

Queensland Management Rights Variation Guide 昆士蘭管理權變更指南

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CHAPTER 2 第2章

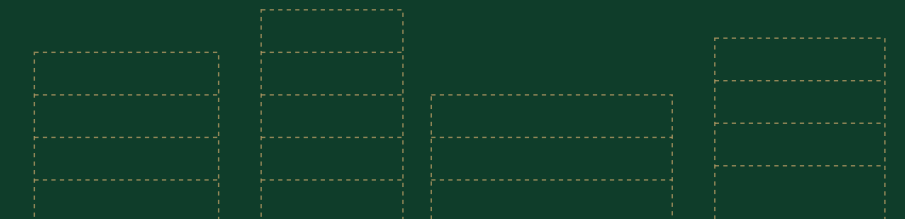
02

The Decision Framework

決策框架

7 sections · pages 9–15 of the complete guide

7節 · 全書第9至15頁



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STANDALONE CHAPTER EDITION

獨立章節版 · 可與全書其他章節合併閱讀

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白宗翰是Bugden Allen Group Legal合夥人。他專注於分層及社區產權發展、複雜及混合用途產權架構、項目重組、業主法人團體治理及管理權，並為發展商、業主法人團體、駐場管理人、融資機構、投資者及海外參與者處理交易、治理及爭議事宜。

Kevin is an honours law graduate of the University of Queensland and a member of the Australian College of Strata Lawyers, the Urban Development Institute of Australia (Queensland) and Strata Community Association (Queensland). This guide is a companion to the Queensland Management Rights Assignment Guide and uses the same three-perspective method.

白宗翰以榮譽成績畢業於昆士蘭大學法律系，並為澳洲分層產權律師學院、澳洲城市發展學會（昆士蘭）及昆士蘭分層社區協會成員。本指南為《昆士蘭管理權轉讓指南》的姊妹篇，採用相同的三角度編寫方法。

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Reader note

讀者須知

IMPORTANT 重要提示

This guide is general educational information, not legal, financial, tax or investment advice. Whether a particular variation is available, and how it must be approved, depends on the actual engagement or authorisation, the community management statement, the applicable regulation module and current law. Obtain independent Queensland legal advice before submitting a motion, voting on one, or executing a deed of variation.

本指南僅提供一般教育資訊，並非法律、財務、稅務或投資意見。某項變更能否進行，以及須經何種程序批准，取決於實際的聘任合約或授權、社區管理聲明、適用規管模組及現行法律。在提交動議、就動議表決或簽立變更契據前，應取得獨立的昆士蘭法律意見。

References to the Standard Module are to the Body Corporate and Community Management (Standard Module) Regulation 2020. The Accommodation Module contains materially identical provisions under different section numbers, and the corresponding section is noted where it matters. Where a translation and the English differ, the English text governs.

本指南所稱標準規管模組，指《2020年業主法人團體及社區管理（標準規管模組）規例》。住宿規管模組載有實質相同的條文，惟條號不同；凡具重要性者，均註明對應條文。如譯文與英文有異，概以英文為準。

Legislation current to 6 August 2026.

法例資料截至2026年8月6日。

02



The Decision Framework

決策框架

2.1 Ordinary resolution, and no proxies

普通決議及不得委任代表表決

2.2 The secret ballot requirement

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業主人團體不得取得利益

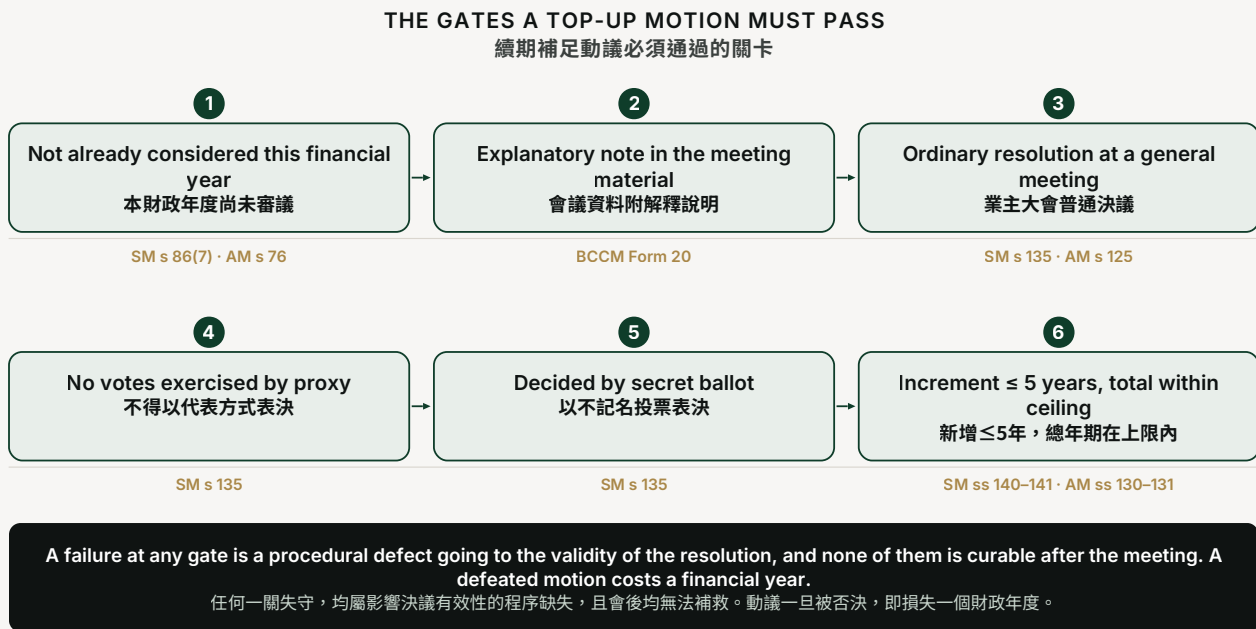
2.7 The statutory review of developer-arranged contracts

發展商安排合約的法定檢討

Section 135 of the Standard Module, and section 125 of the Accommodation Module, govern the authority to make an engagement, give an authorisation, or amend either. It is a short provision carrying an unusual density of procedural requirements, and each of them is capable of invalidating a resolution.

標準規管模組第135條及住宿規管模組第125條，規管訂立聘任合約、給予授權或修訂兩者的權限。此條文篇幅短小，卻載有異常密集的程序規定，而其中每一項均足以令決議失效。

FIG 2 The gates a top-up motion must pass / 續期補足動議必須通過的關卡



2.1

Ordinary resolution, and no proxies

普通決議及不得委任代表表決

The amendment must be approved by an ordinary resolution of the body corporate passed at a general meeting, and for the passing of that resolution no votes may be exercised by proxy. The proxy prohibition is deliberate. It removes the mechanism by which voting power in these schemes was historically aggregated, and it means a manager seeking a top-up must persuade owners to vote rather than to sign.

修訂須經業主法人團體在業主大會上通過普通決議批准，且在通過該決議時，不得以委任代表方式行使表決權。此項禁止並非偶然：它取消了以往在此類社區產權項目中集中表決權的機制，意味著尋求續期補足的管理人，必須說服業主親自表決，而非僅取得簽署。

2.2

The secret ballot requirement

不記名投票的規定

Where the motion is to amend a service contractor's engagement or a letting agent's authorisation to include a right or option of extension or renewal, the motion must be decided by secret ballot. The same requirement applies to the original engagement of a caretaking service contractor and to the authorisation of a letting agent.

The reason is structural. A resident manager knows every owner in the building, often lets their units and controls the reception desk. An open ballot in that setting is not a free vote. Any process that allows the manager, or anyone else, to identify how a particular owner voted defeats the provision and exposes the resolution.

凡動議旨在修訂服務承辦商的聘任合約或出租代理的授權，以加入延期或續期的權利或選擇權者，該動議須以不記名投票方式表決。相同規定亦適用於看管服務承辦商的原始聘任及出租代理的授權。

此規定有其結構性理由。駐場管理人認識大廈內每名業主，往往為其出租單元並掌管接待處；在此情境下的記名投票，並非自由表決。任何令管理人或他人得以辨識某業主投票取向的程序，均違背該條文的目的，並使該決議面臨被推翻的風險。

PRACTICAL EFFECT 實務效果

Secret ballot is a validity requirement, not a courtesy. Committees should confirm the ballot process before the meeting, not defend it afterwards.

不記名投票屬有效性要件，而非禮節安排。委員會應在會議前確認投票程序，而非事後為其辯解。

2.3

The disclosure package

須隨會議通知提供的資料

The material forwarded to owners for the general meeting must include prescribed information about what is being approved. For an amendment adding a right or option of extension or renewal, that includes an explanatory note in the approved form — BCCM Form 20 — identifying the contractor, the current expiry date and the length of the proposed extension.

The form exists because the practical effect of a top-up is difficult to see from the motion alone. An owner reading "that the body corporate agree to amend the engagement to include a further option" is not being told that the term will run to 2049. The explanatory note is the disclosure that makes the vote informed, and omitting it is a procedural defect going to the validity of the resolution.

就該次業主大會向業主發出的資料，須包括有關批准事項的訂明資料。凡屬加入延期或續期權利或選擇權的修訂，則須附上訂明格式的解釋說明——BCCM第20號表格——載明承辦商名稱、現行屆滿日期及擬議延期的長度。

此表格之所以存在，是因為續期補足的實際效果單憑動議本身難以看出。業主閱讀「同意修訂聘任合約以加入進一步選擇權」一語，並不會得知年期將延至2049年。解釋說明正是令表決具知情基礎的披露文件，遺漏該文件屬程序缺失，足以影響決議的有效性。

2.4

Once in a financial year

每財政年度一次

Section 86(7) of the Standard Module provides that a motion proposing to amend an engagement or authorisation to give a right or option of extension or renewal cannot be considered more than once in a body corporate's financial year. The corresponding provision is section 76 of the Accommodation Module, which deals with the same subject — the opportunity to submit agenda motions. A motion defeated in October cannot be resubmitted in November in the hope of a better turnout.

The provision also supplied the answer to a longer argument. In *Atlantis West [2024] QBCCMCmr 340* an owner contended that a term could be topped up only once. The adjudicator rejected that reading, observing that the existence of an express annual limit on how often the motion may be considered is difficult to reconcile with a construction under which the power could be exercised only once in the life of the agreement.

標準規管模組第86(7)條訂明，凡動議旨在修訂聘任合約或授權以給予延期或續期的權利或選擇權者，在業主法人團體的同一財政年度內不得審議超過一次。住宿規管模組的對應條文為第76條，同樣規管提交議程動議的機會。十月被否決的動議，不得於十一月因期望出席率較佳而重新提交。

該條文亦回應了一項長期爭論。在 *Atlantis West [2024] QBCCMCmr 340* 一案中，有業主張年期只可補足一次。裁決官否定此一解讀，指出條文既明文限制該動議每年可審議的次數，便難以與「該權力在合約存續期內只可行使一次」的解釋相協調。

2.5

The five-year rule and the ceiling

五年規則及年期上限

Sections 140 and 141 of the Standard Module permit the body corporate subsequently to amend an engagement or authorisation to include a further right or option of extension or renewal of not more than five years, provided the total unexpired term does not exceed the module ceiling — ten years under the Standard Module, twenty-five under the Accommodation Module. The Accommodation Module equivalents are sections 130 and 131.

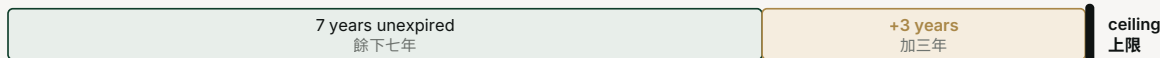
Two calculations follow. The five-year limit applies to the increment. The ceiling applies to the aggregate unexpired term measured from the resolution. A scheme with seven years remaining under the Standard Module can add three years, not five, because the ceiling binds before the increment does.

標準規管模組第140及141條容許業主法人團體其後修訂聘任合約或授權，加入不超過五年的進一步延期或續期權利或選擇權，惟餘下總年期不得超出模組上限——標準規管模組為十年，住宿規管模組為二十五年。住宿規管模組的對應條文為第130及131條。

由此衍生兩項計算。五年上限適用於每次新增的年期；模組上限則適用於自決議日起計的餘下總年期。標準規管模組下餘下七年的社區產權項目，只可加入三年而非五年，因為模組上限先於單次上限發揮限制作用。

FIG 3 The two calculations in a top-up / 續期補足的兩項計算**THE TWO CALCULATIONS IN A TOP-UP**
續期補足的兩項計算**Standard Module — 10 year ceiling**

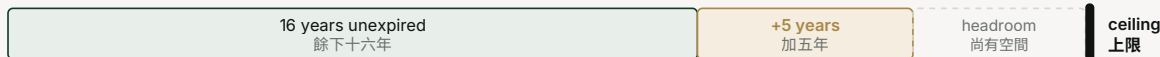
標準規管模組 — 十年上限



The ceiling binds before the five-year limit does.
模組上限先於五年上限發揮限制作用。

Accommodation Module — 25 year ceiling

住宿規管模組 — 二十五年上限



The five-year limit binds each increment; further top-ups remain available.
五年上限規限每次新增年期；其後仍可再作補足。

Increment ≤ 5 years · aggregate unexpired term ≤ module ceiling, measured from the resolution

單次新增 ≤ 五年 · 餘下總年期 ≤ 模組上限，均自決議日起計

2.6

The body corporate must not take value

業主法人團體不得取得利益

Sections 114 and 115 of the Act limit the benefit a body corporate may take under a service contractor engagement and a letting agent authorisation respectively. Section 115 provides that the authorisation must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit on, the body corporate, and that an amount paid or benefit accepted under such a requirement is recoverable from the body corporate by the person who paid or conferred it. Section 114 is the parallel provision for service contractor engagements.

Two features of section 115 matter for variations. It applies to an authorisation including its extension, renewal or replacement, so a top-up is squarely within it. And the exceptions are narrow: they include an amount or benefit for the reasonable costs the body corporate incurs in preparing the agreement for the authorisation, but nothing resembling a price for agreement.

該法第114及115條分別限制業主法人團體在服務承辦商聘任合約及出租代理授權下可取得的利益。第115條訂明，授權不得直接或間接載有向業主法人團體支付款項或向其授予利益的規定；凡依該等規定所支付的款項或所接受的利益，付款人或授予人均可向業主法人團體追討。第114條為服務承辦商聘任合約的對應條文。

第115條有兩項特徵與變更事宜相關。其一，該條適用於授權及其延期、續期或替換，故續期補足明確落入其範圍；其二，例外情況範圍狹窄：包括業主法人團體就擬備授權協議所招致的合理費用所收取的款項或利益，但並不包括任何近似「同意的代價」的安排。

VERIFICATION NOTE 查證說明

Section 115 applies only to an authorisation, including an extension, renewal or replacement, the term of which starts after the commencement of the section. Older arrangements may not be caught, and the position for a particular scheme should be checked against the commencement provisions before advice is given.

第115條僅適用於年期在該條生效後開始的授權，包括其延期、續期或替換。較早期的安排未必受其規管；就個別社區產權項目提供意見前，應對照生效條文查核其適用情況。

A proposal that the manager pay the scheme a sum, fund a capital item, or confer some other benefit in exchange for the extension is therefore not a negotiation to be settled on commercial terms. Owners can properly seek better duties, clearer performance standards or a shorter increment as part of an amended bargain; a payment for the grant itself sits differently, and the money is recoverable from the scheme if it is made.

因此，若建議管理人向該社區產權項目支付款項、資助資本項目，或授予其他利益以換取延期，並非可按商業條款議定的談判。業主可正當地在經修訂的安排中爭取更完善的職責、更明確的履約標準或較短的新增年期；就授予本身付款則屬另一回事，一旦支付，該筆款項可向該社區產權項目追討。

PRACTICAL EFFECT 實務效果

The line is between improving what the scheme receives under the agreement and taking value for granting it. The first is bargaining. The second is recoverable.

界線在於：改善社區產權項目依合約所得，與因給予批准而收取利益。前者屬議價，後者則可被追討。

2.7

The statutory review of developer-arranged contracts

發展商安排合約的法定檢討

Division 7 of Part 2 of Chapter 3 of the Act provides a separate mechanism: sections 130 to 135 deal with the review of terms of service contracts, covering the review itself, its purpose, the procedure, disputes arising out of it, the review criteria and other provisions about review. In specified circumstances it allows a newly established body corporate to seek review of a service contract arranged during the original owner control period, and the contractor may also seek a review.

This is not a general right to reopen a bargain that has become unattractive. It is directed at the structural problem of a contract settled by a developer before the owners existed as a decision-making body. Whether a particular scheme qualifies depends on the circumstances the Division specifies, and that question should be answered before any expectation is created among owners.

該法第3章第2部第7分部提供另一機制：第130至135條處理服務合約條款的檢討，涵蓋檢討本身、檢討目的、程序、由此產生的爭議、檢討準則及其他相關條文。在指明情況下，新成立的業主法人團體可就在原始擁有人控制期內安排的服务合約要求檢討，承辦商亦可要求檢討。

此並非一般性地重開已變得不利的交易安排的權利，而是針對一項結構性問題：合約在業主尚未構成決策機關之前，已由發展商議定。個別社區產權項目是否符合資格，取決於該分部所指明的情況；在向業主營造任何期望之前，應先確定此一問題。

PRACTICAL CHECKLIST 實務清單

- Classify the proposal before drafting the motion: option, top-up, amendment or review.
- Confirm the module and calculate both the increment and the aggregate term.
- Check whether a motion of this kind has already been considered this financial year.
- 在草擬動議前先分類：屬選擇權、續期補足、修訂還是檢討。
- 確認適用模組，並同時計算單次新增年期及餘下總年期。
- 查核本財政年度內是否已審議過同類動議。

- Prepare the explanatory note in the approved form with the meeting material.
- Instruct the returning officer on the secret ballot and the proxy prohibition.
- 連同會議資料一併備妥訂明格式的解釋說明。
- 就不記名投票及禁止委任代表表決事宜，向點票主任作出指示。

ITEM 項目	DETAIL 內容
Companion volume 姊妹篇	Queensland Management Rights Assignment Guide 昆士蘭管理權轉讓指南
Scope 範圍	Queensland; Standard and Accommodation Modules 昆士蘭；標準及住宿規管模組
Status 狀態	General educational information 一般教育資訊

Principal sources: Body Corporate and Community Management Act 1997 (Qld), ss 112, 114–115, 130–135 and schs 2–3; Body Corporate and Community Management (Standard Module) Regulation 2020, ss 86, 135, 137–138, 140–141; Body Corporate and Community Management (Accommodation Module) Regulation 2020, ss 76, 125, 130–131; BCCM Form 20; Atlantis West [2024] QBCCMCmr 340.

主要資料來源：《1997年業主法人團體及社區管理法》（昆士蘭）第112、114至115條、第130至135條及附表2至3；《2020年業主法人團體及社區管理（標準規管模組）規例》第86、135、137至138、140至141條；《2020年業主法人團體及社區管理（住宿規管模組）規例》第76、125、130至131條；BCCM第20號表格；Atlantis West [2024] QBCCMCmr 340。