



# Mixed Use Development Act 1993

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Queensland

# Mixed Use Development Act 1993

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# Mixed Use Development Act 1993

**An Act providing for the approval, development and management of schemes of mixed use development, and for other purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Mixed Use Development Act 1993*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Definitions**

The dictionary in schedule 5 defines particular words used in this Act.

### **4 Words and expressions used in Building Units and Group Titles Act**

Unless the contrary intention appears, words and expressions used in the *Building Units and Group Titles Act 1980* have the same respective meanings in this Act.

### **4A 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.

## **Part 2 Basic concepts**

### **5 Purpose of this part**

- (1) The purpose of this part is to assist in the understanding of this Act.
- (2) The part sets out some of the concepts that are important for an understanding of this Act.

### **6 Mixed use scheme**

- (1) A mixed use scheme is a scheme that, if approved—
- (a) will allow the development of land that consists of 2 or more different classes of uses; and
  - (b) will relate to property that is to be shared by some or all owners and occupiers of lots within the site of the development.
- (2) An approved mixed use scheme will allow the development and subdivision of land in a way not otherwise permitted by law.

### **7 Types of development suitable for a mixed use scheme**

- (1) Approval of a mixed use scheme may be sought in relation to different types of developments or proposed developments of land.
- (2) For example, an industrial site, an inner city site or a site for a tourist complex may be developed or redeveloped under a mixed use scheme.

- (3) A site for a single building or a site on which there is already a single building, in certain circumstances, may be able to be developed or redeveloped under a mixed use scheme.

## **8 Proposed uses of mixed use scheme to be consistent with the planning scheme**

- (1) A mixed use scheme may be approved only if the uses under the scheme are consistent with the planning scheme for the proposed site.
- (2) If a proposed use is inconsistent with the planning scheme for the site, an application to amend the planning scheme to enable the use to be lawfully established may be given to the relevant local government with the application for approval of the mixed use scheme.

## **9 The site**

The site of a mixed use scheme consists of the land within the boundaries of an approved mixed use scheme.

## **10 Future development area**

- (1) An application for approval of a mixed use scheme may identify an area in relation to which development is planned for the future.
- (2) The area identified is called a future development area.
- (3) A provisional approval may be granted in relation to the area and an application for its inclusion in the site of the mixed use scheme may be made at a later stage.

## **11 First subdivision of the site**

- (1) The first subdivision of the site is by a plan called a community plan.
- (2) This plan must subdivide the whole site.

## **12 The community plan**

- (1) The community plan—
  - (a) is a plan that subdivides the site into lots; or
  - (b) comprises a number of plans that subdivide the site into lots.
- (2) These lots are called community development lots and community property lots.
- (3) There must be—
  - (a) at least 1 community development lot; and
  - (b) at least 1 community property lot.

## **13 Community development lots**

- (1) A community development lot is initially owned by the person that owned the land subdivided by the community plan.
- (2) A community development lot may be further developed under the mixed use scheme.

## **14 Community property lots**

- (1) Community property lots are shared by, and are property that is common to, owners of community development lots.
- (2) Community property lots—
  - (a) usually provide access to the community development lots; but
  - (b) may contain improvements.

## **15 Community body corporate**

- (1) A body corporate is incorporated on registration of the community plan.
- (2) This body corporate is the community body corporate.

- (3) The community property lots are transferred to the community body corporate.
- (4) The community body corporate is responsible for, and may make by-laws in relation to, the ongoing management of the community property lots.

## **16 Staged development**

If a community development lot is to be developed in stages, it may be subdivided by a precinct plan.

## **17 Precinct plan**

- (1) A precinct plan is a plan that subdivides a community development lot into lots.
- (2) These lots are called precinct development lots and precinct property lots.
- (3) There must be—
  - (a) at least 1 precinct development lot; and
  - (b) the number of precinct property lots (if any) that is necessary to ensure access to precinct development lots.
- (4) If the precinct development lots and any precinct property lots do not comprise the whole of the community development lot, a further lot is also created.
- (5) This lot is called a balance precinct development lot.

## **18 Balance precinct development lots**

- (1) A balance precinct development lot is initially owned by the person that owned the community development lot subdivided by the precinct plan.
- (2) A balance precinct development lot may be subdivided by a further precinct plan as if it were a community development lot.

## **19 Precinct development lots**

A precinct development lot is initially owned by the person that owned the community development lot or balance precinct development lot subdivided by a precinct plan.

## **20 Precinct property lots**

- (1) Precinct property lots are shared by, and are property that is common to, owners of precinct development lots.
- (2) Precinct property lots—
  - (a) usually provide access to the precinct development lots; but
  - (b) may contain improvements.

## **21 Precinct body corporate**

- (1) A body corporate is incorporated on registration of the first precinct plan subdividing a community development lot.
- (2) This body corporate is a precinct body corporate.
- (3) The precinct property lots created by a precinct plan are transferred to the precinct body corporate.
- (4) The precinct body corporate is responsible for, and may make by-laws in relation to, the ongoing management of the precinct property lots.

## **22 Subdivision of community development lots and precinct development lots by group titles and building units plans**

- (1) A community development lot or precinct development lot may be subdivided by—
  - (a) a group titles plan; or
  - (b) a building units plan.
- (2) A group titles plan that subdivides a community development lot or precinct development lot creates group title lots.

- (3) A group title lot may be further subdivided by—
  - (a) a group titles plan; or
  - (b) a building units plan.
- (4) If a community development lot is subdivided by a group titles or building units plan, it may not then be subdivided by a precinct plan.

## **23 Stratum subdivision**

- (1) A community development lot, precinct development lot or balance precinct development lot may be subdivided by a stratum plan.
- (2) A stratum plan that subdivides a community development lot creates community stratum lots.
- (3) A stratum plan that subdivides a precinct development lot or balance precinct development lot creates precinct stratum lots.
- (4) A community stratum lot or precinct stratum lot may be further subdivided by a building units plan.
- (5) A stratum plan may be registered only if it is accompanied by a management statement.
- (6) A management statement is a document that—
  - (a) regulates a building and its site; or
  - (b) is intended to regulate a proposed building and its site.
- (7) The management of the building and its site is the responsibility of a building management committee.

## **24 Membership of community body corporate On subdivision of site by community plan**

- (1) On registration of the community plan, the owners of the community development lots become members of the community body corporate.

(2) **On subdivision of community development lot by stratum plan**

On registration of a stratum plan subdividing a community development lot, the owners of the community stratum lots become members of the community body corporate in place of the owner of the community development lot.

(3) **On subdivision of community stratum lot by building units plan**

If a community stratum lot is subdivided by a building units plan, the body corporate incorporated by registration of the building units plan becomes a member of the community body corporate in place of the owner of the community stratum lot.

(4) **On subdivision of community development lot by building units or group titles plan**

If a community development lot is subdivided by a building units or group titles plan, the body corporate incorporated by registration of the plan becomes a member of the community body corporate in place of the owner of the community development lot.

(5) **On subdivision of community development lot by precinct plan**

If a community development lot is subdivided by a precinct plan, the precinct body corporate incorporated by registration of the plan becomes a member of the community body corporate in place of the owner of the community development lot.

## **25 Membership of precinct body corporate**

(1) **On subdivision of community development lot by precinct plan**

On registration of a precinct plan, the owners of the precinct development lots and any balance precinct development lot become members of the precinct body corporate.



(2) **On subdivision of precinct development lot by stratum plan**

On registration of a stratum plan subdividing a precinct development lot, the owners of the precinct stratum lots become members of the precinct body corporate in place of the owner of the precinct development lot.

(3) **On subdivision of precinct stratum lot by building units plan**

If a precinct stratum lot is subdivided by a building units plan, the body corporate incorporated by registration of the building units plan becomes a member of the precinct body corporate in place of the owner of the precinct stratum lot.

(4) **On subdivision of precinct development lot by building units or group titles plan**

If a precinct development lot is subdivided by a building units or group titles plan, the body corporate incorporated by registration of the plan becomes a member of the precinct body corporate in place of the owner of the precinct development lot.

(5) **On subdivision of group title lot by building units plan**

If a group title lot is subdivided by a building units plan, the owners of the building unit lots become members of the body corporate incorporated by registration of the group titles plan that created the group title lot.

(6) A further body corporate is not incorporated on subdivision of a group title lot by a building units plan.

## **Part 3**                      **Scheme of mixed use development**

### **Division 1**                **Approval of schemes**

#### **26**      **Minimum requirements for approval of scheme**

- (1) A scheme may be approved under this Act only if it provides for at least—
  - (a) a mixed use development; and
  - (b) community property; and
  - (c) the division of the site into precincts specifying—
    - (i) the name of each precinct; and
    - (ii) generally, the intended development of each precinct; and
    - (iii) the permitted uses of the land within each precinct.
- (2) Subsection (1) does not limit the matters that may be included in the scheme.

#### **27**      **Land taken to be zoned for mixed use development**

If—

- (a) land is proposed to be used for a mixed use development; and
  - (b) the uses proposed for the mixed use development may be lawfully established—
    - (i) on an as of right basis under the planning scheme that applies to the proposed site; or
    - (ii) because a town planning consent permit exists;
- the land is taken to be zoned for the mixed use development.

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## 28 Application for approval of scheme

- (1) An application for approval of a scheme may be made to the relevant local government.
- (1A) However, on and from the commencement of this subsection, no further applications for approval may be made (other than an application that, under a provision of this Act other than this division, is required to be made under this division).
- (2) Except in relation to land intended to be freeholded, the application may be made only in relation to land that—
  - (a) is taken to be zoned for the mixed use development proposed; or
  - (b) if not taken to be zoned for the mixed use development proposed—is the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the mixed use development.
- (3) The application must—
  - (a) be in writing; and
  - (b) be signed by the applicant; and
  - (c) be in the form (if any) determined by the local government; and
  - (d) set out or be accompanied by the matters mentioned in subsection (4).
- (4) The matters required by subsection (3) are—
  - (a) the name of the proposed mixed use development; and
  - (b) the name and address of the applicant; and
  - (c) the address of—
    - (i) the site; and
    - (ii) any other land proposed to be used in conjunction with the mixed use development; and
  - (d) the name and address of—

- (i) each owner (other than the applicant) of land within the site; and
- (ii) each owner of any other land that is proposed to be used in conjunction with the mixed use development; and
- (e) the written consent of each owner mentioned in paragraph (d) to the inclusion of the owner's land in the scheme, signed by the owner; and
- (f) advice that the land comprising the site is freehold land or is intended to be freeholded; and
- (g) details of the existing and proposed form of tenure of any land outside the site that is proposed to be used as part of the scheme; and
- (h) details of each matter for which approval is required, or that must be done, under another Act before approval of the scheme may be granted; and
- (i) details of all agreements that relate to land within the site; and
- (j) evidence of all—
  - (i) undertakings affecting the proposed development given by an interested person; and
  - (ii) contracts affecting the proposed development entered into between the applicant and another interested person; and
- (k) a schedule setting out the type and extent of development in each precinct; and
- (l) details of any minimum lot sizes, height restrictions, building setback requirements, car parking requirements and other requirements that are proposed for the site; and
- (m) a schedule setting out the voting entitlements, and the way of calculating the voting entitlements, of members of the community body corporate; and
- (n) the proposed plan of development for the scheme.

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- (5) The proposed plan of development must—
- (a) include—
    - (i) a site plan; and
    - (ii) a delineation of the site; and
    - (iii) real property descriptions and, if appropriate, metes and bounds descriptions; and
  - (b) identify the location, and specify the area, of each of the proposed precincts; and
  - (c) specify the name of each proposed precinct; and
  - (d) specify the proposed uses to be permitted within each precinct; and
  - (e) identify the staged use precincts proposed at the time; and
  - (f) identify on the site plan the relationship between the site and any adjoining lands; and
  - (g) identify any lands outside the site that are proposed to be used in conjunction with the establishment or operation of the proposed mixed use development; and
  - (h) identify—
    - (i) the proposed community property; and
    - (ii) any community thoroughfare; and
    - (iii) the access points to the site from roads outside the site; and
  - (i) identify the proposed roads and other proposed major engineering works within the site; and
  - (j) identify existing easements and reserves; and
  - (k) identify existing buildings; and
  - (l) identify any watercourse lines, flood lines, storm surge levels, waterholes and similar features.
- (6) If the application relates to land that is taken to be zoned for the proposed mixed use development, a matter mentioned in

subsection (4) is required to be set out in, or accompany, the application only if the applicant has not already given the relevant information or material to the local government.

(7) A matter mentioned in subsection (4) or (5) may be expressed in words or by way of words and a diagram.

(8) In this section—

*interested person* means the applicant, the local government, the State, the Commonwealth or the provider of a public utility service.

## **29 Decision on application if site taken to be appropriately zoned**

(1) The local government must decide, in accordance with this section, an application for approval of a scheme in relation to a site that is taken to be zoned for the mixed use development proposed.

(2) The local government must decide the application—

(a) within 40 days of receiving it; or

(b) if the local government extends or further extends the period—before the end of the extended period.

(3) An extension has effect subject to any written direction given by the Minister to the local government—

(a) shortening the extension; or

(b) directing that the extension ceases to have effect on the giving of the direction.

(4) The local government must notify the applicant of any extension before the extension starts.

(5) The local government may—

(a) approve the scheme; or

(b) approve the scheme subject to reasonable and relevant conditions determined by it; or

(c) refuse to approve the scheme.

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### **30 Decision on application if site requires rezoning**

- (1) The local government must decide, in accordance with this section, an application for approval of a mixed use scheme in relation to a site that is not taken to be zoned for the mixed use development proposed.
- (2) The application for approval of the mixed use scheme may accompany the application to amend the relevant planning scheme to allow the mixed use development proposed.
- (3) The public notice and objection requirements that apply under the *Local Government (Planning and Environment) Act 1990* to the application to amend the planning scheme do not apply to the application for approval of the mixed use scheme.
- (4) If the application for approval of the mixed use scheme accompanies the application to amend the planning scheme, the local government must decide both applications at the same time.
- (5) The local government may—
  - (a) approve the mixed use scheme; or
  - (b) approve the mixed use scheme subject to reasonable and relevant conditions determined by it; or
  - (c) refuse to approve the mixed use scheme.

### **31 Notification of decision on application**

- (1) The local government must notify the applicant of its decision within 10 days after it is made.
- (2) The notification must include—
  - (a) the decision and its date; and
  - (b) if the application has been refused—the grounds for the refusal; and
  - (c) if the application has been approved—any conditions that attach to the approval; and
  - (d) details of—

- (i) the way an applicant may appeal against the refusal or against any conditions to which the approval is subject; and
- (ii) the time within which an appeal must be made.

### **32 Submission of scheme by local government**

- (1) The local government must submit the scheme approved by it to the Minister.
- (2) The scheme must be accompanied by—
  - (a) details of the assessment of the scheme made by the local government; and
  - (b) details of any conditions determined by it in relation to the scheme; and
  - (c) details of any decision of the Planning and Environment Court in relation to the scheme; and
  - (d) any other matters required by the Minister.
- (3) The scheme must be submitted to the Minister within—
  - (a) if the scheme is approved without conditions—14 days after the local government’s decision; or
  - (b) if the time for starting an appeal has ended and no appeal has been started—
    - (i) if security is required to be lodged with the local government to ensure compliance with the conditions to which the scheme is subject—14 days after lodgment of the security; or
    - (ii) if security is not required—14 days after the end of the appeal period; or
  - (c) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined by a decision of the court—
    - (i) 14 days after the decision; or
    - (ii) another period determined by the court; or



- (d) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined otherwise than by a decision of the court—14 days after the determination; or
  - (e) if, because of the determination of an appeal, the applicant is required to lodge security with the local government to ensure compliance with conditions to which the scheme is subject—14 days after lodgment of the security.
- (4) For the purposes of subsection (3), if, before the end of the period mentioned in the subsection, the applicant gives a written notice to the local government stating that the applicant will not appeal against the local government's decision, the time for starting an appeal is taken to have ended on receipt by the local government of the notice.

### **33 Approval of scheme**

- (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 scheme to the person.

### **34 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 Future development areas**

### **35 Application that includes future development area**

- (1) An application under division 1 for the approval of a scheme (the *primary application*) may identify an area (a *future development area*) in relation to which—
  - (a) provisional approval is sought; and
  - (b) a subsequent application is proposed to be made under division 1.
- (2) A future development area may only contain freehold land or land intended to be freeholded.
- (3) Except in relation to land intended to be freeholded, the primary application may include a future development area only if the land in the future development area—

- (a) is taken to be zoned for the mixed use development proposed; or
  - (b) if not taken to be zoned for the mixed use development proposed—is the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the mixed use development proposed.
- (4) The primary application may include a future development area only if—
- (a) the future development area is contiguous with the other land mentioned in the application; and
  - (b) the intended use of the future development area is compatible with the intended use of the other land.
- (5) For the purposes of subsection (4), a future development area that is separated from the other land only by a road, railway, tramway or boundary watercourse is taken to be contiguous with the other land.
- (6) If the primary application identifies a future development area, the applicant must, in addition to giving the information and material required by division 1, give to the local government—
- (a) the address of the future development area; and
  - (b) a site plan and delineation of the future development area, including real property descriptions and, if appropriate, metes and bounds descriptions; and
  - (c) the name and address of each owner (other than the applicant) of land within the future development area; and
  - (d) the written consent of each owner mentioned in paragraph (c) to the inclusion of the owner’s land in the future development area; and
  - (e) advice that the land in the future development area is freehold land or is intended to be freeholded.
- (7) The site plan must identify—

- (a) the relationship between the future development area, the site and any adjoining lands; and
- (b) any lands outside the future development area that are proposed to be used in conjunction with the establishment or operation of the proposed development; and
- (c) any access points to the future development area from roads outside the future development area; and
- (d) existing easements and reserves; and
- (e) any watercourse lines, flood lines, storm surge levels, waterholes and similar features; and
- (f) the nature and extent of development proposed in the future development area.

### **36 Provisional approval**

- (1) An application for provisional approval for a future development area is to be made, and dealt with and approved in the same way and within the same time as the application under division 1 for approval of a scheme.
- (2) The requirements of section 34 that apply to the approved scheme also apply to a future development area that has been provisionally approved in relation to the approved scheme.

### **37 Application for revocation of provisional approval**

- (1) The proprietor of land in a future development area that is the subject of a provisional approval may apply to have the approval revoked in relation to all or part of the land.
- (2) An application may not be made in relation to any part of the future development area that has been the subject of an application under section 40.
- (3) Before making the application, the proprietor must give written notice of the proprietor's intention to make the application to—

- 
- (a) the community body corporate; and
  - (b) the precinct bodies corporate;  
(if these exist) inviting written comments from their members before a specified day (not less than 30 days after the giving of the notice).
- (4) The application must be made in writing to the Minister and include—
- (a) a copy of the notice given under subsection (3); and
  - (b) any written comments of the members of the community body corporate or the precinct bodies corporate received by the applicant; and
  - (c) other matters that the Minister considers necessary.

### **38 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 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.

### **39 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.

### **40 Application for subsequent stages**

- (1) An application may be made to the relevant local government under division 1 in relation to all or part of a future development area that is the subject of a provisional approval.
- (2) The future development area or part of the future development area that is the subject of an application under division 1 is called a *subsequent stage*.
- (3) Division 1 applies to the application for approval of a subsequent stage.
- (4) However, if the local government is satisfied that a matter required under division 1 for the application has previously been complied with, the local government may dispense with the matter.
- (5) The application may be made only if—
- (a) all necessary amounts have been paid to the local authority; and

- 
- (b) all necessary undertakings and securities have been given to, or lodged with, the local authority;  
under an agreement entered into between the applicant and the local authority.
- (6) The application must—
- (a) indicate that the subsequent stage is to be divided into precincts; and
- (b) specify—
- (i) the name of each precinct; and
- (ii) generally, the intended development of each precinct; and
- (iii) the permitted uses of the land within each precinct; and
- (c) be accompanied by a schedule setting out the voting entitlements, and the way of calculating the voting entitlements, of proposed members of the community body corporate.
- (7) An application in relation to a subsequent stage in a future development area may be made at any time.
- (8) Land in a subsequent stage is to be subdivided under part 5 in the same way as land within the site of a scheme.

## **Division 3                      Amendment of approved schemes**

### **41                      Application for amendment of an approved scheme**

- (1) The applicant may apply to the relevant local government for approval of an amendment of an approved scheme.
- (2) The application must be—
- (a) in writing; and
- (b) signed by the applicant; and
- (c) in the form (if any) determined by the local government.

- (3) A matter in the application may be expressed in words or by way of words and a diagram.
- (4) Subject to section 51, if the applicant is the community body corporate, it may apply to amend the approved scheme only if—
  - (a) the amendment proposed has been set out in a motion given to its members; and
  - (b) the motion for the proposed amendment has been carried by comprehensive resolution of the body corporate.
- (5) The application must be accompanied by—
  - (a) a copy of the motion; and
  - (b) evidence that it has been carried by comprehensive resolution.

## **42 Application for amendment to add land to the site**

- (1) If the amendment proposed includes the addition to the site of land outside the site—
  - (a) the intended use of the additional land—
    - (i) must be permitted by the relevant planning scheme; or
    - (ii) if not permitted by the relevant planning scheme—must be the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the use intended; and
  - (b) the intended use of the additional land must be compatible with the approved scheme.
- (2) The application to add additional land must set out or be accompanied by—
  - (a) the name of the scheme; and
  - (b) the name and address of the applicant; and



- (c) the address of the additional land; and
- (d) the name and address of each owner (other than the applicant) of—
  - (i) the additional land; and
  - (ii) any land outside the site and the future development area that is proposed to be used in conjunction with the mixed use development; and
- (e) the written consent of each owner mentioned in paragraph (d) to the addition of the owner's land to the site, signed by the owner; and
- (f) advice that the additional land is freehold land or is intended to be freeholded; and
- (g) details of each matter for which approval is required, or that must be done, under another Act before approval of the amendment of the approved scheme may be given; and
- (h) details of all agreements that relate to any part of the additional land; and
- (i) evidence of all—
  - (i) undertakings affecting the proposed development of the additional land given by an interested person; and
  - (ii) contracts affecting the proposed development of the additional land entered into between the applicant and another interested person; and
- (j) a schedule setting out the type and extent of development in each precinct; and
- (k) details of any minimum lot sizes, height restrictions, building setback requirements, car parking requirements and other requirements that are proposed for the additional land; and
- (l) a schedule specifying the voting entitlements and the methods of calculating the voting entitlements of

- existing and proposed members of the community body corporate; and
- (m) the proposed plan of development for the additional land.
- (3) The proposed plan of development must—
- (a) include—
    - (i) a site plan; and
    - (ii) a delineation of the additional land; and
    - (iii) real property descriptions and, if appropriate, metes and bounds descriptions; and
  - (b) identify the location and specify the area of each of the proposed precincts; and
  - (c) specify the name of each proposed precinct; and
  - (d) specify the proposed uses to be permitted within each precinct; and
  - (e) identify any proposed staged use precincts; and
  - (f) identify on the site plan the relationship between the site and the additional land; and
  - (g) identify any lands outside the site and the future development area (other than additional land) that are proposed to be used in conjunction with the establishment or operation of the mixed use development; and
  - (h) identify—
    - (i) the proposed roads and other proposed major engineering works within the additional land; and
    - (ii) the access points to the additional land from roads outside the land; and
  - (i) identify existing and proposed easements and reserves; and
  - (j) identify any watercourse lines, flood lines, storm surge levels, waterholes and similar features.

(4) In this section—

*interested person* means the applicant, the local government, the State, the Commonwealth or the provider of a public utility service.

#### **43 Application not adding additional land**

An application for approval to amend a scheme that does not relate to additional land must include—

- (a) details of the proposed amendment and an explanation of the nature and extent of the amendment; and
- (b) any other relevant matters required by the local government.

#### **44 Certain amendments not allowed after community plan registered**

An applicant may not apply for approval to amend a precinct boundary, or vary a precinct boundary under section 51, after the community plan has been registered.

#### **45 Decision on application if application to amend planning scheme not required**

- (1) The local government must decide, in accordance with this section—
  - (a) an application for approval of an amendment that relates to additional land the use of which is permitted by the relevant planning scheme; or
  - (b) an application for approval of an amendment that does not relate to additional land.
- (2) The local government must decide the application—
  - (a) within 40 days of receiving it; or
  - (b) if the local government extends or further extends the period—before the end of the extended period.

- (3) An extension has effect subject to any written direction given by the Minister to the local government—
  - (a) shortening the extension; or
  - (b) directing that the extension ceases to have effect on the giving of the direction.
- (4) The local government must notify the applicant of any extension before the extension starts.
- (5) The local government may—
  - (a) approve the amendment of the scheme; or
  - (b) approve the amendment of the scheme subject to reasonable and relevant conditions determined by it; or
  - (c) refuse to approve the amendment of the scheme.

#### **46 Decision on application if amendment of planning scheme required**

- (1) The local government must decide, in accordance with this section, an application for approval of an amendment of a mixed use scheme that relates to additional land the use of which is not permitted by a planning scheme.
- (2) The application for approval of the amendment of the mixed use scheme may accompany the application to amend the relevant planning scheme to allow the use proposed for the additional land.
- (3) The public notice and objection requirements that apply under the *Local Government (Planning and Environment) Act 1990* to the application to amend the planning scheme do not apply to the application for approval of the amendment of the mixed use scheme.
- (4) If the application for approval of amendment of the mixed use scheme accompanies the application to amend the relevant planning scheme, the local government must decide both applications at the same time.
- (5) The local government may—

- (a) approve the amendment of the mixed use scheme; or
- (b) approve the amendment of the mixed use scheme subject to reasonable and relevant conditions determined by it; or
- (c) refuse to approve the amendment of the mixed use scheme.

#### **47 Notification of decision on application**

- (1) The local government must notify the applicant of its decision within 10 days after it is made.
- (2) The notification must include—
  - (a) the decision and its date; and
  - (b) if the application has been refused—the grounds for the refusal; and
  - (c) if the application has been approved—any conditions to which the approval is subject; and
  - (d) details of—
    - (i) the way an applicant may appeal against the refusal or against any conditions to which the approval is subject; and
    - (ii) the time within which an appeal must be made.

#### **48 Submission of amendment of scheme approved by local authority**

- (1) The local government must submit the amendment of the scheme approved by it to the Minister.
- (2) The amendment must be accompanied by—
  - (a) details of the assessment of the amendment of the scheme made by the local government; and
  - (b) details of any conditions determined by it in relation to the amendment; and

- (c) details of any decision of the Planning and Environment Court in relation to the amendment; and
  - (d) any other matters required by the Minister.
- (3) The amendment must be submitted to the Minister within—
- (a) if the amendment is approved without conditions—14 days after the local government’s decision; or
  - (b) if the time for starting an appeal has ended and no appeal has been started—
    - (i) if security is required to be lodged with the local government to ensure compliance with the conditions to which the approval of the amendment is subject—14 days after lodgment of the security; or
    - (ii) if security is not required—14 days after the end of the appeal period; or
  - (c) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined by a decision of the court—
    - (i) 14 days after the decision; or
    - (ii) another period determined by the court; or
  - (d) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined otherwise than by a decision of the court—14 days after the determination; or
  - (e) if, because of the determination of an appeal, the applicant is required to lodge security with the local government to ensure compliance with conditions to which the approval of the amendment is subject—14 days after lodgment of the security.
- (4) For the purposes of subsection (3), if, before the end of the period mentioned in the subsection, the applicant gives a written notice to the local government stating that the applicant will not appeal against the local government’s

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decision, the time for starting an appeal is taken to have ended on receipt by the local government of the notice.

## **49 Approval of amendment of scheme**

- (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 amendment relates to additional land—
  - (a) the additional land becomes part of the scheme; and
  - (b) the additional land is to be subdivided under part 5 in the same way as land within the site of a scheme.
- (3) 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.

- (4) 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.
- (5) The registrar of titles must note the amendment on the plan of development.

## **50 Notation of amendment**

If the amendment relates to additional land, the local government and the chief executive must each make an appropriate notation of the approved amendment on—

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

## **51 Minor variation of precinct boundaries**

- (1) The relevant local government may approve an application to vary the boundaries of a precinct if, in its opinion, the variation is minor.
- (2) If the local government approves the variation, it must submit it to the Minister.
- (3) The Minister may—
  - (a) approve the variation; or
  - (b) refuse to approve the variation.
- (4) The provisions of this Act that apply to—
  - (a) the approval of a scheme; or
  - (b) the approval of an amendment of a scheme;do not apply to the approval of a minor variation under this section.
- (5) If the Minister approves the variation, the chief executive must give the registrar of titles and the local government a new plan of development that includes the minor variation.



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## Division 4                      Appeals

### 52      Appeals to the Planning and Environment Court

- (1) This section applies to the following decisions of a local government—
  - (a) a decision refusing to approve a scheme;
  - (b) a decision approving a scheme subject to conditions;
  - (c) a decision refusing to approve an amendment of a scheme;
  - (d) a decision approving an amendment of a scheme subject to conditions;
  - (e) a decision refusing to approve a subsequent stage;
  - (f) a decision approving a subsequent stage subject to conditions;
  - (g) a decision refusing a provisional approval of a future development area;
  - (h) a decision approving a provisional approval of a future development area subject to conditions.
- (2) An applicant may appeal to the Planning and Environment Court in relation to—
  - (a) a decision to which this section applies; and
  - (b) a failure of a local government to decide an application under this part within the time prescribed by this part.
- (3) A person may appeal in relation to a decision mentioned in subsection (1)(g) only if—
  - (a) the application under division 1 that identifies the future development area has been approved; or
  - (b) if the application under division 1 has been refused—an appeal against this refusal accompanies the appeal in relation to the decision mentioned in subsection (1)(g).

- (4) For the purposes of subsection (2)(b), a failure of local government to decide an application is taken to be a refusal of the local government to approve the application.
- (5) If—
  - (a) an application under this part accompanies an application for amendment of a planning scheme; and
  - (b) both applications are refused by the local government;an appeal may be made in relation to the application under this part only if an appeal is also made in relation to the other application.
- (6) Part 7 (Appeals) of the *Local Government (Planning and Environment) Act 1990* applies to an appeal under this section with any necessary modifications.

## **Division 5                      Effect of approval of scheme**

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

- (1) The mixed use scheme regulates the development and use of land within the site.
- (2) The mixed use scheme modifies any planning scheme in force in relation to the site to the extent the planning scheme is inconsistent with the mixed use scheme.
- (3) However, the mixed use scheme cannot increase the uses permitted by the planning scheme.
- (4) Part 5 (Subdivision applications) of the *Local Government (Planning and Environment) Act 1990* does not apply to the site.
- (5) Subdivision of land by-laws made under the *Local Government Act 1936* do not apply to the site.
- (6) By-laws or ordinances made by a local authority under any Act do not apply to the site so far as they are inconsistent with this Act or the 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 scheme as a permitted use in relation to the precinct.

## **Division 6                      Rescission of approved schemes**

### **54            Application for rescission**

- (1) The applicant may apply to the Minister for rescission of the 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 108.
- (4) If all plans have been extinguished, the application for rescission must be made by all proprietors within the site.

### **55            Rescission of approval**

- (1) The Minister must consider the application and discuss it with the local government.
- (2) The Governor in Council may—
  - (a) approve the rescission; or
  - (b) approve the rescission subject to conditions; or
  - (c) refuse to approve the rescission.
- (3) If the Governor in Council approves the rescission, the chief executive must—
  - (a) notify the approval of the rescission 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 rescission 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 rescission on the plan of development; and
  - (d) send a copy of the approval to the registrar of titles and the local government.
- (4) 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 rescission to the person.
- (5) The registrar of titles must note the rescission on the plan of development.

## **56 Notation of rescission**

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

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

## **57 Effect of rescission**

- (1) On rescission of an approved scheme—
- (a) the provisions of this Act that applied because of the scheme no longer apply; and
  - (b) the provisions of the *Canals Act 1958* prescribed for the purposes of section 156 again apply.
- (2) Nothing in subsection (1) affects anything lawfully done before the rescission of the approved scheme.

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## **Division 7                      Unauthorised uses**

### **58            Use of construction works**

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 division 1.

Maximum penalty—500 penalty units.

### **59            Use of land etc. within a precinct**

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 scheme as a permitted use in relation to the precinct.

Maximum penalty—200 penalty units.

## **Part 4                              The site**

### **60            The site**

- (1) The site of a scheme consists of all land within the boundaries of the site set out in the scheme.
- (2) The site must consist only of freehold land and land intended to be freeholded.
- (3) Despite any other Act or law, the site may include land mentioned in subsection (2) that is, or may become, inundated by water or subject to tidal influence.
- (4) 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 freeholded divides the parcels.

## **61 Grant of Crown land**

- (1) The power conferred by the *Land Act 1962* on the Governor in Council to grant in fee simple any Crown land within Queensland includes, in relation to Crown 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 1962*.
- (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 cannot reasonably be used otherwise than in relation to the site.

## **62 Site forms part of local authority 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 Subdivision of site by community plan**

### **63 Lodgment of community plan**

- (1) After the approval of a scheme by the Governor in Council, the proprietor of land within the site must lodge with the local

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government a community plan subdividing land within the site into—

- (a) a lot that comprises, or lots that together comprise, the community property as provided for in the scheme; and
  - (b) a community development lot that comprises, or community development lots that together comprise, the balance of the land within the site.
- (2) The community plan must—
- (a) identify the community property; and
  - (b) be accompanied by a schedule setting out the voting entitlement applicable to each community development lot.

## **64 Approval of community plan**

- (1) The local government may approve a community plan and schedule only if it is satisfied that—
- (a) each lot comprising community property is shown on—
    - (i) the plan; or
    - (ii) a previous plan approved by the local government that forms part of the community plan; and
  - (b) each community development lot has access to a dedicated road outside the site directly or through the community thoroughfare that is, or is to be, constructed on the community property; and
  - (c) if there is more than 1 community development lot in a precinct—the combined voting entitlement of the lots equals the voting entitlement of the precinct; and
  - (d) the provisions of the scheme that apply to the lots on the plan have been complied with; and
  - (e) the lots on the plan have been, or will be, provided with essential services.
- (2) For the purposes of subsection (1)(b)—

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- (a) if the site is on an island and there is no dedicated road adjoining the site—a community development lot is taken to have access to a dedicated road if the lot or the community thoroughfare adjoins the foreshore; or
  - (b) if the site is remote and there is no dedicated road adjoining the site—a community development 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.
- (3) If a community development lot is taken to have access to a dedicated road under subsection (2), a lot is also taken to have access to a dedicated road if created by the subdivision of—
- (a) the community development lot; or
  - (b) a lot created by the subdivision of the community development lot.
- (4) Subsection (3) has effect subject to the provisions of this Act that relate to access.

## **65 Registration of community plan**

- (1) The registrar of titles may register a community plan only if—
- (a) it includes the subdivision of the site into a lot or lots comprising the community property or a plan that forms part of the community plan has previously created community property and been registered by the registrar of titles; and
  - (b) it is accompanied by a schedule setting out the voting entitlement applicable to each community development lot; 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.



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**66 Vesting of community property in community body corporate**

- (1) On registration of the community plan creating lots comprising the community property and after registration of the necessary transfer by the registrar of titles, the lots are transferred to the community body corporate.
- (2) If land that is to become community property is mortgaged, the transfer may be registered only if the mortgage has been released.
- (3) The registrar of titles must issue certificates of title in the name of the community body corporate.
- (4) The community body corporate must not be required to make any payment or provide any consideration for the transfer.
- (5) This section does not affect the operation of section 150.

**Division 2 Amalgamation of community development lots by community plan of amalgamation**

**67 Community plan of amalgamation**

- (1) The proprietor of 2 or more community development lots on a community plan may amalgamate the lots by a community plan of amalgamation.
- (2) The community plan of amalgamation must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by a schedule setting out the voting entitlement that is to apply to the new community development lot.

**68 Approval of community plan of amalgamation**

A local government may approve a community plan of amalgamation and schedule only if it is satisfied that—

- (a) the voting entitlement that is to apply to the new community development lot equals the total voting entitlement that applies to the community development lots being amalgamated; and
- (b) the provisions of the scheme that apply to the amalgamated lot have been complied with; and
- (c) the amalgamated lot has been, or will be, provided with essential services.

## **69 Registration of community plan of amalgamation**

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

- (a) it is accompanied by a schedule setting out the voting entitlement that is to apply to the new community development lot; and
- (b) the plan and schedule have been approved by the local government.

## **70 Notice of amalgamation**

On registration of the community plan of amalgamation, the proprietor of the new community development lot must give written notice to the community body corporate of—

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

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## **Division 3                      Subdivision of community development lot by community plan of subdivision**

### **71            Community plan of subdivision**

- (1) The proprietor of a community development lot may subdivide it by a community plan of subdivision into—
  - (a) 2 or more community development lots; or
  - (b) 1 or more community development lots and 1 or more community property lots.
- (2) The community plan of subdivision must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by a schedule setting out the voting entitlement that is to apply to each community development lot created by the plan.
- (3) The proprietor may lodge a community plan of subdivision that creates a community property lot only if—
  - (a) details of the proposed subdivision have been set out in a motion given to the members of the community body corporate; and
  - (b) the motion has been carried by comprehensive resolution.

### **72            Approval of community plan of subdivision**

A local government may approve a community plan of subdivision and schedule only if it is satisfied that—

- (a) the total voting entitlement that is to apply to the new community development lot or lots equals the voting entitlement that applies to the community development lot being subdivided; and
- (b) each new community development lot has access to a dedicated road outside the site directly or through the

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community thoroughfare that is, or is to be constructed, on a lot that comprises or on lots that comprise the community property; and

- (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and
- (d) the lots on the plan have been, or will be, provided with essential services.

### **73 Registration of community plan of subdivision**

- (1) The registrar of titles may register a community plan of subdivision only if—
  - (a) it is accompanied by a schedule setting out the voting entitlement that is to apply to each community development lot created by the plan; and
  - (b) 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.

### **74 Notice of subdivision**

On registration of the community plan of subdivision, the proprietor of the new community development lots must give written notice to the community body corporate of—

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

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**75 Vesting of community property in community body corporate**

- (1) On registration of the community plan of subdivision creating or lots comprising the community property and after registration of the necessary transfer by the registrar of titles, the lots are transferred to the community body corporate.
- (2) If land that is to become community property is mortgaged, the transfer may be registered only if the mortgage has been released.
- (3) The registrar of titles must issue certificates of title in the name of the community body corporate.
- (4) The community body corporate must not be required to make any payment or provide any consideration for the transfer.
- (5) This section does not affect the operation of section 150.

**Division 4 Subdivision of community development lot by stratum plan under pt 6**

**76 Stratum subdivision of community development lot**

- (1) The proprietor of a community development lot may subdivide it by a stratum plan under part 6 into stratum lots called *community stratum lots*.
- (2) The stratum plan must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by—
    - (i) a schedule setting out the voting entitlement that is to apply to each community stratum lot created by the stratum plan; and
    - (ii) a management statement mentioned in part 6.

## **77 Approval of stratum plan**

- (1) A local government may approve a stratum plan and schedule only if it is satisfied that—
  - (a) the total voting entitlement that is to apply to the community stratum lots equals the voting entitlement that applied to the community development lot being subdivided; and
  - (b) each new community stratum lot has access to—
    - (i) a dedicated road outside the site; or
    - (ii) the community thoroughfare; and
  - (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and
  - (d) the lots on the plan have been, or will be, provided with essential services.
- (2) If the local government approves the stratum plan and the schedule, it may also approve the management statement.
- (3) For the purposes of this section, access need not be access by road.

## **Division 5 Subdivision of community development lot by building units or group titles plan**

### **78 Building units or group titles plan**

If a community development lot created by the registration of—

- (a) a community plan; or
- (b) a community plan of amalgamation; or
- (c) a community plan of subdivision;

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is not to be subdivided by a precinct plan under division 6 or a stratum plan under part 6, it may be subdivided by a building units or group titles plan under this division.

## **79 Lodgment of building units or group titles plan**

- (1) A building units or group titles plan must be lodged with the local government.
- (2) A group titles plan must be accompanied by a statement by the proprietor of the community development 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.
- (3) 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.
- (4) Each lot on a group titles plan must have access to a dedicated road whether directly or through—
  - (a) the community thoroughfare; or
  - (b) the common property.
- (5) 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.

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

- (1) A local government may approve a group titles plan and schedule only if—
  - (a) it is satisfied that each lot created has the access mentioned in section 79(4); and
  - (b) the plan is accompanied by—
    - (i) the statement mentioned in section 79(2); and
    - (ii) if applicable—the schedule mentioned in section 79(3); and
    - (iii) the diagram mentioned in section 79(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 79(4).
- (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.

## **81 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 does not have to make inquiries but may rely on the local government's approval of the plan.

## **82 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.



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- (2) The *Building Units and Group Titles Act 1980*, section 10(1A), 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 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*.

### **83 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 79(2) and (3) apply to the subdivision of a group title lot by a group titles plan as if it were the subdivision of a community development 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 under section 79(3) in relation to the subdivision of the community development lot by the group titles plan.
- (4) Sections 80 and 81 relating to approval by a local government and registration by the registrar of titles apply to a plan mentioned in this section.

**84 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.
- (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.

**85 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 6 Subdivision of community development lot by precinct plan**

**86 Precinct plan**

- (1) The proprietor of a community development lot may subdivide it by a precinct plan if—
  - (a) the community development lot is contained within a staged use precinct that is identified in the scheme; or

- (b) the proprietor later advises the local government of the proprietor's intention to develop the precinct within which the community development lot is situated as a staged use precinct.
- (2) A precinct plan must subdivide a community development lot into—
  - (a) a precinct development lot; and
  - (b) if necessary for access—a precinct property lot.
- (3) A precinct plan may subdivide a community development lot into—
  - (a) more than 1 precinct development lot; and
  - (b) more than 1 precinct property lot; and
  - (c) if the lot or lots created do not cover the whole of the community development lot—a balance precinct development lot.
- (4) A balance precinct development lot may be later subdivided—
  - (a) by a precinct plan as if it were a community development lot; or
  - (b) under section 101; or
  - (c) by a stratum plan.
- (5) A precinct plan subdividing a community development lot must be lodged with the local government.
- (6) A precinct plan must—
  - (a) identify any precinct property; and
  - (b) be accompanied by a schedule setting out the voting entitlement that applies to each precinct development lot, and any balance precinct development lot, created by the plan.
- (7) If a staged use precinct is identified in the application for an approved scheme, the local government and the applicant may agree to defer the payment of contributions towards water supply, sewerage and drainage works until the approval by the

local government of the precinct plans that create precinct development lots.

## **87 Approval of precinct plan**

The local government may approve a precinct plan and schedule only if the community plan has previously been approved by it and it is satisfied that—

- (a) each precinct development lot has access to—
  - (i) a dedicated road outside the site; or
  - (ii) the community thoroughfare;  
whether directly or through the precinct thoroughfare that is, or is to be, constructed on the lot or lots shown on the plan as constituting precinct property; and
- (b) the total voting entitlement that is to apply to—
  - (i) each of the new precinct development lots; and
  - (ii) any balance precinct development lot;  
equals the voting entitlement that applies to the community development lot being subdivided; and
- (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and
- (d) the lots on the plan have been, or will be, provided with essential services.

## **88 Registration of precinct plan**

- (1) The registrar of titles may register a precinct plan only if—
  - (a) it is accompanied by a schedule setting out the voting entitlement that applies to each precinct development lot, and any balance precinct development lot, created by the plan; and
  - (b) the plan and schedule have been approved by the local government.

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- (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.

## **89 Vesting of precinct property in precinct body corporate**

- (1) On registration of the precinct plan creating lots comprising the precinct property and registration of the necessary transfer by the registrar of titles, the lots are transferred to the precinct body corporate.
- (2) If land that is to become precinct property is mortgaged, the transfer may be registered only if the mortgage has been released.
- (3) The registrar of titles must issue certificates of title in the name of the precinct body corporate.
- (4) The precinct body corporate must not be required to make any payment or provide any consideration for the transfer.
- (5) This section does not affect the operation of section 150.

## **Division 7 Amalgamation of precinct development lots by precinct plan of amalgamation**

### **90 Precinct plan of amalgamation**

- (1) The proprietor of 2 or more precinct development lots that previously formed part of the same community development lot may amalgamate the lots by a precinct plan of amalgamation.
- (2) The precinct plan of amalgamation must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by a schedule setting out the voting entitlement that is to apply to the new precinct development lot.

## **91 Approval of precinct plan of amalgamation**

A local government may approve a precinct plan of amalgamation and schedule only if it is satisfied that—

- (a) the voting entitlement that is to apply to the new precinct development lot equals the total voting entitlement that applies to the precinct development lots being amalgamated; and
- (b) the provisions of the scheme that apply to the amalgamated lot have been complied with; and
- (c) the lot has been, or will be, provided with essential services.

## **92 Registration of precinct plan of amalgamation**

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

- (a) it is accompanied by a schedule setting out the voting entitlement that is to apply to the new precinct development lot; and
- (b) the plan and schedule have been approved by the local government.

## **93 Notice of amalgamation**

On registration of the precinct plan of amalgamation, the proprietor of the new precinct development lot must give written notice to the precinct body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the precinct plan of amalgamation; and
- (c) the description of the precinct development lots amalgamated; and
- (d) the description of the new precinct development lot; and

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- (e) the voting entitlement that applies to the new precinct development lot.

## **Division 8                      Subdivision of precinct development lot by precinct plan of subdivision**

### **94            Precinct plan of subdivision**

- (1) The proprietor of a precinct development lot may subdivide it by a precinct plan of subdivision into—
  - (a) 2 or more precinct development lots; or
  - (b) 1 or more precinct development lots and 1 or more precinct property lots.
- (2) The precinct plan of subdivision must—
  - (a) be lodged with the local government; and
  - (b) be accompanied by a schedule setting out the voting entitlement that is to apply to each precinct development lot created by the plan.
- (3) The proprietor of a precinct development lot may lodge with the local government a precinct plan of subdivision that creates a precinct property lot only if—
  - (a) details of the proposed subdivision have been set out in a motion given to the members of the precinct body corporate; and
  - (b) the motion has been carried by comprehensive resolution.

### **95            Approval of precinct plan of subdivision**

A local government may approve a precinct plan of subdivision and schedule only if it is satisfied that—

- (a) the total voting entitlement that is to apply to the new precinct development lots equals the voting entitlement

that applies to the precinct development lot being subdivided; and

- (b) each new precinct development lot has access to—
  - (i) a dedicated road outside the site; or
  - (ii) the community thoroughfare;

directly or through the precinct thoroughfare that is, or is to be, constructed on a lot that comprises or lots that together comprise precinct property; and

- (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and
- (d) the lots on the plan have been, or will be, provided with essential services.

## **96 Registration of precinct plan of subdivision**

- (1) The registrar of titles may register a precinct plan of subdivision only if—
  - (a) it is accompanied by a schedule setting out the voting entitlement that is to apply to each precinct development lot created by the plan; and
  - (b) 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.

## **97 Notice of subdivision**

On registration of the precinct plan of subdivision, the proprietor of a new precinct development lot must give written notice to the precinct body corporate of—

- (a) the proprietor's full name and address for service; and
- (b) the date of registration of the precinct plan of subdivision; and



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- (c) the description of the precinct development lot subdivided; and
  - (d) the description of the new precinct development lots; and
  - (e) the voting entitlement that applies to each new precinct development lot.

## **98 Vesting of precinct property in precinct body corporate**

- (1) On registration of the precinct plan of subdivision creating lots comprising the precinct property and registration of the necessary transfer by the registrar of titles, the lots are transferred to the precinct body corporate.
- (2) If land that is to become precinct property is mortgaged, the transfer may be registered only if the mortgage has been released.
- (3) The registrar of titles must issue certificates of title in the name of the precinct body corporate.
- (4) The precinct body corporate must not be required to make any payment or provide any consideration for the transfer.
- (5) This section does not affect the operation of section 150.

## **Division 9 Subdivision of precinct development lot or balance precinct development lot by stratum plan under pt 6**

### **99 Stratum plan**

- (1) The proprietor of a precinct development lot or balance precinct development lot may subdivide it by a stratum plan under part 6 into stratum lots called *precinct stratum lots*.
- (2) The stratum plan must—
  - (a) be lodged with the local government; and

- (b) be accompanied by—
  - (i) a schedule setting out the voting entitlement that is to apply to each precinct stratum lot created by the stratum plan; and
  - (ii) a management statement mentioned in part 6.

## **100 Approval of stratum plan**

- (1) A local government may approve a stratum plan and schedule only if it is satisfied that—
  - (a) the total voting entitlement that is to apply to the precinct stratum lots equals the voting entitlement that applied to the precinct development lot or balance precinct development lot being subdivided; and
  - (b) each new precinct stratum lot has access to—
    - (i) a dedicated road outside the site; or
    - (ii) the community thoroughfare; or
    - (iii) the precinct thoroughfare; and
  - (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and
  - (d) the lots on the plan have been, or will be, provided with essential services.
- (2) If the local government approves the stratum plan and the schedule, it may also approve the management statement.
- (3) For the purposes of this section, access need not be access by road.

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**Division 10                      Subdivision of precinct  
development lot or balance precinct  
development lot by building units or  
group titles plan**

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

- (1) A precinct development lot may be subdivided only—
  - (a) under division 8 or 9; or
  - (b) by a building units or group titles plan.
- (2) A balance precinct development lot may be subdivided by a building units or group titles plan.
- (3) A building units or group titles plan must be lodged with the local government.
- (4) A group titles plan must be accompanied by a statement by the proprietor of the precinct development lot or balance precinct development 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.
- (5) 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 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.
- (6) Each lot on a group titles plan must have access to a dedicated road whether directly or through—
  - (a) the community thoroughfare; or

- (b) a precinct thoroughfare; or
  - (c) the common property.
- (7) 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—
- (a) the community thoroughfare, or the part of the community thoroughfare, shown on the plan; and
  - (b) each precinct thoroughfare, or part of a precinct thoroughfare, shown on the plan.

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

- (1) A local government may approve a group titles plan only if—
- (a) it is satisfied that each lot created has the access mentioned in section 101(6); and
  - (b) the plan is accompanied by—
    - (i) the statement mentioned in section 101(4); and
    - (ii) if applicable—the schedule mentioned in section 101(5); and
    - (iii) the diagram mentioned in section 101(7).
- (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 101(6).
- (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.

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

- (1) The registrar of titles may register a building units or 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 does not have to make inquiries but may rely on the local government's approval of the plan.

#### **104 Subdivision of group title lot by a 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) The *Building Units and Group Titles Act 1980*, section 10(1A), 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 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 or 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*.

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

- (1) A group title lot may be subdivided by a group titles plan or a building units plan.
- (2) Section 101(4) and (5) apply to the subdivision of a group title lot by a group titles plan as if it were the subdivision of a precinct development lot or balance precinct development 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 101(5) in relation to the subdivision of the precinct development lot, or balance precinct development lot, by the group titles plan.
- (4) Sections 102 and 103 relating to approval by a local government and registration by the registrar of titles apply to a plan mentioned in this section.

#### **106 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.
- (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.

#### **107 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.

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## **Division 11            Matters applying to subdivision generally**

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

#### **108    Extinguishment of plan**

A plan registered under this Act (other than a stratum plan) may be extinguished—

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

#### **109    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) 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—
    - (i) the land comprised in the extinguished plan; and
    - (ii) any property of the body corporate;be vested in the proprietors of the lots in the shares that the Supreme Court considers appropriate.

## **110 Registration**

- (1) If the Supreme Court makes an order under section 109, 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) 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—
    - (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, a precinct plan, a community plan or a stratum plan under part 6—in the proprietors in the shares agreed by the proprietors by unanimous resolution; 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).

## **111 Notification of local authority**

The registrar of titles must notify the relevant local government on registration under section 110(3) of the request to extinguish the plan.



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## **Subdivision B      Boundary adjustment plans**

### **112      Boundary adjustment plan**

- (1) The boundary of a community development lot, a precinct development lot or a balance precinct development lot within the site of a 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 community property or precinct property—the adjustment is approved by the community body corporate, or precinct body corporate, by comprehensive resolution.
- (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—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) Part 7 of the *Local Government (Planning and Environment) Act 1990* applies to an appeal under subsection (4) with any necessary modifications.

### **113 Registration of boundary adjustment plan**

- (1) The registrar of titles must not register a boundary adjustment plan unless 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 112(1) but may rely on the local government's approval of the plan.

### **114 Effect of boundary adjustment plan**

- (1) A boundary adjustment plan registered under this division does not affect the voting entitlement that applied to any lot before registration of the plan.
- (2) A registered mortgage, lease or other registered estate 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**

### **115 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.
- (1A) Unless an easement is created for support and shelter, there is implied—
- (a) as belonging to any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the subjacent and lateral support by other buildings or structures or parts of buildings or structures that are capable of giving support; and
  - (b) as affecting any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the subjacent and lateral support of other buildings or structures or parts of buildings or structures that are capable of being supported; and
  - (c) as belonging to any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for shelter by other buildings or structures or parts of buildings or structures that are capable of giving shelter; and
  - (d) as affecting any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the shelter of other buildings or structures or parts of buildings or structures that are capable of being sheltered.
- (1B) The easement for support and shelter implied by subsection (1A) entitles the proprietor of the dominant tenement to enter the servient tenement to maintain or replace any support or shelter.
- (2) Subsections (1) and (1A) do not affect—

- (a) easements belonging to and affecting lots in a plan created under the *Building Units and Group Titles Act 1980*; or
  - (b) easements belonging to and affecting stratum lots in a stratum plan under part 6.
- (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.

### **116 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.

### **117 Creation of easements by comprehensive resolution**

A community body corporate or precinct body corporate may by comprehensive resolution—

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

## **Subdivision D Sequential plans**

### **118 Approval of sequential plans by local authority**

- (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 subsection (1)—  
*plan* includes a community plan, precinct plan, group titles and building units plan.

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

If the plans have been endorsed by the local government under section 118 the registrar of titles may register the plans in the appropriate order.

# **Part 6 Stratum subdivision**

## **Division 1 Interpretation**

### **120 Definition**

In this part—

*land* includes—

- (a) any estate in, on, over or under land; and
- (b) the airspace above the surface of land and any estate in the airspace; and
- (c) the subsoil of land and any estate in the subsoil; and
- (d) a building; and
- (e) a stratum lot.

## **Division 2 Subdivision**

### **121 Stratum lots and dealings with stratum lots**

- (1) Despite the Real Property Acts—
  - (a) land comprising a community development lot, precinct development lot or balance precinct development lot may be subdivided by a stratum plan; and
  - (b) a stratum lot may be subdivided by a stratum plan of subdivision; and
  - (c) minor adjustments may be made to the boundaries of stratum lots by a stratum boundary adjustment plan; and

- (d) stratum lots may be amalgamated by a stratum plan of amalgamation.
- (2) The Real Property Acts apply to stratum lots with any necessary modifications.

### **122 Stratum boundary adjustment plan**

- (1) The boundaries of stratum lots may be adjusted by the registration of a stratum boundary adjustment plan if the local government is satisfied that the adjustment is minor.
- (2) On registration of the plan by the registrar of titles, the land vests in accordance with the adjusted boundaries.
- (4) A registered mortgage, lease or other registered estate in a stratum lot adjusted by the registration of a stratum boundary adjustment plan—
  - (a) is not affected by the registration of the plan; and
  - (b) is taken to relate to the adjusted stratum lot.

### **123 Stratum plan of subdivision**

- (1) A stratum lot may be subdivided into 2 or more stratum lots by the registration of a stratum plan of subdivision.
- (2) The registrar of titles may register a stratum plan of subdivision only if the plan is accompanied by a schedule showing, as a whole number for each proposed stratum lot, the proposed value proportion for each stratum lot for the purposes of sections 132 and 138(2)(q).
- (3) In registering a stratum plan of subdivision, the registrar of titles may make any recordings on, and amendments of, the relevant management statement that the registrar of titles considers appropriate to give effect to the plan.

## **124 Stratum plan of amalgamation**

- (1) Two or more, or all, stratum lots in a stratum plan may be amalgamated by the registration of a stratum plan of amalgamation.
- (2) However, a stratum lot that has been subdivided by a building units plan may be amalgamated with another stratum lot only if the building units plan has been extinguished.
- (3) In registering a stratum plan of amalgamation, the registrar of titles may make any recordings on, and amendments of, the relevant management statement that the registrar of titles considers appropriate to give effect to the plan.
- (4) For the purposes of sections 132 and 138(2)(q), the relevant value proportion for the stratum lot created by the amalgamation of 2 or more stratum lots is the total of the value proportions of the stratum lots.
- (5) On registration of a stratum plan of amalgamation that amalgamates all of the stratum lots in a stratum plan—
  - (a) the stratum plan is extinguished; and
  - (b) the relevant management statement is terminated.
- (6) A stratum plan of amalgamation mentioned in subsection (5) must be accompanied by a request to terminate the relevant management statement.
- (7) The request must comply with the requirements prescribed by regulation.
- (8) If a stratum plan of amalgamation is accompanied by a request to terminate a management statement, the registrar of titles—
  - (a) must record the termination of the management statement on the stratum plan to which it relates; and
  - (b) may make such other recordings in the register as the registrar of titles considers appropriate to give effect to the termination.



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## 125 General requirements relating to plans

- (1) Stratum plans, stratum boundary adjustment plans, stratum plans of subdivision and stratum plans of amalgamation must comply with the requirements prescribed by regulation.
- (2) If a stratum plan, stratum boundary adjustment plan, stratum plan of subdivision or stratum plan of amalgamation has been approved by the local government, the registrar of titles may—
  - (a) register the plan under the Real Property Acts; and
  - (b) issue certificates of title for stratum lots created by the registration of the plan; and
  - (c) make such other recordings in the register as the registrar of titles considers appropriate to give effect to the registration of the plan.
- (3) Subsection (2) has effect despite the Real Property Acts and the *Survey and Mapping Infrastructure Act 2003*.
- (4) On registration of a stratum plan, stratum boundary adjustment plan, stratum plan of subdivision or stratum plan of amalgamation, the plan is, for the purposes of the Real Property Acts, taken to form part of the register.

## Division 3 Easements

### 126 Support and shelter for certain stratum lots

- (1) There is implied in a stratum plan—
  - (a) as belonging to the stratum lots comprised in the stratum plan on which a building is situated—an easement for the subjacent and lateral support by other parts of the building that are capable of affording support; and
  - (b) as affecting the stratum lots—an easement for the subjacent and lateral support of other parts of the building that are capable of enjoying support; and

- (c) as belonging to the stratum lots—an easement for their shelter by other parts of the building that are capable of affording shelter; and
  - (d) as affecting the stratum lots—an easement for the shelter of other parts of the building that are capable of being sheltered by the stratum lots.
- (2) The easement for support and shelter implied by subsection (1)—
  - (a) entitles the proprietor of the dominant tenement to enter the servient tenement to maintain or replace any support or shelter; and
  - (b) subsists until the stratum plan is extinguished or the easement is otherwise surrendered.
- (3) This section does not affect an implied easement belonging to and affecting the lots in a building units plan created under the *Building Units and Group Titles Act 1980*.
- (4) A management statement may exclude or modify this section expressly or by implication.

## **127 Services for certain stratum lots**

- (1) Unless an easement is created for a particular service, there is implied in a stratum plan—
  - (a) as belonging to the stratum lots comprised in the stratum plan on which a building is situated—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 building to the extent to which the service is capable of being used in the enjoyment of the stratum lots or common property; and
  - (b) as affecting the stratum lots—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 for the time being existing) in or over the building to the extent to which the service is capable

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of being used in the enjoyment of the stratum lots or common property.

- (2) An easement under subsection (1) must not be exercised unreasonably by the proprietor of a stratum lot in a way that prevents the proprietor of another stratum lot from reasonably enjoying the use and occupation of the other proprietor's stratum lot or common property.
- (3) Subsection (2) does not affect an easement belonging to and affecting lots in a building units plan implied under the *Building Units and Group Titles Act 1980*.

## 128 Right of way

- (1) There is implied in a stratum plan—
  - (a) as belonging to the stratum lots comprised in the stratum plan on which a building is situated—easements of right of way sufficient to allow the proprietor to pass to and from other stratum lots to and from—
    - (i) any dedicated road; or
    - (ii) the community property; or
    - (iii) any precinct property;by using stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways; and
  - (b) as affecting the stratum lots—easements of right of way sufficient to allow other proprietors to pass to and from other stratum lots to and from—
    - (i) any dedicated road; or
    - (ii) the community property; or
    - (iii) any precinct property;by using stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways; and
  - (c) as belonging to the stratum lots—easements of right of way sufficient to allow vehicles of the proprietor to pass to and from other stratum lots to and from—

- (i) any dedicated road; or
  - (ii) the community property; or
  - (iii) any precinct property;by using roadways or ramps; and
- (d) as affecting the stratum lots—easements of right of way sufficient to allow the vehicles of other proprietors to pass to and from other stratum lots to and from—
  - (i) any dedicated road; or
  - (ii) the community property; or
  - (iii) any precinct property;by using roadways or ramps.
- (2) Subsection (1) does not affect an implied easement belonging to and affecting the lots in a building units plan created under the *Building Units and Group Titles Act 1980*.
- (3) A management statement may exclude or modify this section expressly or by implication.
- (4) In this section—

*proprietor* includes the proprietor's employees, agents, lessees, invitees and licensees.

## **129 Ancillary rights for easements**

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

## **130 Subdivision of stratum lot by building units plan**

- (1) Land comprised in a stratum lot (including, for example, a part of a building) may be subdivided into lots, or lots and common property, by the registration of a building units plan.
- (2) The *Building Units and Group Titles Act 1980* applies to land that is subdivided under this section.

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## **131 Creation of easements**

- (1) The registrar of titles may register a stratum plan that—
  - (a) clearly indicates the nature and location of an easement intended to be created on registration of the stratum plan; and
  - (b) is accompanied by an instrument in the approved form signed by the proprietor of the land to be burdened by the easement.
- (2) The instrument—
  - (a) must specify the nature and location of the easement and any conditions to which it is subject; and
  - (b) must specify the land to be benefited, and the land to be burdened, by the easement; and
  - (c) may nominate a person whose consent to a surrender of an easement is required.
- (3) However, an easement may be created in favour of the State, the Commonwealth, a local government or the provider of a public utility service to enable the supply of services to stratum lots even though the easement is not annexed to, or used and enjoyed with, other land.
- (4) An easement under this section may be limited wholly or partly in height or depth.
- (5) On registration of a stratum plan and instrument, the proposed easements shown on the stratum plan—
  - (a) are created; and
  - (b) vest in the person entitled to the benefit of the easement.
- (6) On registration of a stratum plan—
  - (a) an easement created by the registration has effect subject to the conditions specified in the instrument as if the instrument were a deed under seal; and
  - (b) the nomination in the instrument of a person whose consent to a surrender of the easement is required

operates to require the consent of the person to a surrender of the easement.

- (7) For the purposes of this section, the site of an easement may be indicated on the stratum plan—
  - (a) if the easement is intended to be created in relation to existing tunnels, pipes, conduits, wires or other similar objects that are underground or within or beneath an existing building—by defining the position of the easements by reference to the objects; and
  - (b) as applying to the whole or part of a lot.
- (8) Subsection (2)(c) does not affect the requirement for the proprietor of the land benefited by an easement to join in a surrender of the easement.
- (9) An easement may be created under this section, and the rights and obligations in the instrument creating the easement are enforceable, whether or not at the time the relevant plan is registered the land burdened and the land benefited are in common ownership.
- (10) In issuing a certificate of title for land benefited or burdened by an easement under this section, the registrar of titles is to record the easement on the certificate of title in a way that the registrar of titles considers appropriate.
- (11) An easement under this section is not extinguished merely because the owner of the land benefited by the easement holds or acquires a greater interest in the land burdened.
- (12) Subsections (1) and (9) have effect despite—
  - (a) the Real Property Acts or any other Act; or
  - (b) any rule of law or equity to the contrary.

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## Division 4                      Valuation

### 132      Valuation of stratum lots

- (1) In valuing land comprised in a stratum plan, the valuer-general must follow the following steps—
  - (a) the land comprised in the stratum plan must be first valued as though the land were a single parcel of land in a single ownership even though the land may consist of 1 or more stratum lots;
  - (b) the value of the land in the stratum plan must then be apportioned between the stratum lots in the stratum plan according to the value proportions allocated in the management statement.
- (2) For the purposes of making, levying and assessing rates, charges and land tax, the value apportioned to each stratum lot is taken to be the value of the stratum lot.
- (3) If the management statement is amended to give effect to a change in the value proportions allocated to a stratum lot, the valuer-general must, on notification of the amendment, make new valuations of the stratum lots affected by the amendment—
  - (a) if the amendment is made under section 123(3)—by apportioning the former value of the former stratum lot the subject of the subdivision between the new stratum lots created by the subdivision according to the new value proportions allocated in the amended management statement; and
  - (b) if the amendment is made under section 124(3)—by taking the total of the former values of the former stratum lots the subject of the amalgamation as the value of the stratum lot created by the amalgamation; and
  - (c) if the amendment is made under section 136(1)(a)—by apportioning the value of the land in the stratum plan between the stratum lots in the stratum plan—

- (i) according to the new value proportion allocated in the amended management statement; or
  - (ii) if the value proportions of some stratum lots remain unchanged—according to the unchanged proportions.
- (4) If a stratum lot in a stratum plan has become a stratum parcel, the value apportioned under this section to the stratum lot is taken to be the value of the stratum parcel for the purposes of division 7 of part 4 of the *Building Units and Group Titles Act 1980*.
- (5) Subsection (1) has effect despite the *Land Valuation Act 2010* or any other Act relating to the valuation or rating of land, but is taken to be a valuation of land under the *Land Valuation Act 2010*.

*Note—*

For ‘value’ see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.

## Division 5                      Management statements

### 133      Requirements of management statement

- (1) The registrar of titles may register a stratum plan only if the plan is accompanied by a statement (*management statement*) that—
  - (a) if the stratum plan subdivides land that includes parts of a building—regulates the building and its site; and
  - (b) if the stratum plan subdivides land on which it is proposed to construct a building—is intended to regulate the proposed building and its site; and
  - (c) complies with sections 137 and 138; and
  - (d) has been approved by the relevant local government.
- (2) However, a stratum plan of subdivision need not be accompanied by a management statement if it subdivides a



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stratum lot on a stratum plan that is already the subject of a management statement.

### **134 Recording of management statement**

- (1) If a management statement is approved by the local government, then, immediately after the registration of the stratum plan to which it relates, the registrar of titles is to record the management statement on the stratum plan.
- (2) If a stratum lot in the stratum plan mentioned in subsection (1) is subsequently subdivided by a building units plan, the registrar of titles is to record the management statement, and any amendments of the management statement, on the building units plan.

### **135 Effect of management statement**

- (1) The management statement is binding on—
  - (a) the body corporate of the building units plan for the part of the building concerned; and
  - (b) a proprietor, lessee, sublessee, occupier or mortgagee of a lot in the building units plan for the part of the building concerned; and
  - (c) a proprietor, lessee, sublessee, occupier or mortgagee of any part of the building or its site that does not form part of a stratum parcel.
- (2) Subsection (1) has effect as if—
  - (a) the management statement included mutual covenants to observe its provisions entered into by each person bound by it; and
  - (b) each person bound had signed the management statement under seal.
- (3) Despite subsections (1) and (2), the management statement does not affect the rights of a person under a lease or mortgage entered into or given before the registration of the stratum plan.

### **136 General provisions that apply to management statement**

- (1) A management statement may restrict use of any part of the building or its site to—
  - (a) the proprietor, lessee or sublessee of a lot in a building units plan; or
  - (b) a body corporate in a building units plan; or
  - (c) the proprietor, lessee or sublessee of a lease of land in any part of the building or its site that does not form part of the stratum parcel.
- (2) A management statement ends, and ceases to bind the persons mentioned in section 134(1), when the registrar of titles records its termination under section 124(8).
- (3) The registrar of titles must provide to the valuer-general and the relevant local government—
  - (a) a copy of a management statement within 28 days after the registration of a stratum plan that is accompanied by the management statement; and
  - (b) a copy of an amendment of a management statement within 28 days after the recording of the amendment.
- (4) If there is an unresolved dispute between persons bound by a management statement concerning the regulation of a building and its site, the dispute must be referred for final resolution to—
  - (a) a single arbitrator agreed on between the persons in dispute; or
  - (b) if the persons do not agree within 14 days of receipt of a written notice given by one person to the other requiring the appointment of an arbitrator—an arbitrator appointed by the local government.
- (5) A reference under subsection (4) is an arbitration under the *Commercial Arbitration Act 2013*.
- (6) If a management statement or an amendment of a management statement has been approved by the local government, the registrar of titles need not determine whether

the statement or amendment complies with this division but may rely on the local government's approval.

### **137 Form of management statement**

A management statement must be in the approved form.

### **138 Matters required for management statement**

- (1) A management statement must include—
  - (a) the real property description of the stratum lots in the stratum plan to which the management statement relates; and
  - (b) a plan that—
    - (i) delineates the external surface boundaries of the site of the building; and
    - (ii) shows the location of the building in relation to the external surface boundaries.
- (2) The management statement must also include particulars relating to the following—
  - (a) the regulation (including, for example, the control and management) of—
    - (i) the building and its site; and
    - (ii) the maintenance, use and enjoyment of the building and its site;
  - (b) the purpose for which a stratum lot or stratum parcel may be used;
  - (c) the establishment of the building management committee and the election of its office-bearers;
  - (d) the composition of the building management committee;
  - (e) the functions of the building management committee and its office-bearers in regulating the building and its site;

- (f) meetings of the building management committee;
  - (g) voting on motions submitted to the building management committee;
  - (h) the voting entitlement of each member of the building management committee;
  - (i) the keeping of records of the business (including meetings) of the building management committee;
  - (j) the way in which the building management committee may enter into contracts and the way in which appropriate indemnities are to be provided to members of the building management committee in relation to contracts entered into by them for the committee;
  - (k) the inspection of documents in the custody or under the control of the building management committee;
  - (l) certification to members of the building management committee and proprietors of lots in a building units plan as to whether there is any amount unpaid by a member or proprietor of a lot in a building units plan under the management statement;
  - (m) the establishment and operation of financial institution accounts by the building management committee;
  - (n) the storage and collection of garbage on and from the building and its site;
  - (o) the location of any restricted property;
  - (p) compliance with fire safety requirements;
  - (q) the apportionment of the value of land comprised in the relevant stratum plan between stratum lots in the stratum plan;
  - (r) the insurance in relation to the building and its site and the apportionment of the cost of insurance premiums;
  - (s) any other matters prescribed by regulation.
- (3) Each body corporate for a building units plan for part of the building, and any other proprietor of land in any part of the

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building or its site, that does not form part of a stratum parcel must be members of the building management committee.

- (4) If a management statement restricts use of any part of the building or its site, the management statement must include the following—
  - (a) a description of the restricted property;
  - (b) details of the persons entitled to use the restricted property;
  - (c) the conditions on which the persons may use the restricted property;
  - (d) particulars relating to—
    - (i) access to the restricted property; and
    - (ii) the keeping and supply of any necessary key;
  - (e) particulars of the hours during which the restricted property may be used;
  - (f) provisions relating to the maintenance of the restricted property;
  - (g) provisions relating to the determination, imposition and collection of levies from the persons entitled to use the restricted property.
- (5) The relevant local government may, in relation to a particular management statement, waive compliance with a matter mentioned in subsection (2) if it considers compliance with the item is unnecessary, unreasonable or impracticable for the regulation of the building and its site or proposed building and its site.
- (6) If the local government waives compliance with a matter mentioned in subsection (2), it must endorse that fact on the management statement.

### **139 Optional matters for management statement**

- (1) A management statement may include particulars relating to any matter concerning the building and its site.

- (2) Without limiting subsection (1), the management statement may include particulars relating to any of the following—
  - (a) safety and security measures;
  - (b) the appointment of a building manager;
  - (c) the control of unacceptable noise levels;
  - (d) prohibiting or regulating trading activities;
  - (e) management and service contracts (which must not be for a term of more than 5 years);
  - (f) an architectural code to preserve the appearance of the building;
  - (g) a landscaping code to preserve the appearance of the building or its site;
  - (h) any matters prescribed by regulation.
- (3) A management statement may include plans and other instruments.

#### **140 Amendment of management statement**

- (1) The particulars in a management statement may only be amended—
  - (a) in relation to a matter mentioned in section 138(2)(d), (h) and (q)—by unanimous resolution of the building management committee; or
  - (b) in relation to—
    - (i) a matter mentioned in section 136(1); or
    - (ii) a change in the purpose for which a stratum lot or a stratum parcel may be used;by a resolution without dissent of the building management committee; or
  - (c) in any other case—by an ordinary resolution passed by the building management committee.



subject to tidal influence is not affected by the inundation or tidal influence.

## **142 Subdivision of submerged land**

- (1) A parcel of land within the site of a scheme that—
  - (a) includes land—
    - (i) that is submerged or subject to tidal influence; and
    - (ii) to which section 141 applies; and
  - (b) does not extend from the shore beyond any quay line;may be subdivided under this Act.
- (2) Permanent above water access must be provided from each lot on the plan effecting the subdivision to—
  - (a) a dedicated road; or
  - (b) the community thoroughfare; or
  - (c) the precinct thoroughfare;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.

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

- (1) 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.
- (2) Subsection (1) has effect only for purposes prescribed by regulation.



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#### **144 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.

#### **145 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 a scheme, or tidal waters above land within the site of a scheme, only to the extent (if any) that it agrees in writing to accept the obligation.

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

- (1) The proprietor of land within the site of a 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.

#### **147 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 laws 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 by-laws or the standard water supply by-laws considers that a standard determined under the by-laws cannot sensibly be applied to a floating building, the committee may determine a different standard that is to apply having regard to the existing standard.

#### **148 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;

any land within the site of a 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.

*Note—*

For ‘value’ see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.

#### **149 Modification of powers of authorities**

- (1) An authority having jurisdiction over the banks and foreshores of tidal waters within the site of a 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)—

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*relevant area* of a site means any foreshore, tidal lands or tidal waters within the site.

## **Part 8                      Thoroughfares, canals and facilities**

### **Division 1                Thoroughfares**

#### **150      Construction of thoroughfares**

- (1) A community thoroughfare to be constructed on community property must be constructed—
  - (a) if the community property is created by the registration of a community plan—by the original applicant; or
  - (b) if the community property is created by the registration of a community plan of subdivision that subdivides a community development lot—by the proprietor of the community development lot.
- (2) A precinct thoroughfare to be constructed on precinct property must be constructed by the proprietor of the lot the subdivision of which creates the precinct property.
- (3) A community thoroughfare or precinct thoroughfare must be constructed—
  - (a) to a design and standard approved by the relevant local government at the time of construction; and
  - (b) in accordance with the requirements of the local government and to its satisfaction; and
  - (c) at the cost of—
    - (i) in a case to which subsection (1)(a) applies—the original applicant; or
    - (ii) in any other case—the proprietor of the relevant subdivided lot.

## **151 Maintenance etc. of thoroughfares**

- (1) The community body corporate is responsible for the maintenance and reconstruction (including construction on relocation) of—
  - (a) the community thoroughfare; and
  - (b) improvements on the community thoroughfare.
- (2) The precinct body corporate is responsible for the maintenance and reconstruction (including construction on relocation) of—
  - (a) the precinct thoroughfare; and
  - (b) improvements on the precinct thoroughfare.

## **152 Dedication of thoroughfare as road**

- (1) In this section—

*required approval* means the prior approval of—

  - (a) each precinct body corporate (if any) determined by comprehensive resolution; and
  - (b) 75% of members of the community body corporate who—
    - (i) are members because they are proprietors of land within the site that is not within the staged use precincts; and
    - (ii) have voting rights at meetings of the community body corporate that total not less than 75% of all of the voting rights of the members of the community body corporate mentioned in subparagraph (i); and
  - (c) the relevant local government; and
  - (d) the Governor in Council.
- (2) The community body corporate may—
  - (a) with the required approval; and

- 
- (b) subject to any reasonable conditions that the local government imposes;
- dedicate under the *Land Act 1962* to public use as a road any part of the community thoroughfare that adjoins a dedicated road.
- (3) The conditions that may be imposed under subsection (2) include a condition that the community body corporate pay to the local government an amount fixed by the local government for the purpose of constructing or reconstructing the road.
- (4) The part of the community thoroughfare that is dedicated to public use as a road ceases to be a part of the community thoroughfare.
- (5) A precinct body corporate may—
- (a) by comprehensive resolution; and
  - (b) with the prior approval of—
    - (i) the relevant local government; and
    - (ii) the Governor in Council; and
  - (c) subject to any reasonable conditions that the local government imposes;
- dedicate under the *Land Act 1962* to public use as a road any part of the precinct thoroughfare that adjoins a dedicated road.
- (6) The conditions that may be imposed under subsection (5) include a condition that the precinct body corporate pay to the local government an amount fixed by the local government for the purpose of constructing or reconstructing the road.
- (7) The part of a precinct thoroughfare that is dedicated to public use as a road ceases to be part of the precinct thoroughfare.

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

- (1) For the purposes of the *Motor Accident Insurance Act 1994*, the community thoroughfare and precinct thoroughfare are roads.

- (2) For the purposes of the *Transport Operations (Road Use Management) Act 1995* (other than part 6), the community thoroughfare and precinct thoroughfare are roads within the meaning of the Act.

## **154 Temporary closure of thoroughfares**

- (1) If—
- (a) the community body corporate or precinct body corporate determines that any work is to be carried out on—
    - (i) the community thoroughfare; or
    - (ii) a precinct thoroughfare; and
  - (b) the work will require the temporary closure to some or all traffic on either thoroughfare;
- the community body corporate or precinct body corporate must give notice of the intended temporary closure of the road.
- (2) The notice must—
- (a) be in writing; and
  - (b) be given not less than 7 days before the intended closure to each proprietor of a lot to which access is likely to be affected by the closure.
- (3) The notice must—
- (a) identify the lots within the site to which access 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 part of the thoroughfare to be closed; and
  - (d) specify the closure periods; and
  - (e) specify the nature of the work to be carried out.
- (4) Subsection (1) does not apply if the work to be carried out is urgent.

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

- (1) Subject to any by-law made by the community body corporate or a precinct body corporate, a person who lawfully occupies land within the site of a scheme has a right of way over the community thoroughfare and precinct thoroughfare to the extent necessary to allow the occupier access to the occupier's land.
- (2) A by-law that, apart from this subsection, would have the effect of unreasonably restricting access to or from land within the site does not apply in relation to the land unless the proprietor and occupier of land consent in writing to the restriction.

## **Division 2 Canals**

### **156 Construction of canals**

- (1) A canal may be constructed within the site of a scheme by the applicant at the applicant's expense.
- (2) A canal may be constructed only on—
  - (a) community property or precinct property; or
  - (b) part of the site that will become community property or precinct property.
- (3) The *Canals Act 1958* (other than the provisions of the Act prescribed by regulation for the purposes of this section) applies 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 section 9 of the *Canals Act 1958* 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.

## **157 Maintenance of canals**

- (1) The community body corporate is responsible for—
  - (a) the dredging and other maintenance of canals on the community property; and
  - (b) the maintenance of improvements relating to the canals on the community property.
- (2) The precinct body corporate is responsible for—
  - (a) the dredging and other maintenance of canals on the precinct property; and
  - (b) the maintenance of improvements relating to the canals on the precinct property.

## **158 Surrender of canal to State**

- (1) In this section—

*required approval* means the prior approval of—

  - (a) each precinct body corporate (if any) determined by comprehensive resolution; and
  - (b) 75% of members of the community body corporate who—
    - (i) are members because they are proprietors of land within the site that is not within any staged use precincts; and
    - (ii) have voting rights at meetings of the community body corporate that total not less than 75% of all of the voting rights of the members of the community body corporate mentioned in subparagraph (i); and
  - (c) the relevant local government; and
  - (d) the Governor in Council.
- (2) The community body corporate may—
  - (a) with the required approval; and



- (b) subject to any reasonable conditions that the local government imposes;
- sign a transfer surrendering to the State community property on which a canal is constructed.
- (3) The conditions that may be imposed under subsection (2) include a condition that the community body corporate pay to the local government an amount fixed by the local government for the maintenance of the canal.
- (4) The part of the community property that is surrendered to the State ceases to be a part of the community property.
- (5) A precinct body corporate may—
- (a) by comprehensive resolution; and
- (b) with the prior approval of—
- (i) the relevant local government; and
- (ii) the Governor in Council; and
- (c) subject to any reasonable conditions that the local government imposes;
- sign a transfer surrendering to the State precinct property on which a canal is constructed.
- (6) The conditions that may be imposed under subsection (5) include a condition that the precinct body corporate pay to the local government an amount fixed by the local government for the maintenance of the canal.
- (7) The part of the precinct property that is surrendered to the State ceases to be part of the precinct property.
- (8) If community property or precinct property on which a canal is constructed is surrendered, the provisions of the *Canals Act 1958* prescribed for the purposes of section 156 again apply.

## **Division 3                      Community and precinct facilities**

### **159      Construction of community facilities**

- (1) The community body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within the site, on—
  - (a) the community property; or
  - (b) land leased by the community body corporate under section 164.
- (2) The development or construction must not start until authorised by the community body corporate by a comprehensive resolution.
- (3) The community body corporate must maintain the community facilities.

### **160      Construction of precinct facilities**

- (1) A precinct body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within a staged use precinct, on—
  - (a) the precinct property; or
  - (b) land leased by the precinct body corporate under section 164.
- (2) The development or construction must not start until authorised by the precinct body corporate by a comprehensive resolution.
- (3) The precinct body corporate must maintain the precinct facilities.

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## **Division 4                      Other matters**

### **161      Additional works on community property**

- (1) At the request of a member of the community body corporate, the community body corporate may undertake works on any part of the community property to enhance the amenity of land or the profitability of any business undertaking within the site.
- (2) Works that restrict vehicular access to part of the site may be undertaken only if each occupier of the land comprising the part consents in writing to the restriction.
- (3) If the works affect a road constructed on the community thoroughfare, the works may be undertaken only if—
  - (a) the relevant local government approves the works; and
  - (b) all conditions of the local government's approval (including conditions about standards of construction) are complied with.
- (4) If the works affect a canal, the works may only be undertaken if the Governor in Council approves the works.
- (5) The community body corporate must recover all the costs of undertaking the works (including the costs incurred in obtaining the approval of the local government, the Governor in Council and any other approvals required by law) from the members of the community body corporate who requested the works.
- (6) If 2 or more members of the community body corporate are liable to pay the costs of undertaking the works, each member must pay the amount determined under subsection (7).
- (7) Each member must 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 the profitability of which is sought to be enhanced is carried on) bears to the total of the voting entitlements of all members liable to contribute towards the costs.

- (8) The community body corporate must levy contributions to give effect to subsections (5), (6) and (7).
- (9) Section 174 applies, with any necessary modifications, to contributions levied under this section.
- (10) Nothing in this section prevents the community body corporate from requiring the members concerned to pay the whole or part of the expected costs of the finished works before the works are started or finished.

## **162 Additional works on precinct property**

- (1) Additional works may be undertaken on precinct property.
- (2) Section 161 applies to additional works undertaken on precinct property as if—
  - (a) a reference to the community body corporate were a reference to the precinct body corporate; and
  - (b) a reference to the community property were a reference to precinct property.

## **163 Leasing of community and precinct property**

- (1) Community property may be leased with the prior approval of the community body corporate by comprehensive resolution.
- (2) Precinct property may be leased with the prior approval of the precinct body corporate by comprehensive resolution.

## **164 Leases to community and precinct bodies corporate**

- (1) For the purposes of providing access to the community thoroughfare or precinct thoroughfare, the community body corporate or precinct body corporate may take a lease of—
  - (a) a road closed in strata that joins, or is to join, the community thoroughfare or precinct thoroughfare; or
  - (b) a wharf that joins, or is to join, the community property or precinct property.

- (2) The community body corporate or precinct body corporate may take a lease of land for any other purpose prescribed by regulation.

## **165 Powers of officials on community or precinct property**

- (1) An authorised person may enter and remain on any part of the community property or the precinct property for the purpose of exercising the person's powers as an authorised person.
- (2) Subsection (1) has effect despite any by-law or decision made by the community body corporate or precinct body corporate.
- (3) In addition to any powers conferred on an authorised person under any Act or law, the person has, in relation to the community property and precinct property, the powers that the person would have under the Act or law if the community property and precinct property were a public place.
- (4) In this section—

*authorised person* means—

- (a) an officer of the public service; or
- (b) a person employed or authorised by the State, a State authority or a local government; or
- (c) an ambulance officer within the meaning of the *Ambulance Service Act 1991*; or
- (d) an officer of the Queensland Fire Service.

## **165A Community property and precinct property is public place for certain purposes**

Community property and precinct property is a public place for the purposes of any law conferring powers or imposing functions on a police officer.

## Part 9 Bodies corporate

### Division 1 Interpretation

#### 166 Definitions

In this part—

*body corporate* means—

- (a) community body corporate; or
- (b) a precinct body corporate.

*corporation* means—

- (a) a community body corporate; or
- (b) a precinct body corporate; or
- (c) a body corporate created by the registration of a building units or group titles plan.

*original owner*, of a precinct development lot that has been subdivided by a building unit or group titles plan, means the person who was the proprietor of the lot immediately before it was subdivided by the plan.

### Division 2 Incorporation of community body corporate

#### 167 Community body corporate

- (1) On registration of the community plan, the proprietors of the community development lots are, because of this Act, a body corporate under the name '*(insert name of development specified in the approved scheme)* Community Body Corporate'.
- (2) If a community development lot is subdivided by a community plan of subdivision, the proprietors of the community development lots created become members of the

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community body corporate in place of the proprietor of the subdivided community development lot.

- (3) If community development lots are amalgamated by a community plan of amalgamation, the proprietor of the community development lot created becomes a member of the community body corporate in place of the proprietors of the amalgamated community development lots.
- (4) If a community development lot is subdivided by a precinct plan, the precinct body corporate created becomes a member of the community body corporate in place of the proprietor of the subdivided community development lot.
- (5) If a community development lot is subdivided under part 6 by a stratum plan, the proprietors of the community stratum lots created become members of the community body corporate in place of the proprietor of the subdivided community development lot.
- (6) If a community development lot is subdivided by a group titles or building units plan, or a community stratum lot is subdivided by a building units plan—
  - (a) the proprietor of the lot—
    - (i) must give written notice to the community body corporate of the name and address for service of the body corporate created by the registration of the plan; and
    - (ii) ceases to be a member of the community body corporate so far as the proprietor was a member because of being the proprietor of the lot; and
  - (b) the body corporate created by the registration of the plan becomes a member of the community body corporate.
- (7) The subdivision or resubdivision of a lot, or of a lot and common property, on a group titles plan by a building units or group titles plan does not affect the membership of the community body corporate.
- (8) The Corporations Act does not apply to the community body corporate.

- (9) The community body corporate—
  - (a) has the powers and functions conferred on it under this Act or its by-laws; and
  - (b) must do all things that are necessary and reasonable for—
    - (i) the enforcement of its by-laws; and
    - (ii) the control, management and administration of the community property.
- (10) The community body corporate—
  - (a) has perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable of suing and being sued in its corporate name.
- (11) Without limiting subsection (10), the community body corporate may—
  - (a) sue and be sued on any contract made by it; or
  - (b) sue for any damage or injury to the community property; or
  - (c) be sued for any matter connected with the community property; or
  - (d) take the legal action necessary to enforce its by-laws.
- (12) If work is carried out on land that becomes community property, then, on registration of the community plan, the community body corporate—
  - (a) is taken to have been a party to an enforceable contract for the carrying out of the work; and
  - (b) may sue or be sued in relation to the contract.



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## **Division 3                      Incorporation of precinct body   corporate**

### **168      Precinct body corporate**

- (1) On registration of the first precinct plan subdividing a community development lot, the proprietors of the precinct development lots and balance precinct development lots created are, because of this Act, a body corporate under the name '*(insert name of development specified in the approved scheme) Precinct Body Corporate (insert (if necessary) unique identifying number)*'.
- (2) If a precinct development lot is subdivided by a precinct plan of subdivision, the proprietors of the precinct development lots created become members of the precinct body corporate in place of the proprietor of the subdivided precinct development lot.
- (3) If precinct development lots are amalgamated by a precinct plan of amalgamation, the proprietor of the precinct development lot created becomes a member of the precinct body corporate in place of the proprietors of the amalgamated precinct development lots.
- (4) If a balance precinct development lot is subdivided by a precinct plan, the proprietors of precinct development lots and any balance precinct development lots created become members of the precinct body corporate.
- (5) If a precinct development lot or balance precinct development lot is subdivided under part 6 by a stratum plan, the proprietors of the precinct stratum lots created become members of the precinct body corporate in place of the proprietor of the subdivided precinct development lot or balance precinct development lot.
- (6) If a precinct development lot or balance precinct development lot is subdivided by a group titles or building units plan, or a precinct stratum lot is subdivided by a building units plan—
  - (a) the proprietor of the lot—

- (i) must give written notice to the precinct body corporate of the name and address for service of the body corporate created by the registration of the plan; and
    - (ii) ceases to be a member of the precinct body corporate so far as the proprietor was a member because of being the proprietor of the lot; and
  - (b) the body corporate created by the registration of the plan becomes a member of the precinct body corporate.
- (7) The subdivision or resubdivision of a lot, or of a lot and common property, on a group titles plan by a building units or group titles plan does not affect the membership of the precinct body corporate.
- (8) The Corporations Act does not apply to the precinct body corporate.
- (9) The precinct body corporate—
  - (a) has the powers and functions conferred on it under this Act or its by-laws; and
  - (b) must do all things that are necessary and reasonable for—
    - (i) the enforcement of its by-laws; and
    - (ii) the control, management and administration of the precinct property.
- (10) The precinct body corporate—
  - (a) has perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable of suing and being sued in its corporate name.
- (11) Without limiting subsection (10), the precinct body corporate may—
  - (a) sue and be sued on any contract made by it; or
  - (b) sue for any damage or injury to the precinct property; or

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- (c) be sued for any matter connected with the precinct property; or
  - (d) take the legal action necessary to enforce its by-laws.
- (12) If work is carried out on land that becomes precinct property, then, on registration of the precinct plan, the precinct body corporate—
- (a) is taken to have been a party to an enforceable contract for the carrying out of the work; and
  - (b) may sue or be sued in relation to the contract.

## **Division 4                    Matters applying to community and precinct bodies corporate**

### **169    Members' nominees**

- (1) A member of a body corporate may appoint a person to represent the member, and to vote on behalf of the member, at meetings of the body corporate.
- (2) If the member is a corporation created by the registration of a building units or group titles plan, the member must appoint a person under subsection (1) at its first annual general meeting.
- (3) A nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.
- (4) An appointment under subsection (1) in relation to a body corporate does not have effect until written notice of the appointment is received by the secretary of the body corporate.
- (5) 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.

- (6) An appointment of a nominee in relation to a body corporate ends when the first of the following happens—
  - (a) the end of 1 year after the appointment;
  - (b) the secretary of the body corporate receives written notice of—
    - (i) the cancellation of the nominee’s appointment; or
    - (ii) the appointment of another nominee.
- (7) A written notice under subsection (4) or (6)(b) must be signed—
  - (a) for an appointment or cancellation made by a member of the body corporate that is a corporation—by the chairperson and secretary of the corporation; or
  - (b) otherwise—by the member.

## **170 Seals of bodies corporate**

- (1) The common seal of a community body corporate must be kept by—
  - (a) the member of the community body corporate, or member of the executive committee, that the community body corporate determines; or
  - (b) if no determination is made—the secretary of the executive committee.
- (2) The common seal of a precinct body corporate must be kept by—
  - (a) if the precinct body corporate is constituted by the proprietor of the community development lot alone—the original applicant; or
  - (b) if the precinct body corporate is constituted by 2 or more members—
    - (i) the member of the precinct body corporate or member of the executive committee that the precinct body corporate determines; or

- (ii) if no determination is made—the secretary of the executive committee.
- (3) The common seal of a body corporate may only be affixed to a document in the presence of—
  - (a) if the body corporate is constituted by 1 member—the member; or
  - (b) if the body corporate is constituted by 2 members—each member; or
  - (c) if the body corporate is constituted by more than 2 members—
    - (i) 2 persons who are members of the body corporate, or executive committee, determined by the body corporate; or
    - (ii) if no determination is made—the secretary and another member of the executive committee.
- (4) A person in whose presence the common seal is affixed to a document must attest the fact and date of the affixing of the seal by the person’s signature.
- (5) If a member is a corporation, the common seal affixed in the presence of a person nominated in writing by the corporation for the purpose and attested by the person is taken to have been properly affixed in the presence of the corporation.
- (6) For the purpose of exercising any of a body corporate manager’s powers, the body corporate manager is entitled to—
  - (a) have the custody of the body corporate’s common seal; and
  - (b) affix it to any document.
- (7) Subsection (6) has effect despite subsections (1) to (5).
- (8) If the body corporate manager affixes the common seal under subsection (6), the manager must attest the fact and date of the affixing of the seal by the manager’s signature.

- (9) If a body corporate manager has affixed the common seal of a body corporate to a document, the manager is taken to have affixed the seal under the authority of a delegation made under section 192 by the body corporate.
- (10) Subsection (9) does not operate to enable a person fraudulently to obtain a benefit from its operation, but any benefit that accrues to a person from its operation is taken not to have been fraudulently obtained if the benefit was first obtained by the person without any fraud by the person.

### **171 Address for service of bodies corporate**

- (1) On the incorporation of a community body corporate under section 167, its address for service is the same as the address for service of the original applicant.
- (2) On the incorporation of a precinct body corporate under section 168, its address for service is the same as the address for service of the proprietor of the community development lot.
- (3) The address for service of a body corporate must be recorded on the plan that creates it.
- (4) If the address for service changes, the body corporate must immediately lodge a notice in the approved form with the registrar of titles specifying the new address.
- (5) The registrar of titles must record the new address for service on the relevant plan.
- (6) A body corporate may change its address for service by an ordinary resolution of the body corporate.

### **172 Meetings of bodies corporate**

- (1) The original applicant of a scheme must—
  - (a) convene a meeting of the community body corporate to be held within 3 months from the day of its incorporation; and
  - (b) ensure that the meeting is held within the period.

Maximum penalty—50 penalty units.

- (2) The proprietor of a community development lot must—
- (a) convene a meeting of the precinct body corporate to be held within 3 months from the day of its incorporation; and
  - (b) ensure that the meeting is held within the period.

Maximum penalty—50 penalty units.

- (3) The agenda for the first meeting of a body corporate under this section must consist of the following items—
- (a) to decide whether the insurance policies entered into by the body corporate should be confirmed, varied or extended;
  - (b) to decide whether amounts that may have been determined under section 177(1)(h) or (2) should be confirmed or varied;
  - (c) if there are more than 3 members of the body corporate—to determine the number of members of the executive committee;
  - (d) to elect—
    - (i) the chairperson, secretary and treasurer of the body corporate; and
    - (ii) other members of the executive committee;
  - (e) to decide whether to make by-laws.
- (4) The meeting is to be the first annual general meeting of the body corporate and at the meeting a chairperson, secretary and treasurer are to be elected.
- (5) A person may be elected to 1 or more of the offices mentioned in subsection (4).
- (6) The original applicant must deliver to the community body corporate, and the proprietor of the community development lot must deliver to the precinct 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 insurance policies) obtained or received by the applicant or proprietor and relating to the community property and any precinct property; and
- (b) if they are in the applicant's or proprietor's possession or control—the body corporate roll, books of account and any notices or other records relating to the community property or the precinct property; and
- (c) the budget showing the estimated expenditure of the body corporate in relation to the community property or the precinct property on an annual basis.

Maximum penalty—50 penalty units.

- (7) Subsection (6) does not apply to a document that—
  - (a) exclusively evidences rights or obligations of the original applicant or proprietor; and
  - (b) is not capable of being used for the benefit of the body corporate or a member of the body corporate (other than the original applicant or proprietor).
- (8) Part 1 of schedule 2 to the *Building Units and Group Titles Act 1980* applies to the first annual general meeting of a body corporate and voting at the meeting.
- (9) Part 2 of schedule 2 to the *Building Units and Group Titles Act 1980* applies to other meetings of a body corporate and voting at the meetings.
- (10) The provisions of the schedule mentioned in subsection (8) relating to the rights and obligations of mortgagees and mortgagors do not apply for the purposes of the subsection.
- (10A) Also, the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 1 and schedule 5, definition *ordinary resolution*.
- (11) The provisions of the schedule mentioned in subsections (8) and (9) are, for the purposes of the subsections, to be read as if—



- (a) a reference to the aggregate lot entitlement were a reference to—
  - (i) in relation to a community body corporate—the total of all voting entitlements specified in the approved scheme; and
  - (ii) in relation to a precinct body corporate—the total of all voting entitlements relating to the community development lot; and
- (b) a reference to a body corporate were a reference to a community body corporate or precinct body corporate; and
- (c) a reference to the by-laws were a reference to the body corporate's by-laws; and
- (d) a reference to the committee were a reference to the body corporate's executive committee; and
- (e) a reference to a lot were a reference to a community development lot, precinct development lot or balance precinct development lot; and
- (f) a reference to the lot entitlement were a reference to—
  - (i) in relation to a community body corporate—the voting entitlement of a member; and
  - (ii) in relation to a precinct body corporate—the voting entitlement that applies to a precinct development lot or balance precinct development lot; and
- (g) a reference to the original proprietor were a reference to—
  - (i) in relation to a community body corporate—the original applicant; and
  - (ii) in relation to a precinct body corporate—the proprietor of the community development lot; and
- (h) a reference to a proprietor were a reference to a proprietor within the meaning given by this Act; and

- (i) a reference to the roll were a reference to the body corporate roll; and
  - (j) a reference to a particular provision of the *Building Units and Group Titles Act 1980* (other than a provision in the schedules) were a reference to the corresponding provision of this Act; and
  - (k) any precinct body corporate were the proprietor of a parcel of land within the site and its voting entitlements were the voting entitlements of the parcel.
- (12) If a meeting of a body corporate is not convened under subsection (1) or (2), the Minister may by written notice—
- (a) appoint a person to convene a meeting of the body corporate; and
  - (b) specify a time within which the meeting is to be held.
- (13) The appointment may only be made on the application of—
- (a) the body corporate; or
  - (b) a member of the body corporate.
- (14) For the purposes of subsections (3) to (11) and (15), a meeting convened under subsection (12) is taken to be the meeting convened under subsection (1) or (2).
- (15) At any time after the meeting convened under subsection (1) or (2) has been held, the Minister may by written notice—
- (a) appoint a person to convene a meeting of the body corporate; and
  - (b) specify a time within which the meeting is to be held.
- (16) The Minister may appoint the person—
- (a) only on the application of a member of the body corporate; and
  - (b) only if—
    - (i) the person is nominated by the applicant; and
    - (ii) the person consents to the nomination; and

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- (iii) there is no executive committee.
- (17) In addition to making an appointment under subsection (12) or (15), the Minister may give any direction relating to the appointment or meeting that the Minister considers appropriate.
- (18) Without limiting subsection (17), but despite this section, the Minister may also give the following directions—
- (a) that the person appointed to convene a meeting of the body corporate must preside at the meeting and, while the person is presiding, the person is taken to be the chairperson of the body corporate;
  - (b) that notice of the meeting may be given in the way specified in the direction.
- (19) Even if, in relation to a community body corporate—
- (a) an appointment is made under subsection (13); or
  - (b) a meeting is convened and held because of an appointment under subsection (13);
- the original applicant remains liable for the contravention of subsection (1).
- (20) Even if, in relation to a precinct body corporate—
- (a) an appointment is made under subsection (13); or
  - (b) a meeting is convened and held because of an appointment under subsection (13);
- the proprietor of the community development lot remains liable for the contravention of subsection (2).

## **172A Change of annual general meeting**

- (1) A body corporate may make written application to the Minister for approval to change the date of its next annual general meeting.
- (2) The body corporate may apply to the Minister to change the date of its next annual general meeting only if—

- (a) the proposed change of date has been stated 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 body corporate in writing of the approval or refusal.
- (5) If the application is approved, the changed date of the annual general meeting is taken to be the anniversary of the first annual general meeting of the body corporate.

*Example—*

The annual general meeting of the body corporate will now be convened under section 177(1)(g) on or after the anniversary of the changed date of the annual general meeting but not later than 2 months after the anniversary.

### **173 Voting entitlements**

- (1) The proprietor of a community development lot or community stratum lot is—
  - (a) a member of the community body corporate; and
  - (b) has the voting entitlement set out in the schedule accompanying the plan that creates the lot.
- (2) If—
  - (a) a community development lot is subdivided by a building units or group titles plan; or
  - (b) a community stratum lot is subdivided by a building units plan;the body corporate created—
  - (c) becomes a member of the community body corporate; and

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- (d) has the same voting entitlement as the previous proprietor of the subdivided lot.
  - (3) If a community development lot is subdivided by a precinct plan under section 86, the precinct body corporate created—
    - (a) becomes a member of the community body corporate; and
    - (b) has the same voting entitlement as the previous proprietor of the subdivided lot.
  - (4) Each proprietor of a precinct development lot, balance precinct development lot or precinct stratum lot—
    - (a) is a member of the precinct body corporate; and
    - (b) has the voting entitlement set out in the schedule accompanying the plan that creates the lot.
  - (5) If—
    - (a) a precinct development lot or balance precinct development lot is subdivided by a building units or group titles plan; or
    - (b) a precinct stratum lot is subdivided by a building units plan;the body corporate created—
    - (c) becomes a member of the precinct body corporate; and
    - (d) has the same voting entitlement as the previous proprietor of the subdivided lot.

## **174 Levies by bodies corporate on members**

- (1) A body corporate may levy—
  - (a) the contributions determined by it under section 177(1)(h); and
  - (b) any amount determined under section 177(2) in relation to the contributions;by giving its members written notice of the contributions payable by them.

- (2) Contributions must be levied, and are payable by the members of the body corporate, in shares proportional to their voting entitlements at the time the contributions are levied.
- (3) If a contribution is outstanding when a person becomes a member of the body corporate, the member is liable for the contribution jointly and severally with the member who previously owed it.
- (4) A contribution—
  - (a) is payable to the body corporate in accordance with its decision to make the levy; and
  - (b) if paid within 30 days from the day on which it becomes payable—is to be reduced by the part of the contribution attributable to any amount determined under section 177(2); and
  - (c) may be recovered as a debt by the body corporate in a court of competent jurisdiction.
- (5) This section does not prevent the body corporate determining, in general meeting (either generally or in a particular case), that a contribution may be reduced under subsection (4)(b) even if the contribution is not paid within the time mentioned in the subsection.

## **175 Power of entry**

- (1) For the purpose of carrying out—
  - (a) any work required to be carried out by a body corporate by a notice served on it by a local government, the State, the Commonwealth or the provider of a public utility service; or
  - (b) any work necessary under section 177(1)(b);the body corporate may, by its employees and agents, enter any part of a lot.
- (2) The entry may be made—
  - (a) in the case of an emergency—at any time; or

- 
- (b) in any other case—at any reasonable time on reasonable notice (not less than 7 days) given to each occupier of a lot likely to be affected by the work.
  - (3) A person must not obstruct or hinder the body corporate in the exercise of its power under subsection (1).

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

## **176 Miscellaneous powers of bodies corporate**

A body corporate may—

- (a) invest amounts held by it in—
  - (i) a way permitted by law for the investment of trust funds; or
  - (ii) an investment prescribed by regulation; and
- (b) borrow amounts, and secure the repayment of amounts and the payment of any interest in a way that is agreed between the body corporate and the lender; and
- (c) enter into an agreement for the provision of amenities or services by it or another person to—
  - (i) a lot; or
  - (ii) the proprietor or occupier of a lot; or
  - (iii) a parcel comprised in a building units or a group titles plan; and
- (d) if the body corporate is a community body corporate—enter into an agreement with a precinct body corporate for the provision of amenities or services by the community body corporate or another person to—
  - (i) a lot within a staged use precinct; or
  - (ii) the proprietor or occupier of a lot within a staged use precinct; or
  - (iii) a parcel comprised in a building units or a group titles plan; and

- (e) acquire and hold any personal property to facilitate the carrying out of its functions.

## **177 Duties of bodies corporate**

- (1) A body corporate must—
  - (a) control, manage and administer for the benefit of its members—
    - (i) the community property or the precinct property held by it; or
    - (ii) any road, wharf or land leased by it under section 164.
  - (b) properly maintain and keep in a state of good and serviceable repair—
    - (i) the community property or the precinct property held by it, including any improvements on the community property or the precinct property; and
    - (ii) any personal property vested in it; and
    - (iii) any road, wharf or land leased by the body corporate under section 164 and any improvements on the road, wharf or land;
  - (c) arrange for insurance under section 182; and
  - (d) keep proper records of—
    - (i) notices given to the body corporate under this or another Act; and
    - (ii) orders made by a court and served on the body corporate; and
  - (e) keep—
    - (i) for at least 10 years after their creation or receipt by or for the 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 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 body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and
- (f) prepare, from the books mentioned in paragraph (e), a proper statement of accounts of the body corporate in relation to each period—
  - (i) starting on the day of its incorporation or the day up to which the last statement was prepared; and
  - (ii) ending on a day not earlier than 2 months before the next annual general meeting; and
- (g) convene an annual general meeting 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 whenever necessary after that, determine the amounts necessary in its opinion to be raised by way of contributions—
  - (i) for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b); or
  - (ii) for the payment of insurance premiums, rates or any other liability of the body corporate (other than amounts referred to in paragraph (l)); and
- (i) on first determining the amounts mentioned in paragraph (h), establish a fund—
  - (i) into which must be paid all amounts received by it (including the proceeds of the sale or other disposal of any personal property of the body corporate and any fees received by it under section 180); and

- (ii) into which may be paid any amounts paid to the body corporate by way of discharge of insurance claims; and
  - (j) levy under section 174, on each person liable, a contribution to raise the amounts mentioned in paragraph (h); and
  - (k) pay any amounts mentioned in paragraph (i) that are received by it and are not otherwise invested under section 176(a) into an account established in a financial institution in the name of the body corporate; and
  - (l) if the body corporate—
    - (i) becomes liable to pay an amount that it is unable to pay immediately; and
    - (ii) is not required under paragraph (j) to levy contributions to meet the liability;levy contributions under section 174 to raise the amount; and
  - (m) implement the decisions of the body corporate.
- (2) For the purposes of section 174, the body corporate may, in relation to contributions mentioned in subsection (1)(h) or (l), determine by comprehensive resolution an amount that is not greater than 10% of the contributions.
- (3) The body corporate may disburse amounts from its fund only for the purpose of—
- (a) carrying out its powers and functions under this Act or its by-laws; or
  - (b) meeting a liability mentioned in subsection (1)(l).
- (4) A determination made by the body corporate under subsection (1)(h) may specify that the amounts concerned are to be raised by specified regular periodic contributions.
- (5) If the body corporate fails to convene an annual general meeting within the period required by subsection (1)(g), the next general meeting held after the expiry of the period is to be the annual general meeting of the body corporate.

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## **178 Body corporate rolls**

- (1) A body corporate must prepare and maintain a body corporate roll.
- (2) The body corporate must record in the body corporate roll the following information—
  - (a) the voting entitlement of each member of the body corporate;
  - (b) the total of the voting entitlements of all members of the body corporate;
  - (c) the name and address for service of each member of the body corporate;
  - (d) the name and address of any person appointed (by written notice addressed to the body corporate) by a member of the body corporate to represent the member at meetings of the body corporate.
- (3) The body corporate must record and maintain in the body corporate roll a copy of its by-laws in force for the time being.

## **179 Notices to be given by members**

- (1) The original applicant must give to the community body corporate a written notice specifying the original applicant's name in full and address for service.  
Maximum penalty—4 penalty units
- (2) The transferor of a community development lot, precinct development lot or balance precinct development lot must give to the body corporate written notice within 7 days after delivery to the transferee of the instrument of transfer in a form capable of immediate registration.  
Maximum penalty—4 penalty units.
- (3) The notice must—
  - (a) identify the lot; and
  - (b) specify the transferee's name in full and an address for service; and

- (c) specify an address for service for the transferor; and
  - (d) specify the day on which the instrument of transfer was delivered to the transferee; and
  - (e) contain a confirmation by the transferee that the information contained in the notice is accurate.
- (4) If the transferor fails to comply with subsection (2), the transferee may give to the body corporate a written notice that—
- (a) identifies the lot; and
  - (b) specifies the transferee's name in full and an address for service; and
  - (c) specifies the day on which the instrument was delivered to the transferee.
- (5) If a person becomes entitled (otherwise than as transferee) to be registered under the Real Property Acts as the proprietor of a lot within the site, the person must give to the body corporate written notice of the entitlement within 7 days of becoming entitled.
- (6) The notice must—
- (a) be in the form of a statutory declaration; and
  - (b) identify the lot; and
  - (c) specify the person's name in full and an address for service; and
  - (d) specify by what right the person became entitled to be registered as the proprietor of the lot; and
  - (e) specify the day on which the person became entitled to be registered.
- (7) If—
- (a) a community development lot, precinct development lot or balance precinct development lot is subdivided by a building units or group titles plan; or

- (b) a community stratum lot or a precinct stratum lot is subdivided by a building units plan;  
the corporation created must notify the body corporate of—
  - (c) its name; and
  - (d) its address for service; and
  - (e) the date it became a corporation.
- (8) If a person has given written notice under this section of an address for service and the address is no longer appropriate, the person must give written notice to the body corporate of a new address for service.
- (9) If—
  - (a) a body corporate believes that a person was required to give notice to it under another provision of this section; and
  - (b) the body corporate has not received the notice;the body corporate may serve a notice on the person under this subsection.
- (10) The notice must—
  - (a) specify the capacity in which the body corporate believes the person was required to give the notice under this section; and
  - (b) require the person to state within 14 days whether or not the person was required to give the notice in the capacity; and
  - (c) if the person was required to give the notice—require the person to give the notice even though the time for giving the notice has expired.
- (11) A person on whom a notice under subsection (9) is served is not entitled to cast a vote at a meeting of the body corporate until the person gives effect to the requirements of the notice.

## **180 Applications for supply of information etc. by bodies corporate**

- (1) If—
- (a) a written application is made to a body corporate requesting it to do any 1 or more of the things specified in section 181; and
  - (b) the application is made by a person who is entitled, under subsection (2) or (3), to make the application; and
  - (c) the applicant pays to the body corporate the reasonable fee determined by it;
- the body corporate must comply with the request.
- (2) An application to a community body corporate may be made only by—
- (a) a member of the community body corporate; or
  - (b) a member of a precinct body corporate; or
  - (c) a proprietor of a lot on—
    - (i) a group titles plan; or
    - (ii) a building units plan; or
  - (d) a person authorised in writing by the member or proprietor.
- (3) An application to a precinct body corporate may be made only by—
- (a) a member of the precinct body corporate; or
  - (b) a member of a corporation that is—
    - (i) constituted by the registration of a group titles or building units plan; and
    - (ii) a member of the precinct body corporate; or
  - (c) a person authorised in writing by the member.

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## **181 Supply of information etc. by bodies corporate**

- (1) A body corporate may be requested, by an application under section 180, to do any of the following things—
- (a) inform the applicant or the applicant's agent of the name and address of each person who is—
    - (i) the chairperson, secretary or treasurer of the body corporate; or
    - (ii) a member of the executive committee;  
within 21 days after the application is received by the body corporate;
  - (b) make available for inspection by the applicant or the applicant's agent—
    - (i) its body corporate roll; or
    - (ii) the notices and orders mentioned in section 177(1)(d); or
    - (iii) the plans, specifications, drawings (showing water pipes, electric cables and drainage), certificates, diagrams and other documents held by it relating to the community property or any precinct property; or
    - (iv) the minutes of general meetings of the body corporate and meetings of the executive committee; or
    - (v) the books of account of the body corporate; or
    - (vi) a copy of the statement of accounts of the body corporate last prepared by it under section 177(1)(f); or
    - (vii) each current insurance policy of the body corporate and the receipt for the premium last paid in relation to the policy; or
    - (viii) any other document in the custody or under the control of the body corporate; or
    - (ix) its by-laws in force for the time being;

- (c) certify, as at the date of the certificate, in relation to particular land—
  - (i) the amount of any regular periodic contributions determined by the body corporate under section 177(1)(h) and (2) and the periods in relation to which the contributions are payable; or
  - (ii) whether any contribution determined under section 177(1)(h) is unpaid and, if so, the amount unpaid and the date on which it was levied; or
  - (iii) whether any contribution levied under section 177(1)(l) is unpaid and, if so, the amount unpaid and the date on which it was levied; or
  - (iv) whether any contribution levied under section 193 is unpaid and, if so, the amount unpaid and the date on which it was levied; or
  - (v) any amount determined under section 177(2) in relation to an unpaid contribution mentioned in this paragraph;and give the certificate to the applicant or the applicant's agent within 21 days after the application is received by the body corporate;
- (d) give to the applicant or the applicant's agent a copy of its by-laws, or a specified part of its by-laws, in force for the time being within 21 days after the application is received by the body corporate.
- (2) A document mentioned in subsection (1)(b) must be made available for inspection at the time and place agreed between the applicant or the applicant's agent and the body corporate.
- (3) However, if the applicant or the applicant's agent and the body corporate do not reach agreement for the purposes of subsection (2) within 3 days after the body corporate receives the application, the body corporate must immediately send to the applicant a written notice specifying a time at which, or a period during which, the document will be made available for inspection by the applicant or the applicant's agent at the body corporate's office.



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- (4) The time or period specified in the notice must be—
    - (a) between 9a.m. and 8p.m; and
    - (b) not later than 10 days after the body corporate receives the application.
  - (5) The body corporate must permit a person to whom its by-laws are made available for inspection to make copies of or take extracts from them.

## **182 Insurance by bodies corporate**

- (1) A body corporate must take out insurance—
  - (a) for each happening against which it is required by law to insure (including any insurance required to be taken out because of the *Workers' Compensation and Rehabilitation Act 2003*); and
  - (b) for damage to property, death or bodily injury happening on or in relation to—
    - (i) in the case of a community body corporate—the community property; or
    - (ii) in the case of a precinct body corporate—the precinct property; or
    - (iii) a road, wharf, or land, leased under section 164 and any improvements on the road, wharf or land; and
  - (c) against the possibility of the members becoming jointly liable because of a claim arising in relation to any other happening against which the body corporate decides to insure by comprehensive resolution.
- (2) The body corporate may also take out insurance for consequences resulting from a happening, damage or claim mentioned in subsection (1).
- (3) Insurance under subsection (1)(b) must be for a cover of—
  - (a) the amount prescribed by regulation; or
  - (b) if no amount is prescribed—\$10,000,000.

- (4) The body corporate may also insure any property in which it has an insurable interest.

### **183 Delegation by corporate members of bodies corporate**

A corporation that is a member of a body corporate may delegate to an individual any power conferred on the corporation under this Act as a member of the body corporate.

### **184 Voting rights**

- (1) A power of voting conferred under this division may be exercised—
- (a) if the member is an infant—by the member’s guardian; or
  - (b) if the member is for any reason unable to control the member’s property—by the person who is authorised by law to control the property; or
  - (c) if the member is a corporation—by the member’s delegate.
- (2) If, on the application of a body corporate or a member, the Supreme Court is satisfied that—
- (a) there is no person able to vote in relation to a voting entitlement; or
  - (b) the person able to vote cannot be found;
- the court may appoint the public trustee or another appropriate person to exercise the powers of voting under this division that the court determines.

### **185 Constitution of executive committee**

- (1) After the first annual general meeting of a body corporate, there is to be an executive committee consisting of—
- (a) the chairperson, secretary and treasurer; and

- (b) any other members elected or appointed under this section.
- (2) If there is only 1 member of the body corporate—
  - (a) the member may make any decision that a properly convened executive committee is required or authorised to make under this Act; and
  - (b) a decision of the member is taken to be a decision of the executive committee.
- (3) If there are not more than 3 members of the body corporate, the executive committee consists of—
  - (a) each member who is an individual or the member's nominee; and
  - (b) the nominee of each member that is a corporation.
- (4) If there are more than 3 members of the body corporate, the executive committee consists of—
  - (a) the chairperson, secretary and treasurer; and
  - (b) the number of other members (not more than 4) determined by the body corporate.
- (5) If the number of members of a body corporate is less than the number of members of the executive committee (including the chairperson, secretary and treasurer), the members of the executive committee are to be elected—
  - (a) at each annual general meeting of the body corporate; or
  - (b) if the number of members of the executive committee changes because of a determination under subsection (4) at a time more than 4 months from the anniversary of its first annual general meeting—at an extraordinary general meeting convened for the purpose.
- (6) A person may be elected to more than 1 of the offices mentioned in subsection (1)(a).
- (7) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general

meeting of the body corporate must be conducted under schedule 1.

- (7A) 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 body corporate; or
    - (ii) a nominee of a corporation that is a member of the body corporate; and
  - (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.
- (8) Despite subsections (1) and (4), the body corporate may determine that the secretary or treasurer is not to be a member of the executive committee.
- (9) If the body corporate makes a determination under subsection (8), a person elected as secretary or treasurer holds the office in relation to the body corporate and the executive committee, but is not a member of the executive committee.
- (10) A member of the executive committee may, with the consent of the executive committee, appoint—
- (a) a member of the body corporate; or
  - (b) the nominee of a corporation that is a member of the body corporate;
- to act in the member's place as a member of the executive committee at any meeting of the executive committee.
- (11) When the appointed member or nominee is acting in the member's place, the appointed member or nominee is taken to be a member of the executive committee.
- (12) The member or nominee may be appointed whether or not the person is already a member of the executive committee.
- (13) If the person appointed is already a member of the executive committee, the person may, at a meeting of the executive committee, separately vote—

- (a) in the person's capacity as a member; and
  - (b) on behalf of the member in whose place the person has been appointed to act.
- (14) Despite subsections (1) and (5), the executive committee may be constituted before the first annual general meeting of a body corporate by the election, at an extraordinary general meeting, of—
- (a) the chairperson, secretary and treasurer; and
  - (b) any other members of the executive committee.
- (15) The following provisions apply to the election of a person at the extraordinary general meeting—
- (a) subsections (6), (8) and (9);
  - (b) part 1 of schedule 2 to the *Building Units and Group Titles Act 1980* (as applied by section 172) that relate to the election of the person.
- (16) If there is no executive committee of a body corporate, the body corporate is to exercise the powers, and perform the functions, of the executive committee.

### **185A Code of conduct for voting members of executive committee**

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

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

- (1) A person elected as chairperson, secretary or treasurer, or another member of the executive committee of a body corporate, vacates the office—
  - (a) if the person was a member of the body corporate at the time of the person's election—if the person ceases to be a member; or
  - (b) if the person was not a member of the body corporate at the time of the person's election—if the member who nominated the person for election—
    - (i) ceases to be a member of the body corporate; or
    - (ii) notifies the body corporate, in writing, that the member's office is vacated; or
  - (c) on receipt by the body corporate of the person's written resignation; or
  - (d) at the next election of the members of the executive committee at an annual general meeting or extraordinary general meeting; or
  - (e) if the person is absent without leave granted by the executive committee from 3 consecutive meetings of the committee of which proper 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 relating to bankruptcy; or
  - (g) if the person is convicted of an indictable offence; or
  - (h) if the person dies or becomes mentally ill; or
  - (i) if the person is removed from office by ordinary resolution of the body corporate under division 8; or
  - (j) if the body corporate, by a comprehensive resolution, determines that the person's office is vacated.

- (2) Subsection (1)(b) does not apply to a person if the person is elected as secretary or treasurer but is not a member of the executive committee.
- (3) If—
- (a) a vacancy happens in the office of—
    - (i) chairperson, secretary or treasurer; or
    - (ii) another member of the executive committee; and
  - (b) the vacancy happens otherwise than because of subsection (1)(d);
- the body corporate must appoint a person eligible for election to fill the vacancy.
- (4) The person appointed under subsection (3) holds office, subject to this section, for the balance of the predecessor's term of office.
- (5) If the number of persons who are members of the executive committee becomes one-half, or less than one-half, of the number of the members of the executive committee, the members for the time being of the executive committee constitute a quorum at a meeting of the executive committee for the purpose only of—
- (a) appointing a person to fill a vacancy in the office of—
    - (i) chairperson, secretary or treasurer; or
    - (ii) another member of the executive committee; or
  - (b) convening a meeting of the body corporate for the purpose mentioned in paragraph (a).
- (6) Subsection (5) has effect despite section 188(1).
- (7) For the purposes of subsection (5), if—
- (a) there is no member of the executive committee; or
  - (b) the members of the executive committee—
    - (i) do not appoint a person to fill the vacancy; and

- (ii) have not convened a meeting of the body corporate to appoint a person to fill the vacancy;

the referee (within the meaning of the *Building Units and Group Titles Act 1980*) may, on the application of a member of the body corporate or a mortgagee of a lot, appoint a person to convene and hold a meeting of the body corporate within a specified time to appoint persons to fill any vacancies.

- (8) The referee may appoint a person only if—
  - (a) the person is nominated by the applicant; and
  - (b) the person consents to the nomination.
- (9) In addition to making the appointment, the referee may give any directions relating to the appointment or the meeting that the referee considers appropriate.
- (10) Without limiting subsection (9), but despite the provisions of schedule 2 of the *Building Units and Group Titles Act 1980* (as applied by section 172), the referee may also give the following directions—
  - (a) that the person appointed to convene a meeting of the body corporate must preside at the meeting and, while the person is presiding, the person is taken to be the chairperson of the body corporate;
  - (b) that notice of the meeting may be given in the way specified in the direction.
- (11) A meeting held under subsections (7) to (10) because there is no member of the executive committee is, for the purpose of the election of—
  - (a) the chairperson, secretary and treasurer; and
  - (b) the other members of the executive committee;taken to be a first annual general meeting of the body corporate.



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

- (1) The chairperson must preside at all meetings of the executive committee at which the chairperson is present.
- (2) If the chairperson is not present at a meeting, the member chosen by the members present at the meeting is to preside.
- (3) A person (other than a person mentioned in subsection (4)) must not exercise a power of the body corporate, or the treasurer, that relates to—
  - (a) the receipt or expenditure of amounts of the body corporate; or
  - (b) the accounting for amounts of the body corporate; or
  - (c) the keeping of the books of account of the body corporate.

Maximum penalty—50 penalty units.

- (4) The following persons may exercise a power mentioned in subsection (3)—
  - (a) the treasurer or the treasurer’s delegate;
  - (b) a person acting jointly with the treasurer because of a direction under subsection (6).
- (5) The treasurer may, with the approval of the executive committee, delegate the treasurer’s powers to a member of the executive committee.
- (6) The executive committee may, by written notice given to the treasurer, direct that the treasurer may exercise a specified power only jointly with a specified person.
- (7) A person who has possession or control of—
  - (a) any records, books of account or keys of the body corporate; or
  - (b) the body corporate roll; or
  - (c) any other property of the body corporate;

must deliver the records, books of account or keys, the roll or the other property to a specified member of the executive committee within 7 days after service on the person of a resolution of the executive committee requiring the delivery.

Maximum penalty—20 penalty units.

## **188 Meetings of executive committee**

- (1) At a meeting of the executive committee, a quorum is constituted by more than half of the number of members of the executive committee.
- (2) At a meeting at which a quorum is present, the decision on any matter of the majority of the members voting on the matter is the decision of the executive committee unless this Act expressly requires or permits the decision to be made in a different way.
- (3) A decision of the executive committee does not have effect if—
  - (a) before the decision is made, written notice is given to the secretary by not less than half of the total number of members of the body corporate stating that the making of the decision is opposed by the members; and
  - (b) the total of the voting entitlements of the members is more than half of the total of all voting entitlements recorded in the body corporate roll.
- (4) The executive committee must keep—
  - (a) a record of—
    - (i) its decisions; and
    - (ii) any notices given to its secretary under subsection (3); and
  - (b) full and accurate minutes of its meetings.

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**188A 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.

**189 Executive committee's decisions to be decisions of body corporate**

- (1) In this section—  
*restricted matter*, in relation to a body corporate, means—

- (a) a matter relating to the fixing of a special levy on all members of the body corporate; or
  - (b) a matter that seeks to alter the rights, privileges or obligations of members of the body corporate; or
  - (c) a matter that seeks to alter the annual contribution of members of the body corporate; or
  - (d) a matter on which a decision may only be made by the body corporate under a comprehensive resolution or in general meeting of the body corporate.
- (2) A decision of the executive committee on a matter that is not a restricted matter is taken to be the decision of the body corporate.
- (3) Even if the executive committee is properly constituted, the body corporate may in general meeting continue to exercise the powers conferred on the body corporate by this Act.

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

- (1) The executive committee of a body corporate may undertake expenditure only if—
- (a) authorised by a comprehensive resolution of the body corporate; or
  - (b) authorised in an emergency by the Minister.
- (2) In relation to any proposed expenditure that the executive committee is unable to undertake because of subsection (1), the executive committee must—
- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate convened for the purpose of, or for purposes that include, consideration of the proposal; and
  - (b) if the proposed expenditure is for work to be performed or the purchase of personal property—submit at least 2 tenders to the meeting with the proposal.
- (3) Subsection (1) does not apply to expenditure—

- (a) in payment of any premium for insurance taken out for the body corporate; or
- (b) to comply with a notice or order served on the body corporate by a court, a local government, the State, the Commonwealth or a provider of a public utility service; or
- (c) in discharge of a liability incurred in relation to an obligation of the body corporate authorised by the body corporate in general meeting.

**191 Restrictions imposed on executive committee by body corporate**

A body corporate may, in general meeting, decide that a matter may be determined only by the body corporate in general meeting.

**192 Community or precinct body corporate manager**

- (1) A body corporate may appoint a body corporate manager.
- (2) The appointment—
  - (a) must be made in general meeting; and
  - (b) must be in writing; and
  - (c) may be made on the terms determined by the body corporate.
- (3) The body corporate may delegate its powers to the body corporate manager.
- (4) Without limiting subsection (3), the body corporate may delegate to the body corporate manager powers of—
  - (a) the chairperson, secretary or treasurer; or
  - (b) the executive committee.
- (5) The body corporate must not delegate to the body corporate manager its power to make a decision on a restricted matter within the meaning of section 189.

- (6) The body corporate must not, within 3 years of its incorporation, appoint a body corporate manager for a term of more than 3 years.

### **193 Costs in proceedings by members against body corporate**

- (1) In a proceeding brought by a member against the body corporate, the court may order that an amount (including an amount for costs) payable by the body corporate be paid by the body corporate only in relation to specified members, and in specified proportions, out of contributions levied for the purpose.
- (2) For the purpose of paying the amount, the body corporate must—
  - (a) levy contributions in accordance with the order; and
  - (b) pay the amount out of the contributions.
- (3) Section 174 applies, with any necessary modifications, to contributions levied under subsection (2).

### **194 Service of documents on bodies corporate, members and others**

- (1) A summons or other legal process may be served on a body corporate by leaving it with—
  - (a) the chairperson or secretary; or
  - (b) another member of the executive committee.
- (2) A document (other than a document mentioned in subsection (1)) may be served on the body corporate—
  - (a) by leaving it with a person mentioned in subsection (1);  
or
  - (b) sending it by post to the body corporate at its address for service.
- (3) Nothing in this section—

- (a) affects the operation of another law that authorises the service of a document otherwise than as provided in the section; or
- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the section.

### **195 Power of bodies corporate to convene meetings**

- (1) A community body corporate may, at the request of a proprietor or occupier of land or a lot within the site, convene a meeting in relation to any matter of interest to proprietors or occupiers of land or lots within the site.
- (2) A proprietor or occupier of land or a lot within the site may attend and vote at the meeting.
- (3) The precinct body corporate may, at the request of a proprietor or occupier of land or a lot within a staged use precinct, convene a meeting in relation to any matter of interest to proprietors or occupiers of land or lots within the staged use precinct.
- (4) A proprietor or occupier of land or a lot within the staged use precinct may attend and vote at the meeting.
- (5) The chairperson of the body corporate must preside at a meeting under subsection (1) or (3)—
  - (a) for the purpose of electing a chairperson of the meeting; and
  - (b) until the election of a chairperson.
- (6) A meeting convened under subsection (1) or (3) is not a meeting of the body corporate.

### **196 Establishment of committees**

Nothing in this Act prevents the body corporate from establishing, by resolution in general meeting, a committee—

- (a) to consider any matter referred to it by the body corporate; and
- (b) to report on the matter to the body corporate or executive committee.

### **197 Agreements between precinct bodies corporate**

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

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

## **Division 5                    Increase in membership of    community body corporate**

### **198 Effect of subdivision of subsequent stage or additional land**

- (1) On registration of the community plan subdividing a subsequent stage or additional land, the proprietors of community development lots become additional members of the community body corporate created by the community plan that subdivided land within the site.
- (2) For the purposes of this division and divisions 2 and 4, on registration of the community plan subdividing a subsequent stage or additional land, the site comprises—
  - (a) the land subdivided; and
  - (b) the other land that formed part of the site before the subdivision of the subsequent stage or additional land.



## **199 Meeting of community body corporate**

- (1) Within 3 months after registration of the community plan subdividing a subsequent stage or additional land, the community body corporate must convene a meeting.
- (2) Section 172 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.

## **200 Levies and funds**

- (1) Within 14 days after registration of the community plan subdividing a subsequent stage or additional land, the community body corporate must determine the amounts mentioned in section 177(1)(h).
- (2) On registration of the community plan subdividing a subsequent stage or additional land, the fund of the community body corporate existing at the time continues in existence.

## **201 Application of divs 2 and 4**

Divisions 2 and 4 apply, with any necessary modifications, to the community body corporate after the registration of the community plan subdividing a subsequent stage or additional land.

## **Division 6                      Proxies for general meetings of bodies corporate**

### **Subdivision 1                Representing precinct bodies corporate at meetings of community bodies corporate**

#### **201A    Application of sdiv 1**

This subdivision applies to the appointment and use of a proxy to represent a precinct body corporate at a general meeting of the community body corporate of which the precinct body corporate is a member.

#### **201B    Appointment [SM, s 107]**

- (1) Subject to subsections (2) to (4), the precinct body corporate may appoint a proxy to act for it at the general meeting.
- (2) The community body corporate may by a comprehensive resolution prohibit the use of proxies—
  - (a) for particular things described in the resolution; or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a comprehensive resolution under subsection (2).
- (4) The appointment of the proxy is effective only if the precinct body corporate or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the community body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the community 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.

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### **201C Use of proxy [SM, s 109]**

- (1) If a member of the community body corporate is the proxy for the precinct body corporate, the member may vote both in the member's own right and also as proxy of the precinct body corporate.
- (2) A vote by proxy must not be exercised on behalf of the precinct body corporate at the general meeting—
  - (a) if the precinct body corporate's nominee is personally present at the meeting, unless the nominee 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 precinct body corporate; or
  - (c) on a ballot for the election of a member of the executive committee of the body corporate, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a comprehensive 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.

### **201D Special provisions about proxy use [SM, s 110]**

- (1) The precinct 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 precinct body corporate's proxy for voting at the general meeting.

[s 201E]

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- (2) A proxy can not be exercised for the precinct body corporate by—
- (a) the original owner of a precinct development lot; or
  - (b) a body corporate manager for—
    - (i) the community body corporate; or
    - (ii) the precinct body corporate; or
    - (iii) a subsidiary body corporate of the community body corporate or precinct body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is one of the proprietors constituting a subsidiary body corporate of the precinct body corporate.

### **201E Offence [SM, s 111]**

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

Maximum penalty—100 penalty units.

## **Subdivision 2 Meetings of precinct bodies corporate**

### **201F Application of sdiv 2**

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

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## 201G 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 precinct body corporate may by a comprehensive resolution prohibit the use of proxies—
  - (a) for particular things described in the resolution; or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a comprehensive resolution under subsection (2).
- (4) A person must not hold—
  - (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 the 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 precinct body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the precinct 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.

## 201H Use of proxy [SM, s 109]

- (1) A member of the precinct body corporate (*member A*) who is the proxy for another member of the 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 general 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 of the body corporate, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a comprehensive 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.

## **201I Special provisions about proxy use [SM, s 110]**

- (1) A member of the precinct 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 precinct development lot; or
- (b) a body corporate manager for—
  - (i) the community body corporate of which the precinct body corporate is a member; or
  - (ii) the precinct body corporate; or
  - (iii) a subsidiary body corporate of the community body corporate or precinct body corporate; or
- (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is one of the proprietors constituting a body corporate that is itself a member of the precinct body corporate.

### **201J 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 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.

## **Subdivision 3 Matters applying to proxies for meetings of community and precinct bodies corporate**

### **201K Form of proxy [SM, s 108]**

A proxy given under this division to represent a person at a general meeting of a body corporate—

- (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

[s 201L]

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- (e) lapses at the end of the 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 the 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.

### **201L How proxy may be exercised [SM, s 109]**

A proxy may be exercised at a general meeting of a body corporate by—

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

## **Division 7 Accounts and audit for precinct bodies corporate**

### **201M Application of div 7**

This division applies to a precinct body corporate for preparing a statement of accounts under section 177(1)(f).

### **201N 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 177(1)(i) and the account established under section 177(1)(k);



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- (b) total contributions under section 177(1)(h) and (l) and 193 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 precinct 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.
- (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.

### **201O Audit [SM, s 155]**

- (1) The precinct 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 precinct body corporate.
- (3) The motion for agreeing to the auditor to be appointed—
  - (a) must be included in the agenda for the general meeting where the motion is to be considered; and

- (b) must include the name of the auditor proposed to be appointed.
- (4) Also, the precinct 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 precinct body corporate.
- (6) On finishing an audit of the precinct 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 precinct body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the precinct 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

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- (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.

*registered company auditor* means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Act, part 9.2.

## **Division 8                      Removal from office of voting members of executive committee for breach of code of conduct**

### **201P Notice for breach of code of conduct [SM, s 34]**

- (1) If a 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;
  - (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 its next general meeting 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.

### **201Q Removal of voting member at general meeting [SM, s 35]**

- (1) This section applies if—
  - (a) a body corporate gives a voting member of its executive committee a notice under section 201P(1); and
  - (b) the period mentioned in section 201P(1)(c) for the notice has ended.
- (2) The body corporate must—
  - (a) include on the agenda of its next general meeting, called after the period mentioned in section 201P(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 member has given another member of the body corporate a response under section 201P(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 9A                      Conduct of body corporate managers, service contractors and letting agents

### Division 1                      Preliminary

#### 201R Definitions for pt 9A

In this part—

*caretaking service contractor*, for a site or precinct or part of a site or precinct, means a service contractor for the site or precinct or part who is also—

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

*code contravention notice* see section 201Z(1).

*financier* see section 201S.

*letting agent* see section 201T(1).

*letting agent authorisation*, for a letting agent, means—

- (a) an authorisation given by a community body corporate to the letting agent to conduct a letting agent business for a site; or
- (b) an authorisation given by a precinct body corporate to the letting agent to conduct a letting agent business for a precinct.

*letting agent business* see section 201T(2).

*management rights*, of a letting agent for a site or precinct, means—

- (a) the letting agent business for the site or precinct, including the letting agent's authorisation; and
- (b) the business conducted by the letting agent under a service contract for the site or precinct, 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).

**precinct** includes a part of a precinct.

**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 a site or precinct.

**service contractor** see section 201U.

**site** includes a part of the site.

**transfer notice** see section 201ZB(b)(ii).

## 201S 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).

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

### **201T Meaning of *letting agent* and *letting agent business***

- (1) A person is a *letting agent* if—
  - (a) a community body corporate authorises the person to conduct a letting agent business for a site; or
  - (b) a precinct body corporate authorises the person to conduct a letting agent business for a precinct.
- (2) A person conducts a *letting agent business* for a site or precinct 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 site or precinct; 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 site or precinct.
- (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

## **201U Meaning of *service contractor* for site or precinct**

A person is a *service contractor* for a site or precinct if—

- (a) the person is engaged by the community body corporate for the site or precinct body corporate for the precinct to supply services to the body corporate for the benefit of the common property or lots included in the site or precinct; and
- (b) the person is not an employee of the community body corporate or precinct 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**

### **201V Code of conduct for body corporate manager and caretaking service contractor**

- (1) The code of conduct in schedule 3 applies to—
  - (a) a body corporate manager appointed by a community body corporate or precinct body corporate in performing obligations under the person's appointment; and
  - (b) a caretaking service contractor engaged by a community body corporate or precinct body corporate in performing obligations for a site or precinct 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.



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- (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.

### **201W Code of conduct for letting agent**

The code of conduct in schedule 4 applies to—

- (a) a letting agent authorised by a community body corporate to conduct a letting agent business for a site; and
- (b) a letting agent authorised by a precinct body corporate to conduct a letting agent business for a precinct.

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

### **Subdivision 1 Preliminary**

#### **201X Application of div 3**

- (1) This division applies for transferring the management rights of a letting agent—
- (a) authorised by a community body corporate to conduct a letting agent business for a site; or
- (b) authorised by a precinct body corporate to conduct a letting agent business for a precinct.
- (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 a site or precinct for which a serviced strata

arrangement or scheme under the Corporations Act is in operation.

## **201Y 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**

### **201Z 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—
    - (i) the code of conduct for letting agents; or
    - (ii) the code of conduct for 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 code contravention

notice, has contravened a provision of a code mentioned in paragraph (a).

### **201ZA 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—
  - (i) the code of conduct for letting agents; or
  - (ii) the code of conduct for body corporate managers and caretaking service contractors.

### **201ZB Requirement for transfer**

The letting agent must transfer the letting agent's management rights for the site or precinct if—

- (a) a ground under section 201ZA 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.

### **201ZC 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 201ZH does not apply—9 months;
      - (ii) if section 201ZH 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—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.

### **201ZD 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.

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## **201ZE Transfer—body corporate’s choice of transferee**

- (1) If the letting agent does not transfer the management rights as required under section 201ZC, 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.
- (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 a tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts have been 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 201ZM.

### **201ZF 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 201ZC or 201ZE.
- (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 201ZJ(1).

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

### **201ZG 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

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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 site or precinct to which the transferred authorisation related; 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 201ZJ(1).

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

### **201ZH 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 201ZB, 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 201ZI.
- (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.

### **201ZI Review criteria**

- (1) The review criteria are each of the following—



- (a) the appropriateness of the reviewable terms for the service contract for achieving a fair and reasonable balance between the interests of the body corporate and 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 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 service contractor;
  - (d) whether the reviewable terms are appropriate for the site or precinct;
  - (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 site or precinct.

### **201ZJ 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**

### **201ZK QCAT jurisdiction**

A party to a dispute about the transfer, under this division, of a letting agent's management rights may apply, as provided under the QCAT Act, for an order of QCAT exercising QCAT's original jurisdiction to resolve the dispute.

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

### **201ZL 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 a site or precinct; or
  - (b) the authorisation of a person as a letting agent for a site or precinct.
- (2) A party to the dispute may apply, as provided under the QCAT Act, for an order of QCAT exercising QCAT's original jurisdiction to resolve the dispute.
- (3) In this section—

*contractual matter*, about the appointment, engagement or authorisation of a body corporate manager, service contractor or letting agent, means—

  - (a) a contravention of the terms of the appointment, engagement or authorisation; or
  - (b) the termination of the appointment, engagement or authorisation; or
  - (c) the exercise of rights or powers under the terms of the appointment, engagement or authorisation; or

- (d) the performance of duties under the terms of the appointment, engagement or authorisation.

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

### **201ZM Termination for failure to comply with remedial action notice [SM, s 131]**

- (1) A community body corporate or precinct 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—
    - (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 201ZE.
- (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 201ZA;
- (c) that the person must, within a 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.

## Part 10 By-laws

### Division 1 Community by-laws

#### 202 Community development control by-laws

- (1) The community body corporate may, by comprehensive resolution, make by-laws (*community development control by-laws*) regulating the quality of design and development within the site.

- (2) The community development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the site.
- (3) The community development control by-laws may provide—
  - (a) that specified matters in relation to design and development are able to be decided by the community body corporate; and
  - (b) a mechanism for deciding disputes in relation to design and development.
- (4) However, a mechanism provided for in a community development control by-law under subsection (3)(b) cannot limit section 214B.

### **203 Community activities by-laws**

The community body corporate may, by comprehensive resolution, make by-laws (*activities by-laws*) for the control, management, use or enjoyment of lots (other than community property or precinct property) within the site.

### **204 Application of community development control by-laws and community activities by-laws**

- (1) Community development control by-laws and activities by-laws—
  - (a) may apply to the whole of the site or a particular part of the site; and
  - (b) do not have effect until—
    - (i) the Minister approves the by-laws; and
    - (ii) notification of the Minister’s approval is published in the gazette; and
  - (c) subject to subsection (3), do not affect the operation of any Act or other law.
- (2) The community development control by-laws and the activities by-laws bind—

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- (a) the community body corporate; and
  - (b) the members of the community body corporate; and
  - (c) the proprietors of lots created by the registration of a building units or group titles plan; and
  - (d) a precinct body corporate; and
  - (e) the members of a precinct body corporate; and
  - (f) the proprietors of lots created in a staged use precinct by the registration of a building units or group titles plan; and
  - (g) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the site; and
  - (h) a lessee or occupier of a lot within the site.
- (3) A community development control by-law or activity by-law prevails to the extent of any inconsistency with—
- (a) a precinct by-law; or
  - (b) a by-law made by a body corporate under the *Building Units and Group Titles Act 1980*.

## **205 Minor noncompliance with community development control by-laws or community activities by-laws**

On the written request of a person bound by a community development control by-law or activity by-law, the community body corporate may permit noncompliance with the by-law if it is satisfied that the noncompliance is of a minor nature.

## **206 Community property by-laws**

- (1) Subject to subsection (5), the community body corporate may, by comprehensive resolution, make by-laws (*property by-laws*) for the control, management, administration, use or enjoyment of the community property.
- (2) A community property by-law does not have effect until—

- (a) the Minister approves the by-law; and
  - (b) notification of the Minister's approval is published in the gazette.
- (3) If land has access to a dedicated road by way of the community property, a lease of the land is taken to contain an agreement by the lessee that the lessee must comply with the property by-laws.
- (4) The property by-laws bind—
- (a) the community body corporate; and
  - (b) the members of the community body corporate; and
  - (c) the proprietors of lots created by the registration of a building units or group titles plan; and
  - (d) a precinct body corporate; and
  - (e) the members of a precinct body corporate; and
  - (f) the proprietors of lots created in a staged use precinct by the registration of a building units or group titles plan; and
  - (g) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the site; and
  - (h) a lessee or occupier of a lot within the site.
- (5) A property by-law may not prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.
- (6) A property by-law may apply to all the community property or a particular part of the community property specified in the by-law.
- (7) A property by-law does not affect the operation of any other Act or law.



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## 206A Restricted community property by-laws

- (1) The community body corporate may make by-laws under section 206 that restrict the use of any part of the community property (*restricted community property*) to—
  - (a) a member of the community body corporate; or
  - (b) a body corporate created by the registration of a building units or group titles plan; or
  - (c) a proprietor of a lot created by the registration of a building units or group titles plan; or
  - (d) a precinct body corporate; or
  - (e) a member of a precinct body corporate; or
  - (f) a proprietor of a lot created in a staged use precinct by the registration of a building units or group titles plan; or
  - (g) a lessee or occupier of a lot within the site; or
  - (h) someone else while the person is engaged in construction works in the site or in a future development area or subsequent stage.
- (2) Despite section 206(1), the by-law may only be made by resolution without dissent.
- (3) The by-law may restrict the use of community property that is to be created in a subsequent stage.
- (4) To remove any doubt, the by-law made may give the use of restricted community property to the person who is, for the time being, the proprietor or other person mentioned in that subsection.
- (5) The by-law that restricts the use of any part of the community property—
  - (a) must include—
    - (i) subject to paragraph (c), a description of the restricted community property; and
    - (ii) details of the persons entitled to use the restricted community property; and

- (iii) the conditions on which the persons may use the restricted community property; and
  - (b) may include—
    - (i) particulars about—
      - (A) access to the restricted community property; and
      - (B) the keeping and supply of any necessary key; and
    - (ii) particulars of the hours when the restricted community property may be used; and
    - (iii) provisions about the maintenance of the restricted community property; and
    - (iv) provisions about imposing and collecting levies from the persons entitled to use the restricted community property; and
  - (c) need not describe the restricted community property, if—
    - (i) the by-law prescribes a way of identifying the property; or
    - (ii) the by-law authorises a person to identify the property; and
  - (d) may authorise a person to allocate the use of the restricted community property.
- (6) If a person identifies the restricted community property under a by-law mentioned in subsection (5)(c), the person must, as soon as practicable, give the community body corporate a description of the property.
- (7) If a person allocates the use of the restricted community property under a by-law mentioned in subsection (5)(d), the person must, as soon as practicable, give the community body corporate details of the persons to whom use of the property has been allocated.

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- (8) The description and details given to the community body corporate under subsection (6) or (7) are taken to be a by-law made under section 206 when both the description and details are received by the community body corporate.
  - (9) The community body corporate must give a by-law made or taken to be made under this section to the Minister for approval under section 206 as soon as practicable but not later than 3 months after it is made or taken to be made.  
Maximum penalty—50 penalty units.
  - (10) If the by-law is approved by the Minister, the Minister must give details of the by-law to the registrar of titles as soon as practicable after the Minister approves it.
  - (11) A by-law made under this section does not have effect until the registrar of titles has recorded details of the by-law on the relevant community plan.

## **207 Application of community by-laws to leased areas**

The community by-laws may apply to a road, wharf or any other land leased to the community body corporate under section 164.

## **Division 2 Precinct by-laws**

### **208 Precinct development control by-laws**

- (1) A precinct body corporate may, by comprehensive resolution, make by-laws (*precinct development control by-laws*) regulating the quality of design and development within the staged use precinct.
- (2) The precinct development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the staged use precinct.
- (3) The precinct development control by-laws may provide—

- (a) that specified matters in relation to design and development are able to be decided by the precinct body corporate; and
  - (b) a mechanism for deciding disputes in relation to design and development.
- (4) However, a mechanism provided for in a precinct development control by-law under subsection (3)(b) cannot limit section 214C.

## **209 Precinct activities by-laws**

A precinct body corporate may, by comprehensive resolution, make by-laws (*activities by-laws*) for the control, management, use or enjoyment of lots (other than precinct property) within the staged use precinct.

## **210 Application of precinct development control by-laws and precinct activities by-laws**

- (1) Precinct development control by-laws and activities by-laws—
- (a) may apply to the whole of the staged use precinct or a particular part of the staged use precinct; and
  - (b) do not have effect until—
    - (i) the Minister approves the by-laws; and
    - (ii) notification of the Minister’s approval is published in the gazette; and
  - (c) subject to subsection (3), do not affect the operation of any Act or other law.
- (2) The precinct development control by-laws and the activities by-laws bind—
- (a) the precinct body corporate; and
  - (b) the members of the precinct body corporate; and

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- (c) the proprietors of lots in the staged use precinct created by the registration of a building units or group titles plan; and
  - (d) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the staged use precinct; and
  - (e) a lessee or occupier of a lot within the staged use precinct.
- (3) A precinct development control by-law or activity by-law prevails to the extent of any inconsistency with a by-law made by a body corporate under the *Building Units and Group Titles Act 1980*.

## **211 Minor noncompliance with precinct development control by-laws or precinct activities by-laws**

On the written request of a person bound by a precinct development control by-law or activity by-law, the precinct body corporate may permit noncompliance with the by-law if it is satisfied that the noncompliance is of a minor nature.

## **212 Precinct property by-laws**

- (1) Subject to subsection (5), the precinct body corporate may, by comprehensive resolution, make by-laws (*property by-laws*) for the control, management, administration, use or enjoyment of the precinct property.
- (2) A precinct property by-law does not have effect until—
  - (a) the Minister approves the by-law; and
  - (b) notification of the Minister's approval is published in the gazette.
- (3) If a lot or common property has access to a dedicated road or community property by way of the precinct property, a lease of the lot or property is taken to contain an agreement by the lessee that the lessee must comply with the property by-laws.
- (4) The property by-laws bind—

- (a) the precinct body corporate; and
  - (b) the members of a precinct body corporate; and
  - (c) the proprietors of lots created in the staged use precinct by the registration of a building units or group titles plan; and
  - (d) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the staged use precinct; and
  - (e) a lessee or occupier of a lot within the staged use precinct.
- (5) A property by-law may not prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.
- (6) A property by-law may apply to all the precinct property or a particular part of the precinct property specified in the by-law.
- (7) A property by-law does not affect the operation of any other Act or law.

### **212A Restricted precinct property by-laws**

- (1) The precinct body corporate may make by-laws under section 212 that restrict the use of any part of the precinct property (*restricted precinct property*) to—
- (a) a member of the precinct body corporate; or
  - (b) a body corporate created by the registration of a building units or group titles plan in the precinct; or
  - (c) a proprietor of a lot created by the registration of a building units or group titles plan in the precinct; or
  - (d) a proprietor of a lot created in a staged use precinct by the registration of a building units or group titles plan in the precinct; or
  - (e) a lessee or occupier of a lot in the precinct; or

- (f) someone else while the person is engaged in construction works in the site or in a future development area or subsequent stage.
- (2) Despite section 212(1), the by-law may only be made by resolution without dissent.
- (3) The by-law may restrict the use of precinct property that is to be created in a subsequent stage.
- (4) To remove any doubt, the by-law may give the use of restricted precinct property to the person who is, for the time being, the proprietor or other person mentioned in that subsection.
- (5) The by-law that restricts the use of any part of the precinct property—
  - (a) must include—
    - (i) subject to paragraph (c), a description of the restricted precinct property; and
    - (ii) details of the persons entitled to use the restricted precinct property; and
    - (iii) the conditions on which the persons may use the restricted precinct property; and
  - (b) may include—
    - (i) particulars about—
      - (A) access to the restricted precinct property; and
      - (B) the keeping and supply of any necessary key; and
    - (ii) particulars of the hours when the restricted precinct property may be used; and
    - (iii) provisions about the maintenance of the restricted precinct property; and
    - (iv) provisions about imposing and collecting levies from the persons entitled to use the restricted precinct property; and

- (c) need not describe the restricted precinct property if—
    - (i) the by-law prescribes a way of identifying the property; or
    - (ii) the by-law authorises a person to identify the property; and
  - (d) may authorise a person to allocate the use of the restricted precinct property.
- (6) If a person identifies the restricted precinct property under a by-law mentioned in subsection (5)(c), the person must, as soon as practicable, give the precinct body corporate a description of the property.
- (7) If a person allocates the use of the restricted precinct property under a by-law mentioned in subsection (5)(d), the person must, as soon as practicable, give the precinct body corporate details of the persons to whom use of the property has been allocated.
- (8) The description and details given to the precinct body corporate under subsection (6) or (7) are taken to be a by-law made under section 212 when the description and details are received by the precinct body corporate.
- (9) The precinct body corporate must give a by-law made or taken to be made under this section to the Minister for approval under section 212 as soon as practicable but not later than 3 months after it is made or taken to be made.
- Maximum penalty—50 penalty units.
- (10) If the by-law is approved by the Minister, the Minister must give details of the by-law to the registrar of titles as soon as practicable after the Minister approves it.
- (11) A by-law made under this section does not have effect until the registrar of titles has recorded details of the by-law on the relevant precinct plan.



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**213 Application of precinct by-laws to leased areas**

The precinct by-laws may apply to a road, wharf or any other land leased to the precinct body corporate under section 164.

**Part 11 Miscellaneous**

**Division 1 Fire safety**

**214 Fire safety requirements**

Despite the *Fire and Emergency Services Act 1990* or any other Act relating to fire safety, but without compromising the principles of fire safety in those Acts, in issuing a fire safety approval for a building within the site, the relevant fire authority and fire safety officer must take into account—

- (a) this Act; and
- (b) the physical structure of the building as opposed to its title boundaries; and
- (c) the kinds of subdivision permitted by this Act; and
- (d) any management statement regulating the building and its site under part 6; and
- (e) other matters relating to fire safety approvals for buildings situated within the site that may be prescribed by regulation.

**Division 2 Resolution of particular disputes**

**214A 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 201ZK, 201ZL, 214B or 214C; and
  - (b) is subject to section 214D.

### **214B Dealing with matter relating to community development control by-law**

- (1) QCAT may deal with a matter relating to—
  - (a) the application of a community development control by-law for a site to a person mentioned in subsection (2)(b), (c) or (d); or
  - (b) a contravention or alleged contravention of a community development control by-law for a site.
- (2) Each of the following persons may apply to QCAT to deal with a matter under subsection (1) if the person has standing to make the application—
  - (a) the community body corporate that made the by-law;
  - (b) a subsidiary body corporate of the community body corporate;
  - (c) a subsidiary body corporate of a precinct body corporate that is a member of the community body corporate;
  - (d) a proprietor or occupier of, or a person having an estate or interest in, a lot in the site.
- (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 precinct in a site alleges the amenity of the lot has been, or will be, adversely affected by development authorised under a community development control by-law in an adjoining precinct in the site.

- (4) This section is subject to section 214D.

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**214C Dealing with matter relating to precinct development control by-law**

- (1) QCAT may deal with a matter relating to—
  - (a) the application of a precinct development control by-law for a precinct to a person mentioned in subsection (2)(b) or (c); or
  - (b) a contravention or alleged contravention of a precinct development control by-law for a precinct.
- (2) Each of the following persons may apply to QCAT to deal with a matter under subsection (1) if the person has standing to make the application—
  - (a) the precinct body corporate that made the by-law;
  - (b) a subsidiary body corporate of the precinct body corporate;
  - (c) a proprietor or occupier of, or a person having an estate or interest in—
    - (i) a lot in the precinct or in another precinct in the site; or
    - (ii) a lot on a group titles plan or building units plan subdividing a community development lot on the site; or
    - (iii) a community stratum lot on the site; or
    - (iv) a lot on a building units plan subdividing a community stratum lot on the site.
- (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.
- (4) This section is subject to section 214D.

**214D Internal dispute resolution processes to be used before application**

- (1) Subsection (2) applies to 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 214A(1).

- (2) The referee must not decide the application unless the referee is satisfied the applicant has made reasonable attempts to resolve the dispute by using internal dispute resolution processes.
- (3) Subsection (4) applies to QCAT for deciding an application about a matter relating to—
  - (a) a community development control by-law under section 214B(1); or
  - (b) a precinct development control by-law under section 214C(1).
- (4) QCAT must not decide the application unless QCAT is satisfied the applicant has made reasonable attempts to resolve the matter by using—
  - (a) if the application relates to a dispute (a *design and development dispute*) mentioned in section 202(3)(b) or 208(3)(b) and the community or precinct development control by-law provides a mechanism for deciding the dispute—the mechanism provided under the by-law; or
  - (b) otherwise—internal dispute resolution processes.
- (5) In this section—

*internal dispute resolution processes* includes the following—

  - (a) the parties to the dispute communicating with each other about the dispute;
  - (b) the applicant writing about the dispute to the executive committee for the community body corporate or precinct body corporate, as relevant;
  - (c) the applicant causing a motion relevant to deciding the dispute to be presented for consideration at a general meeting of the community body corporate or precinct body corporate, as relevant.

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## **Division 3                      Other matters**

### **214E 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 or de facto 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, one 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 a community development lot, precinct development lot or a lot on a building units or group titles plan and a letting agent 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.

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

- (1) The fee determined by the local government must accompany—
  - (a) an application for approval under this Act; or
  - (b) a plan lodged with the local government for its approval under this Act.
- (2) The fee must be reasonable.

## **216 Chief executive may approve forms**

- (1) The chief executive may approve forms for use for the purposes of this Act.
- (2) A person may request the chief executive to give the person a document setting out a form approved under subsection (1).
- (3) The chief executive must promptly comply with the request.

## **217 Delegation by Minister**

The Minister may delegate the Minister's powers under this Act to an officer of the public service.

## **218 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—

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

## Part 12                      Bretts Wharf development

### 219      Definitions

In this part—

*body corporate* means a body corporate created by registration of a building units or group titles plan over land in Bretts Wharf Hamilton.

*Bretts Wharf Hamilton* means the land described as lot 267 on plan SL 11523, County of Stanley, Parish of Toombul.

*common property* means the common property, within the meaning of the *Building Units and Group Titles Act 1980*, of a building units plan or group titles plan registered over land in Bretts Wharf Hamilton.

*resolution without dissent* has the meaning given by the *Building Units and Group Titles Act 1980*.

*restricted property area* means the part of the common property in relation to which exclusive use and control is granted to the community body corporate by a by-law made under section 221.

## **220 Redevelopment is a mixed use development**

For the purposes of this Act, a redevelopment of Bretts Wharf Hamilton is taken to be a mixed use development whether or not it consists of 2 or more different classes of uses.

## **221 Restricted property by-laws**

- (1) A body corporate may, by resolution without dissent, make a by-law (*restricted property by-law*) giving to the community body corporate the exclusive use and control of any part of the common property identified in the by-law.
- (2) A restricted property by-law does not have effect until—
  - (a) the Minister approves the by-law; and
  - (b) the registrar of titles has recorded a notification on the registered plan under section 30(3) of the *Building Units and Group Titles Act 1980*.
- (3) If a restricted property by-law is made—
  - (a) the restricted property area is taken to be community property for the purposes of section 177(1)(a) and (b) and sections 206 and 206A; and
  - (b) the other by-laws of the body corporate do not apply to the restricted property area; and
  - (c) the community body corporate is not bound by the by-laws of the body corporate; and
  - (d) the *Building Units and Group Titles Act 1980* (other than sections 22, 23, 37(1), 37(2) and 37A) applies to the restricted property area and a body corporate; and



- (e) for the purposes of the by-law and despite paragraph (c), the community body corporate is taken to be an occupier of a lot in the building units or group titles plan that created the body corporate that made the by-law.
- (4) A restricted property by-law may be made, amended, or repealed within 3 months of registration of the plan that creates the body corporate that makes the by-law, without the consent of the community body corporate.
- (5) However, after 3 months, a restricted property by-law may be made, amended, or repealed only with the consent of the community body corporate by comprehensive resolution.

## **222 Application of Building Units and Group Titles Act**

The *Building Units and Group Titles Act 1980* applies, subject to this part, to a redevelopment of Bretts Wharf Hamilton.

# **Part 13 Validation**

## **223 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 214A 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 14**                      **Transitional provisions for Local Government Electoral Act 2011**

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

#### **224**      **Definitions for pt 14**

In this part—

*commencement* means commencement of this section.

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

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

#### **225**      **Deferred application of particular provisions**

The following provisions do not apply until the effective day—

- (a) section 185A and schedule 2;
- (b) part 9, divisions 6 to 8.

#### **226**      **Application of code of conduct for existing voting members of executive committees**

- (1) This section applies to a person who—
  - (a) immediately before the effective day, is a voting member of the executive committee of the community body corporate or precinct body corporate; and
  - (b) on the effective day, continues to be a voting member of the executive committee.

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- (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.

**227 Auditing accounts for first annual general meeting after evaluation day**

- (1) This section applies if—
- (a) before the effective day—
    - (i) a precinct body corporate authorised a person to prepare a statement of accounts of the body corporate under section 177(1)(f) for adoption at the body corporate's next 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 201O does not apply for auditing the statement of accounts for the period to which the authorisation relates.

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

**228 Deferred application of particular provisions**

The following provisions do not apply until the effective day—

- (a) part 9A, divisions 2, 3, 4 and 5;
- (b) schedules 3 and 4.

**229 Application of code of conduct for existing body corporate managers and caretaking service contractors**

- (1) This section applies to a person who—

- (a) immediately before the effective day is—
    - (i) the body corporate manager of a community body corporate or precinct body corporate; or
    - (ii) a caretaking service contractor for a site or precinct or part of a site or precinct; and
  - (b) on the effective day, continues to be the body corporate manager of the body corporate or caretaking service contractor for the site or the precinct or the part of the site or precinct.
- (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.

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

- (1) This section applies to a person who—
- (a) immediately before the effective day, is a letting agent for a site or precinct or part of a site or precinct; and
  - (b) on the effective day, continues to be a letting agent for the site or precinct or the part of the site or precinct.
- (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.

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# Schedule 1      Election of executive committee members of bodies corporate

section 185(7)

## 1      Definitions for sch 1

In this schedule—

*body corporate* means a community body corporate or precinct body corporate.

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

*chairperson* means the chairperson of the executive committee.

*eligibility category*, for a candidate, means the category of person mentioned in section 185(7) to which the candidate belongs.

*executive committee* means the executive committee of the 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.

*required number*, of members of the executive committee, means the number of members of the executive committee required under section 185 of the Act.

*secretary* means the secretary of the executive committee.

*treasurer* means the treasurer of the executive 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.
- (3) The value of any vote able to be cast for a lot included in a scheme, or a part of a 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 scheme or part of the scheme.

### **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 of the body corporate.
- (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 of a candidate for election, the secretary must forward

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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 of the body corporate.
- (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 169 of this Act—
    - (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 169 of this Act; or
- (c) if the member is a corporation other than a subsidiary body corporate—a director, secretary or other person nominated by the corporation for this section.

## **5 Conduct of elections for executive committee by secret ballot [SM, s 21]**

- (1) This section states how a secret ballot required 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, state the names of the



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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 169—
    - (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, 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—
    - (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.

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**6 Conduct of elections for executive committee by open ballot [SM, s 22]**

- (1) This section states how an open ballot required 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 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 169—
    - (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 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.

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- (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 for a ballot, may watch the count for the ballot.
- (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

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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.

**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 section 4, 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.

- (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 names of the members 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 names of the members 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 for the ballot.

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## **Schedule 2      Code of conduct for voting members of executive committees**

section 185A(1) and schedule 5, definition *code of conduct*

### **1      Commitment to acquiring understanding of Act, including this code**

A voting member of the executive committee of a community body corporate or precinct 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 person 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 a community body corporate for a site—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the site; or

- (ii) for a voting member of the executive committee of a precinct body corporate for a precinct—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the precinct.

#### **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.

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## **Schedule 3      Code of conduct for body corporate managers and caretaking service contractors**

section 201V(1) and schedule 5, definition *code of conduct*

### **1      Knowledge of Act, including code**

A body corporate manager or caretaking service contractor appointed or engaged by a community body corporate or precinct body corporate for a site or precinct must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions under the person's appointment or engagement.

### **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 performed 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 site or precinct

## **9 Conflict of duty or interest**

The body corporate manager or caretaking service contractor for a site or precinct must not accept another appointment or

engagement if doing so will place the person's functions or interests as the manager or contractor in conflict with the person's functions or interests for the other appointment or engagement.

*Example of another appointment or engagement—*

an appointment as the body corporate manager or an engagement as a caretaking service contractor for another site or precinct

## **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.

## **Schedule 4      Code of conduct for letting agents**

section 201W and schedule 5, definition *code of conduct*

### **1      Honesty, fairness and professionalism**

A letting agent must act honestly, fairly and professionally in conducting the letting agent business at a site or precinct 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 community body corporate or precinct body corporate that has given the letting agent's authorisation; and
- (b) individual owners of lots in the site or precinct.

### **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.



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## 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 site or precinct
- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the site or precinct

## 7 **Nuisance**

The letting agent must not—

- (a) cause a nuisance or hazard at the site or precinct; or
- (b) interfere unreasonably with the use or enjoyment of a lot in the site or precinct; or
- (c) interfere unreasonably with the use or enjoyment of common property in the site or precinct 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 in the site or precinct.

## 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.

## Schedule 5 Dictionary

### section 3

***access*** means access by road.

***additional land***, in relation to a site, means land outside the site that is added to the site.

***applicant***, in relation to a mixed use scheme—

- (a) if the community plan has not been registered—means the applicant for approval of a scheme, and includes the applicant’s executors, administrators, successors and assigns; or
- (b) if the community plan has been registered—means the community body corporate.

***approved form*** means a form approved by the chief executive under section 216.

***associate***, of a person, means someone else with whom the person is associated under section 214E.

***balance precinct development lot*** of a mixed use scheme means the lot that may remain after a community development lot is subdivided by a precinct plan.

***body corporate***—

- (a) for part 9, see section 166; or
- (b) for schedule 1, see schedule 1, section 1.

***body corporate manager***, for a community body corporate or precinct body corporate, means a person appointed by the body corporate under section 192.

***body corporate roll***, in relation to a community body corporate or precinct body corporate, means the body corporate roll mentioned in section 178.

***boundary adjustment plan*** means a plan that adjusts the boundary of a lot within the site.

**building management committee** means the building management committee for a management statement.

**building unit lot** means a lot shown on a building units plan.

**building units plan** has the meaning given by the *Building Units and Group Titles Act 1980*.

**canal** has the meaning given by the *Canals Act 1958*.

**candidate**, for schedule 1, see schedule 1, section 1.

**caretaking service contractor** see section 201R.

**code contravention notice**, for part 9A, see section 201Z(1).

**code of conduct** means—

- (a) for a voting member of the executive committee of a community body corporate or precinct body corporate—the code in schedule 2; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 3; or
- (c) for a letting agent—the code in schedule 4.

**community body corporate**, in relation to community development lots and community property lots, means the body incorporated by the registration of the community plan.

**community development control by-laws** see section 202(1).

**community development lot** of a mixed use scheme means a lot on the community plan that is not a community property lot.

**community facilities** of a mixed use scheme means facilities on community property.

**community plan**, in relation to a mixed use scheme, means the plan or plans subdividing the site into—

- (a) at least 1 community development lot; and
- (b) at least 1 community property lot.

**community plan of amalgamation** means a plan for the amalgamation of 2 or more community development lots.

**community plan of subdivision** means a plan for the subdivision of a community development lot.

**community property** of a mixed use scheme means the community property lots of the scheme.

**community property lot** of a mixed use scheme means a lot shown on the community plan as community property.

**community thoroughfare** of a mixed use scheme means a part of the community property that is to provide access to community development lots.

**comprehensive resolution**, in relation to a community body corporate or precinct body corporate, means a resolution—

- (a) that is passed at a properly convened meeting of the body corporate; and
- (b) for which the members that vote in favour have not less than 75% of the voting entitlements recorded in its body corporate roll.

**corporation**, for part 9, see section 166.

**drainage** includes drainage for the product of rain, storm, soakage, a spring or seepage.

**eligibility category**, for schedule 1, see schedule 1, section 1.

**executive committee**, for schedule 1, see schedule 1, section 1.

**executive member**, for schedule 1, see schedule 1, section 1.

**financial year**, for a community body corporate or precinct body corporate, means a period in relation to which the body corporate is required under section 177(1)(f) to prepare a statement of accounts.

**financier**, for part 9A, see section 201S.

**floating building** means a building constructed or to be constructed on a flotation system that—

- (a) is or is to be supported by water; and
- (b) is not intended for or useable in navigation; and
- (c) is or is to be permanently moored.

**future development area** has the meaning given by section 35.

**group title lot** means a lot shown on a group titles plan.

**group titles plan** has the meaning given by the *Building Units and Group Titles Act 1980*.

**letting agent** see section 201T(1).

**letting agent authorisation**, for part 9A, see section 201R.

**letting agent business** see section 201T(2).

**majority resolution**, for a properly convened general meeting of a community body corporate or precinct 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 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**, for part 9A, see section 201R.

**management statement** has the meaning given by section 133.

**mixed use development** means a development, or proposed development, that consists of 2 or more different classes of uses.

**mixed use scheme** means a scheme for a mixed use development approved by the Governor in Council under this Act, and includes any amendments of the scheme and any approval of a subsequent stage.

**nominee**, of a member of a community body corporate or precinct body corporate, means a person appointed by the member under section 169(1).

**ordinary member**, for schedule 1, see schedule 1, section 1.

**ordinary resolution** means—

- (a) for a properly convened general meeting of a community body corporate or precinct body corporate—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 body corporate roll; or
- (b) for a properly convened general meeting of a building management committee—a resolution that is passed by the members of the management committee whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the management statement establishing the committee.

**original applicant** means the applicant for approval of a scheme, and includes the applicant's executors, administrators, successors and assigns.

**original owner**, for part 9, see section 166.

**planning scheme** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**plan of development** of a mixed use scheme means the scale plan, or the amended scale plan, of development for the scheme approved by the relevant local government.

**plan of survey** of land includes 2 or more plans of survey each relating to a different part of the land and together relating to all of the land.

**precinct**, of a mixed use scheme—

- (a) means generally a part of the site identified in the scheme as a precinct; and
- (b) for part 9A, see also section 201R.

**precinct body corporate**, in relation to a mixed use scheme, means the body incorporated by the registration of a precinct plan subdividing a community development lot.

**precinct development control by-laws** see section 208(1).

**precinct development lot** of a mixed use scheme means a lot on a precinct plan that is not a precinct property lot.

***precinct facilities*** of a mixed use scheme means facilities on precinct property.

***precinct plan***, in relation to a mixed use scheme, means a plan that subdivides—

- (a) a community development lot; or
- (b) a balance precinct development lot.

***precinct plan of amalgamation*** means a plan for the amalgamation of 2 or more precinct development lots.

***precinct plan of subdivision*** means a plan for the subdivision of a precinct development lot.

***precinct property*** of a mixed use scheme means the precinct property lots of the scheme.

***precinct property lot*** of a mixed use scheme means a lot shown on a precinct plan as precinct property.

***precinct thoroughfare*** of a mixed use scheme means a part of the precinct property that is to provide access to precinct development lots or balance precinct development lots.

***proprietor*** of a lot means the person registered, or entitled to immediate registration, under the Real Property Acts as the proprietor of the lot.

***provisional approval*** means the approval of a future development area.

***quay line***, in relation to a mixed use scheme, means a line identified in the scheme as a quay line.

***Real Property Acts*** means the *Real Property Act 1861* and the *Real Property Act 1877*.

***registered valuer*** means a valuer registered under the *Valuers Registration Act 1992*.

***relevant body corporate debt*** means any of the following amounts 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

***resolution without dissent***, in relation to a community body corporate, precinct body corporate or building management committee, means a resolution—

- (a) that is passed at a properly convened meeting of the body corporate or committee; and
- (b) against which no vote is cast.

***restricted property*** means part of a building or its site, or part of a proposed building or its site, the use of which is restricted by a management statement.

***reviewable terms***, for part 9A, see section 201R.

***review advice***, for part 9A, see section 201R.

***road*** means any way that allows the traffic of vehicles that can reasonably be expected to require access over the way.

***scheme*** means a mixed use scheme.

***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***, for part 9A, see section 201R.

***service contractor*** see section 201U.



**site**, of a mixed use scheme—

- (a) means generally the site of the scheme; and
- (b) for part 9A, see also section 201R.

**special building** means a building—

- (a) constructed, or designed to be constructed, on land; and
- (b) the foundations of which extend from land above high-water mark to land below high-water mark.

**staged use precinct** means a precinct that is to be subdivided and developed in stages.

**stratum boundary adjustment plan** means a plan that provides for minor adjustments to the boundaries of stratum lots.

**stratum lot** means a lot on a stratum plan that is limited wholly or partly in height or depth, or both.

**stratum parcel** means a parcel created by the subdivision of a stratum lot by a building units plan.

**stratum plan** means a plan of subdivision that subdivides land into stratum lots.

**stratum plan of amalgamation** means a plan that amalgamates 2 or more, or all, stratum lots in a stratum plan.

**stratum plan of subdivision** means a plan that subdivides a stratum lot into 2 or more stratum lots.

**subsequent stage** has the meaning given by section 40.

**subsidiary body corporate**—

- (a) of, or in relation to, a community body corporate, means—
  - (i) a precinct body corporate that is a member of the community body corporate; or
  - (ii) a body corporate created by the registration of a building units or group titles plan that is a member of the community body corporate; or

- (b) of, or in relation to, a precinct body corporate, means a body corporate created by the registration of a building units or group titles plan that is a member of the precinct body corporate.

***transfer notice***, for part 9A, see section 201ZB(b)(ii).

***unanimous resolution***, in relation to a community body corporate, precinct body corporate or building management committee, means a resolution—

- (a) that is unanimously passed at a properly convened meeting of the body corporate or committee; and
- (b) for which all members of the body corporate or committee are present personally or by proxy, or vote in writing, at the time of the motion.

***use*** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

***voting member***, of the executive committee of a community body corporate or precinct body corporate, see section 185A(1).