Strata Title and Sustainability Infrastructure in Western Australia

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Abstract:

In October 2014, Landgate published a Consultation Paper relating to proposed reforms to strata title in Western Australia. The Consultation Paper has proposed a range of changes to strata title legislation that aim to improve the management of strata title. In recent years, there has also been a dramatic increase in the installation of sustainability infrastructure, particularly solar panels, which has led to questions about how the existing strata title legislation may inhibit such installations.

This paper examines how strata title legislation may be improved to facilitate the installation of sustainability infrastructure in strata title. The major recommendations are to reduce the requirements for resolutions in respect of the installation of sustainability infrastructure (on lots and common property), provide statements of factors or principles upon which decisions of the strata company are to be made (which take into account sustainability objectives) and imply a standard term into strata insurance policies to the effect that sustainability infrastructure installed, owned and operated by individual proprietors is covered by the strata insurance policy.

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1. Introduction

In 2011, Ms Chiara Pacifici (a co-author to this paper) wrote a paper identifying regulatory barriers to the installation of sustainability infrastructure contained in Western Australia's strata title legislation.[1] The Western Australian State Government is undergoing a review of the strata title legislation to, among other things, introduce community title to Western Australia. The review presents an opportunity to remove regulatory barriers to the installation of sustainability infrastructure.

Sustainability infrastructure will assist in the affordability and longevity of the dwellings designed and constructed in Western Australia, with long-term financial benefits flowing through to occupants (both owner and tenant alike). The need to address housing affordability has been highlighted in the 2014 Consultant Paper[2] and must take into account the concept of 'affordable living', defined by household expenditure on living costs that include electricity, water and gas. The Consultant Paper also highlights the need to better inform consumers stating '*that educational material be developed to assist purchasers in understanding the financial options and obligations of the strata company*'.[3] Energy inefficient and aging buildings are increasingly becoming a cost burden to the strata company and more needs to be done to future-proof these buildings against the rising cost of electricity.

This paper provides an update to the 2011 paper in view of the changes to the strata title legislation. It examines and compares legislation from the ACT, the only other Australian jurisdiction that appears to have specifically addressed legal barriers to the installation of sustainability infrastructure in strata title. It considers the resolution requirements for installations of sustainability infrastructure, the process for registering an exclusive use by-law, the process for appeals to the State Administrative Tribunal and issues relating to insurance. It also provides a useful case study of how some developers have attempted to implement sustainability infrastructure under the existing legislation and, in doing so, illustrates how the State Government can allow sustainability infrastructure to be implemented a lot easier[4].

2. What do we mean by sustainability infrastructure?

Sustainability infrastructure is the term the authors have given to a range of fixtures to land that improve the environmental sustainability of a building or development by, for example, generating electricity, shading windows, harvesting rain water, recycling waste water or using underground water for space heating and air conditioning. It includes infrastructure like solar panels, solar hot water systems, solar heating systems for pools, awnings, rainwater tanks, wastewater treatment systems and geothermal heat exchange systems.

Historically, sustainability infrastructure has been installed by developers or owners to preserve the environment and/or enhance the marketability of a development. However, recently,

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[1] Pacifici, C., 2011 *Greening Strata Title Schemes in Western Australia: Turning barriers into opportunities for individual owners to implement environmentally sustainable provisions in existing residential strata dwellings*. Curtin University, Perth.

[2] Landgate. 2014. *Strata Titles Act Reform: Consultation Paper*. http://consult.landgate.wa.gov.au/consult.ti/STARCP/consultationHome (accessed on 16 January 2015), Landgate CEO Forward

[3] Landgate. 2014. *Strata Titles Act Reform: Consultation Paper*. http://consult.landgate.wa.gov.au/consult.ti/STARCP/consultationHome (accessed on 16 January 2015), Part 8.7, pp 71

[4] Annexure C provides an example of a Management Statement registered for a new multi-residential building and includes a number of Sustainability Infrastructure items that have been embedded for the enjoyment and benefit of owners and occupants.

as the cost of electricity and gas has risen sharply and water restrictions continue, a major driver to install some types of infrastructure has been to save money. Solar panels in particular have become a relatively cheap and accessible technology as a result of Federal Government subsidies and the State feed in tariff. These drivers have helped solar panel installations on residential rooftops grow to an estimated 174,000 installations in Western Australia.[5] This amounts to over 18% of all dwellings in Western Australia.[6]

3. Sustainability infrastructure in *existing* multi-residential buildings

3.1 Solar panels and strata title in Western Australia

Installations of solar panels have not been limited to detached dwellings. Many installations have occurred on strata title dwellings[7] which raises the question how strata title legislation applies to such installations. Under sections 7 and 7A of the *Strata Titles Act 1985* (WA) (**Act**), a proprietor of a lot must not make structural additions to their lot without approval of the other proprietors in the scheme. In the case of a two lot scheme, the proprietor requires approval from the proprietor of the other lot. In the case of a scheme with more than two lots, the proprietor requires approval from the strata company in the form of a 'resolution without dissent'.[8]

However, sections 7 and 7A of the Act do not apply to solar panels because the rooftop forms part of the common property of a strata scheme. If a proprietor wishes to install solar panels, the correct way to allow this to occur is to have the strata company grant the proprietor an 'exclusive use by-law' under section 42(8) of the Act. In the case of a two lot scheme, the proprietor requires a 'unanimous resolution'.[9] In the case of a scheme with more than two lots, the proprietor requires approval from the strata company in the form of a 'resolution without dissent'.

3.2 Resolution requirements

The current requirement in Western Australia to obtain a 'resolution without dissent' is a tough standard to meet for both alterations and additions to a lot pursuant to sections 7 and 7A of the Act and the creation of an exclusive use by-law under section 42(8) of the Act. In practice, a single proprietor could vote against a resolution or an exclusive use by-law for ulterior motives and not because the installation of sustainability infrastructure has any material impact on the

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[5] Clean Energy Regulator, Jan, 6th, 2015. This data does not include systems installed but yet to have REC's registered. http://ret.cleanenergyregulator.gov.au/REC-Registry/Data-reports#Latest-data

[6] Ibid.
http://ret.cleanenergyregulator.gov.au/REC-Registry/Data-reports#Latest-data

[7] The exact number of solar panels installations in strata title is unknown because energy utilities do not keep records of how many installations relate to strata title lots. However, the number of such installations is likely to number in the thousands.

[8] A 'resolution without dissent' is a resolution passed at a duly convened general meeting of the strata company of which sufficient notice is given and a sufficient quorum is present and where no person votes against the resolution (s3AC(1) of the Act). 'Sufficient notice' means 14 days' notice of the proposed resolution to each proprietor in the scheme (s3C(1)(a) of the Act). 'Sufficient quorum' means at least 50% of the proprietors of the scheme are present at the meeting (personally or by proxy) and the aggregate unit entitlement of value of the votes of the proprietors present at the meeting (personally or by proxy) must be at least 50% (s3C(1)(b) of the Act).

[9] A 'unanimous resolution' is a resolution passed at a duly convened general meeting of the strata company of which 14 days' notice of the proposed resolution has been given to each proprietor in the scheme and all the proprietors of the scheme are present at the meeting (personally or by proxy) and the resolution is passed unanimously (i.e. all proprietors of the scheme vote in favour of the resolution). Obviously, in the case of a two lot scheme, a unanimous resolution would require the second proprietor to agree to the resolution.

proprietor. A single vote against the proposed resolution or exclusive use by-law will defeat the resolution or by-law.

The Consultation Paper[10] has identified a variety of proposals to improve management of strata title. One of the proposals is to reduce the resolution requirements in respect of works to install infrastructure servicing a proprietor's lot which affects the common property or another lot.[11] The Consultation Paper does not specifically say whether this will include installing infrastructure "*on*" the common property (as opposed to "*affecting*" the common property), but we assume that the intention is to allow the installation of infrastructure on the common property. The Consultation Paper also does not clarify what it means by "*infrastructure*" and whether this extends to sustainability infrastructure. This should be clarified and is discussed further below.

The proposal relating to resolution requirements is to require only a simple majority to pass resolutions in respect of the installation of infrastructure.[12] The Consultation Paper does not say whether a simply majority means a majority of votes at the relevant meeting or a majority of the total aggregated unit entitlement of the scheme, but we assume a majority of votes at the relevant meeting (which is consistent with similar legislation in the ACT – see discussion below). A simple majority is far less onerous and is endorsed by the authors of this paper, subject to the above language ambiguities being clarified. This paper also proposes further legislative changes relating specifically to sustainability infrastructure that build upon the Consultation Paper's proposal to reduce the resolution requirements relating to the installation of infrastructure (see below).

3.3 Process for registering 'exclusive use by-law'

The process for preparing and registering an exclusive use by-law is costly and time consuming. The by-law would first need to be prepared by a lawyer or a strata consultant, which can be costly. The by-law must also be registered at Landgate, which currently costs $160. In order to register the by-law, the area of exclusive use must also be defined by a sketch on a plan. This would usually need to be prepared by a surveyor and is particularly difficult because the area of exclusive use is not flat. In other words, the surveyor has to measure the height of the area as well as the length and width and represent this on a plan. This is considerably more time consuming and therefore, more expensive. The total costs to prepare and register the exclusive use by-law are likely to exceed $1,500. These costs are clearly not practicable and if a proprietor was required to pay these costs, it would jeopardise the economic benefits of installing the solar panels.

Many proprietors and strata companies are also probably not even aware that solar panels require approval from the strata company let alone the preparation and registration of a by-law and a survey. Even if they were aware, many proprietors would not bring this to the attention of the strata company if they are also aware of the likely costs involved. At the time of writing this paper, it is not known how many (if any) exclusive use by-laws relating to solar panels have been registered in Western Australia. However, in the authors' experiences, it is not standard practice of proprietors in existing schemes or for strata managers or other proprietors (who themselves might not be aware of the requirement) to request the preparation and registration of exclusive use by-laws for solar panels. It is more common for developers incorporating sustainability infrastructure in new

[10] Landgate. 2014. *Strata Titles Act Reform: Consultation Paper*. http://consult.landgate.wa.gov.au/consult.ti/STARCP/consultationHome (accessed on 16 January 2015), Part 8.1.4, pp 63-76
[11] Id, pp 65-66
[12] Ibid.

developments to include exclusive use by-laws, but this is more easily done because it can be done at the same time as preparing the management statement (see Annexure C for an example).

The consequences of not preparing and registering an exclusive use by-law means that such installations of solar panels in strata title in Western Australia are currently unlawful (except those where exclusive use by-laws have been granted in the management statement). Assuming that few (if any) exclusive use by-laws have been registered in existing schemes, the number of unlawful installations is likely to number in the thousands. In situations where an installation of solar panels is unlawful, the strata company could at any time require the solar panels to be removed. This creates a great deal of uncertainty for solar panel owners. Even worse, solar panel owners may not have protection against damage and/or liability. For example, if the solar panels are damages in a storm, the replacement costs may not be covered. Or if the installation of the solar panels is defective and causes some form of loss (e.g. caused by a fire) to the strata company, the strata company's insurer or the other proprietors (this loss could arise out of property damage, personal injury or loss of life of a third party), a claim could potentially be brought against the proprietor. There is no guarantee that the proprietor will be able to subsequently claim against the solar panel installer[13], the strata building insurer (see discussion below) or their home and contents insurer.[14]

3.4 Other sustainability infrastructure in Western Australia

The situation described above in relation to solar panels also applies equally to solar hot water systems and solar heating systems for pools. A similar situation may also apply to other types of sustainability infrastructure. If a proprietor has installed awnings, for example, and the boundary of the lot in the strata scheme is at the walls of the building,[15] the proprietor may need to obtain an exclusive use by-law for the area occupied by the awnings. The same situation also arises in respect of rainwater tanks and wastewater treatment systems.

4. Sustainability infrastructure in *new* multi-residential buildings

Unlike standard by-laws that govern existing strata buildings, newly built strata title buildings can adopt new provisions and laws to govern infrastructure embedded in the building. The original proprietor (developer) can create a 'Management Statement', which specifies amendments or repeals to the standard Schedule 1 and 2 by-laws as well as additional by-laws which are to apply to a particular strata scheme from time of registration. These by-laws may include restrictions and management of the types of infrastructure on buildings, exclusive use detail, and activities that can be conducted on the lot and surrounding common property. Details of any environmentally sustainable provisions can also be included here. Annexure C provides the reader with a recent example of a multi-residential building in Perth that showcases certain sustainability items embedded in the building and the by-laws that govern them.

[13] This could occur, for example, if the installer becomes insolvent and is a likely risk given large structural changes in the solar industry in recent years as Government subsidies have ended or been reduced. Consideration may also need to be given to statutory limitation periods.

[14] This would depend on whether the solar panels are covered by the proprietor's home and contents policy. Some insurers also do not allow strata lot owners to take out a home insurance policy (i.e. on the assumption that the building and improvements are covered by the strata building insurance).

[15] This depends on the strata scheme. Some strata schemes may include an outside portion of space (usually gardens) as part of the lot. Other schemes may include these areas as part of the common property.

5. ACT Legislation

5.1 Overview

The ACT appears to be the only Australian jurisdiction to specifically address the installation of sustainability infrastructure in its community title legislation. Section 23(1) of the *Unit Titles (Management) Act 2011* (ACT) (**UTMA**) begins as follows (the full section 23 is set out in Annexure A to this paper):

> ***23 Installation of sustainability and utility infrastructure on common property***
>
> *(1) An owners corporation for a units plan may, if authorised by an ordinary resolution-*
>
> *(a) approve the installation of sustainability or utility infrastructure on the common property; and…*

The definition of the terms 'sustainability infrastructure' and 'utility infrastructure' are important here because they will determine what infrastructure can and cannot be installed.

In short, 'sustainability infrastructure' is infrastructure and equipment that improves the environmental sustainability of the units or reduces the environmental impact of the owners corporation and the unit owners. It expressly includes 'utility service' connections and equipment. 'Utility services' is separately defined in the *Unit Titles Act 2001* (ACT) (**UTA**) to include services like water, sewerage, drainage, garbage collection, gas, electricity, air conditioning, heating and telecommunications. 'Utility infrastructure' is infrastructure and equipment necessary for or related to the provision of utility services. The full definitions are set out in Annexure B to this paper.

This paper does not intend to provide a detailed legal analysis of the specific language used. However, it is worth noting that the definitions have been drafted broadly using general language and are not limited to specific technologies. This appears appropriate given that sustainability infrastructure will change over time as technology changes and the viability of existing sustainability infrastructure will improve as the infrastructure becomes cheaper. From a public policy perspective, the broad drafting also ensures that a strata company has the same rights in respect of the installation of sustainability infrastructure than what would be available to proprietors of non-strata dwellings.

Nevertheless, the UTMA creates no doubt that it applies to solar panels. The definition of 'sustainability infrastructure' gives some specific examples of sustainability infrastructure – solar panels, clotheslines and rainwater tanks (see Annexure B). This list is non-exhaustive, but has been included to remove any doubt that the legislature intends for the legislation to apply to solar panels, clotheslines and rainwater tanks.

5.2 Exclusive use

The UTMA does not use the concept of an exclusive use by-law. Section 23(1)(c) uses the more familiar property concepts of an "easement" or "any other right" (see Annexure A). 'Any other right' would presumably include a licence. If the concept of an exclusive use by-law in Western Australia was replaced by a licence, it would remove the need for and the costs of registration. However, a licence may not bind subsequent proprietors to the benefits or obligations of the licence. The legislation would have to address this.

5.3 Ordinary resolution

The UTMA also requires only an ordinary resolution from the owners corporation approving an installation of sustainability infrastructure. An 'ordinary resolution' requires a simple majority of votes at the relevant meeting of the owners corporation.[16] This is far less onerous than the 'resolution without dissent' contained in Western Australian legislation. This does not mean that proprietors in the ACT can become bound to any expensive out lay. Section 23(2) of the UTMA requires that the long term benefit of the proposed sustainability infrastructure is greater than the cost of installing and maintaining the infrastructure having regard to a range of circumstances specified in section 23(2) of the UTMA (see Annexure A) and any other circumstances that might be prescribed. This gives proprietors protection against unjustifiable expenditure. Making it easier to pass a resolution and instead imposing standards on the sustainability infrastructure appears to be a better approach than simply making it harder to pass a resolution. The ACT approach appears to be closer to keeping both sides honest.

5.4 ACT legislation does not apply to individual proprietors

Section 23 of the UTMA appears to only apply to an owners corporation installing sustainability infrastructure for the benefit of all proprietors rather than individual proprietors installing sustainability infrastructure on the common property of their lot for their benefit only (see Annexure A). There are circumstances where individual proprietors may wish to install sustainability infrastructure on common property at their own expense with no material impact on other proprietors. This is particularly relevant to solar panels in strata schemes where no lot or part of a lot is above or below another lot (for example, in single storey villas or units or two storey townhouses) (**Horizontal Schemes**). This is in contrast to strata schemes where the lots are on top of each other such as what would occur in apartments (**Vertical Schemes**). It may also be relevant to solar hot water systems, solar heating systems for pools, awnings, rainwater tanks and wastewater treatment systems.

6. Horizontal Schemes and Vertical Schemes

The distinction between Horizontal Schemes and Vertical Schemes is important. This paper pointed out earlier that most (if not all) solar panel installations on strata title in Western Australia are likely to be unlawful[17] because the strata company has not granted and registered an exclusive use by-law giving the proprietor exclusive use of the roof space and that this creates uncertainty and potential liability for relevant proprietors. The same is true for solar hot water systems and solar heating systems for pools. A similar situation may also apply to other types of sustainability infrastructure like awnings, rainwater tanks and wastewater treatment systems.

In Vertical Schemes, it makes sense that the strata company (i.e. all the proprietors in the scheme) has a say in the installation of sustainability infrastructure because all proprietors use the common property equally. The strata company should, for example, be able to at least elect to install solar panels of its own before an individual proprietor can do so. Further, in some situations in Vertical Schemes, it may not be practicable to allow an individual proprietor to use common property because either the strata company may be using or may in the future use the common property for some other purpose or an installation may directly interfere with another proprietor's use of their lot.

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[16] Section 3.15, Schedule 3 of the UTMA.

[17] Except those where exclusive use by-laws have been granted in the management statement.

However, in Horizontal Schemes, individual proprietors in practice use or have access to parts of the common property almost exclusively. For example, in the case of roof tops, every proprietor in a Horizontal Scheme has direct access to "their own" portion of roof space and the installation of sustainability infrastructure like solar panels and solar hot water systems will have no material impact on other proprietors. In these situations, there is no practicable reason why a proprietor should not be entitled to install the sustainability infrastructure on "their" portion of the roof space. Given the prevalence of solar panels and solar hot water systems, one may also question whether a proprietor (in relation to Horizontal Schemes) should be required to seek approval from the strata company at all. In these circumstances, the legislation could deem the proprietor to have exclusive use of "their" portion of the roof space.

The situation is less clear-cut with respect to sustainability infrastructure like awnings, rainwater tanks and wastewater treatment systems (in Horizontal Schemes). There may be circumstances where part of the common property (like gardens) in the vicinity of a lot are in practice used exclusively by the proprietor and where there is no material impact on the other proprietors if the proprietor is entitled to install such sustainability infrastructure. However, a strata company may have a legitimate interest in imposing other conditions to protect other proprietors such as in relation to the colour scheme chosen by the proprietor (e.g. for awnings and rainwater tanks) or whether the sustainability infrastructure is visible from the front of the lots (e.g. a strata company may wish to restrict rooftop solar heating systems for pools to the rear and side of the lots for aesthetics).

6.1 Reviews to the State Administrative Tribunal

In situations where it is less clear-cut, the decision of the strata company to approve or reject a proposal of a proprietor to install sustainability infrastructure on a lot or the common property should be reviewable by the State Administrative Tribunal. This would help prevent a strata company approving a proposal that will have a material impact on other proprietors, imposing unreasonable conditions on any approval or rejecting a proposal for an improper reason. This issue has been identified in the Consultation Paper. Proposal 179 proposes to grant the State Administrative Tribunal the power to make orders in respect of proposals by strata companies or proprietors to carry out structural improvements or additions to common property or a lot.[18] Proposal 179 is endorsed by the authors of this paper, subject to the discussion in the next paragraph.

There are two possible improvements that could be made to Proposal 179. The language does not expressly include installations of sustainability infrastructure. If this paper's recommendation to specifically deal with sustainability infrastructure (see Recommendation 2 below) is accepted, Proposal 179 should also grant the State Administrative Tribunal the power to make orders in respect of proposals by strata companies or proprietors to install sustainability infrastructure. The second is that Proposal 179 does not describe any factors or principles that the State Administrative Tribunal is to consider when reviewing a decision of the strata company. The ACT legislation provides a useful guide. Section 23(2) of the UTMA requires the owners corporation to be satisfied that the long-term benefit of the proposed infrastructure is greater than the cost of installing and maintaining the infrastructure having regarding to a site plan, maintenance plan, the

[18] Landgate. 2014. *Strata Titles Act Reform: Consultation Paper*. http://consult.landgate.wa.gov.au/consult.ti/STARCP/consultationHome (accessed on 16 January 2015), Part 9.2.19, p 86

terms of financing arrangements (if any), the direct and indirect costs and the long term environmental sustainability benefits of the proposed infrastructure (see Annexure A).[19]

Emphasis should be placed on the use of the phrase "long term" and sub-paragraph (e). The phrase "long term" would presumably prevent a proprietor arguing that the proposed infrastructure should not be installed because it does not deliver an economic return immediately or in the short term. Presumably, if it can be shown that the proposed infrastructure will save costs or deliver a return throughout the lifetime of the infrastructure, then the owners corporation can install the infrastructure. The inclusion of sub-paragraph (e) relating to the "*long term environmental sustainability benefits of the proposed infrastructure*" entitles the owners corporation to take into account more altruistic reasons for installing the proposed infrastructure, not just whether the proposed infrastructure will deliver a return. This means that even if the proposed infrastructure will not deliver a return, this is not necessarily fatal.

A distinction also must be drawn between factors and principles that should be taken into account when the strata company is installing the sustainability infrastructure as opposed to an individual proprietor. If an individual proprietor is undertaking an installation at their cost for their benefit only, the reasons for this should not matter to the strata company. The strata company's power to approve, impose conditions on or reject the proposal should be limited to whether there is a material impact on one or more proprietors in the scheme. Consideration may also need to be given to other factors that should be excluded from a strata company's decision. If, for example, a strata company becomes liable to pay an additional insurance premium as a result of an individual proprietor installing sustainability infrastructure, so long as the individual proprietor agrees to pay the additional premium (which is consistent with section 55A of the Act), it should not be a factor in the strata company's decision as to whether to approve the installation.

Decisions of the State Administrative Tribunal should be guided by principles of fairness and the balancing of different considerations. This can most effectively be achieved by providing a statement of factors or principles upon which decisions are to be made.

7. Position in Western Australia

7.1 Improvements and upgrades of common property

Strata title legislation in Western Australia does not expressly address issues relating to the installation of sustainability infrastructure in strata title either by the strata company or individual proprietors. In fact, the Act is silent on any right or obligation to improve or upgrade the common property[20] (as distinct from rights and obligations to repair and maintain the common property as set out in section 35(1) of the Act). This means that rights or obligations to improve or upgrade the common property or install additional infrastructure would either need to be provided for at common law[21] or the strata company or individual proprietor would need to determine if the legislation can be interpreted to allow for such rights or obligations. With respect to common law rights and obligations, a detailed review and analysis of common law relating to community title

[19] Section 23(2) also requires the owners corporation to have regard to any other matter prescribed by regulation. However, as at the date of this paper, no matters have been prescribed.

[20] Pacifici, C., 2011 *Greening Strata Title Schemes in Western Australia: Turning barriers into opportunities for individual owners to implement environmentally sustainable provisions in existing residential strata dwellings*. Curtin University, Perth, p 16

[21] Section 122(1) of the Act has the effect that the provisions of the Act do not derogate from any other rights or remedies that a strata company or proprietor may have in respect of a lot or common property.

would need to be carried out to determine what (if any) rights or obligations strata companies or other community corporations may have in respect of undertaking structural improvements and additions to common property.

With respect to the interpretation of legislation, basic principles of interpretation of legislation such as construing legislation in accordance with its object and purpose may assist with facilitating the installation of sustainability infrastructure if it can be successfully argued that the object and purpose of the Act supports such rights and obligations. Section 85 of the Act gives proprietors a right to apply to the State Administrative Tribunal for review if a strata company refuses to consent to the proprietor effecting alterations to the common property or repairing damage to the common property. This may suggest that strata companies and individual proprietors have rights and obligations in respect of common property, but it is by no means certain.

Importantly, even if such rights and obligations exist at common law or under the legislation, the strata company and/or individual proprietor would still need to successfully argue that such rights and obligations extend to installing sustainability infrastructure. While this paper does not intend to provide a detailed legal analysis of common law or the specific language used in the legislation, it can be safely assumed that in the absence of express provisions in the legislation relating to sustainability infrastructure (such as what is contained in the ACT legislation), there are significant legal barriers to the installation of sustainability infrastructure.

Regardless of whether common law rights or interpretation principles can or may (over time) assist with the installation of sustainability infrastructure, a strata company and/or proprietor runs the risk of having a case brought against it or them in the courts. This would be a time consuming and expensive exercise (including for the State of Western Australia given that courts and Tribunals are partly subsidised by the State). It would be unfair to expect a strata company or proprietor to have to defend such proceedings if it can be easily avoided.

7.2 Insurance

There is some uncertainty over how sustainability infrastructure is treated in relation to insurance. From a review of four home and contents insurance policies and two residential strata insurance policies, there does not appear to be a consistent industry approach to insuring sustainability infrastructure, either for full replacement in the event of damage or for public liability. None of the policies provide for an “all encompassing” definition of sustainability infrastructure. Three of the home and contents insurance policies cover damage to or liability arising from “solar panels” as part of the home component of the policy and two of these policies refer to “clothes lines”, but other than that, these policies do not specifically refer to any other type of sustainability infrastructure. One of these policies also specifically *excludes* plastic solar heating systems for pools or spas. The remaining home and contents insurance policy and both of the residential strata residential insurance policies do not specifically refer to solar panels or any other type of sustainability infrastructure.

Not specifically referring to sustainability infrastructure does not necessarily preclude coverage (for full replacement in the event of damage or for public liability) because sustainability infrastructure may be regarded as “fixtures” and/or “improvements” and therefore, be covered by a policy’s general coverage for fixtures and/or improvements. However, this will depend on the wording of the policy. The wording of the two residential strata insurance policies is ambiguous and requires a technical analysis of the definitions and language used in order to determine what is

covered. They both draw a distinction between fixtures and improvements installed, owned and operated by the strata company and those installed, owned and operated by individual proprietors.

Assuming that sustainability infrastructure is included under general coverage for fixtures and/or improvements, those fixtures and improvements installed, owned and operated by the strata company appear covered. The situation is not as clear when it comes to fixtures and improvements installed, owned and operated by individual proprietors because neither of the policies expressly states this. In the absence of an express statement, it is possible that an argument can be made that the policies are not intended to cover fixtures and improvements installed, owned and operated by the individual proprietors. To avoid this uncertainty and ongoing risk for the consumer, legislation could deem fixtures and improvements installed, owned and operated by the individual proprietors (including sustainability infrastructure) to be covered by residential strata insurance policies subject to the individual proprietor paying any additional premium pursuant to section 55A of the Act.

Many insurance policies also contain exclusions for property that has been installed illegally. As discussed previously, most (if not all) solar panel installations on strata title in Western Australia are likely to be unlawful[22] because the strata company has not granted and registered an exclusive use by-law giving the proprietor exclusive use of the roof space. This may have ramifications for such installations for those policies that exclude illegal installations. One of the residential strata insurance policies expressly excludes claims to rebuild, replace or repair illegal installations. While the authors of this paper have not undertaken a detailed review of common law to determine what may be regarded as illegal, there is a possibility that sustainability infrastructure that is required to be the subject of an exclusive use by-law and that is not the subject of an exclusive use by-law may not be covered. If this paper's recommendations to deem exclusive use and do so retrospectively in the appropriate situations (see Recommendation 5 below) are accepted, this should also include a provision that deems the relevant sustainability infrastructure to be covered by the strata residential insurance policy.

7.3 Other insurance issues

The Consultation Paper proposes to amend section 59 of the Act to allow a strata company to resolve not to apply insurance proceeds to the rebuilding, replacement, repair or restoration of the building.[23] The authors of this paper are unsure as to the reasons for this proposal, particularly given that section 59 is subject to sections 28 and 31 of the Act dealing with damage and destruction and termination of a scheme and it is difficult to contemplate what other circumstances would justify a strata company not applying insurance proceeds to the repair of damage or to a public liability claim. Presumably, section 59 was included for consumer protection purposes to prevent individual proprietors being disadvantaged by insurance proceeds not being applied to the repair of damage or to a public liability claim relating to their lot.

Nevertheless, assuming there is a practical purpose to amending section 59 of the Act as proposed, a proprietor prejudiced by the decision of the strata company should be entitled to apply for a review of the decision to the State Administrative Tribunal. If an individual proprietor has made improvements or upgrades to their lot or to the common property (particularly when it is at their cost and/or when they have paid an additional insurance premium pursuant to section 55A of the Act), the strata company (i.e. the other proprietors) should not be entitled to enjoy a windfall gain

[22] Except those where exclusive use by-laws have been granted in the management statement.

[23] Landgate. 2014. *Strata Titles Act Reform: Consultation Paper*. http://consult.landgate.wa.gov.au/consult.ti/STARCP/consultationHome (accessed on 16 January 2015), Part 8.1.3, p 65

from the insurance proceeds. The individual proprietor should be entitled to either have the damage repaired or the public liability claim paid or receive the insurance proceeds themselves. This issue would apply to any improvements or upgrades an individual proprietor makes to their lot or to the common property including sustainability infrastructure.

8. Solutions and Recommendations

This paper has identified a number of issues relating to the installation of sustainability infrastructure in strata title in Western Australia that could be addressed by the legislature in the current review of strata title. The first issue is that the current legislation is ambiguous with respect to the extent of the rights and obligations of strata companies and individual proprietors to make additions and alterations to common property. This issue does not just relate to sustainability infrastructure, but presumably affects other forms of improvements and additions as well.

Recommendation 1:

Clarify the rights and obligations of strata companies and proprietors with respect to making additions, alterations and other improvements to the common property of strata schemes in Western Australia.

The second issue is that there is no scheme in place that expressly allows strata companies or individual proprietors to install sustainability infrastructure. The ACT has addressed this issue in part by expressly stating that owners corporations have the power to install sustainability infrastructure provided that it can be shown that the long term benefit of the proposed sustainability infrastructure is greater than the cost of installing and maintaining the infrastructure. Western Australia could enact similar provisions to remove any doubt that strata companies and individual proprietors have the power to install sustainability infrastructure.

Recommendation 2:

Consider the provisions of the ACT legislation relating to sustainability infrastructure in strata title and provide similar provisions in Western Australia. Extend these provisions to individual proprietors. Provide statements of factors or principles upon which decisions of the strata company are to be made, not only to guide its decision making, but also to guide the decision making of the State Administrative Tribunal.

The third issue is that in order for individual proprietors to access common property for the installation of sustainability infrastructure, they must obtain an exclusive use by-law. This process is costly and time consuming. The ACT appears to allow rights relating to sustainability infrastructure to be granted by way of a licence. This would be a simpler and less expensive process for individual proprietors than an exclusive use by-law and is a more familiar concept in property law. From a practical point of view, there may not be any real purpose to registering exclusive use rights in general provided that the rights are required to be in writing and are included in the various disclosure requirements of proprietors when they sell their lot.[24] If the concept of an exclusive use

[24] While it is outside the scope of this paper, there are other types of exclusive use of common property (that do not relate specifically to sustainability infrastructure) that encounter the same costly and time consuming process that is involved with exclusive use by-laws. In commercial or mixed use buildings that are strata titled, there are a whole range of rights over common property that should be subject to an exclusive use by-law. These include, for example, car parking rights, signage rights, storage rights and naming rights. Some of these are difficult to register because they (should in theory) require surveys of the exclusive use area. In the authors' experiences, many such rights do not get registered.

by-law was replaced by a licence, the legislation would need to include statements to the effect that subsequent proprietors are bound to the benefits and obligations of the licence.

Recommendation 3:

Consider replacing the concept of an exclusive use by-law and replacing it with the concept of a licence in order to avoid costs and inefficiencies associated with registration. In order to avoid disadvantaging prospective purchasers, consider extending the usual disclosure requirements to include licences granted by the strata company over common property. Consider including statements to the effect that subsequent proprietors are bound to the benefits and obligations of the licence.

The fourth issue is that currently, strata title legislation requires a 'resolution without dissent' before a proprietor can make any improvements to their lot or in order to obtain an exclusive use by-law for any areas of common property which the proprietor wishes to use for sustainability infrastructure. This is a tough standard to meet whether it relates to improvements to a lot or an exclusive use by-law over common property and may also apply to situations not involving sustainability infrastructure. As discussed above, a single proprietor could vote against a resolution or an exclusive use by-law for any reason (including an improper reason) and defeat the resolution or by-law.

However, if the resolution requirements are reduced, the proposed improvements should be required to meet certain standards so as not to unfairly bind proprietors to unjustifiable expenditure. The strata company and/or proprietor may also be required to ensure that the sustainability infrastructure does not have any material impact on other proprietors. The ACT example of requiring that the long term benefit of the proposed sustainability infrastructure is greater than the cost of installing and maintaining the infrastructure may be relevant here. Introducing standard and/or a materiality test will also provide guidance to the State Administrative Tribunal when making decisions as to whether a proposal to install sustainability infrastructure should be approved or rejected.

Recommendation 4:

Reduce the requirements for resolutions in respect of the installation of sustainability infrastructure and improvements generally (on lots and on common property) to a simple majority of votes at the relevant meeting, but at the same time introduce relevant standards and/or a materiality test so as to protect other proprietors. Allow strata companies and proprietors to apply to the State Administrative Tribunal for review of a decision to approve, impose conditions on or reject a proposal to install sustainability infrastructure. Consider the relevance of the ACT legislation.

The fifth issue is that there are circumstances where individual proprietors in Horizontal Schemes may wish to install sustainability infrastructure on common property at their own expense and where there is no material impact on other proprietors. This is particularly relevant to sustainability infrastructure like solar panels and solar hot water systems where every proprietor in a Horizontal Scheme has direct access to "their own" portion of roof space. In these circumstances, it may be worth deeming proprietors to have exclusive use of "their" portion of the roof space without the need to obtain a licence or obtain and register an exclusive use by-law from the strata company.

If the legislation deems proprietors to have exclusive use of "their" portion of the roof space for specific infrastructure considered by the legislature not to have any material impact on other

proprietors (e.g. solar panels and solar hot water systems), the legislation would also need to create standard terms and conditions for the right of exclusive use and prohibit contracting out of those provisions. Deeming provisions into standard documents or creating standard rights is a common legislative technique including in property law. Notable examples include the areas of commercial tenancies, residential tenancies, leasing and mortgages where a range of operative provisions are deemed to be included in or excluded from leases and mortgages for the benefit of the relevant parties.

Deeming proprietors to have exclusive use of "their" portion of the roof space (and creating standard terms and conditions) would also be the *only* solution to the thousands of solar panel and solar hot water system installations that are currently unlawful. It is not practical or feasible to require these installations to go through an approvals process, particularly a process as costly and time consuming as the exclusive use by-law process. There is a great deal of uncertainty for and significant risk of potential liability of owners of solar panels and solar hot water systems that have not obtained exclusive use by-laws.

With respect to other infrastructure like rooftop solar heating systems, awnings, rainwater tanks and wastewater treatment systems, the circumstances may not be as clear-cut as for solar panels and solar hot water systems. Imposing standards and/or introducing a materiality test (as recommended in Recommendation 4) may be more appropriate here.

Technology changes over time and as such, new types of sustainability infrastructure may become available that may warrant deeming provisions and standard terms and conditions to apply. The ACT legislation adopts this principle when defining 'sustainability infrastructure' by not limiting the definition to particular technologies. So that legislation can keep up with technological change, legislation could be drafted to allow the Parliament to prescribe rights of exclusive use, what technologies apply to those rights and when those rights apply or do not apply (e.g. in Horizontal Schemes or Vertical Schemes or other circumstances).

Recommendation 5:

Include provisions in the legislation allowing the Parliament to prescribe:

(a) specific technologies where proprietors are deemed to have rights of exclusive use; and
(b) the area of exclusive use.

Prescribe that proprietors in Horizontal Schemes are deemed to have rights of exclusive use over "their" portion of roof space for the installation of solar panels and solar hot water systems.

Create standard terms and conditions for the rights of exclusive use.

Allow these prescribed rights and terms and conditions to apply retrospectively in order to protect the owners of the thousands of solar panel and solar hot water system installations that are currently unlawful.

The sixth issue is that there does not appear to be a consistent industry approach to insuring sustainability infrastructure, either for full replacement in the event of damage or for public liability. None of the insurance policies reviewed by the authors of this paper contain an "all encompassing" definition of sustainability infrastructure. This appears to be as much a problem for home and contents policies for detached dwellings as it is for strata dwellings. The strata insurance policies

reviewed by the authors of this paper in particular are not drafted to make it absolutely clear that coverage extends to fixtures and improvements installed, owned and operated by individual proprietors.

From the authors' own experiences, many individual proprietors of strata lots take out an additional home insurance policy (as part of a combined home and contents insurance policy) in order to ensure that their solar panels are covered. However, this in effect means that the proprietor is paying twice for coverage – once through their strata levies and once through their own insurance. Of greater concern is that the sustainability infrastructure may not be covered at all (either for full replacement in the event of damage or for public liability) if the strata insurance policies are not intended to extend to fixtures and improvements installed, owned and operated by individual proprietors (and the individual proprietors do not have a separate home insurance policy) or if the insurance policy excludes illegal installations.

Recommendation 6:

Consider implying a standard term into strata insurance policies to the effect that fixtures and improvements installed, owned and operated by individual proprietors (including sustainability infrastructure) is covered by the strata insurance policy subject to the individual proprietor paying any additional premium. Do this retrospectively so that sustainability infrastructure that is required to be the subject of an exclusive use by-law and is not the subject of an exclusive use by-law, but is deemed to become the subject of an exclusive use by-law (pursuant to Recommendation 5), is covered by the strata insurance policy.

The seventh issue is that if section 59 of the Act is amended as proposed by the Consultation Paper, a decision by a strata company not to apply the insurance proceeds towards the repair of property or public liability claim should be made reviewable by the State Administrative Tribunal so that if an individual proprietor has made improvements or upgrades to their lot or to the common property (particularly when it is at their cost and/or when they have paid an additional insurance premium pursuant to section 55A of the Act), the strata company (i.e. the other proprietors) does not receive a windfall gain.

Recommendation 7:

Give the strata company the power to pay insurance proceeds to individual proprietors where the insurance proceeds relate exclusively to their lot or improvements and upgrades to the common property installed, owned and operated by them. Allow individual proprietors disadvantaged by a decision of a strata company not to apply insurance proceeds towards the repair of property or the relevant public liability claim and/or not to pay the insurance proceeds to the individual proprietor to apply for a review of the decision to the State Administrative Tribunal. Give the State Administrative Tribunal the power to order that the insurance proceeds be applied towards the repair of the property or the public liability claim or be paid directly to the individual proprietor.

Profile of the Authors

Tristan Cockman is a commercial lawyer of 7 years experience and specialises in property law including strata title. He has acted for developers, landlords, sellers and buyers and regularly gives advice under the *Strata Titles Act 1985*, *Property Law Act 1969* and *Transfer of Land Act 1893*. Tristan has recently acted on several projects which involve the installation of sustainability infrastructure and has first hand experience implementing such projects under the existing strata title legislative regime.

Chiara Pacifici is Head of Sustainability at Psaros, one of WA's leading multi-residential developers and founder of industry education group Green Gurus™. She has had over two decades of real estate experience, including Licensee and Principal of a real estate agency and has completed university degrees in both property valuation and sustainability at Curtin University. Chiara combines a passion for the environment and property to pursue sustainable benefits and green initiatives from corporate to construction. She works closely with the real estate sector including property developers, consultants and government to help them achieve long-lasting sustainability outcomes.

Annexure A

Section 23 of the UTMA

23 Installation of sustainability and utility infrastructure on common property

(1) An owners corporation for a units plan may, if authorised by an ordinary resolution—

(a) approve the installation of sustainability or utility infrastructure on the common property; and

(b) approve the financing of the installation of the sustainability or utility infrastructure; and

(c) grant an easement or any other right over any part of the common property for the purpose of the installation, operation or maintenance of the sustainability or utility infrastructure.

(2) The owners corporation may only approve the installation, and financing, of sustainability or utility infrastructure under this section if satisfied, after considering the following, the long-term benefit of the proposed infrastructure is greater than the cost of installing and maintaining the infrastructure:

(a) a site plan of the proposed infrastructure;

(b) a maintenance plan for the proposed infrastructure;

(c) if the proposed infrastructure is to be financed by a third party—the terms of the financing arrangements;

(d) the direct and indirect costs of the proposed infrastructure;

(e) the long-term environmental sustainability benefits of the proposed infrastructure;

(f) any other matter prescribed by regulation.

(3) The owners corporation may, by ordinary resolution, decide to hold sustainability infrastructure (including existing sustainability infrastructure) installed on common property and any income earned from the operation of the infrastructure as trustee for—

(a) if all the units are owned by the same person—the owner; or

(b) in any other case—the unit owners as tenants in common in shares proportional to their unit entitlement.

(4) For section 71, an owners corporation is not carrying on a business if it receives income from the operation of the sustainability infrastructure and the income is used only to pay—

(a) costs, including financing costs, in relation to the installation and maintenance of the infrastructure; or

(b) costs of utilities used by, or provided to, the owners corporation.

Annexure B

Definitions

sustainability infrastructure, installed in relation to a units plan—

(a) means infrastructure and equipment that—

(i) improves the environmental sustainability of the units; or

(ii) reduces the environmental impact of the owners corporation and the unit owners; and

(b) includes related utility service connections and equipment.

Examples—par (a)

solar panels, clothes lines, rainwater tanks

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

utility infrastructure means infrastructure and equipment necessary for, or related to, the provision of utility services.

utility services includes—

(a) the collection and passage of stormwater; and

(b) the supply of water (for drinking or any other use); and

(c) sewerage and drainage services; and

(d) garbage collection services; and

(e) gas, electricity and air services (including airconditioning and heating); and

(f) communication services (including telephone, radio, television and internet).

Annexure C

Example of management statement incorporating by-laws relating to sustainability infrastructure

FORM 25

Strata Titles Act 1985
Section 5C(1)

STRATA PLAN No. XXXXX

MANAGEMENT STATEMENT

Original Proprietors: **XXXXXX**

Description of Parcel: **XXXXXX**

This management statement lodged or to be lodged with a strata plan in respect of the above land sets out the by-laws of the strata company or amendments to the by-laws contained in Schedule 1 and/or Schedule 2 of the *Strata Titles Act 1985* that are to have effect upon registration of the strata plan.

1. The Schedule 1 by-laws are amended, repealed, or added to as follows -

The following by-laws are hereby added –

16. THEME OF DEVELOPMENT

(1) The strata scheme is a mixed use of residential and commercial uses with the underlying theme of the development being based on environmental and sustainability aims that include:

(a) solar Photo Voltaic (PV) panels available for use of the residential lots and the common property;

(b) communal solar hot water system (gas boosted)

(c) energy monitoring for apartments, commercial lots and common property electricity consumption and where applicable monitoring of solar power generation;

(d) communal, edible gardens managed by a committee of residents;

(e) a recharging station for electric cars

(2) A proprietor, occupier or other resident of a lot shall comply with the conditions and zoning of the town planning scheme and shall not be permitted to use its lot for the purposes other than those permitted by the City of Vincent.

(3) The following uses for the lots are:

(a) Lots 1 to 22 are to be used for residential occupation

(b) Lots 23 and 24 are to be used as professional offices, consulting rooms or a similar sedentary use.

17. USE OF LOTS 23 AND 24

(1) A proprietor of lots 23 and 24 ("Office Lots") shall be permitted to conduct a business on its lot provided that all planning and other approvals to the use of its lot for the proposed purpose have been obtained from the City of Vincent and the proprietor and/or tenant subsequently complies with the conditions of those approvals. The preferred use of the lots 23 and 24 is for professional offices or consulting rooms. Should a proprietor or tenant wish change the use from offices or consulting rooms to another use then the consent of the strata company will be required.

(2) A proprietor or tenant of the Office Lots must –

(a) conduct any business carried on its lot in an orderly, efficient and reputable manner, consistent with the standard and quality of the strata scheme;

(b) at all times comply with the requirements of the Environmental Protection Regulations 1987 in respect of noise to comply with the Environmental Protection Noise (Regulations)

(c) keep the interior of the lot, the shop front, shop windows, fixtures, fittings and display clean, orderly and adequately illuminated during trading hours;

(d) not install any electrical equipment which will overload the cables, switchboards and other equipment that supply electricity to the scheme;

(e) not commence trade or open for business until they have received the approvals of all relevant authorities;

(f) take all reasonable care to ensure that the conduct of their business does not unreasonably impact on the peaceful enjoyment of the other proprietors, occupiers or residents of their lots.

(3) A proprietor or the tenant of the Office Lots must apply to the council of owners (who act on behalf of the strata company) or their appointed agent, for its prior written consent to any change in the use from offices or consulting rooms. The consent of the council of owners will not be unreasonably withheld if all planning, licensing and other approvals for the use of the lot for the proposed purpose have been obtained and the proprietor and/or tenant fully complies with the conditions of those approvals.

(4) Either a proprietor or tenant of the Office Lots must arrange and maintain insurance on usual terms with an insurer authorised under the Insurance Act 1973 against each of the following:

(a) Public liability in respect of the lot (with cover of at least $10 million for each event, or such higher amount as the strata company may reasonably require);

(b) Damage to, and loss of, internal and external glass (including plate glass), doors, display cases, fittings, chattels, the strata company's fixtures and all other things that are on or in the lot;

(c) Employer's liability in respect of all employees (including workers' compensation insurance).

(5) The insurance under this clause must begin from the commencement of occupation of the lot and be maintained for the whole period that the lot is used or occupied. The strata company must be provided with a copy of any policy, certificate of currency or receipt they ask for in relation to this insurance.

18. OPENING HOURS

(1) The Office Lots shall be permitted to open for business between the hours of 7.00 am and 9.00 pm 7 days a week, or at times approved by the strata company. The proprietors of the lots used for residential occupation will not unreasonably object to noises or other factors associated with the Office Lots.

(2) The proprietor or tenant of the Office Lots will make all reasonable endeavours to keep noise and other factors that impact on the peaceful enjoyment of residential occupants to a reasonable level.

19. ENVIRONMENTAL AND SUSTAINABILITY COMMITTEE

(1) The strata company or the council of owners may appoint a subcommittee or caretaker/s from within the residents of the strata scheme whose tasks will be to manage, inform and educate occupiers within the strata scheme on sustainability.

(2) The original proprietor has paid for the setup of a website platform for the managing agent, lot proprietors, occupiers or other residents to access and be informed on sustainability initiatives and other relevant details pertaining to the building.

20. LOTS 1 TO 24 GRANTED EXCLUSIVE USE OF A SOLAR PHOTOVOLTAIC PANELS

(1) The original proprietor has installed roof mounted solar photovoltaic panels and associated apparatus that includes, mounting fixtures, wires pipes and ducts ("PV System") to lots 1 to 24. Each PV Systems is separately connected to the electrical system of the respective lots through an inverter.

(2) The proprietors of lots 1 to 24, are in accordance with section 42(8) of the Act, hereby granted exclusive use of those part of the common property that comprise the PV System that services each of the lots 1 to 24 that are delineated and marked on Annexure "A" as "EX " followed by the respective lot number.

(3) The proprietors of lots 1 to 24 are entitled to receive electricity generated by a roof mounted PV System that is connected to its lot. The proprietors, occupiers and other residents acknowledge and agree that the amount of electricity generated by the PV Systems may vary and is dependent on the capacity and position of the PV System on the roof.

(4) The proprietor of a lot who has exclusive use of a PV System is responsible for the costs to repair, clean and maintain its PV System. The strata company shall act as the

agent of the proprietor to clean, repair and maintain the PV System and shall separately invoice each proprietor for these costs.

(5) The proprietor of a lot is not permitted at any time to access the roof or interfere with the PV System.

(6) The strata company must use only suitably qualified tradesmen to clean, repair, maintain and is necessary replace the PV Systems.

21. COMMON SOLAR HOT WATER SYSTEM

A common property gas boosted solar hot water system is connected and metered to each lot. The amount of hot water used by each lot is recorded on the meter for the lot and each occupier is invoiced regularly by the strata company for the consumption of hot water used by the occupiers of the lot.

22. RECHARGING STATION FOR ELECTRIC MOTOR VEHICLES

(1) There is provision for a recharge station to be located in one of the allocated visitor car bays. The electric charging station has embedded within it, hardware and firmware enabling residents to register and activate the charging station network. A 3G internet connection is necessary for this system to operate and will be managed by the strata company's appointed managing agent. *(Note: Please refer Schedule 2 by-law 15 for vehicles parking on common property).*

(2) The original proprietor or strata company shall enter into an agreement with an appropriate authorised service provider for a set term and conditions that include the following:

i. issuance of RFID swipe cards to the drivers;
ii. remote monitoring and support;
iii. access to the driver portal;
iv. telephone help line;
v. billing of drivers for power consumption;
vi. reimbursement of the strata company for power consumption

(3) The visitor car bay with the electric recharging station can be used by proprietors, occupiers and other residents and their visitors. Terms of use are as follows:

(a) maximum allowed time to charge will be up to 6 hours. The car must be removed after this time;

(b) the strata company's managing agent will manage access arrangements including limited use of the station to certain drivers and monitoring energy use for the report purposes.

23. ENERGY MONITORING OF COMMON PROPERTY

(1) Mechanical and electrical systems located in parts of the common property have been fitted with energy monitoring devices that will assist the strata company to measure and manage the ongoing energy use of these systems. The monitoring system will also measure the energy generation of the common property solar PV system. A 3G network system is necessary for this system to operate and will be managed by the strata company.

(2) The managing agent of the strata company will collect the data and report to the proprietors at the annual general meeting. The original proprietor reserves the right to receive and use these reports.

24. SUNDRY ITEMS FOR THE USE OF A LOT

Other than items that are maintained by the strata company, a proprietor of a lot shall be responsible for the replacement, maintenance, repair and servicing of sundry and incidental items (e.g. including (but not limited to) fly screens, door locks, lights, etc.) that are installed on or in the relevant proprietor's lot (or the common property if for the exclusive use of the particular lot). In the event a proprietor does not keep these items in good repair, then the strata company may serve a notice on the proprietor requiring these items to be properly maintained.

25. EXCLUSIVE USE FOR CAR BAYS FOR LOTS 23 AND 24

(1) In accordance with section 42(8) of the Act, the proprietor of lot 23 are is hereby granted exclusive use of those parts of the common property that are delineated on Annexure "B" by "Ex 23" ("Exclusive Use of Area 23 ") between the hours of 7.00 am and 9.00 pm 7 days a week. The proprietor of lot 23 shall -

(a) keep Exclusive Use Area 23 in a clean, neat and tidy condition;

(b) use its Exclusive Use Area 23 solely for the purposes of parking licensed motor vehicles between the hours of 7.00 am to 9.00 pm;

(c) not be permitted to store any goods or equipment including transport containers within any part of its Exclusive Use Area 23;

(d) not be permitted to conduct any repairs or maintenance to a motor vehicle, upon any portion of its Exclusive Use Area 23;

(e) not be permitted to enclose or construct any structure within its Exclusive Use Area 23 without the prior written consent of the strata company.

(2) In accordance with section 42(8) of the Act, the proprietor of lot 24 are is hereby granted exclusive use of those parts of the common property that are delineated on Annexure "B" by "Ex 24" ("Exclusive Use of Area 24") between the hours of 7.00 am and 9.00 pm 7 days a week. The proprietor of lot 23 shall -

(a) keep Exclusive Use Area 24 in a clean, neat and tidy condition;

(b) use its Exclusive Use Area 24 solely for the purposes of parking licensed motor vehicles between the hours of 7.00 am to 9.00 pm;

(c) not be permitted to store any goods or equipment including transport containers within any part of its Exclusive Use Area 24;

(d) not be permitted to conduct any repairs or maintenance to a motor vehicle, upon any portion of its Exclusive Use Area 24;

(e) not be permitted to enclose or construct any structure within its Exclusive Use Area 24 without the prior written consent of the strata company.

(3) Exclusive Use Area 23 and Exclusive Use Area 24 are available for parking for visitors only, to lots 1 to 22 between the hours of 9.00 pm to 7.00 am. It is the responsibility of the proprietor, occupier or other resident to ensure its visitors vacate the car parking bays before 7.00 am.

26. DISPLAYING OF GOODS

A proprietor, occupier or tenant of a lot shall not display outside of the relevant lot on the common property any goods, materials, equipment or items associated with the use of, or business carried out on, the lot without the prior written consent of the strata company and subject always to the condition that the proprietor, occupier or tenant (as the case may be) shall first effect a policy or policies of public liability insurance in respect of the loss or damage of such goods, materials and equipment and the death or any injury to persons in connection to such goods, materials and equipment.

27. FACADES OF THE BUILDING

A proprietor, occupier or other resident shall not modify, alter, erect or carry out any works to the facades or change the external colour scheme or appearance of the building without the prior written approval of the strata company (which may be granted or withheld at their absolute discretion).

28. BLOCKAGE OF DRAINAGE PIPES

The water closets, conveniences and other water apparatus, including waste pipes and drains, shall not be used for any purposes other than those for which they are constructed and no rubbish or other unsuitable substance shall be deposited therein. Any resulting damage or blockage to such water closets, conveniences and other water apparatus, waste pipes and drains from misuse or negligence shall be borne by the proprietor of the lot from which the damage or blockage originated, whether the damage or blockage is caused by the proprietor's own actions or those of their tenants, servants, agents, invitees or licensees.

29. WATER LEAKAGE TO OTHER LOTS AND COMMON PROPERTY

(1) It is the responsibility of the proprietor of a lot to ensure that all wet areas within the lot or lots of which they are the registered proprietor or occupier are maintained in a proper sealed manner to prevent the leakage, seepage or transference of any water or other liquid on to any part of the common property or other lot other than waste pipes provided for the disposal of such water or liquid.

(2) The registered proprietor of a lot will be liable for the repair and replacement of any part of the common property, any part of a lot or any of the contents of a lot that has been damaged by water leakage from its lot.

30. ACCESS OVER A LOT BY THE STRATA COMPANY OR IT'S AGENTS OR LOT PROPRIETORS

Where and to the extent that the strata company resolves that access is necessary or desirable for repairs to the common property, cleaning of the external parts of the windows or painting and maintenance of a lot (or for any other reason they reasonably consider necessary), the proprietor, occupier or resident of a lot shall permit the strata company and its servants, agents, contractors and invitees (with all necessary plant and equipment) to have access to his lot in order to obtain access to any part of the common property or lot.

31. INSTRUCTING OF CONTRACTORS BY PROPRIETORS

A proprietor, occupier or other resident shall not instruct any contractors or workmen employed by the strata company unless expressly authorised by the strata company. Any proprietor, occupier or other resident instructing any contractor or workmen without authorisation from the strata company shall be personally responsible for the payment of such contractor or workmen and for the cost of removing, making good or altering any such work, which the strata company deems unsatisfactory. The proprietor shall indemnify the strata company against any costs, claims or liabilities arising from the improper instructions given to contractors or workmen.

32. OBLIGATION TO NOTIFY DEFECTS IN SERVICES

A proprietor, occupier or other resident shall give the strata company or managing agent prompt written notice of any accident to or defect in the water pipes, gas pipes, electrical installations, cabling or fixtures that form part of the common property and which are situated in his or her lot. The strata company shall have the discretion to carry out such repairs and renovations as and when they deem necessary for the safety and preservation of the building and services.

33. SEPARATE COST CENTRES

(1) Because of the of activities and uses that will occur in the strata scheme, and to enable the scheme to be efficiently managed, the strata company may decide to use the following by-laws to separate costs.

(2) The expenses which are Cost Items (meaning any cost, expense or liability incurred by the strata company in the performance of its obligations and that may relate to any specific part of the strata scheme) may be allocated other than on a strict unit entitlement basis.

(3) Each of the areas identified in clause 31(4) will be operated as a separate Cost Centre (being the specific areas to which Cost Items are apportioned or allocated).

(4) The Cost Centre that a proprietor will be required to contribute to will be determined as follows:

(a) the proprietors of the Office Lots will be allocated to the “Commercial Cost Centre”;

(b) the proprietors of lots 1 to 22 that are used for residential occupation will be allocated to the “Residential Apartments Cost Centre”;

(5) The strata company must operate the Cost Centres when apportioning Cost Items so that the Cost Items for the relevant Cost Centre will be allocated to the proprietors of that Cost Centre. Within a Cost Centre, Cost Items shall be apportioned on the basis of the total unit entitlement of all proprietors forming part of that Cost Centre. Cost Items may, where necessary, be apportioned between two or more Cost Centres, either equally or in the proportions that the strata company considers appropriate.

(6) The proprietor will pay the proportion of the Cost Items of the Cost Centre that the proprietor's unit entitlement bears to the total unit entitlement of all proprietors forming part of that Cost Centre.

(7) The strata company shall not be required to maintain a separate bank account for each Cost Centre and may maintain one account containing moneys held for more than one Cost Centre.

(8) The decision of the strata company in the calculation of contributions towards particular Cost Items, or the apportionment of these, shall be conclusive in the absence of a manifest error.

34. RECOVERY OF MONEY BY THE STRATA COMPANY

(1) If the strata company expends money to make good damage caused by a breach of the Act or by-laws by any proprietor or his tenants, servants, agents, invitees or licensees, or incurs any other costs, expense or claim, the strata company shall be entitled to recover that amount (and the costs of recovery) from the person who was the proprietor of the lot at the time when the breach occurred, whether or not they were the person who caused such expense.

(2) A proprietor of a lot must pay on demand to the strata company all legal costs on a solicitor-client basis which the strata company pays, incurs or expends in consequence of any default by the proprietor, occupier or other resident of that lot in the performance or observance of any bylaws including, but not limited to, recovery of strata company contribution fees.

35. AIR CONDITIONING UNITS

(1) The proprietor of a lot shall be responsible for the insurance, and if necessary the repair, replacement, and installation of any new air conditioning unit or exhaust system or the maintenance and upkeep of an existing system.

(2) In the event that the air conditioner or exhaust system is located on the common property or partly on the common property, then the proprietor of the lot shall be granted exclusive use of the cubic space comprising the condenser pipes and wires.

(3) In accordance with section 42(8) of the Act, the rights of exclusive use and enjoyment over that volume of the common property occupied by any air conditioning (including ducting cabling and any ancillary equipment) that services and relates to an individual lot are granted to the proprietor of the lot to which the air conditioning machinery relates but only for the purpose of providing and maintaining conditioned air for that lot.

36. BALCONY AND TERRACE APPEARANCE AND FURNITURE

(1) The external appearance of the buildings is to be maintained to a uniform and aesthetically pleasing demeanour. A proprietor of a lot shall not install or affix any structure, fittings or fixtures, including shade sails, blinds, shutters, umbrellas or other similar improvements or objects to a balcony, terrace or an external wall or surface of the building unless it has been first approved in writing by the strata company (which may be granted or withheld at their absolute discretion).

(2) A proprietor, occupier or other resident of a lot that contains a balcony shall –

(a) ensure at all times that all outdoor furniture that is on the balcony is fitted with suitable floor pads that will prevent the transmission of noise;

(b) ensure outdoor furniture and pot plants are secured to prevent potential damage to other lots or the common property in the case of storms and strong winds;

(c) ensure that rubbish or litter does not fall or is blown by wind from its balcony onto the lots below.

(d) be permitted to place pot plants on its balcony provided the gross weight of the pot plants does not exceed the permitted weight limit of the balcony;

(e) be permitted to grow herbs, vegetables and plants, subject to any excess water from the pots being contained within the pot plant and not spilling onto the balcony floor and the height of any vegetation not exceeding 1.5 metres in height;

(f) be responsible at its cost, to repair any damage to the balcony floor caused by the pot plants or water leaking from the pot plants;

(g) not be permitted to install any temporary structure such as an outdoor umbrella, portable gazebo, tent or similar structures if the height of such a structure is more than 3 metres above the ground surface.

37. NO SMOKING

(1) No proprietor, occupier, other resident or invitee shall smoke any tobacco or similar substance in or on any part of the common property.

(2) Any proprietor, occupier, other resident or invitee who breaches by-law clause (1) or permits a breach of that by-law will indemnify the strata company from any claim by any authority or the fire brigade arising from the smoke detectors fitted to the common property being activated by reason of the breach of clause (1).

38. PEACEFUL ENJOYMENT AND NOISE LIMITATIONS

(1) A proprietor, occupier or other resident or visitors to a lot are advised that all reasonable efforts are to be made by them, to ensure there is no undue noise within the lots or common property.

(2) A proprietor, occupier other resident and tenants shall not be permitted to make undue noise in or about any lot or common property that contravenes any regulation, by-law, or statute of the local government authority or any other government or regulating authority law.

(3) A proprietor, occupier, other resident or a tenant of a lot shall not be permitted to carry out any activities that cause noise or inconvenience to the occupiers of any neighbouring proprieties or allow any undue noise or manner which would unreasonably cause damage, nuisance or disturbance to other proprietors or

tenants, or to the proprietor or occupiers of adjoining premises and lots and shall not use the lot in a noisy, noxious or offensive manner.

39. LIMITING ACCESS TO PARTS OF COMMON PROPERTY

The strata company may take measures to ensure the security and to preserve the safety of the common property and the lots from damage, fire or other hazards and, without limitation, may:

(a) in respect of any part of the common property not required for access to a lot, close off on either a temporary *or* permanent basis, or otherwise restrict the access to, or use by, the proprietors or occupiers of any lot; and

(b) permit, to the exclusion of the proprietors or occupiers of any lot, any designated part of the common property to be used by any security person as a means of monitoring the security and general safety of the lots, either solely or in conjunction with other lots.

40. RESERVE FUND CONTRIBUTIONS

The strata company shall at all times maintain pursuant to section 36(2) of the Act a reserve fund for the purpose of accumulating funds to meet future contingent expenses other than those of a routine nature and other major expenses of the strata company likely to arise in the future.

41. DISPUTE RESOLUTION PROCEDURE

(1) Should a dispute arise in relation to the operation of the strata company or these by-laws, the proprietors and the strata company shall follow the procedures set out in this by-law to resolve disputes. For the purpose of this by-law an "Independent Person" shall mean an independent, suitably qualified mediator nominated or recommended by the Law Society of Western Australia, and a "Dispute Notice" means the written notice that is to be given under this by-law.

(2) Where any party bound by the terms of these by-laws is in dispute with another party bound by the terms of these by-laws and such parties cannot resolve the dispute within a reasonable time, then the provisions of this bylaw shall apply.

(3) A party asserting a dispute must give to the other party a Dispute Notice containing the information set out in by-law 41.

(4) The Dispute Notice must state:

(a) what is in dispute;

(b) the arguments of the party giving the Dispute Notice, and

(c) what should be done to rectify the dispute.

(5) The party receiving the Dispute Notice must respond in writing within five business days of receiving the Dispute Notice.

(6) If the dispute is not resolved by the exchange of notices, then the parties must confer in the presence of an Independent Person and attempt to resolve the dispute.

(7) The conference with the Independent Person must be held within 14 days (or at a later time to meet the convenience of the Independent Person) from a notice convening the conference being sent by one of the parties.

(8) Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.

(9) During the dispute resolution process, the parties must continue to perform their existing obligations under the terms of the by-laws.

(10) Subject to the parties' rights under the Act, the decision of the Independent Person or any settlement reached by the parties will be final and binding on the parties. The Independent Person must also determine which party or parties pays the costs of and incidental to the resolution of the dispute.

42. ROOF DECK

(1) The strata company shall control and manage the Roof Deck located on the including the access and hours of use for proprietors, occupiers and other resident and will use a booking system to assist in the control of the number of people using the roof deck. The strata company may charge a booking and cleaning fee for use of this area.

(2) The strata company's sustainability subcommittee or caretaker/s may plant and maintain a vegetable garden in the planter boxes on the Roof Deck for the benefit of all proprietors, occupiers and other residents.

43. HOUSE RULES

The strata company may from time to time make, withdraw or amend rules for the use and management of the common property, including (but not limited to) the management or control of:

(a) control of the vehicle access ways;

(b) rubbish collection;

(c) charges relating to the security system and security keys; and

(d) any other rule that the strata company reasonably considers necessary.

Provided such house rules shall be intended to promote the peaceful and orderly enjoyment of building and common property for the mutual benefit of all proprietors, tenants and occupiers and must not conflict with the by-laws.

44. LEASING OF LOTS

Prior to the leasing of a lot and before the commencement date of any such lease, the proprietor shall -

(a) inform the strata company of the name of the proprietor's managing agent for the lot (if any) and the name of the lessee. This information shall be recorded on the strata company roll; and

(b) provide the lessee with a copy of the strata company by-laws.

45. TENANTS, OCCUPIERS TO BE BOUND BY THESE BY-LAWS

A proprietor, occupier or other invitee of a proprietor, occupier or resident, including without limiting the generality of the term, any lessee or licensee of the proprietor, occupier or other resident shall be bound by these by-laws.

46. RECOVERY OF MONEY BY THE STRATA COMPANY

(1) If the strata company expends money to make good damage caused by a breach of the Act or by-laws by any proprietor or his tenants, servants, agents, invitees or licensees, or incurs any other costs, expense or claim, the strata company shall be entitled to recover that amount (and the costs of recovery) from the person who was the proprietor of the lot at the time when the breach occurred, whether or not they were the person who caused such expense.

(2) A proprietor of a lot must pay on demand to the strata company all legal costs on a solicitor-client basis which the strata company pays, incurs or expends in consequence of any default by the proprietor, occupier or other resident of that lot in the performance or observance of any bylaws including, but not limited to, recovery of strata company contribution fees.

47. RESERVE FUND

The strata company shall administer a reserve fund in accordance with section 36(2) of the Act for the purpose of accumulating funds to meet contingent expenses that may arise in the future. These funds shall be raised at a rate of 0.05 percent of the insurable value of the building per annum, or another appropriate amount determined by the strata company.

2. The Schedule 2 by-laws are amended, repealed, or added to as follows -

Schedule 2 by-laws 1, 7(b) and 12(c) are repealed and the following by-laws are hereby added:

15. VEHICLES PARKING ON COMMON PROPERTY

(1) The vehicle access way comprising the common property must at all times be available for access and egress by pedestrians or motor vehicles.

(2) A proprietor, occupier, other resident of a lot shall not be permitted at any time to park a motor vehicle, trailer, camper van or boat and trailer either temporarily or permanently on any part of common property.

(3) The vehicle access way comprising the common property must at all times be available for access and egress by pedestrians or motor vehicles.

(4) A proprietor, occupier, other resident of a lot shall not be permitted at any time to park a motor vehicle, trailer, camper van or boat and trailer either temporarily or permanently on any part of common property.

(5) The visitor car bay with the electric recharging station can be used by proprietors, occupiers or other residents and their visitors. Terms of use are as follows:

(a) maximum allowed time to charge will be up to 6 hours. The car will need to be removed after this time;

(b) the strata company's managing agent will manage access arrangements including limited use of the station to certain drivers and monitoring energy use for the report purposes.

16. KEEPING OF PETS

(1) A proprietor, occupier or other resident of a lot shall be permitted to keep one small domesticated dog weighing no more than 10 kilograms or thereabouts or 1 cat on its lot. Indoor aquariums are permitted provided the proprietor, occupier or other resident indemnifies the strata company from any liability for damage caused in the event the aquarium breaks and floods the lot. Domesticated cage birds are permitted provided the birds do not interfere with the quiet and peaceful enjoyment of their lots by the other proprietors.

(2) A proprietor, occupier or other resident may only enter upon the common property with a pet for the purpose of access and egress to their lot.

(3) Any dog or cat belonging to a proprietor, occupier or other resident that enters the common property, must be leashed or carried and under the control of a responsible person.

(4) A person who has purchased or is proposing to purchase a lot within the strata scheme to occupy same as that person's residence and who has an existing pet or pets, the keeping of which will not be in compliance with sub clause (1) above, may be granted an exemption from compliance by the council of owners, at their reasonable discretion. The exemption may apply for the period of a pet's life or other term as reasonably determined by the council and may otherwise be granted subject to such terms and conditions as the council may reasonably impose. The ability to obtain an exemption under this sub clause (4) does not apply to a prospective tenant of a lot.

(5) The strata company may serve notice on a proprietor, occupier or other resident of a lot whose pet causes a nuisance to other proprietors or, subject to (4) above, breaches these by-laws. The notice may request the removal of the offending pet within 7 days of service of the notice.

17. SIGNAGE

(1) A proprietor, occupier or other resident of a lot must not display any sign (including for sale or for lease), advertisement, placard, banner on any external part of its lot or the common property.

(2) Nothing contained in this by-law shall restrict the right of the original proprietor for a period of twenty four months (24) months following the 14 registration of the strata plan (which right is hereby expressly conferred) to display on any part of any lot or any part of the common property such signs, including for sale and for lease as the original proprietor sees fit,. The original proprietor reserves the right to use any

unsold lot that it may retain for the purposes of a display unit to assist in marketing the lot for sale the lot.

18. DAMAGE TO COMMON PROPERTY

(1) A proprietor, occupier or other resident will be responsible for any damage to any part of the common property through misuse by the proprietor, tenant or its employees, agents and other invitees and shall be liable to pay for any repairs to make good the damage.

(2) The strata manger will manage the moving in of the first occupiers into their respective lots. After that has occurred any future proprietor, occupier, resident who is moving into or out of a lot must deposit a bond of $1,000 with the strata manager to cover costs of damage when moving furniture or equipment in and out of its lot and shall at their expense immediately dispose of any rubbish (including cardboard boxes, wrapping material, packaging, broken furniture or similar waste). None of these, or similar, materials are to be stored, kept or remain on a lot, the common property or the proprietor's car parking bay. In the event that a proprietor, occupier, resident or tenant does not dispose of such rubbish immediately, the strata company shall do so and the proprietor, occupier, resident or tenant will be responsible for the costs of doing so. The onus is on the affected party to prove the damage was done prior to commencing the move.

19. SECURITY

(1) The proprietors of each lot will be liable to pay by levy for all operating, maintenance and repair costs for the security gates and doors. The levy shall be in the same proportions as the respective unit entitlements to each lot.

(2) The proprietor of a lot will be issued with key devices and remote controls to gain access to the lot, car park, lifts and stairways. The receipt for the keys and devices and remote control will be signed off by the proprietor and recorded on a key register held by the strata company. In the event that a key device or remote control is lost or destroyed the proprietor will immediately inform the managing agent. The proprietor will be liable for the cost of replacing and recoding these items.

20. TELEVISION ANTENNAS AND AERIALS

The original proprietor has arranged for the building to be wired to permit telecommunications, free to air television and pay television from a system of common wiring. A proprietor, occupier or tenant shall not erect any television antenna, receiving aerial or transmitting device within or about any lot or on the common property without obtaining the prior written consent of the strata company.

21. FLOOR COVERINGS AND NOISE TRANSMISSION

(1) A proprietor of a lot shall ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission of noise likely to disturb the peaceful enjoyment of the proprietor, occupier or other resident of another lot.

(2) A proprietor of a lot shall not be permitted to install any timber, cork or ceramic tile flooring within the floor space within their lot unless it complies with the relevant

Australian Standards and Building Codes of Australia's acoustic separation specifications.

(3) An occupier of a lot shall ensure any movable furniture that is located either permanently or temporarily on a balcony have the legs or base of the furniture fitted with felt pads to assist in the restriction of the transmission of noise.

22. WINDOW TREATMENTS

Those parts of any window treatments that can be viewed from the outside of the building shall at all times match the external colour scheme of the building. A proprietor, occupier or other resident shall not alter or change these colours without the prior written consent of the managing agent.

23. GARBAGE DISPOSAL

(1) A proprietor, occupier, resident or tenant of a lot shall -

(a) comply with all local government authority by-laws and ordinances relating to garbage disposal;

(b) ensure that any household waste that is placed in the garbage bin is wrapped and sealed so as not to cause offensive odours or unsanitary conditions;

(c) ensure that the health, hygiene and comfort of the proprietor, occupier or other resident of any other lot is not adversely affected by his or her disposal of garbage.

(2) Any proprietor, occupier, resident or tenant who is moving into or out of a lot shall at their expense immediately dispose of any rubbish (including cardboard boxes, wrapping material, packaging, broken furniture or similar waste). None of these, or similar, materials are to be stored, kept or remain on a lot, the common property or the proprietor's car parking bay. In the event that a proprietor, occupier, resident or tenant does not dispose of such rubbish immediately, the strata company shall do so and the proprietor, occupier, resident or tenant will be responsible for the costs of doing so.

24. STOREROOMS

(1) A proprietor, occupier or other resident of a lot shall keep their storeroom clean and tidy and shall not store or permit to be stored any item that will cause a noxious odour or foul smell or attract vermin or pests.

(2) A proprietor, occupier or other resident of a lot acknowledge that all items stored in the storerooms are stored at the proprietors, occupiers or residents risk and no claim may be made against the strata company or any related body for the theft, loss or damage of items.

25. INTERFERENCE WITH SAFETY EQUIPMENT

A proprietor, occupier or other resident of a lot must:

(a) not use or interfere with any fire safety equipment except in the case of an emergency and must not obstruct any fire stairs or fire escape;

(b) ensure compliance with all statutory and other requirements relating to fire and fire safety in respect of the lot; and

(c) ensure that all smoke detectors installed in the lot are properly maintained and tested and that back-up batteries relating to the smoke detectors are replaced whenever necessary.

26. DRYING AREAS

(1) Located on the parcel are parts of the common property areas that have been set aside for the purpose of clothes drying areas. These areas are a requirement of the planning approval passed by the City of Vincent and must at all times be used solely for the purposes of drying and airing clothes, bedding or linen.

(2) A proprietor, occupier or other resident shall:

(a) not use the drying areas for any purpose other than drying or airing clothing, bedding or linen;

(b) not leave articles of clothing in the drying area for more than 24 hours;

(c) indemnify the strata company from any liability or responsibility for lots, or stolen articles.