



# **South Bank Corporation Act 1989**

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Queensland

# South Bank Corporation Act 1989

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# South Bank Corporation Act 1989

**An Act to provide for the establishment of a South Bank Corporation and to provide for the continued effective development and management of the South Bank corporation area, to establish the South Bank Employing Office, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *South Bank Corporation Act 1989*.

### 2 Notes in text

A note in the text of this Act is part of the Act.

### 3 Definitions

In this Act—

*application*, for part 7, see section 49.

*appropriate authority* means—

(a) generally—

(i) for a development approval given by the corporation—the corporation; or

(ii) for a development approval given by the council—the council; and

(b) for sections 41(12) and (13) and 42(1)(b) and (17), if there is no development approval for the plan of

subdivision or amalgamation of land, stratum plan or plan for the opening of a road—the corporation.

**approved development plan** means the approved development plan approved by the Governor in Council under section 34 as amended from time to time.

**approved form**, for part 7, see section 49.

**assessable development** see section 4.

**board** means the South Bank Corporation Board.

**boundary adjustment plan** means a plan that, as provided by section 42(4), shows minor adjustments to the boundaries of stratum lots.

**building** see the *Building Act 1975*, section 3.

*Editor's note—*

*Building Act 1975*, section 3 has been relocated to schedule 2—see the *Statute Law (Miscellaneous Provisions) Act 2004*, section 2 schedule.

**building management committee** means the building management committee for a management statement referred to in schedule 3, clause 2(2).

**cadastral surveyor**, for part 9A, see section 97B.

**chairperson** means the chairperson of the corporation.

**corporation** means the South Bank Corporation established and constituted under section 7.

**corporation area** means the area as described in schedule 2 or that area as varied under section 16.

**council** means the Brisbane City Council constituted within the meaning of the *City of Brisbane Act 2010*.

**court** means—

- (a) for a child—the Childrens Court; or
- (b) for someone else—a Magistrates Court.

**currency period**, for part 7, see section 49.

**decision notice** see section 61.

**development** is any of the following—

- (a) carrying out operational work within the corporation area;
- (b) reconfiguring a South Bank lot within the corporation area;
- (c) making a material change of use of premises within the corporation area.

**development approval** means an approval of an application for development approval contained in a decision notice given under section 61.

**development completion date** means the date of completion of development specified under a regulation.

**disclosure statement**, for part 9A, see section 97B.

**employee of the employing office** see section 31G(2).

**employing office** means the South Bank Employing Office established under section 31B.

**exclusion direction** means a direction under section 83.

**exclusion offence** see section 82(2).

**exclusion order** means an order under section 86.

**executive officer** means the executive officer of the employing office appointed under section 31E.

**government entity** see the *Public Service Act 2008*, section 24.

**industrial instrument** see the *Industrial Relations Act 2016*, schedule 5.

**information request**, for part 7, see section 49.

**land**, other than in section 41, 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.

**lawful use** see section 50(1).

**law practice**, for part 9A, see section 97B.

**leasehold building units lot**, for part 9A, see section 97B.

**lot**, for part 9A, see section 97B.

**management statement** means a statement of by-laws and other particulars that, as provided by section 46, regulates a building and its site or is intended to regulate a proposed building and its site.

**material change of use**, of premises, means—

- (a) the start of a new use of the premises; or
- (b) the re-establishment on the premises of a use that has been abandoned; or
- (c) a material increase in the intensity or scale of the use of the premises.

**member** means a member of the board.

**modified Building Units and Group Titles Act** has the meaning given by section 5.

**normal working hours** means the hours between 9a.m. and 4.30p.m. each Monday to Friday, public holidays excepted.

**operational work** has the meaning given in the Planning Act, schedule 2 but does not include placing an advertising device on premises.

**original seller**, for part 9A, see section 97B.

**owner**, for part 7, see section 49.

**Planning Act** means the *Planning Act 2016*.

**planning scheme** means a planning scheme under the Planning Act.

**premises** means—

- (a) a building or other structure; or
- (b) land, whether or not a building or other structure is situated on the land.

***prescribed trust account***, for part 9A, see section 97B.

***proposed leasehold building units lot***, for part 9A, see section 97B.

***proposed lot***, for part 9A, see section 97B.

***public agencies*** includes any public authority or local government constituted by or under any Act, a government department whether of the Commonwealth or Queensland or a statutory body representing the Crown.

***public authority*** means—

- (a) the corporation; or
- (b) the council; or
- (c) a public agency.

***public trustee***, for part 9A, see section 97B.

***QPAT*** means the Queensland Performing Arts Trust.

***rail government entity*** see the *Transport Infrastructure Act 1994*, schedule 6.

***real estate agent***, for part 9A, see section 97B.

***recognised entity***, for part 9A, see section 97B.

***reconfiguring***, in relation to South Bank lots or land, means—

- (a) creating South Bank lots by subdividing a South Bank lot or lots or land; or
- (b) amalgamating 2 or more South Bank lots; or
- (c) rearranging the boundaries of a South Bank lot or lots or land by registering a plan of subdivision; or
- (d) dividing the land into parts by agreement (other than a lease for a term, including renewal options, not exceeding 10 years) rendering different parts of a South Bank lot or lots immediately available for separate disposition or separate occupation; or

- (e) creating an easement giving access to a South Bank lot or lots or land from a constructed road.

**relevant application** see section 77(1).

**registered**, for part 9A, see section 97B.

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

**reviewable exclusion direction** means an exclusion direction excluding a person from the site, or a part of the site, for longer than 24 hours.

**security officer** means an individual appointed by the corporation or the council under section 108.

**seller**, for part 9A, see section 97B.

**site**, in part 8, means the part of the corporation area declared under a by-law to be the site, and includes any part of the area declared to be the site.

**South Bank lot** means any of the following within the corporation area—

- (a) a lot under the *Land Title Act 1994*;
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*;
- (c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*;
- (d) a stratum lot;
- (e) a lot on a leasehold building units plan;
- (f) common property.

*Note—*

‘Common property’ in paragraph (f) has the meaning it has in schedule 4 because of section 6.

**South Bank public land** means land that is—

- (a) under the *Land Title Act 1994*; and

- (b) within the corporation area; and
- (c) held in fee simple by a public authority.

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

**stratum parcel** means a parcel created by a subdivision permitted by schedule 4, section 8(1B).

**stratum plan** means a plan of subdivision that, under section 42, subdivides land into stratum lots.

**stratum plan of amalgamation** means a plan, under section 42, for the amalgamation of 2 or more, or all, stratum lots in a stratum plan.

**stratum plan of subdivision** means a plan, under section 42, for the subdivision of a stratum lot into 2 or more stratum lots.

**use**, for part 7, see section 49.

**work performance arrangement** means an arrangement under which an employee of a government entity or public agency performs work for another government entity or public agency.

#### **4 Meaning of *assessable development***

All development, other than the following development, is ***assessable development***—

- (a) the reconfiguration of a lot under the *Land Title Act 1994* if the plan of subdivision necessary for the reconfiguration—
  - (i) is a building format plan of subdivision that does not subdivide land on or below the surface of the land; or
  - (ii) is for the amalgamation of 2 or more lots; or
  - (iii) is in relation to the acquisition, including by agreement, under the *Acquisition of Land Act 1967*, of land by a constructing authority, as

- defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or
- (iv) is in relation to the acquisition by agreement, other than under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, for a purpose set out in paragraph (a) of the schedule to that Act; or
  - (v) is in relation to land held by the State, or a statutory body representing the State, and the land is being subdivided for a purpose set out in the *Acquisition of Land Act 1967*, schedule, parts 1 to 13 (other than part 10, second dot point); or
  - (vi) is for the reconfiguration of a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*;
- (b) development that—
- (i) is categorised as assessable development, or accepted development, by a regulation made under the Planning Act; or
  - (ii) is accepted development under the Planning Act, section 44(6)(b)(ii);
- (c) development in a priority development area under the *Economic Development Act 2012*;
- (d) PDA-associated development for a priority development area under the *Economic Development Act 2012*.

## **5 Interpretation—modified Building Units and Group Titles Act**

For the purposes of this Act, the modified Building Units and Group Titles Act consists of the provisions set out in schedule 4.

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**6 Interpretation—words etc. used in modified Building Units and Group Titles Act**

Words and expressions used in the modified Building Units and Group Titles Act have the same meaning in this Act.

**Part 2 The corporation and board**

**7 Establishment of corporation**

There shall be established and constituted by this Act a body corporate under the style and title of ‘South Bank Corporation’ which, by that name, shall have perpetual succession and a common seal and shall be capable in law of—

- (a) suing and being sued; and
- (b) compounding or proving in any court of competent jurisdiction or tribunal all debts or sums of money due to it; and
- (c) taking, acquiring by way of grant, purchase, gift, lease or licence, holding, letting (by way of lease or otherwise), dealing with and disposing of real property within the corporation area and personal property of every description; and
- (d) doing and suffering all such acts and things as bodies corporate may do and suffer.

**8 Corporation represents the State**

- (1) The corporation represents the State.
- (2) Without limiting subsection (1), the corporation has all the privileges and immunities of the State.

**9 Corporation board**

- (1) The corporation must have a board of directors.

- (2) The board of directors is the corporation's governing body and is called the South Bank Corporation Board.

## 10 Composition of board

- (1) The board consists of at least 2 but no more than 10 members as follows—
  - (a) a chairperson appointed on the Minister's nomination;
  - (b) no more than 2 members appointed on the council's nomination;
  - (c) no more than 7 other members appointed on the Minister's nomination.
- (2) In nominating persons for appointment to the board, the Minister and the council must—
  - (a) have regard to the proposed member's business, financial, property management, community service or other relevant expertise; and
  - (b) seek to appoint both men and women as members.
- (3) The members are to be appointed by the Governor in Council.
- (4) Schedule 1 contains additional provisions about the members and about procedures of the board.

## 11 Report about person's criminal history

- (1) To help decide whether a person is suitable for nomination for appointment as a member, the Minister or the council (the *nominator*) may ask the commissioner of the police service for a written report about the person's criminal history.
- (2) However, the nominator may make a request about a person under subsection (1) only if the person has given the nominator written consent for the request.
- (3) If asked by the nominator, the commissioner of the police service must give the nominator a written report about the criminal history of the person.

- (4) The duty imposed on the commissioner of the police service applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) The nominator must destroy a report given to the nominator under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (6) In this section—

*criminal history*, of a person, means the convictions, other than spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this section.

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

## 12 Deputies of members

- (1) The Governor in Council may appoint a person who is not a member to be the deputy of a member.
- (2) The deputy of a member appointed on the nomination of the council must be appointed only on the nomination of the council.
- (3) If a member is absent from a meeting of the corporation, the deputy of the member may attend and act as the member.

## 13 Corporation manager

- (1) The corporation shall recommend to the Minister the appointment of a corporation manager who shall be responsible for the management of the affairs of the corporation subject to and in accordance with the directions of the corporation.

[s 15]

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- (2) The Governor in Council may appoint the corporation manager.
- (3) The terms and conditions attaching to the appointment of the corporation manager shall be as approved by the Governor in Council from time to time.

## **Part 3                      The area of the corporation**

### **Division 1                      Corporation area**

#### **15                      Corporation area**

The corporation shall exercise its objects, functions, powers and duties in respect of the area described in schedule 2.

#### **16                      Variation of corporation area**

- (1) Where the corporation is of the opinion that, in order to better fulfil its objects, functions, powers and duties a variation to the corporation area is necessary or desirable, it may, after consultation with the council, recommend a variation in the corporation area to the Minister.
- (2) The Minister may, with such amendment as the Minister considers necessary or desirable, recommend a variation in the corporation area to the Governor in Council who may vary the corporation area under a regulation.
- (3) Where the corporation area is varied by the addition of further land, this Act shall apply to such land as if it were part of the area described in schedule 2.
- (4) If the corporation area is varied by the exclusion of particular land, the provisions of this Act relating to the corporation area stop applying to the land.

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## Division 2                      Road closures, surrenders,    vestings and titling

### 17            Vesting of public lands other than roads

- (1) The Governor in Council may, by gazette notice—
  - (a) if land within the corporation area is within the title of a public agency or is Crown land—vest title in the corporation; and
  - (b) if land within the corporation area is within the control of a public agency—vest title or control in the corporation.
- (2) If title or control is vested in the corporation under this section, the Governor in Council may determine the amount of compensation (if any) that the corporation must pay to the public agency.
- (3) If any land owned in fee simple by the council is vested in the corporation under this section any easement, right, liberty or privilege in relation to that land, save any easement, right, liberty or privilege possessed by the council under the *Metropolitan Water Supply and Sewerage Act 1909* or the *Local Government Act 2009* shall on vesting be extinguished for all purposes and shall not be the subject of any claim for compensation in relation to that extinguishment.
- (4) In this section—

*land* does not include the land owned in fee simple by a rail government entity that, in the opinion of the Governor in Council, is required for the operation of the railways, but includes land above and below that land.

### 18            Riverside parkland

- (1) The land referred to in schedule 5 is divested from the council and vested in the corporation for an estate in fee simple.
- (2) Any easement, right, liberty or privilege in relation to the land (other than an easement, right, liberty or privilege under the

*Metropolitan Water Supply and Sewerage Act 1909* or the *Local Government Act 2009*) is extinguished and compensation is not payable for the extinguishment.

- (3) The Governor in Council may, by gazette notice, vest for an estate in fee simple in the corporation and the council, as tenants in common in the shares of 60% and 40% respectively, the part of the parkland precinct held by the corporation.
- (4) If particulars of an interest in land in the parkland precinct may be recorded in the freehold land register, the corporation and the council may transfer the interest only if the Minister has consented in writing.
- (5) Subsection (4) does not apply to a short lease within the meaning of the *Land Title Act 1994*.
- (6) In this section—  
*parkland precinct* means the land referred to as ‘Precinct 3—Parkland Precinct’ in the approved development plan.

## 19 Car park land and reserve

- (1) Reserve 3367 is revoked.
- (2) However, a lease over a part of the reserve or a licence to occupy a part of a building on the reserve in force immediately before the revocation of the reserve under subsection (1) continues in force over the part after the revocation in accordance with its terms.
- (3) The parts of Russell Street, Stanley Street and Grey Street, South Brisbane in lots 55 and 56 on plan SP 102555 set out in schedule 9 are permanently closed.
- (4) A deed of grant in the name of the corporation may be issued by the Governor in Council for lots 55 and 56 on plan SP 102555 and lot 388 on plan SL 12890.
- (5) On the recording of the particulars of lot 388 on RP 896477 in the freehold land register, it is declared that the lot is dedicated for public use (cultural purposes) and becomes a reserve.

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- (6) The Arts Office is appointed as trustee of the reserve.
- (7) In this section—

***lease*** means any of the following leases mentioned in the *Arts Legislation Amendment Act 1997*, section 75 originally granted by the Queensland Cultural Centre—

- (a) a lease to the Library Board of Queensland for a term of 75 years;
- (b) a lease to the Queensland Art Gallery Board of Trustees for a term of 75 years;
- (c) a lease to the Queensland Museum Board of Trustees for a term of 75 years;
- (d) a lease to the Queensland Performing Arts Trust for a term of 75 years;
- (e) a lease to the Royal Queensland Theatre Company for a term of 30 years.

***licence*** means any of the following licences mentioned in the *Arts Legislation Amendment Act 1997*, section 79—

- (a) the licence agreement expiring on 30 June 1998 entered into between Berlasco Pty Ltd (ACN 010 041 040) and Queensland Performing Arts Trust;
- (b) a licence agreement entered into for a term of 5 years between Advanced Food Systems International Ltd (ACN 004 292 951) and—
  - (i) Library Board of Queensland; or
  - (ii) Queensland Art Gallery Board of Trustees; or
  - (iii) Queensland Museum Board of Trustees.

***the Arts Office*** means the government entity charged with advising the Minister with responsibility for the arts on matters relating to the arts.

## **20 Readjustment of boundaries**

- (1) Indefeasible titles are created in the name of the corporation for lots 1, 932 and 933 on RP 896477 set out in schedule 10 on the recording of the particulars of the lots in the freehold land register.
- (2) To remove any doubt, it is declared that subsection (1) has effect to transfer lots 1, 932 and 933 on RP 896477 to the corporation.

## **21 Registrar may register instruments etc.**

- (1) The registrar of titles may register all plans and other instruments and issue certificates of title to give effect to sections 19 and 20.
- (2) The registrar of titles may do anything to give effect to sections 19 and 20.

## **22 Recording of vesting of land**

- (1) The registrar of titles or anyone else required or permitted to record particulars necessary to identify interests in land must, on the written request of the corporation, record the particulars of any interest in land vesting in the corporation, or in the corporation and the council, under this Act.
- (2) In any case where a written request is in respect of the vesting of an easement, production of the instrument of title to the land in question is not required when such request is made, and the registrar of titles or other person is authorised to make any necessary entries on the instrument of title when it is next produced to him or her.

## **23 Exemption from fees and charges**

No fee or charge is payable by the corporation, QPAT or the council in relation to—

- (a) the transfer of any land in the corporation area; or

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- (b) the transfer of control of any land in the corporation area; or
  - (c) any change in ownership or control of land because of section 19 or 20;
- to or from the corporation, QPAT or the council.

## **Part 4                      Objects, functions and powers**

### **24      Objects**

The corporation's objects are—

- (a) to promote, facilitate, carry out and control the development, disposal and management of land and other property within the corporation area; and
- (b) to achieve an appropriate balance between the corporation's commercial and non-commercial functions; and
- (c) to ensure the corporation area complements, rather than duplicates, other public use sites in the inner city Brisbane area; and
- (d) to provide for a diverse range of recreational, cultural and educational pursuits for local, regional and international visitors; and
- (e) to accommodate public events and entertainment that benefit the general community; and
- (f) to achieve excellence and innovation in the management of open space and park areas.

### **25      Functions**

- (1) The corporation shall fulfil the following functions—
  - (a) to produce such plan or plans as may be necessary in relation to the corporation area in order to fulfil its objects;

- (b) to promote and undertake the development of land within the corporation area in accordance with the approved development plan;
  - (c) to facilitate and control, with the council, the development of land within the corporation area in accordance with the approved development plan;
  - (d) to efficiently manage, and dispose by lease, of land vested in or under the control of the corporation under the approved development plan so as to secure the maximum prudent financial benefit for the corporation;
  - (e) to efficiently manage and dispose of other property vested in or under the control of the corporation so as to secure the maximum prudent financial benefit for the corporation;
  - (f) to manage on an ongoing basis all land and other property vested in or under the control of the corporation so as to secure the maximum prudent financial benefit for the corporation;
  - (g) to promote, organise and conduct tourist, educational, recreational, entertainment, cultural and commercial activities in the corporation area;
  - (h) to construct, establish, maintain, develop and operate tourist, educational, recreational, entertainment, cultural and commercial facilities within the corporation area;
  - (i) to achieve, by the adoption of best practice principles, excellence and innovation in the management of open space and park areas;
  - (j) to carry out works for the purpose of landscaping the corporation area.
- (2) For the purpose of fulfilling those functions, the corporation may do all supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.

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## 26 Powers in relation to land

- (1) In order to fulfil its objects and functions the corporation may, with the prior approval of the Minister—
  - (a) buy, sell, lease, exchange or otherwise acquire or dispose of land within the corporation area whether vested in it at the commencement of this Act or not; and
  - (b) grant such easements or rights of way in relation to land within the corporation area as it considers necessary; and
  - (c) transfer or surrender to the Crown in right of Queensland any land possessed by it within the corporation area, that land then to be Crown land and dealt with in accordance with the provisions of the *Land Act 1994*.
- (2) The corporation may, with the prior consent of the Minister, grant a perpetual lease over land within the commercial precinct.
- (3) The Minister may vary the area shown hatched on the plan in schedule 15, plan 2 (to the extent the area is land of which the corporation is the registered owner or is entitled to be the registered owner) for the purpose of making a minor boundary adjustment to the commercial precinct.
- (4) The area as varied by the Minister under subsection (3) is taken to be part of the commercial precinct.
- (5) The Minister's approval under subsection (1) is not required for the grant or transfer of—
  - (a) a short lease within the meaning of the *Land Title Act 1994* or an interest the particulars of which may not be recorded in the freehold land register; or
  - (b) any other interest, or class of interest, that the Minister advises the corporation, in writing, is an interest for which the Minister's approval is not required.
- (6) Before entering into a lease of land over a road, a public authority is to consult with the Minister administering the *Land Act 1994*.

(7) In this section—

*commercial precinct* means the parts of each of the following areas of land of which the corporation is the registered owner or is entitled to be the registered owner—

- (a) the area shown hatched on the plan in schedule 15, plan 1;
- (b) the area shown hatched on the plan in schedule 15, plan 2.

*perpetual lease* means a lease for a term of 999 years.

## **27 Agreement with public agencies**

- (1) The corporation may enter into negotiations and arrive at agreements with public agencies in relation to all matters necessary to fulfil the objects and functions of the corporation.
- (2) Without limiting subsection (1), the matters include—
  - (a) the provision and maintenance by public agencies of services to, through, over and under the corporation area; and
  - (b) the management of part of the corporation area by the council.

## **28 Agreements with other persons**

The corporation may enter into negotiations with and arrive at agreements with all persons or bodies who have any interest in or charge over any land or other property within the corporation area.

## **29 Business or undertaking**

In carrying out its objects, functions, powers and duties under this Act, the corporation may, with the approval of the Minister, carry on or conduct any business or undertaking necessary to fulfil such objects, functions, powers and duties.

### **30 Delegation by corporation**

The corporation may delegate the corporation's powers under this Act to any person.

### **31 Committees**

- (1) The corporation may establish committees to help or advise it.
- (2) The corporation may decide—
  - (a) the functions of a committee; and
  - (b) the membership of a committee; and
  - (c) how a committee is to operate.

### **31A Corporation may enter into work performance arrangements**

- (1) The corporation may enter into, and give effect to, a work performance arrangement with—
  - (a) the employing office; or
  - (b) the appropriate authority of another government entity or public agency.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

[s 31B]

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- (4) A person performing work for the corporation under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the corporation; and
  - (b) remains an employee of the employing office, or an employee of the other government entity or public agency whose appropriate authority is a party to the arrangement.
- (5) To remove any doubt, it is declared that the corporation does not have power to employ a person performing work for the corporation under a work performance arrangement entered into under subsection (1).

## **Part 4A                      South Bank Employing Office**

### **Division 1                      Establishment and functions of employing office**

#### **31B      Establishment of employing office**

- (1) The South Bank Employing Office is established.
- (2) The employing office consists of—
  - (a) the executive officer; and
  - (b) the employees of the employing office.
- (3) The employing office is a separate entity from the corporation.

#### **31C      Employing office represents the State**

- (1) The employing office represents the State.
- (2) Without limiting subsection (1), the employing office has the status, privileges and immunities of the State.

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### **31D Functions of employing office**

- (1) The main functions of the employing office are—
  - (a) entering into, for the State, a work performance arrangement with the corporation under which employees of the employing office perform work for the corporation; and
  - (b) employing, for the State, staff to perform work for the corporation under the work performance arrangement; and
  - (c) doing anything incidental to the discharge of the functions mentioned in paragraphs (a) and (b).
- (2) Also, the employing office has any other function conferred on the employing office under this or another Act.
- (3) This section does not limit the employing office's power to enter into and give effect to a work performance arrangement under section 31H with a government entity or public agency other than the corporation.

## **Division 2 Executive officer**

### **31E Appointment of executive officer**

- (1) There is to be an executive officer of the employing office.
- (2) The executive officer is to be appointed by the Governor in Council.
- (3) The executive officer is appointed under this Act and not under the *Public Service Act 2008*.

### **31F Executive officer acting for employing office**

- (1) The employing office acts through the executive officer.
- (2) Anything done by the executive officer in the name of, or for, the employing office is taken to have been done by the employing office.

## **Division 3                      Staff of employing office**

### **31G    Employing office may employ staff**

- (1) The employing office may, for the State, employ staff.
- (2) A person employed under subsection (1) is an *employee of the employing office*.
- (3) The employing office may decide the terms of employment of the employees of the employing office.
- (4) Subsection (3) applies subject to any relevant industrial instrument.
- (5) Employees of the employing office are employed under this Act and not under the *Public Service Act 2008*.

### **31H    Employing office may enter into work performance arrangements**

- (1) The employing office may, for the State, enter into and give effect to a work performance arrangement with—
  - (a) the corporation; or
  - (b) the appropriate authority of another government entity or public agency.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

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- (4) A person performing work for the corporation or other government entity or public agency under a work performance arrangement entered into under subsection (1)—
- (a) is not employed by the corporation or other government entity or public agency; and
  - (b) remains an employee of the employing office.
- (5) To remove any doubt, it is declared that the corporation or another government entity or public agency does not have power to employ a person performing work for the corporation or other government entity or public agency under a work performance arrangement entered into under subsection (1).

## **Division 4            Other provisions**

### **31I    Employing office is statutory body**

- (1) The employing office is a statutory body under—
- (a) the *Financial Accountability Act 2009*; and
  - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) For applying the *Financial Accountability Act 2009* to the employing office as a statutory body—
- (a) the executive officer is taken to be the chairperson of the employing office; and
  - (b) the *Financial Accountability Act 2009* is taken to require the executive officer to consider the annual financial statements and the auditor-general's report as soon as practicable after they are received by the employing office; and
  - (c) the *Financial Accountability Act 2009* is taken to require the executive officer to consider any observations, suggestions or comments given to the executive officer under the *Auditor-General Act 2009* as soon as practicable after the executive officer receives them.



submission on any matter concerning the draft development plan.

- (3) The submission shall be in writing and shall be delivered to or lodged with the corporation manager at the office of the corporation during normal working hours.
- (4) During the period of public inspection of the draft development plan, the corporation—
  - (a) shall make available to the public free of charge a synopsis identifying the principal features of the draft development plan; and
  - (b) may, subject to such terms and conditions including fees as the corporation determines, make available for purchase copies of the draft development plan and any supporting documentation.

### **34 Approved development plan**

- (1) The corporation shall, after consideration of the submissions made to it in relation to the draft development plan, and any other matters it deems appropriate, prepare, after consultation with the council, a report to the Minister on the submissions, which shall include the corporation's consideration of the submissions and any other relevant matters, which shall accompany a revised development plan for the corporation area.
- (2) The report and revised development plan shall be submitted to the Minister who shall, after considering such report and revised development plan, submit such material, together with a recommendation, to the Governor in Council.
- (3) The Governor in Council may—
  - (a) approve the revised development plan without amendment; or
  - (b) approve the revised development plan with amendment; or
  - (c) reject the revised development plan.

- (4) If approved by the Governor in Council, with or without amendment, the revised development plan shall be deemed, on notification in the gazette, to be the approved development plan for the corporation area and all subsequent development of the corporation area shall be in accordance with the approved development plan.
- (5) The approved development plan shall, during normal working hours, be available for inspection by all persons or organisations at the office of the corporation.
- (6) The corporation shall, subject to such fees as it determines, make available for purchase copies of the approved development plan and any supporting documentation.

### **35 Amendment of approved development plan**

- (1) If the corporation, after consultation with the council, is of the opinion that it is necessary or desirable that the approved development plan be amended, it shall submit the proposed amendment to the Minister.
- (2) If the Minister is of the opinion that the proposed amendment is of a minor nature and not contrary to the purposes of the approved development plan, then, upon the Minister's so certifying, the Minister may recommend the amendment to the Governor in Council.
- (3) If the amendment recommended under subsection (2) is approved by the Governor in Council, it shall be deemed to form part of and amend the approved development plan from the date of notification in the gazette.
- (4) If the Minister is of the opinion that the proposed amendment is not of a minor nature, then, if the Minister approves the proposed amendment, the corporation shall, by advertisement published in a newspaper circulating in the City of Brisbane, give public notice that the proposed amendment to the approved development plan is available for public inspection during normal working hours at the office of the corporation for a period of 14 days from a date specified in the notice.

- (5) During the period of inspection under subsection (4), any person or organisation may make a submission to the corporation on any matter concerning the proposed amendment.
- (6) The submission shall be in writing and shall be delivered to or lodged with the corporation manager at the office of the corporation during normal working hours.
- (7) During the period of public inspection of the proposed amendment of the approved development plan, the corporation—
  - (a) shall make available to the public free of charge a synopsis identifying the principal feature of the proposed amendment; and
  - (b) may, subject to such terms and conditions, including fees, as the corporation determines, make available for purchase copies of the proposed amendment and any supporting documentation.
- (8) The corporation shall, after consideration of the submissions made to it in relation to the proposed amendment and consultation with the council, prepare a report, which shall include the corporation's consideration of the submissions, to the Minister, who after considering the report, may submit the report and proposed amendments, together with the Minister's recommendation, to the Governor in Council.
- (9) The Governor in Council may—
  - (a) approve the proposed amendment to the approved development plan without amendment; or
  - (b) approve the proposed amendment to the approved development plan with amendment; or
  - (c) reject the proposed amendment to the approved development plan.
- (10) If approved by the Governor in Council with or without amendment, the approved amendment shall become, on notification in the gazette, part of the approved development plan for the corporation area.

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- (11) Where the approved development plan is so amended any right, privilege, liability or obligation arising under the prior approved development plan shall not be affected by such amendment.
- (12) If the Minister is of the opinion that the proposed amendment is not of a minor nature but the Minister does not approve the proposed amendment, the Minister shall return the proposed amendment to the corporation together with the Minister's views on the proposed amendment.

### **36 Implementation of approved development plan**

- (1) The corporation shall, in accordance with the approved development plan, plan, encourage, facilitate, carry out and regulate development within the corporation area in order that the development, as proposed in the approved development plan, be completed as soon as is reasonably practicable having regard to the objects and functions of the corporation.
- (2) The corporation is to submit a development program for the approval of the Minister.
- (3) The program is—
  - (a) to be in accordance with the approved development plan; and
  - (b) to set down the proposed stages and the time for each stage.

### **37 Augmentation of water supply and sewerage**

- (1) The council shall, as soon as practical after publication of the approved development plan, inform the corporation whether any development in accordance with that plan will necessitate the augmentation of any water supply or sewerage works (including head works) outside the corporation area and the estimated costs (if any) of such augmentation.
- (2) Where in accordance with subsection (1) the council notifies the corporation that augmentation is necessary, the corporation and the council shall enter into negotiations for an

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agreement to provide that the corporation shall meet the actual costs (if any) incurred by the council in carrying out the augmentation of any works.

(3) For the purposes of this section—

*augmentation*, in relation to water supply or sewerage works, means those works, necessitated by the increased loading imposed by development in accordance with the approved development plan.

### 38 Continuance of railway operations

(1) The approved development plan must provide for the following—

(a) the as of right use of land owned by a rail government entity within the corporation area, by a railway manager or railway operator for conducting railway operations for the carriage of passengers or goods on the land;

(b) reasonable access to land used for conducting railway operations by—

(i) the railway manager or railway operator conducting the operations; or

(ii) employees of the railway manager or railway operator conducting the operations; or

(iii) employees of the Authority under the *Queensland Rail Transit Authority Act 2013*; or

(iv) members of the public wishing to use the railway to which the operations relate.

(2) In this section—

*railway manager*, for railway operations conducted on land owned by a rail government entity, means a railway manager (within the meaning of the *Transport Infrastructure Act 1994*) for a railway on the land, who has an agreement with the rail government entity to access the land for conducting railway operations relating to the railway.

***railway operator***, for railway operations conducted on land owned by a rail government entity, means a railway operator (within the meaning of the *Transport Infrastructure Act 1994*) for a railway on the land, who has an agreement with the railway manager for the railway operations to use the railway for railway operations.

### **39 Completion of development**

- (1) When the Governor in Council is satisfied that development within the corporation area is substantially complete, the Governor in Council may issue instructions to the corporation that the Governor in Council considers will assist in completion of development.
- (2) The corporation must promptly comply with the instructions.
- (3) When the Governor in Council is satisfied that development is substantially complete and that the corporation has complied with any instructions given to it, the Governor in Council may, under a regulation, specify the date of completion of development.
- (4) After the development completion date—
  - (a) the approved development plan does not apply to the corporation area; and
  - (b) the provisions of this Act referred to in schedule 6 no longer have any effect and are taken to be repealed.

## **Part 6 Roads, reconfiguration and stratum lots**

### **40 Closure of roads**

- (1) Despite the provisions of the *Land Act 1994*, the corporation may recommend to the Minister the permanent closure of any road in the corporation area provided that the corporation has within a period of at least 28 days before such recommendation—

- (a) published at least once in a newspaper circulating in the City of Brisbane a notice detailing the proposed closure; and
  - (b) given or caused to be given by means of the post a notice detailing the proposed closure to the registered owner of land held in fee simple and the lessee of any land held under the *Land Act 1994* or any other Act that adjoins the road the subject of the proposed closure; and
  - (c) exhibited or caused to be exhibited in a conspicuous position at the office of the council a notice detailing the proposed closure.
- (2) A notice shall be deemed to have been given by post if it is forwarded to—
  - (a) the usual or last known place of abode or business; or
  - (b) the address for service last notified to the council; or
  - (c) the registered office under or for the purpose of any Act which requires the having of a registered office.
- (3) The Minister shall consider the recommendation and a report on any submissions which may be received by the corporation in relation to the proposed closure of the road and may recommend to the Governor in Council the permanent closure of the road.
- (4) On notification in the gazette of the approval of the Governor in Council to the permanent closure of the road and on application by the corporation to the Minister administering the *Land Act 1994*, a deed of grant must be issued in the name of the corporation for the land consisting of the road and the registrar of titles must register the deed of grant.
- (5) The corporation shall pay to the Crown, by way of compensation for the permanent closure of any road, a sum of money (if any) determined by the Governor in Council by gazette notice.

## **41 Subdivision and amalgamation of land and opening of roads**

(1) In this section—

*access* means practical means of entry and exit for persons and, where appropriate, vehicles, from a road that abuts the area or South Bank lot concerned or by means of an easement.

*land* means land—

- (a) under the *Land Title Act 1994*; and
- (b) within the corporation area.

*road* means (for the purposes of the definition *access* only)—

- (a) a street or road dedicated to public use; and
- (b) a bridge or ferry and the approaches to them; and
- (c) an access way that permits the movement of persons and, where appropriate, vehicles.

(2) In relation to South Bank public land only, a reference in this section to a reconfiguration of land (whether described as a subdivision, amalgamation or something else) includes a reference to a reconfiguration of land and the opening of roads permitted under sections 42 and 47.

(3) Land may be reconfigured and roads may be opened under this Act.

(4) The registered owner of land may lodge with the registrar of titles a plan for the subdivision or amalgamation of land.

(5) The plan must—

- (a) show, distinctly delineated, all roads dedicated to public use; and
- (b) show each of the parcels into which the land is divided by the plan, with each parcel—
  - (i) distinctly delineated; and
  - (ii) marked with a separate number or symbol; and
- (c) be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and

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- (d) be endorsed by the appropriate authority; and
  - (e) otherwise comply with the requirements of the *Land Title Act 1994*, other than section 50(1)(g) and (h) of that Act.
- (6) If the registrar of titles is satisfied that the plan is correct, the registrar of titles is to record the plan in the register kept under the *Land Title Act 1994*.
  - (7) After the plan is recorded, the land must not be dealt with under that Act otherwise than in accordance with the plan.
  - (8) Subject to subsection (9), the registrar of titles is to record in the register particulars of any dedication to public use of land under this section.
  - (9) Any dedication of land must be of all of the estate or interest of the owner in the land.
  - (10) Land dedicated to public use vests in the Crown.
  - (11) Land may be subdivided only if—
    - (a) each proposed South Bank lot has access or the appropriate authority has waived the requirement for access; and
    - (b) development approval for the subdivision has been given.
  - (12) Land may be amalgamated, and a road may be opened, only with the approval of the appropriate authority.
  - (13) When giving its approval to a dealing under this section, the appropriate authority must endorse the approval on the plan.

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

- (1) Despite the *Land Title Act 1994* or any other Act—
  - (a) the following may be done under this section only if development approval for the subdivision or adjustment has been given—
    - (i) the subdivision of South Bank public land by stratum plan;

- (ii) the subdivision of a stratum lot by stratum plan of subdivision;
    - (iii) a minor adjustment to the boundary of a stratum lot by boundary adjustment plan; and
  - (b) South Bank public land may be opened as a road by stratum plan only if the appropriate authority approves; and
  - (c) stratum lots may be amalgamated by stratum plan of amalgamation.
- (2) The *Land Title Act 1994* applies to stratum lots in the same way as it applies to other land except to the extent that it is inconsistent with this Act or incapable of applying.
  - (3) An adjustment that, in the opinion of the appropriate authority, is a minor adjustment may be made to the boundaries of stratum lots by the registration of a boundary adjustment plan.
  - (4) A boundary adjustment plan registered under this section operates, without any further assurance, to vest the land in accordance with the adjusted boundaries.
  - (5) A registered mortgage, lease or other registered estate in a stratum lot adjusted by the registration of a boundary adjustment plan is not affected by the registration of that plan and is taken to relate to the adjusted stratum lot.
  - (6) A stratum lot may be subdivided into 2 or more stratum lots by the registration of a stratum plan of subdivision.
  - (7) The registrar of titles may register a stratum plan of subdivision only if the stratum plan of subdivision is accompanied by a schedule showing, as a whole number for each proposed stratum lot, the proposed value proportion for each stratum lot for the purposes of section 101 and schedule 3, clause 2(1)(p).
  - (8) When registering a stratum plan of subdivision, the registrar of titles may make any recordings on and amendments to the management statement to which the stratum plan relates, that

the registrar of titles considers appropriate to give effect to the stratum plan.

- (9) Subject to subsection (12), 2 or more, or all, stratum lots in a stratum plan may be amalgamated by the registration of a stratum plan of amalgamation.
- (10) When registering a stratum plan of amalgamation, the registrar of titles may make any recordings on and amendments to the management statement to which the stratum plan relates that the registrar of titles considers appropriate to give effect to the stratum plan.
- (11) For the purposes of section 101 and schedule 3, clause 2(1)(p), the relevant value proportion for the stratum lot created by the amalgamation of 2 or more stratum lots is the sum of the value proportions of the stratum lots.
- (12) A stratum lot that has been subdivided by a leasehold building units plan may be amalgamated with another stratum lot only if the leasehold building units plan has been terminated under schedule 4.
- (13) On registration of a stratum plan of amalgamation that amalgamates all of the stratum lots in a stratum plan—
  - (a) the stratum plan; and
  - (b) the management statement that relates to the stratum plan;are extinguished.
- (14) A request to terminate a management statement must comply with the requirements prescribed by regulation.
- (15) 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 freehold land register as the registrar of titles considers appropriate to

give effect to the termination of the management statement.

- (16) Stratum plans, boundary adjustment plans, stratum plans of subdivision and stratum plans of amalgamation must comply with the requirements prescribed by regulation.
- (17) Despite the *Land Title Act 1994*, the *Surveyors Act 2003* or any other Act, if a stratum plan, a boundary adjustment plan, a stratum plan of subdivision or a stratum plan of amalgamation has been endorsed by the appropriate authority, the registrar of titles may—
  - (a) register the relevant plan under the *Land Title Act 1994*; and
  - (b) create a separate indefeasible title for each stratum lot created by the registration of the relevant plan by recording a separate set of particulars for each lot in the freehold land register; and
  - (c) make such other recordings in the freehold land register as the registrar of titles considers appropriate to give effect to the registration of the relevant plan.
- (18) On registration of a stratum plan, a boundary adjustment plan, a stratum plan of subdivision or a stratum plan of amalgamation, the plan is, for the purposes of the *Land Title Act 1994*, taken to be recorded in the freehold land register.

#### **43 Support and shelter for certain stratum lots**

- (1) Without affecting the implied easements appurtenant to and affecting the lots in a leasehold building units plan created under schedule 4, section 15, there is implied in a stratum plan—
  - (a) as appurtenant to the stratum lots comprised in the stratum plan on which a building is situated, an easement for their subjacent and lateral support by other parts of the building that are capable of affording support; and

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- (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 appurtenant 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 those stratum lots.
- (2) An easement for support and shelter created by subsection (1)—
- (a) entitles the registered owner of the dominant tenement to enter on the servient tenement to replace, renew or restore any support or shelter; and
  - (b) subsists until the stratum plan is cancelled or the easement is otherwise surrendered.

#### **44 Services for certain stratum lots**

- (1) In this section—
- drainage* includes the product of rain, storm, soakage, a spring or seepage.
- service* means—
- (a) a service in relation to water, sewage, drainage, gas, electricity, oil, garbage or conditioned air; or
  - (b) a service in relation to television, telephone or another means of telecommunication; or
  - (c) any other prescribed service.
- (2) Without affecting the easements appurtenant to and affecting lots in a leasehold building units plan created under schedule 4, sections 17 and 17A, unless an easement is created for a particular service or services, there is implied in a stratum plan—

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- (a) as appurtenant 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 or services through or by means of pipes, poles, wires, cables or ducts to be laid down or erected that are for the time being existing in or over the building to the extent to which the service or services are capable of being used in the enjoyment of the stratum lots; and
  - (b) as affecting the stratum lots, an easement for the passage or supply of the service or services through or by means of pipes, poles, wires, cables or ducts to be laid down or erected that are for the time being existing in or over the building to the extent to which the services are capable of being used in the enjoyment of the stratum lots.
- (3) Easements conferred by this section must not be exercised unreasonably by an owner of a stratum lot in such a way as to prevent the owner of another stratum lot from reasonably enjoying the use and occupation of the other owner's stratum lot.

#### **45 Ancillary rights for implied easements**

All ancillary rights and obligations reasonably necessary to make an easement implied by section 43 or 44 effective are conferred by this section.

#### **46 Management statement**

- (1) Subject to subsection (2), the registrar of titles may register a stratum plan only if the plan is accompanied by a management statement that—
- (a) if the stratum plan subdivides land including 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 subsection (3).

- (2) 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.
- (3) A management statement must comply with schedule 3.
- (4) The appropriate authority may, in relation to a particular management statement, waive compliance with an item in schedule 3, clause 2(1) if it considers compliance with the item is unnecessary, unreasonable or impracticable for the regulation of the building and its site the subject of the management statement.
- (5) If the appropriate authority waives compliance with an item in schedule 3, clause 2(1), it must endorse that fact on the management statement.
- (6) If a management statement bears the approval of the appropriate 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.
- (7) If a stratum lot in the stratum plan referred to in subsection (6) is subsequently subdivided by a leasehold building units plan, the registrar of titles is to record the management statement, and any amendments to the management statement, on the leasehold building units plan.
- (8) The management statement is binding on—
  - (a) the body corporate of the leasehold building units plan for the part of the building concerned; and
  - (b) any lessee, sublessee, occupier or mortgagee of a lot in the leasehold building units plan for the part of the building concerned; and
  - (c) any lessee, sublessee, occupier or mortgagee of any part of the building or its site that does not form part of a stratum parcel.
- (9) Subsection (8) 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 executed the management statement under seal.
- (10) Subject to subsection (11), a management statement may be amended by an ordinary resolution passed by the building management committee for the management statement.
- (11) The by-laws and other particulars in a management statement relating to a matter in schedule 3, clause 2(1)(p) may only be amended—
  - (a) in the way provided in section 42(8) or (10); or
  - (b) by unanimous resolution passed by the building management committee for the management statement.
- (12) A body corporate of a leasehold building units plan may support a resolution to amend a management statement only if—
  - (a) if the amendment is an amendment referred to in subsection (11)—the body corporate has passed a unanimous resolution in general meeting to support the amendment; and
  - (b) in any other case—the body corporate has passed an ordinary resolution in general meeting to support the amendment.
- (13) An amendment of a management statement must comply with schedule 3.
- (14) If an amendment of a management statement bears the approval of the appropriate 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 leasehold building units plan—on the leasehold building units plan.

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- (15) An amendment of a management statement has no effect unless the amendment is lodged with the registrar of titles within 2 months after the passing of the resolution making the amendment.
  - (16) A by-law in a management statement may restrict use of any part of a building or its site to—
    - (a) the lessee or sublessee of a lot in a leasehold building units plan; or
    - (b) a body corporate in a leasehold building units plan; or
    - (c) the 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.
  - (17) A management statement terminates and ceases to bind the persons referred to in subsection (8) when the registrar of titles records its termination under section 42(15).
  - (18) The registrar of titles must provide to the valuer-general and the council—
    - (a) a copy of a management statement within 28 days after the registration of a stratum plan which 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.
  - (19) 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 submitted for final resolution to—
    - (a) a single arbitrator agreed on between the persons in dispute; or
    - (b) if the parties do not agree within 14 days of receipt of a written notice given by one person to the other person or persons requiring the appointment of an arbitrator—an arbitrator appointed by the appropriate authority.
  - (20) Every reference under subsection (19) is an arbitration under the *Commercial Arbitration Act 2013*.

- (21) If a management statement or an amendment of a management statement bears the approval of the appropriate authority, the approval is evidence to the registrar of titles that the management statement or the amendment of the management statement complies with this section.

#### **47 Subdivision of land by a leasehold building units plan**

- (1) Despite the *Land Title Act 1994* or any other Act, South Bank public land may be subdivided by a leasehold building units plan only if the appropriate authority approves.
- (2) The modified Building Units and Group Titles Act applies to land that is subdivided under this section.

*Note—*

The modified Building Units and Group Titles Act is set out in schedule 4. Part 9A also applies to land that is subdivided under this section.

#### **48 Creation of easements**

- (1) In this section—
- instrument* means an instrument in the form approved by regulation.
- (2) Despite the *Land Title Act 1994* or any other Act, the registrar of titles may, for the purposes of this Act, register a plan relating to South Bank public land that—
- (a) clearly indicates the nature and location of the easements intended to be created on registration of the plan; and
- (b) is accompanied by an instrument executed by the registered owner of the land to be burdened by the easements.
- (3) The instrument must—
- (a) specify the nature of the easements and any terms and conditions attaching to them; and

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- (b) except for easements mentioned in subsection (5)—  
specify the land to be benefited, and the land to be  
burdened, by the easements.
- (4) A lessee of land from a public authority may not create  
easements by way of a plan and instrument under  
subsection (2).
- (5) Easements may be created under subsection (2) in favour of—
- (a) the Crown or a public authority to enable the supply of  
services to the corporation area; and
- (b) a public authority to enable the public to use and enjoy  
land in the corporation area;
- despite the easements not being annexed to or used and  
enjoyed with any other land.
- (6) Easements under this section may be limited wholly or partly  
in height, depth or both.
- (7) On registration under this section of a plan and instrument, the  
proposed easements shown on the plan are created, and  
without any further assurance and by virtue of the registration,  
are vested in the person entitled to the benefit of the easement.
- (8) For the purposes of this section, the site of easements—
- (a) intended to be created in relation to existing tunnels,  
pipes, conduits, wires or other similar objects that are  
underground, or that are within or beneath an existing  
building, may be indicated on a plan by defining the  
position of the easements; and
- (b) may be indicated on the plan as being the whole or part  
of a lot.
- (9) The instrument under subsection (2) may also nominate the  
persons (if any) whose consent to a surrender of an easement  
is required.
- (10) Subsection (9) does not affect the requirement for the  
proprietor of the land benefited by an easement to join in a  
surrender of the easement.
- (11) On registration of a plan under this section—

- (a) an easement created by the registration has effect according to the terms and conditions specified in the instrument as if the instrument were a deed under seal; and
  - (b) the nomination in the instrument of a person (if any) whose consent to a surrender of the easement is required, operates to require the consent of the person to a surrender of the easement.
- (12) Despite the *Land Title Act 1994*, any other Act, or any rule of law or equity to the contrary—
  - (a) an easement may be created under this section; and
  - (b) 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.
- (13) In creating an indefeasible title for land benefited or burdened by an easement created under this section, the registrar of titles must record the easement against the indefeasible title in the way the registrar of titles considers appropriate.
- (14) An easement created 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.
- (15) A plan proposing to establish an access easement to a road (as defined in section 41(1)) must be approved by the appropriate authority.

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## Part 7 Development and uses

### Division 1 Interpretation

#### 49 Definitions for pt 7

In this part—

*application* means an application for a development approval.

*approved form* means a form approved for use for this part by the council under section 80.

*currency period* see section 66(2) or (3).

*decision notice* see section 61.

*information request* see section 58.

*lawful use* see section 50(1).

*owner*, of land, means—

- (a) subject to paragraphs (b) and (c), the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for it if it were let to a tenant at a rent; or
- (b) if the land is common property in a leasehold building units plan, the body corporate; or
- (c) if the land is a lot in a leasehold building units plan, the lessee of the lot.

*use* see section 50(2).

#### 50 Meaning of *lawful use* and *use*

- (1) A *lawful use* of premises within the corporation area includes a use that is a natural and ordinary consequence of making a material change of use of the premises if the material change of use, including a change that happened before the commencement of this section, was made in accordance with this Act.

- (2) *Use*, of premises, includes any ancillary use of the premises.

## **Division 2                    Existing uses and rights protected**

### **51            Lawful uses of premises protected**

- (1) Subsection (2) applies if immediately before the commencement of the approved development plan or an amendment of the approved development plan the use of premises was a lawful use of the premises.
- (2) Neither the development plan nor the amendment can—
- (a) stop the use from continuing; or
  - (b) further regulate the use; or
  - (c) require the use to be changed.

### **52            Lawfully constructed buildings and works protected**

To the extent a building or other work has been lawfully constructed or effected, neither the approved development plan nor an amendment of the approved development plan can require the building or work to be altered or removed.

### **53            Amendment of approved development plan can not affect existing development approvals**

- (1) This section applies if—
- (a) a development approval exists for premises; and
  - (b) after the approval is given, the approved development plan is amended.
- (2) To the extent the approval has not lapsed, the amendment of the approved development plan can not stop or further regulate the development, or otherwise affect the approval.

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## Division 3                      Development approvals

### 54            **Development approval authorises assessable development**

A development approval authorises assessable development to occur—

- (a) to the extent stated in the approval; and
- (b) subject to the conditions in the approval.

### 55            **Applying for a development approval**

- (1) Each application must be made to the council.
- (2) Each application must be made in the approved form.
- (3) Each application must be accompanied by the fee decided by the council.
- (4) The fee must not be more than the actual cost of considering and processing the application.
- (5) An application complying with subsections (1), (2) and (3) is a *properly made application*.
- (6) The council may refuse to receive an application that is not a properly made application.
- (7) If the council receives, and after consideration accepts, an application that is not a properly made application, the application is taken to be a properly made application.
- (8) Subsection (7) does not apply to an application unless the application contains the written consent of the owner of any land to which the application applies.

### 56            **Changing an application**

Before an application is decided, the applicant may change the application by giving the council written notice of the change.

## **57 Withdrawing an application**

- (1) An application may be withdrawn by the applicant, by written notice given to the council, at any time before the application is decided.
- (2) The council may refund all or part of any fee paid for the application.

## **58 Information requests to applicant**

The council may ask the applicant, by written request (an *information request*), to give further information needed to assess the application.

## **59 Applicant responds to any information request**

- (1) If the applicant receives an information request from the council, the applicant must respond by giving the council all of the information requested within the reasonable time requested by the council.
- (2) If the applicant does not provide the information within the reasonable time requested by the council, the council may refuse the application.

## **60 Deciding the application generally**

- (1) The council must—
  - (a) approve all or part of the application; or
  - (b) approve all or part of the application subject to conditions decided by the council; or
  - (c) refuse the application.
- (2) Without limiting subsection (1)(b), the council may impose conditions about infrastructure and the payment of contributions for infrastructure in the corporation area.
- (3) In this section—

*infrastructure* includes the extent and location of proposed infrastructure, having regard to existing infrastructure networks, their capacities and thresholds for augmentation.

## **61 Decision notice**

- (1) The council must give written notice of the decision in the approved form (the *decision notice*) to the applicant.
- (2) The decision notice must be given within 5 business days after the day the decision is made and must state the following—
  - (a) the day the decision was made;
  - (b) whether the application is approved, approved subject to conditions or refused;
  - (c) if the application is approved subject to conditions, the conditions;
  - (d) if the application is refused, the reasons for refusal.
- (3) When the council gives a decision notice under subsection (1), the council must also give a copy of any plans and specifications approved by the council in relation to the decision notice.

## **62 Conditions must be relevant or reasonable**

A condition imposed under section 60(1)(b) must—

- (a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or
- (b) be reasonably required in relation to the development or use of premises as a consequence of the development.

## **63 Particular approvals to be recorded on planning scheme**

- (1) If—
  - (a) development approval is given by the council; and

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(b) the council is satisfied the development approval is inconsistent with the council's planning scheme;

the council must note the development approval on the planning scheme.

(2) To remove any doubt, it is declared that—

(a) the note on the planning scheme is not an amendment of the planning scheme; and

(b) a contravention of subsection (1) does not affect the validity of the development approval.

#### **64 When development approval takes effect**

If the application is approved, or approved subject to conditions, the decision notice is taken to be the development approval and has effect from the time the decision notice is given.

#### **65 When development may start**

(1) Development may start when development approval for the development takes effect.

(2) Subsection (1) applies subject to any condition applying under section 61(2)(c) to a development approval for the development.

#### **66 When development approval lapses**

(1) The development approval for the application lapses at the end of the currency period for the development approval unless—

(a) for development that is a material change of use—the change of use happens before the end of the currency period; or

(b) for development that is a reconfiguration of a South Bank lot—the plan for the reconfiguration of the lot is

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- given to the council for its approval before the end of the currency period; or
- (c) for development not mentioned in paragraph (a) or (b)—development under the development approval substantially starts before the end of the currency period.
- (2) To the extent the development approval is for development other than a material change of use, the *currency period* is—
- (a) the 1 year starting the day the approval takes effect; or
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
- (3) To the extent the development approval is for development that is a material change of use, the *currency period* is—
- (a) the 2 years starting the day the approval takes effect; or
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.

## **67 Request to extend currency period**

- (1) If, before the development approval lapses, a person having an interest in the land to which the development approval relates wants to extend the currency period, the person may, by written notice, ask the council to extend the currency period.
- (2) If the council has an approved form for the request, the request must be in the approved form.
- (3) The request must—
- (a) be made before the currency period ends; and
- (b) be accompanied by the fee for the request decided by the council.
- (4) The fee must not be more than the actual cost of considering and processing the request.

## **68 Deciding request to extend currency period**

- (1) The council must approve or refuse the extension within 30 business days after receiving the request.
- (2) The council and the person making the request may agree to extend the period within which the council must decide the request.
- (3) Despite section 66, the development approval does not lapse until the council decides the request.
- (4) After deciding the request, the council must give written notice of the decision to the person making the request.

## **69 Development approval attaches to land**

- (1) The development approval attaches to the land, the subject of the application, and binds the owner of the land, the owner's successors in title and any occupier of the land.
- (2) To remove any doubt, it is declared that subsection (1) applies even if later development (including reconfiguring a South Bank lot) is approved for the land (or the land as reconfigured).

## **70 Request to change or cancel development approval**

- (1) This section applies if a person having an interest in the land to which the development approval relates wants to change or cancel a development approval.
- (2) The person may, by written notice to the council, ask the council to change or cancel the development approval.
- (3) If the council has an approved form for the request, the request must be in the approved form.
- (4) The request must be accompanied by the fee for the request decided by the council.
- (5) The fee must not be more than the actual cost of considering and processing the request.

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**71 Deciding request to change or cancel development approvals**

- (1) The council must decide the request within 20 business days after receiving the request.
- (2) The council and the person may agree to extend the period within which the council must decide the request.
- (3) To the extent relevant, the council must assess and decide the request having regard to—
  - (a) the matters the council would have regard to if the request were a development application; and
  - (b) the interests of other persons whose interests in the land may be affected by the application.
- (4) The council must give the person written notice of the decision.
- (5) The changed development approval or cancellation takes effect from the day the notice is given to the person.

**Division 4 South Bank development offences**

**72 Application of this division to the corporation**

This division does not bind the corporation.

**73 Carrying out assessable development without development approval**

A person must not start assessable development without a development approval for the development.

Maximum penalty—1,665 penalty units.

**74 Compliance with development approval**

A person must not contravene a development approval, including any condition in the approval.

Maximum penalty—1,665 penalty units.

**75 Offence about use of premises**

A person must not use premises in the corporation area if the use is not a lawful use.

Maximum penalty—1,665 penalty units.

**76 Development or use carried out in emergency**

Sections 73, 74 and 75 do not apply to a person if—

- (a) the person starts development or a use because of an emergency endangering—
  - (i) the life or health of a person; or
  - (ii) the structural safety of a building; and
- (b) the person gives written notice of the development or use to the corporation or council as soon as practicable after starting the development or use.

**Division 5 Relationship with the Planning Act and Planning and Environment Court Act 2016 until the development completion date**

**77 Application of division**

- (1) This division applies to the following applications (each a *relevant application*)—
  - (a) a development application under the Planning Act for which the corporation is a referral agency under that Act;
  - (b) a change application under the Planning Act for which the corporation is a referral agency under that Act.

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- (2) However, this division applies only until the end of the development completion date.
  - (3) In this section—  
*change application* does not include a change application for a minor change to a development approval, as defined in the Planning Act.

## **78 Modified application of the Planning Act—appeals and prohibited development conditions**

- (1) Despite the Planning Act, section 229, the applicant for the relevant application can not appeal against the corporation’s referral agency’s response under the Planning Act for the application.
- (2) The Planning Act, section 66 does not apply to a condition the corporation directs the assessment manager for the relevant application to impose on any development approval given under the Planning Act for the application.

## **78A Modified application of Planning and Environment Court Act 2016—particular declarations**

The *Planning and Environment Court Act 2016*, section 11 does not apply in relation to the relevant application to the extent a declaration is sought about a matter done, to be done or that should have been done, by the corporation in relation to the application.

## **Division 6 Relationship with the Planning Act on development completion date**

### **79 Effect of development completion date**

On the development completion date, all development approvals that have not lapsed under this Act are taken to be development permits under the Planning Act.

## Division 7                      Miscellaneous

### 80      **Approved forms**

The council may approve forms for use under this part.

### 81      **Interim use**

- (1) It is competent, and has always been competent, to use land within the corporation area of which the corporation is the registered proprietor (whether solely or jointly) for a use other than a use to which land was put immediately before the commencement of this Act—
  - (a) before development starts on the relevant land in accordance with the approved development plan; and
  - (b) for a period specified by the corporation and subject to the terms and conditions imposed by the corporation;where that use is authorised by the corporation.
- (2) The corporation must consult with the council before authorising a use under subsection (1) if the use is to happen after the commencement of the *South Bank Corporation Amendment Act 1991*, section 20.

## Part 8                              Conduct on the site

### 82      **Conduct causing public nuisance**

- (1) A person must not, on the site—
  - (a) be drunk or disorderly; or
  - (b) create a disturbance.Maximum penalty—20 penalty units.
- (2) For this part, an offence under subsection (1) is an ***exclusion offence***.

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**83 Power to exclude persons causing public nuisance**

- (1) This section applies if a security officer finds a person committing an exclusion offence.
- (2) The security officer may, by written notice, direct the person to leave the site.
- (3) The security officer may also, by written notice, direct the person not to re-enter the site for 24 hours.
- (4) A person must not contravene a direction given to the person under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (5) A security officer may, by written notice, direct a person to leave the site, and not re-enter the site for a stated period (starting when the direction is given) of not more than 10 days if—
  - (a) the person contravenes a direction given to the person under subsection (2) or (3); or
  - (b) the security officer is of the opinion, on reasonable grounds, that the exclusion of the person from the site is justified because of the person's behaviour.
- (6) A person must not contravene a direction given to the person under subsection (5), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (7) A written notice mentioned in subsection (5) must comply with the QCAT Act, section 157(2).
- (8) For the purposes of the QCAT Act, a decision made by a security officer under subsection (5) is taken to have been made by the relevant entity for the security officer.
- (9) In this section—

*relevant entity*, for a security officer, means the entity that appointed the security officer under section 108.

## **84 Power to hand over certain offenders to the police**

A security officer who finds a person on the site—

- (a) committing an exclusion offence; or
- (b) unlawfully damaging property; or
- (c) contravening an exclusion direction or order;

may take the person immediately to a police officer, using only such force as is reasonable and necessary.

## **85 Power to ask name and address**

(1) This section applies if a security officer finds a person on the site—

- (a) committing an offence against this Act; or
- (b) in circumstances that lead, or has information that leads, the security officer to suspect on reasonable grounds that the person has just committed, or is committing, an offence against this Act.

*Example of paragraph (b)—*

A security officer finds a person on the site, and has information to suspect on reasonable grounds that the person has remained on, or re-entered the site, in contravention of an exclusion order or direction.

- (2) The security officer may ask the person to state the person's name and address.
- (3) When making the request, the security officer must warn the person that it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.
- (4) The security officer may ask the person to give evidence of the correctness of the stated name or address if the security officer suspects, on reasonable grounds, the stated name or address is false.
- (5) A person must comply with a request under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

- (6) A person does not commit an offence against this section if—
  - (a) the person was asked to state the person's name and address by a security officer who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

## **86 Court may exclude person from the site**

- (1) The corporation or council, or a police officer authorised by the corporation or council, may apply to a court for an order excluding a person from the site because of the person's behaviour on the site.
- (2) The application may be made in a proceeding for an exclusion offence, contravening an exclusion direction or order, or at any other time.
- (3) If the application is not made in a proceeding for an offence mentioned in subsection (2), the corporation or council must give notice of the application to the person at least 21 days before the application is heard.
- (4) The notice must set out particulars of the behaviour claimed to have been committed by the person.
- (5) If the court decides to make the order, the court may order that the person not enter the site for a stated period of not more than 1 year.
- (6) A person must not contravene an order made against the person under subsection (5).

Maximum penalty—20 penalty units.

## **87 Certain exclusion directions may be reviewed**

- (1) A person who is given a reviewable exclusion direction may apply, as provided under the QCAT Act, to QCAT to review the reasonableness of the direction.
- (2) However, the application must be made—
  - (a) within 3 days after the person is given the direction; or

- (b) if the direction is for less than 3 days—before the direction ends.
- (3) The principal registrar of QCAT must immediately give the corporation a copy of the application.

## **88 Review does not stay effect of exclusion direction**

The making of an application for the review of a reviewable exclusion direction does not stay the operation of the direction.

## **89 Review may be expedited hearing**

For section 94(1)(b) of the QCAT Act, the review of a reviewable exclusion direction is a matter for which an expedited hearing may be conducted.

## **90 Monetary decision can not be made on review**

QCAT, on the review of a reviewable exclusion direction, can not make a decision requiring a person to pay an amount to someone else.

## **91 Annual report of corporation to include report on part**

- (1) The corporation must, in each annual report, include a report on the exercise of powers under this part.
- (2) Without limiting subsection (1), the report must state—
  - (a) the number of exclusion directions given, including the number given to children; and
  - (b) the number of exclusion directions reviewed, including the number relating to children; and
  - (c) the number of exclusion directions set aside, including the number relating to children; and
  - (d) the number of exclusion orders made, including the number relating to children.

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## Part 9 Financial provisions

### 92 Payment instead of rates

- (1) The corporation shall enter into an agreement with the Brisbane City Council with respect to the payment of moneys instead of the payment of rates in respect of land owned by the corporation.
- (2) Land in respect of which moneys are payable under an agreement made under subsection (1) shall not be rateable land for the purposes of the *City of Brisbane Act 2010* or any other Act, and even though it may be occupied for the time being by a person other than the corporation or an agency of the Crown.
- (3) Despite subsection (2), if land referred to in subsection (1) becomes the subject of a lease from a public authority, the land is taken to be rateable land for the purposes of the *City of Brisbane Act 2010*.
- (4) Nothing in this section requires a public authority to pay rates under the *City of Brisbane Act 2010*.

### 93 Corporation is statutory body under Financial Accountability Act 2009

The corporation is a statutory body under the *Financial Accountability Act 2009*.

### 94 Corporation is statutory body under Statutory Bodies Financial Arrangements Act 1982

- (1) The corporation is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the corporation's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **95 Payment of surplus funds**

The Minister may direct, from time to time, the corporation to pay amounts from accumulated funds to the consolidated fund.

## **96 Financial return**

In seeking to carry out its objects, functions, powers and duties, the corporation shall endeavour to achieve the maximum prudent financial return from such activity.

## **97 Corporation's budget**

- (1) The corporation must develop and adopt a budget for each financial year.
- (2) The budget must be given to the Minister for the Minister's approval within the time the Minister directs.
- (3) The corporation may develop and adopt changes to its approved budget for a financial year.
- (4) Each change must be given to the Minister for the Minister's approval.
- (5) A budget for a financial year, and any change to the approved budget for the financial year, has effect only if it is approved by the Minister.
- (6) The corporation must comply with its budget.
- (7) The corporation's budget for a financial year must, at all times, be consistent with the funds available to it for the year.
- (8) A budget for a financial year must show—
  - (a) estimates of the corporation's receipts and payments for the year; and
  - (b) the purposes for which payments are to be made; and
  - (c) the estimates of the corporation's receipts and payments adopted for the previous year and the actual receipts and payments for that year.

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## Part 9A                      Sale of leasehold building units lots and proposed lots

### Division 1                      Preliminary

#### 97A      Application of pt 9A

- (1) This part applies to—
  - (a) the granting of an option, or the entry into a contract, relating to the sale of a proposed lot or a leasehold building units lot by a seller of the proposed lot or lot; and
  - (b) any contract for the sale of a proposed lot or lot.
- (2) Also, this part applies to the sale of a proposed lot regardless of where the contract for the sale was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.
- (3) Without limiting section 104, if a person is required to comply with this part and another Act providing for the same matter as this part in relation to the sale of leasehold building units lots or proposed lots, this part applies to the exclusion of the other Act.

#### 97B      Definitions for pt 9A

In this part—

*cadastral surveyor* see the *Surveyors Act 2003*, schedule 3.

*disclosure statement* means a disclosure statement given under section 97F.

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;

- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

***leasehold building units lot*** means a lot shown on a registered leasehold building units plan.

***lot*** means a lot, including a leasehold building units lot and a stratum lot, within the corporation area shown on a registered plan.

***original seller*** means any person who, immediately after the registration of a leasehold building units plan subdividing South Bank public land, is—

- (a) the lessee of all lots in the plan; or
- (b) a successor or assignee of the lessee, other than a genuine transferee for value of the lease of a lot or any successor or assignee of the transferee.

***prescribed trust account***, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***proposed leasehold building units lot*** means land within the corporation area that will become a leasehold building units lot on the registration of the plan on which it is shown.

***proposed lot*** means land within the corporation area that will become a lot on the registration of the plan on which it is shown.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

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*real estate agent* means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

*recognised entity* means any of the following—

- (a) a law practice;
- (b) the public trustee;
- (c) a real estate agent.

*registered*, in relation to a plan, means registered by the registrar of titles as provided by this Act.

*seller*, of a leasehold building units lot or a proposed leasehold building units lot, includes an original seller of the lot.

### **97C References to disclosure statement**

(1) In this part, a reference to a disclosure statement for a leasehold building units lot or a proposed lot includes a reference to the prescribed documents accompanying the statement for the leasehold building units lot or the proposed lot.

(2) In this section—

*prescribed documents*, accompanying a disclosure statement, means the documents mentioned in section 97F(2)(b) or (c).

### **97D References to things done by or in relation to buyer or seller**

(1) This section applies in relation to a provision in this part that refers to—

- (a) a thing required or permitted to be done by or in relation to a buyer or seller of a leasehold building units lot or a proposed lot; or
- (b) a thing having been done by or in relation to a buyer or seller of a leasehold building units lot or a proposed lot.

[s 97E]

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- (2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—
  - (a) personally; or
  - (b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

## **Division 2                      Statements about leasehold    building units lots and proposed    lots**

### **97E      Application of div 2 if option granted for proposed lot**

- (1) Section 97F, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—
  - (a) section 97F(1) requires the giving of the disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of termination under section 97F relating to the disclosure statement applies in relation to—
    - (i) the option; and
    - (ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.
- (3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 97F(1) does not require the giving of a disclosure statement in relation to the contract for the sale.

- (4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 97F before entering into the contract for the sale.
- (5) In this section—

*buyer* means the person who is granted an option to purchase, or who grants an option to sell, the proposed lot.

*seller* means the person who grants an option to purchase, or who is granted an option to sell, the proposed lot.

### **97F Information to be given by seller to buyer**

- (1) Before a seller enters into a contract with another person (the *buyer*) for the sale to the buyer of a leasehold building units lot or a proposed lot, the seller must give the buyer a disclosure statement.
- (2) The disclosure statement must—
  - (a) identify the leasehold building units lot or the proposed lot; and
  - (b) if the contract is for the sale of a proposed leasehold building units lot by an original seller—be accompanied by a disclosure plan, complying with section 97G, for the proposed lot; and
  - (c) if the contract is for the sale of a leasehold building units lot or a proposed leasehold building units lot by an original seller—include or be accompanied by the matters mentioned in section 97H; and
  - (d) if the contract is for the sale of any proposed lot by a seller—state the date by which the seller must settle the contract for the sale of the lot as provided under section 97J.
- (3) The disclosure statement must be signed by the seller.
- (4) The disclosure statement must be substantially complete.

[s 97G]

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- (5) If the contract has not already been settled, the buyer may terminate the contract if the seller has not complied with subsection (1).
- (6) The seller does not fail to comply with subsection (1) merely because the disclosure statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

### **97G Disclosure plan requirements**

- (1) A disclosure plan may comprise 1 or more documents that contain the relevant lot particulars for a proposed leasehold building units lot.
- (2) A disclosure plan must be prepared by a cadastral surveyor.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

- (3) In this section—

***relevant lot particulars***, for a proposed leasehold building units lot, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;
- (d) the floor level in the building in which the lot is proposed to be located;
- (e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;
- (f) identification of the proposed orientation of the lot by reference to north.

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## 97H Matters to be included in disclosure statement

- (1) A disclosure statement must—
  - (a) include or be accompanied by particulars of—
    - (i) for the sale of a leasehold building units lot—the lot entitlement of each leasehold building units lot on the leasehold building units plan on which the lot is shown, and the aggregate lot entitlement; or
    - (ii) for the sale of a proposed leasehold building units lot—the proposed lot entitlement of each proposed leasehold building units lot on the proposed leasehold building units plan for the lot, and the proposed aggregate lot entitlement; and
  - (b) include or be accompanied by details of any prescribed arrangement entered into in relation to the relevant plan, including—
    - (i) the terms and conditions of the prescribed arrangement; and
    - (ii) the cost or estimated costs to the lessee of each lot shown on the plan; and
  - (c) include or be accompanied by any by-laws or proposed by-laws for the building and its site the subject of the relevant plan; and
  - (d) include or be accompanied by any management statement or proposed management statement for the building and its site the subject of the relevant plan.
- (2) In this section—

*relevant plan* means—

  - (a) for a leasehold building units lot—the leasehold building units plan on which the lot is shown; or
  - (b) for a proposed leasehold building units lot—the proposed leasehold building units plan for the lot.

## **97I Variation of disclosure statement by further statement**

- (1) This section applies if the contract for the sale of a leasehold building units lot or a proposed lot has not been settled and—
  - (a) the seller becomes aware that information contained in the disclosure statement was inaccurate as at the day the contract was entered into; or
  - (b) the disclosure statement would not be accurate if now given as a disclosure statement.
- (2) The seller must, at least 21 days before the contract is settled, give the buyer a further statement (the *further statement*) rectifying the inaccuracies in the disclosure statement.
- (3) The further statement must—
  - (a) be signed by the seller; and
  - (b) to the extent, if any, the further statement rectifies inaccuracies in the relevant lot particulars mentioned in section 97G for a proposed leasehold building units lot—be certified as accurate by a cadastral surveyor.
- (4) The buyer may terminate the contract if—
  - (a) it has not already been settled; and
  - (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate; and
  - (c) the termination is effected by written notice given to the seller within 21 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.
- (5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure statement is taken to be constituted by the disclosure statement and any further statement.
- (6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—

- (a) the contract has not already been settled; and
- (b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

## **Division 3                      Additional ground for terminating contract**

### **97J      Terminating contract if not settled within particular period**

- (1) This section applies if, other than because of the buyer's default, the seller has not settled the contract for the sale of the proposed lot before—
  - (a) if the contract provides for a date by which it must be settled (the *sunset date*), the earlier of the following—
    - (i) the sunset date or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date;
    - (ii) the end of 5½ years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date; or
  - (b) otherwise—the end of 3½ years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date.

*Note—*

See section 139 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

- (2) The buyer may terminate the contract for the sale of the proposed lot by a signed written notice of termination given to the seller before the contract is settled.

## **Division 4                    Termination**

### **97K    Termination under this part**

- (1) This section applies if a buyer terminates a contract under this part.
- (2) The seller must, within 14 days after the termination, repay to the buyer—
  - (a) any amount paid to the seller or the seller's agent towards the purchase of the leasehold building units lot or proposed lot; and
  - (b) any interest that accrued on the amount while it was held by the seller or the seller's agent.
- (3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.
- (4) An amount repayable under subsection (2) may be recovered as a debt.

## **Division 5                    Amounts held in trust accounts for proposed lots**

### **97L    Payment of particular amounts**

This division applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase

- an instrument providing for an expression of interest

### **97M Amounts paid under s 97L to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
  - (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
    - (i) a law practice at its office in Queensland;
    - (ii) a real estate agent; or
  - (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
  - (a) held by the recognised entity in a prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

### **97N Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 97M(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

[s 97O]

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Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

### **97O Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 97M(1) in a prescribed trust account may invest the amount if—
- (a) either of the following applies—
- (i) the contract or instrument authorises the investment;
- (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
- (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

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## Division 6                      Other provisions

### 97P      Security instruments

- (1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
  - (a) by a recognised entity on behalf of the seller; or
  - (b) by another person on behalf of the seller; or
  - (c) by the seller.

*Example of an instrument for subsection (1)—*  
bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
  - (a) the instrument is returnable to the buyer according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
  - (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this part and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

[s 97Q]

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Maximum penalty—200 penalty units or 1 year's imprisonment.

- (6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).
- (8) In this section—

*prescribed place* means—

- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or
- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

## **97Q Contracting out prohibited**

- (1) A contract for the sale of a leasehold building units lot or a proposed lot is void to the extent to which it purports to exclude, restrict or otherwise change the effect of a provision of this part.
- (2) In this section—

*contract*, for the sale of a leasehold building units lot or a proposed lot, includes any instrument relating to the sale of the leasehold building units lot or proposed lot.

## **97R Evidentiary provision**

In a proceeding for an offence against this part, a copy of a contract or other instrument purporting to relate to the sale or

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purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

## **Part 10**                      **Miscellaneous provisions**

### **98**        **Offence provision**

- (1) A person who contravenes a provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act (whether provided for in subsection (1) or any other provision of this Act) is liable, unless a specified penalty is otherwise prescribed for that offence to a penalty not exceeding—
  - (a) in the case of an offender who is an individual—40 penalty units or 6 months imprisonment; or
  - (b) in the case of an offender that is a body corporate—250 penalty units.
- (3) Proceedings in respect of an offence against this Act, other than proceedings taken pursuant to the arrest of an offender, shall be taken in a summary way under the *Justices Act 1886* upon the complaint of the corporation manager or of a person authorised by the corporation manager either generally or in a particular case.
- (4) In proceedings in respect of an offence against this Act, it shall not be necessary to prove the appointment of the corporation manager or the authority of the complainant in the absence of evidence that challenges such appointment or authority.

### **98A**        **Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.

- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

- (a) of an individual—an employee or agent of the individual; or
- (b) of an unincorporated body—a member of the body, or an employee or agent of the body; or
- (c) of a partnership—a partner, employee or agent of the partnership; or
- (d) of a corporation—an executive officer, employee or agent of the corporation.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## 99 Fire safety requirements

Despite any Act relating to fire safety, but without compromising the principles of fire safety in the Act, a relevant fire authority or inspecting entity, when deciding whether fire safety installations and other fire safety measures

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for a building on South Bank public land are installed as required by the Act and are adequate and operational, must take into account—

- (a) the provisions of this Act; and
- (b) the physical structure of the building as opposed to its title boundaries; and
- (c) the methods of subdivision permitted by this Act; and
- (d) requests made by a public authority; and
- (e) the by-laws in the management statement (if any) regulating the building; and
- (f) any other matters relating to fire safety approvals for buildings situated within the corporation area as are prescribed by regulation.

## **100 Lessee taken to be owner of land or lot**

- (1) A lessee from a public authority is, for the purposes of the *Land Valuation Act 2010*, the *City of Brisbane Act 2010*, the *Local Government Act 2009* and any other Act relating to the valuation or rating of land, taken to be the owner of the land or lot the subject of the lease.
- (2) For the purposes of the *Land Tax Act 2010* and any other Acts relating to land tax, a lessee from a public authority is not to be taken to be the owner of the land the subject of the lease.

## **101 Valuation of stratum lots**

- (1) Despite the *Land Valuation Act 2010* and any other Act relating to valuation of land or the rating of land, the valuer-general in valuing land comprised in a stratum plan within the corporation area must, for the purposes of those Acts, apply the following principles of valuation—
  - (a) the valuer-general must first value the land comprised in the stratum plan as though the land were a single parcel of land in 1 ownership even though the land may consist of 1 or more stratum lots;

- (b) the valuer-general must then apportion the value of the land in the stratum plan between the stratum lots in the stratum plan according to the value proportions allocated from time to time in the management statement for each stratum lot.
- (2) The value apportioned to each stratum lot under subsection (1)(b) is, for the purposes of making, levying, imposing, assessing or recovering rates, taken to be the value of the stratum lot.
  - (3) If a management statement is amended to give effect to a change in the value proportions allocated to a stratum lot, the valuer-general must, on notification of the amendment, cause new valuations to be made of the stratum lots affected by the amendment—
    - (a) if the amendment is made under section 42(8)—by apportioning the former value of the former stratum lot the subject of the subdivision between the new stratum lots created by the subdivision according to the new value proportions allocated for each new stratum lot; and
    - (b) if the amendment is made under section 42(10)—by taking the sum of the former values of the former stratum lots the subject of the amalgamation as the value of the stratum lot created by the amalgamation; and
    - (c) if the amendment is made under section 46(11)—by apportioning the value of the land in the stratum plan between the stratum lots in the stratum plan according to the new value proportions allocated for each stratum lot, or, if the value proportions of some stratum lots remain unchanged, according to those unchanged proportions.
  - (4) If a stratum lot in a stratum plan is 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 schedule 4, part 4, division 7.

*Note—*

For 'value' in this section see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.

#### **104 Inconsistency with other Acts**

- (1) It is the intention of the Parliament that, to the greatest extent practicable, this Act should have effect despite any inconsistency with any other Act.
- (2) Without limiting subsection (1), this Act has effect despite any law in force at the time of commencement of this Act.
- (3) Without limiting any provision of this Act, the registrar of titles is authorised and directed to accept and register all plans and other instruments prepared under the authority of this Act if, subject to this Act, they are in a form acceptable to the registrar.

#### **105 Reference to single deed of grant only**

To show the reservations to the State contained in a deed of grant issued before deed of grant volume 8536 folio 178 issued over the corporation area—

- (a) a plan lodged after the commencement of this section;  
and
- (b) a certificate of title issued from the plan;

may refer to deed of grant volume 8536 folio 178 that issued on a surrender under the *Land Act 1962*, section 9 and need not refer to previous deeds of grant.

#### **106 Application of Transport Infrastructure Act 1994 to corporation area**

The *Transport Infrastructure Act 1994*, section 255 applies to the corporation area.

#### **107 Reserve power of Minister to give directions in public interest**

- (1) The Minister may give the corporation a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.

- (2) The corporation must ensure the direction is complied with.
- (3) Before giving the direction, the Minister must—
  - (a) consult with the corporation; and
  - (b) ask the corporation to advise whether, in its opinion, complying with the direction would not be in its commercial interest.
- (4) The Minister must cause a copy of the direction to be gazetted within 21 days after it is given.

## **108 Security officers**

- (1) The corporation or council may appoint an individual as a security officer.
- (2) However, the corporation may appoint an individual as a security officer only if the corporation is satisfied the individual has the necessary expertise or experience.

## **109 Appointment conditions and limit on powers**

- (1) A security officer holds office on any conditions stated in—
  - (a) the security officer's instrument of appointment; or
  - (b) a signed notice given to the security officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the security officer or a regulation may limit the security officer's powers under this Act.
- (3) In this section—

*signed notice* means a notice signed by the corporation manager.

## **110 Issue of identity card**

- (1) An entity that appoints a security officer must issue an identity card to the security officer.

- (2) The identity card must—
  - (a) contain a recent photo of the security officer; and
  - (b) contain a copy of the security officer's signature; and
  - (c) identify the person as a security officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **111 Production or display of identity card**

- (1) In exercising a power under this Act in relation to another person, a security officer must—
  - (a) produce the security officer's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the security officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

### **112 When security officer ceases to hold office**

- (1) A security officer ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the security officer ceases to hold office;
  - (c) the security officer's resignation under section 113 takes effect.
- (2) Subsection (1) does not limit the ways a security officer may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the security officer holds office.

### **113 Resignation**

- (1) A security officer may resign by signed notice given to the entity that appointed the security officer.
- (2) However, if holding office as a security officer is a condition of the security officer holding another office, the security officer may not resign as a security officer without resigning from the other office.

### **114 Return of identity card**

An individual who ceases to be a security officer must return the security officer's identity card to the entity that appointed the security officer within 21 days after ceasing to be a security officer, unless the individual has a reasonable excuse.

Maximum penalty—10 penalty units.

### **115 By-laws of corporation**

- (1) The corporation may make by-laws under this Act.
- (2) A by-law may make provision—
  - (a) to regulate the affairs of the corporation and its control of the corporation area; and
  - (b) to regulate the use of land within the corporation area in accordance with the approved development plan; and
  - (c) to regulate the entitlement of persons to enter the corporation area and the activities, conduct and behaviour of persons within the corporation area; and
  - (d) to provide for the protection and security of lands, buildings, structures and other property in the corporation area.

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- (3) A by-law may create offences and prescribe penalties of not more than 20 penalty units for the offences.
  - (4) A by-law may provide that a stated local law does not apply, or applies with stated changes, within the corporation area.
  - (5) If a by-law provides that a stated local law does not apply, or applies with stated changes, within the corporation area, the local law does not apply, or applies with the stated changes, within the corporation area.
  - (6) A by-law must be approved by the Governor in Council.

*Editor's note—*

A by-law is subordinate legislation (see the *Statutory Instruments Act 1992*, sections 7, 8(b)(i) and 9(1)(a)).

- (7) Subject to subsection (5), if a provision of a by-law is inconsistent with a provision of any Act or law (other than this Act) the former provision shall prevail and the latter provision shall, to the extent of the inconsistency, be inoperative within the corporation area until the provision of the by-law terminates.

## **116 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following matters—
  - (a) the preparation of plans and documents for the purposes of this Act;
  - (b) the plans and documents that may be lodged with the registrar of titles;
  - (c) the registration by the registrar of titles of plans and documents;
  - (d) the fees to be paid in respect of the lodgement and registration by the registrar of titles of plans and documents;
  - (e) the forms to be used for the purposes of this Act;

- (f) the nomination and election of the offices of chairperson, secretary and treasurer of bodies corporate and of other members of committees;
  - (g) the practice or procedure to be followed by referees and tribunals;
  - (h) the enforcement of orders made by referees and tribunals;
  - (i) matters relating to fire safety approvals for buildings in the corporation area;
  - (j) the information to be contained in a management statement.
- (3) A regulation may impose a penalty not exceeding 10 penalty units for an offence against a regulation.
- (4) Regulations prescribing forms to be used for the purposes of this Act may also prescribe—
- (a) the size, type and quality of paper on which a form must be printed; and
  - (b) the size and nature of the type to be used in the printing and completion of the form; and
  - (c) the ink or other substance with which the form must be printed or completed.

## **Part 11                      Transitional provisions**

### **Division 1                      Transitional provisions for South Bank Corporation and Other Acts Amendment Act 2003**

#### **118      Members of the corporation**

- (1) A person who, immediately before the commencement of this section, was a member of the corporation is taken to be, on the

commencement, a member of the board in accordance with the member's original conditions of appointment.

(2) The person who, immediately before the commencement of this section, was the chairperson of the corporation is taken to be, on the commencement, the chairperson of the board in accordance with the member's original conditions of appointment.

(3) In this section—

*member's original conditions of appointment* means the terms and conditions governing the member's appointment immediately before the commencement.

### **119 Development approvals**

An approval for development issued, and in force, under section 36 as in force immediately before the commencement of this section is, on the commencement, taken to be a development approval.

### **120 Variation of development approvals**

An application for approval for development made to the corporation under section 22A as in force immediately before the commencement of this section must be dealt with as if the *South Bank Corporation and Other Acts Amendment Act 2003* had not been enacted.

### **121 Existing lawful use**

To the extent an existing use of premises within the corporation area was lawful immediately before the commencement of this section, the use is taken to be lawful under this Act on the commencement.

## 122 Security officers

A person who, immediately before the commencement of this section, was a security officer appointed under this Act is taken to be, on the commencement, a security officer appointed under section 108.

## 123 Reference to member of the corporation

A reference in an Act or document to a member of the corporation may, if the context permits, be taken to be a reference to a member of the board.

## Division 2 Transitional provision for Audit Legislation Amendment Act 2006

### 124 Audit of body corporate's accounts for certain financial years

- (1) This section applies if, before the commencement, a body corporate appointed a person mentioned in pre-amended schedule 4, section 29B(2)(b) to carry out an audit of the books and accounts of the body corporate—
  - (a) for the 2004–2005 financial year and the person has not carried out the audit; or
  - (b) for the 2005–2006 financial year.
- (2) For the purpose of the person carrying out the audit, pre-amended schedule 4, section 29B(2)(b) continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.
- (3) In this section—

***commencement*** means commencement of this section.

***pre-amended***, in relation to schedule 4, section 29B(2)(b), means the provision as in force before the commencement.

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**Division 3**                      **Transitional provisions for Statutory  
Bodies Legislation Amendment Act  
2007**

**125**    **Rights and entitlements of particular employees**

- (1) This section applies to a person who—
  - (a) becomes an employee of the employing office; and
  - (b) was an employee of the corporation—
    - (i) immediately before the commencement of this section; and
    - (ii) immediately before becoming an employee of the employing office.
- (2) On becoming an employee of the employing office, the person is taken to be employed under section 31G on the conditions on which the person would have been employed by the corporation, immediately before the person became an employee of the employing office, if the corporation had never become an employer under the *Workplace Relations Act 1996* (Cwlth).
- (3) Also—
  - (a) the person keeps all rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, that—
    - (i) have accrued or were accruing to the person as an employee of the corporation; and
    - (ii) would have accrued to the person if the corporation had never become an employer under the *Workplace Relations Act 1996* (Cwlth); and
  - (b) if the person is a member of a superannuation scheme—
    - (i) the person keeps all entitlements accrued or accruing to the person as a member of the scheme; and

- (ii) the person's membership of the scheme is not affected.
- (4) Without limiting subsection (3), for working out the person's rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, employment of the person by the employing office is a continuation of employment of the person by the corporation.
- (5) Subsection (2) does not limit section 31G(3) and (4).

## **126 Application of industrial instruments**

The employing office is taken to be bound by the industrial instruments that bound the corporation immediately before it became an employer under the *Workplace Relations Act 1996* (Cwlth).

## **127 Amending Act does not affect particular powers of corporation**

Nothing in the *Statutory Bodies Legislation Amendment Act 2007*, part 9 affects the powers of the corporation under section 7.

## **128 Continued application of repealed s 14**

- (1) Section 14, as in force immediately before the commencement of this section, continues to apply in relation to persons employed by the corporation immediately before the commencement while that employment continues.
- (2) This section does not limit section 127.

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## **Division 4                      Transitional provision for Revenue and Other Legislation Amendment Act (No. 2) 2008**

### **129      Amendment of by-law**

The amendment of the *South Bank Corporation By-law 2004* by the *Revenue and Other Legislation Amendment Act (No. 2) 2008* does not affect the power of the Governor in Council to approve any further amendment of the by-law, or the repeal of the by-law, by the corporation.

## **Division 5                      Transitional provision for Sustainable Planning Act 2009**

### **130      Application of s 78 to particular development applications**

- (1) This section applies if the corporation is a concurrence agency under the repealed *Integrated Planning Act 1997* for a development application made but not decided under that Act before the commencement.
- (2) Section 78 as in force immediately before the commencement continues to apply in relation to the development application.
- (3) In this section—

*commencement* means the day this section commences.

## **Division 6                      Transitional provision for Land Valuation Act 2010**

### **131      Transitional provision for s 101**

After the commencement of this section, a reference in a management statement to ‘unimproved value proportions’ is taken to be a reference to ‘value proportions’.

## **Division 7**                      **Transitional provisions for Economic Development Act 2012**

### **132**    **Definitions for div 7**

In this division—

*amending Act* means the *Economic Development Act 2012*.

*commencement* means the commencement of this section.

*unamended Act* means this Act as in force before the commencement.

### **133**    **Continuing effect of development approvals**

- (1) A development approval that is in effect immediately before the commencement continues as a development approval on and after the commencement.
- (2) A development approval, for an application made before the commencement, that had not taken effect immediately before the commencement continues as a development approval on and after the commencement.
- (3) A development approval mentioned in subsection (2) takes effect from the time the development approval is given to the applicant.

### **134**    **Existing uses**

A use of premises within the corporation area that was an existing use of premises immediately before the commencement is taken to be a lawful use of premises under this Act on and after the commencement.

### **135**    **Application of unamended Act to applications made before commencement**

- (1) This section applies if, before the commencement, an application for a development approval was made and the

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application was not decided or a decision notice for the application was not given to the applicant.

- (2) For dealing with and deciding the application, the unamended Act, part 7, division 3 continues to apply in relation to the application as if the division had not been amended by the amending Act.

### **136 Application of unamended Act to particular development approvals**

- (1) This section applies to a development approval that is in effect immediately before the commencement or is given on an application to which section 135 applies.
- (2) Without limiting section 133, the unamended Act, part 6 and part 7, division 3 continue to apply in relation to the development approval as if the part and the division had not been amended by the amending Act.
- (3) This section does not apply to a development approval to which section 137 applies.

### **137 Application of unamended Act to development approvals for sites 9A and 9B**

- (1) This section applies in relation to land in sites 9A and 9B.
- (2) Without limiting section 133, the unamended Act, part 6 and part 7, division 3 continue to apply in relation to the following as if the part and the division had not been amended by the amending Act—
  - (a) a development approval for sites 9A and 9B, or any part of sites 9A and 9B, that is in effect immediately before the commencement;
  - (b) an application made by a relevant applicant after the commencement—
    - (i) for another development approval for sites 9A and 9B; and

- (ii) to change a development approval mentioned in paragraph (a); and
  - (iii) to cancel a development approval mentioned in paragraph (a);
  - (c) a development approval for an application mentioned in paragraph (b)(i) or (ii).
- (3) In this section—

*relevant applicant* means a person who before the commencement was the applicant for a development approval mentioned in subsection (2)(a).

*sites 9A and 9B* means all of the following land—

- (a) the part of lot 812 on SP 205159 as shown in the approved development plan;
- (b) lot 100 on SP 116313;
- (c) lot 900 on SP 204999;
- (d) lot 3 on SP 121757;
- (e) lot 1 on CP M332199;
- (f) lot 5 on SP 205135.

## **Division 8                      Transitional provisions for Land Sales and Other Legislation Amendment Act 2014**

### **138      Definitions for div 8**

In this division—

*commencement* means the commencement of this division.

*proposed lot* has the meaning given by section 97B.

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### 139 Application of pt 9A and modified application of s 97J

- (1) Part 9A applies only in relation to a contract for the sale of a lot or proposed lot entered into by a buyer after the commencement.
- (2) However, section 97J as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—
  - (a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

  - (b) the contract does not provide the date by which it must be settled.
- (3) Section 97J is modified by omitting subsection (1)(b) and inserting the following—
  - (b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2 worked out from the day the contract was entered into.’
- (4) In this section—

*old LSA, section 28* means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.

### 140 Continuing application of former provisions

- (1) This section applies in relation to a contract for the sale of a lot or proposed lot entered into before the commencement.
- (2) The following provisions continue to apply in relation to the contract as if the *Land Sales and Other Legislation Amendment Act 2014* had not been enacted—
  - (a) schedule 4, section 49 and 49A of this Act as in force at any relevant time before the commencement;
  - (b) old LSA, part 3.

- (3) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, old LSA, part 3 is to be read with the following changes—
- (a) old LSA, section 22(4)(a)—  
*omit, insert—*  
‘(a) the vendor or the vendor’s agent can not require the purchaser to settle; and’;
  - (b) old LSA, section 23(1), ‘, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor’—  
*omit, insert—*  
‘(but excluding an amount payable at settlement)’;
  - (c) old LSA, section 23(4)—  
*omit;*
  - (d) old LSA, section 25(2)(a)—  
*omit, insert—*  
‘(a) before settlement of the sale of the proposed lot; or’;
  - (e) old LSA, section 25(2)(b)(ii)—  
*omit, insert—*  
‘(ii) before settlement of the sale of the proposed lot;’;
  - (f) old LSA, section 27, heading—  
*omit, insert—*  
**‘27 Purchaser’s rights if purchase not settled within a certain period’;**
  - (g) old LSA, section 27(1)(b), ‘the vendor has not given the purchaser a registrable instrument of transfer for the lot’—  
*omit, insert—*  
‘the sale of the proposed lot has not been settled’;

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- (h) old LSA, section 27(2), ‘before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot’—  
*omit, insert—*  
‘before the sale of the proposed lot has been settled’;
- (i) old LSA, section 28, heading, ‘for giving of registrable instrument’—  
*omit.*
- (4) In this section—

*e-conveyancing* see the *Property Law Act 1974*, section 58A.

*old LSA*, followed by a provision number, means the provision with that number in the *Land Sales Act 1984* as in force at any relevant time before the commencement.

## Division 9                      **Transitional provision for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **141 Existing development application if corporation was concurrence agency**

- (1) This section applies to an existing development application if the corporation was a concurrence agency under the repealed Planning Act for the application.
- (2) Section 78 as in force immediately before the commencement continues to apply in relation to the application.
- (3) In this section—

*existing development application* means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

*repealed Planning Act* means the repealed *Sustainable Planning Act 2009*.

# **Schedule 1      Additional provisions about members and procedure of the board**

section 10

## **Part 1                      Provisions about members**

### **1                      Duration of appointment**

A member is to be appointed for a term of not longer than 3 years.

### **2                      Disqualification from membership of board**

A person is disqualified from becoming or continuing as a member if the person—

- (a) engages in full-time employment with the board, or becomes an employee of the employing office or another government entity or public agency performing work for the corporation, on a full-time basis, under a work performance arrangement, without the Governor in Council's approval; or
- (b) has been convicted of an indictable offence.

### **3                      Ceasing to be member**

- (1) A person ceases to be a member if the person—
  - (a) resigns by signed resignation notice given to the Minister; or
  - (b) is disqualified under clause 2; or
  - (c) is removed under subclause (2); or
  - (d) is a public service officer appointed on the nomination of the Minister and stops being a public service officer.

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- (2) The Governor in Council may remove a member from office if the member—
- (a) engages in misconduct or neglect of duty; or
  - (b) contravenes this Act without reasonable excuse; or
  - (c) becomes incapable of performing the functions of office because of physical or mental incapacity; or
  - (d) is incompetent; or
  - (e) is an undischarged bankrupt or is taking advantage of the laws relating to bankruptcy; or
  - (f) was appointed on the nomination of the council and the council has resolved to withdraw the nomination; or
  - (g) is absent from 3 consecutive meetings of the board without leave of the board or the chairperson and without reasonable excuse.

#### **4 Terms of appointment**

- (1) A member is entitled to be paid the remuneration and allowances the Governor in Council decides.
- (2) A member holds office on the terms of appointment not provided under this Act that the Governor in Council decides.

## **Part 2 Meetings and other business of board**

#### **5 Meaning of *required minimum number* of members**

In this part—

*required minimum number* of members means half the number of members of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

## **6 Conduct of meetings and other business**

The board may conduct its business (including its meetings) in the way it considers appropriate.

## **7 Times and places of meetings**

- (1) Meetings of the board are to be held at the times and places it decides.
- (2) However, the chairperson—
  - (a) may at any time call a meeting; and
  - (b) must call a meeting if asked by at least the required minimum number of members.

## **8 Presiding at meetings**

- (1) The chairperson must preside at all meetings when the chairperson is present.
- (2) If the chairperson is absent, the member chosen by the members present is to preside.

## **9 Quorum and voting at meetings**

- (1) At a meeting of the board—
  - (a) the required minimum number of members form a quorum; and
  - (b) a question is to be decided by a majority of the votes of the members present and voting; and
  - (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (2) Subclause (1)(a) has effect subject to clause 15(3) (Voting by interested member).

**10 Taking part in meetings by telephone etc.**

- (1) The board may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another type of communication.
- (2) A member who takes part in a meeting of the board under a permission under subclause (1) is taken to be present at the meeting.

**11 Resolutions without meetings**

- (1) If all members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day when the document is signed or, if the members do not sign it on the same day, the day when the last of the members signs the document.
- (2) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to be a single document.

**12 Register of minutes and decisions**

- (1) The corporation manager must keep, at the corporation's office, a register containing the minutes of each meeting of the board and details of all decisions made by the board.
- (2) The register may be inspected during normal working hours by a person authorised in writing by the Minister.

**13 Corporation's seal**

- (1) The corporation's seal must be kept at the corporation's office, in the corporation manager's custody, and may be used only as authorised by the board.
- (2) The impressing of the seal must be witnessed by the chairperson and the corporation manager or as the chairperson directs.

- (3) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

#### **14 Disclosure of interests by member**

- (1) If a member has a direct or indirect interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

#### **15 Voting by interested member**

- (1) A member who has a material personal interest in an issue being considered by the board must not—

- (a) vote on the issue; or
- (b) vote on a proposed resolution (a *related resolution*) under subclause (2) about the issue (whether in relation to the member or another); or
- (c) be present while the issue, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board about the issue or a related resolution.

Maximum penalty—100 penalty units.

- (2) Subclause (1) does not apply to the issue if the board has at any time passed a resolution that—

- (a) specifies the member, the interest and the issue; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the issue.

- (3) A quorum is present during a consideration of an issue by the board only if at least 1 less than the required minimum

number of members are present who are entitled to vote on any motion that may be moved about the issue.

- (4) The Minister may, by agreeing to a proposed resolution, deal with an issue if the board cannot deal with it because of subclause (3).



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## Schedule 3 Management statement

## section 46

### 1 Form of management statement

A management statement must—

- (a) include the prescribed information; and
- (b) bear the approval of the appropriate authority; and
- (c) not be inconsistent with this Act.

### 2 Matters to be included

(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 delineates the external surface boundaries of the site of the building and shows the location of the building in relation to the external surface boundaries; and

must also include by-laws and other particulars relating to the following—

- (c) the regulation (including the control, management, use, maintenance and enjoyment) of the building and its site;
- (d) the establishment and composition of the building management committee and its office bearers;
- (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 keeping of records of proceedings of the building management committee;
  - (i) the manner in which the building management committee may enter into contracts and the provision of appropriate indemnities to contracting parties by the other members of the building management committee;
  - (j) the inspection of records and documents in the custody or under the control of the building management committee;
  - (k) certification to members of the building management committee and lessees of lots in a leasehold building units plan as to whether there is any amount unpaid by a member or a lessee of a lot in a leasehold building units plan under the management statement;
  - (l) the establishment and operation of accounts at a financial institution by the building management committee;
  - (m) the storage and collection of garbage on and from the various parts of the building and its site;
  - (n) the location of any restricted property;
  - (o) compliance with fire safety requirements;
  - (p) the apportionment of the value of land comprised in the relevant stratum plan between stratum lots in the stratum plan;
- Note—*
- For 'value' see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.
- (q) where schedule 4, section 55B applies—the apportionment of the cost of insurance premiums for a damage policy for the building effected under schedule 4, section 55B;
  - (r) any other matters required by the appropriate authority.
- (2) Each body corporate for a leasehold building units plan for part of the building, and any other lessee of land in any part of the building or its site, that does not form part of a stratum

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parcel must be members of the building management committee.

- (3) If a by-law restricts use of any part of the building or its site, the by-law must include the following—
- (a) a description of the restricted property;
  - (b) details of the persons entitled to use the restricted property;
  - (c) the terms and conditions on which those persons may use the restricted property;
  - (d) particulars relating to access to the restricted property and the supply and keeping 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 those entitled to use the restricted property.

### **3 Optional matters for management statement**

- (1) A management statement may include by-laws and other 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.

- (2) This clause does not limit the matters that may be included in a management statement.
- (3) A management statement may incorporate plans and other instruments as part of the statement.

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## Schedule 4      **Modified Building Units and Group Titles Act**

section 47

### **Explanatory notes to schedule 4**

- 1 The provisions set out in this schedule are, subject to note 2, the provisions of the *Building Units and Group Titles Act 1980* as in force at the enactment of this schedule (the *applied Act*). The provisions also include some amendments of that Act made since the enactment of this schedule.
- 2 Various provisions of the applied Act have been omitted or appear in a modified form in this schedule. Other provisions have been inserted.
- 3 Notes have been included at the end of various provisions of the schedule to indicate the source of provisions. The following rules have been followed in the inclusion of notes—
  - (a) if a provision of the applied Act has not been amended (other than in a way in which an Act is authorised to be reprinted by the *Reprints Act 1992*)—no note is included;
  - (b) if a provision of the applied Act has been omitted—instead of that provision, the note ‘(not applied)’ appears;
  - (c) if an additional provision has been inserted or a provision has been replaced—the note ‘(new)’ appears;
  - (d) if a provision has been otherwise amended (other than in a way in which an Act is authorised to be reprinted by the *Reprints Act 1992*)—the note ‘(amended)’ appears.
- 4 The notes do not form part of the provisions of this schedule.
- 5 In the provisions of the schedule—
  - (a) reference to the *principal Act* is a reference to this Act; and

- (b) a reference to a *section* or other provision is a reference to a section or other provision in this schedule; and
- (c) a reference to *Act* or *this Act* is a reference to this schedule; and
- (d) a reference to a *schedule* or *the schedules* is a reference to a schedule or the schedules to this schedule.

## **Part 1                      Preliminary**

### **1            Short title**

(not applied)

### **2            Commencement**

(not applied)

### **3            Arrangement of Act**

(not applied)

### **4            Repeals and savings**

(not applied)

### **5            Savings and transitional**

(not applied)

### **6            Construction of Act**

- (1) This Act shall be read and construed with and as an amendment of the *Land Title Act 1994*.
- (1A) However that Act shall be read and construed subject to this Act and, to the extent that that Act is inconsistent with this Act, this Act shall prevail.

- (2) The *Land Title Act 1994* applies to lots and common property in the same way as it applies to other land except in so far as any provision of the *Land Title Act 1994* is inconsistent with this Act or is incapable of applying to lots or common property.

(new)

## 7 Interpretation

- (1) In this Act—

***administrative fund*** means the fund established by a body corporate under section 38(1).

***aggregate lot entitlement*** means the sum of the lot entitlements of all lots on a leasehold building units plan.

***body corporate*** means a body corporate incorporated by section 27.

***body corporate manager*** means a person appointed under section 50 or 94 for the time being a body corporate manager of a body corporate.

***building*** means the building or buildings shown on the leasehold building units plan each of which contains 2 or more lots or parts of lots and, where more than 1 building is shown on the leasehold building units plan, means any 1 or more of those buildings.

***building approvals authority*** means the authority required to give approval to building work as defined in the Planning Act, carried out on land, which is land—

- (a) under the *Land Title Act 1994*; and
- (b) within the corporation area; and
- (c) held in fee simple by the corporation, the council or other public agency, solely or jointly.

***Building Units and Group Titles Act*** means the *Building Units and Group Titles Act 1980* in force at the commencement of this schedule.

***ceiling*** does not include a false ceiling.

***committee*** means the committee of a body corporate constituted under this Act.

***common property*** means so much of a parcel as from time to time is not comprised in any lot, and includes contiguous common property and non-contiguous common property.

***company nominee***, in relation to a corporation, means the individual (if any) for the time being authorised under section 52 by the corporation.

***contiguous common property*** means land within the corporation area which is contiguous—

- (a) in any case—to the parcel; or
- (b) in the case of a stratum parcel—to the site on which is erected the building, part of which is comprised in the leasehold building units plan.

***Court*** means the Supreme Court.

***leasehold building units plan*** means a plan which—

- (a) is described in the title or heading as a leasehold building units plan; and
- (b) in the case of a plan that does not relate to a proposed stratum parcel—shows the building comprised in the plan as being divided into lots; and
- (c) in the case of a plan that does relate to a proposed stratum parcel—shows—
  - (i) the building; and
  - (ii) part of the building being subdivided into lots; and
- (d) shows the common property (if any) comprised in the plan; and
- (e) complies with the requirements of section 9.

***lessee***, in relation to a lot, means a person for the time being recorded in the register as entitled to a leasehold estate in the lot, but does not include a sublessee from a lessee of the lot.

***lessor*** means the person who is the lessor of the lots or the lots and common property in a leasehold building units plan.

**local government** means—

- (a) until the day prescribed under a regulation for section 39 of the principal Act—the corporation; or
- (b) after the day prescribed under a regulation for section 39 of the principal Act—the council.

**lot** means a lot shown as such on a leasehold building units plan.

**lot entitlement** means the lot entitlement of a lot specified or apportioned in accordance with the provisions of section 10(5) or (6) or 19, as the case may be.

**mortgage** includes a charge on a lease of a lot for securing money or money's worth.

**non-contiguous common property** means land within the corporation area which is not contiguous—

- (a) in any case—to the parcel; or
- (b) in the case of a stratum parcel—to the site on which is erected the building, part of which is comprised in the leasehold building units plan.

**occupier**, in relation to a lot, means a person in lawful occupation of that lot.

**original leasehold building units plan**—

- (a) in relation to a leasehold plan of resubdivision—means the registered leasehold building units plan containing the lots or common property the subject of the leasehold plan of resubdivision;
- (b) in relation to a leasehold plan of amalgamation—means the registered leasehold building units plan containing the lots the subject of the leasehold plan of amalgamation;
- (c) in relation to a conversion of lots into common property—means the registered leasehold building units plan containing those lots.

**original lessee** means—

(a) for the purposes of sections 29, 39(3)(b) and 53(1), schedule 2, part 1, clauses 2 and 3 and schedule 2, part 2, clauses 15 and 16—any person who, immediately after the registration of the leasehold building units plan concerned, is—

(i) the lessee of all lots in the leasehold building units plan; or

(ii) the lessee of 2 or more of those lots, the sum of whose lot entitlements is more than two-thirds of the aggregate lot entitlement;

and includes any successor or assignee of the lessee or lessees referred to in subparagraph (i) or (ii), but does not include a bona fide transferee for value of the lease of a lot or any successor or assignee of that transferee; and

(b) for the purposes of sections 30(7B), 50(9) and 55C—any person who, immediately after the registration of the leasehold building units plan concerned, is the lessee of all lots in the leasehold building units plan, and includes any successor or assignee of that lessee, but does not include a bona fide transferee for value of the lease of a lot or any successor or assignee of that transferee.

(amended)

**parcel** means the land comprised in a leasehold building units plan.

**person** includes the corporation, council or other public agency.

**prescribed arrangement** means any agreement or arrangement (including an arrangement set out in the by-laws or the management statement (if any) for the building and its site the subject of the leasehold building units plan concerned) between—

(a) in the case of a lot the leasehold estate of which is recorded in the register—the body corporate or the original lessee and any other person; or

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- (b) in the case of a proposed lot—the original lessee and any other person;  
being an agreement or arrangement—
- (c) by instrument in writing appointing, under section 50, a body corporate manager; or
- (d) for the carrying out of any of the duties of the body corporate under section 37(1)(a), (b) or (c); or
- (e) entered into under section 37(2)(a) to (e) or section 38C; or
- (f) for the protection of the parcel or any part or of the security of the occupants of the lots; or
- (g) for the conduct of a business upon the parcel (whether upon a lot or the common property) of subletting of lots on behalf of any lessees of lots; or
- (h) under which the rights of the lessee of a lot are or are likely to be affected to a material extent.

***principal Act*** means the *South Bank Corporation Act 1989*.

***public trustee*** means the public trustee within the meaning of the *Public Trustee Act 1978*.

***qualified auditor*** means—

- (a) a person registered as an auditor under the Corporations Act; or
- (b) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (c) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (d) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’.

***referee*** means a referee appointed under the Building Units and Group Titles Act, section 69.

**registered leasehold building units plan** means a leasehold building units plan as amended from time to time registered under this Act.

**resolution without dissent** means a resolution which is passed at a duly convened general meeting of a body corporate and against which no vote is cast.

**roll** means the roll referred to in section 39 that relates to a leasehold building units plan or to a leasehold building units plan that has been terminated.

**service obligation** means a service obligation created or implied by section 17, 17A or 18.

**service right** means a service right created or implied by section 17, 17A or 18.

**sinking fund** means the fund established by a body corporate under section 38(4).

**special resolution** means a resolution proposed as a special resolution that is passed at a duly convened general meeting of a body corporate by the lessees if the lessees who vote against the resolution do not together—

- (a) constitute more than 25% of the total number of lessees (determined on the basis of each lot having 1 lessee); and
- (b) hold more than 25% of the aggregate lot entitlements.

**tribunal** means a tribunal constituted under section 96.

**unanimous resolution** means a resolution which is unanimously passed at a duly convened general meeting of a body corporate at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy or vote in writing at the time of the motion.

**wall** includes door, window or other structure dividing a lot from common property or from another lot.

(amended)

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- (2) A reference in this Act to a resubdivision of a lot or common property or of a lot and common property is a reference to the alteration of the boundaries of—
- (a) 1 or more lots so as to create only 2 or more different lots; or
  - (b) 1 or more lots so as to create 1 or more different lots and common property; or
  - (c) 1 or more lots and common property so as to create 1 or more different lots or 1 or more different lots and common property; or
  - (d) common property so as to create 1 or more lots;
- but does not include a reference to the amalgamation of 2 or more lots into 1 lot or the conversion of 1 or more lots into common property.
- (4) In this Act, a reference to the *Local Government (Planning and Environment) Act 1990* includes a reference to the planning scheme made by the council as in force from time to time.
- (amended)

## Part 2                      Subdivision of land

### Division 1                      Creation of lots and common property

#### 8                      Subdivision

- (1) In this section—
- land** means land as defined in section 3 of the principal Act, being land—
- (a) under the *Land Title Act 1994*; and
  - (b) within the corporation area; and

- (c) held in fee simple by the corporation, the council or other public agency, solely or jointly;

and, where the land is leased, being land subject to a lease or leases (the terms of which are all expressed to expire at the same time) which is or are registered, or lodged for registration under the *Land Title Act 1994*.

(new)

- (1A) Land, including the whole of a building may be subdivided into lots or into lots and common property by the registration of a leasehold building units plan.

(new)

- (1B) Land comprised in a stratum lot, including part only of a building may be subdivided into lots or into lots and common property by the registration of a leasehold building units plan, but only if the building is erected on a site of land within the corporation area held in fee simple by the corporation, the council or other public agency, solely or jointly.

(new)

- (2) A lot may consist of separate parts.
- (3) (not applied)
- (4) (not applied)
- (5) (not applied)

## **9 Registration of leasehold building units plan**

- (1) A leasehold building units plan shall—
  - (a) where the leasehold building units plan does not relate to a proposed stratum parcel—delineate the external surface boundaries of the parcel and in relation to those boundaries delineate the location of the building; and
  - (b) where the leasehold building units plan relates to a proposed stratum parcel—delineate the external surface boundaries of the site of the building, being the building of which the proposed stratum parcel forms part, and, in relation to those boundaries delineate the location of—

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- (i) the building; and
  - (ii) the proposed stratum parcel;
- and, in relation to the external surface boundaries of the proposed stratum parcel, delineate the location of the part of the building which will be the subject of the proposed leasehold building units plan; and
- (c) where the leasehold building units plan comprises contiguous common property or non-contiguous common property, or both—delineate the external surface boundaries of that common property and in relation to those boundaries show the location of that common property in relation to the parcel or, in the case of a proposed stratum parcel, to the site on which is erected the building part of which is comprised in the leasehold building units plan; and
  - (d) bear a statement containing such particulars as may be necessary to identify the title to such parcel; and
  - (e) include a drawing illustrating the lots and distinguishing such lots by numbers; and
  - (f) define the boundaries of each lot—
    - (i) where the leasehold building units plan does not relate to a proposed stratum parcel—in the building; or
    - (ii) where the leasehold building units plan relates to a proposed stratum parcel—in part of the building;by reference to floors, walls, ceilings and, in the case where a boundary may be defined by reference to a permanent structure or permanent structures of the building, each such structure, but in doing so it shall not be necessary to show any bearing or dimensions of a lot; and
  - (g) show the approximate floor area of each lot; and
  - (h) have endorsed upon it a schedule complying with the provisions of section 19; and
  - (i) have endorsed upon it—

- (i) where the leasehold building units plan does not relate to a proposed stratum parcel—the name of the building; or
    - (ii) where the leasehold building units plan relates to a proposed stratum parcel—the name of the proposed stratum parcel; and
  - (j) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127; and
  - (k) contain such other features as may be prescribed.
- (amended)
- (1A) A leasehold building units plan must not be registered unless—
- (a) where land which is subject to a lease or leases registered under the *Land Title Act 1994* which is or are intended to be replaced wholly or partly by leases of each of the lots and the common property (if any) shown on the leasehold building units plan—
    - (i) the replacement leases relating to the proposed lots and, if the leasehold building units plan provides for common property, the common property, have been lodged in the land registry for registration; and
    - (ii) those replacement leases are expressed to be wholly or partly in substitution for the lease or leases first referred to in this paragraph; and
    - (iii) the terms of those replacement leases are all expressed to commence on registration of the leasehold building units plan and to expire at the same time as the lease or leases first referred to in this paragraph and, if those replacement leases confer rights of renewal, the renewal terms are the same; and
  - (b) where the land is subject to leases registered under the *Land Title Act 1994* which are intended to subsist (after the leasehold building units plan is registered) as leases

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of each of the lots shown on the leasehold building units plan—

- (i) the terms of those leases have commenced and are all expressed to expire at the same time and, if those leases confer rights of renewal, the renewal terms are the same; and
- (ii) a certificate of a cadastral surveyor within the meaning of the *Surveyors Act 2003* has been produced to the registrar of titles, stating that the area to which each of those leases relates (not being an area that is leased solely or principally for use by lessees of the land in common with each other) corresponds to a lot or lots shown on the plan; and
- (iii) a meeting of the lessees is held and a resolution is proposed agreeing to the proposed subdivision of the land as shown on the leasehold building units plan; and
- (iv) there is produced to the registrar of titles at the time of lodgement of the leasehold building units plan—
  - (A) where all of the lessees agree to the resolution referred to in subparagraph (iii)—a certificate in the approved form, purporting to be signed by the persons prescribed for the purposes of this subparagraph, stating that the resolution was so passed; or
  - (B) where a majority but not all of the lessees agree to the resolution referred to in subparagraph (iii)—a copy of an order made under subsection (19) approving the proposed subdivision; and
- (v) if the leasehold building units plan provides for common property—there has been lodged in the land registry for registration a lease of the common property; and

- (vi) the term of the lease of the common property is expressed to commence on registration of the leasehold building units plan and to expire at the same time as the terms of the leases referred to in subparagraph (i) and, if the leases so referred to confer rights of renewal, the lease of the common property confers a right of renewal for a term that is the same as that conferred by those rights; and
- (c) where the leasehold building units plan is lodged in circumstances different from those described in paragraph (a) or (b)—
  - (i) there have been lodged in the land registry for registration leases from the lessor of each of the lots (which may consist of or include leases to the lessor) and, if the leasehold building units plan provides for common property, a lease of the common property; and
  - (ii) the terms of the leases referred to in subparagraph (i) are all expressed to commence on registration of the leasehold building units plan (but, in the case of the leases of the lots, may be expressed to commence before registration of the leasehold building units plan) and to expire at the same time and, if the leases confer rights of renewal, the renewal terms are the same.
- (1B) If subsection (1A)(c) applies and—
  - (a) the land is subject to 1 or more leases (the *original leases*) registered under the *Land Title Act 1994* that—
    - (i) are intended to be replaced wholly or partly by leases of each of the lots and the common property, if any, shown on the leasehold building units plan; and
    - (ii) are expressed to end on registration of the leasehold building units plan; and
  - (b) 1 or more leases (the *replacement leases*) are expressed to start on registration of the leasehold building units plan;

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the original leases end and the replacement leases start on registration of the leasehold building units plan.

- (2) (not applied)
- (3) Save with the consent of the Minister responsible for the administration of the Building Units and Group Titles Act a leasehold building units plan shall not be registered if the name of the building or the name of the stratum parcel, as the case may be, endorsed on the plan, in the opinion of the registrar of titles, is undesirable.
- (3A) A leasehold building units plan shall not be registered if the name of the building or the name of the stratum parcel, as the case may be, endorsed on the plan is currently endorsed on—
- (a) a registered building units plan under the Building Units and Group Titles Act; or
  - (b) a registered leasehold building units plan;
- or is reserved under—
- (c) the Building Units and Group Titles Act, section 120; or
  - (d) section 120 of this Act.
- (amended)
- (4) A body corporate may, by resolution without dissent and with the consent of the registrar of titles, change the name of the building or the stratum parcel, as the case may be, endorsed upon the leasehold building units plan to a name with which the leasehold building units plan could be registered without contravention of subsection (3) or (3A).
- (amended)
- (5) In a leasehold building units plan, the common boundary of any lot with another lot or with common property shall be—
- (a) except as provided by paragraph (b), the centre of the wall, floor or ceiling, as the case may be; or
  - (b) as described in the leasehold building units plan in the prescribed manner by reference to a wall, floor or ceiling, as the case may be.

(5A) Despite subsection (5), a balcony, courtyard, roof garden or other area (being part of a building) which is not bounded wholly by walls or a ceiling or walls and a ceiling may be included as part of a lot shown on a leasehold building units plan.

(5AA) However, the balcony, courtyard, roof garden or other area shall be contiguous to a part of the lot the boundary of which part if it, by itself, were a lot would be the centre of walls, floor and ceiling.

(5B) Where, under subsection (5A), a balcony, courtyard, roof garden or other area of a building is included as part of a lot shown on a leasehold building units plan—

(a) that part of the boundary of the lot that is not the centre of a wall and would, but for the operation of subsection (5A), be required to be the centre of a wall shall be the vertical plane from the upper boundary of the lot to the floor along the line described connecting the centres of the permanent vertical structures of the building approved for that purpose by the registrar of titles (which may include part of a wall) on that boundary, with the centres of the walls that form part of the boundary of the lot;

(b) that part of the boundary of the lot that is not the centre of a ceiling and would, but for subsection (5A), be required to be the centre of a ceiling shall be the horizontal plane from the edge of the existing ceiling to the vertical boundary of the lot over which that ceiling does not extend at the level or levels of the walls and, where paragraph (a) applies, the permanent vertical structures to that part, such that, in any case, the plane is no higher than the boundary of the area of the lot that is the centre of a ceiling.

(amended)

(6) (not applied)

(7) Every leasehold building units plan lodged for registration shall be endorsed with or be accompanied by a certificate of the local government sealed with the common seal of the local

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government that the proposed subdivision of the parcel as illustrated in the leasehold building units plan has been approved by the local government and that all the requirements of the principal Act and, where the corporation is not the local government, the *Local Government (Planning and Environment) Act 1990* as modified by this Act and the principal Act have been complied with in regard to the subdivision.

(amended)

- (8) Every leasehold building units plan lodged for registration shall be endorsed with or be accompanied by certificates respectively—
- (a) where the proposed parcel will not be a stratum parcel—of a cadastral surveyor within the meaning of the *Surveyors Act 2003* that the building shown on the leasehold building units plan is within the external surface boundaries of the parcel the subject of the leasehold building units plan and, where a part of the building projects beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local government has consented and, where the corporation is not the local government, such consent is given under the local laws of the local government, as the case may be; and
  - (ab) of a cadastral surveyor within the meaning of the *Surveyors Act 2003* containing the particulars prescribed; and
  - (b) where the proposed parcel will be a stratum parcel—of a cadastral surveyor within the meaning of the *Surveyors Act 2003* that—
    - (i) part only of a building is included in the proposed stratum parcel; and
    - (ii) the proposed stratum parcel and that building are wholly within the external surface boundaries of the site of the building and, where eaves or guttering project beyond such external boundaries,

that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local government has consented and, where the corporation is not the local government, such consent is given pursuant to the local laws of the local government, as the case may be; and

- (iii) that each part of the building and so much (if any) of the site as constitute the proposed lots and the common property (if any) shown on the leasehold building units plan are wholly within the proposed stratum parcel and, where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local government, has consented and, where the corporation is not the local government such consent is given under the local laws of the local government, as the case may be; and
- (c) of an architect within the meaning of the *Architects Act 1962* that the building has been substantially completed in accordance with plans and specifications approved by the building approvals authority or a designated officer of the building approvals authority or, where the building has not been constructed under the supervision of an architect, of a building surveyor (or where there is no building surveyor a building inspector) of the building approvals authority (which certificate a building surveyor or building inspector is hereby authorised to give unless otherwise directed by the building approvals authority) that the building has been substantially completed in accordance with plans and specifications approved by the building approvals authority or a designated officer of the building approvals authority.

*Editor's note—*

Now see the *Architects Act 2002*, section 146.

(amended)

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- (9) No certificate given by a building surveyor or building inspector in good faith for the purposes of subsection (8)(c) shall subject the building surveyor or building inspector to any liability whatsoever and the proof or any allegation of the absence of good faith on the part of the building surveyor or building inspector shall be upon the person so alleging.
- (amended)
- (10) In this section—
- building inspector* and *building surveyor* include, where there is no building surveyor or building inspector of the building approvals authority, the officer of the building approvals authority whose duties include the performance of duties usually undertaken by a building surveyor or building inspector of the building approvals authority.
- (amended)
- (11) Before registering a leasehold building units plan, the registrar of titles may require proof to his or her satisfaction by statutory declaration or otherwise of the time of commencement of construction of the building to which the leasehold building units plan relates.
- (amended)
- (12) (not applied)
- (13) Before registering a leasehold building units plan, the registrar of titles may make or cause to be made such inspection of the parcel to which the leasehold building units plan relates as the registrar of titles considers necessary.
- (amended)
- (14) Upon lodgement for registration of a leasehold building units plan, the registrar of titles shall allot a number to the plan.
- (amended)
- (15) Registration of a leasehold building units plan shall be effected by notifying under the seal of the registrar of titles on the leasehold building units plan the fact and date of such registration.
- (amended)

- (16) Every leasehold building units plan, leasehold plan of resubdivision or amalgamation or notice of conversion lodged for registration shall be accompanied by the prescribed fees (including the fee prescribed under section 14).

(amended)

- (17) If a proposed leasehold building units plan provides for common property, a reference in subsection (1) to a lease of common property is a reference to a lease of common property from the lessor to the body corporate to be constituted on the registration of the leasehold building units plan, being a lease executed by the lessor as agent for that body corporate.

(new)

- (18) Where a meeting of persons who are lessees of the land comprised in a parcel has been held for the purposes of subsection (1A)(b) and a majority (but not all) of those persons supported a resolution for the subdivision of the land as shown on a proposed leasehold building units plan, any 1 or more of the persons who supported the resolution may apply to the Court for an order under subsection (19).

(new)

- (19) On hearing an application made under subsection (18), the Court may, if it appears to it to be just and equitable to do so, make—

- (a) an order approving the subdivision of the land as shown on the proposed leasehold building units plan; and
- (b) an order directing the registrar of titles to register the approved leasehold building units plan; and
- (c) such other orders that, in the opinion of the Court, are appropriate in the circumstances.

(new)

- (20) Notice of an application made under subsection (18) must be given to any person who is a lessee of a part of the parcel concerned unless that person is the applicant or, as the case may be, one of the applicants.

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(new)

## **9A Effect of registration of leasehold building units plan**

- (1) On registration of a leasehold building units plan—
- (a) where, immediately before registration of the leasehold building units plan, the whole of the parcel was subject to a lease or leases registered under the *Land Title Act 1994* which was or were intended to be wholly or partly replaced by leases of each of the lots and the common property (if any) shown on the leasehold building units plan—
    - (i) the lease or leases first referred to in this paragraph is or are determined in so far as it or they related to lots and common property; and
    - (ii) any registered mortgages, estates or interests (including any rates, charges or fees referred to in part 4, division 7) and any caveat which affected the lease or leases wholly or partly determined by subparagraph (i) shall affect those replacement leases in so far as they relate to lots; and
    - (iii) all outstanding rights and obligations of the lessee under a lease wholly or partly determined by subparagraph (i), being rights and obligations existing immediately before the registration of the leasehold building units plan, shall continue to be exercisable, or, as the case may be, shall be discharged by the person who was the lessee under that lease as if that lease had not been wholly or partly determined, except to the extent (if any) that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties; and
  - (b) where, immediately before registration of the leasehold building units plan, the parcel was subject to 2 or more leases registered under the *Land Title Act 1994* which were intended to subsist after the leasehold building

units plan was registered as leases of each of the lots shown on the leasehold building units plan—

- (i) every lease which was, immediately before the registration of the leasehold building units plan, a lease of a part of the parcel that corresponds to a lot shown on the leasehold building units plan shall become a lease of that lot for the residue of the term of the lease, subject to any registered mortgage, estate or interest (including any rates, charges or fees referred to in part 4, division 7) and any caveat affecting the lease immediately before registration of the leasehold building units plan; and
  - (ii) where any part of the parcel comprised in the leasehold building units plan is shown as common property, any lease affecting that part immediately before the registration of the leasehold building units plan is determined in so far as it relates to the common property; and
- (c) if—
- (i) the leasehold building units plan was lodged in circumstances mentioned in section 9(1A)(c); and
  - (ii) the original leases mentioned in that paragraph were subject to 1 or more mortgages that were expressed to survive the registration of the leasehold building units plan;

the mortgage or mortgages continue to have effect over the replacement leases mentioned in that paragraph in so far as they relate to lots after the registration.

(new)

- (2) As soon as practicable after the registration of a leasehold building units plan, the registrar of titles shall—
- (a) record in the register the leasehold estates of the lessees in lots; and

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- (b) record on the leasehold building units plan, the leasehold estate of the body corporate in the common property (if any); and
  - (c) in the case of replacement leases referred to in subsection (1)(a)—record in the register for the leases of those lots, in such a manner as will preserve their priority of registration, any mortgages, estates or interests or caveats affecting those leases by virtue of subsection (1)(a)(ii).

(new)

- (3) On registration of a leasehold building units plan, the leasehold building units plan is for the purposes of the *Land Title Act 1994* to be taken upon registration to form part of the register.

(new)

- (4) For the purposes of this section, a leasehold building units plan lodged for registration under this Act which is required to be accompanied by a lease to be registered under the *Land Title Act 1994* shall be treated as having been registered only when the lease has been registered under that Act.

(new)

- (5) A lessee of a leasehold estate in a lot holds the leasehold estate subject to any estates or interests for the time being notified on the leasehold building units plan and subject to any amendments to lots or common property shown on that leasehold building units plan.

(new)

- (6) Upon registration of a leasehold building units plan, the registrar of titles is authorised to issue a separate certificate of title for the leasehold estate for each lot setting out the information contained in the register.

(new)

- (6A) A certificate of title issued under subsection (6) is to be treated by the registrar of titles in the same manner as a certificate of title under the *Land Title Act 1994*.

(new)

- (7) In issuing a new certificate of title for a leasehold estate in a lot, the registrar of titles is to certify in the certificate of title that the lessee of the lot holds the share in the common property appurtenant to the lot in accordance with the lot entitlement of the lot as set out in the leasehold building units plan.

(new)

## 10 Resubdivision

- (1) Lots or common property or lots and common property may be resubdivided, with the approval of the local government, by the registration of a leasehold plan of resubdivision relating to the lots or common property or lots and common property so resubdivided in the manner provided by this Act for the registration of leasehold building units plans.

(amended)

- (1A) However, where a resubdivision affects common property or creates additional common property, the approval of the body corporate by resolution without dissent is required.

(amended)

- (2) The provisions of this Act relating to leasehold building units plans, and, where the corporation is not the local government, to appeals from any decision of a local government or failure of a local government to make a decision, shall with such modifications as may be necessary apply to resubdivision.

(amended)

- (2A) A leasehold plan of resubdivision shall not be registered under this section unless—

- (a) there have been lodged in the land registry for registration the replacement leases relating to the proposed lots comprised in the leasehold plan of resubdivision; and

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- (b) those replacement leases contain provisions to the effect that they are in substitution for the leases determined or otherwise affected by the resubdivision; and
  - (c) the terms of those replacement leases are all expressed to commence on registration of the leasehold plan of resubdivision and to expire at the same time as any lease to be determined and, where the replacement leases confer rights of renewal, the renewal terms are the same as those contained in the leases of all other lots comprised in the original leasehold building units plan.

(new)

- (3) Despite the provisions of section 27, lessees of lots in a leasehold plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such leasehold plan of resubdivision, be members of the body corporate constituted in respect of the original leasehold building units plan.

(amended)

- (4) On registration of a leasehold plan of resubdivision, lots comprised in the plan shall be subject to the burden and have the benefit of any easements, service rights and service obligations affecting such lots in the original leasehold building units plan as are included in the leasehold plan of resubdivision.

(amended)

- (5) Where the resubdivision is of 1 or more lots so as to create only 2 or more different lots, the schedule endorsed on the leasehold plan of resubdivision as required by section 19 shall apportion among the lots, the lot entitlement of such lot or lots in the original leasehold building units plan as are included in the leasehold plan of resubdivision and the registrar when registering that leasehold plan of resubdivision shall amend the schedule to the original leasehold building units plan to show the lot entitlement of each lot and each proposed lot and the aggregate lot entitlement as whole numbers.

(amended)

- (6) Where the resubdivision affects common property or creates additional common property, the schedule endorsed on the leasehold plan of resubdivision as required by section 19 shall—
- (a) show as a whole number, in respect of—
    - (i) each lot comprised in the parcel other than any lot or lots the subject of the proposed resubdivision; and
    - (ii) each proposed lot, the proposed lot entitlement of that lot or proposed lot and show the proposed aggregate lot entitlement; and
  - (b) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has by resolution without dissent agreed to each proposed lot entitlement and the proposed aggregate lot entitlement shown in that schedule.

(amended)

- (7) A resubdivision that creates additional common property shall not be registered unless every mortgage, current sublease, caveat or other estate or interest recorded in the register in respect of the leases of each lot from which the additional common property or part of that property is derived has been discharged, surrendered, withdrawn or otherwise disposed of in so far as it affects that additional common property or part of that property.

(amended)

- (8) When registering a leasehold plan of resubdivision, the registrar of titles shall amend the original leasehold building units plan in the manner prescribed.

(amended)

- (9) Upon registration of a leasehold plan of resubdivision, land in the plan shall not be dealt with by reference to lots in the original leasehold building units plan.

(amended)

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**10A Consequences of registration of leasehold plan of resubdivision**

- (1) On the registration of a leasehold plan of resubdivision referred to in section 10—
  - (a) the lease of any lot that is the subject of the resubdivision is determined, and the lease of any common property that is the subject of the resubdivision ceases to apply, to any lot created by the resubdivision; and
  - (b) any registered mortgage, estate or interest (including any rates, charges or fees referred to in part 4, division 7), and any caveat affecting a lease determined by paragraph (a), shall affect the replacement leases in so far as they relate to lots; and
  - (c) the leasehold estate in any common property created vests in the body corporate as lessee for the residue of the term specified in the lease of the common property; and
  - (d) all outstanding rights and obligations of the lessee under a lease determined by paragraph (a), being rights and obligations existing immediately before registration of the leasehold plan of resubdivision, shall continue to be exercisable or, as the case may be, shall be discharged by the person who was lessee under that lease as if that lease had not been determined, except to the extent (if any) that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties.
- (new)
- (2) Upon the recording of a leasehold plan of resubdivision referred to in section 10, the registrar of titles shall—
  - (a) make such recordings in the register as the registrar of titles considers appropriate to give effect to the resubdivision; and
  - (b) in relation to any replacement leases relating to lots, record in the register any registered mortgages, estates,

interests or caveats affecting those leases by virtue of subsection (1)(b); and

- (c) be authorised to issue a separate certificate of title for the leasehold estate for each lot setting out the information contained in the register.

(new)

- (3) For the purposes of this section, a leasehold plan of resubdivision lodged for registration under this Act which is required to be accompanied by a lease to be registered under the *Land Title Act 1994* shall be treated as having been registered only when the lease has been registered under that Act.

(new)

## **11 Amalgamation of lots**

- (1) Two or more lots may be amalgamated into 1 lot with the approval of the local government by the registration of a leasehold plan of amalgamation.

(amended)

- (2) The lot entitlement of a lot created by the amalgamation of 2 or more lots shall be the sum of the lot entitlements of those lots.

- (3) When registering a leasehold plan of amalgamation, the registrar of titles shall amend the original leasehold building units plan and the schedule of lot entitlements endorsed on the original plan in the manner prescribed.

(amended)

## **12 Conversion of lots into common property**

- (1) One or more lots may be converted into common property with the approval of the local government by registering with the registrar of titles, as a notice of conversion, a notice executed by the lessor and the lessee of that lot, or that lessor and the lessees of those lots, and approved by the body corporate by unanimous resolution.

(amended)

- (2) The provisions of this Act relating to leasehold building units plans, and, where the corporation is not the local government, to appeals from any decision of a local government or failure of a local government to make a decision, shall with such modifications as may be necessary apply to conversions of lots into common property.

(amended)

- (3) A notice of conversion shall not be registered unless every mortgage, current sublease, caveat or other estate or interest recorded in the register in respect of the lease of each lot or lots to which the notice relates has been discharged, surrendered, withdrawn or otherwise disposed of, as the case may be.

(amended)

- (4) When registering a notice of conversion the registrar of titles shall—
- (a) amend the original leasehold building units plan in the manner prescribed; and
  - (b) amend the schedule of lot entitlements endorsed upon the original leasehold building units plan in accordance with the schedule complying with the provisions of section 19 lodged with the notice; and
  - (c) record in the register the determination of the lease of the converted lot; and
  - (d) make such other recordings in the register as the registrar of titles considers appropriate to give effect to the notice of conversion.

(amended)

## **12A Lease determined on registration**

On registration of a notice of conversion, the lease of any lot converted into common property is determined and the lot vests in the body corporate as lessee for the residue of the term specified in the lease of the common property.

(new)

### **13 Plans and notices of conversion to be signed**

Where a leasehold building units plan, leasehold plan of resubdivision or amalgamation or notice of conversion is lodged in the land registry for registration, it shall not be registered unless it is signed by every person having a sufficient estate or interest to transfer the leases of the lots and the lease of the common property comprised in the plan or notice.

(amended)

### **14 Copies of leasehold building units plan to certain authorities and bodies corporate**

(1) Upon payment of the prescribed fee, the registrar of titles shall, within 28 days after the registration of a leasehold building units plan or an amendment of the plan, furnish to the valuer-general, to the lessor, to the council and to the body corporate, 2 copies of the registered leasehold building units plan or amendment of the plan including all endorsements thereon.

(2) In this section—

*prescribed fee* means the fee prescribed under the Building Units and Group Titles Act, section 14.

(amended)

### **15 Support and shelter**

(1) In a leasehold building units plan there shall be implied—

(a) as appurtenant to the lots and common property (if any) comprising that leasehold building units plan, being lots and common property which are situated within a building, an easement for their subjacent and lateral support by such other parts of the building as are capable of affording support; and

- (b) as affecting those lots and that common property, an easement for the subjacent and lateral support of such other parts of the building as are capable of enjoying support; and
- (c) as appurtenant to those lots and that common property, an easement for their shelter by all such other parts of the building as are capable of affording shelter; and
- (d) as affecting those lots and that common property, an easement for the shelter of such other parts of the building as are capable of being sheltered by those lots and that common property.

(new)

- (2) An easement for support or shelter created by subsection (1) shall—

- (a) entitle the owner and the lessee of the dominant tenement to enter upon the servient tenement to replace, renew or restore any support or shelter; and
- (b) subsist until the leasehold building units plan is terminated or the easement is otherwise released.

(new)

## 16 Shelter

(not applied)

## 17 Services

- (1) In this section—

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

*service* means—

- (a) a service in relation to water, sewage, drainage, gas, electricity, oil, garbage or conditioned air; or
- (b) a service in relation to telephone, television or radio impulses or signals; or

(c) any other prescribed service.

(new)

(2) If an easement of the kind referred to in section 17A, has not been created for services or a particular service by an instrument referred to in section 17A, then, in respect of the leasehold building units plan, there is implied—

(a) as appurtenant to the lots and common property (if any) comprising the leasehold building units plan, being lots and common property which are situated within a building, an easement for the passage or provision of the particular service or services through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected which are for the time being existing in or over the parcel to the extent to which the particular service or services are capable of being used in connection with the enjoyment of the lot and the common property (if any); and

(b) as affecting those lots and that common property, an easement for the passage or provision of the particular service or services through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected which are for the time being existing in or over the parcel, to the extent to which that particular service or those services are capable of being used in connection with the enjoyment of the lot and the common property (if any);

but the easements conferred by this section shall not be exercised by any lessee in such a manner as unreasonably to prevent any other lessee from enjoying the use and occupation of his or her lot and the common property.

(new)

## **17A Easements in certain leasehold building units plans**

(1) In this section—

*drainage* and *service* have the meanings given to them in section 17.

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*instrument* means an instrument in the form prescribed by regulation.

(new)

(2) Where—

- (a) a leasehold building units plan relates to a stratum parcel; and
- (b) an instrument has or has had the effect of creating after the commencement of this Act a right of vehicular access, a right of personal access or an easement for a specified service or services, over or through or as appurtenant to the stratum parcel or the land comprised in that parcel; and
- (c) the site of the easement is identified on a plan lodged in the land registry;

the rights and obligations conferred or imposed by the easement created by the instrument shall be as specified in schedule 5, except in so far as those rights or obligations may have been varied or negated under this section or in the instrument.

(new)

(3) Nothing in the *Land Title Act 1994* or any other enactment or in subsection (2)(c) requires the site of an easement for services, being an easement to which this section applies, to be identified on a plan lodged in the land registry.

(new)

(4) The terms of an easement created under subsection (2) in so far as they relate to—

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things;

may be varied by memorandum of variation in the approved form and registered under the *Land Title Act 1994* as if it were a dealing.

(new)

- (5) A variation of the terms of an easement referred to in subsection (4) must be executed by every person having an estate or interest registered under the *Land Title Act 1994* in the land benefited or burdened by the easement.

(new)

- (6) On the application of any person who has an estate or interest in any land which has the benefit or burden of an easement to which this section applies, the Court may, by order, vary the terms of the easement in so far as they relate to—

(a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or

(b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things.

(new)

- (7) An order under subsection (6) shall, when registered as provided by subsection (8), be binding on all persons, whether of full age or capacity or not, then entitled or later becoming entitled to the easement, and whether those persons are parties to the proceedings or have been served with notice or not.

(new)

- (8) The registrar of titles shall, on application made in a form approved under the *Land Title Act 1994*, make all necessary recordings in the register and on the leasehold building units plan for giving effect to the order.

(new)

**18 Ancillary rights**

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

**19 Lot entitlement**

(1) Every leasehold building units plan and leasehold plan of resubdivision lodged for registration and every notice of conversion shall have endorsed upon it a schedule specifying in whole numbers the lot entitlement of each lot and a number equal to the aggregate lot entitlement of all lots contained in that leasehold building units plan, and that lot entitlement shall determine—

- (a) the voting rights of lessees; and
- (b) the quantum of the undivided share of each lessee in the estate or interest in the common property; and
- (c) the proportion payable by each lessee of contributions levied pursuant to section 32.

(amended)

- (2) (not applied)
- (3) (not applied)

**Division 2 Common property****20 Body corporate to hold leasehold estate in common property as agent for lessees**

- (1) The leasehold estate of a body corporate in common property shall be held by the body corporate as agent—
- (a) where the same person or persons is or are the lessee or lessees of the lots in the leasehold building units plan concerned—for that lessee or those lessees; or
  - (b) where different persons are lessees of each of 2 or more of the lots in the leasehold building units plan

concerned—for those lessees as tenants in common in shares proportional to the lot entitlements of their respective lots.

(new)

- (2) The registrar of titles in issuing a certificate of title for a leasehold estate in a lot is to certify in the certificate of title that the lessee of the lot holds the share in the common property appurtenant to the lot in accordance with the lot entitlement of the lot as set out in the leasehold building units plan.

(new)

**20A Common property to be dealt with only under this Act**

Common property shall not be capable of being dealt with except in accordance with the provisions of this Act.

(new)

**20B Record on leasehold building units plan where no common property**

Where a leasehold building units plan that does not contain common property is registered, the registrar of titles shall record, in such manner as the registrar of titles considers appropriate on the leasehold building units plan, a statement that the leasehold building units plan concerned does not contain common property.

(new)

**20C Records on leasehold building units plan where there is common property**

- (1) Despite the provisions of the *Land Title Act 1994*, the registrar of titles shall not record any easement of the description contained in section 23(1)(a) or (b) (whether or not the easement was created after the commencement of this Act or under section 23) in the register for the lease of a lot the subject of the leasehold building units plan concerned, but

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shall record the easement on the leasehold building units plan, and any such easement shall affect any such lot to the extent that it is capable of affecting that lot and as if it were recorded by the registrar of titles in the register for the lease of that lot.

(new)

- (2) Any mortgage, estate or interest or caveat recorded in the register for the lease of a lot the subject of a leasehold building units plan need not be recorded on the leasehold building units plan for the lease of the common property, but any such mortgage, estate or interest or caveat recorded in the register for the lease of a lot affects the beneficial interest of the lessee of that lot in the leasehold estate or interest in the common property in the manner provided in section 20D(1).

(new)

- (3) On a leasehold estate in any common property being vested in, acquired by or divested from a body corporate for a leasehold building units plan, the registrar of titles shall make such recordings on the leasehold building units plan with respect to the leasehold estate so vested, acquired or divested as the registrar of titles considers appropriate.

(new)

## **20D Dealings with lots include leasehold estate in common property**

- (1) In any dealing or caveat relating to a lease of a lot, a reference to the lot includes a reference to any estate or interest in the common property which is held by the body corporate as agent for the lessee of the lot without express reference to the common property and without the dealing or caveat being recorded on the leasehold building units plan.

(new)

- (2) The beneficial interest of a lessee of a lot in the estate or interest in the common property (if any) held by the body corporate as agent for that lessee shall not be capable of being severed from, or dealt with except in conjunction with, the lease of the lot.

(new)

## **21 Acquisition of additional common property**

(1) In this section—

*land* means land as defined in section 3 of the principal Act, being land—

- (a) under the *Land Title Act 1994*; and
- (b) within the corporation area; and
- (c) held in fee simple by the corporation, the council or other public agency, solely or jointly;

but does not include a leasehold interest in land evidenced by a lease not registered under the *Land Title Act 1994*.

(new)

(1A) Subject to subsection (1B), a body corporate may, pursuant to a resolution without dissent and with the consent of the lessor, accept a lease or sublease, or a transfer of a lease or sublease, of land (not being a grant or lot within the parcel) which is—

- (a) contiguous—
  - (i) in any case—to the parcel; or
  - (ii) in the case of a stratum parcel—to the site on which is erected the building part of which is comprised in the leasehold building units plan; or
- (b) not contiguous—
  - (i) in any case—to the parcel; or
  - (ii) in the case of a stratum parcel—to the site on which is erected the building part of which is comprised in the leasehold building units plan;

for the purpose of creating, or creating additional, common property.

(new)

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- (1B) A body corporate shall not accept a lease or sublease, or a transfer of a lease or sublease, referred to in subsection (1A) if—
- (a) the lease or sublease concerned is subject to a registered mortgage; or
  - (b) the term of that lease or sublease would expire after the term of the lease of the common property.
- (new)
- (1C) On accepting a lease or sublease, or a transfer of a lease or sublease, under subsection (1A), the body corporate shall forthwith cause the dealing evidencing the transaction to be registered under the *Land Title Act 1994*.
- (new)
- (2) A lease, sublease or transfer referred to in subsection (1A) shall be accompanied by—
- (a) the deed of grant or certificate of title for the land affected by the lease or sublease; and
  - (b) a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the lease, sublease or transfer was a resolution without dissent.
- (amended)
- (2A) (not applied)
- (3) (not applied)
- (4) Upon the registration under the *Land Title Act 1994* of any such lease, sublease or transfer—
- (a) the leasehold interest becomes common property and is then subject to the provisions of this Act relating to common property; and
  - (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sublease, as the case may be; and

- (c) the registrar of titles shall make an appropriate noting on the registered leasehold building units plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of the lease or sublease the demised land is incorporated with land as part of the common property.

(amended)

- (5) A body corporate may, pursuant to a unanimous resolution and with the concurrence of the lessor or sublessor, surrender a lease or sublease accepted by it under this section.

(amended)

- (6) Upon the registration under the *Land Title Act 1994* of any such surrender, the registrar of titles shall make an appropriate recording on the registered leasehold building units plan on which the lease was recorded.

(amended)

## **22 Transfer of lease of part of common property**

- (1) A body corporate may, pursuant to a resolution without dissent and with the consent of the local government and lessor, and if not prevented by the terms of the lease, transfer a lease of part of the common property or grant a sublease of such a part.

(new)

- (2) (not applied)

- (3) A body corporate may, pursuant to a resolution without dissent, accept the surrender of a sublease, or, if otherwise empowered so to do, re-enter under a sublease granted under subsection (1).

(amended)

- (4) Subject to subsection (7), the provisions of this Act relating to resubdivision and to appeals from any decision of a local government or failure of a local government to make a decision shall with such modifications as may be necessary

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apply to transfers of leases and to subleases of part of common property.

(amended)

- (5) A transfer of lease or sublease of part of the common property shall be with such modifications as may be necessary in conformity with the provisions of the *Local Government (Planning and Environment) Act 1990*.

(amended)

- (6) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have—
- (a) in the case of a memorandum of transfer of a lease—consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or
  - (b) in the case of a grant of a sublease—approved in writing of the execution of the proposed sublease;

shall execute the appropriate sublease or memorandum of transfer of the lease and the sublease or memorandum of transfer of the lease shall be valid and effective without execution by any person having an interest in the common property and receipt of the body corporate for the purchase money, rent, premiums or other moneys payable to the body corporate under the terms of the sublease or memorandum of transfer of the lease shall be a sufficient discharge, and shall exonerate the sublessee or the persons taking under the memorandum of transfer, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(amended)

- (7) The local government shall not give its approval to a sublease or transfer of a lease of part of the common property unless it is satisfied—
- (a) that the proposed sublease or transfer of lease will not interfere with the existing or likely future amenity of the

neighbourhood, having regard to the circumstances of the case and the public interest; and

- (b) that if the application for approval were an application to the local government for a certificate for the purposes of section 9(7) in respect of the subdivision of the parcel as illustrated in the plan (excluding the part the subject of the proposed sublease or transfer of lease) it would be proper for the local government to direct the issue of the certificate; and
- (c) that the easements, services and rights referred to in sections 15, 17, 17A and 18 and presently enjoyed or exercised, or capable of being enjoyed or exercised, will not be, or be likely to be, unduly interfered with by the proposed sublease or transfer of lease or that suitable alternative arrangements approved by the local government have been agreed upon by the parties.

(amended)

- (8) Every sublease or memorandum of transfer of lease executed, or surrender of sublease accepted pursuant to subsections (1) and (3), lodged for registration with the registrar of titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the sublease or memorandum of transfer of lease or surrender of sublease conforms with the terms of the resolution and that all necessary consents were given.

(new)

- (9) In favour of transferees or sublessees of part of the common property and in favour of the registrar of titles, the certificate shall be evidence of the matters certified in the certificate.

(amended)

- (10) (not applied)

- (11) The registrar of titles shall register the sublease, transfer of lease or, as the case may be, surrender of sublease by recording particulars in the register in accordance with the provisions of the *Land Title Act 1994*.

(amended)

- (12) Despite the provisions of this section, a body corporate shall not grant a sublease of common property where the access to or egress from the parcel by any lessee is interfered with.

(amended)

- (13) The provisions of subsections (4), (5) and (7) do not apply where the corporation is the local government.

(new)

## **23 Creation of easements**

- (1) Subject to subsection (3A) a body corporate may by resolution without dissent—

- (a) execute a grant of easement which burdens the leasehold estate in the common property; and
- (b) accept a grant of easement which benefits the leasehold estate in the common property; and
- (c) surrender a grant of easement which benefits the leasehold estate in the common property; and
- (d) accept the surrender of a grant of easement which burdens the leasehold estate in the common property.

(amended)

- (2) Subsection (1) does not authorise a body corporate to accept a grant or execute a surrender of easement relating to common property the subject of a lease or sublease accepted or acquired by the body corporate under section 21(1A) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or sublessee or, by the terms of the lease or sublease, it is prevented from accepting or executing.

(amended)

- (3) A body corporate may, pursuant to a resolution without dissent, or the lessor, or both of them, may join in or consent to the execution or acceptance of a dealing referred to in subsection (1) relating to a lease or sublease accepted or acquired by the body corporate under section 21(1A).

(new)

(3A) A dealing referred to in subsection (1) is not effective unless the lessor has consented in writing to the execution or acceptance of the dealing by the body corporate.

(new)

(3B) A body corporate, pursuant to a resolution without dissent, and the lessor may—

(a) execute a grant of easement which burdens the common property; or

(b) accept a grant of easement which benefits the common property; or

(c) surrender a grant of easement which benefits the common property; or

(d) accept the surrender of a grant of easement which burdens the common property.

(new)

(3C) Subsection (3B) does not authorise a body corporate or the lessor—

(a) to execute or accept a dealing relating to—

(i) common property the subject of a lease accepted or acquired by the body corporate under section 21(1A), unless the lessor is the lessor under the lease; or

(ii) common property the subject of a sublease; or

(b) to execute or accept any such dealing contrary to the terms of a lease or sublease concerned or any other agreement entered into by either of them.

(new)

(4) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate instrument and any plan necessary for the release, and every

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instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate of any moneys payable to the body corporate under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

- (5) Every instrument executed under subsection (4) and lodged for registration with the registrar of titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.
- (6) In favour of persons dealing with the body corporate under this section and in favour of the registrar of titles, the certificate shall be conclusive evidence of the matters certified in the certificate.
- (7) The registrar of titles shall register the instrument creating or surrendering an easement by recording the particulars in the register in the manner prescribed.

## **Division 3                      Approval of local government**

### **24                      Approval of subdivision**

- (1) The provisions relating to subdivision of land contained in the *Local Government (Planning and Environment) Act 1990* shall not apply to—
  - (a) a subdivision of land into lots effected by the registration of a leasehold building units plan; or
  - (b) a resubdivision of lots or common property or lots and common property effected by the registration of a leasehold plan of resubdivision; or
  - (c) a lease or sublease of a lot or common property.(amended)
- (1A) However the boundaries of the parcel must correspond with boundaries of a lawful subdivision within the meaning of the

principal Act and, where the council is the local government, the *Local Government (Planning and Environment) Act 1990*.

(amended)

- (2) (not applied)
  - (3) (not applied)
  - (4) In respect of an application for a certificate for the purposes of section 9(7), the local government shall, direct the issue of the certificate if it is satisfied that—
    - (a) the subdivision complies with subsection (1) and the principal Act; and
    - (b) separate occupation of the proposed lots will not contravene—
      - (i) the planning scheme made by the council as in force from time to time; or
      - (ii) the policies of the local government in force in the case of a leasehold building units plan, at the date of the approval given by the local government to the erection of the building; and
    - (c) any consent or approval required under the planning scheme made by the council as in force from time to time or local law has been given in relation to the separate occupation of the proposed lots; and
    - (d) the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case, the public interest and the adequacy of access drives and parking areas within the common property.
- (amended)
- (5) (not applied)
  - (6) An applicant for a certificate required for the purposes of section 9(7) who feels aggrieved by the failure of a local government to direct the issue of a certificate under the provisions of the *Local Government (Planning and Environment) Act 1990* may appeal to the Planning and

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Environment Court under the *Local Government (Planning and Environment) Act 1990* and the provisions of that Act shall extend with such modifications as may be necessary to and in respect of such appeal.

(new)

- (8) The provisions of subsections (4) and (6) do not apply where the corporation is the local government.

(new)

## **Division 4                      Leases of lots**

### **24A      Provisions generally applicable to leases**

- (1) The provisions of the *Property Law Act 1974* relating to leases of land apply to and in respect of a lease of a lot or of common property except in so far as those provisions are inconsistent with the provisions of this part or the regulations.

(new)

- (2) The lessor under a leasehold building units plan may be the lessee of any lot in that leasehold building units plan despite any law relating to the merger of leasehold and reversionary estates in land.

(new)

### **24B      Dealings by lessees**

Except as expressly provided by division 2, any provision in the lease of a lot or common property which purports to require the consent of the lessor under the leasehold building units plan to any dealing with the lease is void.

(new)

### **24C      Powers of lessor where no current lease**

- (1) Where the lessor is entitled to immediate possession of a lot because of the determination of a lease, the lessor shall, for

the purposes only of this Act (but subject to such exceptions as may be prescribed), be deemed to be the lessee of the lot.

(new)

- (2) Nothing in subsection (1) confers or imposes on the lessor any right or obligation created by any lease, sublease, mortgage, or other interest to which any former lessee was subject.

(new)

- (3) Nothing in this section affects the rights of an under-lessee under the provisions of the *Property Law Act 1974*.

(new)

#### **24D Further leases of lots and common property**

- (1) Except as provided by subsection (3) and the *Property Law Act 1974*, section 115, the lessor under a leasehold building units plan may grant further leases of the lots in the leasehold building units plan (which may consist of or include leases to the lessor) at any time before the leasehold building units plan is terminated.

(new)

- (2) If a lease is granted under subsection (1) so as to commence when the lease of the common property expires, the lessor under the leasehold building units plan shall also grant a further lease of the common property to the body corporate.

(new)

- (3) Where the lessees of lots the sum of whose lot entitlements is not less than four-fifths of the aggregate lot entitlement and the body corporate have, at least 6 months before the expiration of the terms of those leases, given written notice under subsection (4) to the lessor under the leasehold building units plan concerned of their intention to exercise their rights to renew their leases, the lessor shall, at least 3 months before those terms expire, grant and deliver—

- (a) further leases of those lots to those lessees; and

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(b) a further lease of the common property to the body corporate.

(new)

(4) A lessee of a lot or a body corporate gives notice under this section to the lessor under the leasehold building units plan concerned of an intention to exercise a right to renew a lease only if—

(a) the right to a further lease, being a lease containing specified provisions, has been granted to the lessee or body corporate by the lessor in writing signed by the lessor; and

(b) the notice is accompanied by a lease for execution by the lessor in the form approved for registration under the *Land Title Act 1994* and containing those provisions.

(new)

(5) Except where any such lease is granted so as to commence during the term of another lease of a lot or the common property and is expressed to expire at the same time as the other lease, the terms of all leases granted under this section with respect to a parcel shall be expressed—

(a) to commence at the expiration of the terms of the leases they are intended to replace; and

(b) to expire at the same time.

(new)

(6) If a lease granted under this section confers on the lessee a right of renewal, the renewal term shall be the same as that to which each other lessee under the leasehold building units plan is entitled.

(new)

(7) The lessor under the leasehold building units plan may execute a further lease of the common property as agent for the body corporate, unless the lease is granted under subsection (3).

(new)

- (8) Despite subsection (3), the lessor may refuse to grant—
- (a) a further lease of a lot to a lessee, if—
    - (i) the lessee has committed a breach of a provision of the lease of that lot and that breach has not been remedied by the lessee or waived by the lessor; or
    - (ii) the lessee has not complied with a requirement imposed by the lessor in accordance with a provision of the lease for the renovation of improvements comprised within that lot; or
  - (b) a further lease of the common property to the body corporate, if—
    - (i) a body corporate has committed a breach of a provision of the lease of the common property and that breach has not been remedied by the body corporate or waived by the lessor; or
    - (ii) the body corporate has not complied with a provision of the lease for the renovation of any improvements comprising common property.

(new)

- (9) If a lessor refuses under subsection (8)(b) to grant a further lease of the common property the subject of a leasehold building units plan, the lessor shall also refuse to grant further leases of lots the subject of the same leasehold building units plan.

(new)

- (10) A right to a further lease of a lot or of common property may not be exercised otherwise than in accordance with this section.

(new)

## **24E Expiry of leases of lots**

- (1) When all leases of the lots and common property (if any) that are the subject of a leasehold building units plan expire or are otherwise determined without being wholly or partly replaced

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by further leases of the lots or common property registered under the *Land Title Act 1994*, then, except as otherwise provided by this section—

- (a) the leasehold building units plan is terminated; and
- (b) the body corporate constituted for the purposes of the leasehold building units plan is dissolved; and
- (c) if the leases so provide or it is so provided in any other agreement—the former lessor under the leasehold building units plan is liable to pay to each person who, immediately before the termination of the plan, was the lessee of a lot (the *former lessee*) such amount by way of compensation, calculated in accordance with the formula set out in schedule 6 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee; and
- (d) all rights which were vested in the body corporate immediately before its dissolution (being rights which, but for the dissolution of the body corporate, would have survived the expiry of the term of the leases) are vested in the former lessees; and
- (e) the former lessees become jointly and severally liable for all of the liabilities of the body corporate subsisting immediately before its dissolution; and
- (f) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees.

(new)

- (2) As soon as practicable after the termination of a leasehold building units plan, the registrar of titles shall, on the application of the lessor—
  - (a) record in the register the expiration or determination of the leases of the lots and common property comprised in the leasehold building units plan; and
  - (b) cancel the leasehold building units plan; and

- (c) record in the register relating to the parcel that was the subject of the leasehold building units plan the fact that the leasehold building units plan has terminated.
- (new)
- (3) Where, in relation to a lot comprised in a leasehold building units plan that is about to be terminated under subsection (1) or to a former lot that was comprised in a leasehold building units plan that has already been so terminated, a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (1)(c) to the lessee or former lessee of that lot, that dispute shall be resolved—
- (a) if the lease of that lot so provides or so provided or the parties to the dispute otherwise agree—by reference to arbitration under the *Commercial Arbitration Act 2013*; or
- (b) in any other case—by an order of the Court.
- (new)
- (4) An application for an order under subsection (3)(b) may be made by any party to the dispute concerned.
- (new)
- (5) Notice of the application shall be served, in accordance with rules of court, on such persons as the Court may direct.
- (new)
- (6) As far as practicable, all applications which relate to the same leasehold building units plan shall be heard together.
- (new)
- (7) At any time before the expiry of the terms of leases of the lots and the common property (if any) comprised in a leasehold building units plan, the lessee of any of those lots, the lessor, the body corporate or any creditor of the body corporate may apply to the Court for an order under subsection (10).
- (new)
- (8) Notice of an application under subsection (7) shall be served, in accordance with the rules of court, on every person referred

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to in that subsection other than the applicant and on such other persons (including creditors of the body corporate) as the Court directs.

(new)

- (9) The person making an application under subsection (7) and any person referred to in subsection (8) (whether served with a copy of the notice of the application or not) is entitled to appear and be heard at the hearing of the application.

(new)

- (10) At the hearing of an application under subsection (7), the Court may make an order to the effect that, despite the expiry of the leases of the lots and common property (if any) the subject of the leasehold building units plan concerned, the body corporate shall continue in existence for the purposes specified in the order until such date as may be specified in the order or in a further order of the Court.

(new)

- (11) An order made under subsection (10) may include directions for or with respect to any of the following matters—
- (a) the sale or disposition of any property of the body corporate;
  - (b) the discharge of the liabilities of the body corporate;
  - (c) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person;
  - (d) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution;
  - (e) the administration and functions of the body corporate;
  - (f) any legal proceedings which have been brought by or against the body corporate and which are currently pending;
  - (g) the voting power at meetings of the body corporate of persons referred to in paragraphs (c) and (d);

- (h) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order;
  - (i) the winding-up of the body corporate (including the appointment and functions of any person to carry out the winding-up).
- (new)
- (12) An order under subsection (10) shall have effect according to its tenor despite any other provision of this part.
- (new)
- (13) The Court may, from time to time, vary any order made under subsection (10) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.
- (new)

## **24F Restrictions on re-entry or forfeiture of lease of lot**

- (1) Where the lease of a lot is subject to a registered mortgage, a right of re-entry or forfeiture under a provision of the lease for a breach of any covenant, condition or agreement (express or implied) in the lease shall, despite the *Property Law Act 1974*, section 124(6), not be exercised unless the lessor has served on the mortgagee a copy of the notice relating to that breach served on the lessee under section 124 of that Act.
- (new)
- (2) Where a lessor has brought legal proceedings to enforce a right of re-entry or forfeiture under a provision of a lease of a lot, the Court may, on application by any person claiming as mortgagee of the lot make an order—
- (a) staying those proceedings on such terms as appear to the Court to be just and equitable; and
  - (b) vesting, for the whole of the remaining term of the lease, or any shorter term, the lease of the lot in that mortgagee on such conditions as to the execution of any dealing or other document, payment of proper and reasonable rent,



(d) such other persons as the Court may direct.

(new)

(3) The applicant and any person referred to in subsection (2) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(new)

(4) The Court may, on an application made under subsection (1), make an order for or with respect to the variation of the existing leasehold building units plan or the substitution for the existing leasehold building units plan of a new leasehold building units plan.

(new)

(4A) In making an order under subsection (4), the Court must take into account the interests of the lessor and the interests of the lessees of lots.

(new)

(5) An order made under subsection (4) shall take effect on such day as may be specified in the order.

(new)

(6) Without limiting the generality of subsection (4), an order made under that subsection may include directions for or with respect to any 1 or more of the following matters—

(a) the substitution for the existing schedule of lot entitlement of a new schedule of lot entitlement;

(b) the reinstatement in whole or in part of the building or, in the case of a stratum parcel, of the part of the building subject to the leasehold building units plan;

(c) the transfer to or vesting in the body corporate, free from registered mortgages, estates or interests, and caveats, of the interests of lessees of lots which have been wholly or partly destroyed;

(d) the application of any insurance money received by the body corporate in respect of damage to or the

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destruction of the building or, in the case of a stratum parcel, the part of the building subject to the leasehold building units plan;

- (e) the payment of money to or by the body corporate, the lessor or the lessees or any 1 or more of them;
- (f) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order.

(new)

- (7) An order made under subsection (4) shall have effect according to its tenor.

(new)

- (8) Where the Court is of the opinion that an order should not be made under subsection (4)—

- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 26; and

- (b) where it makes such a direction—

- (i) the application the subject of the direction shall be deemed to be made under section 26 by a person entitled to make the application; and

- (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 26, is entitled to appear and be heard on the hearing of the application.

(new)

- (9) The Court may, from time to time, vary any order made under subsection (4) on the application of any person entitled to appear and be heard on the hearing of the application for that order.

(new)

- (10) (not applied)

(11) (not applied)

(12) (not applied)

(13) (not applied)

**25A Notification to local government on extinguishment of plan**

(not applied)

**26 Termination of leasehold building units plan**

(1) An application to the Court for an order under subsection (4) may be made by—

(a) the lessor or any lessee of a lot in the leasehold building units plan concerned; or

(b) where the lease of any such lot is subject to a registered mortgage—the mortgagee; or

(c) the body corporate.

(new)

(2) Notice of the application shall be served, in accordance with the rules of court, on—

(a) every person referred to in subsection (1), other than the applicant; and

(b) the local government except where the corporation is the local government; and

(c) the registrar of titles; and

(d) such other persons (including creditors of the body corporate) as the Court may direct.

(new)

(3) The applicant and any person referred to in subsection (2) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(new)

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(4) The Court may, on an application made under subsection (1), make an order terminating the leasehold building units plan concerned.

(new)

(4A) In making an order under subsection (4) the Court must take into account the interests of the lessor and the interests of the lessees of lots.

(new)

(5) An order made under subsection (4) shall take effect on such day as may be specified in the order.

(new)

(6) An order made under subsection (4) shall include directions for or with respect to the following matters—

(a) the sale or disposition of any property of the body corporate;

(b) the discharge of the liabilities of the body corporate;

(c) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person;

(d) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution;

(e) the administration and functions of the body corporate;

(f) the voting power at meetings of the body corporate of persons referred to in paragraph (c) or (d);

(g) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order;

(h) the winding-up of the body corporate (including the appointment and functions of any person to carry out the winding-up).

(new)

(7) Upon an order under this section taking effect—

- (a) the estate or interest of the former lessees in that part of the former parcel which consisted of common property held by the body corporate as agent for the former lessees vests in the body corporate as principal, subject only to any estate or interest recorded on the leasehold building units plan or on any registered sublease, evidencing the estate or interest of the body corporate in that common property; and
  - (b) the estates or interests of every lessee in that part of the former parcel which did not consist of common property vests in the body corporate as principal, subject only to any estate or interest recorded on the leasehold building units plan evidencing the estate or interest of the body corporate in the common property comprised in that former parcel to the extent that the estate or interest so recorded was capable of affecting the lease of any former lot; and
  - (c) the persons who, immediately before the order took effect, were lessees of lots the subject of the leasehold building units plan concerned cease to be lessees of lots subject to that leasehold building units plan; and
  - (d) the persons whose estates or interests are divested by paragraph (b) have instead such rights and liabilities as are conferred or imposed upon them by the order; and
  - (e) if the leases so provided or it is provided in any other agreement—the former lessor is liable to pay to each former lessee such amount by way of compensation, determined in accordance with the formula set out in schedule 6 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee.
- (new)
- (8) The provisions of an order made under this section shall have effect despite any provision of this Act, other than this section.
- (new)

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- (9) An order made under subsection (4) shall have effect according to its tenor.
- (new)
- (10) Where the Court is of the opinion that an order should not be made under subsection (4)—
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 25; and
- (b) where it makes such a direction—
- (i) the application the subject of the direction shall be deemed to be an application made under section 25 by a person entitled to make the application; and
- (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 25, is entitled to appear and be heard on the hearing of the application.
- (new)
- (11) The Court may, from time to time, vary any order made under subsection (4) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.
- (new)
- (12) Where, in relation to a former lot that was comprised in a leasehold building units plan that has been terminated by an order made under subsection (4), a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (7)(e) to the former lessee of that lot, that dispute shall be resolved—
- (a) if the lease of the lot so provided or the parties to the dispute otherwise agree—by reference to arbitration under the *Commercial Arbitration Act 2013*; or
- (b) in any other case—by an order of the Court.
- (new)

- (13) An application for an order under subsection (12)(b) may be made by any party to the dispute concerned.  
(new)
- (14) Notice of an application for an order under subsection (12) shall be served, in accordance with the rules of court, on such persons as the Court may direct.  
(new)
- (15) As far as practicable, all applications which relate to the same leasehold building units plan shall be heard together.  
(new)

### **26A Interchangeability of notices**

Any notice served under section 25 or 26 shall, where it relates to an application which is required to be treated as an application under another of those sections, be deemed to be a notice served under that other section.

(new)

### **26B Consequences of making an order under s 25 or 26**

- (1) Upon lodgement with the registrar of titles of a request in the prescribed form accompanied by a copy of an order made under section 25 or 26, the registrar of titles shall make appropriate recordings in the register and on the leasehold building units plan to give effect to the order.  
(new)
- (2) Where, because of the lodgement of a request in the prescribed form accompanied by a copy of an order made under section 25 or 26, the registrar of titles is required by subsection (1) to make recordings in the register, the registrar of titles shall—
- (a) record in the register the determination of the leases of the lots the subject of the former leasehold building units plan; and

- (b) record the determination of the lease of the common property on the former leasehold building units plan; and
- (c) record in the register evidencing the lessor's reversion in the former parcel that the body corporate is the lessee of that part of the parcel which contained the former lots and common property that were comprised in the leasehold building units plan, together with any other estates or interests to which the body corporate's leasehold estate in that part continues to be subject.

(new)

## **Part 4                      Management**

### **Division 1                Bodies corporate**

#### **27        Constitution of bodies corporate**

- (1) The lessee or lessees from time to time shall, by virtue of this Act, upon registration of the leasehold building units plan be a body corporate under the name 'The Lessees—(insert name of the building or stratum parcel, as the case may be) Leasehold Building Units Plan No.'.

(amended)

- (1A) The name of the building or the stratum parcel shall be the name endorsed upon the relevant leasehold building units plan and the leasehold building units plan number shall be the number allotted to that leasehold building units plan under section 9(14).

(amended)

- (2) The Corporations Law does not apply to or in respect of a body corporate constituted under this Act.

(amended)

- (3) Subject to this Act, the body corporate shall have the powers and functions conferred or imposed on it by or under this Act

or the by-laws or the management statement (if any) for the building or its site the subject of the leasehold building units plan concerned and shall do all things reasonably necessary for the enforcement of the by-laws, or management statement and the control, management and administration of the common property.

(amended)

- (4) Despite the provisions of section 26, a body corporate for a leasehold building units plan which has been terminated under that section continues in existence until it is wound up in accordance with the order made under that section and, while it so continues in existence, is constituted by the persons referred to in section 26(6)(c) and (d).

(new)

- (5) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws or management statement (if any) for the building or its site the subject of the leasehold building units plan concerned for the time being in force.

(amended)

- (6) The body corporate may—

- (a) sue and be sued on any contract made by it; and
- (b) sue for and in respect of any damage or injury to the common property caused by any person, whether a lessee or not; and
- (c) be sued in respect of any matter connected with the parcel for which the lessees are jointly liable.

(amended)

- (7) In any case in which work is carried out for the purpose of constructing or preparing the common property, the body corporate, upon registration of the leasehold building units plan, shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.

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(amended)

## **28 Seal of body corporate**

- (1) The common seal of a body corporate shall be kept—
- (a) where the body corporate is constituted by 1 lessee—by that lessee; or
  - (b) where the body corporate is constituted by 2 or more lessees—by such lessee or member of the committee as the body corporate determines or, in the absence of any such determination, by the secretary of the committee.

(amended)

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

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

(amended)

- (3) Despite subsections (1) and (2), a body corporate manager shall, for the purpose of exercising or performing any of his or her powers or functions, be entitled to have the custody of the common seal of the body corporate and to affix it to any instrument or document and, where he or she so affixes it, shall attest the fact and date of the affixing of the seal by his or her signature.
- (4) Where a body corporate manager has affixed the common seal of the body corporate to any instrument or document, he or she shall be deemed to have done so under the authority of a delegation made under section 50 by the body corporate.

- (5) Subsection (4) shall not operate so as to enable a person to fraudulently obtain a benefit from its operation, but any benefit that accrues to a person from the operation of that subsection shall be deemed not to be fraudulently obtained if the benefit was first obtained by that person without any fraud by that person.

## **29 First annual general meeting of body corporate**

- (1) A meeting of the body corporate shall be convened and held in accordance with schedule 2, part 1—
- (a) by the original lessee (if any), within the period of 3 months after registration of the leasehold building units plan, whether or not the original lessee is the lessee of a lot at the relevant time; or
  - (b) if there is no original lessee—the lessor may convene the meeting.

Maximum penalty—50 penalty units.

(new)

- (1A) If the lessor does not convene the meeting referred to in subsection (1), the penalty provided in that subsection will not apply to the lessor.

(new)

- (2) The agenda for a meeting convened under subsection (1) shall consist of the following items—
- (a) to decide whether insurances effected by the body corporate should be confirmed, varied or extended or, if not effected, what insurances should be effected;
  - (b) to decide whether any amounts determined under section 38A(1), (2) or (4) should be confirmed or varied or, if not determined, what amounts should be determined;
  - (c) where there are more than 3 lessees—to determine the number of members of the committee;

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- (d) to elect the chairperson, secretary and treasurer of the body corporate and other members of the committee;
  - (e) to decide what matters (if any) shall be restricted matters for the purposes of section 46;
  - (f) to decide whether the by-laws in force immediately before the holding of the meeting should be amended, added to or repealed;
  - (g) to decide whether a body corporate manager should be appointed under section 50 by the body corporate and, if a body corporate manager is to be appointed, which powers or functions of the body corporate should be delegated to the body corporate manager;
  - (h) to decide whether to appoint a person to audit the books and accounts of the body corporate;
  - (i) such other matters as may be raised at the meeting.
- (amended)
- (2A) The agenda for a meeting convened under subsection (1) may include as an item that the body corporate resolve that the accounts of the body corporate shall not be audited.
  - (2AA) If the body corporate so resolves, the item on the agenda referred to in subsection (2)(h) shall not be proceeded with.
  - (2B) Nothing in subsection (2A) shall prevent a body corporate resolving in general meeting that the accounts of the body corporate relating to any period specified in the resolution shall be audited.
  - (3) The meeting held under subsection (1) shall be the first annual general meeting of the body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.
  - (3A) A person may be elected to 1 or more of those offices.
  - (4) An original lessee shall not fail or neglect to deliver to the body corporate at its first annual general meeting—
    - (a) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for leases of lots), diagrams

(including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by the original lessee and relating to the parcel or building or part of the building subject to the leasehold building units plan; and

- (b) if they are in the possession or control of the original lessee—the roll, books of account and any notices or other records relating to the leasehold building units plan; and
- (c) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis;

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

Maximum penalty—50 penalty units.

(amended)

- (5) Schedule 2, part 1 applies to and in respect of the first annual general meeting of the body corporate and voting at that meeting.
- (6) If a meeting of the body corporate is not convened and held in accordance with subsections (1) and (2), a referee may, on an application by the body corporate, a lessee or a mortgagee of a lease of a lot, appoint by order a person (other than the lessor) to convene a meeting of the body corporate within such time as may be specified in the order and the meeting convened by that person shall be held within that period and shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).

(amended)

- (8) An order made under subsection (6) may include such ancillary or consequential provisions as the referee thinks fit.
- (9) Despite schedule 2, where an order made under subsection (6) so provides—

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- (a) the person appointed to convene a meeting of a body corporate by the order shall preside at the meeting and, while he or she so presides, shall be deemed to be the chairperson of the body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (10) An original lessee who has failed to convene a meeting of the body corporate in accordance with subsection (1) remains liable to the penalty provided by that subsection even though an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order.

(amended)

#### **29A Meetings, other than first annual general meeting, of body corporate**

- (1) An annual general meeting of a body corporate shall be held in each year on or after the anniversary of the first annual general meeting but not later than 2 months after the anniversary.
- (2) A meeting of a body corporate which is not an annual general meeting shall be held whenever it is convened by the committee and shall be an extraordinary general meeting.
- (3) Schedule 2, part 2 applies to and in respect of a meeting of the body corporate, which is not the first annual general meeting, and voting at that meeting.

#### **29B Audit of accounts of body corporate**

- (1) The books and accounts of the body corporate in respect of each financial year of the body corporate shall be audited except where the body corporate at the annual general meeting held at the beginning of that financial year by special resolution resolves that the accounts shall not be audited.
- (2) The audit of the books and accounts of the body corporate must be performed only by a qualified auditor.

(amended)

### **30 By-laws**

- (1) Except as provided in this section the by-laws in schedule 3 shall be the by-laws in force in respect of each leasehold building units plan.

(amended)

- (1A) If a management statement has been recorded under the principal Act on a leasehold building units plan and the by-laws are inconsistent with the management statement, the management statement prevails.

(new)

- (2) Subject to subsections (7) and (11), a body corporate, pursuant to a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots or the lots and common property the subject of the leasehold building units plan, make by-laws amending, adding to or repealing the by-laws in schedule 3 or any by-laws made under this subsection.

(amended)

- (3) An amendment of, addition to or repeal of the by-laws has no force or effect until the registrar of titles has, pursuant to a notification in the prescribed form lodged in the land registry by the body corporate, recorded the notification on the registered leasehold building units plan.

(amended)

- (3A) The registrar of titles shall not record a notification on the registered leasehold building units plan in relation to an amendment of, addition to or repeal of the by-laws made more than 3 months prior to the lodgement of the notification.

(amended)

- (4) A sublease of a lot or common property shall be deemed to contain an agreement by the sublessee that he or she will comply with the by-laws for the time being in force.

(amended)

- (5) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the body

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corporate and the lessees and any mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier, of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate and each lessee and each such mortgagee, sublessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.

(amended)

- (6) No by-laws or any amendment of or addition to a by-law shall be capable of operating to prohibit or restrict the devolution of a leasehold estate in a lot, or a transfer, sublease, mortgage or other dealing with a leasehold estate in a lot, or to destroy or modify any easement, service right or service obligation implied or created by this Act.

(amended)

- (7) With the written consent of the lessee or lessees of the lot or lots concerned, a body corporate may, pursuant to a resolution without dissent make a by-law—

- (a) conferring on the lessee of a lot specified in the by-law, or on the lessees of the several lots so specified—

- (i) the exclusive use and enjoyment of; or  
(ii) special privileges in respect of;

the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the body corporate, by the lessee or lessees of the lot or several lots) specified in the by-law; or

- (b) amending, adding to or repealing a by-law made in accordance with this subsection.

(amended)

- (7A) A by-law referred to in subsection (7) shall either provide that—

- (a) the body corporate shall continue to be responsible to carry out its duties under section 37(1)(b) and (c), at its own expense; or

- (b) the lessee or lessees of the lot or lots concerned shall be responsible for, at the lessee's or lessees' expense, the performance of the duties of the body corporate referred to in provision (a);

and, in the case of a by-law that confers rights or privileges on more than 1 lessee, any money payable by virtue of the by-law by the lessees concerned—

- (c) to the body corporate; or
- (d) to any person for or towards the maintenance or upkeep of any common property;

shall, except to the extent that the by-law otherwise provides, be payable by the lessees concerned proportionately according to the relevant proportions of their respective lot entitlements.

(amended)

- (7AA) If a by-law does not provide as required by subsection (7A)(a) or (b), the lessee or lessees shall be responsible at his, her or their own expense, for the duties of the body corporate referred to in subsection (7A)(a).

(amended)

- (7B) A by-law made under subsection (7)—

- (a) need not identify or define the common property the subject of the grant of exclusive use and enjoyment or special privileges provided that the by-law prescribes a method of identifying or defining the common property;
- (b) may authorise a person (including the original lessee or his or her agent) to identify or define the common property and to allocate such identified or defined area of common property to the respective lessees of each lot who are entitled by the by-law to the grant of exclusive use and enjoyment or special privileges;
- (c) may authorise the transposition of an identified or defined area of common property the subject of a grant of exclusive use and enjoyment or special privileges from 1 lessee of a lot to another lessee of a lot at any

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time and from time to time on receipt of written notice to the body corporate from both such lessees.

(amended)

- (7C) The notification on the registered leasehold building units plan referred to in subsection (7D) shall be given forthwith by the body corporate on receipt of a written request from the person referred to in subsection (7B)(b) or the lessees referred to in subsection (7B)(c).

(amended)

- (7D) Neither the allocation of identified or defined common property nor any variation or transposition in relation to that allocation has any force or effect until the registrar of titles has, pursuant to a notification in the prescribed form lodged in the land registry by the body corporate, recorded the notification on the registered leasehold building units plan.

(amended)

- (7E) The registrar of titles shall not record a notification on the registered leasehold building units plan in relation to an allocation of identified or defined common property or any variation or transposition in relation to that allocation which occurred more than 3 months prior to the lodgement of the notification.

(amended)

- (8) A by-law referred to in subsection (7) shall, while it remains in force, inure as appurtenant to, and for the benefit of, and (subject to section 40(4)) is binding upon, the lessee or lessees for the time being of the lot or lots specified in the by-law.

(amended)

- (9) To the extent to which such a by-law makes a lessee directly responsible for the duties of the body corporate referred to in subsection (7A)(a), it discharges the body corporate from the performance of those duties.

(amended)

- (9A) Where a person becomes a lessee of a lot at a time when, under a by-law, another person is liable to pay money to the

body corporate, the person who so becomes lessee is, subject to section 40(4), jointly and severally liable with the other person to pay the money to the body corporate.

(amended)

- (10) Any moneys payable by a lessee to the body corporate under a by-law referred to in subsection (7) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction.

(amended)

- (11) Where an order made under part 5, division 3 has effect as if its terms were a by-law, a by-law may vary or nullify the effect of the order.

- (11A) However, the by-law shall be made under a resolution without dissent.

- (12) A by-law which, but for this section, would have effect to prohibit or restrict—

(a) the keeping on a lot of a guide, hearing or assistance dog used by a lessee or occupier of a lot who is a person with a disability who relies on a guide, hearing or assistance dog; or

(b) the use of a guide, hearing or assistance dog on a lot or common property by a person with a disability who relies on a guide, hearing or assistance dog;

shall, to the extent of that prohibition or restriction, have no force or effect.

(amended)

- (12A) For the purposes of subsection (12)—

*assistance dog*, *disability*, *guide dog* and *hearing dog* have the meanings respectively assigned to them under the *Guide, Hearing and Assistance Dogs Act 2009*.

(amended)

- (13) (not applied)

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**31 Copy of by-laws and management statement to be produced upon request**

Where any lot or common property the subject of a leasehold building units plan is sublet or rented, otherwise than to a lessee of a lot, the sublessor or, as the case may be, landlord shall upon the request of the sublessee or tenant produce or cause to be produced to the sublessee or tenant for his or her inspection a copy of the by-laws for the time being in force in respect of the leasehold building units plan and a copy of the management statement for the building and its site, the subject of the leasehold building units plan concerned.

Maximum penalty—2 penalty units.

(amended)

**32 Levies by body corporate on lessees**

- (1) A body corporate may levy the contributions determined by it under section 38A(1) and (2) and contributions referred to in section 38A(3) and the amount (if any) determined under section 38A(4) in respect of contributions by serving on the lessees notice in writing of the contributions payable by them in respect of their respective lots.

(amended)

- (2) Contributions levied under subsection (1) by a body corporate shall be levied in respect of each lot and shall be payable, subject to this section, by the lessees in shares proportional to the lot entitlements of their respective lots.

(amended)

- (3) In respect of a contribution levied under subsection (1), a lessee of a lot is, subject to section 40(4), liable, jointly and severally with any person who was liable to pay that contribution when that lessee became the lessee of that lot, to pay such part of that contribution as was unpaid when he or she became the lessee of that lot.

(amended)

- (4) Regular periodic contributions to the administrative fund and sinking fund of a body corporate referred to in section 38A(5) shall be deemed to have been duly levied on a lessee of a lot even though notice levying the contributions was not served on the lessee.

(amended)

- (5) Without affecting the liability of a lessee of a lot in respect of a contribution levied under this section, where a mortgagee is in possession (whether by the mortgagee or any other person) of the lease of a lot the mortgagee shall be liable jointly and severally with the lessee of the lease of the lot of which the mortgagee is in possession for a contribution levied on that lessee in accordance with this Act but shall not be so liable in respect of a contribution, other than regular periodic contributions to the administrative fund and sinking fund referred to in section 38A(5), unless notice in writing of the levy of the contribution has been served on the mortgagee.

(amended)

- (5A) A notice of the levy of contributions to a lessee of a lot shall—

- (a) if an amount has been determined pursuant to section 38A(4) in respect of the contributions—state the amount of the contribution attributable to that amount of discount; and
- (b) state the date when the contribution becomes due and payable; and
- (c) be served or deemed to be served on the lessee before the date when the contributions become due and payable.

(amended)

- (6) A contribution levied in respect of a lot under this section—

- (a) becomes due and payable to the body corporate in accordance with the decision of the body corporate to make the levy; and
- (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the

contribution attributable to the amount determined under section 38A(4) (if any); and

- (c) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction;

and any part of a contribution attributable to the amount determined under section 38A(4) so paid shall form part of the fund to which the contribution upon which the amount was determined belongs.

- (7) Nothing in this section shall be construed to prevent a body corporate, in general meeting or the committee, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (6)(b) even though the contribution is not paid as prescribed in that subsection.

### **33 Power of body corporate to carry out work**

- (1) Where a notice has been served on the lessee of a lot by a public authority or the council requiring that lessee to carry out work on or in relation to that lot and the notice is not complied with, the body corporate may carry out the work.

(amended)

- (2) Where a lessee, mortgagee in possession, sublessee or occupier of a lot fails or neglects to carry out work—

- (a) required to be carried out by him or her under a term or condition of—

- (i) a by-law referred to in section 30(7); or  
(ii) the management statement (if any) for the building and its site the subject of the leasehold building units plan concerned; or  
(iii) the lease of the lessee's lot; or

- (b) necessary to remedy a breach of the duty imposed on him or her by section 51(1)(a);

the body corporate may carry out that work.

(amended)

- (3) Where the body corporate carries out work on or in relation to a lot or common property under subsection (1) or (2), it may, subject to section 40(4), recover the cost of so doing, as a debt—
- (a) from the lessee, mortgagee in possession, sublessee or occupier referred to in subsection (1) or (2); or
  - (b) where the work is carried out under—
    - (i) subsection (1) or (2)(b), from any person who, after the work is carried out, becomes the lessee of the lot on or in relation to which the work was carried out; or
    - (ii) subsection (2)(a), from any person who, after the work is carried out, becomes the lessee of the lot in respect of which the by-law referred to in subsection (2)(a) was made.

(amended)

- (4) Where an order has been made under part 5 and the order is not complied with, the body corporate may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing, as a debt, in any court of competent jurisdiction.

- (5) Where—

- (a) part of a building comprised in a lot in a leasehold building units plan contains a structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or
- (b) a defect occurs in any pipes, poles, wires, cables or ducts referred to in section 51(1)(a)(ii) within a lot;

and the defect is not due to any breach of the duty imposed on any person by section 51(1)(a), the body corporate shall, at its own expense, carry out such work as is necessary to rectify the defect.

(amended)

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**34 Body corporate's address**

- (1) A body corporate shall ensure that an address for the time being for service of notices on it is recorded on the registered leasehold building units plan.

(amended)

- (2) Upon a change of address of a body corporate for service of notices on it, the body corporate shall cause a notice in the prescribed form of the change of address to be lodged forthwith in the land registry.

- (3) (not applied)

- (4) The registrar of titles shall make such recording on the registered leasehold building units plan of the change of address of a body corporate as the registrar of titles considers appropriate.

(amended)

- (5) Upon the recording by the registrar of titles of the change of address notified under subsection (2) and not otherwise, that address as changed shall, despite any other provision of this Act, be an address for service of notices on the body corporate.

(amended)

**35 Agreement for payment to a lessee of consideration on transfer or lease of common property**

A body corporate may, pursuant to a special resolution, make an agreement with a lessee with respect to the payment to the lessee of the whole or any part of the consideration under any transaction proposed to be entered into by the body corporate under part 2, division 2 or of any moneys payable to the body corporate under a by-law referred to in section 30(7).

(amended)

**36 Power of entry**

- (1) For the purpose of carrying out—

- (a) under section 33(1), (2), (4) or (5), any work; or
- (b) any work required to be carried out by a body corporate—
  - (i) by a notice served on it by a public authority or the council; or
  - (ii) by an order of the referee or a tribunal; or
- (c) any work referred to in section 37(1)(b) or (c); or
- (d) any work necessary to repair or renew any pipes, poles, wires, cables or ducts referred to in section 51(1)(a)(ii);  
the body corporate may, by its agents, employees or contractors, enter upon any part of the parcel for the purpose of carrying out the work—
- (e) in the case of an emergency—at any time; or
- (f) in any other case—at any reasonable time on notice given to any occupier of that part of the parcel.

(amended)

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

Maximum penalty—\$200.

### **37 Duties and powers of body corporate regarding property etc.**

- (1) A body corporate shall—
  - (a) control, manage and administer the common property for the benefit of the lessees; and
  - (b) where reasonably practicable, establish and maintain suitable lawns and gardens on the common property; and
  - (c) subject to section 37A, properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part of the common property)—
    - (i) the common property; and

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- (ii) any fixture or fitting (including any pipe, pole, wire, cable or duct) comprised on the common property or within any wall, floor or ceiling the centre of which forms a boundary of a lot; and
  - (iii) any fixture or fitting (including any pipe, pole, wire, cable or duct) which is comprised within a lot and which is intended to be used for the servicing or enjoyment of any other lot or of the common property; and
  - (iv) each door, window and other permanent cover over openings in walls where a side of the door, window or cover is part of the common property; and
  - (v) any personal property vested in the body corporate; and
- (d) cause to be constructed and maintained at an appropriate place within the parcel, accessible by the lessees a receptacle suitable for the receipt of mail and other documents with the name of the body corporate clearly shown on the receptacle.

(amended)

(2) A body corporate may—

- (a) enter into an agreement, upon such terms and conditions (including terms for the payment of consideration) as may be agreed upon by the parties, with a lessee or occupier of a lot for the provision of amenities or services by it to the lot or to the lessee or occupier; and
- (b) acquire and hold any personal property; and
- (d) enter into hiring agreements and leasing agreements; and
- (e) accept or acquire a lease, licence or permit for the purposes of providing moorings for vessels; and
- (f) make or cause to be made improvements to the common property where—
  - (i) in any 1 case, the cost of the improvements does not exceed the prescribed amount; or

- (ii) the body corporate by resolution without dissent so resolves; or
- (iii) the body corporate resolves in general meeting that the improvements are considered to be essential for the health, safety or security of users of the common property and the referee makes an order approving the making of the improvements.

(amended)

(2A) In subsection (2)(f)(i)—

*prescribed amount* means the amount prescribed under the Building Units and Group Titles Act, section 37(2)(g)(i).

(new)

(3) (not applied)

(4) (not applied)

### **37A Improvement etc. to common property by lessee of lot**

- (1) A body corporate may, upon such terms as it considers appropriate, at the request of a lessee of a lot, by resolution without dissent, authorise the lessee of the lot to effect improvements (including erect or install fixtures and fittings) in or upon the common property for the benefit of that lessee.

(amended)

- (2) The lessee for the time being of a lot in respect of which any improvement in or upon the common property has been effected under an authority granted under subsection (1) shall, unless excused by the body corporate, be responsible for the performance of the duty of the body corporate under section 37(1)(c) in respect of the improvement.

(amended)

### **38 Administrative fund and sinking fund**

- (1) A body corporate shall establish and maintain a fund as its administrative fund.

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- (2) A body corporate shall pay into its administrative fund—
    - (a) all moneys received by it in respect of contributions determined under section 38A(1); and
    - (b) the proceeds of the sale or other disposal of any personal property of the body corporate; and
    - (c) any fees received by the body corporate under section 40; and
    - (d) any amounts paid to the body corporate by way of discharge of insurance claims; and
    - (e) interest received on any investments belonging to the administrative fund.
  - (3) A body corporate shall not disburse any moneys from its administrative fund otherwise than for the purpose of—
    - (a) meeting its liabilities referred to in section 38A(1); or
    - (b) carrying out its powers or functions under this Act.
  - (4) A body corporate shall establish and maintain a fund as its sinking fund.
  - (5) A body corporate shall pay into its sinking fund—
    - (a) all moneys received by it in respect of contributions determined under section 38A(2); and
    - (b) any amounts paid to the body corporate by way of discharge of insurance claims and not paid to its administrative fund; and
    - (c) all other amounts received by the body corporate and not paid or payable into the administrative fund; and
    - (d) interest received on any investments belonging to the sinking fund.
  - (6) A body corporate shall not disburse any moneys from its sinking fund otherwise than for the purpose of—
    - (a) meeting its liabilities referred to in section 38A(2); or
    - (b) carrying out its powers or functions under this Act.

- (7) A body corporate may only invest any moneys in its administrative fund or its sinking fund in any manner permitted by law for the investment of trust funds or in any prescribed investment.

(amended)

- (7A) In subsection (7)—

*prescribed investment* means the investment prescribed under the Building Units and Group Titles Act, section 38(7).

(amended)

- (8) A body corporate shall pay any moneys in its administrative fund or its sinking fund that are not otherwise invested under subsection (7) into an account established with a financial institution in the name of the body corporate.

### **38A Body corporate to determine contributions by lessees**

- (1) Within 14 days after registration of the leasehold building units plan and from time to time afterwards, the body corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred within the period (not exceeding 12 months) specified in the determination in respect of—

- (a) the regular maintenance and keeping in good and serviceable repair under section 37 of parts of the parcel being the common property, fixtures, fittings and other property (including personal property) held by or on behalf of the body corporate; and
- (b) the payment of insurance premiums; and
- (c) all other liabilities incurred or to be incurred during that period by or on behalf of the body corporate in carrying out its powers and functions under this Act other than liabilities referred to in subsection (2).

(amended)

- (2) Within 12 months after registration of the leasehold building units plan and from time to time afterwards, the body

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corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purposes of meeting its actual or expected liabilities in respect of—

- (a) painting or treating of any part of the common property which is a structure or other improvement for the preservation and appearance of the common property; and
- (b) the acquisition of personal property; and
- (c) the making of improvements to the common property; and
- (d) the renewal or replacement under section 37 of parts of the parcel being the common property, fixtures and fittings which the body corporate is required by this Act to maintain and keep in good and reasonable repair and other property (including personal property) held by or on behalf of the body corporate; and
- (e) such other liabilities expected to be incurred at a future time where the body corporate considers that the whole or part of the liabilities should be met from its sinking fund.

(amended)

- (3) If the body corporate becomes liable to pay any moneys that it is unable to pay forthwith, the body corporate shall determine that amount to be raised by contributions.
- (4) The body corporate from time to time may in respect of contributions determined in accordance with section 38A(1), (2) or (3) determine, for the purposes of section 32(6)(b), an amount being not greater than 20% of those contributions.
- (5) A determination made by a body corporate under subsection (1) or (2) may specify that the amounts to be raised for the purposes referred to in the subsection shall be raised by such regular periodic contributions as may be specified in the determination.

**38B Levy by body corporate for contributions**

A body corporate shall from time to time levy, under section 32, on each person liable for the levy a contribution to raise the amounts referred to in section 38A(1), (2) and (3).

**38C Borrowings by body corporate**

A body corporate may borrow moneys and secure the repayment of borrowed moneys and of any interest in such manner as may be agreed upon by the body corporate and the lender.

**38D Duty of body corporate as to keeping records, convening meetings etc.**

- (1) A body corporate shall—
- (a) cause proper records to be kept of notices given to the body corporate under this or any other Act and of any orders made under this Act and served on the body corporate; and
  - (b) cause to be kept and retained for the prescribed time or times minutes of its meetings (which shall include particulars of motions passed by it at those meetings) and proper books of account in respect of moneys received or expended by the body corporate; and
  - (c) cause to be prepared, from the books referred to in paragraph (b), a proper statement of accounts of the body corporate in respect of each period commencing on the date of registration of the leasehold building units plan or the day immediately after the date up to which the last previous such statement was prepared and ending on the last day of the month that precedes by 3 months the month in which occurs each anniversary of the first annual general meeting; and
  - (d) cause annual general meetings to be convened under section 29A.

(amended)

- (2) For the purpose of this section—
- (a) proper books of account shall include a receipt book, cash book, financial institution deposit book, contributions levy register, cheque book and register of assets; and
  - (b) a register of assets shall disclose the personal property vested in the body corporate; and
  - (c) the expression *book* includes any register or other record of information and any accounts or accounting records however compiled, recorded or stored and also includes any document.
- (3) For the purposes of subsection (1)(c), there shall be shown in respect of each item shown in every statement of accounts of the body corporate, except the first statement after incorporation of the body corporate, the corresponding amount (if any) as at the end of the immediately preceding financial year and where the financial years are not equal in length, the periods covered shall be clearly indicated by way of note or otherwise.
- (3A) If the statement of accounts does not include an item corresponding to an item in the statement of accounts as at the end of the immediately preceding financial year, that previous item and the amount of that item shall be shown.
- (4) If a body corporate fails or neglects to convene an annual general meeting within the period required by section 29A, the annual general meeting held next after the expiration of that period shall be an annual general meeting of the body corporate.

### **38E Body corporate to implement its decisions**

A body corporate shall implement the decisions of the body corporate.

### **39 Roll**

- (1) A body corporate shall prepare and maintain a roll in accordance with this section.
- (2) The roll shall be kept in the form of a book (either bound or loose-leaf) which shall contain 1 or more pages in respect of each lot the subject of the leasehold building units plan concerned.  
(amended)
- (3) The body corporate shall record the following information on a page of the roll relating to the lot to which the information relates—
  - (a) the lot entitlement of the lot, as shown from time to time on copies of schedules of lot entitlements forwarded under section 14 and received by the body corporate;
  - (b) the name and address of the original lessee as shown in the register consequent upon registration of the leasehold building units plan and the name of and address for the service of notices on the lessee of each lot as shown in the prescribed notices;
  - (c) the name of the first mortgagee of a lease of the lot as shown on the prescribed notice and the address for the service of notices on the first mortgagee as shown in the prescribed notice;
  - (d) the name of the company nominee of any corporation that is a lessee or mortgagee of a lease of the lot as shown in the prescribed notices;
  - (e) the discharge, transfer or assignment of a mortgage referred to in paragraph (c) as shown in a prescribed notice and, except in the case of a discharge, the address for the service of notices on the transferee or assignee as shown in the prescribed notice;
  - (f) the entry into possession of a lease of the lot by a mortgagee as shown in a prescribed notice;
  - (g) the name and address of any sublessee of the lot the prescribed notice of the granting of whose sublease has been given and the address for the service of the notices

on the sublessor and sublessee as shown in the prescribed notice;

- (h) the termination or assignment of any sublease, referred to in paragraph (g), as shown in a prescribed notice and, in the case of an assignment, the name of the assignee and the address for the service of notices on the assignee as shown in the prescribed notice;
- (i) the name of any person who has become entitled, otherwise than as a transferee, to a lease of the lot, the prescribed notice of which entitlement has been given to the body corporate and the address for the service of notices on the person as shown in the prescribed notice;
- (j) the address for the service of notices on any person as shown in a prescribed notice;
- (k) the name and address of any real estate agent or resident letting agent under the *Property Occupations Act 2014* appointed as agent by the lessee for the purpose of the subletting of the lot as shown in a prescribed notice.

(3A) In subsection (3)—

***prescribed notice*** or ***prescribed notices*** means the relevant notice or, as the case may be, notices given to the body corporate under section 53.

(amended)

- (4) The body corporate shall record and maintain in the roll a copy of the by-laws for the time being in force with respect to the leasehold building units plan concerned and a copy of the management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned.

(amended)

- (5) The body corporate shall maintain as part of the roll a register in which shall be recorded the prescribed particulars of each prescribed arrangement entered into in respect of the leasehold building units plan.

(amended)

**40 Supply of information, certificates and copies by body corporate**

- (1) A body corporate incorporated by the registration of a leasehold building units plan shall, upon application made to it in writing in respect of a lot the subject of that leasehold building units plan by a prescribed person and on payment of the prescribed fee, do such 1 or more of the following things as are required of it in the application—
- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the body corporate or a member of the committee and of any person who has been appointed under section 50 or 94 as a body corporate manager;
  - (b) make available for inspection by the applicant or the applicant's agent—
    - (i) the roll; and
    - (ii) the notices and orders referred to in section 38D(1)(a); and
    - (iii) the plans, specification, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates, diagrams and other documents delivered under section 29(4); and
    - (iv) the minutes of general meetings of the body corporate and of the committee; and
    - (v) the books of account of the body corporate; and
    - (vi) a copy of the statement of accounts of the body corporate last prepared by the body corporate under section 38D(1)(c); and
    - (vii) every current policy of insurance effected by the body corporate and the receipt for the premium last paid in respect of each such policy; and
    - (viii) any other record or document in the custody or under the control of the body corporate; and
    - (ix) the by-laws for the time being in force; and

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- (x) the management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned;

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

- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made—
- (i) the amount of any regular periodic contributions determined by the body corporate under section 38A(1), (2) and (5) and the periods in respect of which those contributions are payable; and
  - (ii) whether there is any amount unpaid of any contribution determined under section 38A(1) and of any contribution determined by the body corporate under section 38A(2) and, if so, the amount unpaid and, in the case of a contribution levied under section 38A(2), the date on which any such contribution was levied; and
  - (iii) whether there is any amount unpaid of any contribution levied under section 38A(3) or 38B and, if so, the amount unpaid and the date on which it was levied; and
  - (iv) whether there is any amount unpaid by a lessee under a by-law referred to in section 30(7); and
  - (v) whether there is any amount unpaid of any contribution levied under section 124(2) and, if so, the amount unpaid and the date on which it was levied; and
  - (vi) whether there is any amount recoverable from the lessee of that lot under section 33(3) or (4) and, if so, the amount unpaid; and
  - (vii) the amount (if any) determined under section 38A(4) in respect of any unpaid contribution referred to in this paragraph;

- (d) furnish to the applicant or the applicant's agent a copy of—
  - (i) the by-laws for the time being in force or any part of the by-laws; and
  - (ii) the management statement for the building and its site the subject of the leasehold building units plan concerned or any part of it;

within a period of 14 days commencing on the day next after the day on which the application is received by the body corporate.

(new)

- (1A) In subsection (1)—

*prescribed fee* means the fee prescribed under the Building Units and Group Titles Act, section 40(1).

(amended)

- (1B) The lessor is not required to pay the prescribed fee in making an application under subsection (1).

(amended)

- (2) Where an applicant and a body corporate fail to reach an agreement referred to in subsection (1)(b) within 3 days after the receipt of the application by the body corporate, the body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9a.m. and 8p.m. on a date so specified, being a date not later than 14 days after the receipt of the application by the body corporate for the making of the inspection referred to in subsection (1)(b).
- (3) The body corporate shall permit any person to whom the by-laws or the management statement are made available for inspection to make copies of or take extracts from the by-laws or the management statement.

(amended)

- (4) In favour of a person taking for valuable consideration an estate or interest in any lot a certificate given under subsection (1)(c) by the body corporate in respect of that lot is

conclusive evidence, as at the date of the certificate, of the matters stated in the certificate.

- (5) For the purposes of subsection (1)—

*prescribed person* means—

- (a) the lessor, a lessee of the lot or mortgagee of a lease of the lot in respect of which the application is made or a person authorised in writing by the lessor or that lessee or mortgagee; or
- (b) a person who signs (personally or by his or her agent) a contract or other instrument that is intended to bind the person (absolutely or conditionally) to accept a transfer of the lease of the lot in respect of which the application is made from the lessee of that lot or a person authorised in writing by the first person.

(amended)

- (6) An application under subsection (1) by a person specified in paragraph (b) in the definition *prescribed person* in subsection (5) shall be supported by a statutory declaration under the *Oaths Act 1867* unless the body corporate is otherwise satisfied that an applicant is such a person.

(amended)

#### **40A Body corporate may require information as to subletting of lot**

A lessee or real estate agent recorded on the roll pursuant to a notice given under section 53(14), shall, upon application made to him or her in writing in respect of a lot by the body corporate, certify whether, at the material time, the lot has or had been sublet by him or her and, if so, the name of the person to whom it has or had been sublet.

(amended)

#### **41 Exemption from certain provisions of Act**

- (1) Where all of the lessees of lots contained in a leasehold building units plan reside permanently in their respective lots

the body corporate may by resolution without dissent resolve that any 1 or more of the following provisions shall not apply to that body corporate, that is to say—

- (a) section 74(a) and (b);
- (b) schedule 2, part 2, clauses 1(4)(d), (5), (6), (7), (8) and (10), 4(b), 5(b), 6 and 8;
- (c) schedule 4, clause 10(f) in so far as that clause casts a duty upon a secretary of the body corporate and any regulation prescribing any procedure for the carrying out of that duty.

(1A) A resolution under subsection (1) shall cease to be a resolution of the body corporate if the lessee of any lot ceases to reside permanently in the lot.

(amended)

(2) Where subsection (1) does not apply to a body corporate, it may by resolution without dissent resolve to make an application on any 1 or more of the prescribed grounds to the referee for an order that any 1 or more of the provisions specified in subsection (1) shall not apply to that body corporate.

(3) An application made by a body corporate under subsection (2) shall be in the prescribed form, be accompanied by the prescribed fee (if any) and specify the grounds upon which the application is made.

(3A) In subsection (3)—

***prescribed fee*** means the fee prescribed under the Building Units and Group Titles Act, section 41(3).

(amended)

(4) Where the referee considers that the grounds specified in an application made under subsection (2) justify the making of an order, the referee may make an order specifying which provision or provisions specified in subsection (1) shall not apply to the body corporate which made the application.

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- (4A) Where, upon an application by a lessee or the body corporate for an order under this subsection, a referee considers that such an order should be made, the referee may by order—
- (a) revoke an order made under subsection (4); or
  - (b) vary an order made under subsection (4); or
  - (c) determine that the order made under subsection (4) shall apply or shall not apply to the extent indicated in the order and either generally or in respect of the applicant.
- (amended)
- (5) The provisions of part 5 shall so far as applicable apply to the making of an order under this section.
- (6) For so long as a resolution made under subsection (1) or an order made under subsection (4) or (4A) subsists, the provisions the subject of the resolution or, as the case may be, order shall not apply to the extent indicated in the resolution or order.

## **Division 2                      Committees**

### **42                      Constitution of committees**

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

such decision shall be deemed to be a decision of the committee.

(amended)

- (4) Where there are more than 3 lessees, the body corporate shall determine the number of persons, being not less than 3 nor more than the number of lessees or 7, whichever is the less, to be members of the committee including the chairperson, secretary and treasurer of the body corporate.

- (4A) The committee shall consist of such members as for the time being hold office not exceeding in number the number determined by the body corporate under subsection (4).

(amended)

- (5) The members of a committee referred to in subsection (4A) (if any) and the chairperson, secretary and treasurer—

- (a) shall, upon the number of lessees increasing to more than 3, be first elected—

(i) at an extraordinary general meeting convened for the purpose and held forthwith after notice has been duly given but not later than 3 months before the anniversary date of the annual general meeting of the body corporate first occurring after that increase or, if requested, in writing addressed to the secretary of the body corporate, by a lessee, at any time before that anniversary date; or

(ii) at the annual general meeting of the body corporate first held after that increase;

whichever shall first occur; or

- (b) shall be elected at each annual general meeting of the body corporate held after the first such election.

(amended)

- (6) A person is not eligible for election as chairperson, secretary or treasurer of the body corporate or as a member of a committee unless he or she is—

- (a) an individual who is a lessee; or

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- (b) a company nominee of a corporation which is a lessee;  
or
  - (c) an individual who is not a lessee but who is nominated  
for election by a lessee.

(amended)

- (6A) Despite the provisions of this section, the body corporate may determine that the holder of the office of secretary or treasurer of the body corporate shall not be a member of the committee and, if it does so, upon election to that office, a person shall be the secretary or, as the case may be, treasurer of the body corporate and of the committee but shall not be a member of the committee.

(amended)

- (7) A member of a committee may, with the consent of the committee, appoint a lessee or company nominee of a corporation which is a lessee to act in his or her place as a member of the committee at any meeting of the committee and any lessee or company nominee of a corporation which is a lessee so appointed shall, when he or she is so acting, be deemed to be a member of the committee.

(amended)

- (8) A lessee or committee nominee of a corporation may be appointed under subsection (7) whether or not he or she is a member of the committee.

(amended)

- (9) If a person appointed under subsection (7) is a member of the committee, he or she may, at any meeting of the committee, separately vote in his or her capacity as such a member and on behalf of the member in whose place he or she has been appointed to act.
- (10) Despite any other provision of this section, a committee may be constituted before the first annual general meeting of the body corporate.
- (11) The members of a committee constituted under subsection (10) (if any) and the chairperson, secretary and treasurer of a body corporate shall be elected at a general

meeting of the body corporate and the provisions of subsection (6) and such of the provisions of schedule 2, part 1 as relate to the election of the chairperson, secretary and treasurer of a body corporate and of members of a committee apply to and in respect of the election of the chairperson, secretary and treasurer of a body corporate and of members of a committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of a committee to be so constituted.

- (12) Schedule 2, part 2 (other than clause 16(1)) does not apply to or in respect of the election of the chairperson, secretary and treasurer of a body corporate and the members of a committee to be constituted under subsection (10).
- (13) The provisions of this division (other than subsections (1), (2), (3), (3A) and (5) of this section) apply to and in respect of a committee constituted under subsection (10) and the members of the committee.
- (amended)
- (14) Where there is no committee of a body corporate, the body corporate shall exercise and perform the powers and functions of the committee but nothing in this subsection prevents a body corporate manager appointed under this Act from exercising or performing any powers or functions conferred upon the body corporate manager.
- (15) The election of members of a committee and the chairperson, secretary and treasurer of a body corporate shall be by secret ballot unless the body corporate resolves otherwise.

#### **43 Vacation of office of member of committee**

- (1) A person elected as chairperson, secretary or treasurer of the body corporate or as a member of a committee vacates his or her office—
- (a) if, where the person was a lessee at the time of his or her election, he or she ceases to be a lessee; or
- (b) if, where the person was not a lessee at the time of his or her election or was a company nominee, the individual

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who nominated the person for election or the corporation for which he or she is a company nominee, as the case may be—

- (i) ceases to be a lessee; or
- (ii) notifies the body corporate, in writing, that his or her office, as a member of the committee is vacated;

and the person is not a secretary or treasurer of the body corporate who is not a member of the committee; or

- (c) upon the receipt by the body corporate from the person of notice in writing of his or her resignation; or
- (d) upon the election at a general meeting of the body corporate of another person to that office or as a member of the committee; or
- (e) where the person is a member referred to in section 42(3) or (3A) and the number of lessees increases to more than 3—upon the election of the chairperson, secretary and treasurer of the body corporate and the other members of the committee at the annual general meeting, or the extraordinary general meeting referred to in section 42(5); or
- (f) if the person is absent without prior leave granted by the committee from 3 consecutive meetings of the committee of which due notice has been given to him or her; or
- (g) if the person becomes bankrupt or compounds with his or her creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (h) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
- (i) if the person dies; or
- (j) if the body corporate, in general meeting pursuant to a resolution, determines that the person's office is vacated.

(amended)

- (2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of a committee, otherwise than because of subsection (1)(d) or (e), the body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of his or her predecessor's term of office.
- (2A) If the membership of the committee is one-half or less than one-half of the number determined by the body corporate under section 42(4) to be members of the committee, the members for the time being of the committee shall, despite section 45(1), constitute a quorum at a meeting of the committee for the purpose only of appointing a person to fill a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of the committee or of convening a meeting of the body corporate for that purpose.
- (2AA) However, if—
- (a) there is no member of the committee; or
  - (b) the members of the committee—
    - (i) do not appoint a person to fill the vacancy or vacancies in that office or those offices; and
    - (ii) have not convened a meeting of the body corporate for that purpose;
- the referee may, on application made to him or her by a lessee or mortgagee of a lease of a lot, appoint by order a person nominated by the lessee or mortgagee, who has consented to that nomination, to convene and hold a meeting of the body corporate within such time as may be specified in the order for the purpose of appointing a person or persons to fill the vacancy or vacancies in that office or those offices and a meeting so convened shall be held within that time.
- (2B) An order under subsection (2AA) may include such ancillary or consequential provisions as the referee thinks fit.
- (2C) Despite schedule 2, where an order made under subsection (2A) so provides—

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- (a) the person appointed to convene and hold a meeting of the body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (2D) A meeting convened and held under an order of the referee made under subsection (2A) because there is no member of the committee shall, for the purpose of conducting the election of the chairperson, secretary and treasurer of the body corporate and the other members of the committee, be deemed to be a first annual general meeting of the body corporate.
- (amended)

#### **44 Chairperson, secretary and treasurer of committee**

- (1) The chairperson shall preside at all meetings of the committee at which he or she is present and, if he or she is absent from any meeting, the members of the committee present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.
- (1A) The committee may from time to time appoint a member of the committee to exercise the powers and perform the functions of the secretary of the body corporate during any absence of the secretary specified in the appointment and that member while acting in accordance with the terms of his or her appointment shall be deemed to be the secretary of the committee.
- (2) A person shall not exercise or perform any of the powers or functions of the body corporate or of the treasurer of the body corporate, being powers or functions relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the body corporate, unless the person is—
  - (a) the treasurer of the body corporate; or
  - (b) a body corporate manager who is empowered to exercise or perform that power or function; or

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

Maximum penalty—\$500.

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

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

Maximum penalty—\$500.

## **45 Meetings of committees**

- (1) At a meeting of a committee a quorum is constituted by members who number more than one-half of—

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- (a) the number of persons determined by the body corporate under section 42(4) to be members of the committee; or
  - (b) if such a determination has not been made—the members of the committee.
- (2) Subject to this Act, the decision on any matter of that majority of the members voting on that matter shall be the decision of the committee at any meeting at which a quorum is present.
  - (3) A decision of a committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the committee by not less than one-half of the total number of lessees, the sum of whose lot entitlements exceed half of the aggregate lot entitlement, that the making of the decision is opposed by those lessees.  
(amended)
  - (4) A committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.

#### **46 Committee's decisions to be decisions of body corporate**

- (1) In this section—  
*restricted matter* means—
  - (a) any matter relating to the striking of a special monetary levy on all lessees; or
  - (b) any matter which seeks to alter the rights, privileges or obligations of lessees; or
  - (c) any matter which seeks to alter the annual monetary contribution of lessees; or
  - (d) any matter a decision which may, in accordance with any provision of this Act or the principal Act, only be made by the body corporate under a unanimous resolution, resolution without dissent or a special resolution or in general meeting of the body corporate; or

(e) any matter referred to in section 48 and specified in a resolution of the body corporate passed for the purposes of that section.

(amended)

(2) Subject to this Act, the decision of a committee on any matter, other than a restricted matter, shall be the decision of the body corporate.

(3) Even though a committee holds office, the body corporate may in general meeting continue to exercise or perform all or any of the powers and functions conferred on it by this Act.

#### **47 Statutory restrictions on powers of committees**

(1) Unless—

(a) otherwise determined by the body corporate in general meeting; or

(b) in an emergency authorised by the referee; or

(c) consented to by each person entitled to vote at a general meeting of the body corporate;

the committee shall not, in any 1 case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots the subject of the leasehold building units plan.

(amended)

(1A) In subsection (1)—

*prescribed amount* means the amount prescribed under the Building Units and Group Titles Act, section 47(1).

(amended)

(2) In respect of any proposed expenditure which, under subsection (1), the committee is not entitled to undertake, the committee shall—

(a) submit the proposal for determination at an extraordinary general meeting of the body corporate

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- convened for the purpose of, or for purposes which include, consideration of the proposal; and
- (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property—submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
- (a) in payment of any premium of insurance effected by or on behalf of the body corporate; or
  - (b) to comply with—
    - (i) a notice or order served on the body corporate by any public authority or the council; or
    - (ii) an order made with respect to the body corporate by a referee or a tribunal; or
  - (c) in discharge of any liability incurred in respect of an obligation of the body corporate authorised by the body corporate in general meeting.
- (amended)

#### **48 Restrictions imposed on committee by body corporate**

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

#### **48A Protection of committee members from liability**

No action shall lie against a member of a committee on account of anything done in good faith and without negligence under the authority of this Act or purporting to be under the authority of this Act.

#### **48B Schedule 4**

Schedule 4 applies to and in respect of the committee of the body corporate, the chairperson, secretary and treasurer of the body corporate and the other members of the committee.

## **Division 3                    Duties of original lessee**

(not applied)

## **Division 4                    Body corporate managers**

### **50            Body corporate manager**

- (1) Subject to subsection (2), a body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the body corporate determines a body corporate manager and may, in like manner, delegate to the body corporate manager—
  - (a) all of its powers and functions; or
  - (b) any 1 or more of its powers and functions specified in the instrument; or
  - (c) all of its powers and functions except those specified in the instrument;and may, in like manner, revoke wholly or in part the delegation.
- (2) A body corporate may not, under subsection (1), delegate to a body corporate manager its power to make—
  - (a) a delegation under that subsection; or
  - (b) a decision on a restricted matter within the meaning of section 46.
- (3) A power or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers or functions, or as to time or circumstances, as may be specified in the instrument of delegation.

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- (5) Despite any delegation made under subsection (1), the body corporate may continue to exercise or perform all or any of the powers or functions delegated by it.
  - (6) Any act or thing done or suffered by a body corporate manager while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the body corporate and shall be deemed to have been done or suffered by the body corporate.
  - (7) Where the instrument of his or her appointment so provides, a body corporate manager shall have and may exercise and perform all the powers and functions of the chairperson, secretary or treasurer of the body corporate and the committee or such of those powers and functions as may be specified in the instrument.
  - (8) Upon registration of the leasehold building units plan, a person shall not be appointed a body corporate manager otherwise than by the body corporate or a referee.  
(amended)
  - (9) Despite any agreement between a body corporate and a body corporate manager, there shall be implied in the agreement or instrument of appointment of a body corporate manager appointed under this section who is the body corporate manager at the expiration of a period of 3 years from the date of the first annual general meeting of the body corporate a term that the body corporate, within 30 days after the expiration of that period, may terminate his or her appointment as body corporate manager.  
(amended)
  - (10) No action shall lie against a body corporate, original lessee or any lessee of a lot in respect of a termination of appointment under this subsection.  
(amended)

## **50A Certain voting by proxy etc. restricted**

- (1) At any meeting of the body corporate, a person who has a financial interest in a prescribed arrangement or a proposed

prescribed arrangement, is not entitled to vote as proxy for another person other than a person who is his or her co-lessee or co-mortgagee or as company nominee of a corporation other than a corporation where the company nominee is the majority shareholder or all of the shares held by the family of the nominee or by the nominee and the nominee's family upon a motion relating to that prescribed arrangement or proposed prescribed arrangement.

(amended)

(1A) In subsection (1)—

*family* means the spouse, parent, brother, sister or child of the company nominee.

(amended)

(2) For the purposes of subsection (1), if a person or the person's spouse—

- (a) owns shares (whether beneficially or otherwise) in a company; or
- (b) is a member of a firm; or
- (c) is a director or employee of a company or of a firm;

that stands to be benefited directly from the prescribed arrangement or proposed prescribed arrangement to which the motion relates he or she shall be taken to have a financial interest in that prescribed arrangement or, as the case may be, proposed prescribed arrangement.

## **Division 5                      Lessees and other occupiers of lots**

### **51                      Duties of lessees and other occupiers of lots**

- (1) A lessee, mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier of a lot shall not—
  - (a) do anything or permit anything to be done on or in relation to that lot so that—

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- (i) any support or shelter provided by that lot for another lot or common property is interfered with; or
  - (ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services) through or by means of any pipes, poles, wires, cables or ducts for the time being in or upon the lot is interfered with; or
- (b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a lessee or not); or
  - (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a lessee or not) or by any other person entitled to the use and enjoyment of the common property.

(amended)

- (2) A lessee or mortgagee in possession (whether by the mortgagee or any other person) shall repair and maintain his or her lot (including any part of a pipe, pole, wire, cable or duct which is intended to be used solely for the servicing or enjoyment of the lot and is within the lot but not within a wall, floor or ceiling forming a boundary of that lot) and keep the same in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(amended)

## **51A Illegal use of lot prohibited**

A lessee, mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier of a lot shall not use his or her lot for any purpose which may be illegal or injurious to the reputation of the parcel.

(amended)

## **52 Power for individuals to act for corporate lessees and mortgagees of lots**

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

(amended)

- (2) Where an individual exercises or performs a power or function that he or she is, by a lessee or mortgagee of a lease of a lot, authorised under subsection (1) to exercise or perform, the power or function shall be deemed to be exercised or performed by the lessee or mortgagee, as the case may be, of the lot.

(amended)

- (3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a corporation which is a lessee or mortgagee of a lease of a lot.

(amended)

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

## **53 Notices to be given by lessees and mortgagees**

- (1) An original lessee and any person who, under this section, has given notice of an address for the service of notices on him or her may give notice in writing to the body corporate of an address or change of address for the service of notices on him or her.

(amended)

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- (2) After delivery to a transferee of the lease of a lot of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the body corporate written notice which shall identify the lot and—
- (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (2A) Where a transferor of the lease of a lot fails to comply with subsection (2), the transferee of the lease of the lot may give to the body corporate written notice which shall identify the lot and specify his or her name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to him or her.
- (amended)
- (3) After the delivery to a first mortgagee of an executed bill of mortgage of the lease of a lot, the mortgagee may give to the body corporate written notice of the mortgage which shall identify the lot and—
- (a) specify the name of the mortgagee in full and the address for the service of notices on the mortgagee and the date on which the bill of mortgage was so delivered; and
  - (b) bear written confirmation by the mortgagor of the accuracy of the information contained in the notice.
- (amended)
- (4) After the delivery to a mortgagor of a discharge of a bill of mortgage of the lease of a lot the mortgagor may give to the body corporate written notice of the discharge which shall identify the lot and the mortgage that has been discharged and—

- (a) specify the date on which the discharge was so delivered; and
- (b) bear written confirmation by the mortgagee of the discharge of the bill of mortgage.

(amended)

- (5) After the delivery by a first mortgagee of a transfer of a bill of mortgage of the lease of a lot, the transferee may give to the body corporate written notice of the transfer which shall identify the lot and—

- (a) specify the name of the transferee in full and the address for the service of notices on the transferee and the date on which the transfer was so delivered; and
- (b) bear written confirmation by the transferor of the accuracy of the information contained in the notice.

(amended)

- (6) After the entry into possession of the lease of a lot by a first mortgagee, the mortgagee may give to the body corporate written notice which shall identify the lot and specify the date on which he or she entered into possession.

(amended)

- (7) After granting a sublease of a lot or part of a lot, a sublessor to whom this subsection applies shall give to the body corporate written notice of the granting of the sublease which shall identify the lot, specify the name of the sublessee in full and the address for the service of notices on the sublessee and the address for the service of notices on the sublessor.

(amended)

- (7A) This subsection applies to a sublessor who grants a sublease of a lot or part of a lot for a period of not less than 6 months except where the body corporate by resolution without dissent determines, either generally or in a particular case, that this subsection shall not apply.

(amended)

- (8) After the termination or assignment of any sublease of a lot or part of a lot, notice of which sublease has, under

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subsection (7), been given to the body corporate, the sublessor shall give to the body corporate written notice of the termination or assignment which shall identify the lot and the lease or sublease that has been terminated or assigned and—

- (a) specify the date of the termination or assignment; and
- (b) in the case of an assignment—
  - (i) specify the name of the assignee in full and the address for the service of notices on the assignee; and
  - (ii) bear written confirmation by the assignee of the accuracy of the information contained in the notice.

(amended)

- (9) After a person becomes entitled, otherwise than as a transferee of the lease of the lot, to be registered under the *Land Title Act 1994* as the lessee of a lot, he or she may give to the body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—

- (a) by what right the person became entitled to the lease of the lot; and
- (b) the person's name in full, the address for the service of notices on him or her and the date upon which he or she became entitled to the lease of the lot.

(amended)

- (10) Where—

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

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

- (c) to state, within 14 days, whether or not he or she is a person entitled or required to give a notice in that capacity; and

- (d) if he or she is such a person—to give that notice.
- (11) Where a body corporate has served a notice under subsection (10) on a person whom it believes to be a person entitled to give a notice to the body corporate under this section, that person is not entitled to cast a vote at any meeting of the body corporate until he or she gives the required notice.
- (12) A vote cast at a meeting of a body corporate by or on behalf of a company nominee of a corporation has no effect unless the body corporate has been given notice in writing specifying the company nominee of the corporation.
- (13) A notice referred to in subsection (12) may be included in any other notice that the corporation to which it relates or any other person is entitled under this section to give to the body corporate.
- (14) A lessee who appoints a real estate agent or resident letting agent under the *Property Occupations Act 2014* as his or her agent for the purpose of letting (within the meaning of that Act) of the lot shall forthwith give notice in writing to the body corporate of the name and business address of the agent and, upon cessation of the appointment, shall forthwith give notice in writing to the body corporate.

(amended)

## Division 6 Insurance

### 54 Interpretation

- (1) In this division—

***building*** means a building or buildings shown on the leasehold building units plan, but does not include a lessee's fixture.

***damage policy***, in relation to a building or the common property including improvements on the common property, means a contract of insurance providing, in the event of the building or the common property including improvements on the common property being destroyed or damaged by fire,

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storm, tempest, explosion or any other occurrence specified in the policy—

- (a) the rebuilding of the building or the common property including improvements on the common property or its replacement by a similar building or the common property including improvements on the common property in the event of its destruction; and
- (b) the repair of damage to or the restoration of the damaged portion of the building or the common property including improvements on the common property in the event of its being damaged but not destroyed;

so that, in the case of destruction, every part of the rebuilt building or the common property including improvements on the common property or the replacement building or the common property including improvements on the common property and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new; and

- (c) for the payment of expenses incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

*lessee's fixture* means a structure or fixture made after the registration of the leasehold building units plan forming part of a building, being a structure or fixture—

- (a) which is exclusively for the use and enjoyment of a lot within or partly within that building but not being a floor, wall or ceiling; and
- (b) which—
  - (i) is not made for the necessary renewal or replacement of a structure or fixture made before the registration of the leasehold building units plan; or
  - (ii) replaces a structure or fixture made before the registration of the leasehold building units plan and

is of greater value than the necessary replacement of and of a like nature to the structure or fixture replaced.

(amended)

- (2) A damage policy may provide that, instead of the work and the payments specified in the definition of *damage policy* in subsection (1) being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.

## **55 Insurance on common property**

The body corporate shall insure and keep insured any improvements on the common property not covered by a damage policy effected under section 55A or 55B, under a damage policy to the reinstatement value in the joint names of the body corporate and the lessor.

(new)

## **55A Insurance of buildings**

Where the parcel is not a stratum parcel, the body corporate shall insure and keep insured the building under a damage policy to the reinstatement or replacement value in the joint names of the body corporate and the lessor.

(new)

## **55B Insurance of buildings in stratum parcel**

- (1) Where the parcel is a stratum parcel—
- (a) the body corporate and any other lessee of part of the building, not being a lot or common property in the leasehold building units plan; and
  - (b) the lessor;

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shall insure and keep insured the building under a damage policy to the reinstatement or replacement value in their joint names.

(new)

- (2) The cost of a premium for a damage policy in respect of a building referred to in subsection (1) shall be apportioned in accordance with the management statement for the building and its site the subject of the leasehold building units plan concerned.

(new)

- (3) If a person fails to comply with a requirement under subsection (1) to insure and keep insured a building, any other person who has an obligation to comply with that requirement may either—
- (a) apply to the referee for an order directing the person failing to comply to join that other person in effecting a damage policy in respect of the building; or
  - (b) effect a damage policy in respect of the building in the joint names and, in a court of competent jurisdiction, recover as a debt from the person failing to comply with the appropriate apportionment (if any) of the amount of the premium for which that person is liable in accordance with the management statement for the building and its site, the subject of the leasehold units plan concerned.

(new)

### **55C Original lessee to pay for damage policy insurance in first year**

- (1) In respect of a leasehold building units plan, the premiums payable in respect of insurances effected by a body corporate under section 55, 55A or 55B and covering the period of 1 year commencing on the date of registration of the leasehold building units plan shall be paid by the original lessee.

(new)

- (2) A body corporate that pays any premium payable by the original lessee under subsection (1) may recover the amount of the premium from the original lessee in any court of competent jurisdiction as a debt due and owing to it.

(new)

- (3) Nothing in this section shall prevent an agreement for the acceptance of a transfer of the lease of a lot by an original lessee providing for the payment by the transferee of an amount determined in respect of an amount paid by the original lessee under subsection (1) in accordance with the terms of the agreement.

(new)

## **56 Further insurance by body corporate**

- (1) In addition to any insurance effected by a body corporate under section 55, 55A and 55B, a body corporate shall effect insurance—
- (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of the liability of the body corporate for damage to property, death or bodily injury occurring upon the common property; and
  - (c) against the possibility of the lessees becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the body corporate, pursuant to a special resolution, decides to insure.

(amended)

- (2) Insurance effected under subsection (1)(b) shall be for a cover of not less than the amount prescribed under the Building Units and Group Titles Act, section 56(2) or, if not prescribed, \$500,000.

(amended)

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- (3) The body corporate may insure any property which it is not required to insure under this division and in which it has an insurable interest.

## **57 Insurance by lessee**

- (1) Nothing in this division limits any right of a lessee to effect insurance.  
(amended)
- (2) Insurance effected by a lessee does not affect, and shall not be taken into consideration in determining, the amount payable to a body corporate under a contract of insurance entered into between it and an insurer pursuant to this division, despite anything contained in that contract of insurance.

## **57A Insurance by proprietor in case of common walls on group title plan**

(not applied)

## **58 Insurance of mortgaged lot**

- (1) A contract of insurance may be entered into by a lessee in respect of damage to his or her lot in a sum equal to the amount secured at the date of the contract by mortgage of the lease of the lot and, where such a contract is in force—
- (a) subject to the terms and conditions of the contract—
- (i) a payment to be made under that contract by the insurer in respect of damage shall be made to each mortgagee whose interest is noted on the contract in order of his or her respective priority; and
- (ii) the amount of the payment shall be the amount stated in the contract, the amount of the loss, or an amount sufficient, at the date of the loss, to discharge the mortgage of the lease of the lot, whichever is the least amount; and

- (b) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to an assignment of that mortgage; and
- (c) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to secure the amount so paid by a transfer of the bill of mortgage of the lease to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.

(amended)

- (2) A contract of insurance entered into as referred to in subsection (1) shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which—
  - (a) is in respect of damage to the same lot; and
  - (b) relates to the same mortgage debt;as that referred to in the contract of insurance first mentioned in this subsection.

## **59 Rebuilding**

Subject to any order made under section 25 or 26, where a body corporate receives payment of moneys from an insurer in respect of destruction of or damage to a building or common property including any improvements on the common property, those moneys shall, unless the body corporate by unanimous resolution otherwise resolves, forthwith be applied by the body corporate in rebuilding, replacing, repairing or restoring the building or common property including any improvements on the common property, as the case may require, so far as the same may lawfully be effected.

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**60 Insurable interest of body corporate**

Despite any other law relating to insurance, a body corporate shall be deemed to have a sufficient insurable interest in the subject matter of any contract of insurance entered into by it under this division.

**Division 7 Rating and taxation****61 Interpretation**

(not applied)

**62 Valuation of parcel**

The valuer-general may, upon the registration of a leasehold building units plan, cause a valuation of the parcel to be made under section 101 of the principal Act showing the body corporate as owner of the parcel and all improvements on the parcel.

(new)

**63 Particulars of lot entitlements to be conclusive**

For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part—

- (a) the particulars shown on the copy of a leasehold building units plan or amendment furnished by the registrar of titles under section 14 shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates, charges or taxes in relation to the parcel or any part of what purports to be the copy of the leasehold building units plan or amendment so furnished shall be prima facie evidence that it is the copy so furnished.

(amended)

## 64 Rating of lots

(1) Without limiting section 101 of the principal Act, for all purposes in relation to the making, levying or recovery of rates or charges by the council under the *City of Brisbane Act 2010* in relation to a parcel the following provisions have effect—

- (a) the value of the parcel shown in the valuation shall be apportioned by the council between the lots comprised in the parcel in proportion to the lot entitlements of the respective lots as shown on the registered leasehold building units plan;
- (b) subject to section 67, the body corporate is not liable in respect of the parcel for any rate or charge made and levied by the council;
- (c) the lessee of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a) and is liable accordingly for any rate or charge made and levied by the council on the owners of land;
- (d) where part of a parcel is subject to rates or charges or rates and charges levied by the council in respect of water supply, sewerage, cleansing or garbage services otherwise than on the basis of value—such rates or charges or rates and charges shall be levied upon the lessee of each lot, in accordance with such basis or bases as may be adopted by the council under the *Local Government Act 1993* or *City of Brisbane Act 1924*.

(amended)

(2) If a rate or charge can not be directly related to use of the service within a particular lot, the rate or charge shall be apportioned by the council between the lots in accordance with the lot entitlements of the respective lots.

(amended)

*Editor's note—*

For 'value' in this section see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.

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**67 Local government may recover arrears of rates and charges upon conversion etc.**

Upon registration of a leasehold plan of resubdivision or amalgamation or a notice of conversion, the council may recover any rates and charges outstanding or accrued and unpaid at the time of registration—

- (a) in respect of a lot that becomes common property—  
from the body corporate;
- (b) in respect of a lot part of which only becomes common property—  
from the lessee for the time being of the balance of the lot;
- (c) in respect of 1 or more lots that are resubdivided or amalgamated—  
from the lessee of each lot created by the resubdivision or amalgamation in proportion to the lot entitlement that his or her lot bears to the sum of lot entitlements of the lots created by the subdivision or amalgamation.

(amended)

## **Part 5 Disputes**

### **Division 1 Referee**

#### **69 Appointment of referee**

(not applied)

#### **70 Delegations of powers etc.**

A delegation made by a referee under the Building Units and Group Titles Act, section 70 will operate as if it were a delegation made by a referee under this Act.

(new)

## **Division 2                      Applications for orders**

### **71            Referee may inspect certain records**

- (1) Where application is made for an order under this part, the body corporate has, in relation to a referee and the referee's delegate, the same duties under section 40(1) and (2) as it has under that section in relation to a lessee.

(amended)

- (1A) However, the body corporate shall not be entitled to payment of any fee prescribed under that section.

(amended)

- (2) A body corporate shall not neglect or fail to perform any duty owed by it to a referee or the referee's delegate under subsection (1).

Maximum penalty—\$500.

### **72            Applications for orders to be made to referee**

- (1) Application for an order under this part shall be made to a referee in writing specifying the grounds on which it is made and the order sought and shall be accompanied by the fee prescribed in respect of the application (if any) and the prescribed deposit (if any).

(amended)

- (2) In this section—

*fee prescribed* and *prescribed deposit* means the fee prescribed and prescribed deposit under the Building Units and Group Titles Act, section 72.

(amended)

### **73            Procedure after referee receives application**

- (1) After receipt of an application for an order under this part, other than an application that under section 106(8)

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accompanied a notice of appeal made under section 106, a referee—

- (a) may require the applicant to provide him or her with such further information in relation to the application as, in the referee's opinion, may assist the investigation of the application; and
- (b) may refuse to proceed with the application until a requirement made by him or her under paragraph (a) has been complied with; and
- (c) shall give written notice of the application (setting out the grounds specified in the application) to the lessor, the body corporate to which the application relates and to any other person (other than the applicant) who, in his or her opinion, would be affected if the order sought were made; and
- (d) shall, in a notice referred to in paragraph (c), specify the order sought and invite the lessor, the body corporate and any member and any other person to whom the notice is given to make to him or her, within a time specified in the notice, a written submission in respect of the matter to which the application relates; and
- (e) may, by further notice, allow the lessor, the body corporate and each person to whom a notice under paragraph (c) was given a longer time within which to make a submission referred to in paragraph (d); and
- (f) may make such other investigations with respect to the application as he or she thinks fit; and
- (g) may enter upon any parcel to which a dispute relates for the purposes of carrying out any investigation with respect to the application at any reasonable time on notice given to every person who has been notified of the application and to the body corporate.

(amended)

- (2) A person shall not obstruct or hinder the referee or the referee's delegates in the exercise of his or her powers under subsection (1)(g).

Maximum penalty—\$500.

#### **74 Body corporate to display and give certain notices**

A body corporate given a notice under section 73(1)(c) or (e) shall—

- (a) forthwith cause the notice or a copy to be prominently displayed within the parcel on some part of the common property and, if there is no common property, on an appropriate place within the parcel visible to the lessees; and
- (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
- (c) forthwith serve a copy of the notice on each person whose name appears on its roll.

(amended)

### **Division 3 Orders by referee**

#### **75 Orders under this division**

- (1) A referee shall not make an order, other than an order under section 76(2), until after—
  - (a) the expiration of the time specified in the notice given under section 73(1)(c); or
  - (b) where a further notice has been given under section 73(1)—the expiration of the longer time specified in that notice;for the making of written submissions with respect to the application seeking the order.
- (2) An order made may include such ancillary or consequential provisions as the referee thinks fit.
- (3) The referee may order a body corporate, a body corporate manager, a lessee, a person having an estate or interest in a lot

or an occupier of a lot to do, or to refrain from doing, a specified act with respect to a parcel.

(amended)

- (4) The referee may, by order, dismiss an application for an order.
- (5) An application may be withdrawn by the applicant at any time before an order is made.
- (6) An application may be amended by the applicant at any time before an order is made provided that the applicant shall satisfy the referee that he or she has served every party to whom the referee has given written notice of the application with a copy of the amendment and advice that he or she is entitled to make within a time specified in the notice further written submissions to the referee.
- (6A) In such a case the referee shall not make an order until after the expiration of the time so specified which shall not be less than the time allowed by him or her for submissions in respect of the original application.
- (7) The referee may not, in connection with an application for an order, make any order for the payment of costs.
- (8) Subject to section 76(5), an order made by the referee shall not be capable of being varied or revoked by him or her but this subsection does not prevent a subsequent order being made.

## 76 Interim orders

- (1) In this section—

*interim order* means an order made under subsection (2).
- (2) Where an applicant for an order under section 77(1) states in his or her application that he or she requests an interim order, the referee may, if satisfied on reasonable grounds that, because of the urgent circumstances of the case, he or she should do so—
  - (a) make, under this subsection, any order that may be made under section 77(1) with respect to the application; and

- (b) before the expiration of 3 months from the date on which it takes effect and upon a further request made by the applicant, renew an interim order that is in force by serving notice under subsection (6) that the order is renewed.
- (3) An interim order may be made or renewed even though—
  - (a) any power or duty of the referee under section 73(1) has not been exercised or performed with respect to the application; or
  - (b) where the referee has given written notice of the application under section 73(1)(c)—any time specified under section 73(1)(d) or (e) in that or any further notice has not expired.
- (4) An interim order made under an application for an order under section 77(1) ceases to have effect—
  - (a) at the expiration of 3 months from the date on which it takes effect or, where the referee has renewed the interim order, at the expiration of 6 months from the date; or
  - (b) where the interim order is revoked by a tribunal under section 107(1)(c) or by the referee under subsection (5)—when it is so revoked; or
  - (c) where—
    - (i) the referee makes an order under section 77(1) with respect to the application; or
    - (ii) the referee dismisses the application;before the interim order ceases to have effect under paragraph (a) or (b), when the order is made under section 77(1) or the application is dismissed, as the case may be.
- (5) The referee may revoke an interim order and, if he or she does so, shall serve notice under subsection (6) that the order has been revoked.
- (6) A notice of the renewal or revocation of an interim order shall be served—

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- (a) except as provided in paragraph (b)—on the body corporate for the plan to which the order relates; or
  - (b) where the order requires a person to do or refrain from doing a specified act—on that person.
- (7) A person shall not in, or in connection with, a request for an interim order or for the renewal of any such order, make a statement that he or she knows is false or misleading in a material respect.

Maximum penalty for subsection (7)—\$500.

## **77 General powers of referee to make orders**

- (1) A referee may, on the application of a body corporate, a body corporate manager, a lessee, a person having an estate or interest in a lot or an occupier of a lot in respect of a parcel, make an order on any person entitled to make an application under this subsection or on the chairperson, secretary or treasurer of the body corporate for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power or function conferred or imposed by this Act in connection with that parcel.
- (amended)
- (2) Where a body corporate has a discretion as to whether or not it exercises or performs a power or function conferred on it by this Act, it shall be deemed to have failed to exercise or perform that power or function only if it has decided not to exercise or perform that power or function.
- (3) Nothing in this part authorises the referee to make an order of the kind that may be made by the Court under section 25 or 26.
- (4) Nothing in this part affects the generality of subsection (1), but an order in respect of any matter dealt with in any other section of this part shall not be made under this section.
- (5) With the exception of orders made under sections 79, 82, 91, 93 and 94, nothing in this part authorises and empowers the referee to make an order affecting the lessor.

(new)

## **78 Further powers of referee**

- (1) A referee is empowered to make an order that—
  - (a) requires a party to the dispute before him or her to pay money not exceeding the sum of \$1,100 to a person specified in the order;
  - (b) requires a party to the dispute before him or her to do, or refrain from doing, some specified act to which the application relates;
  - (c) strikes out for want of jurisdiction the dispute before him or her.
- (2) An order made by a referee may direct that the order shall be complied with within the time limited in the order.
- (3) An order made by a referee that requires the payment of money may be made to take effect instanter or so as to take effect upon default being made in complying with some other order by the referee.

## **79 Order with respect to certain consents affecting common property**

Where, on application by the lessor or a lessee for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to consent to a proposal by that lessor or that lessee—

- (a) to effect improvements on or alterations to the common property; or
- (b) to have carried out repairs to any damage to the common property or any other property of the body corporate;

the referee may make an order that the body corporate consents to the proposal.

(amended)

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**80 Order with respect to acquisition of personal property**

Where, on application by a lessee for an order under this section, the referee considers that an acquisition, or a proposed acquisition, by the body corporate for the parcel to which the application relates, of personal property is unreasonable, the referee may order—

- (a) that the personal property acquired be sold or otherwise disposed of by the body corporate within a specified time; or
  - (b) that the personal property be not acquired.
- (amended)

**81 Order to acquire personal property**

Where, on application by a lessee for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to acquire personal property, the referee may order the body corporate to acquire the personal property.

(amended)

**82 Order to make or pursue insurance claim**

Where, on application by a lessee or the lessor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the body corporate under part 4, division 6, the referee may order the body corporate to make or pursue the claim.

(amended)

**83 Order varying certain contributions**

Where, on application by a lessee for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has determined an

unreasonable amount under section 38A(4) in respect of a contribution for the purposes of section 32, the referee may, in respect of such contributions as are specified in the order, order that the amount shall not be payable or that the amount payable be an amount specified by him or her in the order instead of the amount so determined.

(amended)

#### **84 Order to supply information or documents**

Where, on an application for an order under this section, the referee considers that the body corporate for the parcel to which the application relates, or the body corporate manager for that parcel, or the chairperson, secretary or treasurer of that body corporate has wrongfully—

- (a) withheld from the applicant information to which the applicant is entitled under this Act; or
- (b) failed to make available for inspection by the applicant or the applicant's agent a record or document that, under this Act, the applicant is entitled to inspect;

the referee may order that body corporate, body corporate manager, chairperson, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

#### **85 Order relating to animal kept contrary to by-laws**

Where, on application by a body corporate, a lessee, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the referee may order that person to cause the animal to be removed from the parcel within a specified time, and afterwards to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised under the by-laws.

(amended)

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**86 Order relating to animal kept under by-laws**

Where, on application by a body corporate, a lessee, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that an animal kept on a lot or the common property under the by-laws causes a nuisance or hazard to the lessee or occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the referee may—

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and afterwards to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action so specified as, in the opinion of the referee, will terminate the nuisance, hazard or unreasonable interference.

(amended)

**87 Order confirming information for roll**

- (1) Where a person fails to provide written confirmation of a notice under section 53 that is required to bear that confirmation and a body corporate, body corporate manager, lessee or other person having or acquiring an estate or interest in a lot applies for an order under this section, the referee may, subject to subsection (2), order the body corporate in respect of the plan concerned to enter the information in the notice in the roll even though it does not bear that confirmation.

(amended)

- (2) In making an order under subsection (1), the referee may amend in any manner he or she thinks fit the information in the notice to which the order relates.
- (3) The referee shall dismiss an application for an order under this section if he or she considers that the rights of any person would be prejudiced if he or she makes the order.
- (4) A copy of an order under subsection (1) served on a body corporate shall be deemed to be a notice given to the body

corporate under section 53 and information entered on a roll under such an order shall be deemed to have been entered from a notice bearing written confirmation required by that section.

**88 Order revoking amendment of by-law or reviving repealed by-law**

- (1) Where, on application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) for an order under this section, the referee considers that, having regard to the interest of all lessees in the use and enjoyment of their lots or the common property, an amendment or repeal of a by-law or addition of a new by-law should not have been made or effected, the referee may order that the amendment be revoked, that the repealed by-law be revived or that the additional by-law be repealed.

(amended)

- (2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect to the order under subsection (1) made by a superior court, as if its terms were a by-law.
- (3) The provisions of this section do not apply with respect to a by-law made or deemed to be made under section 30(7).

**89 Order granting certain licence**

- (1) On application by a lessee for an order under this section, a referee may, subject to this section, order that the applicant, and any occupier of the lot of which the applicant is the lessee, may use specified common property in such a manner, for such purposes, and upon such terms and conditions (if any) as are specified in the order.

(amended)

- (2) A referee shall not make an order under subsection (1) unless he or she is satisfied—

- 
- (a) that the lot of which the applicant is lessee is incapable of reasonable use and enjoyment by the lessee or occupier of the lot unless the order is made; and
  - (b) that the body corporate has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that lessee or such an occupier reasonably to use and enjoy that lot.

(amended)

- (3) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect to the order under subsection (1) made by a superior court, as if its terms were a by-law.

## **90 Order invalidating purported by-law**

- (1) Where, on application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) for an order under this section, a referee considers that a body corporate did not have the power to make a by-law purporting to have been made by it, the referee may make an order declaring the by-law to be invalid.

(amended)

- (2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect to the order under subsection (1) made by a superior court, as if its terms were a by-law repealing the by-law to which the order relates.

## **91 Order for variation of contributions or manner of payment of contributions**

Where, on application by a lessee, the lessor or by a mortgagee in possession (whether by the mortgagee or another person) for an order under this section, a referee considers that any amount of contributions levied under section 32 or determined under section 38A is inadequate or

excessive, or that the manner of payment of contributions is unreasonable, the referee may—

- (a) order variation of the amount; or
- (b) order payment of contributions in a different manner; or
- (c) make both such orders.

(amended)

**92 Order where voting rights denied or due notice of item of business not given**

(1) Where, on application by a person under this section, a referee is satisfied that a particular resolution would not have been passed at a general meeting of a body corporate but for the fact that the applicant—

- (a) was improperly denied a vote on the motion for the resolution; or
- (b) was not given due notice of the item of business under which the resolution was passed;

the referee may order that the resolution be treated as a nullity on and from the date of the order.

(2) An application for an order under subsection (1) shall be made within the period of 30 days (or such longer period as the referee, in the particular case, allows) after the date of the meeting at which the resolution was passed.

(3) Where—

- (a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law; and
- (b) the by-law made under that resolution is in force; and
- (c) the order is recorded as provided by section 112;

the by-laws shall, subject to their having been or being amended, added to or repealed under section 30 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the

order is so recorded to the same extent as they would have had if the resolution had not been passed.

### **93 Order with respect to insurance**

(1) Where, on application by—

- (a) the lessor; or
- (b) the lessee or registered mortgagee of a lease of a lot; or
- (c) any person having a leasehold interest in a lot;

for an order under this subsection, a referee considers that the amount for which the person or persons referred to in sections 55A and 55B has or have insured a building which is, or part of which is, subject to a leasehold building units plan is not reasonable, the referee may order that person or those persons to vary that amount to a specified amount.

(new)

(2) Where on application by—

- (a) the lessor; or
- (b) the lessee or a registered mortgagee of a lease of a lot; or
- (c) any person having an interest in the leasehold of a lot;

for an order under this subsection, a referee considers that the amount for which the body corporate constituted for the leasehold building units plan concerned has insured under section 55 or 56(1)(c) is not reasonable, the referee may order the body corporate to vary that amount to a specified amount.

(new)

(3) Where the persons required by section 55B to insure a building are unable to agree on its replacement value for insurance purposes or on any other matter relating to the apportionment of the premium payable for insuring the building, a referee may, on the application of any of those persons, make an order determining that value or matter.

(new)

- (4) A referee may, pursuant to an application under section 55B(3), make an order requiring a person referred to in section 55B(2) to join with the applicant in insuring the building to which the application relates.

(new)

- (5) An order under subsection (4) may be made against a person even though that person is not the body corporate constituted for, a lessee of a lot comprised in or the lessor under a leasehold building units plan.

(new)

**94 Order appointing body corporate manager to exercise or perform certain powers etc.**

- (1) Where—

- (a) in consequence of the making of an order under this part a duty is imposed on a body corporate; or
- (b) a duty is otherwise imposed by this Act on a body corporate; or
- (c) a duty is imposed by this Act on the chairperson, secretary or treasurer of a body corporate or of the committee of a body corporate or on that committee; or
- (d) a judgment debt is owed by a body corporate;

a referee may—

- (e) in the case referred to in paragraph (a)—on the application of the person who obtained the order so referred to; or
- (f) in the case referred to in paragraph (b) or (c)—on the application of a person having an estate or interest in a lot the subject of the leasehold building units plan concerned; or
- (g) in the case referred to in paragraph (d)—on the application of the judgment creditor;

by order appoint a body corporate manager (being a person who has consented in writing to the appointment) to perform

that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

(amended)

- (2) A referee who appoints a body corporate manager under subsection (1) may also order that the body corporate manager shall have and may exercise and perform—
  - (a) all of the powers and functions of the body corporate for the parcel to which the order relates or of the chairperson, secretary or treasurer of that body corporate or the committee of that body corporate; or
  - (b) any 1 or more of those powers or functions specified in the order; or
  - (c) all of those powers and functions except those specified in the order.
- (3) Where a referee makes an order under subsection (1), no person other than the body corporate manager appointed by the order may, while that body corporate manager holds office as such, exercise or perform any power or function which the body corporate manager is authorised to exercise or perform by that order or an order under subsection (2).
- (4) The appointment of a body corporate manager under this section may be made upon such terms and conditions (including terms and conditions relating to his or her remuneration by the body corporate and the duration of his or her appointment) as the referee specifies in the order making the appointment.

#### **94A Order varying anniversary of first annual general meeting of body corporate**

Where, on application by a body corporate for an order under this section, the referee considers that it is reasonable so to do, he or she may order that a date specified in the order and occurring after the order is made shall, for the purposes of this Act, be taken to be the anniversary of the first annual general meeting of the body corporate, and each subsequent anniversary of that date shall for the purposes of this Act be

taken to be an anniversary of the first annual general meeting of the body corporate in place of the anniversary of the date on which the first annual general meeting was in fact held.

#### **94B Order revoking resolution dispensing with audit**

Where a body corporate has resolved that the accounts of the body corporate relating to any financial period should not be audited, a referee may, on application by a lessee for an order under this section, if he or she considers that the accounts of the body corporate should be subjected to such an audit, order the body corporate to appoint a qualified auditor who consents to the appointment to audit the accounts of the body corporate for the relevant period.

(amended)

#### **94C Order giving effect to motion, or variation of motion, as proposed**

(1) If a referee is satisfied that a motion, other than a prescribed motion, considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable, the referee may, on the application of the corporation or a lessee, make an order giving effect to the motion as proposed, or a variation of the motion as proposed.

(2) In this section—

*prescribed motion* means—

- (a) a motion for reinstatement in whole or in part of a building subject to a leasehold building units plan; or
- (b) a motion for termination or amalgamation of a leasehold building units plan.

#### **95 Copy of order to be served**

(1) An order by a referee shall be made in writing and a copy of the order, certified by the referee to be a true copy, shall be served by the referee on—

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- (a) the body corporate for the parcel to which the order relates; and
  - (b) the applicant for the order; and
  - (c) any person to whom notice of the application has been given under section 73(1); and
  - (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.
- (2) The copy of the order duly certified shall be accompanied by a statement setting out the reasons for the referee's decision.

## **Division 4            Tribunals**

### **96      Appointment of tribunal**

- (1) Every stipendiary magistrate and acting stipendiary magistrate shall by virtue of his or her appointment to that office and without any further or other appointment constitute a tribunal for the purposes of this Act while he or she continues to be a stipendiary magistrate or an acting stipendiary magistrate.
- (2) If a tribunal which has begun an investigation into a matter under this division ceases to be a stipendiary magistrate or an acting stipendiary magistrate because of the expiration of the period of, or his or her retirement from his or her appointment as stipendiary magistrate or acting stipendiary magistrate, he or she shall continue to be a tribunal for the purpose of determining that matter.

### **97      Tribunal may investigate as appropriate**

- (1) Before making an order under this part, a tribunal shall make a thorough investigation without regard to legal forms or solemnities.
- (2) A tribunal is not bound to apply the rules of evidence and, after informing itself in such manner as the tribunal thinks fit, may make an order under this part with or without any hearing

and, where a hearing is held, whether or not it is conducted formally.

- (3) Despite subsection (2), a tribunal shall conduct a hearing where any person entitled or required to appear before the tribunal on the hearing of the application or appeal so appears.

## **98 General provisions in relation to orders on appeal**

- (1) An order made by a tribunal may include such ancillary or consequential provisions as the tribunal thinks fit.
- (2) For the purpose of securing compliance with an order on appeal, a tribunal may order a body corporate, the chairperson, secretary or treasurer of a body corporate or its committee, a body corporate manager or lessee or other person having an estate or interest in a lot or an occupier of a lot to do or refrain from doing a specified act with respect to a parcel.  
(amended)
- (3) A tribunal may, by order, dismiss an appeal.

## **99 Representation before a tribunal**

A person may appear before the tribunal on the hearing of the appeal, or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the tribunal on behalf of that person.

## **100 Adjournment of appeal**

- (1) A tribunal may from time to time adjourn the hearing of an appeal to such times and places and for such purposes as the tribunal considers necessary.
- (2) The tribunal shall cause notice of the adjournment and of the time and place to which the hearing of the appeal is adjourned to be given to any person served with a notice under section 106(7) who is not present or represented at the time the hearing is adjourned.

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**101 Continuity of hearing**

- (1) The hearing of an appeal shall at all times during its continuance be conducted by the same tribunal.
- (2) Subject to section 96, if a hearing is interrupted before an order is made in the appeal by the death, incapacity or removal of the stipendiary magistrate or acting stipendiary magistrate constituting the tribunal and the appellant desires to have the appeal determined the appeal shall be heard de novo by a tribunal constituted at the same place by another stipendiary magistrate or acting stipendiary magistrate.

**102 Copy of order to be served**

- (1) An order made by a tribunal under this part shall be made in writing and the tribunal shall cause to be sent to the referee—
  - (a) the order; and
  - (b) the records of the tribunal relating to the appeal including records forwarded to it by the referee when referring that appeal to the tribunal.
- (2) Where an order has been sent to the referee under subsection (1), he or she shall serve a copy of the order, certified by him or her to be a true copy, on—
  - (a) the body corporate for the parcel to which the order relates; and
  - (b) the lessor; and
  - (c) the applicant for the order and the appellant; and
  - (d) any person who was given notice under section 106(7) of the time and place for the determination of the appeal; and
  - (e) any person who, by the order, is required to do, or to refrain from doing, a specified act.

(amended)

### **103 Witness may be summoned before tribunal**

- (1) Upon the request of a person to whom a notice has been given under section 106(7), or the agent of any such person, a tribunal under its hand may summon any person to attend the tribunal at the time and place specified in the summons and then and there to give evidence and to produce books, documents or writings in his or her custody or control which he or she is required by the summons to produce.
- (2) The fee payable for the issue of a summons is the amount prescribed under the Building Units and Group Titles Act, section 103(2).

(amended)

- (3) A person served with a summons under subsection (1) shall not, without reasonable excuse, disobey the summons.

Maximum penalty—

- (a) in the case of an individual—\$500 or imprisonment for 6 months; or
  - (b) in the case of a corporation—\$1,000.
- (4) A person is not bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which he or she would not be bound to produce upon a subpoena for production in the Court.
  - (5) A summons under subsection (1) need not be obeyed by a person unless the person has tendered his or her reasonable expenses for attending the tribunal in accordance with the summons.

### **104 Tribunal may administer oath**

- (1) A tribunal may administer an oath or affirmation to a person appearing as a witness before it, whether or not he or she has appeared in answer to a summons, and may examine the witness upon oath or affirmation.
- (2) A person appearing as a witness before a tribunal—

- (a) shall not refuse to be sworn or to make an affirmation; and
- (b) shall not refuse to answer any question relevant to any proceedings before the tribunal put to him or her by the tribunal or by any person entitled to appear before the tribunal in those proceedings; and
- (c) shall not knowingly give false testimony in any evidence given by him or her to the tribunal.

Maximum penalty—\$500 or imprisonment for 6 months.

- (3) A witness before a tribunal has—
  - (a) the same protection; and
  - (b) in addition to the penalties provided by this Act, the same liabilities;

as he or she would have had if he or she had been a witness before the Court instead of the tribunal.

## 105 Contempt of tribunal

- (1) A person shall not wilfully insult or disturb a tribunal, or interrupt the proceedings of a tribunal, or by writing or speech use words which are false or defamatory of a tribunal or otherwise commit any wilful contempt of a tribunal.

Maximum penalty—\$500 or imprisonment for 6 months.

- (2) A tribunal has, in relation to a contravention of subsection (1) committed in the face of the tribunal, all the powers of a Magistrates Court under the *Justices Act 1886*, section 40.

(amended)

## Division 5 Appeals

### 106 Appeal against order of referee

- (1) Where a referee makes an order under this part—
  - (a) the applicant for the order; or

- (b) a person who, in connection with the application for the order, duly made written submissions to the referee; or
- (c) being an order requiring a person to do or refrain from doing a specified act—that person;

may appeal to a tribunal against the order of the referee by lodging a written notice of appeal with the referee, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

(amended)

- (1A) In subsection (1)—

*prescribed fee* means the fee prescribed under the Building Units and Group Titles Act, section 106(1).

(amended)

- (2) A person may appeal under this section against an order made by a referee under section 76(2) only on the grounds that the referee acted unreasonably by making the order.
- (3) A notice of appeal lodged under subsection (2) shall specify—
  - (a) the name and address of the appellant; and
  - (b) the order appealed against; and
  - (c) the grounds of the appeal; and
  - (d) any other matter prescribed.
- (4) The tribunal to which an appeal lies under this section is the tribunal to which, under subsection (5), the referee forwards the notice of appeal.
- (5) Where a notice of appeal is lodged under subsection (1), the referee shall forward to the tribunal that, in the referee's opinion, is nearest to the parcel to which the order appealed against relates—
  - (a) the notice of appeal; and
  - (b) the referee's records relating to the order appealed against; and
  - (c) the notices referred to in subsection (6).

- 
- (6) The notices that the referee is required by subsection (5)(c) to forward are notices that shall be addressed to each of the following addressees—
- (a) the appellant; and
  - (b) each person (other than the appellant) entitled under subsection (1) to appeal against the order; and
  - (c) each person (other than a person referred to in paragraph (a) or (b)) on whom under section 95 a true copy of the order against which the appeal has been lodged has been served by the referee; and
  - (d) the body corporate for the parcel to which the order appealed against relates, unless it is the appellant.
- (6A) Each notice shall be accompanied by a copy of the notice of appeal and shall specify the tribunal which is to hear the appeal.
- (7) The tribunal to which documents are forwarded under subsection (5) shall cause—
- (a) the notices referred to in subsection (6) to be completed by specifying in them—
    - (i) the place at which the tribunal specified in the notices is to determine the appeal; and
    - (ii) a time and day for the determination of the appeal to which the documents relate; and
  - (b) each notice to be sent by registered post to the addressee so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice under paragraph (a)(ii).
- (8) Where a notice of appeal is accompanied by an application for an order under this subsection—
- (a) the referee, before forwarding to a tribunal the documents referred to in subsection (5); or
  - (b) the tribunal to which the referee has sent those documents;

may, by order, stay the operation of the order appealed against and, where the referee or tribunal does so, forward notice of the order made under this subsection to the persons referred to in subsection (6).

### **107 Determination of appeal from order of referee**

- (1) In the determination of an appeal from an order of the referee, a tribunal—
  - (a) if the tribunal thinks it is proper to do so—may admit evidence other than the evidence before the referee when the referee made the order; and
  - (b) where the order was made otherwise than under section 76(2)—may, by order, affirm, vary or revoke the order appealed against or substitute the tribunal's order for the order appealed against; and
  - (c) where the order was made under section 76(2)—may dismiss the appeal or, by order, revoke the order appealed against; and
  - (d) shall not make any order as to costs.
- (2) An order made under subsection (1)(b) has effect, and the provisions of this Act other than section 106 apply to it, in all respects as if it were an order made under the provision of this Act under which the order appealed against was made.
- (3) With the exception of an appeal by the lessor from an order of the referee, nothing in this part authorises or empowers the tribunal to make an order affecting the lessor.  
(new)

### **108 Appeal to Court on question of law**

- (1) An appeal lies to the Court from an order made by a tribunal under section 107 on the ground that the order is erroneous in law but on no other ground.
- (2) The persons who may appeal under subsection (1) are—
  - (a) —

- 
- (i) the appellant to the tribunal; and
  - (ii) where he or she was not the appellant to the tribunal—the applicant for the original order made by the referee; and
  - (iii) any person who, in connection with the application for the original order, duly made written submissions to the referee; and
  - (iv) where an order requires a person to do or refrain from doing any act—that person;
- (b) in any case where the body corporate for the parcel to which the appeal relates is not included in paragraph (a)—that body corporate.

**109 Appeal does not lie from tribunal except as provided in this division**

Except as provided by this division, an appeal does not lie from an order made by a tribunal.

**Division 6 Miscellaneous**

**110 Refund of prescribed deposit**

Upon the final determination of an application made under this part, the prescribed deposit which accompanied the application shall, unless the referee, the tribunal or the Court making that determination otherwise directs on the ground that the application was vexatious or frivolous in its nature, be refunded to the applicant.

**111 Effect of certain orders**

- (1) The terms of an order made under section 79, 80, 81, 83, 91 or 92 (other than section 92(3)(a)) or under section 93 or an order made under section 77 in which the referee declares that it is to have effect as a decision of a body corporate shall be deemed to be a resolution passed by the body corporate in

respect of the leasehold building units plan to which the order relates.

(amended)

- (2) Upon service upon it by the referee of a copy of an order referred to in subsection (1), the body corporate shall cause the terms of the order to be recorded in its minute book.
- (3) Except in the case of a unanimous resolution or a resolution without dissent, a resolution passed by a body corporate has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the body corporate.
- (4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the body corporate has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period—
  - (a) unless it is a unanimous resolution or a resolution without dissent; or
  - (b) unless, upon an application made as referred to in subsection (5), a referee makes an order under this paragraph authorising the submission to a general meeting of the body corporate of a motion for that resolution.
- (5) An application for an order under subsection (4)(b)—
  - (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1); and
  - (b) shall specify the order sought; and
  - (c) shall be made to the referee in writing specifying the grounds on which it is made; and
  - (d) shall be accompanied by the prescribed fee and the prescribed deposit (if any).

(amended)

(5A) In subsection (5)—

*prescribed fee* and *prescribed deposit* means the fee and deposit prescribed respectively under the Building Units and Group Titles Act, section 111(5).

(amended)

(6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under this part.

## 112 Recording on plan of effect of certain orders

(1) Where an order is made under section 88, 89 or 90 or under section 92 (being an order referred to in section 92(3)(a)), a body corporate shall—

(a) lodge in the land registry—

(i) if no appeal is lodged against the order or, if an appeal is lodged but the order is not revoked—a copy of the order, certified by the referee as a true copy; and

(ii) if upon appeal the order is varied by the tribunal—a copy of the order of the tribunal, certified by the referee as a true copy; and

(b) pay the prescribed fee;

and the registrar of titles shall record the order on the registered leasehold building units plan to which the order relates.

(amended)

(1A) In subsection (1)—

*prescribed fee* means the fee prescribed under the Building Units and Group Titles Act, section 112(1).

(amended)

(2) The body corporate shall lodge a copy of the relevant order as provided in subsection (1) forthwith—

- (a) upon the expiration of the time allowed for an appeal against the referee's order; or
  - (b) if an appeal is lodged—upon the determination of that appeal;
- whichever is the later.

### **113 Penalty for contravention of certain orders**

- (1) A person shall not contravene an order made under this part, not being an order made under section 76(2), to do or refrain from doing a specified act.

Maximum penalty—8 penalty units and, subject to subsection (2), a further penalty not exceeding 2 penalty units for every day during which the contravention continues.

- (2) The maximum amount that may be recovered in any prosecution for an offence under subsection (1) is the maximum amount for which a personal action may be commenced from time to time in a Magistrates Court whether on a balance of account or after an admitted set-off or otherwise.
- (3) A person shall not contravene an order under section 76(2) to do or refrain from doing a specified act.
- Maximum penalty—20 penalty units.
- (4) Proceedings for an offence under subsection (1) or (2) of contravening an order may only be taken by the applicant for the order or body corporate concerned.
- (5) In proceedings under this section—
- (a) the imposition of a penalty operates as a judgment under the *Magistrates Courts Act 1921* against the defendant and in favour of the prosecutor for the amount of the penalty; and
  - (b) an order for a person to pay an amount of costs operates as a judgment for that amount under that Act against that person and in favour of the person whose costs are ordered to be paid.

(amended)

- (6) A penalty imposed under this section or costs referred to in subsection (5)(b) shall not be enforceable or recoverable except as provided in subsection (5).
- (7) Any costs awarded against a defendant in proceedings under this section shall include the amount of the fee paid on filing the application for the order contravened.
- (8) A document purporting to be a copy of an order made by a referee or a tribunal shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the referee or tribunal, as the case may be.

#### **114 Protection of referee and tribunal**

No action shall lie against a referee, including the referee's delegate, or a tribunal on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act.

#### **115 Enforcement of orders for payment of money**

- (1) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing in the office of the registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Court district in which the person required by the order to make payment resides or has a place of business or in which the person to whom payment is to be made resides—
  - (a) a copy of the order certified by the referee to be a true copy; and
  - (b) his or her affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default;and the filing of the order shall be deemed to be a judgment that requires payment of money duly made by a Magistrates

Court under the *Magistrates Courts Act 1921* and may be enforced accordingly.

(amended)

- (2) No court fees shall be payable under subsection (1) up to and including entry of judgment.
- (3) It shall be competent to a person to file a copy of an order under subsection (1) once only and a second or subsequent filing purportedly pursuant to that subsection shall be ineffectual.
- (4) The *Limitation of Actions Act 1974* applies in respect of a decision of a referee and in respect of the enforcement of any order made by the referee as it applies in respect of any judgment.

(amended)

## **116 Time at which order takes effect**

Except—

- (a) where express provision is otherwise made by this Act;  
or
- (b) to the extent that a referee or tribunal specifies an order under this part;

an order takes effect when a copy of the order, certified by the referee to be a true copy, is served—

- (c) where the order requires a person to do or refrain from doing a specified act—on that person; or
- (d) in any other case—on the body corporate for the parcel to which the order relates.

## **117 Inquiries**

- (1) The referee shall, upon inquiry having been made to him or her by a person in writing in or to the effect of the prescribed form and upon payment of the fee prescribed in respect of the inquiry—

- 
- (a) by notice in writing, inform that person whether or not—
- (i) any application (being an application that has not been finally disposed of at a date and time specified in the notice) has been received by the referee for an order under this Act with respect to the parcel to which the inquiry relates; or
  - (ii) any order has been made under this Act within the period of 6 years prior to the inquiry with respect to that parcel, being an order of a class prescribed for the purposes of this subparagraph and specified in the inquiry; and
- (b) where any such application has been received by the referee or any such order has been so made—provide in that notice particulars of the application or order, as the case may be.
- (2) In subsection (1)—
- fee prescribed* means the fee prescribed under the Building Units and Group Titles Act, section 117.
- (new)

## **118 Referee or tribunal not to have jurisdiction where title to land in question**

Despite any other provision of this part, a referee or tribunal shall not have jurisdiction under this part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the referee or tribunal, as the case may be, and any determination made by the referee or tribunal shall not have any force or effect except as provided by this Act.



(amended)

(1A) In subsection (1)—

***prescribed fee*** means the fee prescribed under the Building Units and Group Titles Act, section 120(1).

(amended)

(2) If the registrar of titles is satisfied as to the bona fides of the application and that the proposed name is a name with which the plan could be registered without contravention of section 9, the registrar of titles shall reserve the proposed name in the manner prescribed for a period of 2 years from the date of the lodging of the application.

(3) If, at any time during the period for which a name is reserved, an application, accompanied by the prescribed fee, is made to the registrar of titles for an extension of that period and the registrar of titles is satisfied as to the bona fides of the application, he or she may extend that period for a further period of 1 year.

(amended)

(3A) In subsection (3)—

***prescribed fee*** means the fee prescribed under the Building Units and Group Titles Act, section 120(3).

(amended)

(4) During a period for which a name is reserved in respect of a proposed leasehold building units plan, another leasehold building units plan or building units plan within the meaning of the Building Units and Group Titles Act shall not be registered under this Act whether originally or on change of name, under the reserved name.

(amended)

(5) The reservation of a name under this section in respect of a proposed plan does not in itself entitle a plan to be registered by that name.

(6) An applicant for the reservation of a name who, during the period for which that name is reserved—

- (a) lodges the leasehold building units plan in respect of which that name is reserved; or
- (b) decides not to proceed with the registration of the leasehold building units plan in respect of which that name is reserved; or
- (c) decides not to register the leasehold building units plan in the name so reserved;

shall notify the registrar of titles to that effect and—

- (d) in the case of paragraph (a)—the registrar of titles shall note his or her records accordingly; and
- (e) in the case of paragraph (a) or (c)—the name shall cease to be reserved.

(amended)

## **121 Body corporate is representative of lessees in proceedings**

- (1) Where the lessees of the lots the subject of a leasehold building units plan are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the body corporate and any judgment or order given or made in favour of or against the body corporate in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the lessees.

(amended)

- (2) Where a lessee is liable to make a contribution to another lessee in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the lot entitlement of the lot of the first mentioned lessee bears to the aggregate lot entitlement.

(amended)

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**121A Limited right of action by body corporate**

A body corporate shall not institute proceedings against any person other than a lessee without first obtaining the approval of the body corporate by special resolution.

(amended)

**122 Body corporate's power to take proceedings as agent for lessee in case of structural defects**

(1) Where—

- (a) the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and
- (b) the lessee of the lot in that condition has neglected or refused within a reasonable time to take any proceedings under the *Queensland Building and Construction Commission Act 1991* or for the purpose of exercising any other right or enforcing any other remedy available to him or her to have that condition rectified;

the body corporate may, as agent for the lessee of the lot in that condition but at its own expense, take any of the proceedings referred to in paragraph (b).

(amended)

- (2) A person proposing to take proceedings under subsection (1) shall, before taking those proceedings, notify in writing the other person entitled to take the same proceedings and shall specify in the notice the circumstances that have given rise to that intention.

(new)

**123 Dividing fences**

(not applied)

## **124 Costs in proceedings by lessees against body corporate**

- (1) In any proceedings brought by 1 or more lessees against the body corporate, the court may order that any moneys (including costs) payable by the body corporate under an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the body corporate out of contributions levied for the purpose.

(amended)

- (2) Where a court makes an order under subsection (1), the body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid under that levy.
- (3) The provisions of section 32 with such modifications as may be necessary apply to and in respect of contributions levied under subsection (2) of this section in the same way as those provisions apply to contributions levied under that section.

## **125 Apportionment of statutory charges**

- (1) Where because of any Act or of anything done under the authority of any Act, any expenditure by a public authority or the council would, if the parcel were not the subject of a leasehold building units plan, be a charge on the land comprised in that parcel, that expenditure is a charge on the lease of each lot for an amount bearing to the whole of that expenditure the same proportion as the lot entitlement of that lot bears to the aggregate lot entitlement.

(amended)

- (2) The lessee or mortgagee of a lease of a lot the subject of a charge referred to in subsection (1) may pay to the authority entitled to the charge the amount of the charge and, on payment—
  - (a) the lease of the lot and the appurtenant beneficial interest in the lease of the common property are freed from the charge; and

- (b) the authority has no legal rights against the lessee, the lease of the lot or appurtenant beneficial interest in the lease of the common property in respect of the subject matter of the charge.

(amended)

## **126 Notice of application for order under s 25 or 26**

- (1) The Court may, in respect of any proceedings on an application for an order under section 25 or 26, make either or both of the following orders—
  - (a) order that public notice, by advertisement or otherwise, be given of the proceedings;
  - (b) order that service of notice of the application upon any person be dispensed with.
- (2) The Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the Court is satisfied that—
  - (a) that person can not be found in Queensland; or
  - (b) it is uncertain whether that person is living; or
  - (c) service can not be effected upon that person without expenses disproportional to the value (if any) of his or her interest.

(amended)

## **127 Service of documents on body corporate, lessees and others**

- (1) A summons or other legal process may be served on a body corporate by leaving it with the chairperson or secretary of the body corporate or with any member of the committee.
- (2) A document other than a document referred to in subsection (1) may be served on a body corporate—
  - (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the body corporate under section 37(1)(d); or

- (b) by post on the body corporate at its address recorded on the registered plan or at the address of the parcel.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by a referee, a tribunal, a body corporate, a committee or the secretary of a committee on a lessee, sublessee, mortgagee of a lot or occupier of a lot may be served—
- (a) by leaving it with some person apparently of or above the age of 16 years—
    - (i) where the person to be served is an occupier of the lot—at the lot; or
    - (ii) where an address for the service of notices on the person to be served is recorded in the roll—at the address so recorded; or
  - (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the roll, at the address so recorded; or
  - (c) in the case of a lessee—in any manner authorised by the by-laws for the service of notices on lessees.
- (amended)
- (4) Notice under section 44(5) may be served on a person—
- (a) personally or by post; or
  - (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the first mentioned person.

## **128 Powers of entry by public authority or the council**

A public authority or the council which is authorised by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

(amended)

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**129 Powers of entry of referee in certain cases**

- (1) Where a referee believes on reasonable grounds that—
- (a) an offence against any provision of this Act; or
  - (b) a breach of the by-laws;
- has been or is being committed upon any part of a parcel, the referee may, at any reasonable time on reasonable notice given to an occupier of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.
- (2) When exercising his or her power under subsection (1), the referee may, if he or she thinks fit, be accompanied by—
- (a) the chairperson, secretary or treasurer of the body corporate or other member of the committee; or
  - (b) the body corporate manager (if any) of the parcel concerned.
- (3) A person shall not obstruct or hinder—
- (a) the referee, in the exercise of his or her power under subsection (1); or
  - (b) a person accompanying the referee in pursuance of subsection (2).

Maximum penalty—\$200.

**130 Voting rights**

- (1) Any powers of voting conferred by or under this Act may be exercised—
- (a) in the case of a lessee who is an infant—by his or her guardian; or
  - (b) in the case of a lessee who is for any reason unable to control his or her property—by the person who for the time being is authorised by law to control that property; or
  - (c) in the case of a lessee or a registered mortgagee which is a corporation—by the company nominee.

(amended)

- (2) Where the Court upon the application of the body corporate or of any lessee or of any registered mortgagee is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot can not be found, the Court—
- (a) in cases where a unanimous resolution is required by this Act—shall; and
  - (b) in its discretion in any other case, may appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Act as the Court shall determine.

(amended)

- (3) The Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2), the Court may make such order as it thinks necessary or expedient to give effect to the appointment, including an order as to the payment of costs of the application, and may vary an order so made.
- (5) The powers of the Court under this section may be exercised by the registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.
- (6) In this section and in section 132—

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

### 131 Voting rights of first mortgagees

Where a lessee's interest in the lease of a lot is subject to a registered first mortgage notice of which has been given under section 53 to the body corporate, the power of voting conferred upon a lessee by or under this Act—

- (a) where a unanimous resolution is required—shall be exercised by the mortgagee and shall not be exercised by the lessee;
- (b) in other cases—may be exercised by the lessee unless the mortgagee, or, where a mortgagee is a corporation, the company nominee of the corporation, is present personally or by proxy when the mortgagee, or as the case may be, the company nominee may exercise the power of voting personally or by proxy and, if the mortgagee or company nominee does so, the lessee shall not exercise that power.

(amended)

### **132 Procedure upon application to Court**

- (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made in relation to the application.

(amended)

- (2) On an application, notice shall be served on such persons as the Court thinks fit or the Court may dispense with such notice.
- (3) The Court may, if it thinks fit, adjourn an application into court and on the adjournment may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.
- (4) The Court may delegate to the registrar all or any of its powers under this Act.
- (5) The power to make rules of the Supreme Court includes power to make rules regarding the practice and procedure of the Court under this Act.

### **133 Offences**

- (1) Any person (including a body corporate but excluding the lessor) who contravenes any provision of this Act, other than schedule 3, commits an offence against this Act and, if no

penalty is expressly provided for that offence, shall be liable on conviction to a penalty not exceeding \$500.

(amended)

- (2) An offence against this Act shall be prosecuted in a summary way under the *Justices Act 1886*.

(amended)

### **134 Regulations**

(not applied)

## **Schedule 1**

(not applied)

## **Schedule 2      Meetings of, and voting at meetings of, body corporate**

### **Part 1              First annual general meeting**

#### **1              Interpretation**

In this part—

*business* means the items in the agenda referred to in section 29(2).

*meeting* means the first annual general meeting of a body corporate.

#### **2              Inspection of roll by original lessee**

- (1) For the purposes of preparing the notices referred to in clause 3, an original lessee, whether or not he or she has ceased to be a lessee of a lot, or his or her agent authorised in writing is entitled to inspect the roll without making payment or written application.

(amended)

- (2) If the lessor convenes the first annual general meeting under section 29(1)(b), then the lessor or its agent authorised in writing is entitled to inspect the roll without making payment or written application.

(new)

#### **3              Notice and contents of meeting**

- (1) Notice of the meeting shall be served on each person who is a lessee or first mortgagee of a lease of a lot, as ascertained from the roll, at least 14 days before the meeting and shall—

- (a) set forth the date and time when and the place where the meeting is to be held and set forth as the agenda of the meeting the items referred to in section 29(2) and, if an

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item referred to in section 29(2A) is to be moved, that item and any other appropriate items; and

- (b) inform each person to whom the notice is addressed that he or she or, where the notice is addressed to a corporation, a company nominee of the corporation, may vote at the meeting—
- (i) in the case of a lessee of a lot the lease of which is subject to a mortgage shown on the roll—only in accordance with section 131; and
  - (ii) except in the case of a motion requiring a unanimous resolution or resolution without dissent, only if all contributions levied and payable on the lot, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice has been addressed at the date of the notice (being contributions levied on him or her, or moneys recoverable from him or her, in respect of the lot of which he or she is the lessee or first mortgagee) have been duly paid before the commencement of the meeting; and
  - (iii) either in person at the meeting or by proxy given in writing to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting).

(amended)

- (2) (not applied)
- (3) Where it is served on a first mortgagee of a lease of a lot, notice of the meeting shall include the name of the lessee of the lot and the addresses of the lot.

(amended)

- (4) A meeting shall not be held at any place outside a radius of 15km—
- (a) in any case—from the parcel; or

(b) in the case of a stratum parcel—from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

if, prior to the commencement of the meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.

(amended)

(5) Nothing in this clause requires an original lessee or the lessor to serve on itself notice of a meeting.

(new)

#### **4 Restrictions on submitting motions**

(1) A motion shall not be submitted to the meeting unless it relates to the business of the meeting.

(2) A person is not entitled to move a motion at a meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless he or she is entitled to vote on that motion or in that election.

(3) For the purposes of subclause (2), a lessee who but for the existence of a mortgage over the lease of the lot would be entitled to vote on a motion or in an election or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

(amended)

#### **5 Persons entitled to vote at meetings**

(1) Subject to section 131, a person is entitled to vote at a meeting in respect of any lot only if he or she is the lessee of that lot as shown on the roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(amended)

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- (2) Despite any other provision of this clause, a first mortgagee of a lease of a lot as shown on the roll, or, where the first mortgagee is a corporation, the company nominee of that corporation, as shown on that roll, is entitled to cast a vote at a meeting in respect of that lot under section 131.
- (amended)
- (3) Despite section 53(11), co-lessees or co-mortgagees shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of the person's appointment has been given to the secretary of the body corporate before the commencement of the meeting.
- (amended)
- (4) Only the lessee entitled to the first of 2 or more successive estates in a lot is, subject to this part, entitled to cast a vote at a meeting.
- (amended)
- (5) A lessee who is the trustee of the leasehold estate in a lot is, subject to this part, entitled to cast a vote at a meeting and the persons beneficially interested in the trust are not entitled to cast a vote.
- (amended)
- (6) Despite any other provision of this Act, a person shall not be entitled to cast a vote at a meeting except in respect of a motion for a resolution which to be effective must be passed by unanimous resolution or resolution without dissent unless—
- (a) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which he or she is entitled to vote; and
- (b) any other moneys recoverable under this Act by the body corporate from the person at the date of the notice given under clause 3(1), have been duly paid before the commencement of the meeting.
- (7) The voting rights conferred by this clause are subject to section 53(11) and (12).

## **6 Quorum**

- (1) Business shall not be considered at a meeting unless the number of persons present at that meeting either personally or by proxy and entitled to vote constitutes a quorum.
- (2) Except as provided in subclause (3), one-quarter of the persons entitled to vote on any matter at a meeting constitutes a quorum for considering that matter.
- (3) Where there is no quorum, as provided in subclause (2), for considering any matter at a meeting within one-half hour after that matter arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that matter at the adjourned meeting within half an hour after that matter arises for consideration, the number of persons present personally or by proxy and entitled to vote constitutes a quorum for considering that matter.

## **7 Motions out of order**

The chairperson of a meeting may rule a motion out of order if he or she considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

## **8 Method of casting votes**

Except as provided in clause 5(3), a vote may be cast at a meeting by a person entitled to vote, either personally or by the person's proxy duly appointed in writing.

## **9 Chairperson to preside**

The chairperson of the body corporate, if present, shall preside at the meeting and, in his or her absence, the persons present and entitled to vote at the meeting may elect one of their number to preside at the meeting and the person so elected shall, while he or she is so presiding, be deemed to be the chairperson of the body corporate.

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**10 Chairperson to have available names of persons entitled to vote**

The chairperson at a meeting shall have available for inspection, before submitting a matter to a vote at the meeting, a list of the names of the persons who are entitled to vote on that matter.

**11 Counting of votes on election of chairperson, secretary, treasurer and committee**

Each person entitled to vote on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee has 1 vote in respect of each lot in respect of which he or she is entitled to vote.

**12 Counting of votes**

- (1) Subject to this clause, a motion submitted at a meeting shall be decided according to the number of votes cast for and against the motion, whether personally or by proxy, each person entitled to vote having 1 vote in respect of each lot in respect of which he or she is entitled to vote.
- (2) If—
  - (a) a poll is demanded by any person entitled to vote at a meeting on a motion submitted at that meeting, whether or not the motion has been decided under subclause (1), and the demand is made by that person personally at the meeting; or
  - (b) a motion submitted at the meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution;the motion shall be decided according to the value, ascertained under subclause (3), of the votes cast for and against the motion, whether personally or by proxy.
- (3) For the purposes of subclause (2), the value of a vote cast on a motion submitted at a meeting by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

- (4) Any 1 co-lessee or co-mortgagee may demand a poll and on any poll each co-lessee or co-mortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his or her interest in the lease of the lot.

(amended)

- (4A) A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lease of the lot of such of the co-lessees or co-mortgagees as do not vote personally or by individual proxy.

(amended)

- (5) A poll shall be taken in such manner as the chairperson thinks fit.
- (6) A demand for a poll may be withdrawn by the person who made it.
- (7) In the case of equality in the votes whether on a show of hands or on a poll, the chairperson of the meeting shall be entitled to a casting vote in addition to his or her original vote whether or not he or she has exercised that original vote.

### **13 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion submitted at a meeting, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

### **14 Amendment or revocation of certain resolutions**

A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked at a meeting except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

## 15 Appointment of proxy

- (1) An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting.  
(amended)
- (2) A proxy need not be a lessee.  
(amended)

## Part 2 Meetings other than first annual general meeting

### 1 General meetings of body corporate

- (2) A general meeting of a body corporate (an *extraordinary general meeting*), which is not an annual general meeting, shall be held whenever it is convened by the committee.
- (2A) All business shall be deemed special which is transacted at an annual general meeting (with the exception of the consideration of accounts and the election of the chairperson, secretary and treasurer of the body corporate and other members of the committee) or at an extraordinary general meeting.
- (3) Without limiting the power of a committee under subclause (2)—
  - (a) the secretary of a committee or, in his or her absence, any member of the committee shall convene an extraordinary general meeting of the body corporate as soon as practicable after he or she receives a requisition for an extraordinary general meeting signed by 1 or more persons entitled to vote in respect of 1 or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-quarter of the aggregate lot entitlement; and
  - (b) where a member of the committee other than the secretary receives a requisition to convene an

extraordinary general meeting of the body corporate under this subclause, he or she may give, on behalf of the committee, the notice required to be given under subclause (4).

- (4) Notice of a general meeting of a body corporate shall—
- (a) be served on each lessee of a lot and first mortgagee of a lease of a lot, as ascertained from the roll, at least 7 days before the meeting; and
  - (b) set forth the date and time when and the place where the meeting is to be held; and
  - (c) where it is so served on a first mortgagee of a lease of a lot—include the name of the lessee of the lot and the addresses of the lot; and
  - (d) set forth the business of the meeting and in the notice, in respect of each motion to be considered by the meeting, specify whether the motion to be carried requires a resolution, special resolution, resolution without dissent or unanimous resolution; and
  - (e) where it is so served under a requisition referred to in subclause (3)(a)—specify a date for the convening of the extraordinary general meeting to which it relates that is not later than 1 month after the date on which the secretary or member, as the case may be, of the committee received the requisition.
- (4A) Nothing in subclause (4)(a) requires a lessee to serve on himself or herself notice referred to in the subclause.
- (amended)
- (4AA) A general meeting of a body corporate shall not be held at any place outside a radius of 15km—
- (a) in any case—from the parcel; or
  - (b) in the case of a stratum parcel—from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

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if prior to the commencement of the meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.

(amended)

- (5) Every notice for an annual general meeting shall—
- (a) be accompanied by a copy of the statement of the accounts of the body corporate last prepared by the body corporate under section 38D(1)(c) and, where the accounts of the body corporate for that period are required by this Act to be audited a copy of a certificate by the auditor certifying whether the statement of accounts—
    - (i) is in agreement with the accounts; and
    - (ii) in his or her opinion fairly sets out the financial transactions for the period to which it relates and shows a true and fair view of the state of affairs at the close of that period; and
  - (b) include a form of motion for adoption of those accounts; and
  - (ba) include a form of motion for the appointment of a qualified auditor to audit the accounts of the body corporate for the next ensuing financial year; and
  - (c) when necessary, be accompanied by a ballot paper for the election of candidates as chairperson, secretary and treasurer of the body corporate and as other members of the committee; and
  - (d) if no nomination is received for any such position prior to the closing date—contain advice that the position will be filled from nominations received from the floor of the meeting.

(amended)

- (5A) The notice for an annual general meeting may include a motion that the accounts of the body corporate relating to the next ensuing financial year shall not be audited.

- (5B) However, such a motion shall not be carried except by a special resolution.
- (5C) If the motion is so carried, the motion referred to in subclause (5)(ba) shall not be proceeded with.
- (5D) Nothing in subclauses (5A) to (5C) shall prevent a body corporate resolving by ordinary resolution that the accounts of the body corporate relating to any period specified in the resolution shall be audited.
- (6) Every notice for an annual general meeting or an extraordinary general meeting shall—
  - (a) include—
    - (i) a form of motion to confirm the minutes of the last general meeting; and
    - (ii) where the notice is for a meeting required to be convened by a person appointed under section 43(2AA) for the purpose of appointment of members of a committee—a form of motion for election of those members; and
    - (iii) a form of each other motion which—
      - (A) relates to the striking of a special monetary levy on all lessees of lots; or
      - (B) seeks to alter the rights, privileges or obligations of lessees of lots; or
      - (C) seeks to alter the annual monetary contribution of lessees of lots;to be considered at the meeting; and
  - (b) be accompanied by—
    - (i) a voting paper in respect of each motion referred to in paragraph (a) to be considered and determined at the meeting for use by a person entitled to vote if the person wishes to cast his or her vote in writing; and
    - (ii) a copy of the minutes of the last general meeting; and

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- (c) inform each person to whom the notice is addressed that he or she or, where the notice is addressed to a corporation, a company nominee of the corporation may vote in respect of each motion and, where relevant, on election of the chairperson, secretary and treasurer of the body corporate and other members of the committee—
- (i) in the case of a lessee of a lot the lease of which is subject to a mortgage shown on the roll—only in accordance with section 131; and
  - (ii) except in the case of a motion requiring a unanimous resolution or a resolution without dissent—only if all contributions levied in respect of the lot and due and payable at least 30 days before the meeting, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on him or her, or moneys recoverable from him or her, in respect of the lot of which he or she is the lessee or first mortgagee of the lease) have been duly paid before the commencement of the meeting; and
  - (iii) either—
    - (A) in person at the meeting; or
    - (B) by a person appointed in writing given to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting) as a proxy; or
    - (C) in respect of some or all of the motions set out in the notice—by casting his or her vote on the voting paper referred to in paragraph (b) accompanying the notice; or
    - (D) in respect of the election of the chairperson, secretary or treasurer of the body corporate and other members of the committee—by

furnishing to the secretary of the body corporate the ballot paper given to him or her in accordance with subclause (5)(c) indicating his or her vote on it.

(amended)

- (6A) A person is not entitled to submit a motion for inclusion in the agenda of a meeting, to move a motion at the meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless he or she is entitled to vote on that motion or in that election.
- (6B) For the purposes of subclause (6A), a lessee who but for the existence of a mortgage over the lease of the lot or his or her failure to pay any contribution levied or other amount recoverable by the body corporate, would be entitled to vote on a motion or in an election or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

(amended)

- (7) A motion shall not be submitted at a general meeting unless notice of the motion has been given under this clause.
- (8) A reference in subclause (7) to a motion includes a reference to a motion to amend a motion unless there is no vote cast in writing, as referred to in clause 5(b), in respect of the motion sought to be amended.
- (9) The chairperson of a general meeting may with the consent of the meeting adjourn any general meeting from time to time and from place to place but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (10) No business shall be raised at a meeting unless that business is set forth in the notice of the meeting.

## **2 Persons entitled to vote at general meetings**

- (1) Subject to section 131, a person is entitled to vote in respect of any lot on any motion submitted at a general meeting of a

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body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee only if he or she is the lessee of that lot as shown on the roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(amended)

- (2) Despite any other provision of this clause, a first mortgagee of the lease of a lot, as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to vote in respect of that lot on any motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and members of the committee under section 131.

(amended)

- (3) Despite section 53(11), co-lessees or co-mortgagees including, where a co-lessee or co-mortgagee is a corporation, the company nominee of that corporation as shown on the roll shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of his or her appointment has been given to the secretary of the body corporate before the commencement of the meeting at which the vote is cast or by furnishing to the secretary of the body corporate a voting paper referred to in clause 1(6)(b) indicating their joint vote on that motion or, where relevant, a ballot paper, duly completed, referred to in clause 1(5)(c).

(amended)

- (4) Only the lessee entitled to the first of 2 or more successive estates in a lot or, where that lessee is a corporation, the company nominee of that corporation as shown on the roll is, subject to this part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee.

(amended)

- (5) A lessee who is the trustee of the leasehold estate in a lot or, where that lessee is a corporation, the company nominee of

that corporation as shown on the roll is, subject to this part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee and the persons beneficially interested in the trust are not entitled to cast such a vote.

(amended)

(6) Despite any other provision of this Act, at a general meeting of the body corporate a person shall not be entitled to vote in respect of—

(a) any motion other than a motion which to be effective must be passed by unanimous resolution or resolution without dissent; or

(b) the election of the chairperson, secretary or treasurer of the body corporate or the other members of the committee;

unless—

(c) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which he or she is entitled to vote; and

(d) any other moneys recoverable under this Act by the body corporate from the person or the lessee of the lot at the date of the notice given under clause 1(4);

have been duly paid before the commencement of the meeting.

(amended)

(7) The voting rights conferred by this clause are subject to section 53(11) and (12).

### **3 Quorum**

(1) A motion submitted at a general meeting of a body corporate shall not be considered at that meeting and an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee shall not be held at a meeting of the body corporate unless the number of persons present at

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that meeting either personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or election, constitute a quorum for considering that motion or holding that election.

- (2) Subject to subclause (3), one-quarter of the persons entitled to vote on a motion or on an election of chairperson, secretary and treasurer of that body corporate and other members of the committee constitute a quorum for considering that motion or holding that election.
- (3) Where there is no quorum, as provided in subclause (2), for considering any motion or holding an election of chairperson, secretary and treasurer of the body corporate and other members of the committee at a general meeting of a body corporate within one-half hour after that motion or business arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that motion or holding that election at the adjourned meeting within one-half hour after that motion or business arises for consideration, the number of persons present personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or on that election, constitute a quorum for considering that motion or business.
- (4) A general meeting of a body corporate is, subject to this clause, validly held even though the only person present at the meeting is the chairperson of the body corporate.

#### **4 Motions out of order**

At a general meeting of a body corporate the chairperson may rule that a motion submitted at the meeting is out of order if—

- (a) the chairperson considers that the motion, if carried, would conflict with this Act, the principal Act, the by-laws, management statement or would otherwise be unlawful or unenforceable; or

- (b) except in respect of a motion to amend a motion—  
clause 1(7) has not been complied with respect to the  
motion; or
- (c) in respect of a motion to amend a motion—there is any  
vote cast in writing, as referred to in clause 5(b), in  
respect of the motion sought to be amended.

(amended)

## **5 Method of casting votes**

Subject to clause 2(3), a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee may be cast—

- (a) by the person entitled to vote, either personally or by the person's proxy duly appointed in writing; or
- (b) by furnishing to the secretary of the body corporate a voting paper referred to in clause 1(6)(b) indicating the vote of the person entitled to vote on that motion or a ballot paper, duly complete, referred to in clause 1(5)(c), as the case may be.

## **6 Withdrawal of voting paper**

Even though a person entitled to vote at a general meeting of a body corporate has cast a vote on a motion submitted at that meeting or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee by indicating his or her vote on that motion on a voting paper referred to in clause 1(6)(b) or ballot paper referred to in clause 1(5)(c), if the person attends that meeting either personally or by another person holding a proxy, he or she may before commencement of the business of the meeting notify the chairperson or secretary of the body corporate that he or she withdraws that voting paper or ballot paper and, where he or she does so—

- (a) for the purpose of determining whether there is a quorum for consideration of any such motion or for the

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holding of any such election at the meeting—the person’s voting paper or ballot paper, as the case may be, shall be disregarded; and

- (b) for the purpose of counting the votes on that motion or that election—the person’s voting paper or ballot paper shall be disregarded; and
- (c) the person or the person’s proxy duly appointed in writing may vote on that motion or that election at the meeting in the same manner as if he or she had not furnished that voting paper or ballot paper.

## **7 Chairperson to preside**

The chairperson of a body corporate shall preside at a general meeting of the body corporate at which he or she is present and, in his or her absence from any such meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect a person present at the meeting to preside at that meeting and the person so elected shall, while he or she is so presiding, be deemed to be the chairperson of the body corporate.

## **8 Scrutineers**

At a general meeting, the chairperson may appoint persons as scrutineers who shall be entitled to inspect all voting papers and ballot papers furnished to the secretary of the body corporate under clause 5(b) and relating to business at that meeting.

## **9 Chairperson to have available names of persons entitled to vote**

The chairperson at a general meeting of the body corporate shall have available for inspection, before submitting a motion to the meeting or the holding of the election of the chairperson, secretary and treasurer of the body corporate and other members of the committee, a list of the names of the

persons who are entitled to vote on that motion or at that election.

**10 Counting of votes on election of chairperson, secretary, treasurer and committee**

Each person entitled to vote on an election of the chairperson, secretary and treasurer of a body corporate and other members of the committee has 1 vote in respect of each lot in respect of which he or she is entitled to vote.

**11 Counting of votes on motions**

(1) Subject to this clause, a motion submitted at a general meeting of a body corporate shall be decided according to the number of votes cast for and against the motion, whether personally, by proxy or in writing, each person entitled to vote having 1 vote in respect of each lot in respect of which he or she is entitled to vote.

(2) If—

(a) a poll is demanded by any person entitled to vote at a general meeting of a body corporate on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting or on the voting paper on which he or she votes in respect of that motion; or

(b) a motion submitted at such a meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution;

the motion shall be decided according to the value, ascertained in accordance with subclause (3), of the votes cast for and against the motion, whether personally, by proxy or in writing.

(3) For the purposes of subclause (2), the value of a vote cast on a motion submitted at a general meeting of a body corporate by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

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- (4) Any 1 co-lessee or co-mortgagee may demand a poll and on any poll each co-lessee or co-mortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to the interest in the lease of the lot.

(amended)

- (4A) A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lease of the lot of such of the co-lessees or co-mortgagees as do not vote personally or by individual proxy.

(amended)

- (5) A poll shall be taken in such manner as the chairperson thinks fit.
- (6) A demand for a poll may be withdrawn by the person who made it.
- (7) In the case of equality in the votes whether on a show of hands or in a poll, the chairperson of the meeting shall be entitled to a casting vote in addition to his or her original vote whether or not he or she has exercised that original vote.

## **12 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion submitted at a general meeting of the body corporate, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

## **13 Requisition for motion to be included on agenda for general meeting**

- (1) Any person entitled to vote at a general meeting of a body corporate may by notice in writing served on the secretary of the committee require inclusion in the agenda of the next general meeting of the body corporate (other than a meeting in respect of which notices have already been given under clause 1(4)) of a motion set out in the first notice and the secretary shall comply with the notice.

- (2) For the purposes of subclause (1), a lessee who but for the existence of a mortgage over the lease of the lot or his or her failure to pay any contribution levied or other amount recoverable by the body corporate would be entitled to vote at a general meeting of the body corporate or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote at that meeting.

(amended)

#### **14 Amendment or revocation of resolution**

A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

#### **15 Duties of original lessee until officers elected**

Until the offices of chairperson, secretary and treasurer of the body corporate are filled the powers and functions conferred on the holders of those offices—

- (a) shall be exercised and performed by the original lessee or by his or her agent duly authorised in writing; or
- (b) if the lessor exercises or intends to exercise its rights under section 29(1)(b)—may be performed by the lessor or its agent duly authorised in writing.

(amended)

#### **16 Meetings of body corporate before first annual general meeting**

- (1) Until the first annual general meeting of the body corporate, the original lessee or the body corporate may convene an extraordinary general meeting and shall do so on receipt of a requisition signed by 1 or more persons entitled to vote in respect of 1 or more lots, the lot entitlement or the sum of the

lot entitlements of which is at least one-quarter of the aggregate lot entitlement.

(amended)

- (2) The provisions of this part (other than clause 1(2), (2A), (3) and (5)) apply to and in respect of a meeting referred to in subclause (1) so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

## **17 Appointment of proxy**

- (1) An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting.

(amended)

- (2) A proxy need not be a lessee.

(amended)

## **Schedule 3      By-laws**

### **1      Noise**

A lessee or occupier of a lot shall not upon the parcel create any noise likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using common property.

(amended)

### **2      Vehicles**

Unless a by-law under section 30(7) authorises him or her so to do, a lessee or occupier of a lot shall not park or stand any motor or other vehicle upon common property except with the consent in writing of the body corporate.

(amended)

### **3      Obstruction**

A lessee or occupier of a lot shall not obstruct lawful use of common property by any person.

(amended)

### **4      Damage to lawns etc. on common property**

A lessee or occupier of a lot shall not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated upon common property; or
- (b) except with the consent in writing of the body corporate—use for his or her own purposes as a garden any portion of the common property.

(amended)

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**5 Damage to common property**

- (1) A lessee or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the consent in writing of the body corporate, but this by-law does not prevent a lessee or person authorised by the lessee from installing—
- (a) any locking or other safety device for protection of his or her lot against intruders; or
  - (b) any screen or other device to prevent entry of animals or insects upon his or her lot.
- (2) However, the locking or other safety device or, as the case may be, screen or other device must be properly constructed, maintained in a state of good and serviceable repair by the lessee and not detract from the amenity of the building.

(amended)

**6 Behaviour of invitees**

A lessee or occupier of a lot shall take all reasonable steps to ensure that his or her invitees do not behave in a manner likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using common property.

(amended)

**7 Depositing rubbish etc. on common property**

A lessee or occupier of a lot shall not deposit or throw upon the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using the common property.

(amended)

## **8 Appearance of building**

A lessee or occupier of a lot shall not, except with the consent in writing of the body corporate, hang any washing, towel, bedding, clothing or other article or display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his or her lot in such a way as to be visible from outside the building.

(amended)

## **9 Storage of flammable liquids etc.**

A lessee or occupier of a lot shall not, except with the consent in writing of the body corporate, use or store upon his or her lot or upon the common property any flammable chemical, liquid or gas or other flammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

(amended)

## **10 Garbage disposal**

A lessee or occupier of a lot shall—

- (a) unless the body corporate provides some other means of disposal of garbage, maintain within his or her lot, or on such part of the common property as may be authorised by the body corporate, in a clean and dry condition and adequately covered, a receptacle for garbage; and
- (b) comply with all council local laws relating to the disposal of garbage; and
- (c) ensure that the health, hygiene and comfort of the lessee or occupier of any other lot is not adversely affected by his or her disposal of garbage.

(amended)

**11 Keeping of animals**

Subject to section 30(12), a lessee or occupier of a lot shall not, without the approval in writing of the body corporate, keep any animal upon his or her lot or the common property.

(amended)

## **Schedule 4      Provisions applying to committees and office bearers**

### **1      Committee's power to employ agents and employees**

Subject to sections 46, 48 and 50, a committee may employ for and on behalf of the body corporate such agents and employees as it thinks fit in connection with the exercise and performance of the powers and functions of the body corporate.

### **2      Noticeboard**

A committee shall cause a noticeboard to be affixed to some part of the common property and, if there is no common property, on an appropriate place within the parcel, visible to the lessees.

(amended)

### **3      Meetings and delegation of powers and duties**

The committee may—

- (a) subject to clauses 4 and 5, meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit; and
- (b) subject to any restriction imposed or direction given at a general meeting, delegate to 1 or more of its members such of its powers and duties as it thinks fit and at any time revoke such delegation.

### **4      Meeting at request of members**

The secretary of the body corporate or, in the secretary's absence, any member of the committee, at the request of not less than one-third of the members of the committee, shall convene a meeting of the committee within the period of time (if any) specified in the request or, if not so specified, within 7 days of the making of the request.

## **5 Place of meeting**

A meeting of the committee shall not be held at any place outside a radius of 15km—

- (a) in any case—from the parcel; or
- (b) in the case of a stratum parcel—from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

if, prior to the commencement of the meeting, any person entitled to vote at the meeting objects to that place by notice in writing to the secretary of the committee.

(amended)

## **6 Notice of committee meetings**

For not less than 24 hours ending immediately before a committee holds a meeting the secretary or member of the committee convening the meeting shall cause a notice of intention to hold the meeting, containing the agenda for the meeting, to be displayed on the noticeboard.

## **7 Voting in writing by members of a committee**

Where—

- (a) clause 6 has been complied with in relation to any meeting; and
- (b) the committee has caused to be served on each member of the committee a copy of any motion for a proposed resolution to be submitted at that meeting; and
- (c) any such resolution has been approved in writing by a majority of the members of the committee;

the resolution shall, subject to section 45(3), be valid as if it had been duly passed at a duly convened meeting of the committee, even though the meeting was not held.

**8 Minute of certain resolutions to be included in committee's minutes**

The committee shall cause to be included in its minutes a minute of all resolutions passed under clause 7.

**9 Acts etc. of committee valid despite vacancies**

Any act or proceeding of a committee done in good faith, even though at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the committee; or
- (b) a defect in the appointment, or a disqualification of a member;

is valid as if the vacancy, defect or disqualification did not exist and the committee were fully and properly constituted.

**10 Powers and duties of secretary**

The powers and duties of a secretary of a body corporate include—

- (a) the preparation and distribution of minutes of meetings of the body corporate and the submission of a motion for confirmation of the minutes of any meeting of the body corporate at the next such meeting; and
- (b) the giving on behalf of the body corporate and of the committee of the notices required to be given under this Act; and
- (c) the maintenance of the roll; and
- (d) the supply of information on behalf of the body corporate under section 40(1)(a) and (b); and
- (e) the answering of communications addressed to the body corporate; and
- (f) the calling of nominations of candidates for election as chairperson, secretary and treasurer of the body corporate and other members of the committee; and

- (g) subject to sections 29(1) and (6) and 43(2A) and clause 3(b), the convening of meetings of the body corporate and of the committee.

(amended)

## **11 Powers and duties of treasurer**

The powers and duties of a treasurer of a body corporate include—

- (a) the notifying of lessees of any contributions levied under this Act; and
- (b) the receipt, acknowledgement and depositing at a financial institution of and the accounting for any money paid to the body corporate; and
- (c) the preparation of any certificate applied for under section 40(1)(c); and
- (d) the keeping of the books of account referred to in section 38D(1)(b) and the preparation of the statement of accounts referred to in section 38D(1)(c).

(amended)

## **Schedule 5      Rights and obligations implied in certain easements**

### **1      Interpretation**

(1) In this schedule—

*pipes* includes cables, tubes, wires and conduits of all kinds.

*service* has the same meaning as in section 17(1).

(new)

(2) For the purposes of this schedule, a reference to a person entitled to the benefit of a right of vehicular or personal access or of an easement for a specified service—

(a) where a stratum parcel is the dominant tenement—is a reference to—

(i) a lessee of a lot within the parcel; or

(ii) the body corporate of the leasehold building units plan; or

(iii) any person authorised by either of them; or

(iv) any person who is, under any Act, entitled to immediate possession of the lot or former lot; or

(b) where a stratum parcel is the servient tenement—is a reference to—

(i) the lessor under the leasehold building units plan concerned; or

(ii) any person entitled to an estate or interest in possession in the dominant tenement; or

(iii) any person authorised by either of them.

(new)

### **2      Right of vehicular access**

Each person entitled to the benefit of a right of vehicular access has at all times an unrestricted right—

- 
- (a) to pass and repass, with or without vehicles, machinery, implements and other equipment of every kind, over the roadways, ramps and land over which the right of access is created; and
  - (b) to carry out an inspection of those roadways and ramps and that land.
- (new)

### **3 Right of personal access**

Each person entitled to the benefit of a right of personal access has at all times an unrestricted right—

- (a) to pass and repass, without vehicles but with or without hand tools, hand implements and other equipment capable of being carried by hand, over the stairs, escalators, lifts, passages, corridors, shafts and other areas over which the right of access is created; and
  - (b) to carry out an inspection of those stairs, escalators, lifts, passages, corridors, shafts and other areas.
- (new)

### **4 Obligations relating to rights of access**

- (1) Where a right of vehicular or personal access is created over or appurtenant to a stratum parcel, the roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates shall be maintained in good order and repaired—
  - (a) by the body corporate concerned, the lessor or another person indicated, in the instrument by which the right is created or in any instrument in an approved form by which the instrument is varied, as having responsibility for those matters; or
  - (b) where any such instrument does not indicate who is responsible for those matters—by the person or, if more than 1, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(new)

- (2) If a body corporate, the lessor or someone else fails to carry out a responsibility imposed by subclause (1) and at least 7 days have passed since the failure first happened, any other of them may take the lawful steps necessary to ensure the responsibility is carried out.

(new)

## **5 Easements for services**

- (1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right—
- (a) (except when it is necessary to halt the service for any essential maintenance or repairs relating to the service) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land; and
  - (b) to carry out an inspection of the pipes or apparatus to which the easement relates; and
  - (c) in order to maintain the efficiency of any such pipes or apparatus—
    - (i) to enter the part of the burdened land in respect of which the easement is created by such route as is reasonable in the circumstances; and
    - (ii) to remain there for such reasonable time as may be necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making such excavations as may be reasonably necessary;subject to the conditions that—
    - (iii) the burdened land is disturbed as little as possible; and

- (iv) any excavated surface is restored as nearly as possible to its original state; and
- (v) any other damage attributable to the operations referred to in this clause is repaired.

(new)

(2) In this clause, a reference to burdened land—

- (a) where a stratum parcel is the dominant tenement—is a reference to so much of—
  - (i) the building, part of which is subject to the leasehold building units plan; and
  - (ii) the site of that building;
 as is not part of the parcel; or
- (b) where a stratum parcel is the servient tenement—is a reference to the parcel.

(new)

## **6 Obligations relating to an easement for the provision of services**

- (1) Where an easement for services is created over or appurtenant to a stratum parcel, the pipes or apparatus to which the easement relates shall be maintained in good order and repaired—
  - (a) by the body corporate concerned, the lessor or another person, indicated in the instrument by which the easement is created or in any instrument in the approved form, by which that easement is varied, as having responsibility for those matters; or
  - (b) where any such instrument fails to indicate who is responsible for those matters—by the person or, if more than 1, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(new)

- (2) If a body corporate, the lessor or someone else fails to carry out a responsibility imposed by subclause (1) and at least 7

days have passed since the failure first happened, any other of them may take the lawful steps necessary to ensure the responsibility is carried out.

(new)

## **7 Sharing of costs of maintenance and repair**

(1) The costs of maintenance and repair in respect of a right of vehicular or personal access or an easement for services to which this schedule applies shall be borne by the lessor, body corporate or other person concerned—

(a) in the proportions specified in the instrument by which the easement was created or, where the proportions so specified have been varied, those proportions as varied; or

(b) where no such proportions are so specified—in equal proportions.

(new)

(2) Where a person (whether or not the body corporate or the lessor) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate, the lessor or other person referred to in that subclause is liable to contribute to those costs.

(new)

(3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices which evidence the expenditure to which the demand relates.

(new)

(4) Where the body corporate, the lessor or other person fails to comply with any such demand within 7 days after it has been made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the body corporate, lessor or other person.

(new)

**8 Ancillary rights and powers**

All easements to which this schedule applies shall carry with them such ancillary rights and powers as may be necessary to render them effective.

(new)

## **Schedule 6      Compensation payable on termination of leasehold building units plan**

For the purposes of sections 24E(1)(c) and 26(7)(e), the formula is—

$$A = B - (C - D)$$

where—

*A* means the value, at the date of termination of the leasehold building units plan concerned, of the improvements attributable to a lot.

*B* means the market value, at that date, of the lot, being the value of the lot at that date calculated on the basis that the lot—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used, whether or not only with the consent of the local government for any purpose the use of the lot for which is not at that date prohibited.

where—

$$C = E \times \frac{U_1}{U_n}$$

*E* means the site value, at that date, of the parcel the subject of that leasehold building units plan, being the value of the land included in that parcel at that date calculated on the basis that the land—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used for the purpose of a site for the building or part of the building subject to the leasehold building units plan;

but excluding the value at that date of all improvements within the parcel.

*U<sub>l</sub>* means the unit entitlement of the lot.

*U<sub>n</sub>* means the aggregate unit entitlement for that leasehold building units plan.

*D* means the part of factor *B* (if any) attributable to the value, at that date, of improvements to the lot effected by the lessor.

(new)

## **Schedule 5      Council land vested in corporation**

section 18

- (a) freehold held by council
  - lots 1 to 4 on RP 81435
  - lots 1 to 3 on RP 1419
  - lot 293 on plan B 3139
  - lot 92 on plan B 118250
- (b) reserve land with council as trustee
  - R 1744 lot 7 on plan SL 11015 GG 1956.3.163
  - R 689 lot 5 on plan SL 11015 GG 1956.3.161.

**Schedule 6**      **Provisions not to apply after  
development completion date**

section 39

section 25(1)(a) to (c)

sections 32 to 38

section 40

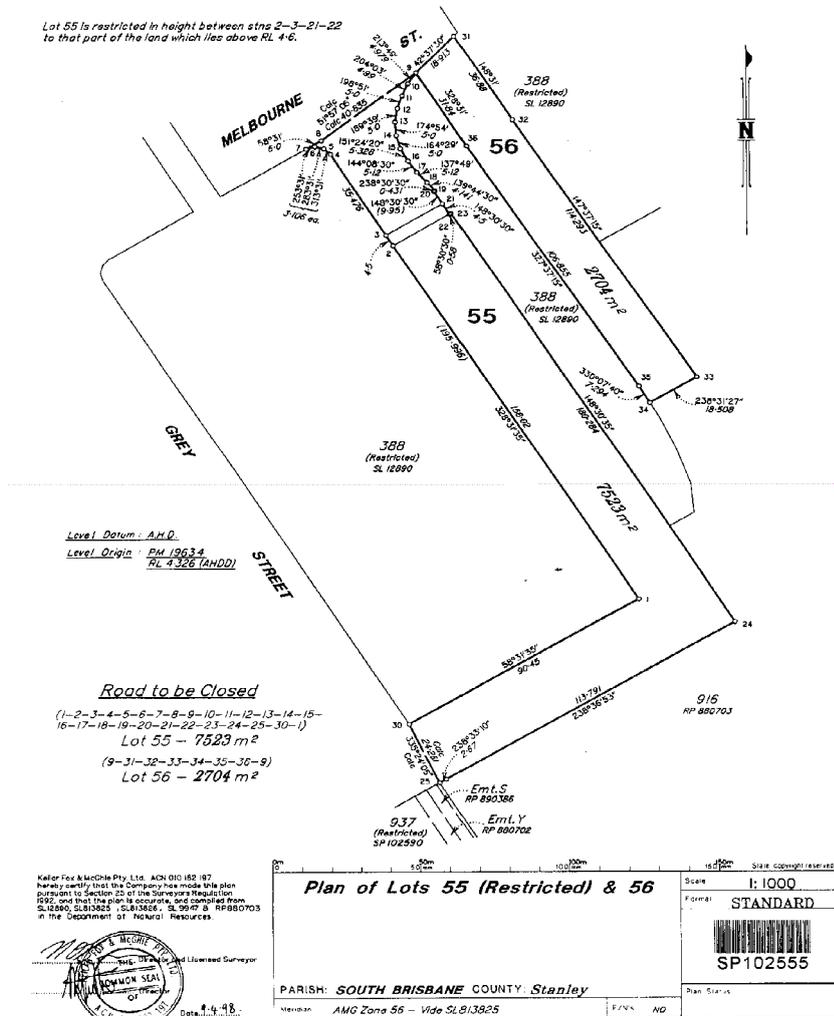
part 7

section 92

# Schedule 9

section 19

Lot 55 is restricted in height between stns 2-3-21-22 to that part of the land which lies above RL 4.6.



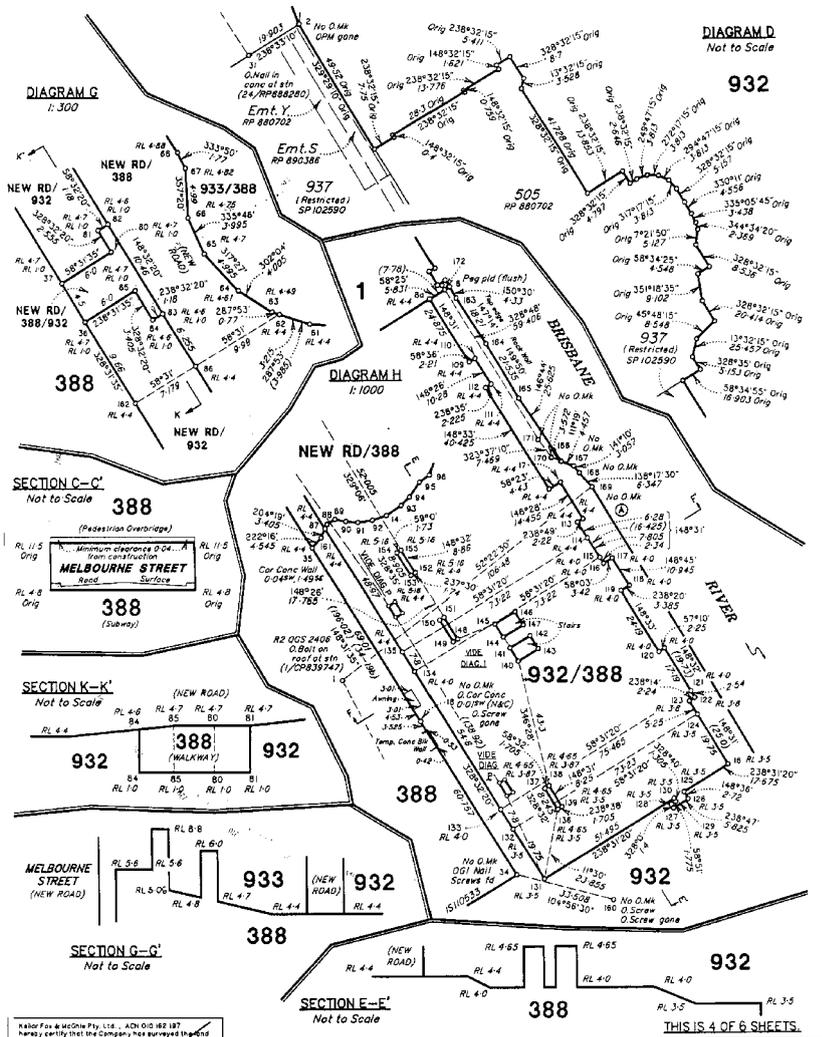
Kaloor Fox & Co Pty Ltd. ACN 010 160 187  
 hereby certify that the Company has made this plan  
 pursuant to Section 15 of the Surveyors Act 1982  
 and that the plan is accurate, and compiled from  
 S. 4280, S. 813825, S. 813826, S. 997 & RP 880703  
 in the Department of Natural Resources.

*[Signature]*  
 THE SURVEYOR  
 Date: 4.4.98.









Refer to MacDon Pty. Ltd. ACH 010 187  
 hereby certify that the Company has surveyed the land  
 contained in this plan by means of a Chain  
 (Licence Survey) for the purpose of the  
 company's responsibility that the plan is correct  
 and that the survey was performed in accordance  
 with the Survey Act 1971 and the Survey Regulation  
 1983. The survey was completed on 11/10/95  
 11/10/95

**PLAN OF LOTS 1, 388 (in strata), 932 (in strata) and 933 (in strata)**  
 Cancelling Lot 388 (in strata) on SL12890, Lot 916 on RP880703 and Lots 55 (Restricted) & 56 on SPIO2555

Lot 388 (in strata) on SL12890 and Lot 901 on CP33747

|   |  |
|---|--|
| ORIGINAL  | NO SURVEY RECORDS DEPOSITED                        |
| MERIDIAN<br>AMC Zone 58<br>Vide RP880703          | ENDORSED<br>ACCREC/T/TPD<br>LOCAL GOVT<br>BRISBANE |
| MAP REF<br>8542-33330<br>8543-33331<br>8547-33334 | SCALE<br>See Above                                 |
|   | ARCHIVED<br>BRISBANE                               |

THIS IS 4 OF 6 SHEETS.

**CROWN PLAN 896477**





# Schedule 15 Commercial precinct

section 26(7), definition *commercial precinct*

## Plan 1

