

# NORTHERN TERRITORY OF AUSTRALIA

## CULLEN BAY MARINA REGULATIONS

As in force at 1 July 2008

### Table of provisions

#### **Part 1 Preliminary**

1	Citation .....	1
2	Interpretation .....	1

#### **Part 2 Management Corporation and committee**

##### **Division 1 General**

3	Joint owners and body corporate members may appoint representative .....	2
4	Seal of Management Corporation .....	3
5	Address of Management Corporation .....	3
6	Management Corporation to act through committee .....	3

##### **Division 2 Functions and powers of Management Corporation**

7	Functions of Management Corporation .....	4
8	Powers of Management Corporation .....	4
9	Records to be kept .....	4
10	Management Corporation roll .....	5
11	Proper books of account to be kept .....	6
12	Determination of contributions .....	7
13	Levy of contributions .....	8
14	Administrative Fund and Sinking Fund .....	9
15	Banking and investment of Corporation money .....	10
16	Management Corporation's power to borrow .....	11
17	Apportionment of expenditure in respect of staged development .....	11
18	Statement of members' liability to Management Corporation and inspection of books, &c. ....	11
19	Improvements to common property .....	13
20	Breaches may be remedied .....	13
21	Agreements with members .....	13
22	Special privileges relating to common property .....	14
23	Power of entry .....	14
24	Recovery for certain repairs, &c. ....	14
25	Recovery of expenditure resulting from fault .....	15
26	Liability of co-owners .....	15
27	Restrictions on powers of Management Corporation .....	15

---

### **Division 3                      Committee of Management Corporation**

28	Constitution of committee before first annual general meeting .....	16
29	Constitution of committee after first annual general meeting .....	16
30	Vacation of office of member of committee.....	17
31	Meetings of committee .....	18
32	Chairman, Secretary and Treasurer .....	19
33	Powers, &c., of Treasurer .....	19
34	Delegation by Treasurer .....	20
35	Committee's decisions to be decisions of Management Corporation.....	20
36	Statutory restrictions on powers of committee .....	21
37	Restrictions imposed on committee by Management Corporation.....	22
38	Delegation by committee .....	22
39	Employees.....	23
40	Records, &c., to be kept by committee .....	23
41	Validity of acts of committee .....	24

### **Division 4                      General meetings of Management Corporation**

42	Annual general meetings .....	24
43	First annual general meeting .....	24
44	General meeting after registration of second or subsequent completed stage of development.....	25
45	Convening of general meeting other than first annual general meeting.....	26
46	Notice of general meetings .....	26
47	Quorum at general meeting .....	27
48	Scrutineers .....	27
49	Chairman to have names of persons entitled to vote.....	28

### **Division 5                      Voting at general meetings**

50	Voting by members.....	28
51	Counting of votes on election of committee .....	28
52	Deciding a motion.....	28
53	Limitation on voting power of Developer, &c.....	29
54	Voting by mortgagees.....	29
55	Restrictions on moving motions, &c.....	30
56	Declaration by Chairman of result of voting.....	31
57	Polls.....	31
58	Votes may be cast personally or by proxy .....	31
59	Certain voting by proxy, &c., limited .....	31
60	Voting by Chairman .....	32
61	No vote unless dues paid .....	32
62	Absentee votes on resolutions without dissent .....	32
63	Joint voters .....	33
64	Capacity to vote.....	33

---

65	Amendment, &c., of certain resolutions .....	33
----	--	----

**Part 3                      Duties, &c., of owners and occupiers**

66	Duties of owners and occupiers of lots .....	34
67	Notice to Management Corporation .....	34

**Part 4                      Insurance**

68	Insurance by Management Corporation .....	35
69	Insurable interests of Management Corporation .....	37

**Part 4A                   Subdivision and consolidation of lots**

69A	Method of subdivision and consolidation .....	37
69B	Form and contents of plan .....	37
69C	Lot entitlements .....	37

**Part 5                      Miscellaneous**

70	Facilities for service of documents .....	38
71	Service of documents .....	38
72	Fences .....	39

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Regulations as in force at 1 July 2008. Any amendments that commence after that date are not included.

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## CULLEN BAY MARINA REGULATIONS

### Regulations under the *Cullen Bay Marina Act*

#### Part 1 Preliminary

##### 1 Citation

These Regulations may be cited as the *Cullen Bay Marina Regulations*.

##### 2 Interpretation

In these Regulations, unless the contrary intention appears:

***administrative fund*** means the Administrative Fund established by the Management Corporation under regulation 14.

***Chairman*** means the person elected as Chairman under regulation 32.

***committee*** means the committee of the Management Corporation constituted under regulation 28 or 29, as the case requires.

***corporation manager*** means the person appointed under regulation 39 to be the corporation manager.

***initial period*** means the period ending 3 months after the day on which the Management Corporation is constituted or the day on which there are owners (other than the Developer) of lots the subject of the lots plan the sum of whose lot entitlements is not less than one third of the aggregate lot entitlement, whichever is the later.

***jointly owned***, in relation to a lot, means ownership of the lot by 2 or more persons whether as joint tenants or as tenants in common.

***maintenance*** means keeping in a state of good repair within the meaning of regulation 7(c) and (d) and includes painting, renewal or replacement of fixtures and fittings where necessary and surveillance of water quality.

***ordinary resolution*** means a resolution passed at a duly convened general meeting of the Management Corporation:

- (a) on a poll – by a majority in the value of lot entitlements of votes cast at that meeting; or
- (b) otherwise than on a poll – by a majority in the number of votes cast at that meeting.

***resolution without dissent*** means a resolution passed at a duly convened general meeting of the Management Corporation, against which no vote is cast by the members so present at that meeting.

***roll*** means the roll referred to in regulation 10.

***secretary*** means the person elected as secretary under regulation 32.

***sinking fund*** means the Sinking Fund established by the Management Corporation under regulation 14.

***special resolution*** means a resolution passed at a duly convened general meeting of the Management Corporation by votes representing not less than two-thirds of the total number of lots and not less than half of the aggregate lot entitlement of the lots.

***treasurer*** means the person elected as treasurer under regulation 32.

***unit*** means a unit as defined in section 4 of the *Unit Titles Act*.

## **Part 2                      Management Corporation and committee**

### **Division 1              General**

#### **3                      Joint owners and body corporate members may appoint representative**

- (1) Where a lot is jointly owned or is owned by a body corporate, the owners shall, from time to time, by notice in writing to the Chairman, appoint a person to represent them for the purposes of this Division and Divisions 3, 4 and 5 (other than regulations 46, 61, 62 and 63) and, in that event, those Divisions apply as if the person were the owner of the lot.

- (2) The appointment of a person under subsection (1) has effect until the Chairman receives notice in writing from the owner of the lot of the cancellation of the appointment or of the appointment of another person.

#### **4                      Seal of Management Corporation**

- (1) The common seal of the Management Corporation shall be kept in accordance with the directions of the committee.
- (2) The seal shall be used only by the authority of the committee and shall be affixed to an instrument or document in the presence of the secretary and at least one other committee member or, in the absence of the secretary, two committee members, who shall attest that fact and the date of the affixing of the seal by their signatures.
- (3) Notwithstanding subregulations (1) and (2), a committee member shall, for the purpose of exercising a power or performing a function delegated to the member under regulation 38, be entitled to have the custody of the common seal of the Management Corporation and to affix it to an instrument or document, and where the member so affixes it, shall attest the fact and the date of the affixing of the seal by his or her signature.
- (4) Where a committee member referred to in subregulation (3) has affixed the common seal of the Management Corporation to a document, the member shall be taken to have done so under the authority of a delegation made under regulation 38.

#### **5                      Address of Management Corporation**

- (1) Until amended in accordance with subregulation (2), the address for service of notices on the Management Corporation shall be the address on the lot plan.
- (2) Where the Management Corporation in a general meeting resolves to change its address for the service of notices it shall, as soon as practicable, notify the Registrar-General in accordance with the *Land Title Act* and the Registrar-General shall make the necessary amendments to the Registrar-General's records accordingly.

#### **6                      Management Corporation to act through committee**

- (1) On and after the constitution of the Management Corporation, there shall be a committee of the Corporation, constituted in accordance with regulation 28 or 29 as the case requires, that may, subject to these Regulations, exercise the powers and perform the functions imposed or conferred on the Corporation.

- (2) The powers and functions referred to in subregulation (1) shall be exercised or performed by the committee in such manner as the Management Corporation, by resolution passed at a general meeting, directs or, in the absence of such a resolution, in such manner as the committee thinks fit.

## **Division 2                      Functions and powers of Management Corporation**

### **7                      Functions of Management Corporation**

The functions of the Management Corporation include:

- (a) the enforcement of the By-laws;
- (b) the implementing of the decisions of the Corporation;
- (c) the control, management and administration of the common property, including the maintenance of apparatus and equipment of any kind used or intended, adapted or designed for use in the provision of services in respect of, or for the use and enjoyment of, the common property, the mooring basin and associated activities including the mooring, servicing, provisioning and fuelling of marine vessels; and
- (d) the maintenance in a state of good repair and proper order of the common property and all chattels in its possession, custody or control, including personal property vested in the Corporation.

### **8                      Powers of Management Corporation**

- (1) The Management Corporation has the powers and functions conferred or imposed on it by or under the Act and these Regulations and, subject thereto, has the control, management and administration of the common property.
- (2) The Management Corporation may do such things as are incidental or ancillary to the exercise of its powers and the performance of its functions.

### **9                      Records to be kept**

- (1) The Management Corporation shall cause to be kept proper records of:
  - (a) notices under these Regulations or any other Act, given by or to the Corporation; and
  - (b) orders made by a court and served on the Corporation.

- (2) The Management Corporation shall cause to be kept and maintained, for not less than 10 years:
  - (a) minutes of its meetings which shall include particulars of motions passed at its meetings;
  - (b) its books of accounts; and
  - (c) the records referred to in subregulation (1).

## **10 Management Corporation roll**

- (1) The Management Corporation shall prepare and maintain a roll which shall include:
  - (a) a copy of the By-laws;
  - (b) a copy of insurance policies relating to the common property; and
  - (c) particulars in relation to each lot.
- (2) The Management Corporation shall maintain the roll:
  - (a) in such form or combination of forms;
  - (b) in such medium or combination of mediums; and
  - (c) in such manner,  
as it thinks fit.
- (3) A reference to a medium in subregulation (2) includes, but is not limited to, a computer, micro film or paper.
- (4) In relation to subregulation (1)(c), particulars relating to each lot shall be entered on a separate page or part of the roll.
- (5) The information required to be entered in the roll relating to a lot shall include particulars of:
  - (a) the lot entitlement;
  - (b) the name and address of:
    - (i) the owner of the lot for the service of notices; and
    - (ii) the person appointed by the owner by notice in writing given to the Management Corporation to represent the member at meetings of the Corporation;



- (c) if the lot is in possession of a mortgagee, the entry into possession of the lot by the mortgagee in accordance with a written notice given to the Management Corporation; and
  - (d) the name and address of a person who has become entitled, other than as a transferee, to the lot in accordance with a written notice given to the Management Corporation.
- (6) The information required to be entered in the part of the roll relating to the common property shall include a copy of each policy of insurance in relation to the common property which shall include particulars of:
  - (a) the name of the insurance company and the number of the policy;
  - (b) the nature of the risk insured against and the amount of the insurance; and
  - (c) the date on which the premium was last paid, the amount of the premium and the due date for payment.
- (7) For the purposes of this regulation:
  - (a) an owner or the mortgagee of a lot;
  - (b) a person authorised in writing by the owner or mortgagee of a lot; or
  - (c) a person who signs (by himself or by his agent) a contract for sale or other instrument that is intended to bind the person (absolutely or conditionally) to purchase a lot in respect of which the application is made from the owner of that lot or a person authorised in writing by the first mentioned person,

may, at a reasonable time, on payment of a reasonable fee determined by the Management Corporation, inspect that part of the roll, or obtain from the Management Corporation a copy of that part of the roll, relating to the lot.

## **11 Proper books of account to be kept**

- (1) The Management Corporation shall keep proper books of account in respect of money received or expended by the Corporation, showing the items in respect of which the money was received or expended.

- (2) The Management Corporation shall cause to be prepared from the account books a proper statement of accounts of the Corporation in respect of each period commencing on the date of its incorporation or the date to which the previous statement was prepared and ending on a date not earlier than 3 months before each annual general meeting.

## **12 Determination of contributions**

- (1) The Management Corporation shall, within one month after the expiration of the initial period, and from time to time as it thinks fit, determine the amount necessary to be raised for the period (not exceeding 12 months) specified in the determination, by way of contributions for the purpose of meeting the liabilities that the Corporation may reasonably be expected to incur or that it has incurred during the period including:
  - (a) costs incurred in exercising its powers and performing its functions under these Regulations, other than liabilities referred to in subregulation (2);
  - (b) the costs of carrying out maintenance of the common property and all chattels in its possession, custody or control including personal property vested in the Corporation; and
  - (c) the payment of premiums for insurance of the common property.
- (2) The Management Corporation shall, within 12 months after the expiration of the initial period and from time to time as it thinks fit, determine the amount necessary to be raised for the period (not exceeding 12 months) specified in the determination, by way of contributions for the purpose of meeting the Corporation's actual or expected liabilities in respect of:
  - (a) the maintenance of part of the common property that is a building, wall or other structure;
  - (b) subject to regulations 19 and 36, improvements to the common property;
  - (c) the acquisition of personal property;
  - (d) the renewal or replacement of fixtures or fittings comprised in the common property or in personal property vested in the Corporation;
  - (e) money in respect of a liability that the Corporation is not in a position to pay immediately and for which it is not required to levy contributions to meet the liability; or

- (f) liabilities expected to be incurred in relation to which payment is to be made out of the sinking fund.
- (3) Where the Management Corporation becomes liable for a sum for which it has insufficient funds to enable it to pay, it shall determine the amount necessary to be raised by way of contributions for the purpose of meeting the liability.
- (4) A determination made by the Management Corporation under this regulation may specify that the amounts to be raised shall be raised by regular periodic contributions as specified in the determination.

### **13 Levy of contributions**

- (1) The Management Corporation shall, from time to time, by notice in writing served on each person liable for its payment, levy contributions payable under these regulations in respect of each lot.
- (2) Subject to subregulation (5), the contribution shall be levied on the person liable for the contribution to raise the amounts referred to in regulation 12 in the same proportion as the lot entitlement of his or her lot, as at the date of the determination, bears to the aggregate lot entitlement of all the lots at that date.
- (3) The notice shall specify the amount, the time for and the manner of payment, of the contributions.
- (4) Where the developer is the owner of a lot the developer is responsible for payment of contributions.
- (5) Where an expenditure relates to a specific liability under regulation 12(2)(e), and for which it has no funds, the Management Corporation may determine, by special resolution, that contributions for the expenditure may be in a proportion other than the lot entitlement of each lot.
- (6) The owner of a lot is liable, jointly and severally with a person who was liable to pay a contribution levied under these Regulations when the owner became the owner of the lot, to pay such part of the contribution that remained unpaid when he or she became the owner.
- (7) The owner of a lot is liable for the regular periodic contributions referred to in regulation 12(4) to the administrative fund and sinking fund duly levied on the owner, whether or not the notice of the levy of the contributions was served on the owner.

- (8) Without affecting the liability of the owner of the lot, where a mortgagee is in possession of a lot, the mortgagee is liable jointly and severally with the owner for a contribution on the lot levied under these Regulations.
- (9) A contribution levied under this regulation:
  - (a) becomes due and payable to the Management Corporation in accordance with the Corporation's determination to make the levy;
  - (b) bears interest compounding monthly at the rate of 10% per year, or such lesser amount as the Corporation, by special resolution, determines; and
  - (c) may be recovered as a debt by the Corporation in a court of competent jurisdiction, and recovery may include such reasonable costs, if any, as the court allows.
- (10) Interest paid under subregulation (9)(b) shall form part of the fund to which the contribution belongs.

#### **14 Administrative Fund and Sinking Fund**

- (1) The Management Corporation shall establish a fund to be known as the Administrative Fund.
- (2) The Management Corporation shall pay into the administrative fund the following:
  - (a) the amounts paid as contributions determined under regulation 12(1);
  - (b) amounts received by the Corporation, including proceeds of the sale or disposal of the Corporation's personal property;
  - (c) fees paid under regulation 10(7) or 18(2);
  - (d) amounts paid to it by way of discharge of insurance claims.
- (3) The Management Corporation shall establish a fund to be known as the Sinking Fund.
- (4) The Management Corporation shall pay into the sinking fund the following:
  - (a) the amounts paid as contributions determined under regulation 12(2);

- (b) amounts paid to it by way of discharge of insurance claims not paid into the administrative fund;
  - (c) any amounts received by the Corporation and not payable or paid into the administrative fund.
- (5) Interest received on an investment made under this regulation shall form part of the fund from which the money to make the investment was expended.
- (6) Subject to subregulation (7), the Management Corporation shall not disburse money:
  - (a) from the administrative fund except for the purpose of meeting liabilities referred to in regulation 12(1); or
  - (b) from the sinking fund except for the purpose of meeting liabilities referred to in regulation 12(2).
- (7) The Management Corporation shall not disburse money from the administrative fund or the sinking fund except for the purpose of carrying out its powers and functions under these Regulations.

## **15 Banking and investment of Corporation money**

- (1) The Management Corporation shall open and maintain ADI accounts for its administrative and sinking funds and shall pay into the relevant account all money received by it and shall pay from the relevant account all money expended by it.
- (2) Subject to subregulation (3), the Management Corporation's money may be invested:
  - (a) in such manner as trust funds may be invested under the *Trustee Act*; or
  - (b) in such other manner as is authorised by a special resolution.
- (3) The Management Corporation shall not invest its money in mortgage of land.
- (4) No moneys shall be paid out of an account referred to in this regulation except on the authority of the Management Corporation.

**16 Management Corporation's power to borrow**

The Management Corporation may, if authorised by special resolution:

- (a) borrow money required by it for the purpose of performing its duties or functions or exercising its powers; and
- (b) secure the repayment of money borrowed by it and the payment of interest on the money,

on such terms and conditions relating to the security, repayment and interest in such manner as is agreed between the Corporation and the lender.

**17 Apportionment of expenditure in respect of staged development**

Notwithstanding anything in this Part, money due to or held by the Management Corporation immediately before the grant of freehold title to land relating to a second or subsequent completed stage of the development shall be apportioned for expenditure on or in relation to the completed lots and common property in the development immediately before the grant of the freehold title to land relating to the second or subsequent completed stage of the development.

**18 Statement of members' liability to Management Corporation and inspection of books, &c**

- (1) A person referred to in regulation 10(7) may apply to the Management Corporation in relation to any matter referred to in subregulation (3).
- (2) An application under subregulation (1) shall be in writing accompanied by a fee, not exceeding the reasonable cost to the Management Corporation of providing the information or making available the books and records, as the Corporation determines by resolution.
- (3) The matters in relation to which an application may be made under this regulation include:
  - (a) the name and address of each person who is the Chairman, secretary or treasurer or a member of the committee;
  - (b) inspection of:
    - (i) the relevant part of the roll;

- (ii) the notices and orders referred to in regulation 9;
  - (iii) the plans, specifications, certificates, diagrams and other documents required under these Regulations;
  - (iv) the minutes of general meetings of the Management Corporation and of the committee;
  - (v) the books of account of the Management Corporation;
  - (vi) a copy of the statement of accounts of the Management Corporation last prepared by it in accordance with regulation 11(2);
  - (vii) every current policy of insurance effected by the Management Corporation and the receipt for the premium last paid in respect of each policy;
  - (viii) any other record or document in the custody or under the control of the Management Corporation; and
  - (ix) the By-laws;
- (c) the provision of a certificate relating to the lot for which the application was made as to:
  - (i) the amount of regular periodic contributions determined by the Management Corporation under regulation 12(1) and (2) and the periods for which the contributions are payable; and
  - (ii) the amount, if any, that remains unpaid of a contribution levied under regulation 12; and
- (d) the provision of a copy of the By-laws.
- (4) The Management Corporation shall, as soon as reasonably practicable after receipt of an application:
  - (a) provide the information requested; or
  - (b) make available the books and records of the Corporation for inspection, and give the applicant reasonable opportunity to make the inspection.

Penalty: \$400.

- (5) Where the Management Corporation and the applicant fail, within 3 days after receipt of the application by the Corporation, to agree on the time and place at which an inspection under

subregulation (3)(b) is to take place, the Corporation shall, without delay, by notice sent by post to the applicant or his or her agent, fix a day for the inspection, not later than 10 days after receipt of the application, and time, between 9 a.m. and 8 p.m., specified in the notice.

- (6) In this regulation ***inspect***, in relation to a document, includes making copies of or taking extracts from the document.

## **19 Improvements to common property**

- (1) The Management Corporation may make or cause to be made improvements to the common property where:
- (a) the Corporation, by resolution without dissent, so resolves;
  - (b) the Corporation resolves by special resolution in general meeting that the improvements are essential for the health, safety or security of users of the common property; or
  - (c) the costs of the improvements in a particular case do not exceed the amount calculated under subregulation (2).
- (2) For the purposes of subregulation (1)(c), the cost of the improvement shall not exceed the amount obtained using \$200 as the multiplicand and the number of lots (other than the common property) in the lot plan as the multiplier.

## **20 Breaches may be remedied**

- (1) Where a person commits a breach, by act or omission, of these Regulations, the Management Corporation may serve on the person a notice in writing giving particulars of the breach and requiring the person to remedy it within a reasonable time specified in the notice.
- (2) Where the person on whom the notice under subregulation (1) has been served fails to comply with the notice, the Management Corporation may remedy the breach.

## **21 Agreements with members**

The Management Corporation may, if authorised by a special resolution, enter into and carry out an agreement with the owner or occupier of a lot providing for the repair or maintenance of the lot or for the provision of amenities or services by the Corporation to the lot or to the owner or occupier.



## **22 Special privileges relating to common property**

- (1) The Management Corporation may, if authorised by a special resolution, grant to a member or a person who has derived an interest in a lot through a member, a special privilege, other than a lease, in respect of the enjoyment of a part of the common property.
- (2) A grant under subregulation (1) may be terminated in accordance with an ordinary resolution by notice in writing given by the Management Corporation to the grantee.

## **23 Power of entry**

- (1) The Management Corporation may, by its employees, agents or contractors, enter a lot:
  - (a) to exercise its powers under these Regulations;
  - (b) to do any work required to be carried out by the Corporation in accordance with a notice given by a statutory corporation or a municipal authority; or
  - (c) to renew or replace its personal property or fixtures that are part of the common property.
- (2) The power to enter referred to in subregulation (1) may be exercised by the Management Corporation:
  - (a) in an emergency – at any time; or
  - (b) in any other case – at a reasonable time after notice in writing has been given to the owner or occupier of a lot that is likely to be affected.
- (3) Where the owner of a lot is a member of a body corporate the owner or an occupier of the lot shall be taken to have received a notice referred to in subregulation (2)(b) if the notice is sent to the body corporate by prepaid post to the last address entered on the roll.
- (4) A person shall not obstruct or hinder the Management Corporation in the exercise of its powers under this Regulation.

Penalty for an offence against this subregulation: \$200.

## **24 Recovery for certain repairs, &c.**

- (1) Where the Management Corporation has performed an act that it was required or authorised by these Regulations or any other law in force in the Territory to perform, and that related to one lot only or

some of the lots only, the money expended by the Corporation in performing that act is recoverable by the Corporation as a debt from the owner or owners for the time being of that lot or those lots.

- (2) Where the act referred to in subregulation (1) related to some of the lots only, the amount recoverable from an owner in respect of a lot bears to the whole amount of the debt the same proportion as the lot entitlement of the lot bears to the aggregate lot entitlement of all those lots.
- (3) For the purposes of this regulation:
  - (a) **act** includes repairs and work; and
  - (b) an act shall be deemed to relate to a lot if, but only if, the act is wholly or substantially for the benefit of the lot or wholly or substantially the liability or the responsibility of the owner of the lot.

## **25 Recovery of expenditure resulting from fault**

Where the Management Corporation has incurred expenditure or performed any repairs, work or act that it was required or authorised by these Regulations or any other law in force in the Territory, to perform, the expenditure, repairs, work or act having been rendered necessary by reason of a wilful or negligent act or omission on the part of an owner, the amount of the expenditure, or of money expended by the Corporation in performing the repairs, work or act, is recoverable by it from the owner as a debt.

## **26 Liability of co-owners**

Where a lot is jointly owned and an amount is recoverable under regulations 12, 13, 24 or 25 from the owner of the lot, the liability of the persons in respect of the payment of the amount is joint and several.

## **27 Restrictions on powers of Management Corporation**

- (1) Notwithstanding anything contained elsewhere in these Regulations, the Management Corporation shall not, during the initial period:
  - (a) alter the common property or erect a structure on the common property; or
  - (b) borrow money or give securities,unless the doing of the thing is authorised by an order of a court.

- (2) Without affecting any other remedy available against the Developer, where the Management Corporation contravenes subregulation (1):
- (a) the Developer is liable for a loss suffered by the Corporation or an owner of a lot as a result of the contravention; and
  - (b) the Corporation or an owner may recover from the Developer, as damages for breach of statutory duty, a loss suffered by it or him or her,
- unless:
- (c) the contravention occurred without the knowledge of the Developer;
  - (d) the Developer was not in a position to influence the conduct of the Corporation in relation to the contravention; or
  - (e) the Developer, being in such a position, used due diligence to prevent the contravention.

### **Division 3                      Committee of Management Corporation**

#### **28                      Constitution of committee before first annual general meeting**

- (1) Until the first annual general meeting, the committee consists of all the members of the Management Corporation.
- (2) Until the first annual general meeting, the committee shall not perform a duty or function imposed, or exercise a power conferred, on the Management Corporation unless it is authorised by a special resolution to do so.

#### **29                      Constitution of committee after first annual general meeting**

- (1) After the first annual general meeting the committee shall consist of such number of eligible persons, being not less than 4 nor more than 12, as are elected by the persons who are owners of lots.
- (2) A person is an eligible person for the purposes of subregulation (1) if the person is:
  - (a) an owner of a lot;
  - (b) a nominee of a body corporate that is an owner of a lot;
  - (c) a person who is nominated for election by an owner of a lot who is not a candidate for election,

- (3) Subject to this regulation, the number of members of the committee may be varied by ordinary resolution of the Management Corporation passed at a general meeting.
- (4) The members of the committee shall be elected at each annual general meeting.
- (5) Subject to regulation 30, the term of office of a member of the committee commences at the first meeting of the committee held after the annual general meeting at which the person is elected as a member and ends immediately after the annual general meeting next following.
- (6) The Management Corporation may, by special resolution, remove a member of the committee before the expiry of the person's term of office and appoint another member of the Corporation in his or her place to hold office for the unexpired period of the term.
- (7) A member of the committee may, with the consent of the committee, appoint a person to act in his or her place at a meeting of the committee, and if the person is a member of the committee, the person may separately vote on a matter in his or her capacity as a member and on behalf of the member in whose place the person has been appointed to act.

**30                      Vacation of office of member of committee**

- (1) The office of a person elected as a member of the committee becomes vacant:
  - (a) where he or she was an owner of a lot at the time of the election and ceases to be an owner;
  - (b) where he or she was not the owner of a lot at the time of the election or was a nominee and the person who made the nomination for election or the body corporate for which he or she is a nominee:
    - (i) ceases to be an owner; or
    - (ii) notifies the Management Corporation, in writing, that his or her office as a member is vacated;
  - (c) on the receipt by the Management Corporation of notice in writing of the resignation of the person as a member of the committee;
  - (d) where the person is absent, except on leave granted by the committee, from 3 consecutive meetings of the committee of which notice has been given;

- (e) if the person becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
  - (f) where the person is convicted of an indictable offence;
  - (g) where the person dies or becomes subject to mental incapacity; or
  - (h) where the Management Corporation, by special resolution under regulation 29(6), removes the member from office.
- (2) Where a vacancy in the office of a member of the committee has occurred, the committee may appoint a person who is eligible for election to fill the vacancy for the balance of the term of office.

### **31 Meetings of committee**

- (1) Subject to these regulations, the committee may meet for the conduct of business as and when it determines and may adjourn and otherwise regulate its meetings as it thinks fit.
- (2) A member of the committee may convene a meeting of the committee by giving to each other member not less than 7 days notice in writing specifying the business that the member proposes to bring before the meeting and the time and place of the meeting.
- (3) At a meeting of the committee a majority of the persons comprising the number determined under regulation 29 to constitute the committee shall constitute a quorum of the committee.
- (4) At a meeting of the committee the Chairman shall have a deliberative vote and in the event of an equality of votes also has a casting vote.
- (5) The committee shall cause to be kept full and accurate minutes of its meetings including a record of notices given under subregulation (6) and a record of its decisions.
- (6) A decision of the committee has no force or effect where, before the decision is made, notice in writing is given to the secretary of the committee by one or more owners of lots, the sum of whose lot entitlement exceeds 50% of the aggregate lot entitlement, that the making of the decision is opposed by those owners.

## **32 Chairman, Secretary and Treasurer**

- (1) Until a person is elected as Chairman by the committee under subregulation (2), the person elected as Chairman of the Management Corporation at its first annual general meeting shall preside at the first meeting of the committee held after the first annual general meeting of the Management Corporation.
- (2) At the first meeting of the committee held after the first or a subsequent annual general meeting of the Management Corporation the members of the committee shall elect one of their number to be Chairman, one to be Deputy Chairman, one to be secretary and one to be treasurer.
- (3) Subject to regulation 30, the term of office of a person elected as Chairman commences as soon as that person is elected as such under subregulation (2) and ends immediately on the election of a Chairman at the first meeting of the committee held after the next annual general meeting.
- (4) Subject to regulation 30, the term of office of a person elected as Deputy Chairman, secretary or treasurer commences as soon as that person is elected as such under subregulation (2) and ends immediately after the annual general meeting next following.
- (5) The person elected as Chairman under subregulation (2) shall preside at every general meeting of the Management Corporation and at every meeting of the committee at which he or she is present.
- (6) Where the Chairman is absent from a general meeting of the Management Corporation or a meeting of the committee the Deputy Chairman shall preside and where the Chairman and Deputy Chairman are absent the members of the Management Corporation or the members of the committee, as the case requires, shall elect one of their number to act as Chairman.

## **33 Powers, &c., of Treasurer**

- (1) A person shall not exercise the powers or perform a function of the Management Corporation or of the treasurer, being a power or function relating to receipt, expenditure or accounting for money or the keeping of books of account, unless the person is:
  - (a) the treasurer;
  - (b) the corporation manager; or

- (c) a person with whom the treasurer is required by an order of the committee to jointly exercise the power or perform jointly the function and who is enabling the Treasurer to comply with the order.

Penalty: \$500.

- (2) The committee may, by notice in writing served on the treasurer, order that the treasurer shall not exercise any of the powers, or perform any of the functions specified in the notice, except jointly with another person so specified.
- (3) A person who has possession or control of:
  - (a) records, books of account or keys belonging to the Management Corporation; or
  - (b) other property of the Corporation,

shall, within 7 days after service on the person of notice of a resolution of the committee requiring the person to do so, deliver the records, books of account, keys or other property to a member of the committee specified in the notice.

Penalty: \$500.

#### **34 Delegation by Treasurer**

- (1) The treasurer may by notice in writing, delegate to a member of the committee approved for the purpose by the committee, or a person employed or engaged under regulation 39, any of his or her powers and functions under these Regulations, specified in the instrument of delegation and subject to any limitations as to time or otherwise as are so specified, other than this power of delegation.
- (2) A power or function delegated under this regulation, when exercised or performed by the delegate, shall, for the purposes of these Regulations, be deemed to have been exercised or performed by the treasurer.
- (3) A delegation under this regulation does not prevent the exercise of a power or the performance of a function by the treasurer.

#### **35 Committee's decisions to be decisions of Management Corporation**

- (1) Subject to these Regulations, the decision of the committee on a matter, other than a restricted matter, is the decision of the Management Corporation.

- (2) Notwithstanding that a committee holds office, the Management Corporation may, in general meeting, continue to exercise all or any of the powers, or perform all or any of the functions conferred or imposed on it by these Regulations.
- (3) In this regulation, ***restricted matter***, in relation to the committee, means:
  - (a) a matter, a decision on which may, in accordance with these Regulations, only be made by the Management Corporation in pursuance of a resolution without dissent or a special resolution or in general meeting of the Corporation;
  - (b) a matter specified in a resolution of the Corporation passed for the purposes of regulation 36 or 37;
  - (c) a matter relating to the striking of a special monetary levy on all members;
  - (d) a matter that seeks to alter the rights, privileges or obligations of members; or
  - (e) a matter that seeks to alter the annual monetary contribution of members.

### **36                      Statutory restrictions on powers of committee**

- (1) Unless otherwise determined in pursuance of a special resolution of the Management Corporation, the committee shall not, in any one case, undertake expenditure that exceeds the amounts determined under regulation 12(1) or (2).
- (2) Where proposed expenditure would exceed the amount referred to in subregulation (1), the committee shall:
  - (a) submit the proposal for determination at an extraordinary general meeting of the Management Corporation convened for the purpose of, or for purposes that include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property, submit to the meeting at least 2 tenders with the proposal.
- (3) Subregulation (1) does not apply to expenditure:
  - (a) in payment of a premium of insurance effected by or on behalf of the Management Corporation;



- (b) to comply with a notice or order served on the Corporation by a public authority or municipal council; or
  - (c) in discharge of a liability incurred in respect of an obligation of the Corporation authorised by the Corporation in general meeting.
- (4) Where proposed expenditure for improvements to the common property exceeds, in a particular case, the amount calculated under regulation 19(2), the committee shall not cause the expenditure to be made unless:
  - (a) it is made in accordance with a resolution without dissent passed at a general meeting of the Management Corporation; or
  - (b) it has been resolved by the Management Corporation by special resolution that the improvements are essential for the health, safety or security of users of the common property.

### **37 Restrictions imposed on committee by Management Corporation**

The Management Corporation may, in general meeting, decide what matters or class of matters, if any, shall be determined only by the Corporation in general meeting.

### **38 Delegation by committee**

- (1) Subject to a restriction or direction that may be imposed or given by ordinary resolution passed at a general meeting of the committee, the committee may delegate to one or more of its members or a person employed or engaged under regulation 39, either generally or otherwise as specified in the instrument of delegation, all or any of its powers, functions and duties, other than this power of delegation.
- (2) A power, function or duty delegated under this section, when exercised or performed by the delegate, shall, for the purposes of the Act, these Regulations or the By-laws, be deemed to have been exercised by the committee.
- (3) A delegation under this regulation does not prevent the exercise of a power or the performance of a function or duty by the committee.

**39 Employees**

- (1) Subject to regulations 36 and 37, the committee may, for and on behalf of the Management Corporation, employ or engage a corporation manager and such other officers, employees and agents as may be necessary for the performance of the functions of the Corporation.
- (2) The terms and conditions applicable in relation to a person employed or engaged under subregulation (1) shall be specified in the contract.

**40 Records, &c., to be kept by committee**

- (1) The committee shall:
  - (a) keep minutes of its proceedings;
  - (b) cause minutes of proceedings at all general meetings of the Management Corporation to be kept in a minute book of the Corporation kept for the purpose;
  - (c) include in the minute book a record of every resolution of the Corporation, indicating if the resolution was a resolution without dissent, a special resolution or an ordinary resolution;
  - (d) cause proper records and books of account to be kept in respect of the assets and liabilities of the Corporation and all sums of money received and expended by, and owing to and by, the Corporation; and
  - (e) cause the minutes, records and books of account to be retained for a period of not less than 10 years after the completion of the transactions, acts or operations to which they relate.
- (2) At each annual general meeting, the committee shall present to the Management Corporation statements of accounts showing the sums of money received and paid by, and assets and liabilities of, the Corporation for the period since the last accounts so presented made up to a date that is not more than 3 months before the date of the meeting.
- (3) Subregulation (2) applies in the case of the first annual general meeting as if the period since the last accounts were the period since the registration of the lot plan.

- (4) Where default has been made by the committee in complying with this regulation, each person who was, at the time when the default occurred, a member of the committee is, unless the person proved that he or she took reasonable care to ensure that the default did not occur, or proves that the default occurred without his or her knowledge, guilty of an offence.

Penalty:        \$400.

#### **41                      Validity of acts of committee**

No act done in good faith by the committee is invalidated merely by reason of the fact that at the relevant time there was some defect in the appointment of or continuance in office of a member of the committee.

### **Division 4                      General meetings of Management Corporation**

#### **42                      Annual general meetings**

- (1) The Management Corporation shall hold a general meeting (which shall be called the annual general meeting and may be held in addition to any other general meeting held in the same year) at least once in every year and, except in the case of the first annual general meeting, not more than 15 months after the date of the preceding annual general meeting.
- (2) Subject to this Division, the Management Corporation may hold, adjourn and otherwise regulate general meetings as it thinks fit.

#### **43                      First annual general meeting**

- (1) The Developer, whether or not the Developer is an owner of a lot at the time, shall convene a meeting of the Management Corporation to be held within 3 months after the expiration of the initial period.
- (2) A meeting convened under subregulation (1) shall be the first annual general meeting of the Management Corporation and shall:
- (a) resolve whether insurances effected by the Developer should be confirmed, varied or extended;
  - (b) resolve whether the amounts, if any, determined under regulation 12(1) or (2) should be confirmed or varied or, if not determined, make such a determination;
  - (c) determine, in accordance with regulation 29(1), the number of members of the committee;
  - (d) elect the members of the committee;

- (e) resolve which matters, if any, shall be restricted matters within the meaning of regulation 37 for the purposes of these Regulations;
  - (f) resolve whether the By-laws in force immediately before the holding of the meeting shall be amended or repealed;
  - (g) resolve which of the powers, authorities duties or functions of the Corporation should be delegated to the committee;
  - (h) resolve whether to appoint a person to audit the Corporation's records and books of account; and
  - (j) resolve such other matters as are raised at the meeting.
- (3) The Developer shall present to the meeting a budget showing its estimated expenditure in relation to the common property.
- (4) The Developer shall not fail or neglect to deliver to the Management Corporation at the first annual general meeting and at each general meeting referred to in regulation 44(1):
- (a) all plans, specifications, certificates (other than certificates as to title for lots), diagrams and other documents (including particulars of any guarantees and warranties relating to equipment and policies of insurance) obtained or received by him or her and relating to the common property; and
  - (b) where they are in his or her possession or control, the certificate as to title for the common property, the books of account and all notices or other records relating to the lot plan,

other than any such documents that exclusively evidence the rights or obligations of the Developer and that are not capable of being used for the benefit of the Corporation or any of the owners of lots, other than the Developer.

Penalty: \$2,000.

#### **44 General meeting after registration of second or subsequent completed stage of development**

- (1) Within 3 months after the registration of a survey plan relating to a second or subsequent stage of the development, the Developer shall request the committee to convene a general meeting of the Management Corporation to be held within that 3 months period and the Committee shall comply with the request.

- (2) At a meeting referred to in subregulation (1), all matters required to be considered by a meeting convened under regulation 43 shall be considered as if the meeting referred to in subregulation (1) were the first annual general meeting.

**45 Convening of general meeting other than first annual general meeting**

- (1) The committee:
  - (a) may, whenever it thinks fit; and
  - (b) shall, on a requisition in writing specifying the matters to be considered at a general meeting and made by members having not less than 25% of the aggregate lot entitlement,on notice given in accordance with regulation 46, convene a general meeting.
- (2) Where a mortgagee of a lot has, in a notice given under regulation 54 or in a subsequent written notice, notified the Management Corporation that he or she is to be regarded as a member of the Corporation in respect of the lot for the purposes of subregulation (1), the mortgagee shall be deemed for those purposes to be a member of the Corporation in respect of the lot.

**46 Notice of general meetings**

- (1) Subject to subregulation (2), the time to be fixed for the holding of a general meeting, other than the first annual general meeting, shall be a time that will permit not less than 28 days' notice of the time fixed for the meeting to be given.
- (2) Where it appears to the committee that a matter to be considered at a general meeting requires a resolution without dissent, the time to be fixed for holding the general meeting shall be a time that will permit not less than 42 days' notice of the time fixed for the meeting to be given.
- (3) A notice for a general meeting:
  - (a) shall specify the time, date and place fixed for holding the meeting;
  - (b) if it appears to the committee that a matter to be considered at the meeting is a matter that requires a resolution without dissent, shall specify the matter and state the fact that it requires a resolution without dissent; and

- (c) shall be given to all the members of the Management Corporation and to all mortgagees who have given notice to the Corporation under regulation 54, as ascertained from the roll.
- (4) Notice under subregulation (3) shall be sufficiently given to a person if it is sent by prepaid post as a letter properly addressed to the last address of the person notified to the Management Corporation and entered in the roll or, if no such address has been notified, to the person's last known place of abode or, if the person is a body corporate, to its registered office, its place of business or any other known address.
- (5) The proceedings at a general meeting are not invalidated by reason of the fact only:
  - (a) that a person did not receive notice under this regulation; or
  - (b) that such notice was received by a person less than 28 days or 42 days referred to in subregulations (1) and (2).
- (6) Where notice of a general meeting has been received by a person less than 28 days or 42 days referred to in subregulations (1) and (2) before the time fixed for the meeting, the meeting shall, if the person so requests, be adjourned to a date to be determined by the persons present and voting at the meeting.

#### **47 Quorum at general meeting**

- (1) Subject to subregulation (2), no business shall be transacted at a general meeting of the Management Corporation unless a quorum, consisting of persons entitled to exercise voting rights in respect of not less than 25% of the total number of lots, is present.
- (2) If, within 30 minutes after the time appointed for a general meeting, a quorum referred to in subregulation (1) is not present, the meeting shall be adjourned to the same day in the next week at the same place and time and, if a quorum is not then present within 30 minutes after the time appointed for the adjourned meeting, the persons who are then present and entitled to vote constitute a quorum for the purposes of that subregulation.

#### **48 Scrutineers**

- (1) At a general meeting of the Management Corporation, the Chairman may appoint persons to be scrutineers.
- (2) The scrutineers may inspect all voting papers and ballot papers furnished to the secretary and relating to the business of the meeting.

**49                      Chairman to have names of persons entitled to vote**

At a general meeting of the Management Corporation, the Chairman shall have available for inspection the names of persons entitled to vote.

**Division 5                      Voting at general meetings**

**50                      Voting by members**

A person is entitled to vote at a meeting of the Management Corporation in respect of a lot if:

- (a) the person is the owner of the lot as shown on the roll; or
- (b) where a lot is jointly owned or owned by a body corporate, the person is the nominee of the owner or body corporate as shown on the roll.

**51                      Counting of votes on election of committee**

Notwithstanding regulation 52, each person entitled to vote on an election of the members of the committee, has one vote for each lot in respect of which the person is entitled to vote.

**52                      Deciding a motion**

At a general meeting of the Management Corporation the following provisions apply in relation to deciding a motion:

- (a) subject to this regulation, a motion shall be decided according to the votes cast, whether personally or by proxy, for or against the motion, and each person entitled to vote is entitled to one vote in relation to each lot with respect to which that person is entitled to vote;
- (b) if a person who is entitled to vote demands a poll, either personally or on the voting paper, a poll shall be taken, whether or not the motion has been decided in accordance with paragraph (a), and the motion shall then be decided according to the value of the votes cast, whether personally or by proxy, for or against the motion;
- (c) if a motion to be effective is required to be carried by special resolution, the motion shall be carried by the votes representing not less than two-thirds of the total number of lots and not less than half the value of the votes cast; and

- (d) the value of a vote for the purposes of paragraph (b) or (c) is equal to the lot entitlement of the lot with respect to which the vote is cast.

### **53 Limitation on voting power of Developer, &c.**

Where the Developer is the owner of a lot, the Developer or a mortgagee of the lot is entitled to vote at a meeting of the Management Corporation and in determining the result of a poll or a special resolution, the entitlement of the Developer or mortgagee shall be:

- (a) the actual lot entitlement; or
- (b) one lot entitlement less than the combined lot entitlement of the members in respect of whose lot entitlements votes are cast,

whichever is the lesser.

### **54 Voting by mortgagees**

- (1) Where the estate or interest of the owner of a lot is subject to a mortgage, the mortgagee or, if there are 2 or more mortgages, the mortgagee under whichever of the mortgages is entitled to priority over the other mortgages, may give to the Management Corporation written notice that the lot is subject to the mortgage and that he or she proposes to exercise the rights conferred by this regulation.
- (2) Where a mortgagee of a lot has given notice under subregulation (1) and the mortgage has not been discharged, the right to vote in respect of the lot on a matter requiring a special resolution or a resolution without dissent that would, but for this subregulation, be exercisable by the owner of the lot:
  - (a) shall not be exercised by the owner; and
  - (b) may be exercised by the mortgagee.
- (3) Where:
  - (a) a mortgagee of a lot has given notice under subregulation (1);
  - (b) the mortgagee or his or her proxy is present at a general meeting of the Management Corporation at the time of voting; and
  - (c) the mortgage has not been discharged,



the right to vote in respect of the lot on a matter not requiring a special resolution or a resolution without dissent that would, but for this subregulation, be exercisable by the owner of the lot:

- (d) shall not be exercised by the owner; and
  - (e) may be exercised by the mortgagee.
- (4) Where 2 or more persons are mortgagees of a lot as joint tenants or as tenants in common:
- (a) the right to give notice under this regulation is exercisable by them acting only jointly;
  - (b) the right to vote conferred on them by this regulation is exercisable by them only jointly; and
  - (c) for the purposes of subregulation (3), the mortgagees shall be deemed not to be present at a meeting unless their proxy is present at the meeting.
- (5) Where:
- (a) a lot is held by 2 or more persons as tenants in common; and
  - (b) one of the tenants has mortgaged his or her estate or interest as owner,

the mortgagee may give notice to the Management Corporation in accordance with subregulation (1) and the preceding provisions of this regulation then apply in relation to the right to vote that the mortgagor would, but for this subregulation, be entitled to exercise.

## **55                      Restrictions on moving motions, &c.**

- (1) A person is not entitled to move a motion at a general meeting of the Management Corporation or nominate a candidate for election unless the person is entitled to vote on such a motion or in that election.
- (2) The Chairman may, if he or she is of the opinion that a motion submitted at a general meeting of the Management Corporation, if carried:
  - (a) would conflict with these Regulations or some other Act; or
  - (b) would be unforceable,rule that the motion is out of order.

**56                      Declaration by Chairman of result of voting**

Where a resolution without dissent is not required, then, unless a poll is demanded under regulation 57, a declaration by the Chairman that a resolution has or has not been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded against or in favour of the resolution.

**57                      Polls**

- (1) Where a resolution, including a special resolution or a resolution without dissent, is required, a poll may be demanded by a person present and entitled to vote.
- (2) A demand for a poll may be withdrawn.
- (3) A poll, if demanded, shall be taken in such manner as the Chairman thinks fit and the result of the poll, which shall be declared by the Chairman as soon as it is ascertained, shall determine whether or not the resolution in respect of which the poll was demanded has been carried.

**58                      Votes may be cast personally or by proxy**

- (1) Subject to regulations 62 and 63, votes at a general meeting may be cast either personally or by proxy, whether on a poll or not.
- (2) An instrument appointing a proxy for the purposes of this Division shall be in accordance with a form determined by the committee.

**59                      Certain voting by proxy, &c., limited**

- (1) At a meeting of the Management Corporation, a person who has a financial interest in a prescribed arrangement or a proposed prescribed arrangement is not entitled to vote as proxy for another person or as a nominee of a corporation on a motion relating to the prescribed arrangement or proposed prescribed arrangement.
- (2) For the purposes of subregulation (1), where a person or a spouse or de facto partner of the person:
  - (a) are the owners of shares, whether or not beneficially, in a company;
  - (b) is a member of a firm; or
  - (c) is a director or employee of a company or a firm,

that stands to benefit directly from a prescribed arrangement or a proposed prescribed arrangement to which the motion relates, the person shall be taken to have a financial interest in the arrangement.

(3) For the purposes of this regulation, a ***prescribed arrangement*** means an agreement or arrangement between:

- (a) in the case of a registered lot, the Management Corporation or the Developer and any other person; or
- (b) in the case of a proposed lot, the Developer and any other person,

being an agreement or arrangement:

- (c) employing or engaging a person under regulation 39;
- (d) for the carrying out of a function or power of the Management Corporation under regulation 7 or 8;
- (e) for the protection of the common property or a part of it or of the security of the occupants of the lots;
- (f) for the conduct of a business on the common property; or
- (g) under which the rights of an owner of a lot are or are likely to be affected to a material extent.

## **60            Voting by Chairman**

The Chairman has a deliberative vote and, in the case of an equality of votes on an ordinary resolution, also a casting vote.

## **61            No vote unless dues paid**

Except where a resolution without dissent is required, the right to vote in respect of a lot is not exercisable unless all amounts due and payable in respect of the lot to the Management Corporation by the member liable to pay the amounts have been paid.

## **62            Absentee votes on resolutions without dissent**

- (1) Where notice has been given that it is proposed to move at a general meeting a matter requiring a resolution without dissent and more than one person is entitled to attend the meeting and vote on the resolution:
  - (a) the committee shall, with the notice of the meeting given to the person, give a voting paper; and

- (b) a person entitled to vote on the proposed resolution may, instead of voting in any other manner, cast an absentee vote by recording his or her vote on the voting paper and causing it to be delivered to the Management Corporation before the commencement of the meeting.
- (2) A vote recorded and delivered in accordance with subregulation (1) shall be accepted by the Chairman as a valid vote by the person exercising it and the person shall be deemed to be present at the meeting and to have exercised his or her powers of voting on the resolution, but the person shall not be deemed to be present for the purpose of constituting a quorum under regulation 47.

### **63                      Joint voters**

- (1) Where a lot is jointly owned and the owners are entitled to exercise one vote jointly, the vote shall be exercised by one person:
  - (a) appointed by the owners as their nominee and recorded on the roll; or
  - (b) appointed by the owners as their proxy.
- (2) Notwithstanding subregulation (1), where 2 or more persons are entitled to exercise one vote jointly, any one of them may, except where a resolution without dissent is required, demand a poll.

### **64                      Capacity to vote**

The right of a person to vote at a general meeting:

- (a) may, subject to paragraph (b), be exercised by the person, if he or she has attained the age of 18 years;
- (b) shall not be exercised by the person if he or she is under a legal disability (not being infancy) that prevents him or her from lawfully dealing with his or her property, but may in that event be exercised by the person who is, for the time being, authorised by law to control the property; and
- (c) shall not be exercised by the person if he or she has not attained the age of 18 years, but may in that event be exercised by his or her guardian.

### **65                      Amendment, &c., of certain resolutions**

A special resolution or a resolution without dissent of the Management Corporation may not be amended or revoked except by a subsequent special resolution or resolution without dissent, respectively.

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## **Part 3                      Duties, &c., of owners and occupiers**

### **66                      Duties of owners and occupiers of lots**

- (1) The owner, mortgagee in possession (whether by himself or herself or another person), lessee or occupier of a lot shall not:
  - (a) do anything or permit anything to be done on, in or in relation to the lot so that:
    - (i) the support or shelter provided by the lot for another lot or common property is interfered with; or
    - (ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services) through or by means of a pipe, wire, cable or duct for the time being in the lot is interfered with;
  - (b) use or enjoy the lot, or permit the lot to be used or enjoyed in a manner or for a purpose that may cause a nuisance or hazard to the owner or occupier of another lot; or
  - (c) use or enjoy the common property in a manner or for a purpose that may interfere with the use or enjoyment of the common property by the owner or occupier of another lot or by any other person entitled to the use and enjoyment of the common property.
- (2) The owner, mortgagee in possession (whether by himself or herself or another person), lessee or occupier of a lot shall not use the lot for a purpose that may be illegal or injurious to the lot or to the common property.

### **67                      Notice to Management Corporation**

- (1) A person including an owner, mortgagee in possession and a body corporate shall, not later than 28 days after becoming the owner of a lot, give notice in writing to the Management Corporation of particulars required to be recorded in the roll, and the address for service of notices.
- (2) A person referred to in subregulation (1) shall, without delay, give notice in writing to the Management Corporation of particulars of:
  - (a) a change of address for service of notices; or
  - (b) a change of nominee appointed under regulation 3 to exercise voting rights.

- (3) If the Management Corporation has not received a notice referred to in this regulation it may, by notice in writing, request a person referred to in subregulation (1) to provide a notice referred to in subregulation (1) or (2) within 14 days after service, and the person shall comply with the request.
- (4) A person who fails to supply to the Management Corporation a notice required under this regulation is not entitled to vote at a meeting of the Management Corporation.

## **Part 4                      Insurance**

### **68                      Insurance by Management Corporation**

- (1) Subject to subregulation (3), the Management Corporation shall insure and keep insured the buildings, improvements and other structures on the common property, including the lock, gates, and mooring basin, for their replacement or reinstatement value against the following risks:
  - (a) fire, lightning, tempest, earthquake and explosion;
  - (b) riot, civil commotion, strikes and labour disturbances;
  - (c) malicious damage;
  - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus; and
  - (e) impact of boats, aircraft (including parts of, and objects falling from, aircraft), road vehicles, horses and cattle.
- (2) Subject to subregulation (3), the Management Corporation shall insure itself and keep itself insured against liability in respect of:
  - (a) death, bodily injury or illness; or
  - (b) loss of, or damage to, property,occurring in connection with the common property as a result of an accident, for such aggregate amount of liability, being not less than \$10,000,000 at any one time, as determined by the Corporation.
- (3) The Management Corporation may, by resolution without dissent, resolve that it will not insure against such of the risks referred to in subregulations (1) and (2) as are specified in the resolution and, in that event, the Corporation is not required by this regulation to insure against a risk so specified.

- (4) The Management Corporation shall insure:
- (a) in respect of an occurrence that it is required by law to insure, including insurance required to be effected under Part 7, Division 3 of the *Workers Rehabilitation and Compensation Act*; and
  - (b) in respect of a liability of the Management Corporation for damage to property, death or bodily injury occurring on the common property; and
  - (c) against the possibility of the owners of lots becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the Management Corporation, in pursuance of a special resolution, resolved to insure.
- (5) Where the Management Corporation has, under subregulation (3), resolved that it will not insure against a particular risk, an owner or mortgagee of a lot may at any time serve on the Corporation a written notice requiring it to insure against the risk.
- (6) Within 28 days after service on the Management Corporation of the notice referred to in subregulation (5), the resolution without dissent ceases to have effect in relation to the risk specified in the notice and the Corporation shall, in accordance with subregulations (1) or (2), insure against the risk.
- (7) As soon as is practicable after service on the Management Corporation of the notice referred to in subregulation (5), the Corporation shall notify every member and, where the lot is mortgaged, the mortgagee of the lot:
- (a) of the particulars of the notice and the date of its receipt; and
  - (b) of the date on and from which the risk specified in the notice is, or is to be, covered by insurance effected by the Corporation.
- (8) Nothing in this regulation shall be construed as limiting the right of the Management Corporation to effect such additional insurance as it determines.
- (9) In this regulation, **risk** includes a liability referred to in subregulation (2) or (4).

**69 Insurable interests of Management Corporation**

For all purposes connected with an insurance effected by it under regulation 68(1), the Management Corporation shall be deemed to have an insurable interest in the buildings and improvements on the common property to the extent of their replacement value or reinstatement value.

**Part 4A Subdivision and consolidation of lots****69A Method of subdivision and consolidation**

- (1) A lot may be subdivided in pursuance of section 7(3) of the Act by the registration of a plan as a plan of subdivision.
- (2) Two or more lots held by the same registered proprietor may be consolidated into one lot by the registration of a plan as a plan of consolidation.

**69B Form and contents of plan**

A plan illustrating a proposed subdivision of a lot or a proposed consolidation of lots shall not be registered as a plan of subdivision or plan of consolidation unless:

- (a) it shows the precalculated dimensions and areas of lots into which it is proposed to subdivide the lot, or consolidate the lots, prepared by a surveyor licensed under the *Licensed Surveyors Act*;
- (b) it complies with Part 5 of the *Planning Act*;
- (c) it contains a schedule of lot entitlements which shall be prepared in accordance with regulation 69C;
- (d) it complies with the *Licensed Surveyors Act* in relation to plan drawing standards; and
- (e) it contains a certificate from the Surveyor-General stating that it complies with this Part.

**69C Lot entitlements**

- (1) A schedule of lot entitlement shall show, in respect of each lot (**resulting lot**) into which the lot (**original lot**) is to be subdivided, the nearest whole number determined by dividing the lot entitlement of the original lot by the percentage that the area of the resulting lot bears to the area of the original lot.



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- (2) In respect of a consolidation, the lot entitlement shall be shown in the schedule of entitlement as the sum of the lot entitlements of the lots being consolidated.

## **Part 5                      Miscellaneous**

### **70                      Facilities for service of documents**

- (1) The Management Corporation shall cause to be continuously displayed in a conspicuous place on the development area a notice showing the name of the Corporation and the address notified under regulation 5.
- (2) The Management Corporation shall cause to be continuously available in a conspicuous and accessible place on the development area one or more receptacles suitable for the purposes of postal delivery, bearing the name of the Corporation in clear and legible characters. Repossesses

Penalty for an offence against this regulation: \$400.

### **71                      Service of documents**

- (1) Personal service on the Management Corporation may be effected by leaving it with the Chairman, secretary or corporation manager or with a member of the committee.
- (2) A document or notice may be served on the Management Corporation by leaving it with a person specified in subregulation (1) or in the receptacle provided in accordance with regulation 70 or by post addressed to the Corporation at the address notified under regulation 5.
- (3) A notice required under these Regulations to be served by the Management Corporation or by the committee on an owner, lessee, mortgagee or other occupier of a lot may be served:
- (a) by leaving it with a person apparently of or over the age of 16 years:
- (i) where the person to be served is an occupier of the lot, at the lot; or
- (ii) where the address for service on the person to be served is recorded in the roll, at the recorded address; or
- (b) by post on the person to be served where an address for service on the person to be served is recorded in the roll, at the recorded address.

**72       Fences**

The Management Corporation is not liable to join in or contribute to the construction of fences in respect of a lot within the development area.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Cullen Bay Marina Regulations (SL No. 40, 1993)***

Notified	10 November 1993
Commenced	10 November 1993

***Amendments to Cullen Bay Marina Regulations (SL No. 29, 1995)***

Notified	13 September 1995
Commenced	13 September 1995

***Planning (Consequential Amendments) Act 1999 (Act No. 56, 1999)***

Assent date	14 December 1999
Commenced	12 April 2000 (s 2, s 2 <i>Planning Act 1999</i> (Act No. 55, 1999) and <i>Gaz</i> S15, 12 April 2000)

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz</i> G38, 1 December 2000, p 2)

***Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)***

Assent date	13 September 2002
Commenced	30 October 2002 ( <i>Gaz</i> G43, 30 October 2002, p 3)

***Statute Law Revision Act (No. 2) 2003 (Act No. 44, 2003)***

Assent date	7 July 2003
Commenced	7 July 2003

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 ( <i>Gaz</i> G11, 17 March 2004, p 8)

***Law Reform (Work Health) Amendment Act 2003 (Act No. 30, 2007)***

Assent date	12 December 2007
Commenced	1 July 2008 ( <i>Gaz</i> S29, 25 June 2008)

### **3 LIST OF AMENDMENTS**

r 5	amd Act No. 45, 2000, s 12
r 14	amd Act No. 44, 2003, s 6
r 15	amd Act No. 38, 2002, s 7
r 59	amd Act No. 1, 2004, s 63
r 68	amd Act No. 30, 2007, s 59
pt 4A hdg	ins No. 29, 1995, r 1
r 69A	ins No. 29, 1995, r 1
r 69B	ins No. 29, 1995, r 1
	amd Act No. 56, 1999, s 3(2)
r 69C	ins No. 29, 1995, r 1