



# **Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980**

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## **Reprint note**

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Queensland

# Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980

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# Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980

**An Act to provide for the registration of certain plans each in respect of part of a building on certain land in Surfers Paradise in the State, and for connected purposes**

## Preamble

- 1 H.S.P. (Nominees) Pty. Limited, a company duly incorporated in Queensland having its registered office at care of M. G. Lyons & Co 3rd floor Hibernian Building 246 Queen Street Brisbane in the said State, is the registered proprietor of an estate in fee simple of certain land situate in the County of Ward Parish of Gilston being land in Hanlan Street Surfers Paradise in the said State.
- 2 H.S.P. (Nominees) Pty. Limited is desirous of having plans registered under the *Building Units and Group Titles Act 1980* in respect of certain buildings constructed or in the course of construction thereon each of which plans is not in respect of a whole building.
- 3 No provision exists for the registration of such plans under the *Building Units and Group Titles Act 1980*.
- 4 It is desirable to make provision for the registration of such plans and to provide for the consequences thereof.

## 1 Short title

This Act may be cited as the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*.

### 3 Application of Building Units and Group Titles Act 1980

Save to the extent that this Act is inconsistent with the provisions of the *Building Units and Group Titles Act 1980* in which case the provisions of this Act shall apply, the provisions of that Act which relate to the subdivision of land by the registration of building units plans and apply in respect of those plans shall apply in respect of the subdivision of each of parcel 1 and parcel 2 by the registration of upper plans and lower plans pursuant to this Act and in respect of those plans as if those plans were building units plans under that Act and for those purposes references in that Act to building units plans, lots, common property, parcel, subdivision of land and body corporate shall be construed as references to upper plans or lower plans, lots, common property, parcel, subdivision of part of parcel 1 or, as the case may be, of part of parcel 2 and a body corporate of an upper plan or lower plan respectively within the meaning of this Act.

### 4 Interpretation

In this Act and in all instruments purporting to be made or executed hereunder, unless the contrary intention appears—

(a) the terms used shall have the meanings respectively assigned to them in the *Building Units and Group Titles Act 1980*, section 7;

(b) —

***building*** means the building built on parcel 1, or the building built on parcel 2, of which the plans have been approved by the local government.

***common property*** means, in relation to an upper plan or a lower plan, so much of the parcel 1 or, as the case may be, parcel 2 comprised in that plan as from time to time is not comprised in a lot.

***local government*** means the Council of the City of Gold Coast.

***lot*** means a lot shown as such on an upper plan or a lower plan.

**lower plan** means a plan which—

- (a) is described in the title or heading thereto as a lower plan; and
- (b) comprises that part of parcel 1 or, as the case may be, parcel 2 which part is below reduced level 15.9 metres on State datum; and
- (c) shows the part of the building comprised therein as divided into lots; and
- (d) shows the common property comprised therein; and
- (e) complies with—
  - (i) the provisions of section 5 of this Act; and
  - (ii) the provisions of the *Building Units and Group Titles Act 1980* relating to building unit plans save to the extent that those provisions are inconsistent with this Act.

**parcel** means—

- (a) in relation to a lower plan—the land comprised in the plan below reduced level 15.9 m on State datum;
- (b) in relation to an upper plan—the part of parcel 1 or, as the case may be, parcel 2 above reduced level 15.9 m on State datum.

**parcel 1** means that piece of land situate in the County of Ward, Parish of Gilston described as lot 1 on plan numbered 166140 a copy of which plan is set forth in the schedule.

**parcel 2** means that piece of land situate in the County of Ward, Parish of Gilston described as lot 2 on plan numbered 166140 a copy of which plan is set forth in the schedule.

**road** means a State-controlled road under the *Transport Infrastructure Act 1994* or a road under the *Local Government Act 2009*.

**upper plan** means a plan which—

- (a) is described in the title or heading thereto as an upper plan; and

- (b) comprises that part of parcel 1 or, as the case may be, parcel 2 which part is above reduced level 15.9 m on State datum; and
- (c) shows the part of the building comprised therein as being divided into lots; and
- (d) shows the common property therein; and
- (e) complies with—
  - (i) the provisions of section 5 of this Act; and
  - (ii) the provisions of the *Building Units and Group Titles Act 1980* relating to building units plans save to the extent that those provisions are inconsistent with this Act.

## **5 Registration of upper plans and lower plans**

- (1) An upper plan and a lower plan shall be registered in respect of each of parcel 1 and parcel 2 in the manner provided by or under this Act.
- (1A) Each plan in respect of each such parcel shall—
  - (a) delineate the external surface boundaries of the parcel and the location of the relevant part of the building in relation thereto;
  - (b) for a lower plan—have a sheet attached containing a schedule of the easements mentioned in section 7 (including a diagram or diagrams drawn to scale identifying the location and extent of the easements signed by the chief executive officer of the local government and certified by a cadastral surveyor within the meaning of the *Surveyors Act 2003*).
- (2) The boundary between the parts of the building comprised in a lower plan and an upper plan shall be a horizontal plane through the centre of a floor of the building.
- (3) Upon lodgment for registration of an upper plan and a lower plan in respect of parcel 1, the registrar of titles shall allot thereto the numbers upper plan 1 and lower plan 1 respectively.



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- (4) Upon lodgment for registration of an upper plan and a lower plan in respect of parcel 2, the registrar of titles shall allot thereto the numbers upper plan 2 and lower plan 2 respectively.
  - (5) A lower plan may define any boundary of a lot by reference to any structural element in lieu of walls.
  - (6) Subject to this section, upper plans and lower plans shall be registered as provided in the *Building Units and Group Titles Act 1980* in relation to building units plans.
  - (7) On registration of a lower plan, a part of a lot included in the plan may be leased without the local government's approval.

## 6 Support and services

- (1) In respect of each of parcel 1 and parcel 2, the easements implied between the proprietors of lots pursuant to the *Building Units and Group Titles Act 1980*, section 15 shall also be implied—
  - (a) in favour of the body corporate of the upper plan and the proprietors of lots comprised in that plan affected thereby and as appurtenant thereto; and
  - (b) as against the body corporate of the lower plan and the proprietors of lots comprised in that plan affected thereby and to which they shall be subject;as if the parcel comprised in the upper plan were a lot referred to in section 15(a) and the parcel comprised in the lower plan were a lot referred to in section 15(b).
- (2) In respect of each of parcel 1 and parcel 2, the easements implied between proprietors of lots pursuant to the *Building Units and Group Titles Act 1980*, section 17 shall also be implied between—
  - (a) the bodies corporate of the upper plan and of the lower plan as if both bodies corporate were lots; and
  - (b) the proprietors of the lots of both plans as if they were the proprietors of lots;in the one building units plan under that Act.

- (2A) In respect of each of the following—
- (a) the upper plan of parcel 1 and the upper plan of parcel 2;
  - (b) the upper plan of parcel 1 and the lower plan of parcel 2;
  - (c) the upper plan of parcel 2 and the lower plan of parcel 1;
  - (d) the lower plan of parcel 1 and the lower plan of parcel 2;
- the easements implied between proprietors of lots under the *Building Units and Group Titles Act 1980*, section 17, must also be implied between—
- (e) each of the bodies corporate of the plans referred to in paragraph (a), (b), (c) or (d) as if in each case both bodies corporate were proprietors of lots in the one building units plan under that Act; and
  - (f) the proprietors of the lots of both plans referred to in paragraph (a), (b), (c) or (d) as if in each case they were the proprietors of lots in the one building units plan under that Act.
- (3) The easements conferred by this section shall not be exercised by a body corporate or the proprietor of a lot in such a manner as unreasonably to prevent any proprietor from enjoying the use and occupation of the proprietor's lot and common property.
- (4) Subsection (2A) is taken to have always had effect.

## **7 Right of way**

- (1) In respect of each of parcel 1 and parcel 2 there shall be implied in favour of the proprietor of each lot on the upper plan and as appurtenant thereto—
- (a) an easement or easements of right of way for and sufficient to allow the passage of the proprietor, the proprietor's servants, agents, invitees and licensees to and from the parcel of the upper plan from and to a road through or by means of stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways through the common property of the lower plan and identified as easements in a sheet annexed to the lower plan;

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- (b) an easement or easements of right of way sufficient to allow vehicles to pass to and from the parcel of the upper plan from and to a road through the common property of the lower plan over or by means of the roadways or ramps identified as easements for vehicular purposes in a sheet annexed to the lower plan.
- (2) In respect of each of parcel 1 and parcel 2 there shall be implied as against the body corporate of the lower plan and the proprietor of each lot comprised in that plan affected thereby and to which they shall be subject—
- (a) an easement or easements of right of way for and sufficient to allow the passage of the proprietor of a lot in the upper plan, the proprietor's servants, agents, invitees and licensees to and from the parcel of the upper plan from and to a road through or by means of stairs, escalators, lifts, ramps, passages, corridors, pathways or roadways through the common property of the lower plan and identified as easements in a sheet annexed to the lower plan;
  - (b) an easement or easements of right of way sufficient to allow vehicles to pass to and from the parcel of the upper plan from and to a road through the common property of the lower plan over or by means of the roadways or ramps identified as easements for vehicular purposes in a sheet annexed to the lower plan.

## **8 Maintenance, repair and upkeep of stairs etc.**

- (1) The stairs, escalators, lifts, ramps, passages, roadways, corridors and shafts in respect of which easements are implied pursuant to section 7 in respect of parcel 1 or, as the case may be, parcel 2, shall be maintained, repaired and kept in good order and condition by the body corporate of the upper plan or of the lower plan shown to have responsibility therefor in a sheet annexed to the lower plan.
- (2) The costs of maintenance, repair and upkeep in respect of each such easement shall be borne by the body corporate of the upper plan and the body corporate of the lower plan

respectively in the proportions set out in a sheet annexed to the lower plan.

- (2A) A body corporate which incurs expenditure towards such costs may demand in writing (accompanied by receipts or invoices or copies thereof evidencing the expenditure in respect thereof) the amount that the other body corporate is liable to contribute towards those costs.
- (2B) The body corporate may recover any amount not paid within 7 days of the demand as a debt due and owing to it.
- (3) Where a body corporate is in breach of any obligation imposed on it under subsection (1) and fails to remedy that breach within 7 days of notice to it by the other body corporate calling upon it so to do, that other body corporate may do all such things as are necessary or desirable to remedy that breach.

## **9 Ancillary rights**

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

## **10 Destruction of or substantial damage to a building**

- (1) Where the building or part thereof on parcel 1 or parcel 2 is destroyed or substantially damaged, the body corporate of the relevant upper plan or lower plan may apply to the Court for relief pursuant to subsection (2).
- (2) Upon being satisfied that the applicant is the body corporate of the upper plan or of the lower plan and that the building or part of the building contained in parcel 1 or, as the case may be, parcel 2 has been destroyed or substantially damaged the Court may order—
  - (a) that the relevant upper plan and lower plan be extinguished and that parcel 1 or, as the case may be, parcel 2 be sold by public auction or private treaty and that the proceeds of sale be distributed between the proprietors of the lots of the upper plan and the

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- proprietors of the lots of the lower plan in such proportions as the Court may determine to be just and equitable in all the circumstances of the case; or
- (b) that the building or part thereof be reinstated or repaired and that the cost of such reinstatement or repair be borne by the bodies corporate of the upper plan and the lower plan in such proportions as the Court may determine to be just and equitable in all the circumstances of the case; or
  - (c) that the interests of the proprietors of the lots of an upper plan or a lower plan be adjusted inter se to such extent as the Court considers just and equitable including by the transfer or vesting of the interest or interests of a proprietor of a lot to or in the proprietor of another lot with or without payment of compensation.
- (3) In the exercise of its powers under subsection (2) the Court may make such further or other orders, impose such terms and conditions and give such directions as it considers necessary or expedient.
- (4) An upper plan or lower plan shall not be extinguished otherwise than as provided in this section.

## **11 Bodies corporate**

- (1) The body corporate in respect of each upper plan shall be under the name ‘The proprietors—(insert name endorsed upon the relevant plan) upper plan no. 1’ or, as the case may be, ‘The proprietors—(insert name endorsed upon the relevant plan) upper plan no. 2’.
- (2) The body corporate in respect of each lower plan shall be under the name ‘The proprietors—(insert name endorsed upon the relevant plan) lower plan no. 1’ or, as the case may be, ‘The proprietors—(insert name endorsed upon the relevant plan) lower plan no. 2’.

## 12 Insurance

- (1) Each body corporate shall insure and keep insured that part of the building included in its plan under a contract of insurance providing in the event of that part of the building being destroyed or damaged by storm, tempest, fire, lightning, explosion or any other occurrence specified in the policy—
  - (a) for—
    - (i) the rebuilding of that part of the building in the event of its destruction; and
    - (ii) the repair of damage to or the restoration of the damaged portion of that part of the building in the event of its being damaged but not destroyed;  
so that, in the case of destruction, that part is rebuilt or replaced and in the case of damage, repaired or restored, in a condition no worse nor less extensive than its condition when new; and
  - (b) for the repayment 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.
- (2) The proceeds of any such contract of insurance shall not be used or capable of being used or paid to any person except for the purposes set out in subsection (1)(a) and (b) unless, in the case of destruction, that part of the building has been rebuilt or replaced or in the case of damage, that part of the building has been repaired or restored.
- (3) In respect of parcel 1 or of parcel 2, if a body corporate fails to effect or maintain insurance in accordance with the requirements of subsection (1), the other body corporate in respect thereof may effect the insurance in the name of and may recover from the firstmentioned body corporate the amount of any premium so paid by it as a debt due and owing to it by the firstmentioned body corporate.
- (4) However, the other body corporate shall not effect such insurance unless the firstmentioned body corporate fails to produce to or deliver to it a receipt, or other document issued or produced by an insurer, or a photostat copy thereof,

evidencing the payment of a premium sufficient to effect or maintain such insurance within 7 days of written demand in that regard being made by it to the firstmentioned body corporate.

### **13 Valuation of lots for rating and land tax purposes**

For the purposes of applying the provisions of the *Building Units and Group Titles Act 1980*, part 4, division 7 in respect of lots the subject of an upper plan or a lower plan, the unimproved value of the parcel in relation to that plan shall be—

- (a) in the case of an upper plan—45%;
- (b) in the case of a lower plan—55%;

of the unimproved value of parcel 1 or, as the case may be, parcel 2.

### **14 Regulation-making power**

The Governor in Council may make regulations under this Act.

Schedule

# Schedule

section 1, defs parcel 1 and parcel 2

