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## OWNERS CORPORATION PLAN

### CONSOLIDATED RULES OF THE OWNERS CORPORATION (“the Rules”)

Pursuant to section 138 of the *Owners Corporation Act 2006* (“the Act”) and the *Owners Corporations Regulations 2007* (“Regulations”)

Made by special resolution passed on \_\_\_\_\_ 20\_\_

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#### 1. HEALTH, SAFETY AND SECURITY

##### 1.1. Health, safety and security of lot Owners, occupiers of lots and others

A lot owner or occupier must not use the lot, or permit it to be used, so as to cause a hazard to the health, safety and security of an owner, occupier, or user of another lot.

##### 1.2. Storage of flammable liquids and other dangerous substances and materials

- (a) Except with the approval in writing of the Owners Corporation, an owner or occupier of a lot must not use or store on the lot or on the common property any flammable chemical, liquid or gas or other flammable material.
- (b) This rule does not apply to —
  - (i) chemicals, liquids, gases or other material used or intended to be used for domestic purposes; or
  - (ii) any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.
- (c) Nothing in this rule 1.2 prohibits the member or occupier of a lot used for commercial purposes storing on that lot any flammable chemical liquid or gas for use in that business so long as such substances have been registered with and approved by the Owners Corporation and pose no special risk to other Owners or occupiers.

##### 1.3. Waste disposal

- (a) An owner or occupier must ensure that the disposal of garbage or waste does not adversely affect the health, hygiene or comfort of the occupiers or users of other lots.

- (b) All bins must be maintained in a clean and hygienic state at all times.
- (c) An Owner, Occupier or Visitor must not deposit, discard, throw or leave garbage, waste or any other material including cigarette butts onto any part of the common property at any time.

## **2. MANAGEMENT AND ADMINISTRATION**

### **2.1. Owners to provide Australian address for service of notices**

- (a) All owners must provide to the Owners Corporation a postal address for service of notices within Australia, failing which, all notices and documents will be deemed to be properly served on the owner if sent by Australia Post or delivered to the lot.
- (b) Lot owners are encouraged to provide an email address for communications, notices and documents of the Owners Corporation and thereby consent to the giving of information electronically pursuant to the provisions of the *Electronic Transactions (Victoria) Act 2000* but lot owners must also provide a postal address as per sub-rule 2.1(a).

### **2.2. Metering of services and apportionment of costs of services**

- (a) The Owners Corporation must not seek payment or reimbursement for a cost or charge from a lot owner or occupier that is more than the amount that the supplier would have charged the lot owner or occupier for the same goods or services.
- (b) If a supplier has issued an account to the Owners Corporation, the Owners Corporation cannot recover from the lot owner or occupier an amount which includes any amount that is able to be claimed as a concession or rebate by or on behalf of the lot owner or occupier from the relevant supplier.
- (c) Subrule (b) does not apply if the concession or rebate —
  - (i) must be claimed by the lot owner or occupier and the Owners Corporation has given the lot owner or occupier an opportunity to claim it and the lot owner or occupier has not done so by the payment date set by the relevant supplier; or
  - (ii) is paid directly to the lot owner or occupier as a refund.

### **2.3. Emergency Works and Diagnostic Costs**

If in the opinion of the chairperson or manager of the Owners Corporation an emergency has arisen likely to cause loss or damage to the common property or to private property then the chairperson or manager are authorised without further

resolution of the Owners Corporation to use best endeavours to arrange for such repairs or diagnostic tests as may be reasonably necessary to prevent further loss or damage.

### **3. USE OF COMMON PROPERTY**

#### **3.1. Use of common property**

- (a) An owner or occupier of a lot must not obstruct the lawful use and enjoyment of the common property by any other person entitled to use the common property.
- (b) An owner or occupier of a lot must not, without the written approval of the Owners Corporation, use for his or her own purposes any portion of the common property.
- (c) An approval under sub-rule (b) may state a period for which the approval is granted.

#### **3.2. Vehicles and parking on common property**

An owner or occupier of a lot must not, unless in the case of an emergency, park or leave a motor vehicle or other vehicle or permit a motor vehicle or other vehicle —

- (a) to be parked or left in parking spaces situated on common property and allocated for other lots; or
- (b) on the common property so as to obstruct a driveway, pathway, entrance or exit to a lot; or
- (c) in any place other than a parking area situated on common property specified for that purpose by the Owners Corporation.

#### **3.3. Damage to common property**

- (a) An owner or occupier of a lot must not damage or alter the common property.
- (b) An owner or occupier of a lot must not damage or alter a structure that forms part of the common property.
- (c) The Owners Corporation may grant approval in writing for alterations to common property and may state a period for which the approval is granted, and may specify the works and conditions to which the approval is subject.
- (d) An owner or occupier of a lot must not install any awning, screen, sign or barrier on the exterior of a lot or any part of the common property without prior approval in writing of the Owners Corporation which may specify the terms and conditions upon which such approval is granted.
- (e) An owner or occupier of a lot must not install any device cabling pipes or wires in or over any common property without the consent in writing of the Owners Corporation Committee.

## **4. LOTS**

### **4.1. Change of use of lots**

An owner or occupier must not change the use of their lot in a way that may affect the insurance premiums\* for the Owners Corporation, or make any structural alterations to the lot which requires a building or planning permit, without prior written approval from the Owners Corporation.

#### **Example**

\*If the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes.

### **4.2. Prohibition on use of lots for short term letting**

An owner or occupier must not use or allow their lot to be leased or sub-let for a period of less than 31 consecutive days without the written consent of the Owners Corporation.

## **5. BEHAVIOUR OF PERSONS**

### **5.1. Behaviour of Owners, occupiers and invitees on common property**

An owner or occupier of a lot must take all reasonable steps to ensure that guests of the owner or occupier do not behave in a manner likely to unreasonably interfere with the peaceful enjoyment of any other owner or occupier of a lot.

## **6. NEGATIVE OBLIGATIONS**

6.1 An owner or occupier must not:-

- (a) Interfere with the operation of any plant and equipment owned by the Owners Corporation and installed on the common property;
- (b) Alter in any way the external façade or structural appearance, colour of any lot or any common property without prior written approval from the Owners Corporation;
- (c) Erect or affix any sign or notice advertising a lot for sale or lease on any part of the building or on the common property without written approval of the Owners Corporation.
- (d) Display any placard, advertisement or sign in or upon the owner's lot or upon the common property other than on the entrance door of the lot without the prior written approval of the Owners Corporation.

- (e) Any approval granted by the Owners Corporation in accordance with sub-rules 6.1(c) and 6.1(d) may state the period and terms upon which the approval is granted.
- (f) Store, place, display or hang any chattel or item (including without limitation any item of clothing or linen) on any part of common property unless otherwise agreed in writing by the owners corporation;
- (g) Store, place, display or hang any chattel or item (including without limitation any item of clothing or linen) on or from a balcony or terrace of any lot that is visible from the common property or from any other lot;
- (h) Sub-rules 6.1(f) and 6.1(g) do not apply to pot plants, barbeques, outdoor furniture in a lot that are maintained in a safe, clean and tidy manner;
- (i) Use or permit a lot affected by the Owners Corporation to be used for any purpose which may be illegal or injurious to the reputation of the Owners Corporation or may cause a nuisance or hazard to any other member or occupier of any lot or the families, or visitors of any such member or occupier.

## 6.2 **Noise and other nuisance control**

- (a) An owner or occupier of a lot, or a guest of an owner or occupier, must not unreasonably create any noise likely to interfere with the peaceful enjoyment of any other person owner or occupier of a lot at any time.
- (b) Subrule 6.2(a) does not apply to the making of a noise if the Owners Corporation has given written permission for the noise to be made.

## 6.3 **Pets and animals**

The owner or occupier of a lot may keep domestic pets in the lot subject to the following:-

- (a) each animal does not disturb any occupier, guest or other pet at any time;
- (b) each animal is a domesticated pet;
- (c) care must be taken to ensure that the animals do not urinate or defecate on common property;
- (d) that each pet is kept clean, quiet and controlled at all times;
- (e) that the pet is not left, tied up or unattended in or on any common property (including within a vehicle) at any time;
- (f) If the Owners Corporation has resolved that an animal is a danger or is causing a nuisance to the common property, it must give reasonable notice of this resolution to the owner or occupier who is keeping the animal.
- (g) An owner or occupier of a lot who is keeping an animal that is the subject of a notice under sub-rule (f) must remove that animal.

- (h) Sub-rule (f) and (g) do not apply to an animal that assists a person with an impairment or disability.

#### 6.4 **Internal blinds**

An owner or occupier of a lot must have internal blinds installed at their lot to windows visible from the exterior of their lot and the backing of the blinds (visible from the exterior of their lot) must be either white or black.

### 7 **DISPUTE RESOLUTION**

#### 7.1 **Dispute Resolution Procedure**

- (a) The grievance procedure set out in this rule applies to disputes involving a lot owner, or an occupier or the Owners Corporation.
- (b) The party making the complaint must prepare a written statement in the approved form and serve a copy of the complaint on the manager, secretary or the chairperson of the Owners Corporation and if appropriate, on any other party involved.
- (c) The Owners Corporation will be represented for all dispute resolution purposes by one or more of:-
  - (a) The manager; or
  - (b) The grievance committee; or
  - (c) The chairperson;("the **OC representatives**") who shall be entitled to make decisions on behalf of the Owners Corporation for purposes of compliance with Part 10 of the Act. These rules evidence the resolution of the Owners Corporation to delegate power to the OC representatives for all purposes to enable operation of these rules and in accordance with the Act.
- (d) If the representatives decide to take action in respect of any alleged breach of an obligation imposed under the Act or the Regulations or these rules ("**breach**"), the OC representatives must give 28 days notice to rectify the breach to the person who allegedly committed the breach ("**respondent**") in accordance with Section 155 of the Act ("**S155 Notice**"). A copy of the S155 Notice must be given to both the lot occupier and the lot owner.
- (e) If the respondent does not rectify the breach within 28 days after the date of the S155 notice the OC representatives may decide to give a final notice stating that the respondent must within 28 days after the date of such final

notice rectify the breach in accordance with section 157 of the Act (“**Final Notice**”).

- (f) The OC representatives may decide to apply to VCAT for an order requiring rectification of the breach if the respondent fails to comply with the Final Notice within the required time and must give the notices contemplated by section 157(3) of the Act of their decision.
- (g) At any time after the OC representatives become aware that a complaint remains unresolved the OC representatives may in their sole and absolute discretion require the parties to attend a meeting to discuss the matter in dispute with the complainant and the respondent and:-
  - (i) A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting and each party shall have the right to make submissions and to be heard.
  - (ii) The parties must each:-
    1. use their best endeavours to make available to the OC representatives all facts and circumstances required in order to consider and resolve the dispute or differences; and
    2. attend in person and ensure that their respective employees, agents or consultants are available to appear at the meeting.
  - (iii) The OC representatives shall be entitled to make reasonable directions to expedite adjourn or terminate any meeting or determination of this dispute resolution process as the OC representatives in their sole discretion think fit on behalf of the Owners Corporation.

## **7.2 Reference of Dispute to an Expert**

- (a) In the event of any dispute or difference as to the effect of or operation of the plan of subdivision of the Owners Corporation, the interpretation and performance of obligations under these rules, the Act or the Regulations, that dispute or difference may, if the OC representatives the complainant and the respondent agree, be referred for determination by a person (Expert) who shall be agreed upon between the parties or appointed by the President for the time being of the Law Institute of Victoria.
- (b) Parties to use best endeavours

When any dispute or difference has been referred for expert determination, the parties must each:-

- (i) use their best endeavours to make available to the Expert all facts and circumstances which the Expert requires in order to settle or determine the dispute or difference; and

(ii) ensure that their respective employees, agents or Consultants are available to appear at any hearing or enquiry called for, by the Expert.

(c) Right to be heard

The parties each have the right to:-

(i) make submissions to; and

(ii) be heard by; and

(iii) each party may be legally represented before the Expert.

(d) Expert's decision

The decision of the Expert must be made and delivered to the parties within a period of 1 month (or such other period as the parties may agree, or the Expert may determine) after the date of submission of the dispute or difference to the Expert and shall be final and binding upon the parties.

(e) Expert may appoint other expert to assist

The Expert may appoint any other expert to consult with, assist and advise the Expert. The cost of such other expert is deemed to form part of the determination costs and expenses.

(f) Expert to act as an expert

The Expert must act as an expert, not as an arbitrator, and his or her decision will be final and binding upon the parties.

(g) Costs of determination

The Expert must also determine:-

(i) the amount of the costs and expenses of, and relating to, the reference of any dispute or difference to him or her (but excluding the personal time cost of any person acting in an honorary capacity including the chairperson secretary or committee member of the Owners Corporation); and

(ii) which party or parties must bear the costs and expenses, and in what shares, and in making the determination, the Expert must take into account the reasonableness of the parties leading up to the expert determination including any offers made to resolve the dispute and the costs so determined will be recoverable in a Court or Tribunal of competent jurisdiction as a debt due.



### **7.3 Conduct pending dispute resolution and/or expert determination**

In the event of any matter being the subject of dispute resolution or referred for the decision of an independent expert:-

- (a) These Rules, the Act and the Owners Corporations Regulations 2007 (“the Regulations”) will be adhered to pending the decision; and
- (b) If either party is challenging any payment claimed by the other:-
  - (i) so much of that payment, as is admitted to be owing, must be paid immediately; and
  - (ii) an appropriate adjustment must be made within 14 days of resolution.

### **7.4 Recovery of outstanding fees and other money due to the owners Corporation**

The Owners Corporation may commence debt recovery proceedings for recovery of outstanding fees levies charges and other money due, against any member of the Owners Corporation in any court of competent jurisdiction including for the purpose of bankruptcy or winding up of a company. This resolution does not detract in any way from the power of the Owners Corporation to make an application to VCAT under Part 11 of the Owners Corporations Act 2006 to recover fees and charges and other money or to enforce the Rules of the Owners Corporation. The Manager of the Owners Corporation and/or the Committee shall have the power pursuant to this resolution to determine the appropriate jurisdiction on a case by case basis in the sole discretion of the Manager and/or the Committee.

### **7.5 Costs**

All costs and expenses arising out of any breach by a lot owner, or an occupier of a lot, of an obligation imposed on that person under the Act the Regulations or these Rules, incurred by the Owners Corporation, including any costs and charges payable by the Owners Corporation to the manager or otherwise (but excluding the personal time cost of any person acting in an honorary capacity including the chairperson secretary or committee member of the owners corporation) shall be payable by any member in default or breach. The costs charges and expenses shall be due and payable as a debt due by the person in default or breach to the Owners Corporation on an indemnity basis.

### **7.6 General Provisions for Dispute Resolution**

- (a) If the dispute is not resolved, the grievance committee, secretary or chairperson must issue the Notices required under Part 10 and notify each party of his or her right to take further action under Part 11 of the Act.
- (b) This dispute resolution process must comply with Part 10 of the Act.

I certify that this is a true copy of the Consolidated Rules made by Special Resolution of the Owners Corporation on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Secretary of Owners Corporation

Date: \_\_\_\_\_