

## **MANAGEMENT STATEMENT**

**STRATA TITLES ACT 1985, as amended.**

**THE OWNERS OF THE ESPLANADE MOUNT PLEASANT**

**STRATA PLAN No \_\_\_\_\_.**

**1 THE ESPLANADE MOUNT PLEASANT  
WESTERN AUSTRALIA 6153.**

## FORM 25

*Strata Titles Act 1985*

Section 5C(1)

**STRATA/SURVEY-STRATA PLAN No. \_\_\_\_\_.**

### MANAGEMENT STATEMENT

(Name of original proprietors of land the subject of the plan)

**Harliwich Investments Pty Ltd ABN (64 002 603 349)**

(Description of the parcel the subject of the plan)

**Lot 36 on Diagram 43497 being the whole of the land comprised in Certificate of Title Volume 1335 Folio 332.**

This management statement lodged or to be lodged with a strata/survey-strata plan in respect of the above land sets out the by-laws of the strata company or amendments to the by-laws contained in Schedule 1 and Schedule 2 of the Strata Titles Act 1985 that are to have effect upon registration of the strata plan.

1. The Schedule 1 by-laws are hereby amended, repealed, and added to as follows:

the by-laws in Schedule 1 to the Act and numbered 1 to 15, inclusive, as they apply to the scheme referred to in the strata plan are repealed and the by-laws numbered 1 to 41, inclusive, are adopted as the Schedule 1 by-laws of the strata company as follows in Schedule 1 :-

2. The Schedule 2 by-laws are hereby amended, repealed, or added to as follows:

the by-laws in Schedule 2 to the Act and numbered 1 to 14, inclusive, as they apply to the scheme referred to in the strata plan are repealed and the by-laws numbered 1 to 21, inclusive, are adopted as the Schedule 2 by-laws of the strata company as follows in Schedule 2 :-

### STRATA COMPANY BY-LAWS

#### SCHEDULE 1

##### 1. Interpretation.

- (a) **“the Act”** means the Strata Titles Act 1985, as amended;
- (b) **“the by-laws”** means the by-laws of the Strata Company as are contained in this management statement;
- (c) **“common property”** means all that part of the strata plan that is not a lot or part of a lot on the strata plan;
- (d) **“the council”** means the council of the Strata Company;
- (e) **“the local government authority”** means the City of Melville;
- (f) **“lot”** means a strata lot contained on the strata plan;
- (g) **“the original proprietor”** means Harliwich Investments Pty Ltd ABN (64 002 603 349)
- (h) **“the parcel”** means the land comprised in the strata plan;
- (i) **“services”** means the supply of electricity, gas, water, sewer, drainage, telephone and any other pipe or cable which delivers those things to a lot or the parcel;
- (j) **“the Strata Company”** means a body corporate constituted pursuant to section 32 of the Act which comes into being upon the registration of the strata plan;
- (k) **“the Strata Company Manager”** means the organization or person appointed by the Strata Company to administer the affairs of the Strata Company in accordance with Schedule 2 by-law 15;
- (l) **“Strata Company Management Agreement”** means the agreement in accordance with Schedule 2 by-law 16;

- (m) “**strata plan**” means the strata plan registered with the Department of Land Administration, the subject of the parcel, as is contained in the Schedule hereto;
- (n) “**the scheme**” means the strata plan, the by-laws of the Strata Company and the buildings, facilities and services contained within the parcel.

## 2. Duties of proprietors and occupiers.

- (1) A proprietor shall -
  - (a) forthwith carry out all work that may be ordered by any competent public or local government authority in respect of his or her lot other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his or her lot;
  - (b) 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.
- (1a) A proprietor shall -
  - (a) notify the Strata Company forthwith upon any change of ownership, including in the notice an address of the proprietor for service of notices and other documents under this Act; and
  - (b) if required in writing by the Strata Company, notify the Strata Company 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 lessee and the term of the lease.
- (2) A proprietor, occupier or other resident of a lot shall -
  - (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or tenants, or their visitors; and
  - (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of another lot (whether a proprietor or not);
  - (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 or tenant of another lot or of any person lawfully using 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 parking of motor vehicles.

## 3. Power to decorate and affix fittings.

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, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if and so long as such action does not unreasonably damage the common property or increase the transmission of noise between the lots.

## 4. Constitution of the council of the Strata Company.

- (1) The powers and duties of the Strata Company shall, subject to any restrictions 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.
- (2) Until the first annual general meeting of the Strata Company, the proprietors of all the lots shall constitute the council.
- (3) (a) 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 nor more than 7 proprietors as is determined by the Strata Company; and
  - (b) where the original proprietor remains a proprietor of at least one lot then that original proprietor shall be a member of the council in respect to the requirements of this by-law and shall not require election to the council.
- (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, at an extraordinary general meeting convened for the purpose.

- (5) In determining the number of proprietors for the purposes 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.
- (6) 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 or her 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.
- (7) On an election of members of the council, a proprietor shall have one vote in respect of each lot owned by him or her.
- (8) Except where the council consists of all the proprietors, the Strata Company may by special resolution remove any member of the council before the expiration of his or her term of office.
- (9) 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 co-proprietor of a lot;
  - (b) upon receipt by the Strata Company of 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;
  - (e) where he or she is removed from office under sub-bylaw (8) of this by-law.
- (10) 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 (8), the Strata Company may resolve that the casual vacancy shall be filled by the Strata Company at a general meeting.
- (11) Except where there is only one proprietor, a quorum of the council shall be 2 where the council consists of 3 or 4 members; 3, where it consists of 5 or 6 members; and 4, where it consists of 7 members.
- (12) 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.
- (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

## 5. Procedure for the election of the council.

The procedure for nomination and election of members of a council shall be in accordance with the following rules -

- (1) The meeting shall determine, in accordance with the requirements of by-law 4 (3), the number of persons of whom the council shall consist.
- (2) The chairman 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 chairman at the meeting; or
  - (b) orally by a nominee who is present at the meeting.
- (4) When no further nominations are forthcoming, the chairman:-
  - (a) where the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4 (3), shall declare those candidates to be elected as members of the council;

- (b) where the number of candidates exceeds the number of members of the council as so determined, shall direct that a ballot be held.
- (5) If a ballot is to be held, the chairman 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 so votes as proprietor or first mortgagee of each such lot or as proxy of the proprietor or first mortgagee;
  - (c) signing the ballot-paper; and
  - (d) returning it to the chairman.
- (7) The chairman, or a person appointed by him or her, shall count the votes recorded on valid ballot-papers in favour of each candidate.
- (8) Subject to sub by-law (9), candidates, being equal in number to the number of the council determined in accordance with by-law 4 (3), who receive the highest numbers 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) 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 elected would exceed 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.

**6. Election of office bearers 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 chairman, a secretary and a treasurer of the council.
- (2) A person -
  - (a) shall not be appointed to an office referred to in sub-bylaw (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-bylaw (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 chairman 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 chairman.

**7. Chairman, secretary and treasurer of the Strata Company.**

- (1) Subject to sub-bylaw (2), the chairman, secretary and treasurer of the council are also respectively the chairman, secretary and treasurer of the Strata Company.
- (2) A Strata Company may at a general meeting authorise a person who is not a proprietor to act as the chairman of the Strata Company for the purposes of that meeting.

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

**8. Meeting procedure 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, specifying in the notice the reason for calling the meeting;
- (b) 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;
- (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 power and duties as it thinks fit, and at any time revoke the delegation.

(3) A member of a 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-bylaw (3) of this by-law whether or not he or she is a member of the council.

(5) If a person appointed under sub-bylaw (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.

**9. Powers and duties of the secretary of the Strata Company.**

The powers and duties of the secretary of a 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 section 43 (1) (a) and (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 section 49 and 103 of the Act the convening of meetings of the Strata Company and of the council.

**10. Powers and duties of the treasurer of the Strata Company.**

The powers and duties of the treasurer of a 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.

**11. General meetings of the Strata Company.**

- (1) General meetings of the Strata Company shall be held once in each year 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 when ever 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 or any other 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 all proprietors and registered first mortgagees who have notified their interests to the Strata Company, but accidental omission to give the notice to any proprietor or to any registered first mortgagee or non-receipt of the notice by any proprietor or by any registered first mortgagee does not invalidate any proceedings at 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 that item on the agenda accordingly and shall give notice of that item as an item of special business in accordance with sub-bylaw (5) of this by-law.

**12. 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 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 it shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.
- (5) The chairman, 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 an 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, 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 so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number of proportion of votes recorded in favour of 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 chairman thinks fit and the result of the 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.

**13. Moving motions and nominating members of the council.**

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.

**14. Voting rights of proprietors.**

- (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 entitlement of their respective lots.
- (3) On a show of hands or on a poll votes may be given either personally or by 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 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 moneys 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 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.

**15. Common seal of the Strata Company.**

- (1) The original proprietor is authorised to affix the common seal of the strata company on behalf of the council, and to be the sole signatory to every instrument, application, consent or document to which the seal is required to be affixed, but the original proprietor shall only be authorised to affix the common seal of the strata company on behalf of the council while the original proprietor owns at least one lot in the scheme and the original proprietor's signature or the signature of an authorised individual pursuant to section 45 to the Act shall be sufficient for the purpose of this by-law.
- (2) Upon the original proprietor not being a proprietor in the scheme, the common seal of the strata company shall at no time be used except by the authority of the council previously given and in the presence of least 2 members of the council, who shall sign every instrument to which the seal is affixed, but where there is only one member of the strata company his signature shall be sufficient for the purpose of this by-law.
- (3) The council shall make provision for the safe custody of the common seal.

**16. Reserve fund.**

The Strata Company will at all times administer a reserve fund, in accordance with section 36(2) of the Strata Titles Act 1985, as amended, for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the Strata Company likely to arise in the future.

**17. Strata Company insurance.**

The Strata Company will at all times ensure that an insurance policy in accordance with the Act is in the name of the Strata Company and is current together with any other insurance policy which the Strata Company may decide to be necessary from time to time.

**18. Maintenance of common services.**

Where any services such as sewer, water supply, gas, electricity and telephone supply and any other service are provided to the scheme and such service or supply is shared in common by all lots:

- (a) the cost of any maintenance, repair or replacement of such service or supply will be the responsibility of the Strata Company; and
- (b) any costs of any maintenance, repair or replacement of such service or supply will be divided between all lot proprietors and will be payable by the individual lot proprietor in the proportion that the individual unit entitlement of each lot bears in ratio to the aggregate unit entitlement of the scheme.

**19. Maintenance of common services within a lot.**

While it is the responsibility of the registered proprietors of the individual lots to maintain all buildings and services contained within the boundaries of the individual lot to which they relate 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 Strata Titles Act 1985, as amended, and in this regard sections 38 & 39 of the Strata Titles Act 1985, as amended, shall apply.

**20. Strata Company to be advised of defects to services.**

- (a) A proprietor shall give the Strata Company prompt notice of any accident to or defect in the supply of sewer, water supply, gas, electricity, telephone and any other service situated within the common property which comes to his or her knowledge; and
- (b) the Strata Company shall have authority to enter upon any lot, by its agents or servants, if necessary in the circumstances, having regard to the urgency involved, to carry out such repairs or renovations as it may deem necessary.

**21. Rights of exclusive use and enjoyment over certain portions of the common property.**

1. Upon the registration of the first re-subdivision of the original Lots 1 to 34 inclusive on the Strata Plan to create Lots 35 to 68 inclusive, in accordance with section 42(8) of the Act the following rights of exclusive use and enjoyment over certain portions of the common property are granted to the lot proprietors as follows:
  - (a) to Lots 36 to 49 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto;
  - (b) to Lots 50 to 54 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (c) to Lots 55 to 59 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (d) to Lots 60 to 63 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (e) to Lots 64 to 66 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (f) to Lots 67 and 68 the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (g) to Lots 50 to 68 inclusive the rights of exclusive use and enjoyment over those portions of the common property as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (h) to Lot 39 the rights of exclusive use and enjoyment over those portions of the common property for parking purposes limited to the daytime parking of cars during such hours 8.30 am to 5.00 pm from Monday to Friday inclusive, as depicted within the sketch plans contained in ANNEXURE B attached hereto; and
  - (i) it is the responsibility of the registered proprietors of the lots to which the rights of exclusive use and enjoyment have been granted to indemnify the Strata Company against any claim whatsoever by any party for any compensation or damages claim due to any action that may occur within those portions of the common property over which the rights of exclusive use and enjoyment have been granted; and
  - (j) the maintenance and upkeep of those portions of the common property over which the rights of exclusive use and enjoyment have been granted shall be the sole responsibility of the proprietors of the lots to which the rights of exclusive use and enjoyment have been granted; and
  - (k) in the case where the rights of exclusive use and enjoyment have been granted jointly to two or more lots the costs of maintenance and upkeep referred to in clause (j) shall be payable by the individual proprietors of those lots granted the rights of exclusive use and enjoyment over a particular portion of the common property in the ratio that the aggregate unit entitlement of such lots bear to the unit entitlement of the individual lot.
2. Upon the registration of the second re-subdivision of Lot 35 on the Strata Plan to create Lots 69 to 72 inclusive in accordance with section 42(8) of the Act the following rights of exclusive use and enjoyment over certain portions of the common property are granted to Lots 69 to 72 inclusive (in conjunction with the lots within By-law 21,1(a)) as depicted within the sketch plans contained in "ANNEXURE A" attached hereto.

**22. Variation in the payment of Strata Company levy contributions by certain lots.**

1. In accordance with section 42B of the Act the method of assessing contributions to be levied on proprietors under section 36 of the Act are varied in that Lot 1 inclusive within the strata scheme will NOT contribute to the following items of expenditure contained in the Strata Company levy budget:

- (a) Strata company insurance applicable to the commercial Lots 2 to 15 inclusive;
- (b) Strata company insurance applicable to the residential Lots 16 to 34 inclusive;
- (c) Cleaning, repair and maintenance to those parts of the common property building structures and the common property areas applicable to Lots 2 to 34 inclusive.

2. In accordance with section 42B of the Act the method of assessing contributions to be levied on proprietors under section 36 of the Act are varied in that Lot 2 to 34 inclusive within the strata scheme will NOT contribute to the following items of expenditure contained in the Strata Company levy budget:

- (a) Strata company insurance applicable to the commercial Lot 1;
- (b) Cleaning, repair and maintenance to those parts of the common property building structures and the common property areas applicable to Lot 1.

3. Upon the registration of the first re-subdivision of the original Lots 1 to 34 inclusive on the Strata Plan to create Lots 35 to 68 inclusive, in accordance with section 42B of the Act the method of assessing contributions to be levied on proprietors under section 36 of the Act are varied in that Lots 36 to 49 inclusive, within the strata scheme will NOT contribute to the following items of expenditure contained in the Strata Company levy budget:

- (a) Strata company insurance applicable to the Lot 35;
- (b) Strata company insurance applicable to the residential Lots 50 to 68 inclusive;
- (c) Cleaning, repair and maintenance to those parts of the common property building structures and the common property areas that are subject to the grants of exclusive use in accordance with Schedule 1 by-law 21.

4. Upon the registration of the first re-subdivision of the original Lots 1 to 34 inclusive on the Strata Plan to create Lots 35 to 68 inclusive, in accordance with section 42B of the Act the method of assessing contributions to be levied on proprietors under section 36 of the Act are varied in that Lots 50 to 68 inclusive, within the strata scheme will NOT contribute to the following items of expenditure contained in the Strata Company levy budget:

- (b) Strata company insurance applicable to the Lot 35;
- (b) Strata company insurance applicable to the commercial Lots 36 to 49 inclusive;
- (c) Cleaning, repair and maintenance to those parts of the common property building structures and the common property areas that are subject to the grants of exclusive use in accordance with Schedule 1 by-law 21.

5. Upon the registration of the second re-subdivision of Lot 35 on the Strata Plan to create Lots 69 to 72 inclusive, in accordance with section 42B of the Act the method of assessing contributions to be levied on proprietors under section 36 of the Act are varied in that Lots 69 to 72 inclusive, within the strata scheme will NOT contribute to the items of expenditure contained in the Strata Company levy budget as set out in clause 22,3 (b) (c).

6. In accordance with section 42B of the Act the method of assessing contributions to be levied on the lot proprietors under section 36 of Act are varied in that if any service is supplied to a lot, the use of which will be regulated by sub-meters, the consumption cost of the common service, will not be determined by the unit entitlement that each lot bears in relation to the aggregate unit entitlement for the total lots in the scheme, but will be levied on the following basis;

- (a) the Strata Company shall arrange the periodic reading of all sub-meters to ascertain the amount of cost of each particular service consumed by each lot.
- (b) the Strata Company shall calculate the consumption cost of each particular service to each lot.
- (c) the Strata Company shall levy each lot proprietor for the amount of money required to pay for each proprietors share of the service consumed within the scheme, and
- (d) the amount referred to in item (c) of this by-law shall be payable by each lot proprietor in accordance with the terms set out in the notice of account issued by the Strata Company.

7. All other levy contributions payable by the lot proprietors for the cost of any common property repair and maintenance, the consumption of services and common rates and taxes applicable to the Strata Company, and other matters as decided by the Strata Company, will be assessed by the payment of the Strata Company levy by the individual strata lot proprietors apportioned on the proportion that the unit entitlement of the individual strata lot bears in relation to the aggregate unit entitlement of all lots.

**23. Restrictions on use of lots**

Except as approved by the Strata Company or the local authority a proprietor of a lot in the strata scheme shall not use the lot or allow the Lot to be used for any other purpose other than what was originally intended in the approved plans and specification for the buildings constructed.

**24. Signage**

No sign or hoarding will be erected, installed or painted on any building or any part of the parcel within the boundary of any lot so as to be visible from outside the lot without the prior written consent of the council; and a proprietor, occupier or other tenant of a lot shall not, except with the consent in writing of the council and the original proprietor until such time as the original proprietor has completed the sale of the last remaining unsold lot on the strata plan.

:

- (a) erect or display any promotional material on any part of the common property without first obtaining written permission from the council or the duly appointed Strata Company Manager; or
- (b) display any sign, advertising, placard, banner, pamphlet or like matter on any external part of his lot without first obtaining written permission from the council or the duly appointed Strata Company Manager.

**25. Floor coverings.**

- (a) Where lot proprietors (other than those on the ground floor) wish to install hard floor surface finishes within their lots, including (but not limited to) ceramic tiles, marble, timber, vinyl or cork, the hard floor surface finish must be installed over a resilient underlay and a proprietor or occupier of a lot shall take all reasonable steps to reduce impact noise throughout the area of a lot; and
- (b) Even with the installation of the resilient underlay, hard floor surface finishes will not match the impact isolation as well as carpet on under felt. Therefore, those lot proprietors and occupiers whose lots contain hard floor surface finishes should take action to reduce impact noise in their daily activities. Such action includes using soft rubber soled shoes whilst walking on hard surface floor finishes and affixing felt to the underside of chairs and furniture to reduce noise associated with shifting furniture.

**26. Security Screens, doors, blinds and shutters**

- (a) Each lot proprietor is granted exclusive use of all external security screens and doors and external blinds and shutters relating to his or her lot that are common property.
- (b) The proprietor of each lot shall bear the cost of maintenance, repair and replacement of all such external security screens and doors and external blinds and shutters relating to his or her lot.
- (c) A proprietor shall not install any external security screen or door or any external blind or shutter to his or her lot without first obtaining written approval of the colour, materials and design of that item from:
  - (i) the council of the strata company; and
  - (ii) the original proprietor until such time as the original proprietor has completed the sale of the last remaining unsold lot on the strata plan.

**27. Installation of machinery & air-conditioning.**

No proprietor or occupier will install any machinery or air-conditioning plant within any lot within the strata scheme, so that part of that machinery or plant projects into common property without obtaining prior approval, in writing, for such installation from the council of the strata company.

**28. Air conditioning operating costs.**

The costs of maintenance, operation, insurance, repair and replacement of the individual air conditioning plants contained within the building shall be the responsibility of the registered proprietor of the strata lot to which the air conditioning plant relates.

**29. Exclusive use rights over common property relative to air conditioning plant & any machinery installation.**

In accordance with Section 42(8) of the Act the rights of exclusive use and enjoyment over that volume of common property occupied by any air conditioning plant and any machinery that services and relates to the air conditioning of an individual strata lot within the strata scheme, are granted to the registered proprietor of the strata lot to which the air conditioning plant or machinery relates; and the costs of any damage repairs or replacements to any part of the common property that may become necessary, due to the repair, maintenance or replacement of any air conditioning plant or machinery for which a registered proprietor is responsible shall be the responsibility of that registered proprietor.

**30. Access to common property for maintenance of air conditioning plant & any machinery installation.**

A lot proprietor shall have access to the areas of common property external to the strata lots contained within the strata scheme, at all times, subject to the By-Laws for the maintenance, repair, or replacement of any machinery or building repair that may be required in respect to any air conditioning plant or machinery installation that is the responsibility of a registered proprietor, provided that the registered proprietor has first given reasonable notice to that effect, verbally or in writing, to the Strata Company that such access is required.

**31. Design and theme of building**

- (a) Each proprietor acknowledges that the original proprietor of the lots has designed and constructed the building according to a theme depicted on plans and drawings made available to each proprietor prior to acquiring his or her lot and that the original proprietor wishes to complete construction and theme of the building in a manner which is consistent and of a similar standard.
- (b) The proprietors and the strata company will not alter the theme, structure or colour scheme of any building and other structure on the land without the prior written approval of the original proprietor until such time as the original proprietor has completed the sale of the last remaining unsold lot on the strata plan.

**32. Clothes driers.**

Where lots contain or will contain clothes driers that are supported off walls, the lot proprietor must undertake to take all reasonable measures to reduce noise emanating from the clothes dryer.

**33. Spas.**

Lot proprietors are to ensure that in all spas installed in their individual lots the motor is isolated from the concrete floor below with an impact sound and vibration control product approved by the original proprietor or the strata company.

**34. Employment of caretaker.**

A caretaker may be employed by the Strata Company. The duties, remuneration and terms of employment of the caretaker will be fixed from time to time by the Strata Company Manager exercising its powers of appointment.

**35. Strata Company to make rules.**

- (1) The council of the Strata Company shall be entitled from time to time to make and prescribe rules and regulations relating to the use of the communal recreational facilities and the common property contained within the strata scheme (not inconsistent with these by-laws), for the proper management of the strata scheme or any improvements thereon and may display these rules within the areas to which they apply. Without limiting the generality of this clause in any way the council may make regulations in regard to the following matters:
  - (a) the use, safety and cleanliness of all parts of the common property including (if any) swimming pools, gymnasiums, courtyards, gates, visitors car bays, walkways, balconies, stairways, passageways, other parts of the common property and the conduct of the proprietors, mortgagees in possession, lessees, occupiers and their visitors;
  - (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 strata scheme;
  - (f) the fire and emergency exercises;
  - (g) the maximum speed limit not to be exceeded by any vehicle or bicycle travelling upon the parcel;
  - (h) the parking of caravans, boats or similar vehicles on the lots on such parts of the common property as shall be set aside for the same;
  - (i) control and erection of external antenna or receiving devices;
  - (j) control and erection of external advertisements on the facades of the buildings;

- (k) the control of the commercial lots in relation to operating hours of any business with the exception of Lot 1 or any lot derived from Lot 1 while it remains as a petrol service station.
- (2) A proprietor, mortgagee in possession, lessee 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.

**36. Facades of buildings.**

A proprietor or occupier shall not alter, modify, erect or carry out any works to the facades of the buildings, including any awnings, blinds, shutters, etc that are not in keeping with the rest of the buildings without the prior written authority of the council of the Strata Company.

**37. Development approval required**

- (a) Development or redevelopment on the strata lots must comply with an existing development approval issued by the City of Melville, or such alternative development approval as the Council of the City of Melville may grant, which complies with the grouped dwelling requirements of the City of Melville Town Planning Scheme(s) and planning policies.
- (b) Amendment to or repeal of 37(a) cannot be effected without the Western Australian Planning Commission's agreement.

**38. Development of the strata scheme.**

The strata scheme to be developed in accordance with the construction plans and specifications approved by the local government authority as are contained in the Schedule hereto on the following basis:

- (a) It is the intention of the original proprietor to arrange for the final construction of 37 strata title residential dwellings and common building facilities in accordance with the plans and specifications contained in the Schedule hereto and marked **ANNEXURE G** and such constructions will be carried out in a progressive manner herein after referred to as stages that will necessitate the re-subdivision of the strata plan.
- (b) The strata scheme is to be created has been pre-determined in three stages as contained in the strata plans contained in the Schedule hereto and marked **ANNEXURES C, D and E** and will be completed by the preparation of a initial strata plan creating thirty four strata title lots, comprising 1 (one) lot containing a building and thirty three (33) vacant development Lots suitable for the construction of further building works to create at the completion of the scheme a total of thirty seven (37) strata title lots as follows;

Stage 1 will comprise Lots 1 to 34 inclusive

Stage 2 will comprise the re-subdivision of Lots 1 to 34 inclusive to create Lots 35 to 68 inclusive

Stage 3 (the final stage) will comprise the re-subdivision of Lot 35 to create Lots 69 to 72 inclusive

- (c) The original proprietor shall request the strata company upon the registration and the completion of the stage 1 strata plan to pass unanimous resolutions to effect the re-subdivision of the strata plan for the scheme by re-subdividing Lots 1 to 34 inclusive to create Lots 35 to 68 inclusive, the re-subdivision of Lot 35 to create Lots 69 to 72 inclusive and a re-allocation of the unit entitlement for the lots created upon each re-subdivision.
- (f) At the final stage the unit entitlement will be re-allocated in accordance with the Act and in accordance with the Form 27 contained in the Schedule attached hereto and contained **ANNEXURE F** to reflect the completed constructions upon the strata plan.

**39. Re-subdivision of the original strata plan.**

- (a) As the buildings works are completed in stages and when all the building works are completed, in accordance with the construction plans and specifications, the strata plan shall be re-subdivided by the strata company in accordance with the resolutions set out in by-law 38, to reflect the construction which has taken place within the Development Lots upon the final strata plan.
- (b) The unit entitlement of the strata scheme shall be reallocated upon completion of the final stage in accordance with the reallocation of the unit entitlement as set out in **ANNEXURE E** contained in the Schedule hereto as determined by a licensed valuer in accordance with the Valuation of Land Act and Section 15 of the Strata Titles Act 1985, as amended, upon the issue of a certificate of a licensed valuer in accordance with Section 14 to the Strata Titles Act 1985, as amended; and
- (c) The re-subdivision of the first, second and final strata plan and the re-allocation of the unit entitlement of the lots contained in the strata plan at the final stage will to be in accordance with **Sections 8, 8A (a) (ii) II, (b) & (c) and Schedule 2A, Item 8, (a) and (b) of the Strata Titles Act 1985, as amended.**

**40. Amendments to Schedule 1 of the by-laws of the Strata Company.**

The Strata Company by-laws comprising Schedule 1 may only be amended, repealed or added to by a resolution without dissent of the Strata Company, in accordance with the Act together with the approval of the local government authority and/or the Western Australian Planning Commission, if required.

**41. Amendments to Schedule 2 of the by-laws of the Strata Company.**

The Strata Company by-laws comprising Schedule 2 may only be amended, repealed or added to by a special resolution of the Strata Company, in accordance with the Act together with the approval of the local government authority and/or the Western Australian Planning Commission, if required.

**WARNING**

**The proposed re-subdivision in by-law 38 and 39 of Schedule 1 is not binding on the Western Australian Planning Commission, local government or any other public or statutory authority. Any of these authorities may not approve, or may require changes before approving, the proposed re-subdivision.**

## STRATA COMPANY BY-LAWS

### SCHEDULE 2

#### 1. Use of lots.

No lot shall be used for any purpose that contravenes any by-law or requirement of the Strata Company, or any by-law of the local government authority and any other authority that may have jurisdiction over the use to which a lot may be put.

#### 2. Behaviour of proprietors, occupiers and tenants within the scheme.

A proprietor, occupier or tenant 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 any other government and regulating authority law;
- (b) use the lot that he or she owns, occupies, leases or rents for any purpose that may be illegal 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 the lawful use of the common property by any person or permit to be done anything whereby any obstruction, restriction or hindrance may be caused to the entrances, exits, access roads or 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, other than in areas set aside for such use and allocated to that proprietor except with the approval of the Strata Company.
- (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;
- (g) park or leave any vehicle in such a position where it is likely to be a nuisance or obstruct access to or egress from any car parking area, strata lot, any part of the common property or any part of the scheme;
- (h) use any facility or utility situated within the common property for any purpose other than that for which it is specifically intended;
- (i) 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 or tenant of another lot or of any person lawfully using the common property;
- (j) make undue noise in or about any lot or common property that contravenes any regulation, by-law or statute of the local government authority or any other government or regulating authority law;
- (k) keep any animals on the lot that he or she owns, occupies, leases or rents or the common property after notice in that behalf given him or her by the council of the strata company;
- (l) permit any child of whom he or she has control to play upon common property within the scheme, or unless accompanied by an adult exercising effective control, to be or to remain upon common property comprising an access road, car parking area or other area of possible danger or hazard to children;
- (m) use language or behave in a manner likely to cause offence or embarrassment to the proprietor, occupier or tenant of another lot or to any person lawfully using common property and shall be adequately clothed when upon common property;
- (n) except with the approval in writing of the Strata Company, 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, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.
- (o) 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 by-laws;
- (p) permit any clothing, bedding or other articles to be hung on the balconies or on the outside of the lot or from the windows of the lot;

(q) throw or allow to fall or permit to be thrown or to fall anything whatsoever out of or from any window, door, balcony or other part of the proprietor's lot.

**3. Use of common property.**

Except with the approval of the Strata Company a proprietor, occupier, or tenant 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.

**4. Alterations to common property.**

The facilities, amenities, services and common property included in the original construction plans and building specification approved by the local government authority will not be changed or altered in any manner so as to delete any item aforesaid from the scheme without the passing of an appropriate resolution of the Strata Company 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.

**5. 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.

**6. Instructing of contractors by proprietors.**

A proprietor shall not directly instruct any contractors or workmen employed by the Strata Company unless the Strata Company has authorised the proprietor to do so. Any proprietor instructing any contractor or workman without proper authorisation from the Strata Company shall be personally responsible for the payment of the contractor or workman for the work carried out under the unauthorised proprietor's direction and shall be further personally responsible for the cost of removing or altering any such work which the Strata Company deems unsatisfactory.

**7. Costs of making good any damage.**

If the Strata Company expends money to make good damage caused by a breach of the Act or of 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 so expended as a debt in an action in any Court of competent jurisdiction from the proprietor who was the proprietor of the lot at the time when the breach occurred.

**8. Weight loads to floors.**

A proprietor, occupier or tenant of a lot shall not do any act or thing or permit any person to do any act or thing which might result in excessive stress or floor loading to any part of his or her lot or the common property including without limitation, allowing a weight loading on any part of his or her lot of more than that specified in the engineer's specifications for that lot.

**9. Appearance of the lot.**

A proprietor, occupier or tenant of a lot shall maintain the appearance of the lot in respect to tidiness and landscaping contained within the lot in such a manner as is in keeping with the appearance of the other lots within the scheme and shall not maintain within the lot anything visible from outside the lot that, when viewed from outside the lot, is not in keeping with the rest of the building; except if the proprietor, occupier or tenant of the lot uses any lot for commercial purposes consented to by the council of the Strata Company they may display any sign, advertising, placard, banner, or pamphlet or like matter relating to those commercial purposes with permission of the council of the Strata Company.

**10. Maintenance of services and parts of the building contained within a lot.**

The cost of any maintenance, repair or replacement of any part of the building, 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 registered proprietor of the lot to which such maintenance, repair or replacement is required.

**11. Blockage of drainage pipes.**

- (a) The water closets, conveniences and other water apparatus including waste pipes and drains, shall not be used for any purpose other than those for which they were constructed and no sweepings, or rubbish or other unsuitable substances shall be deposited therein.

(b) Any damage or blockage resulting to such water closets, conveniences, water apparatus, waste pipes and drains from misuse or negligence by the proprietor, tenants, servants, agents, invitees shall be borne by the proprietor whether the same is caused by his or her own actions or those of his or her tenants, servants, agents, invitees or licensees.

**12. Water leakage to other lots or common property.**

(a) It is the responsibility of the registered proprietor or occupier of a lot to ensure that all wet areas, (such as bathrooms, en-suites, toilets, laundries, kitchens and balconies), contained within the lot or lots of which they are the registered proprietor or occupier are maintained in a proper sealed manner so as to prevent the leakage, seepage or transference of any water or other liquid to any part of the common property, (other than waste pipes provided for the disposal of such water or liquid), or to any other lot or part of the building.

(b) 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 building occur, it is the responsibility of the registered proprietor of the first mentioned lot or lots to rectify such leakage, seepage or transference of such water or liquid and the cost of such rectification shall be the responsibility of the registered proprietor of the lot or lots from which the leakage, seepage or transference has occurred.

(c) 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 building occur, the Strata Company shall give notice in writing to the registered proprietor of the lot or lots from which the leakage, seepage or transference originates to rectify such leakage, seepage or transference.

(d) Should the registered proprietor of the offending lot or lots not, within a time specified by the Strata Company for the rectification to be carried out carry out, such works as may be required, then the Strata Company may in accordance with sections 38 and 39 of the Act employ whatever means may be necessary to rectify such leakage, seepage or transference.

(e) Should the Strata Company take action in accordance with clause (d) of this by-law, any and all costs incurred by the Strata Company in rectifying such leakage, seepage or transference shall be payable by the registered 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.

(f) Should any leakage, seepage or transference of water or liquid be found to be due to a fault or defect in any part of the common property, this by-law will be limited to granting to or acknowledging those powers conferred on the Strata Company pursuant to sections 38 and 39 to the Act.

**13. Vermin, pest and insects.**

A proprietor shall keep his or her lot clean and shall take all practicable steps to prevent infestation by vermin, pests and insects.

**14. Garbage disposal.**

A proprietor, occupier or tenant of a lot shall:-

(a) maintain in a clean dry condition within his or her lot, or on such part of the common property as may be approved by the Strata Company a garbage disposal chute for the lot and if required an adequately covered receptacle for garbage

(c) ensure that before refuse is placed in the receptacle it is securely wrapped or in the case of tins, bottles and other containers, is completely drained;

(c) comply with all local government authority by-laws and ordinances relating to the disposal of garbage; and

(d) ensure that the health, hygiene and comfort of the proprietor, occupier or tenant of any other lot is not adversely affected by his or her disposal of garbage.

**15. Employment of the Strata Company Manager.**

(a) The Strata Company may employ the services of a Strata Company Manager for the purposes of administering the affairs of the Strata Company in respect to all of the responsibilities and obligations of the Strata Company as contained in sections 35 and 36 (1) of the Act and to perform those other duties of the Strata Company as contained in section 36 (2) of the Act together with exercising the powers of the Strata Company in accordance with section 37 of the Act and Schedule 1 by-law 8 (2) (b), as may be required from time to time, and

(b) the Strata Company may enter into an agreement with a Strata Company Manager for these purposes.

**16. The Strata Company Management Agreement.**

The management agreement between the Strata Company and the Strata Company Manager shall be in the same form and context and contain the same expressed meanings and terms of appointment of the Strata Company Manager as are contained in the Strata Company Management Agreement **attached to the schedule hereto and marked as Annexure A** that forms part of these by-laws unless varied in accordance with Schedule 2 by-law 17.

**17. Variation of the Strata Company Management Agreement.**

The terms and conditions and delegation of responsibilities of the duties and powers of the Strata Company contained within the Strata Company Management Agreement, as specified in Schedule 2 by-law 15, may only be varied by a majority resolution of the Strata Company, an order of the Strata Titles Referec or the Supreme Court, as provided for in the Act.

**18. Termination of the Strata Company Management Agreement.**

- (a) The Strata Company may only terminate an agreement with a Strata Company Manager by a majority resolution passed at a duly convened general meeting of the Strata Company; and
- (b) Prior to such majority resolution to terminate such agreement the Strata Company must have resolved by a majority at a duly convened general meeting of the Strata Company to enter into a further agreement with another Strata Company Manager that shall contain the same terms and conditions and delegation of responsibilities, duties and powers of the Strata Company as were contained in the previous Strata Company Management Agreement (unless varied in accordance with Schedule 2 by-law 17.)

**19. Rules for swimming pool, spa and gymnasium areas.**

**(I) Interpretation**

- (a) **Adult Resident** means a Resident over the age of eighteen (18) years.
- (b) **Child** means any person under the age of eighteen (18) years who on that day occupies a Unit.
- (c) **Occupy** means to stay in a Unit (including on a non-exclusive basis) for any part of a day, solely or in common with other and (for the avoidance of any doubt) ever person, whether adult or child, who is staying in a Unit is occupying that Unit.
- (d) **Pool Area** means the area forming part of the common property in the strata scheme and being identified as the swimming pool, spa and gymnasium area, which is subject to this by-law.
- (e) **Pool Area Rules** means Schedule 2 by-law numbers 19 and 20.
- (f) **Pool Manager** means a pool manager appointed under this by-law.
- (g) **Pool User** means any person in the Pool Area.
- (h) **Resident** means every person who on that day occupies a Unit, and includes any Child.
- (i) **Unit** means:
  - (i) in relation to a Resident, the unit (forming part of a Lot) which that Resident occupies; and
  - (ii) in relation to a Visitor, means the unit (forming part of a Lot) which the Resident, which the Visitor relates to, occupies.
- (j) **Visitor** means any person (excluding Residents) who is in (insert address of property) because he or she is or has been visiting or is intending to visit a Resident, or is in (insert address of property) with the express or implied consent of a Resident.
- (k) A Resident relates to another Resident if both of those Residents occupy the same Unit.
- (l) A Visitor relates to a Resident if the Visitor is in the scheme because he or she is or has been visiting or is intending to visit, or is in the scheme with the express or implied consent of, that Resident or a Resident who occupies the same Unit as that Resident.

**20. Regulation of the pool area.**

**(I) Persons entitled to use the Pool Area**

- (a) Subject to paragraph (1) (b) & 1 (c) of this by-law, only Residents and Visitors may enter the Pool Area.

- (b) Paragraph (1) (a) of this by-law does not apply to the Strata Company Manager, Pool Manager, or any person authorised to enter the Pool Area by the Strata Manager or Pool Manager.
- (c) No Visitor may enter the Pool Area unless accompanied by at least one adult Resident.
- (d) In respect of each Unit, no more than four Visitors may be in the Pool Area at any time and the Resident related to the Visitor must accompany a Visitor.
- (e) Pool Users under the age of fourteen (14) years must not enter the Pool Area unless accompanied by the adult Resident related to the Pool User.

**(2) Responsibility, Risk and Indemnities**

- (a) Every adult Resident agrees to be bound by the Pool Area 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 Pool Area Rules, constitute a breach of the Pool Area Rules by that person.
- (b) To the full extent permitted by law, every Pool User:
  - (i) enters the Pool Area at their own risk;
  - (ii) assumes all risk and danger to them arising out of entering, remaining in and using the Pool Area including without limitation damage or injury caused by other persons; and
- (c) releases the Strata Company, the Strata Company Manager, the Pool Manager and their and each or their employees and agents from all liability howsoever arising from:
  - (i) any accident damage or injury to property of, or loss of property of, that Pool User; and
  - (ii) any accident, damage, injury or death suffered by that Pool User, incurred whilst that Pool User is or was in the Pool Area.
- (d) Every adult Resident, regardless of whether he or she is present with the Children or Visitors relating to that Resident in the Pool Area, 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 including without limitation damage or injury caused by other persons.
- (e) Every adult Resident indemnifies and shall keep indemnified the Strata Company, the Strata Company Manager, the Pool Manager and their 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.

**(3) Appointment and role of the Pool Manager**

- (a) The Strata Company must appoint and may dismiss and replace from time to time a Pool Manager to manage the Pool Area, on terms and conditions acceptable to the Strata Company.
- (b) The Pool Manager may:
  - (i) suspend for a period of time not exceeding four (4) weeks any person from entering the Pool Area if in the opinion of the Pool Manager that person is breaching the Pool Area Rules or if in the opinion of the Pool Manager it is necessary or desirable for the safety or well being of Pool Users generally or any Pool User specifically that that person be so suspended;
  - (ii) require every Pool User to immediately vacate the Pool Area, if in the opinion of the Pool Manager it is necessary or desirable for the safety or well being of Pool Users generally or any Pool User specifically that the Pool Area be immediately vacated;
  - (iii) direct any Pool User as to the manner in which that Pool User may use and enjoy the Pool Area and that Pool User shall obey the lawful commands of the Pool Manager; and
  - (iv) refuse admission to or remove or cause to be removed from the Pool Area any Pool User who in the opinion of the Pool Manager is guilty of a breach of any of the Pool Area Rules or who the Pool Manager reasonably suspects to be guilty of a breach of any of the Pool Area Rules.

- (c) The Pool Manager shall do all things reasonable to ensure that all legislation regulations and orders including, without limitation, the Health Act (Swimming Pools) Regulations 1964 (as amended or replaced from time to time) are complied with.
- (d) The Pool Manager shall ensure that the 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 Pool Users.

**(4) Conduct of every Pool User**

A Pool User must not:

- (a) use any part of the Pool Area to the exclusion of other Pool Users;
- (b) use any part of the Pool Area for any business;
- (c) enter or remain in the Pool Area if under the influence of drugs or alcohol;
- (d) behave in a loud, disorderly, immoral, abusive, riotous, indecent, obscene or aggressive manner either generally or in respect of any pool user;
- (e) spit, urinate or defecate in the Pool Area;
- (f) use soap, detergent or any other substance that may foul or pollute any part of the Pool Area;
- (g) climb up or onto any fence, partition, roof or raised object in the Pool Area other than one expressly intended for that purpose;
- (h) enter or remain in the Pool Area unless properly attired;
- (i) enter or exit the Pool Area except through the gates and doors which are designed for that purpose;
- (j) eat in or take into the swimming pool any food, drink or confectionery;
- (k) permit any pet to enter the Pool Area;
- (l) leave any rubbish in the Pool Area except in a receptacle provided for that purpose;
- (m) smoke or inhale tobacco or any other substance in the swimming pool;
- (n) enter or use the swimming pool if affected by or suffering from any infectious or contagious disease or skin complaint;
- (o) use or leave drinking glasses, bottles or any other glass container within 3 metres of the swimming pool;
- (p) improperly use, damage or remove any furniture fittings, equipment or chattels located in the Pool Area; or
- (q) tamper with any equipment in the Pool Area.

**21. Conference room facility.**

- (a) The common property conference room facility shall only be used by a proprietor, occupier or tenant of a lot.
- (b) The strata company may put in place rules relating to the use of the conference room.
- (c) The strata company manager shall take bookings from a proprietor, occupier or tenant on a first preference basis.