



Queensland

# Planning (Urban Encroachment—Milton Brewery) Act 2009

Reprinted as in force on 18 December 2009

Reprint No. 1A

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

**NOTE—This is the last reprint before repeal  
Repealed by 2012 Act No. 3 s 131**

# Information about this reprint

This Act is reprinted as at 18 December 2009. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

**Also see endnotes for information about—**

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

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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Queensland

# Planning (Urban Encroachment—Milton Brewery) Act 2009

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	3
2	Commencement . . . . .	3
3	Main purpose of Act and its achievement. . . . .	3
<b>Part 2</b>	<b>Interpretation</b>	
4	Definitions. . . . .	4
5	What is a relevant development application. . . . .	4
6	Words have meanings given by particular Acts . . . . .	5
<b>Part 3</b>	<b>Legal proceedings</b>	
7	Application of pt 3. . . . .	5
8	Restrictions on particular legal proceedings . . . . .	6
<b>Part 4</b>	<b>Particular obligations</b>	
9	Record of relevant development application in appropriate register . . . . .	7
10	Additional consequence of failure to give notice asking for affected area notation. . . . .	8
11	Notifying prospective buyers . . . . .	9
<b>Part 5</b>	<b>Miscellaneous provisions</b>	
12	Publication of particular documents of registered operator . . . . .	11
13	Regulation-making power. . . . .	11
14	Review of Act . . . . .	11
<b>Part 6</b>	<b>Transitional provisions</b>	
15	Relevant development applications made before commencement . . . . .	12
16	Transitional provision for s 11 . . . . .	12
<b>Schedule 1</b>	<b>Affected area</b> . . . . .	13
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	14

Contents

---

**Endnotes**

1	Index to endnotes . . . . .	16
2	Date to which amendments incorporated . . . . .	16
3	Key . . . . .	17
4	Table of reprints . . . . .	17
5	List of legislation . . . . .	17
6	List of annotations . . . . .	18

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# Planning (Urban Encroachment—Milton Brewery) Act 2009

[as amended by all amendments that commenced on or before 18 December 2009]

## An Act to protect the existing use of the Milton Brewery

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Planning (Urban Encroachment—Milton Brewery) Act 2009*.

#### 2 Commencement

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

#### 3 Main purpose of Act and its achievement

- (1) The main purpose of this Act is to protect the existing use of the Milton Brewery from encroachment by, and the intensification of, other development.
- (2) The purpose is to be achieved mainly by restricting particular civil proceedings and criminal proceedings relating to a local law in connection with particular activities relating to the Milton Brewery.

[s 4]

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## Part 2 Interpretation

### 4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 5 What is a *relevant development application*

- (1) A *relevant development application* is a development application made under the repealed *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009* for a material change of use of premises or reconfiguring a lot, other than in relation to the following, in the affected area—

- (a) a class 1a or class 1b building;
- (b) a class 10 building or structure.

- (2) In this section—

*affected area* means the area called ‘Milton Rail Precinct’, shown on the map in schedule 1.

*class*, for a building or structure, means its particular classification under the 2008 edition of the Building Code of Australia published by the Australian Building Codes Board.

*Editor’s note*—

Building Code of Australia (2008 edition), part A3.2 (Classifications)—

‘**Class 1a**—a single dwelling being—

- (i) a detached house; or
- (ii) one of a group of two or more attached dwellings, each being a building, separated by a *fire-resisting* wall, including a row house, terrace house, town house or villa unit; ...’

‘**Class 1b**—a boarding house, guest house, hostel or the like—

- (i) with a total area of all floors not exceeding 300m<sup>2</sup> measured over the enclosed walls of the Class 1b; and
- (ii) in which not more than 12 persons would ordinarily be resident, ...’

‘**Class 10**—a non-habitable building or structure—

- (a) **Class 10a**—a non-habitable building being a *private garage*, carport, shed, or the like; or
- (b) **Class 10b**—a structure being a fence, mast, antenna, retaining or free-standing wall, *swimming pool*, or the like.’

## 6 Words have meanings given by particular Acts

- (1) Words defined under the *Environmental Protection Act 1994* and used in this Act have the same meanings as they have under that Act.
- (2) Words defined under the *Sustainable Planning Act 2009* and used in this Act have the same meanings as they have under that Act.

## Part 3 Legal proceedings

### 7 Application of pt 3

- (1) This part applies to the following development applications—
  - (a) a relevant development application made after the commencement;
  - (b) a relevant development application made before the commencement for which a decision notice had not been given to the applicant before the commencement;
  - (c) a relevant development application for premises for which—
    - (i) a development approval has been given for the application before the commencement; and
    - (ii) a certificate of classification has not been given before the commencement.
- (2) In this section—

[s 8]

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*certificate of classification* see the *Building Act 1975*, schedule 2.

*commencement* means the commencement of this section.

## 8 Restrictions on particular legal proceedings

- (1) This section applies to a claim by an affected person that—
  - (a) a relevant act at the Milton Brewery is, was or will be an unreasonable interference, or likely interference, with an environmental value; and
  - (b) the relevant act was, or was caused by, the emission of aerosols, fumes, light, noise, odour, particles or smoke.
- (2) The affected person can not take a civil proceeding or a criminal proceeding relating to a local law against any person in relation to the claim if—
  - (a) the following have been complied with for the relevant act—
    - (i) the development conditions of the brewery development approval;
    - (ii) any code of environmental compliance applying to the relevant act; and
  - (b) if the relevant act was, or caused, the emission of light—the emission was no more than the intensity of light emitted at any time before the commencement of this section.
- (3) Subsection (2) applies despite the *Environmental Protection Act 1994* or any other Act.
- (4) This section does not apply if—
  - (a) either—
    - (i) the brewery development approval or brewery registration certificate is amended (an *amended authority*); or
    - (ii) a new development approval or registration certificate is given authorising the carrying out of a

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chapter 4 activity at the Milton Brewery (a *new authority*); and

- (b) the amended authority or new authority authorises greater emissions of light or noise, or a greater release of contaminants into the atmosphere, at the Milton Brewery than is authorised under the brewery development approval, or brewery registration certificate, in force at the commencement of this section.
- (5) In this section—

*affected person*—

- (a) means the owner, occupier or lessee of premises if the premises is the subject of a relevant development application for a material change of use of the premises or reconfiguring a lot on which the premises is situated; and
- (b) includes the owner's successors in title.

*relevant act* means an act or omission of a person in carrying out a chapter 4 activity under the brewery development approval or brewery registration certificate.

## Part 4 Particular obligations

### 9 Record of relevant development application in appropriate register

- (1) The applicant for a relevant development application must, within 20 business days after making the application, give the registrar notice, in the form approved by the registrar, asking the registrar to keep a record that this Act applies to the premises or lot the subject of the application (an *affected area notation*).

Maximum penalty—200 penalty units.

[s 10]

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- (2) On receiving the notice, the registrar must keep a record so that a search of the appropriate register will show the affected area notation for the lot.
- (3) If—
  - (a) the relevant development application is refused, or lapses or is withdrawn before the application is decided; and
  - (b) the applicant has given the registrar a notice under section (1);

the applicant must give the registrar notice, in the form approved by the registrar, asking the registrar to remove the record of the affected area notation from the register.

Maximum penalty—20 penalty units.

- (4) As soon as practicable after receiving the notice under subsection (3), the registrar must remove the record of the affected area notation from the register.
- (5) The registrar may remove the affected area notation from the register if the registrar is satisfied, on reasonable grounds, the relevant development application has been refused, has lapsed or was withdrawn before it was decided.
- (6) No fee is payable to the registrar for keeping or removing, under this section, a record of the affected area notation.

## **10 Additional consequence of failure to give notice asking for affected area notation**

- (1) This section applies if—
  - (a) the applicant for a relevant development application enters into a contract with someone else (the *buyer*) for the buyer to buy the premises or lot the subject of the application, or part of the premises; and
  - (b) at the time of entering into the contract, an affected area notation is not shown on the appropriate register because the applicant has failed to comply with section 9(1).

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- (2) The buyer may end the contract at any time before the contract is completed by giving the applicant or the applicant's agent a signed, dated notice of ending of the contract.
  - (3) The notice must state that the contract is ended under this section.
  - (4) If the buyer ends the contract, the applicant must, within 14 days, refund to the buyer any deposit paid to the seller under the contract.  
Maximum penalty—200 penalty units.
  - (5) This section applies despite anything to the contrary in the contract.

## 11 Notifying prospective buyers

- (1) This section applies if—
  - (a) a relevant development application is made or has been made before the commencement of this section; and
  - (b) the application is a current application; and
  - (c) anyone (the *seller*) offers the premises or lot the subject of the application, or part of the premises, (the *property*) for sale to someone else (a *prospective buyer*).
- (2) Before the prospective buyer enters into a contract to buy the property, the seller must give the prospective buyer a notice (an *affected area notice*) of—
  - (a) the restrictions under section 8 that may apply to the prospective buyer if the prospective buyer buys the property; and
  - (b) the keeping, under section 9(2), of a record of the affected area notation for the property in the appropriate register.
- (3) If—
  - (a) the seller fails to give the prospective buyer an affected area notice for the property; and

[s 11]

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- (b) the prospective buyer enters into a contract with the seller to buy the property;  
the failure to notify gives the prospective buyer the right to end the contract.
- (4) The prospective buyer may end the contract at any time before the contract is completed by giving the seller or the seller's agent a signed, dated notice of ending of the contract.
- (5) The notice must state that the contract is ended under this section.
- (6) If the prospective buyer ends the contract, the seller must, within 14 days, refund to the prospective buyer any deposit paid to the seller under the contract.  
Maximum penalty—200 penalty units.
- (7) This section applies despite anything to the contrary in the contract.
- (8) To remove any doubt, it is declared that this section applies—
- (a) even if the offer for sale is made by someone other than the applicant for the relevant development application;  
and
- (b) if the seller is not the applicant—whether or not the seller received an affected area notice for the property;  
and
- (c) regardless of the number of times the property has been sold since the making of the development application.
- (9) In this section—  
***current application*** means a relevant development application that has not been refused, or has not lapsed or been withdrawn before the application is decided.

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## Part 5 Miscellaneous provisions

### 12 Publication of particular documents of registered operator

- (1) The registered operator, named in the brewery registration certificate, must publish on the registered operator's website—
  - (a) the brewery registration certificate; and
  - (b) the brewery development approval and the development conditions of the approval.

*Editor's note—*

At the commencement of this section, the registered operator's website address is <www.lion-nathan.com>.

- (2) A failure to comply with subsection (1) does not affect the operation of section 8.

### 13 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of no more than 20 penalty units for contravention of a regulation.

### 14 Review of Act

- (1) The Minister must, within 5 years after the date of assent of this Act, carry out a review of the operation and effectiveness of this Act.
- (2) The Minister must, as soon as practicable after the review is finished, cause a report on its outcome to be laid before the Legislative Assembly.

[s 15]

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## **Part 6 Transitional provisions**

### **15 Relevant development applications made before commencement**

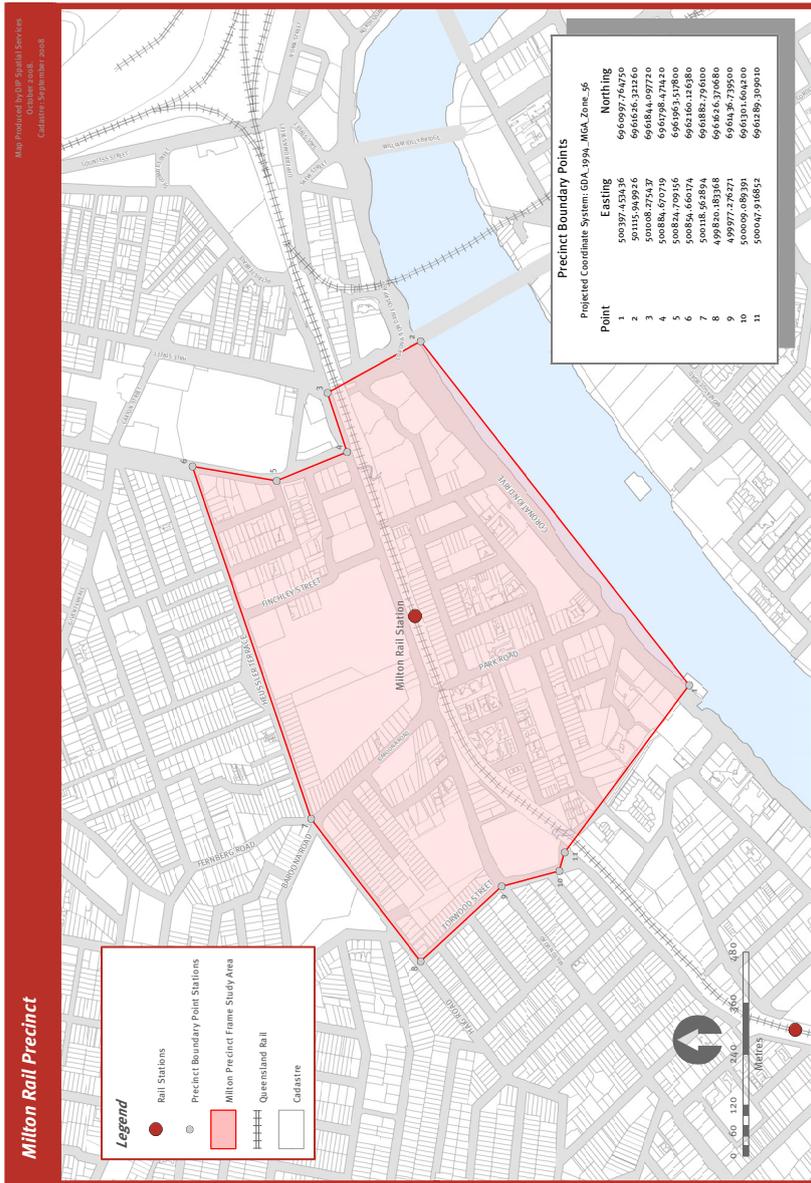
- (1) Section 9(1) applies to a relevant development application mentioned in section 7(1)(b) or (c) as if a reference to ‘20 business days after making the application’ were replaced by ‘20 business days after the commencement of this section’.
- (2) Section 9(3) and (4) does not apply to a relevant development application mentioned in section 7(1)(c).

### **16 Transitional provision for s 11**

- (1) If a prospective buyer entered into a contract to which section 11 applies to buy a property before the commencement of this section, section 11 does not apply to the contract.
- (2) The prospective buyer does not have the right to end the contract under that section only because the seller did not give the prospective buyer an affected area notice before the prospective buyer entered into the contract.
- (3) The failure to give the prospective buyer an affected area notice does not constitute a breach of the contract by the seller.

# Schedule 1 Affected area

section 5(2)



## Schedule 2 Dictionary

### section 4

*affected area notation* see section 9(1).

*affected area notice* see section 11(2).

*appropriate register*, for a lot or property, means the register the registrar keeps under an Act, in which register the lot or property is registered.

*brewery development approval* means the development approval in force at the commencement of section 8 to carry out the chapter 4 activities, stated in the approval, at the Milton Brewery.

*brewery registration certificate* means the registration certificate in force at the commencement of section 8 authorising the registered operator, named in the certificate, to carry out the chapter 4 activities, stated in the certificate, at the Milton Brewery.

*Note—*

At the commencement of this definition—

- (a) the registered operator named in the brewery registration certificate is Castlemaine Perkins Pty Limited; and
- (b) the chapter 4 activities stated in the brewery registration certificate are—
  - (i) environmentally relevant activity 17 (Fuel Burning); and
  - (ii) environmentally relevant activity 29(b) (Beverage Production).

*Milton Brewery* means the brewery situated on lot 35 on plan SL805565.

*Editor's note—*

The address for the Milton Brewery is 185 Milton Road, Milton.

*notice* means a notice in writing.

*owner* see the *Environmental Protection Act 1994*, schedule 4.

***premises*** see the *Sustainable Planning Act 2009*, schedule 3.

***registrar*** means the registrar of titles under the *Land Title Act 1994* or another person who, under an Act, is responsible for keeping a register for dealings in land.

***relevant development application*** see section 5(1).

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	16
3 Key . . . . .	17
4 Table of reprints . . . . .	17
5 List of legislation . . . . .	17
6 List of annotations . . . . .	18

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 18 December 2009. Future amendments of the Planning (Urban Encroachment—Milton Brewery) Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	27 April 2009	
1A	2009 Act No. 36	18 December 2009	

### 5 List of legislation

**Planning (Urban Encroachment—Milton Brewery) Act 2009 No. 1**

date of assent 23 February 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 27 April 2009 (2009 SL No. 34)

amending legislation—

**Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2**

date of assent 22 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

## **6 List of annotations**

**What is a “relevant development application”**

s 5 amd 2009 No. 36 s 872 sch 2

**Words have meanings given by particular Acts**

s 6 amd 2009 No. 36 s 872 sch 2

**SCHEDULE—DICTIONARY**

def “**owner**” amd 2009 No. 36 s 872 sch 2

def “**premises**” amd 2009 No. 36 s 872 sch 2