

**1. INTERPRETATION**

**Act** means the *Body Corporate and Community Management Act 1997* (Qld) and the Regulation Module applying to the Scheme.

**Body Corporate** means the Body Corporate for Hermitage Gardens Community Titles Scheme 26995 created on establishment of the Scheme.

**By-laws** means these by-laws or any specified part of them.

**CMS** means this community management statement.

**Committee** means the committee of the Body Corporate appointed pursuant to the Act.

**Common Property** means the common property of the Scheme.

**Contractor** means any person engaged by another to perform services in accordance with their instructions.

**Improvement** means the erection of a building, a structural change or a non-structural change of any kind.

**Invitee** means a person who is invited in any capacity onto Scheme land by an occupier or another invitee, including any visitor, contractor, employee, or other person.

**Lot** means an individual lot in the Scheme.

**Owner or Occupier** means the owner or occupier from time to time of a Lot.

**Scheme** means Hermitage Gardens Community Titles Scheme 26995.

**System** means any air conditioning, solar power, hot water, or other immovable system requiring installation.

**Vehicle** includes all types of automobiles, motor cycles, scooters, trucks, bicycles, boats, trailers, caravans, camper vans, mobile homes, golf buggies or any other equivalent means of transportation.

**1.2 In these By-laws unless the contrary intention appears:**

- (a) headings are for guidance only and are not to be used as an aid in interpretation;
- (b) terms not defined in this CMS but defined in the Act have the meanings given to them in the Act;
- (c) a reference to a By-law includes any variation or replacement of it;

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- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the singular includes the plural and vice versa;
- (f) reference to either gender includes a reference to the other gender;
- (g) a reference to any thing is a reference to the whole and each part of it;
- (h) reference to a person includes a firm, body corporate, an unincorporated association or an authority; and
- (i) "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind.

1.3 Where these By-laws say that something can or must be done by the Body Corporate, then that thing may be done by the Committee unless it amounts to a decision on a restricted issue.

1.4 All By-laws must be construed so as to be valid, legal or enforceable in all respects. If any By-law is illegal, invalid or unenforceable, it is to be read down to the extent necessary to ensure that it is legal, valid or enforceable as may be reasonable in the circumstances so as to give a valid operation of a partial character. If any such By-law cannot be read down and is deemed void it is severed and the remaining By-laws are not in any way affected or impaired.

1.5 These By-laws must be read in conjunction with the obligations of the Body Corporate, Owners and Occupiers under the Act.

## 2. APPROVAL PROCESS

2.1 When deciding whether to approve an application made by an Owner or Occupier (the Applicant) under these By-laws, the Body Corporate may:

- (a) request the Applicant to provide all information reasonably required to make a decision;
- (b) grant its approval on relevant conditions;
- (c) refuse an application if the Applicant fails to provide any information reasonably necessary for the Body Corporate to make a decision within 28 days of a written request being made for specific information; or
- (d) refuse any application which does not adhere to the By-laws or any relevant legislation.

2.2 An Applicant granted approval under these By-laws must comply with any conditions of that approval, failing which the Body Corporate may withdraw that approval.

2.3 Any approval granted under these By-laws by the Body Corporate is invalid to the extent it is inconsistent with the Act.

## 3. VEHICLES

3.1. An Owner or Occupier of a lot must not, without the Body Corporate's prior written approval:

- (a) park a Vehicle or allow a Vehicle to stand, on the Common Property; or
- (b) permit an invitee to park a Vehicle, or allow a Vehicle to stand, on the Common Property, except for the designated visitor parking which must remain available at all times for the sole use of visitor Vehicles.

3.2. An approval under the above By-law must state the period for which it is given, with the exceptions of designated visitor parking.

3.3. However, the Body Corporate may cancel the approval by giving 7 days written notice to the Occupier, with the exception of designated visitor parking.

#### 4. PRIVATE ROADS AND OTHER COMMON PROPERTY

4.1. The private roadway, pathways, driveways and other Common Property and any easement giving access to the land shall not be obstructed by any Owner or their tenants, guests, servants, employees, agents, children, invitees, or licensees for any purpose other than the reasonable ingress and egress to and from their respective lots or the parking areas provided.

4.2. An Owner or Occupier of a lot shall not:

- (a) drive or permit to drive any motor vehicle in excess of two (2) tonnes weight into or over the common property other than such vehicles necessary to complete the construction and/or occupation of any residence erected on the land, and any Vehicle entitled by any statute and/or local authority ordinances;
- (b) permit any invitee's Vehicles to be parked on the roadway forming part of the common area at any time. Any Invitees shall park their Vehicles in the visitors' parking bays on the Common Property and shall use such area only for its intended purpose of casual parking;
- (c) permit any caravan, campervan or mobile home onto or over or throughout the common area or on the land of an Owner unless the same is housed in a garage and is not visible from any part of the Common Property;
- (d) permit any occupation of a caravan on a lot;
- (e) permit the riding of skateboards, roller blades, trikes, carts or other similar means of transport on or over the Common Property, in driveways or on footpaths.

4.3. Bicycles and other similar means of transport are only to be used on roadways in accordance with the applicable laws and regulations for the purpose of reasonable ingress or egress to a Lot in the Scheme.

**6. OBSTRUCTION AND HARASSMENT**

- 5.1. An Owner or Occupier of a lot shall not obstruct lawful access to or use of the Common Property by any person, including a Contractor authorised by the Body Corporate or an Owner to be present on the Scheme.
- 5.2. An Owner or Occupier of a Lot shall not directly instruct any Contractors engaged by the Body Corporate unless authorised.
- 5.3. An Owner or Occupier of a Lot shall not invite, encourage, or knowingly permit hawkers or canvassers onto the Common Property without the prior written approval of the Body Corporate.

**6. DAMAGE TO COMMON PROPERTY**

- 6.1. An Owner or Occupier of a lot shall not damage, alter, or deface any part of the common property, including all lawns and gardens situated upon Common Property, except with the prior written approval of the Body Corporate.
- 6.2. An Occupier must not:
- 2.3.1 take any part of the Common Property for their exclusive use; or
  - 2.3.2 alienate any part of the Common Property in any way; or
  - 2.3.3 otherwise interfere with the lawful use and enjoyment of Common Property by other Occupiers,
- without the prior written approval of the Body Corporate.

**7. DISPOSAL OF GARBAGE**

- 7.1. An Occupier must not leave garbage or other materials on the Common Property except to a designated garbage receptacle.
- 7.2. Unless the Body Corporate provides some other way of garbage disposal, an Occupier must keep a garbage receptacle in a clean and dry condition and adequately covered on the Lot, or on a part of the Common Property designated by the Body Corporate for the purpose.
- 7.3. An Occupier must:
- (a) comply with any Brisbane City Council By-laws or local laws about the disposal of garbage that apply to the Scheme;
  - (b) remove all rubbish from their Lot at least weekly;
  - (c) keep their Lot free of pests and vermin; and
  - (d) ensure that the Occupier does not, in disposing of garbage, adversely affect the health, hygiene or comfort of other Occupiers.

**8. APPEARANCE OF BUILDINGS AND SIGNS**

8.1. An Owner or Occupier of a lot shall not, except with the prior written approval of the Body Corporate:

- (a) hang any washing, towel, bedding, clothing or other article; or,
- (b) display any sign, advertisement, placard, banner, pamphlet or like material on any part of his lot in such a way as to be visible from the common property or any other lot.

8.2. The hanging of clothing to dry naturally is permitted only in areas designated by the Body Corporate Committee where facilities are supplied for such needs.

8.3. The Occupier of a lot must not, without the prior written approval of the Body Corporate, make a change to the external appearance of the lot, including the colour scheme, unless the change is minor and does not detract from the amenity of the lot and its surrounds.

## 9. STORAGE OF CONTENTS AND FIRE HAZARDS

9.1. An Owner or Occupier of a lot shall not bring to, do, or keep anything in a lot that:

- (a) may increase the rate of fire insurance on any property in the Scheme;
- (b) conflicts with the Law relating to fire safety and prevention; or,
- (c) conflicts with any insurance policy upon any property on the Scheme or the regulations or ordinances of any Public Authority for the time being in force.

9.2. An Owner or Occupier of a lot shall not, except where the consent in writing of the Body Corporate is obtained, use or store upon his lot or upon the Common Property any flammable chemical, liquid or gas or other flammable material, other than chemicals, liquids, gas or other material used or intended to be used for domestic purposes, including gas barbecues, or any such chemical, liquid, gas or other material in a fuel tank of a Vehicle or internal combustion engine.

## 10. KEEPING OF ANIMALS PETS

10.1 An Occupier must not:

- (a) bring or keep an animal on the lot or the Common Property; or
- (b) permit an Invitee to bring or keep an animal on the lot or Common Property,

without the prior written approval of the Body Corporate.

10.2 This By-law does not apply to a person who has the right to be accompanied by a guide dog under *The Guide, Hearing and Assistance Dogs Act 2009*.

10.3 An Occupier granted approval under this By-law must comply with any conditions of that approval, failing which the Body Corporate may withdraw that approval.



- 10.4 If the Body Corporate declines or withdraws an approval, the Occupier must immediately remove the animal from the Scheme.

## 11. CORRESPONDENCE

- 11.1. All complaints or applications for approvals under these By-laws shall be addressed in writing to the Body Corporate Manager.
- 11.2. When communicating with members of the Committee or the Body Corporate Manager, an Owner or Occupier must:
- (a) communicate in a reasonable and courteous manner; and
  - (b) not communicate in any way that constitutes a nuisance.

## 12. NUISANCE

- 12.1. An Occupier must not use, or permit the use by any invitee, Contractor, or other person of, the Lot or the Common Property, in a way that:
- (a) causes a nuisance or hazard; or
  - (b) interferes unreasonably with the use or enjoyment of another Lot; or
  - (c) interferes unreasonably with the use or enjoyment of the Common Property by a person who is lawfully on the Common Property.
- 12.2. In the event of any unavoidable noise in a Lot at any time the Occupier shall take all practical means to minimise annoyance to other Occupiers and persons on the Common Property by closing all doors, windows, and curtains of his lot and also such further reasonable steps to minimise the level of noise.

## 13. USE OF LOTS

- 13.1. An Owner or Occupier of a Lot shall not use their Lot or permit their Lot to be used for any illegal purpose or other purpose that may endanger the safety or good reputation of persons residing within the Scheme.
- 13.2. An Owner or Occupier of a Lot shall not operate or permit to be operated upon the Scheme any device or equipment to interfere unreasonably with any domestic appliance or apparatus (including a radio or television receiver) lawfully in use upon the Common Property or in any Lot.
- 13.3. In the event of an infectious disease which may require notification by virtue of any law, the Owner or Occupier of such Lot shall give written notice of the infectious disease and any other relevant information to the Committee.

## 14. IMPROVEMENTS

- 14.1. An Owner or Occupier must not make any Improvement to the Common Property without the prior written approval of the Body Corporate.

*Examples –*

- (a) *building a balcony out of a Lot into Common Property air space;*
- (b) *installing a clothesline on the Common Property;*
- (c) *making alterations to a garden on the Common Property;*
- (d) *erecting a sign on the Common Property; and*
- (e) *solar panels and hot water systems.*

## 14.2 An Owner or Occupier must not make any:

- (a) Improvements to:
  - (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a Lot and Common Property;
  - (ii) doors, windows and associated fittings situated in a boundary wall separating a Lot from Common Property; or
  - (iii) roofing membranes that are not Common Property but that provide protection for Lots or Common Property; or
- (b) structural alterations to:
  - (i) foundation structures;
  - (ii) roofing structures providing protection; or
  - (iii) essential supporting framework, including load-bearing walls; or
- (c) alterations to utility infrastructure (including gas, water and electrical installations) within a Lot or the common property;

without the prior written approval of the Body Corporate.

## 14.3 An Owner or Occupier must not make any Improvement to, renovate or refurbish a Lot without the prior written approval of the Body Corporate.

*Examples –*

- (a) *adding or changing internal walls;*
- (b) *re-painting the Lot;*
- (c) *laying any floor covering;*
- (d) *enclosing balconies;*
- (e) *air-conditioning units; and*
- (f) *solar panels and hot water systems.*

- 15.1 If an Owner lets their Lot for a term of three months or more, the Owner must, as soon as possible, give the Body Corporate notice of:
- (a) the name of the tenant and all other Occupiers;
  - (b) the service address of the tenant;
  - (c) the term of the tenancy; and
  - (d) the name and service address of the Owner's letting agent for the tenancy.
- 15.2 If the Owner of a Lot is not its Occupier, that Owner must ensure that any Occupiers of the Lot (ie the tenants) are given notice of:
- (a) these By-laws at the time any tenancy, letting or lease arrangement is entered into; and
  - (b) any amendments to these By-laws within one month of those amendments taking effect.

15.3 An Occupier must take all reasonable steps to ensure their invitees comply with these By-laws.

15.4 An Owner must take reasonable steps under any tenancy agreement that applies to their Lot to ensure their tenants abide by these By-laws, and to address any breach of these By-laws by their tenants.

## **16 AUCTION SALES**

16.1 An Owner or Occupier of a Lot shall not permit any auction sale to be conducted or to take place in the Lot or upon the Scheme without the prior written approval of the Body Corporate.

## **17 CARETAKERS UNIT**

17.1 Lot 120 may be used for providing the caretaking and management functions and for the sale and letting of lots in the plan on behalf of owners.

17.2 The Owner or Occupier of Lot 120 shall be permitted, with the consent of the Body Corporate Committee which shall not be unreasonably withheld, to display reasonable signs or notices on the Scheme for the purpose of offering for sale or lease or letting any lot in the plan, provided that such signs shall be of a standard that shall not detract from the overall appearance of the development.

## **18 SWIMMING POOLS**

18.1 In relation to the use of swimming pools and adjacent areas an Owner or Occupier of a Lot shall ensure:

- (a) that its invitees do not use the swimming pools unless the Owner or Occupier accompanies them;



- (b) that children below the age of 13 years are not allowed in or around the swimming pools unless accompanied by an adult Owner or Occupier exercising effective control over them;
- (c) that glass containers or receptacles of any type are not taken to or allowed to remain in or around the swimming pools;
- (d) that its invitees shall exercise caution at all times and shall not run or splash or behave in any manner that it likely to interfere with the use and enjoyment of the swimming pools by other persons; and
- (e) that no use is made of the swimming pools and surrounding areas between the hours of 10.00 pm and 7.00 am without the prior written approval of the Body Corporate.

18.2 An Owner or Occupier of a Lot shall not without the proper authority operate, adjust or interfere with the operation of any equipment associated with the swimming pools or add any chemical or other substance to the swimming pools.

## **19 BARBECUES**

19.1 The barbecue area shall not be used between the hours of 10.00 pm and 7.00 am without the prior written approval of the Body Corporate.

## **20 EXCLUSIVE USE**

20.1 An owner or occupier of a lot shall cause any lawns, gardens, paved or other areas within any common property area which the owner or occupier has been granted exclusive use to be kept in a neat and tidy condition and if at any time this by-law is not complied with, the Body Corporate, upon 14 days notice to that owner or occupier, may cause the necessary work to be carried out and the reasonable cost of carrying out the necessary work shall be payable by the owner or occupier to the Body Corporate upon request.

20.2 The owners from time to time of lots identified in Schedule E of the Community Management Statement shall be entitled to exclusive use and enjoyment of those parts of the common property designated, as courtyard areas, as are allocated therein and as identified on the sketch plan marked "A" and "B" attached hereto. The foresaid grant of exclusive use and enjoyment is made subject to and conditional upon the said owners allowing the Body Corporate and its committee and its properly appointed servants or agents, at all reasonable times, access to such areas for any proper purpose including inspection and maintenance thereof.

## **21 LOCAL AUTHORITY CONSENT**

21.1 Nothing in these By-laws shall override any requirements, where necessary, to obtain local authority approval under applicable statutory requirements.

## **22 SPECIAL PRIVILEGES**

- 22.1 For as long as there is in existence an agreement with the proprietor or occupier of Lot 120 for such proprietor or occupier to provide services for the control, management and administration of the common property (a "Caretaking Agreement") and/or an agreement for such proprietor or occupier to provide letting and ancillary services to such of the proprietors or occupiers of lots who wish to avail themselves of such services (a "letting agreement") then:
- (a) the body corporate will not itself, directly or indirectly, provide any of the services set out in the agreements;
  - (b) the body corporate will not allow any person or company other than the party to such agreement to provide, from the Scheme Land, any of the services set out in the agreements;
  - (c) the body corporate will not enter into with any other person or entity an agreement similar to the agreements;
  - (d) the proprietor or occupier of lot 120 will be entitled to erect or display signs or notices in or on the common property advertising any of the services it provides pursuant to the agreements;
  - (e) the body corporate must not grant to any other person or corporation the right to conduct any business of a similar nature to the letting business from within the scheme land nor must the body corporate (or any of its members individually) directly or indirectly conduct or attempt to conduct any business of a similar nature to the letting business from within the scheme land;
  - (f) the body corporate must not make any part of the common property available to any person or corporation for the purpose of conducting a letting business; and
  - (g) the body corporate confers on the proprietor of lot 120 special privileges in respect of the whole of the common property to use same in connection with the business carried out pursuant to the agreement.
- 22.2 The proprietor or occupier for the time being of lot 120 will be entitled to operate a PABX telephone facility within the scheme land and for the purposes aforesaid has and will continue to have a licence to install, lay, use, repair, maintain and replace cabling and other equipment necessary for the operation of such a facility throughout the scheme land.
- 22.3 The body corporate will continue to be responsible to carry out its duties pursuant to the Body Corporate and Community Management Act in respect of any common property for which special privileges have been granted pursuant to this by-law.
- 23 AIR CONDITIONING SYSTEMS**
- (a) An Owner or Occupier of a Lot shall not install a System to a Lot without the prior written approval of the Body Corporate.

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- (b) The Body Corporate may approve the installation of a System if:
- (i) The system is a split system unit or ducted system;
  - (ii) The Owner or Occupier provides a detailed installation drawing to the Body Corporate showing the proposed installation of the System and all associated ducting with technical details of the proposed System specifying noise levels;
  - (iii) The Owner or Occupier of a Lot acknowledges in writing its obligations to comply with the noise levels and hours of operation set by the Body Corporate under these By-laws or if not so set, as defined in current Environmental Protection Authority Regulations or any other law;
  - (iv) It is to be conducted in a good and workmanlike manner that does not detract from the external appearance of the Lot or the Scheme.
- (c) The Owner or Occupier of a Lot shall be responsible for the position and sound attenuation of the System to achieve at least the following minimum requirements:
- (i) All readings are taken from a "noise sensitive place" for example the nearest neighbouring Lot;
  - (ii) Between 7am and 10pm – a sound pressure to be no more than 50 decibels (dB(A));
  - (iii) Between 10pm and 7am – a sound pressure to be no more than 40 dB(A) or 5 dB(A) above background noise level, whichever is higher;
  - (iv) As a guide only and depending on the type of installation, a System with an outside rated sound power level at 1 metre of 60 dB(A) maximum will generally be regarded by the Body Corporate as acceptable.
- (d) The Owner or Occupier of a Lot shall be wholly responsible for all costs of and incidental to the System including:
- (i) Approval by the Body Corporate;
  - (ii) Installation;
  - (iii) Regular maintenance and repairs of the System;
  - (iv) Replacement at the end of the System's useful life; and
  - (v) Insurance.