

RULES OF ILUKA HOMEOWNER'S ASSOCIATION

CONTENTS

1. Name of Association.....	1
2. Definitions .....	1
3. Objects of the Association .....	2
4. Powers of Association .....	3
5. Qualifications for Membership of Association.....	3
6. Register of Members of Association .....	4
7. Subscriptions of Members of Association.....	4
8. Committee of Management .....	5
9. Chairperson.....	7
10. Secretary .....	8
11. Treasurer .....	9
12. Casual Vacancies in Membership of Committee.....	9
13. Proceedings of Committee.....	10
14. General Meetings.....	11
15. Quorum in Proceedings at General Meetings.....	13
16. Minutes of Meetings of Association.....	14
17. Voting Rights of Members of Association .....	15
18. Proxies of Members of Association.....	16
19. Rules of Association .....	16
20. Common Seal of Association .....	16
21. Inspection of records, etc. of Association.....	17
22. Distribution of Surplus Property on Winding up of Association .....	17
23. Disciplinary Action, Disputes and Mediation .....	17
24. Disciplinary Action.....	18
25. Resolving disputes - Member Dispute.....	19
26. Resolving disputes - Association Dispute. ....	21
27. Mediation.....	22
Annexure “B” .....	24

## RULES OF ILUKA HOMEOWNER'S ASSOCIATION

### 1. Name of Association

The name of the Association is ILUKA HOMEOWNER'S ASSOCIATION (INC).

### 2. Definitions

In these rules, unless the contrary intention appears -

"Committee Meeting" means a meeting referred to in rule 13 (1),

"Committee Member" means a person referred to in paragraph (a), (b), (c), (d) or (e) of rule 8(1);

"financial year" has the meaning given by Schedule 1, Division 2, clause 5 of the Act;

"financial year period" means, pursuant to Schedule 1, Division 2, clause 5(3) of the Act, the period commencing 7 days prior to the beginning of one Annual General Meeting to 7 days prior to the beginning of the next Annual General Meeting;

"general meeting" means a meeting convened under rule 14 and includes a Special General Meeting and an Annual General Meeting;

"Member" means a member of the Association pursuant to rule 5(1);

"ordinary resolution" means a resolution other than a special resolution;

"Iluka Estate" means and includes each of the lots comprised in "Plans and Diagrams registered at the Land Titles Office and nominated by the Developer as forming part of Beaumaris Beach Estate Iluka;

"SAR" means the 'Specified Area Rate', payable to the City of Joondalup in accordance with the *Local Government Act 1995* (WA);

"Special General Meeting" means a general meeting of the Association other than the Annual General Meeting;

"special resolution" has the meaning given by section 51 of the Act;

"the Act" means the *Associations Incorporation Act 2015*;

"the Association" means the Association referred to in rule 1;

"the Chairperson" means -

- (a) in relation to the proceedings at a Committee Meeting or general meeting, the person presiding at the Committee Meeting or general meeting in accordance with rule 9; or
- (b) otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in rule 8(1)(a) or, if that person is unable to perform his or her functions, the Vice-Chairperson;

"the Committee" means the Committee of Management of the Association referred to in rule 8(1);

"the Developer" means The Roman Catholic Archbishop of Perth and Davidson Pty Ltd (ACN 009 447 745);

"the Secretary", means the Secretary referred to in rule 8(1)(c);

"the Treasurer" means the Treasurer referred to in rule 8(1)(d);

"the Vice-Chairperson" means the Vice-Chairperson referred to in rule 8(1)(b).

"Type A Associate Member" means a person granted membership pursuant to rule 5(1)(D).

"Type A Associate Membership" means the type of membership referred to in rule 5(1)(D).

"Type A Associate Committee Member" means a Type A Associate Member elected to membership of the Committee in accordance with rule 8.

### **3. Objects of the Association**

- (1) To provide for and ensure high standards of maintenance for Iluka Estate parks and reserves, gardens, road features, foreshore reserve facilities and any private recreation and other facilities constructed within Iluka Estate.
- (2) The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members, except in good faith in the promotion of those objects.
- (3) To engender a sense of community spirit and utility amongst home owners in Iluka.

- (4) To represent the best interests of the Association to government and private organisations.
- (5) To promote the activities and services, of the Association, within the community.
- (6) To promote and co-ordinate community events.
- (7) To liaise with the Estate developer and local government, regarding ongoing development within Iluka
- (8) To assist in the enforcement of the restrictive covenants applicable to properties in Iluka.
- (9) To develop and implement a set of covenants to maintain the amenity and integrity of Iluka and to ensure compliance of those covenants by the levying of fines or taking such other steps that may in all the circumstances be deemed reasonable.

#### **4. Powers of Association**

The Association shall have power to do all things as it or its Members may deem to be necessary, incidental or conducive to the attainment of the above objects.

#### **5. Qualifications for Membership of Association**

- (1) Every person, or body corporate, who is the owner of a legal or equitable estate in fee simple of any lot or lots in Iluka Estate or any share or interest therein shall ipso facto be a Member of the Association.
  - (1)(A) A person or body corporate, commences to be a Member of the Association, as soon as that person or body corporate satisfies the requirements of rule 5(1).
  - (1)(B) A person or body corporate, ceases to be a Member of the Association, when that person or body corporate, ceases to satisfy the requirements of rule 5(1).
  - (1)(C) Any person, including: children; relatives; or friends; of a Member, who does not have a right of membership in accordance with rule 5(1), is not a Member of the Association. Any body corporate that does not have a right of membership in accordance with rule 5(1), is not a Member of the Association. Any person or body corporate, who is not a Member of the Association has no right to attend Association Committee Meetings or General Meetings nor vote at any Association meeting or event.

- (1)(D) Any person who: does not have a right of Membership in accordance with rule 5(1); and is registered on the Commonwealth electoral roll as being a resident of ILUKA; and has a lease for life residential contract with, a lot owner pursuant to rule 5(1); may apply to the Committee for a Type A Associate Membership.
- (1)(E) A person ceases to be a Type A Associate Member of the Association, when that person ceases to satisfy the requirements of rule 5(1)(D).
- (2) Deleted
- (3) Each lot in Iluka Estate shall be allocated one vote for the purposes of meetings of the Association and where a lot is owned by more than one person then such persons shall be entitled to jointly exercise that one vote. Where a corporation is an owner the corporation must appoint a person to exercise the vote on behalf of the corporation.
- (4) A Type A Associate Member shall not have a vote pursuant to rule 5(3).

## **6. Register of Members of Association**

The Secretary, or their delegate, shall on behalf of the Association keep and maintain the register of Members in accordance with section 53 of the Act and that register shall be so kept and maintained.

## **7. Subscriptions of Members of Association**

- (1) The Members shall from time to time at a general meeting determine the amount of the membership joining fee and other fees to be paid by each Member.
- (1)(A) Pursuant to rule 5(1), the owner of each lot shall pay a joining fee to the Association at the time of becoming an owner of that lot.
- (1)(B) Pursuant to rule 5(1)(D), Type A Associate Member shall pay a joining fee to the Association at the time of becoming a member.
- (2) Each Member shall pay to the Joondalup City Council the SAR when it becomes due.
- (3) The membership joining fee and all other fees or fines payable by a Member shall be a charge on the lot owned by each Member and the Association shall be entitled

to lodge a Caveat on any lot in Iluka Estate which is in arrears in order to secure payment of any membership joining fee and other fees or fines and arrears thereof.

- (4) If any Member refuses and/or neglects to pay any membership joining fee or other fees or fines imposed by the Association within thirty (30) days of being requested to do so in writing, the Association shall be entitled to commence legal proceedings to enforce payment of the amount outstanding.

## **8. Committee of Management**

- (1) The affairs of the Association shall be managed exclusively by a Committee of Management consisting of -

- (a) a Chairperson;
- (b) a Vice-Chairperson;
- (c) a Secretary;
- (d) a Treasurer; and
- (e) not less than 4 other persons,

all of whom shall be Members of the Association elected to membership of that Committee at an Annual General Meeting or appointed under rule 8(7).

- (1)(A) In addition to the Committee of Management specified in rule 8(1), the Committee of Management may consist of no more than two Type A Associate Members, referred to as Type A Associate Committee Members. One of the two Type A Associate Committee Member positions is reserved for the lot owner or the lot owner's delegate who may also be a person so specified in 5(1)(D).

- (1)(B) A Type A Associate Committee Member, shall be elected to membership in accordance with this rule.

- (1)(C) Type A Associate Committee Members, shall be afforded the same rights and privileges of all other Committee Members and have a right be elected to any office specified in rule 8(1)(a) to 8(1)(d) inclusive in accordance with this rule.

- (2) The Committee of Management shall hold office and shall be elected annually. At the commencement of the first Annual General Meeting to be held after the incorporation of the Association under the Act and at the end of each successive

Annual General Meeting thereafter all Members of the Committee of Management shall retire but shall be eligible for re-election.

- (2)(A) The Committee has power to do all things necessary or convenient to be done for the proper management of the affairs of the Association.
- (3) A person is not eligible for election to membership of the Committee unless a Member (who has paid all fees or fines then due and payable) has nominated him for election by delivering notice in writing of that nomination, signed by -
  - (a) the nominator; and
  - (b) the nominee to signify his or her willingness to stand for election,to the Secretary not less than 7 days before the day on which the Annual General Meeting concerned is to be held, and the nominee has paid all membership joining fee and other fees or fines then due and payable.
- (4) A person who is eligible for election or re-election under this rule may at the Annual General Meeting concerned -
  - (a) propose or second himself or herself for election or re-election; and
  - (b) vote for himself or herself.
- (5) The Secretary, or their delegate, shall ensure that notice of all persons seeking election to membership of the Committee is given to all Members when notice is given to those Members of the calling of the Annual General Meeting at which that election is to be held.
- (6) If the number of persons nominated for election to membership of the Committee does not exceed the number of vacancies in that membership to be filled -
  - (a) the Secretary shall report accordingly to; and
  - (b) the Chairperson shall declare those persons to be duly elected as members of the Committee at,the Annual General Meeting concerned.
- (7) When a casual vacancy within the meaning of rule 12 occurs in the membership of the Committee -

- (a) the Committee may appoint a Member to fill that vacancy; and
  - (b) a Member appointed under this subrule shall -
    - (i) hold office until the end of; and
    - (ii) be eligible for election to membership of the Committee at, the next following Annual General Meeting.
- (8) The Committee of Management shall administer the funds of the Association.
- (a) The Committee shall approve all payments made by the treasurer prior to the payments being made.
  - (b) Notwithstanding rule 9(3), the Committee shall approve all recurring payments.
  - (c) A Committee Member or Member, of the Association shall first obtain approval from the Committee prior to making purchases on behalf of the Association.
- (9) The Committee may approve a payment to a Committee Member or Member out of the funds of the Association only if it is a:
- (a) payment in good faith to the Committee Member or Member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
  - (b) payment of interest, on money borrowed by the Association from the Committee Member or Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
  - (c) payment of reasonable rent to the Committee Member or Member for premises leased by the Committee Member or Member to the Association; or
  - (d) reimbursement of reasonable expenses properly incurred by the Committee Member or Member on behalf of the Association.

## **9. Chairperson**

- (1) Subject to this rule, the Chairperson shall preside at all general meetings and Committee Meetings.



- (2) In the event of the absence from -
- (a) a general meeting of -
    - (i) the Chairperson, the Vice-Chairperson; or
    - (ii) both the Chairperson and the Vice-Chairperson, a Member elected by the other Members present at the general meeting;

or

  - (b) a Committee Meeting of -
    - (i) the Chairperson, the Vice-Chairperson; or
    - (ii) both the Chairperson and the Vice-Chairperson, a Committee Member elected by the other Committee Members present,
- shall preside at the meeting.
- (3) The Chairperson may authorise ad-hoc payments of up to \$100, on behalf of the Association, without approval from the Committee. All said payments shall be reimbursed by the treasurer and accurately recorded in the relevant Association's financial records.

## **10. Secretary**

The Secretary, or their delegate, shall -

- (1) co-ordinate the correspondence of the Association;
- (2) keep full and correct minutes of the proceedings of the Committee and of the Association;
- (3) comply on behalf of the Association with -
  - (a) section 53 of the Act in respect of the register of Members of the Association;
  - (b) section 35 of the Act in respect of the rules of the Association; and
  - (c) section 58 of the Act in respect of the record of the office holders, and any trustees, of the Association;

- (4) have custody of all books, securities documents, records and registers of the Association, including those referred to in paragraph (3), other than those required by rule 11(6) to be kept and maintained by, or in the custody of, the Treasurer; and
- (5) perform such other duties as are imposed by these rules on the Secretary.

#### **11. Treasurer**

The Treasurer shall -

- (1) be responsible for the receipt of all moneys paid to or received by, him or her on behalf of, the Association and shall issue receipts for those moneys in the name of the Association;
- (2) pay all moneys referred to in paragraph (1) into such account or accounts of the Association as the Committee may from time to time direct;
- (3) make payments from the funds of the Association with the authority of a general meeting or of the Committee and in so doing ensure that all cheques are signed by 1 Committee Member and himself or herself;
- (4) comply on behalf of the Association with sections 66 and Tier 1: s68 & 70, Tier 2: s71 & 73 or Tier 3: s74 & 76 of the Act in respect of the accounting records of the Association;
- (5) whenever directed to do so by the Chairperson, submit to the Committee a report, balance sheet or financial statement in accordance with that direction;
- (6) have custody of all securities, books and documents of a financial nature and accounting records of the Association, including those referred to in paragraphs (4) and (5); and
- (7) perform such other duties as are imposed by these rules on the Treasurer.

#### **12. Casual Vacancies in Membership of Committee**

A casual vacancy occurs in the office of a Committee Member and that office becomes vacant if the Committee Member -

- (1) dies;

- (2) resigns by notice in writing delivered to the Chairperson or, if the Committee Member is the Chairperson, to the Vice-Chairperson;
- (3) is convicted of an offence under the Act;
- (4) is permanently incapacitated by mental or physical ill-health.
- (5) is absent from more than -
  - (a) 3 consecutive Committee Meetings; or
  - (b) 3 Committee Meetings in the same financial year, of which he or she has received notice without tendering an apology to the person presiding at each of those Committee Meetings; or
- (6) ceases to be a Member of the Association.

### **13. Proceedings of Committee**

- (1) The Committee shall meet together for the dispatch of business not less than once in each calendar month and the Chairperson may at any time convene a meeting of the Committee.
- (2) Each Committee Member has a deliberative vote.
- (3) A question arising at a Committee Meeting shall be decided by a majority of votes, but, if there is an equality of votes, the person presiding at the Committee Meeting shall have a casting vote in addition to his or her deliberative vote.
- (4) At a Committee Meeting 6 Committee Members constitute a quorum.
- (5) Subject to these rules, the procedure and order of business to be followed at a Committee Meeting shall be determined by the Committee Members present at the Committee Meeting.
- (6) Subject to sections 43(2) and 43(3) of the Act, a Committee Member who has a material personal interest in a matter being considered at a Committee Meeting, must not:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.

- (7) Every Member of the Association has the right to attend a Committee Meeting as a visitor to the Committee Meeting however, only Committee Members elected in accordance with rule 8, have a deliberative vote at Committee Meetings.

#### **14. General Meetings**

- (1) The Committee -
  - (a) may at any time convene a Special General Meeting;
  - (b) shall convene Annual General Meetings within the time limits provided for the holding of Annual General Meetings by section 50 of the Act; and
  - (c) shall, within 60 days of receiving a request in writing to do so from not less than 5% of Members of the Association, convene a Special General Meeting for that purpose specified in that request.
- (1)(A) Every Member of the Association, subject to rule 5(1) and rule 5(1)(D), has a right to attend a general meeting.
- (1)(B) At a general meeting, a Member of the Association may be requested to provide their name, address or such other details to verify their membership of the Association.
- (1)(C) Any person, body corporate or institution that does not have a right as specified in rule 14(1)(A) does not have a right to attend any Association meeting unless consent is provided by the Committee.
- (2) The Members making a request referred to in subrule (1)(c) shall -
  - (a) state in that request the purpose for which the Special General Meeting concerned is required; and
  - (b) sign that request.
- (3) Subject to subrule (6), the Secretary shall give to all Members not less than 14 days notice of a general meeting and of any motions to be moved at the general meeting.
- (4) A notice given under subrule (3) shall specify -
  - (a) when and where the general meeting concerned is to be held; and

- (b) particulars of the business to be transacted at the general meeting concerned and of the order in which that business is to be transacted.
- (5) In the case of an Annual General Meeting, the order in which business is to be transacted is
  - (a) first, the consideration of the accounts and reports of the Committee;
  - (b) second, the election of Committee Members to replace outgoing Committee Members; and
  - (c) third, any other business requiring consideration by the Association in a general meeting.
- (6) The Secretary, or their delegate, shall give to all Members not less than 21 days notice of a general meeting at which a special resolution is to be proposed and of any other motions to be moved at that general meeting.
- (7) The Secretary, or their delegate, may give a notice under subrule (3) or (6) by -
  - (a) serving it on a Member personally; or
  - (b) sending it by post to a Member at the address of the Member appearing in the register of Members kept and maintained under section 53 of the Act; or
  - (c) causing it to be placed in the Member's letter box;
  - (d) causing it to be advertised in a local newspaper.
- (8) When a notice is sent by post under subrule (7)(b), sending of the notice shall be deemed to be properly effected if the notice is sufficiently addressed and posted to the Member concerned by ordinary prepaid mail.
- (9) Except for general meetings convened pursuant to rule 14(1), the Association is not obligated to convene a Special General Meeting.
- (10) In the case of a Special General Meeting, the order in which business is to be transacted shall be determined by the Committee in accordance with the purpose of that Special General Meeting and where applicable, the Committee shall;

- (a) give each Member in attendance a reasonable opportunity to make written and oral submissions to the meeting considering the number of submissions that are to be presented;
- (b) give due consideration to any submissions so made;
- (c) respond to Member submissions in a reasonable time and by a media acceptable to the parties.

**15. Quorum in Proceedings at General Meetings**

- (1) At a general meeting 15 Members present in person or by proxy constitute a quorum.
- (2) If within 30 minutes after the time specified for the holding of a general meeting in a notice given under rule 14(3) or (6) -
  - (a) as a result of a request or notice referred to in rule 14(1)(c) or a quorum is not present; the general meeting lapses; or
  - (b) the general meeting stands adjourned to the same time on the same day in the following month and to the same venue; orwhere the venue is not available, the closest possible time to the original set time with the appropriate notice as required in rule 14.
- (3) If within 30 minutes of the time appointed by subrule (2)(b) for the resumption of an adjourned general meeting a quorum is not present, the Members who; are present in person or by proxy may nevertheless proceed with the business of that general meeting as if a quorum were present.
- (4) The Chairperson may, with the consent of a general meeting at which a quorum is present, and shall, if so directed by such a general meeting, adjourn that general meeting from time to time and from place to place.
- (5) There shall not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.

- (6) When a general meeting is adjourned for a period of 30 days or more, the Secretary, or their delegate, shall give notice under rule 14 of the adjourned general meeting as if that general meeting were a fresh general meeting.
- (7) At a general meeting -
  - (a) an ordinary resolution put to the vote shall be decided by a majority of votes cast on a show of hands; and
  - (b) a special resolution put to the vote shall be decided in accordance with section 51 of the Act.
- (8) A declaration by the Chairperson at a general meeting that a resolution has been passed as an ordinary resolution thereat shall be evidence of that fact unless, during the general meeting at which the resolution is submitted, a poll is demanded in accordance with subrule (9).
- (9) At a general meeting, a poll may be demanded by the Chairperson at the general meeting or by 3 or more Members present in person or by proxy and, if so demanded, shall be taken in such manner as the Chairperson directs.
- (10) If a poll is demanded and taken under subrule (9) in respect of an ordinary resolution, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.
- (11) A poll demanded under subrule (9) on the election of a person to preside over a general meeting or on the question of an adjournment shall be taken forthwith on that demand being made.

## **16. Minutes of Meetings of Association**

- (1) The Secretary, or their delegate, shall cause proper minutes of all proceedings of all general meetings and Committee Meetings to be taken and then to be entered within 30 days after the holding of each general meeting or Committee Meeting, as the case requires, in a minute book kept for that purpose.
- (2) The Chairperson shall ensure that the minutes taken of a general meeting or Committee Meeting under subrule (1) are checked and signed as correct by the Chairperson of the general meeting or Committee Meeting to which those minutes

relate or of the next succeeding general meeting or Committee Meeting, as the case requires.

- (3) When minutes have been entered and signed as correct under this rule, they shall, until the contrary is proved, be evidence that
  - (a) the general meeting or Committee Meeting to which they relate (in this subrule called "the meeting" was duly convened and held;
  - (b) all proceedings recorded as having taken place at the meeting did in fact take place thereat; and
  - (c) all appointments or elections purporting to have been made at the meeting have been validly made.

#### **17. Voting Rights of Members of Association**

- (1) Subject to rule 5(3), each Member present in person or by proxy at a general meeting is entitled to a deliberative vote.
- (2) A Member which is a body corporate may appoint in writing a natural person, whether or not he or she is a Member, to represent it at a particular general meeting or at all general meetings.
- (3) An appointment made under subrule (2) shall be so made by a resolution of the board or other governing body of the body corporate concerned
  - (a) which resolution is authenticated under the common seal of that body corporate; and
  - (b) a copy of which resolution is lodged with the Secretary.
- (4) A person appointed under subrule (2) to represent a Member which is a body corporate shall be deemed for all purposes to be a Member until that appointment is revoked by the body corporate or, in the case of an appointment in respect of a particular general meeting, which appointment is not so revoked, the conclusion of that general meeting.



**18. Proxies of Members of Association**

A Member (in this rule called "the appointing Member") may appoint in writing another Member who is a natural person to be the proxy of the appointing Member and to attend, and vote on behalf of the appointing Member at, any general meeting.

**19. Rules of Association**

- (1) The Association may alter or rescind these rules, or make rules additional to these rules, only by special resolution at a Special General Meeting in accordance, with the procedure set out in Part 3 Division 2 of the Act.
- (2) These rules bind every Member and the Association to the same extent as if every Member and the Association had signed and sealed these rules and agreed to be bound by all their provisions.
- (3) These rules include, and consequently bind all residents in accordance with rule 19(2), the:
  - Restrictive Covenants (Annexure 'B'),  
as annexed below.
- (4) The Committee may from time to time adopt policies and/or procedures that are consistent with the rules of the ILUKA Homeowner's Association. Said policies and procedures are binding on all residents in accordance with rule 19(2).

**20. Common Seal of Association**

- (1) The Association shall have a common seal on which its corporate name shall appear in legible characters.
- (2) The common seal of the Association shall not be used without the express authority of the Committee and every use of that common seal shall be recorded in the minute book referred to in rule 16.
- (3) The affixing of the common seal of the Association shall be witnessed by any 2 of the Chairperson, the Secretary and the Treasurer.
- (4) The common seal of the Association shall be kept in the custody of the Secretary or of such other person as the Committee from time to time decides.

**21. Inspection of records, etc. of Association**

- (1) A Member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.
- (2) A Member inspecting the material referred to in rule 21(1) may make a copy of, or take an extract from, the material but is not entitled to remove the material for that or any other purpose.
- (3) The Committee shall refuse a Member, or any other party, access to the material referred to in rule 21(1) or any part thereof, if providing said access to the material is contrary to another Commonwealth or State law.
- (4) A Member who wishes to make a copy of, or take an extract from, the material referred to in rule 21(1) shall provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the association and for no other purpose.

**22. Distribution of Surplus Property on Winding up of Association**

- (1) If, on the winding up of the Association, any property of the Association remains after satisfaction of the debts and liabilities of the Association and the costs, charges and expenses of that winding up, that surplus property shall be distributed in accordance with section 24 of the *Associations Incorporation Act 2015* as amended from time to time.
- (2) Where surplus property arises pursuant to rule 22(1), the surplus property distribution shall be determined by resolution of the Members and distributed in accordance with Part 10, Division 1, of the *Associations Incorporation Act 2015* as amended from time to time.

**23. Disciplinary Action, Disputes and Mediation**

- (1) Rules 23 to 27 inclusive, provides a procedure for dealing with any dispute under or relating to these rules —
  - (a) between Members; or
  - (b) between a Member and the Association.
- (2) Terms used in rules 23 to 27 inclusive.

"Association Dispute" means, a dispute between one Member of the Association and the Association, under or relating to these rules.

"Dispute" means, either an Association Dispute or a Member Dispute.

"Dispute Procedure" means, a procedure in relation to rule 23(1).

"Member Dispute" means, a dispute between two or more Members of the Association, under or relating to these rules.

## **24. Disciplinary Action**

### **(1) Suspension**

- (a) The Committee may decide to suspend a Member's membership if —
  - (i) the Member contravenes any of these rules including the annexed documents specified in rule 19(3); or
  - (ii) the Member acts detrimentally to the interests of the Association.
- (b) The secretary must give the Member written notice of the proposed suspension at least 28 days before the Committee Meeting at which the proposal is to be considered by the Committee.
- (c) The notice given to the Member must state —
  - (i) when and where the Committee Meeting is to be held; and
  - (ii) the grounds on which the proposed suspension is based; and
  - (iii) that the Member, or the Member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral submissions to the Committee about the proposed suspension.
- (d) At the Committee Meeting, the Committee must —
  - (i) give the Member, or the Member's representative, a reasonable opportunity to make written and oral submissions to the Committee; and

- (ii) give due consideration to any submissions so made and decide whether to suspend the Member's membership and, if the decision is to suspend the membership, the period of suspension.
  - (e) The Committee must give the Member written notice of the Committee's decision, the effective date, and the reasons for the decision, within 28 days after the Committee Meeting at which the decision is made.
  - (f) A Member whose membership is suspended from the Association may, within 28 days after receiving notice of the Committee's decision, give written notice to the secretary requesting the appointment of a mediator in accordance with rule 27.
- (2) Consequences of suspension
  - (a) During the period a Member's membership is suspended, the Member —
    - (i) loses any rights (including voting rights) arising as a result of membership;
    - (ii) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the Association;
    - (iii) shall continue to abide by these rules; and
    - (iv) shall continue to be subject to fines for non-compliance of these rules to the same extent as other Member.
  - (b) When a Member's membership is suspended, the secretary must record the detail of the suspension in the register of Members. —
  - (c) When the period of the suspension ends, the secretary must record in the register of Members that the Member's membership is no longer suspended.

**25. Resolving disputes - Member Dispute.**

- (1) Any party to a Member Dispute may commence the procedure, by giving written notice to the secretary of —
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.

- (2) The parties to a Member Dispute must attempt to resolve the dispute between themselves within 30 days after the dispute has come to the attention of the Association. The parties to a Member Dispute may engage in mediation.
- (3) After receiving a notice, the Committee must consider the dispute at one of the next three Committee Meetings referred to in rule 13(1) or within 3 months, or at any other meeting convened to determine the Dispute.
- (4) The secretary must give each party to the dispute, written notice of the Committee Meeting at which the dispute is to be considered and determined, at least 21 days before the meeting is held.
- (5) The notice given to each party to the dispute must state —
  - (a) when and where the Committee Meeting is to be held; and
  - (b) that all parties, or their representatives, must attend the meeting and all parties will be given a reasonable opportunity to make written and oral submissions to the Committee about the dispute.
- (6) At the Committee Meeting at which a dispute is to be considered and determined, the Committee must —
  - (a) give each party to the dispute, or their representative, a reasonable opportunity to make written and oral submissions to the Committee about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (7) If one or more parties to a dispute is not present at a meeting so convened in accordance with rules 25(3) to 25(5) without reasonable apology, the Committee may determine the dispute in their absence.
- (8) The Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 28 days after the Committee Meeting at which the determination is made.

- (9) A party to the Member Dispute may, within 28 days after receiving notice of the Committee's determination under 25(8), give written notice to the secretary requesting the appointment of a mediator in accordance with rule 27.

**26. Resolving disputes - Association Dispute.**

- (1) An Association Dispute is a dispute between one Member of the Association and the Association. These rules do not allow for an Association Dispute to be with more than one Member of the Association. Each Member must raise their grievance with the Association individually. The Committee may elect to manage individual grievances collectively.
- (2) Only a Member of the Association has standing to raise an Association Dispute.
- (3) Either party to an Association Dispute may commence the procedure, by giving written notice to the secretary or the Member of the Association as the case may be, of —
- (a) the party to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (4) After receiving a notice, the Committee must consider the dispute at one of the next three Committee Meetings referred to in rule 13(1) or within 3 months, or at any other meeting convened to determine the Dispute.
- (5) The secretary must give the Association Member to the dispute, written notice of the Committee Meeting at which the dispute is to be considered and determined at least 21 days before the meeting is held.
- (6) The notice given to the Association Member to the dispute must state —
- (a) when and where the Committee Meeting is to be held; and
  - (b) that the Association Member or their representative, may attend the meeting and will be given a reasonable opportunity to make written and oral submissions to the Committee about the dispute.
- (7) At the Committee Meeting at which a dispute is to be considered and determined, the Committee must —

- (a) give the Association Member or their representative, a reasonable opportunity to make written and oral submissions to the Committee about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (8) If the Member of the Association or their representative is not present at a meeting so convened in accordance with rules 26(5) to 26(7) without reasonable apology, the Committee may determine the dispute in their absence including dismissing the dispute.
- (9) The Committee must give each party to the dispute written notice of the Committee's determination, and the reasons for the determination, within 28 days after the Committee Meeting at which the determination is made.
- (10) A party to the dispute may, within 28 days after receiving notice of the Committee's determination under 25(8), give written notice to the secretary requesting the appointment of a mediator in accordance with rule 27.

## **27. Mediation**

- (1) This rule applies if written notice has been given to the secretary requesting the appointment of a mediator —
- (a) by a party under rule 24(1)(f); or
  - (b) by a party under rule 25(9) or
  - (c) by a party under rule 26(10).
- (2) If this rule applies, a mediator must be chosen or appointed in accordance with this rule.
- (3) The mediator must be a person chosen by agreement between the parties and the Committee; or
- (4) If there is no agreement for the purposes of rule 27(3), then the Committee must appoint the mediator. The person appointed as mediator by the Committee must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre.

- (5) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (6) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 21 days before the mediation takes place.
- (7) In conducting the mediation, the mediator must —
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (8) The mediator cannot determine the matter that is the subject of the mediation.
- (9) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (10) The costs of the mediation are to be paid by the party to the mediation that requested the appointment of the mediator.
- (11) If-
  - (a) mediation takes place because a Member whose membership is suspended from the Association gives notice under rule 24(1)(f); and
  - (b) as the result of the mediation, the decision to suspend the Member's membership is revoked,that revocation does not affect the validity of any decision made at a Committee Meeting or general meeting during the period of suspension.



# Restrictive Covenants<sup>1</sup>

## Annexure "B"

1. The Buyer acknowledges that the Seller has agreed to sell the land to the Buyer only on condition that the Buyer enters into certain restrictive covenants relating to the use of the land for the purpose of enhancing the amenity of all other land comprised in the Seller's subdivision. The restrictive covenants shall be contained in a Deed which will be registered against the deposited plan creating the lot. The restrictive covenants will be substantially as follows:

The Buyer covenants with the Seller:

(1) NOT to construct, erect or install or permit to be constructed, erected or installed on the land hereby transferred ("the land") a permanent non-transportable private residence ("a residence") with a total floor area of less than 225 square metres inclusive of external walls but exclusive of garages verandahs and other unenclosed areas.

(2) NOT to construct, erect or install or permit to be constructed, erected or installed on the land:

a) A residence or any alteration or addition to a residence:

(i) Using wall materials which are not either predominantly concrete, clay bricks or stone or other similar materials in facework or render;

(ii) Using roof materials which are not either clay, slate or concrete tiles or colourbond metal;

(iii) Having a roof pitch less than 25°.

b) A residence which does not contain a garage making provision for parking of at least two motor vehicles side by side.

c) A garage, which if not located under the main roof of the residence:

(i) Is not made of the same materials as the residence or

(ii) Does not match or complement the residence, in respect of the pitch of the roof, materials used, the design and external appearance including colour and the quality of construction.

d) Any structure exceeding 4metres x 4meters in area and 2.1 metres in height which does not use the same materials used in the construction of the residence and does not complement the design and external appearance of the residence in respect of colour and quality of construction.

e) Any shed or other outbuilding less than 4metres x 4metres in area and 2.1 metres in height which has walls and/or a roof made of or coated with zincalume, galvanised iron, fibro cement or other reflective material or is located within the front setback area.

f) A residence, unless a driveway and crossover between the road and parking area on the land and all fences are constructed and completed prior to the occupation of the residence.

g) A driveway which is not constructed of brick paving or approved material.

h) A residence, unless all ground areas which are visible from the street ("visible areas") are properly landscaped within 3 months after completion of the residence. "Properly landscaped" means that all visible areas must be cleared and grassed or planted.

i) Subject to provisions 1(2)(j) and 1(2)(k) any fence which is not comprised of:

1. Masonry or

2. Hardifence which is capped and painted on both sides in wheat coloured paint with capping to be painted with wheat coloured paint.

j) If the land is a corner lot, any fence which is not comprised of opened styled masonry along any part of any boundary of the land which faces any street, road, park, pedestrian way or reserve.

k) Any fence forward of the building frontage set-back line which is less than 900mm in height and does not match or compliment the residence or any fence which is greater than 900mm in height and does not match or compliment the residence and is comprised of masonry or an open styled masonry fence.

l) A letterbox which is not located adjacent to the driveway, is not clearly numbered or does not match or complement the residence.

m) An air conditioner or evaporative cooler, unless contained wholly within the residence or being of similar colour to the roof, or within the roof space between the ceilings of the residence, and the underside of the roof of the residence.

n) A solar hot water heater unless it fits the roof profile and is not elevated at an angle to the roof profile and otherwise matches or complements the residence.

o) A clothes line or rain water tank except in accordance with the manufacturer's instruction and which is not screened from public view.

p) While a Cable Television System is operative and available a television and radio antenna and satellite dish unless contained wholly within the residence or within the roof space between the ceilings of the residence and to the underside of the roof of the residence.

(3) NOT to park or allow to be parked on the land or on the road or on any other land near of next to the land, any commercial vehicles including but not limited to trucks, utilities, caravans, trailers, boats or any other mobile machinery ("commercial vehicles") unless such commercial vehicles are housed or contained wholly within a garage on the land or are screened from public view.

(4) That where retaining walls or fences have been erected on any of the boundaries of the land by the Seller, NOT to alter or remove any of the retaining walls or fences, NOT to allow or permit the retaining walls or fences to fall into a state of disrepair, and NOT to repair or renew such retaining walls or fences except in the same style and colour as the existing retaining walls and fences.

(5) That where retaining walls or fences have been erected on any of the boundaries of the land by the Seller, NOT to alter the level of the surface without written approval of the Seller.

(6) Subject to this provision, NOT to erect or display or cause to be erected or displayed on the land any sign boarding or advertising of any description whatsoever PROVIDED THAT a FOR SALE SIGN may be erected or displayed on the land as per Development and Building Guidelines.

(7) NOT to breach or allow to be breached the Beaumaris Estate Standard Lots Development & Building Guidelines which are attached to the sale of land contract and marked Annexure "A" (Development and Building Guidelines).

(8) That the covenants herein contained shall operate and be enforceable for so long as the Association exists.

(9) That the burden of the covenants hereinbefore contained shall run with the land for the benefit of every other lot on the plan or diagram of subdivision hereinbefore. The covenants shall be enforceable against the Buyer and every subsequent registered proprietor of the land, by the Seller and every subsequent registered proprietor of any other lot on the said plan or diagram of subdivision.

2. The restrictive covenants are entered into for the benefit of all Buyers of lots on the relevant Plan or Diagram of Subdivision and are enforceable by all owners. Each Buyer must therefore comply with and observe the restrictive covenants. The Seller accepts no responsibility for enforcement of the restrictive covenants, but does have and reserves the right to do so.

3. The Buyer agrees that prior to commencement of any construction on the land, the Buyer shall submit plans and specifications to the Seller or it's Agents for approval. Approval shall automatically be given if such plans and specifications comply with the covenants hereinbefore contained.

<sup>1</sup> Restrictive Covenants may vary from one stage release to another. Where a property was sold under a different Restrictive Covenants contract, residents are bound to comply with those restrictive covenants to the extent that they differ from the restrictive covenants listed above except section 1(8) where the covenants in these rules do NOT cease to have any further effect.