

Queensland



MIXED USE DEVELOPMENT AMENDMENT ACT 1993

Act No. 80 of 1993

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**MIXED USE DEVELOPMENT
AMENDMENT ACT 1993**

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Queensland



Mixed Use Development Amendment Act 1993

Act No. 80 of 1993

An Act to amend the *Mixed Use Development Act 1993*

[Assented to 17 December 1993]

The Parliament of Queensland enacts—**Short title**

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

Commencement

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

Amended Act

3. The *Mixed Use Development Act 1993* is amended as set out in this Act.

Amendment of s.3 (Definitions)

4. Section 3 (definition “road”)—

omit, insert—

‘ “road” means any way that allows the traffic of vehicles that can reasonably be expected to require access over the way;’.

Amendment of s.112 (Boundary adjustment plan)

5. Section 112(5)—

omit ‘subsection (5)’, insert ‘subsection (4)’.

Amendment of s.115 (Implied easements)

6.(1) After section 115(1)—

insert—

‘(1A) Unless an easement is created for support and shelter, there is implied—

- (a) as belonging to any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the subjacent and lateral support by other buildings or structures or parts of buildings or structures that are capable of giving support; and
- (b) as affecting any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the subjacent and lateral support of other buildings or structures or parts of buildings or structures that are capable of being supported; and
- (c) as belonging to any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for shelter by other buildings or structures or parts of buildings or structures that are capable of giving shelter; and
- (d) as affecting any lot or common property within the site on which a building or structure is wholly or partly situated—an easement for the shelter of other buildings or structures or parts of buildings or structures that are capable of being sheltered.

‘(1B) The easement for support and shelter implied by subsection (1A) entitles the proprietor of the dominant tenement to enter the servient tenement to maintain or replace any support or shelter.’.

(2) Subsection (2)—

omit ‘Subsection (1) does not affect—’

insert ‘Subsections (1) and (1A) do not affect—’.

Amendment of s.123 (Stratum plan of subdivision)

7. Section 123(2)—

omit ‘139(2)(q)’, *insert* ‘138(2)(q)’.

Amendment of s.124 (Stratum plan of amalgamation)

8. Section 124(4)—

omit ‘139(2)(q)’, *insert* ‘138(2)(q)’.

Insertion of new s.172A

9. After section 172—

insert—

‘Change of annual general meeting

‘172A.(1) A body corporate may make written application to the Minister for approval to change the date of its next annual general meeting.

‘(2) The body corporate may apply to the Minister to change the date of its next annual general meeting only if—

- (a) the proposed change of date has been stated in a motion given to its members; and
- (b) the motion for the proposed change of date has been carried by ordinary resolution of the body corporate.

‘(3) The application to the Minister must be accompanied by—

- (a) a copy of the motion; and
- (b) evidence that it has been carried by ordinary resolution.

‘(4) The Minister may approve or refuse the application and must advise the body corporate in writing of the approval or refusal.

‘(5) If the application is approved, the changed date of the annual general meeting is taken to be the anniversary of the first annual general meeting of the body corporate.

Example—

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

Amendment of s.177 (Duties of body corporate)

10.(1) Section 177(1)(a)—

omit, insert—

- (a) control, manage and administer for the benefit of its members—

(i) the community property or the precinct property held by it; or

(ii) any road, wharf or land leased by it under section 164.’.

(2) After section 177(1)(b)(ii)—

insert—

‘(iii) any road, wharf or land leased by the body corporate under section 164 and any improvements on the road, wharf or land.’.

Insertion of new s.206A

11. After section 206—

insert—

‘Restricted community property by-laws

‘206A.(1) The community body corporate may make by-laws under section 206 that restrict the use of any part of the community property (**“restricted community property”**) to—

- (a) a member of the community body corporate; or
- (b) a body corporate created by the registration of a building units or group titles plan; or
- (c) a proprietor of a lot created by the registration of a building units or group titles plan; or
- (d) a precinct body corporate; or
- (e) a member of a precinct body corporate; or
- (f) a proprietor of a lot created in a staged use precinct by the registration of a building units or group titles plan; or
- (g) a lessee or occupier of a lot within the site; or
- (h) someone else while the person is engaged in construction works in the site or in a future development area or subsequent stage.

‘(2) Despite section 206(1), the by-law may only be made by resolution without dissent.

‘(3) The by-law may restrict the use of community property that is to be created in a subsequent stage.

‘(4) To remove any doubt, the by-law made may give the use of restricted community property to the person who is, for the time being, the proprietor or other person mentioned in that subsection.

‘(5) The by-law that restricts the use of any part of the community property—

(a) must include—

- (i) subject to paragraph (c), a description of the restricted community property; and
- (ii) details of the persons entitled to use the restricted community property; and
- (iii) the conditions on which the persons may use the restricted community property; and

(b) may include—

- (i) particulars about—
 - (A) access to the restricted community property; and
 - (B) the keeping and supply of any necessary key; and
- (ii) particulars of the hours when the restricted community property may be used; and
- (iii) provisions about the maintenance of the restricted community property; and
- (iv) provisions about imposing and collecting levies from the persons entitled to use the restricted community property; and

(c) need not describe the restricted community property, if—

- (i) the by-law prescribes a way of identifying the property; or
- (ii) the by-law authorises a person to identify the property; and

(d) may authorise a person to allocate the use of the restricted community property.

‘(6) If a person identifies the restricted community property under a

by-law mentioned in subsection (5)(c), the person must, as soon as practicable, give the community body corporate a description of the property.

‘(7) If a person allocates the use of the restricted community property under a by-law mentioned in subsection (5)(d), the person must, as soon as practicable, give the community body corporate details of the persons to whom use of the property has been allocated.

‘(8) The description and details given to the community body corporate under subsection (6) or (7) are taken to be a by-law made under section 206 when both the description and details are received by the community body corporate.

‘(9) The community body corporate must give a by-law made or taken to be made under this section to the Minister for approval under section 206 as soon as practicable but not later than 3 months after it is made or taken to be made.

Maximum penalty—50 penalty units.

‘(10) If the by-law is approved by the Minister, the Minister must give details of the by-law to the Registrar of Titles as soon as practicable after the Minister approves it.

‘(11) A by-law made under this section does not have effect until the Registrar of Titles has recorded details of the by-law on the relevant community plan.’.

Insertion of new s.212A

12. After section 212—

insert—

‘Restricted precinct property by-laws

‘212A.(1) The precinct body corporate may make by-laws under section 212 that restrict the use of any part of the precinct property (“**restricted precinct property**”) to—

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

- (c) a proprietor of a lot created by the registration of a building units or group titles plan in the precinct; or
- (d) a proprietor of a lot created in a staged use precinct by the registration of a building units or group titles plan in the precinct; or
- (e) a lessee or occupier of a lot in the precinct; or
- (f) someone else while the person is engaged in construction works in the site or in a future development area or subsequent stage.

‘(2) Despite section 212(1), the by-law may only be made by resolution without dissent.

‘(3) The by-law may restrict the use of precinct property that is to be created in a subsequent stage.

‘(4) To remove any doubt, the by-law may give the use of restricted precinct property to the person who is, for the time being, the proprietor or other person mentioned in that subsection.

‘(5) The by-law that restricts the use of any part of the precinct property—

- (a) must include—
 - (i) subject to paragraph (c), a description of the restricted precinct property; and
 - (ii) details of the persons entitled to use the restricted precinct property; and
 - (iii) the conditions on which the persons may use the restricted precinct property; and
- (b) may include—
 - (i) particulars about—
 - (A) access to the restricted precinct property; and
 - (B) the keeping and supply of any necessary key; and
 - (ii) particulars of the hours when the restricted precinct property may be used; and
 - (iii) provisions about the maintenance of the restricted precinct property; and

- (iv) provisions about imposing and collecting levies from the persons entitled to use the restricted precinct property; and
- (c) need not describe the restricted precinct property if—
 - (i) the by-law prescribes a way of identifying the property; or
 - (ii) the by-law authorises a person to identify the property; and
- (d) may authorise a person to allocate the use of the restricted precinct property.

‘(6) If a person identifies the restricted precinct property under a by-law mentioned in subsection (5)(c), the person must, as soon as practicable, give the precinct body corporate a description of the property.

‘(7) If a person allocates the use of the restricted precinct property under a by-law mentioned in subsection (5)(d), the person must, as soon as practicable, give the precinct body corporate details of the persons to whom use of the property has been allocated.

‘(8) The description and details given to the precinct body corporate under subsection (6) or (7) are taken to be a by-law made under section 212 when the description and details are received by the precinct body corporate.

‘(9) The precinct body corporate must give a by-law made or taken to be made under this section to the Minister for approval under section 212 as soon as practicable but not later than 3 months after it is made or taken to be made.

Maximum penalty—50 penalty units.

‘(10) If the by-law is approved by the Minister, the Minister must give details of the by-law to the Registrar of Titles as soon as practicable after the Minister approves it.

‘(11) A by-law made under this section does not have effect until the Registrar of Titles has recorded details of the by-law on the relevant precinct plan.’.

Insertion of new Part 12—

13. After Part 11—

insert—

‘PART 12—BRETTS WHARF DEVELOPMENT

‘Definitions

‘219. In this Part—

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

“Bretts Wharf Hamilton” means the land described as Lot 267 on Plan SL 11523 County of Stanley Parish of Toombul;

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

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

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

‘Redevelopment is a mixed use development

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

‘Restricted property by-laws

‘221.(1) A body corporate may, by resolution without dissent, make a by-law (**“restricted property by-law”**) giving to the community body corporate the exclusive use and control of any part of the common property identified in the by-law.

‘(2) A restricted property by-law does not have effect until—

- (a) the Minister approves the by-law; and
- (b) the Registrar of Titles has recorded a notification on the registered plan under section 30(3) of the *Building Units and Group Titles Act 1980*.

‘(3) If a restricted property by-law is made—

- (a) the restricted property area is taken to be community property for the purposes of section 177(1)(a) and (b) and sections 206 and 206A; and
- (b) the other by-laws of the body corporate do not apply to the restricted property area; and
- (c) the community body corporate is not bound by the by-laws of the body corporate; and
- (d) the *Building Units and Group Titles Act 1980* (other than sections 22, 23, 37(1), 37(2) and 37A) applies to the restricted property area and a body corporate; and
- (e) for the purposes of the by-law and despite paragraph (c), the community body corporate is taken to be an occupier of a lot in the building units or group titles plan that created the body corporate that made the by-law.

‘(4) A restricted property by-law may be made, amended, or repealed within 3 months of registration of the plan that creates the body corporate that makes the by-law, without the consent of the community body corporate.

‘(5) However, after 3 months, a restricted property by-law may be made, amended, or repealed only with the consent of the community body corporate by comprehensive resolution.

‘Application of Building Units and Group Titles Act

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

Minor amendments of Integrated Resort Development Act 1987

14.(1) The *Integrated Resort Development Act 1987* is amended as set out in this section.

(2) Section 99A(4) and (5)—

omit ‘thoroughfare’.

