



and /  or

By ordinary resolution passed at the Annual General Meeting on 23 March 2021 and pursuant to Regulation 175(4) of the *Strata Titles Act 1985* the following  **additions**/  **amendments**/  **repeal**<sup>4</sup> to the Conduct by-laws were made as detailed here

#### 45. Financial Year By-Law

The financial year for the strata company will be determined at a general meeting of the strata company by an ordinary resolution resolving a period of 12 months ending on a defined date and in the absence of such resolution, the financial year shall be a period of 12 months ending on **30 November**.

The strata company further certifies that the consolidated by-laws provided in **Part 3** are all the current by-laws for the scheme.

### **Part 3 – Consolidated By-laws of Scheme Number: 64552**

#### **Schedule 1 - Governance By-Laws**

##### **1. INTERPRETATION**

###### (1) Definitions

Unless the contrary intention appears or is required by the context, in the by-laws of the Strata Company (whether the Schedule 1 or Schedule 2 by-laws), the following definitions shall apply:

**Act** means the *Strata Titles Act 1985 (WA)*, as amended from time to time;

**ADI** means an authorised deposit-taking institution as defined in section 5

---

<sup>4</sup> Select whichever is applicable.

of the *Banking Act 1959 (Cth)*;

**Asset Manager** means, in connection with any particular Recreational Facility, the Asset Manager appointed under sub-by-law 38(5) of this Schedule 1 from time to time;

**Buildings** means the buildings and each other improvement constructed on the Parcel;

**by-laws** means the by-laws of the Strata Company, as contained in this Management Statement, and as thereafter varied from time to time and **by-law** and **sub-by-law** have the same meaning;

**Common Property** means all that part of the Strata Plan that is not a Lot or part of a Lot on the Strata Plan;

**Council** means the council of the Strata Company;

**Local Government Authority** means the Shire of Roebourne or any replacement thereof;

**Lot** means a strata lot contained in the Strata Plan;

**Original Proprietor** means Minderoo Pty Limited (ACN 087 437 312) as trustee for The Andrew & Nicola Forrest Family Investment Trust;

**Parcel** means the whole of the land comprised in the Strata Plan;

**Proprietor** means the registered proprietor from time to time of a Lot;

**Recreational Facilities** means the pool, gymnasium, barbeques, and other recreational facilities situated on the Common Property from time to time;

**Relevant Authority** includes each government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, statutory or public authority, tribunal, agency or entity, whether local, state,

federal or otherwise (and, for the avoidance of doubt, includes the Local Government Authority);

**Scheme** means the Strata Plan, the by-laws and the Buildings, facilities and Services contained within the Parcel;

**Services** means the supply of electricity, gas, water, sewer, drainage, telephone, data and any other pipes or cables which deliver those things to a Lot or the Parcel;

**Strata Company** means the body corporate constituted pursuant to section 32 of the Act which comes into being upon the registration of the Strata Plan;

**Strata Company Manager** means the organisation or person (whether natural or not) appointed by the Council to administer the affairs of the Strata Company in accordance with by-law 19 of Schedule 2;

**Strata Company Management Agreement** means the agreement entered into by the Strata Company in accordance with by-law 19 of Schedule 2;

**Strata Plan** means the strata plan registered with Landgate, the subject of the Parcel, with which this Management Statement is registered; and

**TPS** means the Local Government Authority's *Town Planning Scheme* as in existence from time to time.

(2) Interpretation

In the by-laws:

- (a) a reference to any statute or statutory provision includes a reference to:
  - (i) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and

- (ii) all statutory instruments or orders made pursuant to it;
  - (b) words denoting the singular number shall include the plural and vice versa;
  - (c) words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa; and
  - (d) headings are inserted for convenience only and shall not affect the construction or interpretation of the by-laws.
- (3) Severability

If any by-law is invalid or unenforceable, then the remaining by-laws shall be valid and enforceable.

## 2. DUTIES OF PROPRIETORS, OCCUPIERS, ETC.

- (1) A Proprietor shall:
- (a) forthwith carry out all work that may be ordered by any competent Relevant Authority or the Local Government Authority in respect of his or her Lot and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his or her Lot; and
  - (b) in accordance with these by-laws, repair and maintain his or her Lot, and keep it in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted,

except to the extent that the Strata Company is obliged, by these by-laws, to carry out work or to repair or maintain any part or parts of the Proprietor's Lot. When undertaking any work, repair or maintenance under this or any other by-law, the Proprietor shall only engage the services of qualified and competent tradesmen and use proper and new materials.

- (2) A Proprietor shall:

- (a) notify the Strata Company or the duly appointed Strata Company Manager forthwith upon any change of ownership, including in the notice an address of the Proprietor for service of notices and other documents under the Act; and
  - (b) notify the Strata Company or the Strata Company Manager of any mortgage or other dealing in connection with his or her Lot, including in the case of a lease of a Lot, the name of the tenant and the term of the lease.
- (3) Subject to these by-laws and subject to the rights of any person who has any leasehold interest in any part of the Common Property, a Proprietor, occupier, tenant or other resident of a Lot shall:
- (a) use and enjoy the Common Property in such a manner as to not unreasonably interfere with the use and enjoyment thereof by other Proprietors, occupiers, tenants, other residents or their visitors:
  - (b) not use the Lot or permit it to be used in such manner or for such purpose as causes a nuisance (or is likely to cause a nuisance) to any occupier of another Lot (whether a Proprietor or not) or the employees or visitors of such an occupier;
  - (c) take all reasonable steps to ensure that his or her visitors do not behave in a manner likely to interfere with the peaceful enjoyment of the Proprietor, occupier, tenant or other resident of another Lot or of any other person lawfully using the Common Property; and
  - (d) take all reasonable steps to ensure that his or her visitors comply with the by-laws of the Strata Company relating to the use of the Common Property and/or parking of motor vehicles.
- (4) Without limiting sub-bylaw (3) of this bylaw, a Proprietor must:
- (a) if the Proprietor is unable to ensure compliance with paragraphs (c) and (d) of sub-bylaw (3) of this by-law by any visitor, upon written notice from the Strata Company or the duly appointed Strata Company

Manager take reasonable steps to have the relevant visitor leave the Parcel; and

- (b) compensate the Strata Company for any damage, loss, expense or claim occasioned by the Strata Company and caused or contributed to by the relevant visitor.

### **3. POWER OF PROPRIETOR TO DECORATE ETC.**

- (1) Subject to sub-bylaw (2) of this by-law and to by-law 26 of this Schedule 1, a Proprietor may, without obtaining the consent of the Strata Company, paint, wallpaper or otherwise decorate the structure which forms the inner surface of the boundary of his or her Lot or affix locking devices, furnishings, furniture, carpets and other similar things to that surface PROVIDED however that the Proprietor shall not do or permit anything to be done in his or her Lot which is visible outside the lot without the prior consent in writing of the Strata Company or the duly appointed Strata Company Manager, such consent not to be unreasonably withheld and PROVIDED FURTHER that any such action does not unreasonably damage or affect the integrity of the CommonProperty.
- (2) A Proprietor, tenant, occupier or other resident of a Lot must not install window treatments (such as blinds or curtains) to any external windows of the Buildings which by their colour or design detract from the aesthetic of, or which are not in keeping with, the rest of the Buildings or the Scheme.

### **4. POWER OF STRATA COMPANY REGARDING SUBMETERS**

- (1) Where the supply of gas, water or electricity to a Lot is regulated by means of a sub-meter, the Strata Company may require the Proprietor or other occupier of the Lot to pay the Strata Company by way of security for the payment of charges arising through the sub-meter an amount not exceeding \$1,000.00 and, if any amount so paid is applied by the Strata Company under sub-bylaw (3) of this by- law, to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-bylaw, the Strata Company may require.
- (2) The Strata Company shall lodge every sum received under this by-law to the

credit of an interest-bearing account with an ADI and all interest accruing in respect of the amounts so received shall, subject to this by-law, be held on trust for the Proprietor or occupier who made the payment.

- (3) If the Proprietor or other occupier of a Lot in respect of which a sub-meter is used for the supply of gas, water or electricity refuses or fails to pay any charges due for the supply of gas, water or electricity to that Lot, the Strata Company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the Strata Company by that Proprietor or occupier under this by-law, including any interest that may have accrued in respect of that amount.
- (4) Where a person who has paid an amount under this by-law to the Strata Company satisfies the Strata Company that he or she is no longer the Proprietor or occupier of a lot and that the Strata Company no longer has any liability or contingent liability for the supply of gas, water or electricity to that Lot during the period when that person was a Proprietor or occupier of the Lot, the Strata Company shall refund to that person the amount then held on his or her behalf under this by-law.

## **5. CONSTITUTION OF THE COUNCIL OF THE STRATA COMPANY**

- (1) The powers and duties of the Strata Company shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Council of the Strata Company and a meeting of the Council at which a quorum is present shall be competent to exercise all or any of the authorities, functions or powers of the Council. Where a Strata Company Manager has been appointed by the Strata Company, the Strata Company Manager (subject always to the express terms of the Strata Company Management Agreement) may exercise and perform all of the powers and duties of the Strata Company subject to any lawful direction of the Council to the contrary.
- (2) Until the first annual general meeting of the Strata Company, the Proprietors of all the Lots shall constitute the Council.
- (3) Where there are not more than 3 Proprietors the Council shall consist

of all Proprietors and where there are more than 3 Proprietors the Council shall consist of not less than 3 and not more than 7 Proprietors as determined by the Strata Company.

- (4) Where there are more than 3 Proprietors the members of the Council shall be elected at each annual general meeting of the Strata Company or, if the number of Proprietors increases to more than 3 after the relevant annual general meeting, at a general meeting convened for the purpose.
- (5) Where the Original Proprietor remains the Proprietor of any Lot, the Original Proprietor shall be entitled to be a member of the Council and shall not need to be elected to that position notwithstanding any provisions of these by-laws to the contrary.
- (6) In determining the number of Proprietors for the purpose of this by-law, co- Proprietors of a Lot or more than one Lot shall be deemed to be one Proprietor and a person who owns more than one Lot shall also be deemed to be one Proprietor.
- (7) If there are co-Proprietors of a Lot, one only of the co-Proprietors shall be eligible to be, or to be elected to be, a member of the Council and the co-Proprietor who is so eligible shall be nominated by his co-Proprietors, but, if the co-Proprietors fail to agree on a nominee, the co-Proprietor who owns the largest share of the Lot shall be the nominee or if there is no co-Proprietor who owns the largest share of the Lot, the co-Proprietor whose name appears first in the certificate of title for the Lot shall be the nominee.
- (8) On an election of members of the Council, a Proprietor shall have one vote in respect of each Lot owned by him or her.
- (9) Except where the Council consists of all the Proprietors and subject to sub-by-law (5) of this by-law, the Strata Company may by special resolution remove any member of the Council before the expiration of his or her term of office.
- (10) A member of the Council vacates his or her office as a member of the

Council:

- (a) if he or she dies or ceases to be a Proprietor or a nominated co-Proprietor of a Lot;
  - (b) upon receipt by the Strata Company of a notice in writing of his or her resignation from the office of member;
  - (c) at the conclusion of an annual general meeting of the Strata Company at which an election of members of the Council takes place and at which he or she is not elected or re-elected;
  - (d) in a case where he or she is a member of the Council by reason of there being not more than 3 Proprietors, upon an election of members of the Council (as a result of there being an increase in the number of Proprietors to more than 3) at which he or she is not elected; or
  - (e) where he or she is removed from office under sub-bylaw (9) of this by-law.
- (11) Any casual vacancy on the Council may be filled by the remaining members of the Council except that, in a case where a casual vacancy arises because of the removal from office of a member under sub-bylaw (9), the Strata Company may resolve that the casual vacancy shall be filled by the Strata Company at a general meeting.
- (12) Except where there is only one Proprietor, a quorum of the Council shall be 2 where the Council consists of 2, 3 or 4 members, 3, where it consists of 5 or 6 members and 4, where it consists of 7 members.
- (13) The continuing members of the Council may act notwithstanding any vacancy in the Council, but so long as the number of members is reduced below the number fixed by these by-laws as the quorum of the Council, the continuing members or member of the Council may act for the purpose of increasing the number of members of the Council or convening a general meeting of the Strata Company, but for no other purpose.
- (14) All acts done in good faith by the Council (including acts done in good faith by

any delegate of the Council, including without limitation, the Strata Company Manager) shall, notwithstanding that it is afterwards discovered that there were some defect in the appointment or continuance in office of any member of the Council (and/or such delegate), be as valid as if that member (or delegate) had been duly appointed or had duly continued in office.

## 6. PROCEDURE FOR THE ELECTION OF THE COUNCIL

The procedure for nomination and election of members of a Council shall be in accordance with the rules set out in this by-law.

- (1) The meeting shall determine, in accordance with the requirements of by-law 5(3) of this Schedule 1, the number of persons of whom the Council shall consist.
- (2) The chairperson shall call upon those persons present and entitled to nominate candidates to nominate candidates for election to the Council.
- (3) A nomination is ineffective unless supported by the consent of the nominee to his or her nomination, given:
  - (a) in writing, and furnished to the chairperson at the meeting; or
  - (b) orally by a nominee who is present at the meeting.
- (4) When no further nominations are forthcoming, the chairperson:
  - (a) where the number of candidates equals the number of members of the Council determined in accordance with the requirements of by-law 5(3) of this Schedule 1, shall declare those candidates to be elected as members of the Council; or
  - (b) where the number of candidates exceeds the number of members of the Council determined in accordance with the requirements of by-law 5(3) of this Schedule 1, shall direct that a ballot be held.
- (5) If a ballot is to be held, the chairperson shall:

- (a) announce the names of the candidates; and
  - (b) cause to be furnished to each person present and entitled to vote a blank paper in respect of each Lot in respect of which he or she is entitled to vote for use as a ballot paper.
- (6) A person who is entitled to vote shall complete a valid ballot paper by:
- (a) writing thereon the names of candidates, equal in number to the number of members of the Council so that no name is repeated;
  - (b) indicating thereon the number of each Lot in respect of which his or her vote is cast and whether he or she so votes as Proprietor or first mortgagee of each such Lot or as proxy of the Proprietor or first mortgagee (it being noted that a proxy must be appointed by the relevant Proprietor or first mortgagee in writing under the hand of the appointor or his or her attorney);
  - (c) signing the ballot paper; and
  - (d) returning it to the chairperson.
- (7) The chairperson, or a person appointed by him or her, shall count the votes recorded in valid ballot papers in favour of each candidate.
- (8) Subject to sub-by-law (9) of this by-law, candidates being equal in number to the number of members of the Council determined in accordance with by-law 5(3) of this Schedule 1, who receive the highest number of votes shall be declared elected to the Council.

(9) Where the number of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in sub-by-law (8) of this by-law and:

(a) that number equals the number of votes recorded in favour of any other candidate; and

(b) if each of those candidates were to be declared elected the number of persons required to be elected,

as between those candidates, the election shall be decided by a show of hands of those present and entitled to vote.

## **7. CHAIRPERSON, SECRETARY AND TREASURER OF THE COUNCIL**

(1) The members of a Council shall, at the first meeting of the Council after they assume office as such members, appoint a chairperson, a secretary and a treasurer of the Council.

(2) A person:

(a) shall not be appointed to an office referred to in sub-by-law (1) of this by-law unless he or she is a member of the Council; and

(b) may be appointed to one or more of those offices.

(3) A person appointed to an office referred to in sub-by-law (1) of this by-law shall hold office until:

(a) he or she ceases to be a member of the Council;

(b) receipt by the Strata Company of notice in writing of his or her resignation from that office; or

(c) another person is appointed by the Council to hold that office, whichever first happens.

(4) The chairperson shall preside at all meetings of the Council at which he or she is present and, if he or she is absent from any meeting, the members of the Council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.

#### **8. CHAIRPERSON, SECRETARY AND TREASURER OF THE STRATA COMPANY**

(1) Subject to sub-by-law (2) of this by-law, the chairperson, secretary and treasurer of the Council are also respectively the chairperson, secretary and treasurer of the Strata Company.

(2) The Strata Company may at a general meeting authorise a person who is not a Proprietor to act as the chairperson of the Strata Company for the purpose of that meeting.

(3) A person appointed under sub-by-law (2) of this by-law may act until the end of the meeting for which he or she was appointed to act.

#### **9. PROCEDURE AT MEETINGS, AND POWERS, OF THE COUNCIL**

(1) At meetings of the Council, all matters shall be determined by a simple majority vote.

(2) The Council may:

(a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the Council shall meet when any member of the Council gives to the other members not less than 7 days' notice of a meeting proposed by him or her, specifying in the notice the reason for calling the meeting;

(b) subject to these by-laws, employ on behalf of the Strata Company such agents and employees as it thinks fit in connection with the control and

management of the Common Property and the exercise and performance of the powers and duties of the Strata Company; and

- (c) subject to any restriction imposed or direction given at a general meeting of the Strata Company, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.
- (3) A member of the Council may appoint a Proprietor, or an individual authorised under section 45 of the Act by a corporation which is a Proprietor, to act in his or her place as a member of the Council at any meeting of the Council and any Proprietor or individual so appointed shall, when so acting, be deemed to be a member of the Council.
- (4) A Proprietor or individual may be appointed under sub-by-law (3) of this by-law whether or not he or she is a member of the Council.
- (5) If a person appointed under sub-by-law (3) of this by-law is a member of the Council he or she may, at any meeting of the Council, separately vote in his or her capacity as a member and on behalf of the member in whose place he or she has been appointed to act.
- (6) The Council shall keep minutes of its proceedings.
- (7) Where a Strata Company Manager has been appointed by the Council, the Strata Company Manager (subject always to the express terms of the Strata Company Management Agreement) may exercise and perform all of the powers and duties of the Council subject to any lawful direction of the Council to the contrary.

#### **10. POWERS AND DUTIES OF THE SECRETARY OF THE STRATA COMPANY**

- (1) The powers and duties of the secretary of the Strata Company include:
  - (a) the preparation and distribution of minutes of meetings of the Strata Company and the submission of a motion for confirmation of the minutes of any meeting of the Strata Company at the next such meeting;

- (b) the giving on behalf of the Strata Company and of the Council of the notices required to be given under the Act;
  - (c) the supply of information on behalf of the Strata Company in accordance with sections 43(1)(a) and 43(1)(b) of the Act;
  - (d) the answering of communications addressed to the Strata Company;
  - (e) the calling of nominations of candidates for election as members of the Council; and
  - (f) subject to sections 49 and 103 of the Act, the convening of meetings of the Strata Company and of the Council.
- (2) Where a Strata Company Manager has been appointed by the Council, the Strata Company Manager (subject always to the express terms of the Strata Company Management Agreement) may exercise and perform all of the powers and duties of the secretary of the Strata Company subject to any lawful direction of the elected secretary (if any) of the Strata Company to the contrary.

## **11. POWERS AND DUTIES OF THE TREASURER OF THE STRATA COMPANY**

- (1) The powers and duties of the treasurer of the Strata Company include:
- (a) the notifying of Proprietors of any contributions levied pursuant to the Act;
  - (b) the receipt, acknowledgment and banking of and the accounting for any money paid to the Strata Company;
  - (c) the preparation of any certificate applied for under section 43 of the Act; and
  - (d) the keeping of the books of account referred to in section 35(1)(f) of the Act and the preparation of the statement of accounts referred to in section 35(1)(g) of the Act.

- (2) Where a Strata Company Manager has been appointed by the Council, the Strata Company Manager (subject always to the express terms of the Strata Company Management Agreement) may exercise and perform all of the powers and duties of the treasurer of the Strata Company subject to any lawful direction of the elected treasurer (if any) of the Strata Company to the contrary.

## **12. GENERAL MEETINGS OF THE STRATA COMPANY**

- (1) Annual general meetings of the Strata Company shall be held not less than once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next.
- (2) All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- (3) The Council may whenever it thinks fit and shall upon a requisition in writing made by Proprietors entitled to a quarter or more of the aggregate unit entitlement of the Lots convene an extraordinary general meeting.
- (4) If the Council does not within 21 days after the date of the making of a requisition under this by-law proceed to convene an extraordinary general meeting, the requisitionists, or any of them representing more than one-half of the aggregate unit entitlement of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the Council, convene an extraordinary general meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date on which the requisition was made.
- (5) Not less than 14 days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of that business, shall be given to the Strata Company Manager, all Proprietors and registered first mortgagees who have notified their interests to the Strata Company, but accidental omission to give the notice to the Strata Company Manager, any Proprietor or to any registered first mortgagee or non-receipt of the notice by the Strata Company

Manager, any Proprietor or by any registered first mortgagee does not invalidate any proceedings at any such meeting.

- (6) If a Proprietor gives notice in writing to the secretary of an item of business that the Proprietor requires to be included on the agenda for the next general meeting of the Strata Company, the secretary shall include, or shall cause the Strata Company Manager to include, that item on the agenda accordingly and shall give notice of that item as an item of special business in accordance with sub-by-law (5) of this by-law.

### **13. PROCEEDINGS AT GENERAL MEETINGS OF THE STRATA COMPANY**

- (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the Council, or at an extraordinary general meeting.
- (2) Except as otherwise provided in these by-laws, no business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (3) One-half of the persons entitled to vote present in person or by duly appointed proxy constitutes a quorum.
- (4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition of Proprietors, shall be dissolved and in any other case the persons entitled to vote and present constitute a quorum regardless of any other provision of the by-laws to the contrary.
- (5) The chairperson, may with the consent of the meeting, adjourn any general meeting from time to time and from place to place but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) Except where otherwise required by or under the Act or these by-laws, resolutions may be passed at a general meeting by a simple majority vote.

- (7) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any Proprietor present in person or by proxy.
- (8) Unless a poll be demanded, a declaration by the chairperson that a resolution has on a show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour or against such resolution.
- (9) A demand for a poll may be withdrawn.
- (10) A poll, if demanded, shall be taken in such manner as the chairperson thinks fit and the result of that poll shall be deemed to be the resolution of the meeting at which such poll was demanded.
- (11) In the case of equality in the votes whether on a show of hands or on a poll, the question is determined in the negative.

#### **14. RESTRICTION ON MOVING MOTION OR NOMINATING CANDIDATE**

A person is not entitled to move a motion at a general meeting or to nominate a candidate for election as a member of the Council unless the person is entitled to vote on the motion or at the election.

#### **15. VOTING RIGHTS OF PROPRIETORS**

The provisions of this by-law shall take effect subject to section 50A of the Act.

- (1) On a show of hands each Proprietor has one vote.
- (2) On a poll the Proprietors have the same number of votes as the unit entitlements of their respective Lots.
- (3) On a show of hands or on a poll, votes may be given either personally or by a duly appointed proxy.
- (4) An instrument appointing a proxy shall be in writing under the hand of the

appointer or his or her attorney and may be either general or for a particular meeting.

- (5) A proxy need not be a Proprietor.
- (6) Except in cases where by or under the Act a unanimous resolution or a resolution without dissent is required, no Proprietor is entitled to vote at any general meeting unless all contributions payable in respect of his or her Lot have been duly paid and any other monies recoverable under the Act by the Strata Company from him or her at the date of the notice given to Proprietors of the meeting have been duly paid before the commencement of the meeting.
- (7) Co-Proprietors may vote by proxy jointly appointed by them and in the absence of such a proxy are not entitled to vote on a show of hands, except when the unanimous resolution or a resolution without dissent of Proprietors is required by the Act.
- (8) On any poll each co-Proprietor is entitled to such part of the vote applicable to a Lot as is proportionate to his or her interest in the Lot.
- (9) The joint proxy (if any) on a poll has a vote proportionate to the interests in the Lot of such of the joint Proprietors as do not vote personally or by individual proxy.

## **16. COMMON SEAL OF THE STRATA COMPANY**

*[Deleted on First Consolidation]*

## **17. LOCAL AUTHORITY REQUIREMENTS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 24]*

## **18. AIR-CONDITIONING INSTALLATION, OPERATING AND REPLACEMENT COSTS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 25]*

**19. EXCLUSIVE USE RIGHTS OVER COMMON PROPERTY RELATIVE TO AIR-CONDITIONING PLANT AND ANY MACHINERY INSTALLATION**

In accordance with section 42(8) of the Act, rights of exclusive use and enjoyment over that volume of Common Property occupied by any air-conditioning plant and machinery (including all ducting, cabling and any ancillary equipment) that services and relates to an individual Lot are granted to the Proprietor of the Lot to which the air-conditioning plant and machinery relate but only for the purpose of providing and maintaining conditioned air to that Lot.

**20. ACCESS TO ROOF FOR MAINTENANCE OF LOT AND FOR INSTALLATION AND MAINTENANCE OF AIR-CONDITIONING PLANT AND OTHER MACHINERY**

- (1) A Proprietor shall only have access to the external roof area of any Buildings, subject to sub-bylaw (2) of this by-law, from time to time, for:
- (a) the repair, replacement or maintenance of the roof, the pipes or gutters forming part of the Lot, to the extent that such repairs are not the responsibility of the Strata Company under these by-laws; and
  - (b) the installation, maintenance, repair or replacement of any machinery or any building repair that may be required in respect of any air-conditioning plant or machinery installation that is the responsibility of the Proprietor,

and when undertaking any work, maintenance, repair or replacement under this sub-bylaw, the Proprietor shall only engage the services of qualified and competent tradesmen, use proper and new materials and ensure that the tradesmen engaged comply with all relevant safety regulations and make use of the safety devices available as part of the structure of the Buildings.

- (2) In each instance that a Proprietor requires access to the external roof of any Buildings, the Proprietor shall give reasonable notice to that effect to

the Strata Company or the duly appointed Strata Company Manager specifying:

- (a) the reason access is required;
- (b) the name of the contractor engaged by the Proprietor to undertake the replacement works;

and the Strata Company or the Strata Company Manager (as the case may be) may approve, on behalf of each Proprietor that may be affected by such access, of the access requested by a Proprietor on such conditions as the Strata Company or the Strata Company Manager thinks fit.

- (3) A Proprietor granted access to the external roof of any Buildings under this by-law shall indemnify, and keep indemnified, the Strata Company and/or the duly appointed Strata Company Manager and/or any Proprietor, occupier, tenant or other resident of a Lot against any claim made by any person resulting from any damage caused to the Lot or the property of any Proprietor, occupier, tenant or other resident of a lot in the Scheme, or the death, injury or damage to property suffered by any person granted access to the roof.
- (4) For the purposes of sub-by-law (2) of this by-law, each Proprietor expressly acknowledges and agrees that the Strata Company and the duly appointed Strata Company Manager has his or her authority to permit other Proprietors in the Scheme (by their workmen, agents or contractors) to traverse over the roof area over his or her Lot for the purposes set out in sub-by-law (1) of this by-law, and the Strata Company and/or the Strata Company Manager shall not be liable for any damage caused by such access for any reason whatsoever.

## 21. CLEANING AND GARDENING

*[Moved to Schedule 2 Conduct By-Laws and renumbered 26]*

## 22. LIMITATIONS ON USE OF LOTS AND LEASING

*[Moved to Schedule 2 Conduct By-Laws and renumbered 27]*

**23. INSTALLATION OF BARBEQUE ON A LOT**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 28]*

**24. WALL MOUNTED ENTERTAINMENT EQUIPMENT IN A LOT**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 29]*

**25. INSURANCE**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 30]*

**26. FACADES OF THE BUILDING**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 31]*

**27. FUNCTIONS AND DISPLAYS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 32]*

**28. LOUDSPEAKERS ETC.**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 33]*

**29. STRUCTURES IN COMMON PROPERTY**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 34]*

**30. OBLIGATION TO NOTIFY DEFECTS IN SERVICES**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 35]*

**31. BLOCKAGE OF DRAINAGE PIPES**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 36]*

**32. WATER LEAKAGE TO OTHER LOTS AND COMMON PROPERTY**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 37]*

**33. CLEANING AND MAINTENANCE OF COMMON PROPERTY AND COMMON SERVICES**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 38]*

**34. MAINTENANCE OF COMMON SERVICES WITHIN A LOT**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 39]*

**35. ACCESS OVER A LOT BY THE STRATA COMPANY OR ITS AGENTS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 40]*

**36. COMMON PROPERTY LIGHTING**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 41]*

**37. INSTRUCTING OF CONTRACTORS BY PROPRIETORS AND OTHERS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 42]*

**38. RECREATIONAL AND COMMON FACILITIES**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 43]*

### **39. RULES AND REGULATIONS**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 44]*

### **40. DISPUTE RESOLUTION**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 45]*

### **41. EASEMENTS AND ENCUMBRANCES OVER COMMON PROPERTY**

*[Moved to Schedule 2 Conduct By-Laws and renumbered 46]*

### **42. PENALTY FOR BREACH OF BY-LAWS**

Unless otherwise expressly provided to the contrary in any by-law, any person who breaches any by-laws comprising Schedule 1 or Schedule 2 is, subject to section 42A(2) of the Act, liable to pay a penalty of \$500.00 or such other amount as is prescribed by the Act from time to time.

### **43. AMENDMENTS TO SCHEDULE 1 BY-LAWS OF THE STRATA COMPANY**

*[Deleted on First Consolidation]*

### **44. AMENDMENTS TO SCHEDULE 2 BY-LAWS OF THE STRATA COMPANY**

*[Deleted on First Consolidation]*

### **45. FINANCIAL YEAR BY-LAW**

The financial year for the strata company will be determined at a general meeting of the strata company by an ordinary resolution resolving a period of 12 months ending on a defined date and in the absence of such resolution, the financial year shall be a

period of 12 months ending on **30 November**.

## **Schedule 2 - Conduct By-Laws**

### **1. FLOOR COVERINGS**

A Proprietor of a Lot shall ensure that all floor space within the Lot (other than that comprising kitchen, laundry, lavatory or bathroom areas) is covered or otherwise treated to an extent sufficient to prevent the transmission therefrom of noise likely to disturb the peaceful enjoyment of the Proprietor, occupier, tenant or other resident of another Lot.

### **2. BEHAVIOUR OF PROPRIETORS, OCCUPIERS AND TENANTS WITHIN THE SCHEME**

Without limiting or otherwise affecting by-laws 2(3), 22 or 38 of Schedule 1, a Proprietor, occupier, tenant or other resident of a Lot shall not:

- (a) use any Lot or part of the Common Property for any purpose which may be a breach of any Strata Company by-law applying to the Scheme, any Local Government Authority regulation or by-law, or a regulation or by-law of any other Relevant Authority;
- (b) use the Lot that he or she owns, occupies, leases or rents for any purpose that may be illegal or immoral or injurious to the reputation of the Scheme;
- (c) use any part of the Common Property for any purpose which may be unclean;
- (d) obstruct lawful use of Common Property by any person or permit to be done anything whereby any obstruction, restriction or hindrance may be caused to the entrances exists, access roads, pathways, of any Lot or any part of the Common Property to any person lawfully using the same;
- (e) park or stand any motor or other vehicle upon Common Property, except with the approval of the Strata Company or the duly appointed Strata Company Manager;

- (f) use any part of the Common Property for the parking or standing of a caravan, camper van, trailer, marine craft or commercial vehicle other than within those areas set aside for such use as may be allocated from time to time by the Strata Company or the duly appointed Strata Company Manager;
- (g) use any garage, trailer, camper, motor home or recreational vehicle as a temporary or permanent residence within the Scheme;
- (h) park or leave any vehicle in such a position where it is likely to be a nuisance or obstruct access or egress to any car parking area, Lot, any part of the Common Property or any part of the Scheme;
- (i) use any facility or utility situated with Common Property other than that for which it is specifically intended;
- (j) deposit or throw upon the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the Proprietor, occupier, tenant or other resident of another Lot or of any person lawfully using the Common Property;
- (k) make undue noise in or about any Lot or Common Property that disturbs any other person or that contravenes any regulation, by-law or statute of the Local Government Authority or any other regulation, by-law or statute of any Relevant Authority;
- (l) keep any animals on the Lot that he or she owns, occupies, leases or rents or the Common Property after notice in that regard has been given to him or her by the Council or the duly appointed Strata Company Manager;
- (m) *[Deleted on First Consolidation]*
- (n) use language or behave in a manner likely to cause offence or embarrassment to the Proprietor, occupier, tenant or other resident or another Lot or to any person using Common Property;

- (o) be inadequately clothed when upon Common Property;
- (p) ride bicycles, skateboards or rollerblades or like equipment on any portion of the Common Property;
- (q) be or remain upon the Common Property when intoxicated;
- (r) subject to by-laws 23 of Schedule 1 and by-law 6 of this Schedule 2, use or store on the Lot or upon the Common Property any inflammable chemicals, liquids or gas or other inflammable material, other than in a fuel tank of a motor vehicle or internal combustion engine; or
- (s) alter the structure of the Lot or gas, electrical, water or sewerage installation except as may be permitted and provided for under the Act and these by-laws, before commencement of the alteration.

### **3. CONTROL OF PESTS AND VERMIN**

A Proprietor, occupier, tenant or other resident of a Lot shall take all proper precautions to keep his or her Lot free of rodents, vermin, insects, pests, birds and animals and in the event of failing to do so, if so required, the Strata Company or the duly appointed Strata Company Manager will, but at the cost of the Proprietor, employ from time to time or periodically, pest exterminators for that purpose.

### **4. DAMAGE TO LAWNS ETC. ON COMMON PROPERTY**

Except with the approval of the Strata Company or the duly appointed Strata Company Manager, a Proprietor, occupier, tenant or other resident of a Lot shall not:

- (a) damage any lawn, garden, tree, shrub, plant or flower upon Common Property;  
or
- (b) use any portion of the Common Property for his or her own purposes as a garden or otherwise.

### **5. DRYING OF LAUNDRY ITEMS OR DISPLAY OF SIGNS AND PLACARDS**

Except with the approval of the Strata Company or the duly appointed Strata Company Manager, a Proprietor, occupier, tenant or other resident of a Lot shall not:

- (a) hang any washing, towel, bedding, clothing or other article on any part of the Parcel in such a way as to be visible from outside the Building, other than for a reasonable period on any lines or apparatus provided by the Strata Company for the purpose; or
- (b) display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his or her Lot in such a way as to be visible from outside the Building or on any part of the Common Property.

#### **6. STORAGE OF INFLAMMABLE LIQUIDS ETC.**

- (1) Without limiting by-law 23 of Schedule 1, a Proprietor, occupier, tenant or other resident of a Lot shall not, except with the approval in writing of the Strata Company or the duly appointed Strata Company Manager, use or store upon the Lot or upon the Common Property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other materials used or intended to be used for domestic purposes and then only in such quantities as reasonably necessary for those purposes.
- (2) This by-law is without prejudice to the Proprietor's and the Strata Company's respective rights and obligations under sections 54A and 55A of the Act.

#### **7. ALTERATIONS TO LOT**

- (1) A Proprietor shall not commence any structural alterations, building or associated works of any kind to his or her Lot before he or she has:
  - (a) obtained all the necessary approvals and permits from or of the Local Government Authority and each other Relevant Authority;
  - (b) obtained the consent of the Strata Company if the structural alterations are prescribed improvements within the meaning of section 7 of the

Act;

- (c) given to the Strata Company at least 14 days' written notice of the proposed structural alterations and the date that work is to commence and true and complete copies of all relevant plans and specifications in respect thereto and the approvals and permits obtained from the Local Government Authority and each other Relevant Authority pursuant paragraph (a) of this sub-by-law (1); and
  - (d) indemnified the Strata Company in respect of any cost, expense or liability that may be incurred by the Strata Company in connection with the Proprietor undertaking the structural alterations, building or associated works which indemnity shall be in writing in a form reasonably required by the Strata Company and prepared and endorsed with duty at the cost of the Proprietor.
- (2) In causing or allowing any structural alterations, building or associated works of any kind to be carried out on his or her Lot, a Proprietor shall ensure:
- (a) that he or she only engages qualified and competent tradesmen;
  - (b) that only proper and new materials are used;
  - (c) that all tradesmen's vehicles are parked, stored or kept within that part of the Proprietor's Lot intended for use as a car parking bay;
  - (d) that no refuse, rubbish, trash or building materials are stored on or within any part of the Common Property;
  - (e) that no security door or gate within the Scheme remains open while the works are being carried out;
  - (f) that any Common Property damaged as a result of conducting the works is cleaned and restored to the same state and condition as it was prior to the works commencing;

- (g) that access to or egress from the Proprietor's Lot by all tradesman bringing materials to the Lot for the purpose of carrying out the works is pre- arranged with or through the Strata Company Manager;
- (h) that no noxious or offensive activity shall be carried on upon his or her Lot between the hours of 5:00pm and 8:30am nor shall anything be done on his or her Lot which may be or may become an annoyance or nuisance to the Proprietor of other Lots or which shall in any way interfere with the quiet enjoyment of other Proprietors and without limiting the generality of the foregoing no mechanical or pneumatic tools shall be used in the performance of the works during the hours specified earlier in this paragraph (h); and
- (i) that so far as possible all works are carried out in an enclosed environment so as to prevent the escape of dust, debris and other materials from the Lot.

## **8. ALTERATIONS TO COMMON PROPERTY**

The facilities, amenities, Services and Common Property included in the construction plans and building specification approved by the Local Government Authority and each Relevant Authority (as required) will not be changed or altered in a manner so as to delete any item aforesaid from the Scheme without a majority resolution and the Strata Company will ensure that all such facilities, amenities, Services and Common Property are properly maintained and where necessary replaced should their proper function be beyond repair.

## **9. DAMAGE TO COMMON PROPERTY**

Should any damage whatsoever be caused to any part of the Common Property by any Proprietor, its tenants, servants, agents, invitees, licensees or contractors then that Proprietor shall be solely responsible for the costs of making good such damage. For the avoidance of doubt the Strata Company shall engage qualified tradesmen to make good any such damage, and the relevant Proprietor shall pay upon demand the costs so incurred.

## 10. MOVING FURNITURE ETC. ON OR THROUGH COMMON PROPERTY

A Proprietor, occupier, tenant or other resident of a Lot shall not transport any furniture or large object through or upon Common Property unless he or she has first given to the Council or the duly appointed Strata Company Manager not less than 48 hours' notice of his or her intention to do so to enable the Council or the Strata Company Manager (as the case may be) to:

- (a) arrange for proper precautions to be put in place to minimise potential damage to the Common Property, including but not limited to any lifts; and/or
- (b) arrange for its nominee to be present at the time when any such furniture or large object is to be so transported.

## 11. GARBAGE DISPOSAL

A Proprietor, occupier, tenant or other resident of a Lot:

- (a) shall maintain within his Lot, or on such part of the Common Property as may be authorised by the Strata Company or the duly appointed Strata Company Manager, in clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all Local Government Authority by-laws and ordinances relating to the disposal of garbage; and
- (c) ensure that the health, hygiene and comfort of the Proprietor, occupier, tenant or other resident of any other Lot is not adversely affected by his or her disposal of garbage.

## 12. APPEARANCE OF LOT

Subject to any contrary provisions in the by-laws, a Proprietor, occupier, tenant or other resident of a Lot shall not, without the written consent of the Strata Company or the duly appointed Strata Company Manager, maintain within the Lot anything visible from outside the Lot (including any window treatments) that, viewed from outside the Lot, is not in keeping with the rest of the Buildings or

the Scheme.

### **13. MAINTENANCE OF SERVICES AND PARTS OF THE BUILDINGS CONTAINED WITHIN A LOT**

The cost of maintenance, repair or replacement of any part of the Buildings, sewerage plumbing, water supply pipes, gas piping, electrical supply wiring and any other service supply contained within the boundaries of the individual Lot, beyond any common supply connection point contained within the Parcel, shall be the sole responsibility of the Proprietor of the Lot to which such maintenance, repair or replacement is required, unless specified to the contrary in these by-laws. When undertaking any work, maintenance, repair or replacement under this by-law, the Proprietor shall only engage the services of qualified and competent tradesmen and use proper and new materials.

### **14. STRATA CONTRIBUTIONS**

- (1) As provided in section 36 of the Act, the Council may determine amounts to be raised for the administrative expenses fund and the reserve fund and levy the Proprietors either:
  - (a) in proportion to the unit entitlement of their respective Lots; or
  - (b) in any other manner permitted under these by-laws and the Act from time to time.
  
- (2) The Council may raise contributions levied by the Strata Company pursuant to Section 36(1)(c) of the Act in respect of the administrative expenses fund on the basis that:
  - (a) separate budgets are prepared for the costs associated with the repair and maintenance of areas, plant and equipment which are provided for the exclusive or predominant use of particular Lots as reasonably determined by the Council or the Strata Company Manager; and
  - (b) the amount levied by the Strata Company for the control, repair and management of those areas, plant and equipment is apportioned

between those Lots which have the exclusive or predominant use of those areas, plant or equipment in the same proportion that the unit entitlement of each of those Lots bears to the total unit entitlements for all of those Lots.

## 15. VEHICLE PARKING

- (1) A Proprietor, occupier, tenant or other resident of a Lot must not:
  - (a) park or permit or allow to be parked any motor vehicle in a car parking bay that forms part of another Lot;
  - (b) obstruct or permit the obstruction in any way by any vehicle or howsoever of any car parking bay forming part of another Lot or any access ways leading thereto or therefrom; or
  - (c) conduct repairs on or restoration to any motor vehicle, on any portion of the Common Property.
- (2) In accordance with section 42A of the Act, if a Proprietor, occupier, tenant or other resident of a Lot contravenes sub-by-law (1) of this by-law, the Proprietor of the relevant Lot must subject to the Act pay to Strata Company or the Strata Company Manager on demand for each day or part thereof during which any such contravention occurs an amount equal to \$100.00.

## 16. TELEVISION ANTENNAS AND AERIALS

A Proprietor, occupier, tenant or other resident shall not erect any television antenna, receiving aerial or transmitting device within or about any lot without obtaining the prior written consent of the Council or the duly appointed Strata Company Manager, which consent shall not be unreasonably withheld.

## 17. SECURITY

- (1) A Proprietor, occupier, tenant or other resident shall not do or permit to be done anything that may prejudice the security or safety of the Building

or the Common Property. Without limiting the generality of the foregoing, all fire and security doors and gates must be kept locked or secured in an operational state when not in immediate use.

- (2) A Proprietor, occupier, tenant or other resident acknowledges and agrees that particular parts of the Scheme will have restricted access and will not be accessible by all Proprietors, occupiers, tenants or other residents as reasonably determined by the Strata Company. Without limitation, the Strata Company may restrict access to a portion of the Building to only such Proprietors, occupiers, tenants or other residents whom shall reside in a Lot that is within that portion of the Building.
- (3) In furtherance of sub-by-law (2) of this by-law, the Strata Company may restrict access to any part or parts of the Buildings or the Scheme by means of a proximity card reader system or security key system (**Security Access Devices**) for the purposes of securing the Buildings and the Common Property from intruders and to preserve the safety of the Buildings from fire and other hazards.
- (4) The Strata Company shall provide to each Proprietor two proximity cards and one security key and any further keys as the Strata Company determines to enable a Proprietor to operate the Security Access Devices and to gain access to such restricted areas in the Buildings which that Proprietor is permitted by the Strata Company to access.
- (5) The Strata Company may charge a reasonable fee for any additional Security Access Devices required by a Proprietor.
- (6) A Proprietor is responsible in making available Security Access Devices to any occupier, tenant or other resident of his or her Lot and must take all reasonable steps to ensure that any person provided with Security Access Devices complies with this by-law.
- (7) No Proprietor or person in possession of Security Access Devices may duplicate them or permit them to be duplicated and must take all reasonable steps to prevent their loss, theft, damage or transfer.

- (8) A Proprietor, occupier, tenant or other resident of a Lot must immediately notify the Strata Company or the duly appointed Strata Company Manager if any Security Access Device is lost, stolen, damaged or destroyed.
- (9) A Proprietor, occupier, tenant or other resident of a Lot and each of their respective visitors or invitees must not:
- (i) interfere with any safety equipment;
  - (ii) access or attempt to access any part of the Buildings or Scheme for which they have not been provided with Security Access Devices;
  - (iii) obstruct any fire escape or fire stair well; or
  - (iv) use and fire safety equipment except in the case of an emergency and then in accordance with the purpose for which it is designed.
- (10) A Proprietor, occupier, tenant or other resident of a Lot acknowledges and agrees that the Strata Company may install closed circuit television systems (**CCTV**) or other video and/or audio recording systems (**Security Recording Devices**) to monitor the use of the Common Property, the Recreational Facilities and the common facilities, and that the Security Recording Devices may be used for the purposes of determining whether any person has contravened any by- laws or any other law or regulation, and that the images or audio recordings made by the Security Recording Devices may be used as evidence in enforcing the by-laws or any other law or regulation but for no other purpose.

## 18. ALARM SYSTEMS

A Proprietor, occupier, tenant or other resident of a Lot must not install or cause to be installed a security alarm system which has an audible alarm but is permitted to install a monitored (back to base) security system {without an audible alarm}.

## 19. ENGAGEMENT OF STRATA COMPANY MANAGER

- (1) The Council shall, from time to time, engage the services of a suitably qualified and professional strata company manager for the purposes of administering the affairs of the Strata Company in respect to any or all of the responsibilities and obligations of the Strata Company as contained in sections 35 and 36(1) of the Act and to also perform any or all of those other duties of the Strata Company as contained in section 36(2) of the Act together with exercising any or all of the powers of the Strata Company in accordance with sections 37, 38, 39 and 43 of the Act and Schedule 1 by-law 10(1)(b), as may be required from time to time, and the Strata Company shall enter into an agreement with a Strata Company Manager for these purposes. The agreement shall set out the extent of the responsibilities, obligations, duties or powers to be imposed upon and delegated to the Strata Company Manager.
  
- (2) Without limiting the generality of sub-by-law (1) of this by-law, where the Strata Company Management Agreement so provides, the Strata Company Manager may:
  - (a) perform all the powers, authorities, duties and functions of the chairman, secretary and treasurer of the Strata Company and the Council or such of those powers, authorities, duties and functions as may be specified in the Strata Company Management Agreement; and
  
  - (b) sub-delegate all or any of the powers, authorities, duties and functions conferred upon the Strata Company Manager by the Strata Company Management Agreement to a person whom the Strata Company Manager considers is properly qualified in the management and operation of properties similar to the Buildings.

## **20. VARIATION OF THE STRATA COMPANY MANAGEMENT AGREEMENT**

The terms, conditions, delegation or responsibilities of the duties and powers of the Strata Company contained within the Strata Company Management Agreement, specified in by-law 19 of this Schedule 2, may only be varied (subject to any power of variation contained within the agreement itself) by a majority resolution of the Strata Company, an order of the State Administrative Tribunal or the Supreme Court, as provided for in the Act.

## **21. TERMINATION OF STRATA COMPANY MANAGER**

The Council may terminate an agreement with a Strata Company Manager upon and in accordance with the terms of the relevant Strata Company Management Agreement and must have prior to any such resolution to terminate such agreement have resolved to enter into a further agreement with another Strata Company Manager that shall contain the same terms, conditions, delegation of responsibilities, duties and powers of the Strata Company as were contained in the previous Strata Company Management Agreement (save and except as to the fees payable to the Strata Company Manager), unless varied in accordance with by-law 20 of this Schedule 2.

## **22. FAIR GO FOR USE OF INDIGENOUS CONTRACTORS**

The Council or the duly appointed Strata Company Manager shall, whenever it is required under these by-laws to employ, or procure the employment of, the services of a contractor in connection with any cleaning, maintaining, landscaping or pest control of any part of the Common Property or any facilities in the Common Property, give an equal and fair opportunity to indigenous contractors to bid for the relevant work.

## **23. LEGAL COSTS**

A Proprietor of a Lot must pay on demand to the Strata Company all legal costs on a full indemnity basis which the Strata Company pays, incurs or expends in connection with any default by the Proprietor, occupier, tenant or other resident of that Lot in the due and proper performance or observance of any by-laws (including but not limited to, recovery of Strata Company levy contributions).

## **24. LOCAL AUTHORITY REQUIREMENTS**

No Proprietor shall, or shall suffer or permit, any part of the Buildings or any other part of the Parcel to be used in a manner that contravenes any requirements of any Relevant Authority or the Local Government Authority or any legislation that may impose controls over the use of Lots and Common Property contained within the Scheme.

## **25. AIR-CONDITIONING INSTALLATION, OPERATING AND REPLACEMENT COSTS**

- (1) No Proprietor or other occupier shall install any air-conditioning plant or machinery within any Lot so that part of that plant or machinery projects into the Common Property or install it on the roof of the Buildings without obtaining the prior written approval for such installation from the Council or the duly appointed Strata Company Manager.
- (2) All air-conditioning plant and machinery (including all ducting) which services a particular Lot shall belong to and be the responsibility of the Proprietor of that Lot.
- (3) Notwithstanding anything to the contrary, the costs of the maintenance, operating, insurance, repair and replacement of the individual air-conditioning plant contained within the Buildings (including all ducting and other ancillary equipment) shall be the responsibility of the Proprietor of the Lot to which the air-conditioning plant relates. When undertaking any work, maintenance, repair or replacement under this sub-law, the Proprietor shall only engage the services of qualified and competent tradesmen and use proper and new materials.
- (4) Any costs of any repairs or replacements to any part of the Common Property (including the costs of any removal of old ducting or other air-conditioning plant) that may become necessary due to the operation, repair, maintenance or replacement of any air-conditioning plant for which a Proprietor is responsible shall be the responsibility of the Proprietor and shall be effected at the cost of that Proprietor to the satisfaction of the duly appointed Strata Company Manager or the Council as the case may be.

## **26. CLEANING AND GARDENING**

- (1) Without limiting the terms of any other by-law, the Strata Company or the duly appointed Strata Company Manager shall at all times employ, or procure the employment of, the services of a contractor for the purposes of maintaining the general cleanliness of the grounds of the Parcel and the

Common Property, and for the upkeep of the gardens on the Parcel (if any) (other than a garden of the type referred to in sub-by-law (2) of this by-law).

- (2) Where a portion of a Lot is designated as "CY" or "Courtyard" on the Strata Plan, and within that courtyard portion there is established a garden, then the Proprietor, occupier, tenant or other resident of that Lot is responsible for the upkeep of the gardens on that portion of his or her Lot.

## 27. LIMITATIONS ON USE OF LOTS AND LEASING

(1) General

No Lot may be used for any purpose that contravenes any by-law of the Strata Company or requirement or by-law of the Local Government Authority and any other Relevant Authority that may have jurisdiction over the use to which a Lot may be put.

(2) Limitations on Use

- (a) Subject to paragraphs (b), (c), (d), (e) and (f) of this sub-by-law (2), a Lot may only be used as a residential dwelling and shall not be permitted to be used for any unlawful use.
- (b) Notwithstanding paragraph (a) of this sub-by-law (2), a Proprietor, occupier, tenant or other resident of a Lot may conduct business from his or her Lot provided that:
- (i) customers of the business are not invited to visit the Lot for the purpose of conducting the business;
  - (ii) the conduct of the business from the Lot does not breach sub-by-law (1) of this by-law;
  - (iii) the conduct of the business does not cause any inconvenience to the Proprietors, occupiers, tenants or other residents of other Lots:  
and

- (iv) the business does not involve the manufacture, storage or vending of goods.
- (c) A part of a Lot that is designated as "SR" or "Storeroom" on the Strata Plan may only be used for storage and for no other purpose.
- (d) A part of a Lot that is designated as "CB" or "Carbay" on the Strata Plan:
  - (i) must not have erected on it any form of structure within or on the boundary of it which may prevent access to any other carbay adjacent to it;
  - (ii) may only be used for the parking of motor vehicles that can be parked within the relevant area without unreasonably interfering with the use of any other carbay adjacent to it;
  - (iii) may not be used for the repairing, servicing, restoration or washing of any motor vehicle or marine craft: and
  - (iv) may not, except with the prior approval of the Council or the duly appointed Strata Company Manager, be used for the parking or storage of any marine craft and then only if the parking or storage of any such marine craft does not unreasonably interfere with the use of any other carbay adjacent to it,

and each user of a carbay shall:

- (v) keep the carbay clean and in a safe condition at all times, and free from oil, lubricants and other spillages;
- (vi) not obliterate or damage any of the markings indicating the boundaries of each carbay; and
- (vii) indemnify and keep indemnified, the Strata Company and/or the duly appointed Strata Company Manager and/or any Proprietor, occupier, tenant or other resident of a Lot or any other visitor to the Parcel against any claim made by any person resulting from any

damage to property or injury or death caused by that user's use of a carbay or the state in which the user has left the carbay.

(e) A Proprietor, occupier, tenant or other resident of part of a Lot that is designated as "CY", "Courtyard", "B" or "Balcony" on the Strata Plan must:

- (i) only use the courtyard or balcony for uses reasonably envisaged for the quiet enjoyment of the courtyard or balcony and the placement of outdoor furniture settings, a gas or electric barbeque, pot plants and similar items;
- (ii) not use the courtyard or balcony for the general storage of any items and, in particular, flammable items (except a gas bottle used for barbeques); and
- (iii) permit the Strata Company Manager to inspect the courtyard or balcony from time to time to ensure that the requirements of this paragraph (e) are being complied with.

(f) Notwithstanding paragraph (a) of this sub-by-law (2), the Original Proprietor may use any Lot owned by the Original Proprietor for the purposes of display to prospective buyers or tenants of that or other Lots within the Scheme.

(3) Granting of Occupancy/Use Rights

(g) In granting any rights of occupation or use of the whole or part of a Lot to any person (whether as a tenant, licensee or invitee), a Proprietor of the Lot must:

- (i) provide, or must cause to be provided, to any such person, a full copy of the by-laws and a copy of all current rules as made under by-laws 38 and 39 of this Schedule 1 (**Rules**) at the commencement of the occupation or use;
- (ii) ensure that each such person covenants and agrees in writing

to comply with the by-laws and the Rules; and

- (iii) ensure that it has the right in writing to terminate each such person's rights to occupy or use the Lot (or the relevant part of the Lot) and therefore access the Parcel and the relevant Lot if that person persistently contravenes the by-laws and the Rules.
- (h) Without limiting paragraph (a) of this sub-by-law (3), a Proprietor may not grant any rights of occupation or use of that part of the Proprietor's Lot that:
  - (i) is designated as "SR" or "Storeroom" on the Strata Plan; or
  - (ii) is designated as "CB" or "Carbay" on the Strata Plan,

unless to another Proprietor, occupier, tenant or other resident of another Lot.

- (i) In accordance with section 42A of the Act, if a Proprietor, contravenes this sub-by-law, the Proprietor of the relevant Lot must subject to the Act pay to Strata Company or the Strata Company Manager on demand an amount equal to \$500.00 in connection with each contravention.

## **28. INSTALLATION OF BARBEQUE ON A LOT**

Unless a barbeque has already been constructed on a Lot (including the installation of a gas connection point for the purposes of connection to a barbeque) prior to the registration of the Strata Plan, a Proprietor, occupier, tenant or other resident of a Lot must not install or permit to be installed on his or her Lot a built-in barbeque or a barbeque gas connection point, other than with the prior written consent of the Strata Company. A Proprietor, occupier, tenant or other resident of a Lot may however use a portable barbeque that is not attached to or installed on the Lot.

## **29. WALL MOUNTED ENTERTAINMENT EQUIPMENT IN A LOT**

If a Proprietor, occupier, tenant or other resident of a Lot installs:

- (a) a plasma, LCD or other television panel or screen (**Television Screen**);  
and/or
- (b) a surround sound or home theatre system which includes a speaker system  
**(Audio Equipment)**,

on a wall which is immediately adjacent to another Lot, that Proprietor, occupier, tenant or other resident must ensure that the Television Screen or Audio Equipment is mounted or installed taking into account the acoustic integrity of the Lot so that noise is not transmitted from one Lot to another in a manner:

- (c) which causes disturbance; or
- (d) which may interfere with the peace, quiet and comfort of any other Proprietor, occupier, tenant or resident of a Lot.

### 30. INSURANCE

(1) The Strata Company shall:

- (a) insure and keep insured to their respective "replacement value" (as that phrase is defined in section 53 of the Act), all Buildings and parts of Buildings whether part of the Common Property or part of a Lot, all structures, all Services to Lots, including any machinery that forms part of the Common Property and the Common Property;
- (b) effect and maintain insurance in respect to damage to property, death or bodily injury for which Proprietors of Lots in the Scheme could become liable in damages in such amount as prescribed under the Act;
- (c) in respect to any employees or contractors engaged by the Strata Company, effect and maintain insurance against liability to pay compensation under any applicable workers compensation and rehabilitation legislation;

- (d) effect and maintain insurance in respect to office bearers liability;
  - (e) effect and maintain fusion cover on electric motors that form part of the Common Property; and
  - (f) insure against such other risks that the Strata Company from time to time may determine.
- (2) Without limiting the Proprietor's obligations under sections 54A or 55A of the Act, a Proprietor, occupier, tenant or other resident of a Lot shall be liable for any insurance excess costs that may result from a claim for malicious damage to the Common Property that abuts his or her Lot.
- (3) The Proprietor, tenant, occupier or other resident of a Lot (as the case may be) acknowledges that save for any negligence in the maintenance of the Common Property on the part of the Strata Company, the Buildings may not be secure from the ingress of wind, water or debris during storms (including cyclones) and tempests, and that neither the Strata Company (nor, to the extent permitted by-law, the Original Proprietor) shall be liable in any way whatsoever for any damage caused to any property, fixtures or fittings (including floor coverings) within the Lot during any such storms, cyclones or tempests.

### **31. FACADES OF THE BUILDING**

- (1) Each Proprietor, occupier, tenant or other resident of a Lot acknowledges that the boundaries of the Lots or parts of Lots which are Buildings are the inner surfaces of the walls, the upper surface of the floor and the under surface of the ceilings, and hence the parts of the Buildings that are not part of the Lots comprise Common Property, including the external boundary walls (and any voids), the floor slab and the ceiling voids.
- (2) Each Proprietor, occupier, tenant or other resident of a Lot acknowledges and agrees that:
- (a) he or she is not entitled to and shall not, without the prior written consent

of the Strata Company or the duly appointed Strata Company Manager, modify, alter or erect, or carry out works to the facade of the Building or to the roof or gutters of the Building adjacent to his or her Lot;

- (b) the Strata Company, by its workmen or agents, is entitled at all times to carry out such renovation or refurbishment works to the facades of the Building (which works shall include, but not be limited to, painting the facades from time to time) as the Strata Company or the duly appointed Strata Company Manager thinks fit;
  - (c) the Strata Company, by its workmen or agents, is entitled to carry out such maintenance and repair of the roof and gutters of the Building as the Strata Company or the duly appointed Strata Company Manager thinks fit; and
  - (d) the Strata Company may levy contributions against the Lots in proportion to their unit entitlements to fund the repair, maintenance and refurbishment (as the case may be) of the facades, roof and gutters of the Building.
- (3) For the purposes of sub-by-law (2)(b) and (2)(c) of this by-law, each Proprietor, occupier, tenant or other resident of a Lot hereby irrevocably authorises the Strata Company, by its workmen or agents, to have reasonable access to and over his or her Lot.

### **32. FUNCTIONS AND DISPLAYS**

Notwithstanding anything to the contrary, the Council or the duly appointed Strata Company Manager may permit any person or organisation to hold any function or exhibition or display and sell any merchandise in any part or parts of the Common Property at such times and upon such terms and conditions as the Council or the duly appointed Strata Company Manager in its absolute discretion thinks fit.

### **33. LOUDSPEAKERS ETC.**

The Proprietor, occupier, tenant or other resident of a Lot shall not place or operate, or permit to be placed or operated, any radio, television, receiver, loud speaker, amplifier

or other similar device in any part of the Common Property or in any place from where the same may be heard in any part of the Scheme (other than in his or her Lot) without the prior written consent of the Council or the duly appointed Strata Company Manager. The Council or the Strata Company Manager may grant or refuse consent in their absolute discretion, which consent may be granted subject to conditions, and, if given, such consent may be withdrawn at any time without compensation to the Proprietor, occupier, tenant or other resident of the Lot.

#### **34. STRUCTURES IN COMMON PROPERTY**

The Strata Company may erect, remove and re-erect structures in any part of the Common Property and may grant to any person the exclusive licence of all or any part thereof for such purposes, periods and upon such terms and conditions as the Strata Company or the duly appointed Strata Company Manager in its absolute discretion thinks fit provided that no such structure shall be erected that will materially affect the use or amenity of the Common Property or the access to or the visibility of any Lot.

#### **35. OBLIGATION TO NOTIFY DEFECTS IN SERVICES**

(1) A Proprietor, occupier, tenant or other resident of a Lot shall give the Strata Company or the duly appointed Strata Company Manager prompt notice of any accident to or defect in:

- (a) the water pipes, gas pipes, electrical installations, cabling or fixtures; or
- (b) the supply of sewer, water, gas, electricity, telephone, data or other Services;

which are situated:

- (c) in his or her Lot; or
- (d) within the Common Property,

and which comes to his or her knowledge and the Strata Company or the duly appointed Strata Company Manager shall have authority to enter upon any Lot by its agents or servants, in the circumstances having regard to the urgency involved, to carry out such repairs and renovations as it deems necessary for the safety and preservation of the Buildings and the Services.

- (2) If the Strata Company expends money to make good damage caused by a breach of the Act or the by-laws by any Proprietor or his or her tenants, servants, agents, invitees or licensees, the Strata Company shall be entitled to recover the amount expended as a debt in an action in any court of competent jurisdiction from the person who was the Proprietor of the Lot at the time when the breach occurred.

### **36. BLOCKAGE OF DRAINAGE PIPES**

- (1) The water closets, conveniences and other water apparatus including waste pipes and drains shall not be used for any purposes other than those for which they are constructed and no sweepings, rubbish, paints, toxic materials or other unsuitable substances shall be deposited therein.
- (2) Any damage or blockage resulting to such water closets, conveniences and other water apparatus, waste pipes and drains from misuse or negligence shall be borne by the Proprietor whether the same is caused by their own actions or those of their tenants, servants, agents, invitees or licensees.

### **37. WATER LEAKAGE TO OTHER LOTS AND COMMON PROPERTY**

- (1) The Proprietor or occupier of a Lot will be liable for the repair and replacement of any part of the Common Property, any part of another Lot or any of the contents of another Lot that has been damaged by water leakage from his or her Lot but only to the extent that that water leakage was caused or materially contributed to by any act, omission or neglect of such Proprietor or any of his or her agents, servants, tenants, licensees or invitees.
- (2) Should any leakage, seepage or transference of any water or liquid from the wet areas of a Lot or Lots to another Lot or Lots, any part of the Common

Property or the Buildings occur, the Strata Company shall give notice, in writing, to the Proprietor of the Lot or Lots from which the leakage, seepage or transference originates to rectify such leakage, seepage or transference. When undertaking any rectification works under this sub-law, the Proprietor shall only engage the services of qualified and competent tradesmen and use proper and new materials.

- (3) Should the Proprietor of the offending Lot or Lots not, within a time specified by the Strata Company or the duly appointed Strata Company Manager for the rectification to be carried out, carry out such works as may be required then the Strata Company may in accordance with section 38 and 39 of the Act employ whatever means may be necessary to rectify such leakage, seepage or transference.
- (4) Should the Strata Company or the duly appointed Strata Company Manager take action in accordance with sub-law (3) of this by-law then any and all costs incurred by or on behalf of the Strata Company in rectifying such leakage, seepage or transference shall be payable by the Proprietor of the offending Lot or Lots to the Strata Company and may be recovered by the Strata Company in accordance with section 38 of the Act.
- (5) Should any leakage, seepage or transference of water or liquid be found due to a fault or defect in any part of the Common Property then this by-law will have no effect other than to those powers conferred on the Strata Company pursuant to sections 38 and 39 of the Act.

### **38. CLEANING AND MAINTENANCE OF COMMON PROPERTY AND COMMON SERVICES**

- (1) Without limiting by-laws 21, 26 and 29 of this Schedule 1, the Strata Company shall be responsible for the maintenance, repair, replacement and cleaning of all Buildings, structures, utilities and other Services or improvements forming part of or located within the Common Property including, but not limited to, the vehicle access ways, thoroughfares, parking areas, stairways, gardens and landscaping, sewerage systems, drainage systems, water services, electrical wiring and switch systems, communication wiring and equipment and Common Property lighting.

- (2) The Council may on behalf of the Strata Company employ one or more caretakers and others in connection with the exercise and performance of the Strata Company's obligations under this by-law.

#### **39. MAINTENANCE OF COMMON SERVICES WITHIN A LOT**

Whilst it is the responsibility of the Proprietors of the individual Lots to maintain all Buildings and Services contained within the boundaries of the individual Lot to which they relate (insofar as is not inconsistent with any express provision of these by-laws to the contrary) this responsibility will not apply to any common services that may be contained within the boundaries of the Lot that are subject to section 11 of the Act, as amended, and in this regard sections 38 and 39 of the Act, as amended, shall apply.

#### **40. ACCESS OVER A LOT BY THE STRATA COMPANY OR ITS AGENTS**

Without limiting the generality of any other provision of these by-laws, where and to the extent that the Strata Company or the duly appointed Strata Company Manager resolves that access is reasonably necessary or desirable, the Proprietor, occupier, tenant or other resident of a Lot shall permit the Strata Company and its servants, agents and contractors and invitees with all necessary plant and equipment to have access through his or her Lot in order to obtain reasonable access to any part of the Common Property.

#### **41. COMMON PROPERTY LIGHTING**

The Proprietor of each lot acknowledges that he or she will be liable to pay by levy for all Common Property lighting expenses, including electricity, repairs and replacements in the proportion that the individual unit entitlement of each Lot bears in ratio to the aggregate unit entitlement of the Scheme.

#### **42. INSTRUCTING OF CONTRACTORS BY PROPRIETORS AND OTHERS**

- (1) No Proprietor, occupier, tenant or other resident of a Lot may directly instruct any contractors or workmen employed by the Strata Company or the duly

appointed Strata Company Manager unless authorised by the Strata Company or the Strata Company Manager.

- (2) Any Proprietor, occupier, tenant or other resident instructing any contractor or workmen without authorisation from the Strata Company or the duly appointed Strata Company Manager shall be responsible personally for the payment of such contractor or workmen and shall also be personally responsible for the cost of removing or altering any such work which the Strata Company or the duly appointed Strata Company Manager deems unsatisfactory.

#### 43. RECREATIONAL AND COMMON FACILITIES

- (1) Definitions

In the by-laws, the following additional definitions apply:

**Adult Resident** means a Resident over the age of eighteen (18) years;

**Child** means any person under the age of eighteen (18) years who on that day occupies a Unit;

**Gymnasium** means that part of the Common Property established for use as a gymnasium by the Strata Company from time to time;

**Pool Area** means that part of the Common Property established for use as a swimming pool area by the Strata Company from time to time;

**Recreational Facilities Rules** means any rules made by the Council under this by-law 38 or under by-law 39 of this Schedule 1 and that apply to the use of the Recreational Facilities generally or in connection with any specific Recreational Facility in particular;

**Resident** means every person who on that day occupies a Unit, and includes any Child;

**Unit** means:

- (a) in relation to a Resident, the unit (forming part of a Lot) which that Resident occupies as a residential dwelling; and
- (b) in relation to a Visitor, means the unit (forming part of a Lot) of the Resident to which the Visitor relates to occupies; and

**Visitor** means any person (excluding Residents) who is invited to a Unit by the Resident of that Unit or a person who has the express or implied consent of a Resident to be in that Resident's Unit.

(2) Making of Rules

- (a) This sub-bylaw does not limit by-law 39 of this Schedule 1.
- (b) The Council may make rules regarding the use of the Recreational Facilities.
- (c) A Proprietor, occupier, tenant or other resident of a Lot, including, without limiting the generality of the term, any lessee, licensee, guest or visitor of the Proprietor, occupier, tenant or other resident, must at all times comply with the rules made from time to time by the Council in relation to the Recreational Facilities.

(3) General Rules applicable to all Recreational Facilities

Unless subsequently repealed, modified or added to by the Council, the general rules in this sub-bylaw (3) shall apply to the use of all Recreational Facilities.

- (a) The Recreational Facilities may only be used by:
  - (i) a Resident or Visitor; or

- (ii) the Strata Company Manager, the relevant Asset Manager, or any person authorised to enter to the relevant Recreational Facility by the Strata Company Manager or relevant Asset Manager.
  
- (b) No Resident or Visitor may enter the Pool Area or the Gymnasium (as the case may be) unless that person is an Adult Resident or is accompanied by at least one Adult Resident related to the user.
  
- (c) Unless the prior approval of the Strata Company or the duly appointed Strata Company Manager is first obtained in connection with any particular event or use, in respect of each Unit, no more than four (4) Visitors may be in the Pool Area or the Gymnasium (as the case may be) at any one time and a Visitor must be accompanied by at least one Adult Resident related to the Visitor.
  
- (d) Glass objects, drinking glasses and sharp objects are not permitted in or about the Pool Area or the Gymnasium.
  
- (e) Unless using specific equipment installed in the Recreational Facility for that purpose, running, ball playing, noisy or hazardous activities are not permitted in or about the Recreational Facilities.
  
- (f) All users must be appropriately attired whilst using the Recreational Facilities, and no nude bathing is permitted.
  
- (g) All users must remove all items they take with them onto the Recreational Facilities and properly dispose of refuse.
  
- (h) In connection with any barbeques forming part of the Recreational Facilities, all users must properly clean them after each use.
  
- (i) All users must wear footwear to and from, and (unless in relation to a swimming pool), while using the Recreational Facilities.
  
- (j) The Recreational Facilities (other than the Gymnasium) may only be used

between the hours of 7:30am and 10:00pm or any other times specified by the Council or the duly appointed Strata Company Manager.

- (k) The Gymnasium may only be used between the hours of 5:00am and 12:00am or any other times specified by the Council or the duly appointed Strata Company Manager.
  
- (l) A user must not:
  - (i) use any part of a Recreational Facility to the exclusion of other users;
  - (ii) use any part of a Recreational Facility for any business;
  - (iii) enter or remain in the Pool Area or the Gymnasium if under the influence of drugs or alcohol;
  - (iv) behave in a loud, disorderly, immoral, abusive, riotous, indecent, obscene or aggressive manner either generally or in respect of any user;
  - (v) spit, urinate or defecate in any part of a Recreational Facility unless using a facility designed for that purpose;
  - (vi) use soap, detergent or any other substance that may foul or pollute the water in any swimming pool;
  - (vii) climb up or onto any fence, partition, roof or raised object in or adjoining the Pool Area other than one expressly intended for that purpose;
  - (viii) enter or exit the Pool Area or the Gymnasium (as the case may be) except through the gates and doors which are designed for that purpose;
  - (ix) eat in or take into the swimming pool in the Pool Area, or the

Gymnasium (as the case may be), any food, drink (other than water) or confectionery;

- (x) permit any pet or other animal to enter into the Pool Area or the Gymnasium (as the case may be);
- (xi) smoke or inhale tobacco or any other substance in the Pool Area or the Gymnasium (as the case may be);
- (xii) enter or use the swimming pool in the Pool Area, or the Gymnasium (as the case may be), if affected by or suffering from any infectious or contagious disease or skin complaint;
- (xiii) improperly use, damage or remove any furniture fittings, equipment or chattels located in any Recreational Facility; or
- (xiv) tamper with any equipment in any Recreational Facility.

(4) Acknowledgments, Indemnities and Releases

- (a) Every Adult Resident agrees to be bound by the Recreational Facilities Rules and furthermore warrants that every Child and Visitor related to that Adult Resident will not act in a manner which would, if that Child or Visitor were bound by the Recreational Facilities Rules, constitute a breach of the Recreational Facilities Rules by that person.
- (b) To the fullest extent permitted by law, every user:
  - (i) enters the Pool Area or the Gymnasium (as the case may be) at their own risk;
  - (ii) uses all equipment and facilities in any Recreational Facility at their own risk;

- (iii) assumes all risk and danger to them arising out of entering, remaining in and using the Pool Area or the Gymnasium (as the case may be) including without limitation damage or injury caused by other persons:
- (iv) assumes all risk and danger to them arising out of using all equipment and facilities in any Recreational Facility including without limitation damage or injury caused by other persons; and
- (v) releases the Strata Company, the Strata Company Manager, each Asset Manager and each of their employees and agents from all liability howsoever arising from:
  - (A) any accident, damage or injury to property of, or loss of property of, that user; and
  - (B) any accident, damage, injury or death suffered by that user, incurred whilst that user is or was in, or using any equipment or facility in, any Recreational Facility (as the case may be).
- (c) Every Adult Resident, regardless of whether he or she was in the Pool Area or the Gymnasium (as the case may be), accepts all responsibility for all of the risk and danger to all of those Children and Visitors arising out of those Children and Visitors entering, remaining in and using the Pool Area or the Gymnasium (as the case may be), including without limitation damage or injury caused by other persons.
- (d) Every Adult Resident indemnifies and shall keep indemnified the Strata Company, the Strata Company Manager, each Asset Manager and each of their employees and agents from and against any loss, damage, consequential loss and damage, claims, demands, proceedings and actions whatsoever made in relation to:
  - (i) any accident damage or injury to property of, or loss of property of, that Resident and every Resident and Visitor relating to that Resident; and

- (ii) any accident, damage, injury or death suffered by that Resident and every Resident and Visitor relating to that Resident, in or about or proximate to or arising out of the use of the Pool Area or the Gymnasium (as the case may be).
  
- (5) Appointment and Role of Asset Manager(s)
  - (a) The Strata Company must appoint and may dismiss and replace from time to time an Asset Manager to manage:
    - (i) the Pool Area; and
  
    - (ii) the Gymnasium,

on terms and conditions acceptable to the Strata Company.
  
  - (b) The relevant Asset Manager may:
    - (i) suspend for any period of time deemed necessary by the Asset Manager, any person from entering the Pool Area or the Gymnasium (as the case may be) if in the opinion of the Asset Manager that person is breaching the applicable Recreational Facilities Rules or if in the opinion of the Asset Manager it is necessary or desirable for the safety or well-being of users generally or any user specifically that that person be so suspended;
  
    - (ii) require every user to immediately vacate the Pool Area or the Gymnasium (as the case may be), if in the opinion of the Asset Manager it is necessary or desirable for the safety or well-being of users generally or any user specifically that the Pool Area or the Gymnasium (as the case may be) be immediately evacuated;
  
    - (iii) direct any user as to the manner in which that user may use and enjoy the Pool Area or the Gymnasium (as the case may be) and that

user shall obey the lawful commands of the Asset Manager; and

- (iv) refuse admission to or remove or cause to be removed from the Pool Area or the Gymnasium (as the case may be) any user who in the opinion of the Asset Manager is guilty of a breach of any of the applicable Recreational Facilities Rules or who the Asset Manager reasonably suspects to be guilty of a contravention of any of the applicable Recreational Facilities Rules.
- (c) In relation to the Pool Area, the Asset Manager shall do all things reasonable to ensure that all legislation and regulations and orders including, without limitation, the *Health (Aquatic Facilities) Regulations 2007* (as amended or replaced from time to time) are complied with.
- (d) The relevant Asset Manager shall ensure that the:
  - (i) Pool Area is maintained at all times the Pool Area is open, and that the water in the swimming pool is of such quality as not to be injurious to the health of users; and
  - (ii) Gymnasium is maintained at all times the Gymnasium is open, and that the equipment in the Gymnasium is repaired or replaced as necessary if it is damaged or defective and the Asset Manager becomes aware of the same.

(6) Costs of Recreational Facilities

The Strata Company may prepare separate budgets for the maintenance, repair and running costs, inclusive of budgeting for any replacement equipment required, in connection with, any Recreational Facility, and determine how such costs and expenses shall be apportioned between the Proprietors of Lots. The Strata Company may levy contributions to each Proprietor of a Lot in proportion to the unit entitlement of each such Lot to recover the costs referred to in this sub-by-law (6).

#### 44. RULES AND REGULATIONS

- (1) The Council may from time to time make and prescribe rules and regulations (not inconsistent with these by-laws as amended from time to time) for the proper management of the Common Property and/or any improvements on the Parcel and the conduct of persons on the Parcel generally. All rules made by the Council from time to time must be consistent with all applicable laws and otherwise comply with the requirements of any Relevant Authority in connection with the Common Property and/or any improvements on the Parcel and the conduct of persons on the Parcel generally.
  
- (2) Without limiting the generality of sub-by-law (1) of this by-law, the Council may make rules and regulations in regard to the following matters:
  - (a) the use, safety and cleanliness of the Common Property and the conduct of the Proprietors, mortgagees in possession, tenants, occupiers and their employees, agents, contractors and invitees, including but not limited to in connection with any Recreational Facilities;
  
  - (b) the control of traffic and the parking of vehicles on such parts of the Common Property as shall be set aside for the same;
  
  - (c) the manner and times of delivery of goods;
  
  - (d) the removal of garbage and other rubbish;
  
  - (e) the security of the Common Property, the Buildings, facilities and Services comprised within the Scheme;
  
  - (f) fire and emergency exercises;
  
  - (g) the maximum speed limit not to be exceeded by any vehicle travelling upon the Parcel;
  
  - (h) control and erection of external antenna or receiving devices;
  
  - (i) control and erection of external advertisements and signs on the facades of

the Building; or

(j) any other matter which the Council considers desirable or necessary to regulate.

- (3) A Proprietor, mortgagee in possession, tenant or occupier of a Lot shall comply with and shall ensure that their respective servants, agents, employees, contractors, invitees and licensees comply with any such rules and regulations.
- (4) For the avoidance of doubt, the Council may from time to time direct that signage be installed in or on any part of the Common Property (including the Recreational Facilities) to regulate the conduct of persons on such parts of the Common Property, including without limitation, the speed at which motor vehicles may driven on the Common Property, and upon the installation of such signage the Council shall be deemed to have made a rule that such signage is to be complied with.

#### 45. DISPUTE RESOLUTION

- (1) In this by-law, **Dispute** includes a dispute or disagreement between:
- (a) the Strata Company and a Proprietor, tenant or occupier of a Lot; or
- (b) two or more Proprietors, tenants or occupiers of separate Lots.
- (2) In the event of a Dispute arising, the Dispute will be resolved by referring the Dispute to an appropriate expert for determination, it being the case that:
- (a) if the Dispute concerns the design or construction of any improvements, the Dispute will be referred to a suitably qualified engineer;
- (b) if the Dispute concerns monetary or financial issues, the Dispute will be referred to a suitably qualified accountant; or

- (c) if the Dispute concerns legal issues, the Dispute will be referred to a suitably qualified lawyer.
- (3) An expert appointed under this sub-by-law (2) must be "independent", meaning that he or she has not undertaken any work for any of the parties to the Dispute within the last five years or have any other affiliation or history of dealings with any of the parties to the Dispute that may reasonably be considered to be capable of influencing or leading to any bias in his or her determination of the Dispute in favour of or against any such party.
- (4) If the parties cannot agree on the appropriate expert to which the Dispute is to be referred within 14 days of the Dispute arising, the expert will be appointed by the President (or acting President) of the Law Society of Western Australia (Inc.) at the request of any party to the Dispute.
- (5) The decision of the expert will be final and binding on the parties to the Dispute and those parties will pay the costs of the expert in equal shares.

#### 46. EASEMENTS AND ENCUMBRANCES OVER COMMON PROPERTY

- (1) For the avoidance of doubt, each Proprietor, occupier, tenant and other resident of a Lot must comply with the requirements of each easement or other encumbrance over the Common Property, and must not do anything that would constitute to a breach of the relevant easement or other encumbrance.
- (2) A Proprietor, occupier, tenant or other resident of a Lot shall indemnify and shall keep indemnified the Strata Company and all other Proprietors (**Indemnified Parties**) against any loss or claim that may be made or brought against any of the Indemnified Parties in any way connected with a breach by the Proprietor or any of the occupiers, tenants or other residents of his or her Lot of any easement or other encumbrance over the Common Property.