

COMMUNITY MANAGEMENT STATEMENT FOR OYSTER COVE WATERFRONT COMMUNITY TITLES SCHEME 28389

20. WATERWAYS

20.1 Waterways and lakes

The waterways, if any, may only be used as follows:

- (a) in the case of lakes and other water bodies not subject to tidal influence or having access to tidal water only for the recreational purposes authorised from time to time by the Body Corporate;
- (b) in the case of that part of the Waterway which is subject to tidal influence or has access to tidal water, only by Vessels owned or used by owners or occupiers of Lots in the Scheme Land, their invitees and those Vessels which the Body Corporate from time to time allows.

20.2 Inference

An Owner must not:

- (a) dispose of any rubbish, plant, animal or other substance whatsoever in the Waterways;
- (b) dispose of any pollutant chemicals or substances into the Waterways;
- (c) do any thing which will in any way interfere with the water quality of the Waterways or will interfere with any structures in or about the Waterways generally; and
- (d) swim, berth a boat or fish in the Waterways except as may be authorised for recreational purposes from time to time by the Body Corporate.

20.3 Use and control Waterways

The Body Corporate may:

- (a) take any steps and do any acts as it considers necessary for the general benefit and safety of persons, Vessels and property and for the security of any Vessels or the avoidance of any injury or further injury to any person, Vessel or property in or upon or in the vicinity of any Waterway;
- (b) give the master or Owner of a Vessel or to any person within any waterway any direction the Body Corporate considers necessary including but without limitation where, in the opinion of the Body Corporate a Vessel is not securely moored, a direction that the master or Owner or the Vessel remedy the lack of secure mooring forthwith or within such time as the Body Corporate specifies;
- (c) fix time limits for the carrying out of works or maintenance;
- (d) identify areas and places within the Waterway for the purpose of carrying out works or maintenance;
- (e) restrict those areas, if any, of the Waterways, if any where a person may swim or dive; and
- (f) impose restrictions on the type of Vessels using a Waterway and/or any device or apparatus connected with a Waterway, for example, without limitation, a lock. Without limiting the generality of this by-law 20.3, the Body Corporate may impose restrictions on Vessel type, length, beam and draft.

20.4 Mooring of Vessels

It will be the responsibility of the Owner or person in lawful possession of a Vessel moored in any Waterway to ensure that:

- (a) the Vessel and its machinery, equipment and goods on board are sufficiently protected against loss or damage arising out of accident, damage or theft;
- (b) any mooring lines holding the Vessel are good and sufficient; and
- (c) the Vessel is in all other respects safely secured in its mooring place.

20.5 Fishing Vessels

Fishing Vessels will not be allowed in the Waterways.

20.6 Houseboats

- (a) Any Vessel being a houseboat may not be moored in any Waterways without the written consent of the Body Corporate; and
- (b) An Owner and crew of a Vessel must not live or allow any person to live on board the Vessel in the Waterway.

20.7 Restrictions

A Person must not:

- (a) except in relation to an Owner's Private Mooring, moor a Vessel in any Waterway without first obtaining the written consent of the Body Corporate;
- (b) cast, place, leave or cause to be cast, placed or left any mooring of whatever kind or description in, upon, on, over, through or across any portion of any Waterway including but without limitation the bottom or bed of any Waterway except to the extent reasonably necessary for a Private Mooring;
- (c) anchor a Vessel in any Waterway in contravention or any prohibition, restriction as to the time of anchoring or other restriction for the time being in force;
- (d) navigate a Vessel in any Waterway at a speed exceeding four (4) knots. A speed less than four (4) knots must be maintained where necessary or as stipulated to avoid the likelihood or damage to moored Vessels or any hazard or undue inconvenience to the navigation of Vessels. Areas where a speed of less than four (4) knots is required will be identified by the Body Corporate;
- (e) navigate a Vessel carelessly, negligently, or recklessly in any Waterway;
- (f) moor or place any Vessel, Vehicle or any other thing in any Waterway so as to impede the use by any person or any part of the Waterway;
- (g) use or interfere with any Mooring or any fitting or appliance on any Mooring for any purpose other than that for which such fitting or appliance is provided;
- (h) undertake maintenance or repairs to any Vessel in any part of the Waterway without the prior consent of the Body Corporate;
- (i) organise any gathering of people or entertain on or in any Waterway or on any Vessel at any time without permission of the Body Corporate; or
- (j) launch any Vessel into any Waterway except from a properly constructed launching ramp, dock or slipway.

20.8 Failure to comply

Failure by any person to comply with a direction from the Body Corporate or with any part of by-laws affecting the Waterways will allow the Body Corporate to rectify the non-compliance or to take any steps to ensure the person rectifies the non-compliance. The Body Corporate may also:

- (a) give the Person written notice that the Person has not complied with one or more of the by-laws and that the Person must rectify the non-compliance forthwith or within a period nominated by the Body Corporate;
- (b) where the non-compliance is not a non-compliance with by-law 20.7, with any assistance the Body Corporate requires at the cost of the Person moor, unmoor, anchor or remove the Vessel. The Body Corporate may also cast off or loosen any wrap or rope, or unshackle or loosen any chain by which the Vessel is moored or fastened, first putting on board a sufficient number of persons to protect the Vessel where there is no person on board the Vessel; or
- (c) where the non-compliance is a non-compliance with by-law 20.7(b), remove the mooring and restore the site to the former condition at the cost of the Person.

20.9 Boatsheds

Boatsheds are not permitted on any Waterway.

20.10 Boat ramps

A person must not:

- (a) use any boat ramp except for the purpose of launching or retrieving a Vessel;
- (b) drive or stand a Vehicle onto or upon any boat ramp except for the purpose of launching or retrieving a Vessel;
- (c) moor, place or anchor a Vessel within the approach fairway to any boat ramp so as to be likely to obstruct its use by any other person;
- (d) obstruct or impede the use of any boat ramp by any other person;
- (e) carry out maintenance or repairs to a Vessel on any boat ramp;
- (f) carry out maintenance or repairs to a Vessel in the approach fairway to any boat ramp. This by-law does not apply to repairs or maintenance of an emergency nature where to move the Vessel from its position is likely to result in damage to the Vessel, to any other Vessel or injury to any person; or
- (g) take onto or drive on any boat ramp any Vehicle the wheels of which are not fitted with rubber tyres. Any Vehicle permitted by this by-law to be taken onto or driven on any boat ramp that exceeds 3 tonnes in the aggregate including the mass of any load, trailer or boat being lowered by the Vehicle must have approval from the Body Corporate before using the boat ramp.

20.11 Launching and retrieval

A Person must complete the launching or retrieving of a Vessel as quickly as possible.

20.12 Construction of private moorings

A Person must not construct, modify or vary a Mooring situated or to be situated in or on any part of the Waterway without receiving the Body Corporate's prior written approval. An approval will only be given when a mooring is situated or is to be situated in or on that part of the Waterway immediately adjacent to an Owner's lot.

20.12A Installation of Dry Docks

- (a) A person must not install a dry dock without the Body Corporate's prior written approval which approval must be applied for in accordance with provisions of by-law.
- (b) Any proposed dry dock must:
 - (i) not exceed a length of 6 meters;
 - (ii) float level and not higher than the Mooring it is attached to;
 - (iii) not exceed the perimeter of the Mooring it is attached to;
 - (iv) not encroach on any neighbouring Mooring;
 - (v) not be used for the purpose of housing any Vessel containing a fix super structure.
- (c) Without limiting by-law 20.3, a Person seeking the Body Corporate's approval for the installation of a dry dock must provide the Committee with the following documentation:
 - (i) A project plan detailing the works to be completed and the expected commencement and completion dates of the works; and
 - (ii) Evidence that the proposed dry dock complies with any applicable Australian Standard or regulation or any standard determined to be appropriate by the Committee.
- (d) The Committee may also request further documentation should it think necessary to properly consider and evaluate the Person's application to install a dry dock.
- (e) The style and colour of any proposed dry dock must not offend the general amenity of the Waterway.
- (f) The person agrees to maintain the dry dock in a clean and tidy manner and accepts full responsibility for its insurance and upkeep.
- (g) Without limiting the generality of by-law 2.6, the Person agrees not to run or flush the motor of any Vessel moored on the dry dock between the hours of 6.00pm and 7.00am.
- (h) The Committee will only consider an application to install a dry dock when all necessary documentation has been provided by the Person to the Committee or the body corporate manager appointed by the Body Corporate from time to time.
- (i) A Person may not commence the installation of the dry dock until final Committee approval is granted. Such approval must be in writing and may contain conditions that Committee deems appropriate.
- (j) The Person who applies for the installation of a dry dock indemnifies the Body Corporate for any loss or damage suffered as a result of damage to Common Property.

20.13 Application

Written application to the Body Corporate must:

- (a) be accompanied by two copies of the plans and specifications of the proposed Mooring or modifications or variations proposed to an existing approved Mooring; and
- (b) such other particulars as the Body Corporate may from time to time require.

The Body Corporate may engage professional consultants which the Body Corporate determines necessary to give the Body Corporate advise on an application including but not limited to consultants such as architects and engineers to review plans, specifications and other information relating to the application. A Person making an application must pay the reasonable cost to the Body Corporate of engaging such a consultant or consultants to review an application within 7 days of a request by the Body Corporate.

20.14 Decisions

After the Body Corporate has considered an application it must approve the application (conditionally or unconditionally) or disapprove the application. If the Body Corporate requires additional information before it can make a decision, the Body Corporate must write to the Owner asking for additional information.

20.15 Guidelines

The Body Corporate will not approve an application where the application is:

(a) Inconsistent with the following guidelines:

- (i) No jetties will be permitted in the Waterway west of Helensvale Road, except in relation to the main jetty/pontoon structure adjacent to the Pearl Bay Community Titles Scheme 30248;
- (ii) the only type of pontoon permitted will be a strut, walkway and cable moored pontoon;
- (iii) if piles are required for any such pontoon then those piles must consist of a plastic outer case filled with concrete;
- (iv) all such concrete piles must be in situ and driven into the seabed to a minimum of 3 metres;
- (v) no pontoon shall be under 5 metres in length;
- (vi) no pontoon shall be constructed of fibreglass or timber;
- (vii) no steel drums or hollow floatation system will be permitted;
- (viii) no split pin securing on moveable components shall be permitted;
- (ix) the decking of a pontoon must consist of concrete of 50mpa;
- (x) all pontoons must be designed and constructed so as to sit level in the water;
- (xi) all pontoons and walkways must be in accordance with 1.5kpa live load;
- (xii) carpets must be polypropylene UV stabilised;
- (xiii) decking must be a minimum of 80 mm thick concrete;
- (xiv) measures must be undertaken to ensure that no deck distortion occurs;
- (xv) handrails and walkways must be double handrails with a minimum width of 1,200mm;
- (xvi) floatation systems must be solid systems only with strong outer flexible protective coating. No polyurethane or fibreglass coating will be permitted;
- (xvii) handrails must be box section marine aluminium and no tubular steel or timber handrail will be permitted;
- (xviii) all fixing on moveable items (e.g. walkway to revetment wall/walkway to pontoon) must be tamper proof;
- (xix) construction of any boardwalk must be carried out only by a registered builder and only in accordance with Australian standards;
- (xx) approval must be obtained from any relevant authority;
- (xxi) a pontoon must not be, nor house, an air dock of any type;

(xxii) a 'sea pen' which sits level in the water to enable a boat to be moored dry without being lifted from the water and which is not aesthetically displeasing or obstructive and does not encroach on any other moorings may be permitted provided that no chemicals or other substances may be placed in a 'sea pen' that may interfere with water quality in a Waterway or be harmful to the environment in any way.

(b) (Omitted due to time)

(b)(A) (Omitted due to time)

(c) inconsistent with any other guidelines issued by the Body Corporate for the design of Moorings before the application is made; or

(d) the Mooring proposed to be constructed or the proposed modifications or variations of an existing Mooring are not consistent with other Moorings used or to be used by other Owners of the Scheme Land or in the Waterways generally.

20.16 Conditional approval

Where the Body Corporate approves an application conditionally the conditions may include but not limited to:

(a) submission of additional plans and specifications or such other information required by the Body Corporate;

(b) changes being made to any of the items or information included in the application;

(c) completion of construction, modification or variation of the Mooring withing reasonable time, with the time being specified in the approval; and

(d) payment by the Owner to the Body Corporate of a bond or such amount determined by the Body Corporate having regard to the level of extent of the construction modification or variation proposed, to be held by the Body Corporate as a security for the Owner, carrying out the construction modification or variation in accordance with the Body Corporate's approval and any damage caused by the Owner or by the Owner's contractors, servants, agents or employees. The Body Corporate may use the bond to reimburse the Body Corporate at any time for any expenses incurred by the Body Corporate or for any damage caused by the Owner or the Owner's contractors, servants, agents or employees.

20.17 Construction

Where approval (conditional or unconditional) has been given the Owner or the Owner's contractors, servants, agents or employees must, unless the application is at any time withdrawn, construct, modify or vary the Mooring in accordance with the approval. When the construction modification or variation is complete the Owner must notify the Body Corporate. The Body Corporate will, following an inspection of the Mooring, notify whether the construction, modification or variation is in accordance with Body Corporate's approval. Where the construction, modification or variation is not in accordance with the Body corporate's approval the Body Corporate must give the Owner written notice requiring the non-compliance to be rectified within a specified period.

20.18 Rectification

Where the non-compliance referred to in the previous by-law is not rectified within the period referred to in the notice the Body Corporate may with all necessary workmen rectify the non-compliance at the expense of the Owner.

20.19 Non-waiver

The approval of the Body Corporate to any construction, modification or variation of a Mooring will not constitute a waiver of any right to approve conditionally or disapprove any similar construction, modification or variation subsequently or additionally submitted for Body Corporate approval.

20.20 Use of a private mooring

An Owner or Occupier who has a Private Mooring must:

- (a) not use the Private Mooring for any purpose except the mooring of a Vessel or any other purpose specifically authorised by the Body Corporate from time to time;
- (b) register and maintain the registration of any Vessel intended to be moored at the Private Mooring from time to time if it is required by law to be registered;
- (c) keep the Private Mooring neat and tidy, free of litter, rubbish, bottles and drying clothes;
- (d) always securely lock and secure a Vessel while it is at the Private Mooring;
- (e) not store flammable liquids or dangerous materials on a Vessel while it is at the Private Mooring other than in the tank of the Vessel;
- (f) effect and maintain proper and adequate marine insurance of any Vessel and public liability insurance in relation to any Vessel;
- (g) ensure that any Vessel to be moored at the Private Mooring does not extend past the projected boundary lines of the Private Mooring;
- (h) ensure that there is no movement of a Vessel to be moored at the Private Mooring between the hours of 10.00pm and 6.00am unless such movement can be undertaken with minimal noise and disturbance to others;
- (i) ensure that any navigation lights or navigation marks required by the Body Corporate are erected or placed on the Private Mooring at the Owner's cost as so directed by the Body Corporate; and
- (j) at the owner's cost maintain the Private Mooring in good order and repair.

20.21 Use of private mooring by Owner's invitee

- (a) An Owner who has a Private Mooring may, subject to the Body Corporate's approval, allow his invitee to use his Mooring for the mooring of the invitee's Vessel for short periods as approved by the Body Corporate;
- (b) To obtain the Body Corporate's approval, the Owner will provide the following information about the invitee's vessel:
 - (i) name and address of the Owner and the Owner's invitee;
 - (ii) length and draught of the Vessel;
 - (iii) registered number and name (if applicable) of the Vessel;
 - (iv) location of the Mooring;
 - (v) length of time sought for the temporary use of the mooring; and
 - (vi) such other particulars as the Body Corporate may from time to time require;
- (c) the Body Corporate may approve (conditionally or unconditionally) or disapprove the use of a Mooring by an Owner's invitee.

20.22 Fire fighting equipment

Any Vessel using the Waterway must be equipped by the Owner or master with fire fighting equipment prescribed by regulations made under *The Queensland Marine Act of 1958* for the class of that Vessel.

20.23 Safety

Nothing in these by-laws will be taken, read or construed so as to limit or effect the power of the Body Corporate to do or refrain from doing any act, matter or thing for the purpose of securing the safety of life, Vessels or any property in any Waterway. Without limiting the generality of the foregoing, the Body Corporate may from time to time close or restrict the use or any part or parts of any Waterway for any works therein.

20.24 Defence to certain breaches

Where a Person has not complied with any by-laws it will be a defence to provide that the act complained of was necessary to secure the safety of any property or avoid personal injury and was a reasonable step to take in the circumstances.

20.25 Lock

Where any lock forms part of the Common Property all Owners and Occupiers must ensure:

- (a) that the lock is operated by an adult Owner or Occupier over the age of 15 years;
- (b) that the Owner or Occupier exercise caution at all times when using the lock and do not behave in any manner that is likely to interfere with the use and enjoyment of the lock by other persons;
- (c) that the lock is used in a proper manner and in accordance with the operating instructions applying to the use of the lock; and
- (d) that the lock is used only in accordance with the rules made by the Body Corporate for the use of the lock from time to time which use may include a requirement that an Owner or Occupier enter into an agreement between the Owner or Occupier and the Body Corporate which governs the issuing of access devices for access to any lock by Owners or Occupiers, including the payment of a deposit or fee.

20.26 Revetment wall

- (a) A Person must not alter, deface or damage any revetment wall forming part of a Lot or Common Property where such revetment wall is adjacent to or forms part of the boundary of a Waterway without the written consent of the Body Corporate and any other approval required by law.
- (b) A Person must promptly notify the Body corporate of any damage to or defect in such a revetment wall on a Lot or Common Property.
- (c) A Person must pay for any damage to such a revetment wall and to other Lots or Common Property caused by that Person's improper alteration, defacing or damage to such a revetment wall on a Lot or Common Property;
- (d) Subject to by-law 20.26(c), the Body Corporate:
 - (i) will be responsible for the supply, or engagement of another person to supply, cleaning, maintenance, repair, and replacement services in relation to any such revetment wall forming part of Common Property;

- (ii) must ensure that any such revetment wall on common Property is properly maintained in a good and structurally sound condition so that lateral and/or subjacent support exists and is maintained in favour of the Common Property and in particular any Waterway; and
- (iii) is entitled to such reasonable access to a Lot or common Property to maintain and replace such a revetment wall to ensure that revetment wall is maintained in a structurally sound condition in accordance with this by-law 20.26.

20.27 Maintenance of Buffer Strip

- (a) An owner or occupier must not alter, deface or damage any stabilisation works or vegetation on any part of the Common Property, on any land or lease area forming part of a Body Corporate asset or on any land immediately adjoining the Common Property including but not limited to any Common Property bounding any water course including Salt Water Creek and Coombabah Creek whether above or below the high water mark ("**Buffer Strip**").
- (b) An owner or occupier must promptly notify the Body Corporate of any damage to or defect in such Buffer Strip.
- (c) An owner or occupier must pay for any damages caused to any part of the Buffer Strip or to other lots of Common Property by the improper alteration, defacing or damage to those areas by an owner, occupier or an invitee of an Owner or occupier.
- (d) Subject to by-law 20.27(c), the Body Corporate will be responsible for ensuring that any stabilisation works in the Buffer Strip are properly maintained in a good and sound condition in accordance with any approved management plan and the standards lawfully required by the relevant authority from time to time.

20.28 Licenses for use of waterway

Pursuant to section 111(4) of the *Body Corporate and Community Management (Standard Module) Regulation 1997* the Body Corporate may grant a lease or license for any term including in excess of 3 years over part of the Common Property forming a Waterway to the owner from time to time of land outside the Scheme but adjacent to a Waterway in a form and content approved by the Committee of the Body Corporate's then legal advisor and such lease or license:

- (a) May permit the owners from time to time of that land to:
 - (i) construct a pontoon or jetty on the Waterway consistent with the guidelines for such a structure contained in these by-laws; and
 - (ii) to access and use a Waterway consistent with the rights of use prescribed for lot owners under these by-laws;
- (b) May contain such other terms as the Committee and the Body Corporate's legal advisor determines necessary and/or expedient.