
amd 2004 No. 53 s 2 sch

**Site forms part of local government area**

s 29 sub 1993 No. 46 s 14

**Subdivision A—Creation of initial lots and primary thoroughfare**

**sdiv hdg** ins 1993 No. 46 s 15

**Approval of local government**

s 31 amd 1993 No. 46 s 16; 2008 No. 5 s 36

**Registration of initial plan of subdivision**

s 32 amd 1991 No. 94 s 12; 1993 No. 46 s 17; 2008 No. 5 s 37

**Subdivision B—Subdivision of initial lots**

**sdiv hdg** ins 1993 No. 46 s 18

**Subdivision of initial lot**

s 34 ins 1993 No. 46 s 18

**Approval of local government**

s 35 ins 1993 No. 46 s 18

**Registration of plan of subdivision of initial lot**

s 36 ins 1993 No. 46 s 18

**Notice of subdivision to primary thoroughfare body corporate**

s 37 ins 1993 No. 46 s 18

**Notice of subdivision to principal body corporate**

s 38 ins 1993 No. 46 s 18

**Subdivision C—Amalgamation of initial lots**

**sdiv hdg** ins 1993 No. 46 s 18

**Amalgamation of initial lots**

s 39 ins 1993 No. 46 s 18

**Approval of local government**

s 40 ins 1993 No. 46 s 18

**Registration of plan of amalgamation of initial lots**

s 41 ins 1993 No. 46 s 18

**Notice of amalgamation to primary thoroughfare body corporate**

s 42 ins 1993 No. 46 s 18

**Notice of amalgamation to principal body corporate**

s 43 prev s 43 amd 1991 No. 94 s 15

om 1993 No. 46 s 21

pres s 43 ins 1993 No. 46 s 18

**Subdivision D—Subdivision of initial lots by building units or group titles plan**

**sdiv hdg** ins 1993 No. 46 s 18

**Subdivision by building units or group titles plan**

s 44 prev s 44 om 1993 No. 46 s 21

pres s 44 ins 1993 No. 46 s 18

amd 2009 No. 26 s 14

**Approval of building units or group titles plan**

s 45 prev s 45 om 1993 No. 46 s 21

pres s 45 ins 1993 No. 46 s 18

amd 2009 No. 26 s 15

**Registration of building units or group titles plan**

s 46 ins 1993 No. 46 s 18

**Subdivision of group title lot by building units plan**

s 47 ins 1993 No. 46 s 18

**Subdivision of group title lot by group titles plan**

s 48 ins 1993 No. 46 s 18

**Lot entitlement if group title lot to be subdivided by a building units plan**

s 49 ins 1993 No. 46 s 18

**Application of Building Units and Group Titles Act to subdivisions**

s 50 ins 1993 No. 46 s 18

**Plan of subdivision of initial lots**

s 51 amd 1991 No. 94 s 13; 1993 No. 46 s 3 sch

**Approval by local government**

s 52 amd 2008 No. 5 s 38

**Registration of plan of subdivision of initial lot**

s 53 amd 1991 No. 94 s 14; 2008 No. 5 s 39

**Amalgamation of secondary lot**

s 55 ins 1993 No. 46 s 19

**Approval of local government**

s 56 ins 1993 No. 46 s 19

**Registration of plan of amalgamation of secondary lots**

s 57 ins 1993 No. 46 s 19

**Notice of amalgamation to principal body corporate**

s 58 ins 1993 No. 46 s 19

**Subdivision of secondary lots within residential precincts**

s 59 amd 2002 No. 64 s 4; 2004 No. 53 s 2 sch; 2009 No. 26 s 16

**Notice of subdivision to principal body corporate**

s 60 ins 1993 No. 46 s 20

**Approval by local government**

s 61 amd 2008 No. 5 s 40; 2009 No. 26 s 17

**Registration of building units plan or group titles plan over secondary lot**

s 62 amd 1997 No. 81 s 3 sch; 2008 No. 5 s 41

**Application of Building Units and Group Titles Act to subdivisions**

s 65 amd 1999 No. 30 s 98 sch 3

**Primary thoroughfare deemed to be dedicated road**

s 67 amd 1991 No. 94 s 16

**Division 4—Matters applying to subdivision generally**

div hdg ins 1993 No. 46 s 22

**Subdivision A—Extinguishment of plans**

sdiv hdg ins 1993 No. 46 s 22

**Extinguishment of plan**

s 68 ins 1993 No. 46 s 22



**Order of Supreme Court to extinguish plan**

s 69 ins 1993 No. 46 s 22

**Registration**

s 70 ins 1993 No. 46 s 22

**Notification of local government**

s 71 ins 1993 No. 46 s 22

**Subdivision B—Boundary adjustment plans**

**sdiv hdg** ins 1993 No. 46 s 22

**Boundary adjustment plan**

s 72 ins 1993 No. 46 s 22

amd 1998 No. 13 s 191 sch; 2009 No. 26 s 5 sch

**Registration of boundary adjustment plan**

s 73 ins 1993 No. 46 s 22

**Effect of boundary adjustment plan**

s 74 ins 1993 No. 46 s 22

amd 2001 No. 71 s 551 sch 1

**Subdivision C—Easements**

**sdiv hdg** ins 1993 No. 46 s 22

**Implied easements**

s 75 ins 1993 No. 46 s 22

**Ancillary rights**

s 76 ins 1993 No. 46 s 22

**Creation of easements by special resolution**

s 77 ins 1993 No. 46 s 22

**Subdivision D—Sequential plans**

**sdiv hdg** ins 1993 No. 46 s 22

**Approval of sequential plans by local government**

s 78 ins 1993 No. 46 s 22

**Registration of sequential plans by registrar of titles**

s 79 ins 1993 No. 46 s 22

**Subdivision E—Replacement schedules accompanying particular plans of subdivision**

**sdiv hdg** ins 2002 No. 64 s 5

**Application of sdiv E**

s 79A ins 2002 No. 64 s 5

**Application to replace schedule**

s 79B ins 2002 No. 64 s 5

**Approval of replacement schedule**

s 79C ins 2002 No. 64 s 5

amd 2008 No. 5 s 42

**Recording of replacement schedule**

s 79D ins 2002 No. 64 s 5

amd 2005 No. 68 s 114

**Estate or interest in submerged land continues**

s 80 amd 1991 No. 94 s 17

**Subdivision of land**

s 81 amd 1991 No. 94 s 17

**Construction of floating buildings and special buildings**

s 82 sub 1993 No. 46 s 23

**Tidal waters within jurisdiction of authorities**

s 83 prev s 83 om 1993 No. 46 s 3 sch

pres s 83 sub 1993 No. 46 s 23

**Obligation of authorities to maintain or undertake works**

s 84 sub 1993 No. 46 s 23

**Movement of vessels on tidal waters**

s 85 sub 1993 No. 46 s 23

**Application of laws relating to design and construction etc.**

s 86 sub 1993 No. 46 s 23

**Statutory charges and valuation of land**

s 87 sub 1993 No. 46 s 23

amd 2010 No. 39 s 325 sch 1 pt 2

**Modification of powers of authorities**

s 88 sub 1993 No. 46 s 23

**PART 7—ROADS AND CANALS ON THOROUGHFARES**

pt hdg amd 1991 No. 94 s 18

**Construction of canals**

s 90 ins 1991 No. 94 s 19

sub 1993 No. 46 s 24

amd 2004 No. 53 s 2 sch; 2009 No. 26 s 5 sch

**Maintenance of canals**

s 92 ins 1993 No. 46 s 25

**Dedication of thoroughfare as road**

s 95 amd 1991 No. 94 s 20; 1993 No. 46 s 3 sch

**Surrender of canal to the Crown**

s 96 ins 1991 No. 94 s 21

amd 1992 No. 36 s 2 sch 2; 1993 No. 46 s 26; 2004 No. 53 s 2 sch; 2009 No. 26 s 5 sch

**Thoroughfares are roads under certain Acts**

s 97 amd 1993 No. 46 s 3 sch; 1999 No. 42 s 54(3) sch pt 3

**Powers etc. of inspectors and others on thoroughfares**

s 98 amd 2000 No. 5 s 373 sch 2; 2004 No. 53 s 2 sch

**Primary and secondary thoroughfares are public places for certain purposes**

s 98A ins 2000 No. 5 s 373 sch 2

**Occupier's right to use thoroughfares**

s 100 amd 1991 No. 94 s 22

**Interpretation**

s 101 amd 1994 No. 11 s 194 sch 2

def *special resolution* amd 2009 No. 26 s 18

**Primary thoroughfare body corporate**

s 102 amd 1993 No. 46 s 3 sch; 2001 No. 45 s 29 sch 3; 2004 No. 53 s 2 sch

**Member's nominee**

s 103 amd 2004 No. 53 s 2 sch; 2009 No. 26 s 19

**Meetings of primary thoroughfare body corporate**

s 106 amd 1993 No. 46 ss 27, 3 sch; 2004 No. 53 s 2 sch; 2009 No. 26 s 20

**Change of annual general meeting**

s 107 ins 1993 No. 46 s 28

**Change of primary thoroughfare body corporate's address**

s 110 amd 1993 No. 46 s 3 sch

**Power of entry**

s 111 prev s 111 om 1993 No. 46 s 3 sch

pres s 111 amd 1993 No. 46 s 29; 2004 No. 53 s 2 sch

**Maintenance of services within lots or common property**

s 112 ins 1993 No. 46 s 30

**Miscellaneous powers of primary thoroughfare body corporate**

s 113 amd 2004 No. 53 s 2 sch; 2009 No. 26 s 21

**Leases to primary thoroughfare body corporate**

s 114 ins 1991 No. 94 s 23

amd 1994 No. 49 s 6 sch 2

**Community facilities on primary thoroughfare**

s 115 ins 1991 No. 94 s 23

amd 1993 No. 46 s 31

**Duties of primary thoroughfare body corporate**

s 116 amd 1993 No. 46 s 32; 1997 No. 17 s 74 sch; 1999 No. 30 s 98 sch 3; 2004 No. 53 s 2 sch; 2009 No. 26 s 22

**Notices to be given by proprietors**

s 118 amd 1993 No. 46 s 33; 1994 No. 11 s 194 sch 2

**Supply of information, certificates and copies by primary thoroughfare body corporate**

s 119 amd 2004 No. 53 s 2 sch

**Insurance by primary thoroughfare body corporate**

s 120 amd 1991 No. 94 s 24; 1993 No. 46 s 3 sch; 1996 No. 75 s 535 sch 2; 2003 No. 27 s 622 sch 5

**Voting rights**

s 122 amd 2004 No. 53 s 2 sch

**Constitution of executive committee**

s 123 amd 2009 No. 26 s 23

**Code of conduct for voting members of executive committee**

s 123A ins 2009 No. 26 s 24

**Vacation of office of member of executive committee**

s 124 amd 2000 No. 16 s 590 sch 1 pt 2; 2009 No. 26 s 25

**Chairperson, secretary and treasurer of executive committee**

s 125 amd 1993 No. 46 s 34

**Conflict of interest of executive committee member [SM, s 53]**

s 126A ins 2009 No. 26 s 26

**Offences generally and penalty**

s 127 prev s 127 om 1993 No. 46 s 3 sch

**Proceedings for offences**

s 128 prev s 128 om 1993 No. 46 s 44

**Renumbering of Act**

s 129 orig s 129 om 1993 No. 46 s 3 sch  
prev s 129 ins 1993 No. 46 s 45

**Protection of executive committee members from liability**

s 129A ins 2009 No. 26 s 27

**Protection of body corporate and executive committee from liability for defamation**

s 129B ins 2009 No. 26 s 27

**Primary thoroughfare body corporate manager**

s 130 prev s 130 om 1993 No. 46 s 3 sch  
pres s 130 ins 1991 No. 94 s 25  
amd 2009 No. 26 s 28

**Regulations**

s 131 prev s 131 om 1993 No. 46 s 45

**Division 1A—Proxies for principal bodies corporate at general meetings of primary thoroughfare bodies corporate**

div 1A (ss 133A–133F) ins 2009 No. 26 s 29

**Division 2—Increase in membership of primary thoroughfare body corporate**

**div hdg** ins 1991 No. 94 s 26

**Effect of subdivision in subsequent stage**

s 134 ins 1991 No. 94 s 26

sub 1993 No. 46 s 35

**Meeting of primary thoroughfare body corporate**

s 135 ins 1991 No. 94 s 26

**Levies and funds**

s 136 ins 1991 No. 94 s 26

**Application of other division**

s 137 ins 1991 No. 94 s 26

**Interpretation**

s 138 amd 1994 No. 11 s 194 sch 2

def *nominee* ins 2009 No. 26 s 30(1)

def *special resolution* amd 2009 No. 26 s 30(2)

**Principal body corporate**

s 139 amd 1993 No. 46 s 3 sch; 2001 No. 45 s 29 sch 3; 2004 No. 53 s 2 sch

**Member's nominee**

s 140 amd 2004 No. 53 s 2 sch

sub 2009 No. 26 s 31

**When original owner can not be nominee for subsidiary body corporate**

s 140A ins 2009 No. 26 s 31

**Seal of principal body corporate**

s 141 amd 2004 No. 53 s 2 sch

**Meetings of principal body corporate**

s 143 amd 1993 No. 46 ss 36, 3 sch; 1993 No. 80 s 14(2); 2004 No. 53 s 2 sch; 2009 No. 26 s 32

**Change of annual general meeting**

s 144 ins 1993 No. 46 s 37

**Change of principal body corporate's address**

s 146 amd 1993 No. 46 s 3 sch

**Power of entry**

s 147 amd 1993 No. 46 s 38

**Miscellaneous powers of principal body corporate**

s 148 amd 2004 No. 53 s 2 sch; 2009 No. 26 s 33

**Leases to principal body corporate**

s 149 ins 1993 No. 46 s 39

amd 1994 No. 49 s 6 sch 2

**Community facilities on secondary thoroughfare**

s 150 ins 1993 No. 46 s 39

**Duties of principal body corporate**

s 151 amd 1993 No. 46 s 40; 1996 No. 75 s 535 sch 2; 1997 No. 17 s 74 sch; 1999 No. 30 s 98 sch 3; 2004 No. 53 s 2 sch; 2009 No. 26 s 34

**Notices to be given by proprietors**

s 153 amd 1993 No. 46 s 41; 1994 No. 11 s 194 sch 2

**Supply of information, certificates and copies by principal body corporate**

s 154 amd 2004 No. 53 s 2 sch

**Insurance by principal body corporate**

s 155 amd 1993 No. 46 s 3 sch; 2003 No. 27 s 622 sch 5

**Voting rights**

s 157 amd 2004 No. 53 s 2 sch

**Constitution of executive committee**

s 158 amd 2009 No. 26 s 35

**Code of conduct for voting members of executive committee**

s 158A ins 2009 No. 26 s 36

**Vacation of office of member of executive committee**

s 159 amd 2000 No. 16 s 590 sch 1 pt 2; 2009 No. 26 s 37

**Chairperson, secretary and treasurer of executive committee**

s 160 amd 1993 No. 46 s 42

**Conflict of interest of executive committee member [SM, s 53]**

s 161A ins 2009 No. 26 s 38

**Protection of executive committee members from liability**

s 164A ins 2009 No. 26 s 39

**Protection of body corporate and executive committee from liability for defamation**

s 164B ins 2009 No. 26 s 39

**Principal body corporate manager**

s 165 ins 1991 No. 94 s 27  
amd 2009 No. 26 s 40

**Division 3A—Proxies for general meetings of principal bodies corporate**

div 3A (ss 168A–168F) ins 2009 No. 26 s 41

**Division 3B—Accounts and audit**

div hdg ins 2009 No. 26 s 41

**Application of div 3B**

s 168G ins 2009 No. 26 s 41

**Accounts [SM, s 154]**

s 168H ins 2009 No. 26 s 41

**Audit [SM, s 155]**

s 168I ins 2009 No. 26 s 41  
amd 2013 No. 39 s 43 sch 1

**Division 4—Additional principal bodies corporate or increase in membership of existing principal body corporate**

**div hdg** (prev div hdg 2A) ins 1991 No. 94 s 28  
sub 1993 No. 46 s 43

**Effect of subdivision of residential precinct in subsequent stage**

s 169 ins 1991 No. 94 s 28  
sub 1993 No. 46 s 43

**Procedure for increase in membership of existing principal body corporate**

s 170 ins 1991 No. 94 s 28  
sub 1993 No. 46 s 43

**Meeting of expanded principal body corporate**

s 171 ins 1991 No. 94 s 28  
sub 1993 No. 46 s 43

**Levies and funds of expanded principal body corporate**

s 172 ins 1993 No. 46 s 43

**Application of particular provisions to expanded principal body corporate**

s 173 ins 1993 No. 46 s 43  
amd 2009 No. 26 s 42

**Application of Act to new principal body corporate**

s 174 ins 1993 No. 46 s 43

**Agreements with another principal body corporate**

s 175 ins 1993 No. 46 s 43

**Division 5—Removal from office of voting members of executive committees for breach of code of conduct**

div 5 (ss 175A–175C) ins 2009 No. 26 s 43

**PART 8A—CONDUCT OF BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND LETTING AGENTS**

**pt hdg** ins 2009 No. 26 s 43

**Division 1—Preliminary**

**div hdg** ins 2009 No. 26 s 43

**Definitions for pt 8A**

s 175D ins 2009 No. 26 s 43

**Meaning of financier for a letting agent's contract**

s 175E ins 2009 No. 26 s 43

**Meaning of letting agent and letting agent business**

s 175F ins 2009 No. 26 s 43  
amd 2014 No. 22 s 287 sch 2 pt 2

**Meaning of service contractor for approved scheme or part**

s 175G ins 2009 No. 26 s 43

**Division 2—Codes of conduct**

**div 2 (ss 175H–175I)** ins 2009 No. 26 s 43

**Division 3—Required transfer of management rights for contravention of code of conduct**

**div hdg** ins 2009 No. 26 s 43

**Subdivision 1—Preliminary**

**sdiv 1 (ss 175J–175K)** ins 2009 No. 26 s 43

**Subdivision 2—Transfer of management rights**

**sdiv 2 (ss 175L–175R)** ins 2009 No. 26 s 43

**Subdivision 3—Replacement of letting agent authorisation and service contract**

**sdiv 3 (s 175S)** ins 2009 No. 26 s 43

**Subdivision 4—Reviewing terms of letting agent’s service contract**

**sdiv 4 (ss 175T–175V)** ins 2009 No. 26 s 43

**Subdivision 5—Disputes about transfer of management rights**

**sdiv hdg** ins 2009 No. 26 s 43

**QCAT jurisdiction**

**s 175W** ins 2009 No. 26 s 43

sub 2009 No. 48 s 154

**Division 4—Disputes about contractual matters**

**div hdg** ins 2009 No. 26 s 43

**QCAT jurisdiction**

**s 175X** ins 2009 No. 26 s 43

amd 2009 No. 48 s 155

**Division 5—Termination of appointment, engagement or authorisation**

**div 5 (s 175Y)** ins 2009 No. 26 s 43

**Minor non-compliance with development control by-laws**

**s 177** amd 2009 No. 26 s 44

**Primary thoroughfare by-laws**

**s 178** amd 1991 No. 94 s 29

**Secondary thoroughfare by-laws**

**s 179** amd 1991 No. 94 s 30

**Division 1—Resolution of particular disputes**

**div hdg** ins 2009 No. 26 s 45

**Dealing with particular disputes under Building Units and Group Titles Act 1980**

**s 179A** ins 2003 No. 6 s 131

sub 2009 No. 26 s 45

**Dealing with matter relating to development control by-law**

**s 179B** ins 2009 No. 26 s 45

amd 2009 No. 48 s 156

**Internal dispute resolution processes to be used before application**



s 179C ins 2009 No. 26 s 45  
amd 2009 No. 48 s 157

**Division 2—Other matters**

div hdg ins 2009 No. 26 s 45

**Associates**

s 179D ins 2009 No. 26 s 45  
amd 2011 No. 46 s 61; 2012 No. 12 s 59 sch pt 2; 2015 No. 33 s 52(2) sch pt 2

**Penalties paid to general fund or operating fund**

s 181 sub 1993 No. 46 s 44

**Regulation-making power**

s 182 prev s 182 om 1993 No. 46 s 44  
pres s 182 ins 1993 No. 46 s 45  
amd 2004 No. 53 s 2 sch

**PART 11—VALIDATION**

pt hdg ins 2003 No. 6 s 132

**Declaration about resolution of disputes under Building Units and Group Titles Act 1980**

s 183 ins 2003 No. 6 s 132

**PART 12—TRANSITIONAL PROVISIONS FOR RESORTS AND OTHER ACTS AMENDMENT ACT 2009**

pt hdg ins 2009 No. 26 s 46

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div 1 (s 184) ins 2009 No. 26 s 46

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div 2 (ss 185–189) ins 2009 No. 26 s 46

**Division 3—Body corporate managers, service contractors and letting agents**

div 3 (ss 190–193) ins 2009 No. 26 s 46

**SCHEDULE 1—REQUIREMENTS FOR APPLICATION FOR APPROVAL OF SCHEME AND PROVISIONAL APPROVAL OF FUTURE DEVELOPMENT AREA**

(prev sch) amd 1991 No. 94 s 31; 1993 No. 46 s 3 sch; 1994 No. 49 s 6 sch 2; 2004 No. 53 s 2 sch  
renum 2004 No. 53 s 2 sch  
amd 2009 No. 36 s 872 sch 2

**SCHEDULE 2—REQUIREMENTS FOR NOTICES OF PROPOSED SCHEME AMENDMENTS**

ins 2009 No. 26 s 48

**SCHEDULE 3—ELECTION OF EXECUTIVE COMMITTEE MEMBERS OF BODY CORPORATE**

ins 2009 No. 26 s 48

**SCHEDULE 4—CODE OF CONDUCT FOR VOTING MEMBERS OF EXECUTIVE COMMITTEES**

ins 2009 No. 26 s 48

**SCHEDULE 5—CODE OF CONDUCT FOR BODY CORPORATE MANAGERS AND CARETAKING SERVICE CONTRACTORS**

ins 2009 No. 26 s 48

**SCHEDULE 6—CODE OF CONDUCT FOR LETTING AGENTS**

ins 2009 No. 26 s 48

**SCHEDULE 7—DICTIONARY**

Note—definitions for this Act were originally located in s 2

(prev sch 2) ins 2004 No. 53 s 2 sch

renum 2009 No. 26 s 47(2)

def *access* ins 1991 No. 94 s 3

reloc 2004 No. 53 s 2 sch

def *applicant* reloc 2004 No. 53 s 2 sch

def *approved scheme* reloc 2004 No. 53 s 2 sch

def *associate* ins 2009 No. 26 s 47(1)

def *body corporate* ins 2009 No. 26 s 47(1)

def *body corporate manager* ins 2009 No. 26 s 47(1)

def *building unit lot* reloc 2004 No. 53 s 2 sch

def *building units plan* reloc 2004 No. 53 s 2 sch

def *business precinct* reloc 2004 No. 53 s 2 sch

def *canal* ins 1991 No. 94 s 3

amd 2004 No. 53 s 2 sch

reloc 2004 No. 53 s 2 sch

def *candidate* ins 2009 No. 26 s 47(1)

def *caretaking service contractor* ins 2009 No. 26 s 47(1)

def *chief executive* ins 1993 No. 46 s 4

reloc 2004 No. 53 s 2 sch

def *code contravention notice* ins 2009 No. 26 s 47(1)

def *code of conduct* ins 2009 No. 26 s 47(1)

def *Commercial and Consumer Tribunal* ins 2009 No. 26 s 47(1)

om 2009 No. 48 s 158

def *development control by-laws* reloc 2004 No. 53 s 2 sch

def *drainage* ins 1993 No. 46 s 4

reloc 2004 No. 53 s 2 sch

def *eligibility category* ins 2009 No. 26 s 47(1)

def *executive committee* ins 2009 No. 26 s 47(1)

def *executive member* ins 2009 No. 26 s 47(1)

def *financial year* ins 2009 No. 26 s 47(1)

def *financier* ins 2009 No. 26 s 47(1)

def *floating dwelling* reloc 2004 No. 53 s 2 sch

def *future development area* ins 1991 No. 94 s 3

reloc 2004 No. 53 s 2 sch

def *group title lot* reloc 2004 No. 53 s 2 sch

def *group titles plan* reloc 2004 No. 53 s 2 sch

def *initial lot* reloc 2004 No. 53 s 2 sch

def *initial plan of subdivision* reloc 2004 No. 53 s 2 sch  
def *Integrated Planning Act* ins 2009 No. 26 s 47(1)  
def *letting agent* ins 2009 No. 26 s 47(1)  
def *letting agent authorisation* ins 2009 No. 26 s 47(1)  
def *letting agent business* ins 2009 No. 26 s 47(1)  
def *Local Authority* om 1993 No. 46 s 3 sch  
def *majority resolution* ins 2009 No. 26 s 47(1)  
def *management rights* ins 2009 No. 26 s 47(1)  
def *Minister* om 1993 No. 46 s 3 sch  
def *nominee* ins 2009 No. 26 s 47(1)  
def *ordinary member* ins 2009 No. 26 s 47(1)  
def *ordinary resolution* ins 2009 No. 26 s 47(1)  
def *original owner* ins 2009 No. 26 s 47(1)  
def *precinct* reloc 2004 No. 53 s 2 sch  
def *primary thoroughfare* reloc 2004 No. 53 s 2 sch  
def *primary thoroughfare body corporate* reloc 2004 No. 53 s 2 sch  
def *primary thoroughfare by-laws* reloc 2004 No. 53 s 2 sch  
def *primary thoroughfare precinct* reloc 2004 No. 53 s 2 sch  
def *principal body corporate* reloc 2004 No. 53 s 2 sch  
def *quay line* reloc 2004 No. 53 s 2 sch  
def *relevant body corporate debt* ins 2009 No. 26 s 47(1)  
def *replacement schedule* ins 2002 No. 64 s 3  
reloc 2004 No. 53 s 2 sch  
def *residential precinct* reloc 2004 No. 53 s 2 sch  
reloc 2004 No. 53 s 2 sch  
def *reviewable terms* ins 2009 No. 26 s 47(1)  
def *review advice* ins 2009 No. 26 s 47(1)  
def *road* reloc 2004 No. 53 s 2 sch  
def *scheme* reloc 2004 No. 53 s 2 sch  
def *secondary lot* reloc 2004 No. 53 s 2 sch  
def *secondary thoroughfare* reloc 2004 No. 53 s 2 sch  
def *secondary thoroughfare by-laws* reloc 2004 No. 53 s 2 sch  
def *service* ins 1993 No. 46 s 4  
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def *service contract* ins 2009 No. 26 s 47(1)  
def *service contractor* ins 2009 No. 26 s 47(1)  
def *site* reloc 2004 No. 53 s 2 sch  
def *special dwelling* reloc 2004 No. 53 s 2 sch  
def *special resolution* ins 2009 No. 26 s 47(1)  
def *subject land* ins 2009 No. 26 s 47(1)  
def *subsequent stage* ins 1991 No. 94 s 3  
reloc 2004 No. 53 s 2 sch  
def *subsidiary body corporate* ins 2009 No. 26 s 47(1)  
def *transfer notice* ins 2009 No. 26 s 47(1)  
def *voting member* ins 2009 No. 26 s 47(1)

## 6 Table of renumbered provisions

under the Reprints Act 1992 s 43 and the Integrated Resort Development Act 1987 s 129 [Reprint No. 1]

**Note—s 129 of the principal Act (as inserted by the Integrated Resort Development Amendment Act 1993 No. 46 s 45) required renumbering of certain provisions of the Act. The opportunity has also been taken, under the Reprints Act 1992, to renumber other provisions—see table of renumbered provisions.**

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