

# RULES OF BODY CORPORATE NUMBER 83936

(Wellington Land Registry)

The body corporate rules set out in the second and third schedules to the Unit Titles Act 1972 are repealed and the following rules substituted in their place.

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In these Rules, unless the context otherwise requires:

"Act" means the Unit Titles Act 1972 and includes any statutory modification or re-enactment of that act.

"Body Corporate" means body corporate number 83936 (Wellington Land Registry).

"Building" means the building on the Land.

"Club Unit" means Principal Unit PU1 on the Unit Plan.

"Common Property" means the common property comprised in the Unit Plan.

"Land" means the land which is the subject of the Unit Plan.

"Proprietor" means a person registered as a proprietor of a stratum estate in a Unit on the Unit Plan.

"Residential Units" means Principal Units A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A19, A20, A21 and A22 on the Unit Plan.

"Retail Units" means Principal Units PUR1, PUR2, PUR3, PUR4, PUR5, PUR6, PUR7 and PUR8 on the Unit Plan.

"Rules" means these rules and amendments made to them from time to time.

"Secretary" means the secretary for the time being of the Body Corporate.

"Unit Plan" means unit plan number 83936 (Wellington Land Registry).

"Unit" means a principal unit on the Unit Plan and:

(a) unless the context otherwise requires, includes all accessory units attached to that unit.

- (b) in relation to any Proprietor or occupier means the unit owned or occupied by that Proprietor or occupier.

**Interpretation**

- 1.2 In the Rules, unless the context otherwise requires:
  - (a) words importing one gender include the other gender;
  - (b) words importing the singular or plural include the plural and singular respectively.
  - (c) headings are inserted for the sake of convenience and ease of reference only. They do not form part of the text, and shall not affect the construction or interpretation of these Rules.

**2. RULES THAT MAY BE AMENDED BY UNANIMOUS RESOLUTION**

**Duties of Proprietor**

- 2.1 A Proprietor or occupier of any Unit shall not:
  - (a) in respect of any Residential Unit, use or permit the Unit to be used for any purpose other than for residential use without the prior written consent of the Body Corporate, which consent may at any time be revoked or varied by the Body Corporate, provided that the power of revocation or variation shall not be unreasonably or arbitrarily exercised;
  - (b) in respect of the Club Unit, use or permit the Unit to be used for any purpose other than for use as a club incorporating restaurants, bars, entertainment facilities and such other facilities as are normally found and included in hotel premises without the prior written consent of the Body Corporate which consent shall not be arbitrarily or unreasonably withheld;
  - (c) in respect of the Retail Units, use or permit the Units to be used for any purpose other than retail shopping, cafes, restaurants, show and display rooms, offices or any use permitted under Wellington City Council town planning requirements;
  - (d) use or permit the Unit to be used for any purpose which is not authorised or permitted by these Rules or which is illegal or which may be injurious to the reputation of any Unit, provided that using any Unit for the purposes permitted by these Rules shall not be a breach of this requirement;
  - (e) erect or paint any notice or sign on the exterior of the Unit or any part of the Common Property provided that the Proprietor of the Club Unit shall be entitled to erect and maintain signs under the veranda of the Building outside the Cuba Street entrance to the Building and on the exterior of the main entranceway to the Building advertising the presence of the Proprietor and its operations and provided also that the proprietors of the retail units shall be entitled to erect and maintain signs under the veranda of the building on Cuba

Street, such signs to be in conformity with Wellington City Council by-laws and to be in keeping with the character of the building, each such sign to be consented to in writing by the Body Corporate – such consent not to be unreasonably withheld;

- (f) use the Unit or permit it to be used in any manner, as to cause a nuisance, annoyance, disturbance, damage or injury to any occupier of any Unit, provided that using any Unit for the purposes permitted by these Rules shall not be a breach of this requirement;
- (g) except as permitted by the use of the Unit in terms of these Rules, make or permit to be made any objectionable noise in the Unit, or the Common Property, or interfere in any way with the peaceful enjoyment of other Proprietors or lessees, or occupiers of other Units or those having business with them, or of any person lawfully using the Common Property.

**PROVIDED THAT** the Proprietor or occupier of the Club Unit shall not be held to be in breach of any of the provisions contained in clause 2.1(d), (e), (f) and (g) above so long as the Club Unit is being used for the purposes permitted by clause 2.1(b), and the Club Unit is owned by the Trustees of the Wellington Workingmens Club and Literary Institute.

2.2 A Proprietor shall in relation to any Unit of which that Proprietor is the registered proprietor:

- (a) permit the Body Corporate (or its agents or employees) at all reasonable hours to enter the Unit for any of the following purposes:
  - (i) maintaining, repairing or renewing any pipes, conduits, wires, cables, services, ducts or plant in, upon or passing through the Unit and capable of being used in connection with the enjoyment of any other Unit or Common Property;
  - (ii) maintaining, repairing or renewing any Common Property;
  - (iii) ensuring that the Rules are being observed; and
  - (iv) without prejudice to any other rights, powers and remedies of the Body Corporate (in the case of default by a Proprietor) for maintaining any garden or ground pursuant to rule 2.2(g);
- (b) comply in all respects with all legal requirements for the time being in force in the area in which the Unit is situated insofar as they relate to the use, occupation or enjoyment of the Unit;
- (c) forthwith and at all times carry out all work that may be ordered by any competent local authority or public body in respect of the Unit to the satisfaction of that local authority or public body;

- (d) duly and punctually pay all rates, taxes, charges and other outgoings from time to time payable in respect of the Unit to any local authority or public body and all sums properly levied in respect of the Unit by the Body Corporate;
- (e) repair and maintain the interior of the Unit and keep it in good order, repair and condition to ensure that no damage, harm or diminution in value occurs to the Common Property or any other Unit;
- (f) make no additions or structural alterations to the Unit or in any way alter the elevation or external appearance of the Unit without the written consent of the Body Corporate;
- (g) maintain any garden or ground forming part of the Unit in a neat and tidy condition, free from noxious weeds and keep any grass well mown;
- (h) keep and maintain in good order, repair and condition any fence on any boundary between any accessory Unit at any time comprised within the same stratum estate as the Unit and any adjoining land, including any road or street, and keep the Body Corporate indemnified against any costs, claims or demands in respect thereof, whether under the Fencing Act 1978 or any other statute;
- (i) not erect any fence without first obtaining the written consent of the Body Corporate to the type of fence to be erected, not paint or stain any fence or any existing fence without first obtaining the written consent of the Body Corporate to the colour to be used nor without the written consent of the Body Corporate remove any fence;
- (j) make no alteration to the colour scheme or appearance of the exterior of the Unit without first obtaining the written consent of the Body Corporate;
- (k) make no alteration to any paved or sealed areas without first obtaining the written consent of the Body Corporate;
- (l) maintain all licences or other statutory requirements in respect of the Unit.

**Powers and duties of Body Corporate**

2.3 The Body Corporate shall:

- (a) repair and maintain all chattels, fixtures and fittings, lifts, lighting, stairs, fire escapes, fences, grassed areas, gardens, paved and sealed areas, curbing, channelling, drainage and other services used, or intended, adapted or designed for use in connection with the Common Property or the enjoyment of the Common Property;
- (b) repair and maintain all pipes, wires, cables, ducts and all other apparatus and equipment which may be reasonably necessary for the enjoyment of an incidental right which may from time to time exist by virtue of section 11 of the Act;

- (c) repair, paint, renew, replace, keep waterproof and maintain in a state of good and substantial repair the exterior of the Building including the roof and including windows and entrance and exit ways not forming part of any Unit. "The Building" means the whole of the building or buildings comprising any part of the principal units, accessory units and common property as shown on the Unit Plan. All such work shall be deemed to be of equal value to all units and Section 133 of the Act shall be inapplicable;
- (d) on request, produce to any Proprietor, or a registered mortgagee of any Unit, or any person authorised in writing by any Proprietor or registered mortgagee of any Unit, all policies of insurance effected by the Body Corporate under the provisions of section 15 of the Act and the receipt for the last premiums paid in respect of such insurance;
- (e) insure and keep insured the buildings and other improvements on the Land for replacement value (including demolition costs and architect's fees) against fire and other risks set out in section 15(1)(b) of the Act;
- (f) comply with all other provisions of section 15 of the Act; and
- (g) meet, discharge and perform all of the covenants, obligations and requirements contained in the Memorandum of Encumbrance dated 20 April 1998 granted to the Wellington City Council and to be registered as an encumbrance against the Titles for all the units on Unit Plan 83936.

#### 2.4 The Body Corporate may:

- (a) borrow any money necessary to enable it to adequately perform its duties or exercise its powers;
- (b) invest any money for the time being held by it (whether in a fund established under section 15 of the Act or otherwise) in any of the modes of investment for the time being authorised by law for the investment of trust funds;
- (c) establish a current bank account at a bank, and nominate for the purposes of this paragraph three persons, two of whom shall be the Secretary and the Proprietor of the Club Unit, of whom any two may operate the account;
- (d) enter into any agreement with a Proprietor or occupier of any Unit for the provision of amenities or services by it to the Unit or to the Proprietor or occupier, or for the provision of amenities or services by a Proprietor or occupier to the Body Corporate or another proprietor or occupier of a Unit;
- (e) grant to a Proprietor, or to anyone claiming through the Proprietor, any special privilege (not being a lease) in respect of the enjoyment of part or parts of the Common Property provided that any such grant shall be determinable by special resolution, and that any such grant shall not be inconsistent or conflict with any lease or easement affecting any part of the Common Property granted by all the Proprietors in accordance with the Act and these Rules;

- (f) enter into any agreement with a manager (whether or not incorporated) for a fixed period of time (not exceeding two years) for the carrying out and management of the duties of the Body Corporate at such remuneration and upon such terms and conditions as it may approve;
- (g) settle and approve schemes for the exterior colour and landscaping of the Units and for signs to be erected or painted on the Common Property;
- (h) levy, and require payment from a defaulting Proprietor, without the necessity of making an application pursuant to section 33 of the Act or apportioning the liability to the Proprietors as a whole, and any fees, costs or expenditure incurred in the recovery of a contribution or other lawful payment shall be recoverable from such defaulting Proprietor.

For the purposes of rule 2.4(h) "a defaulting Proprietor" means a Proprietor whose Unit substantially benefits from any repair, work or act carried out by the Body Corporate pursuant to the Act, or by or under any other act, or pursuant to these Rules, where that Proprietor does not pay the share of expenditure allocated to the Proprietor by the Body Corporate, and also includes a Proprietor whose negligent act or omission, or breach of Rule by that Proprietor, or that Proprietor's tenant, lessee, licensee or invitee necessitates any repair work or act to be carried out by the Body Corporate.

#### **Proceedings of Body Corporate**

- 2.5 The quorum necessary for the transaction of the business of the Body Corporate shall be three, if there are not more than six members, and four if there are more than six members.
- 2.6 Subject to any restriction imposed or direction given at a general meeting, the Body Corporate may:
  - (a) meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit provided that it shall meet when any member of the Body Corporate gives to the other members not less than seven days notice of a meeting proposed by the member, specifying the reason for calling the meeting;
  - (b) employ such agents and employees as it thinks fit in connection with the control, management and administration of the Common Property, and the exercise and performance of the powers and duties of the Body Corporate;
  - (c) delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation, and
  - (d) whenever it thinks fit, convene an extraordinary general meeting of the Body Corporate.
- 2.7 The Body Corporate shall:
  - (a) keep minutes of its proceedings;

- (b) Keep minutes of general meetings of the Body Corporate, and include a record of all resolutions;
- (c) Keep proper books of accounts in respect of all money received and spent by it, and the matters in respect of which all such income and expenditure is received or incurred;
- (d) prepare proper accounts relating to all money of the Body Corporate, and the income and expenditure of the Body Corporate (provided that it shall be at the option of the Body Corporate whether or not such accounts shall be audited by an independent auditor) and the Body Corporate shall arrange for a copy of such annual accounts to be sent to each Proprietor before each annual general meeting of the Body Corporate, and for the accounts to be presented to each annual general meeting of the Body Corporate;
- (e) on application by a Proprietor or a mortgagee of a Unit, or any person authorised in writing by either of them, make the books of account and all minutes available for inspection at all reasonable times; and
- (f) upon a written requisition made by Proprietors entitled to 50% of the aggregate unit entitlement of all the Units, convene an extraordinary general meeting of the Body Corporate.

#### **General Meetings of Body Corporate**

- 2.8 A general meetings of the Body Corporate, to be called the annual general meeting, shall, in addition to any other meeting, be held at least once every calendar year and not more than 15 months after the holding of the preceding annual general meeting. The first annual general meeting of the Body Corporate shall be held within three months after the date of the deposit of the Unit Plan or of the first sale of a Unit, whichever is the later.
- 2.9 All general meeting of the Body Corporate other than annual general meetings shall be called extraordinary general meetings.
- 2.10 At least seven days written notice of every general meeting of the Body Corporate specifying the place, the date, the hour of the meeting and the proposed agenda shall be given by the Secretary to all persons entitled to exercise a vote in accordance with the provisions of section 41 of the Unit Titles Act 1972 and of Rule 2.17, provided that accidental omission to give written notice to anyone so entitled shall not invalidate any proceeding at any such meeting.
- 2.11 Any notice required to be given under Rule 2.10 shall be sufficiently given if delivered to the person concerned or, if left or sent by letter posted to the person concerned, at the last address of that person notified to the Body Corporate, or if no address has been notified, at that person's last known place of residence or place of business in New Zealand. However, if a Proprietor advises the Body Corporate in writing that the Proprietor requires notice to be sent to the Proprietor by registered post, a notice sent to the Proprietor by post shall not be sufficiently given unless it is sent by registered post.

- 2.12 Except as otherwise provided in these Rules, no business shall be transacted at any general meeting of the Body Corporate unless a quorum is present.
- 2.13 If within half an hour from the time appointed for a general meeting of the Body Corporate a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at that adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the number of persons present and entitled to vote at the expiration of that half hour shall constitute a quorum.
- 2.14 At a general meeting of the Body Corporate the chairperson shall be the convenor of the general meeting if he or she is present. If there is no convenor, or if the convenor is not present or is unwilling to act, a chairperson shall be elected at the commencement of the meeting.
- 2.15 Except as otherwise provided by the Act or these Rules, all matters at a general meeting of the Body Corporate shall be determined by a simple majority of votes. In the case of equality of votes the chairperson for the time being of the meeting shall not be entitled to a second or casting vote.
- 2.16 Subject to the provisions of section 41 of the Act, at any general meeting of the Body Corporate whether or not a poll is demanded, the number of votes exercisable for each Unit shall be equal to the unit entitlement allocated to that Unit appearing on the Schedule to the Unit Plan, and no separate vote may be exercised for any accessory unit.
- 2.17 Any Proprietor which is a company or other incorporated body may (so long as the company or incorporated body is empowered to do so by its articles or constituting document), by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Body Corporate, and shall notify the Body Corporate of the name of the person so authorised. That person may exercise on behalf of the company or other incorporated body at any meeting of the Body Corporate the same powers on behalf of the Proprietor that the person represents as that Proprietor could exercise if it were a person.
- 2.18 At any meeting of the Body Corporate any person present and entitled to vote on the matter that is under consideration may demand a poll which shall be taken in such manner as the chairperson thinks fit.
- 2.19 The result of the poll shall be deemed to be the resolution of the meeting at which it was demanded. Where a poll is not demanded, a declaration by the chairperson that a resolution has been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded for or against the resolution.
- 2.20 Any vote to be cast at a general meeting of the Body Corporate may be exercised personally or by proxy. Where two or more persons are jointly entitled to exercise one vote and wish to do so by proxy, that proxy shall be jointly appointed by them and may be one of them. A proxy shall be appointed in writing. If only one of those persons is present at a general meeting and they have not appointed a proxy as aforesaid, that single person may exercise the vote.

2.21 If there is an equal number of votes for and against any matter, the matter shall be referred to a single arbitrator where the Proprietors can agree on one, and otherwise to two arbitrators, one to be appointed by each group of Proprietors to the matter in difference and, if the arbitrators are unable to agree, then to their umpire to be appointed by them before entering upon the consideration of the matter submitted to them. In either case, arbitration shall be conducted in accordance with the provisions contained in the Arbitration Act 1996 or any other act in substitution for that act for the time being in force. The decision of the arbitrator, arbitrators or their umpire shall be final and binding upon all Proprietors and upon the Body Corporate.

2.22 Except where a unanimous resolution is required, a power of voting for a Unit shall not be exercised unless all amounts accrued due and payable under the Act to the Body Corporate for the Unit in respect of which the vote is exercisable shall have been paid.

#### **Secretary**

2.23 A Secretary (who may or may not be a Proprietor) shall be appointed by the Body Corporate at its first annual general meeting for such term, at such remuneration and upon such conditions as the Body Corporate shall reasonably approve. Any Secretary so appointed may be removed by the Body Corporate, either at a subsequent annual general meeting or at an extraordinary general meeting called for that purpose. At any such meeting the Secretary shall have the right to attend and be heard.

2.24 The function of the Secretary shall be to keep proper books of account which shall record true, full and complete accounts of the affairs and transactions of the Body Corporate and to carry out such other functions as are delegated to the Secretary by the Body Corporate.

#### **Resolution by Minute Book Entry**

2.25 (a) Notwithstanding anything to the contrary contained in these Rules, anything that may be done by the Body Corporate, by resolution or special resolution passed at a meeting of the Body Corporate, may be done by the Body Corporate by means of an entry in its minute book signed by each Proprietor without a meeting or any prior notice being required.

(b) It shall not be necessary for the Body Corporate to hold an annual general meeting if everything required to be done at that meeting by resolution or special resolution is, within the time prescribed for the holding of the meeting, done by means of an entry in its minute book in accordance with this rule.

(c) Any such entry may be signed on behalf of a Proprietor by an agent duly authorised in writing by that Proprietor.

(d) For the purpose of this rule, any entry signed in accordance with this Rule and permanently fixed in the minute book and purporting to have been signed for the purpose of becoming an entry, shall be deemed to be an entry accordingly, and any such entry may consist of several documents in like form, each signed by or on behalf of the Proprietors.

- (e) For the purpose of this rule the term "Proprietor" shall mean and include each Proprietor and any other person having the right to vote.

#### **Common Seal**

- 2.26 The common seal of the Body Corporate shall not be used without the authority of the Body Corporate. Whenever the seal is affixed to an instrument, the affixing of the seal shall be attested by at least two Proprietors or, where an administrator has been appointed or there is only one Proprietor, by the administrator or that Proprietor.

#### **Section 36 Certificates**

- 2.27 Notwithstanding the provisions of Rule 2.26 relating to the common seal, the Secretary may, in the name of and on behalf of the Body Corporate, give a certificate pursuant to section 36 of the Act to any person authorised in writing by any Proprietor to request such certificate and:

- (a) the common seal may be affixed to the certificate without further authority; and
- (b) the affixing of the common seal may be witnessed by the Secretary and one Proprietor.

#### **Miscellaneous**

- 2.28 For the purposes of these Rules a special resolution means a resolution proposed at a general meeting of the Body Corporate of which at least 7 days notice specifying the intention to propose the resolution as a special resolution has been given.

- 2.29 Where a resolution is proposed as a special resolution, the vote of the meeting shall be taken in the same way as it if had been proposed as an ordinary resolution and a poll had been demanded, provided that a special resolution shall be deemed not to be carried unless persons entitled to exercise not less than three-fourths of the value of the votes and not less than three-fourths of the number of votes exercisable in respect of all the Units vote in favour of it.

- 2.30 If a Proprietor wishes to dispute a resolution of the Body Corporate, and such Proprietor is unable (because of the total number of Units comprised in the Unit Plan) to make an application to the High Court pursuant to sections 42 or 43 of the Act the Proprietor may refer the resolution in dispute to the arbitration of a single arbitrator if all the Proprietors can agree upon one, and otherwise to two arbitrators (one to be appointed by the Proprietors who supported the resolution, and one to be appointed by the Proprietors who opposed the resolution) and their umpire, in the manner provided in the Arbitration Act 1996 or any statutory modification or re-enactment of that act. Any questions or differences between the Proprietors concerning the powers and duties of the Body Corporate, including the interpretation or enforcement of the Rules of the Body Corporate or as to the rights, duties or liabilities of the Proprietors, shall be referred to arbitration in like manner.

- 2.31 Where the Body Corporate under these Rules resolves: