



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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OWNERS CORPORATION NOTIFICATION OF MAKING RULES SECTION 27E(1) SUBDIVISION ACT 1988 (WHEN LODGED WITH PLAN)

Applicant(s):

MP COMMERCIAL NO 1 PTY LTD (ACN/ARBN: 605707784)
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

MP COMMERCIAL NO 2 PTY LTD (ACN/ARBN: 605707793)
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

MP COMMERCIAL NO 3 PTY LTD (ACN/ARBN: 605707800)
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

Plan Number:

PS738832M

Owners Corporation Number:

8

Proposed rules of the Owners Corporation:

Appended

Execution:

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and



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Electronic Instrument Statement

any Prescribed Requirement.

Executed on behalf of MP COMMERCIAL NO 1 PTY LTD

MP COMMERCIAL NO 2 PTY LTD

MP COMMERCIAL NO 3 PTY LTD

Signer Name MITCHELL SHARMAN

Signer Organisation MADDOCKS

Signer Role AUSTRALIAN LEGAL PRACTITIONER

Execution Date 29 July 2020

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



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Date / /20

**Owners Corporation Rules
“Rise”, Everage Street, Moonee Ponds, Victoria 3039
Retail/Commercial Lots**

Owners Corporation No. 8 on Plan of Subdivision PS738832M

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Owners Corporation Rules Retail/Commercial Lots

Date / /

NOTES

The *Owners Corporations Regulations 2007* detail the powers of the Owners Corporation(s), the general duties of members, meetings and administration of the Owners Corporation(s), insurance and other miscellaneous matters. These rules must be read in conjunction with the Regulations and the Owners Corporation No. 1 Rules.

1. Definitions

In these rules:

Act means the *Owners Corporations Act 2006 (Vic)* as amended from time to time.

Building Works means all design, building and construction works including the construction, erection, fixing, installation or otherwise or any item not originally included with or part of a Lot or Common Property (and without limitation, includes the alteration or modification to the external façade of a Lot, removal or replacement of floor coverings or materials, fixing or having fixed any electrical, audio visual, or communication device or equipment (for example, plasma or LCD televisions or speakers) within or about or relating to a Lot which may affect the acoustic performance of any inter-tenancy wall, floor or ceiling).

Commercial Lot means:

- (a) lots 1AR, 2AR, 3AR and 4AR on the Plan; and
- (b) lots S12, S13, S14, S15 and S16, or any lots created upon the further subdivision of such lots, on the Plan which are intended for non-residential use.

Commercial Purpose means use for a restaurant, café, retail or other commercial use (including office use).

Common Property means the land and any improvements erected on 34-36 Margaret Street and 40 Hall Street and 15 Everage Street, Moonee Ponds, Victoria 3039 designated as common property on the Plan.

Developer means the party engaged by the Owner or a Related Body Corporate and responsible for the development of the Development and creation of Lots and includes the Developer's successors and assigns and Related Bodies Corporate and where it is consistent with the context includes the Developer's employees, agents, builders, contractors, subcontractors and invitees.

Development means the development to be carried out on the land known as 34-36 Margaret Street and 40 Hall Street and 15 Everage Street, Moonee Ponds as a mixed use community and associated facilities including the marketing and sale of Lots.

Director has the same meaning as it has in the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

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

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

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

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Initial Owner has the same meaning as it has under the Act and where the context requires includes its successors and assigns.

Land means the whole of the land described in the Plan.

Lot means a lot shown on the Plan.

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

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

Manager means the person or entity appointed by the Owners Corporation as Manager of the Owners Corporation(s) and where relevant includes the Manager's successors and assigns and where the context requires includes the Manager's officers, employees, agents, contractors, subcontractors and invitees.

Member means a member of the Owners Corporation by reason of being the owner of a Lot for the time being and where the context requires includes an Occupier or their invitees.

Occupier means the person or entity authorised by the Member to occupy the designated Lot as tenant or licensee and where the context requires includes the Occupier's invitees.

Owner means the owner of the Land, being:

- (a) MP Commercial No 1 Pty Ltd ACN 605 707 784;
- (b) MP Commercial No 2 Pty Ltd ACN 605 707 793; or
- (c) MP Commercial No 3 Pty Ltd ACN 605 707 800,

either collectively or singularly as the context requires, or such other registered proprietor or proprietors of the whole or any part of the land comprising the Development from time to time.

Owners Corporation(s) means the Owners Corporation(s) created by the registration of the Plan.

Owners Corporation No. 1 means the unlimited owners corporation on the Plan.

Owners Corporation No. 1 Rules means the Rules for unlimited Owners Corporation No. 1 on the Plan.

Plan means plan of subdivision no. PS738832M.

Proximity Card means a card, magnetic card or other device used to open and close doors, gates, locks in respect of a Lot or Common Property including any remote control or other security device issued to the Member or Occupier.

Regulations means the *Owners Corporations Regulations 2007 (Vic)* as amended from time to time.

Related Body Corporate has the same meaning given to that term in the *Corporations Act 2001 (Cth)*.

Rule or Rules means these rules which are for the purpose of the control, management, administration, use or enjoyment of the Common Property or any Lot as amended from time to time.

2. Interpretation

2.1 Unless the context otherwise requires:

2.1.1 headings are for convenience only;

2.1.2 words imparting the singular include the plural and vice versa;

2.1.3 expressions imparting a natural person includes any company, partnership, joint structure, association or other Owners Corporation and any governmental authority; and

2.1.4 a reference to a thing includes part of that thing.

2.2 The obligations and restrictions in these Rules must be read subject to the rights, grants or privileges that may be given to any person or entity by the Owners Corporation from time to time and to the extent of any inconsistency, such rights, grants or privileges, must prevail over these Rules in respect of the person or entity to whom they are given.

2.3 In these Rules:

2.3.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

2.3.2 if it is not possible to read down a provision as required in this Rule, that provision is severable without affecting the validity or enforceability of the remaining part of that Rule or the other Rule.

2.4 In the event of a conflict between these Rules and any restriction(s) on the Plan, the restriction will prevail.

3. Relationship with Owners Corporation No. 1 Rules

If there is any conflict between these Rules and the Owners Corporation No. 1 Rules, the Owners Corporation No. 1 Rules prevail.

4. Provision of Services

Each Member of the Owners Corporation agrees that the Owners Corporation will provide the following services:

- 4.1 the repair and maintenance of all Common Property including gardens, trees, paved areas and landscaping;
- 4.2 any other service or facility provided by the Owners Corporation for the benefit of the Members.

5. Use of a Lot

5.1 A Member must not:

- 5.1.1 create noise or behave in a manner that is likely to interfere with the peaceful enjoyment of the member of another Lot, or any person lawfully using the Common Property;
- 5.1.2 do or permit anything on a Lot which may invalidate, suspend or increase the premium for any insurance effected by the Owners Corporation;
- 5.1.3 without the prior written consent of the Owners Corporation, maintain inside a Lot anything visible from outside a Lot (including but not limited to a balcony, terrace or garden area) that when viewed from outside the Lot is aesthetically or otherwise detrimental to the amenity of the Development including the hanging of any washing, towel, bedding, clothing or any other article or like matter on any part of their Lot;
- 5.1.4 operate or permit to be operated on a Lot any device or electronic equipment which interferes with any domestic appliance lawfully in use on the Common Property, another Lot or another part of the Development;
- 5.1.5 use that part of a Lot designed for use as a car parking space for any other purpose without the prior written consent of the Owners Corporation (including for storage – all storage items must be contained within designated storage spaces/cages only);
- 5.1.6 carry out or cause to be carried out on a Lot, road or any other land in the vicinity of a Lot, any dismantling, assembly, repairs or restorations of vehicles;
- 5.1.7 use the Lot for any purpose that may be illegal or injurious to the reputation of the premises comprised of the lots and the Common Property or which may cause a nuisance or hazard to any other member of a Lot; or
- 5.1.8 install blinds to windows visible from outside the Members Lot other than of a neutral colour and of a type and style general consistent with the fixtures and fittings used throughout at the time the Plan was first registered.

5.2 Each Member must:

- 5.2.1 maintain their Lot and must ensure that their Lot is so kept and maintained as not to be offensive in appearance nor a fire or health hazard to other Members; and
- 5.2.2 comply with all laws relating to the Lot including, without limitation, any requirement, notices and orders of any governmental authority.

6. Cleaning and maintenance of a Lot

- 6.1 A Member or Occupier must keep its Lot (including any garage, car park or storage cage utilised by the Member or Occupier) clean and in good repair.
- 6.2 A Member or Occupier must ensure its car parking space(s) are free of oil, petrol and like substances. The Owners Corporation may clean any car parking space which is excessively stained by oil, petrol or a like substance at the Member's or Occupier's expense if after providing 28 days' notice the Member or Occupier has failed to clean the excessive staining. The Owners Corporation may authorise a person to enter the relevant Lot or Building on its behalf to carrying out cleaning of car spaces in accordance with this Rule.
- 6.3 A Member or Occupier must ensure that all landscaped areas visible from Common Property or which adversely affect the outward appearance or state of repair of the Lot or the use and enjoyment of the Lots or Common Property by other Members or Occupiers are maintained to a standard commensurate with the standard of maintenance of Common Property landscaped areas or as reasonably directed by the Owners Corporation or its Manager.

7. Blinds, windows and awnings

- 7.1 A Member or Occupier must not install or permit the installation of any awnings to the exterior of any Lot or any part of the Common Property other than as permitted by the Owners Corporation.
- 7.2 A Member or Occupier must not allow any glazed portions of the Lot or the Common Property that surrounds the Lot to be tinted or otherwise treated.
- 7.3 A Member or Occupier must not install or permit the installation of any window furnishings to the interior of any window visible from outside the Member's Lot without the prior written consent of the Owners Corporation unless they are:
 - 7.3.1 a translucent roller blind of shearweave material in ivory white or off-white; or
 - 7.3.2 an opaque block out roller blind with the external face in ivory white or off-white,and must not install any curtains or other furnishings on the interior of any windows or doors.
- 7.4 If approval to window furnishings is given under Rule 7.3, the window furnishings must be installed and maintained in a manner so as to ensure efficient operation of the heating/cooling system of the Lot.

8. Cleaning windows and doors

- A Member or Occupier must keep clean all surfaces of glass in windows and doors installed in, or otherwise on the boundary of, the Lot, including any part of that glass which is in the Common Property, unless:
- 8.1 the Owners Corporation resolves that it will keep the glass or specified parts of the glass clean; or

- 8.2 that glass or part of the glass cannot be accessed by the Member or Occupier safely or at all.

9. Building Works

- 9.1 A Member must not undertake any Building Works within or about or relating to a Lot unless such works are performance in accordance with this Rule 9.

- 9.2 Before commencing any Building Works, the Member or Occupier must:

9.2.1 submit to the Owners Corporation for approval plans and specifications of any proposed Building Works;

9.2.2 obtain, for any Building Works proposal submitted for approval, certification by a qualified acoustics engineer that the works when completed will meet the Building Code of Australia minimum requirements for sound attenuation;

9.2.3 receive written approval from the Owners Corporation to proceed with those specified Building Works;

9.2.4 obtain and supply copies to the Manager of all requisite permits, approvals and consents under all relevant Laws;

9.2.5 pay costs to the Owners Corporation where a building contractor or consultant may be engaged to advise the Owners Corporation on the proposed Building Works even if consent is not given;

9.2.6 cause to be effected and maintained during the period of the Building Works a contractor's all risk insurance policy; and

9.2.7 deliver a copy of the contractor's all risk insurance policy and certificate of currency to the Owners Corporation which notes the interests of the Owners Corporation.

- 9.3 A Member or Occupier must ensure that any contractor engaged to perform approved Building Work on their Lot complies with the reasonable directions of the Owners Corporation concerning the method of building operations, means of access, use of the Common Property, on-site management, building protection and hours of work. The Member or Occupier must also supervise the carrying out of such Building Works and ensure that the following conditions are met:

9.3.1 the Building Works are undertaken in a reasonable manner so as to minimise any nuisance, annoyance, disturbance and inconvenience to other Members or Occupiers;

9.3.2 building materials are not stacked or stored in Common Property;

9.3.3 scaffolding is not erected on the Common Property or exterior of the Building;

9.3.4 construction work complies with all Laws of the relevant Authorities;

9.3.5 construction vehicles and construction worker's vehicles are not brought into, or parked on the Common Property except by prior arrangement with the Owners Corporation;

9.3.6 the exterior and Common Property of the Building is at all times be maintained in a clean and tidy state;

9.3.7 suitable floor, wall and other protections is installed in the Common Property before any building materials are taken through those parts of the Common Property; and

- 9.3.8 all contractors and tradesmen use only the basement, lifts, lobby and areas designated by the Manager when working in the Lot.
- 9.4 Where a Member or Occupier commissions Building Work in accordance with Rule 9.3, a representative of the Owners Corporation and the Member or Occupier must inspect the part of the Common Property which will be affected by the Building Works (for example, the area through which building materials will be transported) prior to commencing the Building Work to establish the state of repair of the Common Property and again after the Building Work has been completed to determine if any damage has been caused to the Common Property.
- 9.5 A Member or Occupier must promptly make good all damage to and dirtying of the Building, the Common Property, the services thereof or any fixtures and fittings and finishes which are caused by any Building Works. If the Member or Occupier fails to do so the Owners Corporation may in its absolute discretion make good the damage and dirtying at the Member's or Occupier's expenses. The Member or Occupier must indemnify and keep indemnified the Owners Corporation for all costs and liabilities incurred by the Owners Corporation in so making good the damage or dirtying caused by the Building Work. The Owners Corporation may at their absolute discretion demand from the Member or Occupier a performance bond in relation to the cleaning or repair of the Common Property to guarantee their performance under this Rule.
- 9.6 For the avoidance of doubt, this rule needs to be satisfied by a Member in addition to its obligations under Rule 8 of Owners Corporation No. 1 Rules.

10. Use of appurtenances

A Member or Occupier must not use the water closet, conveniences or other water apparatus, including water pipes and drains for any other purpose than those which they were constructed and, must not sweep or deposit rubbish or other unsuitable substances therein. The Member indemnifies and keeps indemnified the Owners Corporation on a full indemnity basis for any costs or expenses resulting from any damage or blockage incurred by the Owners Corporation where the damage or blockage was caused by the Member, Occupier or their invitees.

11. Fittings

- 11.1 A Member or Occupier must:
- 11.1.1 not modify any air-conditioning, heating or ventilation system or associated ducting servicing that Lot without the prior consent of the Owners Corporation;
 - 11.1.2 not install in a Lot a floor safe, a safe, or any other item exceeding 100kg in weight without a written consent of the Owners Corporation and before submitting to the Owners Corporation a structural engineering report in respect to the proposed installation; and
 - 11.1.3 ensure that all floor space within a Lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of the Lot noise likely to disturb the peaceful enjoyment of the Member or Occupier of another Lot.
- 11.2 A Member or Occupier must not affix or have affixed to any Common Property wall, floor or ceiling any electrical, audio visual or communication device or equipment without the prior written consent of the Owners Corporation including but not limited to plasma or LCD televisions or speakers.

12. Use of Common Property

A Member must not:

- 12.1 do or allow to be done anything on the Common Property which causes a nuisance to or interferes with its lawful use by the Owners Corporation or other Members;
- 12.2 do or permit anything which might cause structural damage to the Common Property;
- 12.3 move any article likely to cause damage or obstruction through Common Property without first notifying the Manager in sufficient time to enable the Manager to arrange for a representative of the Owners Corporation to be present at the time of moving if it is considered necessary;
- 12.4 interfere with the operation of any equipment installed on the Common Property without the prior written consent of the Owners Corporation;
- 12.5 interfere with any personal property vested in the Owners Corporation;
- 12.6 park or leave a vehicle or permit any vehicle to be parked or left upon the Common Property or in any place other than in a parking area specified for such purpose by the Owners Corporation;
- 12.7 obstruct a driveway or entrance to a Lot or any other road on the Development;
- 12.8 paint, drive nails or screws or the like into, or otherwise damage, alter or deface, any structure that forms part of the Common Property including the external facade except with the consent in writing of the Owners Corporation;
- 12.9 when on Common Property (or if on any part of a Lot so as to be visible from another Lot or from Common Property), fail to be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the Member or Occupier of another Lot or to any person lawfully using Common Property;
- 12.10 deposit or throw upon the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of other Member or any person lawfully using the Common Property;
- 12.11 disregard any requirements made by the Owners Corporation relating to the use of any access keys and intercom system that may be provided as the means of access upon roadways created within the Common Property;
- 12.12 use or store on the Common Property any flammable chemical, liquid, gas or other flammable material other than chemicals, liquids, gases or other material used or intended to be used for normal and lawful domestic purposes or in the fuel tank of a motor vehicle;
- 12.13 hold or allow to be held any public auction on or near the Common Property;
- 12.14 directly instruct any contractors or workmen employed by the Owners Corporation unless so authorised;
- 12.15 except with the consent in writing of the Owners Corporation, use for their own purposes as a garden any portion of the Common Property;
- 12.16 must notify the Owners Corporation or its Manager promptly when becoming aware of any damage to or defect in the Common Property or any personal property vested in the Owners Corporation.

13. Moving object on or through Common Property

- 13.1 The Owners Corporation may resolve that furniture or large objects are to be transported through or on the Common Property (whether in the Building or not) in a specified manner.
- 13.2 If the Owners Corporation has specified, by resolution, the manner in which furniture or large objects are to be transported, a Member or Occupier must not transport any furniture or large object through or on the Common Property except in accordance with that resolution.
- 13.3 When using the lifts to move goods or furniture a Member or Occupier must ensure that the walls, floor and ceiling of the lifts are adequately protected from damage.
- 13.4 A Member or Occupier must not move any article of furniture or any other article likely to cause damage or obstruction through the Common Property without first notifying the Owners Corporation in sufficient time to enable the lifts to be covered and ensure only one Member or Occupier is moving in at a time.
- 13.5 Prior to moving any article of furniture or any other article likely to cause damage or destruction, the Manager or a representative of the Owners Corporation and the Member or Occupier will inspect the Common Property through which such article is to be moved to establish its state of repair. The Member or Occupier will be liable for any damage caused to the Common Property arising from the movement of the article.

14. Signage and windows

- 14.1 A Member is not permitted to display signs, advertising or notices on any Lot, including for the purpose of offering for sale or lease or letting any Lot or Common Property, without the consent of the Owners Corporation. Any sign that is erected must be of a standard that shall not detract from the overall appearance of the Development.
- 14.2 A Member is not permitted to display any advertising material, logos or sign writing to any external window, glazing or external solid face of a lot without the written consent of the Owners Corporation.

15. Garbage disposal

A Member of a Lot must:

- 15.1 except where the Owners Corporation provides some other means of disposal of garbage, maintain within their Lot, or on such part of the Common Property as may be authorised by the Owners Corporation, a receptacle for garbage and to keep such receptacle in a clean and tidy condition and not visible to the public except on days designated for rubbish collection;
- 15.2 comply with all requirements of Governmental Agencies relating to the disposal of garbage;
- 15.3 ensure that rubbish does not accumulate on their Lot, and that the health, hygiene and comfort of other Members is not adversely affected by their disposal of garbage; and
- 15.4 ensure that rubbish is transported from their Lot to the designated garbage room on the Common Property in an appropriate watertight receptacle.

16. Commercial area

- 16.1 Without limiting any other rule, the proprietor or occupier of a Commercial Lot used for Commercial Purposes must:
- 16.1.1 take out its own bins on each garbage collection day to the bin collection area nominated by the Owners Corporation(s) from time to time, and bring the bins in before 9:00am on each collection day Monday to Saturday and before 10:00am on Sundays;
 - 16.1.2 avoid unnecessary noise when filling bins and ensure contractors pick up between 8:00am and 9:00am Monday to Saturday and between 9:00am and 10:00am on Sundays;
 - 16.1.3 ensure lids on bins are securely closed at all times and ensure that bins are kept clean;
 - 16.1.4 ensure all cardboard and paper waste is cut up or folded and neatly contained in bins;
 - 16.1.5 store all bins, bottles, cardboard/paper and any other refuse within the relevant Lot (but not any car park forming part of that Lot) and must not store bins, bottles, cardboard/paper or any other refused on common property except when this is the 'bin collection area' nominated by the Owners Corporation(s).
 - 16.1.6 ensure that any perishable rubbish is refrigerated and hidden from view;
 - 16.1.7 wash down of bins must only be carried out within the Lot, excluding carspaces. or as instructed by the Owners Corporation;
 - 16.1.8 comply with all health, noise and other regulations in carrying on the business from the Lot;
 - 16.1.9 any mechanical fluing must be charcoal filtered or equivalent;
 - 16.1.10 small utility deliveries are to be between 5:30am – 6:00pm Monday to Friday and 6:30am – 6:00pm Saturdays & Sundays;
 - 16.1.11 large deliveries are to be between 8:00am – 6:00pm Monday to Sunday;
 - 16.1.12 not permit electronic gaming machines;
 - 16.1.13 make all reasonable attempts to address/treat any odours that emanate from the Lot; and
 - 16.1.14 ensure that all wall, floor and ceiling linings and treatments are acoustically treated to ensure that an acoustic performance level of STC30 is achieved.
- 16.2 Nothing herein will prevent or prohibit any owner or Occupier of a Commercial Lot from carrying on its reasonable business operations within a Commercial Lot and to apply for, and obtain, any planning permit, liquor licence, or any other legislative consent or permit which the owner of any commercial Lot may apply for, provided that all times the proprietor or occupier of any such commercial Lot:
- 16.2.1 operates lawfully;
 - 16.2.2 obtains each and every permit, liquor licence or other consent required; and
 - 16.2.3 operates within the terms of any such liquor licence, permit or consent.

- 16.3 The owner or Occupier of any Commercial Lot will be responsible for all costs associated with the cleaning, repairs and maintenance of the areas licensed to them. The licensees will be responsible for ensuring that these areas are kept in a pristine condition at all times.
- 16.4 Any owner or Occupier of a Commercial Lot will be entitled to reasonable access at all times for invitees and customers through those parts of the Common Property necessary for usual business practice.
- 16.5 The Owners Corporation(s) will not hinder access to the Commercial Lots via the main front entry except when they are required to undertake routine maintenance of these areas.

17. Behaviour of Invitees

- 17.1 The duties and obligations imposed by these special rules upon a Member of a Lot must be observed not only by the Member but also by the guest, servants, employees, agents, children, invitees and licensees of the Member or the occupier of their Lot (**Invitees**).
- 17.2 A Member must take all reasonable steps to ensure that their Invitees do not behave in a manner likely to interfere with the peaceful enjoyment of any Member or occupier of another Lot or of any person lawfully using the Common Property.
- 17.3 A Member is liable to compensate the Owners Corporation for all damage to the Common Property or personal property vested in it caused by a breach of Rule 17.1 and 17.2.
- 17.4 Where the Owners Corporation expends money to make good damage caused by a breach of the Act, or of these rules by any Member or Invitees, the Owners Corporation can recover the amount so expended as a debt in action in any Court of competent jurisdiction from the Member of the Lot at the time when the breach occurred.

18. Owners Corporation Fees

- 18.1 The Member must pay the fees set by the Owners Corporation to cover general administration and maintenance, insurance and other recurrent obligations quarterly or as periodically resolved by the Owners Corporation, in advance according to their lot entitlement.
- 18.2 The amount of the annual Owners Corporation fees which is payable by each Member will be established at each annual general meeting of the Owners Corporation.
- 18.3 Any special fees or charges levied by the Owners Corporation to cover extraordinary items of expenditure must be paid on the due date set by the Owners Corporation upon the levying of each special fee or charge.

19. Consent of Owners Corporation

A consent given by the Owners Corporation under these Rules will, if practicable, be revocable and may be given subject to conditions including, without limitation, a condition evidenced by a minute of a resolution that the member for the time being of the lot to which the consent or approval relates is responsible for compliance with the terms of the consent.

20. Enforcement of Domestic Building Contract

The Member agrees that for the purpose of its obligations under the Act:

- 20.1 the Members acknowledge and agree that reasonable steps to enforce any domestic building contract (within the meaning of the *Domestic Building Contracts Act 1995*) include:
 - 20.1.1 the making of a demand in writing to the builder under any domestic building contract to comply with the terms of the domestic building contract and/or rectify any breach of the domestic building contract;
 - 20.1.2 the exercise of any right under the domestic building contract to withhold any payment to the builder or have recourse to any security provided by the builder under the domestic building contract;
 - 20.1.3 the settlement of any dispute under any domestic building contract between the original owner and the builder on terms acceptable to the original owner; and
 - 20.1.4 any other enforcement action the Initial Owner considers appropriate in the circumstances; and
- 20.2 the Members agree to pay or reimburse the Initial Owner its portion of any enforcement relative to its lot liability.

21. Complaints and Disputes

- 21.1 Any Dispute must be dealt with at first instance in accordance with this Rule 21.
- 21.2 A party to a Dispute must not initiate legal proceedings or complain to the Director in respect of the Dispute unless it has first complied with the dispute resolution procedure set out in this Rule 21.2.
- 21.3 The party making the complaint must in the first instance notify the Manager, or where the Manager is the subject of or involved in the Dispute, the Committee, of the Dispute in writing. The Manager must refer any complaint it receives to the Committee. Upon receipt of a complaint referred by the Manager or received directly from a Member or Occupier, the Committee will then decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether to:
 - 21.3.1 arrange a meeting between the parties to resolve the Dispute; or
 - 21.3.2 waive the requirement for the parties to meet.
- 21.4 Notwithstanding the course of action elected by the Committee under Rule 21.3, the parties must consult with one another in good faith and use their best endeavours to resolve the Dispute to the mutual satisfaction of both parties without resort to legal proceedings or other avenues of dispute resolution.
- 21.5 Without limiting the generality of this Rule 21.4, where no formal complaint is made by a Member or Occupier and the Owners Corporation otherwise becomes aware of a Dispute, the Owners Corporation (through the Manager or the Committee or otherwise) may decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether:
 - 21.5.1 arrange a meeting between the parties to resolve the Dispute; or
 - 21.5.2 waive the requirement for the parties to meet.
- 21.6 If the parties are unable to resolve the Dispute within 30 days (or such other period as the Committee thinks fit) of the meeting arranged pursuant to Rule 21.3.1 or 21.5.2, the parties may revert to the dispute resolution mechanisms set out in the Act or other Law.

22. Cost of Non-compliance

The Member or Occupier must indemnify and keep indemnified the Owners Corporation on a full indemnity basis against any action, demand, cost, liability or loss incurred by the Owners Corporation as a consequence of any default by the Member or Occupier in the performance or observance of any term, covenant or condition contained in these Rules, the Act or Regulations including, without limitation administrative costs, legal costs, the cost of any works performed to rectify any non compliance and the cost incurred by the Owners Corporation in recovering overdue charges from the Member or Occupier.

23. Charges imposed on Members and Occupiers

- 23.1 Any payments to the Owners Corporation imposed on a Member or Occupier under the Rules, Act or Regulations will (until paid) be a charge on the Lot.
- 23.2 The Member or Occupier must accept a certificate signed by the Manager or valid tax invoice issued by the Owners Corporation as prima facie proof of the costs and expenses incurred by the Owners Corporation relating to any charge payable by a Member or Occupier pursuant to these Rules and must not make any claim or dispute the amount specified therein.
- 23.3 The Member or Occupier must pay interest at the rate prescribed under the *Penalty Interest Rates Act 1983 (Vic)* on outstanding fees and charges set under the Rules, Act or Regulations until they are paid.
- 23.4 Any payments made for the purposes of these Rules, the Act or Regulations will be appropriated first in payment of any interest and any unpaid costs and expenses of the Owners Corporation and then be applied in repayment of the principal sum.

24. Rights of entry

A Member of a Lot, upon receiving reasonable notice from the Owners Corporation, must allow the Owners Corporation or any contractors, sub-contractors, workmen or other person authorised by it, the right of access to their Lot for the purpose of carrying out works or effecting repairs on mains, pipes, wires or connection or any water, sewerage, drainage, gas, electricity, telephone or other system or service, whether to their Lot or to any adjoining Lot or the Common Property.

25. Security

The Owners Corporation may make rules and regulations to ensure the security of the Development from intruders and otherwise with regard to the use and means of access to any roadways created upon the Common Property.

26. Contact

- 26.1 Each Member must advise the Manager of any out of normal business hours contact address and telephone number for their Lot and must promptly advise the Manager of any change in their address or telephone number.

- 26.2 Each Member must provide the Manager with an Australian address for service of notices. If a Member fails to provide an Australian address for service of notices, the Lot address will be deemed to be the proper address for service.

27. Restricted use of Common Property for fire control

- 27.1 The Owners Corporation may take measures to ensure the security, and to preserve the safety of the Common Property and the Lots affected by the Owners Corporation from fire or other hazards and without limitation may:
- 27.1.1 close off any part of the Common Property not required for access to a Lot on either a temporary or permanent basis or otherwise restrict the access to or use by Members or Occupiers of any part of the Common Property;
 - 27.1.2 permit, to the exclusion of Members and Occupiers, any designated part of Common Property to be used by any security person as a means of monitoring security and general safety of the Lots, either solely or in conjunction with other Lots; and
 - 27.1.3 restrict by means of key or other security device the access of the Members or Occupiers of one level of the Lots to any other level of the Lots.
- 27.2 A Member and Occupier of a Lot must abide by any actions taken by the Owners Corporation in accordance with these Rules and must meet all costs incurred by the Owners Corporation in relation to these Rules (or a breach of these Rules by the relevant Member or Occupier).

28. Fire

- 28.1 A Member or Occupier of a Lot must ensure compliance with all statutory and other requirements, including those of the Owners Corporation, relating to fire and fire safety in respect of the Lot.
- 28.2 A Member or Occupier of a Lot must not use, interfere or tamper with any fire safety equipment except in the case of an emergency and must not obstruct any fire stairs or fire escape.
- 28.3 A Member or Occupier of a Lot must ensure that all fire doors, exhaust systems and smoke detectors installed in a Lot are properly maintained and tested monthly and that back-up batteries relating to the smoke detectors are replaced whenever necessary.

29. Insurance

A Member or Occupier of a Lot must not without the prior written consent of the Owners Corporation do or permit anything to be done which may invalidate, suspend or increase the premium for any insurance policy effected by the Owners Corporation.

30. Security and Proximity Cards

- 30.1 A Member or Occupier of a Lot or persons thereon from time to time must not do or permit anything, which may prejudice the security or safety of the Common Property, or any person in or about the Development.

- 30.2 A Member in possession of a Proximity Card must:
- 30.2.1 keep the Proximity Card for their exclusive use and must not give the Proximity Card to any other person;
 - 30.2.2 not duplicate the card or permit it to be duplicated without the Owners Corporation's written permission;
 - 30.2.3 take all reasonable precautions to ensure that the Proximity Card is not lost or handed to a person other than the Member and is not to dispose of the Proximity Card in any way other than by returning it;
 - 30.2.4 promptly notify the Owners Corporation if a Proximity Card is lost or destroyed; and
 - 30.2.5 include in any lease or licence of a Lot to the Member a condition or obligation requiring the return of the Proximity Card to the Owners Corporation upon demand by the Owners Corporation acting reasonably.
- 30.3 The Owners Corporation may make a number of Proximity Cards as deemed appropriate available to Members free of charge. The Owners Corporation may charge a reasonable fee for any additional Proximity Cards required by a Member.
- 30.4 Where a Member is in arrears in payment of the Owners Corporation levies in excess of 120 days, or has breached these rules, the Owners Corporation may cancel, suspend or restrict the Proximity Card.
- 30.5 The Member must pay the cost of replacing any lost, stolen, damaged, non functioning or destroyed Proximity Card issued to them.

31. Rules Subject to Rights of the Owner and Developer

- 31.1 These Rules do not apply to and, are not enforceable against the Owner, the Developer or their mortgagee(s) or chargee(s) (if any), for so long as any of the following apply:
- 31.1.1 the Owner and/or its equity partners (if any) is a Member or Occupier;
 - 31.1.2 the Developer and/or its equity partners (if any) is a Member or Occupier;
 - 31.1.3 any mortgagee or chargee of the Owner or Developer has an interest in any Lot; or
 - 31.1.4 the Owner or Developer and/or their equity partners (if any) is engaged in any action required to complete the Development,
- where to do so would prevent, hinder, obstruct or in any way interfere with any works of any nature or description that the Owner, Developer or their mortgagee(s) or chargee(s) may be engaged in or which may need to be carried out in order to complete construction of the Building and facilities comprised in the Plan or the Development.
- 31.2 Subject to Rule 31.4, the Owner, Developer and their equity partners (if any), their mortgagee(s) and chargee(s) must be and are by this Rule, authorised by each and every member of each and every Owners Corporation(s) in the Plan and by each and every Owners Corporation(s) in the Plan to:
- 31.2.1 erect such barriers, fences, hoardings, signs as it deems necessary to facilitate any works to be carried out in relation to the Development; and

- 31.2.2 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; and
- 31.2.3 exclude all and any Members or Occupiers from any parts of the Common Property as may be necessary in order to carry out any works in relation to the Development; and
- 31.2.4 erect for sale promotional advertising or other signs as the Developer may require on any part of the Common Property; and
- 31.2.5 grant rights to use or access through or over the Common Property to third parties on such terms and conditions as the Owner, Developer or their mortgagee(s) or chargee(s) thinks fit; and
- 31.2.6 limit or restrict access to certain areas of the Development including areas of the Common Property in order to expeditiously complete the Development; and
- 31.2.7 use whatever rights of way and/or points of egress and ingress to the Development as 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 the Owner, Developer and/or any third party authorised by it under this Rule or any party to which it assigns all or part of the benefits of its rights under this Rule, uses its best endeavours to minimise disturbance and inconvenience to others occupying or using the Common Property.

- 31.3 The Owners Corporation(s) must, within 7 days of being requested by the Developer or its mortgagee or chargee, sign whatever consents, authorities, permits or other such documents as may be required to enable the Owner, Developer or their mortgagee(s) or chargee(s) to complete the Development.
- 31.4 In case of any inconsistency between the Rules and the rights of the Owner and/or the Developer under any Development Agreement, the Owner's and/or the Developer's rights under the Development Agreement will prevail and the Members, Occupiers and Owners Corporation must not seek to enforce the Rules against the Owner and/or the Developer where to do so would conflict with the Owner's and/or the Developer's Rights under any such Development Agreement.
- 31.5 A Member or Occupier must comply with the terms of any Development Agreement between the Owner, the Developer and/or the Owners Corporation that is disclosed to the Member or Occupier.
- 31.6 Every Member hereby consents to and agrees to the Owner and the Developer undertaking any or all of the rights of the Owner and the Developer set out in this Rule without any prevention or hindrance of such Member.
- 31.7 In exercising its rights under this Rule, the Owner and/or Developer must act honestly and in good faith and with due care and diligence in the interests of the Owners Corporation(s) and must have regard to the amenity of Members. The Owner and/or Developer must only exercise their rights to the extent genuinely necessary for the Development. The Owner and Developer must not exercise their rights under this Rule to arbitrarily exclude the Owners Corporation(s) or the participation of Members.

32. Development Lease/Licence, Signage & Other Licences

- 32.1 The Owners Corporation may grant the Owner and/or the Developer:
- 32.1.1 a development lease or licence for the purpose of access to the Common Property for the purpose of facilitating the completion of the Development including without limitation the completion and integration of the carpark areas, landscaping and common areas within the various stages of the Development;
 - 32.1.2 a lease and licence including but not limited to for the provision of information technology infrastructure relating to broadband services to the Development;
 - 32.1.3 a licence to place and maintain sale signs, insignias, logos and other fixtures and fittings for marketing purposes on the Common Property;
 - 32.1.4 a lease or licence to allow the Owner's and/or the Developer's representatives and their invitees to conduct selling activities from a Lot, if not sold prior to completion; or
 - 32.1.5 a licence to host festivals, parties or other celebratory or promotional events on Common Property or any other recreational areas within the Development; or
 - 32.1.6 any other leases, licences or other rights of occupation which are reasonably required for the purpose of the Development or for the use and occupation of any Lot,
- provided the Owner and/or the Developer uses its best endeavours to minimise disturbance and inconvenience to others Members' or Occupiers' use of the Common Property and at all times acts honestly and in good faith and with due care and diligence in the interests of the Owners Corporation.
- 32.2 A Member or Occupier of the Lot must not hinder or impede the Owner or the Developer from exercising its rights under any agreement entered into under this Rule.
- 32.3 The Owners Corporation(s) must procure all the necessary consents and resolutions to give effect to the matters set out in this Rule 32.
- 32.4 A Member must not vote in favour of any motion for a resolution proposed for consideration by a general meeting of the Owners Corporation(s) which would impede the powers of the Owners Corporation(s) under this Rule 32.

33. Warranties & Novation or assignment of contracts

- 33.1 The Owner and/or Developer may at their discretion enter into time limited contracts to supply, service, clean, manage, maintain and/or inspect building essentials services, other building services or functions, common areas of the Building, landscaping, or any other Common Property, and any other service or other contract deemed appropriate and necessary for the proper care and function of the Common Property.
- 33.2 The Owners Corporation(s) must accept commencement, assignment or novation of the contracts referred to in Rule 33.1 at a meeting of the Owners Corporation.
- 33.3 The Owners Corporation must maintain any contracts commenced, assigned or novated to it under this Rule to the end of its current term except where it is deemed that the contract is unreasonable or unnecessary or is replaced by a contract for similar services by the same service provider.

- 33.4 The Owners Corporation must comply with the terms of and properly manage any time or condition limited warranties for items, services, components or parts of the Common Property provided by subcontractors or suppliers so as to ensure they remain valid for the benefit of the Owners Corporation.
- 33.5 The Owners Corporation must ensure that it provides for or enters into contracts to provide for care, cleaning, management, maintenance and inspection of any item, service or component of Common Property to enable it to perform its obligations under the Law and these Rules upon the lapse of any subcontractor or supplier backed warranty or upon the end of any contract commenced, assigned or novated to it by the Developer or the Owner.
- 33.6 All Members must contribute its proportion of the cost incurred by the Owners Corporation in complying with this Rule 33 relative to the lot liability on the Plan.

