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Owners Corporation Notification of Making Rules

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Section 27E(1) Subdivision Act 1988
(when lodged with Plan)

Lodged by

Name: Maddocks

Phone: 9288 0555

Address: 140 William Street, Melbourne

Reference: NFH:NJS:5616594

Customer Code: 1167E

Applicant: *(full name and address including postcode)*

Wyndham Harbour Pty Ltd of Level 1, 70 Dorcas Street, Southbank, VIC 3006

Plan No.: PS540313Q

Owners Corporation No.: 1

Supplied with notification is:

A copy of the proposed rules of the Owners Corporation

Date: 19/09/2012

Signature of Australian Legal Practitioner under the Legal Profession Act 2004 for applicant:

NICHOLAS JAMES SPARKS
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

OC015754M



Wyndham Harbour
Draft Owners Corporation Rules

Owners Corporation No. 1
on Plan of Subdivision PS540313Q
(Unlimited Owners Corporation)



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of Lodging Party

[Signature]



Owners Corporation No. 1 on PS 540313Q

Additional Rules

Part A - General

1. Definitions and interpretation

1.1 Definitions

In these rules, unless the context otherwise requires:

Act means the *Owners Corporation Act 2006 (Vic)*;

Applicant means an Owner who has made an Application;

Application means an application made for the Design Review Committee to Approve development of a Lot in accordance with rule 8.2;

Approve or **Approval** means an approval in writing given by the Design Review Committee in respect of an Application and can include conditions, as subsequently endorsed or modified by the Council;

Authority means any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament;

Bond means monies (in a form determined by the Design Review Committee) which the Owner may be required to deposit with the Owners Corporation on account of any Remedy for non compliance noted in rule 10.3 or any Damage that may be caused in the course of development of a Lot, in accordance with rule 5.1(c)(iv);

Building has the same meaning as in the Planning and Environment Act 1987;

Commencement Date means the date which is 24 months from the Settlement Date;

Commence Construction means to begin the 'base stage' construction works for the dwelling at the Lot, as defined in section 40(1) of the *Domestic Building Contracts Act 1995 (Vic)*, in accordance with;

- (a) The Residential Design Guidelines;
- (b) any approval of the Design Review Committee; and
- (c) any other approval issued by an Authority for the construction of a dwelling at the Lot.

Commercial Lot means any lot on the Plan designated by the Owners Corporation from time to time to be a commercial lot;



Commercial Purposes means use for a restaurant, café, retail use or other commercial purpose;

Common Areas means the Common Property No. 1 on the Plan, the public areas that the Owners Corporation is required to maintain under the OEMP Activation Agreement and any area leased or licensed to the Owners Corporation;

Completion Date means the date which is:

- (a) 12 months from the Commencement Date; and
- (b) 36 months from the Settlement Date;

Council means the Wyndham City Council and includes (where applicable) any successor local government body whose municipality may at any time include the Development Land or the Estate;

Damage means damage caused during the course of development of a Lot including, but not limited to, damage to adjoining lots and buildings, roads, footpaths, landscaping and public utility infrastructure;

Design Review Committee means a committee appointed by the Original Owner and /or by the Owners Corporation from time to time, to review and determine applications to develop Lots within the Development Land in accordance with the Residential Design Guidelines;

Development Agreement means any agreement between the Original Owner and the Owners Corporation in relation to the Estate, including any ancillary agreements the between the Original Owner and the Owners Corporation such as development leases or other licences;

Development Land means the whole of the land in the Plan as amended from time to time;

Dispute means a dispute or other matter arising under the Act, Regulations or these rules including a dispute or matter relating to:

- (a) the operation of the Owners Corporation;
- (b) an alleged breach by an Owner or Occupier of an obligation imposed on that person under the Act, Regulations or these rules; or
- (c) the exercise of a function by a Manager in respect of the Owners Corporation.

Domestic Building Contract means any domestic building contract within the meaning of the *Domestic Building Contracts Act 1995* (Vic) entered into by the Original Owner;

Dwelling means a residential dwelling constructed on a Lot;

Estate means the Original Owner's development known as "Wyndham Harbour" and includes the Development Land and any other land including any land leased or licensed areas and water purchased or otherwise obtained by the Original Owner for which the Original Owner or an Owners Corporation is or will become responsible;

Facilities Manager means the person appointed by the Owners Corporation to control and supervise the operation and management of the Common Areas;

Local Laws means all local laws made from time to time by the Council;

Lot means a lot on the Plan and includes any lot created by a subsequent stage of the Plan or any part of the Development Land or the Estate;

Maintenance Fund means a fund or part of a fund used for implementation of the Maintenance Plan (if any);

Maintenance Plan means a maintenance plan (if any) established and approved by the Owners Corporation as contemplated by the Act;

Manager means the manager appointed by the Owners Corporation under Section 119 of the Owners Corporation Act 2006;

Occupancy Permit means an occupancy permit issued under the Building Act 1993 (Vic) for the dwelling on a Lot;

Occupier means the legal occupant from time to time of a Lot;

OEMP means the Wyndham Harbour Operational Environmental Management Plan as varied from time to time;

OEMP Activation Agreement means the document between the Original Owner, the Council and the Owners Corporation under section 173 of the Planning and Environment Act 1987 (Vic);

Original Owner means Wyndham Harbour Pty Ltd and its successors, assigns, mortgagee or chargee;

Owner means an Owner of a Lot (and includes any mortgagee in possession of a Lot);

Owners Corporation means Owners Corporation No.1 on PS540313Q;

Original Owner's Representative means the member of the Design Review Committee representative appointed by the Original Owner from time to time;

Person means a person bound by these rules;

Plan means Plan of Subdivision No PS540313Q;

Planning Scheme means the Wyndham Planning Scheme as amended from time to time;

Recreation Areas include the following areas, if any, on the Estate:

- (a) tennis court;
- (b) barbecue area;
- (c) clubhouse; and
- (d) any other facility provided for the use of residents and any other persons lawfully on the Estate.

Refuse or Refusal means a refusal in writing given by the Design Review Committee in respect of an Application;



Regulations means the *Owners Corporations Regulations* 2007 (Vic);

Residential Design Guidelines means the guidelines for the development of housing on the Estate approved by the Council from time to time, a copy of which are available from the Owners Corporation on request;

Road has the same meaning as “road” as defined in the Local Laws;

Section 173 Agreement means:

- (a) the section 173 agreement dated 7 July 2011 between the Original Owner, Council and the Werribee South Foreshore Committee of Management;
- (b) the section 173 agreement dated 8 December 2010 between the Original Owner and Council
- (c) the section 173 agreement dated 29 November 2010 registered against between the Original Owner, Council and VicRoads ; and
- (d) the provisions of any agreement which the Vendor may be required to enter into with any responsible authority in relation to the Plan including, but not limited to, an agreement under Section 173 of the *Planning and Environment Act* 1987 and any agreement amending the section 173 agreements specified in items (a), (b) and (c) of this definition;

Settlement Date means the date of transfer of any Lot on the Plan by the Original Owner to the Owner of any Lot on the Plan;

Vacant Lot means any lot without a Dwelling;

Vehicle has the same meaning as ‘motor vehicle’ as defined in the *Road Safety Act* 1986;

1.2 Interpretation

- (a) These Owners Corporation Rules are to be interpreted having regard to the following objectives of the Original Owner:
 - (i) ensuring compliance with any obligations of the Owners Corporation in the Section 173 Agreements;
 - (ii) the OEMP Activation Agreement;
 - (iii) enhancing the amenity of every Lot;
 - (iv) maintaining and enhancing any landscaping for which the Owners Corporation is responsible and any other relevant landscaping requirements;
 - (v) ensuring compliance with Local Laws.
- (b) In these rules, except to the extent that the context otherwise requires:
 - (i) the singular includes the plural and vice versa;
 - (ii) person includes a natural person, each other kind of legal entity and an unincorporated association;

- (iii) reference to a statute or any other law is a reference to the statute or law;
- (iv) Owners Corporation includes any elected committee of the Owners Corporation, or where the context requires, a managing agent appointed by the Owners Corporation;
- (c) Clause headings will be disregarded in the interpretation of these rules.
- (d) If it is held by a court of competent jurisdiction that:
 - (i) any part of these rules is void, voidable, unenforceable or ultra vires; or
 - (ii) these rules would be void, voidable, unenforceable or ultra vires unless some part of them were severed from the remainder of them,

then that part will be severable and severed from these rules but without affecting the continued operation of the remainder.
- (e) The Original Owner will arrange for a management agreement to be entered into by the Owners Corporation with the Manager.
- (f) The Manager will arrange for an operations agreement to be entered into by the Owners Corporation with the Facilities Manager.

2. Original Owner

2.1 Display Lot

While the Original Owner is the owner of any Lot it may:

- (a) use any such Lot for display purposes;
- (b) allow prospective purchasers of any Lot to inspect such display Lot; and
- (c) use such signs, advertising or display material in or about the display Lot and Common Areas as it thinks fit.

2.2 Signs

Any signs erected pursuant to rule 2.1 must be attractive and tasteful having regard to the general aesthetics and amenity of the Estate and must not at any time be more, in number and size, than is reasonably necessary.

2.3 Development Rights

- (a) Notwithstanding anything to the contrary contained in any other rules, for so long as the Original Owner is an Owner or an Occupier or is in engaged in any action required to complete the Estate or any mortgagee or chargee of the mortgagee of the Original Owner has an interest in any part of any Lot these rules shall not apply to or be enforceable against the Original Owner or its mortgagee or chargee where to do so would prevent, hinder, obstruct or in any way interfere with any works of any nature or description that the Original Owner their servant, agents and contractors their mortgagee or chargee, may be engaged in or which may need to be carried out in order to complete construction of the buildings and facilities comprised in Estate.



- (b) The Original Owner shall be and are by this rule in relation to the completion of the Estate, authorised by the Owners Corporation to:
- (i) progressively develop staged lots as set out in the Plan;
 - (ii) incorporate further land into the Plan, to become part of the Estate;
 - (iii) erect any barriers, fences, hoardings, signs as the Original Owner deems necessary to facilitate any works to be carried out in relation to the Estate;
 - (iv) notwithstanding anything herein contained take exclusive and sole possession of any parts of the Common Areas as the Original Owner may need to have exclusive possession of in order to carry out any works or activities in relation to the Estate;
 - (v) exclude all and any Owner's or Occupiers or their agents or invitees from any parts of the Common Areas as may be necessary in order to carry out any works in relation to the Estate;
 - (vi) erect for sale promotional advertising or other signs as the Original Owner may require on any part of the Common Areas;
 - (vii) grant rights to use or access through or over the Common Areas to third parties on such terms and conditions as the Original Owner deems fit;
 - (viii) limit or restrict access to certain areas of the Estate including areas of the Common Areas in order to expeditiously complete the Original Owner's development at the Estate ; and
 - (ix) use whatever access is required to the Estate as necessary to carry out any works and to block for whatever period as is necessary access to the Estate in order to carry out any works,

provided that the Original Owner and any third party authorised by it under this rule or any party to which it assigns all or part of the benefits of its rights under this rule, will use its best endeavours to minimise disturbance and inconvenience to others occupying or using the Common Areas and will make good any damage caused due to the exercise of its powers under this Rule.

- (c) Upon the written request by the Original Owner or its mortgagee or chargee the Owner's Corporation shall sign whatever consents, authorities, permits, agreements or other such documents as may be required from time to time to enable the Original Owner or its mortgagee or chargee to complete the Estate and or comply with or discharge any obligations imposed on the Original Owner by an Authority having jurisdiction (including, without limitation, the entering into of any of the contracts referred to in rule 2.6(a)(ii)-(iv)), provided that any such request is consistent with the powers and duties of the Owners Corporation under the *Subdivision Act* 1988 or the *Owners Corporations Act* 2006 and any regulations made pursuant to those Acts.
- (d) An Owner or Occupier must not vote in favour of any motion for a resolution proposed for consideration by a general meeting of the Owners Corporation which would revoke this rule or contravene any right or reprieve afforded to the Original Owner under this rule, except as is inconsistent with the powers of duties of the Owners Corporation.

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- (e) In case of any inconsistency between the rules and the rights of the Original Owner under any agreement for the Development Land, the Original Owner's rights under the agreement for the Development Land shall prevail and the Owner's, Occupiers and Owners Corporation must not seek to enforce the rules against the Original Owner where to do so would conflict with the Original Owner's rights under any such agreement for the Development Land.
- (f) An Owner or Occupier must comply with the terms of any agreement for the Development Land between the Original Owner and the Owners Corporation that is disclosed to the Owner or Occupier.
- (g) In exercising its rights under this rule, the Original Owner must act honestly and in good faith and with due care and diligence in the interests of the Owners Corporation and must have regard to the amenity of Owners. The Original Owner must only exercise its rights to the extent necessary for the development of the Estate. The Original Owner must not exercise its rights under this Rule to arbitrarily exclude the Owners Corporation or the participation of Owners.

2.4 Rectification of Damage

The Original Owner is permitted to use and develop the Common Areas for the purpose of developing the Estate. If any damage is caused to the Common Areas or anything on the Common Areas, the Original Owner will make good the damage at its expense.

2.5 Management Lot

A Lot from time to time, owned and selected by the Original Owner, may be used for administration, management and related purposes by the Owners Corporation and /or any person appointed for such purposes by the Owners Corporation.

2.6 Warranties, Novation, Assignment and Entering into of Contracts

- (a) The Original Owner may at their discretion enter into contracts (which includes without limitation, any agreement, lease or licence) relating to the Estate, including, but not limited to:
 - (i) cleaning, maintenance and/or inspection of buildings, essentials services, other building services or functions, common areas of any Building, landscaping, or any other Common Areas, as may be appropriate and necessary for the proper maintenance, care and function of the Common Areas;
 - (ii) access for the maintenance, management and/or monitoring of all:
 - (A) landscaping, public areas, Common Areas and infrastructure (including without limitation, any wet areas, the foreshore reserve and the northern beach at or surrounding the Estate);
 - (B) general maintenance matters, environmental health, public open space, heritage and occupational health and safety; and
 - (C) matters specified in or relating to clause 5.1 of the section 173 agreement dated 29 November 2010 in respect of certificates of title 10041 folio 486 and folio 487;



- (iii) agreements with third parties (to the extent that it is able and subject to compliance with all laws) for the exclusive right to provide the Estate with services and utilities; and
 - (iv) agreements with any Authority (including without limitation, Parks Victoria).
- (b) All Owners acknowledge and agree that the Owners Corporation may be required by the Original Owner to accept an assignment or novation of the contracts referred to in rule 2.6(a) at the first meeting of the Owners Corporation(s).
- (c) The Owners Corporation(s) must maintain any contracts assigned or novated to it under this rule to the end of the term of the relevant contract.
- (d) The Owners Corporation(s) must comply with the terms of and properly manage any time or condition limited warranties for items, components or parts of the Common Areas or other property managed by the Owners Corporation provided by subcontractors or suppliers so as to ensure they remain valid for the benefit of the Owners Corporation(s).
- (e) The Owners Corporation(s) must ensure that it provides for or enters into contracts to provide for care, cleaning, maintenance and inspection of any part of the Common Areas to enable it to perform its obligations under the Act and these Rules upon the lapse of any subcontractor or supplier backed warranty or upon the end of any contract assigned or novated to it by the Original Owner.
- (f) All Owners or Occupiers must contribute its proportion of the cost incurred by the Owners Corporation(s) in complying with this rule 2.6 relative to the lot liability on the Plan.

2.7 Enforcement of Domestic Building Contract

- (a) This rule applies when the Original Owner is required to take steps to enforce any Domestic Building Contract in relation to the Common Areas.
- (b) If the Original Owner takes steps contemplated by rule 2.7(a), the Original Owner may:
 - (i) make a demand in writing to the builder under any Domestic Building Contract to comply with the terms of the Domestic Building Contract and/or rectify any breach of the Domestic Building Contract;
 - (ii) exercise any right under the Domestic Building Contract to withhold any payment to the builder or have recourse to any security provided by the builder under the Domestic Building Contract;
 - (iii) settle any dispute under any Domestic Building Contract between the Initial Owner and the builder on terms acceptable to the Original Owner; and
 - (iv) take any other enforcement action the Original Owner considers appropriate in the circumstances.
- (c) An Owner must not require the Original Owner to take any further steps other than those listed in rule 2.7(b).



- (d) The Owners must if required to do so by the Original Owner pay or reimburse the Original Owner its portion of any enforcement relative to its lot liability on the Plan.
- (e) Where the Original Owner has elected to enforce any Domestic Building Contract, an Owner or Occupier must not take any action to deny access to any part of the Common Areas to any person, persons, or entity who may be required by the Estate to take remedial action, repair, rectify, alter or amend any component of the Common Areas. Owner's and Occupiers must follow any safety instruction or procedure put in place to protect the safety of Occupiers, workers, pedestrians, or the Buildings on the Estate. An Owner, Occupier or the Owners Corporation in general must not take any action to prevent any Domestic Building Contract being enforced by the Original Owner except in accordance with the law.

3. Design Review Committee

3.1 Establishment

The Original Owner has established the Design Review Committee to administer the Residential Design Guidelines.

3.2 Owners Corporation Role

The Owners Corporation must:

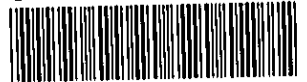
- (a) ensure that the Design Review Committee is constituted from time to time in accordance with this rule 3;
- (b) ensure that meetings of the Design Review Committee are convened as required in order for the Design Review Committee to fulfill its functions as set out in these rules;
- (c) act as secretary of the Design Review Committee in receiving, reviewing and distributing all correspondence addressed or directed to the Design Review Committee; and
- (d) receive and account for all monies payable in relation to Approvals and the functions of the Design Review Committee.

3.3 Membership of the Design Review Committee

(a) Original Owner is Proprietor

If the Original Owner is the proprietor of any land in the Plan the Design Review Committee is to be constituted of four members, as follows:

- (i) one member appointed, from time to time, by the Original Owner;
- (ii) a representative from the Original Owner's design architect team;
- (iii) one member appointed, from time to time, by the Owners Corporation for a term stipulated by the Owners Corporation at the time the appointment or appointments are made; and
- (iv) a representative of the Council.



(b) Original Owner Not Proprietor

If the Original Owner is not the proprietor of any land in the Plan the Design Review Committee is to be constituted of four members, as follows:

- (i) a representative from the Original Owner's design architect team;
- (ii) two members appointed, from time to time, by the Owners Corporation for a term stipulated by the Owners Corporation at the time the appointment or appointments are made; and
- (iii) a representative of the Council.

(c) Termination of Appointment

- (i) A person appointed to be a member of the Design Review Committee (other than the Original Owner's Representative or Council), vacates office:
 - (A) upon receipt by the Owners Corporation of notice in writing from that member of the resignation of that member;
 - (B) if that member dies or becomes mentally ill; or
 - (C) if the Owners Corporation determines that the appointment of that member is terminated.
- (ii) The Owners Corporation will determine that the appointment of a member is terminated if that member is without prior leave granted by the Design Review Committee absent from two consecutive meetings of the Design Review Committee of which due notice has been given to that member.
- (iii) The Council must advise the Owners Corporation in writing of any change in its nominee.

(d) Vacation of Original Owner's Representative

The Original Owner's Representative vacates office upon:

- (i) receipt by the Owners Corporation of notice in writing:
 - (A) from that member of the resignation of that member; or
 - (B) from the Original Owner that the appointment of that member has been terminated; or
 - (C) upon the Original Owner ceasing to be the proprietor of any land within the Plan.

(e) Vacancy

Upon the occurrence of a vacancy on the Design Review Committee (other than the Original Owner's Representative or Council) the Owners Corporation is to appoint a person to fill the vacancy and a person so appointed is, subject to rule 3.3(c), to hold office for the balance of the term of the predecessor to the person so appointed.



3.4 Remuneration

Members of the Design Review Committee other than the Council nominee may be remunerated by the Owners Corporation out of the fees received by the Owner's Corporation from an Applicant pursuant to rule 8.5 for work performed under these rules in their capacity as members of the Design Review Committee.

4. Meetings of the Design Review Committee

4.1 Meeting

The Design Review Committee is to meet in a way determined by the Design Review Committee and at whatever times are necessary to perform its duties, or as directed by the Owners Corporation.

4.2 Quorum

Fifty (50) percent of Design Review Committee members, one of whom is to be the Original Owner's Representative (where rule 3.3(b)(i) applies), are to constitute a quorum.

4.3 Chair

- (a) If the Original Owner is a proprietor of any land in the Plan, the Original Owner's representative will be appointed as the Chairman otherwise the Chairman will be appointed by the members of the Design Review Committee.
- (b) If the Chairman of the Design Review Committee is absent from a meeting, the people who are present at the meeting are to elect from their number a person to chair the meeting.

4.4 Voting

Subject to the Original Owner's Representative exercising his power of veto under rule 4.6 every question to be decided by the Design Review Committee is to be decided by a majority on a show of hands by members present at the meeting. In the case of an equality of votes the chairman of the meeting is to be entitled to a second or casting vote.

4.5 Investigate

The Design Review Committee may from time to time, by resolution in writing, designate one or more of its members to investigate or perform any duties for and on behalf of the Design Review Committee and report the findings of that member to the Design Review Committee. Recommendations are to be made by the Design Review Committee. The vote of a majority of the members of the Design Review Committee is to constitute an act of the Design Review Committee.

4.6 Right of Veto

Each member of the Design Review Committee is to have one vote and the Original Owner's Representative is to have the right to veto any decision of the Design Review Committee, which right is to be exercised in the sole discretion of the Original Owner's Representative.



4.7 Council Role

The Council representative will provide the Council's view on the plans submitted for each dwelling submitted for approval and will vote in accordance with these Rules. It is acknowledged that the Council as statutory planning authority must separately approve the plans and may not necessarily approve plans which have been approved by the Design Review Committee.

5. Powers and Functions of the Design Review Committee

5.1 Application

- (a) The Design Review Committee is to assess all Applications for Approval having regard to the Residential Design Guidelines.
- (b) After assessing an Application, the Design Review Committee must either Approve, Refuse, or reserve its decision pending the provision of any further information which the Design Review Committee indicates in writing to the Applicant that it requires.
- (c) In the case of Approval, the Design Review Committee may impose conditions that require:
 - (i) changes to be made to the plans and specifications;
 - (ii) the proposed development to be undertaken within the reasonable time frame specified in the condition;
 - (iii) the Owner to give to the Design Review Committee a written undertaking:
 - (A) not to cause unreasonable inconvenience to other residents; and
 - (B) to repair without delay any damage caused by the development;
 - (iv) the Owner to deposit with the Owners Corporation a Bond (in a form and amount determined by the Design Review Committee) to be held by the Owners Corporation on account of any:
 - (A) Remedy for non-compliance specified in rule 10.3;
 - (B) Damage which may be caused in the course of the development. If no Damage is caused then the Owners Corporation will, on certification from the Design Review Committee of satisfactory completion of the development, release the Bond to the Owner. If damage is caused then the Owners Corporation and the Design Review Committee may, without prejudice to its rights against the Owner, use the Bond to repair the Damage caused;
 - (v) lodgement of the Bond prior to the release of the formal Approval.

5.2 Services of Consultants

The Design Review Committee may, at its discretion, retain the services of architects, engineers, landscape architects, town planners, urban designers, solicitors and other

consultants to advise and assist it and the Design Review Committee to perform their duties and functions.

6. Management Plan and Fund

6.1 Maintenance Plan

The Owners Corporation must prepare and maintain a Maintenance Plan for:

- (a) the Common Areas as required to do so under the Act;
- (b) any other property or area (including, without limitation, the wet areas, the foreshore reserve and the northern beach at or surrounding the Estate) it has agreed to or is required to maintain in accordance with these rules; and
- (c) the obligations of the Owners Corporation under the OEMP Activation Agreement.

6.2 Consultants

The Owners Corporation may elect to commission consultants to provide advice and recommend minimum care, cleaning, maintenance and inspection regimes for all the property referred to in rule 6.1 for the purposes of preparing the Maintenance Plan.

6.3 Variation of Maintenance Plan

The Owners Corporation may vary the Maintenance Plan from time to time.

7. Management Agreement

7.1 No Interference

An Owner or Occupier must not in any way interfere, or cause interference, with the rights of any person or entity appointed by the Owners Corporation from time to time to provide services to the Owners or manage the Common Areas or any other property required to be managed by the Owner's Corporation.

7.2 Indemnity

Any Owner or Occupier who breaches rule 7.1 must indemnify and keep indemnified the Owners Corporation and any other Owner or Occupier for any loss or damage suffered by that manager and arising out of that conduct.



Part B – Owner’s Works

8. Works Carried Out by the Owner

8.1 Development

- (a) No Owner may develop a Lot without Approval.
- (b) An Owner must not:
 - (i) lodge an application with a building surveyor to develop a Lot;
 - (ii) commence development on a Lot or any other part of the Land; or
 - (iii) develop a Lot or any other part of the Land;
 unless the proposed development has first received Approval.
- (c) Development must be in accordance with the Approval.
- (d) Once an Owner has commenced development, it must not alter the development without Approval.

8.2 Application for Approval

- (a) All applications and correspondence to the Design Review Committee must be directed to the Secretary of the Owners Corporation.
- (b) An application must be made to the Design Review Committee by submitting (in a manner determined by the Design Review Committee) the following:
 - (i) an application form as available from the Owners Corporation;
 - (ii) fully dimensioned and accurately drawn plans to scale, including any supporting documentation to show:
 - (A) Site layout plan detailing all information noted on the application form;
 - (B) Cut and fill on the allotment relative to the existing site levels (if applicable);
 - (C) Internal plans, elevations and sections;
 - (D) Elevations showing all building heights, roof pitches, eaves depths and specific window treatments;
 - (E) Schedule of external materials, finishes and colours (including a colour board);
 - (F) Details of fencing;



- (G) Structural drawings and soil test reports;
- (H) Swimming pool plans and structural drawings;
- (I) A front yard landscape plan including nominated plant species, pathways, driveways and retaining walls; and
- (J) A report addressing the extent to which the proposal deviates from the Residential Design Guidelines (if applicable) and the reasons for these variations; and
- (K) any other information required from time to time by the Design Review Committee.

8.3 Consultant's Costs

- (a) The Design Review Committee may:
 - (i) determine that the Owner is to pay any reasonable cost to the Owner's Corporation of any additional consultants to those contemplated in the Design Review Committee process retained by the Design Review Committee from time to time after first giving notice to the Owner to advise and assist the Design Review Committee to consider the Application ("**Consultant's Costs**"); and
 - (ii) require the Owner to pay to the Owners Corporation any reasonable sum of money sufficient, in the estimation of the Design Review Committee to meet the liability of the Consultant's Costs.
- (b) The Design Review Committee is not obliged to consider the Application until payment by the Owner to the Owners Corporation of all sums of money determined as payable under these rules.

8.4 Application Fee

- (a) A fee or fees, to be determined by the Design Review Committee for time to time, will be payable to the Owner's Corporation by a person making an Application.
- (b) The Design Review Committee may determine different fees for different Applications depending on their nature and complexity and whether any additional consultants are required in considering the Application in accordance with rule 8.4.

8.5 Certification

- (a) An Owner must not take occupation of a Lot after development until the Occupancy Permit has been issued.

8.6 Dispute

If there is a dispute as to whether the Owner's application complies with the Residential Design Guidelines, the Owner acknowledges and agrees that:

- (a) the Design Review Committee will determine whether the Owner has complied with the Residential Design Guidelines, and its determination will be final and binding on the Owner;



- (b) the Owner may not initiate proceedings in any court or tribunal of competent jurisdiction to determine the dispute; and
- (c) the Owner is not entitled to compensation or damages from the Owners Corporation, the Design Review Committee or the Original Owner as a result of a determination by the Design Review Committee under this rule 8.7.

9. Proceeding with Works

9.1 Carry Out Works

Upon receipt of Approval from the Design Review Committee and the Council, the Owner is, as soon as practicable, to satisfy all conditions of that Approval and diligently proceed with the development of a Lot in accordance with the requirements of all authorities having jurisdiction over the development.

9.2 Commence Construction

- (a) An Owner must Commence Construction by the Commencement Date.
- (b) In addition to any other right the Owners Corporation has under these rules, if an Owner does not Commence Construction by the Commencement Date it must pay to the Owners Corporation within 7 days of demand:
 - (i) \$200 for each whole month that the Owner does not Commence Construction in accordance with rule 9.2(a) up to the date that is 12 months from the Commencement Date;
 - (ii) \$600 for each whole month that the Owner does not Commence Construction from the date that is 12 months from the Commencement Date up to the date that is 24 months from the Commencement Date;
 - (iii) \$1,250 for each whole month that the Owner does not Commence Construction from the date that is 24 months from the Commencement Date up to the date that is 36 months from the Commencement Date; and
 - (iv) \$2,500 for each whole month that the Owner does not Commence Construction from the date that is 36 months from the Commencement Date.

9.3 Issue of Occupancy Permit

- (a) An Owner must procure the issue of an Occupancy Permit by the Completion Date.
- (b) In addition to any other right the Owners Corporation has under these rules, if an Owner does not procure the issue of the Occupancy Permit by the Completion Date, it must pay to the Owners Corporation, within 7 days of demand:
 - (i) \$400 for each whole month that the Occupancy Permit is not issued from the Completion Date until the date that is 48 months from the Settlement Date;
 - (ii) \$1,250 for each whole month that the Occupancy Permit is not issued from the date that is 48 months from the Settlement Date to the date that is 60 months from the Settlement Date; and



- (iii) \$2,500 for each whole month that the Occupancy Permit is not issued from the date that is 60 months from the Settlement Date.

9.4 Contribution

The Owner acknowledges and agrees that the payments specified in rules 9.2(b) and 9.3 (b) are a reasonable estimate of a contribution towards the Owner's Corporation's foreseeable loss as a result of a breach of rules 9.2 (a) and 9.3 (a) by the Owner.

10. Inspection and Correction of Works

10.1 Inspection

Inspection of Lots after development and correction of defects is to proceed as follows:

- (a) upon the completion of any development on a Lot requiring Approval under these rules, the Owner must as soon as possible give notice of completion to the Design Review Committee;
- (b) within fourteen (14) days of receipt of a notice of completion from the Owner, the Design Review Committee must inspect the development and decide whether the development of the Lot is complete in accordance with the Approval; and
- (c) if the Design Review Committee decides that the works are not in accordance with the Approval it is to notify the Owner in writing of that non compliance within that thirty (30) day period. The notice is to specify the particulars of non-compliance, and it is to require the Owner to remedy them.

10.2 Non-Compliance

The Owner must remedy that non-compliance notified to it by the Design Review Committee within thirty (30) days of receipt by the Owner of the notice referred to in rule 10.1(b) or such longer period as the Design Review Committee may specify in the notice.

10.3 Remedy Non-Compliance

If the Owner does not comply with that notice as provided in rule 10.2 the Design Review Committee may, at the expense of the Owner, do whatever is necessary to remedy that non-compliance.

11. Non liability of Members

11.1 Owners Corporation Not Responsible

No approval of plans and specifications by the Design Review Committee is to be construed as representing or implying that those plans and specifications will, if followed, result in properly designed improvements. Such approvals and guidelines are in no event to be construed as representing or guaranteeing that any improvement carried out in accordance with them will be built in a good and workmanlike manner. Neither the Owners Corporation nor the Design Review Committee is to be responsible or liable for any defects in any plans and specifications submitted, revised, amended or approved nor for any defects in construction undertaken pursuant to such plans and specifications.

11.2 Not Responsible for Loss

Neither the Design Review Committee nor any member of the Owners Corporation nor their duly authorised representative, is to be liable to any Owner or any other person for any loss, damage, or injury arising out of or in any way connected with the performance of the Design Review Committee's duties under these rules, unless due to the wilful misconduct or bad faith of the Design Review Committee.

12. Variance of Works

12.1 Authorising Non-Compliance

The Owners Corporation may authorise in writing non-compliance with any of the provisions of these rules including (without limitation) restrictions upon height, size, colour, materials and location of works if circumstances such as topography, natural obstructions, aesthetic or environmental considerations so dictate, except so far as prohibited by law. The granting of such an authority is not to operate to authorise non-compliance with these rules for any purpose except as to the particular Lot and the particular rule exempted by the authority, and only to the extent specified in the authority.

13. Monitoring of Compliance

13.1 Inspection

The Design Review Committee or its agent is periodically to survey all Lots for compliance with these rules and any Approval given.

13.2 Notify Owners Corporation

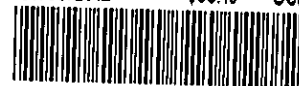
The Design Review Committee is to inspect Lots undergoing development at completion and is to notify the Owners Corporation in writing of breaches, if any, and when satisfied that the conditions set out in the Approval have been met.

13.3 Reporting

A person who considers that there has been a breach of an Approval or these rules may report the alleged breach to the Design Review Committee in writing.

13.4 Investigations

- (a) The Design Review Committee is to appoint one of its members, or a Consultant appointed under Section 5.2, to investigate any alleged breach which comes to its attention.
- (b) If that member or Consultant forms the opinion that there has been no breach the complainant is to be informed in writing.
- (c) If that member or Consultant forms the opinion that there has been a breach, the Owners Corporation may take whatever steps or action it determines as appropriate in order that any breach of these rules is remedied.



13.5 Confidentiality

The Design Review Committee and the Owners Corporation are to keep the name of the person responsible for the alleged breaches confidential until the breach or breaches have been established. In all cases the Owners Corporation and the Design Review Committee are to keep confidential the name of the complainant, except as required by law.

14. Original Owner's Exemption

14.1 Original Owner May Construct

Notwithstanding any provision in these rules the Original Owner may construct buildings or other structures within the Development Land in such style shape and size as the Original Owner in its sole discretion deems suitable.



Part C – Owner’s Obligations

15. Owner’s obligations

15.1 Compliance with the OEMP

An Owner must not and must ensure that the Occupier of an Owner’s Lot does not carry out or permit any action that contravenes or will lead to the contravention of any requirement of the OEMP.

15.2 Use of Lot

An Owner must not and must ensure that the Occupier of an Owner’s Lot does not and the Occupier of a Lot must not:

- (a) use the Common Areas or permit the Common Areas to be used in such a manner as to unreasonably interfere with or prevent its use by other Owners or Occupiers of Lots or their visitors;
- (b) use or permit a Lot affected by the Owners Corporation or the Common Areas to be used for any purpose which may be illegal or injurious to the reputation of the Development Land or the Estate or which may cause a nuisance or hazard to any other Owner or Occupier of any Lot or the visitors of any such Owner or Occupier;
- (c) fit any covering over external areas of the Lot (including ground floor patio and balconies) without the approval of the Design Review Committee;
- (d) plant or permit to be planted in any garden or open land forming part of the Lot (excluding any vegetable garden) any plants, trees, lawn or other vegetation except by replacing any such vegetation which dies with plants, trees, lawn or vegetation of the same size and type unless otherwise approved in writing by the Owners Corporation except as permitted by the Residential Design Guidelines;
- (e) store any materials or goods on the Common Areas except with the prior written consent of the Owners Corporation and in accordance with the terms and conditions contained in that written consent;
- (f) keep the Lot in a manner which is dangerous or likely to cause danger to life or property;
- (g) store or accumulate any matter, substance or thing which is dangerous or likely to cause danger to life or property without prior written consent of the Owners Corporation. Items included in this definition that are for personal use may be stored without consent if they are stored and used in accordance with the manufacturers recommendations or any other applicable standard;
- (h) store or accumulate in public view or permit to be so stored or accumulated any materials goods or debris on any part of a Lot;
- (i) obstruct any fire appliance cupboard, stairway, landing or lift lobby or permit the same to be obstructed;



- (j) permit any tradesman contractor or other person carrying out any works to be on the Lot (except the Owner doing home maintenance and gardening) or the Common Areas;

- (i) on any public holiday or Sunday; or
- (ii) before 7.00 am or after 6.00 pm Monday to Friday; or
- (iii) before 9.00am or after 6.00pm on Saturday;

except in the case of an emergency which includes:

- (A) an interruption to gas, water, electricity, telephone, drainage, sewerage or a similar service; or
 - (B) a leak or a similar problem requiring prompt attention; or
 - (C) cracking or a similar problem likely to affect the immediate safety of the building;
- (k) display or hang or permit to be displayed or hung any clothes or other articles on any part of the exterior of the Lot or so as to be visible from outside the Lot;
 - (l) damage or deface or obstruct or suffer to be damaged, defaced or obstructed the Common Areas or any part thereof; or
 - (m) do or permit to be done on the Lot any act or thing by reason of or in consequence of which any increased or extra premium may become payable for the insurance of the Common Areas or any part or parts thereof or any policy for such insurance may become void or voidable.

15.3 Owner must ensure

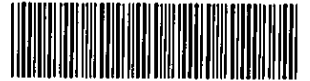
An Owner must and must ensure that the Occupier of the Lot will:

- (a) at the Owner's cost replace any security key which is issued to the Owner by the Owners Corporation or the Facilities Manager; and
- (b) comply with any directions made or action taken by the Owners Corporation pursuant to the duty of the Owners Corporation to manage and administer the Common Areas under Section 4 of the Owners Corporation Act 2006.

15.4 Leasing

An Owner may let a Lot but only:

- (a) by means of a written lease or tenancy agreement; and,
- (b) if that lease or agreement obliges the lessee or tenant to comply with these rules; and
- (c) if the lessee or tenant signs an agreement confirming their acceptance of these Rules if required to do so by the Owners Corporation.



15.5 Noise

No Person may in a Lot or on Common Areas:

- (a) carry on a noxious or offensive activity; or
- (b) make or allow noise in a Lot or on Common Areas that will interfere with the enjoyment of a Lot or the Common Areas by others.

15.6 Appearance

A person may not display a sign or notice on part of a Lot or on Common Areas in any manner whatsoever so it is visible from outside the Lot without the prior written approval of the Owners Corporation.

15.7 Auctions

Subject to rule 2.1, an Owner or Occupier must not permit any auction sale to be conducted or to take place in the Lot or within the Development Land or the Estate without the prior approval in writing of the Owners Corporation.

15.8 Animals

- (a) No animals, except common household pets, are allowed in a Lot or the Common Areas and the behaviour of pets in a Lot or the Common Areas must be controlled so that it:
 - (i) does not interfere with the enjoyment of a Lot or the Common Areas by others; and
 - (ii) minimises the adverse impact of such pets on fauna in the Lot and in Common Areas.
- (b) A Person must not have more than two (2) animals (other than fish) in a Lot, unless prior approval is obtained from the Owners Corporation.
- (c) Rules 15.8(a) and 15.8(b) apply subject to any law.
- (d) Dogs are not allowed on Common Areas unless they are kept on a leash or carried, except where the area is a designated 'leash free' area.
- (e) Cats must, at all times, wear a collar and bell and kept indoors inside the dwelling on the Lot at all times, and if a cat is over three (3) months old it must be registered by the Council are not permitted at any time on the Development Land or within a Lot.
- (f) All animals must wear an identification tag clearly showing the Owner's address and/or telephone number.
- (g) Any excrement deposited by a pet on the Common Areas must be removed promptly by the Owner of the pet.
- (h) Any Owner who keeps and maintains a pet will be liable for any and all action by the pet whether or not the owner had knowledge, notice or forewarning of the likelihood of such action.



- (i) The Owners Corporation may serve a Person a notice that an animal owned by the Person is causing a nuisance to any other person. Where a Person receives such a notice from the Owners Corporation the Person must immediately take steps to prevent further nuisance occurring failing which the Owners Corporation may serve a further notice requiring the immediate removal of the animal specified in the notice and the Person must immediately permanently remove the animal from the Development Land or the Estate.

15.9 Local Laws

The Owners Corporation, Owners and visitors must comply with all Local Laws.

16. Structures, Gardens etc

16.1 Alterations - Lot

A Person may not without the prior written consent of the Owners Corporation alter gas, water, drainage, septic, sewerage, electrical or any other utility connections and services to a Lot.

16.2 Alterations - Common Areas

A Person must not:

- (a) alter;
- (b) paint or otherwise mark;
- (c) drive nails or anything else into; or
- (d) otherwise damage or deface,

any structure (including any irrigation equipment or piping) forming part of the Common Areas except with the prior written consent of the Owners Corporation.

16.3 Interference - Common Areas

A Person must not:

- (a) damage a lawn or garden;
- (b) damage or remove any plant or part of a plant; or
- (c) interfere with the operation of irrigation,

on Common Areas.

16.4 Register

The Owners Corporation may, at its option, maintain a register and description of trees, landscaping and any associated plants within the Development Land or the Estate.



16.5 Prohibition against destruction

A Person must not:

- (a) wilfully injure, ring-bark, cut down, top, lop, remove or destroy any trees, plants or other growing thing or landscaping (collectively “**Landscape**”) on the Development Land or the Estate (whether or not identified in the register).
- (b) otherwise partially or totally remove any of the Landscape (whether or not entered in the register) except with the prior written approval of the Owners Corporation and, if required, any local council approval.

16.6 Damage to Landscaping on Common Areas

A Person must not:

- (a) damage any of the Landscape situated upon the Common Areas; or
- (b) except with the prior written consent of the Owners Corporation use for the Person’s own purpose as a garden any of the Common Areas.

17. Maintenance/Appearance

17.1 Maintenance

Every Owner must:

- (a) comply with the Residential Design Guidelines;
- (b) maintain in good condition and repair the exterior of the Dwelling and/or Building including (without limitation) all fences, walls, windows, gates, sidewalls, walkways and driveways within a Lot;
- (c) maintain in good condition and repair all yard landscaping (including the mowing of nature strips outside the Lot), irrigation facilities, drainage facilities, swimming pools, spas, fountains, and other surrounds within the Lot;
- (d) make any necessary arrangements for supply of sufficient water for the maintenance and irrigation of all yard landscaping and pay for such water; and
- (e) take all practicable steps to prevent infestation of the Lot by vermin or insects.

17.2 Notice

If an Owner has refused or failed to carry out repairs, maintenance or other works to the Owner’s Lot that are required to comply with rule 17.1, the Owners Corporation may serve a notice on the Owner requiring the Owner to carry out the necessary repairs, maintenance or other works.

17.3 Owner Must Carry Out Works

If an Owner has been served with a notice under rule 17.2, then the Owner must carry out the repairs, maintenance or other works required by the notice within 7 days of the service of the notice.



17.4 Owners Corporation May Rectify

If an Owner has been served with a notice under rule 17.2 and has not complied with the notice within the required time, the Owners Corporation may, at the Owner's expense, carry out the necessary repairs, maintenance or other works to the Lot.

17.5 Recreational Equipment

All recreational equipment must be kept within the rear yard of the Lot and must not be visible from the road.

18. Vehicles

18.1 Parking & Repair

- (a) A Person must not park or keep any Vehicle on a Lot except wholly within the parking area designated for it and except that a recreational Vehicle (which includes, but without limitation, a camper unit, trailer or car motor home) may be parked or kept elsewhere on the Lot if it is screened so as not to be visible from any other Lot or road.
- (b) A Person must not park or keep a Vehicle of a commercial type (which includes, but without limitation, a dump truck, cement mixer truck, delivery truck, semi-trailer, coach, bus, or operable vehicle equipment, whether mobile or otherwise) within the Development Land or the Estate except for the purpose and in the course of commercial deliveries.
- (c) A Person must not conduct repairs or restorations to any motor Vehicle, boat trailer, aircraft or other Vehicle on a Lot except:
 - (i) wholly within the garage on the Lot; and
 - (ii) if such activity does not interfere with the quiet enjoyment of other Lots or Common Areas by others;
 - (iii) in the case of a motor vehicle it must be registered to the owner or occupier of the Lot;
 - (iv) in the case of an unregistered motor vehicle the prior written consent of the Owners Corporation must be obtained

but such activity is not permitted if it is determined by the Owners Corporation to be a nuisance, and is not permitted on Common Areas.
- (d) A Person must use the garage in a Lot only as a garage for vehicles and for general storage purposes and not convert it to any other use.
- (e) A Person must not park or keep any Vehicle on the Common Areas other than within designated visitor parking areas and must not obstruct any Common Area or Road.
- (f) An owner or occupier of a Lot must not permit any occupation of a caravan, camper van or mobile home upon the Lot or Common Areas.



19. Insurance and Related Matters

19.1 Restrictions

A Person must not bring to, do or keep anything on a Lot which:

- (a) will increase the rate of premium for fire insurance on a Dwelling, Building or the Common Areas;
- (b) may conflict with the laws or regulations relating to fire or any insurance policy on a Dwelling or the Common Areas; or
- (c) may conflict with the Local Laws, regulations or ordinances of the local government or other public authority for the time being in force.

19.2 Insurance

All Owners must ensure that any improvements, including the house, constructed on the Lot are insured for full replacement value.

20. Security

20.1 Security monitoring

The Owners Corporation may arrange and operate a security system to monitor the Common Areas and other parts of the Development.

20.2 Owners Corporation Responsible

The Owners Corporation:

- (a) is responsible for control of the security system; and
- (b) may employ servants, agents or contractors to operate the system.

20.3 Security Arrangements

The security arrangements may, at the discretion of the Owners Corporation, include without limitation the following:

- (a) the issue of security access cards upon conditions, including payment of a deposit;
- (b) the right to enter upon any part of the Development Land or the Estate for the purpose of maintaining its security;
- (c) that parts of the Common Areas that are secured against entry as approved by Council by unauthorised persons; and
- (d) that security patrols, locks and other security devices or procedures are used to implement or operate it.

20.4 Security

The Owners Corporation may:



- (a) delegate to security officers the function of deciding whether to grant permission for access to any part of the Common Areas. Any delegation will not limit the power of the Owners Corporation to grant such permission. The Owners Corporation may revoke a delegation at any time; and
- (b) grant a conditional approval for access to any part of the Common Areas and without limitation may only allow access to parts of the Common Areas during specified times as approved by Council. A Person who has the permission of the Owners Corporation to drive on or otherwise use any part of the Common Areas is entitled to do so to the extent of that approval. The Owners Corporation may revoke any approval at any time.

20.5 Owners Corporation Liability

The Owners Corporation is not liable for injury to or death of a person or loss of or damage to property (whether in Common Areas or a Lot) arising because:

- (a) the security system is not operating; or
- (b) the security system fails to operate as intended.

21. Garbage Collection

21.1 Owner's Duties

Each Owner must:

- (a) except if the Owners Corporation provides some other means of disposal of garbage, maintain on the Lot in a clean and dry condition and adequately covered, a receptacle for garbage which is not visible from outside the Lot;
- (b) at all times protect garbage deposited in the receptacle against the attraction of flies or other vermin by wrapping the garbage in paper or other suitable material;
- (c) thoroughly cleanse and deodorise the receptacle regularly as and when considered necessary;
- (d) at all times keep the proper lid (of correct fit) on the receptacle;
- (e) not place or caused to be placed in the receptacle any refuse, or other thing which is aflame, smouldering, sludge, alive or not garbage;
- (f) ensure the receptacle is not overloaded to more than the maximum weight for the receptacle;
- (g) ensure the receptacle is placed at the nominated collection point on collection days and promptly returned to the Lot following collection on the collection day; and
- (h) comply with all Local Laws relating to the disposal of garbage.



22. Notice of Accidents/Damage to Property

22.1 Notice

Each Person must notify the Owners Corporation or the Facilities Manager promptly of any accident to or defect in any water pipes, gas pipes, electric installations, fixtures or any other utility infrastructure which comes to the Person's knowledge.

23. Contractors

23.1 No Instruction

A Person must not directly instruct any contractors or workmen employed by the Owners Corporation unless specifically authorised to do so.

23.2 Owners Corporation Representative

All requests for the Owners Corporation to consider giving directions on a particular matter to a contractor or workman must be directed to the Manager or secretary of the Owners Corporation, who will in turn refer the request to the Owners Corporation for determination.

24. Notices to be observed

Each Person must observe the terms of any notice displayed on any part of the Common Areas by authority of the Owners Corporation or of any statutory authority.

25. Invitees

25.1 Compliance with Rules

Each Person must:

- (a) ensure any invitees comply with these rules; and
- (b) if an invitee fails to comply, forthwith cause that invitee to leave the property.

25.2 Lessee

A Person who lets a Lot must take all reasonable steps (including any action available to him under relevant lease or agreement) to ensure that the lessee and lessee's invitees comply with these rules.

26. Rules to be exhibited

A copy of these rules (including rules made under them or a précis of them approved by the Owners Corporation) must be exhibited in a prominent place in any Lot made available for letting and contained in any lease of the Lot.



27. Flammable Materials

Other than for domestic usage or purposes, a person must not without the Owners Corporation's written consent use or store any chemicals, burning fluids, acetylene gas or alcohol in a Lot or on Common Areas nor in any other way cause or increase a risk of fire or explosion in a Dwelling or Building or cost of fire insurance or breach a law.

28. Obstruction

A Person must not obstruct the lawful use of the Common Areas by any person or access to another Lot.

29. Maintenance and Upgrading of Services

29.1 Maintenance

The Owners Corporation may from time to time arrange for the maintenance and upgrading of utility services provided to a Lot or a series of Lots.

29.2 Payment

The Owner of any Lot that receives the benefit of the services must pay on demand by the Owners Corporation the proportion of the cost of providing those services and maintenance and upgrade of those services from time to time.

29.3 Disconnection

If a relevant Owner does not do so, the Owners Corporation may authorise the disconnection of any or all of the services provided to the Lot.

30. Breaches and Penalties

30.1 Remedy

A Person in breach of these rules (which includes breach of any proper direction given under them) must remedy that breach immediately the Person becomes aware of it and in any event within 7 days after notice from the Owners Corporation requiring the Person to do so.

30.2 Non-Compliance

An Owner who has not complied with these rules within seven days after service of a notice by the Owners Corporation specifying any non-compliance, agrees to the following in addition to any other rights that the Owners Corporation has under these rules:

- (a) to allow the Owners Corporation, its employees, contractors or agents to enter the Lot and rectify any non-compliance where the non-compliance relates to performance of any works required to be performed by an Owner under these rules;
- (b) if the Owners Corporation exercises its power to rectify non-compliance, to pay to the Owners Corporation any charges levied against the Owner in respect of the costs of the works performed as a result of the non-compliance;



- (c) to accept a certificate signed by the Secretary of the Owners Corporation as prima facie proof of the costs and expenses incurred by the Owners Corporation to rectify the Owner's non-compliance with the rules;
- (d) to pay interest at the rate determined by the Owners Corporation (provided that it does not exceed the rate prescribed under the *Penalty Interest Rates Act* 1983) on all monies outstanding under these rules (including the non-payment of any Owners Corporation fees) until they are paid; and
- (e) that any payments made for the purposes of these rules will be appropriated first in payment of any interest and any unpaid costs and expenses of the Owners Corporation and then be applied in repayment of the principal sum.

30.3 Recovery of Costs

- (a) An Owner must pay on demand the whole of the Owners Corporation's costs and expenses (including solicitor and own client costs and Owners Corporation management fees, plus any GST properly chargeable in respect of these costs) in connection with:
 - (i) any action, demand, cost, liability or loss incurred by the Owners Corporation as a consequence of any default by an Owner or Occupier in the performance or observance of any term, covenant or condition contained in these rules, the Act or Regulations;
 - (ii) recovering levies or monies payable to the Owners Corporation pursuant to the Act or these rules duly levied upon the Owner by the Owners Corporation or otherwise pursuant to these rules;
 - (iii) all legal and other proceedings concluded by way of settlement or court determination in favour of the Owners Corporation taken by or against the Owner or occupier of a Lot; and
 - (iv) costs and expenses (including solicitor and own client costs and Owners Corporation management fees) incurred by the Owners Corporation to enforce a rule or make good any damage incurred by a breach of these rules by that Person or that Person's invitees (including tenants) and incurred in recovery of those costs-and-expenses.
- (b) The amount of any such costs will be deemed to be a liquidated debt due by the Owner to the Owners Corporation.
- (c) If the Owner fails to pay such costs upon demand, the Owners Corporation:
 - (i) may take action for the recovery of those costs in a court of competent jurisdiction, and/or;
 - (ii) may enter such costs and expenses against the levy account of the Owner.
- (d) The Owners Corporation may include any costs payable to it under this rule on any certificate issued in respect of the Lot pursuant to the Act, including but not limited to a notation of unpaid insurance premiums.



30.4 Recovery of Expenditure

Where the Owners Corporation expends money to make good the damage caused by a breach of the Act or of these rules by an Owner or occupier of a Lot or the tenants, guests, servants, employees, agents or children, invitees or licensees of such Owner or occupier or any of them, the Owners Corporation will be entitled to recover the amount so expended as a debt in an action in any court of competent jurisdiction from the Owner of the Lot at the time when the breach occurred.

30.5 Charge

Any payments to the Owners Corporation, whether under this rule 30, these rules or any other payment payable under the *Owners Corporation Act 2006* (Vic) or the *Owners Corporation Regulations 2007* (Vic), as amended from time to time, imposed on an Owner will (until paid) be a charge on the Lot.



Part D – Roads, recreation and commercial areas

31. Roads

31.1 Speed Limit

The maximum allowable speed upon the roads within the Estate will be 40 kilometres per hour or any other speed determined by the Owners Corporation.

32. Recreation Areas

32.1 Times for Use of Recreation Areas

The Owners Corporation may make rules regarding the hours of use of various areas of the Estate having regard to the need to provide reasonable access to the public for activities including fishing, boating and other leisure activities.

32.2 Rules for Use of Recreation Areas

All Owners and Occupiers of Lots when making use of the Recreation Areas must ensure:

- (a) that invitees and guests do not use the Recreation Areas unless the Owner or Occupier or another Owner or Occupier accompanies them;
- (b) that children below the age of 13 years are not in or around the Recreation Areas unless accompanied by an adult Owner or Occupier exercising effective control over them;
- (c) that the Owner or Occupier and invitees of the Owner or Occupier exercise caution at all times and do not behave in any manner that is likely to interfere with the use and enjoyment of the Recreation Areas by other Persons;
- (d) if congestion is experienced in the use of the Recreation Areas, the Owners Corporation may arrange for the implementation of booking systems for mutual benefit of all Owners and Occupiers of Lots in the Development Land or the Estate;
- (e) all users of the Recreation Areas must be suitably attired and must observe a dress code suitable for the occasion as approved by the Owners Corporation from time to time.

32.3 Barbecue Areas

Owners, Occupiers and any other authorised users may use any barbecue area and associated facilities which may be located on the Common Areas subject to compliance with the following rules:

- (a) the area is only to be used between the hours of 7.00 am and 10.00 pm or such other time as the Owners Corporation may determine;
- (b) the area is not to be used so as to create a nuisance or disturbance to others and in particular:



- (i) all sound systems, musical instruments and the like are to be controlled so that sound arising from them is reasonable and does not cause annoyance to others;
- (ii) food, cigarette butts, papers and other items must be deposited in an appropriate rubbish receptacle and not be littered about the area;
- (iii) there is to be no offensive language;
- (c) cooking appliances and appurtenances must be used in a proper manner and turned off according to the operating instructions and all such appliances and appurtenances are to be thoroughly cleaned after use. If such appliances and appurtenances are not thoroughly cleaned, the Owners Corporation may, in its discretion, arrange such cleaning at the expense of the relevant Owner or Occupier.
- (d) all users of the Barbecue Area must be suitably attired.

32.4 Non Resident Users

All Owners and Occupiers acknowledge and agree that the Owners Corporation may allow non Owners or Occupiers to use the Recreation Areas on such terms as it considers reasonable.

PART E – MISCELLANEOUS

33. Removal

A drunken, idle or disorderly person found in or upon the Common Areas may be summarily ejected and removed from the Development Land or the Estate by a security officer or a member of the police force.

34. Vacant Lot Maintenance

34.1 Owners Corporation to Maintain

The Owners Corporation may arrange for the maintenance of Vacant Lots after the sale of the Lot by the Original Owner settles until the development commences on the Lot.

34.2 Entry

The Owners Corporation may enter a Vacant Lot at any time for the purpose of this rule.

34.3 Vacant Lot Maintenance Levy

If the Owners Corporation arranges for the maintenance of vacant lots, it may by ordinary resolution:

- (a) determine a levy to be paid in respect of each Vacant Lot to meet the actual or expected cost of the maintenance of those Lots; and
- (b) set the period to be covered by the levy; and
- (c) specify the dates the levy must be paid; and
- (d) set a discount for timely payment of the levy.

34.4 Levy to Be Paid

A Levy imposed by the Owners Corporation under rule 34.3 must be paid by the owner of a Lot on or before the due date specified by the Owner's Corporation in that notice.

34.5 Limit on liability of Owners Corporation

The Owners Corporation is not liable for damage or loss caused by maintaining the vacant Lot, whether caused by the Owners Corporation, its servants and agents, or any other person and through any cause whatsoever, including negligence.

35. GST

35.1 Definition

For the purposes of this rule:



- (a) **GST** means a goods and services tax, consumption tax, value added tax, retail turnover tax or a tax of a similar nature;
- (b) **Primary Payment** means any payment or consideration given by an Owner or Occupier to the Owners Corporation for any levy or other money or consideration payable or to be given by an Owner or Occupier to the Owners Corporation in connection with any supply of any goods and services.

35.2 Payment

If the Owners Corporation is liable by law for any GST on any Primary Payment, the Owner must pay to the Owners Corporation the amount of the GST in addition to the Primary Payment at the same time and in the same manner as the Owner is required to pay the Primary Payment in respect of which the GST relates

36. Complaints and Disputes

- 36.1 Any Dispute must be dealt with at first instance in accordance with this Rule 36.
- 36.2 A party to a Dispute must not initiate legal proceedings or complain to the Director (as defined in the Act) in respect of the Dispute unless it has first complied with the dispute resolution procedure set out in this Rule 36.
- 36.3 The party making the complaint must in the first instance notify the Manager, or where the Manager is the subject of or involved in the Dispute, the Owners Corporation committee (**Committee**), of the Dispute in writing. The Manager must refer any complaint it receives to the Committee. Upon receipt of a complaint referred by the Manager or received directly from an Occupier, the Committee will then decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether to:
 - (a) arrange a meeting between the parties to resolve the Dispute; or
 - (b) waive the requirement for the parties to meet.
- 36.4 Notwithstanding the course of action elected by the Committee under Rule 36.3, the parties must consult with one another in good faith and use their best endeavours to resolve the Dispute to the mutual satisfaction of both parties without resort to legal proceedings or other avenues of dispute resolution.
- 36.5 Without limiting the generality of this Rule 36.4, where no formal complaint is made by an Occupier and the Owners Corporation otherwise becomes aware of a Dispute, the Owners Corporation (through the Manager or the Committee or otherwise) may decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether to:
 - (a) arrange a meeting between the parties to resolve the Dispute; or
 - (b) waive the requirement for the parties to meet.
- 36.6 If the parties are unable to resolve the Dispute within 30 days (or such other period as the Committee thinks fit) of the meeting arranged pursuant to Rule 36.3(a) or 36.5(a), the parties may revert to the dispute resolution mechanisms set out in the Act or other law.