

**Date** 2020

# **Owners Corporation Rules**

## **Botanic Melbourne - All Lots**

**Owners Corporation No. 1 of Plan PS801135L/S1**

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## Contents

|     |  |    |
|-----|--|----|
| 1.  | Definitions.....                                 | 1  |
| 2.  | Interpretation .....                             | 2  |
| 3.  | Role and Functions.....                          | 3  |
| 4.  | Relationship with model rules .....              | 3  |
| 5.  | Provision of Services.....                       | 4  |
| 6.  | Use of Common Property .....                     | 4  |
| 7.  | Use of Lot.....                                  | 5  |
| 8.  | Fire control.....                                | 5  |
| 9.  | Building Works to Lots and Common Property ..... | 6  |
| 10. | Private Roads and Other Common Property.....     | 7  |
| 11. | Behaviour of Invitees.....                       | 8  |
| 12. | Support and provision of Services .....          | 8  |
| 13. | Owners Corporation(s) Fees.....                  | 9  |
| 14. | Garbage disposal .....                           | 9  |
| 15. | Bicycles.....                                    | 10 |
| 16. | Signage and Windows .....                        | 10 |
| 17. | Building inductions.....                         | 10 |
| 18. | Rights of Entry .....                            | 11 |
| 19. | Security .....                                   | 11 |
| 20. | Security of Common Property .....                | 11 |
| 21. | Contact.....                                     | 11 |
| 22. | Consent of Owners Corporation(s) .....           | 11 |
| 23. | Complaints and Disputes .....                    | 11 |
| 24. | Cost of Non-compliance.....                      | 12 |
| 25. | Owners Corporation Committees.....               | 12 |
| 26. | Charges imposed on Members and Occupiers.....    | 13 |
| 27. | Rules Subject to Rights of the Developer .....   | 13 |

28. **Restrictions – Trade or Business** ..... 14

29. **Warranties & Novation or assignment of contracts** ..... 15

30. **Signage & Other Licences**..... 15

31. **Commercial Area**..... 16

32. **Use of Lift**..... 18

33. **Infectious diseases** ..... 18

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# Owners Corporation Rules – Botanic Melbourne, All lots

**Date** 2020

## NOTES

The Act and Regulations 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 model rules prescribed under the Regulations.

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## 1. Definitions

In these Rules:

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

**Botanic Melbourne** means the land and improvements contained in the Plan and includes all the Lots and the Common Property.

**Commercial Lot** means lot on the Plan S2 (located on the ground floor) and any ancillary lots on the Plan.

**Commercial Purposes** means use for an office, restaurant, café, retail use or other commercial purpose.

**Common Property** means Botanic Melbourne and any improvements erected on 25-29 Coventry Street, Southbank designated as common property on the Plan.

**Council** means Melbourne City Council.

**Developer** means Evolve No 21 Pty Ltd ACN 159 050 674 or any Related Body Corporate responsible for the development of the Land and creation of Lots and includes the Developer's successors and assigns and where it is consistent with the context includes the Developer's employees, agents, contractors, subcontractors and invitees.

**Development** means the development of Botanic Melbourne as a mixed use residential community and associated facilities including the marketing and sale of Lots.

**Director** has the same meaning as it has in the *Fair Trading Act 1999 (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(s); or
- (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(s).

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

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

**Lot** means a lot shown on the Plan.

**Manager** means the person or entity appointed by the Owners Corporation(s) 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(s) 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, guests, servants, employees, agents, children and licensees.

**Owners Corporation(s)** means the Owners Corporation(s) created by the registration of the Plan and includes Owners Corporation No. 1 and Owners Corporation No. 2.

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

**Owners Corporation No. 2** means the limited owners corporation on the Plan.

**Plan** means Plan of Subdivision No. PS801135L/S1

**Regulations** means the *Owners Corporation 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.

**Special Resolution** has the same meaning as in the Act.

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## 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(s) 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(s) 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.

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### **3. Role and Functions**

3.1 The Owners Corporation(s) is responsible for ensuring that appropriate rules, measures and procedures are established to govern issues common to the Members, including that the Common Property and/or a Lot are maintained for the benefit and enjoyment of all Members and Occupiers. The Owners Corporation(s) exercises such responsibilities through enforcing the Rules and through holding regular committee meetings at which matters affecting the operation of the Common Property are resolved and advised to all Members.

3.2 The Owners Corporation(s) must abide by the Rules, Act and Regulations, and in carrying out its functions and powers must act honestly and in good faith and exercise due care and diligence.

3.3 These Rules are for the purpose of the control, management, administration, use or enjoyment of the Common Property or a Lot and represent the interests of Members and Occupiers. The Rules may be added to, amended or revoked by a Special Resolution of the Owners Corporation.

3.4 Under the Act and Regulations, the Owners Corporation(s) is responsible for, amongst other things:

3.4.1 electing the Committee (if required);

3.4.2 establishing a Maintenance Plan and Fund;

3.4.3 establishing and maintaining an Owners Corporation(s) Register;

3.4.4 taking out, maintaining and paying the premiums for insurance;

3.4.5 keeping proper accounts that cover the income, expenditure, assets and liabilities of the Owners Corporation(s) and providing true reports of the financial situation of the Owners Corporation(s); and

3.4.6 preparing annual financial statements.

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### **4. Relationship with model rules**

If there is any conflict between these Rules and the model rules prescribed under the Regulations, these Rules prevail.

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## **5. Provision of Services**

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

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

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## **6. Use of Common Property**

A Member or Occupier must not:

- 6.1 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(s) or other Members;
- 6.2 create any undue noise, odours, vibrations or behave in a manner likely to interfere with the peaceful enjoyment of the Proprietor or Occupier of another Lot or of any person lawfully using Common Property;
- 6.3 do or permit anything which might cause structural damage to the Common Property;
- 6.4 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(s) to be present at the time of moving if it is considered necessary;
- 6.5 interfere with the operation of any equipment installed on the Common Property without the prior written consent of the Owners Corporation(s);
- 6.6 interfere with any personal property vested in the Owners Corporation(s);
- 6.7 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(s);
- 6.8 obstruct or block any car parking spaces forming part of the Common Property;
- 6.9 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(s);
- 6.10 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;
- 6.11 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;
- 6.12 disregard any requirements made by the Owners Corporation(s) 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;

- 6.13 hold or allow to be held any public auction on or near the Common Property;
- 6.14 directly instruct any contractors or workmen employed by the Owners Corporation(s) unless so authorised;
- 6.15 except with the consent in writing of the Owners Corporation(s), use for their own purposes as a garden any portion of the Common Property;
- 6.16 tamper with any fire safety equipment on Common Property except in the case of an emergency;
- 6.17 use or store on the Lot or on the Common Property any flammable chemical, liquid or has or other flammable material, except those chemicals, liquids, gases or other materials used or intended to be used for domestic purposes or fuel tank of a motor vehicle or internal combustion engine;
- 6.18 smoke on the common property including the car park;

A Member must notify the Owners Corporation(s) 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(s).

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## **7. Use of Lot**

- 7.1 A Member must not do or permit anything on a Lot which may invalidate, suspend or increase the premium for any insurance effected by the Body Corporate.
- 7.2 Each Member must comply with all laws relating to the Lot including, without limitation, any requirement, notices and orders of any governmental authority.
- 7.3 A Member or Occupier must not:
  - 7.3.1 use machinery hammer drills or jack hammers or other noise emitting power tools in a Lot between the hours of 5:00 pm and 8:00 am on weekdays and on weekends or such hours not permitted by the authorities.
  - 7.3.2 allow the entry door or any external door of any Lot or on Common Property to be physically restrained from closing in any way;
  - 7.3.3 make or permit to be made noise from music, appliances or otherwise between the hours of 11.00 pm to 8:00 am Monday to Friday and from midnight to 8.00 am on Saturday and/or Sunday which may be heard outside the Member's Lot or which would otherwise be in breach of the Environment Protection Act 1970 (Vic) or the Environment Protection (Residential Noise) Regulations 2008 (Vic); or
  - 7.3.4 contravene the fire regulations by installing unapproved dead locks or peep holes on its Lot that would void the Owners Corporation insurance policy. Any additional security device(s) installed must be approved by Owners Corporation.

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## **8. Fire control**

- 8.1 A Member or Occupier must not:
  - 8.1.1 use or interfere with any fire safety equipment except in the case of an emergency;



- 8.1.2 obstruct any fire stairs or fire escape; and
  - 8.1.3 allow the fire safety equipment (e.g. smoke detectors as installed in respect to their Lot) to become non-operational.
- 8.2 The Member or Occupier must ensure compliance with all statutory and other requirements relating to fire and fire safety in respect of their Lot, including but not limited to:
- 8.2.1 ensuring that smoke detectors installed in the Lot are properly maintained and tested on a regular basis; and
  - 8.2.2 that back up batteries relating to smoke detectors are replaced when required.
- 8.3 To avoid false alarm call outs by the fire brigade, a Member or Occupier must not:
- 8.3.1 smoke on Common Property, including the corridors, floor landings, foyer, lifts, stairwells and car park or such other parts of the Common Property, as the Owners Corporation or the Manager may designate from time to time;
  - 8.3.2 open the entry door to their Lot in non-dangerous instances (such as smoke from burning toast or other food) to eliminate the resulting smoke from their Lot. Only windows should be opened to allow smoke to escape in non-dangerous situations;
  - 8.3.3 open the entry door to their Lot whilst having steam cleaning or dry cleaning of their carpet undertaken;
  - 8.3.4 utilise fire hoses except in the case of an emergency; and
  - 8.3.5 leave open the entry door of their Lot whilst having building works undertaken.
- 8.4 For the avoidance of doubt, in cases of negligence resulting in a false alarm call out being made by the fire brigade, the associated cost will be charged to the Member or Occupier identified as being responsible which such amount to be paid within seven (7) days to the Owners Corporation or the relevant fire authority.

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## **9. Building Works to Lots and Common Property**

- 9.1 A Member must not undertake any building works within or about or relating to a Lot except in accordance with the following requirements:
- 9.1.1 such works may only be undertaken if all required permits, approvals and consents under all relevant laws have been obtained and copies given to the Manager; and
  - 9.1.2 the Member must ensure that all works are undertaken in a reasonable manner so as to minimise any nuisance, disturbance or inconvenience to other Members.
- 9.2 The Member of a lot must not proceed with any such works until the Member:
- 9.2.1 submits to the Owners Corporation(s) plans and specification of any works proposed by the Member which affect the external appearance of the Development, and such further particulars of those proposed works as the Owners Corporation(s) may request; and
  - 9.2.2 receives written approval from the Owners Corporation(s) that the works accord with the reasonable aesthetic and orderly development of Botanic Melbourne Such approval not to be unreasonably withheld but which may be given subject to the

condition including that the reasonable costs of the Owners Corporation(s) be met by the Member.

- 9.3 A Member of a lot must ensure that all works undertaken by the Member and the Member's agents and contractors complies with the reasonable directions of the Owners Corporation(s) concerning the method of building operation, means of access, use of the Common Property, on site management, and building protection and hours of work.

All agents and contractors must be supervised in the carrying out of such works so as to minimise any damage to or dirtying of the Common Property and services therein.

- 9.4 The Member must immediately make good all damage to, and dirtying of, the Common Property, the services thereof or any damage to fixtures fittings and finishes which are caused by such works. If the Member fails to immediately do so the Owners Corporation(s) may in its absolute discretion make good the damage and dirtying at the cost of the Member.

- 9.5 A Member must not construct or permit the construction or erection of any fence, pergola, screen, awning or other structure or outbuildings of any kind within or upon a Lot or on Common Property without the written approval of the Owners Corporation(s).

- 9.6 A Member or Occupier must not:

9.6.1 consume alcohol on any part of the Common Property including but not limited to the stairwells, lifts, foyers and carpark forming part of the Common Property or such other parts of the Common Property as the Owners Corporation or the Manager may designate from time to time;

9.6.2 dispose nor permit disposal of cigarette butts, cigarette ash or any other type of rubbish over their balconies/terrace, windows or on any Common Property;

9.6.3 use their balcony/terrace/external area without consideration for surrounding properties (particularly with respect to noise, behaviour and appropriate clothing); and

9.6.4 dirty, soil or stain any part of the Common Area floors with muddy, dusty or dirty shoes.

- 9.7 A Member and/or Occupier use the Common Property at their own risk.

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## **10. Private Roads and Other Common Property**

- 10.1 All Members must ensure that their car parking space and driveway are maintained, cleaned and free of oil. The Owners Corporation(s) reserves its right to clean any area and charge the owner for the costs incurred.

- 10.2 A Member must not:

10.2.1 drive or permit to be driven any motor vehicle in excess of 2 tonnes weight into or over the Common Property;

10.2.2 park, cause or permit to be parked any caravan, campervan, boat, trailer, commercial vehicle or any other vehicle or structure determined by the Owners Corporation(s) from time to time onto or throughout the Common Property or on any Lot or within the vicinity of a Lot, unless it is housed in a garage and is not visible from any part of the Common Property, road or the street;

- 10.2.3 obstruct the private roadways, pathways, drives and visitor car parking in the Common Property and any easement giving access to Botanic Melbourne by any Member, the tenants, guests, servants, employees, agents, children, invitees, licensees of any Member or used by them for any purpose other than the reasonable access to and from their respective Lots or the parking areas provided;
- 10.2.4 permit any occupation of a caravan on a Lot;
- 10.2.5 permit the riding of skateboards, roller blades, skates, carts or other similar means of transport on or over the Common Property, in driveways or on footpaths without the consent of the Owners Corporation(s). The riding of bicycles on the roadways is permitted;
- 10.2.6 use its car park lot for any purposes other than for parking of vehicles without first obtaining the written approval of the Owners Corporation.
- 10.2.7 park or leave a vehicle or permit a Member to be parked or left on Common Property so as to obstruct any driveway, entrance or access to a Lot, or in any place other than in a parking area that may be specified for such purpose by the Owners Corporation; and
- 10.2.8 park or permit to be parked any vehicle, trailer or motorcycle or bicycle other than within that Member's car park lot.

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## **11. Behaviour of Invitees**

- 11.1 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**).
- 11.2 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.
- 11.3 A Member is liable to compensate the Owners Corporation(s) for all damage to the Common Property or personal property vested in it caused by a breach of rule 11.1 and 11.2.
- 11.4 Where the Owners Corporation(s) 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(s) 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.

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## **12. Support and provision of Services**

- 12.1 Except for the purposes of maintenance and renewal and with the written consent of the Owners Corporation, a Member or Occupier must not do anything or permit anything to be done on or in relation to that Lot or the Common Property which results in:
  - 12.1.1 the structural and functional integrity of any part of the Common Property being altered, changed or impaired; or
  - 12.1.2 the passage or provision of services through the Lot or the Common Property being

- 12.2 A Member or Occupier must not install a safe in a Lot without the written consent of the Manager and before submitting to the Manager a structural engineering report in respect of the proposed installation. The Member or Occupier acknowledges that they will be liable for all reasonable costs that the Manager may incur in reviewing reports provided pursuant to this Rule.
- 12.3 The Owners Corporation may share among the Members the common costs of supply, consumption and maintenance of any shared facility or services (including that for gas, power and/or water supply) required for heating or cooling the Lots or cooking within the Lots (except for the Commercial Lot) or shared supply of lighting to a Lot or Lots (including any carpark lot or storage lot).
- 12.4 The Manager has the discretion to apportion such costs taking into account the benefit, whether wholly, substantially or nominally, to or usage by a Lot for the particular the period being apportioned or the Manager may charge a proportion of such service and supply charges relating to the relevant Lot calculated by the Manager on a proportional rate by dividing the unit liability of that Lot by the total unit liability of all Lots serviced jointly by the service.
- 12.5 For the avoidance of doubt, the Manager reserves its rights pursuant to section 49(2) of the Act.

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### **13. Owners Corporation(s) Fees**

- 13.1 The Member must pay the fees set by the Owners Corporation(s) to cover general administration and maintenance (including the cost of maintenance of any lifts within the Common Property), insurance and other recurrent obligations quarterly in advance according to their lot entitlement.
- 13.2 The amount of the annual Owners Corporation(s) fees which is payable by each Member will be established at each annual general meeting of the Owners Corporation(s).
- 13.3 Any special fees or charges levied by the Owners Corporation(s) to cover extraordinary items of expenditure must be paid on the due date set by the Owners Corporation(s) upon the levying of each special fee or charge.

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### **14. Garbage disposal**

A Member of a Lot must:

- 14.1 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 at any time except on days designated for rubbish collection;
- 14.2 comply with all requirements of Governmental Agencies relating to the disposal of garbage;
- 14.3 ensure that rubbish, including but not limited to any storage or moving box, does not accumulate on their Lot or on Common Property, and that the health, hygiene and comfort of other Members is not adversely affected by their disposal of garbage; and
- 14.4 comply with the requirements and/or conditions of and waste and/or recycling management plan required by Council as directed by the Owners Corporation and/or the Manager.

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## **15. Bicycles**

- 15.1 A Member or Occupier must not:
- 15.1.1 permit any bicycle to be stored on Common Property except in areas designated by the Owners Corporation or otherwise with its written consent; and
  - 15.1.2 permit any bicycle to be brought into a Lot (other than a Lot designated for parking) or the foyer, lifts, stairwells, hallways, garden areas, walkways, balconies.
- 15.2 Members or Occupiers must indemnify and keep indemnified the Owners Corporation on a full indemnity basis for the costs of repairing any damage to the Common Property arising out of bringing their bicycles on to any Lot (for example, corridors).

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## **16. Signage and Windows**

- 16.1 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.
- 16.2 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.
- 16.3 A Member must not allow any glazed portions of the Lot or Common Property to be tinted or otherwise treated with the intention of changing the visual characteristic of the Development.

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## **17. Building inductions**

- 17.1 To protect the health and safety of persons and upkeep of the building, the Owners Corporation may require Owners and Occupiers that enter Common Property to undertake a building induction.
- 17.2 Should a building induction be required, the Owners Corporation will conduct up to two (2) building inductions per occupiable Lot every calendar, year free of charge. The number of persons, per occupiable Lot, to participate in an induction is unlimited.
- 17.3 If a Lot requires more than two (2) inductions to be undertaken within a calendar year, the Owners Corporation may charge a reasonable fee to the Lot owner for every additional induction.
- 17.4 If an Owner or Occupier has not completed an induction the Owners Corporation may take measures to restrict non-essential areas of the Common Property (i.e. recreational facilities) to the relevant party(s) on either a temporary or permanent basis.

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**18. Rights of Entry**

A Member of a Lot, upon receiving reasonable notice from the Owners Corporation(s), must allow the Owners Corporation(s) 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.

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**19. Security**

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

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**20. Security of Common Property**

- 20.1 A Member or Occupier must not do anything which may prejudice or be detrimental to the security, integrity or safety of the Common Property or Botanic Melbourne. This includes, but is not limited to, ensuring that all entry into and exit from Botanic Melbourne is carried out via secure airlock entry access area or by way of the designated carpark entries and exits.
- 20.2 A Member or Occupier must not allow persons unknown to or un-accompanied by them to follow them through or entry to the secured doors to Botanic Melbourne or carpark to the lobby or any other Common Property.

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**21. Contact**

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

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**22. Consent of Owners Corporation(s)**

A consent given by the Owners Corporation(s) 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.

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**23. Complaints and Disputes**

- 23.1 Any Dispute must be dealt with at first instance in accordance with this Rule 23.1.
- 23.2 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 23.2.
- 23.3 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:

23.3.1 arrange a meeting between the parties to resolve the Dispute; or

23.3.2 waive the requirement for the parties to meet.

23.4 Notwithstanding the course of action elected by the Committee under Rule 23.3, 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.

23.5 Without limiting the generality of this Rule 23.4, where no formal complaint is made by a Member or Occupier and the Owners Corporation(s) otherwise becomes aware of a Dispute, the Owners Corporation(s) (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:

23.5.1 arrange a meeting between the parties to resolve the Dispute; or

23.5.2 waive the requirement for the parties to meet.

23.6 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 23.3.1 or 23.5.2, the parties may revert to the dispute resolution mechanisms set out in the Act or other Law.

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## 24. Cost of Non-compliance

The Member or Occupier must indemnify and keep indemnified the Owners Corporation(s) on a full indemnity basis against any action, demand, cost, liability or loss incurred by the Owners Corporation(s) 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(s) in recovering overdue charges from the Member or Occupier.

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## 25. Owners Corporation Committees

25.1 The Committee, as appointed by the Owners Corporation, may from time appoint sub-committees (**Sub-Committees**) to assist in the performance of its functions. The Committee can delegate any or all its functions to a Sub-Committee as permitted by law.

25.2 Sub-Committees must:

25.2.1 be comprised of Lot owners or Lot owner proxy holders;

25.2.2 act in accordance with the Committee's instructions; and

25.2.3 report to the Committee in relation to the performance of its functions.

25.3 A member of the Owners Corporation Committee or Sub-Committee must:

25.3.1 act honestly and in good faith in the performance of his or her functions; and

- 25.3.2 exercise due care and diligence in the performance of his or her functions; and
  - 25.3.3 not make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person.
- 25.4 The Owners Corporation may implement a Code of Conduct for the Committee or a Sub-Committee. If a Committee or Sub-Committee member fails to abide by an approved Code of Conduct it will provide good reason for the member to be removed.

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## **26. Charges imposed on Members and Occupiers**

- 26.1 Any payments to the Owners Corporation(s) imposed on a Member or Occupier under the Rules, Act or Regulations will (until paid) be a charge on the Lot.
- 26.2 The Member or Occupier must accept a certificate signed by the Manager or valid tax invoice issued by the Owners Corporation(s) as prima facie proof of the costs and expenses incurred by the Owners Corporation(s) 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.
- 26.3 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.
- 26.4 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(s) and then be applied in repayment of the principal sum.

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## **27. Rules Subject to Rights of the Developer**

- 27.1 These Rules do not apply to and, are not enforceable against the Developer or its mortgagee or chargee, for so long as any of the following apply:
  - 27.1.1 the Developer and/or its equity partners (if any) is a Member or Occupier;
  - 27.1.2 any mortgagee or chargee of the Developer has an interest in any Lot; or
  - 27.1.3 the Developer and/or its 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 Developer their mortgagee or chargee may be engaged in or which may need to be carried out in order to complete construction of the Buildings and facilities comprised in the Plan or the Development.
- 27.2 Subject to Rule 27.4, the Developer and its equity partners (if any), its mortgagees and chargees 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:
  - 27.2.1 erect such barriers, fences, hoardings, signs as it deems necessary to facilitate any works to be carried out in relation to the Development; and



- 27.2.2 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
- 27.2.3 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
- 27.2.4 erect for sale promotional advertising or other signs as the Developer may require on any part of the Common Property; and
- 27.2.5 grant rights to use or access through or over the Common Property to third parties on such terms and conditions as the Developer or its mortgagee or chargee thinks fit; and
- 27.2.6 limit or restrict access to certain areas of the Development including areas of the Common Property in order to expeditiously complete the Development; and
- 27.2.7 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,
- 27.2.8 have exclusive use of the amenities located on the Common Property, up to a maximum of 3 occasions within the first 12 months following completion of the construction of the Development for the sole purpose of marketing and promotional activities.

provided that the Developer and 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

- 27.3 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 Developer or its mortgagee or chargee to complete the Development. 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 revoke this Rule 27 or contravene any right or reprieve afforded to the Developer under this Rule 27.
- 27.4 Every Member hereby consents to and agrees to the Developer undertaking any or all of the rights of the Developer set out in this Rule without any prevention or hindrance of such Member.
- 27.5 In exercising its rights under this Rule, the 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 Developer must only exercise its rights to the extent necessary for the genuine Development. The Developer must not exercise its rights under this Rule to arbitrarily exclude the Owners Corporation(s) or the participation of Members.

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## **28. Restrictions – Trade or Business**

- 28.1 The Member or Occupier must not use or permit others from using that Lot or any part of the Common Property for any trade, business or other commercial use unless that Lot is a Commercial Lot, without the express written consent of the Owners Corporation(s).

- 28.2 If authorised to do so by the Owners Corporation(s), the Member or Occupier of any Lot may carry on a trade, business or other commercial use from the relevant Lot, provided:
- 28.2.1 the planning scheme of the relevant Authority governing the use of that Lot permits the trade, business or other commercial use to be carried on from the Lot; and
  - 28.2.2 any requirements in respect of the trade, business or other commercial use stipulated by any relevant Authority from time to time are complied with; and
  - 28.2.3 the trade, business or other commercial use can be carried on and is carried on without causing undue nuisance or, creating a greater security risk to the Members and Occupiers of other Lots.
- 28.3 This Rule 28 does not prevent the activities of carers and/or support workers to be provided within a Lot.

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## **29. Warranties & Novation or assignment of contracts**

- 29.1 The Developer or its builder or subcontractors (all the 'Developer') may at their discretion enter into time limited contracts to supply, service, clean, 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.
- 29.2 The Developer must and the Owners Corporation(s) must accept, assignment or novation of the contracts referred to in Rule 29.1 at the first meeting of the Owners Corporation(s).
- 29.3 The Owners Corporation(s) must maintain any contracts 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.
- 29.4 The Owners Corporation(s) must comply with the terms of and properly manage any time or condition limited warranties for items, 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(s).
- 29.5 The Owners Corporation(s) must ensure that it provides for or enters into contracts to provide for care, cleaning, maintenance and inspection of any item 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 assigned or novated to it by the Developer.
- 29.6 All Members must contribute its proportion of the cost incurred by the Owners Corporation(s) in complying with this Rule 29 relative to the lot liability on the Plan.

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## **30. Signage & Other Licences**

- 30.1 The Owners Corporation(s) may grant the Developer:
- 30.1.1 a lease and licence including but not limited to for the provision of information technology infrastructure relating to broadband services to the Development;

- 30.1.2 a licence to host festivals, parties or other celebratory or promotional events in the main lobby area;
- 30.1.3 a licence to place and maintain sale signs, insignias, logos and other fixtures and fittings for marketing purposes on the Common Property; or
- 30.1.4 allow the Developer's representatives and their invitees to conduct selling activities from a Lot, if not sold prior to completion, which will serve as a display unit,

provided 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(s).

- 30.2 A Member or Occupier of the Lot must not hinder or impede the Developer from exercising its rights under any agreement entered into under this Rule.
- 30.3 The Owners Corporation(s) must procure all the necessary consents and resolutions to give effect to the matters set out in this Rule 30.
- 30.4 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 30.

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## **31. Commercial Area**

- 31.1 Without limiting any other rule, the proprietor or occupier of a Commercial Lot used for Commercial Purposes must:
  - 31.1.1 take out its own bins on each garbage collection day to the bin collection area nominated by the Owners Corporation(s), and bring the bins in before 9:00am on each collection day Monday to Saturday and before 10:00am on Sundays;
  - 31.1.2 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;
  - 31.1.3 ensure lids on bins are securely closed at all times and ensure that bins are kept clean;
  - 31.1.4 ensure all cardboard and paper waste is cut up or folded and neatly contained in bins;
  - 31.1.5 store all bins, bottles, cardboard/paper and any other refuse within the relevant Lot (but not any car park forming part of that Lot) so that it is screened from public view 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).
  - 31.1.6 any perishable rubbish must be refrigerated and hidden from view;
  - 31.1.7 washing down of bins must only be carried out within the lot, excluding car spaces;
  - 31.1.8 comply with all health, noise, environment and other regulations in carrying on the business from the Lot;

- 31.1.1 install and maintain a kitchen exhaust system to the satisfaction of Council so as to prevent the emission of unreasonable odours;
- 31.1.2 not install sound or amplified equipment so that it is audible from outside the Commercial Lot.
- 31.1.3 any mechanical fluing must be charcoal filtered or equivalent;
- 31.1.4 small utility deliveries are to be between 5:30am-6:00pm Monday to Friday and 6:30am – 6:00pm Saturdays & Sundays;
- 31.1.5 large deliveries are to be between 8:00am – 6:00pm Monday to Sunday;
- 31.1.6 not permit electronic gaming machines;
- 31.1.7 make all reasonable attempts to address/treat any odours that emanate from the Lot;
- 31.1.8 ensure that all wall, floor and ceiling linings and treatments are acoustically treated to ensure that an acoustic performance level of STC30 is achieved;
- 31.1.9 must at all times maintain an active frontage at ground level in such a manner that allows views into and out of the building to the satisfaction of Council and must ensure that signage, shelving, blinds, displays, awnings or similar must not be located in a manner that prevents views into the building. A minimum of 75% of the shopfront area of the Commercial Lot must provide for unobstructed surveillance into the Commercial Lots from outside and vice versa;
- 31.1.10 must use reasonable endeavours to ensure that the amenity of the Commercial Lot must not be detrimentally affected by the use or development for any reason including through the:
  - (a) transport of materials, goods or commodities to or from the Commercial Lot;
  - (b) appearance of any building, works or materials;
  - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam;
  - (d) soot, ash, dust, waste water, waste products, grit or oil;
  - (e) presence of vermin;
  - (f) construction activities;
  - (g) hours of operation of the commercial uses; or
  - (h) presence of graffiti.
- 31.1.11 keep the Commercial Lot in an ordered and tidy state and with an appearance which must not prejudicially affect the amenity of the Commercial Lots;
- 31.1.12 only install security alarms or other similar devices which are of a silent type;
- 31.1.13 ensure any and all cooking exhaust ducts within or part of the Commercial Lot's kitchen exhaust system is cleaned at a frequency recommended or required by law or by any Governmental Agency. The Member or Occupier of the Commercial Lot must at all times maintain all aspects of their kitchen exhaust system which

includes minimizing grease build-up within the hood and all associated ducts, removal of grease laden steam, arrest/control and proper dispersal of grease and/or exhaust emissions. The Manager may also stipulate how frequent the cooking exhaust ducts must be cleaned. The evidence of any clean must be provided to the Manager upon request.

- 31.2 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:
- 31.2.1 operates lawfully;
  - 31.2.2 obtains each and every permit, liquor licence or other consent required; and
  - 31.2.3 operates within the terms of any such liquor licence, permit or consent.
- 31.3 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.
- 31.4 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.
- 31.5 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.
- 31.6 Rule 16 does not apply to a Lot used for Commercial Purposes.

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## **32. Use of Lift**

- 32.1 A Member or Occupier of a Lot must give at least 72 hours' notice to the Owners Corporation or the Manager before any furniture, fittings or equipment may be moved in or out of any Lot via the lift. If insufficient notice is provided, the Member or Occupier of that Lot may be refused lift access and directed to make an alternative time for delivery.
- 32.2 A Member or Occupier of a Lot must not, without the consent of the Owners Corporation or the Manager, use the lift for delivery or removal of goods except between the hours of 9.00 AM and 5.00 PM on weekdays days and then only when lift covers have been installed.

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## **33. Infectious diseases**

In the event of any infectious disease which may require notification by virtue of any statute, regulation or ordinance affecting any person in any Lot, the Member or Occupier of such Lot shall give, or cause to be given, written notice thereof and any other information which may be required relative thereto to the Manager and shall pay to the Owners Corporation the expenses of disinfecting the Building where necessary and replacing any articles or things the destruction of which may be rendered necessary by such disease.