

NORTHERN TERRITORY OF AUSTRALIA

CULLEN BAY MARINA ACT

As in force at 1 December 1998

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 December 1998

CULLEN BAY MARINA ACT

An Act to relating to the subdivision and management of certain land at Cullen Bay and the obligations and liabilities of certain persons in relation to the development of that land, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Cullen Bay Marina Act*.

2 Definitions

In this Act, unless the contrary intention appears:

common property means so much of the development area as is from time to time vested in the Management Corporation and includes the lock and associated structures and the easements for the maintenance of, and access to, the lock and associated structures.

Developer means Darwin Marina Estates Pty. Ltd., the party to the development agreement, or its successors or assigns.

development area means Lot 5647 Town of Darwin delineated in survey plan S87/278B deposited with the Surveyor-General.

development agreement means the development agreement between the Territory and the Developer dated 26 May 1988, as amended from time to time in accordance with its terms.

lot means an area shown in the lot plan as a lot.

lot entitlement, in relation to a lot, means the number specified in the lot plan as the lot entitlement.

lot plan means the lot plan prepared in accordance with section 3.

Management Corporation means the body corporate established by section 8.

owner, in relation to a lot, means:

- (a) in the case of a lot subdivided into units under the *Unit Titles Act* – the body corporate of the units plan; and
- (b) in all other cases – the owner in fee simple of the lot.

Part 2 Development

3 Subdivision of development area

- (1) The Developer shall, before lodging a survey plan for the development area with the Surveyor-General, prepare a lot plan in accordance with this section.
- (2) The lot plan shall:
 - (a) show the precalculated dimensions and areas of the lots into which it is proposed to subdivide the development area prepared by a surveyor licensed under the *Licensed Surveyors Act*;
 - (b) identify the common property;
 - (c) specify the easements referred to in section 13A;
 - (d) identify the lots formerly contained in Lot 5555 Town of Darwin that are to be subject to building restrictions in favour of Lot 5556 Town of Darwin;
 - (e) contain a certificate issued under section 116 of the *Planning Act*, stating that the lots shown are in accordance with all relevant instruments of determination under that Act;
 - (f) contain a schedule of lot entitlements prepared in accordance with section 5 and certified correct by the valuer who prepared it;
 - (g) comply with the *Licensed Surveyors Act* in relation to plan drawing standards;
 - (h) contain such other information, if any, as is prescribed; and
 - (j) contain a certificate from the Surveyor-General stating that it complies with this section.

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- (3) The Developer is not entitled to the grant of a freehold title in respect of any land in the development area until the lot plan has been registered by the Registrar-General and the prescribed fee under the *Registration Act* has been paid.

4 Amendment of lot plan

- (1) A lot plan may be amended by the preparation of a further plan in accordance with section 4(2) which shall, in addition to the information required under that section, contain the written consent of all lot owners who or whose lots are directly affected by the changes proposed and, where the proposed change results from the revision of a lot entitlement as the result of a determination under section 9, shall be accompanied by the notice referred to in that section.
- (2) The Management Corporation, in pursuance of a special resolution as prescribed (or, in relation to an amendment before the first freehold title to a lot is issued, the Developer), may lodge a replacement lot plan with the Registrar-General on payment of the prescribed fee under the *Registration Act*.
- (3) The Registrar-General shall, on receiving the replacement lot plan, amend the Register under the *Real Property Act*.

5 Lot entitlement

A schedule of lot entitlements for the purposes of this Act shall be prepared by a valuer as defined in the *Valuation of Land Act* and shall show, in respect of each lot, a whole number that represents, as nearly as practicable, the proportion that the value of the lot bears to the aggregate value of all the lots, where the value of each lot is established by reference to its unimproved capital value at the date of the valuation.

6 Recording of lot entitlements, easements, &c., on Register

The Registrar-General shall, at the time of creating a folio of the Register under the *Real Property Act* in respect of a lot, record on the Register and the certificate as to title in relation to the lot, in such manner as he or she thinks fit, the relevant lot entitlement in respect of the lot specified in the lot plan and the relevant easements and restrictive covenants.

7 Further subdivision

- (1) Subject to subsection (3) and the *Planning Act*, a lot may be further subdivided under the *Unit Titles Act* into units and common property.

- (2) Where a lot is further subdivided under the *Unit Titles Act* into units, the Registrar-General shall note on the certificate as to title of each unit into which it is subdivided that the lot comprising all the units and common property in that further subdivision has the relevant lot entitlement for the purposes of this Act.
- (3) A lot may be further subdivided (otherwise than under the *Unit Titles Act*) as prescribed in the Regulations and the relevant entitlement of each part into which it is subdivided shall be determined as prescribed.

Part 3 Management Corporation

8 Incorporation of owners of lots

- (1) There is established, on the issuing under the *Real Property Act* of the first freehold title to land in the development area, the Cullen Bay Marina Management Corporation.
- (2) The Management Corporation:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) subject to this Act, is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Management Corporation affixed to a document and shall assume that it was duly affixed.
- (4) The members of the Management Corporation are the owners from time to time of the lots in respect of which freehold titles have issued (including the lots in each successive completed part of the development area).

9 Re-assessment of lot entitlement

- (1) At any time in the sixth, seventh, eighth or ninth year after the first freehold title to a lot is issued to the Developer, a valuer, as defined in the *Valuation of Land Act*, may, at the request of the Management Corporation, in pursuance of a special resolution as prescribed, for the purposes of confirming or revising the relative lot entitlement of lots, determine the unimproved capital value of each lot and, by notice in writing to the Management Corporation, confirm or revise a unit entitlement of a lot.

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- (2) A notice under subsection (1) shall include a schedule of lot entitlement prepared in accordance with section 6 and certified correct by the valuer.

10 Management Corporation may enforce developer's obligation to maintain common property

- (1) The Management Corporation is not liable to rectify or maintain the common property until the Developer's obligation under the development agreement in relation to that rectification or maintenance has expired in accordance with the agreement.
- (2) Where the Management Corporation is of the opinion that the Developer has not carried out its obligations under and in accordance with the development agreement in relation to the rectification or maintenance of the common property, it may, by notice in writing to the Minister, require the Territory to enforce the agreement in that regard and the Territory shall, accordingly, enforce the agreement or itself have the work carried out as provided in the agreement.

11 Common property of Management Corporation not subject to municipal rates

Notwithstanding any other law of the Territory, neither the Management Corporation nor its members are liable to pay municipal rates in respect of the common property.

12 Disposal of common property

The Management Corporation may, in accordance with a special resolution as prescribed and on such terms and conditions as it thinks fit, lease out any part of its common property.

Part 4 Dispute resolution

12A Definitions

In this Part:

owner, in relation to:

- (a) a unit – means the registered proprietor of the unit and includes an occupier of the unit; or
- (b) a lot – means the registered proprietor of a lot that has not been subdivided into units under the *Unit Titles Act* and includes an occupier of the lot,

and includes:

- (c) in the case of an owner who is a natural person – his or her heirs, executors, administrators or assigns or a person in whom the property of the natural person is vested, or by whom that property is controlled, under the *Bankruptcy Act 1966* of the Commonwealth; and
- (d) in the case of an owner who is a body corporate – its liquidators, receivers, administrators or assigns.

registered means registered in the Register:

- (a) under the *Real Property Act*; or
- (b) under the *Real Property (Unit Titles) Act*.

unit means a unit, as defined in the *Unit Titles Act*, located on an area shown on the lot plan as a lot.

unit corporation means a body corporate constituted under section 27 of the *Unit Titles Act* in relation to a lot.

12B Persons who may make application for resolution of dispute

- (1) An application may be made to the Local Court if:

- (a) the Management Corporation;
- (b) an owner of a lot or unit;
- (c) a mortgagee of a lot or unit; or
- (d) a unit corporation,

claims that a breach of this Act, the Regulations or By-laws made under this Act has occurred.

- (2) An application may be made to the Local Court if:

- (a) an owner of a lot or unit; or
- (b) a unit corporation,

claims to have been prejudiced, as owner of the lot or unit or as the unit corporation in relation to a lot, by the wrongful act or default of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act.

- (3) An application may be made to the Local Court if:
- (a) an owner of a lot or unit; or
 - (b) a unit corporation,
- claims to have been prejudiced, as owner of the lot or unit or as the unit corporation in relation to a lot, by the wrongful act or default of:
- (c) an owner of another lot;
 - (d) an owner of a unit on another lot; or
 - (e) the unit corporation in relation to another lot.
- (4) An application may be made to the Local Court if:
- (a) an owner of a lot or unit; or
 - (b) a unit corporation,
- claims that a decision of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act is unreasonable, oppressive or unjust.
- (5) An application may be made to the Local Court if a dispute arises between:
- (a) an owner of a lot or unit or a unit corporation; and
 - (b) the Management Corporation or a committee of the Management Corporation,
- in relation to any aspect of the occupation or use of the lot or unit or the common property vested in the Management Corporation.
- (6) An application may be made to the Local Court if a dispute arises between:
- (a) an owner of a lot or unit; and
 - (b) the owner of another lot or a unit on another lot,
- in relation to any aspect of the occupation or use of the lot or unit or the common property vested in the Management Corporation.
- (7) An application may be made to the Local Court if a dispute arises between:
- (a) the registered proprietor of Lot 5556 Town of Darwin; and

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- (b) a person referred to in subsection (1),
in relation to a restrictive covenant imposed under section 14.

12C Application to be dealt with as small claims matter

- (1) An application under section 12B is to be made in accordance with the *Small Claims Act* and the *Small Claims Rules* as if it were an application under that Act.
- (2) Subject to this Part:
- (a) the *Small Claims Act* (other than sections 5 and 23) and the *Small Claims Rules*; and
 - (b) the *Local Court Act* and the *Local Court Rules* to the extent that they are applied by the *Small Claims Act* and the *Small Claims Rules*,
- apply to the proceedings.

12D Local Court may decline small claims jurisdiction

- (1) The Local Court may order that an application under section 12B be dealt with as if it were an application under:
- (a) the *Local Court Act*, or
 - (b) the *Supreme Court Act*.
- (2) In respect of an order under subsection (1), the Local Court may give directions that it thinks appropriate.
- (3) An order may be made under subsection (1):
- (a) at any stage in the proceedings; and
 - (b) on the application of a party or of the Court's own motion.
- (4) If the Local Court makes an order under subsection (1)(a), the *Local Court Act* and the *Local Court Rules* apply to the proceedings.
- (5) If the Local Court makes an order under subsection (1)(b):
- (a) the proceedings before the Local Court are discontinued;
 - (b) the record and all documents relating to the proceedings are to be transmitted by the Registrar to the Supreme Court; and

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- (c) the *Supreme Court Act* and the *Supreme Court Rules* apply to the proceedings.

12E Powers of court to resolve dispute

- (1) The powers of a court under this section are in addition to any other powers that the court has under any other law.
- (2) A court may in respect of an application under section 12B do one or more of the following:
 - (a) attempt to settle the proceedings between the parties by the processes of mediation and arbitration;
 - (b) require a party to provide reports or other information for the purposes of the proceedings;
 - (c) order that a party take the action specified in the order that, in the opinion of the court, is necessary to remedy a breach or default or to resolve a dispute;
 - (d) order a party to refrain from a further action of a kind specified in the order;
 - (e) confirm, vary or reverse a decision of the Management Corporation, a committee of the Management Corporation or a person exercising powers under this Act;
 - (f) give judgment on a monetary claim;
 - (g) order compensation be paid by a party to the dispute to a party to the dispute who has suffered loss because of:
 - (i) a wrongful act or default referred to in section 12B(2) or (3);
 - (ii) an unreasonable, oppressive or unjust decision referred to in section 12B(4); or
 - (iii) the unlawful or unauthorised use or occupation of a lot or unit or the common property vested in the Management Corporation;
 - (h) order the Management Corporation to refund to an owner of a lot or unit, or a former owner of a lot or unit, money paid to the Management Corporation by the owner or former owner;
 - (j) make any incidental or ancillary orders that it thinks fit.

12F Interim orders

- (1) If an application is made under section 12B and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order:
 - (a) to preserve the status quo between the parties to the proceedings pending the final resolution of the proceedings; or
 - (b) to minimise the risk of loss or damage to persons or property.
- (2) An interim order:
 - (a) has effect for the period that the court specifies in the order;
 - (b) may be renewed by the court from time to time;
 - (c) may be made or renewed whether or not notice of the application has been given to a respondent; and
 - (d) unless it is sooner revoked or it expires, ceases to have effect on the determination or resolution of the application under this Part.

12G Corporation may be represented by person

- (1) A person who is appointed by the Management Corporation may represent the Management Corporation in proceedings under this Part.
- (2) An owner of a lot or unit who is appointed by:
 - (a) a unit corporation; or
 - (b) the owner of another lot or unit,may represent the unit corporation or owner in proceedings under this Part.

12H Other remedies not affected

This Part does not limit or derogate from any civil remedy at law or in equity.

Part 5 Miscellaneous

13 Maintenance of revetment

- (1) Where a revetment to that part of the development area known as the mooring basin is contained in a lot, the owner of the lot shall ensure that the revetment is at all times maintained, at the owner's expense, to a standard not lower than the standard at the time of the completion of the revetment by the Developer.
- (2) A person shall not erect a building or structure on or across the revetment, or attach anything to the revetment, except with and in accordance with the approval in writing of the Management Corporation and the standards, if any, prescribed in the By-laws.
- (3) It is a condition of every approval given under subsection (2) that the person will, on being so directed by notice in writing by the Management Corporation, remove a building, structure or thing referred to in that subsection from or from across the revetment, at the person's own expense and within the time specified in the notice, where, in the opinion of the Management Corporation, its removal is necessary for the proper maintenance of the revetment.
- (4) Where:
 - (a) a building or other structure has been constructed on or across the revetment; or
 - (b) a thing has been attached to a revetment,otherwise than in accordance with subsection (2), or
 - (c) an improvement (other than a building or structure) has been placed on or fixed to the revetment otherwise than as permitted by the By-laws,

the Management Corporation may, by notice in writing, direct the owner of the lot to remove it within such reasonable time as is specified in the notice and the owner shall comply with the direction.

Penalty: \$2,000 and \$100 for each day during which the offence continues.

13A Easements of support

The owner of each lot has against the owner of each adjoining lot an easement of support and, without limiting the generality of that right, the right includes the right to the support of the revetment on his or her lot by the revetment on an adjoining lot.

14 Restrictive covenants

- (1) Subject to subsections (2) and (3), for the purposes of imposing a restrictive covenant on the use of a lot the common property shall be deemed to be the dominant tenement for the benefit of which the covenant is imposed (notwithstanding that no part of the common property may be contiguous to the lot), and the burden of the covenant shall run with the land comprised in the lot.
- (2) The Minister shall, in issuing freehold title in respect of lots identified as provided in section 3(2)(d), ensure that each title is issued subject to a restrictive covenant in favour of Lot 5556 Town of Darwin so that a building any part of which is above the height of 8 metres above the level of Bench Mark 422 located on the abutment of the Stokes Hill Wharf in Darwin Harbour may not be constructed on the lot.
- (3) Lot 5556 Town of Darwin shall be deemed to be the dominant tenement for the benefit of which the covenant referred to in subsection (2) is imposed (notwithstanding that no part of Lot 5556 is contiguous to a lot), and the burden of the covenant shall run with the land comprised in the lots.

15 By-laws

- (1) Subject to subsection (3), the Management Corporation may, by special resolution as prescribed, in respect of its common property, make By-laws, not inconsistent with this or any other law of the Territory, relating to:
 - (a) the management, use and maintenance of the common property;
 - (b) the control of vehicles in areas that are not part of the public roadways;
 - (c) the control of vessels;
 - (d) the control of wharfs and berths;
 - (e) the control of polluting substances and pollution control and clean-up;

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- (f) the imposing and collection of dues and other fees and charges;
 - (g) noise and other nuisance control;
 - (h) the enforcement of the By-laws and prosecuting persons for offences against the By-laws;
 - (i) the duties of owners and occupiers of lots; and
 - (j) such other matters as are necessary or convenient to be provided for by by-laws.
- (2) The By-laws may prescribe penalties, not exceeding \$2,000, for a contravention of, or failure to comply with, the By-laws and, in addition, may prescribe a penalty, not exceeding \$50, for each day during which the offence continues.
- (3) A pecuniary penalty recovered on prosecution for an offence against the By-laws is payable to the Management Corporation and may be recovered by it as a debt due to it.
- (4) Section 57 of the *Interpretation Act* does not apply to or in relation to By-laws made under subsection (1).

16 Regulations

- (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may prescribe:
- (a) the functions and powers of the Management Corporation, including its powers to deal with the common property, levy contributions from the lot owners and effect insurance;
 - (b) the powers, obligations and duties of officers of the Management Corporation;
 - (c) the powers, obligations and duties of the owners, occupiers and mortgagees of lots in relation to the Management Corporation and the common property;

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- (d) the procedures, at meetings or otherwise, of the Management Corporation and its committees;
 - (e) the power of the Minister to intervene in the affairs of the Management Corporation to ensure the performance of its functions and the due exercise of its powers;
 - (f) voting at meetings of the Management Corporation and limiting the voting power of the Developer; and
 - (g) penalties, not exceeding \$2,000 for a contravention of, or failure to comply with, the Regulations.
- (3) Without limiting the generality of subsection (1), and notwithstanding anything in the development agreement, the Regulations may impose conditions on work by the Developer in the development area to minimise nuisance to persons residing in the development area or neighbouring areas and, in particular, may limit, by reference to time or otherwise, the creation of noise and dust.
- (4) For the purposes of subsection (2)(b), the Regulations may provide that such provisions of the Corporations Law, with such adaptations and modifications as are prescribed, shall apply as if those provisions were incorporated in this Act.

17 Transitional

- (1) At any time before the Management Corporation first meets after the commencement of this Act the Minister may make a by-law on any matter which, under section 15(1), the Management Corporation could make a by-law.
- (2) A by-law made under subsection (1) may be revoked or amended by a by-law made under section 15(1) by the Management Corporation.
- (3) Until the first meeting of the Management Corporation after the issuing of the first freehold title to land referred to in section 8(1), the Developer may exercise the power of approval of the Management Corporation under section 13(2) and on it so doing the approval shall be deemed to be that of the Management Corporation.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Cullen Bay Marina Act 1992 (Act No. 81, 1992)

Assent date	18 December 1992
Commenced	18 December 1992

Cullen Bay Marina Amendment Act 1993 (Act No. 63, 1993)

Assent date	3 November 1993
Commenced	1 December 1993 (<i>Gaz</i> S95, 1 December 1993)

Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)

Assent date	9 November 1993
Commenced	9 November 1993

Planning (Consequential Amendments) Act 1993 (Act No. 86, 1993)

Assent date	31 December 1993
Commenced	18 April 1994 (s 2, s 2 <i>Planning Act</i> 1993 (Act No. 85, 1993) and <i>Gaz</i> S28, 18 April 1994)

Cullen Bay Marina Amendment Act 1998 (Act No. 77, 1998)

Assent date	15 October 1998
Commenced	1 December 1998 (<i>Gaz</i> G43, 4 November 1998, p 4)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 8 *Cullen Bay Marina Amendment Act* 1998 (Act No. 77, 1998)

4 LIST OF AMENDMENTS

pt 1 hdg	ins No. 77, 1998, s 4
s 2	amd No. 63, 1993, s 4
pt 2 hdg	ins No. 77, 1998, s 5
s 3	amd No. 63, 1993, s 5; No. 86, 1993, s 3
pt 3 hdg	ins No. 77, 1998, s 6

ENDNOTES

s 8	amd No. 63, 1993, s 6
pt 4 hdg	ins No. 77, 1998, s 7
ss 12A – 12H	ins No. 77, 1998, s 7
pt 5 hdg	ins No. 77, 1998, s 7
s 13	sub No. 63, 1993, s 7
s 13A	ins No. 63, 1993, s 7
s 14	amd No. 70, 1993, s 8; No. 63, 1993, s 8
s 17	amd No. 63, 1993, s 9