

# Bayview BSCP 437277S

## Owners Corporation Rules

### 1. Interpretation

1.1 In these rules unless the context requires otherwise:

**Act** means *Subdivision Act 1988 (VIC)* as amended

**Body Corporate** means all bodies corporate created by the Plan of Subdivision

**Commercial Lot** means Lots R1 to R12 (inclusive) on the Plan of Subdivision

**Committee** means a committee established under the Regulations

**Common Property** means all common property described on the Plan of Subdivision and includes any improvements comprising, decoration of, fittings or fixtures on and facilities of any kind within that common property.

**Development** means all the land and improvements now and in the future comprising the Plan of Subdivision known as Bayview Port Melbourne

**Lots** means all lots created by registration of the Plan of Subdivision and any future subdivision of a lot

**Managing Agent** means the person from the time being appointed by the Body Corporate as its managing agent

**Member** means an owner of a Lot and includes an Occupier

**Occupier** means any person occupying or in possession of a Lot and any invitee, guest or other person

**Plan of Subdivision** means Plan of Subdivision PS 437277S as amended, re-subdivided or altered from time to time

**Recreational Area** means the area of the Development designated by the Body Corporate as the recreational area and includes all equipment, improvements, fixtures and fittings located in that area

**Regulations** means the Subdivision (Body Corporate) Regulations 2001 (VIC)

**Rules** mean these rules and any amendment or addition to or replacement of these rules.

**Statute** means any legislation, statute, regulation, provision, by law or other rule enacted pursuant to or in replacement of that legislation from time to time

- 1.2 These rules operation in addition to any obligation imposed on or responsibility of a Member under any Statute, common law or equity
- 1.3 Where it appears that a Rule conflicts with another Rule, then other than in relation to Rule 6, these Rules are to be interpreted so that obligations set out in conflicting Rules will apply. For example, Rule 2.1(7) applies together with Rule 2.3(1) when determining whether a noise emanating from a Lot over Common Property breaches these rules

## **2. Prohibitions**

A Member must not and must ensure that an Occupier does not:

- 2.1 Use of Common Property
  - (1) Use the Common Property (or permit it to be used) in a manner which is or is likely to cause an unreasonable interference with or prevent use by other Members;
  - (2) Obstruct, restrict or hinder the lawful use of Common Property by any person;
  - (3) Use Common Property for any purpose other than the purpose for which it is provided and properly available;
  - (4) Deposit, throw or store upon the Common Property any rubbish, dirt, dust or other material on the Common Property, other than in proper receptacles in the areas specified for such purpose by the Body Corporate
  - (5) Fail to comply with any reasonable request or direction of or by the Body Corporate
  - (6) Park or leave a vehicle on Common Property in any place other than a designated parking space;
  - (7) Do not allow anything to be done on the Common Property or within a Lot which:
    - a) Constitutes a nuisance, damage, grievance, disturbance or annoyance to any Member; or
    - b) May be illegal or injurious to the reputation to the Development
  - (8) Use or allow the use of its Lot for any noxious, noisome, offensive, illegal or immoral purpose, act, trade, business, occupation or calling or in breach of any Statute;

- (9) Enter into any plan room, machine housing, water disposal room, electricity switch room, machinery room or other Common Property housing facilities or adjust or cause adjustments to the thermostat, water control, electricity, gas or heating and/or cooling controls in or on the Common Property without first obtaining the consent in writing of the Body Corporate
- (10) Require the Body Corporate to contribute or reimburse or pay for any plant, equipment, service or facilities exclusively servicing its Lot notwithstanding that the plan, equipment service or facility may be located within the Common Property;
- (11) Use any water closets, conveniences and other water apparatus including waste pipes and drains for any purpose other than those for which they were constructed
- (12) Deposit Sweepings, rubbish, debris or other unsuitable substance in such water apparatus, waste pipes and drains;
- (13) Smoke or permit any person to smoke anywhere on the Common Property include the car park and lifts
- (14) Move goods into or out of the Development in the course of moving residence or otherwise without first obtaining the consent in writing of the Body Corporate to do so and if the moving requires the use of lifts, unless protected covers have first been installed by the Body Corporate
- (15) Use or allow the laneways, ramps or paths leading to a car park or other Common Areas to be used for any purpose other than for which they are designed;
- (16) Hold parties or gather on Common Property, unless the Body Corporate first consents in writing;
- (17) Allow or arrange for delivery or collection of goods or rubbish other than at times reasonable approved of by the Body Corporate in writing from time to time;
- (18) Consume or permit to be consumed alcohol on the Common Property or take or permit to be taken glassware or other breakable items onto the Common Property
- (19) Store, place, display or hand any good, chattel, item or article of clothing on or from a balcony, terrace, window or door forming part of its Lot:
  - a) Where the good, chattel, item or article will not be visible from any other Lot or property, without first taking all reasonable precautions to ensure the safety of others
  - b) Where the good, chattel, item or article will be visible from another Lot or property, without first obtaining the written consent of the Body Corporate to do so; or
- (20) Store, place, display or hand any good, chattel, item or article of clothing on or from Common Property

## **2.2 Appearance**

- (1) Use any part of its Lot or any Common Property for any public announcement or for the display of any signage, place card or advertisement in relation to the sale or lease of its Lot unless previously approved in writing by the Body Corporate and affixed to its Lot in the area designated for such signage by the Body Corporate from time to time;
- (2) Store or permit to be store on Common Property any materials or goods of any kind except in a place set aside for that purpose by the Body Corporate;
- (3) Bring on to Common Property any noxious, dangerous, inflammable or other substance or contaminant that may cause damage or injury to person or property
- (4) Cut, injure, damage, deface or other interfere with any Common Property; or
- (5) Without first obtaining the written consent of the Body Corporate
  - a) Make or permit to be made any alterations or additions (painting and decorating included) to the exterior of its Lot;
  - b) Erect or affix any television mast, antenna, satellite dish or similar device or any canvas blind or other awning on the outside of any window, balcony or terrace; or
  - c) Make structural alternations or additions to the interior of its Lot or any part of it which may either affect the amenity or peaceful occupation of or diminish the support and shelter of its Lot or Common Property, and for the purpose of determining this the Body Corporate has the right to appoint and architect, structural engineer or building contractor at the expense of the Member

## **2.3 Noise Levels**

- (1) Use or permit to be used any instrument, fixture, mechanical apparatus or other thing which is audible outside its Lot between the hours of 10:00pm and 8:00am or such other hours as the Body Corporate approves in writing from time to time;
- (2) Make any disturbing or irritating noises or install or use any appliance, engine machine or instrument which causes or may be likely to cause noise or vibration in or about Common Property or that can be heard or felt outside of its Lot in which the noise or vibration is emanating from; or

- (3) Hold or permit to be held any social gathering in its Lot which is likely to cause that can be heard outside of its Lot

## **2.4 Conduct**

- (1) Use or permit to be used on its Lot any machine, equipment or instrument operated by electricity which causes or is likely to cause interference with wireless or telephone reception in any other Lot or to the Body Corporate unless such machine, equipment or instrument is effectively fitted with a device which prevents interference with wireless, telephone or other reception of other Members or the Body Corporate
- (2) Keep an animal in its Lot or leave unattended or exercise any animals on the Common Property unless the Body Corporate first consents in writing to the keeping of that animal and that consent has not been revoked or withdrawn;
- (3) Install any heating or cooling device or machine other than by mounting the plant and equipment for it in an area first approved by the Body Corporate in writing and in accordance with all laws;
- (4) Park or permit to be parked any of its vehicles within any car spaces allocated for visitor or commercial parking
- (5) Bring to, do or keep anything in its Lot which does or is likely to:
  - a) Increase the rate of insurance premium for the Development or Common Property;
  - b) Constitute or contribute to a breach of these Rules or other laws;
  - c) Conflict with or breach any insurance policy covering the Development or Common Property
- (6) Violate the provisions of any state, common law, equity or these Rules;
- (7) Carry out or permit to be carried out in its Lot any works lawfully permitted to be carried out other than between the hours of 8:00am to 5:00pm Monday to Friday or such other hours as the Body Corporate first approves in writing from time to time; or
- (8) Interfere with or inhibit from operating any channel, ventilation vent, duct or closure within its Lot

## **3. Obligations**

A Member must and must ensure that an Occupier will:

- (1) Keep keys and all security passes which have been allocated to them safe and promptly report the loss of any key or security pass to the Body Corporate
- (2) Ensure compliance with all Statutes including without limitation fire protection, detection and prevention laws in respect to its Lot, the Development and Common Property;
- (3) Ensure that only the Body Corporate replaces any security pass which is issued to them;

- (4) Pay the Body Corporate reasonable fee for any additional security key required by a Member
- (5) Give prompt notice to the Body Corporate of any accident to or fault in the water pipes, gas pipes, electrical, heating or cooling installations, fixtures or other improvements which comes to their notice;
- (6) Regularly and thoroughly clean the interior of all windows forming part of its Lot;
- (7) Promptly pay all recurrent and extraordinary rates, taxes, charges, outgoings and assessments levied by the Body Corporate and payable in respect of its Lot and no later than the due date;
- (8) Repair and maintain the interior of its Lot and keep the Lot in a safe state and in good and tidy repair;
- (9) Notify the Body Corporate immediately of any change of ownership or occupancy of its Lot;
- (10) Notify any subsequent owner or occupier of its Lot of any licences or agreements in place that affect the Lot, the Common Property and the Development
- (11) Only use light, power or heat generated by electrical current or gas supplied through meters except in the case of emergency or failure of supply when a Member may use other sources of energy except naked flame;
- (12) Notify the Body Corporate of any person who is not a member to whom use of a security pass to Common Property has been given;
- (13) Maintain the car space comprised in the Lot or licensed to the Member (if any) in a clean and tidy condition and ensure that the car space is used for registered and roadworthy vehicles only that will not emanate any noxious substance in excess of those prescribed by Statute or cause any contamination by oil, petrol, grease and other such substances;
- (14) Close any gates or doors when entering and leaving the Common Property
- (15) Allow reasonable access to any part of its Lot for any tradesperson, contractor or serviceperson employed by the Body Corporate for the purpose of maintenance or repair of the Common Property or Lot or any plant equipment, service, facility or utility;
- (16) Take all reasonable precautions to keep its Lot and Common Property free from rodents, vermin, insects and other pests;
- (17) Maintain public liability insurance over its Lot for no less than \$5 Million for any one event and insure its Lot and its contents for all customary risks of damage and destruction;
- (18) Take all reasonable steps to ensure that guests and visitors do not behave in a manner likely to interfere with the peaceful and quiet enjoyment of any Member or of any other person lawfully using the Common Property;
- (19) Keep clear on each and every day any mail receiving box and/or newspaper receptacle of all mail, leaflets, circulars, pamphlets, newspapers

- advertising and promotion literature or material or any other objects whatsoever whether solicited or not;
- (20) Arrange for such required clearance by other persons, should a Member be absent for any reason for any period of more than one night; and
  - (21) When on Common Property be adequately clothed and not use language or behave in a manner likely to cause offence or embarrassment to other Members or to any person lawfully using Common Property

#### **4. Recreational Area**

**A member must and must ensure that the Occupier of a Lot will:**

- (1) Only use the Recreational Area at their own risk in all things;
- (2) Strictly observe any signs put up in the Recreational Area by the Body Corporate from time to time including without limitation rules for the use of the swimming pool, gymnasium and general conduct rules;
- (3) Act in a responsible and sensible manner at all times in the Recreation Area and in use the Recreational Area and facilities;
- (4) Ensure that the Recreation area is used by Members only;
- (5) Ensure that children under the age of 16 only use the Recreational Area when accompanied by an adult;
- (6) Not take any glass, sharp or breakable objects into the Recreation Area;
- (7) Not take any alcohol, food or illegal substances into the Recreation Area nor use the Recreational Area after the consumption of alcohol or illegal substances
- (8) Shower prior to entering the swimming pool, sauna or spa area;
- (9) Not participate in running, ball playing or noisy or hazardous activities in the Recreational Area
- (10) Dry off after using the swimming pool, sauna or spa area and before leaving these areas within the Recreational Area;
- (11) Wear sensible footwear to, in and from the Recreational Area;
- (12) Wear appropriate attire in the Recreational Area at all times;
- (13) Wear appropriate and dry clothing in the gymnasium and wipe down the gym equipment with a towel after use; and
- (14) Use equipment in the Recreational Area strictly in accordance with manufacturer's directions at all times

#### **5. General**

- (1) A Member shall not let any person occupy its Lot unless that person first agrees in writing to be bound by these Rules

- (2) The Body Corporate may take measures to ensure the security of the Development from fire and other hazards and without limitation may act reasonable to:
- (a) Close off any part of the Common Property not required for access to a Lot on either a temporary or permanent basis;
  - (b) Otherwise restrict the access to or use by Members of any part of the Common Property
  - (c) Permit any designated part of the Common Property to be used exclusively by an security person as a means of monitoring security and general safety of the Development
  - (d) Restrict by means of a security key access of Members and occupiers to Common Property;
  - (e) Restrict by means of a security key the access of Members and Occupiers of one level of the Development to any other level of the Development and
  - (f) Cancel any security key, including where a Member is in arrears in payment of Body Corporate levies in excess of two payments
- (3) Members shall observe the terms of any notice displayed by the Body Corporate
- (4) Where the Body Corporate expends money to make good damage caused by a breach of any Statute of these Rules, the Body Corporate shall be entitled to recover the amount so expended as a debt in any action in Court of competent jurisdiction from the relevant Member at the time when the breach occurred

## **6. Bayview Port Melbourne Limited**

### 6.1 Future Works

Notwithstanding any Rule to the contrary, for so long as Bayview Port Melbourne Limited is the owner of a Lot and for so long as any mortgagee or chargee of Bayview Port Melbourne Limited has an interest in any Lot then these Rules shall not in any way whatsoever apply to or be enforceable against Bayview Port Melbourne Limited or its mortgagee or chargee where to do would prevent, hinder, obstruct or in any way interfere with any works of any nature or description that Bayview Port Melbourne Limited, its mortgagee or chargee may be engaged in or which it may need to carry out in order to complete construction of any building and facilities now or in the future comprised in the development

### 6.2 Standing Authorisation

Bayview Port Melbourne Limited its mortgagees or chargees shall and are by this Rule, authorised by the Body Corporate to:

- (1) Erect such barriers, fences, hoardings and signs as it deems necessary to facilitate any works to be carried out in relation to the Development;
- (2) Take exclusive and sole possession of any parts of the Common Property as it may need to have exclusive possession of in order to carry out any works or activities in relation to the Development;
- (3) Exclude all and any Members from any parts of the Common Property as may be necessary in order to carry out any works in relation to the Development;
- (4) Erect for sale promotional advertising or other signs as Bayview Port Melbourne Limited may require on any part of the Common Property;
- (5) Grant rights to use or access through or over the Common Property to third parties on such terms and conditions as Bayview Port Melbourne Limited or its mortgagee or chargee think fit; and
- (6) Use whatever rights of way and/or points of egress and ingress to the Development as are necessary to carry out any works and to block for whatever periods are necessary any rights of way or points of egress and ingress to the Development in order to carry out any works,

Provided that in doing so, Bayview Port Melbourne Limited will take reasonable steps to minimise any interference to other Members when exercising rights under this Rule;

## **7. Consent**

### **7.1 Conditions**

Wherever the consent of the Body Corporate is required, the Body Corporate:

- (1) Must be given reasonable notice in writing of the request;
- (2) Subject to any Statute preventing it from so doing, can delay, refuse or grant the consent subject to any conditions which it deems fit in its absolute discretion,  
and the Member must comply with the terms and conditions on any consent

### **7.2 Waiver**

If the consent of the Body Corporate is given to an act, matter or thing then the Body Corporate may revoke that consent at any time and is not obliged to renew that consent in the event that the consent was given for a specified period

## **8. Complaints**

Any complaint or application to the Body Corporate must be addressed in writing to the Managing Agent or where there is no Managing Agent to the secretary of the Body Corporate

## **9. Compliance with Laws**

A Member must at its expense promptly comply with all laws relating to its Lot

## **10. Compliance with Rules**

A Member is responsible for ensuring that to its invitees comply with these Rules

## **11. Commercial Lots**

Without limiting any other Rule, a Member must in relation to its Commercial Lot:

- (1) Take out its own bins on each garbage collection day and bring those bins in before 8:00am on each collection day or promptly after collection, whichever occurs first;
- (2) Avoid unnecessary noise when filling bins;
- (3) Ensure lids on bins are securely closed at all times and ensure that bins are kept clean;
- (4) Ensure all cardboard and paper waste is cut up or folded so as to fit in bins;
- (5) Store all bins within appropriate areas of the Lot and must not store bins or leave garbage on Common Property
- (6) Comply with all Statutes including without limitation health, noise and other regulations in carrying on any business from the Lot; and
- (7) Not affix a sign to the Commercial Lot or to Common Property unless the sign:
  - (a) Is only for the purpose of identifying the business carried on from the Commercial Lot and the laws of operation of business;
  - (b) Does not exceed a reasonable height and width; and
  - (c) Complies with the requirements of all relevant authorities

## **12. Breach**

### **12.1 Consequence**

If a Member breaches these Rules, the Member;

- (1) Must remedy the relevant breach and where the breach is incapable of remedy, pay compensation to the Body Corporate's satisfaction;

- (2) Must pay to the Body Corporate an amount equal to all costs, liability, loss or damage suffered or incurred by the Body Corporate as a result of the breach (together **Loss**); and
- (3) Indemnify the Body Corporate against Loss

12.2 Without limiting the above, the Member must pay interest on any amount outstanding for more than 7 days at a rate equal to 2% per annum less than the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983*

### **13. Lot R5**

Members acknowledge that if there is any conflict between these Rules and the terms of any lease granted in respect of Lot R5, the terms of the lease insofar as they may be inconsistent with these Rules prevail.

### **14. Standard Rules**

The Rules prescribed by the Regulation follow and must also be adhered to where a more onerous obligation does not apply:

- (1) A Member must not, and more ensure that the occupier of a Member's lot does not:
  - (a) Use the Common Property or permit the Common Property to be used in such a manner as to unreasonable interfere with or prevent its use by other Members or occupants of lots or their families or visitors;
  - (b) Park or leave a vehicle or permit a vehicle to be parked or left on the Common Property so as to obstruct a driveway or entrance to a lot or in any place other than in a parking area specified for such purpose by the Body Corporate
  - (c) Use or permit a lot affected by the Body Corporate to be used fro any purpose which may be illegal or injurious to the reputation of the Development 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;
  - (d) Make or permit to be made any undue noise in or about the Common Property or any Lot affected the Body Corporate;
  - (e) Make or permit to be made noise from music or machinery which may be heard outside the Owner's Lot between the hours of midnight and 8:00a.m.;
  - (f) Keep any animal on the Common Property after being given notice by the Body Corporate to remove the animal after the Body Corporate has resolved that the animal is causing a nuisance

## **15. General**

In these Rules unless the context otherwise requires:

- (1) Headings are for convenience of reference only and do not affect interpretation;
- (2) Words importing the singular include the plural and vice versa;
- (3) A reference to a person includes any company, partnership, joint venture or other entity;
- (4) A reference to a thing includes part of that thing;
- (5) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (6) A reference to a Statute includes all regulations, proclamations, ordinances or by-laws issued under that Statute and any statute amending, consolidating or replacing them;
- (7) A reference to the Body Corporate shall, where there is a Managing Agent, be construed as a reference to that Managing Agent;
- (8) One gender includes all genders;
- (9) "Including" and similar expressions are not words of limitation; and
- (10) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word have a corresponding meaning.

## **16. Severability**

- (1) As far as possible all of these Rules must not be construed so as not to be invalid, illegal or unenforceable
- (2) If any part of a Rule is unenforceable, illegal or void then it is severed and the rest of the Rule remains in force provided that it retains its intended effect
- (3) If construing the Rule without unenforceable, illegal or void component would result in an effect that was not intended, then the Rule itself shall be severed
- (4) After severance of any part or entire Rule, the remaining Rules shall remain in full force and effect