
OWNERS CORPORATION 448740J SPECIAL RULES

94-102 KEYS ROAD MOORABBIN

SPECIAL RULES

Owners Corporation PS 448740J (In addition to the Model Rules)

1. Interpretation

1.1 In these Rules unless stated otherwise:

- (a) an obligation on the part of two or more persons binds them jointly and individually;
- (b) references to members include their officers, employees, agents, invitees and licensees;
- (c) references to an occupier of a lot include the occupier's officers, employees, agents, invitees and licensees;
- (d) references to a thing or quantity are references to the whole or any part of it;
- (e) singular words include the plural and vice-versa;
- (f) words expressed in a particular gender include the other genders;
- (g) headings are for convenience only and do not affect the interpretation of these Rules;
- (h) powers, discretions and authorities conferred on the Owners Corporation by these Rules may be exercised at any time and from time to time;
- (i) "Noise" includes music and sound of all kinds, whether made by persons, animals, musical instruments, radios, television sets, tools, equipment, sound-reproducing equipment or in any other way, and whether on a lot in the subdivision, on a carpark, on the common property, or emanating from a vehicle.
- (j) "The Act" means the *Owners Corporation Act 2006 (Vic)*.

1.2 In these Rules, references to "the estate" and to "the subdivision" are used interchangeably and are references to the land comprised in plan of subdivision PS448740J and situate at and known as 94-102 Keys Road, Moorabbin.

2. Consent of Approval of Owners Corporation

2.1 Unless state otherwise if the consent or approval of the Owners Corporation is required under these Rules, it:

- (a) must be in writing; and
- (b) may be given conditionally

2.2 If the Owners Corporation may make a decision, it may do so in the exercise of its absolute discretion.

2.3 In these Rules, the terms "consent" and "approval" are used interchangeably unless stated otherwise.

3. Rules & Laws

- 3.1 These Rules are binding on:
- (a) Members and their employees, servants, agents and invitees;
 - (b) Occupiers and their employees, servants, agents and invitees;
 - (c) The Owners Corporation.
- 3.2 These Rules may be amended from time to time by the Owners Corporation by the passing of a Special Resolution.
- 3.3 Members must, at their own cost and in a timely manner, comply with all Rules and Laws relating to:
- (a) The Member's Lot;
 - (b) The use of the Member's Lot
 - (c) The use of common property services to the building on the Member's Lot.
- 3.4 Members must ensure that:
- (a) Their employees, servants, agents and invitees;
 - (b) Occupiers and users of their Lot;
 - (c) The employees, servants, agents and invitees of occupiers of their Lots, comply with these Rules and all Laws relating to the Lot.
- 3.5 Members are responsible for any breaches or failures to comply with these Rules or any Laws relating to their Lot by:
- (a) Their employees, servants, agents and invitees;
 - (b) Occupiers and users of their Lot;
 - (c) The employees, servants, agents and invitees of occupiers of their Lots.

4. Members must not cause Nuisance

- 4.1 Members must not:
- (a) Use the common property or allow the common property to be used in a way which unreasonably interferes with or prevents its use by other members or occupiers of lots.
 - (b) Use or allow their lots to be used:
 - (i) For an illegal or immoral purpose;
 - (ii) For a purpose which would or might injure the reputation of the development constructed on the subdivision, including all stages; or
 - (iii) For any purpose which causes a nuisance or hazard to the health, safety or security of:

- A. Another member;
 - B. An occupier or user of a lot, or
 - C. A member of the public.
- (c) Make or allow any undue noise to be made in or near the common property or in or near their lots.
- (d) Keep animals on their lots.

5. Use of Vehicles, Car Parking and Management of Common Property

5.1 Members and occupiers must not:

- (a) obstruct driveways or entrances to lots;
- (b) park or leave vehicles on the common property or in any place other than in a parking area specified for the purpose by the Owners Corporation and allocated to the member;
- (c) park in spaces set aside for visitors or incapacitated persons;
- (d) use or allow car parking areas to be used for any purpose other than the parking of vehicles;
- (e) allow any motor vehicle or motor cycle to be repaired or maintained on the common property;
- (f) park or permit the parking of boats and caravans on the common property;
- (g) use the car parking areas or common property for storage of refrigeration units and pallets or for operating mobile workshops;
- (h) exceed the speed restrictions for vehicles being driven on the common property which are imposed by the Owners Corporation.

5.2

- (a) In the event that the Owners Corporation has delegated its functions of managing and administering the common property to the Committee of the Owners Corporation, then the Committee may from time to time issue rules for this purpose.
- (b) Any such rules issued by the Committee shall be notified to members who in turn shall be obliged to notify the occupier of the member's lot of those rules.
- (c) Any breach of such rules issued by the Committee as have been notified as above shall be deemed to be a breach of the Owners Corporation Rules and Clause 18 hereof shall apply to the member or occupier in breach.

6. Use of Machinery

- 6.1 A member, or occupier of a lot, when operating machinery such as forklifts or any other motorised equipment, must at all times comply with all statutory requirements for its appropriate and safe use, and must hold the Owners Corporation indemnified at all times.

7. Maintenance

- 7.1 Members must:
- (a) Make certain that their buildings are kept in a good and serviceable state of repair;
 - (b) Ensure that all external surfaces of their building are regularly cleaned; and
 - (c) Ensure that any rubbish is stored only where it is not visible to the public.

8. Criteria for Occupancy, Permitted Uses and Performance Standards

- 8.1 Members will be required to satisfy a number of general criteria relating to site use, operational characteristics, emissions and appearance.
- 8.2 Noxious or offensive activities or uses are forbidden.
- 8.3 The Owners Corporation may from time-to-time set levels for:
- (a) Fumes, odors, dust, smoke or gases;
 - (b) Glare, vibration, radiation or noise;
 - (c) Solid or liquid waste production; and
 - (d) Anything else which may be an annoyance or nuisance to the occupants of other lots, which the Owners Corporation has not approved.
- 8.4 Members will not allow the erection of signs of any kind or the storage of goods or materials in a way that may detract from the overall appearance and amenity of the estate.
- 8.5 Except with the approval in writing of the Owners Corporation, a member or occupier of a lot must not use or store on the lot or in the common property any flammable chemical, liquid or gas or other flammable material.
- This rule does not apply to:
- (a) Chemicals, liquids, gas or other material used or intended to be used for domestic purposes; or
 - (b) Any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.
- 8.6 A Member or occupier must not cause or allow to be caused any contamination to any part of the land. Where a lot is leased the Lessee undertakes to indemnify the member

of the lot and the Owners Corporation against any costs, loss or damage involved in rectifying any damage which has been caused by the Lessee or any persons employed by the Lessee.

9. Dumpster Bins and Rubbish

9.1 Members must not:

- (a) Leave dumpster bins or other rubbish containers anywhere on the common property except areas of the common property designated for the purpose by the Owners Corporation.
- (b) Burn rubbish or waste anywhere on the estate.

9.2 Members must ensure that:

- (a) All rubbish containers are kept closed at all times other than when rubbish is being placed in, or cleared from them.
- (b) All oil and food wastes are kept in approved waste receptacles.

9.3 Other than in respect of the usual waste and garbage which is collected by the regular Council-operated waste-collection system, Members must make their own arrangements in respect to appropriate waste and garbage disposal measures from their Lots to the satisfaction of the Owners Corporation and must ensure that the disposal of waste or garbage does not adversely affect the health, hygiene or comfort of the occupiers or users of other Lots.

9.4 Members must take all reasonable steps to keep those parts of the common property which are adjacent to their own lots clean and free from rubbish.

10. Signage and Advertising

10.1 Members must not install or allow the installation of signs of any kind, including illuminated signs, on the exteriors of their lots without first obtaining the consent of the Owners Corporation.

10.2 Members must comply with any signage guidelines relating to their respective lots as stipulated by the City of Kingston from time to time

10.3 The consent of the Owners Corporation will not be unreasonably withheld to the installation of non-illuminated signs if they comply with the signage guidelines for the subdivision as stipulated by the City of Kingston from time to time and if the signage does not detract from the architectural design of buildings.

10.4 Members must not install signs inside the windows of the buildings on their lot, which will be visible from the exterior of the building, without first obtaining the consent of the Owners Corporation.

- 10.5 Members must:
- (a) Not erect or permit the erection of “For Sale” or “For Lease” boards (called “boards” in these Rules) relating to their lots, or any other lots in the subdivision, within the precincts of the subdivision without the consent of the Owners Corporation, which consent will not be unreasonably withheld;
 - (b) Instruct their real estate agents to obtain the consent of the Owners Corporation before erecting any boards; and
 - (c) Remove the boards within 7 days of the sale or leasing of their lot.
- 10.6 Members must not:
- (a) Allow advertising banners, signs or logos, loudspeakers or lights relating to their business or other activities to be attached to, erected or placed on the common property; or
 - (b) Use the common property for business or commercial purposes.
- 10.7 The Owners Corporation will impose a strict regime of consistent signs throughout the estate, and will ensure that all occupants adhere to these criteria and these Rules.

11. Structural Alterations

- 11.1 Members must not:
- (a) Carry out structural alterations to the exterior of their lots, or allow them to be carried out; or
 - (b) Attach fixtures, fittings or external lights to the exteriors of their lots; or
 - (c) Paint the exterior of their lots; or
 - (d) Alter any existing improvements on the estate, without first obtaining the consent of the Owners Corporation to:
 - (i) The nature and extent of the proposed works or alterations and finishes to be used; and
 - (ii) The colour and quality of paint proposed to be used.
 - (e) Interfere or tamper with any improvements on the estate or infrastructure installed by the Owners Corporation.

12. Security

- 12.1 Members must advise the Owners Corporation of their private address, email address and telephone numbers when they take possession of their lot, and whenever these details change. Members must ensure that any other occupiers of their lots do the same.
- 12.2 Members must ensure that all doors and windows of their lots are securely fastened whenever the lots are unoccupied.

13. Funds

13.1 The Owners Corporation may:

- (a) Establish a Capital Replacement Fund to which all members of the Owners Corporation shall make an annual contribution that shall be calculated on the Lot Liability of the member's Lot at an amount to be struck by the Owners Corporation Manager. Moneys held in this fund shall be used only for the repair and replacement of capital items that are within the common area within the estate;
- (b) Establish a Maintenance Fund to which all members of the Owners Corporation shall make an annual contribution that shall be calculated on the Lot Liability of the member's Lot at an amount to be struck by the Owners Corporation Manager. Moneys held in this fund shall be used only for the repair and maintenance of items that are within the common area within the estate;
- (c) Establish a Painting Fund to which all members of the Owners Corporation shall make an annual contribution that shall be calculated on the Lot Liability of the member's Lot at an amount to be struck by the Owners Corporation Manager. Moneys held in this fund shall be used only for the repainting of all external surfaces every seven years, or such other period as determined by the Owners Corporation.

13.2 The fees set by the Owners Corporation to cover general administration and maintenance, insurance and other recurrent obligations must be paid either quarterly, half-yearly or annually in advance as determined by the Owners Corporation by each member according to their Lot liability on or before the due date.

13.3 Any special fees or charges levied by the Owners Corporation to cover extraordinary items expenditure must be paid on the due date set by the Owners Corporation upon the levying of each special fee or charge.

13.4 The Owners Corporation may also impose additional reasonable fees on a member for any additional reasonable costs incurred by the Owners Corporation as a result of the breach of these Rules caused by the member, or occupier. These additional fees are to be paid within 28 days of being levied against the member or occupier. The member will be liable to pay these additional fees as a member is responsible and liable for the conduct of its occupier or invitees.

14. Charging of interest and recovery of amounts owing to the Owners Corporation

14.1 The Owners Corporation will charge penalty interest at the rate set from time to time under section 2 of the *Penalty Interest Rates Act 1983* on outstanding fees and accounts and any other amount payable to the Owners Corporations pursuant to these Rules. If any payment of the Owners Corporation fees and charges are not paid within 28 days of the due date as identified on the invoice then interest will be charged from the due date until the amount owing and all interest has been paid in full.

- 14.2 The Owners Corporation may undertake debt recovery action against any member or occupier to recover any amount owed to the Owners Corporation.
- 14.3 The owner of a Lot must take all reasonable action to recover from the occupier of the lot, the cost of damage, false alarms, or other amounts from time to time owed to the Owners Corporation. If the amount is not paid within 7 days, or within the agreed period, the owner will become liable to the Owners Corporation for the amount charged.
- 14.4 The owner of a Lot must pay to the Owners Corporation any monies reasonably incurred in pursuit of debt collection or searching for correct correspondence addresses including Land Titles Searches, administration fees or any other fees reasonably incurred.
- 14.5 Where the Owners Corporation expends money to make good the loss and/or damage caused by a breach of the Act, the Regulations made thereunder or of these Rules, including without limitation administrative and management costs, legal costs and the costs of any services or works incurred as a result of, arising from and/or for the rectification of the breach by the members or occupiers or invitees, servants, employees, agents, children, or licensees of such members, the amount so expended will be a charge on that member's Lot and the Owners Corporation will be entitled to recover the amount as a debt due in an action in VCAT or any Court of competent jurisdiction from the member of the Lot at the time when the breach occurred.
- 14.6 A member will on demand pay all costs including legal costs of the Owners Corporation on an indemnity basis incurred by the Owners Corporation as a result of any breach of any Rules by that member.

15. Insurance premiums

- 15.1 Members must not, without prior written consent of the Owners Corporation, do or permit anything to be done which may invalidate, suspend or increase the premiums for any insurance policy affected by the Owners Corporation.
- 15.2 A member or occupier of a Lot must give written notification to the Owners Corporation if the member or occupier changes the existing use of the Lot in a way that will affect the insurance premium for the Owners Corporation.
- 15.3 Members must, where the Owners Corporation demands, reimburse the Owners Corporation for any difference in insurance premiums resulting from any consent provided by the Owners Corporation pursuant to these Rules.
- 15.4 Members must not breach fire regulations by installing unapproved deadlocks or peepholes that would void any insurance policy effected by the Owners Corporation.

16. Use of Lots

- 16.1 A member or occupier shall not do, nor any of them cause, or suffer or permit to be done any of the following things:

- (a) Use or permit a lot affected by the Owners Corporation to be used for any purpose which may be illegal or injurious to the reputation of the estate or may cause a nuisance or hazard to any other member or occupier of any lot or visitors of any such member or occupier. For the purposes of this rule it includes but is not limited to:
 - (i) Sex Shop;
 - (ii) Brothel;
 - (iii) Filming and/or production of pornographic movies and images;
 - (iv) Car wrecking;
 - (v) Automotive repairs or works;
 - (vi) Panel Beating;
 - (vii) Spray Painting;
 - (viii) Collecting and storage of scrap metal unless the scrap metal is kept within a wholly enclosed building;
 - (ix) Any use which is offensive to the neighbourhood by reason of odour, fumes, dust, smoke or pollution or which would be hazardous by reason of fire or explosion.
- (b) Any act or thing which may be or become an annoyance or nuisance to the Owners Corporation or to any occupier of any other lot; or the doing of any act or thing whereby any policy of insurance on the buildings and other improvements on the lot or any part thereof may become void or voidable or which may increase the premium payable in respect of such insurance.
- (c) Damage, defacing or obstructing of the entrances, passages, stairways, landings, drives or any part of the common property or the use of the same for any purpose other than the purposes for which they are provided or properly available.
- (d) Erect or permit or cause to be erected on the parcel any free standing advertising signs.
- (e) Display any placard advertisement or sign in or upon this lot or in or upon the common property without the consent of the Owners Corporation; or
- (f) Making of any alterations or additions to the exterior of his lot (and/or accessory unit) or any part thereof without the written consent of the Owners Corporation or the painting or decorating otherwise of the same; or
- (g) Store or suffer or permit goods, materials or any other commodities or any water or rubbish to be stored outside any building erected on the parcel.

17. Management and administration

Metering of services and apportionment of costs of services

- 17.1 The Owners Corporation must not seek payment or reimbursement for a cost or charge from a member or occupier that is more than the amount that the supplier would have charged the member or occupier for the same goods or services.
- 17.2 If a supplier has issued an account to the Owners Corporation, the Owners Corporation cannot recover from the member or occupier an amount which includes any amount that is able to be claimed as a concession or rebate by or on behalf of the member or occupier from the relevant supplier.
- 17.3 Subrule 17.2 does not apply if the concession or rebate:
- (a) must be claimed by the member or occupier and the Owners Corporation has given the member or occupier an opportunity to claim it and the member or occupier has not done so by the payment date set by the relevant supplier; or
 - (b) is paid directly to the member or occupier as a refund.

18. Breach of Rules

- 18.1 In the instance that a member or occupier of the Lot has breached or failed to comply with a Rule requiring the member or occupier to do or refrain from doing anything to their Lot, to the Common Property or to Land affected by the Owners Corporation, the Owners Corporation may:
- (a) Take all necessary action to rectify the breach, the cost of which shall be at the Member's expense:
 - (b) Do anything necessary on the Member's Lot, Common Property or Land affected by the Owners Corporation that should have been done by the Member or occupier but which was not done or which in the opinion of the Owners Corporation was not done properly and the cost of which shall be at the Member's expense.
- 18.2 The Owners Corporation must provide the Member with written notice specifying when it will enter the Member's Lot to do the works and the Member must:
- (a) Provide the Owners Corporation with access to the Member's Lot in accordance with the Owners Corporation's written notice at the Member's cost;
 - (b) Pay the Owners Corporation for its costs of doing the works.
- 18.3 The Owners Corporation reserves the right to recover any costs a Member owes it pursuant to these Rules as a debt.
- 18.4 The Member must pay on demand and is liable for all legal costs on an indemnity basis which the Owners Corporation pays, incurs or expends in consequence of the Member's breach or failure to comply with any of these Rules including but not limited to the recovery of Owners Corporation contribution fees.

19. Consent of Owners Corporation

- 19.1 Any consent required from the Owners Corporation which does not require the passing of a special or unanimous resolution pursuant to these Rules or pursuant to law may be given:
- (a) By the Owners Corporation at a committee meeting
 - (b) By any person to whom the Owners Corporation has delegated a power or function, including but not limited to the committee, sub-committee, member of a committee or sub-committee, or the manager;
 - (c) The Owners Corporation may apply conditions to any consent given under these Rules and a member must ensure that all the conditions are complied with including a condition evidenced by a minute of a resolution that a member or occupier for the time being of the lot to which the consent or approval relates is responsible for compliance with the terms of the consent.
 - (d) The Owners Corporation may revoke any consent given under these Rules if the member does not comply with:
 - (i) Any conditions attached to the consent;
 - (ii) The rule pursuant to which the consent was given.

20. Engagement of Owners Corporation Manager

- 20.1 The Owners Corporation shall engage a registered Owners Corporation manager to act as manager of the Owners Corporation.
- 20.2 The manager may perform any of the Owners Corporation's powers or functions except for those that require unanimous or special resolution.
- 20.3 The manager appointed by the Owners Corporation must:
- (a) Comply with all relevant Laws and Regulations; and
 - (b) Report to the committee, where a committee has been elected, on the carrying out of its functions.

21. Committees & Sub-Committees

- 21.1 In the instance that the Owners Corporation wishes to or must elect a Committee to perform all or some of its functions, it must do so in accordance with all relevant laws and regulations.
- 21.2 A Committee as appointed by the Owners Corporation, from time to time, may elect Sub-Committees to assist it in the performance of its functions.
- 21.3 The Committee can delegate any or all of its functions to the Sub-Committees as permitted by law.
- 21.4 Sub-Committees must:

- (a) be comprised of Members
- (b) not act outside of their delegation;
- (c) act honestly and in good faith in the performance of their functions;
- (d) act in accordance with the Committees' instructions; and
- (e) report to the Committee with respect to the performance of their functions.

21.5 Members of Sub-Committees must vote in their capacity as members of the Sub-Committee and not as Members of the Committee.

21.6 The Committee and Sub-Committees must comply with these Rules and all applicable laws.

22. Dispute Resolution

22.1 The grievance procedure set out in this rule applies to disputes involving a member, occupier, the Owners Corporation Manager or the Owners Corporation.

22.2 The party making the complaint must prepare a written statement in the form approved by Consumer Affairs Victoria.

22.3 If there is a grievance committee of the Owners Corporation, it must be notified of the dispute by the complainant.

22.4 If there is no grievance committee, the Owners Corporation must be notified of any dispute by the complainant, regardless of whether the Owners Corporation is an immediate party to the dispute.

22.5 The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the Owners Corporation, within 14 working days after the dispute comes to the attention of all the parties.

22.6 A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting.

22.7 If the dispute is not resolved, the grievance committee or Owners Corporation must notify each party of his or her right to take further action under Part 10 of the Act.

22.8 This process is separate from and does not limit any further action under Part 10 of the Act.