

Queensland



MIXED USE DEVELOPMENT ACT 1993

**Reprinted as in force on 2 June 1998
(includes amendments up to Act No. 78 of 1997)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 2 June 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



MIXED USE DEVELOPMENT ACT 1993

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	11
2	Commencement	11
3	Definitions	11
4	Words and expressions used in Building Units and Group Titles Act	17
PART 2—BASIC CONCEPTS		
5	Purpose of this part	17
6	Mixed use scheme	17
7	Types of development suitable for a mixed use scheme	17
8	Proposed uses of mixed use scheme to be consistent with the planning scheme	18
9	The site	18
10	Future development area	18
11	First subdivision of the site	18
12	The community plan	19
13	Community development lots	19
14	Community property lots	19
15	Community body corporate	19
16	Staged development	20
17	Precinct plan	20
18	Balance precinct development lots	20
19	Precinct development lots	20
20	Precinct property lots	21
21	Precinct body corporate	21

22	Subdivision of community development lots and precinct development lots by group titles and building units plans	21
23	Stratum subdivision	22
24	Membership of community body corporate	22
25	Membership of precinct body corporate	23

PART 3—SCHEME OF MIXED USE DEVELOPMENT

Division 1—Approval of schemes

26	Minimum requirements for approval of scheme	24
27	Land taken to be zoned for mixed use development	25
28	Application for approval of scheme	25
29	Decision on application if site taken to be appropriately zoned	28
30	Decision on application if site requires rezoning	29
31	Notification of decision on application	29
32	Submission of scheme by local authority	30
33	Approval of scheme	31
34	Notation of approved scheme	32

Division 2—Future development areas

35	Application that includes future development area	32
36	Provisional approval	34
37	Application for revocation of provisional approval	34
38	Approval of revocation	35
39	Notation of revocation of provisional approval	35
40	Application for subsequent stages	36

Division 3—Amendment of approved schemes

41	Application for amendment of an approved scheme	37
42	Application for amendment to add land to the site	38
43	Application not adding additional land	40
44	Certain amendments not allowed after community plan registered	40
45	Decision on application if application to amend planning scheme not required	40
46	Decision on application if amendment of planning scheme required	41
47	Notification of decision on application	42
48	Submission of amendment of scheme approved by local authority	42

49	Approval of amendment of scheme	44
50	Notation of amendment	45
51	Minor variation of precinct boundaries	45
	<i>Division 4—Appeals</i>	
52	Appeals to the Planning and Environment Court	45
	<i>Division 5—Effect of approval of scheme</i>	
53	Approved scheme regulates development etc. of site	47
	<i>Division 6— Rescission of approved schemes</i>	
54	Application for rescission	47
55	Rescission of approval	48
56	Notation of rescission	49
57	Effect of rescission	49
	<i>Division 7—Unauthorised uses</i>	
58	Use of construction works	49
59	Use of land etc. within a precinct	49
	PART 4—THE SITE	
60	The site	50
61	Grant of Crown land	50
62	Site forms part of local authority area	50
	PART 5—SUBDIVISION OF SITE	
	<i>Division 1—Subdivision of site by community plan</i>	
63	Lodgment of community plan	51
64	Approval of community plan	51
65	Registration of community plan	52
66	Vesting of community property in community body corporate	53
	<i>Division 2—Amalgamation of community development lots by community plan of amalgamation</i>	
67	Community plan of amalgamation	53
68	Approval of community plan of amalgamation	54
69	Registration of community plan of amalgamation	54
70	Notice of amalgamation	54

Division 3—Subdivision of community development lot by community plan of subdivision

71	Community plan of subdivision	55
72	Approval of community plan of subdivision	55
73	Registration of community plan of subdivision	56
74	Notice of subdivision	56
75	Vesting of community property in community body corporate	56

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

76	Stratum subdivision of community development lot	57
77	Approval of stratum plan	57

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

78	Building units or group titles plan	58
79	Lodgment of building units or group titles plan	58
80	Approval of building units or group titles plan	59
81	Registration of building units or group titles plan	59
82	Subdivision of group title lot by building units plan	60
83	Subdivision of group title lot by group titles plan	60
84	Lot entitlement if group title lot to be subdivided by a building units plan	61
85	Application of Building Units and Group Titles Act to subdivisions	61

Division 6—Subdivision of community development lot by precinct plan

86	Precinct plan	62
87	Approval of precinct plan	63
88	Registration of precinct plan	63
89	Vesting of precinct property in precinct body corporate	64

Division 7—Amalgamation of precinct development lots by precinct plan of amalgamation

90	Precinct plan of amalgamation	64
91	Approval of precinct plan of amalgamation	64
92	Registration of precinct plan of amalgamation	65
93	Notice of amalgamation	65

<i>Division 8—Subdivision of precinct development lot by precinct plan of subdivision</i>	
94	Precinct plan of subdivision 65
95	Approval of precinct plan of subdivision 66
96	Registration of precinct plan of subdivision 67
97	Notice of subdivision 67
98	Vesting of precinct property in precinct body corporate 67
<i>Division 9—Subdivision of precinct development lot or balance precinct development lot by stratum plan under pt 6</i>	
99	Stratum plan 68
100	Approval of stratum plan 68
<i>Division 10—Subdivision of precinct development lot or balance precinct development lot by building units or group titles plan</i>	
101	Subdivision by building units or group titles plan 69
102	Approval of building units or group titles plan 70
103	Registration of building units or group titles plan 70
104	Subdivision of group title lot by a building units plan 70
105	Subdivision of group title lot by group titles plan 71
106	Lot entitlement if group title lot to be subdivided by a building units plan 72
107	Application of Building Units and Group Titles Act to subdivisions 72
<i>Division 11—Matters applying to subdivision generally</i>	
<i>Subdivision A—Extinguishment of plans</i>	
108	Extinguishment of plan 72
109	Order of Supreme Court to extinguish plan 73
110	Registration 73
111	Notification of local authority 74
<i>Subdivision B—Boundary adjustment plans</i>	
112	Boundary adjustment plan 74
113	Registration of boundary adjustment plan 75
114	Effect of boundary adjustment plan 75
<i>Subdivision C—Easements</i>	
115	Implied easements 76
116	Ancillary rights 78

117	Creation of easements by comprehensive resolution	78
	<i>Subdivision D—Sequential plans</i>	
118	Approval of sequential plans by local authority	78
119	Registration of sequential plans by registrar of titles	79
	PART 6—STRATUM SUBDIVISION	
	<i>Division 1—Interpretation</i>	
120	Definition	79
	<i>Division 2—Subdivision</i>	
121	Stratum lots and dealings with stratum lots	80
122	Stratum boundary adjustment plan	80
123	Stratum plan of subdivision	80
124	Stratum plan of amalgamation	81
125	General requirements relating to plans	82
	<i>Division 3—Easements</i>	
126	Support and shelter for certain stratum lots	82
127	Services for certain stratum lots	83
128	Right of way	84
129	Ancillary rights for easements	85
130	Subdivision of stratum lot by building units plan	85
131	Creation of easements	86
	<i>Division 4—Valuation</i>	
132	Valuation of stratum lots	87
	<i>Division 5—Management statements</i>	
133	Requirements of management statement	89
134	Recording of management statement	89
135	Effect of management statement	89
136	General provisions that apply to management statement	90
137	Form of management statement	91
138	Matters required for management statement	91
139	Optional matters for management statement	94
140	Amendment of management statement	94

PART 7—LAND SUBJECT TO TIDAL INFLUENCE

141	Estate or interest in submerged land continues	95
142	Subdivision of submerged land	96
143	Construction of floating buildings and special buildings	96
144	Tidal waters within jurisdiction of authorities	97
145	Obligation of authorities to maintain or undertake works	97
146	Movement of vessels on tidal waters	97
147	Application of laws relating to design and construction etc.	97
148	Statutory charges and valuation of land	98
149	Modification of powers of authorities	98

PART 8—THOROUGHFARES, CANALS AND FACILITIES*Division 1—Thoroughfares*

150	Construction of thoroughfares	99
151	Maintenance etc. of thoroughfares	99
152	Dedication of thoroughfare as road	100
153	Thoroughfares are roads under certain Acts	101
154	Temporary closure of thoroughfares	101
155	Occupier's right to use thoroughfares	102

Division 2—Canals

156	Construction of canals	103
157	Maintenance of canals	103
158	Surrender of canal to State	104

Division 3—Community and precinct facilities

159	Construction of community facilities	105
160	Construction of precinct facilities	105

Division 4—Other matters

161	Additional works on community property	106
162	Additional works on precinct property	107
163	Leasing of community and precinct property	107
164	Leases to community and precinct bodies corporate	107
165	Powers of officials on community or precinct property	108

PART 9—BODIES CORPORATE*Division 1—Interpretation*

166	Definitions	109
-----	-------------------	-----

Division 2—Incorporation of community body corporate

167	Community body corporate	109
-----	--------------------------------	-----

Division 3—Incorporation of precinct body corporate

168	Precinct body corporate	111
-----	-------------------------------	-----

Division 4—Matters applying to community and precinct bodies corporate

169	Members' nominees	113
170	Seals of bodies corporate	114
171	Address for service of bodies corporate	115
172	Meetings of bodies corporate	116
172A	Change of annual general meeting	120
173	Voting entitlements	121
174	Levies by bodies corporate on members	122
175	Power of entry	123
176	Miscellaneous powers of bodies corporate	123
177	Duties of bodies corporate	124
178	Body corporate rolls	127
179	Notices to be given by members	127
180	Applications for supply of information etc. by bodies corporate	130
181	Supply of information etc. by bodies corporate	130
182	Insurance by bodies corporate	133
183	Delegation by corporate members of bodies corporate	133
184	Voting rights	134
185	Constitution of executive committee	134
186	Vacation of office of member of executive committee	137
187	Chairperson, secretary and treasurer of executive committee	139
188	Meetings of executive committee	140
189	Executive committee's decisions to be decisions of body corporate	141
190	Statutory restrictions on powers of executive committee	141
191	Restrictions imposed on executive committee by body corporate	142

Mixed Use Development Act 1993

192	Community or precinct body corporate manager	142
193	Costs in proceedings by members against body corporate	143
194	Service of documents on bodies corporate, members and others	143
195	Power of bodies corporate to convene meetings	144
196	Establishment of committees	144
197	Agreements between precinct bodies corporate	145
	<i>Division 5—Increase in membership of community body corporate</i>	
198	Effect of subdivision of subsequent stage or additional land	145
199	Meeting of community body corporate	145
200	Levies and funds	146
201	Application of divs 2 and 4	146
	PART 10—BY-LAWS	
	<i>Division 1—Community by-laws</i>	
202	Community development control by-laws	146
203	Community activities by-laws	147
204	Application of community development control by-laws and community activities by-laws	147
205	Minor noncompliance with community development control by-laws or community activities by-laws	148
206	Community property by-laws	148
206A	Restricted community property by-laws	149
207	Application of community by-laws to leased areas	151
	<i>Division 2—Precinct by-laws</i>	
208	Precinct development control by-laws	151
209	Precinct activities by-laws	152
210	Application of precinct development control and precinct activities by-laws	152
211	Minor noncompliance with precinct development control by-laws or precinct activities by-laws	153
212	Precinct property by-laws	153
212A	Restricted precinct property by-laws	154
213	Application of precinct by-laws to leased areas	156
	PART 11—MISCELLANEOUS	
214	Fire safety requirements	156

215	Applications to be accompanied by fees	157
216	Chief executive may approve forms	157
217	Delegation by Minister	157
218	Regulations	157

PART 12—BRETTS WHARF DEVELOPMENT

219	Definitions	158
220	Redevelopment is a mixed use development	158
221	Restricted property by-laws	159
222	Application of Building Units and Group Titles Act	160

ENDNOTES

1	Index to endnotes	161
2	Date to which amendments incorporated	161
3	Key	161
4	Table of earlier reprints	162
5	List of legislation	162
6	List of annotations	163

MIXED USE DEVELOPMENT ACT 1993

[as amended by all amendments that commenced on or before 2 June 1998]

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

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. In this Act—

“**access**” means access by road.

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

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

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

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

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

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

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

“building management committee” means the building management committee for a management statement.

“building unit lot” means a lot shown on a building units plan.

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

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

“chief executive” means the chief executive of the department.

“chief executive (valuations)” means the chief executive within the meaning of the *Valuation of Land Act 1944*.

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

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

“community facilities” of a mixed use scheme means facilities on community property.

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

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

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

“community plan of subdivision” means a plan for the subdivision of a community development lot.

Mixed Use Development Act 1993

“community property” of a mixed use scheme means the community property lots of the scheme.

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

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

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

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

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

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

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

“future development area” has the meaning given by section 35.

“group title lot” means a lot shown on a group titles plan.

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

“management statement” has the meaning given by section 133.

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

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

“ordinary resolution”, in relation to a community body corporate, precinct body corporate or building management committee, means a

resolution that is passed at a properly convened meeting of the body corporate or committee.

“original applicant” means the applicant for approval of a scheme, and includes the applicant’s executors, administrators, successors and assigns.

“plan of development” of a mixed use scheme means the scale plan, or the amended scale plan, of development for the scheme approved by the relevant local authority.¹

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

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

“precinct” of a mixed use scheme means a part of the site identified in the scheme as a precinct.

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

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

“precinct facilities” of a mixed use scheme means facilities on precinct property.

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

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

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

“precinct plan of subdivision” means a plan for the subdivision of a precinct development lot.

“precinct property” of a mixed use scheme means the precinct property

¹ For all references to local authority in this Act, now see *Local Government Act 1993* s 796(1)(a).

lots of the scheme.

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

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

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

“provisional approval” means the approval of a future development area.

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

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

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

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

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

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

“scheme” means a mixed use scheme.

“service” means—

- (a) a service for—
 - (i) water, sewage or drainage; or
 - (ii) gas, electricity or oil; or
 - (iii) air conditioning; or
 - (iv) garbage; or

Mixed Use Development Act 1993

- (b) a service for television, telephone or another means of telecommunication; or
- (c) another service prescribed by regulation.

“site” of a mixed use scheme means the site of the scheme.

“special building” means a building—

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

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

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

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

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

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

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

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

“subsequent stage” has the meaning given by section 40.

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

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

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

Words and expressions used in Building Units and Group Titles Act

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

PART 2—BASIC CONCEPTS

Purpose of this part

5.(1) The purpose of this part is to assist in the understanding of this Act.

(2) The part sets out some of the concepts that are important for an understanding of this Act.

Mixed use scheme

6.(1) A mixed use scheme is a scheme that, if approved—

- (a) will allow the development of land that consists of 2 or more different classes of uses; and
- (b) will relate to property that is to be shared by some or all owners and occupiers of lots within the site of the development.

(2) An approved mixed use scheme will allow the development and subdivision of land in a way not otherwise permitted by law.

Types of development suitable for a mixed use scheme

7.(1) Approval of a mixed use scheme may be sought in relation to different types of developments or proposed developments of land.

(2) For example, an industrial site, an inner city site or a site for a tourist complex may be developed or redeveloped under a mixed use scheme.

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

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

8.(1) A mixed use scheme may be approved only if the uses under the scheme are consistent with the planning scheme for the proposed site.

(2) If a proposed use is inconsistent with the planning scheme for the site, an application to amend the planning scheme to enable the use to be lawfully established may be given to the relevant local authority with the application for approval of the mixed use scheme.

The site

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

Future development area

10.(1) An application for approval of a mixed use scheme may identify an area in relation to which development is planned for the future.

(2) The area identified is called a future development area.

(3) A provisional approval may be granted in relation to the area and an application for its inclusion in the site of the mixed use scheme may be made at a later stage.

First subdivision of the site

11.(1) The first subdivision of the site is by a plan called a community plan.

(2) This plan must subdivide the whole site.

The community plan

12.(1) The community plan—

- (a) is a plan that subdivides the site into lots; or
- (b) comprises a number of plans that subdivide the site into lots.

(2) These lots are called community development lots and community property lots.

(3) There must be—

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

Community development lots

13.(1) A community development lot is initially owned by the person that owned the land subdivided by the community plan.

(2) A community development lot may be further developed under the mixed use scheme.

Community property lots

14.(1) Community property lots are shared by, and are property that is common to, owners of community development lots.

(2) Community property lots—

- (a) usually provide access to the community development lots; but
- (b) may contain improvements.

Community body corporate

15.(1) A body corporate is incorporated on registration of the community plan.

(2) This body corporate is the community body corporate.

(3) The community property lots are transferred to the community body corporate.

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

Staged development

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

Precinct plan

17.(1) A precinct plan is a plan that subdivides a community development lot into lots.

(2) These lots are called precinct development lots and precinct property lots.

(3) There must be—

- (a) at least 1 precinct development lot; and
- (b) the number of precinct property lots (if any) that is necessary to ensure access to precinct development lots.

(4) If the precinct development lots and any precinct property lots do not comprise the whole of the community development lot, a further lot is also created.

(5) This lot is called a balance precinct development lot.

Balance precinct development lots

18.(1) A balance precinct development lot is initially owned by the person that owned the community development lot subdivided by the precinct plan.

(2) A balance precinct development lot may be subdivided by a further precinct plan as if it were a community development lot.

Precinct development lots

19. A precinct development lot is initially owned by the person that

owned the community development lot or balance precinct development lot subdivided by a precinct plan.

Precinct property lots

20.(1) Precinct property lots are shared by, and are property that is common to, owners of precinct development lots.

(2) Precinct property lots—

- (a) usually provide access to the precinct development lots; but
- (b) may contain improvements.

Precinct body corporate

21.(1) A body corporate is incorporated on registration of the first precinct plan subdividing a community development lot.

(2) This body corporate is a precinct body corporate.

(3) The precinct property lots created by a precinct plan are transferred to the precinct body corporate.

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

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

22.(1) A community development lot or precinct development lot may be subdivided by—

- (a) a group titles plan; or
- (b) a building units plan.

(2) A group titles plan that subdivides a community development lot or precinct development lot creates group title lots.

(3) A group title lot may be further subdivided by—

- (a) a group titles plan; or

(b) a building units plan.

(4) If a community development lot is subdivided by a group titles or building units plan, it may not then be subdivided by a precinct plan.

Stratum subdivision

23.(1) A community development lot, precinct development lot or balance precinct development lot may be subdivided by a stratum plan.

(2) A stratum plan that subdivides a community development lot creates community stratum lots.

(3) A stratum plan that subdivides a precinct development lot or balance precinct development lot creates precinct stratum lots.

(4) A community stratum lot or precinct stratum lot may be further subdivided by a building units plan.

(5) A stratum plan may be registered only if it is accompanied by a management statement.

(6) A management statement is a document that—

(a) regulates a building and its site; or

(b) is intended to regulate a proposed building and its site.

(7) The management of the building and its site is the responsibility of a building management committee.

Membership of community body corporate—

On subdivision of site by community plan

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

On subdivision of community development lot by stratum plan

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

On subdivision of community stratum lot by building units plan

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

On subdivision of community development lot by building units or group titles plan

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

On subdivision of community development lot by precinct plan

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

Membership of precinct body corporate—**On subdivision of community development lot by precinct plan**

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

On subdivision of precinct development lot by stratum plan

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

On subdivision of precinct stratum lot by building units plan

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

On subdivision of precinct development lot by building units or group titles plan

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

On subdivision of group title lot by building units plan

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

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

PART 3—SCHEME OF MIXED USE DEVELOPMENT*Division 1—Approval of schemes***Minimum requirements for approval of scheme**

26.(1) A scheme may be approved under this Act only if it provides for at least—

- (a) a mixed use development; and
- (b) community property; and
- (c) the division of the site into precincts specifying—
 - (i) the name of each precinct; and
 - (ii) generally, the intended development of each precinct; and
 - (iii) the permitted uses of the land within each precinct.

(2) Subsection (1) does not limit the matters that may be included in the scheme.

Land taken to be zoned for mixed use development

27. If—

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

the land is taken to be zoned for the mixed use development.

Application for approval of scheme

28.(1) An application for approval of a scheme may be made to the relevant local authority.

(1A) However, on and from the commencement of this subsection, no further applications for approval may be made (other than an application that, under a provision of this Act other than this division, is required to be made under this division).

(2) Except in relation to land intended to be freeholded, the application may be made only in relation to land that—

- (a) is taken to be zoned for the mixed use development proposed; or
- (b) if not taken to be zoned for the mixed use development proposed—is the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the mixed use development.

(3) The application must—

- (a) be in writing; and
- (b) be signed by the applicant; and
- (c) be in the form (if any) determined by the local authority; and
- (d) set out or be accompanied by the matters mentioned in subsection (4).

- (4) The matters required by subsection (3) are—
- (a) the name of the proposed mixed use development; and
 - (b) the name and address of the applicant; and
 - (c) the address of—
 - (i) the site; and
 - (ii) any other land proposed to be used in conjunction with the mixed use development; and
 - (d) the name and address of—
 - (i) each owner (other than the applicant) of land within the site; and
 - (ii) each owner of any other land that is proposed to be used in conjunction with the mixed use development; and
 - (e) the written consent of each owner mentioned in paragraph (d) to the inclusion of the owner's land in the scheme, signed by the owner; and
 - (f) advice that the land comprising the site is freehold land or is intended to be freeholded; and
 - (g) details of the existing and proposed form of tenure of any land outside the site that is proposed to be used as part of the scheme; and
 - (h) details of each matter for which approval is required, or that must be done, under another Act before approval of the scheme may be granted; and
 - (i) details of all agreements that relate to land within the site; and
 - (j) evidence of all—
 - (i) undertakings affecting the proposed development given by an interested person; and
 - (ii) contracts affecting the proposed development entered into between the applicant and another interested person; and
 - (k) a schedule setting out the type and extent of development in each precinct; and

Mixed Use Development Act 1993

- (l) details of any minimum lot sizes, height restrictions, building setback requirements, car parking requirements and other requirements that are proposed for the site; and
 - (m) a schedule setting out the voting entitlements, and the way of calculating the voting entitlements, of members of the community body corporate; and
 - (n) the proposed plan of development for the scheme.
- (5) The proposed plan of development must—
- (a) include—
 - (i) a site plan; and
 - (ii) a delineation of the site; and
 - (iii) real property descriptions and, if appropriate, metes and bounds descriptions; and
 - (b) identify the location, and specify the area, of each of the proposed precincts; and
 - (c) specify the name of each proposed precinct; and
 - (d) specify the proposed uses to be permitted within each precinct; and
 - (e) identify the staged use precincts proposed at the time; and
 - (f) identify on the site plan the relationship between the site and any adjoining lands; and
 - (g) identify any lands outside the site that are proposed to be used in conjunction with the establishment or operation of the proposed mixed use development; and
 - (h) identify—
 - (i) the proposed community property; and
 - (ii) any community thoroughfare; and
 - (iii) the access points to the site from roads outside the site; and
 - (i) identify the proposed roads and other proposed major engineering works within the site; and
 - (j) identify existing easements and reserves; and

- (k) identify existing buildings; and
- (l) identify any watercourse lines, flood lines, storm surge levels, waterholes and similar features.

(6) If the application relates to land that is taken to be zoned for the proposed mixed use development, a matter mentioned in subsection (4) is required to be set out in, or accompany, the application only if the applicant has not already given the relevant information or material to the local authority.

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

(8) In this section—

“interested person” means the applicant, the local authority, the State, the Commonwealth or the provider of a public utility service.

Decision on application if site taken to be appropriately zoned

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

(2) The local authority must decide the application—

- (a) within 40 days of receiving it; or
- (b) if the local authority extends or further extends the period—before the end of the extended period.

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

- (a) shortening the extension; or
- (b) directing that the extension ceases to have effect on the giving of the direction.

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

(5) The local authority may—

- (a) approve the scheme; or

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

Decision on application if site requires rezoning

30.(1) The local authority must decide, in accordance with this section, an application for approval of a mixed use scheme in relation to a site that is not taken to be zoned for the mixed use development proposed.

(2) The application for approval of the mixed use scheme may accompany the application to amend the relevant planning scheme to allow the mixed use development proposed.

(3) The public notice and objection requirements that apply under the *Local Government (Planning and Environment) Act 1990* to the application to amend the planning scheme do not apply to the application for approval of the mixed use scheme.

(4) If the application for approval of the mixed use scheme accompanies the application to amend the planning scheme, the local authority must decide both applications at the same time.

(5) The local authority may—

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

Notification of decision on application

31.(1) The local authority must notify the applicant of its decision within 10 days after it is made.

(2) The notification must include—

- (a) the decision and its date; and
- (b) if the application has been refused—the grounds for the refusal; and

- (c) if the application has been approved—any conditions that attach to the approval; and
- (d) details of—
 - (i) the way an applicant may appeal against the refusal or against any conditions to which the approval is subject; and
 - (ii) the time within which an appeal must be made.

Submission of scheme by local authority

32.(1) The local authority must submit the scheme approved by it to the Minister.

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

- (i) 14 days after the decision; or
- (ii) another period determined by the court; or
- (d) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined otherwise than by a decision of the court—14 days after the determination; or
- (e) if, because of the determination of an appeal, the applicant is required to lodge security with the local authority to ensure compliance with conditions to which the scheme is subject—14 days after lodgment of the security.

(4) For the purposes of subsection (3), if, before the end of the period mentioned in the subsection, the applicant gives a written notice to the local authority stating that the applicant will not appeal against the local authority's decision, the time for starting an appeal is taken to have ended on receipt by the local authority of the notice.

Approval of scheme

33.(1) The Governor in Council may—

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

(2) If the Governor in Council approves the scheme, the chief executive must—

- (a) notify the approval of the scheme by a gazette notice that specifies—
 - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and
 - (ii) the places where a copy of the approved scheme is available for inspection; and
- (b) keep a copy of the approved scheme available for inspection at the office of the chief executive at Brisbane at all times during which the office is open for the transaction of public business; and

- (c) note the approval on the plan of development; and
- (d) send a copy of the approved scheme and the plan of development to the registrar of titles and the local authority.

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

Notation of approved scheme

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

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

Division 2—Future development areas

Application that includes future development area

35.(1) An application under division 1 for the approval of a scheme (the “**primary application**”) may identify an area (a “**future development area**”) in relation to which—

- (a) provisional approval is sought; and
- (b) a subsequent application is proposed to be made under division 1.

(2) A future development area may only contain freehold land or land intended to be freeholded.

(3) Except in relation to land intended to be freeholded, the primary application may include a future development area only if the land in the future development area—

- (a) is taken to be zoned for the mixed use development proposed; or
- (b) if not taken to be zoned for the mixed use development proposed—is the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the mixed

Mixed Use Development Act 1993

use development proposed.

(4) The primary application may include a future development area only if—

- (a) the future development area is contiguous with the other land mentioned in the application; and
- (b) the intended use of the future development area is compatible with the intended use of the other land.

(5) For the purposes of subsection (4), a future development area that is separated from the other land only by a road, railway, tramway or boundary watercourse is taken to be contiguous with the other land.

(6) If the primary application identifies a future development area, the applicant must, in addition to giving the information and material required by division 1, give to the local authority—

- (a) the address of the future development area; and
- (b) a site plan and delineation of the future development area, including real property descriptions and, if appropriate, metes and bounds descriptions; and
- (c) the name and address of each owner (other than the applicant) of land within the future development area; and
- (d) the written consent of each owner mentioned in paragraph (c) to the inclusion of the owner's land in the future development area; and
- (e) advice that the land in the future development area is freehold land or is intended to be freeholded.

(7) The site plan must identify—

- (a) the relationship between the future development area, the site and any adjoining lands; and
- (b) any lands outside the future development area that are proposed to be used in conjunction with the establishment or operation of the proposed development; and
- (c) any access points to the future development area from roads outside the future development area; and

- (d) existing easements and reserves; and
- (e) any watercourse lines, flood lines, storm surge levels, waterholes and similar features; and
- (f) the nature and extent of development proposed in the future development area.

Provisional approval

36.(1) An application for provisional approval for a future development area is to be made, and dealt with and approved in the same way and within the same time as the application under division 1 for approval of a scheme.

(2) The requirements of section 34 that apply to the approved scheme also apply to a future development area that has been provisionally approved in relation to the approved scheme.

Application for revocation of provisional approval

37.(1) The proprietor of land in a future development area that is the subject of a provisional approval may apply to have the approval revoked in relation to all or part of the land.

(2) An application may not be made in relation to any part of the future development area that has been the subject of an application under section 40.

(3) Before making the application, the proprietor must give written notice of the proprietor's intention to make the application to—

- (a) the community body corporate; and
- (b) the precinct bodies corporate;

(if these exist) inviting written comments from their members before a specified day (not less than 30 days after the giving of the notice).

(4) The application must be made in writing to the Minister and include—

- (a) a copy of the notice given under subsection (3); and
- (b) any written comments of the members of the community body corporate or the precinct bodies corporate received by the

- applicant; and
- (c) other matters that the Minister considers necessary.

Approval of revocation

38.(1) The Governor in Council may—

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

(2) If the Governor in Council approves the revocation, the chief executive must—

- (a) notify the approval of the revocation by a gazette notice that specifies—
 - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and
 - (ii) the places where a copy of the approved revocation is available for inspection; and
- (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane at all times during which the office is open for the transaction of public business; and
- (c) note the revocation on the plan of development; and
- (d) send a copy of the revocation to the registrar of titles and the local authority.

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

(4) The registrar of titles must note the revocation on the plan of development.

Notation of revocation of provisional approval

39. The local authority and the chief executive must each make an

appropriate notation of the revocation on—

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

Application for subsequent stages

40.(1) An application may be made to the relevant local authority under division 1 in relation to all or part of a future development area that is the subject of a provisional approval.

(2) The future development area or part of the future development area that is the subject of an application under division 1 is called a “**subsequent stage**”.

(3) Division 1 applies to the application for approval of a subsequent stage.

(4) However, if the local authority is satisfied that a matter required under division 1 for the application has previously been complied with, the local authority may dispense with the matter.

(5) The application may be made only if—

- (a) all necessary amounts have been paid to the local authority; and
- (b) all necessary undertakings and securities have been given to, or lodged with, the local authority;

under an agreement entered into between the applicant and the local authority.

(6) The application must—

- (a) indicate that the subsequent stage is to be divided into precincts; and
- (b) specify—
 - (i) the name of each precinct; and
 - (ii) generally, the intended development of each precinct; and
 - (iii) the permitted uses of the land within each precinct; and

- (c) be accompanied by a schedule setting out the voting entitlements, and the way of calculating the voting entitlements, of proposed members of the community body corporate.

(7) An application in relation to a subsequent stage in a future development area may be made at any time.

(8) Land in a subsequent stage is to be subdivided under part 5 in the same way as land within the site of a scheme.

Division 3—Amendment of approved schemes

Application for amendment of an approved scheme

41.(1) The applicant may apply to the relevant local authority for approval of an amendment of an approved scheme.

(2) The application must be—

- (a) in writing; and
- (b) signed by the applicant; and
- (c) in the form (if any) determined by the local authority.

(3) A matter in the application may be expressed in words or by way of words and a diagram.

(4) Subject to section 51, if the applicant is the community body corporate, it may apply to amend the approved scheme only if—

- (a) the amendment proposed has been set out in a motion given to its members; and
- (b) the motion for the proposed amendment has been carried by comprehensive resolution of the body corporate.

(5) The application must be accompanied by—

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

Application for amendment to add land to the site

42.(1) If the amendment proposed includes the addition to the site of land outside the site—

- (a) the intended use of the additional land—
 - (i) must be permitted by the relevant planning scheme; or
 - (ii) if not permitted by the relevant planning scheme—must be the subject of an application to amend a planning scheme under the *Local Government (Planning and Environment) Act 1990* that, if approved, would allow the use intended; and
- (b) the intended use of the additional land must be compatible with the approved scheme.

(2) The application to add additional land must set out or be accompanied by—

- (a) the name of the scheme; and
- (b) the name and address of the applicant; and
- (c) the address of the additional land; and
- (d) the name and address of each owner (other than the applicant) of—
 - (i) the additional land; and
 - (ii) any land outside the site and the future development area that is proposed to be used in conjunction with the mixed use development; and
- (e) the written consent of each owner mentioned in paragraph (d) to the addition of the owner's land to the site, signed by the owner; and
- (f) advice that the additional land is freehold land or is intended to be freeholded; and
- (g) details of each matter for which approval is required, or that must be done, under another Act before approval of the amendment of the approved scheme may be given; and
- (h) details of all agreements that relate to any part of the additional

Mixed Use Development Act 1993

- land; and
- (i) evidence of all—
 - (i) undertakings affecting the proposed development of the additional land given by an interested person; and
 - (ii) contracts affecting the proposed development of the additional land entered into between the applicant and another interested person; and
 - (j) a schedule setting out the type and extent of development in each precinct; and
 - (k) details of any minimum lot sizes, height restrictions, building setback requirements, car parking requirements and other requirements that are proposed for the additional land; and
 - (l) a schedule specifying the voting entitlements and the methods of calculating the voting entitlements of existing and proposed members of the community body corporate; and
 - (m) the proposed plan of development for the additional land.
- (3)** The proposed plan of development must—
- (a) include—
 - (i) a site plan; and
 - (ii) a delineation of the additional land; and
 - (iii) real property descriptions and, if appropriate, metes and bounds descriptions; and
 - (b) identify the location and specify the area of each of the proposed precincts; and
 - (c) specify the name of each proposed precinct; and
 - (d) specify the proposed uses to be permitted within each precinct; and
 - (e) identify any proposed staged use precincts; and
 - (f) identify on the site plan the relationship between the site and the additional land; and
 - (g) identify any lands outside the site and the future development area

(other than additional land) that are proposed to be used in conjunction with the establishment or operation of the mixed use development; and

- (h) identify—
 - (i) the proposed roads and other proposed major engineering works within the additional land; and
 - (ii) the access points to the additional land from roads outside the land; and
- (i) identify existing and proposed easements and reserves; and
- (j) identify any watercourse lines, flood lines, storm surge levels, waterholes and similar features.

(4) In this section—

“interested person” means the applicant, the local authority, the State, the Commonwealth or the provider of a public utility service.

Application not adding additional land

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

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

Certain amendments not allowed after community plan registered

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

Decision on application if application to amend planning scheme not required

45.(1) The local authority must decide, in accordance with this section—

- (a) an application for approval of an amendment that relates to

additional land the use of which is permitted by the relevant planning scheme; or

- (b) an application for approval of an amendment that does not relate to additional land.

(2) The local authority must decide the application—

- (a) within 40 days of receiving it; or
- (b) if the local authority extends or further extends the period—before the end of the extended period.

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

- (a) shortening the extension; or
- (b) directing that the extension ceases to have effect on the giving of the direction.

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

(5) The local authority may—

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

Decision on application if amendment of planning scheme required

46.(1) The local authority must decide, in accordance with this section, an application for approval of an amendment of a mixed use scheme that relates to additional land the use of which is not permitted by a planning scheme.

(2) The application for approval of the amendment of the mixed use scheme may accompany the application to amend the relevant planning scheme to allow the use proposed for the additional land.

(3) The public notice and objection requirements that apply under the *Local Government (Planning and Environment) Act 1990* to the application to amend the planning scheme do not apply to the application for approval

of the amendment of the mixed use scheme.

(4) If the application for approval of amendment of the mixed use scheme accompanies the application to amend the relevant planning scheme, the local authority must decide both applications at the same time.

(5) The local authority may—

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

Notification of decision on application

47.(1) The local authority must notify the applicant of its decision within 10 days after it is made.

(2) The notification must include—

- (a) the decision and its date; and
- (b) if the application has been refused—the grounds for the refusal; and
- (c) if the application has been approved—any conditions to which the approval is subject; and
- (d) details of—
 - (i) the way an applicant may appeal against the refusal or against any conditions to which the approval is subject; and
 - (ii) the time within which an appeal must be made.

Submission of amendment of scheme approved by local authority

48.(1) The local authority must submit the amendment of the scheme approved by it to the Minister.

(2) The amendment must be accompanied by—

- (a) details of the assessment of the amendment of the scheme made by the local authority; and

Mixed Use Development Act 1993

- (b) details of any conditions determined by it in relation to the amendment; and
- (c) details of any decision of the Planning and Environment Court in relation to the amendment; and
- (d) any other matters required by the Minister.

(3) The amendment must be submitted to the Minister within—

- (a) if the amendment is approved without conditions—14 days after the local authority's decision; or
- (b) if the time for starting an appeal has ended and no appeal has been started—
 - (i) if security is required to be lodged with the local authority to ensure compliance with the conditions to which the approval of the amendment is subject—14 days after lodgment of the security; or
 - (ii) if security is not required—14 days after the end of the appeal period; or
- (c) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined by a decision of the court—
 - (i) 14 days after the decision; or
 - (ii) another period determined by the court; or
- (d) if (in a case to which paragraph (e) does not apply) an appeal has been made and the appeal has been determined otherwise than by a decision of the court—14 days after the determination; or
- (e) if, because of the determination of an appeal, the applicant is required to lodge security with the local authority to ensure compliance with conditions to which the approval of the amendment is subject—14 days after lodgment of the security.

(4) For the purposes of subsection (3), if, before the end of the period mentioned in the subsection, the applicant gives a written notice to the local authority stating that the applicant will not appeal against the local authority's decision, the time for starting an appeal is taken to have ended on receipt by the local authority of the notice.

Approval of amendment of scheme

49.(1) The Governor in Council may—

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

(2) If the amendment relates to additional land—

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

(3) If the Governor in Council approves the amendment, the chief executive must—

- (a) notify the approval of the amendment by a gazette notice that specifies—
 - (i) the modifications (if any) made by the approval and the conditions (if any) to which the approval is subject; and
 - (ii) the places where a copy of the approved amendment is available for inspection; and
- (b) keep a copy of the approved amendment available for inspection at the office of the chief executive at Brisbane at all times during which the office of the chief executive is open for the transaction of public business; and
- (c) note the approval on any plan of development; and
- (d) send a copy of the approved amendment and any plan of development each endorsed by the chief executive to the registrar of titles and the local authority.

(4) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the amendment to the person.

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

Notation of amendment

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

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

Minor variation of precinct boundaries

51.(1) The relevant local authority may approve an application to vary the boundaries of a precinct if, in its opinion, the variation is minor.

(2) If the local authority approves the variation, it must submit it to the Minister.

(3) The Minister may—

- (a) approve the variation; or
- (b) refuse to approve the variation.

(4) The provisions of this Act that apply to—

- (a) the approval of a scheme; or
- (b) the approval of an amendment of a scheme;

do not apply to the approval of a minor variation under this section.

(5) If the Minister approves the variation, the chief executive must give the registrar of titles and the local authority a new plan of development that includes the minor variation.

Division 4—Appeals**Appeals to the Planning and Environment Court**

52.(1) This section applies to the following decisions of a local authority—

- (a) a decision refusing to approve a scheme;

Mixed Use Development Act 1993

- (b) a decision approving a scheme subject to conditions;
- (c) a decision refusing to approve an amendment of a scheme;
- (d) a decision approving an amendment of a scheme subject to conditions;
- (e) a decision refusing to approve a subsequent stage;
- (f) a decision approving a subsequent stage subject to conditions;
- (g) a decision refusing a provisional approval of a future development area;
- (h) a decision approving a provisional approval of a future development area subject to conditions.

(2) An applicant may appeal to the Planning and Environment Court in relation to—

- (a) a decision to which this section applies; and
- (b) a failure of a local authority to decide an application under this part within the time prescribed by this part.

(3) A person may appeal in relation to a decision mentioned in subsection (1)(g) only if—

- (a) the application under division 1 that identifies the future development area has been approved; or
- (b) if the application under division 1 has been refused—an appeal against this refusal accompanies the appeal in relation to the decision mentioned in subsection (1)(g).

(4) For the purposes of subsection (2)(b), a failure of local authority to decide an application is taken to be a refusal of the local authority to approve the application.

(5) If—

- (a) an application under this part accompanies an application for amendment of a planning scheme; and
- (b) both applications are refused by the local authority;

an appeal may be made in relation to the application under this part only if an appeal is also made in relation to the other application.

(6) Part 7 (Appeals) of the *Local Government (Planning and Environment) Act 1990* applies to an appeal under this section with any necessary modifications.

Division 5—Effect of approval of scheme

Approved scheme regulates development etc. of site

53.(1) The mixed use scheme regulates the development and use of land within the site.

(2) The mixed use scheme modifies any planning scheme in force in relation to the site to the extent the planning scheme is inconsistent with the mixed use scheme.

(3) However, the mixed use scheme cannot increase the uses permitted by the planning scheme.

(4) Part 5 (Subdivision applications) of the *Local Government (Planning and Environment) Act 1990* does not apply to the site.

(5) Subdivision of land by-laws made under the *Local Government Act 1936* do not apply to the site.

(6) By-laws or ordinances made by a local authority under any Act do not apply to the site so far as they are inconsistent with this Act or the scheme.

(7) Any land, building or structure may be used within a precinct without the consent of the local authority, for any of the purposes set out in the scheme as a permitted use in relation to the precinct.

Division 6—Rescission of approved schemes

Application for rescission

54.(1) The applicant may apply to the Minister for rescission of the scheme.

(2) The application may be made only if no plan of subdivision has been registered under this Act.

(3) However, the application may be made if all plans that have been registered have been extinguished under section 108.

(4) If all plans have been extinguished, the application for rescission must be made by all proprietors within the site.

Rescission of approval

55.(1) The Minister must consider the application and discuss it with the local authority.

(2) The Governor in Council may—

- (a) approve the rescission; or
- (b) approve the rescission subject to conditions; or
- (c) refuse to approve the rescission.

(3) If the Governor in Council approves the rescission, the chief executive must—

- (a) notify the approval of the rescission by a gazette notice that specifies—
 - (i) the conditions (if any) to which the approval is subject; and
 - (ii) the places where a copy of the approved rescission is available for inspection; and
- (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane at all times during which the office is open for the transaction of public business; and
- (c) note the rescission on the plan of development; and
- (d) send a copy of the approval to the registrar of titles and the local authority.

(4) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the approval of the rescission to the person.

(5) The registrar of titles must note the rescission on the plan of development.

Notation of rescission

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

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

Effect of rescission

57.(1) On rescission of an approved scheme—

- (a) the provisions of this Act that applied because of the scheme no longer apply; and
- (b) the provisions of the *Canals Act 1958* prescribed for the purposes of section 156 again apply.

(2) Nothing in subsection (1) affects anything lawfully done before the rescission of the approved scheme.

Division 7—Unauthorised uses**Use of construction works**

58. A person must not use construction works that have been undertaken in a future development area unless the works are situated in a subsequent stage that has been approved under division 1.

Maximum penalty—500 penalty units.

Use of land etc. within a precinct

59. A person must not use land, or a building or other structure, within a precinct for a use that is not a use specified in the scheme as a permitted use in relation to the precinct.

Maximum penalty—200 penalty units.

PART 4—THE SITE

The site

60.(1) The site of a scheme consists of all land within the boundaries of the site set out in the scheme.

(2) The site must consist only of freehold land and land intended to be freeholded.

(3) Despite any other Act or law, the site may include land mentioned in subsection (2) that is, or may become, inundated by water or subject to tidal influence.

(4) The boundaries of the site may enclose 2 or more parcels of land, but only to the extent that this is necessary because a road, railway, tramway or boundary watercourse that is not intended to be freeholded divides the parcels.

Grant of Crown land

61.(1) The power conferred by the *Land Act 1962* on the Governor in Council to grant in fee simple any Crown land within Queensland includes, in relation to Crown land included or to be included as part of a scheme, power to grant the land in fee simple to an applicant, on payment of the amount that the Governor in Council determines, in priority to and to exclusion of all other persons.

(2) Subsection (1) applies despite the *Land Act 1962*.

(3) The power applies only to land—

- (a)** that is necessary to regularise the boundaries of the site and is required in relation to works to be carried out on the site; and
- (b)** that, following development of the site, is of a shape that cannot reasonably be used otherwise than in relation to the site.

Site forms part of local authority area

62.(1) If a part of the site is not within the area of any local authority, the part forms part of the area of the local authority to which application in

relation to a scheme was made.

(2) Subsection (1) applies despite any other Act.

PART 5—SUBDIVISION OF SITE

Division 1—Subdivision of site by community plan

Lodgment of community plan

63.(1) After the approval of a scheme by the Governor in Council, the proprietor of land within the site must lodge with the local authority a community plan subdividing land within the site into—

- (a) a lot that comprises, or lots that together comprise, the community property as provided for in the scheme; and
- (b) a community development lot that comprises, or community development lots that together comprise, the balance of the land within the site.

(2) The community plan must—

- (a) identify the community property; and
- (b) be accompanied by a schedule setting out the voting entitlement applicable to each community development lot.

Approval of community plan

64.(1) The local authority may approve a community plan and schedule only if it is satisfied that—

- (a) each lot comprising community property is shown on—
 - (i) the plan; or
 - (ii) a previous plan approved by the local authority that forms part of the community plan; and
- (b) each community development lot has access to a dedicated road

outside the site directly or through the community thoroughfare that is, or is to be, constructed on the community property; and

- (c) if there is more than 1 community development lot in a precinct—the combined voting entitlement of the lots equals the voting entitlement of the precinct; and
- (d) the provisions of the scheme that apply to the lots on the plan have been complied with; and
- (e) the lots on the plan have been, or will be, provided with essential services.

(2) For the purposes of subsection (1)(b)—

- (a) if the site is on an island and there is no dedicated road adjoining the site—a community development lot is taken to have access to a dedicated road if the lot or the community thoroughfare adjoins the foreshore; or
- (b) if the site is remote and there is no dedicated road adjoining the site—a community development lot is taken to have access to a dedicated road if the Minister has advised the local authority that the Minister is satisfied that there is appropriate access to the site.

(3) If a community development lot is taken to have access to a dedicated road under subsection (2), a lot is also taken to have access to a dedicated road if created by the subdivision of—

- (a) the community development lot; or
- (b) a lot created by the subdivision of the community development lot.

(4) Subsection (3) has effect subject to the provisions of this Act that relate to access.

Registration of community plan

65.(1) The registrar of titles may register a community plan only if—

- (a) it includes the subdivision of the site into a lot or lots comprising the community property or a plan that forms part of the community plan has previously created community property and been registered by the registrar of titles; and

- (b) it is accompanied by a schedule setting out the voting entitlement applicable to each community development lot; and
- (c) the plan and the schedule have been approved by the local authority.

(2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local authority's approval of the plan.

Vesting of community property in community body corporate

66.(1) On registration of the community plan creating lots comprising the community property and after registration of the necessary transfer by the registrar of titles, the lots are transferred to the community body corporate.

(2) If land that is to become community property is mortgaged, the transfer may be registered only if the mortgage has been released.

(3) The registrar of titles must issue certificates of title in the name of the community body corporate.

(4) The community body corporate must not be required to make any payment or provide any consideration for the transfer.

(5) This section does not affect the operation of section 150.

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

Community plan of amalgamation

67.(1) The proprietor of 2 or more community development lots on a community plan may amalgamate the lots by a community plan of amalgamation.

(2) The community plan of amalgamation must—

- (a) be lodged with the local authority; and
- (b) be accompanied by a schedule setting out the voting entitlement that is to apply to the new community development lot.

Approval of community plan of amalgamation

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

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

Registration of community plan of amalgamation

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

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

Notice of amalgamation

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

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

Division 3—Subdivision of community development lot by community plan of subdivision

Community plan of subdivision

71.(1) The proprietor of a community development lot may subdivide it by a community plan of subdivision into—

- (a) 2 or more community development lots; or
- (b) 1 or more community development lots and 1 or more community property lots.

(2) The community plan of subdivision must—

- (a) be lodged with the local authority; and
- (b) be accompanied by a schedule setting out the voting entitlement that is to apply to each community development lot created by the plan.

(3) The proprietor may lodge a community plan of subdivision that creates a community property lot only if—

- (a) details of the proposed subdivision have been set out in a motion given to the members of the community body corporate; and
- (b) the motion has been carried by comprehensive resolution.

Approval of community plan of subdivision

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

- (a) the total voting entitlement that is to apply to the new community development lot or lots equals the voting entitlement that applies to the community development lot being subdivided; and
- (b) each new community development lot has access to a dedicated road outside the site directly or through the community thoroughfare that is, or is to be constructed, on a lot that comprises or on lots that comprise the community property; and
- (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and

- (d) the lots on the plan have been, or will be, provided with essential services.

Registration of community plan of subdivision

73.(1) The registrar of titles may register a community plan of subdivision only if—

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

(2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local authority's approval of the plan.

Notice of subdivision

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

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

Vesting of community property in community body corporate

75.(1) On registration of the community plan of subdivision creating or lots comprising the community property and after registration of the necessary transfer by the registrar of titles, the lots are transferred to the community body corporate.

(2) If land that is to become community property is mortgaged, the transfer may be registered only if the mortgage has been released.

(3) The registrar of titles must issue certificates of title in the name of the community body corporate.

(4) The community body corporate must not be required to make any payment or provide any consideration for the transfer.

(5) This section does not affect the operation of section 150.

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

Stratum subdivision of community development lot

76.(1) The proprietor of a community development lot may subdivide it by a stratum plan under part 6 into stratum lots called “**community stratum lots**”.

(2) The stratum plan must—

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

Approval of stratum plan

77.(1) A local authority may approve a stratum plan and schedule only if it is satisfied that—

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

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

(2) If the local authority approves the stratum plan and the schedule, it may also approve the management statement.

(3) For the purposes of this section, access need not be access by road.

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

Building units or group titles plan

78. If a community development lot created by the registration of—

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

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

Lodgment of building units or group titles plan

79.(1) A building units or group titles plan must be lodged with the local authority.

(2) A group titles plan must be accompanied by a statement by the proprietor of the community development lot—

- (a) indicating whether or not it is proposed to subdivide any lot created by the group titles plan by the registration of a building units plan; and
- (b) if it is proposed to do so—identifying the lot.

(3) If—

- (a) a group titles plan creates lots; and
- (b) at least 1 of the lots is proposed to be further subdivided by the registration of a building units plan;

the group titles plan must be accompanied by a schedule setting out, in relation to each lot proposed to be further subdivided, the maximum number of lots into which the lot may be subdivided.

(4) Each lot on a group titles plan must have access to a dedicated road whether directly or through—

- (a) the community thoroughfare; or
- (b) the common property.

Approval of building units or group titles plan

80.(1) A local authority may approve a group titles plan and schedule only if—

- (a) it is satisfied that each lot created has the access mentioned in section 79(4); and
- (b) the plan is accompanied by—
 - (i) the statement mentioned in section 79(2); and
 - (ii) if applicable—the schedule mentioned in section 79(3).

(2) A local authority may approve a building units plan that subdivides a group title lot only if it is satisfied that the group title lot has the access mentioned in section 79(4).

(3) If the schedule accompanying a group titles plan indicates that it is proposed to further subdivide any lot created, the local authority must endorse that fact on the plan.

Registration of building units or group titles plan

81.(1) The registrar of titles may register a building units or a group titles plan only if the plan and, if applicable, the schedule accompanying the plan, have been approved by the local authority.

- (2) In determining whether a lot has access to a dedicated road, the

registrar of titles does not have to make inquiries but may rely on the local authority's approval of the plan.

Subdivision of group title lot by building units plan

82.(1) If the statement accompanying a group titles plan identifies a group title lot that is proposed to be subdivided by way of a building units plan, the building units plan may be—

- (a) approved by the local authority; and
- (b) registered by the registrar of titles.

(2) The first proviso to section 10(1)² of the *Building Units and Group Titles Act 1980* does not apply to a subdivision by a building units plan mentioned in subsection (1).

(3) Despite the *Building Units and Group Titles Act 1980*, the registration of a building units plan under subsection (1) has effect as if the subdivision by the plan were a subdivision of the original group titles plan.

(4) If a building units plan subdivides a lot created by a group titles plan, a further body corporate is not created by registration of the building units plan.

(5) For the purposes of the *Building Units and Group Titles Act 1980*, the body corporate created by registration of the group titles plan is taken to be the body corporate created by the registration of the building units plan.

(6) Subsections (4) and (5) apply despite section 27 of the *Building Units and Group Titles Act 1980*.

Subdivision of group title lot by group titles plan

83.(1) Before a group title lot is subdivided by a building units plan, it may be subdivided by a group titles plan.

(2) Section 79(2) and (3) apply to the subdivision of a group title lot by a group titles plan as if it were the subdivision of a community development lot by a group titles plan.

² This provision was renumbered as section 10(1A) (now see *Building Units and Group Titles Act 1980* s 10).

(3) The number of lots created by the subdivision of the group title lot by a further group titles plan, and then by a building units plan, must not exceed the number of lots indicated on the schedule under section 79(3) in relation to the subdivision of the community development lot by the group titles plan.

(4) Sections 80 and 81 relating to approval by a local authority and registration by the registrar of titles apply to a plan mentioned in this section.

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

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

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

Application of Building Units and Group Titles Act to subdivisions

85.(1) The following provisions of the *Building Units and Group Titles Act 1980* do not apply to a subdivision under this division—

- (a) the second proviso to section 10(1);³ and
- (b) section 10(6)(b).

(2) For the purposes of section 9(7) of the *Building Units and Group Titles Act 1980*, a plan of subdivision is taken to comply with the requirements mentioned in the subsection in relation to the subdivision if the plan complies with those requirements as modified by this Act.

³ This provision was renumbered as section 10(1B) (now see *Building Units and Group Titles Act 1980* s 10).

Division 6—Subdivision of community development lot by precinct plan**Precinct plan**

86.(1) The proprietor of a community development lot may subdivide it by a precinct plan if—

- (a) the community development lot is contained within a staged use precinct that is identified in the scheme; or
- (b) the proprietor later advises the local authority of the proprietor's intention to develop the precinct within which the community development lot is situated as a staged use precinct.

(2) A precinct plan must subdivide a community development lot into—

- (a) a precinct development lot; and
- (b) if necessary for access—a precinct property lot.

(3) A precinct plan may subdivide a community development lot into—

- (a) more than 1 precinct development lot; and
- (b) more than 1 precinct property lot; and
- (c) if the lot or lots created do not cover the whole of the community development lot—a balance precinct development lot.

(4) A balance precinct development lot may be later subdivided—

- (a) by a precinct plan as if it were a community development lot; or
- (b) under section 101; or
- (c) by a stratum plan.

(5) A precinct plan subdividing a community development lot must be lodged with the local authority.

(6) A precinct plan must—

- (a) identify any precinct property; and
- (b) be accompanied by a schedule setting out the voting entitlement that applies to each precinct development lot, and any balance precinct development lot, created by the plan.

(7) If a staged use precinct is identified in the application for an approved

scheme, the local authority and the applicant may agree to defer the payment of contributions towards water supply, sewerage and drainage works until the approval by the local authority of the precinct plans that create precinct development lots.

Approval of precinct plan

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

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

Registration of precinct plan

88.(1) The registrar of titles may register a precinct plan only if—

- (a) it is accompanied by a schedule setting out the voting entitlement that applies to each precinct development lot, and any balance precinct development lot, created by the plan; and
- (b) the plan and schedule have been approved by the local authority.

(2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local authority's approval of the plan.

Vesting of precinct property in precinct body corporate

89.(1) On registration of the precinct plan creating lots comprising the precinct property and registration of the necessary transfer by the registrar of titles, the lots are transferred to the precinct body corporate.

(2) If land that is to become precinct property is mortgaged, the transfer may be registered only if the mortgage has been released.

(3) The registrar of titles must issue certificates of title in the name of the precinct body corporate.

(4) The precinct body corporate must not be required to make any payment or provide any consideration for the transfer.

(5) This section does not affect the operation of section 150.

Division 7—Amalgamation of precinct development lots by precinct plan of amalgamation

Precinct plan of amalgamation

90.(1) The proprietor of 2 or more precinct development lots that previously formed part of the same community development lot may amalgamate the lots by a precinct plan of amalgamation.

(2) The precinct plan of amalgamation must—

- (a) be lodged with the local authority; and
- (b) be accompanied by a schedule setting out the voting entitlement that is to apply to the new precinct development lot.

Approval of precinct plan of amalgamation

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

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

Registration of precinct plan of amalgamation

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

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

Notice of amalgamation

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

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

Division 8—Subdivision of precinct development lot by precinct plan of subdivision

Precinct plan of subdivision

94.(1) The proprietor of a precinct development lot may subdivide it by a precinct plan of subdivision into—

- (a) 2 or more precinct development lots; or
- (b) 1 or more precinct development lots and 1 or more precinct property lots.

(2) The precinct plan of subdivision must—

- (a) be lodged with the local authority; and
- (b) be accompanied by a schedule setting out the voting entitlement that is to apply to each precinct development lot created by the plan.

(3) The proprietor of a precinct development lot may lodge with the local authority a precinct plan of subdivision that creates a precinct property lot only if—

- (a) details of the proposed subdivision have been set out in a motion given to the members of the precinct body corporate; and
- (b) the motion has been carried by comprehensive resolution.

Approval of precinct plan of subdivision

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

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

Registration of precinct plan of subdivision

96.(1) The registrar of titles may register a precinct plan of subdivision only if—

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

(2) In determining whether a lot has access to a dedicated road, the registrar of titles is not obliged to make inquiries but may rely on the local authority's approval of the plan.

Notice of subdivision

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

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

Vesting of precinct property in precinct body corporate

98.(1) On registration of the precinct plan of subdivision creating lots comprising the precinct property and registration of the necessary transfer by the registrar of titles, the lots are transferred to the precinct body corporate.

(2) If land that is to become precinct property is mortgaged, the transfer may be registered only if the mortgage has been released.

(3) The registrar of titles must issue certificates of title in the name of the precinct body corporate.

(4) The precinct body corporate must not be required to make any payment or provide any consideration for the transfer.

(5) This section does not affect the operation of section 150.

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

Stratum plan

99.(1) The proprietor of a precinct development lot or balance precinct development lot may subdivide it by a stratum plan under part 6 into stratum lots called “**precinct stratum lots**”.

(2) The stratum plan must—

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

Approval of stratum plan

100.(1) A local authority may approve a stratum plan and schedule only if it is satisfied that—

- (a) the total voting entitlement that is to apply to the precinct stratum lots equals the voting entitlement that applied to the precinct development lot or balance precinct development lot being subdivided; and
- (b) each new precinct stratum lot has access to—
 - (i) a dedicated road outside the site; or
 - (ii) the community thoroughfare; or
 - (iii) the precinct thoroughfare; and
- (c) the provisions of the scheme that apply to the lots on the plan have been complied with; and

(d) the lots on the plan have been, or will be, provided with essential services.

(2) If the local authority approves the stratum plan and the schedule, it may also approve the management statement.

(3) For the purposes of this section, access need not be access by road.

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

Subdivision by building units or group titles plan

101.(1) A precinct development lot may be subdivided only—

- (a) under division 8 or 9; or
- (b) by a building units or group titles plan.

(2) A balance precinct development lot may be subdivided by a building units or group titles plan.

(3) A building units or group titles plan must be lodged with the local authority.

(4) A group titles plan must be accompanied by a statement by the proprietor of the precinct development lot or balance precinct development lot—

- (a) indicating whether or not it is proposed to subdivide any lot created by the group titles plan by the registration of a building units plan; and
- (b) if it is proposed to do so—identifying the lot.

(5) If—

- (a) a group titles plan creates lots; and
- (b) at least 1 of the lots is proposed to be further subdivided by the registration of a building units plan;

the plan must be accompanied by a schedule setting out, in relation to each lot proposed to be further subdivided, the maximum number of lots into which the lot may be subdivided.

(6) Each lot on a group titles plan must have access to a dedicated road whether directly or through—

- (a) the community thoroughfare; or
- (b) a precinct thoroughfare; or
- (c) the common property.

Approval of building units or group titles plan

102.(1) A local authority may approve a group titles plan only if—

- (a) it is satisfied that each lot created has the access mentioned in section 101(6); and
- (b) the plan is accompanied by—
 - (i) the statement mentioned in section 101(4); and
 - (ii) if applicable—the schedule mentioned in section 101(5).

(2) A local authority may approve a building units plan that subdivides a group title lot only if it is satisfied that the group title lot has the access mentioned in section 101(6).

(3) If the schedule accompanying a group titles plan indicates that it is proposed to further subdivide any lot created, the local authority must endorse that fact on the plan.

Registration of building units or group titles plan

103.(1) The registrar of titles may register a building units or group titles plan only if the plan and, if applicable, the schedule accompanying the plan have been approved by the local authority.

(2) In determining whether a lot has access to a dedicated road, the registrar of titles does not have to make inquiries but may rely on the local authority's approval of the plan.

Subdivision of group title lot by a building units plan

104.(1) If the statement accompanying a group titles plan identifies a group title lot that is proposed to be subdivided by way of a building units

plan, the building units plan may be—

- (a) approved by the local authority; and
- (b) registered by the registrar of titles.

(2) The first proviso to section 10(1)⁴ of the *Building Units and Group Titles Act 1980* does not apply to a subdivision by a building units plan mentioned in subsection (1).

(3) Despite the *Building Units and Group Titles Act 1980*, the registration of a building units plan under subsection (1) has effect as if the subdivision by the plan were a subdivision of the original group titles plan.

(4) If a building units plan subdivides a lot created by a group titles plan, a further body corporate is not created by registration of the building units plan.

(5) For the purposes of the *Building Units or Group Titles Act 1980*, the body corporate created by registration of the group titles plan is taken to be the body corporate created by the registration of the building units plan.

(6) Subsections (4) and (5) apply despite section 27 of the *Building Units and Group Titles Act 1980*.

Subdivision of group title lot by group titles plan

105.(1) A group title lot may be subdivided by a group titles plan or a building units plan.

(2) Section 101(4) and (5) apply to the subdivision of a group title lot by a group titles plan as if it were the subdivision of a precinct development lot or balance precinct development lot by a group titles plan.

(3) The number of lots created by the subdivision of the group title lot by a further group titles plan, and then by a building units plan, must not exceed the number of lots indicated on the schedule mentioned in section 101(5) in relation to the subdivision of the precinct development lot, or balance precinct development lot, by the group titles plan.

(4) Sections 102 and 103 relating to approval by a local authority and

⁴ This provision was renumbered as section 10(1A) (now see *Building Units and Group Titles Act 1980* s 10).

registration by the registrar of titles apply to a plan mentioned in this section.

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

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

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

Application of Building Units and Group Titles Act to subdivisions

107.(1) The following provisions of the *Building Units and Group Titles Act 1980* do not apply to a subdivision under this division—

- (a) the second proviso to section 10(1);⁵ and
- (b) section 10(6)(b).

(2) For the purposes of section 9(7) of the *Building Units and Group Titles Act 1980*, a plan of subdivision is taken to comply with the requirements mentioned in the subsection in relation to the subdivision if the plan complies with those requirements as modified by this Act.

Division 11—Matters applying to subdivision generally

Subdivision A—Extinguishment of plans

Extinguishment of plan

108. A plan registered under this Act (other than a stratum plan) may be

⁵ This provision was renumbered as section 10(1B) (now see *Building Units and Group Titles Act 1980* s 10).

extinguished—

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

Order of Supreme Court to extinguish plan

109.(1) An application to extinguish a plan may be made to the Supreme Court by—

- (a) the relevant body corporate; or
- (b) a proprietor of a lot; or
- (c) a registered mortgagee of a lot.

(2) In considering an application to extinguish a plan, the Supreme Court must have regard to the rights and interests of the proprietors as a whole.

(3) If the Supreme Court makes an order extinguishing a plan, it must also order—

- (a) that the relevant body corporate be wound up; and
- (b) that—
 - (i) the land comprised in the extinguished plan; and
 - (ii) any property of the body corporate;

be vested in the proprietors of the lots in the shares that the Supreme Court considers appropriate.

Registration

110.(1) If the Supreme Court makes an order under section 109, the registrar of titles must take the action necessary to give effect to the order, on lodgment for registration of a request to register the order.

(2) If the relevant body corporate resolves to extinguish a plan it must lodge with the registrar of titles—

- (a) a request to extinguish the plan; and
- (b) a copy of the unanimous resolution.

(3) On registration of a request under subsection (1) or (2)—

- (a) the plan is extinguished; and
- (b) the relevant body corporate is wound up; and
- (c) the land comprised in the extinguished plan is vested—
 - (i) in the case of a building units plan—in the proprietors in shares proportional to the lot entitlements of the proprietors' respective lots; or
 - (ii) in the case of a group titles plan, a precinct plan, a community plan or a stratum plan under part 6—in the proprietors in the shares agreed by the proprietors by unanimous resolution; and
- (d) all property of the body corporate is vested in the proprietors in the same shares as the land comprised in the plan is vested under paragraph (c).

Notification of local authority

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

Subdivision B—Boundary adjustment plans

Boundary adjustment plan

112.(1) The boundary of a community development lot, a precinct development lot or a balance precinct development lot within the site of a scheme may be adjusted by a boundary adjustment plan if—

- (a) the adjustment is minor and necessary to resolve a problem in relation to the management, development or subdivision of the site; and
- (b) each proprietor, mortgagee and registered lessee of a lot the boundary of which is to be adjusted consents to the adjustment; and
- (c) if the adjustment alters the boundary of community property or precinct property—the adjustment is approved by the community

body corporate, or precinct body corporate, by comprehensive resolution.

(2) A proprietor mentioned in subsection (1)(b) may lodge the boundary adjustment plan with the local authority.

(3) The local authority may approve a boundary adjustment plan only if it is satisfied that—

- (a) the adjustment is minor and necessary to resolve a problem in relation to the management, development or subdivision of the site; and
- (b) the consents mentioned in subsection (1)(b) have been given; and
- (c) if applicable—approval mentioned in subsection (1)(c) has been given.

(4) If the local authority—

- (a) refuses to approve a boundary adjustment plan; or
- (b) fails to approve it within 40 days of receiving it;

the proprietor that lodged the plan may appeal to the Planning and Environment Court.

(5) Part 7 of the *Local Government (Planning and Environment) Act 1990* applies to an appeal under subsection (4) with any necessary modifications.

Registration of boundary adjustment plan

113.(1) The registrar of titles must not register a boundary adjustment plan unless the plan has been approved by the local authority.

(2) The registrar of titles does not have to be satisfied of the matters mentioned in section 112(1) but may rely on the local authority's approval of the plan.

Effect of boundary adjustment plan

114.(1) A boundary adjustment plan registered under this division—

- (a) does not affect the voting entitlement that applied to any lot before

registration of the plan; and

(b) does not of itself give rise to any liability for stamp duty.

(2) A registered mortgage, lease or other registered estate in a lot adjusted by the registration of a boundary adjustment plan—

(a) is not affected by the registration of the plan; and

(b) is taken to relate to the adjusted lot.

Subdivision C—Easements

Implied easements

115.(1) Unless an easement is created for a particular service, there is implied—

(a) as belonging to any lot or common property within the site—an easement for the passage or supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are already existing) in or over the site to the extent to which the service is capable of being used in the enjoyment of the lots or common property; and

(b) as affecting any lot or common property within the site—an easement for the passage or supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are already existing) in or over the site to the extent to which the service is capable of being used in the enjoyment of lots or common property.

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

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

(b) as affecting any lot or common property within the site on which a building or structure is wholly or partly situated—an easement

Mixed Use Development Act 1993

for the subjacent and lateral support of other buildings or structures or parts of buildings or structures that are capable of being supported; and

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

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

(2) Subsections (1) and (1A) do not affect—

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

(3) If a multiple occupancy building is situated on 2 or more group title lots, the proprietor of a lot on which there is situated a part of the building that is intended for separate occupation is entitled to the right conferred by subsection (4).

(4) In relation to any roofs, eaves, gutters, downpipes or foundations (the “**building parts**”) situated (wholly or partly) over, on or under any adjoining lot, the proprietor is entitled to any shelter, drainage or support capable of being provided by the building parts in relation to the proprietor’s lot.

(5) The right created by subsection (4) is an easement to which the adjoining lot is subject.

(6) The easement entitles the proprietor of the dominant tenement to enter the servient tenement and to maintain or replace any of the building parts.

(7) If a building is on the boundary of a lot or so close to the boundary of a lot that maintenance or replacement in relation to the building is not able to

be carried out without entering an adjoining lot, the proprietor of the lot on which the building is situated is entitled to enter the adjoining lot to carry out the maintenance or replacement.

(8) The right created by subsection (7) is an easement to which the adjoining lot is subject.

(9) The easement entitles the proprietor of the dominant tenement—

- (a) to enter the servient tenement; and
- (b) to maintain or replace any part of the proprietor's building.

(10) An easement under this section must not be exercised by a proprietor in a way that unreasonably prevents another proprietor from enjoying the use and occupation of the other proprietor's lot or the common property.

Ancillary rights

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

Creation of easements by comprehensive resolution

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

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

Subdivision D—Sequential plans

Approval of sequential plans by local authority

118.(1) If a number of plans are lodged with a local authority at the same time, the local authority may approve the plans if it is satisfied that access

and other matters of which it must be satisfied will be effected if the plans are registered in the appropriate order.

(2) In subsection (1)—

“**plan**” includes a community plan, precinct plan, group titles and building units plan.

Registration of sequential plans by registrar of titles

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

PART 6—STRATUM SUBDIVISION

Division 1—Interpretation

Definition

120. In this part—

“**land**” includes—

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

Division 2—Subdivision**Stratum lots and dealings with stratum lots**

121.(1) Despite the Real Property Acts—

- (a) land comprising a community development lot, precinct development lot or balance precinct development lot may be subdivided by a stratum plan; and
- (b) a stratum lot may be subdivided by a stratum plan of subdivision; and
- (c) minor adjustments may be made to the boundaries of stratum lots by a stratum boundary adjustment plan; and
- (d) stratum lots may be amalgamated by a stratum plan of amalgamation.

(2) The Real Property Acts apply to stratum lots with any necessary modifications.

Stratum boundary adjustment plan

122.(1) The boundaries of stratum lots may be adjusted by the registration of a stratum boundary adjustment plan if the local authority is satisfied that the adjustment is minor.

(2) On registration of the plan by the registrar of titles, the land vests in accordance with the adjusted boundaries.

(3) Registration of the plan, and the vesting of the land, do not of themselves give rise to any liability to stamp duty.

(4) A registered mortgage, lease or other registered estate in a stratum lot adjusted by the registration of a stratum boundary adjustment plan—

- (a) is not affected by the registration of the plan; and
- (b) is taken to relate to the adjusted stratum lot.

Stratum plan of subdivision

123.(1) A stratum lot may be subdivided into 2 or more stratum lots by

the registration of a stratum plan of subdivision.

(2) The registrar of titles may register a stratum plan of subdivision only if the plan is accompanied by a schedule showing, as a whole number for each proposed stratum lot, the proposed unimproved value proportion for each stratum lot for the purposes of sections 132 and 138(2)(q).

(3) In registering a stratum plan of subdivision, the registrar of titles may make any recordings on, and amendments of, the relevant management statement that the registrar of titles considers appropriate to give effect to the plan.

Stratum plan of amalgamation

124.(1) Two or more, or all, stratum lots in a stratum plan may be amalgamated by the registration of a stratum plan of amalgamation.

(2) However, a stratum lot that has been subdivided by a building units plan may be amalgamated with another stratum lot only if the building units plan has been extinguished.

(3) In registering a stratum plan of amalgamation, the registrar of titles may make any recordings on, and amendments of, the relevant management statement that the registrar of titles considers appropriate to give effect to the plan.

(4) For the purposes of sections 132 and 138(2)(q), the relevant unimproved value proportion for the stratum lot created by the amalgamation of 2 or more stratum lots is the total of the unimproved value proportions of the stratum lots.

(5) On registration of a stratum plan of amalgamation that amalgamates all of the stratum lots in a stratum plan—

- (a) the stratum plan is extinguished; and
- (b) the relevant management statement is terminated.

(6) A stratum plan of amalgamation mentioned in subsection (5) must be accompanied by a request to terminate the relevant management statement.

(7) The request must comply with the requirements prescribed by regulation.

(8) If a stratum plan of amalgamation is accompanied by a request to

terminate a management statement, the registrar of titles—

- (a) must record the termination of the management statement on the stratum plan to which it relates; and
- (b) may make such other recordings in the register as the registrar of titles considers appropriate to give effect to the termination.

General requirements relating to plans

125.(1) Stratum plans, stratum boundary adjustment plans, stratum plans of subdivision and stratum plans of amalgamation must comply with the requirements prescribed by regulation.

(2) If a stratum plan, stratum boundary adjustment plan, stratum plan of subdivision or stratum plan of amalgamation has been approved by the local authority, the registrar of titles may—

- (a) register the plan under the Real Property Acts; and
- (b) issue certificates of title for stratum lots created by the registration of the plan; and
- (c) make such other recordings in the register as the registrar of titles considers appropriate to give effect to the registration of the plan.

(3) Subsection (2) has effect despite the Real Property Acts and the *Surveyors Act 1977*.

(4) On registration of a stratum plan, stratum boundary adjustment plan, stratum plan of subdivision or stratum plan of amalgamation, the plan is, for the purposes of the Real Property Acts, taken to form part of the register.

Division 3—Easements

Support and shelter for certain stratum lots

126.(1) There is implied in a stratum plan—

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

affording support; and

- (b) as affecting the stratum lots—an easement for the subjacent and lateral support of other parts of the building that are capable of enjoying support; and
- (c) as belonging to the stratum lots—an easement for their shelter by other parts of the building that are capable of affording shelter; and
- (d) as affecting the stratum lots—an easement for the shelter of other parts of the building that are capable of being sheltered by the stratum lots.

(2) The easement for support and shelter implied by subsection (1)—

- (a) entitles the proprietor of the dominant tenement to enter the servient tenement to maintain or replace any support or shelter; and
- (b) subsists until the stratum plan is extinguished or the easement is otherwise surrendered.

(3) This section does not affect an implied easement belonging to and affecting the lots in a building units plan created under the *Building Units and Group Titles Act 1980*.

(4) A management statement may exclude or modify this section expressly or by implication.

Services for certain stratum lots

127.(1) Unless an easement is created for a particular service, there is implied in a stratum plan—

- (a) as belonging to the stratum lots comprised in the stratum plan on which a building is situated—an easement for the passage or supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are already existing) in or over the building to the extent to which the service is capable of being used in the enjoyment of the stratum lots or common property; and
- (b) as affecting the stratum lots—an easement for the passage or

supply of the service through or by way of pipes, poles, wires, cables or ducts (to be laid down or erected or that are for the time being existing) in or over the building to the extent to which the service is capable of being used in the enjoyment of the stratum lots or common property.

(2) An easement under subsection (1) must not be exercised unreasonably by the proprietor of a stratum lot in a way that prevents the proprietor of another stratum lot from reasonably enjoying the use and occupation of the other proprietor's stratum lot or common property.

(3) Subsection (2) does not affect an easement belonging to and affecting lots in a building units plan implied under the *Building Units and Group Titles Act 1980*.

Right of way

128.(1) There is implied in a stratum plan—

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

- (c) as belonging to the stratum lots—easements of right of way sufficient to allow vehicles of the proprietor to pass to and from other stratum lots to and from—
 - (i) any dedicated road; or
 - (ii) the community property; or
 - (iii) any precinct property;
 by using roadways or ramps; and
- (d) as affecting the stratum lots—easements of right of way sufficient to allow the vehicles of other proprietors to pass to and from other stratum lots to and from—
 - (i) any dedicated road; or
 - (ii) the community property; or
 - (iii) any precinct property;
 by using roadways or ramps.

(2) Subsection (1) does not affect an implied easement belonging to and affecting the lots in a building units plan created under the *Building Units and Group Titles Act 1980*.

(3) A management statement may exclude or modify this section expressly or by implication.

(4) In this section—

“**proprietor**” includes the proprietor’s employees, agents, lessees, invitees and licensees.

Ancillary rights for easements

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

Subdivision of stratum lot by building units plan

130.(1) Land comprised in a stratum lot (including, for example, a part of a building) may be subdivided into lots, or lots and common property, by the registration of a building units plan.

(2) The *Building Units and Group Titles Act 1980* applies to land that is subdivided under this section.

Creation of easements

131.(1) The registrar of titles may register a stratum plan that—

- (a) clearly indicates the nature and location of an easement intended to be created on registration of the stratum plan; and
- (b) is accompanied by an instrument in the approved form signed by the proprietor of the land to be burdened by the easement.

(2) The instrument—

- (a) must specify the nature and location of the easement and any conditions to which it is subject; and
- (b) must specify the land to be benefited, and the land to be burdened, by the easement; and
- (c) may nominate a person whose consent to a surrender of an easement is required.

(3) However, an easement may be created in favour of the State, the Commonwealth, a local authority or the provider of a public utility service to enable the supply of services to stratum lots even though the easement is not annexed to, or used and enjoyed with, other land.

(4) An easement under this section may be limited wholly or partly in height or depth.

(5) On registration of a stratum plan and instrument, the proposed easements shown on the stratum plan—

- (a) are created; and
- (b) vest in the person entitled to the benefit of the easement.

(6) On registration of a stratum plan—

- (a) an easement created by the registration has effect subject to the conditions specified in the instrument as if the instrument were a deed under seal; and
- (b) the nomination in the instrument of a person whose consent to a surrender of the easement is required operates to require the

consent of the person to a surrender of the easement.

(7) For the purposes of this section, the site of an easement may be indicated on the stratum plan—

- (a) if the easement is intended to be created in relation to existing tunnels, pipes, conduits, wires or other similar objects that are underground or within or beneath an existing building—by defining the position of the easements by reference to the objects; and
- (b) as applying to the whole or part of a lot.

(8) Subsection (2)(c) does not affect the requirement for the proprietor of the land benefited by an easement to join in a surrender of the easement.

(9) An easement may be created under this section, and the rights and obligations in the instrument creating the easement are enforceable, whether or not at the time the relevant plan is registered the land burdened and the land benefited are in common ownership.

(10) In issuing a certificate of title for land benefited or burdened by an easement under this section, the registrar of titles is to record the easement on the certificate of title in a way that the registrar of titles considers appropriate.

(11) An easement under this section is not extinguished merely because the owner of the land benefited by the easement holds or acquires a greater interest in the land burdened.

(12) Subsections (1) and (9) have effect despite—

- (a) the Real Property Acts or any other Act; or
- (b) any rule of law or equity to the contrary.

Division 4—Valuation

Valuation of stratum lots

132.(1) In valuing land comprised in a stratum plan, the chief executive (valuations) must follow the following steps—

- (a) the land comprised in the stratum plan must be first valued as

Mixed Use Development Act 1993

though the land were unimproved and a single parcel of land in a single ownership even though the land may consist of 1 or more stratum lots;

- (b) the unimproved value of the land in the stratum plan must then be apportioned between the stratum lots in the stratum plan according to the unimproved value proportions allocated in the management statement.

(2) For the purposes of making, levying and assessing rates, charges and land tax, the unimproved value apportioned to each stratum lot is taken to be the unimproved value of the stratum lot.

(3) If the management statement is amended to give effect to a change in the unimproved value proportions allocated to a stratum lot, the chief executive (valuations) must, on notification of the amendment, make new valuations of the stratum lots affected by the amendment—

- (a) if the amendment is made under section 123(3)—by apportioning the former unimproved value of the former stratum lot the subject of the subdivision between the new stratum lots created by the subdivision according to the new unimproved value proportions allocated in the amended management statement; and
- (b) if the amendment is made under section 124(3)—by taking the total of the former unimproved values of the former stratum lots the subject of the amalgamation as the unimproved value of the stratum lot created by the amalgamation; and
- (c) if the amendment is made under section 136(1)(a)—by apportioning the unimproved value of the land in the stratum plan between the stratum lots in the stratum plan—
 - (i) according to the new unimproved value proportion allocated in the amended management statement; or
 - (ii) if the unimproved value proportions of some stratum lots remain unchanged—according to the unchanged proportions.

(4) If a stratum lot in a stratum plan has become a stratum parcel, the value apportioned under this section to the stratum lot is taken to be the value of the stratum parcel for the purposes of division 7 of part 4 of the *Building Units and Group Titles Act 1980*.

(5) Subsection (1) has effect despite the *Valuation of Land Act 1944* or any other Act relating to the valuation or rating of land, but is taken to be a valuation of land under the *Valuation of Land Act 1944*.

Division 5—Management statements

Requirements of management statement

133.(1) The registrar of titles may register a stratum plan only if the plan is accompanied by a statement (“**management statement**”) that—

- (a) if the stratum plan subdivides land that includes parts of a building—regulates the building and its site; and
- (b) if the stratum plan subdivides land on which it is proposed to construct a building—is intended to regulate the proposed building and its site; and
- (c) complies with sections 137 and 138; and
- (d) has been approved by the relevant local authority.

(2) However, a stratum plan of subdivision need not be accompanied by a management statement if it subdivides a stratum lot on a stratum plan that is already the subject of a management statement.

Recording of management statement

134.(1) If a management statement is approved by the local authority, then, immediately after the registration of the stratum plan to which it relates, the registrar of titles is to record the management statement on the stratum plan.

(2) If a stratum lot in the stratum plan mentioned in subsection (1) is subsequently subdivided by a building units plan, the registrar of titles is to record the management statement, and any amendments of the management statement, on the building units plan.

Effect of management statement

135.(1) The management statement is binding on—

- (a) the body corporate of the building units plan for the part of the building concerned; and
- (b) a proprietor, lessee, sublessee, occupier or mortgagee of a lot in the building units plan for the part of the building concerned; and
- (c) a proprietor, lessee, sublessee, occupier or mortgagee of any part of the building or its site that does not form part of a stratum parcel.

(2) Subsection (1) has effect as if—

- (a) the management statement included mutual covenants to observe its provisions entered into by each person bound by it; and
- (b) each person bound had signed the management statement under seal.

(3) Despite subsections (1) and (2), the management statement does not affect the rights of a person under a lease or mortgage entered into or given before the registration of the stratum plan.

General provisions that apply to management statement

136.(1) A management statement may restrict use of any part of the building or its site to—

- (a) the proprietor, lessee or sublessee of a lot in a building units plan; or
- (b) a body corporate in a building units plan; or
- (c) the proprietor, lessee or sublessee of a lease of land in any part of the building or its site that does not form part of the stratum parcel.

(2) A management statement ends, and ceases to bind the persons mentioned in section 134(1), when the registrar of titles records its termination under section 124(7).

(3) The registrar of titles must provide to the chief executive (valuations) and the relevant local authority—

- (a) a copy of a management statement within 28 days after the registration of a stratum plan that is accompanied by the management statement; and

- (b) a copy of an amendment of a management statement within 28 days after the recording of the amendment.

(4) If there is an unresolved dispute between persons bound by a management statement concerning the regulation of a building and its site, the dispute must be referred for final resolution to—

- (a) a single arbitrator agreed on between the persons in dispute; or
- (b) if the persons do not agree within 14 days of receipt of a written notice given by one person to the other requiring the appointment of an arbitrator—an arbitrator appointed by the local authority.

(5) A reference under subsection (4) is an arbitration under the *Commercial Arbitration Act 1990*.

(6) If a management statement or an amendment of a management statement has been approved by the local authority, the registrar of titles need not determine whether the statement or amendment complies with this division but may rely on the local authority's approval.

Form of management statement

137. A management statement must be in the approved form.

Matters required for management statement

138.(1) A management statement must include—

- (a) the real property description of the stratum lots in the stratum plan to which the management statement relates; and
- (b) a plan that—
 - (i) delineates the external surface boundaries of the site of the building; and
 - (ii) shows the location of the building in relation to the external surface boundaries.

(2) The management statement must also include particulars relating to the following—

- (a) the regulation (including, for example, the control and management) of—

Mixed Use Development Act 1993

- (i) the building and its site; and
- (ii) the maintenance, use and enjoyment of the building and its site;
- (b) the purpose for which a stratum lot or stratum parcel may be used;
- (c) the establishment of the building management committee and the election of its office-bearers;
- (d) the composition of the building management committee;
- (e) the functions of the building management committee and its office-bearers in regulating the building and its site;
- (f) meetings of the building management committee;
- (g) voting on motions submitted to the building management committee;
- (h) the voting entitlement of each member of the building management committee;
- (i) the keeping of records of the business (including meetings) of the building management committee;
- (j) the way in which the building management committee may enter into contracts and the way in which appropriate indemnities are to be provided to members of the building management committee in relation to contracts entered into by them for the committee;
- (k) the inspection of documents in the custody or under the control of the building management committee;
- (l) certification to members of the building management committee and proprietors of lots in a building units plan as to whether there is any amount unpaid by a member or proprietor of a lot in a building units plan under the management statement;
- (m) the establishment and operation of financial institution accounts by the building management committee;
- (n) the storage and collection of garbage on and from the building and its site;
- (o) the location of any restricted property;

- (p) compliance with fire safety requirements;
- (q) the apportionment of the unimproved value of land comprised in the relevant stratum plan between stratum lots in the stratum plan;
- (r) the insurance in relation to the building and its site and the apportionment of the cost of insurance premiums;
- (s) any other matters prescribed by regulation.

(3) Each body corporate for a building units plan for part of the building, and any other proprietor of land in any part of the building or its site, that does not form part of a stratum parcel must be members of the building management committee.

(4) If a management statement restricts use of any part of the building or its site, the management statement must include the following—

- (a) a description of the restricted property;
- (b) details of the persons entitled to use the restricted property;
- (c) the conditions on which the persons may use the restricted property;
- (d) particulars relating to—
 - (i) access to the restricted property; and
 - (ii) the keeping and supply of any necessary key;
- (e) particulars of the hours during which the restricted property may be used;
- (f) provisions relating to the maintenance of the restricted property;
- (g) provisions relating to the determination, imposition and collection of levies from the persons entitled to use the restricted property.

(5) The relevant local authority may, in relation to a particular management statement, waive compliance with a matter mentioned in subsection (2) if it considers compliance with the item is unnecessary, unreasonable or impracticable for the regulation of the building and its site or proposed building and its site.

(6) If the local authority waives compliance with a matter mentioned in subsection (2), it must endorse that fact on the management statement.

Optional matters for management statement

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

(2) Without limiting subsection (1), the management statement may include particulars relating to any of the following—

- (a) safety and security measures;
- (b) the appointment of a building manager;
- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) management and service contracts (which must not be for a term of more than 5 years);
- (f) an architectural code to preserve the appearance of the building;
- (g) a landscaping code to preserve the appearance of the building or its site;
- (h) any matters prescribed by regulation.

(3) A management statement may include plans and other instruments.

Amendment of management statement

140.(1) The particulars in a management statement may only be amended—

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

building management committee.

(2) Subsection (1)(a) has effect subject to sections 123(3) and 124(3).

(3) A body corporate of a building units plan may support a resolution to amend a management statement only if—

- (a) if the amendment is an amendment mentioned in subsection (1)(a)—the body corporate has passed a unanimous resolution to support the amendment; and
- (b) if the amendment is an amendment mentioned in subsection (1)(b)—the body corporate has passed a resolution without dissent to support the amendment; and
- (c) in any other case—the body corporate has passed an ordinary resolution to support the amendment.

(4) An amendment of a management statement must be approved by the local authority.

(5) A management statement as amended must contain only the matters mentioned in sections 138 and 139.

(6) An amendment has effect only if it is lodged with the registrar of titles within 3 months after the passing of the resolution making the amendment.

(7) If an amendment of a management statement has been approved by the relevant local authority, the registrar of titles is to record the amendment—

- (a) on the stratum plan to which it relates; and
- (b) if a stratum lot in the stratum plan has been subdivided by a building units plan—on the building units plan.

PART 7—LAND SUBJECT TO TIDAL INFLUENCE

Estate or interest in submerged land continues

141. If a scheme provides for land that becomes or has become

inundated by water or subject to tidal influence, an estate or interest held in the land before the land became inundated or subject to tidal influence is not affected by the inundation or tidal influence.

Subdivision of submerged land

142.(1) A parcel of land within the site of a scheme that—

- (a) includes land—
 - (i) that is submerged or subject to tidal influence; and
 - (ii) to which section 141 applies; and
- (b) does not extend from the shore beyond any quay line;

may be subdivided under this Act.

(2) Permanent above water access must be provided from each lot on the plan effecting the subdivision to—

- (a) a dedicated road; or
- (b) the community thoroughfare; or
- (c) the precinct thoroughfare;

either directly or through common property of the parcel.

(3) For the purposes of subsection (2), above water access need not be access by road.

Construction of floating buildings and special buildings

143.(1) The construction of a floating building or a special building within the site is not—

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

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

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

Tidal waters within jurisdiction of authorities

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

Obligation of authorities to maintain or undertake works

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

Movement of vessels on tidal waters

146.(1) The proprietor of land within the site of a scheme has the right to restrict, regulate or prohibit the use or movement of vessels on, over, through or beneath tidal waters above the land if the waters are not beyond the quay line.

(2) If the proprietor of land within the site permits the mooring of a vessel in waters above the land, the proprietor of other land within the site must not restrict or prohibit the movement of the vessel over the proprietor's land that is beyond the quay line to—

- (a) the mooring; or
- (b) another place in relation to which permission to moor the vessel has been given; or
- (c) tidal waters outside the site.

Application of laws relating to design and construction etc.

147.(1) Laws relating to the design and construction, and standard of construction or materials, of buildings and other structures apply to floating buildings and special buildings, so far as the laws may be sensibly applied, as if floating buildings or special buildings were constructed on land.

(2) If the relevant joint committee established for the purposes of the

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

Statutory charges and valuation of land

148. For the purpose of—

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

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

Modification of powers of authorities

149.(1) An authority having jurisdiction over the banks and foreshores of tidal waters within the site of a scheme may not grant—

- (a) a lease in relation to a relevant area of the site; or
- (b) a licence to use and occupy a relevant area of the site; or
- (c) a permit to use and occupy a relevant area of the site.

(2) Subsection (1) has effect despite any other Act.

(3) In subsection (1)—

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

PART 8—THOROUGHFARES, CANALS AND FACILITIES

Division 1—Thoroughfares

Construction of thoroughfares

150.(1) A community thoroughfare to be constructed on community property must be constructed—

- (a) if the community property is created by the registration of a community plan—by the original applicant; or
- (b) if the community property is created by the registration of a community plan of subdivision that subdivides a community development lot—by the proprietor of the community development lot.

(2) A precinct thoroughfare to be constructed on precinct property must be constructed by the proprietor of the lot the subdivision of which creates the precinct property.

(3) A community thoroughfare or precinct thoroughfare must be constructed—

- (a) to a design and standard approved by the relevant local authority at the time of construction; and
- (b) in accordance with the requirements of the local authority and to its satisfaction; and
- (c) at the cost of—
 - (i) in a case to which subsection (1)(a) applies—the original applicant; or
 - (ii) in any other case—the proprietor of the relevant subdivided lot.

Maintenance etc. of thoroughfares

151.(1) The community body corporate is responsible for the maintenance and reconstruction (including construction on relocation) of—

- (a) the community thoroughfare; and
- (b) improvements on the community thoroughfare.

(2) The precinct body corporate is responsible for the maintenance and reconstruction (including construction on relocation) of—

- (a) the precinct thoroughfare; and
- (b) improvements on the precinct thoroughfare.

Dedication of thoroughfare as road

152.(1) In this section—

“required approval” means the prior approval of—

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

(2) The community body corporate may—

- (a) with the required approval; and
- (b) subject to any reasonable conditions that the local authority imposes;

dedicate under the *Land Act 1962* to public use as a road any part of the community thoroughfare that adjoins a dedicated road.

(3) The conditions that may be imposed under subsection (2) include a condition that the community body corporate pay to the local authority an amount fixed by the local authority for the purpose of constructing or reconstructing the road.

(4) The part of the community thoroughfare that is dedicated to public use as a road ceases to be a part of the community thoroughfare.

(5) A precinct body corporate may—

- (a) by comprehensive resolution; and
- (b) with the prior approval of—
 - (i) the relevant local authority; and
 - (ii) the Governor in Council; and
- (c) subject to any reasonable conditions that the local authority imposes;

dedicate under the *Land Act 1962* to public use as a road any part of the precinct thoroughfare that adjoins a dedicated road.

(6) The conditions that may be imposed under subsection (5) include a condition that the precinct body corporate pay to the local authority an amount fixed by the local authority for the purpose of constructing or reconstructing the road.

(7) The part of a precinct thoroughfare that is dedicated to public use as a road ceases to be part of the precinct thoroughfare.

Thoroughfares are roads under certain Acts

153.(1) For the purposes of the *Motor Vehicles Insurance Act 1936*,⁶ the community thoroughfare and precinct thoroughfare are roads.

(2) For the purposes of the *Traffic Act 1949* (other than parts 4 and 6A), the community thoroughfare and precinct thoroughfare are roads within the meaning of the Act.

Temporary closure of thoroughfares

154.(1) If—

- (a) the community body corporate or precinct body corporate determines that any work is to be carried out on—

⁶ Now see *Motor Accidents Insurance Act 1994* s 103.

- (i) the community thoroughfare; or
 - (ii) a precinct thoroughfare; and
- (b) the work will require the temporary closure to some or all traffic on either thoroughfare;

the community body corporate or precinct body corporate must give notice of the intended temporary closure of the road.

(2) The notice must—

- (a) be in writing; and
- (b) be given not less than 7 days before the intended closure to each proprietor of a lot to which access is likely to be affected by the closure.

(3) The notice must—

- (a) identify the lots within the site to which access is likely to be affected by the closure; and
- (b) specify the classes of traffic to be excluded; and
- (c) identify the location of the part of the thoroughfare to be closed; and
- (d) specify the closure periods; and
- (e) specify the nature of the work to be carried out.

(4) Subsection (1) does not apply if the work to be carried out is urgent.

Occupier's right to use thoroughfares

155.(1) Subject to any by-law made by the community body corporate or a precinct body corporate, a person who lawfully occupies land within the site of a scheme has a right of way over the community thoroughfare and precinct thoroughfare to the extent necessary to allow the occupier access to the occupier's land.

(2) A by-law that, apart from this subsection, would have the effect of unreasonably restricting access to or from land within the site does not apply in relation to the land unless the proprietor and occupier of land consent in writing to the restriction.

Division 2—Canals**Construction of canals**

156.(1) A canal may be constructed within the site of a scheme by the applicant at the applicant's expense.

(2) A canal may be constructed only on—

- (a) community property or precinct property; or
- (b) part of the site that will become community property or precinct property.

(3) The *Canals Act 1958* (other than the provisions of the Act prescribed by regulation for the purposes of this section) applies to the construction, operation and maintenance of a canal within the site.

(4) The registrar of titles may register instruments of title dealing with land in any plan of subdivision to which section 9 of the *Canals Act 1958* applies even though a transfer surrendering to the State all land defined in the plan as the land on which the canal is to be constructed has not been registered in the land registry.

Maintenance of canals

157.(1) The community body corporate is responsible for—

- (a) the dredging and other maintenance of canals on the community property; and
- (b) the maintenance of improvements relating to the canals on the community property.

(2) The precinct body corporate is responsible for—

- (a) the dredging and other maintenance of canals on the precinct property; and
- (b) the maintenance of improvements relating to the canals on the precinct property.

Surrender of canal to State

158.(1) In this section—

“required approval” means the prior approval of—

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

(2) The community body corporate may—

- (a) with the required approval; and
- (b) subject to any reasonable conditions that the local authority imposes;

sign a transfer surrendering to the State community property on which a canal is constructed.

(3) The conditions that may be imposed under subsection (2) include a condition that the community body corporate pay to the local authority an amount fixed by the local authority for the maintenance of the canal.

(4) The part of the community property that is surrendered to the State ceases to be a part of the community property.

(5) A precinct body corporate may—

- (a) by comprehensive resolution; and
- (b) with the prior approval of—
 - (i) the relevant local authority; and
 - (ii) the Governor in Council; and

- (c) subject to any reasonable conditions that the local authority imposes;

sign a transfer surrendering to the State precinct property on which a canal is constructed.

(6) The conditions that may be imposed under subsection (5) include a condition that the precinct body corporate pay to the local authority an amount fixed by the local authority for the maintenance of the canal.

(7) The part of the precinct property that is surrendered to the State ceases to be part of the precinct property.

(8) If community property or precinct property on which a canal is constructed is surrendered, the provisions of the *Canals Act 1958* prescribed for the purposes of section 156 again apply.

Division 3—Community and precinct facilities

Construction of community facilities

159.(1) The community body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within the site, on—

- (a) the community property; or
(b) land leased by the community body corporate under section 164.

(2) The development or construction must not start until authorised by the community body corporate by a comprehensive resolution.

(3) The community body corporate must maintain the community facilities.

Construction of precinct facilities

160.(1) A precinct body corporate may develop or construct facilities, for the use of persons who lawfully occupy land within a staged use precinct, on—

- (a) the precinct property; or
(b) land leased by the precinct body corporate under section 164.

(2) The development or construction must not start until authorised by the precinct body corporate by a comprehensive resolution.

(3) The precinct body corporate must maintain the precinct facilities.

Division 4—Other matters

Additional works on community property

161.(1) At the request of a member of the community body corporate, the community body corporate may undertake works on any part of the community property to enhance the amenity of land or the profitability of any business undertaking within the site.

(2) Works that restrict vehicular access to part of the site may be undertaken only if each occupier of the land comprising the part consents in writing to the restriction.

(3) If the works affect a road constructed on the community thoroughfare, the works may be undertaken only if—

- (a) the relevant local authority approves the works; and
- (b) all conditions of the local authority's approval (including conditions about standards of construction) are complied with.

(4) If the works affect a canal, the works may only be undertaken if the Governor in Council approves the works.

(5) The community body corporate must recover all the costs of undertaking the works (including the costs incurred in obtaining the approval of the local authority, the Governor in Council and any other approvals required by law) from the members of the community body corporate who requested the works.

(6) If 2 or more members of the community body corporate are liable to pay the costs of undertaking the works, each member must pay the amount determined under subsection (7).

(7) Each member must pay an amount that bears to the total costs incurred the same proportion that the member's voting entitlements (attributable to the land the amenity of which is sought to be enhanced or on which the business undertaking the profitability of which is sought to be

enhanced is carried on) bears to the total of the voting entitlements of all members liable to contribute towards the costs.

(8) The community body corporate must levy contributions to give effect to subsections (5), (6) and (7).

(9) Section 174 applies, with any necessary modifications, to contributions levied under this section.

(10) Nothing in this section prevents the community body corporate from requiring the members concerned to pay the whole or part of the expected costs of the finished works before the works are started or finished.

Additional works on precinct property

162.(1) Additional works may be undertaken on precinct property.

(2) Section 161 applies to additional works undertaken on precinct property as if—

- (a) a reference to the community body corporate were a reference to the precinct body corporate; and
- (b) a reference to the community property were a reference to precinct property.

Leasing of community and precinct property

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

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

Leases to community and precinct bodies corporate

164.(1) For the purposes of providing access to the community thoroughfare or precinct thoroughfare, the community body corporate or precinct body corporate may take a lease of—

- (a) a road closed in strata that joins, or is to join, the community thoroughfare or precinct thoroughfare; or

(b) a wharf that joins, or is to join, the community property or precinct property.

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

Powers of officials on community or precinct property

165.(1) An authorised person may enter and remain on any part of the community property or the precinct property for the purpose of exercising the person's powers as an authorised person.

(2) Subsection (1) has effect despite any by-law or decision made by the community body corporate or precinct body corporate.

(3) In addition to any powers conferred on an authorised person under any Act or law, the person has, in relation to the community property and precinct property, the powers that the person would have under the Act or law if the community property and precinct property were a public place.

(4) In this section—

“authorised person” means—

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

PART 9—BODIES CORPORATE

Division 1—Interpretation

Definitions

166. In this part—

“body corporate” means—

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

“corporation” means—

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

Division 2—Incorporation of community body corporate

Community body corporate

167.(1) On registration of the community plan, the proprietors of the community development lots are, because of this Act, a body corporate under the name ‘*(insert name of development specified in the approved scheme)* Community Body Corporate’.

(2) If a community development lot is subdivided by a community plan of subdivision, the proprietors of the community development lots created become members of the community body corporate in place of the proprietor of the subdivided community development lot.

(3) If community development lots are amalgamated by a community plan of amalgamation, the proprietor of the community development lot created becomes a member of the community body corporate in place of the proprietors of the amalgamated community development lots.

(4) If a community development lot is subdivided by a precinct plan, the

precinct body corporate created becomes a member of the community body corporate in place of the proprietor of the subdivided community development lot.

(5) If a community development lot is subdivided under part 6 by a stratum plan, the proprietors of the community stratum lots created become members of the community body corporate in place of the proprietor of the subdivided community development lot.

(6) If a community development lot is subdivided by a group titles or building units plan, or a community stratum lot is subdivided by a building units plan—

(a) the proprietor of the lot—

(i) must give written notice to the community body corporate of the name and address for service of the body corporate created by the registration of the plan; and

(ii) ceases to be a member of the community body corporate so far as the proprietor was a member because of being the proprietor of the lot; and

(b) the body corporate created by the registration of the plan becomes a member of the community body corporate.

(7) The subdivision or resubdivision of a lot, or of a lot and common property, on a group titles plan by a building units or group titles plan does not affect the membership of the community body corporate.

(8) The Corporations Law does not apply to the community body corporate.

(9) The community body corporate—

(a) has the powers and functions conferred on it under this Act or its by-laws; and

(b) must do all things that are necessary and reasonable for—

(i) the enforcement of its by-laws; and

(ii) the control, management and administration of the community property.

(10) The community body corporate—

- (a) has perpetual succession; and
- (b) has a common seal; and
- (c) is capable of suing and being sued in its corporate name.

(11) Without limiting subsection (10), the community body corporate may—

- (a) sue and be sued on any contract made by it; or
- (b) sue for any damage or injury to the community property; or
- (c) be sued for any matter connected with the community property; or
- (d) take the legal action necessary to enforce its by-laws.

(12) If work is carried out on land that becomes community property, then, on registration of the community plan, the community body corporate—

- (a) is taken to have been a party to an enforceable contract for the carrying out of the work; and
- (b) may sue or be sued in relation to the contract.

Division 3—Incorporation of precinct body corporate

Precinct body corporate

168.(1) On registration of the first precinct plan subdividing a community development lot, the proprietors of the precinct development lots and balance precinct development lots created are, because of this Act, a body corporate under the name ‘*(insert name of development specified in the approved scheme)* Precinct Body Corporate *(insert (if necessary) unique identifying number)*’.

(2) If a precinct development lot is subdivided by a precinct plan of subdivision, the proprietors of the precinct development lots created become members of the precinct body corporate in place of the proprietor of the subdivided precinct development lot.

(3) If precinct development lots are amalgamated by a precinct plan of amalgamation, the proprietor of the precinct development lot created

Mixed Use Development Act 1993

becomes a member of the precinct body corporate in place of the proprietors of the amalgamated precinct development lots.

(4) If a balance precinct development lot is subdivided by a precinct plan, the proprietors of precinct development lots and any balance precinct development lots created become members of the precinct body corporate.

(5) If a precinct development lot or balance precinct development lot is subdivided under part 6 by a stratum plan, the proprietors of the precinct stratum lots created become members of the precinct body corporate in place of the proprietor of the subdivided precinct development lot or balance precinct development lot.

(6) If a precinct development lot or balance precinct development lot is subdivided by a group titles or building units plan, or a precinct stratum lot is subdivided by a building units plan—

(a) the proprietor of the lot—

- (i) must give written notice to the precinct body corporate of the name and address for service of the body corporate created by the registration of the plan; and
- (ii) ceases to be a member of the precinct body corporate so far as the proprietor was a member because of being the proprietor of the lot; and

(b) the body corporate created by the registration of the plan becomes a member of the precinct body corporate.

(7) The subdivision or resubdivision of a lot, or of a lot and common property, on a group titles plan by a building units or group titles plan does not affect the membership of the precinct body corporate.

(8) The Corporations Law does not apply to the precinct body corporate.

(9) The precinct body corporate—

- (a) has the powers and functions conferred on it under this Act or its by-laws; and
- (b) must do all things that are necessary and reasonable for—
 - (i) the enforcement of its by-laws; and
 - (ii) the control, management and administration of the precinct property.

(10) The precinct body corporate—

- (a) has perpetual succession; and
- (b) has a common seal; and
- (c) is capable of suing and being sued in its corporate name.

(11) Without limiting subsection (10), the precinct body corporate may—

- (a) sue and be sued on any contract made by it; or
- (b) sue for any damage or injury to the precinct property; or
- (c) be sued for any matter connected with the precinct property; or
- (d) take the legal action necessary to enforce its by-laws.

(12) If work is carried out on land that becomes precinct property, then, on registration of the precinct plan, the precinct body corporate—

- (a) is taken to have been a party to an enforceable contract for the carrying out of the work; and
- (b) may sue or be sued in relation to the contract.

Division 4—Matters applying to community and precinct bodies corporate

Members' nominees

169.(1) A member of a body corporate may appoint a person to represent the member, and to vote on behalf of the member, at meetings of the body corporate.

(2) If the member is a corporation created by the registration of a building units or group titles plan, the member must appoint a person under subsection (1) at its first annual general meeting.

(3) An appointment under subsection (1) in relation to a body corporate does not have effect until written notice of the appointment is received by the secretary of the body corporate.

(4) The notice of appointment must be signed—

- (a) by the member; or

- (b) if the member is a corporation—by the chairperson and secretary of the corporation.

(5) The appointment of the person continues until the secretary of the body corporate receives a notice of—

- (a) the appointment of another person; or
- (b) the cancellation of the person's appointment.

Seals of bodies corporate

170.(1) The common seal of a community body corporate must be kept by—

- (a) the member of the community body corporate, or member of the executive committee, that the community body corporate determines; or
- (b) if no determination is made—the secretary of the executive committee.

(2) The common seal of a precinct body corporate must be kept by—

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

(3) The common seal of a body corporate may only be affixed to a document in the presence of—

- (a) if the body corporate is constituted by 1 member—the member; or
- (b) if the body corporate is constituted by 2 members—each member; or
- (c) if the body corporate is constituted by more than 2 members—

Mixed Use Development Act 1993

- (i) 2 persons who are members of the body corporate, or executive committee, determined by the body corporate; or
- (ii) if no determination is made—the secretary and another member of the executive committee.

(4) A person in whose presence the common seal is affixed to a document must attest the fact and date of the affixing of the seal by the person's signature.

(5) If a member is a corporation, the common seal affixed in the presence of a person nominated in writing by the corporation for the purpose and attested by the person is taken to have been properly affixed in the presence of the corporation.

(6) For the purpose of exercising any of a body corporate manager's powers, the body corporate manager is entitled to—

- (a) have the custody of the body corporate's common seal; and
- (b) affix it to any document.

(7) Subsection (6) has effect despite subsections (1) to (5).

(8) If the body corporate manager affixes the common seal under subsection (6), the manager must attest the fact and date of the affixing of the seal by the manager's signature.

(9) If a body corporate manager has affixed the common seal of a body corporate to a document, the manager is taken to have affixed the seal under the authority of a delegation made under section 192 by the body corporate.

(10) Subsection (9) does not operate to enable a person fraudulently to obtain a benefit from its operation, but any benefit that accrues to a person from its operation is taken not to have been fraudulently obtained if the benefit was first obtained by the person without any fraud by the person.

Address for service of bodies corporate

171.(1) On the incorporation of a community body corporate under section 167, its address for service is the same as the address for service of the original applicant.

(2) On the incorporation of a precinct body corporate under section 168, its address for service is the same as the address for service of the

proprietor of the community development lot.

(3) The address for service of a body corporate must be recorded on the plan that creates it.

(4) If the address for service changes, the body corporate must immediately lodge a notice in the approved form with the registrar of titles specifying the new address.

(5) The registrar of titles must record the new address for service on the relevant plan.

(6) A body corporate may change its address for service by an ordinary resolution of the body corporate.

Meetings of bodies corporate

172.(1) The original applicant of a scheme must—

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

Maximum penalty—50 penalty units.

(2) The proprietor of a community development lot must—

- (a) convene a meeting of the precinct body corporate to be held within 3 months from the day of its incorporation; and
- (b) ensure that the meeting is held within the period.

Maximum penalty—50 penalty units.

(3) The agenda for the first meeting of a body corporate under this section must consist of the following items—

- (a) to decide whether the insurance policies entered into by the body corporate should be confirmed, varied or extended;
- (b) to decide whether amounts that may have been determined under section 177(1)(h) or (2) should be confirmed or varied;
- (c) if there are more than 3 members of the body corporate—to determine the number of members of the executive committee;
- (d) to elect—

Mixed Use Development Act 1993

- (i) the chairperson, secretary and treasurer of the body corporate; and
 - (ii) other members of the executive committee;
- (e) to decide whether to make by-laws.

(4) The meeting is to be the first annual general meeting of the body corporate and at the meeting a chairperson, secretary and treasurer are to be elected.

(5) A person may be elected to 1 or more of the offices mentioned in subsection (4).

(6) The original applicant must deliver to the community body corporate, and the proprietor of the community development lot must deliver to the precinct body corporate, at its first annual general meeting—

- (a) all plans, specifications, drawings (showing water pipes, electric cables and drainage), certificates (other than certificates of title for lots), diagrams and other documents (including insurance policies) obtained or received by the applicant or proprietor and relating to the community property and any precinct property; and
- (b) if they are in the applicant's or proprietor's possession or control—the body corporate roll, books of account and any notices or other records relating to the community property or the precinct property; and
- (c) the budget showing the estimated expenditure of the body corporate in relation to the community property or the precinct property on an annual basis.

Maximum penalty—50 penalty units.

(7) Subsection (6) does not apply to a document that—

- (a) exclusively evidences rights or obligations of the original applicant or proprietor; and
- (b) is not capable of being used for the benefit of the body corporate or a member of the body corporate (other than the original applicant or proprietor).

(8) Part 1 of schedule 2 to the *Building Units and Group Titles Act 1980* applies to the first annual general meeting of a body corporate and voting at

the meeting.

(9) Part 2 of schedule 2 to the *Building Units and Group Titles Act 1980* applies to other meetings of a body corporate and voting at the meetings.

(10) The provisions of the schedule mentioned in subsection (8) relating to the rights and obligations of mortgagees and mortgagors do not apply for the purposes of the subsection.

(11) The provisions of the schedule mentioned in subsections (8) and (9) are, for the purposes of the subsections, to be read as if—

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

Mixed Use Development Act 1993

- (ii) in relation to a precinct body corporate—the proprietor of the community development lot; and
- (h) a reference to a proprietor were a reference to a proprietor within the meaning given by this Act; and
- (i) a reference to the roll were a reference to the body corporate roll; and
- (j) a reference to a particular provision of the *Building Units and Group Titles Act 1980* (other than a provision in the schedules) were a reference to the corresponding provision of this Act; and
- (k) any precinct body corporate were the proprietor of a parcel of land within the site and its voting entitlements were the voting entitlements of the parcel.

(12) If a meeting of a body corporate is not convened under subsection (1) or (2), the Minister may by written notice—

- (a) appoint a person to convene a meeting of the body corporate; and
- (b) specify a time within which the meeting is to be held.

(13) The appointment may only be made on the application of—

- (a) the body corporate; or
- (b) a member of the body corporate.

(14) For the purposes of subsections (3) to (11) and (15), a meeting convened under subsection (12) is taken to be the meeting convened under subsection (1) or (2).

(15) At any time after the meeting convened under subsection (1) or (2) has been held, the Minister may by written notice—

- (a) appoint a person to convene a meeting of the body corporate; and
- (b) specify a time within which the meeting is to be held.

(16) The Minister may appoint the person—

- (a) only on the application of a member of the body corporate; and
- (b) only if—
 - (i) the person is nominated by the applicant; and
 - (ii) the person consents to the nomination; and

(iii) there is no executive committee.

(17) In addition to making an appointment under subsection (12) or (15), the Minister may give any direction relating to the appointment or meeting that the Minister considers appropriate.

(18) Without limiting subsection (17), but despite this section, the Minister may also give the following directions—

- (a) that the person appointed to convene a meeting of the body corporate must preside at the meeting and, while the person is presiding, the person is taken to be the chairperson of the body corporate;
- (b) that notice of the meeting may be given in the way specified in the direction.

(19) Even if, in relation to a community body corporate—

- (a) an appointment is made under subsection (13); or
- (b) a meeting is convened and held because of an appointment under subsection (13);

the original applicant remains liable for the contravention of subsection (1).

(20) Even if, in relation to a precinct body corporate—

- (a) an appointment is made under subsection (13); or
- (b) a meeting is convened and held because of an appointment under subsection (13);

the proprietor of the community development lot remains liable for the contravention of subsection (2).

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.

Voting entitlements

173.(1) The proprietor of a community development lot or community stratum lot is—

(a) a member of the community body corporate; and

(b) has the voting entitlement set out in the schedule accompanying the plan that creates the lot.

(2) If—

(a) a community development lot is subdivided by a building units or group titles plan; or

(b) a community stratum lot is subdivided by a building units plan;

the body corporate created—

(c) becomes a member of the community body corporate; and

(d) has the same voting entitlement as the previous proprietor of the subdivided lot.

(3) If a community development lot is subdivided by a precinct plan under section 86, the precinct body corporate created—

- (a) becomes a member of the community body corporate; and
- (b) has the same voting entitlement as the previous proprietor of the subdivided lot.

(4) Each proprietor of a precinct development lot, balance precinct development lot or precinct stratum lot—

- (a) is a member of the precinct body corporate; and
- (b) has the voting entitlement set out in the schedule accompanying the plan that creates the lot.

(5) If—

- (a) a precinct development lot or balance precinct development lot is subdivided by a building units or group titles plan; or
- (b) a precinct stratum lot is subdivided by a building units plan;

the body corporate created—

- (c) becomes a member of the precinct body corporate; and
- (d) has the same voting entitlement as the previous proprietor of the subdivided lot.

Levies by bodies corporate on members

174.(1) A body corporate may levy—

- (a) the contributions determined by it under section 177(1)(h); and
- (b) any amount determined under section 177(2) in relation to the contributions;

by giving its members written notice of the contributions payable by them.

(2) Contributions must be levied, and are payable by the members of the body corporate, in shares proportional to their voting entitlements at the time the contributions are levied.

(3) If a contribution is outstanding when a person becomes a member of the body corporate, the member is liable for the contribution jointly and severally with the member who previously owed it.

(4) A contribution—

- (a) is payable to the body corporate in accordance with its decision to make the levy; and
- (b) if paid within 30 days from the day on which it becomes payable—is to be reduced by the part of the contribution attributable to any amount determined under section 177(2); and
- (c) may be recovered as a debt by the body corporate in a court of competent jurisdiction.

(5) This section does not prevent the body corporate determining, in general meeting (either generally or in a particular case), that a contribution may be reduced under subsection (4)(b) even if the contribution is not paid within the time mentioned in the subsection.

Power of entry

175.(1) For the purpose of carrying out—

- (a) any work required to be carried out by a body corporate by a notice served on it by a local authority, the State, the Commonwealth or the provider of a public utility service; or
- (b) any work necessary under section 177(1)(b);

the body corporate may, by its employees and agents, enter any part of a lot.

(2) The entry may be made—

- (a) in the case of an emergency—at any time; or
- (b) in any other case—at any reasonable time on reasonable notice (not less than 7 days) given to each occupier of a lot likely to be affected by the work.

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

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

Miscellaneous powers of bodies corporate

176. A body corporate may—

- (a) invest amounts held by it in—

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

Duties of bodies corporate

177.(1) A body corporate must—

- (a) control, manage and administer for the benefit of its members—
 - (i) the community property or the precinct property held by it; or
 - (ii) any road, wharf or land leased by it under section 164.
- (b) properly maintain and keep in a state of good and serviceable repair—

Mixed Use Development Act 1993

- (i) the community property or the precinct property held by it, including any improvements on the community property or the precinct property; and
 - (ii) any personal property vested in it; and
 - (iii) any road, wharf or land leased by the body corporate under section 164 and any improvements on the road, wharf or land;
- (c) arrange for insurance under section 182; and
- (d) keep proper records of—
 - (i) notices given to the body corporate under this or another Act; and
 - (ii) orders made by a court and served on the body corporate; and
- (e) keep for at least 10 years—
 - (i) minutes of its meetings (including particulars of motions passed at its meetings); and
 - (ii) proper books of account in relation to amounts received or expended by it (showing the items in relation to which the amounts were received or expended); and
- (f) prepare, from the books mentioned in paragraph (e), a proper statement of accounts of the body corporate in relation to each period—
 - (i) starting on the day of its incorporation or the day up to which the last statement was prepared; and
 - (ii) ending on a day not earlier than 2 months before the next annual general meeting; and
- (g) convene an annual general meeting each year on or after the anniversary of the first annual general meeting, but not later than 2 months after the anniversary; and
- (h) not later than 14 days after its incorporation and whenever necessary after that, determine the amounts necessary in its opinion to be raised by way of contributions—

Mixed Use Development Act 1993

- (i) for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b); or
 - (ii) for the payment of insurance premiums, rates or any other liability of the body corporate (other than amounts referred to in paragraph (l)); and
- (i) on first determining the amounts mentioned in paragraph (h), establish a fund—
- (i) into which must be paid all amounts received by it (including the proceeds of the sale or other disposal of any personal property of the body corporate and any fees received by it under section 180); and
 - (ii) into which may be paid any amounts paid to the body corporate by way of discharge of insurance claims; and
- (j) levy under section 174, on each person liable, a contribution to raise the amounts mentioned in paragraph (h); and
- (k) pay any amounts mentioned in paragraph (i) that are received by it and are not otherwise invested under section 176(a) into an account established in a financial institution in the name of the body corporate; and
- (l) if the body corporate—
- (i) becomes liable to pay an amount that it is unable to pay immediately; and
 - (ii) is not required under paragraph (j) to levy contributions to meet the liability;
- levy contributions under section 174 to raise the amount; and
- (m) implement the decisions of the body corporate.

(2) For the purposes of section 174, the body corporate may, in relation to contributions mentioned in subsection (1)(h) or (l), determine by comprehensive resolution an amount that is not greater than 10% of the contributions.

(3) The body corporate may disburse amounts from its fund only for the purpose of—

- (a) carrying out its powers and functions under this Act or its

by-laws; or

(b) meeting a liability mentioned in subsection (1)(l).

(4) A determination made by the body corporate under subsection (1)(h) may specify that the amounts concerned are to be raised by specified regular periodic contributions.

(5) If the body corporate fails to convene an annual general meeting within the period required by subsection (1)(g), the next general meeting held after the expiry of the period is to be the annual general meeting of the body corporate.

Body corporate rolls

178.(1) A body corporate must prepare and maintain a body corporate roll.

(2) The body corporate must record in the body corporate roll the following information—

- (a) the voting entitlement of each member of the body corporate;
- (b) the total of the voting entitlements of all members of the body corporate;
- (c) the name and address for service of each member of the body corporate;
- (d) the name and address of any person appointed (by written notice addressed to the body corporate) by a member of the body corporate to represent the member at meetings of the body corporate.

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

Notices to be given by members

179.(1) The original applicant must give to the community body corporate a written notice specifying the original applicant's name in full and address for service.

Maximum penalty—4 penalty units

Mixed Use Development Act 1993

(2) The transferor of a community development lot, precinct development lot or balance precinct development lot must give to the body corporate written notice within 7 days after delivery to the transferee of the instrument of transfer in a form capable of immediate registration.

Maximum penalty—4 penalty units.

(3) The notice must—

- (a) identify the lot; and
- (b) specify the transferee's name in full and an address for service; and
- (c) specify an address for service for the transferor; and
- (d) specify the day on which the instrument of transfer was delivered to the transferee; and
- (e) contain a confirmation by the transferee that the information contained in the notice is accurate.

(4) If the transferor fails to comply with subsection (2), the transferee may give to the body corporate a written notice that—

- (a) identifies the lot; and
- (b) specifies the transferee's name in full and an address for service; and
- (c) specifies the day on which the instrument was delivered to the transferee.

(5) If a person becomes entitled (otherwise than as transferee) to be registered under the Real Property Acts as the proprietor of a lot within the site, the person must give to the body corporate written notice of the entitlement within 7 days of becoming entitled.

(6) The notice must—

- (a) be in the form of a statutory declaration; and
- (b) identify the lot; and
- (c) specify the person's name in full and an address for service; and
- (d) specify by what right the person became entitled to be registered as the proprietor of the lot; and

Mixed Use Development Act 1993

- (e) specify the day on which the person became entitled to be registered.

(7) If—

- (a) a community development lot, precinct development lot or balance precinct development lot is subdivided by a building units or group titles plan; or
- (b) a community stratum lot or a precinct stratum lot is subdivided by a building units plan;

the corporation created must notify the body corporate of—

- (c) its name; and
- (d) its address for service; and
- (e) the date it became a corporation.

(8) If a person has given written notice under this section of an address for service and the address is no longer appropriate, the person must give written notice to the body corporate of a new address for service.

(9) If—

- (a) a body corporate believes that a person was required to give notice to it under another provision of this section; and
- (b) the body corporate has not received the notice;

the body corporate may serve a notice on the person under this subsection.

(10) The notice must—

- (a) specify the capacity in which the body corporate believes the person was required to give the notice under this section; and
- (b) require the person to state within 14 days whether or not the person was required to give the notice in the capacity; and
- (c) if the person was required to give the notice—require the person to give the notice even though the time for giving the notice has expired.

(11) A person on whom a notice under subsection (9) is served is not entitled to cast a vote at a meeting of the body corporate until the person gives effect to the requirements of the notice.

Applications for supply of information etc. by bodies corporate**180.(1)** If—

- (a) a written application is made to a body corporate requesting it to do any 1 or more of the things specified in section 181; and
- (b) the application is made by a person who is entitled, under subsection (2) or (3), to make the application; and
- (c) the applicant pays to the body corporate the reasonable fee determined by it;

the body corporate must comply with the request.

(2) An application to a community body corporate may be made only by—

- (a) a member of the community body corporate; or
- (b) a member of a precinct body corporate; or
- (c) a proprietor of a lot on—
 - (i) a group titles plan; or
 - (ii) a building units plan; or
- (d) a person authorised in writing by the member or proprietor.

(3) An application to a precinct body corporate may be made only by—

- (a) a member of the precinct body corporate; or
- (b) a member of a corporation that is—
 - (i) constituted by the registration of a group titles or building units plan; and
 - (ii) a member of the precinct body corporate; or
- (c) a person authorised in writing by the member.

Supply of information etc. by bodies corporate

181.(1) A body corporate may be requested, by an application under section 180, to do any of the following things—

- (a) inform the applicant or the applicant's agent of the name and address of each person who is—

Mixed Use Development Act 1993

- (i) the chairperson, secretary or treasurer of the body corporate;
or
- (ii) a member of the executive committee;
within 21 days after the application is received by the body corporate;
- (b) make available for inspection by the applicant or the applicant's agent—
 - (i) its body corporate roll; or
 - (ii) the notices and orders mentioned in section 177(1)(d); or
 - (iii) the plans, specifications, drawings (showing water pipes, electric cables and drainage), certificates, diagrams and other documents held by it relating to the community property or any precinct property; or
 - (iv) the minutes of general meetings of the body corporate and meetings of the executive committee; or
 - (v) the books of account of the body corporate; or
 - (vi) a copy of the statement of accounts of the body corporate last prepared by it under section 177(1)(f); or
 - (vii) each current insurance policy of the body corporate and the receipt for the premium last paid in relation to the policy; or
 - (viii) any other document in the custody or under the control of the body corporate; or
 - (ix) its by-laws in force for the time being;
- (c) certify, as at the date of the certificate, in relation to particular land—
 - (i) the amount of any regular periodic contributions determined by the body corporate under section 177(1)(h) and (2) and the periods in relation to which the contributions are payable;
or
 - (ii) whether any contribution determined under section 177(1)(h) is unpaid and, if so, the amount unpaid and the date on which it was levied; or

Mixed Use Development Act 1993

- (iii) whether any contribution levied under section 177(1)(l) is unpaid and, if so, the amount unpaid and the date on which it was levied; or
- (iv) whether any contribution levied under section 193 is unpaid and, if so, the amount unpaid and the date on which it was levied; or
- (v) any amount determined under section 177(2) in relation to an unpaid contribution mentioned in this paragraph;

and give the certificate to the applicant or the applicant's agent within 21 days after the application is received by the body corporate;

- (d) give to the applicant or the applicant's agent a copy of its by-laws, or a specified part of its by-laws, in force for the time being within 21 days after the application is received by the body corporate.

(2) A document mentioned in subsection (1)(b) must be made available for inspection at the time and place agreed between the applicant or the applicant's agent and the body corporate.

(3) However, if the applicant or the applicant's agent and the body corporate do not reach agreement for the purposes of subsection (2) within 3 days after the body corporate receives the application, the body corporate must immediately send to the applicant a written notice specifying a time at which, or a period during which, the document will be made available for inspection by the applicant or the applicant's agent at the body corporate's office.

(4) The time or period specified in the notice must be—

- (a) between 9 a.m. and 8 p.m.; and
- (b) not later than 10 days after the body corporate receives the application.

(5) The body corporate must permit a person to whom its by-laws are made available for inspection to make copies of or take extracts from them.

Insurance by bodies corporate

182.(1) A body corporate must take out insurance—

- (a) for each happening against which it is required by law to insure (including any insurance required to be taken out because of the *WorkCover Queensland Act 1996*); and
- (b) for damage to property, death or bodily injury happening on or in relation to—
 - (i) in the case of a community body corporate—the community property; or
 - (ii) in the case of a precinct body corporate—the precinct property; or
 - (iii) a road, wharf, or land, leased under section 164 and any improvements on the road, wharf or land; and
- (c) against the possibility of the members becoming jointly liable because of a claim arising in relation to any other happening against which the body corporate decides to insure by comprehensive resolution.

(2) The body corporate may also take out insurance for consequences resulting from a happening, damage or claim mentioned in subsection (1).

(3) Insurance under subsection (1)(b) must be for a cover of—

- (a) the amount prescribed by regulation; or
- (b) if no amount is prescribed—\$10 000 000.

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

Delegation by corporate members of bodies corporate

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

Voting rights

184.(1) A power of voting conferred under this division may be exercised—

- (a) if the member is an infant—by the member’s guardian; or
- (b) if the member is for any reason unable to control the member’s property—by the person who is authorised by law to control the property; or
- (c) if the member is a corporation—by the member’s delegate.

(2) If, on the application of a body corporate or a member, the Supreme Court is satisfied that—

- (a) there is no person able to vote in relation to a voting entitlement; or
- (b) the person able to vote cannot be found;

the court may appoint the public trustee or another appropriate person to exercise the powers of voting under this division that the court determines.

Constitution of executive committee

185.(1) After the first annual general meeting of a body corporate, there is to be an executive committee consisting of—

- (a) the chairperson, secretary and treasurer; and
- (b) any other members elected or appointed under this section.

(2) If there is only 1 member of the body corporate—

- (a) the member may make any decision that a properly convened executive committee is required or authorised to make under this Act; and
- (b) a decision of the member is taken to be a decision of the executive committee.

(3) If there are not more than 3 members of the body corporate, the executive committee consists of—

- (a) each member who is an individual or the member’s nominee; and
- (b) the nominee of each member that is a corporation.

(4) If there are more than 3 members of the body corporate, the executive committee consists of—

- (a) the chairperson, secretary and treasurer; and
- (b) the number of other members (not more than 4) determined by the body corporate.

(5) If the number of members of a body corporate is less than the number of members of the executive committee (including the chairperson, secretary and treasurer), the members of the executive committee are to be elected—

- (a) at each annual general meeting of the body corporate; or
- (b) if the number of members of the executive committee changes because of a determination under subsection (4) at a time more than 4 months from the anniversary of its first annual general meeting—at an extraordinary general meeting convened for the purpose.

(6) A person may be elected to more than 1 of the offices mentioned in subsection (1)(a).

(7) A person is eligible for election as chairperson, secretary or treasurer or other member of the executive committee only if the person is—

- (a) an individual who is a member of the body corporate; or
- (b) a nominee of a corporation that is a member of the body corporate; or
- (c) an individual who is not a member of the body corporate but who is nominated for election by a member.

(8) Despite subsections (1) and (4), the body corporate may determine that the secretary or treasurer is not to be a member of the executive committee.

(9) If the body corporate makes a determination under subsection (8), a person elected as secretary or treasurer holds the office in relation to the body corporate and the executive committee, but is not a member of the executive committee.

(10) A member of the executive committee may, with the consent of the executive committee, appoint—

Mixed Use Development Act 1993

- (a) a member of the body corporate; or
- (b) the nominee of a corporation that is a member of the body corporate;

to act in the member's place as a member of the executive committee at any meeting of the executive committee.

(11) When the appointed member or nominee is acting in the member's place, the appointed member or nominee is taken to be a member of the executive committee.

(12) The member or nominee may be appointed whether or not the person is already a member of the executive committee.

(13) If the person appointed is already a member of the executive committee, the person may, at a meeting of the executive committee, separately vote—

- (a) in the person's capacity as a member; and
- (b) on behalf of the member in whose place the person has been appointed to act.

(14) Despite subsections (1) and (5), the executive committee may be constituted before the first annual general meeting of a body corporate by the election, at an extraordinary general meeting, of—

- (a) the chairperson, secretary and treasurer; and
- (b) any other members of the executive committee.

(15) The following provisions apply to the election of a person at the extraordinary general meeting—

- (a) subsections (6), (8) and (9);
- (b) part 1 of schedule 2 to the *Building Units and Group Titles Act 1980* (as applied by section 172) that relate to the election of the person.

(16) If there is no executive committee of a body corporate, the body corporate is to exercise the powers, and perform the functions, of the executive committee.

Vacation of office of member of executive committee

186.(1) A person elected as chairperson, secretary or treasurer, or another member of the executive committee of a body corporate, vacates the office—

- (a) if the person was a member of the body corporate at the time of the person's election—if the person ceases to be a member; or
- (b) if the person was not a member of the body corporate at the time of the person's election—if the member who nominated the person for election—
 - (i) ceases to be a member of the body corporate; or
 - (ii) notifies the body corporate, in writing, that the member's office is vacated; or
- (c) on receipt by the body corporate of the person's written resignation; or
- (d) at the next election of the members of the executive committee at an annual general meeting or extraordinary general meeting; or
- (e) if the person is absent without leave granted by the executive committee from 3 consecutive meetings of the committee of which proper notice has been given to the person; or
- (f) if the person becomes bankrupt or compounds with the person's creditors or otherwise takes advantage of the laws relating to bankruptcy; or
- (g) if the person is convicted of an indictable offence; or
- (h) if the person dies or becomes mentally ill; or
- (i) if the body corporate, by a comprehensive resolution, determines that the person's office is vacated.

(2) Subsection (1)(b) does not apply to a person if the person is elected as secretary or treasurer but is not a member of the executive committee.

(3) If—

- (a) a vacancy happens in the office of—
 - (i) chairperson, secretary or treasurer; or
 - (ii) another member of the executive committee; and

(b) the vacancy happens otherwise than because of subsection (1)(d); the body corporate must appoint a person eligible for election to fill the vacancy.

(4) The person appointed under subsection (3) holds office, subject to this section, for the balance of the predecessor's term of office.

(5) If the number of persons who are members of the executive committee becomes one-half, or less than one-half, of the number of the members of the executive committee, the members for the time being of the executive committee constitute a quorum at a meeting of the executive committee for the purpose only of—

(a) appointing a person to fill a vacancy in the office of—

(i) chairperson, secretary or treasurer; or

(ii) another member of the executive committee; or

(b) convening a meeting of the body corporate for the purpose mentioned in paragraph (a).

(6) Subsection (5) has effect despite section 188(1).

(7) For the purposes of subsection (5), if—

(a) there is no member of the executive committee; or

(b) the members of the executive committee—

(i) do not appoint a person to fill the vacancy; and

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

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

(8) The referee may appoint a person only if—

(a) the person is nominated by the applicant; and

(b) the person consents to the nomination.

(9) In addition to making the appointment, the referee may give any

directions relating to the appointment or the meeting that the referee considers appropriate.

(10) Without limiting subsection (9), but despite the provisions of schedule 2 of the *Building Units and Group Titles Act 1980* (as applied by section 172), the referee may also give the following directions—

- (a) that the person appointed to convene a meeting of the body corporate must preside at the meeting and, while the person is presiding, the person is taken to be the chairperson of the body corporate;
- (b) that notice of the meeting may be given in the way specified in the direction.

(11) A meeting held under subsections (7) to (10) because there is no member of the executive committee is, for the purpose of the election of—

- (a) the chairperson, secretary and treasurer; and
- (b) the other members of the executive committee;

taken to be a first annual general meeting of the body corporate.

Chairperson, secretary and treasurer of executive committee

187.(1) The chairperson must preside at all meetings of the executive committee at which the chairperson is present.

(2) If the chairperson is not present at a meeting, the member chosen by the members present at the meeting is to preside.

(3) A person (other than a person mentioned in subsection (4)) must not exercise a power of the body corporate, or the treasurer, that relates to—

- (a) the receipt or expenditure of amounts of the body corporate; or
- (b) the accounting for amounts of the body corporate; or
- (c) the keeping of the books of account of the body corporate.

Maximum penalty—50 penalty units.

(4) The following persons may exercise a power mentioned in subsection (3)—

- (a) the treasurer or the treasurer's delegate;

Mixed Use Development Act 1993

(b) a person acting jointly with the treasurer because of a direction under subsection (6).

(5) The treasurer may, with the approval of the executive committee, delegate the treasurer's powers to a member of the executive committee.

(6) The executive committee may, by written notice given to the treasurer, direct that the treasurer may exercise a specified power only jointly with a specified person.

(7) A person who has possession or control of—

- (a) any records, books of account or keys of the body corporate; or
- (b) the body corporate roll; or
- (c) any other property of the body corporate;

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

Maximum penalty—20 penalty units.

Meetings of executive committee

188.(1) At a meeting of the executive committee, a quorum is constituted by more than half of the number of members of the executive committee.

(2) At a meeting at which a quorum is present, the decision on any matter of the majority of the members voting on the matter is the decision of the executive committee unless this Act expressly requires or permits the decision to be made in a different way.

(3) A decision of the executive committee does not have effect if—

- (a) before the decision is made, written notice is given to the secretary by not less than half of the total number of members of the body corporate stating that the making of the decision is opposed by the members; and
- (b) the total of the voting entitlements of the members is more than half of the total of all voting entitlements recorded in the body corporate roll.

- (4) The executive committee must keep—
- (a) a record of—
 - (i) its decisions; and
 - (ii) any notices given to its secretary under subsection (3); and
 - (b) full and accurate minutes of its meetings.

Executive committee's decisions to be decisions of body corporate

189.(1) In this section—

“restricted matter”, in relation to a body corporate, means—

- (a) a matter relating to the fixing of a special levy on all members of the body corporate; or
- (b) a matter that seeks to alter the rights, privileges or obligations of members of the body corporate; or
- (c) a matter that seeks to alter the annual contribution of members of the body corporate; or
- (d) a matter on which a decision may only be made by the body corporate under a comprehensive resolution or in general meeting of the body corporate.

(2) A decision of the executive committee on a matter that is not a restricted matter is taken to be the decision of the body corporate.

(3) Even if the executive committee is properly constituted, the body corporate may in general meeting continue to exercise the powers conferred on the body corporate by this Act.

Statutory restrictions on powers of executive committee

190.(1) The executive committee of a body corporate may undertake expenditure only if—

- (a) authorised by a comprehensive resolution of the body corporate; or
- (b) authorised in an emergency by the Minister.

(2) In relation to any proposed expenditure that the executive committee

is unable to undertake because of subsection (1), the executive committee must—

- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate convened for the purpose of, or for purposes that include, consideration of the proposal; and
 - (b) if the proposed expenditure is for work to be performed or the purchase of personal property—submit at least 2 tenders to the meeting with the proposal.
- (3)** Subsection (1) does not apply to expenditure—
- (a) in payment of any premium for insurance taken out for the body corporate; or
 - (b) to comply with a notice or order served on the body corporate by a court, a local authority, the State, the Commonwealth or a provider of a public utility service; or
 - (c) in discharge of a liability incurred in relation to an obligation of the body corporate authorised by the body corporate in general meeting.

Restrictions imposed on executive committee by body corporate

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

Community or precinct body corporate manager

192.(1) A body corporate may appoint a body corporate manager.

(2) The appointment—

- (a) must be made in general meeting; and
- (b) must be in writing; and
- (c) may be made on the terms determined by the body corporate.

(3) The body corporate may delegate its powers to the body corporate manager.

(4) Without limiting subsection (3), the body corporate may delegate to

the body corporate manager powers of—

- (a) the chairperson, secretary or treasurer; or
- (b) the executive committee.

(5) The body corporate must not delegate to the body corporate manager its power to make a decision on a restricted matter within the meaning of section 189.

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

Costs in proceedings by members against body corporate

193.(1) In a proceeding brought by a member against the body corporate, the court may order that an amount (including an amount for costs) payable by the body corporate be paid by the body corporate only in relation to specified members, and in specified proportions, out of contributions levied for the purpose.

- (2) For the purpose of paying the amount, the body corporate must—
- (a) levy contributions in accordance with the order; and
 - (b) pay the amount out of the contributions.

(3) Section 174 applies, with any necessary modifications, to contributions levied under subsection (2).

Service of documents on bodies corporate, members and others

194.(1) A summons or other legal process may be served on a body corporate by leaving it with—

- (a) the chairperson or secretary; or
- (b) another member of the executive committee.

(2) A document (other than a document mentioned in subsection (1)) may be served on the body corporate—

- (a) by leaving it with a person mentioned in subsection (1); or
- (b) sending it by post to the body corporate at its address for service.

(3) Nothing in this section—

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

Power of bodies corporate to convene meetings

195.(1) A community body corporate may, at the request of a proprietor or occupier of land or a lot within the site, convene a meeting in relation to any matter of interest to proprietors or occupiers of land or lots within the site.

(2) A proprietor or occupier of land or a lot within the site may attend and vote at the meeting.

(3) The precinct body corporate may, at the request of a proprietor or occupier of land or a lot within a staged use precinct, convene a meeting in relation to any matter of interest to proprietors or occupiers of land or lots within the staged use precinct.

(4) A proprietor or occupier of land or a lot within the staged use precinct may attend and vote at the meeting.

(5) The chairperson of the body corporate must preside at a meeting under subsection (1) or (3)—

- (a) for the purpose of electing a chairperson of the meeting; and
- (b) until the election of a chairperson.

(6) A meeting convened under subsection (1) or (3) is not a meeting of the body corporate.

Establishment of committees

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

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

Agreements between precinct bodies corporate

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

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

Division 5—Increase in membership of community body corporate**Effect of subdivision of subsequent stage or additional land**

198.(1) On registration of the community plan subdividing a subsequent stage or additional land, the proprietors of community development lots become additional members of the community body corporate created by the community plan that subdivided land within the site.

(2) For the purposes of this division and divisions 2 and 4, on registration of the community plan subdividing a subsequent stage or additional land, the site comprises—

- (a) the land subdivided; and
- (b) the other land that formed part of the site before the subdivision of the subsequent stage or additional land.

Meeting of community body corporate

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

(2) Section 172 applies to the meeting with any necessary modifications.

(3) For the purposes of setting the date for subsequent annual general meetings after the meeting mentioned in subsection (1), the meeting is taken to be the first annual general meeting.

Levies and funds

200.(1) Within 14 days after registration of the community plan subdividing a subsequent stage or additional land, the community body corporate must determine the amounts mentioned in section 177(1)(h).

(2) On registration of the community plan subdividing a subsequent stage or additional land, the fund of the community body corporate existing at the time continues in existence.

Application of divs 2 and 4

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

PART 10—BY-LAWS

Division 1—Community by-laws

Community development control by-laws

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

(2) The development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the site.

(3) The development control by-laws may provide—

- (a)** that specified matters in relation to design and development are able to be decided by the community body corporate; and
- (b)** a mechanism for deciding disputes in relation to design and development.

Community activities by-laws

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

Application of community development control by-laws and community activities by-laws

204.(1) Development control by-laws and activities by-laws—

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

(2) The development control by-laws and the activities by-laws bind—

- (a) the community body corporate; and
- (b) the members of the community body corporate; and
- (c) the proprietors of lots created by the registration of a building units or group titles plan; and
- (d) a precinct body corporate; and
- (e) the members of a precinct body corporate; and
- (f) the proprietors of lots created in a staged use precinct by the registration of a building units or group titles plan; and
- (g) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the site; and
- (h) a lessee or occupier of a lot within the site.

(3) A development control by-law or activity by-law prevails to the extent of any inconsistency with—

- (a) a precinct by-law; or
- (b) a by-law made by a body corporate under the *Building Units and Group Titles Act 1980*.

Minor noncompliance with community development control by-laws or community activities by-laws

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

Community property by-laws

206.(1) Subject to subsection (5), the community body corporate may, by comprehensive resolution, make by-laws (“**property by-laws**”) for the control, management, administration, use or enjoyment of the community property.

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

- (a) the Minister approves the by-law; and
- (b) notification of the Minister’s approval is published in the gazette.

(3) If land has access to a dedicated road by way of the community property, a lease of the land is taken to contain an agreement by the lessee that the lessee must comply with the property by-laws.

(4) The property by-laws bind—

- (a) the community body corporate; and
- (b) the members of the community body corporate; and
- (c) the proprietors of lots created by the registration of a building units or group titles plan; and
- (d) a precinct body corporate; and
- (e) the members of a precinct body corporate; and
- (f) the proprietors of lots created in a staged use precinct by the registration of a building units or group titles plan; and

(g) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the site; and

(h) a lessee or occupier of a lot within the site.

(5) A property by-law may not prohibit, destroy or modify any easement, service right or service obligation implied or created by this Act.

(6) A property by-law may apply to all the community property or a particular part of the community property specified in the by-law.

(7) A property by-law does not affect the operation of any other Act or law.

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.

Application of community by-laws to leased areas

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

Division 2—Precinct by-laws

Precinct development control by-laws

208.(1) A precinct body corporate may, by comprehensive resolution, make by-laws (“**development control by-laws**”) regulating the quality of design and development within the staged use precinct.

(2) The development control by-laws may regulate the size, shape, height, colour, texture and overall placement of buildings or other structures within the staged use precinct.

- (3) The development control by-laws may provide—
- (a) that specified matters in relation to design and development are able to be decided by the precinct body corporate; and
 - (b) a mechanism for deciding disputes in relation to design and development.

Precinct activities by-laws

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

Application of precinct development control and precinct activities by-laws

- 210.(1)** Development control by-laws and activities by-laws—
- (a) may apply to the whole of the staged use precinct or a particular part of the staged use precinct; and
 - (b) do not have effect until—
 - (i) the Minister approves the by-laws; and
 - (ii) notification of the Minister’s approval is published in the gazette; and
 - (c) subject to subsection (3), do not affect the operation of any Act or other law.
- (2) The development control by-laws and the activities by-laws bind—
- (a) the precinct body corporate; and
 - (b) the members of the precinct body corporate; and
 - (c) the proprietors of lots in the staged use precinct created by the registration of a building units or group titles plan; and
 - (d) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the staged use precinct; and
 - (e) a lessee or occupier of a lot within the staged use precinct.

(3) A development control by-law or activity by-law prevails to the extent of any inconsistency with a by-law made by a body corporate under the *Building Units and Group Titles Act 1980*.

Minor noncompliance with precinct development control by-laws or precinct activities by-laws

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

Precinct property by-laws

212.(1) Subject to subsection (5), the precinct body corporate may, by comprehensive resolution, make by-laws (“**property by-laws**”) for the control, management, administration, use or enjoyment of the precinct property.

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

- (a) the Minister approves the by-law; and
- (b) notification of the Minister’s approval is published in the gazette.

(3) If a lot or common property has access to a dedicated road or community property by way of the precinct property, a lease of the lot or property is taken to contain an agreement by the lessee that the lessee must comply with the property by-laws.

(4) The property by-laws bind—

- (a) the precinct body corporate; and
- (b) the members of a precinct body corporate; and
- (c) the proprietors of lots created in the staged use precinct by the registration of a building units or group titles plan; and
- (d) a mortgagee in possession (whether by the mortgagee or another person) of a lot within the staged use precinct; and
- (e) a lessee or occupier of a lot within the staged use precinct.

(5) A property by-law may not prohibit, destroy or modify any

easement, service right or service obligation implied or created by this Act.

(6) A property by-law may apply to all the precinct property or a particular part of the precinct property specified in the by-law.

(7) A property by-law does not affect the operation of any other Act or law.

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.

Application of precinct by-laws to leased areas

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

PART 11—MISCELLANEOUS

Fire safety requirements

214. Despite the *Fire Service Act 1990*⁷ or any other Act relating to fire safety, but without compromising the principles of fire safety in those Acts, in issuing a fire safety approval for a building within the site, the relevant fire authority and fire safety officer must take into account—

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

⁷ Now see *Fire Service Amendment Act 1996* s 5.

Applications to be accompanied by fees

215.(1) The fee determined by the local authority must accompany—

- (a) an application for approval under this Act; or
- (b) a plan lodged with the local authority for its approval under this Act.

(2) The fee must be reasonable.

Chief executive may approve forms

216.(1) The chief executive may approve forms for use for the purposes of this Act.

(2) A person may request the chief executive to give the person a document setting out a form approved under subsection (1).

(3) The chief executive must promptly comply with the request.

Delegation by Minister

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

Regulations

218.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may be made with respect to any of the following matters—

- (a) the preparation and approval of plans and documents for the purposes of this Act;
- (b) the plans and documents that may be lodged under this Act in the land registry;
- (c) the registration in the land registry of plans and documents;
- (d) the fees to be paid in relation to the lodgment and registration in the land registry of plans and documents;

- (e) the nomination and election of—
 - (i) the chairperson, secretary and treasurer of community bodies corporate and precinct bodies corporate; and
 - (ii) other members of the executive committees of community bodies corporate and precinct bodies corporate;
- (f) the powers and functions of community bodies corporate and precinct bodies corporate.

(3) A regulation may create offences and prescribe penalties of not more than 4 penalty units for the offences.

PART 12—BRETTS WHARF DEVELOPMENT

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.

ENDNOTES

1 Index to endnotes

	Page
2 Date to which amendments incorporated	161
3 Key	161
4 Table of earlier reprints	162
5 List of legislation	162
6 List of annotations	163

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 June 1998. Future amendments of the Mixed Use Development Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 80 of 1993	14 February 1994
1A	to Act No. 69 of 1994	12 August 1996
1B	to Act No. 75 of 1996	6 May 1997
1C	to Act No. 78 of 1997	5 January 1998

5 List of legislation

Mixed Use Development Act 1993 No. 21

date of assent 28 May 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 17 December 1993 (1993 SL No. 484)

as amended by—

Mixed Use Development Amendment Act 1993 No. 80

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 11 February 1994 (1994 SL No. 39)

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1)
sch 7

WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1997 (1996 SL No. 442)

Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Natural Resources and Other Legislation Amendment Act 1977 No. 78 pts 1, 9

date of assent 5 December 1997

commenced on date of assent

6 List of annotations

Definitions

- s 3** def “**building units plan**” sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
 def “**group titles plan**” sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
 def “**road**” sub 1993 No. 80 s 4

Words and expressions used in Building Units and Group Titles Act

- s 4** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Application for approval of scheme

- s 28** amd 1997 No. 28 s 295 sch 3; 1997 No. 78 s 93

PART 5—SUBDIVISION OF SITE**Division 5—Subdivision of community development lot by building units or group titles plan**

- div hdg** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Building units or group titles plan

- s 78** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Lodgment of building units or group titles plan

- s 79** om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Approval of building units or group titles plan

- s 80** om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Registration of building units or group titles plan

- s 81** om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision of group title lot by building units plan

- s 82** om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision of group title lot by group titles plan

s 83 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

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

s 84 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Application of Building Units and Group Titles Act to subdivisions

s 85 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

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

div hdg sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision by building units or group titles plan

s 101 sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Approval of building units or group titles plan

s 102 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Registration of building units or group titles plan

s 103 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision of group title lot by a building units plan

s 104 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision of group title lot by group titles plan

s 105 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

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

s 106 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Application of Building Units and Group Titles Act to subdivisions

s 107 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Boundary adjustment plan

s 112 amd 1993 No. 80 s 5

Implied easements

s 115 amd 1993 No. 80 s 6; 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Stratum plan of subdivision

s 123 amd 1993 No. 80 s 7

Stratum plan of amalgamation

s 124 amd 1993 No. 80 s 8

Support and shelter for certain stratum lots

s 126 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Services for certain stratum lots

s 127 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Right of way

s 128 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Subdivision of stratum lot by building units plan

s 130 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Valuation of stratum lots

s 132 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Matters required for management statement

s 138 amd 1997 No. 17 s 74 sch

Leases to community and precinct bodies corporate

s 164 amd 1994 No. 49 s 6 sch 2

Meetings of body corporate

s 172 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Change of annual general meeting

s 172A ins 1993 No. 80 s 9

Duties of bodies corporate

s 177 amd 1993 No. 80 s 10; 1997 No. 17 s 74 sch

Insurance by bodies corporate

s 182 amd 1996 No. 75 s 535 sch 2

Constitution of executive committee

s 185 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Vacation of office of member of executive committee

s 186 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Application of community development control by-laws and community activities by-laws

s 204 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Restricted community property by-laws

s 206A ins 1993 No. 80 s 11

Application of precinct development control and precinct activities by-laws

s 210 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Restricted precinct property by-laws

s 212A ins 1993 No. 80 s 12

PART 12—BRETTS WHARF DEVELOPMENT

pt hdg ins 1993 No. 80 s 13

Definitions

s 219 def “**body corporate**” ins 1993 No. 80 s 13
 def “**Bretts Wharf Hamilton**” ins 1993 No. 80 s 13
 def “**common property**” ins 1993 No. 80 s 13
 sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
 def “**resolution without dissent**” ins 1993 No. 80 s 13
 sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
 def “**restricted property area**” ins 1993 No. 80 s 13

Redevelopment is a mixed use development

s 220 ins 1993 No. 80 s 13

Restricted property by-laws

s 221 ins 1993 No. 80 s 13
 amd 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)

Application of Building Units and Group Titles Act

s 222 ins 1993 No. 80 s 13
 sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)