



HOBART CORPORATION

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 No. 39 of 1976
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ANALYSIS

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AN ACT to amend the Hobart Corporation Act 1963.

[21 June 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Hobart Corporation Act* Short title and citation. 1976.

(2) The *Hobart Corporation Act* 1963, as subsequently amended, is in this Act referred to as the Principal Act.

General powers.

2 Section 188 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “, including lands subject to Division XVI of Part XVI of the *Local Government Act 1962*”;
- (b) by omitting from paragraph (a) of that subsection the words “, Division III of this Part, and Part XIV” and substituting the words “, and Division III of this Part”; and
- (c) by inserting after that subsection the following subsection:—
 - “(1A) In subsection (1), ‘its lands’, in relation to lands of the corporation, includes lands subject to Division XVI of Part XVI of the *Local Government Act 1962* but does not include the rivulets the fee simple of which is vested in the corporation under section 198.”.

Application of Part.

3 Section 197 of the Principal Act is amended by omitting the word “Part” and substituting the word “Division”.

4 Section 198 of the Principal Act is repealed and the following sections are substituted:—

Interpretation.

“197A In this Division, a reference to a rivulet to which this Division applies includes a reference to the bed and banks of the rivulet and the soil below, and the space above, the rivulet.

Certain rivulets vested in corporation for estate in fee simple.

“198—(1) Subject to any outstanding estate or interest created by the corporation, the rivulets to which this Division applies are vested, and shall be deemed always to have been vested, in the corporation for an estate in fee simple.

“(2) The corporation has the right of ingress and egress to and from the rivulets to which this Division applies for the purpose of exercising its statutory rights, duties, and powers.

“(3) The corporation—

- (a) may construct any buildings, structures, or works on, in, or over any part of a rivulet to which this Division applies; and
- (b) may enter into an agreement with any person for the carrying out or construction of any such buildings, structures, or works.

“(4) The corporation—

- (a) may sell, lease, or otherwise deal with—
 - (i) any part of a rivulet to which this Division applies;
 - or

(ii) any such buildings, structures, or works as are referred to in subsection (3); and

(b) may grant any right or interest in or over that part of that rivulet or those buildings, structures, or works.

“(5) The provisions of section 203 of the *Local Government Act 1962* do not apply to the demise or other disposition by the corporation of any part of a rivulet to which this Division applies.

“(6) The corporation may take the benefit of any easement over, or covenant restrictive of the use of, any building or structure erected on, in, or over a rivulet to which this Division applies.

“(7) The burden of a covenant referred to in subsection (6) is capable of running with the land in equity, notwithstanding that the corporation owns no land capable of being benefited by the covenant or that any land originally capable of being benefited by the covenant has subsequently been subdivided.

“(8) The *Conveyancing and Law of Property Act 1884* applies to and in relation to a building erected over or partly over a rivulet to which this Division applies as if that Act had been amended as provided in the Schedule to the *Hobart Corporation Act 1976*.

“(9) Notwithstanding anything in this section, a person who considers that he is aggrieved by the loss of any right or interest in a rivulet to which this Division applies by virtue of its vesting in the corporation under this section may make a claim to the corporation for compensation for his loss.

“(10) Where there is a dispute between the corporation and a person making a claim under subsection (9) as to whether he is entitled to compensation under that subsection or as to the amount of the compensation, the claim for compensation shall be determined as if it were a disputed claim for compensation under the *Public Authorities' Land Acquisition Act 1949*.”.

5 After section 200 of the Principal Act the following section is inserted in Division III of Part XIV:—

“200A The provisions of this Division—

Application
of Division.

(a) apply to those rivulets that are vested in the corporation pursuant to section 198; and

- (b) except those of section 205, apply to those rivulets that are vested in persons other than the corporation pursuant to section 208.”.

Power to build
over rivulets.

6 Section 207 of the Principal Act is repealed.

THE SCHEDULE

(Section 198)

AMENDMENTS OF THE CONVEYANCING AND LAW OF PROPERTY
ACT 1884 REFERRED TO IN SECTION 198 (8)

1 Insertion in Part XI of the following heading before section 59:—

“ *Division I—General provisions relating to deeds and other instruments, including conveyances of chambers and flats* ”.

2 The following amendments of section 75B:—

(a) Omission of subsection (1) and substitution of the following subsection:—

“(1) Subject to this section, where—

- (a) a chamber is owned by a person other than the owner of the underlying soil and the building containing that chamber;
- (b) a building comprised in a stratum plan registered under Part XIA; or
- (c) a building comprised in a building title plan registered under section 75CD,

is destroyed, there is a continuance of the estate of the owner of the chamber, the owner of a flat in the building, in the case of a building of a kind mentioned in paragraph (b), or the owner of a building of a kind mentioned in paragraph (c).”; and

(b) Omission from subsection (2) of the words “ the kind ” and substitution of the words “ a kind ”.

3 Insertion of the following Division after section 75CA:—

“ *Division II—Plans for vesting the fee simple in buildings erected over or partly over rivulets in the city of Hobart that are vested in the corporation of that city* ”

Interpretation.

“ 75CB In this Division, unless the contrary intention appears—

‘ building ’, used in reference to a building comprised in a building title plan, includes the building’s supporting works;

‘ building title plan ’ means a plan on which a declaration is made pursuant to section 75CC;

‘ corporation ’ means the corporation of the city of Hobart;

‘ rivulet ’ means a rivulet in the city of Hobart the fee simple of which is vested in the corporation by section 198 of the *Hobart Corporation Act 1963*;

‘ site ’ means the whole surface of the land in a building title plan;

‘ supporting works ’, in relation to a building, means any works within the site that support the building, its curtilage, or part of the building or curtilage.

“ 75CC—(1) The corporation may, by declaration under its seal and endorsed on a building title plan in the prescribed form, declare—

Vesting by plans of buildings over or partly over rivulets.

(a) that the building comprised in the plan and erected entirely over a rivulet vests in a person for an estate in fee simple;

(b) that, where the building comprised in the plan is erected partly over a rivulet and partly on adjoining land on one side of the rivulet, the part of the building over the rivulet vests in the owner of the adjoining land for an estate in fee simple; or

(c) that, where the building comprised in the plan is erected partly over a rivulet and partly on land on both sides of the rivulet, the part of the building over the rivulet vests in the owner of the adjoining lands for an estate in fee simple.

“(2) Subsection (1) (c) does not apply where the same owner does not own land on both sides of a rivulet.

“(3) A building title plan may be used to subdivide into flats the building comprised in the plan, notwithstanding that the site is not all in one ownership, and where the plan is so used, Part XIA applies to it.

“(4) Where a building title plan is not intended to operate under Part XIA, there shall be endorsed on it a certificate under the hand of the town clerk of the corporation that the building in the plan has been completed in accordance with the description contained in it.

“(5) The site shown on a building title plan shall extend at least to the external lateral surfaces of the building comprised in the plan.

“(6) Where a building title plan is not intended to operate under Part XIA, it shall—

(a) delineate the external surface boundaries of the site and the location of the building in relation to those boundaries;

(b) bear a statement containing such particulars as are necessary to identify the title to the site;

(c) bear a statement setting forth the number of floors comprised in the building and the approximate area of each floor; and

(d) contain such other features as may be prescribed.

“(7) A statement for the purposes of subsection (6) (b) may be completed by the Recorder of Titles where any part of the land within the building title plan to which the statement relates is not under the *Real Property Act 1862*.

Lodging and registration of plans.

“75CD—(1) A building title plan shall be lodged in the office of the Recorder of Titles, together with—

- (a) an application under section 15 of the *Real Property Act 1862* by each owner of the land comprised in the plan to bring under that Act so much of that land as is not already under that Act; and
- (b) a plan under section 104 of that Act relating to each application.

“(2) When a building title plan is in order for registration and the whole of the land comprised in it has been brought under the *Real Property Act 1862*, the Recorder of Titles shall register a memorial of the plan on each certificate of title to the land and shall—

- (a) where the plan is not intended to operate under Part XIA, issue a certificate of title to the building; or
- (b) where the plan is intended to operate under Part XIA, issue a separate certificate of title to each flat in the building.

“(3) A certificate of title issued pursuant to paragraph (a) or paragraph (b) of subsection (2) shall certify that a fee simple is vested in the person in whom it is declared to vest under section 75CC (1) and the fee simple so vests notwithstanding anything contained in section 40 of the *Real Property Act 1862*.

“(4) The fee simple in the air space above a rivulet and under and above a building remains vested in the corporation.

Provisions consequential on the registration of plans.

“75CE—(1) On the registration of a building title plan pursuant to section 75CD, there is implied a grant by the corporation of such easements as may be necessary for the reasonable enjoyment of the building comprised in the plan.

“(2) Where a building comprised in a building title plan is subdivided into flats under Part XIA—

- (a) notwithstanding anything contained in this Act, the supporting works form part of the common property; and
- (b) no part of the supporting works may be conveyed under section 75M or section 75N.

Amendment of building title of plans.

“75CF—(1) On—

- (a) a lateral or vertical extension or diminution of the building comprised in a building title plan that is not intended to operate under Part XIA; or
 - (b) an alteration in the number of floors in that building,
- the Recorder of Titles shall amend the description of the building comprised in the plan in accordance with an application made—

(c) jointly by the corporation, the registered proprietor of the certificate of title to the building, and his mortgagees, being mortgagees registered under the *Real Property Act 1862*; or

(d) by any one or more of the persons referred to in paragraph (c), after service of the application on the other or others of them,

if the Recorder is satisfied that the amendment to which the application relates is in accordance with the alteration made to the building.

“(2) Where the Recorder refuses to amend the description of a building in accordance with an application made under subsection (1), section 110 of the *Real Property Act 1862* applies, with the necessary modifications, as if the applicant was a proprietor, or the applicants were proprietors, who had made an application of a kind referred to in subsection (1) of that section which the Recorder had refused to grant.

“(3) The effect of the issue of a certificate of title under section 75CD (2) (a) is to vest a fee simple in the building to which it relates as it is from time to time described in the relevant building title plan, whether by the building’s original description or after amendment in accordance with subsection (1).

“(4) A mortgage of a building comprised in a building title plan that is not intended to operate under Part XIA shall be secured on the building as it is from time to time described in the plan.

“75CG The Governor may make regulations for the purposes of this **Regulations** Division.”.

