

**THE OWNER'S STRATA PLAN NO. 61139  
REGISTERED BY-LAWS AS AT 1 SEPTEMBER 2015**

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**THE OWNERS' STRATA PLAN NO. 61139**  
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**1. Definitions**

- (a) "Act" means Strata Schemes Management Act 1996 or such other legislation as may be enacted in its place.
- (b) "Building" means the building constructed within the parcel.
- (c) "Government Agency" or "Government Agencies" means a government or any governmental, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- (d) Unless repugnant to the context, terms defined in the Act have the same meaning in these by-laws.

**2. Noise**

An owner or occupier of a lot must not create any noise on the parcel likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of any person lawfully using common property.

**3. Vehicles**

An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the approval in writing of the owner's corporation.

**4. Obstruction of common property**

An owner or occupier of a lot must not obstruct, impede or restrict the lawful use of common property by any person.

**5. Damage to lawns and plants on common property**

An owner or occupier of a lot must not damage or interfere with any lawn, garden, tree, shrub, plant, flower or any landscaped area, whether internal or external of the Building or use for his or her own purposes as a garden any portion of the common property.

**6. Damage to common property**

An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owner's corporation, but this by-law does not prevent an owner or person authorised by the owner from installing any locking or other safety device for protection of the owner's lot against intruders. Any such locking or safety device must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the Building. An approval given under this by-law cannot authorise any additions to the common property.

**7. Behaviour of owners and occupiers**

An owner or occupier of a lot when on common property or when on any part of a lot so as to be visible from another lot, the street or from common property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the

owner or occupier of another lot or to any person lawfully using common property or on the street.

#### **8. Children playing on common property in building**

An owner or occupier of a lot must not permit any child of whom he or she has control to play on any common property within the Building (other than an area designated in a resolution of the owners corporation or the executive committee as a children's play area) or, unless unaccompanied by an adult exercising effective control, to be or to remain on common property comprising a car parking area or other area of possible danger or hazard to children.

#### **9. Depositing rubbish and other material on common property**

An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or any appliance, chattel or other article or thing, except in any receptacle or any area specifically provided therefor.

#### **10. Drying of laundry items**

An owner or occupier of a lot must not hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the Building.

#### **11. Cleaning Windows and doors**

An owner or occupier of a lot must keep clean all glass in windows, doors and balustrading on the boundary of the lot, including so much as is common property and must immediately report any breakage to the owners corporation.

#### **12. Storage of inflammable liquids and other substances**

An owner or occupier of a lot must not use or store on the owner's lot or on the common property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, and must not do, permit or omit to be done any act, matter or thing which may invalidate or suspend any insurance cover effected by the owners corporation or cause the premium to be increased.

#### **13. Moving furniture and other objects on or through common property**

An owner or occupier of a lot must not transport any furniture or large object through or on common property within the Building unless the owner has first given to the executive committee notice of intention to do so sufficient in the circumstances to enable the executive committee to arrange for its nominee to be present at the time when the owner does so. The owner or occupier must observe the directions of such nominee as to the time of and manner in which such transport takes place, the parking of delivery vehicles and the use of lifts.

#### **14. Floor coverings**

An owner or occupier of a lot must ensure that all floor space within the lot (other than that comprising a kitchen, laundry, lavatory, bathroom, balcony or outdoor area) is covered with carpet of adequate thickness and with adequate underlay or is otherwise treated to an extent sufficient to prevent the transmission of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.

## **15. Garbage disposal**

An owner or occupier of any lot must:

- (a) dispose of garbage by draining and securely wrapping same in small parcels and then depositing same in the garbage bins or other receptacles provided for this purpose in the garbage room or other designated garbage collection area; and
- (b) comply with the directions of the owners corporation or its executive committee from time to time relating to the disposal of garbage.

## **16. Appearance of a lot**

An owner or occupier of a lot must ensure that all curtains and blinds installed in any windows or doors to a lot have an off-white appearance when viewed from outside the Building and must not otherwise do any thing or permit any thing to be done which may interfere with the uniform appearance of the Building from the outside.

## **17. Behaviour of invitees**

An owner or occupier of a lot must not entertain invitees on any part of the common property in such a way as to cause a nuisance or inconvenience to any other owner or occupier or so as to unreasonably interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using common property.

## **18. Use as a residence**

An owner or occupier of a lot must not use that lot or permit the same to be used:

- (a) otherwise than as a private residence; or
- (b) for any purpose that may cause a nuisance or hazard or for any illegal or immoral purpose;  
or
- (c) for any other purpose that may endanger the good reputation of the strata scheme.

## **19. Use of elevators etc**

An owner or occupier of a lot must not misuse or permit to be misused any elevator or other equipment or thing whatsoever within the Building and must not obstruct or damage the same or otherwise interfere with or impede its normal operation.

## **20. Alteration to interior**

An owner or occupier of a lot must not effect any alteration or addition to the internal walls or structural features of a lot without the prior approval in writing of the owner's corporation PROVIDED that such approval must not be unreasonably withheld.

## **21. Use of water closets**

An owner or occupier of a lot must not use any water closets or other water apparatus in the Building for any purpose other than for which they were constructed and must not deposit or throw any sweepings, rubbish, rags, napkins or any other article into the same.

## **22. No external aerial or satellite dish etc**

An owner or occupier of a lot must not attach to or hang from the exterior of the Building any radio or television aerial, satellite dish or any receiving or transmitting device, security device or wires therefor.

### **23. No radio interference etc**

An owner or occupier of a lot must not operate or permit to be operated on the parcel any radio, two way radio, short wave radio, transmitter, receiver, telecommunications device or electronic equipment so as to interfere with any domestic appliance or apparatus (including a computer or a radio or television receiver) lawfully in use on the common property or in any other lot.

### **24. Cleaning of lot and pest control**

An owner or occupier of a lot must keep the same in a good state of preservation and cleanliness and must take all necessary steps to control and exterminate therein all vermin, insects or other pests.

### **25. Maintenance of fixtures etc**

Any alteration made to common property or any fixture or fitting attached to common property by any owner or occupier of a lot, whether made or attached with or without the approval of the owners corporation, must, unless otherwise provided by resolution of a general meeting or of a meeting of the executive committee, be repaired and maintained by the owner for the time being of the lot of which the aforesaid owner or occupier was such owner or occupier at the time of such alteration or attachment.

### **26. No interference with air conditioning**

An owner or occupier of a lot must not modify, adjust, add to or otherwise interfere with any existing air conditioning system, ventilator or ducting associated therewith without the approval in writing of the owners corporation as to the type, location and manner of installation thereof, such approval not to be unreasonably withheld. The owner must indemnify and keep indemnified the owner's corporation against any cost or expense arising out of any modification. This by-law does not prevent a owner or occupier from operating the control switches and devices for the air conditioning system located on the control panel accessible from within the lot.

### **27. Appointment of air conditioning contractor**

In addition to the powers, authorities, duties and functions conferred or imposed on the owners corporation by the Act or the by-laws and for the better control, management, administration, use and enjoyment of the Lots and the common property the subject of the strata scheme the owners corporation has the power to appoint a suitably qualified contractor for the purposes of maintaining all of the air conditioning plant and equipment located on the parcel and such contractor (during the period of any agreement between the owners corporation and the contractor), subject to these by-laws, is responsible for the maintenance of all of the air conditioning plant and equipment located on the parcel to the exclusion of any other contractor, tradesman or other person.

### **28. Terms of appointment of air conditioning contractor**

Any agreement entered into between the owners corporation and the contractor referred to in by-law 27 is to contain such terms and conditions as the owners corporation from time to time may determine but may provide for:-

- (a) periodic inspection and servicing of air conditioning plant and equipment (including any component thereof which is situated within, or accessible from, any lot);
- (b) the provision of a 24 hour emergency service to prevent or rectify any malfunction of equipment;
- (c) the designation of rates and charges to be made by the contractor (its employees, servants or agents) to perform the obligations imposed under the agreement.

### **29. Notification of malfunction in air conditioning**

On detecting any malfunction of the air conditioning equipment a owner or occupier of a lot must forthwith notify the owner's corporation or its managing agent, Building Manager or other person nominated by the owners corporation for that purpose of such malfunction.

### **30. Owner's liability for costs**

An owner or occupier of a lot is liable to reimburse the owners corporation for:-

- (a) the cost of materials and labour for repairs carried out to air conditioning plant or equipment located within any lot and any pipes, wires, cables or ducts servicing such lot outside the boundary of such lot of those pipes, wires, cables and ducts with the cooling water isolating valves;
- (b) any costs or damages incurred by the owner's corporation resulting from any act or commission by an owner or occupier or any invitee thereof in breach of the Act or these by-laws; and
- (c) any other costs incurred pursuant to these by-laws.

### **31. No signs or advertisements**

No name, writing, drawing, sign board, plate, placard, signal, advertisement or illumination may be inscribed or exposed on or at any window or other part of the Building and no article may be projected out of any window of a lot or over any balcony of a lot.

### **32. No animals**

An owner or occupier of a lot must not keep any animal on the lot or the common property.

### **33. Methods of heating**

Please see Special By-law 72 "Lot Heating (page 26).

## **SECURITY AND SAFETY**

### **34. Rights of owners corporation to ensure security and safety**

The executive committee of the owners corporation may take all reasonable steps to ensure the security of the parcel and the Building from intruders or to preserve its safety from fire or other hazard and without limiting the generality of the foregoing may:-

- (a) close off any part of the common property not required for ingress or egress to a lot or car parking space on either a temporary or permanent basis or otherwise restrict the access to or use by owners or occupiers of any such part of the common property; and
- (b) permit any designated part of the common property to be used by any security person, firm or company (to the exclusion of owners and occupiers generally) as a means to monitoring the security and general safety of the Building, either solely or in conjunction with any other building.

### **35. Owner's obligations**

An owner or occupier of a lot must not do or omit or suffer to be done or omitted any act, matter or thing which may interfere with or impede the security or fire or safety of the parcel or any part and without limiting the generality of the foregoing an owner or occupier of a lot must ensure that all fire and security doors and windows (including apparatus or appliances attached thereto) are kept locked or secure or in an operational state, as the case may be, when not in immediate use.

### **36. No interference with fire safety equipment**

An owner or occupier of a lot must not use or interfere with any fire hydrant or other fire fighting or fire safety equipment except in the case of an emergency and must not obstruct any fire stairs or fire escape.

### **37. Security keys**

If the executive committee of the owners corporation in the exercise of any of its powers under these by-laws restricts the access of owners or occupiers to any part of the common property by means of any lock or similar security device it may make sure number of keys or operating systems as it determines available to owners who are entitled to access to that part of the common property free of charge and thereafter may at its discretion make additional numbers thereof available to owners on payment of such reasonable charge therefore as may be determined from time to time by the executive committee.

### **38. Owner's obligations with respect to security devices**

An owner of a lot to whom any key, card or other operating system is given pursuant to these by-laws must exercise a high degree of caution and responsibility in making the same available for use by any occupier of a lot and must take reasonable precautions (which must include an appropriate covenant in any lease or licence of a lot to any such occupier) to ensure return thereof to the owner or the body corporate on the occupier ceasing to be an occupier.

### **39. No duplication of keys or other security devices**

An owner or occupier of a lot into whose possession any key, card or other operating system referred to in these by-laws has come must not duplicate same or cause or permit the same to be duplicated and must take all reasonable precautions to ensure that the same is not lost or handed to any person other than another owner or occupier and is not disposed of otherwise than by returning it to the owners corporation.

## **SWIMMING POOLS, SAUNA, GYMNASIUM AND CHANGE ROOMS**

### **40. Restricted use**

Subject to the by-laws, only lot owners or occupiers are entitled to use the Swimming Pool, Sauna, Gymnasium and Change Room and their surrounds.

### **41. Hours of use**

The swimming pool, sauna, gymnasium, change rooms and their surrounds must not be used between the hours of 11:00pm and 5:30am without the prior consent of the owners corporation.

### **42. No dangerous activity**

Persons using the swimming pool and sauna must exercise caution at all times and must not run or splash, jump or behave in any manner that is likely to interfere with the use of the pools by other persons or cause injury to themselves or any other person.

### **43. Invitees and children**

In relation to the use of the swimming pool, sauna, gymnasium, and change rooms, and owner or occupier of a lot must ensure:-

- (a) that invitees and guests do not use the same or any of them unless that owner or another owner or occupier accompanies them at all times;



- (b) that children are not in or around the same or any of them unless accompanied at all times by an adult owner or occupier exercising effective control over them;
- (c) that alcoholic beverages are not taken to or consumed in or around the same; and
- (d) that glass containers or receptacles of any type are not taken to or allowed to remain in or around the same.

#### **44. No interference with operation of pool or sauna or any equipment**

An owner or occupier of a lot must not without proper authority operate, adjust or interfere with the operation of any equipment associated with the swimming pool or sauna or add any chemical or other substance to any water therein. The owner must indemnify and keep indemnified the owners corporation against any cost or expense arising out of any breach of this by-law.

### **INVITEES AND TENANTS**

#### **45. Owner's liability for acts of invitees**

The owner of a lot is liable to compensate the owners corporation in respect of all damage to the common property or personal property vested in it caused by such owner or the occupiers of the lot of their respective tenants or invitees or persons obtaining access by use of a key or operating system supplied to that owner or his tenant or invitee.

#### **46. Owner's responsibility for tenants and licensees**

An owner of a lot which is the subject of a lease or licence agreement must take all reasonable steps, including any action available under any such lease or licence agreement, to ensure that any lessee or licensee or other occupier of the lot and their invitees comply with the provisions of the by-laws and that any breach of these by-laws is a breach of the lease or licence.

#### **47. Owner's responsibility for invitees**

An owner or occupier of a lot must take all reasonable steps to ensure that invitees comply with the provisions of the by-laws and in the event of inability for any reason to ensure such compliance by any invitee such owner or occupier must thereupon ensure that such invitee leaves the parcel.

#### **48. Behaviour of invitees**

An owner or occupier of a lot must take all reasonable steps to ensure that invitees do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using common property.

### **MANAGEMENT**

#### **49. Appointment of building manager**

The owners corporation, in addition to the powers and authorities conferred on it by or under the Act or elsewhere in these by-laws, has the power and authority to provide for the management of the lots and common property and of the Building generally and without limiting the generality of the foregoing may, but is not required to, in addition to the appointment of any Managing Agent, enter into any contractual or other arrangement with any one or more person, firm or company (in these by-laws referred to as "the Building Manager") under which the Building Manager is responsible for attending to all or any of the day to day management and maintenance aspects of the Building and which contractual or other arrangement may, but is not required to, provide the following:-

- (a) a fixed term not exceeding ten (10) years (including any period or periods of any option or options for renewal), with or without any rights for each determination by either the owners corporation or the Building Manager;
- (b) use by the Building Manager (as licensee) to the exclusion of owners and occupiers generally of any designated areas of the common property for a manager's residence, reception, office, storage or other purpose;
- (c) the cleaning, caretaking, security, supervision, and service of the common property and any personal property vested in the owners corporation and for the general repair and maintenance or renewal and replacement thereof;
- (d) the provision of services to owners or occupiers, including but not limited to, the services of a porter, telephonist, handyman, room cleaning and servicing, food and drink service to residential units, reception, laundry and a letting or property management, serviced apartment management and/or sales service;
- (e) the supervision or any employees or contractors of the owners corporation;
- (f) the control and supervision of the common property generally and the enforcement of these by-laws;
- (g) the arbitration of disputes between the owners corporation and the Building Manager; and
- (h) any other matter that may be considered by the owners corporation to be necessary or desirable.

#### **50. No interference with building manager**

An owner or occupier of a lot must not use or obstruct or prevent use by the Building Manager of any area of common property designated pursuant to these by-laws as being for use by the Building Manager as licensee for any purpose.

#### **51. Joint service contracts**

The owners corporation, in addition to the powers and authorities conferred on it by or under the Act and elsewhere in these by laws, has the power and authority to enter into any contractual or other arrangements with the registered owner for the time being of any parcel of land adjoining the parcel the subject of the strata scheme for the purpose of contributing to the cost of providing or maintaining any service or repairing and maintaining any equipment or facility to be used jointly in respect of the two parcels by the body corporate and such adjoining registered owner.

#### **52. Notification of defects**

An owner or occupier of a lot must as soon as practicable after becoming aware of any defect in the common property or any personal property vested in the owners corporation, or of any accident associated therewith, give notice to the Building Manager or managing agent of the owners corporation, or in the absence of both of them, to the owners corporation.

#### **53. Consent of owners corporation**

Any consent or approval given by the owners corporation pursuant to these by-laws must, if practicable, be revocable and may be given subject to conditions, including but not limited to, a condition evidenced by a minute of a resolution that the owner or occupier for the time being of the lot to which the consent or approval relates must be responsible for compliance with the terms of such consent or approval. The owner must indemnify and keep indemnified the owners corporation against any cost or expense arising out of any non-compliance with the terms of such consent or approval.

#### **54. Notice in writing**

All complaints or applications to the owners corporation or its executive committee must be addressed in writing to the owners corporation, the Building Manager or the managing agent of the owners corporation.

#### **55. Service of notice**

An owner whose address for services of notices as recorded on the strata roll is a lot within the strata scheme may be served with any notice or other document required or authorised by the Act of the by-laws to be served by the Commissioner, the Board, the owners corporation, its executive committee or the secretary or treasurer of its executive committee, by depositing any such notice or document in the receptacle provided for the receipt of mail in respect of such lot.

#### **56. Carparking**

An owner or occupier of a lot must not park or stand any motor or other vehicle on the common property (other than areas specifically designated for such use) which has a gross laden weight of 3 tonnes or more without the prior written consent of the owners corporation.

#### **57. Release in respect of use of motor vehicle**

An owner or occupier of a lot and all persons authorised by them must use the lot and the common property at their own risk and hereby release the owners corporation from all claims and demands of whatever kind and all liability which may arise in respect of damage to persons, property or motor vehicles including any theft of or from any motor vehicle while on the common property or theft or any personal property on the lot or the common property, any theft of parts or equipment or contents of any motor vehicle howsoever occurring. An owner or occupier of a lot must not clean, grease, oil, repair or wash motor vehicles in the common property except in a place specifically designated for use for any such purpose.

#### **58. Building rules**

An owner or occupier of a lot and all persons authorised by them must comply with the rules (if any) from time to time promulgated by the owners corporation for the orderly management or security of the common property provided that any such rule does not derogate from any rights hereby granted.

#### **59. Compliance with laws**

An owner or occupier of a lot must comply on time with all laws including the requirements of any Government Agency.

#### **60. Strata management statement**

The owners corporation must comply on time with obligations imposed on it by the strata management statement filed with the strata plan to which it is a party ("the Strata Management Statement").

#### **61. Election of owners corporation representative**

The owners corporation must elect one of its members to be the owners corporation's representative in accordance with the Strata Management Statement.

#### **62. Fire safety**

The owners corporation and the owners and occupiers of any lot must in respect of the parcel and in respect of the lots as appropriate:

- (a) consult with any relevant Government Agency as to the appropriate fire alarm and equipment for the parcel and the lots;
- (b) ensure the provision of all adequate fire protection equipment in the parcel and the lots to the satisfaction of all relevant Government Agencies; and
- (c) take all reasonable steps to ensure compliance with the fire laws in respect of the parcel and the lots.

### 63. Exclusive use rights

The owners for the time being of the Lots set out in Column 1 are jointly entitled to the right of exclusive use and enjoyment of the areas of the common property indicated with the letter set out in Column 2 opposite such lot numbers on the Strata Plan annexed and such owners are jointly responsible for the proper maintenance and upkeep of such part of the common property.

Column 1	Column 2	Column 1	Column 2
2&3	(a)	58&59	(o)
4&5	(b)	60&61	(p)
6&7	(c)	62&63	(q)
8&9	(ab)	69&70	(r)
10&11	(d)	71&72	(s)
12&13	(e)	73&74	(t)
14&15	(f)	75&76	(u)
44&45	(g)	77&78	(v)
46&47	(h)	79&80	(w)
48&49	(j)	81&82	(x)
50&51	(k)	83&84	(y)
52&53	(l)	85&86	(z)
54&55	(m)	87&88	(aa)
56&57	(n)		

### 64. Indemnity in favour of Manly Council in respect of use of overhanging balconies

- (a) In addition to the rights and powers of the owners corporation under the Act or elsewhere, the owners corporation is authorised to and must enter into a deed of release and indemnity with Manly Council in the form or to the effect of the draft deed attached and marked "A".
- (b) Each owner of a lot the balcony of which overhangs Central Avenue or Sydney Road must:
  - (A) comply with clauses 4.1 to 4.6 inclusive of the deed (or any equivalent provisions) so far as they relate to the balcony attached to the owner's lot as if the owner had entered into the deed in place of the owners corporation with the exception that the owner has no liability under this by-law for any structural repairs or maintenance except to the extent caused or contributed by the negligence or wilful act or default of the owner or its occupant; and
  - (B) indemnify the owners corporation from and against all claims, demands, actions, liabilities, losses, damages, costs, charges and expenses of any nature which the owners corporation may suffer, incur or for which the owners corporation may become liable in respect of or arising out of any failure by the owner to comply with the requirements of this by-law.

### 65. Exclusive right to enclose parking spaces

The owner for the time being of lot 121 has the right to enclose the parking spaces forming part of that lot and to install automatic garage doors in those spaces ("Owner's Works") subject to the following conditions:

- (a) the owner must first obtain the consent of Manly Council and any other necessary consent from any other Government Agency to the Owner's Works;
- (b) the owner must carry out the Owner's Works in a proper and workmanlike manner using new materials and in accordance with the requirements of all consents and authorities;
- (c) the owner must indemnify the owners corporation, its agents, employees and contractors and keep the owners corporation, its agents, employees and contractors indemnified against:
  - (A) all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by or brought or made against the owners corporation, its agents, employees or contractors and arising out of or in connection with the Owner's Works except to the extent the same is caused by the negligence or wilful act of the owners corporation, its agents, employees or contractors;
  - (B) without limiting paragraph (c)(A), all costs, damages and expenses arising out of or in connection with any damage to the common property caused by or resulting from the carrying out, installation, repair or removal of the Owner's Works by or on behalf of the owner; and
  - (C) any liability on the part of the owners corporation for any damage to the common property caused by or arising out of the carrying out by the owners corporation by its agents, employees or contractors of any work referred to in paragraph (e) or section 63 of the Strata Schemes Management Act 1996 or the exercise of the power of entry conferred by that section or section 65 of the Act in connection with the Owner's Works;
- (d) the owner must maintain the Owner's Works and keep the Owner's Works in a state of good and serviceable repair and, subject to paragraph (f), must perform maintenance repairs upon or, if necessary as a result of the state of repair or damage and if the owners corporation by written notice reasonably requires him to do so, replace the Owner's Works all in a manner approved or directed by the owners corporation in writing (which must not unreasonably withhold its approval or unreasonably give a direction);
- (e) if the owner fails or neglects to carry out any work or discharge any obligation which he is required to do under this by-law the owners corporation by its agents, servants or contractors may carry out the work or perform the obligation following notice in writing to the owner and may recover the costs of doing the work or discharging the obligation as a debt from the owner;
- (f) the owner may remove the Owner's Works at any time but must repair and make good any damage caused to the common property by such removal and must reinstate to its former condition all such part of the common property as may have been affected by the installation or removal of the Owner's Works; and
- (g) the owner must bear all costs of doing anything which it is required or permitted to do under this by-law.

## **66. Special By-Law – Prohibition on smoking**

*Explanatory Note: Owners and occupiers of lots in the Pacific Waves Building (“PWB”), SP61139, do not agree to be inundated while in their lot (including its balcony) with smoke from a nearby apartment.*

*Further, the Owners Corporation seeks to ban all smoking on the common property of SP61139, including the roof top recreational areas, laundries, hallways, elevators and stairwells.*

### **PART 1: DEFINITIONS & INTERPRETATION**

1.1 In this by-law:

- (a) “Balcony” means balcony as defined in strata plan registration nos. 61139
- (b) “Common Property” means the common property in strata scheme 61139;
- (c) “Lot” means a lot in strata scheme 61139;
- (d) “Smoking” means to smoke, hold or otherwise have control over, an ignited Smoking Product; and
- (e) “Smoking Product” means any tobacco or other product that is intended to be smoked;

In this by-law, a word which denotes:

the singular includes plural and vice versa;

any gender includes the other genders;

any terms in the by-law will have the same meaning as those defined in the Act; and

references to legislation includes references to amending and replacing legislation.

### **PART 2: OBLIGATIONS**

2.1 The owner or occupier of a lot must not, on the Common Property:

be Smoking;

allow another person, including without limitation their invitee or employee, to be Smoking; and/or

encourage another person, including without limitation their invitee or employee, to be Smoking, including without limitation, by providing ashtrays, matches, lighters or any other thing that could facilitate Smoking.

2.2 The owner or occupier of a lot must ensure that smoke caused by Smoking within a Lot including Smoking while on the Balcony of a Lot does not enter or drift into or penetrate the Common Property or another Lot.

## **67. Special By-Law – Fire Alarm**

### **PART 1: DEFINITIONS & INTERPRETATION**

1.1 In this by-law:

- (a) ‘Building Manager’ means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.

- (b) 'Common Property' means the common property in strata scheme 61139.
- (c) 'Executive Committee' means the Executive Committee of the Owners Corporation or its nominee the Building Manager or Strata Manager
- (d) 'Fire Alarm' means a back to base fire alarm system installed on the Common Property and in each Lot.
- (e) 'Fire Alarm Costs' means:
  - (i) the charge imposed from time to time by Fire and Rescue NSW pursuant to the *Fire Brigades Act 1989*, the *Fire Brigades Regulation 2008* in responding to activation of any Fire Alarm; and
  - (ii) any additional administrative fee associated with the charges referred to in clause 1.1(e)(i).
- (f) 'Fire and Rescue NSW' means the department of government established by the Fire Brigades Act 1989 or any other authority, company or individual which replaces or performs that same function.
- (g) 'Lot' means a lot in strata scheme 61139.
- (h) 'Owner or Occupier' means the owner or occupier of a Lot from time to time.
- (i) 'Owners Corporation' means the Owners Corporation created by the registration of strata plans registration no. 61139.
- (j) 'Strata Manager' means the person or entity appointed under the Strata Schemes Management Act 1996 to manage the business and maintain the records of the Owners Corporation.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the *Strata Schemes Management Act 1996*;
- (d) references to legislation includes references to amending and replacing legislation; and
- (e) references to a government body which is not bound by this by-law which ceases to exist or whose power or function is transferred to another government body, is a reference to the government body which replaces or substantially succeeds to the power or the function of the first government body.

## **PART 2: CONDITIONS AND OBLIGATIONS**

- 2.1 An Owner or Occupier must not, by wilful or negligent act or omission, do or permit anything to be done to cause any Fire Alarm to be activated where such activation of the Fire Alarm could have been prevented by the Owner or Occupier.
- 2.2 The Owners Corporation is entitled to recover from an Owner or Occupier the Fire Alarm Costs as a consequence of activating any Fire Alarm.
- 2.3 Liability for Fire Alarm Costs will be determined at the absolute discretion of the Executive Committee based on fair and equitable principals.

2.4 The Owners Corporation may:

- (a) demand payment from an Owner or Occupier for any money outstanding under this by-law and recover this amount from the Owner or Occupier as a debt; and
- (b) include reference to the debt on notices under section 109 of the Strata Schemes Management Act 1996.

*Explanatory Note: This by-law makes the costs to the Owners Corporation of fire services call outs as a result of activating the Fire Alarm recoverable from a lot owner or an occupier of a lot.*

*From 1 July 2013 the false alarm fine charged by NSW Fire and Rescue is \$1,250 per alarm.*

## **68. Special by-Law – Lot Owners Works**

### **PART 1: DEFINITIONS & INTERPRETATION**

1.1 In this by-law:

- (a) 'Authority' means any government, semi government, statutory, public or other authority having any jurisdiction over the Lot.
- (b) 'Building Manager' means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.
- (c) 'Executive Committee' means the executive committee of the Owners Corporation or it's nominee being the Building Manager or the Strata Manager.
- (d) 'Insurance' means:
  - (i) contractors all risk insurance in the minimum sum of \$10,000,000 or such other amount as nominated by the Executive Committee and if permissible by the insurer noting the Owners Corporation as a joint insured or an interested party;
  - (ii) insurance required under the Home Building Act 1989 and if permissible by the insurer noting the Owners Corporation as a joint insured or an interested party;
  - (iii) workers compensation insurance, if required; and
  - (iv) other insurances that may be required at law.
- (e) 'Owner' means the owner of a lot in strata scheme 61139.
- (f) 'Owners Corporation' means the Owners Corporation created by the registration of strata plan registration no. 61139.
- (g) 'Reasonable notice' for inspection of Works in the 21 days following notification of completion, is 2 hours prior notice, or as otherwise determined by the Executive Committee
- (h) 'Required Documents' means:
  - 1. existing plans and drawings;
  - 2. proposed plans and drawings;
  - 3. if the plans and drawing do not adequately describe the works a detailed description of the works in terms satisfactory to the Executive Committee;



4. details of the current and proposed flooring system, and if the Owner is proposing to change the flooring system a report from an acoustic engineer nominated by the Executive Committee about the proposed flooring system which provides that it complies with the scheme's by-laws; and
  5. any other document reasonably required by the Executive Committee.
- (i) 'Strata Manager' means the person or entity appointed under the Strata Schemes Management Act 1996 to manage the business and maintain the records of the Owners Corporation.
  - (j) 'Works' means the additions and alterations undertaken by an Owner to their lot and to the common property as specified in the Required Documents, except for the installation of smoke alarms and works permitted under by-law 16.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the Strata Schemes Management Act 1996; and
- (d) references to legislation includes references to amending and replacing legislation.

## **PART 2: GRANT OF RIGHT**

2.1 The Owner must not install or carry out Works except in accordance with Part 3 of this by-law.

## **PART 3: CONDITIONS**

### **Part 3.1: Before Commencement**

3.1 Before commencement of the Works the Owner must:

- (a) provide the Required Documents to the Executive Committee not less than 28 days before the commencement of the Works;
- (b) obtain approval for the Works from the Executive Committee which may be in the form of a by-law under section 52 or 65A of the Act granted to an Owner;
- (c) obtain all necessary approvals from any Authorities and provide a copy to the Executive Committee at the time of seeking approval under clause 3.1(b) above;
- (d) effect and maintain Insurance as required under this by-law and provide a copy to the Executive Committee;
- (e) comply with all reasonable directions of the Executive Committee as to how the Works are to be undertaken including but not limited to the sequence of tradespeople, the movement of materials to and from the lot, the requirement to safeguard common property from damage by erecting structures to minimise damage and hours and days of operation; and
- (f) provide access to the lot upon the reasonable request of the Executive Committee for the purpose of inspection during and following the period of the Works.

### **Part 3.2: During Construction**

3.2 Whilst the Works are in progress the Owner must:

- (a) use duly licensed employees, contractors or agents to conduct the Works and supply their contact details, license and any other information reasonably required to the Executive Committee before each of them commences their work;
- (b) ensure the Works are conducted in a proper and workmanlike manner and comply with the current Australian Building Codes and Standards;
- (c) use reasonable endeavors to cause as little disruption as possible;
- (d) perform the Works during times reasonably approved by the Executive Committee noting that Works will not be approved to be carried out in the months of December or January of any year, on weekends or public holidays;
- (e) perform the Works within a period as reasonably approved by the Executive Committee;
- (f) use reasonable endeavors to ensure that any Works which are likely to interfere with the peaceful enjoyment of the Owner or Occupier of another Lot are performed between the hours of 10.00 am to 4.00 pm Monday to Friday excluding public holidays;
- (g) transport all construction materials, equipment and debris in the manner reasonably directed by the Owners Corporation or the Executive Committee;
- (h) protect all affected areas of the building outside the lot from damage relating to the Works or the transportation of construction materials, equipment and debris;
- (i) ensure that the Works do not interfere with or damage the common property or the property of any other lot owner other than as approved in this by-law and if this happens the Owner must rectify that interference or damage within a reasonable period of time as advised by the Executive Committee, failing which the Owners Corporation can do such rectification works and recover the cost of those works as a debt of the Owner;
- (j) not vary the Works without first obtaining the consent in writing from the Owners Corporation;
- (k) upon the reasonable request of the Building Manager, Executive Committee or the Executive Committee's nominee, allow access to the lot for the purpose of inspecting the Works; and
- (l) reimburse the Owners Corporation's reasonable costs incurred in cleaning-up any debris, rubbish, building materials, or other objects resting on or over common property areas during construction within 21 days of receiving an invoice from the Owners Corporation , failing which the Owners Corporation can recover the costs of these works as a debt of the Owner.

### **Part 3.3: After Construction**

3.3 Within 21 days after the Works have been completed the Owner must:

- (a) notify the Executive Committee that the Works have been completed;
- (b) continue to permit the Executive Committee access to the lot, upon reasonable notice for the purpose of inspecting the Works;
- (c) notify the Executive Committee that all damage, if any, to lot and common property caused by the Works and not permitted by this by-law have been rectified;

- (d) provide the Executive Committee with a copy of any certificate or certification required by an Authority to certify the Works; and
- (e) within 21 days of receiving an invoice from the Owners Corporation, reimburse the Owners Corporation's reasonable costs incurred in cleaning-up any debris, rubbish, building materials, or other objects resting on or over common property areas after construction failing which the Owners Corporation can recover the costs of these works as a debt of the Owner.

### **Part 3.4: Enduring Rights and Obligations**

#### 3.4 The Owner:

- (a) must maintain and upkeep the Works to the extent that the Works or parts of the Works do not form common property;
- (b) remains liable for any damage to lot or common property arising out of the Works;
- (c) must make good any damage to lot or common property arising out of the Works; and
- (d) must indemnify the Owners Corporation against any costs or losses arising out of the Works to the extent permitted by law.

*Explanatory Note: This by-law is intended to regulate the manner in which lot owners will go about renovating their apartment in the best interests of the Owner, other Owners and the Owner's Corporation.*

*Clause 3.1(d) The requirement to obtain and provide insurance is the Owners. An Owner may submit appropriate contractors insurance to the Executive Committee but any shortfall or inadequacies in the contractors insurance or any further insurance required pursuant to this by-law must be obtained by the Owner.*

*Clause 3.3(b) "Reasonable notice" for inspection of Works in the 21 days following notification of completion, is 2 hours prior notice.*

## **69. Special by-law – Goods left on common property and activities on common property**

### **PART 1: DEFINITIONS & INTERPRETATION**

#### 1.1 In this by-law:

- (a) 'Administration Fee' means the reasonable charges incurred by the Owners Corporation in moving Goods left on common property.
- (b) 'Building Manager' means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.
- (c) 'Cleaning Fee' means the reasonable charges incurred by the Owners Corporation in cleaning the Common Property areas.
- (d) 'Common Property' means the common property in strata plans 61139.
- (e) 'Disposal Costs' means the reasonable costs incurred by the Owners Corporation in disposing or dealing with Goods left on Common Property.
- (f) 'Executive Committee' means the executive committee of the Owners Corporation or its nominee being the Building Manager or the Strata Manager.

- (g) 'Goods' mean any item of personal property owned by or in possession of an Occupier or Owner.
- (h) 'Lot' means a lot in strata scheme 61139.
- (i) 'Owners Corporation' means the Owners Corporation created by the registration of strata plans registration no. 61139
- (j) 'Owner or Occupier' means the owner or occupier of a Lot from time to time.
- (k) 'Strata Manager' means the person or entity appointed under the *Strata Schemes Management Act 1996* to manage the business and maintain the records of the Owners Corporation.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the *Strata Schemes Management Act 1996*; and
- (d) references to legislation includes references to amending and replacing legislation.

## **PART 2: RIGHTS AND OBLIGATIONS REGARDING GOODS LEFT ON COMMON PROPERTY**

2.1 An Owner or Occupier must not leave Goods unattended on the Common Property of the Owners Corporation within the scheme, without the written consent of the Executive Committee.

2.2 If an Owner or Occupier leaves Goods on the Common Property which breaches the law, workplace health and safety requirements, fire safety requirements or this by-law, they consent to the Building Manager moving those Goods to another place on the Common Property or if Goods are unable to be reasonably relocated, they consent to the disposal of the goods at the discretion of the Executive Committee and the Owner or Occupier agrees to pay the Administration Fee within seven (7) days of a request for payment.

2.3 If an Owner or Occupier does not claim the Goods within 21 days from the date that the Goods were moved, the Owners Corporation may:

- (a) hand over the Goods to the police as lost property, if the Executive Committee considers this necessary; or
- (b) otherwise dispose of or deal with the Goods at the Executive Committee's discretion.

2.4 If the Building Manager moves Goods left on Common Property, the Building Manager will use reasonable endeavors to:

- (a) locate the owner of the Goods;
- (b) notify the owner of the Goods that the Goods have been moved; and
- (c) notify the owner of the Goods that if left unclaimed, the Goods will be disposed of,
- (d) where any such reasonable endeavors to locate and notify the owner of the Goods may be made by placing a notice on the scheme's notice board.

### **PART 3: CONDITIONS**

3.1 The Owners Corporation is entitled to recover from an Owner or Occupier the Administration Fee, Cleaning Fee and Disposal Costs paid by the Owners Corporation.

3.2 The Owners Corporation may:

- (a) demand payment from an Owner or Occupier for any money outstanding under this by-law and recover this amount from the Owner or Occupier as a debt; and
- (b) include reference to the debt on notices under section 109 of the Strata Schemes Management Act 1996.

### **PART 4: PROHIBITED ACTIVITIES ON COMMON PROPERTY**

4.1 An Owner or Occupier must use reasonable endeavors to avoid any water, sand, dirt, grit particles or the like coming onto the Common Property.

4.2 If an Owner or Occupier brings water, sand, dirt, grit particles or the like onto the Common Property they agree to reimburse the Owners Corporation the Cleaning Fee to remove the water, sand, dirt, grit particles or the like.

4.3 An Owner or Occupier must not transport any furniture or large object through or on the Common Property unless sufficient notice has first been given to the Executive Committee so as to enable the Executive Committee to arrange to be present at the time when the Owner or Occupier does so.

4.4 An Owner or Occupier must follow the reasonable directions of the Executive Committee in relation to any approval to move items through the Common Property in accordance with clause 4.3 of this by-law including but not limited to the use of lift blankets and restrictions of the hours of the day or days of the week for the movement of any furniture or large object.

*Explanatory Note: This by-law allows the Owners Corporation to deal with goods left on all areas of common property and to deal with any unclaimed goods left on common property whether by handing over to an authority or by disposal.*

*This by-law also provides for the Owners Corporation to recover any costs of dealing with goods left on common property.*

*Clause 4.4 allows the Owners Corporation to regulate the movement of large objects through common property.*

### **70. Special By-law —Hard Floors Residential Lots**

*Explanatory Note: this By-Law is being proposed to control the installation of non carpeted flooring within a residential lot. This By-Law is in addition to By-Law 25 which deals with the transference of noise from floors within a lot other than wet areas. The By-Law imposes responsibilities upon owners to ensure appropriate underlays are used when installing non carpeted flooring to minimise the transference of noise.*

### **PART 1: DEFINITIONS & INTERPRETATION**

1.1 In this by-law:

- (a) 'Commencement Date' means
- (b) 'Non-Carpet Floor Covering' means a floor covering on the floor boundary of a residential lot (other than a kitchen, laundry, lavatory or bathroom) and other than carpet, including, but not limited to, timber, parquetry, tiles, cork and marble on levels of Strata Plan 61139

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(c) 'Owners Corporation' means The Owners—Strata Plan No 61139

(d) 'Owner' means the owner of a residential lot from time to time in the Owners Corporation.

1.2 Where any term used in this by-law is defined in the Strata Schemes Management Act 1996, it has the same meaning as in that Act.

1.3 Include and including and similar expressions are not words of limitation.

1.4 The singular includes the plural and vice versa.

## **PART 2: APPLICATION OF BY-LAW**

This by-law applies to all Non-Carpet Floor Coverings, whether installed or laid before or after the Commencement Date.

## **PART 3: PROHIBITION**

3.1 After the Commencement Date, an Owner must not install or lay a Non-Carpet Floor Covering in the Owner's lot unless the Owner complies with the conditions specified in paragraph 5.

3.2 An Owner must not retain a Non-Carpet Floor Covering in the Owner's lot that was installed or laid before the Commencement Date unless the Owner complies with the conditions specified in paragraph 6.

## **PART 4: RIGHTS**

Subject to the conditions in paragraphs 5 and 6, Owners are granted a special privilege to lay and maintain Non-Carpet Floor Coverings on the floor boundaries of their lots.

## **PART 5: CONDITIONS FOR NEW NON-CARPET FLOOR COVERINGS**

After the Commencement Date, an Owner may install or lay a Non-Carpet Floor Covering in that Owner's lot on condition that the Owner:

5.1 obtains the written permission of the Executive Committee before any work is carried out in connection with the Non-Carpet Floor Covering;

5.2 pays a bond of an amount to be determined by the Executive Committee from time to time and agrees that all interest accruing on the bond is to the benefit of the Owner's Corporation;

### **Works**

5.3 when carrying out work in connection with the Non-Carpet Flooring Covering:

5.3.1 protects all areas of the common property from damage;

5.3.2 does not disturb the peaceful enjoyment of the owner or occupier of another lot;

5.3.3 promptly removes all debris resulting from work;

### **Noise**

5.4 ensures that the weighted standardised impact sound pressure level ( $L'_{nT,w}$ ) of the floor after the Non-Carpet Flooring Covering has been installed is 40 or less when carried out and calculated according to the requirements of AS/NZS ISO 140.7:2006 *Acoustics—Measurement of sound insulation in buildings and of building elements. Field measurements of impact sound insulation of floors and AS ISO 717.2—2004 Acoustics—Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation*;

5.5 provides to the Executive Committee at the Owner's expense within 14 days after the Non-Carpet Flooring Covering has been installed and access has been granted for the purposes of testing by the owner of the lot or lots adjoining both horizontally and vertically, a certified test report by a qualified acoustic engineer showing that the measured  $L'_{nT,w}$  when carried out and calculated according to the requirements of AS/NZS ISO 140.7:2006 (which requires noise transmission readings to be taken in the lot below) and AS ISO 717.2–2004 is 40 or less;

#### **Maintenance**

5.6 properly maintains and keeps the Non-Carpet Floor Covering in a state of good and serviceable repair and replaces it as required from time to time;

#### **Cost**

5.7 pays all costs of the installation, the maintenance of and the repair of the Non-Carpet Floor Covering; and

5.8 effects and continues to keep insurance cover for the Non Carpet Floor Covering.

### **PART 6: CONDITIONS FOR EXISTING NON-CARPET FLOOR COVERINGS**

6.1 An Owner may retain a Non-Carpet Floor Covering in that Owner's lot that was installed before the Commencement Date on condition that the Owner:

6.1.1 has fully complied with the requirements of this Special By-Law or

6.1.2 had installed the Non-Carpet Floor Covering before the Commencement Date and had previously obtained the permission of the Owners Corporation to install the Non-Carpet Floor Covering and had complied with all conditions specified in that approval; or

6.1.3 notifies the Executive Committee in writing that a Non-Carpet Floor Covering has been installed in the Owner's lot; and within 28 days after a receiving written notice from the Executive Committee requiring the Owner to do so, provides at the Owners expense a certified test report by a qualified engineer showing that the measured  $L'_{nT,w}$  when carried out and calculated according to the requirements of AS/NZS ISO 140.7:2006 and AS ISO 717.2–2004 is 40 or less;

#### **Maintenance**

6.2 properly maintains and keeps the Non-Carpet Floor Covering in a state of good and serviceable repair and replaces it as required from time to time.

#### **Cost**

6.3 pays all costs of the installation of, maintenance of and repair of the Non-Carpet Floor Covering.

6.4 effects and continues to keep insurance cover for the Non Carpet Floor Covering.

### **PART 7: NOTIFICATION AND APPROVAL PROCEDURE**

7.1 After receiving a request under paragraph 5.1 or a notification under paragraph in relation to a Lot, the Executive Committee must notify the owners of all adjoining lots (both horizontally and vertically) that it has received such a request or notification.

7.2 The Executive Committee must not grant an Owner permission to install or lay a Non-Carpet Floor Covering until at least 14 days after notifying the owners of adjoining lots in accordance with paragraph 7.1.

## PART 8: REFUND OF BOND

8.1 After an Owner has provided a report in accordance with paragraph 5.5 and the Owner has notified the Executive Committee that the work has been completed, the Executive Committee must refund the bond, less any costs the Owners Corporation has incurred as a result of non-compliance by the Owner with the conditions of this by-law.

8.2 If an Owner does not provide a report in accordance with paragraph 5.5 the Executive Committee may arrange for independent testing of the floor and any rectification required to be paid for out of the bond. The Executive Committee must refund the bond, less any costs it has incurred as a result of non-compliance by the Owner with the conditions of this by-law.

## PART 9: REMEDY

9.1 If an Owner fails to comply with any obligation of this by-law, then in addition to its rights under paragraph 8 of this by-law, the Owners Corporation may:

9.1.1 enter any part of the building or buildings to carry out the necessary work to perform that Owner's obligation; and

9.1.2 recover the costs of carrying out that work from the Owner as a debt, due and payable at the Owners Corporation's direction and as a contribution according to section 80(1) of the Strata Schemes Management Act 1996 and which, if unpaid within 1 month of being due, will bear interest at the rate of 10 percent per annum until paid or if the regulations provide for another rate, that other rate and the interest will form part of that debt.

### 71. Special By-law — Use of pool courtyard

*Explanatory Note: The common property pool courtyard recreational area is popular with lot owners and occupiers in the Pacific Waves Building (PWB)), SP61139. In the past lot owners and occupiers have invited onto this part of the common property large numbers of guests such that nearby lot owners and occupiers were disturbed by the noise and/or other lot owners and occupiers were excluded from using the pool courtyard area at the same time.*

*Further, PWB is a secure building that does not therefore readily facilitate the ingress and egress from the PWB of large groups of visitors. Lot owners and occupiers are therefore limited to 6 guests or visitors each at any one time.*

## PART 1: DEFINITIONS & INTERPRETATION

1.1 In this by-law:

- (a) 'Authority' means any government, semi government, statutory, public or other authority having any jurisdiction over the Lot.
- (b) 'Building Manager' means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.
- (c) 'Executive Committee' means the executive committee of the Owners Corporation or its nominee being the Building Manager or the Strata Manager.
- (d) 'Lot' means a lot in strata plan 61139.
- (e) 'Owner or Occupier' means the owner or the occupier of a Lot from time to time.



- (f) 'Owners Corporation' means the owners corporation created by the registration of strata plans registration no. 61139
- (g) 'Pool Court Yard' means the common property on the eastern side of the PWB, level 2, strata plan no. 61139 including the pool, gym and recreational areas.
- (h) 'Strata Manager' means the person or entity appointed under the Strata Schemes Management Act 1996 to manage the business and maintain the records of the Owners Corporation.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the Strata Schemes Management Act 1996; and
- (d) references to legislation includes references to amending and replacing legislation.

## **PART 2: RIGHTS AND OBLIGATIONS REGARDING USE OF THE POOL COURTYARD**

2.1 The Owner or Occupier must:

- (a) only use the Pool Courtyard during the hours reasonably determined by the Executive Committee from time to time. Use of the Pool Courtyard may be restricted by the Executive Committee for example between the hours of 10pm and 5am.
- (b) remove any rubbish, debris, waste or the like following use of the pool courtyard to ensure that the Pool Courtyard is left in a clean and orderly state;
- (c) not have more than 6 people in addition to the Owner or Occupier on the pool courtyard at any one time;
- (d) not create any noise on the pool courtyard likely to interfere with the peaceful enjoyment of each Owner or Occupier of another lot or of any person lawfully using common property;
- (e) take all reasonable steps to ensure that invitees of the Owner or Occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the Owner or Occupier of another lot or any person while using the pool courtyard;
- (f) immediately report to the Executive Committee any damage or other maintenance issues in relation to the Pool Courtyard;
- (g) not restrict any other Owner or Occupier having access to the pool courtyard; and
- (h) be present on the Pool Courtyard with up to 6 people referred to in clause 2.1(c) above.

2.2 Notwithstanding clause 2.1(c) of this by-law, nothing in this by-law restricts or limits access to and use of the Pool Courtyard by any other Owner or Occupier.

## 72. Special By-law – Lot Heating

### PART 1: DEFINITIONS AND INTERPRETATION

1.1 In this by-law:

- (a) 'Building Manager' means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.
- (b) 'Common Property' means the common property in strata scheme 61139.
- (c) 'Common Property gas services' means gas outlet systems on the common property in strata scheme 61139.
- (d) 'Executive Committee' means the Executive Committee of the Owners Corporation or its nominee the Building Manager or Strata Manager.
- (e) 'Gas Outlet' means a gas outlet system installed within the boundary of any Lot.
- (f) 'Gas Usage Costs' means:
  - (i) the cost incurred by the Owners Corporation to supply gas to any Lot.
  - (ii) any additional Administration Fee associated with the charges referred to in clause 1.1(f)(i).
- (g) 'Lot' means a lot in strata plan 61139.
- (h) 'Owner or Occupier' means the owner or occupier of a Lot from time to time.
- (i) 'Owners Corporation' means the Owners Corporation created by the registration of strata plans registration no. 61139.
- (j) 'Strata Manager' means the person or entity appointed under the Strata Schemes Management Act 1996 to manage the business and maintain the records of the Owners Corporation.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the Strata Schemes Management Act 1996;
- (d) references to legislation includes references to amending and replacing legislation; and
- (e) references to a government body which is not bound by this by-law which ceases to exist or whose power or function is transferred to another government body, is a reference to the government body which replaces or substantially succeeds to the power or the function of the first government body.

### PART 2: CONDITIONS AND OBLIGATIONS

2.1 An Owner or Occupier must not, by wilful or negligent act or omission, do or permit anything to be done to cause any Gas Outlet inside a Lot to be used for any purpose other than cooking.

- 2.2 The Owners Corporation is entitled to recover from any Owner or Occupier any costs as a consequence of any breach of the terms of this by-law.
- 2.3 Liability for costs will be determined at the absolute discretion of the Executive Committee based on fair and equitable principles.
- 2.4 An Owner or Occupier who contravenes the terms of this by-law otherwise indemnifies the Owners Corporation for any resulting loss.
- 2.5 The Owners Corporation may:
- (a) demand payment from an Owner or Occupier for costs under this by-law including any enforcement costs and interest and recover this amount from the Owner or Occupier as a debt; and
  - (b) include reference to the debt on notices under section 109 of the Strata Schemes Management Act 1996.
- 2.6 An Owner or Occupier must not use any method of heating other than through use of electric power.
- 2.7 An Owner or Occupier must not tamper or attempt to interfere with common property gas services.
- 2.8 By-Law 33 is hereby revoked, on registration of this by-law.

*Explanatory Note: This by-law makes the costs to the Owners Corporation of common property gas utility charges as a result of inappropriate use of same recoverable from a lot owner or an occupier of a lot.*

### **73. Special By-law –Use of Car Parking Spaces**

*Explanatory Note: The car parking spaces in the Strata Plan have become untidy and detracting from the overall appearance of that part of common property. It is deemed desirable to maintain the car parking spaces for vehicle use in addition to storage of other materials in an orderly and tidy manner at all times.*

- 1.1 In this by-law:
- (a) 'Building Manager' means a person or corporation appointed by the Owners Corporation as either a caretaker or onsite manager or some other person appointed for the purpose by the Owners Corporation.
  - (b) 'Executive Committee' means the Executive Committee of the Owners Corporation or its nominee being the Building Manager or Strata Manager.
  - (c) 'Lot' means a lot in strata plan 61139.
  - (d) 'Owner or Occupier' means the owner or occupier of a Lot from time to time.
  - (e) 'Owners Corporation' means the Owners Corporation created by the registration of strata plans registration no. 61139.
  - (f) 'Car Parking Spaces' means the parking spaces forming part of a Lot.
  - (g) 'Strata Manager' means the person or entity appointed under the Strata Schemes Management Act 1996 to manage the business and maintain the records of the Owners Corporation.

1.2 In this by-law a word which denotes:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the Strata Schemes Management Act 1996; and
- (d) references to legislation includes references to amending and replacing legislation.

## **PART 2: RIGHTS AND OBLIGATIONS REGARDING USE OF THE CAR PARKING SPACES**

2.1 The Owner or Occupier must:

- (a) only use the car parking spaces to park, stand a motor or other vehicle and for approved storage;
- (b) remove any rubbish, debris, waste or the like and to ensure that the car parking spaces are left in a clean and orderly state;
- (c) keep all personal property of whatever kind inside storage containers, to be approved by the Owners Corporation;
- (d) present to the Owners Corporation a satisfactory description of any proposed storage containers;
- (e) maintain any storage containers in a proper condition at all times;
- (f) replace any storage containers upon reasonable request by the Owners Corporation;
- (g) take all reasonable steps to ensure that invitees of the Owner or Occupier comply with this by-law;
- (h) immediately report to the Executive Committee any damage or other maintenance issues in relation to the car parking spaces;
- (i) allow reasonable access to the car parking spaces by the Owners Corporation and its agents to reasonably ensure compliance with this by-law.

### **74. Special By-law No. 74 - Right of Owners Corporation to Ensure Security and Safety (including Personal Health)**

1. For the purposes of this by-law:

- 1.1 "Act" means the *Strata Schemes Management Act 1996* as amended from time to time;
- 1.2 "Building" means the building and improvements on the land located at 9-15 Central Avenue, Manly NSW 2095;
- 1.3 "Common Property" means the common property in the Strata Plan;
- 1.4 "Costs" means all professional and trade costs/fees/disbursements/expenses associated with any damage to property or injury to person sustained as a result of a breach of this by-law and includes Enforcement Costs;

- 1.5 “Enforcement Costs” means the costs associated with the investigation of a breach of, and enforcement of this by-law, including but not limited to the costs to the Owners Corporation in engaging professional services, including legal services;
- 1.6 “Executive Committee” means the executive committee appointed by the Owners Corporation from time to time;
- 1.7 “Indemnify” means the Owner indemnifying the Owners Corporation in respect of their breach, or their Occupiers’ breach, of this by-law, which includes but is not limited to the following:
  - 1.7.1 all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by, brought or made against the Owners Corporation;
  - 1.7.2 any sum payable by way of increased premiums; and
  - 1.7.3 any costs or damages for which the Owners Corporation is or becomes liable;
- 1.8 “Lots” means a lot in the Strata Plan;
- 1.9 “Occupiers” means the legal occupiers of the Lots from time to time;
- 1.10 “Owners” means the registered proprietors of the Lots from time to time;
- 1.11 “Owners Corporation” means the owners corporation known as The Owners- Strata Plan No. 61139;
- 1.12 “Security Keys” means a key, magnetic card or other device or information used on the Common Property to:
  - 1.12.1 open and close the security gates, doors, gates or locks; or
  - 1.12.2 operate alarms, security systems or communication systems.
- 1.13 “Strata Plan” means Strata Plan No. 61139;
2. Where any terms in this by-law are not defined, they will have the same meaning those words are attributed under the Act.
3. If this by-law empowers the Owners Corporation to take action, it may or may not take such action in its reasonable discretion.
4. The Owners Corporation, via the Executive Committee, may take all reasonable steps to:
  - 4.1 prevent intruders coming into the Building;
  - 4.2 ensure the security of the Building; and
  - 4.3 prevent fires, property damage and other hazards in the Building.
5. The Owners Corporation may do the following in the exercise its functions under the Act and under this by-law:
  - 5.1 install and operate on the Common Property security cameras and other audio visual surveillance equipment;
  - 5.2 make agreements with third parties about the installation and operation of surveillance equipment;

- 5.3 from time to time close off and/or restrict access to and/or restrict the use of the Common Property or parts of the Common Property that are not required for ingress or egress to a Lot or car parking space;
  - 5.4 from time to time close off and/or restrict access to and/or restrict the use of any facilities on the Common Property; and
  - 5.5 engage and permit security personnel to use part of the Common Property as a means of monitoring the security and safety of the Building.
6. Owners and Occupiers must:
    - 6.1 not interfere with any security cameras, surveillance equipment and/or the performance of duties by the Owners Corporation's security personnel;
    - 6.2 not do anything that may compromise the security and/or safety of the Building and other Owners and Occupiers; and
    - 6.3 take reasonable care to ensure that fire and security doors are closed or locked when they are not being used.
  7. If the Executive Committee reasonably believes that a fire, safety or security hazard is created as a result of the actions or inactions of an Owner or Occupier, the Owners Corporation, via the Executive Committee or Strata Manager, may:
    - 7.1 exercise its legislative right to enforce this by-law, which may result in the issuing of a penalty order against the Owner and/or Occupier by the NSW Civil and Administrative Tribunal in the sum of \$5,500.00 (as at the date of registration of this by-law and subject to change); and/or
    - 7.2 refuse to provide additional Security Keys to an Owner or Occupier; and/or
    - 7.3 de-activate an Owner or Occupier's Security Keys to any common area.
  8. An Owner or Occupier is responsible for and will bear all Costs.
  9. Where the Owners Corporation has incurred Costs on behalf of an Owner or Occupier, the Owners Corporation may recover those Costs from the Owner, including charging those Costs to the Owner's lot account as if they were a contribution under the Act, with all the same rights of recovery to apply.
  10. In the event Lot(s) or Common Property is/are damaged as a result of the actions or inactions of an Owner or Occupier, the responsible Owner or Occupier will pay the costs of rectifying the damage and/or eliminating the fire or safety hazard.
  11. Owners will sign all documents and do all things necessary to facilitate the matters the subject of this by-law.
  12. Owners will Indemnify and will keep Indemnified the Owners Corporation.
  13. Specially resolved to repeal By-law 41

*NB: this By-law is ambiguous with By-law 71, 2.1(a)*

*Specially resolved pursuant to section 47 of the Strata Schemes Management Act 1996, that by-law no.14- Floor coverings be repealed in its entirety, and that the following by-law be made and lodged for registration with the Registrar-General under the common seal of the Owners Corporation.*

## 75. Special By-Law No. 75 - Installation of Non-Carpet Floor Coverings

### PART 1: DEFINITIONS AND INTERPRETATION

1.1 In this by-law:

- 1.1.1 “Acoustic Expert” means, in the opinion of the Executive Committee, an appropriately qualified acoustic consultant who is also a member of the Association of Australian Acoustic Consultants;
- 1.1.2 “Act” means the Strata Schemes Management Act 1996 as amended from time to time;
- 1.1.3 “Application” means a written application by an Owner to the Owners Corporation (via the Executive Committee) to undertake Works to a Lot, including the following details:
  - 1.1.3.1 the type of Non-Carpet Floor Coverings to be installed at the Lot as part of the Works, including the brand and quality;
  - 1.1.3.2 the supplier, manufacturer, installer, make, model and specifications;
  - 1.1.3.3 a plan detailing the proposed location of the Non-Carpet Floor Coverings;
  - 1.1.3.4 Evidence from the Contractor that the minimum standard for the acoustic underlay is Acoustica Angel Step Gold 8 or equivalent;
  - 1.1.3.5 Evidence from the Contractor confirming that the installation and use of the Non-Carpet Floor Coverings will not interfere with the quiet and peaceful enjoyment of residents in the Building;
  - 1.1.3.6 Evidence from a structural engineer (reasonably acceptable to the Executive Committee) that the installation and use of the Non-Carpet Floor Coverings will not affect the structural integrity of the Building;
  - 1.1.3.7 details of the contractors engaged to carry out the Works, including confirmation that the contractors have effected all necessary policies of insurance, including any policy of insurance specifically requested by the Owners Corporation;
  - 1.1.3.8 (if applicable) evidence that the installation of the underfloor heating system will be carried out by a Contractor qualified and experienced in the installation of underfloor heating systems;
  - 1.1.3.9 approvals from the relevant statutory/regulatory authority; and
  - 1.1.3.10 any other document reasonably required by the Owners Corporation;
- 1.1.4 “Approval” means written approval from the Owners Corporation (via the Executive Committee) to the Owner for the Works, which may include a requirement to pay a Bond;
- 1.1.5 “Bond” means an amount to be determined by the Executive Committee from time to time;
- 1.1.6 “Building” means the building and improvements on the land located at 9-15 Central Avenue Manly NSW 2095;
- 1.1.7 “Commencement Date” means the date this by-law is registered by the Registrar-General;

- 1.1.8 “Common Property” means the common property in the Strata Plan;
- 1.1.9 “Contractor” means the contractor engaged by the Owner to carry out the Works;
- 1.1.10 “Costs” means all professional and trade costs, fees, and disbursements incurred as a result of, or associated with this by-law, the Works, and Remedial Works, including the costs of engaging an Acoustic Expert and obtaining a Noise Report;
- 1.1.11 “Direction” means a written direction from the Owners Corporation to an Owner requiring the:
- 1.1.11.1 carrying out of Remedial Works; and/or
  - 1.1.11.2 carrying out of any works set out in a Noise Report obtained with regard to a Lot;
- 1.1.12 “Evidence” means documentation in the form of a signed certificate, report or letter;
- 1.1.13 “Executive Committee” means the executive committee elected by the Owners Corporation from time to time;
- 1.1.14 “Indemnify” means the Owner indemnifying the Owners Corporation in respect of the Works and/or Remedial Works or anything arising from the Works and/or Remedial Works, including, but not limited to the following:
- 1.1.14.1 all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by, brought or made against the Owners Corporation;
  - 1.1.14.2 any sum payable by way of increased premiums; and
  - 1.1.14.3 any costs or damages incurred by or for which the Owners Corporation is or becomes liable;
- 1.1.15 “Lot” means a lot in the Strata Plan;
- 1.1.16 “Noise Complaint” means a complaint made by an Owner to the Owners Corporation with regard to the level of noise emanating from a Lot as a result of the use of Non-Carpet Floor Coverings;
- 1.1.17 “Noise Report” means a report prepared by an Acoustic Expert noting, amongst other things, whether or not the Weighted Standardised Impact Sound Pressure Level (LnTw) for the noise transmitted as a result of the Non-Carpet Floor Coverings used at the Lot is not greater than 40 when carried out and calculated according to the requirements of the relevant Australian Standards. If the noise transmitted is greater than 40, the report should also include recommendations to remedy the level of noise transmitted, which may include removal of the Non-Carpet Floor Coverings;
- 1.1.18 “Non-Carpet Floor Coverings” means floor coverings other than carpet and underlay including, but not limited to, timber, wood, bamboo, melamine, laminate, vinyl, parquetry, tiles, cork, and marble.
- 1.1.19 “Notice” means a notice from the Owners Corporation to the Owner detailing Noise Complaints made with regard to their Lot and directing the Owner to engage the services of an Acoustic Expert to prepare a Noise Report;
- 1.1.20 “Owner” means the registered proprietor of a Lot from time to time;
- 1.1.21 “Owners Corporation” means The Owners- Strata Plan No. 61139;



- 1.1.22 "Remedial Works" means repair, maintenance, replacement and/or removal of items relating to the Works, and/or Common Property affected by the Works;
- 1.1.23 "Strata Plan" means registered Strata Plan No. 61139;
- 1.1.24 "Works" means the installation of Non-Carpet Floor Coverings at a Lot other than in the kitchen, laundry, lavatory, or bathroom.

1.2 Where any terms used in this by-law are defined in the Act, they will have the same meaning those words are attributed under the Act.

1.3 "Include", "including", and similar expressions are not words of limitation.

1.4 The singular includes the plural and vice versa.

1.5 If this by-law empowers the Owners Corporation to take action, it may or may not take such action in its reasonable discretion.

## **PART 2: APPLICATION OF BY-LAW**

This by-law applies to all Works, whether carried out before or after the Commencement Date.

## **PART 3: PROHIBITION**

3.1 After the Commencement Date, an Owner must not carry out the Works except in accordance with clause 4 of this by-law.

3.2 If the Works were carried out prior to the Commencement Date, an Owner must not retain Non- Carpet Floor Coverings except in accordance with clause 5 of this by-law.

## **PART 4: CONDITIONS FOR NEW NON-CARPET FLOOR COVERINGS**

4.1 An Owner may carry out Works after the Commencement Date provided that the Owner makes an Application prior to carrying out the Works.

4.2 If the Owner's Application complies with the requirements of this by-law, the Owners Corporation will not unreasonably withhold its Approval.

4.3 The Owners Corporation may require the Owner to adopt an additional by-law authorising the Works at their Lot as required by the Act, and the said by-law must be in substantially similar terms to those set out in this by-law.

4.4 Within 14 days after carrying out the Works, the Owner must, at its own expense, provide to the Executive Committee a Noise Report if:

4.4.1 Acoustica Angel Step Gold 8 was not used as acoustic underlay; or

4.4.2 requested to do so by the Owners Corporation.

4.5 If the Noise Report referred to in clause 4.4 of this by-law shows that the Weighted Standardised Impact Sound Pressure Level (LnTw) for the noise transmitted from the Lot is greater than 40, the Owner of the Lot must comply with the recommendations in the report to remedy the level of noise transmitted.

## **PART 5: CONDITIONS FOR EXISTING NON-CARPET FLOOR COVERINGS**

5.1 An Owner may retain Non-Carpet Floor Coverings that were installed before the Commencement Date on the condition that the Owner:

- 5.1.1 has complied with all conditions specified in an approval that was previously obtained from the Owners Corporation; or
- 5.1.2 notifies the Executive Committee in writing that Works have been carried out, and subject to a written request from the Executive Committee, provide a Noise Report within 28 days.

#### **PART 6: CONDITIONS APPLYING TO ALL WORKS**

- 6.1 The Owner is responsible for, and will bear all costs.
- 6.2 Where the Owners Corporation incurs Costs on behalf of an Owner, the Owners Corporation may recover those Costs from the Owner, including charging those Costs to the Owner's lot account as if they were a contribution under the Act, with all the same rights of recovery to apply.
- 6.3 In the event Lots or Common Property are damaged because of the Works or Remedial Works, the Owner will pay the Costs of rectifying that damage.
- 6.4 Owners will Indemnify and will keep Indemnified the Owners Corporation.
- 6.5 Owners will not claim upon the Owners Corporation's insurance in respect of anything arising out of Works or Remedial Works.
- 6.6 Owners will not claim upon the Owners Corporation's insurance in respect of anything arising out of Works or Remedial Works.
- 6.7 Owners will sign all documents and do all things necessary to facilitate the matters the subject of this by-law.
- 6.8 Works and Remedial Works must be carried out and completed:
  - 6.8.1 in a proper and workmanlike manner and by licensed and/or accredited contractors;
  - 6.8.2 with due skill and care and using materials suitable for the purpose for which they are used;
  - 6.8.3 in compliance with the Building Code of Australia and any other Australian Standards, as applicable;
  - 6.8.4 in a way so as to not unreasonably interfere with the enjoyment of other Common Property areas or access to Lots in the strata scheme by other persons;
  - 6.8.5 in a way which minimises the disturbance of other owners including but not limited to vibration, noise, dust and dirt;
  - 6.8.6 ensuring that the security of the Building is maintained throughout the performance of the Works, Replacement Works or Remedial Works;
  - 6.8.7 promptly and completely removing all rubbish from the Building resulting from the Works and/or Remedial Works;
  - 6.8.8 keeping all areas of the Building as clean and tidy as possible;
  - 6.8.9 promptly repairing any damage to any part of the Building caused by the Works, and/or Remedial Works;

- 6.8.10 in compliance with all reasonable requirements of the Owners Corporation including any requirements relating to access and egress of tradespersons, building materials, tools and debris;
- 6.8.11 in a way that will protect all areas of the Building outside the Lot from any damage caused by the Works and/or Remedial Works, for example by the transportation of construction materials, equipment and debris; and
- 6.8.12 only in respect of the Works, during the installation of Non-Carpet Floor Coverings the Works must be inspected and confirmed in writing by the Building Manager that the Works (in particular the underlay) complies with the requirements of this by-law.

#### **PART 7: APPROVAL PROCEDURE**

- 7.1 After receiving an Application, the Executive Committee must notify the Owners of all adjoining Lots (both horizontally and vertically) that it has received the Application.
- 7.2 The Executive Committee must not grant an Owner Approval to carry out the Works until:
  - 7.2.1 at least 14 days have passed after notifying the Owners of adjoining Lots in accordance with clause 7.1 of this by-law; and
  - 7.2.2 the Owners Corporation has considered the reasonable objections, if any, of the Owners of adjoining Lots.

#### **PART 8: REFUND OF BOND**

- 8.1 After an Owner has notified the Executive Committee that the Works have been completed and provided a Noise Report, the Executive Committee must refund any Bond, less any Costs the Owners Corporation has incurred.
- 8.2 If an Owner does not provide a Noise Report, the Owners Corporation may engage its own Acoustic Expert to undertake the inspection and Noise Report, the Costs of which will be deducted from the Bond.

#### **PART 9: REMEDIES**

- 9.1 The Owners Corporation reserves the right to issue a Direction.
- 9.2 If an Owner fails to comply with its obligations under this by-law or the terms of a Direction within 2 months of the date of the Direction, the Owners Corporation may:
  - 9.2.1 enter any part of the Lot to carry out the work necessary to perform the Owner's obligations; and
  - 9.2.2 recover the Costs of carrying out that work from the Owner as a debt, including charging those Costs to the Owner's lot account as if they were a contribution under the Act.

#### **PART 10: NOISE COMPLAINTS**

- 10.1 If the Owners Corporation receives two or more Noise Complaints regarding a particular Lot within a period of 12 months from the date of the first Noise Complaint, it may serve a Notice on the Owner of the Lot to which the Noise Complaints relate.
- 10.2 The Owner must inform the Owners Corporation of the name and contact details of the Acoustic Expert engaged.

- 10.3 The Owner will do all things and sign all necessary documents in order to enable the Acoustic Expert to carry out an inspection and any testing necessary.
- 10.4 The Owner is responsible for and will bear all Costs associated with engaging the Acoustic Expert and following the recommendations set out in the Noise Report.
- 10.5 If within 14 days of the date of the Notice, the Owner does not engage an Acoustic Expert and provide the Owners Corporation with that person's details, the Owners Corporation may engage its own Acoustic Expert to undertake the inspection and Noise Report.

*NB: A concern was put to the meeting that the bylaw as drafted provided retrospectivity contrary to the provisions of strata legislation. Post meeting the drafting solicitor confirmed in writing that such was not the case.*

## **76 SPECIAL BY-LAW - PROHIBITION OF SHORT-TERM ACCOMMODATION**

1. For the purpose of this by-law:

- 1.1. **"Act"** means the *Strata Schemes Management 1996* (NSW) as amended from time to time;
- 1.2. **"Building"** means the building and improvements on the land located at 9-15 Central Avenue, Manly NSW 2095;
- 1.3. **"Common Property"** means the common property in the Strata Plan;
- 1.4. **"Costs"** means all professional and trade costs/fees/disbursements incurred or associated with any damage caused as a result of the use of a Lot in breach of this by-law and includes Enforcement Costs;
- 1.5. **"Council"** means Manly Council, its administrators, successors and assigns, or any other organisation serving the same or similar function, and includes its employees and agents;
- 1.6. **"Development Approval"** means the Council's approval of development application no. DA315/96 for the Building and in particular approval condition no. 103 which states the following:
 

*"103. The residential component of the development must be for permanent resident accommodation only and not for the purpose of any hotel, motel, serviced apartments, tourist accommodation or the like. Any alteration in the approved permanent residential accommodation will require separate approval from Council".*
- 1.7. **"Enforcement Costs"** means the costs associated with the enforcement of this by-law, including but not limited to the cost to the Owners Corporation engaging professional services including legal services;
- 1.8. **"Executive Committee"** means the executive committee elected by the Owners Corporation from time to time;
- 1.9. **"Indemnify"** means the Owner indemnifying the Owners Corporation in respect of their use of a Lot in breach of this by-law, which includes but is not limited to the following:
  - i. all actions, proceedings, claims, demands, costs, damages and expenses which may be incurred by, brought or made against the Owners Corporation;
  - ii. any sum payable by way of increased premiums; and
  - iii. any costs or damages for which the Owners Corporation is or becomes liable;
- 1.10. **"Lot"** means a lot in the Strata Plan;

- 1.11. **“Occupier”** means the legal occupier of a Lot from time to time, including the occupier’s agent or employee;
  - 1.12. **“Owner”** means the owner of a Lot from time to time, including the owner’s agent or employee;
  - 1.13. **“Owners Corporation”** means the owners corporation known as The Owners – Strata Plan No. 61139;
  - 1.14. **“Residential Tenancy Agreement”** means an agreement under which an Owner or Occupier leases, sublets or licenses a Lot on a commercial basis for a period of 3 consecutive months or greater.
  - 1.15. **“Security Keys”** means a key, magnetic card or other device or information used on the Common Property to:
    - 1.15.1. open and close the security gates, doors, gates or locks; or
    - 1.15.2. operate alarms, security systems or communication systems.
  - 1.16. **“Short-Term Accommodation”** means the provision of temporary accommodation on a commercial basis for a period less than 3 months, including but not limited to:
    - 1.16.1. Backpackers’ accommodation;
    - 1.16.2. Bed and breakfast accommodation;
    - 1.16.3. Hotel or motel accommodation;
    - 1.16.4. Serviced apartments;
    - 1.16.5. Private hotel;
    - 1.16.6. Boarding house;
    - 1.16.7. Tourist or visitor accommodation; and
    - 1.16.8. Any other short-term rentals, including but not limited to the use of online services such as Airbnb, Stayz, Gumtree or similar.
  - 1.17. **“Statutory Declaration”** means a statutory declaration made by an Owner or Occupier in the form required by the Executive Committee having regard to the contents of this by-law;
  - 1.18. **“Strata Manager”** means Lamb and Walters Strata Management or any other strata managing agent engaged by the Owners Corporation from time to time;
  - 1.19. **“Strata Plan”** means registered strata plan number 61139;
  - 1.20. **“The Plan”** means the Manly Local Environmental Plan 2013 as amended from time to time, including any succeeding instrument.
2. Where terms in this by-law are not defined, they have the same meaning those words are attributed under the Act.
  3. Owners and Occupiers are prohibited from using, operating, or directly or indirectly facilitating the use of a Lot for Short-Term Accommodation, including by advertising the Lot or permitting the Lot to be advertised for Short-Term Accommodation.
  4. If the Executive Committee reasonably believes an Owner or Occupier is using, operating, or directly or indirectly facilitating the use of a Lot for Short-Term Accommodation, the Owners Corporation, via the Executive Committee or Strata Manager, may:
    - 4.1. Request that the Owner and/or Occupier provide evidence of their compliance with this by-law, including a copy of their Residential Tenancy Agreement or Council approval. Such evidence must meet the reasonable requirements of the Executive Committee, which may include a Statutory Declaration; and/or

- 4.2. Notify Council of the potential breach of The Plan and the Development Approval and provide Council with all information and evidence needed to assist it to make a determination and take any necessary regulatory action; and/or
- 4.3. Exercise its legislative right to enforce this by-law, which may result in the issuing of a penalty order against the Owner and/or Occupier by the NSW Civil and Administrative Tribunal in the sum of \$5,500.00 (as at the date of registration of this by-law and subject to change); and/or
- 4.4. Enter upon any part of the Lot to carry out the necessary investigation to confirm the Owner or Occupier's compliance with this by-law; and/or
- 4.5. Refuse to provide additional Security Keys to an Owner or Occupier; and/or
- 4.6. De-activate an Owner or Occupier's Security Keys.
5. The Owner or Occupier is responsible for and will bear all Costs.
6. The Owner or Occupier must promptly repair any damage to any part of the Building directly or indirectly caused by the Owner or Occupier's breach of this by-law.
7. Where the Owners Corporation has incurred Costs on behalf of an Owner, the Owners Corporation may recover those Costs from the Owner, including charging those Costs to the Owner's lot account as if they were a contribution under the Act, with all the same rights of recovery to apply.
8. The Owner and/or Occupier will include a copy of this by-law in every Residential Tenancy Agreement.
9. The Owner Indemnifies and will keep Indemnified the Owners Corporation.