



# Sanctuary Cove Resort Act 1985

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Queensland

# Sanctuary Cove Resort Act 1985

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# Sanctuary Cove Resort Act 1985

## An Act relating to the development of ‘Sanctuary Cove Resort’ at Hope Island in the State of Queensland

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Sanctuary Cove Resort Act 1985*.

#### 2 Commencement

- (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.
- (2) Except as provided by subsection (1), this Act shall commence on a day appointed by proclamation.

#### 3A Sanctuary Cove Resort

For the purposes of this Act, Sanctuary Cove Resort comprises the site and the adjacent site.

#### 4 Definitions

The dictionary in schedule 9 defines particular words used in this Act.

#### 4A Meaning of *approved use* for a zone or part of a zone

An *approved use* for a zone or part of a zone is—

- (a) a use for the zone or part that is approved under a regulation as a use for the zone or part; or

- (b) if a change of a use for the zone or part is approved under part 2AA, the use for the zone or part as changed and approved under a regulation.

#### **4B Meaning of *proposed use plan* of the site and adjacent site**

- (1) The *proposed use plan* of the site is—
  - (a) the plan of survey of the site that was approved under section 8(4) or (7) as in force immediately before 2 October 2009; or
  - (b) if an amendment of the plan is approved under section 8(2) or 12M—the amended plan for the time being approved.
- (2) However, if a plan of survey is approved under section 7(4), the *proposed use plan* of the site is—
  - (a) the plan of survey approved under that subsection; or
  - (b) if an amendment of the plan is approved under section 8(2) or 12M—the amended plan for the time being approved.
- (3) The *proposed use plan* of the adjacent site is—
  - (a) the plan of survey of the adjacent site that was approved under section 12D(4) or 12D(7) as in force immediately before 2 October 2009; or
  - (b) if an amendment of the plan is approved under section 12D(2) or 12M—the amended plan for the time being approved.
- (4) However, if a plan of survey is approved by the local government under section 12C(4), the *proposed use plan* of the adjacent site is—
  - (a) the plan of survey approved under that subsection; or
  - (b) if an amendment of the plan is approved under section 12D(2) or 12M—the amended plan for the time being approved.

- (5) To remove any doubt, it is declared that the approval of an amendment of the proposed use plan of the site or adjacent site under section 12M does not limit the later amendment and approval of the plan under section 8(2) or 12D(2).

#### **4C 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 The site and subdivision of the site**

### **Division 1 The site**

#### **5 The site**

- (1) Subject to subsection (2), the *site* is the area of land shown on the initial plan of survey of the site.
- (2) If the initial plan of survey is amended under part 2AA by varying the boundary of the site, the *site* is the area of land shown on the initial plan of survey as amended.
- (3) Notwithstanding any other Act or law, the site includes land within the boundaries of the site that is or may be or becomes inundated by water or subject to tidal influence and any estate or interest held in that land before the land becomes inundated or became subject to tidal influence is not affected by the inundation or being subject to tidal influence.
- (4) Despite the *Local Government Act 2009*, the site forms part of the Gold Coast city local government area constituted under that Act.

## **6 Grant of Crown land to the company**

The power conferred by the *Land Act 1962* on the Governor in Council to grant in fee simple any Crown land within Queensland includes power, upon payment of such amount as the Governor in Council determines, to grant Crown land within the site to the company in fee simple in priority to and to the exclusion of all other persons, notwithstanding the provisions of the *Land Act 1962*.

## **Division 2 Zones**

### **7 Approval of plan of survey**

- (1) The primary thoroughfare body corporate may lodge with the local government a plan of survey showing the zones of the site substantially in the form set out in schedule 7.
- (2) If the local government considers it appropriate that a boundary of a zone shown on the plan should differ from the boundary of the zone as shown in schedule 7, it may require the primary thoroughfare body corporate to lodge an amended plan showing the different boundary.
- (3) The plan of survey must include a schedule stating—
  - (a) for each of the residential zones, the maximum number of group title lots or building unit lots into which each zone may be subdivided for residential purposes; and
  - (b) the total of the maximum number of, not more than 1,100, group title lots and building unit lots into which all of the residential zones within the site may be subdivided for residential purposes.
- (4) The local government may approve the plan if it is satisfied—
  - (a) the plan adequately defines the boundaries of all the zones within the site; and
  - (b) the number of building unit lots and group title lots under subsection (3)—



- 
- (i) is appropriate to the nature of the proposed development of the site; and
    - (ii) is not more than the maximum number under subsection (3)(b).
  - (5) The local government must—
    - (a) keep the proposed use plan; and
    - (b) give a copy of the plan to—
      - (i) the registrar of titles; and
      - (ii) the chief executive.
  - (6) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
    - (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and
    - (b) the group title lots or building unit lots created from the subdivision must be counted.

## **8 Amendment of proposed use plan for minor boundary variation**

- (1) The primary thoroughfare body corporate may lodge with the local government a plan of survey (the *amending plan*) varying the boundaries of the zones as shown on the proposed use plan of the site.
- (2) The local government may approve the amending plan if it is satisfied—
  - (a) the plan adequately defines the boundaries of all the zones within the site; and
  - (b) the number of building unit lots and group title lots stated in the schedule included with the plan—
    - (i) is appropriate to the nature of the proposed development of the site; and

- (ii) is not more than the relevant maximum for the site;  
and
  - (c) the variation of the boundaries is of a minor nature and does not substantially prejudice the rights of any person.
- (3) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
  - (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and
  - (b) the group title lots or building unit lots created from the subdivision must be counted.
- (4) The local government must—
  - (a) keep the approved amending plan; and
  - (b) give a copy of it to—
    - (i) the registrar of titles; and
    - (ii) the chief executive.
- (5) In this section—

*relevant maximum*, for the site, means—

  - (a) if the proposed use plan of the site is the proposed use plan under section 4B(1)—900; or
  - (b) if the proposed use plan of the site is the proposed use plan under section 4B(2)—1,100.

## 9 Town planning provisions

- (1) Despite the Planning Act, the local government's planning scheme under that Act does not apply to the site.
- (2) However, any agreement entered into by the former Albert Shire Council prior to the commencement of this section shall continue to have force and effect.

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- (3) For the Planning Act, the use of land or a building or other structure in a part of a zone of the site for an approved use for the part is taken to be a lawful use under that Act.
  - (4) A person must not use land, or erect or use a building or other structure, in a part of a zone of the site for a use that is not an approved use for the part.

Maximum penalty—20 penalty units.

- (5) In this section—

*erect*, in relation to a building or other structure, includes the following—

- (a) doing work for the purpose of erecting the building or structure;
- (b) carrying out structural work, alterations or additions or rebuilding the building or structure;
- (c) moving the building or structure or rebuilding it, with or without alteration—
  - (i) within a parcel of land; or
  - (ii) from one parcel of land to another parcel of land; or
  - (iii) so that part of the building or structure is on a parcel of land and another part of the building or structure is on another parcel of land.

## **Division 3                      Initial subdivision**

### **10                      Initial subdivision within the site**

- (1) Upon the company becoming the proprietor of all land within the site, there shall be lodged with the registrar of titles a plan of survey of the site subdividing the site into—
  - (a) a lot or lots which comprise or together comprise the primary thoroughfare; and

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- (b) lots which together comprise the balance of the land in the site each of which lots shall be wholly within a zone.
- (2) The registrar of titles shall not register the plan of survey lodged with the registrar pursuant to subsection (1) unless the plan has endorsed thereon the approval of the local government.
- (3) When the plan of survey is submitted to the local government for its approval, it shall be accompanied by a schedule setting out in respect of each lot within each residential zone the maximum number of group title lots or building unit lots into which that lot may be subdivided for residential purposes.
- (4) The local government shall not approve the plan of survey unless it is satisfied that the plan fulfils the requirements of subsection (1) and that the maximum number of group title lots or building unit lots into which a zone may be subdivided does not exceed and is not less than 90% of the number specified for that zone in the proposed use plan.
- (5) The schedule that in accordance with subsection (3) accompanied the plan of survey shall be retained by the local government.
- (6) A copy of the plan of survey and of the schedule referred to in subsection (3) shall be forwarded to the chief executive.
- (7) Notwithstanding any other Act, for the purposes of subsection (2), a lot shall be taken to have access to a dedicated road if—
  - (a) in the case of a lot that comprises or forms part of the primary thoroughfare—the primary thoroughfare adjoins a dedicated road;
  - (b) in the case of any other lot—that lot adjoins a lot that comprises wholly or partly the primary thoroughfare.
- (8) A plan of survey may from time to time be lodged with the registrar of titles—
  - (a) to enable part of the land comprising the primary thoroughfare to cease to be part of the primary

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- thoroughfare and other land to become part of the primary thoroughfare; or
- (b) to amend the initial plan of survey in accordance with a variation of the boundary of a zone approved by—
- (i) the local government under section 8(2); or
  - (ii) the Governor in Council under section 12M.
- (9) The registrar of titles shall not register a plan of survey lodged with the registrar under subsection (8)(a) or (b)(i) unless the plan has endorsed thereon the approval of the local government.
- (9A) The local government shall not approve a plan of survey to be lodged under subsection (8)(a) or (b)(i) unless it is satisfied that access to any land within the site or the adjacent site will not be restricted or if access is restricted the proprietor of that land consents to that restriction.
- (9B) A copy of the plan of survey shall be forwarded to the chief executive.
- (10) Upon registration of a plan of survey lodged with the registrar of titles pursuant to subsection (8), the initial plan of survey as amended by the firstmentioned plan shall become the initial plan of survey.

## **11 Effect of registration of initial plan of survey**

Upon registration by the registrar of titles of the initial plan of survey, then but not otherwise the following sections of this Act (other than of part 2A) shall take effect.

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

- (1) The company shall as soon as practicable lodge with the registrar of titles all documents necessary to transfer the lot or lots shown on the initial plan of survey that comprise the primary thoroughfare within the site to the primary thoroughfare body corporate.

- (1A) The primary thoroughfare body corporate shall not be required to make any payment or provide any consideration for such transfer.
- (2) Nothing in this section shall operate to relieve the company of its obligation to effect at its expense the initial construction of the primary thoroughfare to the standard prescribed pursuant to section 51.

## **Part 2A                      The adjacent site and subdivision of the adjacent site**

### **Division 1                      The adjacent site**

#### **12A      The adjacent site**

- (1) Subject to subsection (2), the *adjacent site* is the area of land shown on the initial plan of survey of the adjacent site.
- (2) If the initial plan of survey of the adjacent site is amended under part 2AA by varying the boundary of the adjacent site, the *adjacent site* is the area of land shown on the initial plan of survey of the adjacent site as amended.
- (3) Notwithstanding any other Act or law the adjacent site includes land within the boundaries of the adjacent site that is or may be or becomes inundated by water or subject to tidal influence and any estate or interest held in that land before the land becomes inundated or became subject to tidal influence is not affected by the inundation or being subject to tidal influence.
- (4) Despite the *Local Government Act 1993*, the adjacent site forms part of the Gold Coast city local government area constituted under that Act.
- (5) Subject to subsection (6) but notwithstanding any other provision of this Act, land within the site (as defined in section 5) may, for the purposes of this Act, be treated as being within a zone of the adjacent site if—

- (a) it abuts land within the adjacent site; and
  - (b) it is zoned for residential use; and
  - (c) its zoning corresponds with that of the land it abuts within the adjacent site; and
  - (d) the land is not already included in a subdivision or resubdivision of the site by means of a building units plan or group titles plan.
- (6) Where pursuant to subsection (5) land within the site is included in a plan of survey subdividing or resubdividing a secondary lot within the adjacent site by means of a building units plan or group titles plan, the plan shall not be approved if—
- (a) the aggregate of the areas of the land within the site and included in the plan and of all other land within the site previously treated under subsection (5) as being within the adjacent site exceeds 5ha; or
  - (b) the total number of building unit lots and group title lots permitted within the adjacent site would be exceeded if the plan were to be approved; or
  - (c) the total number of building unit lots and group title lots approved for the relevant zone of the adjacent site would be exceeded if the plan were to be approved.

## **12B Grant of Crown land to the company**

The power conferred by the *Land Act 1962* on the Governor in Council to grant in fee simple and Crown land within Queensland includes power, upon payment of such amount as the Governor in Council determines, to grant Crown land within the adjacent site to the company in fee simple and priority to and to the exclusion of all other persons, notwithstanding the provisions of the *Land Act 1962*.

## **Division 2                      Zones in the adjacent site**

### **12C      Approval of plan of survey**

- (1) The primary thoroughfare body corporate may lodge with the local government a plan of survey showing the zones of the adjacent site substantially in the form set out in schedule 8.
- (2) If the local government considers it appropriate that a boundary of a zone shown on the plan should differ from the boundary of the zone as shown in schedule 8, it may require the primary thoroughfare body corporate to lodge an amended plan showing the different boundary.
- (3) The plan of survey must include a schedule stating—
  - (a) for each of the residential zones, the maximum number of group title lots or building unit lots into which each zone may be subdivided for residential purposes; and
  - (b) the total of the maximum number of, not more than 900, group title lots and building unit lots into which all of the residential zones within the site may be subdivided for residential purposes.
- (4) The local government may approve the plan if it is satisfied—
  - (a) the plan adequately defines the boundaries of all the zones within the adjacent site; and
  - (b) the number of building unit lots and group title lots under subsection (3)—
    - (i) is appropriate to the nature of the proposed development of the adjacent site; and
    - (ii) is not more than the maximum number under subsection (3)(b).
- (5) The local government must—
  - (a) keep the proposed use plan; and
  - (b) give a copy of the plan to—
    - (i) the registrar of titles; and



- (ii) the chief executive.
- (6) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
  - (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and
  - (b) the group title lots or building unit lots created from the subdivision must be counted.

## **12D Amendment of proposed use plan for minor boundary variation**

- (1) The primary thoroughfare body corporate may lodge with the local government a plan of survey (the *amending plan*) varying the boundaries of the zones as shown on the proposed use plan of the adjacent site.
- (2) The local government may approve the amending plan if it is satisfied—
  - (a) the plan adequately defines the boundaries of all the zones within the adjacent site; and
  - (b) the number of building unit lots and group title lots stated in the schedule included with the plan—
    - (i) is appropriate to the nature of the proposed development of the adjacent site; and
    - (ii) is not more than the relevant maximum for the adjacent site; and
  - (c) the variation of the boundaries is of a minor nature and does not substantially prejudice the rights of any person.
- (3) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
  - (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and

- (b) the group title lots or building unit lots created from the subdivision must be counted.
- (4) The local government must—
  - (a) keep the approved amending plan; and
  - (b) give a copy of it to—
    - (i) the registrar of titles; and
    - (ii) the chief executive.
- (5) In this section—

*relevant maximum*, for the adjacent site, means—

  - (a) if the proposed use plan of the adjacent site is the proposed use plan under section 4B(3)—1,100; or
  - (b) if the proposed use plan of the adjacent site is the proposed use plan under section 4B(4)—900.

## 12E Town planning provisions

- (1) Despite the Planning Act, the local government's planning scheme under that Act does not apply to the adjacent site.
- (2) However, any agreement entered into by the former Albert Shire Council prior to the commencement of this section shall continue to have force and effect.
- (3) For the Planning Act, the use of land or a building or other structure in a part of a zone of the adjacent site for an approved use for the part is taken to be a lawful use under that Act.
- (4) A person must not use land, or erect or use a building or other structure, in a part of a zone of the adjacent site for a use that is not an approved use for the part.

Maximum penalty—20 penalty units.
- (4A) Notwithstanding subsection (4), any building or other structure that, immediately before the commencement of section 19 of the *Sanctuary Cove Resort Act Amendment Act 1989*, was within the administration zone may, on and from

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that commencement, be used for any purpose for which buildings or structures within the administration zone are permitted to be used until 31 December 1996 or such later date as is declared by order in council made before 31 December 1996.

(5) In this section—

*erect*, in relation to a building or other structure, includes the following—

- (a) doing work for the purpose of erecting the building or structure;
- (b) carrying out structural work, alterations or additions or rebuilding the building or structure;
- (c) moving the building or structure or rebuilding it, with or without alteration—
  - (i) within a parcel of land; or
  - (ii) from one parcel of land to another parcel of land; or
  - (iii) so that part of the building or structure is on a parcel of land and another part of the building or structure is on another parcel of land.

## **Division 3                      Initial subdivision of adjacent site**

### **12F      Initial subdivision within the adjacent site**

- (1) Upon the company becoming the proprietor of all land within the adjacent site, there shall be lodged with the registrar of titles a plan of survey of the adjacent site subdividing the adjacent site into—
  - (a) a lot or lots which comprises or together comprise the primary thoroughfare; and
  - (b) lots which together comprise the balance of the land in the adjacent site each of which lots shall be wholly within a zone.

[s 12F]

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- (2) The registrar of titles shall not register the plan of survey lodged with him pursuant to subsection (1) unless the plan has endorsed thereon the approval of the local government.
- (3) When the plan of survey is submitted to the local government for its approval, it shall be accompanied by a schedule setting out in respect of each lot within each residential zone the maximum number of group title lots or building unit lots into which that lot may be subdivided for residential purposes.
- (4) The local government shall not approve the plan of survey unless it is satisfied that the plan fulfils the requirements of subsection (1) and that the maximum number of group title lots or building unit lots into which a zone may be subdivided does not exceed and is not less than 90% of the number specified for that zone in the proposed use plan of the adjacent site.
- (5) The schedule that in accordance with subsection (3) accompanied the plan of survey shall be retained by the local government.
- (6) A copy of the plan of survey and of the schedule referred to in subsection (3) shall be forwarded to the chief executive.
- (7) Notwithstanding any other Act, for the purposes of subsection (2), a lot shall be taken to have access to a dedicated road if—
  - (a) in the case of a lot that comprises or forms part of the primary thoroughfare—the primary thoroughfare adjoins a dedicated road;
  - (b) in the case of any other lot—that lot adjoins a lot that comprises wholly or partly the primary thoroughfare.
- (8) A plan of survey may from time to time be lodged with the registrar of titles—
  - (a) to enable part of the land comprising the primary thoroughfare to cease to be part of the primary thoroughfare and other land to become part of the primary thoroughfare; or

- (b) to amend the initial plan of survey in accordance with a variation of the boundary of a zone approved by—
  - (i) the local government under section 12D(2); or
  - (ii) the Governor in Council under section 12M.
- (9) The registrar of titles shall not register a plan of survey lodged with the registrar under subsection (8)(a) or (b)(i) unless the plan has endorsed thereon the approval of the local government.
- (9A) The local government shall not approve a plan of survey to be lodged under subsection (8)(a) or (b)(i) unless it is satisfied that access to any land within the site or the adjacent site will not be restricted or if access is restricted the proprietor of that land consents to that restriction.
- (9B) A copy of the plan of survey shall be forwarded to the chief executive.
- (10) Upon registration of a plan of survey lodged with the registrar of titles pursuant to subsection (8), the initial plan of survey of the adjacent site as amended by the firstmentioned plan shall become the initial plan of survey of the adjacent site.

## **12G Effect of registration of initial plan of survey of the adjacent site**

Upon registration by the registrar of titles of the initial plan of survey of the adjacent site, then but not otherwise the following sections of this Act shall take effect in respect of the adjacent site.

## **12H Transfer of primary thoroughfare to primary thoroughfare body corporate**

- (1) The company shall as soon as practicable lodge with the registrar of titles all documents necessary to transfer the lots or lots shown in the initial plan of survey of the adjacent site that comprise the primary thoroughfare within the adjacent site to the primary thoroughfare body corporate.

[s 12I]

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- (1A) The primary thoroughfare body corporate shall not be required to make any payment or provide any consideration for such transfer.
- (2) Nothing in this section shall operate to relieve the company of its obligations to effect at its expense the initial construction of the primary thoroughfare to the standard prescribed pursuant to section 51.

## **Part 2AA                      Amendments by application to Minister**

### **12I      Amendment applications**

- (1) The primary thoroughfare body corporate may apply to the Minister under this part for any of the following amendments—
  - (a) changing an approved use for a zone or part of a zone by—
    - (i) replacing the use with a different approved use; or
    - (ii) including an additional approved use for the zone or part;
  - (b) amending the proposed use plan of the site or the proposed use plan of the adjacent site by—
    - (i) replacing a zone name with a different zone name; or
    - (ii) varying the boundary of a zone on the plan, other than a variation to which section 8(2) or 12D(2) applies;
  - (c) amending the initial plan of survey of the site by varying the boundary of the site;
  - (d) amending the initial plan of survey of the adjacent site by varying the boundary of the adjacent site.

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- (2) Each of the plans mentioned in subsection (1)(b) to (d) is a *relevant plan*.

## **12J Members to be notified of proposed amendment**

- (1) Before making the application, the primary thoroughfare body corporate must—
- (a) give a written notice to each of the members of the primary thoroughfare body corporate and each of the members of the principal body corporate stating—
    - (i) the nature of the proposed amendment; and
    - (ii) a description of each lot to which the proposed amendment relates; and
    - (iii) that a member may give the primary thoroughfare body corporate written submissions about the proposed amendment within a period (the *notification period*) of at least 30 business days after the notice is given; and
  - (b) for a proposed amendment of a relevant plan, make the proposed amended plan available for inspection by the members of the primary thoroughfare body corporate and the members of the principal body corporate during the notification period; and
  - (c) place, on the subject land, a notice stating—
    - (i) a brief summary of the nature of the proposed amendment and each lot to which the amendment relates; and
    - (ii) the notification period for giving written submissions about the proposed amendment; and
    - (iii) the name and contact details of a person authorised by the primary thoroughfare body corporate to give information about the amendment.
- (2) The notice under subsection (1)(c) must—

[s 12K]

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- (a) be of a type, and placed on the subject land in the way required, under schedule 2; and
- (b) remain on the subject land during the notification period.

## **12K Requirements for application**

The application must include—

- (a) a written statement confirming that—
  - (i) a written notice was given to the members under section 12J(1)(a), including the days the notice was given; and
  - (ii) a notice was placed on the subject land under section 12J(1)(c) and (2), including the period during which the notice was on the land; and
- (b) a copy of the notice given under section 12J(1)(a); and
- (c) for an amendment of a relevant plan—
  - (i) a written statement confirming the plan was made available for inspection under section 12J(1)(b), including the period during which the plan was available for inspection; and
  - (ii) a copy of the proposed amended plan; and
- (d) all written submissions given to the primary thoroughfare body corporate under section 12J(1)(a)(iii); and
- (e) other matters, if any, the Minister considers necessary for deciding the application.

## **12L Minister to consider application**

- (1) The Minister must—
  - (a) consider the application including any written submissions included in the application; and



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

## **12M Decision on application**

The Governor in Council may, subject to section 12N—

- (a) approve the amendment; or
- (b) approve the amendment with modifications or subject to conditions; or
- (c) refuse to approve the amendment.

## **12N Minor variation of site boundaries**

- (1) This section applies to an amendment of—
  - (a) the initial plan of survey of the site by varying the boundary of the site; or
  - (b) the initial plan of survey of the adjacent site by varying the boundary of the adjacent site.
- (2) The Governor in Council may approve the amendment only if—
  - (a) the Governor in Council considers—
    - (i) the proposed variation of the boundary is of a minor nature; and

- (ii) the total area of the site or adjacent site will not be materially changed because of the variation; and
  - (b) neither the aggregate number of the lots on the plan nor the aggregate voting entitlements for the lots will be changed because of the variation; and
  - (c) each affected land owner has given the owner's written consent to the variation.
- (3) In this section—
- affected land owner* means an owner of—
- (a) land that is outside the site and is proposed under the relevant application to be within the site; or
  - (b) land that is outside the adjacent site and is proposed under the relevant application to be within the adjacent site.

## **120 Approval of change of use for zone or part of zone**

If the Governor in Council approves an amendment to change an approved use for a zone or part of a zone, the amendment does not take effect until it has been approved under a regulation.

## **12P Approval of amendment of relevant plan**

- (1) This section applies if the Governor in Council approves an amendment of a relevant plan under this part.
- (2) The chief executive must—
  - (a) notify the approval of the amendment by a gazette notice stating—
    - (i) the amendment that has been approved; and
    - (ii) the modifications, if any, made by the approval and the conditions, if any, to which the approval is subject; and

- (iii) the places where a copy of the approval is available for inspection; and
- (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane during business hours; and
- (c) note the approval on the amended plan; and
- (d) give to the registrar of titles and the local government a copy of—
  - (i) the approved amendment; and
  - (ii) the amended plan endorsed under paragraph (c).
- (3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the amendment to the person.
- (4) After receiving copies of the documents mentioned in subsection (2)(d), the registrar of titles must register the amended plan.

## **Part 2B                      Dealing with land in zones**

### **Division 1                      Dealing with land in residential zones**

#### **13                      Subdivision etc. of land within certain residential zones**

- (1) An initial lot within a residential zone may only be subdivided in the manner and to the extent prescribed by this section.
- (2) In a plan of survey subdividing an initial lot, each secondary lot must have access to the primary thoroughfare whether directly or through a lot or lots shown on the plan as constituting a secondary thoroughfare.
- (2A) For the purposes of determining whether to approve a plan of survey subdividing an initial lot, the local government shall deem any area shown in the plan of survey or the initial plan

of survey as being secondary thoroughfare or primary thoroughfare to be dedicated road.

- (2B) When a plan of survey is submitted to the local government for its approval, it shall be accompanied by a schedule setting out in respect of each secondary lot the maximum number of group title lots or, as the case may be, building unit lots into which that lot may be subdivided for residential purposes.
- (2C) The local government shall not approve the plan of survey unless it is satisfied that the plan complies with this section and that the total number of lots specified in the schedule accompanying the plan in respect of all secondary lots into which an initial lot is subdivided does not exceed the maximum number of lots specified in respect of that initial lot in the schedule that accompanied the initial plan of survey or, as the case may be, the initial plan of survey of the adjacent site whereby that initial lot was created.
- (3) The provisions of subsection (2) shall apply in respect of the amalgamation of secondary lots as if the amalgamation were a subdivision of an initial lot comprising the secondary lots being amalgamated and the maximum number of lots into which that lot would have been subdivided was the sum of the maximum number of lots into which each of the lots being amalgamated could have been subdivided.
- (4) A plan of survey may from time to time be lodged with the registrar of titles to enable part of the land comprising a secondary thoroughfare to cease to be part of the secondary thoroughfare and other land to become part of the secondary thoroughfare.
- (5) The registrar of titles shall not register a plan of survey lodged with the registrar pursuant to subsection (4) unless the plan has endorsed thereon the approval of the local government.
- (5A) The local government shall not approve the plan of survey unless it is satisfied that access to any land within the site or the adjacent site will not be restricted or if access is restricted the proprietor of that land consents to that restriction.
- (5B) A copy of the plan of survey shall be forwarded to the chief executive.

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- (6) Upon registration of a plan of survey lodged with the registrar of titles pursuant to subsection (4), any plan of survey or group titles plan to which the firstmentioned plan of survey relates is deemed to be amended to the extent shown on the firstmentioned plan of survey.

**14 Transfer of lots comprising secondary thoroughfares to principal body corporate**

- (1) Immediately upon registration of a plan of survey subdividing an initial lot or part of an initial lot, the registered proprietor of any lot shown on the plan as a secondary thoroughfare shall lodge with the registrar of titles all documents necessary to transfer that lot to the principal body corporate.
- (1AA) The principal body corporate shall not be required to make any payment or provide any consideration for such transfer.
- (1A) Immediately upon registration of a group titles plan subdividing or resubdividing a secondary lot or resubdividing a lot shown on a group titles plan—
- (a) the registered proprietor of any lot shown on the plan as secondary thoroughfare;
- (b) where common property is shown on the plan as secondary thoroughfare, the body corporate;
- shall lodge with the registrar of titles all documents necessary to transfer that lot or, as the case may be, common property to the principal body corporate.
- (1B) Upon registration of the principal body corporate as a proprietor of the lot or common property referred to in subsection (1A), that lot or, as the case may be, that common property shall, for the purposes of the *Building Units and Group Titles Act 1980*, cease to be part of the parcel shown on the group titles plan.
- (1C) The principal body corporate shall not be required to make any payment or provide any consideration for a transfer pursuant to this subsection.

- (2) Nothing in this section shall operate to relieve the company of its obligation to effect at its expense the initial construction of the secondary thoroughfare to the standard prescribed pursuant to section 51.

## **15 Subdivision of secondary lots**

- (1) A secondary lot within the Harbour 1 Residential Zone, Harbour, River and Waterfront Residential Zone or the General Residential Zone may only be subdivided or resubdivided—
  - (a) for the purpose of the registration of a group titles plan or a building units plan over a lot thereby created—by way of registration of a plan of survey; or
  - (b) by way of registration of a building units plan or a group titles plan.
- (2) A lot shown on a registered group titles plan referred to in subsection (1) may, subject to compliance with this section, be resubdivided by way of registration of a building units plan or a group titles plan.
- (3) Notwithstanding the provisions of the *Building Units and Group Titles Act 1980*, a group titles plan subdividing a secondary lot referred to in subsection (1) or resubdividing a lot shown on a registered group titles plan referred to in subsection (1) or (2) may create a lot or common property shown as secondary thoroughfare.
- (4) In a group titles plan resubdividing a lot shown on a registered group titles plan referred to in subsection (1) or (2) each lot thereby created must have access to the primary thoroughfare whether directly or indirectly through a lot or lots shown as secondary thoroughfare or through common property.
- (5) A group titles plan mentioned in subsection (1) or (2) that is submitted to the local government must 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—

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- (a) the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan; and
  - (b) each secondary thoroughfare, or part of a secondary thoroughfare, shown on the plan.
- (6) Notwithstanding the provisions of section 19 and of section 19 of the *Building Units and Group Titles Act 1980*, the lot entitlement of a lot on a group titles plan shown as secondary thoroughfare shall be zero and the proprietor of that lot shall not be a member of the body corporate constituted in respect of that plan.
- (7) If, when a group titles plan subdividing a secondary lot within the Harbour 1 Residential Zone, Harbour, River and Waterfront Residential Zone or the General Residential Zone is submitted to the local government for approval, the plan is accompanied by a statement by or on behalf of the proprietor of the secondary lot that it is proposed to subdivide the group title lots to be created by the registration of that plan by the registration of building units plans—
- (a) such a building units plan may be approved by the local government and may be registered by the registrar of titles and for that purpose the *Building Units and Group Titles Act 1980*, section 10(1A), does not apply;
  - (b) the local government shall not approve a group titles plan subdividing such a group titles lot unless, when the plan is submitted to the local government for approval it is accompanied by statement to the like effect.
- (8) The registration of a building units plan of subdivision pursuant to subsection (7) shall, notwithstanding the provisions of the *Building Units and Group Titles Act 1980* take effect as if it were a resubdivision of the original group titles plan.
- (9) Notwithstanding the provisions of section 27 of the *Building Units and Group Titles Act 1980*, where a secondary lot that, pursuant to subsection (1), is subdivided by the registration of a group titles plan and a lot in the group titles plan is subdivided by a building units plan pursuant to subsection (7), the body corporate created by the registration of the group

titles plan shall be deemed, for the purpose of applying the provisions of that Act, to be a body corporate created by the registration of a building units plan as if the group titles plan were a building units plan.

- (10) The *Building Units and Group Titles Act 1980*, section 10(1B) and (6)(b), does not apply to a subdivision under this section.
- (11) For the purposes of section 9(7) of the *Building Units and Group Titles Act 1980*, a plan of subdivision shall be taken to have complied with the requirements of the *Local Government Act 1936* as modified by the *Building Units and Group Titles Act 1980* in regard to the subdivision if the plan has complied with those requirements as modified by this Act.
- (12) The provisions of section 9(6) of the *Building Units and Group Titles Act 1980* do not apply to any group titles plan in respect of any land within the residential zones.
- (13) However, the maximum number of group title lots or building unit lots prescribed by this Act into which a parcel of land may be subdivided is not thereby exceeded in respect of that parcel.

### **15A Plan of survey where variation of boundary approved**

- (1) Where any variation of the boundaries of the zones has been approved by the local government under section 8(2) or 12D(2) or by the Governor in Council under section 12M, a plan of survey may be lodged with the registrar of titles for the purpose of amending, in accordance with the variation approved, any plan of survey or group titles plan for the subdivision or resubdivision of a secondary lot or any group titles plan for the resubdivision of a lot shown on a group titles plan.
- (2) The registrar of titles shall not register a plan lodged pursuant to subsection (1) unless it is endorsed with the approval of the local government.
- (3) However, the endorsement of the approval of the local government is not required on a plan of survey showing a



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variation of a boundary of a zone that has been approved under section 12M.

- (4) Upon the registrar of titles approving a plan of survey lodged pursuant to subsection (1), any plan of survey or group titles plan to which the firstmentioned plan of survey relates is deemed to be amended to the extent shown on the firstmentioned plan of survey and a copy of that plan of survey shall be forwarded to the chief executive.

## 16 Services

In respect of each initial lot and each secondary lot there shall be implied—

- (a) in favour of the proprietor of the lot and as appurtenant thereto, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage and telephone) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing in or over the primary thoroughfare and the secondary thoroughfare to the extent to which those services are capable of being used in connection with the enjoyment of the lot;
- (b) as against the principal body corporate and to which the lots comprising the secondary thoroughfare shall be subject, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage and telephone) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing within any of those lots as appurtenant to the initial lots and secondary lots;
- (c) as against the primary thoroughfare body corporate and to which the lot or lots comprising the primary thoroughfare shall be subject, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage and telephone) through or by means of any pipes, poles, wires, cables or

ducts to be laid down or erected or which are for the time being existing within any of those lots as appurtenant to the initial lots and secondary lots;

but the easements conferred by this section shall not be exercised by any proprietor in such a manner as unreasonably to prevent any other proprietor from enjoying the use and occupation of the proprietor's lot or the use of the primary thoroughfare or the secondary thoroughfare.

### **16A Creation of easements over group title lots**

- (1) Where a multiple dwelling is situated on 2 or more group title lots (whether built before or after the commencement of section 11 of the *Sanctuary Cove Resort Act Amendment Act 1989*), the proprietor of a lot on which is situated part of the multiple dwelling (which part is intended for separate occupation) shall, in respect of any roofs, eaves, gutters, downpipes or foundations situated wholly or in part on any adjoining lot, be entitled to any shelter, drainage or support capable of being afforded thereby in respect of the proprietor's lot.
- (2) The rights created by subsection (1) are easements to which are subject the relevant parts of the multiple dwelling and the lot on which those parts are situated.
- (3) An easement created by this section shall entitle the proprietor of the dominant tenement to enter the servient tenement and maintain, replace, renew or restore any of the parts of the multiple dwelling that are subject to the easement.
- (4) An easement created by this section shall not be exercised by the proprietor of a lot in such a manner as unreasonably to prevent any other proprietor from enjoying the use or occupation of the proprietor's lot.

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**17 Ancillary rights**

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

**18 Creation of easements**

The principal body corporate may by special resolution within the meaning of section 22—

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

**19 Determination of lot entitlements**

- (1) Notwithstanding the provisions of section 19 of the *Building Units and Group Titles Act 1980*, where a secondary lot is subdivided or resubdivided by way of a group titles plan or a building units plan, the aggregate lot entitlement of the lots thereby created for residential purposes shall not exceed, and shall be not less than 90% of, the maximum number of lots specified in respect of that secondary lot in the schedule that accompanied the plan of survey whereby that secondary lot was created.
- (2) The provisions of section 19(2) and (3) of the *Building Units and Group Titles Act 1980* do not apply to any subdivision under this division.

**20 Subdivision of land where wholly or partly submerged**

- (1) Notwithstanding that the whole or part of land within an initial lot comprised within the Harbour 1 Residential Zone or the Harbour, River and Waterfront Residential Zone is submerged or subject to inundation or tidal influence, that

land may be subdivided by way of a group titles plan of subdivision.

- (2) However, permanent, above water access is provided from each lot on the group titles plan to the primary thoroughfare or to a secondary thoroughfare, either directly or through common property.

## **Division 2                    Dealing with land in zones other than residential zones**

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

For the purpose of the subdivision of or other dealing with land within a zone other than a residential zone, the primary thoroughfare shall be deemed to be dedicated road.

### **21A        Subdivision of land outside residential zones**

- (1) Subject to this section, land within the site or the adjacent site and not within a residential zone may be subdivided in the same manner as land that is neither within the site nor within the adjacent site.
- (2) The local government shall not approve a plan of subdivision unless satisfied that the plan is consistent with the initial plan of survey of the site or, as the case may be, the initial plan of survey of the adjacent site.
- (3) A plan of subdivision lodged with the local government under this section must 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.
- (4) Where the local government approves a plan of subdivision it shall forward a copy of the plan to the chief executive.
- (5) The registrar of titles shall not register a plan of subdivision unless it contains or is accompanied by a notation under the

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seal of the local government that the local government is satisfied as required by subsection (2).

## Part 3 Principal body corporate

### Division 1 Principal body corporate

#### 22 Definitions for pt 3

In this part—

*executive committee* means the executive committee of the principal body corporate constituted under division 2.

*financial year* means a period in relation to which the principal body corporate is required under section 33(1)(f) to prepare a statement of accounts.

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

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

*nominee*, of a member of the principal body corporate, see section 24(1).

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

*principal body corporate roll* means the roll referred to in section 34 to be maintained by the principal body corporate.

*proprietor* means—

- (a) for an initial lot or secondary lot—the person registered, or entitled to be registered, under the *Land Title Act 1994* as the proprietor of the lot; or

- (b) for a secondary lot subdivided under a group titles plan or building units plan—the body corporate incorporated under the *Building Units and Group Titles Act 1994*.

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

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

## 23 Principal body corporate

- (1) Upon registration of the initial plan of survey, the proprietor or proprietors of all the initial lots within the residential zones of the site shall by virtue of this Act be a body corporate under the name ‘Sanctuary Cove Principal Body Corporate’.
- (1A) Upon registration of the initial plan of survey of the adjacent site, the proprietor or proprietors of all the initial lots within the residential zones of the adjacent site shall be members of the principal body corporate.
- (2) When an initial lot is subdivided into secondary lots (whether or not lots for secondary thoroughfares are thereby created), the proprietor of the initial lot shall cease to be a member of the principal body corporate and the proprietor or proprietors of the secondary lots shall become a member or, as the case may be, members of the principal body corporate.
- (3) When a secondary lot is subdivided by way of a group titles plan or a building units plan, the proprietor of the secondary lot—
- (a) shall give notice in writing to the principal body corporate of the name and address or service of notices

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of the body corporate incorporated by the registration of that plan; and

- (b) shall cease to be a member of the principal body corporate, and the body corporate created by the registration of that plan shall become a member of the principal body corporate.
- (4) Subdivision or resubdivision of a lot or a lot and common property on a group titles plan by way of a building units plan or a group titles plan does not affect the membership of the principal body corporate.
- (5) The Corporations Act does not apply to or in respect of the principal body corporate.
- (6) Subject to this Act, the principal body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act, the development control by-laws or the residential zone activities by-laws and shall do all things reasonably necessary for the enforcement of the development control by-laws and the control, management and administration of the secondary thoroughfares.
- (7) The principal body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the principal body corporate by-laws for the time being in force.
- (8) The principal body corporate may—
  - (a) sue and be sued on any contract made by it;
  - (b) sue for and in respect of any damage or injury to the secondary thoroughfares caused by any person;
  - (c) be sued in respect of any matter connected with the secondary thoroughfares for which as proprietor it is so liable;
  - (d) take such legal action as may be necessary to enforce the development control by-laws and the secondary thoroughfare by-laws.

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- (9) In any case in which work is carried out for the purpose of constructing or preparing a secondary thoroughfare, upon registration of the initial plan of survey or, as the case may be, the initial plan of survey of the adjacent site, the principal body corporate shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.
- (10) Nothing in subsection (9) shall relieve the company from its obligation to pay for the initial construction of secondary thoroughfares to the standard prescribed pursuant to section 51.

## 24 Member's nominee

- (1) This section applies to a member of the principal body corporate for appointing a person (a *nominee*) to represent and vote on behalf of the member at meetings of the principal body corporate.
- (2) A subsidiary body corporate of the principal body corporate—
  - (a) must appoint a nominee at its annual general meeting; and
  - (b) otherwise, may appoint a nominee from time to time.
- (3) A member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.
- (4) Subject to section 24A, a nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.
- (5) The appointment of a nominee has no effect until written notice of the appointment is received by the secretary of the principal body corporate.
- (6) A nominee appointed by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and



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- (b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.
- (7) The appointment of a nominee for a member ends when the first of the following happens—
- (a) the end of 1 year after the appointment;
  - (b) the secretary of the principal body corporate receives written notice of—
    - (i) the cancellation of the nominee’s appointment; or
    - (ii) the appointment of another nominee for the member.
- (8) A written notice under subsection (5) or (7)(b) must be signed—
- (a) for an appointment or cancellation made by a subsidiary body corporate—by the chairperson and secretary of the subsidiary body corporate; or
  - (b) otherwise—by the member.

**24A When original owner can not be nominee for subsidiary body corporate**

- (1) This section applies if more than 50% of the lots created by the registration of a group titles plan or building units plan subdividing a secondary lot are no longer owned by the original owner of the secondary lot.
- (2) The subsidiary body corporate created by the registration of the plan can not appoint as its nominee—
  - (a) the original owner; or
  - (b) an associate (an *ineligible associate*) of the original owner who is not 1 of the proprietors constituting the subsidiary body corporate.
- (3) If the original owner or an ineligible associate of the original owner is already a nominee for the subsidiary body corporate—

- (a) a general meeting of the subsidiary body corporate must be held within 2 months; and
- (b) if it is not sooner ended, the owner's or associate's appointment as the nominee ends at the next general meeting of the subsidiary body corporate.

## **25 Seal of principal body corporate**

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

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

- (3) However, where a member is a body corporate, the common seal affixed in the presence of a person nominated in writing by the body corporate for that purpose and attested by that

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person as provided in this subsection shall be deemed to have been duly affixed in the presence of that body corporate.

## **26 Address of principal body corporate**

The address for service of notices on the principal body corporate shall upon its incorporation pursuant to section 23 be the address for service of notices of the company.

## **27 Meetings of principal body corporate**

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

Maximum penalty—20 penalty units.

- (2) The agenda for a meeting convened under subsection (1) shall consist of the following items—
- (a) to decide whether insurances effected by the principal body corporate should be confirmed, varied or extended;
  - (b) to decide whether any amounts determined under section 33(1)(h) or (2) should be confirmed or varied;
  - (c) where there are more than 3 members of the principal body corporate—to determine the number of members of the executive committee;
  - (d) to elect the chairperson, secretary and treasurer of the principal body corporate and other members of the executive committee;
  - (e) to decide whether to make by-laws regulating, controlling or prohibiting the passage through and conduct and activities of persons on or within all or part of the secondary thoroughfares;
  - (f) to decide whether to make development control by-laws.
- (3) The meeting convened under subsection (1) shall be the first annual general meeting of the principal body corporate and at

such meeting a chairperson, secretary and treasurer shall be elected.

- (3A) However, a person may be elected to 1 or more of those offices.
- (4) The company shall not fail or neglect to deliver to the principal body corporate at its first annual general meeting—
- (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates, diagrams and other documents (including policies of insurance) obtained or received by it and relating to the secondary thoroughfare;
  - (b) if they are in its possession or under its control, the principal body corporate roll, books of account and any notices or other records relating to the secondary thoroughfare;
  - (c) the budget showing the estimated expenditure of the principal body corporate in relation to the secondary thoroughfare on an annual basis;

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

Maximum penalty—20 penalty units.

- (4A) The company shall not fail or neglect to deliver to the principal body corporate at or before its annual general meeting first held after the registration of the initial plan of survey of the adjacent site—
- (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates, diagrams and other documents (including policies of insurance) obtained or received by it and relating to the secondary thoroughfare within the adjacent site;

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- (b) if they are in its possession or under its control, any books of account and notices or other records relating to the secondary thoroughfare within the adjacent site;
  - (c) the budget showing the estimated expenditure of the principal body corporate in relation to the secondary thoroughfare within the adjacent site on an annual basis;

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

Maximum penalty—20 penalty units.

- (5) Schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act applies to and in respect of the first annual general meeting of the principal body corporate and voting at that meeting and schedule 2, part 2 of that Act in force at the commencement of this Act applies to and in respect of meetings of the principal body corporate, other than the first annual general meeting, and voting at those meetings.
- (5A) However, the provisions in those schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 9, definition *ordinary resolution*.
- (5B) The provisions of the schedules referred to in subsection (5) shall, for the purposes of subsection (5), be read and construed as if—
  - (a) references therein to ‘aggregate lot entitlement’ were references to the total of the initial lot entitlements of the initial lots which have not been subdivided into secondary lots and the secondary lot entitlements of the secondary lots;
  - (b) references therein to ‘body corporate’ were references to principal body corporate;

- (c) references therein to ‘by-laws’ were references to principal body corporate by-laws or development control by-laws;
  - (d) references therein to ‘council’ were references to executive committee;
  - (e) references therein to a ‘lot’ were references to an initial lot or a secondary lot;
  - (f) references therein to ‘lot entitlement’ were references—
    - (i) in the case where a ‘lot’ is an initial lot—to the initial lot entitlement of that lot;
    - (ii) in the case where a ‘lot’ is a secondary lot—to the secondary lot entitlement of that lot;
  - (g) references therein to the ‘original proprietor’ were references to the company;
  - (h) references therein to a ‘proprietor’ were references to a proprietor within the meaning of this part;
  - (i) references therein to the ‘roll’ were references to the principal body corporate roll;
  - (j) references to particular provisions of the *Building Units and Group Titles Act 1980* (other than the provisions in those schedules) were references to corresponding provisions of this Act.
- (5C) When an expression is substituted for an expression used in the *Building Units and Group Titles Act 1980* and referred to in subsection (5B), the substituted expression shall, for the purposes of subsection (5B), be read and construed in the same manner as the expression for which it is substituted is required to be read and construed.
- (6) If a meeting of the principal body corporate is not convened in accordance with subsection (1), the Minister for Justice and Attorney-General may, pursuant to an application by the principal body corporate or any member of the principal body corporate appoint by order a person to convene a meeting of the principal body corporate within such time as may be specified in the order and the meeting convened by that person

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shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).

- (7) At any time after the meeting convened under subsection (1) has been held, the Minister for Justice and Attorney-General may, pursuant to an application made to the Minister for Justice and Attorney-General by a member of the principal body corporate, appoint by order a person, nominated by the member, who has consented to that nomination, if there is not an executive committee, to convene a meeting of the principal body corporate within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of the chairperson, secretary and treasurer of the principal body corporate and the other members of the executive committee, be deemed to be a first annual general meeting of the principal body corporate.
- (8) An order made under subsection (6) or (7) may include such ancillary or consequential provisions as the Minister for Justice and Attorney-General thinks fit.
- (9) Notwithstanding subsection (5), where an order made under subsection (6) or (7) so provides—
  - (a) the person appointed to convene a meeting of the principal body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the principal body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (10) Notwithstanding that an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order, the company remains liable to the penalty provided by subsection (1) for any failure to comply with that subsection.

## **28 Secondary thoroughfare by-laws**

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

management, administration, use or enjoyment of the secondary thoroughfares, may from time to time make by-laws and may in like manner amend or repeal those by-laws.

- (2) A secondary thoroughfare by-law has no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (3) A lease of a lot or of any common property where access to the primary thoroughfare is through a secondary thoroughfare shall be deemed to contain an agreement by the lessee that the lessee will comply with the secondary thoroughfare by-laws for the time being in force.
- (4) Without limiting the operation of any other provision of this Act, the secondary thoroughfare by-laws for the time being in force bind the principal body corporate, each member of the principal body corporate and each registered proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier, of a lot within a residential zone to the same extent as if those by-laws had been signed and sealed by the principal body corporate, the members of the principal body corporate and each registered proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (5) No amendment of or addition to a secondary thoroughfare by-law shall be capable of operating to prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.

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

- (1) The principal body corporate may levy the contributions determined by it in accordance with section 33(1)(h) and the amount (if any) determined pursuant to section 33(2) in respect thereof by serving on its members notice in writing of the contributions payable by them.



- (2) Contributions levied by the principal body corporate shall be levied in respect of—
- (a) each initial lot which has not been subdivided into secondary lots; and
  - (b) each secondary lot;
- and shall be payable, subject to this section, by the proprietors of those initial lots and secondary lots in shares proportional to the initial lot entitlements or, as the case may be, secondary lot entitlements of their respective lots at the time when the contribution was levied.
- (3) In respect of a contribution levied under subsection (1), a proprietor of an initial lot or a secondary lot is liable, jointly and severally with any person who was liable to pay that contribution when that proprietor became the proprietor of that initial lot or, as the case may be, that secondary lot, to pay such part of that contribution as was unpaid when the proprietor became the proprietor of that lot.
- (4) A contribution levied in respect of an initial lot or a secondary lot under this section—
- (a) becomes due and payable to the principal body corporate in accordance with the decision of the principal body corporate to make the levy; and
  - (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 33(2) (if any); and
  - (c) may be recovered, as a debt, by the principal body corporate in any court of competent jurisdiction.
- (5) Nothing in this section shall be construed to prevent the principal body corporate, in general meeting, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (4)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.

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

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

### **31 Power of entry**

- (1) For the purpose of carrying out—
  - (a) any work required to be carried out by the principal body corporate by a notice served on it by a public or local government;
  - (b) any work referred to in section 33(1)(b);the principal body corporate may, by its agents, servants or contractors, enter upon any part of the secondary thoroughfare for the purpose of carrying out the work—
  - (c) in the case of an emergency—at any time;
  - (d) in any other case—at any reasonable time on notice given to any occupier of a lot likely to be affected thereby.
- (1A) For the purposes of subsection (1)(d), a proprietor of a lot, being a lot on a group titles plan or a building units plan, shall be taken to have been given notice if the notice is duly given to the body corporate incorporated by the registration of that plan.
- (2) A person shall not obstruct or hinder the principal body corporate in the exercise of its power under subsection (1).  
Maximum penalty—4 penalty units.

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

The principal body corporate may do any of the following—

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

## **33 Duties of principal body corporate**

(1) The principal body corporate shall—

- (a) control, manage and administer the secondary thoroughfare for the benefit of its members; and
- (b) properly maintain and keep in a state of good and serviceable repair—
  - (i) the secondary thoroughfare, including any improvements thereon;
  - (ii) any personal property vested in it; and
- (c) effect insurance in accordance with section 37; and
- (d) cause proper records to be kept of notices given to the principal body corporate under this or any other Act and of any orders made by a court and served on the principal body corporate; and
- (e) keep—

- (i) for at least 10 years after their creation or receipt by or for the principal body corporate—
  - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
  - (B) proper books of account for amounts received or paid by the principal body corporate showing the items for which the amounts were received or paid; and
- (ii) for at least 2 years after their creation or receipt by or for the principal body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and
- (f) cause to be prepared, from the books referred to in paragraph (e), a proper statement of accounts of the principal body corporate in respect of each period commencing on the date of its incorporation or the date up to which the last previous such statement was prepared and ending on a date not earlier than 2 months before each annual general meeting; and
- (g) cause an annual general meeting to be held each year on or after the anniversary of the annual general meeting held in 1990 but not later than 2 months after that anniversary; and
- (h) not later than 14 days after its incorporation and from time to time thereafter, determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums, rates or any other liability of the principal body corporate, other than amounts referred to in paragraph (1); and
- (i) upon first determining the amounts referred to in paragraph (h), establish a fund into which shall be paid all amounts received by it, including the proceeds of the sale or other disposal of any personal property of the principal body corporate and any fees received by it under section 36 and into which may be paid any

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- amounts paid to the principal body corporate by way of discharge of insurance claims; and
- (j) from time to time, levy, in accordance with section 29, on each person liable therefor a contribution to raise the amounts referred to in paragraph (h); and
  - (k) pay any moneys referred to in paragraph (i) that are received by it and are not otherwise invested in accordance with section 32(a) into an account established in a financial institution in the name of the principal body corporate; and
  - (l) if the principal body corporate—
    - (i) becomes liable to pay any moneys that it is unable to pay forthwith; and
    - (ii) is not required, under paragraph (j), to levy contributions to meet the liability;levy, in accordance with section 29, contributions to raise those moneys; and
  - (m) implement the decisions of the principal body corporate.
- (2) The principal body corporate from time to time may in respect of contributions determined in accordance with subsection (1)(h) or contributions referred to in subsection (1)(l) determine by special resolution, for the purposes of section 29, an amount being not greater than 10% of those contributions.
- (3) The principal body corporate shall not disburse any moneys from its fund, otherwise than for the purpose of carrying out its powers, authorities, duties and functions under this Act, the development control by-laws or secondary thoroughfare by-laws or meeting any liability referred to in subsection (1)(l).
- (4) A determination made by the principal body corporate under subsection (1)(h) may specify that the amounts to be raised shall be raised by such regular periodic contributions as may be specified in the determination.

### **34 Principal body corporate roll**

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

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

- (1) The company and any person who, under this section, has given notice of an address for the service of notices on the company or person shall give notice in writing to the principal body corporate of an address or change of address for the service of notices on the company or person.
- (2) After delivery to a transferee of an initial lot or a secondary lot of an instrument or instruments of transfer in the name of the

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transferee duly executed and capable of immediate registration, the transferor shall give to the principal body corporate written notice which shall identify the lot and—

- (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (2A) Where a transferor of an initial lot or a secondary lot fails to comply with subsection (2), the transferee of that lot may give to the principal body corporate written notice which shall identify the lot and specify the transferee's name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to the transferee.
- (3) After a person becomes entitled, otherwise than as a transferee, to be registered under the *Land Title Act 1994* as the proprietor of an initial lot or a secondary lot, the person shall give to the principal body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—
- (a) by what right the person became entitled to the lot; and
  - (b) the person's name, in full, the address for the service of notices on the person and the date upon which the person became entitled to the lot.
- (4) Where—
- (a) the principal body corporate believes that a person is required, under this section, to give a notice to it; and
  - (b) the principal body corporate has not received that notice;

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

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- (c) to state, within 14 days, whether or not the person is required to give a notice in that capacity; and
  - (d) if the person is so required, to give that notice.
- (5) Where the principal body corporate has served a notice under subsection (4) on a person whom it believes is required to give a notice to the principal body corporate under this section that person is not entitled to cast a vote at any meeting of the principal body corporate until the person gives the required notice.
- (6) A vote cast at a meeting of the principal body corporate by or on behalf of a body corporate has no effect unless the principal body corporate has been given notice in writing specifying the nominee of the body corporate.
- (7) A notice referred to in subsection (6) may be included in any other notice that the body corporate to which it relates or any other person is entitled under this section to give to the principal body corporate.

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

- (1) The principal body corporate shall, upon application made to it in writing by a member of the principal body corporate or by a member of a body corporate constituted by the registration of a group titles plan or building units plan (which lastmentioned body corporate is a member of the principal body corporate) or by a person authorised in writing by such member and on payment of such sum as the principal body corporate may fix by resolution but not exceeding the reasonable cost to the principal body corporate, do such 1 or more of the following things as are required of it in the application—
- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the principal body corporate or a member of the executive committee;



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- (b) make available for inspection by the applicant or the applicant's agent—
- (i) the principal body corporate roll;
  - (ii) the notices and orders referred to in section 33(1)(d);
  - (iii) the plans, specifications, drawings showing water pipes, electric cables or drainage, certificates, diagrams and other documents held by it relating to any secondary thoroughfare;
  - (iv) the minutes of general meetings of the principal body corporate and of the executive committee;
  - (v) the books of account of the principal body corporate;
  - (vi) a copy of the statement of accounts of the principal body corporate last prepared by the principal body corporate in accordance with section 33(1)(f);
  - (vii) every current policy of insurance effected by the principal body corporate and the receipt for the premium last paid in respect of each such policy;
  - (viii) any other record or document in the custody or under the control of the principal body corporate;
  - (ix) the development control by-laws or the secondary thoroughfare by-laws for the time being in force;
- at such time and place as may be agreed upon by the applicant or the applicant's agent and the principal body corporate and, failing agreement, at the office of the principal body corporate at a time and on a date fixed by the principal body corporate under subsection (2);
- (c) certify, as at the date of the certificate, in respect of the initial lot or secondary lot in respect of which the application is made—
- (i) the amount of any regular periodic contributions determined by the principal body corporate under

- section 33(1)(h) and (4) and the periods in respect of which those contributions are payable; and
- (ii) whether there is any amount unpaid of any contribution determined under section 33(1)(h) and, if so, the amount thereof; and
  - (iii) whether there is any amount unpaid of any contribution levied under section 33(1)(1) and, if so, the amount thereof and the date on which it was levied; and
  - (iv) whether there is any amount unpaid of any contribution levied under section 48 and, if so, the amount thereof and the date on which it was levied; and
  - (v) the amount (if any) determined under section 33(2) in respect of any unpaid contribution referred to in this paragraph;
- (d) furnish to the applicant or the applicant's agent a copy of the development control by-laws or the secondary thoroughfare by-laws for the time being in force or any part thereof within a period of 21 days commencing on the day next after the date on which the application is received by the principal body corporate.
- (2) Where an applicant and the principal body corporate fail to reach an agreement referred to in subsection (1)(b) within 3 days after the receipt of the application by the principal body corporate, the principal body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9a.m. and 8p.m. on a date so specified, being a date not later than 10 days after the receipt of the application by the principal body corporate for the making of the inspection referred to in subsection (1)(b).
- (3) The principal body corporate shall permit any person to whom the development control by-laws or the secondary thoroughfare by-laws are made available for inspection to make copies of or take extracts from those by-laws.

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### **37 Insurance by principal body corporate**

- (1) The principal body corporate shall effect insurance—
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of damage to property, death or bodily injury occurring upon the secondary thoroughfare or the consequences resulting therefrom; and
  - (c) against the possibility of the proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the principal body corporate, pursuant to a special resolution, decides to insure.
- (2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of the amount prescribed by order in council or, if not prescribed, \$10,000,000.
- (3) The principal body corporate may insure any property in which it has an insurable interest.

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

- (1) A body corporate may authorise an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the body corporate as proprietor of a lot and may revoke the authority of an individual so authorised.
- (2) Where an individual exercises or performs a power, authority, duty or function that the individual is, by a proprietor of a lot, authorised pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the proprietor of the lot.
- (3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a body corporate which is a proprietor of a lot.

- (4) A document under the seal of a body corporate purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

### **39 Voting rights**

- (1) Any powers of voting conferred by or under this part may be exercised—
- (a) in the case of a proprietor who is an infant—by the proprietor’s guardian;
  - (b) in the case of a proprietor who is for any reason unable to control the proprietor’s property—by the person who for the time being is authorised by law to control that property;
  - (c) in the case of a proprietor which is a body corporate—by the person nominated pursuant to section 38 by that body corporate.
- (2) Where the Supreme Court of Queensland upon the application of the principal body corporate or of any proprietor is satisfied that there is no person able to vote in respect of an initial lot or a secondary lot or that the person able to vote in respect of the lot cannot be found, the court in its discretion may appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this part as the court shall determine.
- (3) The court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2) the court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.

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- (5) The powers of the court under this section may be exercised by the registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.
  - (6) In this section and in section 40—  
*registrar* means the registrar of the Supreme Court of Queensland at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

#### **40 Procedure upon application to Supreme Court**

- (1) Every application to the Supreme Court of Queensland under this part shall be by summons at chambers unless otherwise provided by rules of court made in relation thereto.
- (2) On an application, notice shall be served on such persons as the court thinks fit or the court may dispense with such notice.
- (3) The court may, if it thinks fit, adjourn an application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.
- (4) The court may delegate to the registrar all or any of its powers under this part.

### **Division 2 Executive committee**

#### **41 Constitution of executive committee**

- (1) After the first annual general meeting of the principal body corporate, there shall be an executive committee consisting of a chairperson, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.
- (2) The chairperson, secretary and treasurer of the principal body corporate shall be members of, and be also respectively the chairperson, secretary and treasurer of, the executive committee.

- (2A) However, a person may be elected to 1 or more of those offices.
- (3) Where there are not more than 5 members of the principal body corporate, the executive committee shall consist of each member (if any) who is an individual or the member's nominee, together with the nominee of each member (if any) which is a body corporate.
- (3A) Where there is 1 member only of the principal body corporate, the member may make any decision that a duly convened executive committee may make under this Act and such decision shall be deemed to be a decision of the executive committee.
- (4) If there are more than 5 members of the principal body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the principal body corporate, as decided by the principal body corporate.
- (5) The members of an executive committee referred to in subsection (4) and the chairperson, secretary and treasurer shall be elected at each annual general meeting of the principal body corporate or, if the number of members of the principal body corporate increases to more than 5, at an extraordinary general meeting convened for the purpose.
- (5A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the principal body corporate must be conducted under schedule 3.
- (6) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—
- (a) is an individual who is—
    - (i) a member of the principal body corporate; or
    - (ii) a nominee of a member of the principal body corporate; and

- (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.
- (6A) Notwithstanding the provisions of this section, the principal body corporate may determine that the holder of the office of secretary or treasurer of the principal body corporate shall not be a member of the executive committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the principal body corporate and of the executive committee but shall not be a member of the executive committee.
- (7) A member of the executive committee may, with the consent of the executive committee, appoint a member of the principal body corporate or nominee of a body corporate which is a member of the principal body corporate to act in the member's place as a member of the executive committee at any meeting of the executive committee and any member or nominee so appointed shall, when the member or nominee is so acting, be deemed to be a member of the executive committee.
- (8) A member of the principal body corporate or a nominee of a body corporate may be appointed under subsection (7) whether or not the member is a member of the executive committee.
- (9) If a person appointed under subsection (7) is a member of the executive committee the person may, at any meeting of the executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.
- (10) Notwithstanding any other provision of this section, the executive committee may be constituted before the first annual general meeting of the principal body corporate.
- (11) The members of the executive committee constituted under subsection (10) (if any) and the chairperson, secretary and treasurer of the principal body corporate shall be elected at a general meeting of the principal body corporate and the provisions of subsection (6) and such of the provisions of schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act as applied by

section 27 and as relate to the election of the chairperson, secretary and treasurer of the principal body corporate and of members of the executive committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of the executive committee to be so constituted.

- (12) Schedule 2, part 2 of the *Building Units and Group Titles Act 1980* other than clause 16(1) as applied by section 27 does not apply to or in respect of the election of the chairperson, secretary and treasurer of the principal body corporate and the members of the executive committee to be constituted under subsection (10).
- (13) The provisions of this part (other than subsections (1), (2), (3) and (5)) apply to and in respect of an executive committee constituted under subsection (1) and the members thereof.
- (14) Where there is no executive committee of the principal body corporate, the principal body corporate shall exercise and perform the powers, authorities, duties and functions of the executive committee.

#### **41A Code of conduct for voting members of executive committee**

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

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

- (1) A person elected as chairperson, secretary or treasurer of the principal body corporate or as a member of the executive committee vacates the person's office—



- (a) if, where the person was a member of the principal body corporate at the time of the person's election, the person ceases to be such a member; or
- (b) if, where the person was not a member of the principal body corporate at the time of the person's election, the member who nominated the person for election—
  - (i) ceases to be a member of the principal body corporate; or
  - (ii) notifies the principal body corporate, in writing, that the person's office, as member of the executive committee, is vacated;however, this paragraph shall not apply to a secretary or treasurer of the principal body corporate who is not a member of the executive committee; or
- (c) upon the receipt by the principal body corporate from the person of notice in writing of the person's resignation; or
- (d) upon the election at a general meeting of the principal body corporate of another person to that office or as a member of the executive committee; or
- (e) where the person is a member referred to in section 41(3) and the number of members of the principal body corporate increases to more than 3—upon the election of the chairperson, secretary and treasurer of the principal body corporate and the other members of the executive committee at the annual general meeting, or the extraordinary general meeting referred to in section 41(5); or
- (f) if the person is absent without prior leave granted by the executive committee from 3 consecutive meetings of the executive committee of which due notice has been given to the person; or
- (g) if the person becomes bankrupt or compounds with the person's creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or

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- (h) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
  - (i) if the person dies; or
  - (j) if the person is removed from office by ordinary resolution of the principal body corporate under division 2D; or
  - (k) if the principal body corporate, pursuant to a special resolution, determines that the person's office is vacated.
- (2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the principal body corporate or another member of the executive committee, otherwise than by reason of subsection (1)(d) or (e), the principal body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of the person's predecessor's term of office.

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

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

- (b) a person with whom the treasurer of the principal body corporate is required by an order of the executive committee to exercise or perform jointly that power, authority, duty or function, or who is enabling the treasurer to comply with the order.

Maximum penalty—10 penalty units.

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

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

Maximum penalty—10 penalty units.

#### **44 Meetings of executive committee**

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

#### **44A 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.

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- (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.

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

- (1) In this section—  
*restricted matter* means—
  - (a) any matter relating to the striking of a special monetary levy on all members of the principal body corporate; and
  - (b) any matter which seeks to alter the rights, privileges or obligations of members of the principal body corporate; and
  - (c) any matter which seeks to alter the annual monetary contribution of members of the principal body corporate; and
  - (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the principal body corporate pursuant to a special resolution or in general meeting of the principal body corporate; and
  - (e) any matter referred to in section 47 and specified in a resolution of the principal body corporate passed for the purposes of that section.

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- (2) Subject to this Act, the decision of the executive committee on any matter, other than a restricted matter, shall be the decision of the principal body corporate.
- (3) Notwithstanding that the executive committee holds office, the principal body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on it by this Act.

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

- (1) Unless—
  - (a) otherwise determined pursuant to a special resolution of the principal body corporate; or
  - (b) in an emergency authorised by the Minister; or
  - (c) consented to by such persons entitled to vote at a general meeting of the principal body corporate who represent an aggregate lot entitlement of not less than 75% of the aggregate of all lot entitlements recorded in the principal body corporate roll;the executive committee shall not undertake expenditure.
- (2) In respect of any proposed expenditure which, under subsection (1), the executive committee is not entitled to undertake the executive committee shall—
  - (a) submit the proposal for determination at an extraordinary general meeting of the principal body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
  - (a) in payment of any premium of insurance effected by or on behalf of the principal body corporate; or

- (b) to comply with a notice or order served on the principal body corporate by any public or local government; or
- (c) in discharge of any liability incurred in respect of an obligation of the principal body corporate authorised by the principal body corporate in general meeting.

**47 Restrictions imposed on executive committee by principal body corporate**

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

**47A Protection of executive committee members from liability**

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

- (2) In this section—

*act done or omission made* does not include the publication of defamatory matter as mentioned in section 47AA(1).

**47AA Protection of body corporate and executive committee from liability for defamation**

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

(3) In this section—

*member of the committee* includes the body corporate manager acting under a delegation under section 47AB(1).

*prescribed motion* means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 47K(1);
- (b) a motion mentioned in section 47L(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for a part of the resort under section 94K;
- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 94V.

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

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



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## **Division 2A                    Principal body corporate manager**

### **47AB Principal body corporate manager**

(1) Subject to subsections (2), (8), (9) and (10), the principal body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the principal body corporate determines a body corporate manager and may, in like manner, delegate to the body corporate manager—

- (a) all of its powers, authorities, duties and functions; or
- (b) any 1 or more of its powers, authorities, duties and functions specified in the instrument; or
- (c) all of its powers, authorities, duties and functions except those specified in the instrument;

and may, in like manner, revoke wholly or in part the delegation.

(2) The principal body corporate may not, under subsection (1), delegate to a body corporate manager its powers to make—

- (a) a delegation under that subsection; or
- (b) a decision on a restricted matter within the meaning of section 45.

(3) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.

(4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation made under subsection (1), the principal body corporate may continue to exercise or

perform all or any of the powers, authorities, duties or functions delegated by it.

- (6) Any act or thing done or suffered by a body corporate manager while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the principal body corporate and shall be deemed to have been done or suffered by the principal body corporate.
- (7) Where the instrument of appointment so provides, a body corporate manager shall have and may exercise and perform all the powers, authorities, duties and functions of the chairperson, secretary or treasurer of the principal body corporate and the executive committee or such of those powers, authorities, duties and functions as may be specified in the instrument.
- (8) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

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

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

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## **Division 2B                      Proxies for general meetings of principal body corporate**

### **47B      Application of div 2B**

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

### **47C      Appointment [SM, s 107]**

- (1) Subject to subsections (2) to (5), a person entitled to vote at the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) The principal body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution;  
or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- (4) A person must not hold—
  - (a) if there are 20 or more lots for which there are voting entitlements for the meeting—proxies greater in number than 5% of the lots; or
  - (b) if there are fewer than 20 lots for which there are voting entitlements for the meeting—more than 1 proxy.
- (5) The appointment of a proxy is effective only if the person or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the principal body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or

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- (b) if the principal body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

#### **47D Form of proxy [SM, s 108]**

A proxy under this division—

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

#### **47E Use of proxy [SM, s 109]**

- (1) A member of the principal body corporate (*member A*) who is the proxy for another member of the principal body corporate (*member B*) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the 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—

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- (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- (4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

#### **47F Special provisions about proxy use [SM, s 110]**

- (1) A member of the principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make

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someone else the member's proxy for voting at the general meeting.

- (2) A proxy can not be exercised for someone else by—
- (a) the original owner of a secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a body corporate that is itself a member of the principal body corporate.

#### **47G Offence [SM, s 111]**

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

Maximum penalty—100 penalty units.

## **Division 2C Accounts and audit**

#### **47H Application of div 2C**

This division applies to the principal body corporate for preparing a statement of accounts under section 33(1)(f).

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**47I 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 33(1)(i) and the account established under section 33(1)(k);
  - (b) total contributions in arrears;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- (3) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the principal body corporate at the end of the financial year for which the accounts are prepared.
- (4) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the executive committee, identifying the total amounts paid to each member during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- (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.

**47J Audit [SM, s 155]**

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



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*auditor* means—

- (a) a person who is a registered company auditor; or
- (b) a person who—
  - (i) is a member of—
    - (A) CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or
    - (B) the Institute of Chartered Accountants in Australia and entitled to use the letters ‘CA’ or ‘FCA’; or
    - (C) the Institute of Public Accountants and entitled to use the letters ‘MIPA’ or ‘FIPA’; and
  - (ii) has a total of 2 years auditing experience, whether or not continuous.

## **Division 2D                      Removal from office of voting members of executive committee for breach of code of conduct**

### **47K    Notice for breach of code of conduct [SM, s 34]**

- (1) If the principal body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the principal body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
  - (a) that the principal 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 principal body corporate, within the state period of at least 21 days after the member is given the notice, a

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- written response to the notice in not more than 600 words;
- (d) that, if asked by the member, the principal 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 principal body corporate;
  - (e) that the principal 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 principal 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 principal body corporate.

#### **47L Removal of voting member at general meeting [SM, s 35]**

- (1) This section applies if—
- (a) the principal body corporate give a voting member of its executive committee a notice under section 47K(1); and
  - (b) the period mentioned in section 47K(1)(c) for the notice has ended.
- (2) The principal body corporate must—
- (a) include on the agenda of its next general meeting, called after the period mentioned in section 47K(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of—
    - (i) the notice; and
    - (ii) if the body corporate has received a written response from the member under section 47K(1)(c)—the response.

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- (3) The member may be removed from office, by ordinary resolution of the principal body corporate, at the next general meeting.

## **Division 3                    General provisions**

### **48            Costs in proceedings by members against principal body corporate**

- (1) In any proceedings brought by any member against the principal body corporate, the court before which the proceedings are brought may order that any moneys (including costs) payable by the principal body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the principal body corporate out of contributions levied for the purpose.
- (2) Where a court makes an order under subsection (1) the principal body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy. The provisions of section 29 with such modifications as may be necessary apply to and in respect of contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.

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

- (1) A summons or other legal process may be served on the principal body corporate by leaving it with the chairperson or secretary of the principal body corporate or with any member of the executive committee.
- (2) A document other than a document referred to in subsection (1) may be served on the principal body corporate—

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- (a) by leaving it with any person referred to in subsection (1); or
  - (b) by post on the principal body corporate at its last address notified in the gazette.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by the principal body corporate, the executive committee or the secretary of the executive committee or a member or proprietor, lessee or occupier of a lot may be served—
- (a) by leaving it with some person apparently of or above the age of 16 years—
    - (i) where the person to be served is an occupier of the lot, at the lot; or
    - (ii) where an address for the service of notices on the person to be served is recorded in the principal body corporate roll, at the address so recorded; or
  - (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the principal body corporate roll, at the address so recorded; or
  - (c) in the case of a member, in any manner authorised by the by-laws for the service of notices on members.
- (4) Notice under section 43(5) may be served on a person—
- (a) personally or by post; or
  - (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the firstmentioned person.

## **50 Establishment of committees**

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

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## **Part 4                      Thoroughfares**

### **Division 1                      Construction of roads**

#### **51                      Local government to approve design etc.**

Any road constructed on the primary thoroughfare or on the secondary thoroughfare shall be constructed to a design and standard approved by the local government at the time of construction.

#### **52                      Company to construct roads**

All roads on the primary thoroughfare and all roads on the secondary thoroughfare shall initially be constructed by the company at its cost in accordance with the requirements of the local government and to the satisfaction of that council.

### **Division 2                      Maintenance etc. of roads and other structures**

#### **53                      Thoroughfares are roads**

For the purposes of the *Motor Accident Insurance Act 1994*, the roads on the primary thoroughfare and the roads on the secondary thoroughfare are roads.

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

- (1) Notwithstanding any other provision of this Act or of any by-law or other decision made by the primary thoroughfare body corporate or the principal body corporate, any inspector or officer employed by the Crown or a statutory body (including the local government) or any other person authorised by a statutory body may enter and be upon any part of the primary thoroughfare or the secondary thoroughfare for

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the purpose of exercising powers or authorities or performing functions or duties as such inspector, officer or other person.

- (1A) In respect of the primary thoroughfare and the secondary thoroughfare, the inspector, officer or other person, in addition to any powers, authorities, functions and duties vested in the person by or under this or any other Act or law, shall have such powers, authorities, functions and duties that the person would have under any Act or law if the primary thoroughfare and the secondary thoroughfare was a public place.
- (2) A person shall not obstruct the inspector, officer or other person, in his or her access to any part of the primary thoroughfare or of the secondary thoroughfare as provided in subsection (1).

Maximum penalty—20 penalty units.

#### **54A Primary and secondary thoroughfares are public places for certain purposes**

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

#### **55 Temporary closure of thoroughfares**

- (1) Subject to subsection (2), if the primary thoroughfare body corporate or the principal body corporate determines that any work is to be carried out on a primary thoroughfare or, as the case may be, a secondary thoroughfare which work is of such a nature as will or would require the temporary closure to some or all traffic on any road, the primary thoroughfare body corporate or, as the case may be, the principal body corporate shall give notice of intention to temporarily close the road at least 7 days prior to the closure by—
- (a) if the body corporate has a website—publishing the notice on the website; and

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- (b) giving the notice in writing to each member of the body corporate who is the proprietor of a lot access to which is likely to be affected by the closure.
- (1A) The notice shall—
- (a) specify the classes of traffic to be excluded; and
  - (b) identify the location of the road to be closed; and
  - (c) specify the period or periods of the closure; and
  - (d) specify the nature of the work being carried out.
- (2) The provisions of subsection (1) do not apply where the work to be carried out is of an emergent nature.

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

- (1) Subject to the application of any primary thoroughfare by-law or any secondary thoroughfare by-law, every person who lawfully occupies any land within the site or the adjacent site has a right of way over the primary thoroughfare and the secondary thoroughfare.
- (2) A primary thoroughfare by-law or a secondary thoroughfare by-law that, but for this subsection, would have the effect of unreasonably restricting access to or access from any land within the site or the adjacent site shall in respect of that land have no force or effect unless the person for the time being entitled to occupy that land consents in writing to that restriction.
- (3) For the purposes of this section, where land is the subject of a registered mortgage, the mortgagee shall be deemed to be a person who lawfully occupies that land.

## **Division 3 Primary thoroughfare**

### **57 Maintenance etc. of roads and other improvements**

The primary thoroughfare body corporate shall be responsible for the maintenance and reconstruction (including

construction on relocation) of roads within the primary thoroughfare and of any other improvements on the primary thoroughfare.

## **58 Dealings with land comprising primary thoroughfare**

Except as provided in sections 59 and 60, no part of a primary thoroughfare may be subdivided, transferred or leased without the prior approval of—

- (a) the primary thoroughfare body corporate given by special resolution; and
- (b) the local government; and
- (c) the Minister.

## **59 Dedication of primary thoroughfare as road**

(1) With the prior approval of—

- (a) the principal body corporate determined by special resolution within the meaning of section 22; and
- (b) 75% of members of the primary thoroughfare body corporate who are members by reason of being proprietors of land within the site or the adjacent site that is not within the residential zones which members have voting rights at meetings of the primary thoroughfare body corporate that aggregate not less than 75% of the aggregate voting rights of those members; and
- (c) the local government; and
- (d) the Minister;

and subject to any reasonable conditions that the local government imposes, the primary thoroughfare body corporate may dedicate in accordance with the *Land Act 1962* any part of the primary thoroughfare that adjoins a dedicated road to public use as a road.



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

## **60 Establishment of pedestrian mall**

- (1) Notwithstanding any other law, a pedestrian mall may not be established on the primary thoroughfare except in accordance with the provisions of this section.
- (2) At the request in writing of the proprietor or where there is more than 1 proprietor of a majority of proprietors of the land within the Village Zone delivered to the secretary of the primary thoroughfare body corporate, the primary thoroughfare body corporate may in general meeting resolve that a pedestrian mall be established on a part of the primary thoroughfare adjacent to that zone and specified in the resolution.
- (3) A pedestrian mall established on a part of the primary thoroughfare shall not limit vehicular access to the Harbour 1 Residential Zone.
- (4) The primary thoroughfare body corporate, upon passing a resolution to establish a pedestrian mall shall give notice in writing to all owners and lessees of property in the Harbour Zone, the Village Zone, the Harbour 1 Residential Zone and the International Hotel Zone of the resolution and details of the proposed pedestrian mall (including its location, the extent of restriction upon vehicular traffic to, on or through the pedestrian mall or upon the primary thoroughfare) and, in the case of proprietors of land, the proposed method of meeting the cost of the establishment and maintenance of the pedestrian mall.

- (4A) The notice shall specify a date (being not less than 30 days from the giving of the notice) on or before which the owner or lessee may forward any submission in writing to the secretary of the primary thoroughfare body corporate.
- (5) After the date specified pursuant to subsection (4A), the primary thoroughfare body corporate shall make application to the Minister for the Governor in Council's approval of the establishment of the pedestrian mall.
- (5A) The application shall be accompanied by—
- (a) a copy of the resolution, certified by the secretary of the primary thoroughfare body corporate, of the primary thoroughfare body corporate resolving that the pedestrian mall be established; and
  - (b) a copy certified by the secretary of the primary thoroughfare body corporate of the request by the proprietor or, as the case may be, by proprietors of the relevant land for the establishment of the pedestrian mall and, where there is more than 1 proprietor, a certificate by the secretary of the primary thoroughfare body corporate as to the proportion of the number of proprietors making the request; and
  - (c) all submissions received by the secretary of the primary thoroughfare body corporate (whether before or after the date specified in subsection (4A)) in respect of the proposed pedestrian mall.
- (6) In determining whether to recommend the establishment of a pedestrian mall, the Minister shall have regard to—
- (a) the desirability of the proposal; and
  - (b) the effect thereof on the movement of traffic (including emergency service vehicles) within the site or the adjacent site; and
  - (c) the cost of its establishment and maintenance and who it is proposed will contribute to the cost.
- (7) The Governor in Council, upon the recommendation of the Minister and upon such terms and conditions as to the proper

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management, operation and use of the pedestrian mall as the Governor in Council thinks fit, may by order in council approve the establishment of the pedestrian mall.

- (8) Upon the Governor in Council approving the establishment of a pedestrian mall and from time to time thereafter, the Minister may determine that the cost of the establishment of the pedestrian mall and the maintenance thereof shall be met by specified members of the primary thoroughfare body corporate and the proportion which those members shall contribute.

## **61 Additional works on primary thoroughfare**

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

- (5) Where 2 or more members of the primary thoroughfare body corporate are liable to pay the costs of undertaking works each shall pay an amount that bears to the total costs incurred the same proportion that the member's voting entitlements attributable to the land the amenity of which is sought to be enhanced or on which the business undertaking sought to be enhanced is carried on bears to the aggregate of such voting entitlements of all persons liable to contribute towards those costs.
- (6) The primary thoroughfare body corporate shall levy contributions in accordance with subsection (5) to recover the costs of undertaking the works and the provisions of section 73 with such modifications as may be necessary apply to and with respect of contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.
- (7) Nothing in subsections (4) and (5) shall prevent the primary thoroughfare body corporate from requiring the persons specified in those subsections to pay to the primary thoroughfare body corporate the whole or part of the expected costs of the completed works before the works are commenced or completed.
- (8) Any member of the primary thoroughfare body corporate who feels aggrieved by any levy imposed upon the member pursuant to this section may apply in writing to the Minister for a review of the levy.
- (9) The Minister after considering all the relevant information shall determine that member's liability and may adjust other members' liability accordingly.
- (10) The Minister's decision may be expressed as an amount or as a proportion of the total amount payable for works.

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## **Division 4                      Secondary thoroughfare**

### **62            Maintenance etc. of roads and other improvements**

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

### **63            Dealings with land comprising secondary thoroughfare**

Except as provided in section 64, no part of a secondary thoroughfare may be subdivided, transferred or leased without the prior approval of—

- (a) the principal body corporate given by special resolution; and
- (b) the local government.

### **64            Dedication of secondary thoroughfare as road**

(1) With the prior approval of—

- (a) the principal body corporate determined by special resolution within the meaning of section 22; and
- (b) the local government; and
- (c) the Minister;

and subject to any reasonable conditions that the local government imposes, the principal body corporate may dedicate in accordance with the *Land Act 1962* any part of the secondary thoroughfare that adjoins a dedicated road to public use as a road.

(2) The local government may impose a condition pursuant to subsection (1) that the principal body corporate pay to the local government an amount of money fixed by the local government with a view to the cost of constructing or maintaining the road.

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- (3) A part of the secondary thoroughfare that is dedicated to public use as a road pursuant to this section shall thereupon cease to be a part of the secondary thoroughfare.

#### **64A Maintenance etc. of canals**

The principal body corporate must preserve, maintain and keep clean a canal, or the part of a canal, that is part of a secondary thoroughfare.

#### **64B Surrender of secondary thoroughfare as canal**

- (1) This section applies to a canal, including the part of a canal, that is part of a secondary thoroughfare.
- (2) With the prior approval of—
  - (a) the principal body corporate determined by special resolution within the meaning of section 22; and
  - (b) the local government; and
  - (c) the Minister; and
  - (d) the Governor in Council upon the recommendation of the Minister for the time being administering the *Coastal Protection and Management Act 1995*;

and subject to any reasonable conditions that the local government imposes, the principal body corporate may transfer and surrender the canal to the Crown.

- (3) The local government may impose a condition pursuant to subsection (2) that the principal body corporate pay to the local government an amount of money fixed by the local government with a view to the cost of constructing or restoring as necessary and preserving, maintaining and keeping clean the canal.
- (4) The Minister for the time being administering the *Coastal Protection and Management Act 1995* shall not recommend that the Governor in Council give approval to the transfer and surrender to the Crown of a canal pursuant to subsection (2) unless the Minister is satisfied that the construction and

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condition of the canal is of a standard that, if it was proposed, at the time of the recommendation, to construct such a canal over land to which the *Coastal Protection and Management Act 1995* applied, no approval required by that Act in respect thereof would have reasonably been refused.

- (5) A canal that, pursuant to this section, is transferred and surrendered to the Crown shall cease to be a part of the secondary thoroughfare and of the site or, as the case may be, the adjacent site, and shall be deemed to be a canal within the meaning of the *Coastal Protection and Management Act 1995* which has been constructed in accordance with that Act.

## Part 5                      Primary thoroughfare body corporate

### Division 1                Primary thoroughfare body corporate

#### 65            Definitions for pt 5

In this part—

*executive committee* means the executive committee of the primary thoroughfare body corporate constituted under division 2.

*financial year*, for the primary thoroughfare body corporate, means a period in relation to which the primary thoroughfare body corporate is required under section 77(1)(f) to prepare a statement of accounts.

*primary thoroughfare body corporate roll* means the roll referred to in section 78 to be maintained by the primary thoroughfare body corporate.

*proprietor* means—

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- (a) for land subdivided under a group titles plan or building units plan—the body corporate incorporated under the *Building Units and Group Titles Act 1994*; or
- (b) for other land—the person registered, or entitled to be registered, under the *Land Title Act 1994* as the proprietor of the land.

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

## 66 Primary thoroughfare body corporate

- (1) Upon registration of the initial plan of survey, the proprietor or proprietors of the land within the site (excluding land within the residential zones and land comprising the primary thoroughfare) and the principal body corporate shall by virtue of this Act be a body corporate under the name ‘Sanctuary Cove Primary Thoroughfare Body Corporate’.
- (1A) Upon registration of the initial plan of survey of the adjacent site, the proprietor or proprietors of the land within the adjacent site (excluding land within the residential zones and land comprising the primary thoroughfare) shall be members of the primary thoroughfare body corporate.
- (2) When land, within the site or the adjacent site (excluding land within the residential zones) is subdivided by way of a group titles plan or a building units plan, the proprietor of that land—
  - (a) shall give notice in writing to the primary thoroughfare body corporate of the name and address for service of notices of the body corporate incorporated by the registration of that plan; and
  - (b) shall cease to be a member of the primary thoroughfare body corporate;



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and the body corporate created by the registration of that plan shall become a member of the primary thoroughfare body corporate.

- (3) The Corporations Act does not apply to or in respect of the primary thoroughfare body corporate.
- (4) The primary thoroughfare body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act and shall do all things reasonably necessary for the control, management and administration of the primary thoroughfare.
- (5) The primary thoroughfare body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the primary thoroughfare by-laws for the time being in force.
- (6) The primary thoroughfare body corporate may—
  - (a) sue and be sued on any contract made by it;
  - (b) sue for and in respect of any damage or injury to the primary thoroughfare caused by any person;
  - (c) be sued in respect of any matter connected with the primary thoroughfare which as proprietor it is so liable;
  - (d) take such legal action as may be necessary to enforce the primary thoroughfare by-laws.
- (7) In any case in which work is carried out for the purpose of constructing or preparing the primary thoroughfare, upon registration of the initial plan of survey or, as the case may be, initial plan of survey of the adjacent site, the primary thoroughfare body corporate shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.
- (8) Nothing in subsection (7) shall relieve the company from its obligation to pay for the initial construction of the primary thoroughfare to the standard prescribed pursuant to section 51.

## **67 Member's nominee**

- (1) A member of the primary thoroughfare body corporate—
  - (a) being a subsidiary body corporate, shall at its annual general meeting and may from time to time thereafter;
  - (b) in any other case, may from time to time;  
appoint a person to represent the member and to vote on behalf of the member at meetings of the primary thoroughfare body corporate.
- (2) The appointment of a person pursuant to subsection (1) shall not be effective until notification in writing signed by the member or, in a case referred to in subsection (1)(a), by the chairperson and secretary of the body corporate is received by the secretary of the primary thoroughfare body corporate.
- (3) The appointment of a person to represent a member at meetings of the primary thoroughfare body corporate shall continue until—
  - (a) notice of the appointment of another person to represent that member; or
  - (b) notice of the cancellation of the person's appointment;  
is received by the secretary of the primary thoroughfare body corporate.
- (4) A person appointed under this section by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.

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

- (1) The common seal of the primary thoroughfare body corporate shall be kept by such member of the primary thoroughfare body corporate or member of the executive committee as the primary thoroughfare body corporate determines or, in the

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absence of any such determination, by the secretary of the executive committee.

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

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

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

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

The address for service of notices on the primary thoroughfare body corporate shall upon its incorporation pursuant to section 66 be the address for service of notices on the company.

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

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

Maximum penalty—20 penalty units.

- (2) The agenda for a meeting convened under subsection (1) shall consist of the following items—
  - (a) to decide whether insurances effected by the primary thoroughfare body corporate should be confirmed, varied or extended;
  - (b) to decide whether any amounts determined under section 77(1)(h) or (2) should be confirmed or varied;
  - (c) where there are more than 3 members of the primary thoroughfare body corporate, to determine the number of members of the executive committee;
  - (d) to elect the chairperson, secretary and treasurer of the primary thoroughfare body corporate and other members of the executive committee;
  - (e) to decide whether to make by-laws regulating, controlling or prohibiting the passage through and conduct and activities of persons on or within all or part of the primary thoroughfare.
- (3) The meeting convened under subsection (1) shall be the first annual general meeting of the primary thoroughfare body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.
- (3A) However, a person may be elected to 1 or more of those offices.
- (4) The company shall not fail or neglect to deliver to the primary thoroughfare body corporate at its first annual general meeting—
  - (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates, diagrams and other documents (including policies of insurance) obtained or received by it and relating to the primary thoroughfare;
  - (b) if they are in its possession or under its control, the primary thoroughfare body corporate roll, books of account and any notices or other records relating to the primary thoroughfare;

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- (c) the budget showing the estimated expenditure of the primary thoroughfare body corporate in relation to the primary thoroughfare on an annual basis;

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

Maximum penalty—20 penalty units.

- (4A) The company shall not fail or neglect to deliver to the primary thoroughfare body corporate at or before its annual general meeting first held after the registration of the initial plan of survey of the adjacent site—

- (a) all plans, specifications, drawings showing water pipes, electric cables and drainage, certificates, diagrams and other documents (including policies of insurance) obtained or received by it and relating to the primary thoroughfare within the adjacent site;

- (b) if they are in its possession or under its control, any books of account and any notices or other records relating to the primary thoroughfare within the adjacent site;

- (c) the budget showing the estimated expenditure of the primary thoroughfare body corporate in relation to the primary thoroughfare within the adjacent site on an annual basis;

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

Maximum penalty—20 penalty units.

- (5) Schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act applies to and in respect of the first annual general meeting of the primary thoroughfare body corporate and voting at that meeting and

schedule 2, part 2 of that Act applies to and in respect of meetings of the primary thoroughfare body corporate, other than the first annual general meeting, and voting at those meetings.

- (5A) However, the provisions in those schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 9, definition *ordinary resolution*.
- (5B) The provisions of the schedules referred to in subsection (5) shall, for the purposes of subsection (5), be read and construed as if—
- (a) references therein to ‘aggregate lot entitlement’ were references to the aggregate of all voting entitlements specified in the table in section 72(1);
  - (b) references therein to ‘body corporate’ were references to primary thoroughfare body corporate;
  - (c) references therein to ‘by-laws’ were references to primary thoroughfare by-laws;
  - (d) references therein to ‘council’ were references to executive committee;
  - (e) references therein to a ‘lot’ were references to a parcel of land within the site and, after the registration of the initial plan of survey of the adjacent site, the adjacent site;
  - (f) references therein to ‘lot entitlement’ were references to the voting entitlement of a member;
  - (g) references therein to the ‘original proprietor’ were references to the company;
  - (h) references therein to a ‘proprietor’ were references to a member of the primary thoroughfare body corporate;
  - (i) references therein to the ‘roll’ were references to the primary thoroughfare body corporate roll;

- (j) references to particular provisions of the *Building Units and Group Titles Act 1980* (other than the provisions in those schedules) were references to corresponding provisions of this Act;
  - (k) the principal body corporate were the proprietor of a parcel of land within the site and, after the registration of the initial plan of survey of the adjacent site, the adjacent site and its voting entitlements were the voting entitlements of that parcel.
- (5C) When an expression is substituted for an expression used in the *Building Units and Group Titles Act 1980* and referred to in subsection (5B), the substituted expression shall, for the purposes of subsection (5B), be read and construed in the same manner as the expression for which it is substituted is required to be read and construed.
- (6) If a meeting of the primary thoroughfare body corporate is not convened in accordance with subsection (1), the Minister for Justice and Attorney-General may, pursuant to an application by the primary thoroughfare body corporate or any member of the primary thoroughfare body corporate appoint by order a person to convene a meeting of the primary thoroughfare body corporate within such time as may be specified in the order and the meeting convened by that person shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).
- (7) At any time after the meeting convened under subsection (1) has been held, the Minister for Justice and Attorney-General may, pursuant to an application made to the Minister for Justice and Attorney-General by a member of the primary thoroughfare body corporate, appoint by order a person, nominated by the member, who has consented to that nomination, if there is not an executive committee, to convene a meeting of the primary thoroughfare body corporate within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the other members of the

executive committee, be deemed to be a first annual general meeting of the primary thoroughfare body corporate.

- (8) An order made under subsection (6) or (7) may include such ancillary or consequential provisions as the Minister for Justice and Attorney-General thinks fit.
- (9) Notwithstanding subsection (5), where an order made under subsection (6) or (7) so provides—
  - (a) the person appointed to convene a meeting of the primary thoroughfare body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the primary thoroughfare body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (10) Notwithstanding that an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order, the company remains liable to the penalty provided by subsection (1) for any failure to comply with that subsection.

## **71 Primary thoroughfare by-laws**

- (1) Subject to subsection (5), the primary thoroughfare body corporate, pursuant to a special resolution, for the purpose of the control, management, administration, use or enjoyment of the primary thoroughfare, may from time to time make by-laws and may in like manner amend or repeal those by-laws.
- (2) A primary thoroughfare by-law has no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (3) A lease of any land where access to a dedicated road is by way of the primary thoroughfare shall be deemed to contain an agreement by the lessee that the lessee will comply with the primary thoroughfare by-laws for the time being in force.



- (4) Without limiting the operation of any other provision of this Act, the primary thoroughfare by-laws for the time being in force bind the primary thoroughfare body corporate, the principal body corporate and each registered proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier, of land (including lots) within the site to the same extent as if those by-laws had been signed and sealed by the primary thoroughfare body corporate, the principal body corporate and each registered proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (5) No amendment of or addition to a primary thoroughfare by-law shall be capable of operating to prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.

## **72 Voting entitlements before registration of initial plan of survey of adjacent site**

- (1) Until land within a zone within the site, other than a residential zone or the Primary Thoroughfare Zone, is subdivided, the proprietor of that land as a member of the primary thoroughfare body corporate shall have a voting entitlement as set out opposite that zone in the following table—

**Table**

<b>Zone</b>	<b>Voting entitlement</b>
Golf Course Zone	100
Harbour Zone	200
International Hotel Zone	500
Recreation Club Zone	100
Village Zone	1,200

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- (2) When the land comprising a zone set out in the table in subsection (1), is subdivided the voting entitlement set out opposite that zone in that table shall be apportioned by notice in writing by the proprietor of the land given to the primary thoroughfare body corporate amongst parcels thereby created and a proprietor of a parcel shall as a member of the primary thoroughfare body corporate have the voting entitlement apportioned in respect of that parcel.
- (2A) In like manner the voting entitlement of a proprietor of land that is further subdivided shall be apportioned amongst the parcels thereby created and the proprietor of each parcel shall have the relevant voting entitlement so apportioned.
- (3) Until the registration of the initial plan of survey of the adjacent site, the principal body corporate as a member of the primary thoroughfare body corporate shall have a voting entitlement of 900.

## **72A Voting entitlements after registration of initial plan of survey of adjacent site**

- (1) Upon the registration of the initial plan of survey of the adjacent site and until land within the Golf Course Zone or the Administration Zone each within the adjacent site is subdivided, the proprietor of that land as a member of the primary thoroughfare body corporate shall have a voting entitlement as set out opposite that zone in the following table—

**Table**

<b>Zone</b>	<b>Voting entitlement</b>
Administration Zone	50
Golf Course Zone	100

- (2) When the land comprising a zone set out in the table in subsection (1) within the adjacent site is subdivided the voting entitlement set out opposite that zone in that table shall be

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apportioned by notice in writing by the proprietor of the land given to the primary thoroughfare body corporate amongst the parcels thereby created and a proprietor of a parcel shall as a member of the primary thoroughfare body corporate have the voting entitlement apportioned in respect of that parcel.

- (2A) In like manner the voting entitlement of a proprietor of land that is further subdivided shall be apportioned amongst the parcels thereby created and the proprietor of each parcel shall have the relevant voting entitlement so apportioned.
- (3) Upon the registration of the initial plan of survey of the adjacent site, the principal body corporate as a member of the primary thoroughfare body corporate shall have, in lieu of its voting entitlement prescribed in section 72(3), a voting entitlement of 2,000.

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

- (1) The primary thoroughfare body corporate may levy the contributions determined by it in accordance with section 77(1)(h) and the amount (if any) determined pursuant to section 77(2) in respect thereof by serving on its members notice in writing of the contributions payable by them.
- (2) Contributions levied by the primary thoroughfare body corporate shall be levied and shall be payable, subject to this section, by the members of the primary thoroughfare body corporate in shares proportional to the voting entitlements at the time when the contribution was levied.
- (3) In respect of a contribution levied under subsection (1), a proprietor of land is liable, jointly and severally with any person who was liable to pay that contribution when that proprietor became the proprietor of that land to pay such part of that contribution as was unpaid when the proprietor became the proprietor of that land.
- (4) A contribution levied under this section—
  - (a) becomes due and payable to the primary thoroughfare body corporate in accordance with the decision of the

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primary thoroughfare body corporate to make the levy;  
and

- (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 77(2) (if any); and
  - (c) may be recovered, as a debt, by the primary thoroughfare body corporate in any court of competent jurisdiction.
- (5) Nothing in this section shall be construed to prevent the primary thoroughfare body corporate, in general meeting, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (4)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.

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

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

#### **75 Power of entry**

- (1) For the purpose of carrying out—
  - (a) any work required to be carried out by the primary thoroughfare body corporate by a notice served on it by a public or local government;
  - (b) any work referred to in section 77(1)(b);

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the primary thoroughfare body corporate may, by its agents, servants or contractors, enter upon any part of the primary thoroughfare for the purpose of carrying out the work—

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

Maximum penalty—4 penalty units.

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

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

- (a) invest any moneys held by it in any manner permitted by law for the investment of trust funds or in any prescribed investment;
- (b) borrow moneys and secure the repayment thereof and of any interest in such manner as may be agreed upon by the primary thoroughfare body corporate and the lender;
- (c) enter into an agreement for the provision of amenities or services by it or any other person to any land or to the proprietor or occupier thereof;
- (d) enter into an agreement with the principal body corporate for the provision of amenities or services by the primary thoroughfare body corporate or any other

- person to any land within the residential zones or to the proprietor or occupier thereof;
- (e) acquire and hold any personal property to facilitate the carrying out of its duties;
  - (f) exchange land that forms part of the primary thoroughfare with other land within the site or the adjacent site for the purpose of that other land becoming part of the primary thoroughfare;
  - (g) employ staff to perform its functions.

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

- (1) The primary thoroughfare body corporate shall—
  - (a) control, manage and administer the primary thoroughfare for the benefit of its members; and
  - (b) properly maintain and keep in a state of good and serviceable repair—
    - (i) the primary thoroughfare, including any improvements thereon;
    - (ii) any personal property vested in it; and
  - (c) effect insurance in accordance with section 81; and
  - (d) cause proper records to be kept of notices given to the primary thoroughfare body corporate under this or any other Act and of any orders made by a court and served on the primary thoroughfare body corporate; and
  - (e) keep—
    - (i) for at least 10 years after their creation or receipt by or for the primary thoroughfare body corporate—
      - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
      - (B) proper books of account for amounts received or paid by the primary thoroughfare

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body corporate showing the items for which the amounts were received or paid; and

- (ii) for at least 2 years after their creation or receipt by or for the primary thoroughfare body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and
- (f) cause to be prepared, from the books referred to in paragraph (e), a proper statement of accounts of the primary thoroughfare body corporate in respect of each period commencing on the date of its incorporation or the date up to which the last previous such statement was prepared and ending on a date not earlier than 2 months before each annual general meeting; and
- (g) cause an annual general meeting to be held each year on or after the anniversary of the annual general meeting held in 1990 but not later than 2 months after that anniversary; and
- (h) not later than 14 days after its incorporation and from time to time thereafter, determine the amounts necessary in its opinion to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums, rates or any other liability of the primary thoroughfare body corporate, other than amounts referred to in paragraph (1); and
- (i) upon first determining the amounts referred to in paragraph (h), establish a fund into which shall be paid all amounts received by it, including the proceeds of the sale or other disposal of any personal property of the primary thoroughfare body corporate and any fees received by it under section 80 and into which may be paid any amounts paid to the primary thoroughfare body corporate by way of discharge of insurance claims; and
- (j) from time to time, levy, in accordance with section 73, on each person liable therefor a contribution to raise the amounts referred to in paragraph (h); and

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- (k) pay any moneys referred to in paragraph (i) that are received by it and are not otherwise invested in accordance with section 76(a) into an account established in a financial institution in the name of the primary thoroughfare body corporate; and
  - (l) if the primary thoroughfare body corporate—
    - (i) becomes liable to pay any moneys that it is unable to pay forthwith; and
    - (ii) is not required, under paragraph (j), to levy contributions to meet the liability;  
levy, in accordance with section 73, contributions to raise those moneys; and
  - (m) implement the decisions of the primary thoroughfare body corporate.
- (2) The primary thoroughfare body corporate from time to time may in respect of contributions determined in accordance with subsection (1)(h) or contributions referred to in subsection (1)(1) determine by special resolution, for the purposes of section 73, an amount being not greater than 10% of those contributions.
  - (3) The primary thoroughfare body corporate shall not disburse any moneys from its fund, otherwise than for the purpose of carrying out its powers, authorities, duties and functions under this Act or the primary thoroughfare by-laws or meeting any liability referred to in subsection (1)(1).
  - (4) A determination made by the primary thoroughfare body corporate under subsection (1)(h) may specify that the amounts to be raised shall be raised by such regular periodic contributions as may be specified in the determination.

## **78 Primary thoroughfare body corporate roll**

- (1) The primary thoroughfare body corporate shall prepare and maintain a roll in accordance with this section.



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- (2) The primary thoroughfare body corporate shall record in the primary thoroughfare body corporate roll the following information—
- (a) the voting entitlements of the proprietor of each parcel of land within the site (excluding land within the residential zones);
  - (b) the voting entitlements for the time being of the principal body corporate;
  - (c) the total of the voting entitlements referred to in paragraphs (a) and (b);
  - (d) from the registration of the initial plan of survey of the adjacent site—
    - (i) the voting entitlement of the proprietor of each parcel of land within the adjacent site (excluding land within the residential zones);
    - (ii) the total of the voting entitlements referred to in paragraphs (a), (b) and (d)(i);
  - (e) the name and address for service of notices on each member of the primary thoroughfare body corporate;
  - (f) the name and address of any person appointed (in writing addressed to the primary thoroughfare body corporate) by any member of the primary thoroughfare body corporate to represent that member at meetings of the primary thoroughfare body corporate.
- (3) The primary thoroughfare body corporate shall record and maintain in the primary thoroughfare body corporate roll a copy of the primary thoroughfare by-laws for the time being in force.

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

- (1) The company and any person who, under this section, has given notice of an address for the service of notices on the company or person may give notice in writing to the primary

thoroughfare body corporate of an address or change of address for the service of notices on the company or person.

- (2) After delivery to a transferee of any land within the site or the adjacent site (excluding land within the residential zones) of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the primary thoroughfare body corporate written notice which shall identify the land and—
  - (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (2A) Where a transferor of any land fails to comply with subsection (2), the transferee of that land may give to the primary thoroughfare body corporate written notice which shall identify the land and specify the transferee's name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to the transferee.
- (3) After a person becomes entitled, otherwise than as a transferee, to be registered under the *Land Title Act 1994* as the proprietor of land within the site or the adjacent site (excluding land within the residential zones) the person shall give to the primary thoroughfare body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—
  - (a) by what right the person became entitled to the land; and
  - (b) the person's name, in full, the address for the service of notices on the person and the date upon which the person became entitled to the land.
- (4) Where—

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- (a) the primary thoroughfare body corporate believes that a person may, under this section, give a notice to it; and
- (b) the primary thoroughfare body corporate has not received that notice;
- the primary thoroughfare body corporate may serve a notice on that person specifying the capacity in which it believes the person is entitled to give the notice and requiring the person—
- (c) to state, within 14 days, whether or not the person is a person entitled to give a notice in that capacity; and
- (d) if the person is such a person, to give that notice.
- (5) Where the primary thoroughfare body corporate has served a notice under subsection (4) on a person whom it believes to be a person entitled to give a notice to the primary thoroughfare body corporate under this section that person is not entitled to cast a vote at any meeting of the primary thoroughfare body corporate until the person gives the required notice.
- (6) A vote cast at a meeting of the primary thoroughfare body corporate by or on behalf of a member of the primary thoroughfare body corporate has no effect unless the primary thoroughfare body corporate has been given notice in writing specifying the nominee of the member.
- (7) A notice referred to in subsection (6) may be included in any other notice that the member of the primary thoroughfare body corporate to which it relates is entitled under this section to give to the primary thoroughfare body corporate.

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

- (1) The primary thoroughfare body corporate shall, upon application made to it in writing by a member of the primary thoroughfare body corporate, by a member of the principal body corporate or by a proprietor of any lot on a group titles plan or building units plan or by a person authorised in writing by such member or proprietor and on payment of such sum as the primary thoroughfare body corporate may fix by

resolution but not exceeding the reasonable cost to the primary thoroughfare body corporate, do such 1 or more of the following things as are required of it in the application—

- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the primary thoroughfare body corporate or a member of the executive committee;
- (b) make available for inspection by the applicant or the applicant's agent—
  - (i) the primary thoroughfare body corporate roll;
  - (ii) the notices and orders referred to in section 77(1)(d);
  - (iii) the plans, specifications, drawings showing water pipes, electric cables or drainage, certificates, diagrams and other documents held by it relating to the primary thoroughfare;
  - (iv) the minutes of general meetings of the primary thoroughfare body corporate and of the executive committee;
  - (v) the books of account of the primary thoroughfare body corporate;
  - (vi) a copy of the statement of accounts of the primary thoroughfare body corporate last prepared by the primary thoroughfare body corporate in accordance with section 77(1)(f);
  - (vii) every current policy of insurance effected by the primary thoroughfare body corporate and the receipt for the premium last paid in respect of each such policy;
  - (viii) any other record or document in the custody or under the control of the primary thoroughfare body corporate;
  - (ix) the primary thoroughfare by-laws for the time being in force;

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

- (c) certify, as at the date of the certificate, in respect of any land in respect of which the application is made—
- (i) the amount of any regular periodic contributions determined by the primary thoroughfare body corporate under section 77(1)(h) and (4) and the periods in respect of which those contributions are payable; and
  - (ii) whether there is any amount unpaid of any contribution determined under section 77(1)(h) and, if so, the amount thereof; and
  - (iii) whether there is any amount unpaid of any contribution levied under section 77(1)(l) and, if so, the amount thereof and the date on which it was levied; and
  - (iv) whether there is any amount unpaid of any contribution levied under section 92 and, if so, the amount thereof and the date on which it was levied; and
  - (v) the amount (if any) determined under section 77(2) in respect of any unpaid contribution referred to in this paragraph; and
  - (vi) whether there is a liability to contribute towards the establishment and maintenance of a pedestrian mall approved pursuant to section 60 and whether there is unpaid any contribution levied and if so, the amount thereof and the date which it was levied;
- (d) furnish to the applicant or the applicant's agent a copy of the primary thoroughfare by-laws for the time being in force or any part thereof within a period of 21 days

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commencing on the day next after the date on which the application is received by the primary thoroughfare body corporate.

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

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

- (1) The primary thoroughfare body corporate shall effect insurance—
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of damage to property, death or bodily injury occurring upon the primary thoroughfare or the consequences resulting therefrom; and
  - (c) against the possibility of the members becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the primary thoroughfare body corporate, pursuant to a special resolution, decides to insure.
- (2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of the prescribed amount prescribed by order in council or, if not prescribed, \$10,000,000.

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- (3) The primary thoroughfare body corporate may insure any property in which it has an insurable interest.

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

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

## **83 Voting rights**

- (1) Any powers of voting conferred by or under this part may be exercised—
- (a) in the case of a member who is an infant—by the member’s guardian;
- (b) in the case of a member who is for any reason unable to control the member’s property—by the person who for the time being is authorised by law to control that property;

- (c) in the case of a member which is a body corporate—by the person nominated pursuant to section 82 by that member.
- (2) Where the Supreme Court of Queensland upon the application of the primary thoroughfare body corporate or of any member is satisfied that there is no person able to vote in respect of any voting entitlement or that the person able to vote cannot be found, the court in its discretion may appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this part as the court shall determine.
- (3) The court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2) the court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.
- (5) The powers of the court under this section may be exercised by the registrar in the first instance, who may refer the application to a Judge and who shall so refer it at the request of the applicant or any respondent.
- (6) In this section and in section 84—  
*registrar* means the registrar of the Supreme Court of Queensland at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

## **84 Procedure upon application to Supreme Court**

- (1) Every application to the Supreme Court of Queensland under this part shall be by summons at chambers unless otherwise provided by rules of court made in relation thereto.
- (2) On an application, notice shall be served on such persons as the court thinks fit or the court may dispense with such notice.



- (3) The court may, if it thinks fit, adjourn an application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.
- (4) The court may delegate to the registrar all or any of its powers under this part.

## **Division 2                    Executive committee**

### **85            Constitution of executive committee**

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

the primary thoroughfare body corporate increases to more than 5, at an extraordinary general meeting convened for the purpose.

- (5A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the primary thoroughfare body corporate must be conducted under schedule 3.
- (6) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—
- (a) is an individual who—
    - (i) is a member of the primary thoroughfare body corporate; or
    - (ii) has been nominated for election by a member of the primary thoroughfare body corporate; and
  - (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.
- (6A) Notwithstanding the provisions of this section, the primary thoroughfare body corporate may determine that the holder of the office of secretary or treasurer of the primary thoroughfare body corporate shall not be a member of the executive committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the primary thoroughfare body corporate and of the executive committee but shall not be a member of the executive committee.
- (7) A member of the executive committee may, with the consent of the executive committee, appoint a member of the primary thoroughfare body corporate or nominee of a body corporate which is a member of the primary thoroughfare body corporate to act in the member's place as a member of the executive committee at any meeting of the executive committee and any member or nominee so appointed shall, when the member is so acting, be deemed to be a member of the executive committee.

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- (8) A member of the primary thoroughfare body corporate or a nominee of a body corporate may be appointed under subsection (7) whether or not the member is a member of the executive committee.
  - (9) If a person appointed under subsection (7) is a member of the executive committee the person may, at any meeting of the executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.
  - (10) Notwithstanding any other provision of this section, the executive committee may be constituted before the first annual general meeting of the primary thoroughfare body corporate.
  - (11) The members of the executive committee constituted under subsection (10) (if any) and the chairperson, secretary and treasurer of the primary thoroughfare body corporate shall be elected at a general meeting of the primary thoroughfare body corporate and the provisions of subsection (6) and such of the provisions of schedule 2, part 1 of the *Building Units and Group Titles Act 1980* in force at the commencement of this Act as applied by section 70 as relate to the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and of members of the executive committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of the executive committee to be so constituted.
  - (12) Schedule 2, part 2 of the *Building Units and Group Titles Act 1980* other than clause 16(1) as applied by section 70 does not apply to or in respect of the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the members of the executive committee to be constituted under subsection (10).
  - (13) The provisions of this part (other than subsections (1), (2), (3) and (5) of this section) apply to and in respect of an executive committee constituted under subsection (10) and the members thereof.

- (14) Where there is no executive committee, the primary thoroughfare body corporate shall exercise and perform the powers, authorities, duties and functions of the executive committee.

### **85A Code of conduct for voting members of executive committee**

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

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

- (1) A person elected as chairperson, secretary or treasurer of the primary thoroughfare body corporate or as a member of the executive committee vacates the person's office—
- (a) if, where the person was a member of the primary thoroughfare body corporate at the time of the person's election, the person ceases to be a member of the primary thoroughfare body corporate; or
  - (b) if, where the person was not a member of the primary thoroughfare body corporate at the time of the person's election the member who nominated the person for election—
    - (i) ceases to be a member of the primary thoroughfare body corporate; or
    - (ii) notifies the primary thoroughfare body corporate, in writing, that his office, as a member of the executive committee, is vacated;

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however, this paragraph shall not apply to a secretary or treasurer of the primary thoroughfare body corporate who is not a member of the executive committee; or

- (c) upon the receipt by the primary thoroughfare body corporate from the person of notice in writing of the person's resignation; or
- (d) upon the election at a general meeting of the primary thoroughfare body corporate of another person to that office or as a member of the executive committee; or
- (e) where the person is a member referred to in section 85(3) and the number of members of the primary thoroughfare body corporate increases to more than 3, upon the election of the chairperson, secretary and treasurer of the primary thoroughfare body corporate and the other members of the executive committee at the annual general meeting, or the extraordinary general meeting referred to in section 85(5); or
- (f) if the person is absent without prior leave granted by the executive committee from 3 consecutive meetings of the executive committee of which due notice has been given to the person; or
- (g) if the person becomes bankrupt or compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (h) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
- (i) if the person dies; or
- (j) if the person is removed from office by ordinary resolution of the primary thoroughfare body corporate under division 2C; or
- (k) if the primary thoroughfare body corporate, pursuant to a special resolution, determines that the person's office is vacated.

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- (2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the primary thoroughfare body corporate or another member of the executive committee, otherwise than by reason of subsection (1)(d) or (e), the primary thoroughfare body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of the person's predecessor's term of office.

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

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

Maximum penalty—10 penalty units.

- (3) The treasurer of the primary thoroughfare body corporate may delegate the exercise or performance of any of the treasurer's powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is

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specifically approved by the executive committee, to another member of the executive committee so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, the delegate shall be deemed to be the treasurer of the primary thoroughfare body corporate.

- (4) The executive committee may, by a notice in writing served on the treasurer of the primary thoroughfare body corporate, order that the treasurer shall not exercise or perform any of the treasurer's powers, authorities, duties or functions that are specified in the notice, unless the treasurer does so jointly with another person so specified.
- (5) A person who has possession or control of—
  - (a) any records, books of account or keys belonging to the primary thoroughfare body corporate; or
  - (b) the primary thoroughfare body corporate roll; or
  - (c) any other property of the primary thoroughfare body corporate;

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

Maximum penalty—10 penalty units.

## **88 Meetings of executive committee**

- (1) At a meeting of the executive committee more than half of the members of the executive committee constitutes a quorum.
- (2) Subject to this Act, the decision on any matter of the majority of the members voting on that matter shall be the decision of the executive committee at any meeting at which a quorum is present.

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

**88A 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



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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.

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

- (1) In this section—

*restricted matter* means—

- (a) any matter relating to the striking of a special monetary levy on all members of the primary thoroughfare body corporate; and
  - (b) any matter which seeks to alter the rights, privileges or obligations of members of the primary thoroughfare body corporate; and
  - (c) any matter which seeks to alter the annual monetary contribution of members of the primary thoroughfare body corporate; and
  - (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the primary thoroughfare body corporate pursuant to a special resolution or in general meeting of the primary thoroughfare body corporate; and
  - (e) any matter referred to in section 91 and specified in a resolution of the primary thoroughfare body corporate passed for the purposes of that section.
- (2) Subject to this Act, the decision of the executive committee on any matter, other than a restricted matter, shall be the decision of the primary thoroughfare body corporate.
- (3) Notwithstanding that the executive committee holds office, the primary thoroughfare body corporate may in general meeting continue to exercise or perform all or any of the

powers, authorities, duties and functions conferred or imposed on it by this Act.

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

- (1) Unless—
- (a) otherwise determined pursuant to a special resolution of the primary thoroughfare body corporate; or
  - (b) in an emergency authorised by the Minister; or
  - (c) consented to by such persons entitled to vote at a general meeting of the primary thoroughfare body corporate who represent an aggregate voting entitlement of not less than 75% of the aggregate of all voting entitlements recorded in the primary thoroughfare body corporate roll;
- the executive committee shall not undertake expenditure.
- (2) In respect of any proposed expenditure which, under subsection (1), the executive committee is not entitled to undertake the executive committee shall—
- (a) submit the proposal for determination at an extraordinary general meeting of the primary thoroughfare body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
- (a) in payment of any premium of insurance effected by or on behalf of the primary thoroughfare body corporate; or
  - (b) to comply with a notice or order served on the primary thoroughfare body corporate by any public or local government; or

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- (c) in discharge of any liability incurred in respect of an obligation of the primary thoroughfare body corporate authorised by the primary thoroughfare body corporate in general meeting.

**91 Restrictions imposed on executive committee by primary thoroughfare body corporate**

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

**91A Protection of executive committee members from liability**

- (1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a member of the committee.
- (2) In this section—  
*act done or omission made* does not include the publication of defamatory matter as mentioned in section 91AA(1).

**91AA Protection of body corporate and executive committee from liability for defamation**

- (1) This section applies if—
- (a) the executive committee publishes required material for a general meeting of the primary thoroughfare body corporate; and
  - (b) the required material contains defamatory matter.
- (2) Each of the following is not liable for defamation because of the publication—
- (a) the primary thoroughfare body corporate;

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

(3) In this section—

***member of the committee*** includes the body corporate manager acting under a delegation under section 91AB(1).

***prescribed motion*** means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 91H(1);
- (b) a motion mentioned in section 91I(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for the resort or a part of the resort under section 94K;
- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 94V.

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

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

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## **Division 2A                    Primary thoroughfare body     corporate manager**

### **91AB Primary thoroughfare body corporate manager**

- (1) Subject to subsections (2), (8), (9) and (10) the primary thoroughfare body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the primary thoroughfare body corporate determines a body corporate manager and may, in like manner, delegate to the body corporate manager—
  - (a) all of its powers, authorities, duties and functions; or
  - (b) any 1 or more of its powers, authorities, duties and functions specified in the instrument; or
  - (c) all of its powers, authorities, duties and functions except those specified in the instrument;and may, in like manner, revoke wholly or in part the delegation.
- (2) The primary thoroughfare body corporate may not, under subsection (1), delegate to a body corporate manager its powers to make—
  - (a) a delegation under that subsection; or
  - (b) a decision on a restricted matter within the meaning of section 89.
- (3) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.

[s 91AB]

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- (5) Notwithstanding any delegation made under subsection (1), the primary thoroughfare body corporate may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by it.
- (6) Any act or thing done or suffered by a body corporate manager while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the primary thoroughfare body corporate and shall be deemed to have been done or suffered by the primary thoroughfare body corporate.
- (7) Where the instrument of appointment so provides, a body corporate manager shall have and may exercise and perform all the powers, authorities, duties and functions of the chairperson, secretary or treasurer of the primary thoroughfare body corporate and the executive committee or such of those powers, authorities, duties and functions as may be specified in the instrument.
- (8) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.  
*Example—*  
The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.
- (9) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.
- (10) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—
  - (a) the appointment expires; and
  - (b) the person can not act again as the body corporate manager without a new appointment.
- (11) Nothing in this section shall prevent the reappointment of a body corporate manager after the term of appointment has expired.

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## **Division 2B                    Proxies for principal body corporate    at general meetings of primary    thoroughfare body corporate**

### **91B    Application of div 2B**

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

### **91C    Appointment [SM, s 107]**

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

### **91D    Form of proxy [SM, s 108]**

A proxy given under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and

[s 91E]

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- (e) lapses at the end of the primary thoroughfare body corporate's financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this division, may be given to any individual; and
- (h) must appoint a named individual.

### **91E Use of proxy [SM, s 109]**

- (1) A member of the primary thoroughfare body corporate who is the proxy for the principal body corporate may vote both in the member's own right and also as proxy of the principal body corporate.
- (2) A vote by proxy must not be exercised on behalf of the principal body corporate at the general meeting—
  - (a) if the person appointed to represent the principal body corporate under section 67(1) is personally present at the meeting, unless the person consents at the meeting; or
  - (b) on a particular motion, if a written or electronic vote has been exercised on the motion on behalf of the principal body corporate; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—



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- (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
  - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- (3) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

#### **91F Special provisions about proxy use [SM, s 110]**

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

### **91G Offence [SM, s 111]**

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

Maximum penalty—100 penalty units.

## **Division 2C                      Removal from office of voting members of executive committee for breach of code of conduct**

### **91H Notice for breach of code of conduct [SM, s 34]**

- (1) If the primary thoroughfare body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the primary thoroughfare body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
  - (a) that the primary thoroughfare 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 primary thoroughfare 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 primary thoroughfare 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 primary thoroughfare body corporate;

- (e) that the primary thoroughfare 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 primary thoroughfare 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 primary thoroughfare body corporate.

**91I Removal of voting member at general meeting [SM, s 35]**

- (1) This section applies if—
  - (a) the primary thoroughfare body corporate gives a voting member of its executive committee a notice under section 91H(1); and
  - (b) the period mentioned in section 91H(1)(c) for the notice has ended.
- (2) The primary thoroughfare body corporate must—
  - (a) include on the agenda of its next general meeting, called after the period mentioned in section 91H(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of—
    - (i) the notice; and
    - (ii) if the body corporate has received a written response from the member under section 91H(1)(c)—the response.
- (3) The member may be removed from office, by ordinary resolution of the primary thoroughfare body corporate, at the next general meeting.

## **Division 3                      General provisions**

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

- (1) In any proceedings brought by any member against the primary thoroughfare body corporate, the court before which the proceedings are brought may order that any moneys (including costs) payable by the primary thoroughfare body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such members as are specified in the order and in such proportions as may be so specified, by the primary thoroughfare body corporate out of contributions levied for the purpose.
- (2) Where a court makes an order under subsection (1) the primary thoroughfare body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy.
- (3) The provisions of section 73 with such modifications as may be necessary apply to and in respect of contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.

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

- (1) A summons or other legal process may be served on the primary thoroughfare body corporate by leaving it with the chairperson or secretary of the primary thoroughfare body corporate or with any member of the executive committee.
- (2) A document other than a document referred to in subsection (1) may be served on the primary thoroughfare body corporate—
  - (a) by leaving it with any person referred to in subsection (1); or

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- (b) by post on the primary thoroughfare body corporate at its last address notified in the gazette.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by the primary thoroughfare body corporate, the executive committee or the secretary of the executive committee or a member or proprietor, lessee or occupier of land or of a lot may be served—
- (a) by leaving it with some person apparently of or above the age of 16 years—
- (i) where the person to be served is an occupier of land or a lot, at the land or lot; or
- (ii) where an address for the service of notices on the person to be served is recorded in the primary thoroughfare body corporate roll, at the address so recorded; or
- (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the primary thoroughfare body corporate roll, at the address so recorded; or
- (c) in the case of a member—in any manner authorised by the primary thoroughfare by-laws for the service of notices on members.
- (4) Notice under section 87(5) may be served on a person—
- (a) personally or by post; or
- (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the firstmentioned person.

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

- (1) The primary thoroughfare body corporate may, at the request of any proprietor or occupier of land or of a lot within the site or the adjacent site, convene a meeting in respect of any

matter of interest to proprietors or occupiers of land or lots within the site or the adjacent site.

- (2) Any proprietor or occupier of land or of a lot within the site or the adjacent site may attend and vote at a meeting convened pursuant to subsection (1).
- (3) The chairperson of the primary thoroughfare body corporate shall preside at the meeting for the purpose of the election of a chairperson of the meeting and until the election of a chairperson.
- (4) A meeting convened pursuant to subsection (1) is not a meeting of the primary thoroughfare body corporate.

## **Part 5A                      Conduct of body corporate managers, service contractors and letting agents**

### **Division 1                      Preliminary**

#### **94A      Definitions for pt 5A**

In this part—

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

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

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

*management rights*, of a letting agent for the resort or part of the resort, means—

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

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

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

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

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

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

## **94B 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.

[s 94C]

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- (2) A person stops being a *financier* for the contract if the person gives the body corporate a written notice withdrawing the notice given under subsection (1).
- (3) A notice under subsection (2) may be given without the letting agent's agreement.
- (4) However, a person is a *financier* for the contract only if the person is—
  - (a) a financial institution; or
  - (b) a person who, 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.

#### **94C Meaning of *letting agent* and *letting agent business***

- (1) A person is a *letting agent* for the resort or part of the resort if the person is authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the resort or part.
- (2) A person conducts a *letting agent business* for the resort or part of the resort 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 resort or part; and
  - (b) the owners choose to use the person's services for securing, negotiating or enforcing, including collecting rents or tariffs for, leases or other occupancies of lots included in the resort or part.



- (3) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

*Examples of ancillary businesses or activities—*

video hire, linen hire, agency for tour operator

#### **94D Meaning of *service contractor* for resort or part**

A person is a *service contractor* for the resort or part of the resort if—

- (a) the person is engaged by the primary thoroughfare body corporate or principal body corporate to supply services to the body corporate for the benefit of the common property or lots included in the resort or part; and
- (b) the person is not an employee of the primary thoroughfare body corporate or principal body corporate; and
- (c) the services do not include administrative services; and
- (d) the term of the engagement is at least 1 year.

*Examples of services that might be provided by a service contractor—*

caretaking services, pool cleaning services

## **Division 2 Codes of conduct**

#### **94E Code of conduct for body corporate manager and caretaking service contractor**

- (1) The code of conduct in schedule 5 applies to—
- (a) a body corporate manager appointed by the primary thoroughfare body corporate or principal body corporate in performing obligations under the person's appointment; and
  - (b) a caretaking service contractor engaged by the primary thoroughfare body corporate or principal body corporate

for the resort or part of the resort in performing obligations under the person's engagement.

- (2) Compliance with the provisions of the code is taken to be a condition of the instrument of appointment or the contract providing for the person's engagement.
- (3) If there is an inconsistency between a provision of the code and a provision in the instrument of appointment or contract, the provision of the code prevails.
- (4) In this section—  
*instrument of appointment*, in relation to a person's appointment as a body corporate manager, includes a contract or other document relating to the appointment.

## **94F Code of conduct for letting agent**

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

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

### **Subdivision 1 Preliminary**

#### **94G Application of div 3**

- (1) This division applies for transferring the management rights of a letting agent authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the resort or a part of the resort.
- (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 part of the resort for which a serviced strata

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arrangement or scheme under the Corporations Act is in operation.

## 94H 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

### 94I Code contravention notice

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

## **94J Grounds for requiring transfer**

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

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

## **94K Requirement for transfer**

The letting agent must transfer the letting agent's management rights for the resort or the part of the resort if—

- (a) a ground under section 94J 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.

## **94L 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 94Q does not apply—9 months;
    - (ii) if section 94Q applies—11 months; and

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- (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 its approval.

Maximum penalty for subsection (3)—50 penalty units.
  - (4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

#### **94M 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.

#### **94N Transfer—body corporate’s choice of transferee**

- (1) If the letting agent does not transfer the management rights as required under section 94L, 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 by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.
- (3) The letting agent must pay the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

*Note—*

If the letting agent does not transfer the management rights as required under this section, it is a ground for giving the letting agent a remedial action notice under section 94V.

## **94O 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 94L or 94N.
- (2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—

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- (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 94S(1).

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

#### **94P      Replacement of letting agent authorisation and service contract in particular circumstances**

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

*Example—*

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

- (2) On the transfer—
- (a) the transferred authorisation and any service contract (the *transferred service contract*) forming part of the transferred management rights terminate; and
  - (b) the body corporate must—

- (i) authorise the transferee to conduct a letting agent business for the resort or part; and
  - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.
- (3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.
- (4) Subject to subsection (3)—
  - (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
  - (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
    - (i) the terms applying to the transferred service contract under subsection (5); or
    - (ii) if subsection (5) does not apply—the terms applying to the transferred service contract immediately before the transfer (the *existing terms*).
- (5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—
  - (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 94S(1).

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

### **94Q      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 94K, 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 94R.
- (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.

## **94R Review criteria**

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

- (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;
  - (d) whether the reviewable terms are appropriate for the resort;
  - (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 resort.

**94S 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**

**94T QCAT jurisdiction**

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

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

### **94U      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 the resort or part of the resort; or
  - (b) the authorisation of a person as a letting agent for the resort or part of the resort.
- (2) A party to the dispute may apply, as provided under the QCAT Act, for an order of QCAT to resolve the dispute.

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

### **94V      Termination for failure to comply with remedial action notice [SM, s 131]**

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

- (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents.
- (2) Also, the body corporate may terminate a person’s authorisation as a letting agent if—
  - (a) the person or, if the person is a corporation, a director of the corporation—
    - (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 has been given a transfer notice requiring transfer of the person’s management rights and has not transferred the management rights as required under section 94N.
- (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 94J;
- (c) that the person must, within the reasonable period of at least 14 days stated in the notice—
  - (i) remedy the misconduct or gross negligence; or
  - (ii) carry out the duties; or
  - (iii) remedy the contravention;
- (d) that if the person does not comply with the notice in the stated period, the body corporate may terminate the person's appointment, engagement or authorisation as a body corporate manager, service contractor or letting agent.

## Part 6 Development control by-laws

### 95 Development control by-laws

- (1) The principal body corporate, pursuant to special resolution, may from time to time make by-laws regulating the quality of design and development within the residential zones.
- (2) The development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the residential zones.
- (3) A development control by-law may apply to all the residential zones or to a particular zone or part of a zone specified in the by-law.
- (4) A development control by-law may repeal or amend an existing development control by-law.
- (5) A development control by-law shall have no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (6) A development control by-law shall not affect the operation of any other Act or law.
- (7) Without limiting the operation of any other provision of this Act, the development control by-laws for the time being in force bind the principal body corporate, each member of the principal body corporate and each registered proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier, of a lot within the residential zones to the same extent as if those by-laws had been signed and sealed by the principal body corporate, each member and each registered proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (8) Notwithstanding the provisions of the *Building Units and Group Titles Act 1980*, a by-law made by a body corporate incorporated by the registration of a building units plan or group titles plan in respect of land within a residential zone

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that is inconsistent with the development control by-laws shall to the extent of the inconsistency have no effect.

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

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

*affected person* means any of the following—

- (a) the member of the principal body corporate making the request under subsection (1);
- (b) the registered proprietor, mortgagee in possession, lessee or occupier of the land or lot to which the request relates.

## **Part 6A Residential zone activities by-laws**

### **96A Residential zone activities by-laws**

- (1) The principal body corporate, pursuant to a special resolution, may from time to time make by-laws for the control, management, administration, use or enjoyment of land and lots (other than the secondary thoroughfare) within the residential zones.

[s 96B]

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- (2) A residential zone activities by-law may apply to all the residential zones or to a particular zone or part of a zone specified in the by-law.
- (3) A residential zone activities by-law may repeal or amend an existing residential zone activities by-law.
- (4) A residential zone activities by-law shall have no force or effect until the Minister has approved the by-law and notification of the Minister's approval has been published in the gazette.
- (5) Subject to subsection (7), a residential zone activities by-law shall not affect the operation of any other Act or law.
- (6) Without limiting the operation of any other provision of this Act, the residential zone activities by-laws for the time being in force bind the principal body corporate, the members of the principle body corporate and the registered proprietor and any mortgagee in possession (whether by himself or herself or any other person), lessee or occupier of a lot within the residential zones to the same extent as if those by-laws had been signed and sealed by the principal body corporate, each member and each registered proprietor and each such mortgagee, lessee and occupier respectively as if they contained mutual covenants to observe and perform all the provisions of those by-laws.
- (7) Notwithstanding the provisions of the *Building Units and Group Titles Act 1980* or of section 28, a by-law made by a body corporate incorporated by the registration of a building units plan or group titles plan in respect of land within a residential zone or a secondary thoroughfare by-law that is inconsistent with the residential zone activities by-laws shall to the extent of the inconsistency have no effect.

## **96B Minor noncompliance with residential zone activities by-laws**

- (1) At the request in writing of a member of the principal body corporate or of a proprietor of land or a lot within a residential zone, the principal body corporate may permit the





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

- (1) The proprietor of land within the site 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) the Coomera River; or
  - (c) another place for which permission to moor the vessel has been given; or
  - (d) tidal waters outside the site.

## **101 State not to grant lease etc. within site etc.**

The State may not grant a lease, a licence to use and occupy, or a permit to use and occupy, any foreshore, tidal lands or tidal waters within the site.

## **102 Construction of special dwelling houses**

- (1) The construction of a special dwelling house 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 another 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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### 103 Application of laws of the State

- (1) The laws of the State relating to the design and construction and standard of construction or materials of buildings and other structures apply according to their tenor in respect of special dwelling houses so far as those laws may be sensibly so applied, as if special dwelling houses were constructed on land.
- (2) The *Coastal Protection and Management Act 1995* and the Planning Act do not apply to the development, or proposed development, of a part of the site as a harbour facility.
- (3) In this section—  
*harbour facility* see schedule 1, part 3.

### 104 Construction and use of structures on bank of Coomera River

- (1) With the prior written approval of the chief executive, the proprietor of land within the site bounded in part by the Coomera River may erect a structure that extends from that land upon or over that part of the river or bank that abuts that land.
- (2) An application for approval to erect a structure referred to in subsection (1) shall be made to the chief executive and accompanied by the prescribed fee.
- (3) A structure erected pursuant to subsection (1) shall be for the purpose of providing pedestrian access from the land abutting the structure and for such other purpose as may be approved by the chief executive.
- (4) For so long as the structure is maintained in a good state of repair and to the standard specified by the chief executive in giving approval for its construction or from time to time specified by the chief executive, the proprietor for the time being of the land abutting the structure shall have the right to exclusive use of the structure for the purpose specified in subsection (3).

[s 104A]

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- (5) If the chief executive is of the opinion that a structure erected upon or over the part of the Coomera River bank apparently for a purpose specified in subsection (3) does not comply with this section it may by notice in writing directed to the proprietor of land within the site that abuts the river bank where the structure is erected order—
- (a) the demolition and removal of the structure; or
  - (b) the structure to be repaired or other work as is necessary to comply with this section be carried out;
- within the time specified in the order.
- (6) A proprietor of land shall comply with an order directed to the proprietor pursuant to subsection (5).
- Maximum penalty—20 penalty units.
- (7) The chief executive may at any time enter upon land for the purpose of inspecting any structure referred to in subsection (1) or (5) and may be upon the structure for that purpose.
- (8) A person shall not prevent the chief executive from entering land or being upon any structure for the purpose of inspecting the structure pursuant to subsection (7) or obstruct or hinder the chief executive in carrying out the chief executive's inspection.
- Maximum penalty—20 penalty units.

## **Part 8                      Miscellaneous provisions**

### **Division 1                      Resolution of particular disputes**

#### **104A    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

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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 94T, 94U or 104B; and
  - (b) is subject to section 104C.

### **104B Dealing with matter relating to development control by-law**

- (1) QCAT may deal with a matter relating to—
  - (a) the application of a development control by-law to a person mentioned in subsection (2)(b) or (c); or
  - (b) a contravention or alleged contravention of a development control by-law.
- (2) Each of the following persons may apply to QCAT, as provided under the QCAT Act, to deal with a matter under subsection (1) if the person has standing to make the application—
  - (a) the principal body corporate;
  - (b) a subsidiary body corporate of the principal body corporate;
  - (c) a proprietor or occupier of, or a person having an estate or interest in, a lot in a residential zone.
- (3) For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.

*Example—*

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

- (4) This section is subject to section 104C.

### **104C Internal dispute resolution processes to be used before application**

- (1) This section applies to—
  - (a) a referee for deciding an application for an order under the *Building Units and Group Titles Act 1980*, part 5 relating to a dispute about a matter mentioned in section 104A; and
  - (b) QCAT in deciding an application about a matter mentioned in section 104B.
- (2) The referee or QCAT must not decide the application unless the referee or QCAT is satisfied the applicant has made reasonable attempts to resolve the dispute or matter by using internal dispute resolution processes.

*Examples of internal dispute resolution processes—*

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

## **Division 2 Other matters**

### **104D Associates**

- (1) For this Act, a person is associated with someone else if—
  - (a) a relationship of a type to which this section applies exists between them; or
  - (b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.
- (2) This section applies to relationships of the following types—
  - (a) marriage, de facto relationship or civil partnership;
  - (b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship

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- of persons who have a parent or grandparent in common;
- (c) business partnership;
  - (d) the relationship of employer and employee;
  - (e) a fiduciary relationship;
  - (f) the relationship of persons, 1 of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;
  - (g) the relationship of a corporation and executive officer of the corporation;
  - (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.
- (3) Despite subsection (2)(e) and (f), the owner of a secondary lot or lot on a group titles plan or building units plan and a letting agent for the resort or part of the resort 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.

## 105 Statutory charges

For the purpose of the assessment of rates, land tax and any other statutory charges payable in respect of land and for the purpose of determining the value of land, the land within the site or the adjacent site that is or may be or becomes inundated by water or subject to tidal influence shall be deemed to be land that is not and never has been so inundated or subject.

*Note—*

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

### **105A Delegation by chief executive**

The chief executive may delegate the chief executive’s powers under this Act to an officer or employee of the public service.

### **106 Request for local government approval to be accompanied by fee**

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

### **107 Offences generally and penalty**

- (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.
- (2) Where no penalty is expressly provided, a person who commits an offence against this Act is liable to a penalty of 20 penalty units.

### **108 Proceedings for offences**

- (1) A prosecution for an offence against this Act shall be by way of summary proceedings under the *Justices Act 1886* upon the complaint of—
  - (a) in the case of offences against the provisions of part 2, division 2—the chief executive officer of the local government or the chief executive officer’s delegate; or



- (b) in any other case—any person authorised in writing in that behalf by the Minister.
- (2) In any proceedings it shall not be necessary to prove the appointment of the chief executive officer of the local government or the authority of a complainant to lay a complaint in respect of an offence against this Act in the absence of evidence that challenges that appointment or authority.

### **109 Evidentiary provisions**

In proceedings under this Act a signature purporting to be that of the Minister shall be taken to be the signature it purports to be until the contrary is proved.

### **110 Tabling of orders in council**

Section 28A of the *Acts Interpretation Act 1954* (Tabling of Regulations) shall apply with respect to orders in council made for the purposes of this Act as if they were regulations.

### **111 Regulation-making power**

- (1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to—
  - (a) the preparation of plans and documents for the purposes of this Act;
  - (b) the plans and documents that under this Act may be lodged in the office of the registrar of titles;
  - (c) the registration in the office of the registrar of titles of plans and documents;
  - (d) the nomination and election of the offices of chairperson, secretary and treasurer of the principal body corporate or of the primary thoroughfare body corporate and of other members of the executive committee of each such body corporate;

- (e) any matter or thing which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.
- (2) A regulation may impose a penalty not exceeding \$200 for an offence against a regulation.

## Part 9 Validation

### 112 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 104A 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 10 Transitional provisions for Resorts and Other Acts Amendment Act 2009

### Division 1 Preliminary

#### 113 Definitions for pt 10

In this part—

*commencement* means the commencement of this section.

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

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## Division 2                      Changes to zones

### 114      References to proposed use plan of site

- (1) This section applies—
  - (a) until the local government approves a plan of survey of the site under section 7(4); and
  - (b) despite section 4B(1).

*Note—*

Paragraph (b) refers to section 4B(1) as in force before the commencement of the *Local Government Electoral Act 2011*, section 304.

- (2) A reference in this Act to the proposed use plan of the site is a reference to the plan of survey of the site approved under section 8(4) or (7) as it was in force immediately before the commencement.
- (3) This section stops applying on the commencement of section 4B(1) and (2) as inserted by the *Local Government Electoral Act 2011*.

### 115      References to proposed use plan of adjacent site

- (1) This section applies—
  - (a) until the local government approves a plan of survey of the adjacent site under section 12C(4); and
  - (b) despite section 4B(2).

*Note—*

Paragraph (b) refers to section 4B(2) as in force before the commencement of the *Local Government Electoral Act 2011*, section 304.

- (2) A reference in this Act to the proposed use plan of the adjacent site is a reference to the plan of survey of the adjacent site approved under section 12D(4) or (7) as it was in force immediately before the commencement.

- (3) This section stops applying on the commencement of section 4B(3) and (4) as inserted by the *Local Government Electoral Act 2011*.

## 116 Former floating dwelling house zone

- (1) Subsections (2) and (3) apply until—
- (a) the local government approves a plan of survey of the site under section 7(4); or
  - (b) the beginning of the effective day.
- (2) The former floating dwelling house zone continues to be a residential zone of the site.
- (3) A reference to the Harbour 1 Residential Zone in schedule 1, part 1 or schedule 9, definition *residential zone* is taken to be a reference to the former floating dwelling house zone.
- (4) If, at the beginning of the effective day, the approval mentioned in subsection (1)(a) has not happened—
- (a) the name of the former floating dwelling house zone is changed to ‘Harbour 1 Residential Zone’; and
  - (b) a reference in the proposed use plan of the site to the Floating Dwelling House Zone is taken to be a reference to the Harbour 1 Residential Zone.
- (5) In this section—
- former floating dwelling house zone* means the zone that, before the commencement, was named and shown on the proposed use plan of the site as the Floating Dwelling House Zone.

## 117 Transitional amendment of initial plan of survey of site to reflect new zone boundaries

- (1) This section applies if a proposed use plan of the site is approved by the local government under section 7(4).
- (2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend the initial plan of survey of the site

in accordance with the boundaries of the zones shown on the proposed use plan.

- (3) Section 10(9) to (10) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 10(8)(b)(i).
- (4) Only 1 lodgement may be made under subsection (2).

**118 Transitional amendment of initial plan of survey of adjacent site to reflect new zone boundaries**

- (1) This section applies if a proposed use plan of the adjacent site is approved by the local government under section 12C(4).
- (2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend the initial plan of survey of the adjacent site in accordance with the boundaries of the zones shown on the proposed use plan.
- (3) Section 12F(9) to (10) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 12F(8)(b)(i).
- (4) Only 1 lodgement may be made under subsection (2).

**119 Transitional amendment of other plans of survey or group title plans to reflect new zone boundaries**

- (1) This section applies if a proposed use plan is approved by the local government under section 7(4) or 12C(4).
- (2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend any of the following plans in accordance with the boundaries of the zones shown on the proposed use plan—
  - (a) a plan of survey or group titles plan for the subdivision or resubdivision of a secondary lot;
  - (b) a group titles plan for the resubdivision of a lot shown on a group titles plan.

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- (3) Section 15A(2) and (4) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 15A(1).
- (4) Only 1 lodgement may be made under subsection (2).

## **Division 3                      Bodies corporate**

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

- (1) This section applies if—
  - (a) the principal body corporate or primary thoroughfare body corporate has more than 5 members; and
  - (b) the number (the *existing number*) of members of the executive committee of the body corporate is less than 5.
- (2) Despite section 41(4) or 85(4), the executive committee may continue to consist of the existing number of members.
- (3) This section stops applying at the beginning of the effective day.

### **121      Deferred application of particular provisions**

The following provisions do not apply until the effective day—

- (a) sections 41A and 85A and schedule 4;
- (b) part 3, divisions 2B, 2C and 2D;
- (c) part 5, divisions 2B and 2C.

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

- (1) This section applies to a person who, before the effective day, was a voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate.

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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.

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

- (1) This section applies if—
- (a) before the effective day—
    - (i) the principal body corporate authorised a person to prepare a statement of accounts under section 33(1)(f) for adoption at the body corporate's annual general meeting; and
    - (ii) the person started to prepare the statement of accounts; and
  - (b) the annual general meeting has not happened.
- (2) Section 47J does not apply for auditing the statement of accounts for the period to which the authorisation relates.

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

- (1) This section applies if—
- (a) before the commencement—
    - (i) a subsidiary body corporate under a building units or group titles plan appointed as its nominee, under section 24, the original owner of the secondary lot subdivided by the plan or an ineligible associate of the original owner; and
    - (ii) the original owner ceased to own more than 50% of the lots; and
  - (b) immediately before the commencement, the original owner or ineligible associate was still the nominee for the subsidiary body corporate.

- (2) Despite section 24A, the owner's or associate's appointment as the nominee for the subsidiary body corporate ends when the first of the following happens—
- (a) the beginning of the effective day;
  - (b) the secretary of the principal body corporate receives a written notice under section 24(7)(b) of—
    - (i) the cancellation of the appointment; or
    - (ii) the appointment of another nominee for the subsidiary body corporate.

- (3) In this section—

*ineligible associate* see section 24A(2)(b).

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

## **Division 4                      Body corporate managers, service contractors and letting agents**

### **125      Deferred application of particular provisions**

The following provisions do not apply until the effective day—

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

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

- (1) This section applies to a person who, before the effective day—
- (a) was appointed as the body corporate manager of the primary thoroughfare body corporate or principal body corporate; or



- (b) was engaged as a caretaking service contractor for the resort or part of the resort.
- (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.

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

- (1) This section applies to a person who, before the effective day, was a letting agent for the resort or part of the resort.
- (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.

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

- (1) This section applies if—
  - (a) before the commencement, a body corporate manager was appointed for—
    - (i) the principal body corporate under former section 47A; or
    - (ii) the primary thoroughfare body corporate under former section 91A; and
  - (b) the term of the appointment has not ended.
- (2) The term of the appointment ends on the day provided for in the instrument of appointment.
- (3) For subsection (2), the term of the appointment provided for in the instrument of appointment includes rights or options of extension or renewal provided for in the instrument of appointment.
- (4) This section applies despite sections 47AB(8) and (9) and 91AB(8) and (9).
- (5) In this section—

*former section 47A* means section 47A as it was in force immediately before the commencement.

*former section 91A* means section 91A as it was in force immediately before the commencement.

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## **Schedule 1      Names of and uses for zones**

schedule 9, definitions *use and zone*

### **Part 1                      Names of zones**

Administration Zone

General Residential Zone

Golf Course Zone

Harbour 1 Residential Zone

Harbour Zone

Harbour, River and Waterfront Residential Zone

International Hotel Zone

Primary Thoroughfare Zone

Recreation Club Zone

Village Zone

### **Part 2                      Uses for zones**

- accommodation units
- brewery
- car hire premises
- catering facility
- child care centre
- club
- commercial premises
- commissary
- dwelling house

Schedule 1

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- educational establishment
- education and care service premises
- fauna park
- gatehouse
- harbour facility
- health care institution
- helipad
- indoor entertainments
- international hotel
- lake
- landscaping
- licensed premises
- liquid fuel depot
- marina
- motel
- outdoor entertainment
- park
- place of assembly
- place of worship
- plant nursery
- premises
- recreation
- recreation club
- residential care facility
- retirement facility
- service station
- shop
- site maintenance depot

- special dwelling house
- thoroughfare
- transport terminal
- utility undertaking
- vehicular parking area
- veterinary surgery
- visitor information centre
- waste transfer facility
- water recreation
- yacht club

## Part 3 Definitions of uses for zones

In part 2—

***accommodation units*** means premises not exceeding 4 storeys in height suitable for and used or intended for use as apartment houses, flats or home units.

***brewery*** means premises used or intended to be used for the manufacture, dispensing and packaging for sale of alcoholic beverages brewed wholly or in part from malten hops.

***car hire premises*** means premises used or intended for use for the storage of motor vehicles pending their hire to customers.

***catering facility*** means premises used for cafes, espresso bars, kiosks, milk bars, restaurants, snack bars, soft drink shops, tea gardens or tea rooms.

***child care centre*** means premises used or intended for use for the care of more than 8 children and includes a kindergarten.

***club*** means premises in the form of an integrated development whether operated for profit or otherwise and which is used or intended to be used by persons resorting thereto, for social, literary, political, sporting, athletic or other like purposes or

by a body or bodies constituted for those purposes whether the whole or part of the premises are premises to which a license under the *Liquor Act 1992* applies, and includes premises used or intended to be used for all or any of the following purposes—

- (a) the watching of, practising of, receiving or giving instruction in or taking part in, whether for recreation or otherwise—
  - (i) a sport; or
  - (ii) a form of athletics; or
  - (iii) a game not being a sport or form of athletics; or
  - (iv) health or physical fitness activities; or
- (b) a meeting place for persons associated with the club; or
- (c) a function room; or
- (d) a catering facility.

***commercial premises*** means premises used or intended for use as a business office or professional office or for other business or commercial purposes not otherwise specifically defined in this schedule.

***commissary*** means a kitchen used for the preparation of food to be distributed to a catering facility.

***dwelling house*** means premises which consist of only self-contained accommodation for the exclusive use of persons residing within the site including such outbuildings as are incidental to and necessarily associated with a dwelling house, and does not include accommodation units.

***educational establishment*** means premises used or intended to be used as an art gallery or museum and includes craft workshops producing handicrafts, folk art and other art work for sale to the public.

***education and care service premises*** see the Education and Care Services National Law (Queensland), section 5(1).

***fauna park*** means premises used or intended to be used for keeping and viewing either fauna or marine life or both.

**gatehouse** means premises used or intended to be used for the purpose of maintaining security by restricting or regulating public access to the site or any part or parts of the site.

**harbour facility** means any part of the site which has been, or is intended to be, developed to provide a protected navigable water area for the specific use by marine vessels with access to the site and providing for the servicing, mooring or anchorage of vessels, and includes wharves, docks, jetties and the like but does not include marinas or land used or intended for use for residential or commercial purposes.

**health care institution** means premises used or intended for use for the medical care or treatment of persons and includes an ambulance station, a first-aid station, a nursing service and premises used or intended for use by a medical practitioner, optometrist, pathologist, radiologist, physiotherapist, chiropodist, chiropractor or dentist in the practice of his or her profession.

**helipad** means premises used or intended for use for the landing and departure of helicopters and includes facilities used or intended for use in sheltering, securing, servicing, maintaining and repairing helicopters.

**indoor entertainments** includes the conducting or performing indoors of the following—

- amusement parlours or arcades
- bazaars
- billiard saloons
- bowling centres
- cinemas
- competitions
- covered swimming pools
- exhibitions (including tourist attractions)
- games
- gymnasiums
- skating rinks

- squash courts
- stadiums.

***international hotel*** means licensed premises which provide at least for—

- (a) 250 guest suites each of which—
  - (i) have bath, shower and toilet facilities;
  - (ii) have a minimum floor area (including the bath, shower and toilet facilities) of 35.0 m<sup>2</sup>;
  - (iii) is furnished with lounge chairs and a writing table or desk;
  - (iv) provide facilities for making tea and coffee;
- (b) 30 of the guest suites referred to in paragraph (a) to comprise more than 1 room (excluding the bath, shower and toilet facilities);
- (c) a dining room or restaurant capable of seating at least 150 persons;
- (d) 8 meeting rooms, 1 of which is capable of seating at least 400 persons;
- (e) a lobby lounge bar capable of seating at least 60 persons;
- (f) parking space for at least 200 cars increasing by at least 2 spaces for each 3 guest suites provided in excess of 300;
- (g) air conditioning with a control panel in each suite;
- (h) telephone, television and radio in each guest's suite;
- (i) swimming pool and pool snack bar;
- (j) adequate space for reception of guests and storage of baggage;
- (k) adequate kitchens and storage space for food, liquor and other beverages;
- (l) adequate lighting of first-class quality;
- (m) carpeting in guest bedrooms and public rooms;



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- (n) adequate portorage service for guests;
  - (o) room service for food, liquor and other beverages available for 24 hours of each day;
  - (p) a valet service available to guests;
  - (q) a medical service available to guests;
  - (r) adequate access and parking or buses and taxis for the setting down and picking up of passengers.

***lake*** means a body of water whether occurring naturally or artificially constructed, used or intended to be used primarily for ornamental or recreational purposes.

***landscaping*** means the treatment of land for the purpose of enhancing or protecting the amenities of any part of the site and the locality in which it is situated by—

- (a) screening by fences, walls or other means; or
- (b) planting of trees, hedges, shrubs or grass; or
- (c) forming of banks, terraces or other earthworks; or
- (d) laying out of gardens or courts; or
- (e) constructing walkways or tracks.

***licensed premises*** means premises in respect of which a license has been issued under the *Liquor Act 1992*.

***liquid fuel depot*** means premises used or intended to be used for the storage and distribution of flammable or combustible liquids, which premises are required to be licensed under the *Building Act 1975*.

***marina*** means a building or other structure erected in a harbour facility used for the mooring, servicing, provisioning and fuelling of marine vessels.

***motel*** means a building or group of buildings within the same curtilage suitable for and used or intended to be used for the temporary accommodation of travellers and includes restaurant facilities on the same site for use by persons accommodated in the motel.

***outdoor entertainment*** includes the conducting or performing outdoors of the following—

- exhibitions
- fairs
- marine aquaria
- promotional activities
- zoological gardens.

***park*** means land which is provided for use or intended for use for open air recreation and which—

- (a) has been ornamentally laid out or repaired; or
- (b) is maintained so as to preserve or enhance its natural beauty; or
- (c) has been prepared or is maintained as a grassed or landscaped area;

and includes facilities provided on the land for the enjoyment or convenience of visitors to the park including—

- (d) exercise or light refreshment booths; or
- (e) picnic places, places for enjoying views, nature areas, vehicular parking areas and footways; or
- (f) shelters and other public conveniences; or
- (g) children's play areas.

***place of assembly*** means land or premises used or intended for use as a music hall, concert hall, theatre, dance hall or place of public assembly whether or not used for purposes of gain.

***place of worship*** means premises used or intended for use primarily for religious activities.

***plant nursery*** means premises used or intended for use for the purpose of propagating and nurturing of flowers, grasses, shrubs or trees to be used in connection with the landscaping of the site or used for the interior decorating of any premises contained within the site and includes the purpose of growing

of plants for gain and the storage of materials necessarily required in association with landscaping.

***premises*** means land, building or other structure or any part thereof.

***recreation*** includes—

- boating
- bowling
- bush walking
- fishing
- golfing
- swimming
- tennis.

***recreation club*** means a club where the principal area of interest of persons resorting thereto relates to sporting activities, but does not include a yacht club.

***residential care facility*** means premises used or intended for use for supervised accommodation, and medical and other support services, for persons who—

- (a) can not live independently; and
- (b) require regular nursing or personal care.

*Examples of a residential care facility—*

a convalescent home or nursing home

***retirement facility*** means premises used or intended for use for—

- (a) accommodation for older members of the community, or retired persons, in independent living units or serviced units; or
- (b) amenity and community facilities, a manager's residence, health care and support services, preparing food and drink or staff accommodation, if the use is ancillary to the use mentioned in paragraph (a).

***service station*** means premises used or intended for use for the fuelling of motor vehicles involving the sale by retail of motor fuel, whether or not the premises are also used or intended for use for—

- (a) the sale by retail of any 1 or more of the following—
  - (i) motor fuel for boats;
  - (ii) motor fuel for motor mowers;
  - (iii) lubricating oils and greases;
  - (iv) batteries;
  - (v) power and lighting kerosene;
- (b) the carrying out of any 1 or more of the following—
  - (i) the removal, exchange and fitting of tyres;
  - (ii) minor repairs to tyres and tubes or either of them;
  - (iii) the supply of air;
  - (iv) the charging of batteries;
  - (v) the lubrication of motor vehicles;
  - (vi) running repairs to a motor vehicle being of a minor nature;
  - (vii) the washing or cleaning of motor vehicles other than by the use or operation of an automatic or partly automatic process using mechanically operated brushes and washers or either of them and air jet dryers.

***shop*** includes any premises used or intended for use for the purpose of displaying or offering goods for sale by retail and includes a hairdressing salon, a barber's shop, a coin-operated laundry and premises for the reception or return of goods deposited for washing, cleaning or repairing.

***site maintenance depot*** means premises used or intended for use for the garaging, servicing and fuelling of any plant and equipment required in connection with the ongoing maintenance of the site including the storage of materials

(including fertilisers, pesticides and the like) associated with such maintenance.

***special dwelling house*** means a structure constructed or designed to be constructed as a dwelling house which structure is upon land comprising a lot on a group titles plan the foundations of which structure extend from lands above high-water mark to land below low-water mark.

***thoroughfare*** means any land used or intended for use to facilitate the traffic of vehicles usually passing on public roads.

***transport terminal*** means premises used or intended for use for the loading of goods and people, for transport whether by road, water or air.

***utility undertaking*** includes any of the following services—

- (a) transport by rail, road, air or water;
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of radio broadcasting, television, telephone, sewerage or drainage services.

***vehicular parking area*** means premises used or intended for use solely for the parking or storage of motor vehicles, other transport vehicles, recreation vehicles and boat trailers.

***veterinary surgery*** means premises used or intended for use by a veterinary surgeon in the practice of the veterinary surgeon's profession.

***visitor information centre*** means premises used or intended for use for providing information on the activities and attractions available within the site.

***waste transfer facility*** means premises used or intended for use for the reception and compaction of refuse and garbage collected within the resort and for loading compacted refuse and garbage upon conveyances for removal from the resort and includes offices and facilities for sheltering, securing, maintaining and repairing conveyances and other machinery used in conveying or compacting refuse and garbage.

***water recreation*** includes any land, buildings or other structures or part thereof used for beach and water-oriented

recreation including changing rooms, toilets, lifesaving, first aid and kiosk facilities and facilities for the rental of water sports equipment.

***yacht club*** means any club where the principal area of interest of persons resorting thereto relates to yachting, boating or marine activities.

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## Schedule 2 Requirements for notices of proposed amendments

section 12J(2)

### 1 Requirements for placing notice on subject land

- (1) This section applies for placing a notice under section 12J(1)(c) on subject land.
- (2) The notice must be—
  - (a) placed on, or within 1.5m of, the road frontage for the land; and
  - (b) mounted at least 300mm above ground level; and
  - (c) positioned so that it is visible from the road; and
  - (d) made of weatherproof material; and
  - (e) not less than 1,200mm x 900mm.
- (3) The lettering on the notice must be—
  - (a) for lettering in a heading—at least 50mm in height and in a bold style; or
  - (b) for lettering in a subheading—at least 25mm in height and in a bold style; or
  - (c) for lettering not mentioned in paragraphs (a) and (b)—at least 25mm in height, of regular weight and in sentence case.
- (4) Each sentence in the notice must start on a new line.
- (5) If the land has more than 1 road frontage, a notice must be placed on each road frontage for the land.
- (6) The primary thoroughfare body corporate must maintain the notice from the day it is placed on the land until the end of the notification period stated in the notice.
- (7) In this section—

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

Schedule 2

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



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

sections 41(5A) and 85(5A)

### 1      Definitions for sch 3

In this schedule—

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

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

*eligibility category*, for a candidate, means the category of person mentioned in section 41(6) or 85(6) to which the candidate belongs.

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

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

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

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

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

*Note—*

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

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

- (3) The value of any vote able to be cast for a lot included in the resort or a part of the resort 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 resort or part.

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

- (1) This section states how individuals are nominated for election at the body corporate's annual general meeting, other than the first annual general meeting, as a voting member of the executive committee.
- (2) The secretary must serve a notice on each member of the body corporate—
  - (a) inviting nomination for the members of the executive committee; and
  - (b) stating that a nominated person is not eligible to be a voting member of the executive committee if, when the members of the executive committee are chosen, the person owes a body corporate debt in relation to a lot or lots owned by the person.
- (3) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year.
- (4) Nominations must comply with section 4 and must be given to the secretary by the end of the body corporate's financial year.
- (5) As soon as practicable after receiving a nomination under this section from a candidate for election, the secretary must forward written notice to the candidate acknowledging the nomination has been received.

### **4 Requirements for nominations [SM, s 18]**

- (1) Each member of the body corporate may nominate 1 person for election as a voting member of the executive committee.
- (2) A nomination must be made by written notice and—

- 
- (a) if the nomination is from a member of the body corporate who is an individual nominating himself or herself—must be signed and dated by the member; or
  - (b) if the nomination is from a member of the body corporate other than a member to whom paragraph (a) applies—
    - (i) must be signed and dated by the nominated person; and
    - (ii) must be countersigned by the appropriate authorising person.
- (3) A nomination must contain each of the following details—
- (a) the family name and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;
  - (b) the position or positions the candidate is nominated for;
  - (c) the eligibility category for the candidate;
  - (d) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 24 or 67—
    - (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 24 or 67; or
- (c) if the member is a corporation other than a subsidiary body corporate—a director, secretary or other nominee of the corporation.

**5 Conduct of elections for executive committee by secret ballot [SM, 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 this schedule, state the names of the properly nominated candidates in alphabetical order of family name, showing—
  - (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 24 or 67—
    - (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.

## **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 24 or 67—
    - (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.
- (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.



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- (2) It is necessary to have a ballot for ordinary members of the executive committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the executive committee), plus the number of executive members of the executive committee, is more than the required number of members for the executive committee.

## **8 Conduct of ballot—general requirements [SM, s 24]**

- (1) Any items of business about the election of members of the executive committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.
- (2) The election of members takes effect immediately after the close of the meeting at which they are elected.
- (3) The ballots for the positions on the executive committee for which ballots are required must be conducted in the following order—
- chairperson
  - secretary
  - treasurer
  - ordinary members.
- (4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
- (5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.
- (6) The secretary must pass any ballot papers, particulars envelopes and ballot paper envelopes for the ballot to the person chairing the meeting for counting.

## **9 Conduct of ballot—scrutiny of votes [SM, s 25]**

- (1) If a ballot for positions on the executive committee is an open ballot, the person chairing the meeting must—

- (a) confirm, by a scrutiny of the details on the back of each ballot paper envelope or each ballot paper itself, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) if a ballot paper is in a ballot paper envelope—take the ballot paper out of the envelope.
- (2) If a ballot for positions on the executive committee is a secret ballot, the person chairing the meeting must—
  - (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) take the ballot paper envelope out of the particulars envelope, or detach the particulars tab from the ballot paper envelope; and
  - (c) place the ballot paper envelope in a receptacle in open view of the meeting; and
  - (d) after paragraph (c) has been complied with for all ballot paper envelopes, randomly mix the envelopes; and
  - (e) take each ballot paper out of its envelope.
- (3) The person chairing the meeting must record the count of votes in each ballot in the minutes of the meeting.
- (4) The person chairing the meeting may delegate a function under subsection (1) or (2) in relation to a ballot for a position on the executive committee to a person attending the meeting who is not a candidate for the position and who the person chairing the meeting considers has sufficient independence.

## **10 Conduct of ballot—deciding executive member positions [SM, s 26]**

- (1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this schedule, must declare the person to have been elected unopposed.

- 
- (2) If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—
    - (a) must invite nominations for the position at the meeting; and
    - (b) must accept nominations that are made in either of the following ways—
      - (i) by members of the body corporate who are personally present or represented at the meeting;
      - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
  - (3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
  - (4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for an ordinary member's position on the executive committee.
  - (5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.
  - (6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

## **11 Conduct of ballot—deciding ordinary member positions [SM, s 27]**

- (1) The positions of the ordinary members of the executive committee are decided only after the executive member positions on the executive committee are filled.
- (2) A person's nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the executive committee, even if the person's name appears on a ballot for ordinary members forwarded before the meeting.

- (3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is not more than the required number of members for the executive committee, the person chairing the meeting, if satisfied the nominations for the ordinary member positions comply with this schedule, must declare the candidates to have been elected as ordinary members.
- (4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is less than the required number of members for the executive committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all executive committee members to not more than the required number of members for the executive committee.
- (5) The person chairing the meeting—
  - (a) must invite nominations for the position or positions at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are personally present or represented at the meeting;
    - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- (6) A member of the body corporate may nominate, under subsection (5), not more than 1 person for all ordinary member positions for which nominations are invited.
- (7) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for a position on the executive committee.
- (8) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is more than the required number of members for the executive committee, the person chairing the

meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.

- (9) The persons who receive the highest numbers of votes, in descending order until the executive committee numbers the required number of members for the executive committee, must be declared elected as the ordinary members.
- (10) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- (11) For the counting of votes for positions of ordinary members of the executive committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.

## **12 Conduct of ballot—declaration of voting results [SM, s 28]**

- (1) The person chairing an annual general meeting must declare the result of an election.
- (2) When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.
- (3) The number of votes cast for each candidate must be recorded in the minutes of the meeting.
- (4) The voting tally sheet kept for the meeting must include, for each ballot that is an open ballot under section 6—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected as informal; and
  - (b) for each vote rejected—the reason for the rejection; and
  - (c) the total number of votes counted for each candidate.

- (5) The voting tally sheet kept for the meeting must include, for each ballot that is a secret ballot under section 5—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected from the count before the enclosing ballot paper envelopes were opened; and
  - (b) a list of the votes taken out of ballot paper envelopes for counting, but rejected as informal; and
  - (c) for each vote rejected—the reason for the rejection; and
  - (d) the total number of votes counted for each candidate.
- (6) The voting tally sheet may be inspected at the meeting by any of the following persons—
  - (a) a person who is a voter for the meeting;
  - (b) a candidate;
  - (c) the returning officer, if any, appointed by the body corporate for the meeting;
  - (d) the person chairing the meeting;
  - (e) a scrutineer appointed by a candidate under section 8.

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## **Schedule 4      Code of conduct for voting members of executive committees**

sections 41A and 85A and schedule 9, definition *code of conduct*

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

A voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member's role on the executive committee.

### **2      Honesty, fairness and confidentiality**

- (1) The voting member must act honestly and fairly in performing the member's functions as a voting member.
- (2) The voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

### **3      Acting in best interests of body corporate and persons with estate or interest in lots**

Unless it is unlawful to do so, the voting member must, in performing the member's functions as a voting member, act in the best interests of—

- (a) the body corporate; and
- (b) either—
  - (i) for a voting member of the executive committee of the primary thoroughfare body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the site and the adjacent site; or

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

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

section 94E and schedule 9, definition *code of conduct*

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

A body corporate manager or caretaking service contractor appointed or engaged by the primary thoroughfare body corporate or principal body corporate must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions.

### **2      Honesty, fairness and professionalism**

- (1) The body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person's functions under the person's appointment or engagement.
- (2) The body corporate manager must not attempt to unfairly influence the outcome of an election for the executive committee of the body corporate.

### **3      Skill, care and diligence**

The body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's appointment or engagement.

### **4      Acting in body corporate's best interests**

The body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

## **5 Keeping body corporate informed of developments**

The body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity 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 resort

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

The body corporate manager or caretaking service contractor for the resort or part of the resort must not accept an

appointment or engagement (the *second appointment or engagement*) if doing so will place the person's functions or interests for the resort or part in conflict with the person's functions or interests for obligations under the second appointment or engagement.

*Example of a second appointment or engagement—*

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

## **10 Goods and services to be supplied at competitive prices**

The body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

## **11 Body corporate manager to demonstrate keeping of particular records**

If the body corporate or its executive committee gives the body corporate manager a written request to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

## **Schedule 6      Code of conduct for letting agents**

section 94F and schedule 9, definition *code of conduct*

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

A letting agent for the resort or part of the resort must act honestly, fairly and professionally in conducting the letting agent's business under the letting agent's authorisation.

### **2      Skill, care and diligence**

The letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent's authorisation.

### **3      Acting in body corporate's and individual lot owner's best interests**

Unless it is unlawful to do so, the letting agent must, as far as practicable, act in the best interests of—

- (a) the body corporate that has given the letting agent's authorisation; and
- (b) individual owners of lots in the resort or part.

### **4      Ensuring employees comply with Act and code**

The letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent's authorisation.

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

**7 Nuisance**

The letting agent must not—

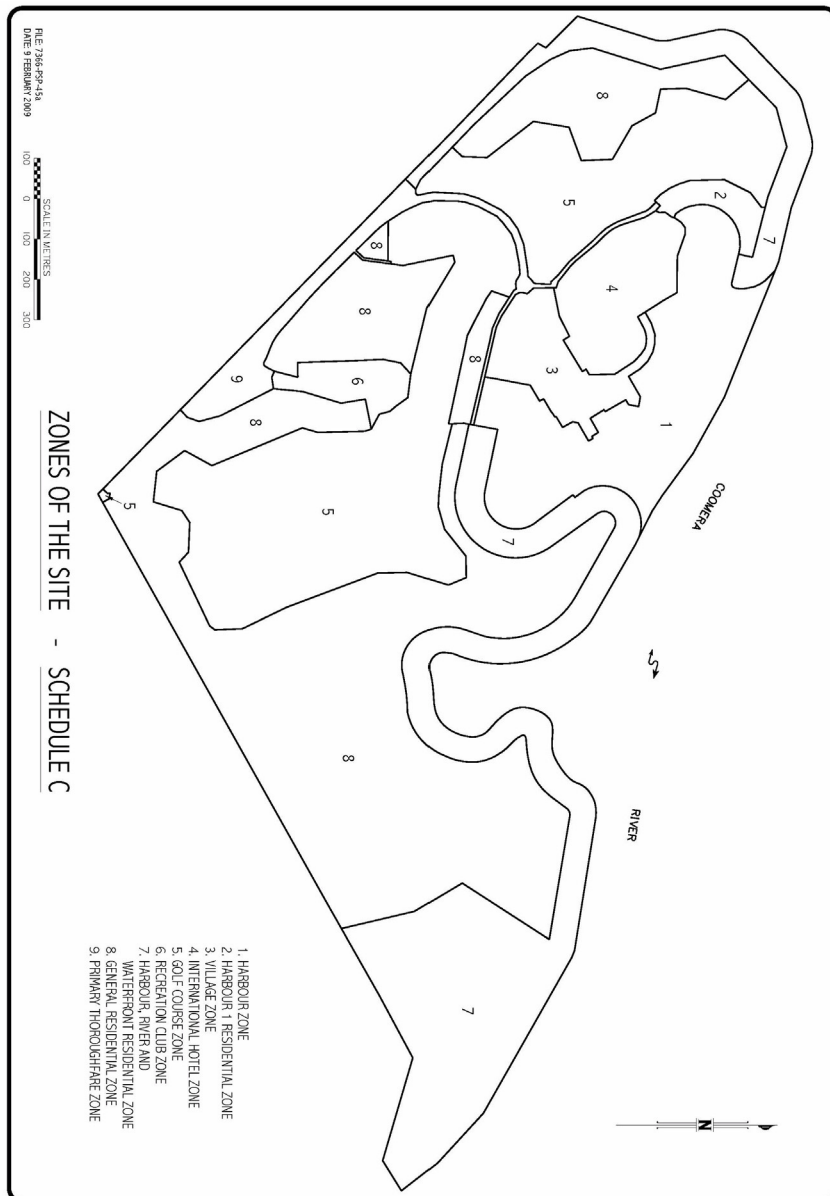
- (a) cause a nuisance or hazard at the resort; or
- (b) interfere unreasonably with the use or enjoyment of a lot in the resort; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

**8 Goods and services to be supplied at competitive prices**

The letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

# Schedule 7 Zones of the site

section 7(1)





## Schedule 9 Dictionary

### section 4

***adjacent site*** see section 12A.

***approved use***, for a zone or part of a zone, see section 4A.

***associate***, of a person, means someone else with whom the person is associated under section 104D.

***body corporate***, for schedule 3, see schedule 3, section 1.

***body corporate manager***—

- (b) of the principal body corporate—means a person appointed by the body corporate under section 47AB; or
- (b) of the primary thoroughfare body corporate—means a person appointed by the body corporate under section 91AB.

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

***building units plan*** means a building units plan within the meaning of the *Building Units and Group Titles Act 1980*.

***canal*** see the *Coastal Protection and Management Act 1995*, schedule.

***candidate***, for schedule 3, see schedule 3, section 1.

***caretaking service contractor*** see section 94A.

***code contravention notice*** see section 94I(1).

***code of conduct*** means—

- (a) for a voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate—the code in schedule 4; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 5; or
- (c) for a letting agent—the code in schedule 6.



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***Commercial and Consumer Tribunal*** means the tribunal of that name established under the *Commercial and Consumer Tribunal Act 2003*.

***company*** means Discovery Bay Developments Pty Ltd being a company duly incorporated in Queensland and having its registered office at c/- Messrs Robert Lehn & Co, First Floor, 3290 Gold Coast Highway, Surfers Paradise and includes its successors and assigns.

***development control by-laws*** means the development control by-laws in force for the time being pursuant to section 95.

***eligibility category***, for schedule 3, see schedule 3, section 1.

***executive committee***, for schedule 3, see schedule 3, section 1.

***executive member***, for schedule 3, see schedule 3, section 1.

***financial year***—

- (a) for the principal body corporate, see section 22; or
- (b) for the primary thoroughfare body corporate, see section 65.

***financier***, for a letting agent's contract, see section 94B.

***former Albert Shire Council*** means the local government of that name that was constituted under the repealed *Local Government Act 1993* or its successors in law.

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

***group titles plan*** means a group titles plan within the meaning of the *Building Units and Group Titles Act 1980*.

***initial lot*** means a lot shown on the initial plan of survey or initial plan of survey of the adjacent site other than a lot that comprises the whole or part of the primary thoroughfare.

***initial plan of survey***, except where followed by the words 'of the adjacent site', means the plan of survey for the time being registered by the registrar of titles under section 10 or 12P(4).

***initial plan of survey of the adjacent site*** means the plan of survey for the time being registered by the registrar of titles under section 12F or 12P(4).

**letting agent** see section 94C(1).

**letting agent authorisation** see section 94A.

**letting agent business** see section 94C(2).

**local government** means the local government for the local government area in which the site and adjacent site are situated.

**majority resolution**, for a duly convened general meeting of the primary thoroughfare body corporate or principal body corporate, means a resolution on a motion—

- (a) for which only 1 written vote may be exercised, other than by proxy, for each lot mentioned in the relevant body corporate roll; and
- (b) that is passed only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

**management rights**, of a letting agent for the resort or part of the resort, see section 94A.

**Minister** means the Minister of the Crown for the time being administering this Act and includes any Minister of the Crown who is temporarily performing the duties of the Minister.

**nominee**, of a member of the principal body corporate, see section 24(1).

**ordinary member**, for schedule 3, see schedule 3, section 1.

**ordinary resolution**, for a duly convened general meeting of the primary thoroughfare body corporate or principal body corporate, means a resolution that is passed by the members of the body corporate whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the relevant body corporate roll.

**original owner**, of a secondary lot that has been subdivided by a building unit or group titles plan, see section 22.

**Planning Act** means the *Planning Act 2016*.

**plan of survey**, used with reference to any land, includes a number of plans of survey each relating to a different part of the land and together relating to all of the land.

**primary thoroughfare** means the lot or lots that comprises or together comprise the primary thoroughfare as shown at the material time on the initial plan of survey and on the initial plan of survey of the adjacent site.

**primary thoroughfare body corporate** means the Sanctuary Cove Primary Thoroughfare Body Corporate incorporated by the registration of the initial plan of survey.

**primary thoroughfare by-laws** means the primary thoroughfare by-laws for the time being in force pursuant to section 71.

**principal body corporate** means Sanctuary Cove Principal Body Corporate incorporated by the registration of the initial plan of survey.

**proposed use plan**—

- (a) of the site—see section 4B(1) and (2); or
- (b) of the adjacent site—see section 4B(3) and (4).

**registrar of titles** means the registrar of titles under the *Land Title Act 1994*.

**relevant body corporate debt** means a following amount owed by a person to a subsidiary body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law made by the subsidiary body corporate
- an amount owing to the subsidiary body corporate for lawn mowing services arranged by the subsidiary body corporate on behalf of the person

**relevant plan** see section 12I(2).

**residential zone** means any of the following zones—

- (a) General Residential Zone;
- (b) Harbour 1 Residential Zone;
- (c) Harbour, River and Waterfront Residential Zone.

**resort** means Sanctuary Cove Resort.

**reviewable terms**, for a service contract, see section 94A.

**review advice**, about a service contract, see section 94A.

**road** means any way constituted to facilitate the traffic of vehicles usually passing on public roads.

**secondary lot** means a lot (other than a lot constituting a secondary thoroughfare) shown on a plan of subdivision of an initial lot or of subdivision of a secondary lot but does not include a building unit lot or a group title lot.

**secondary thoroughfare** means the lots within the residential zones that comprise the secondary thoroughfare as shown on—

- (a) the plans of survey subdividing or resubdividing initial lots; and
- (b) any group titles plans subdividing or resubdividing a secondary lot; and
- (c) any group titles plans resubdividing a lot or common property or a lot and common property shown on a group titles plan.

**secondary thoroughfare by-laws** means the secondary thoroughfare by-laws for the time being in force pursuant to section 28.

**service contract** see section 94A.

**service contractor**, for the resort or part of the resort, see section 94D.

**site** see section 5.

**subject land**, in relation to an amendment application under part 2AA, means each zone, or other land within the resort, to which the application relates.

***subsidiary body corporate***—

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

***transfer notice***, for part 5A, see section 94K(b)(ii).

***use***, for a zone, means a use mentioned in schedule 1, part 2.

***voting member***—

- (a) of the executive committee of the principal body corporate—see section 41A(1); or
- (b) of the executive committee of the primary thoroughfare body corporate—see section 85A(1).

***zone*** means a part of the site or adjacent site that—

- (a) has a name mentioned in schedule 1, part 1; and
- (b) is shown as a zone on the proposed use plan of the site or the proposed use plan of the adjacent site.