

**SP61618**



**The Wharf**  
**Strata Management**  
**Statement**

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## The Wharf Strata management statement

### 1 What is a strata management statement?

- 1.1 A strata management statement is a set of rules that regulate the management and operation of buildings where part of the building is subdivided by a strata scheme or schemes. These types of strata schemes are called "part building strata schemes". The Strata Schemes in The Wharf are part building strata schemes.
- 1.2 A strata management statement confers rights and obligations on the owners corporations and owners and occupiers of lots in a building in which there is a part building strata scheme. It contains procedures about a wide range of issues including meetings, financial management and the maintenance of shared facilities.

### 2 About The Wharf

#### What are the components in The Wharf?

- 2.1 The Wharf is a luxury development containing a mixture of residential, retail, commercial, hotel and berthing facility uses.
- 2.2 The Wharf has eight distinct components. The owner of each component is a Member of the Committee and must comply with this management statement.
- 2.3 The various components of The Wharf are:

| Component              | Description                                                             | Owner                                     |
|------------------------|-------------------------------------------------------------------------|-------------------------------------------|
| Residential North      | A Strata Scheme comprising 10 residential lots and 20 carparking spaces | Residential North Owners Corporation      |
| Residential South      | A Strata Scheme comprising 212 residential lots                         | Residential South Owners Corporation      |
| The Promenade          | A Strata Scheme comprising 88 residential lots                          | The Promenade Owners Corporation          |
| Carpark Wharf          | A Strata Scheme comprising 165 carparking spaces                        | Carpark Wharf Owners Corporation          |
| Berthing Facility East | A Strata Scheme comprising 34 marine berths                             | Berthing Facility East Owners Corporation |

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| Component      | Description                                        | Owner            |
|----------------|----------------------------------------------------|------------------|
| Retail Lot     | A Stratum Lot comprising numerous retail tenancies | Retail Owner     |
| Hotel Lot      | A Stratum Lot comprising a 104 room boutique hotel | Hotel Owner      |
| Commercial Lot | A Stratum Lot comprising commercial tenancies      | Commercial Owner |

## MMHC and leasehold land

- 2.4 MMHC owns the freehold title in all of the land in The Wharf. It leases the various components of The Wharf to each Member and the Owners of Strata Lots.
- 2.5 When MMHC leases land in The Wharf, it creates a leasehold interest in the land in favour of the lessee (ie a Member or an Owner).
- 2.6 Each Strata Scheme has two types of leases:
- (a) Strata Lot leases (eg for an apartment or a carparking space); and
  - (b) a Common Property lease.
- 2.7 The lease for a Strata Lot is between the owner of the leasehold interest in the Strata Lot and MMHC. A Common Property lease is between the Owners Corporation and MMHC.
- 2.8 The lease for a Stratum Lot is between the owner of the leasehold interest in the Stratum Lot and MMHC.

## 3 Who must comply with this management statement?

- 3.1 This management statement has effect as an agreement under seal.
- 3.2 Persons who must comply with this management statement are:
- (a) the Residential North Owners Corporation;
  - (b) the Residential South Owners Corporation;
  - (c) The Promenade Owners Corporation;
  - (d) the Carpark Wharf Owners Corporation;
  - (e) the Berthing Facility East Owners Corporation;
  - (f) the Retail Owner;
  - (g) the Hotel Owner;

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- (h) the Commercial Owner;
  - (i) Owners;
  - (j) Occupiers; and
  - (k) MMHC (as the owner of The Wharf land).
- 3.3 A person who must comply with this management statement must not do anything to prevent another person from complying with the management statement.
- 3.4 The by-laws for Members which are Owners Corporations contain obligations with which Owners and Occupiers of Strata Lots must comply (in addition to their obligations under this management statement).

## **4 The management structure of The Wharf**

### **The Committee**

- 4.1 Each Member is a member of the Committee.
- 4.2 Each Member must appoint a Representative to attend and vote for the Member at meetings of the Committee. See clause 5 for more information.

### **Who assists the Committee to perform its functions?**

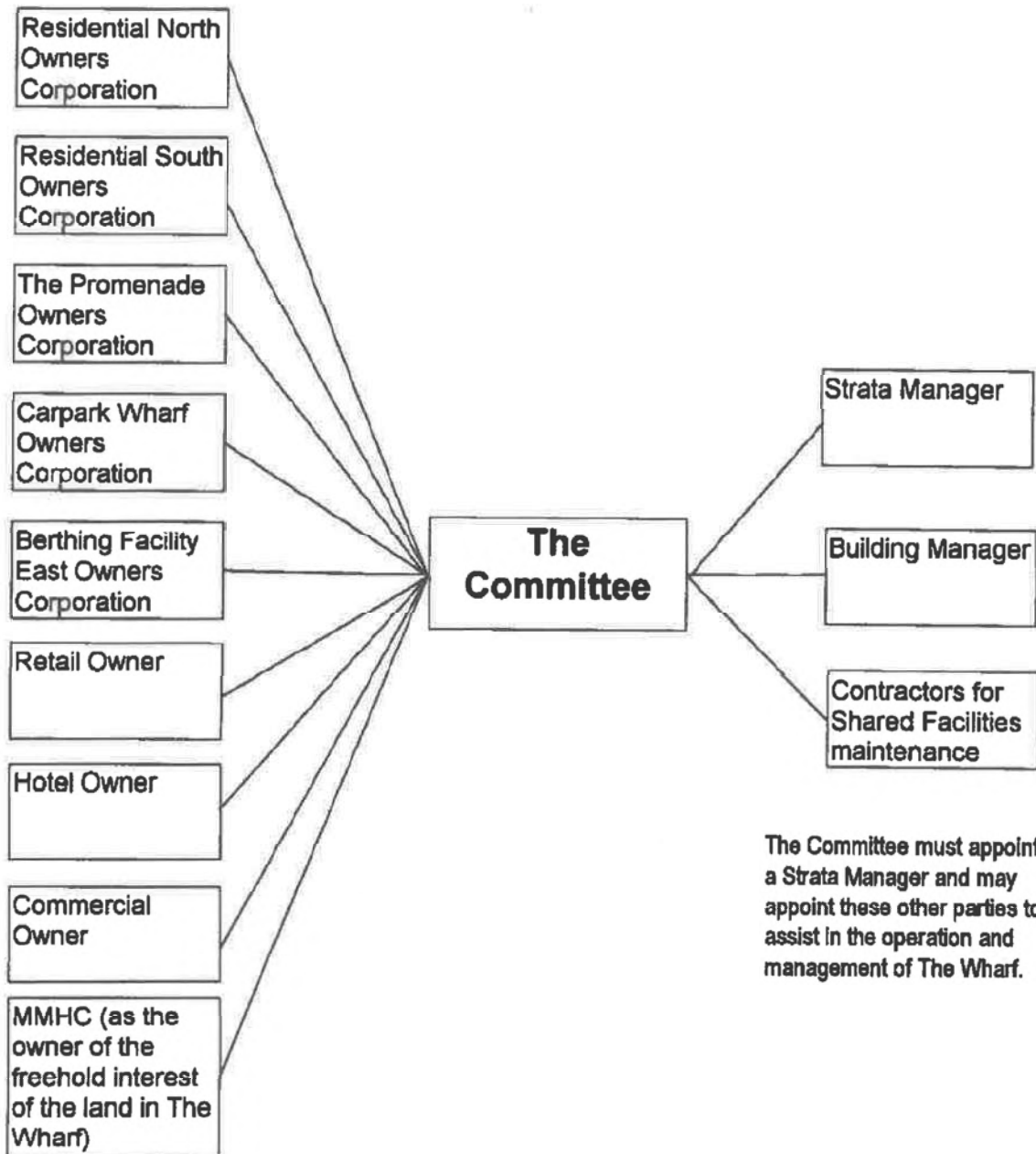
- 4.3 The Committee must appoint a Strata Manager to assist in the operation and management of The Wharf. In particular, the Strata Manager may assist the Committee to perform secretarial and financial functions. See clause 8 for more information.
- 4.4 The Committee may appoint a Building Manager to assist in the day to day operation of The Wharf and, in particular, the maintenance of Shared Facilities. See clause 9 for more information.
- 4.5 The Committee may enter into contracts with various service providers to assist the Committee perform its functions and obligations under this management statement. In particular, the Committee may enter into contracts for the operation, maintenance, preventative maintenance, repair and replacement of Shared Facilities. The Committee may authorise a third party (eg the Building Manager) to enter into contracts with service providers as agent for the Committee. See clause 6 for more information.

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## Overview of the management structure

4.6 The management structure for The Wharf looks like this:



The Committee must appoint a Strata Manager and may appoint these other parties to assist in the operation and management of The Wharf.

These parties are Members of the Committee. They each appoint a Representative to attend and vote for them at meetings of the Committee.

## **5 The Committee**

### **Establishing the Committee**

**5.1 The Members must:**

- (a) establish the Committee within one month after this management statement is registered; and
- (b) always have a Committee.

### **Representatives and Substitute Representatives**

- 5.2** Each Member must appoint a Representative to represent it at Meetings and Emergency Meetings.
- 5.3** Each Member may appoint a Substitute Representative to represent it at Meetings and Emergency Meetings if its Representative cannot attend a meeting.
- 5.4** A Member must give the Committee a written notice when it appoints a Representative or a Substitute Representative. The notice must contain the information in clause 64.

## **6 Functions and powers of the Committee**

### **What are the functions?**

- 6.1** In addition to its functions and powers elsewhere in this management statement, the functions and powers of the Committee are to:
- (a) make decisions about the matters in this management statement;
  - (b) convene and hold Meetings and Emergency Meetings according to this management statement;
  - (c) determine, levy and recover contributions from the Administrative Fund and the Capital Works Fund and make payments from those funds;
  - (d) operate, maintain (including preventative maintenance), renew and replace Shared Facilities;
  - (e) appoint and contract with persons to provide operational, maintenance, renewal and replacement services for Shared Facilities;
  - (f) change or add to Shared Facilities;
  - (g) fairly control use of Shared Facilities;
  - (h) effect insurance according to the Management Act and this management statement;
  - (i) arrange for maintenance, preventative maintenance and other contracts so that insurances are not affected;

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- (j) monitor the performance by Members of their obligations under the Management Act, the Development Act and this management statement;
- (k) monitor the performance of the Strata Manager;
- (l) monitor the performance of the Building Manager;
- (m) adopt, administer and monitor compliance with the Shared Facilities Maintenance Manuals according to clause 42;
- (n) adopt, administer and monitor compliance with the Substructure Maintenance Manual according to clause 42;
- (o) adopt, administer and monitor compliance with the Fire and Safety Documents according to clause 56;
- (p) adopt, administer and monitor compliance with the Conservation Plan according to clause 56;
- (q) adopt, administer and monitor compliance with the Building and Use Standards according to clause 57; and
- (r) comply with the Management Act, the Development Act and this management statement.

**Power to contract and make appointments**

6.2 The Committee has the power to:

- (a) enter into contracts or other arrangements with persons (eg the Building Manager) to assist the Committee to perform its functions under this management statement; and
- (b) appoint consultants and experts to advise and assist it in the administration and performance of its functions and, in particular, in regard to the performance of its functions under the Building and Use Standards, the Fire and Safety Documents and the Conservation Plan.

6.3 The Committee has the power to appoint persons (eg a Member or the Building Manager) to act as its agent to enter into contracts or other arrangements on its behalf.

**Making Rules**

- 6.4 The Committee may make Rules to assist in the proper management, operation, maintenance and control of The Wharf.
- 6.5 When the Committee makes Rules, it must take into account the mixed use nature of The Wharf and the various components in The Wharf.
- 6.6 Rules must be consistent with this management statement. If a Rule is inconsistent with this management statement, the management statement prevails to the extent of the inconsistency.

## **7 Officers of the Committee**

### **What officers must the Committee appoint?**

- 7.1 The Committee must appoint as officers a secretary, a treasurer and a chairperson.
- 7.2 An officer must be:
  - (a) a Representative;
  - (b) a Substitute Representative; or
  - (c) the Strata Manager.
- 7.3 The Committee may appoint a Representative, Substitute Representative or the Strata Manager to one or more of the offices of secretary, treasurer or chairperson.
- 7.4 An officer must perform their functions according to this management statement, the Management Act, the Development Act and the directions of the Committee.

### **Procedure for appointing officers**

- 7.5 The Committee must appoint its officers within one month after this management statement is registered.
- 7.6 The Committee:
  - (a) may appoint replacement officers at any time; and
  - (b) must immediately appoint a replacement officer if an existing officer vacates their position as an officer.

### **Vacating the position of an officer**

- 7.7 An officer vacates their position as an officer if:
  - (a) they cease to be a Representative, Substitute Representative or the Strata Manager;
  - (b) the Committee dismisses them from their position;
  - (c) the Committee appoints a replacement officer to fill their position; or
  - (d) the officer resigns in writing from their position. The officer must serve notice on the Committee of their resignation and the date from which their resignation will become effective.

### **The secretary**

- 7.8 The functions of the secretary are to:
  - (a) convene Meetings and Emergency Meetings;
  - (b) prepare notices and agendas for Meetings and Emergency Meetings;

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- (c) prepare and distribute minutes of Meetings and Emergency Meetings;
- (d) serve notices for the Committee;
- (e) answer communications addressed to the Committee;
- (f) perform administrative and secretarial functions for the Committee; and
- (g) keep records (other than records which the treasurer must keep) for the Committee according to this management statement and the Management Act.

**The treasurer**

7.9 The functions of the treasurer are to:

- (a) prepare budgets for the Administrative Fund and Capital Works Fund according to clause 47;
- (b) prepare (or arrange for the preparation of) financial statements according to clause 49;
- (c) prepare (or arrange for the preparation of) audit reports according to clause 49;
- (d) send notices of Administrative Fund and Capital Works Fund contributions to Members according to clause 50;
- (e) collect contributions from Members;
- (f) receive, acknowledge, bank and account for contributions and other money paid to the Committee; and
- (g) keep accounting records for the Committee.

**The chairperson**

7.10 The function of the chairperson is to preside at each Meeting and Emergency Meeting at which the chairperson is present. If the chairperson does not attend a Meeting or an Emergency Meeting, the Committee may appoint another Representative, Substitute Representative or the Strata Manager to preside at that meeting only.

## **8 Appointing a Strata Manager**

**Purpose of the agreement**

8.1 The Committee has the power to appoint and enter into an agreement with a Strata Manager to assist the Committee perform its functions and, in particular, perform secretarial and financial functions.

**Appointment and delegation of powers**

**8.2 The Committee:**

- (a) must appoint a Strata Manager to manage The Wharf and provide administrative, financial management and book keeping service according to this clause; and
- (b) may, subject to clause 8.4, delegate its functions and the functions of its officers only to the Strata Manager.

**8.3** The Strata Manager must have the licences required by law to be a strata managing agent.

**8.4** The Committee must not delegate these functions to the Strata Manager:

- (a) functions which the Committee may exercise only by Unanimous Resolution;
- (b) the function to determine and levy Administrative Fund and Capital Works Fund contributions on Members; and
- (c) functions which the Committee determines may be performed only by the Committee.

**Terms of the agreement**

**8.5** The agreement between the Committee and the Strata Manager must be in writing and must be signed by each Member and the Strata Manager.

**8.6** The term of the initial agreement under this clause must not exceed three years. The agreement may have provisions about the rights of the Committee and the Strata Manager to terminate the agreement early.

**8.7** The agreement between the Committee and the Strata Manager must reserve the power for the Committee and its officers to continue to exercise the functions delegated to the Strata Manager according to this clause.

**8.8** The Committee must not allow the Strata Manager to assign the agreement.

**8.9** The remuneration of the Strata Manager for the first year of the initial agreement must not exceed \$10,000.00. The remuneration of the Strata Manager for the second and subsequent years of the initial agreement (and any years of a subsequent agreement) may be the amount reasonably determined by the Committee.

**8.10** The duties of the Strata Manager under the agreement may include:

- (a) performing the functions of the secretary;
- (b) performing the functions of the treasurer;
- (c) performing the function of the chairperson; and

- (d) doing anything else that the Committee agrees is necessary for the operation and management of The Wharf.

**Obligations of Owners Corporations**

- 8.11 Members which are Owners Corporations must, after the expiry of the initial period for their Strata Schemes, appoint and retain under section 28 of the Management Act the same Strata Manager the Committee appoints under this clause.

## **9 Agreement with the Building Manager**

**Purpose of the agreement**

- 9.1 The Committee may enter into agreements with the Building Manager to provide management and operational services for The Wharf.
- 9.2 The Building Manager may provide:
  - (a) services to the Committee which Members must pay for according to schedule 2 (or clause 40 if the cost is not dealt with in schedule 2); and
  - (b) services for individual Members (at the request of the Member) which must be paid for or reimbursed to the Committee by those Members.
- 9.3 When an agreement with the Building Manager ends, the Committee may enter into a new agreement with a building manager to provide the services and perform the duties contemplated by this clause.

**Terms of the agreement**

- 9.4 An agreement between the Committee and the Building Manager must be in writing and must be signed by each Member and the Building Manager.
- 9.5 The term of an agreement under this clause may be up to 10 years with one option of up to 10 years. The agreement may have provisions about:
  - (a) the rights of the Committee and Building Manager to terminate the agreement early; and
  - (b) the right of the Building Manager to assign the agreement.
- 9.6 The remuneration of the Building Manager for the first year of the first agreement under this clause may be a fixed fee not exceeding \$208,000.00. The remuneration of the Building Manager for subsequent years of the agreement or for a new agreement must not exceed:
  - (a) the market cost agreed between the Committee and the Building Manager for performing the duties of the Building Manager; and

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- (b) an administration and a profit component for the Building Manager of up to 20% of that market cost.

9.7 The duties of the Building Manager under an agreement may include, without limitation:

- (a) managing the maintenance, preventative maintenance, repair and replacement of Shared Facilities;
- (b) preparing and keeping current a short and long term maintenance, preventative maintenance, repair and replacement program for Shared Facilities (subject to the Shared Facilities Maintenance Manuals and Substructure Maintenance Manual);
- (c) preparing and keeping current an asset management plan for Shared Facilities (subject to the Shared Facilities Maintenance Manuals and Substructure Maintenance Manual);
- (d) performing an annual audit of Shared Facilities (which are readily accessible to the Building Manager);
- (e) supervising contracts entered into by the Committee or by the Building Manager on behalf of the Committee and, in particular, contracts for garbage and waste removal, cleaning, security, fire services, pest control, lifts and services;
- (f) co-ordinating Owners and Occupiers moving in and out of Residential North, Residential South and The Promenade according to clause 25;
- (g) co-ordinating the delivery of goods according to clause 26; and
- (h) doing anything else which the Committee considers is necessary for the operation and management of Share Facilities and The Wharf.

9.8 Under an agreement with the Building Manager, the Members may authorise the Building Manager to act as their agent and:

- (a) negotiate contracts, including contracts for the operation, use, maintenance, repair and renewal of Shared Facilities; and
- (b) enter into contracts on behalf of the Members.

9.9 Under an agreement, the Building Manager may provide services to Members, Owners and Occupiers on the terms, and for the cost, agreed between the parties.

### Using the Wharf 7 Offices

9.10 The Wharf 7 Offices are a Shared Facility. The Committee has the power to:

- (a) allow the Building Manager to exclusively use the office areas in the Wharf 7 Offices to exercise the rights and perform the obligations of the Building Manager; and

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- (b) include provisions in the agreement with the Building Manager about use of the Wharf 7 Offices.

See clause 32 for more information.

## **10 Meetings of the Committee**

### **When to convene a Meeting**

- 10.1 A Meeting may be convened only by:
  - (a) the Strata Manager (if the Committee has delegated that function to the Strata Manager according to clause 8);
  - (b) the secretary of the Committee; or
  - (c) another officer of the Committee if the secretary is absent or unable to convene a Meeting.
- 10.2 A Meeting must be convened:
  - (a) if the Committee decides to hold a Meeting;
  - (b) if two or more Members request a Meeting;
  - (c) if it is necessary to appoint a replacement officer of the Committee; or
  - (d) at least every six months.
- 10.3 Special provisions apply to convening and holding Emergency Meetings if the Committee needs to convene a meeting and it is not practical to give fourteen days notice. See clause 11 for more information.

### **Giving notice of a Meeting**

- 10.4 A person who convenes a Meeting must give each Member at least fourteen days notice of the Meeting. The notice must:
  - (a) include the time, date and venue of the Meeting; and
  - (b) include an agenda for the Meeting.
- 10.5 A person who convenes a Meeting must serve the notice of the Meeting on each Member according to clause 65.
- 10.6 Special provisions apply to notices for Meetings where the Committee will determine Administrative Fund and Capital Works Fund contributions. See clause 48 for more information.

### **Agenda for a Meeting**

- 10.7 The agenda for a Meeting must include details of all business which the Committee will deal with at the Meeting. The Committee cannot deal with business that is not on the agenda for the Meeting.

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The agenda for a Meeting must clearly show which motions, if any, require a Unanimous Resolution to be passed.

## Quorum for a Meeting

- 10.9 A quorum for a Meeting is the Representative or Substitute Representative of four or more Members.
- 10.10 If a quorum is not present within 30 minutes after a Meeting is due to commence, the Committee must adjourn the Meeting to a time and place determined by the chairperson at the Meeting.
- 10.11 If a Meeting is adjourned, the person who convened the Meeting must give notice of the adjournment to each Member at least one day before the adjourned Meeting is due to be held.
- 10.12 A quorum at an adjourned Meeting is:
- (a) the Representatives or Substitute Representatives of four or more Members; or
  - (b) the Representatives or Substitute Representatives present at the Meeting within 15 minutes after the Meeting is due to commence.

## Conducting a Meeting

- 10.13 Subject to this management statement, the Committee may meet to conduct its business, adjourn and otherwise regulate Meetings as it thinks fit.

## Attendance at a Meeting

- 10.14 An Owner or Occupier may attend a Meeting. However, they may address the Meeting only with the consent of the Committee.

## Special provisions for Meetings held in writing

- 10.15 The Committee may hold a Meeting in writing and Representatives and Substitute Representatives may vote in writing if:
- (a) the person who convenes the Meeting serves notice of the Meeting according to this clause;
  - (b) the person who convenes the Meeting provides each Member with a voting paper with the notice for the Meeting; and
  - (c) the required Members or number of Members have approved the motion(s) in the agenda by completing their voting paper and returning it to the person who convened the Meeting before the Meeting is due to commence.
- 10.16 A Member may return their completed voting paper:
- (a) by post, facsimile or e-mail to the current address or number of the person convening the Meeting according to clause 65; or
  - (b) personally to the person who convened the Meeting.

## **11 Emergency Meetings of the Committee**

### **When to convene an Emergency Meeting**

- 11.1 An Emergency Meeting may be convened only by:
- (a) the Strata Manager (if the Committee has delegated that function to the Strata Manager according to clause 8);
  - (b) the secretary of the Committee; or
  - (c) another officer of the Committee if the secretary is absent or unable to convene an Emergency Meeting.
- 11.2 An Emergency Meeting may be convened:
- (a) if there is an emergency or other urgent matter which must be determined by the Committee within fourteen days; and
  - (b) it is impractical, in the reasonable option of the person convening the Emergency Meeting, to give fourteen days notice of the Emergency Meeting.

### **Giving notice of an Emergency Meeting**

- 11.3 Subject to clause 65, the person convening an Emergency Meeting may:
- (a) serve notice of the Emergency Meeting by the best method reasonably determined by them in the circumstances; and
  - (b) give the amount of notice of the Emergency Meeting reasonably determined by them in the circumstances.

### **Agenda for an Emergency Meeting**

- 11.4 The agenda for an Emergency Meeting must include details of all business which the Committee will deal with at the Emergency Meeting. The Committee cannot deal with business that is not on the agenda for the Emergency Meeting.
- 11.5 The agenda for an Emergency Meeting must include only motions which require a Resolution. The agenda must not include a motion for a Unanimous Resolution.
- 11.6 Special provisions apply to notices for Emergency Meetings where the Committee will determine Administrative Fund and Capital Works Fund contributions. See clause 48 for more information.

### **Conducting an Emergency Meeting**

- 11.7 Subject to this management statement, the Committee may meet, conduct its business, adjourn and otherwise regulate Emergency Meetings as it thinks fit.
- 11.8 A motion for a Resolution is passed at an Emergency Meeting if the required Members or number of Members vote in favour of the motion.

- 11.9 Subject to clause 65, a Member may cast a vote at an Emergency Meeting:
- (a) by telephone to the current telephone numbers of the person who convened the Emergency Meeting;
  - (b) personally to the person who convened the Emergency Meeting; or
  - (c) by post, facsimile or e-mail for the current address or number of the person who convened the Emergency Meeting.
- 11.10 An Owner or Occupier may attend an Emergency Meeting. However, they may address the Emergency Meeting only with the consent of the Committee.

## **12 Minutes of meetings**

The person who convenes a Meeting or an Emergency Meeting must distribute minutes of the meeting to each Member within seven days after the meeting.

## **13 Keeping books and records**

- 13.1 The Committee must keep books and records relating to the operation, management and administration of The Wharf and Shared Facilities according to this clause.
- 13.2 Records which the Committee must keep include, without limitation:
- (a) an up-to-date copy of this management statement;
  - (b) an up-to-date copy of the Building and Use Standards;
  - (c) an up-to-date copy of the Fire and Safety Documents;
  - (d) an up-to-date copy of the Conservation Plan;
  - (e) an up-to-date copy of the Shared Facilities Maintenance Manuals;
  - (f) an up-to-date copy of the Substructure Maintenance Manual;
  - (g) its agreements with the Building Manager and the Strata Manager;
  - (h) its agreements with service providers, contractors, tradespersons and any other persons in relation to Shared Facilities;
  - (i) an up-to-date record of address and other details for each Member, Representative and Substitute Representative provided by each Member according to clause 64;

- (j) notices and minutes of Meetings and Emergency Meetings;
- (k) voting papers for Meetings and Emergency Meetings;
- (l) financial statements;
- (m) audit reports;
- (n) budgets;
- (o) notices served on the Committee;
- (p) correspondence sent to the Committee;
- (q) insurance records; and
- (r) other records relating to the administration and operation of The Wharf by the Committee.

- 13.3 The Committee must keep copies of its records for at least seven years from the date of the record.

## **14 Inspecting the books and records of the Committee**

- 14.1 A Member, an Owner or an Occupier (or a person authorised in writing by a Member, Owner or Occupier) may inspect the books and records of the Committee.
- 14.2 The procedure for inspecting the books and records of the Committee is:
- (a) the applicant must apply in writing to the Committee; and
  - (b) the applicant must pay the Committee an inspection fee of \$20.00 for the first hour of the inspection and \$10.00 for each half hour after that (or other amounts the Management Act requires for the inspection of the books and records of an Owners Corporation).
- 14.3 The Committee must allow the applicant to inspect its books and records within 10 business days after the applicant makes a written application and pays the inspection fee.
- 14.4 At the cost of the applicant, the applicant may take extracts from or copy the books and records of the Committee. The applicant cannot remove the records unless the Committee agrees.

## **15 Power of the Committee to act on behalf of Members**

- 15.1 Each Member agrees that the Committee or a person appointed by the Committee may act as agent for all the Members or take legal proceedings about:

- (a) the failure of a Member to pay Administrative Fund contributions or Capital Works Fund contributions;
  - (b) the failure of a Member to comply with its obligations under this management statement; or
  - (c) the failure of an Owner or an Occupier to comply with their obligations under this management statement.
- 15.2 Each Member appoints the Committee as its agent and attorney to enable the Committee or a person authorised by the Committee to take any action authorised by a Resolution or Unanimous Resolution made by the Committee according to this management statement.
- 15.3 This clause does not prevent a Member from taking legal proceedings in its own name.

## 16 Voting rights of Members

### What are voting rights of Members?

- 16.1 Each Member has one vote at a Meeting or an Emergency Meeting.
- 16.2 To exercise its voting rights on a motion that requires a Resolution, a Member must be a Financial Member immediately before the commencement of the Meeting or Emergency Meeting. A Member does not need to be a Financial Member to exercise its voting rights on a motion that requires a Unanimous Resolution.

### Instructions by a Member

- 16.3 A Representative or Substitute Representative must vote at a Meeting or Emergency Meeting according to any instructions by the Member which appointed them.
- 16.4 The executive committee of a Member which is an Owners Corporation may give instructions to the Representative or Substitute Representative of the Owners Corporation about the way in which the Representative or Substitute Representative must vote at a Meeting or an Emergency Meeting.

### Restrictions on voting

- 16.5 The chairperson does not have a casting vote at a Meeting or an Emergency Meeting.
- 16.6 The Strata Manager does not have a vote at a Meeting or Emergency Meeting of the Committee unless the Strata Manager is a Representative or a Substitute Representative.
- 16.7 The Building Manager does not have a vote at a Meeting or Emergency Meeting unless the Building Manager is a Representative or a Substitute Member.

## **17 When is a Resolution required?**

The matters which the Committee may determine by Resolution are:

- (a) appointing or terminating the appointment of the Strata Manager (subject to the written agreement between the Committee and the Strata Manager);
- (b) appointing or terminating the appointment of the Building Manager (subject to the written agreement between the Committee and the Building Manager);
- (c) adopting the Shared Facilities Maintenance Manuals ;
- (d) adopting the Substructure Maintenance Manual ;
- (e) adopting the Fire and Safety Documents;
- (f) adopting the Conservation Plan;
- (g) adopting the Building and Use Standards; and
- (h) resolving any other matter which does not require a Unanimous Resolution.

## **18 When is a Unanimous Resolution required?**

The matters which the Committee may determine only by Unanimous Resolution are:

- (a) amending, adding to or repealing parts of this management statement;
- (b) amending clauses 20.7 to 20.9 (inclusive) regarding the nature of the obligations of MMHC under this management statement;
- (c) adding to, extending or removing a Shared Facility according to clause 40;
- (d) amending the division of costs for Shared Facilities according to clause 41;
- (e) amending the Substructure Maintenance Manual;
- (f) extending or shortening a 12 months budget period according to clause 47;
- (g) repaying all or part of the Administrative Fund or Capital Works Fund to Members (other than MMHC) according to clause 53;
- (h) amending the Fire and Safety Documents;
- (i) amending the Conservation Plan; and
- (j) amending the Building and Use Standards.

## **19 Things done by Representatives**

Anything done by a Representative or a Substitute Representative for the Member that appointed them has the same effect as if the Member did it.

## **20 What are the obligations of Members?**

### **General obligations**

20.1 In addition to their obligations elsewhere in this management statement, the Members must:

- (a) promptly comply with their obligations under this management statement, the Management Act and the Development Act;
- (b) ensure, as far as is reasonable, that The Wharf is efficiently managed to a standard appropriate to its permitted use;
- (c) promptly pay their Administration Fund and Capital Works Fund contributions and other amounts they owe the Committee under this management statement;
- (d) effect and maintain the insurances required by this management statement and the Management Act;
- (e) make sure the Committee is properly constituted;
- (f) comply with decisions of the Committee;
- (g) implement decisions of the Committee;
- (h) comply with Rules;
- (i) comply with their obligations under Easements;
- (j) comply with their obligations under the Shared Facilities Maintenance Manuals;
- (k) comply with their obligations under the Substructure Maintenance Manual;
- (l) comply with their obligations under the Fire and Safety Documents;
- (m) comply with their obligations under the Conservation Plan; and
- (n) comply with their obligations under the Building and Use Standards.

20.2 Members must not interfere with Shared Facilities other than according to this management statement.

**Maintenance requirements**

- 20.3 Except for Shared Facilities and subject to this management statement and the Easements, each Member must at the cost of the Member:
- (a) maintain and keep in good repair the part of The Wharf owned by the Member;
  - (b) maintain and keep in good repair the facade and other external finishes, fixtures or fittings in the part of The Wharf owned by the Member; and
  - (c) maintain, inspect and operate plant and equipment owned or used exclusively by the Member to a standard recommended by the manufacturer or the applicable Australian standard.

**Nature of obligations**

- 20.4 Members must act in good faith in their dealings with each other and with Owners and Occupiers under this management statement and the Easements.
- 20.5 Each Member is liable for damage or loss it causes to each other Member, an Owner or an Occupier if the Member causing the damage or loss does or fails to do something under this management statement. However, the liability of the Member causing the damage or loss does not include damage or loss caused or contributed to by the Member, the Owner or the Occupier suffering the damage or loss.
- 20.6 In clause 20.5, a reference to a Member includes the Representative, Substitute Representative, contractors, agents and employees of the Member.

**Special requirements for MMHC**

- 20.7 Despite anything else in this management statement, MMHC is not obliged to make any financial contributions (other than according to clause 20.5) in respect of:
- (a) the Administrative Fund or Capital Works Fund; or
  - (b) any other matter under this management statement.
- 20.8 Despite anything else in this management statement, MMHC is not liable under an agreement or contract entered into by the Committee (other than according to clause 20.5).
- 20.9 The Committee may amend clauses 20.7, 20.8 and 20.9 only by Unanimous Resolution and with the written consent of MMHC.

## **21 What are the obligations of Owners and Occupiers?**

**General obligations**

- 21.1 In addition to their obligations elsewhere in this management statement, Owners and Occupiers must:

- (a) promptly comply with their obligations under this management statement, the Management Act and the Development Act;
- (b) comply with decisions of the Committee;
- (c) comply with Rules;
- (d) comply with their obligations under Easements;
- (e) comply with their obligations under the Fire and Safety Documents;
- (f) comply with their obligations under the Conservation Plan; and
- (g) comply with their obligations under the Building and Use Standards.

**21.2 An Owner or an Occupier must not:**

- (a) interfere with Shared Facilities other than according to this management statement; or
- (b) do anything to contravene (or cause contravention of) the Shared Facilities Maintenance Manuals or the Substructure Maintenance Manual.

**Nature of obligations**

- 21.3 Owners and Occupiers must act in good faith in their dealings with each other and Members under this management statement and the Easements.**

## **22 Leases with MMHC**

- 22.1 Members and Owners must comply on time and at their cost with their leases with MMHC.**
- 22.2 Nothing in the management statement gives a Member or an Owner consent to do anything which is prohibited or regulated by their lease with MMHC.**

## **23 Working harbour and the role of MMHC**

MMHC has the responsibility to preserve and protect the port of Sydney as an operating port and ensure optimum public use of the waterways including the waterways in Woolloomooloo Bay as part of the working harbour and for recreational purposes. These uses include, without limitation:

- (a) use of the Boardwalk to provide optimum public access to and use of the waterways (subject to this management statement and Easements); and

- (b) use of Garden Island for 24 hours per day by the Navy. This use generates noise, traffic and other impacts associated with port operations.

## **24 Additional obligations for Owners Corporation**

### **Notices of meetings**

- 24.1 A Member which is an Owners Corporation must give each Member notice of its general meetings and meetings of its executive committee as if the Member receiving the notice is a member of the Owners Corporation or its executive committee.
- 24.2 A Member which is an Owners Corporation must allow the Representatives or Substitute Representatives of each Member to:
  - (a) attend its general meetings and meetings of its executive committee; and
  - (b) address meetings in regard to matters affecting this management statement or that Member.

### **By-laws**

- 24.3 A Member which is an Owners Corporation may add to, change or cancel the by-laws for its Strata Scheme only if:
  - (a) it consults with the Committee before making the addition, change or cancellation;
  - (b) it obtains written consent from MMHC; and
  - (c) the addition, change or cancellation does not conflict with this management statement or the Member's lease with MMHC.
- 24.4 A Member which is an Owners Corporation must not make by-laws that are inconsistent with this management statement. If there is an inconsistency, the Owners Corporation must amend the inconsistent by-law to make it consistent with this management statement.

## **25 Moving into or out of a Strata Lot**

### **Rights and obligations of the Committee**

- 25.1 The Committee must co-ordinate:
  - (a) Owners and Occupiers moving into and out of Strata Lots in Residential North, Residential South and The Promenade; and
  - (b) the delivery and removal of furniture and similar goods to Strata Lots in Residential North, Residential South and The Promenade.

**25.2 The Committee may:**

- (a) allocate areas in Shared Facilities and Common Property for temporary use by Owners and Occupiers moving into and out of Residential North, Residential South and The Promenade;
- (b) appoint the Building Manager to perform its functions under this clause; and
- (c) make Rules about moving into and out of Residential North, Residential South and The Promenade. See clause 6 for more information about making Rules.

**Obligations of Owners and Occupiers**

**25.3 Owners and Occupiers of Strata Lots in Residential North, Residential South and The Promenade must make arrangements with the Committee at least 48 hours before they propose to:**

- (a) move into or out of their Strata Lot; or
- (b) move large articles or furniture or other large items into or out of their Strata Lot.

**25.4 Owners and Occupiers of Strata Lots in Residential North, Residential South and The Promenade must comply with the reasonable instructions of the Committee. If the Committee appoints the Building Manager to perform its functions under this clause, the Owners and Occupiers must comply with the reasonable instructions of the Building Manager (or its authorised representative).**

## **26 Making deliveries**

**Rights of the Committee**

**26.1 The Committee may make Rules to co-ordinate the delivery of goods to The Wharf and, in particular, to the Retail Lot and the Hotel Lot. See clause 6 for more information about making Rules.**

**26.2 The Committee may:**

- (a) allocate areas in Shared Facilities for temporary use for the delivery of goods;
- (b) appoint the Building Manager to perform its functions under this clause; and
- (c) make Rules about the delivery of goods.

**Obligations of Owners and Occupiers**

**26.3 Members, Owners and Occupiers must comply with the reasonable instructions of the Committee about the delivery of goods. If the Committee appoints the Building Manager to perform its functions under this clause, Members, Owners and Occupiers must comply with the reasonable instructions of the Building Manager (or its authorised representative).**

## **27 What are Shared Facilities?**

### **Obligations of the Committee and Members**

- 27.1 A number of facilities and services in The Wharf are used by two or more Members. These are called Shared Facilities. A list of Shared Facilities (with a description of each) is in schedule 1.
- 27.2 Subject to this management statement, the Committee must operate, manage, control, maintain (including preventative maintenance), repair and replace Shared Facilities.
- 27.3 The Committee may appoint and contract with parties to perform its functions in relation to Shared Facilities. See clause 6 for more information.

### **How to apportion costs**

- 27.4 Schedule 2 sets out how much each Member must contribute towards the costs of Shared Facilities. The Committee must charge Members for Shared Facilities according to schedule 2 (or according to clause 40 if there is no provision in schedule 2 for that charge).
- 27.5 Members must pay their proportion of the costs for Shared Facilities according to schedule 2 (or according to clause 40 if there is no provision in schedule 2 for that cost).
- 27.6 If there is a dispute about the proportion of a Member's cost for a Shared Facility, the Member must pay according to the proportion in schedule 2 (or according to clause 40 if there is no provision in schedule 2 for that cost). After the Member and the Committee resolve the dispute, the Members or the Committee must pay any necessary adjustments.
- 27.7 If a dispute about the proportion of a Member's cost for a Shared Facility is determined under clause 63, the mediator or expert who determines the dispute must determine any adjustments the Member or the Committee must pay.

### **What do Shared Facilities include?**

- 27.8 Subject to the description of Shared Facilities in schedule 1, Shared Facilities include:
  - (a) pipes, wires, cables and ducts which are connected to or form part of a Shared Facility, excluding any of those things which exclusively service one Member's part of The Wharf;
  - (b) any rooms or areas in which Shared Facilities are located;
  - (c) the maintenance, preventative maintenance, repair, operation, cleaning and replacement of Shared Facilities;
  - (d) parts or consumables used in the maintenance, preventive maintenance, repair, operation, cleaning and replacement of Shared Facilities;

- (e) labour used in the maintenance, preventative maintenance, repair, operation, cleaning and replacement of Shared Facilities;
  - (f) the inspection of Shared Facilities (if applicable) by Government Agencies; and
  - (g) the certification of Shared Facilities for the purposes of the law.
- 27.9 Subject to the description of Shared Facilities in schedule 1, costs relating to Shared Facilities include costs for:
- (a) the maintenance, preventative maintenance, repair, operation, cleaning and replacement of Shared Facilities;
  - (b) parts or consumables used in the maintenance, preventative maintenance, repair, operation, cleaning and replacement of Shared Facilities;
  - (c) labour used in the maintenance, preventative maintenance, repair, operation, cleaning and replacement of Shared Facilities;
  - (d) the inspection of Shared Facilities (if applicable) by Government Agencies; and
  - (e) the certification of Shared Facilities for the purposes of the law.

**Who may use Shared Facilities?**

- 27.10 This management statement may specify which Members and other persons are entitled to use and enjoy a Shared Facility or may restrict use of a Shared Facility. If the enjoyment or use of a Shared Facility is not restricted, the Shared Facility is available for use and enjoyment by each Member, Owner and Occupier according to this management statement.

## **28 Using the Boardwalk and South Concourse for special events**

**Procedures to hold a special event?**

- 28.1 A Member and, in particular, the Hotel Owner and Retail Owner (or persons authorised by them), may apply to the Committee for consent to use the Boardwalk and South Concourse for special events.
- 28.2 The Committee will generally give consent to the following types of special events:
- (a) for the Boardwalk, market days and food festivals; and
  - (b) for the South Concourse, art exhibitions or similar passive uses
- held between 9.00am to 5.00pm Mondays to Fridays and 10.00am to 4.00pm Saturdays and Sundays and public holidays in New South Wales.

**What consents are required?**

- 28.3 A Member (or a person authorised by a Member) must have consent from the Committee to use the Boardwalk or South Concourse for a special event. When the Committee considers an application to use the Boardwalk or South Concourse, it must give due consideration to:
- (a) the benefit which the special event may have for the commercial interests of the applicant; and
  - (b) the possible detrimental effect of the special event, if any, on the Members, Owners and Occupiers.
- 28.4 Subject to this clause, the Committee must not unreasonably withhold its consent to an application to use the Boardwalk or South Concourse for a special event.
- 28.5 A Member (or a person authorised by a Member) must obtain all necessary consents, permits and licences to hold a special event from:
- (a) MMHC; and
  - (b) all other relevant Government Agencies.
- 28.6 A Member (or person authorised by a Member) must provide the Committee with a copy of the consents, permits or licences it obtains under clause 28.5 before the special event commences. The Committee may rescind its consent to the special event if the Member (or person authorised by a Member) does not comply with this clause 28.5.
- 28.7 If a Member (or person authorised by a Member) proposes to use the Boardwalk or South Concourse for a purpose which is in competition with the commercial operation of another Member, the Member (or person authorised by a Member) proposing the use must obtain consent from the affected Member.

**Conditions for using the Boardwalk and South Concourse**

- 28.8 The Committee may impose reasonable conditions if it gives approval to a Member (or a person authorised by a Member) to use the Boardwalk or South Concourse for a special event. The conditions may include, without limitation:
- (a) regardless of clause 28.2, the hours during which the special event may take place;
  - (b) requirements for additional security for the Boardwalk or South Concourse (and other areas of The Wharf which are accessible from the Boardwalk or South Concourse) during the special event;
  - (c) the payment of a reasonable fee to the Committee;
  - (d) requirements for additional insurance of the Boardwalk or South Concourse and persons using or on the Boardwalk or South Concourse during the special event;

- (e) actions which the Member (or person authorised by the Member) must take to reduce noise, odours and interference with Members, Owners and Occupiers during the special event; and
- (f) other conditions which are reasonable in the circumstances, having regard to the nature and duration of the special event.

## **29 Issuing and managing Security Keys**

### **Who is entitled to have a Security Key?**

- 29.1 Subject to this clause and the Easements, each Member, Owner and Occupier who may access or use areas of The Wharf which are secured by Security Key is entitled to have a Security Key(s) to that area.
- 29.2 Members, Owners and Occupiers who require (and are entitled to) a Security Key, an additional Security Key or a replacement Security Key must contact the Committee to arrange for the provision of the Security Key. Subject to this clause, the Committee must provide the Security Key within a reasonable time.

### **What are the functions of the Committee?**

- 29.3 The Committee must:
  - (a) provide and issue Security Keys according to this clause;
  - (b) code each Security Key to access areas of The Wharf which the holder of Security Key is entitled to access according to this management statement and the Easements;
  - (c) take reasonable action to ensure that Security Keys which are stolen, lost or no longer used are denied access to The Wharf;
  - (d) keep an up-to-date electronic register of Security Keys which it has issued;
  - (e) take reasonable action to ensure that Security Keys which are stolen, lost or no longer used are removed from the electronic register of Security Keys; and
  - (f) take other actions which the Committee reasonably determines are necessary for the proper management and control of Security Keys.
- 29.4 The Committee may charge Members, Owners and Occupiers a reasonable fee or bond for Security Keys. The Committee may refuse to issue a Security Key if the Member, Owner or Occupier does not pay the fee or bond.

### **What are the obligations of Members, Owners and Occupiers?**

- 29.5 Members, Owners and Occupiers must:
  - (a) take all reasonable steps not to lose Security Keys;

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- (b) return Security Keys to the Committee if they no longer need the Security Keys (eg if an Occupier moves out of The Wharf); and
  - (c) notify the Committee immediately if they lose a Security Key.
- 29.6 If an Owner or Occupier leases their Lot (or part of their Lot), they must include a requirement in the lease that, when the lessee moves out of The Wharf, the lessee returns their Security Keys to the Committee.
- 29.7 Members, Owners and Occupiers must not give a Security Key to someone who is not an Owner or Occupier.
- 29.8 Members, Owners and Occupiers must comply with the reasonable instructions of the Committee about Security Keys.

## **30 Public Access Area**

### **Who may use the area?**

- 30.1 The Public Access Area is available for use by:
- (a) Members, Owners and Occupiers; and
  - (b) members of the public according to the Easements.
- 30.2 The location of the Public Access Area is shown on the Shared Facilities Plan. See the definition of Public Access Area in schedule 1 for more information.

### **What are the obligations of the Committee?**

- 30.3 Subject to this clause, the Committee must:
- (a) properly maintain, clean and insure the Public Access Area; and
  - (b) ensure that the public may safely access the Public Access Area according to the Easements.

### **Agreements with Members**

- 30.4 The Committee may contract with Members to perform some or all of the functions of the Committee in relation to the parts of the Public Access Area on the conditions agreed between the Committee and the Member.
- 30.5 The Committee intends, within two months after this management statement is registered, to make an agreement with the Hotel Owner for the Hotel Owner to manage the orderly operation of vehicular and pedestrian access, clean, maintain light fittings, secure and perform similar functions in regard to part of the Public Access Area in the Hotel Lot. The agreement must contain the following conditions:
- (a) the term of the agreement must not be more than five years;

- (b) the Hotel Owner must meet the costs for performing the functions of the Committee under the agreement. Subject to this management statement, the Committee is not responsible to reimburse the Hotel Owner for those costs;
- (c) the Hotel Owner must perform the functions of the Committee in relation to the Public Access Area subject to the agreement;
- (d) the Committee may terminate the agreement only if the Hotel Owners does not perform or properly perform its functions under the agreement; and
- (e) any other conditions which are agreed between the Committee and the Hotel Owner.

30.6 The Hotel Owner may allow the operator of the Hotel Lot or a third party to perform its duties under this clause and the agreement with the Committee. However, the Hotel Owner remains responsible to the Committee to perform the functions and duties of the Hotel Owner under this clause and the agreement.

## **31 Maintaining the Berthing Facility**

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- 31.1 The Berthing Facility is located in Berthing Facility East. It is a Shared Facility.
- 31.2 The Committee must maintain the Berthing Facility according to the Shared Facilities Maintenance Manuals and this management statement.
- 31.3 Even though the Berthing Facility is a Shared Facility, it is available for use only by:
  - (a) the Berthing Facility East Owners Corporation;
  - (b) Owners and Occupiers of Strata Lots in Berthing Facility East; and
  - (c) persons authorised by the Berthing Facility East Owners Corporation or an Owner or Occupier of a Strata Lot in Berthing Facility East.

## **32 The Wharf 7 Offices**

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### **What are the Wharf 7 Offices?**

- 32.1 The Wharf 7 Offices are a Shared Facility located in Residential South. The Wharf 7 Offices include:
  - (a) the mail room;
  - (b) the security room;
  - (c) the meeting room;

- (d) office areas; and
- (e) kitchen and bathroom facilities.

32.2 The location of the Wharf 7 Offices is shown on the Shared Facilities Plan. See schedule 1 for more information.

**Who may use the Wharf 7 Offices?**

32.3 Subject to this clause, the Wharf 7 Offices are available for use by:

- (a) the Committee;
- (b) Members;
- (c) Owners and Occupiers;
- (d) the Building Manager (subject to its agreement with the Members under clause 9);
- (e) security personnel; and
- (f) other persons authorised by the Committee.

**Rights and obligations of the Committee**

- 32.4 Subject to this management statement and its agreement with the Building Manager, the Committee must control, manage, maintain, repair and, where necessary, replace the Wharf 7 Offices.
- 32.5 The Committee may allow the Building Manager to exclusively use part of the Wharf 7 Offices to exercise the rights and perform the functions of the Building Manager under the agreement between it and the Committee.
- 32.6 The Committee may impose reasonable Rules and conditions about the use of the Wharf 7 Offices including, without limitation:
  - (a) the payment of rent or other fees; and
  - (b) a reservation system for use of the meeting room.

## **33 Termite control**

33.1 The Committee must:

- (a) arrange for the regular inspection of all parts of The Wharf which may be affected (or become affected) by termites;
- (b) establish the necessary termite control procedures adopted by the Committee under this clause; and
- (c) immediately take action to treat any parts of The Wharf which become affected by termites.

- 33.2 The Committee must, within six months after registration of this management statement, develop a strategy to deal with monitoring and controlling termites.
- 33.3 The Committee must report to MMHC about its monitoring and control activities under this clause at least every 12 months (or at other times agreed between the Committee and MMHC).
- 33.4 In this clause, "termites" include pests which affect or are likely to affect the structural integrity of The Wharf or a component of The Wharf.

## 34 Storage and disposal of waste

### Shared Facilities and Easements

- 34.1 The Committee has the overall responsibility for ensuring that garbage and recyclable materials are properly stored and removed from The Wharf. Each Member has obligations in relation to the storage and disposal of waste from their Stratum Lot or Strata Scheme.
- 34.2 The Central Garbage Room is the central storage and collection point for all garbage and recyclable materials. The Central Garbage Room is part of the Waste Disposal Shared Facility and is located in the Retail Lot. Several other aspects of garbage and recyclable materials storage and disposal form part of the Waste Disposal Shared Facility (eg garbage and recyclable materials bins and receptacles). See schedule 1 for a complete list.
- 34.3 The cost sharing arrangements for Waste Disposal are in schedule 2 (or clause 40 if there is no provision in schedule 2). The cost sharing arrangements reflect the different obligations of the Members under this clause.
- 34.4 The rights of Members to gain access to the Central Garbage Room are in the Easements and this management statement.

### What are the rights and obligations of the Committee?

- 34.5 The Committee must provide sufficient receptacles in the Central Garbage Room to store and dispose of waste generated from:
  - (a) Residential North;
  - (b) Residential South;
  - (c) The Promenade;
  - (d) the Hotel Lot;
  - (e) the Retail Lot; and
  - (f) the Commercial Lot.

34.6 The Committee must:

- (a) regularly clean and sanitise the Central Garbage Room and garbage and recyclable receptacles in the Central Garbage Room; and
- (b) arrange for the regular removal of garbage stored in the Central Garbage Room according to this clause.

34.7 The Committee may:

- (a) lease or purchase receptacles for the storage of garbage and recyclable materials;
- (b) appoint the Building Manager to perform its functions and exercise its rights under this clause;
- (c) allocate areas in the Central Garbage Room for exclusive use by a Member (subject to the storage and disposal needs of the Owners and Occupiers of Stratum Lots); and
- (d) make Rules about the storage and disposal of garbage and recyclable materials.

34.8 The obligations of the Committee in relation to Residential North, Residential South and The Promenade are to:

- (a) regularly remove household garbage from the Common Property garbage chute rooms on level 1 in those Strata Schemes and place it in the Central Garbage Room;
- (b) regularly remove recyclable materials from the Common Property garbage rooms in those Strata Schemes and place it in the Central Garbage Room;
- (c) ensure that clean garbage chute receptacles are in place and working for each Common Property garbage chute in those Strata Schemes;
- (d) ensure that sufficient and clean receptacles are provided in the Common Property garbage rooms in those Strata Schemes for the disposal of recyclable materials; and
- (e) regularly clean and remove any spilt garbage or recyclable materials from the Common Property garbage chute rooms on level 1 in those Strata Schemes.

34.9 Subject to the obligations of the Committee in regard to the maintenance of Shared Facilities, the Committee is not required to remove or store garbage from Carpark Wharf or Berthing Facility East.

- 34.10 The obligations of the Committee in relation to the Hotel Lot and Retail Lot are to:
- (a) provide a space for the garbage and recyclable materials used in the Hotel Lot and Retail Lot; and
  - (b) empty, clean, sanitise and store ready for collection from the Central Garbage Room sufficient receptacles for use in the Hotel Lot and Retail Lot.
- 34.11 The obligations of the Committee in relation to the Commercial Lot are to:
- (a) regularly collect the garbage and recyclable materials from the Commercial Lot and place it in the Central Garbage Room; and
  - (b) ensure that sufficient and clean receptacles are regularly made available for use in the Commercial Lot.

**What are the rights and obligations of Members, Owners and Occupiers?**

- 34.12 Members, Owners and Occupiers must:
- (a) comply with their obligations under this clause;
  - (b) comply with the Rules made by the Committee about the storage and disposal of garbage; and
  - (c) give the Committee access to their Strata Scheme or Stratum Lot to enable the Committee to comply with its obligations and exercise its rights under this clause.
- 34.13 The Residential North Owners Corporation, Residential South Owners Corporation, The Promenade Owners Corporation and the Commercial Owner must allow the Committee to bring into their Common Property or Stratum Lot trolleys and other vehicles to assist with the removal and transportation of garbage and recyclable materials from their Common Property or Stratum Lot to the Central Garbage Room.
- 34.14 Owners and Occupiers of Strata Lots in Residential North, Residential South and The Promenade must dispose of their garbage and recyclable materials according to the by-laws for their Strata Scheme. In summary, the by-laws require the Owners and Occupiers to place their household garbage in a Common Property garbage chute and leave their recyclable materials in an area of Common Property designated for that purpose by their Owners Corporation.
- 34.15 Owners and Occupiers of Strata Lots in Carpark Wharf and Berthing Facility East must remove garbage and recyclable materials from their Strata Lot.
- 34.16 Owners and Occupiers of the Hotel Lot and Retail Lot must deliver their garbage and recyclable materials to the Central Garbage Room and store it in the area allocated for their use by the Committee.

## **35 Provision of Services**

### **What are the powers of the Committee?**

- 35.1 Subject to this clause, the Committee has the power to supply Services to Members, Owners and Occupiers. Services include:
- (a) Electricity Supply, Gas Supply and Water Supply (each of which are Shared Facilities); and
  - (b) additional services which the Committee decides to supply according to this clause.
- 35.2 The Committee has the power to supply Services in addition to those in clause 35.1(a) to Members, Owners or Occupiers if:
- (a) there would be significant cost savings if the Committee purchases the Service in bulk and supplies to it Members, Owners or Occupiers;
  - (b) the Committee reasonably determines it would be beneficial to the operation and management of The Wharf for the Committee to provide the Service; or
  - (c) a Member, Owner or Occupier asks the Committee to provide the Service.
- 35.3 The Committee has the power to enter into contracts and agreements with the providers of Services.

### **Disconnecting a Service**

- 35.4 Subject to this clause, the Committee has the power to disconnect a Service to a Member, an Owner or an Occupier who does not pay the Committee for the Service according to this management statement.
- 35.5 The Committee must not disconnect or discontinue a Service to a Member, an Owner or an Occupier if doing so interferes (or might interfere) with the provision of that Service to another Member, Owner or Occupier who has paid the Committee for the Service.

## **36 Private Landing Pontoon**

- 36.1 The Committee has the power to enter into a licence with MMHC for the installation and operation of a Private Landing Pontoon adjacent to the Boardwalk to enable safe and convenient access for Members , Owners, Occupiers and their visitors to and from water craft.
- 36.2 The licence for the Private Pontoon Landing may include provisions, without limitation:
- (a) the Private Landing Pontoon and ramps, ladders or other means of access being attached temporarily or permanently to the Boardwalk for the term of the licence; and

- (b) other terms and conditions, including the term and payments under the licence, that are reasonably agreed between the Committee and MMHC.

36.3 While there is a current licence for the Private Landing Pontoon, the Private Landing Pontoon is a Shared Facility.

## 37 Swimming Pool and Gym

### Who can use the pool and gym?

- 37.1 The Swimming Pool and Gym are located in the Hotel Lot. They are not Shared Facilities.
- 37.2 The Hotel Owner must offer to make the Swimming Pool and Gym available for use to each of the following (either jointly or separately):
  - (a) the Residential South Owners Corporation;
  - (b) the Residential North Owners Corporation; and
  - (c) The Promenade Owners Corporationunder an agreement on the terms in this clause.
- 37.3 If there is no agreement between the Hotel Owner and an Owners Corporation under this clause, the Hotel Owner must make the Swimming Pool and Gym available for use by Owners of Strata Lots and Occupiers of Strata Lots in that Strata Scheme according to clause 37.9.
- 37.4 The Hotel Owner may make the Swimming Pool and Gym available to its patrons and guests and members of the public in its absolute discretion.

### Arrangements with Owners Corporations

- 37.5 The Residential South Owners Corporation, the Residential North Owners Corporation and The Promenade Owners Corporation may make agreements with the Hotel Owner about use of the Swimming Pool and Gym either:
  - (a) separately; or
  - (b) jointly (by two or three of the Owners Corporations entering into the agreement).
- 37.6 The principles which the Hotel Owner must adopt when determining fees payable under an agreement for use of the Swimming Pool and Gym by the Residential South Owners Corporation, the Residential North Owners Corporation and The Promenade Owners Corporation (separately or jointly) are:
  - (a) for the purposes of determining fees, the Swimming Pool and Gym are to be regarded as the equivalent of Common Property in a Strata Scheme;

- (b) the Hotel Owner may be reimbursed for its estimate of costs, determined according to this clause, for the repair, renewal, replacement, operation and other costs for the Swimming Pool and Gym as if they were Common Property in a Strata Scheme; and
- (c) the fees may take into account the level of services provided by the Hotel Owner in the Swimming Pool and Gym (eg the provision of a towel service), but must exclude the costs of any attendant in the Swimming Pool and Gym (including labour and the costs associated with the provision of any attendant).

37.7 The Hotel Owner must establish by independent verification that the fee for use of the Swimming Pool and Gym payable by an Owners Corporation or Owners Corporations has been prepared according to the principles in clause 37.6. The verification must be prepared by a person:

- (a) who holds the licences required by law to be a strata managing agent; and
- (b) is acceptable to the Owners Corporation or Owners Corporations who are a party to the agreement.

If the Hotel Owner and the Owners Corporation or Owners Corporations who are a party to the agreement cannot agree on a person who is to provide the verification within 14 days of the Hotel Owner submitting its proposed fee, the person is to be nominated at any party's request by the president of the Institute of Strata Title Management Limited.

37.8 The proportion of the fees payable by an Owners Corporation that is a party to an agreement under this clause must be calculated according to this formula:

$$F = \frac{L}{TL} \times C$$

- F is the fee payable by the particular Owners Corporation.
- C is the cost established by the independent verifier of maintaining the Swimming Pool and Gym according to the principals in clause 37.6.
- L is the number of residential Strata Lots in the Strata Scheme for the particular Owners Corporation.
- TL is the total number of residential Strata Lots in Residential South, Residential North and The Promenade.

**Example**

The calculation of the fee for the Residential South Owners Corporation at the date of registration of this management statement on the assumption that C is \$30,000.00 is:

$$\text{Fee for Residential South Owners Corporation} = \frac{212}{310} \times \$30,000.00$$

**Arrangements with Owners and Occupiers**

- 37.9 If an Owners Corporation does not make an agreement with the Hotel Owner under this clause, the Hotel Owner must offer membership of the Swimming Pool and Gym to Owners and Occupiers of Strata Lots in the relevant Strata Scheme at reasonable rates, which must not be more than membership charged for swimming pools and gyms of the same standard in comparable hotels in the Sydney CBD (having the same rating).

**Operating the pool and gym**

- 37.10 The Hotel Owner must make the Swimming Pool and Gym available to the Owners and Occupiers of Strata Lots in Residential South, Residential North and The Promenade who are entitled to use the Swimming Pool and Gym under this clause (ie because the Owners Corporations have separately or jointly entered into an agreement with the Hotel owner or because the Owner or Occupier has individual membership) at all times that the facilities are available to guests in the Hotel Lot.
- 37.11 Subject to its obligations under this clause, the Hotel Owner may make reasonable rules about use of the Swimming Pool and Gym by the Owners and Occupiers of Strata Lots who are entitled to use those facilities under this clause. The rules may include limitations on the number of persons who may use the Swimming Pool and Gym at the same time but must not operate to give entry preference to guests of the Hotel Lot or members of the public.
- 37.12 The Hotel Owner may allow the operator of the Hotel Lot or a third party to operate the Swimming Pool and Gymnasium. However, the Hotel Owner remains responsible to the Committee, Owners and Occupiers to perform the functions and duties of the Hotel Owner under this clause and to determine fees for use of the Swimming Pool and Gym according to this clause.

**38 Using the loading docks**

- 38.1 Loading docks are located in:
- (a) the Hotel Lot for the exclusive use of the Hotel Owner and persons authorised by the Hotel Owner; and
  - (b) in the Retail Lot for the exclusive use of the Retail Owner and persons authorised by the Retail Owner.

- 38.2 The loading docks in the Hotel Lot and Retail Lot are not Shared Facilities.
- 38.3 The Hotel Owner and the Retail Owner must:
- (a) ensure that the roller shutter doors at the entrance to the loading docks in their Stratum Lots are kept closed at all times when the loading docks are not in use;
  - (b) ensure the vehicles using the loading docks in their Stratum Lot are not more than 3.6 metres high or weigh more than 16 tonnes gross weight;
  - (c) keep the loading docks in their Stratum Lots clean and tidy and in good condition;
  - (d) ensure that no garbage, recyclable materials or food is stored in the loading docks in their Stratum Lots; and
  - (e) keep the loading docks in their Stratum Lots free from vermin.
- 38.4 Subject to this clause, the Hotel Owner and Retail Owner may use the loading docks in their Stratum Lots (or allow them to be used by other persons) only:
- (a) between the hours of 7.30am to 5.30pm Mondays to Fridays and 10.00am to 4.00pm Saturdays, Sundays and public holidays in New South Wales; or
  - (b) during other hours with consent from the Committee.
- 38.5 If the Committee grants consent under clause 38.4 it must:
- (a) be satisfied that there is a genuine need for the Hotel Owner or Retail Owner (having regard to the type of business conducted by the Hotel Owner or Retail Owner) to have access to the loading dock outside the times in clause 38.4;
  - (b) properly consider whether the use of the loading dock outside the times in clause 38.4 may detrimentally and materially affect other Members, Owners or Occupiers in the use and enjoyment of their Stratum Lots or Strata Lots; and
  - (c) impose appropriate conditions on the consent including without limitation conditions limiting noise by vehicles and personnel using the loading dock, the type of vehicles permitted to use the loading dock, the frequency of deliveries or removals and the types of items to be delivered to, or removed from, the loading dock.
- 38.6 The Committee, acting reasonably, may revoke a consent given under clause 38.4.

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## **39 Bicycle Racks in Carpark Wharf**

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- 39.1 The Bicycle Racks located in the Common Property of Carpark Wharf are not Shared Facilities.
- 39.2 The Carpark Wharf Owners Corporation:
- (a) must allow the Hotel Owner (or persons authorised by the Hotel Owner) to park up to five bicycles in the Bicycle Racks free of charge; and
  - (b) may make the remaining Bicycle Racks available for use by Members, Owners and Occupiers on the terms and conditions agreed between the parties.

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## **40 Changing and adding to Shared Facilities**

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- 40.1 The Committee may, by Unanimous Resolution:
- (a) add Shared Facilities if it identifies new Shared Facilities;
  - (b) create new Shared Facilities;
  - (c) change existing Shared Facilities;
  - (d) change the use of existing Shared Facilities;
  - (e) modify or replace existing Shared Facilities;
  - (f) extend Shared Facilities;
  - (g) remove Shared Facilities with the consent of MMHC; and
  - (h) determine a charge for Shared Facilities where schedule 2 does not make provision for a charge.
- 40.2 The Members must amend schedules 1 and 2 to reflect anything the Committee resolves to do under this clause.

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## **41 Changing the costs for Shared Facilities**

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- 41.1 The Committee may, by Unanimous Resolution, change costs, add new costs or adjust the division of costs for Shared Facilities in schedule 2 if:
- (a) the Committee resolves to deal with Shared Facilities under clause 40;
  - (b) it will more fairly divide costs for Shared Facilities;
  - (c) The Wharf changes;
  - (d) the Committee identifies new Shared Facilities;
  - (e) the use of existing Shared Facilities changes;

- (f) Shared Facilities are repaired, modified or replaced;
- (g) a Shared Facility is removed;
- (h) a charge for a Shared Facility is determined because schedule 2 does not make provision for a charge; or
- (i) anything else happens which affects the costs or the apportionment of costs of Shared Facilities.

- 41.2 The Members must amend schedules 1 and 2 to reflect anything the Committee resolves to do under this clause.

## **42 Shared Facilities and Substructure Maintenance Manuals**

### **Shared Facilities**

- 42.1 The Shared Facilities Maintenance Manuals are the manuals prepared from time to time by the manufacturers and suppliers of Shared Facilities (other than the Substructure).
- 42.2 The Shared Facilities Maintenance Manuals contain:
- (a) the obligations of the Committee, Members, Owners and Occupiers to inspect, maintain, repair and replace Shared Facilities (other than the Substructure); and
  - (b) procedures, time frames, plans, specifications and other information about inspecting, maintaining, repairing and replacing Shared Facilities (other than the Substructure).

### **Substructure**

- 42.3 The Committee must, within one month after this management statement is registered, adopt the Substructure Maintenance Manual.
- 42.4 The Substructure Maintenance Manual contains:
- (a) the obligations of the Committee, Members, Owners and Occupiers to inspect, maintain, repair and replace the Substructure; and
  - (b) procedures, time frames, plans, specifications and other information about inspection, maintaining, repairing and replacing the Substructure.
- 42.5 The Substructure Maintenance Manual applies as if it is part of this management statement.

### **Obligations of the Committee and Members**

- 42.6 The Committee, Members, Owners and Occupiers must comply on time and at their cost with their obligations under the Shared Facilities Maintenance Manuals and the Substructure Maintenance Manual.