

Oyster Cove Waterfront CTS 28389

WATERWAYS RULES

1. CITATION:

These rules may be cited as the Oyster Cove Waterfront Rules and are intended to co-exist with the By-Laws of that Community Title Scheme 28389 and/or any other Scheme contained within Oyster Cove and Serenity.

2. INTERPRETATION:

(1) In these Rules, unless the contrary intention appears:

“Act” means the *Body Corporate and Community Management Act 1997*.

“approved” means approved by the body corporate committee or by a person to whom the power to approve a matter or thing has been delegated by the body corporate committee under the Act;

“berth” includes:

- (a) a vessel allotted place at or beside a jetty, pontoon or pylon or other mooring or structure for vessels within the waterways; and
- (b) where the context so requires, the underlying land comprising an area on or over which such a structure is or is capable of being located and within or on which a vessel is capable of being berthed or moored.
- (c) “exempted” means a lot/vessel owner with a pre-existing vessel/vessel’s contained within the Oyster Cove Waterways, deemed to be non-compliant with these Rules, prior to 28 October 2010 and therefore are exempted for that period where the vessel (identified in a letter of exemption provided by the body corporate committee to the owner) remains in the ownership of that owner; Upon change of ownership of such vessel, the exemption expires immediately and these rules automatically apply.

“casual” means the granting of access to the waterways via the lock for a single entry/exit allowing a vessel to be stored at a specific lot but not requiring a Lock Access Permit for normal movement through the lock.

“fee” means a fee determined by the body corporate committee under 20.25 (d) of the By-Laws;

“lock” means the control mechanism and associated structures, established at the entrance to the waterways for the purpose of:

- (a) maintaining the body of water within the waterways at levels from time to time considered appropriate by the body corporate committee, and
- (b) enabling vessels to enter and exit the waterways;

“lock manager” means an individual or organization employed by the body corporate committee under a contract/management agreement;

“lot” means a parcel of land (including water) within the scheme land;

- (a) designated as a lot on a lot plan; and
- (c) in respect of which freehold title is issued including allocated exclusive use;

“mooring” means, according to its context, a structure for the anchoring of or securing of vessels to a buoy, pile or other structure or the action of anchoring or securing a vessel;

“owner” includes:

- (a) In relation to a lot:
 - i an occupier or person in possession (whether as lessee, licensee, tenant or any other legal title);
 - ii successors in title (including a mortgagee in possession); and
 - iii a person who exercises, whether personally or by his or her servants and agents, a right of occupation;
- (b) in relation to a vehicle – the person in charge of the vehicle;
- (c) in relation to a berth or marina berth – a person who holds, in fee simple (including unit title), or as lessee, sublessee, licensee or permittee, the land on or over which the berth or marina berth is situated in whole or in part; and
- (d) in relation to a vessel – a part owner, charterer, occupier, licensee, agent and permittee and the person in charge of the vessel;

“permittee” means the holder of a lock access permit as issued by the body corporate committee from time to time;

“vessel” includes an air cushioned vessel, a boat, ship, barge, yacht, surf ski, jet ski, racing shell, canoe, dinghy or windsurfer or other craft capable of being used as a means of transportation on water, whether propelled by sail, motor, oars or otherwise;

“waterway” means the area within the scheme land forming part of the common property the whole or part of which is capable of or intended to be submerged by water;

LOCK ACCESS PERMITS

3. VESSEL TO HAVE PERMIT:

- (1) The owner of a vessel shall not permit or cause the vessel to:
 - (a) Enter or exit the lock; or

(b) Enter any other part of the waterways which is part of the common property, unless the vessel is the subject of the current annual lock access permit or a casual lock access permit.

- (2) The owner of a vessel shall not moor, or permit or cause to be moored, the vessel unless the vessel is the subject of a current annual lock access permit or a Casual Lock Access Permit.

4. DETERMINATION OF REQUIREMENT FOR PERMITS:

- (1) The body corporate committee shall determine the length, beam and draft of the vessel to be issued with a lock permit and will be specified in the instructions issued to the Lock Manager.
- (2) The body corporate committee has the discretion to exempt a vessel/vessels from one or more of the restrictions in the vessel/vessels is identified in writing by the committee as having been given access prior to the introduction of these Rules (i.e. 28 October 2010).
- (3) The body corporate may, as it thinks fit, waive the requirements for a lock access permit.
- (4) The body corporate committee shall determine from time to time the annual fee for the grant of a lock access permit for vessels and whether that fee is payable in installments and whether in advance or in arrears. The body corporate committee may impose a different fee for permits issued to different classes of vessels, or issued to vessels used for different purposes, and may charge a flat fee or a fee based on usage of the lock by vessels, or on any other basis determined by the body corporate committee.
- (5) Where the application fee or any installment of the fee is not paid by the Owner within the time specified by the body corporate committee or where any of the terms of the permit are breached by the Owner, the body corporate committee may at any time thereafter revoke the permit. If a permit is revoked the body corporate committee has no obligation to refund any fees to the Owner.
- (6) The owner of a vessel shall not moor, or permit or cause to be moored, a vessel unless the berth or pontoon the vessel is to be moored at has received a Principal Body Corporate approval or a Development Approval.

5. PROVISION OF INFORMATION:

The Lot/vessel owner shall provide the following information to the body corporate committee and shall update that information as it changes from time to time:

- i The full name of the Owner.
- ii The full postal address, residential address or business address of the Owner.
- iii If applicable, the ABN of the owner.
- iv The location of the berth including the lot number and, if applicable, the unit number.
- v The length of the berth.

- vi The name and registration of the vessel which is subject to the issue of the permit.
- vii The full name, and address, telephone number and email address of the owner and contact person of the vessel which is subject to the issue of the permit.
- viii Photograph of the vessel which is subject to the issue of the permit.
- ix The name of the vessel which is intended to be moored at the berth.
- x Other information necessary to identify the vessel.
- xi The overall length and beam of the vessel and draft of the vessel.
- xii Identification of the berth or marina berth at which it is intended to moor the vessel.
- xiii Evidence of Body Corporate approval for the installation of the berth.
- xiv Details of insurances carried in respect of the vessel and evidence of the currency of those insurances.

6. GRANT OF PERMITS:

1. The body corporate may in its absolute discretion and subject to the conditions it thinks fit grant or refuse a lock access permit.
2. A lock access permit is valid for a period determined by the body corporate committee but in any case for no longer than 12 months.
3. The body corporate committee has the discretion to not grant a casual lock access permit.
4. The permittee becomes liable for the loss and replacement of any lock access device once it has been issued, notwithstanding any manufacturers warranty that may apply to any remote device issued with the permit, at date of issue.

7. REFUSAL OF ACCESS:

The body corporate committee may in its absolute discretion refuse a vessel access to the waterway if no lock access permit has been issued in respect of that vessel or if a lock access permit previously issued in respect of it has been revoked.

8. SUBLETTING AND TRANSFER OF PERMITS:

1. A permittee shall not permit a vessel other than the vessel in respect of which the vessel was granted to use a berth to which the permit relates, except with the approval of the body corporate committee.

2. A permittee may apply in writing to the body corporate committee for an amendment to the permit so that the permit applies to a vessel in substitution for the vessel to which the permit originally applied.
3. The body corporate committee may, on the application in writing of a permittee, amend a permit so that the permit applies to a vessel in substitution for the vessel to which the permit originally applied.
4. The body corporate committee shall not amend a lock permit granted to the owner unless the mooring structure used to house the vessel is of a suitable dimension for the vessel to which the permit, if amended, would apply.
5. A Lock Access Permit cannot be transferred. The Permittee remains wholly responsible for any damage caused as a result of the granting of their Lock Access Permit.
6. The Permittee's responsibility will end upon receipt of a written application from the Permittee to the Lock Manager for the termination of their permit and the subsequent deactivation of their remote device.

9. CONTROL OF WATERWAYS:

1. Where, in the opinion in the body corporate committee, a vessel is not securely moored or is otherwise potentially causing a damage to a person, a vessel or property on or withing the common property, it may direct the owner of the vessel to remedy the lack of secure mooring or to do those things the body corporate thinks necessary to avoid any such danger, within a time specified by the body corporate committee.
2. Where:
 - a. A direction is given by the body corporate committee;
 - b. A vessel is moored or anchored in contravention of these Rules or is otherwise in contravention of these Rules; or
 - c. A vessel may, in the opinion of the body corporate committee, cause a danger to the common property, the person so directed shall moor, unmoor, anchor or remove the vessel in accordance with the directions of the body corporate committee.
3. A person shall not fail to comply with the direction of the body corporate committee.
4. Where:
 - a. A person fails to comply with the direction of the body corporate committee under this rule; or
 - b. There is no person on board a vessel that in contravention of this rule, the body corporate committee or an individual action under its direction may moo, unmoor, anchor or resecure the vessel as it thinks fit, and for that purpose may cast off or loose a warp or rope, or unshackle or loosen a chain, by which the vessel is moored or fastened, for the purpose of protecting the vessel and its mooring of any third party/property contained within the Scheme.

10. NAVIGATION OF VESSELS:

1. A person shall not navigate a vessel in the waterway at speed exceeding 4 knots.
2. A person shall not:
 - a. Navigate in the waterway at a speed likely to cause injury or damage to moored vessels or to a person or an object; or
 - b. Cause a hazard or undue inconvenience to the navigation of other vessels in the waterway
3. A person shall not navigate a vessel in the waterway carelessly, negligently or recklessly.
4. A person navigating or using a vessel in the waterway shall not cause, permit or suffer a boom, spar or other projection to be rigged out of its stowed position so as to extend so far from the side of the vessel that it may cause injury to a person or object in the waterway.

11. RESTRICTION OF VESSELS:

1. Where the body corporate committee or lock manager engaged by the body corporate committee is satisfied that a vessel:
 - a. Presents an undue risk of injury to the waterway, or to property or persons within the waterway; or
 - b. is undesirable because of:
 - i. The size, design or type of vessel as outlined in the Lock Operating Instructions and the instructions to the lock manager except those vessels exempted in writing by the body corporate committee;
 - ii. The trade or service in which the vessel is engaged; or
 - iii. Any other reason whatsoever,the body corporate committee or the lock manager may, by verbal or written directions to the owner of the vessel:
 - c. Absolutely prohibit the entry of the vessel in the waterway and therefore refuse the application for a lock access permit.
 - d. Authorise the entry, mooring or berthing of the vessel at a mooring facility, berth or marina berth within the waterway on such terms and conditions as the body corporate committee or lock manager directs.
2. A lock manager may refuse an application for a lock access permit or refuse to re-activate a de-activated permit if:
 - a. It is in breach of a rule;
 - b. The breach has not been remedied to the satisfaction of the body corporate committee;
 - c. The permit holder is a repeat offender with regards to breaches of the rules.

AND/OR

- d. It is nor comprehensively insured or is not subject to contract of third party personal/property insurance (the obligation to provide evidence of which shall rest with the master owner of the vessel).
- e. The berth/pontoon intended for housing the vessel has not received Principal Body Corporate or Development approval.

12. INDEMNITY:

The owner indemnifies the body corporate for any loss, damage, or injury suffered as a result of the Owner's use of the lock/locks and the waterways via the granting of an Annual or Casual Lock Access Permit.

For and On Behalf of: **Principal Body Corporate**

Oyster Cove waterfront CTS 28389