

# EXPLANATORY MEMORANDUM

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## BAYVIEW ESTATE BY-LAWS

These By-laws were made by the Estate Management Corporation and notified in the *Gazette* on 5 June 2002.

Authority: section 26ZD of the *Unit Titles Act*.

NORTHERN TERRITORY OF AUSTRALIA

BAYVIEW ESTATE BY-LAWS

PART 1 - PRELIMINARY

1. Citation

These By-laws may be cited as the Bayview Estate By-laws.

2. Definitions and Interpretation

2.1 In these By-laws, unless the contrary intention appears:

"Act" means the Units Titles Act, the Regulations made under the Unit Titles Act and these By-laws;

"approved" means approved in writing by the Estate Management Corporation or by a person to whom the power to approve a matter or thing has been delegated by the Estate Management Corporation under the Act;

"berth" means a wharf, jetty, pontoon, buoy, pile or other mooring or structure for anchoring, securing, berthing or mooring a watercraft in on or within the Waterway;

"By-laws" means these by-laws;

"Committee" means the committee of the Estate Management Corporation;

"common property" means the common property of the Estate vested in the Estate Management Corporation from time to time pursuant to the Act;

"Encumbrance" means in respect of a lot, the encumbrance registered against that lot pursuant to the Real Property Act in favour of Dover Investments Pty Ltd;

"Estate" means all property the subject of Units Plan No. 2000/015 (as amended from time to time) including without limitation the common property described therein;

"Estate Management Corporation" means the body corporate established pursuant to the provisions of s27 of the Act in respect of the Estate and known as "The Proprietors-Units Plan No. [2000/015]";

"fee" means a fee determined by the Estate Management Corporation under By-law 3;

"Island" means that part of land within the Estate that is surrounded by the Waterway, and is not intended to be covered by water;

"jetty" means a wharf, jetty, boardwalk or other structure erected on over or within that part of the Waterway as is common property for a purpose of pedestrian access and includes all buildings and other works thereon and appurtenances thereto;

"lock" means the control mechanism, and associated structures and facilities, established at the entrance to the Waterway for the purpose of -

(a) maintaining the body of water contained in the Waterway at levels from time to time considered appropriate by the Estate Management Corporation; and

(b) enabling watercrafts to enter and exit the Waterway;

"lock master" means any person employed or engaged for the purpose of controlling the operation of the lock;

"lock permit" means a lock permit granted under By-law 14;

"lot" means a parcel of land (including a lot covered by water) within the Estate in respect of which a person is the holder of an estate in fee simple but excludes the common property;

"Manager" means a person appointed or engaged by the Estate Management Corporation pursuant to By-law 8.1;

"marina" means a lot within the Estate situated within the Waterway which has a structure or berth providing for the mooring of more than one (1) watercraft and includes facilities provided and/or associated with a marina;

"marina berth" means a berth within a marina;

"mooring" means the action of anchoring or securing a watercraft;

"Mooring Area" means any one of:

(a) lots 1 to 130 inclusive within the Estate; and

(b) that part of any other lot within the Estate which is, or is constructed to be, covered by water for use by watercraft;

and where the context permits includes the water covering such area;

"owner" includes -

(a) in relation to a lot or a part of a lot (including a Mooring Area)-

(i) an occupier or person in possession (whether as lessee, licensee, tenant or under any other legal title);

(ii) successors in title (including a mortgage in possession); and

(iii) a person who exercises, whether personally or by his or her servants and agents, a right of occupation;

(b) in relation to a vehicle - the person in charge of the vehicle;

(c) in relation to a watercraft - a part owner, master, charterer, occupier, licensee, agent and permit holder and the person in charge of the watercraft;

"permit holder" means the holder of a lock permit;

"register" means the register established under By-law 24;

"watercraft" means a vessel or craft capable of being used as a means of conveyance or movement across, through on or in water, whether propelled by sail, motor, oars or otherwise:

- (a) of length not exceeding 26 metres, with a beam not exceeding that specified or determined by the Committee from time to time and with a draft not exceeding 2.5 metres;
- (b) and includes an air-cushioned watercraft, a boat, ship, yacht, dingy;
- (c) but excludes a house boat, jet ski, raft, canoe, kayak, surf ski, inflatable craft windsurfer barge, model or radio controlled vessels or craft, or any vessel or craft of similar nature as any of the foregoing.

"Waterway" means:

- (a) all Mooring Areas; and
- (b) that part of the common property which is, or is constructed to be, covered by water for the general purpose of use by watercraft

and where the context permits includes the water covering such area;

2.2 A reference to the Estate Management Corporation includes:

- (a) the Committee, where pursuant to the Act it is empowered to do any act on behalf of or as or for the Estate Management Corporation; and
- (b) the Estate Manager, where a matter the subject of a By-law has been delegated to the Estate Manager in respect of such matter.

2.3 Where any power is vested in or exercisable by the Estate Management Corporation pursuant to these By-laws, that power may be exercised by one or more persons acting on behalf of or at the direction of the Committee (whether generally in relation to these By-laws, or the enforcement thereof, or in a specific instance).

## **PART 2 - POWERS OF ESTATE MANAGEMENT CORPORATION**

### **3. Fees**

3.1 The Estate Management Corporation may determine the fee or fees, if any, payable in respect of a permit or an approval, or application thereof, under these By-laws.

### **4. Pulling down of Unauthorised Work**

4.1 The Estate Management Corporation may pull down, remove or alter work, a structure or a thing erected or being in breach of these By-laws.

4.2 The exercise of a power under clause 4.1 does not limit or affect the liability of a person to be prosecuted for a breach of a By-law.

### **5. Removal of Offenders**

5.1 The Estate Management Corporation or a member of the Police Force acting on the instructions of the Estate Management Corporation may summarily eject or remove any person from a place under the control of the Estate Management Corporation where such person:

- (a) is, or is reasonably considered to be, in breach of these By-laws; or
- (b) is not entitled to be on or at such place.

5.2 A person may be prosecuted for a breach of these By-laws notwithstanding that he or she was summarily ejected or removed from a place under the control of the Estate Management Corporation by the Estate Management Corporation or a member of the Police Force.

## 6. Removal of Objects

6.1 The Estate Management Corporation may remove from any part of the common property any object, material or thing which:-

- (a) is not permitted to be in or on the common property;
- (b) has apparently been discarded in or on the common property;
- (c) no person apparently is responsible for; or
- (d) may cause, or contribute to, a situation of risk of injury or damage.

6.2 Any object, material or thing so removed may be:-

- (a) stored;
- (b) sold;
- (c) discarded; or
- (d) delivered to its apparent owner or custodian, if known;

as the Estate Management Corporation may, in its absolute discretion, decide without liability other than as provided in By-law 6.3.

6.3 Any person who claims ownership of any such object, material or thing which has:-

- (a) stored, seek recovery from the Estate Management Corporation if it is in storage provided that the Estate Management Corporation may withhold delivery or return of the object, material or thing unless and until payment is made to the Estate Management Corporation of any costs, expenses or liabilities arising out of any action pursuant to clauses 6.1 or 6.2; or
- (b) sold, seek payment of the proceeds:
  - (i) less any costs arising out of any action pursuant to clause 6.1 or 6.2; and
  - (ii) if the financial year of the Estate Management Corporation in which it was sold has not expired.

## 7. Interference with person

7.1 It is an offence for a person to hinder, disturb, disobey or interrupt an authorised person or officer or employee of the Estate Management Corporation in the proper execution of his or her work or duty, or in carrying out the functions of the Estate Management Corporation.

## 8. Delegation

8.1 The Estate Management Corporation may:-

- (a) engage or appoint a person to manage all or any part of the common property of the Estate, or to undertake any of the duties and functions of the Estate Management Corporation, and any other-associated activities, for and on behalf of the Estate Management Corporation; and

(b) delegate any function or power.

## 9. Security against Damage to Property of the Corporation

9.1 Where, in the opinion of the Estate Management Corporation, an activity to be performed under a permit or approval granted under these By-laws may involve alteration or damage to work or property belonging to or under the control of the Estate Management Corporation, the Estate Management Corporation may, before granting the permit or approval, require the applicant to lodge with the Estate Manager sufficient security in favour of the Estate Management Corporation of such an amount that, in the opinion of the Estate Management Corporation, would be necessary to cover the cost of any possible rectification by the Estate Management Corporation of the potential alteration or damage.

## PART 3 - OFFENCES AND RECOVERY OF EXPENSES

### 10. Penalty For Offences

- 10.1 A contravention or failure to comply with these By-laws is an offence and a person found guilty of an offence is liable to a penalty not exceeding \$2,000 and, in addition, to a penalty not exceeding \$50 for each day during which the offence continues.
- 10.2 A contravention of or failure to comply with a condition of a permit or approval granted under these By-laws is, and is deemed to be, a contravention of or failure to comply with these By-laws.
- 10.3 A prosecution for a breach of these By-laws may be brought, in addition to any other manner permitted by law, by the Estate Management Corporation in the same manner as a prosecution or other proceeding under the *Justices Act*.

### 11. Expenses to be Paid

- 11.1 Where a person has breached these By-laws or has, without reasonable excuse, failed to carry out works which he or she is required to carry out by or under these By-laws, he or she is liable to pay, in addition to any penalty that he or she may incur as a consequence of that breach or failure, all expenses reasonably incurred by the Estate Management Corporation as a consequence of that breach or failure (including the cost to the Estate Management Corporation of any rectification by the Estate Management Corporation of the alteration or damage).
- 11.2 A person is not liable to pay expenses referred to in clause (1) unless notice of the expenses incurred by the Estate Management Corporation has been served on him or her.
- 11.3 A person upon whom a notice of expenses payable has been served shall pay the amount of the expenses before the expiration of 30 days after the date of service of the notice.

## PART 4 - WATERCRAFT AND LOCK PERMIT

### 12. Watercraft within the Waterway

- 12.1 The owner of a watercraft shall not permit or cause that watercraft to:
- (a) enter or exit the lock; or

- (b) enter or be in or on any other part of the Waterway, whether moored, moving or stationary; unless:
  - (i) the watercraft is the subject of a current lock permit; and
  - (ii) the watercraft is not of a type prohibited, or does not exceed the maximum size permitted, from time to time by the Estate Management Corporation.
- 12.2 A person shall not permit or cause an object that is excluded from the definition of watercraft herein to:
  - (a) enter or exit the lock; or
  - (b) enter or be in or on any other part of the Waterway or the Island.
- 12.3 Mooring of a watercraft within the Waterway is not permitted other than:
  - (a) in a Mooring Area; and
  - (b) to a berth:
    - (i) provided by the developer of the Estate or the Estate Management Corporation at the date of commencement of these By-laws; or
    - (ii) approved in accordance with an Encumbrance over the land on or within which the Mooring Area is located.
- 12.4 Subject to By-law 13.1 (c), an owner of a watercraft shall only moor, and the owner of a Mooring Area shall only permit there to be moored, one watercraft in a Mooring Area.
- 12.5 Without limiting By-law 12.1, the owner of a watercraft shall not moor, or permit or cause to be moored, the watercraft in or at a Mooring Area unless the watercraft:-
  - (a) is the subject of a current lock permit in respect of the Mooring Area designated in the lock permit; and
  - (b) is not of a type prohibited, or does not exceed the maximum size permitted, from time to time by the Estate Management Corporation.
- 12.6 The owner of a Mooring Area shall not construct a structure for mooring watercraft in the Mooring Area unless a current lock permit in respect of the Mooring Area has been granted by the Estate Management Corporation.
- 12.7 The owner of a Mooring Area in which a berth has been constructed shall ensure that a current lock permit in respect of the berth has been granted by the Estate Management Corporation.

### 13. Watercraft limits

13.1 The Estate Management Corporation may specify:

- (a) the type and maximum size of watercraft permitted to enter or exit the lock or be in the Waterway (being a size less than that specified in paragraph (a) of the definition of a "watercraft" herein);
- (b) the type and maximum size of watercraft permitted to be moored in any particular Mooring Area; and
- (c) whether a particular Mooring Area is entitled to have moored more than one watercraft.

### 14. Lock Permits

14.1 The Owner of a lot shall be entitled, subject to these By-laws, to have issued to him, her or it upon application a lock permit in respect of the Mooring Area owned by that person and in respect of a watercraft.

14.2 A person may apply to the Estate Management Corporation for a lock permit by lodging with the Estate Management Corporation -

- (a) the applicant's full name and address;
- (b) details of the Mooring Area where the watercraft will be moored;
- (c) where the applicant is the owner of the Mooring Area - details of the berth in, or to be constructed in, the Mooring Area;
- (d) where the applicant is not the owner of the Mooring Area - consent from the owner to the application; and
- (e) details of the applicant's watercraft, including -
  - (i) the length, draft and a general description of the watercraft; and
  - (ii) the register number and name of the watercraft, the radio call sign and other communication details, if any.

14.3 The Estate Management Corporation shall, subject to and upon an application in compliance with these By-laws, grant a lock permit to the applicant for a period of up to 12 months.

14.4 The grant of a lock permit shall be evidenced by:

- (a) the entry in the register of current lock permits maintained by the Estate Management Corporation; and
- (b) the issue to the permit holder of an instrument in writing by the Estate Management Corporation containing:
  - (i) the full name and address of the person to whom it is granted;
  - (ii) the period for which it is valid;
  - (iii) particulars to enable the identification of the watercraft to which it relates;
  - (iv) the Mooring Area to which it relates; and
  - (v) other approved particulars.



- 14.5 The Estate Management Corporation shall establish and maintain a register of current lock permits, in such form as it wishes provided the contents of the register may be inspected upon paper, of each lock permit containing the matters in By-law 14.4(b) above and such other information as it considers appropriate.
- 14.6 The Estate Management Corporation shall not grant a lock permit in respect of an object that is expressly excluded from the definition of "watercraft" herein.
- 14.7 Only one lock permit can be granted in respect of any one Mooring Area.
- 14.8.1 The holder of a lock permit may apply to the Estate Management Corporation for the renewal of the permit, on or before the expiry of the permit.
- 14.8.2 The Estate Management Corporation shall, subject to these By-laws and subject to such conditions as it thinks fit, renew a lock permit for such period, not exceeding 12 months, as it thinks fit.
- 14.9.1 A permit holder may apply in writing to the Estate Management Corporation for an amendment to the lock permit so that the lock permit applies to a different watercraft in substitution for the watercraft to which the lock permit originally applied.
- 14.9.2 The Estate Management Corporation shall, subject to these By-laws, on the application in writing of a permit holder, amend a lock permit so that the lock permit applies to a watercraft in substitution for the watercraft to which the lock permit originally applied.
- 14.10 The Estate Management Corporation shall not, grant, renew or amend a lock permit unless the watercraft to which the lock permit relates is of a suitable dimension for, or does not exceed the maximum permitted dimension in respect of, the berth in or appertenant to the Mooring Area to which the lock permit relates.

## **15. Maintenance of Watercrafts**

- 15.1 A person shall not carry out maintenance or repairs to a watercraft in the Waterway except :
- (a) in a part of the common property, if any, approved for that purpose by; or
  - (b) under and in accordance with the approval of,  
the Estate Management Corporation.
- 15.2 Notwithstanding By-law 15.1, the owner of a watercraft may perform minor repairs or cleaning, internal painting, mechanical adjustments and electrical works in respect of the watercraft within the Waterway:
- (a) if the Estate Management Corporation is advised in writing of the work before the work commences;
  - (b) if the Estate Management Corporation does not object to such works;
  - (c) if the works are carried out in a Mooring Area; and
  - (d) subject to any restrictions or conditions imposed by the Estate Management Corporation.

16. deleted.

## 17. Disposal of Wastes From Watercrafts

17.1 Without limiting By-law 25, the owner of a watercraft shall ensure that:

- (a) waste from toilets and showers on a watercraft, including contaminated bilge waste, is not discharged into the Waterway;
- (b) antifouling substances, petrol (other than normal emissions from an engine in use), oil or other toxic materials or waste are not released from the watercraft into the Waterway; and
- (c) any cleaning products that are used pursuant to By-law 15 shall be biodegradable and phosphate free detergents.

17.2 The owner of a watercraft shall ensure that all quarantine wastes on board the watercraft are disposed of prior to entering the Waterway in accordance with Australian Quarantine Inspection Service requirements.

## 18. Use of Watercrafts

18.1 The owner of a watercraft shall not permit a watercraft to:

- (a) enter or be in or on the Waterway; or
- (b) enter the Waterway through the lock,

unless the watercraft:

- (i) is sea-worthy and travelling under its own power;
- (ii) complies with the *Marine Act* or other applicable legislation or any applicable Australian standard in respect of its conditions, fittings and safety equipment;
- (iii) without limiting the foregoing, is equipped with all fire fighting equipment prescribed by or under the *Marine Act* or any Australian standard for watercraft of its class, and any fire extinguishers are kept fully charged, maintained in good order and condition and fitted in the position on the watercraft required by or under the *Marine Act*; and
- (iv) is registered as required by law and identified, marked, equipped and maintained as required by law and safe boating practice.

18.2 A person shall not, except in an emergency, use sails on a watercraft within the Waterway.

18.3 A watercraft within the Waterway is subject to the direction of the Estate Management Corporation whether made generally by notice or specifically in respect of a particular watercraft.

18.4 Where an owner of a watercraft has an outstanding debt to the Estate Management Corporation, he or she shall not remove the watercraft from the Waterway except with the permission of the Estate Management Corporation.

18.5 The owner of a watercraft shall observe maritime law and practice when travelling within or entering or leaving the Waterway, including, but not limited to, keeping the watercraft to the right of an approaching watercraft.

18.6 The owner of a watercraft shall shut down the engines of the watercraft as soon as possible after mooring in order to minimize fuel emissions and foul odors.

## PART 5 - WORKS RELATING TO THE WATERWAY

### 19. No Waterway related works without approval

19.1 A person shall not commence or continue to:

- (a) construct or place any form of works, including a berth or jetty, in, on, over, through or across any part of the Island or the Waterway (including land lying under or comprising part of the Waterway);
- (b) remove material from a part of the Island or the Waterway (including land lying under or comprising part of the Waterway); or
- (c) attach anything to or do any works on or to such part of the revetment wall as forms part of the common property;

except under and in accordance with a works approval granted by the Estate Management Corporation.

19.2 In By-law 19.1 "material" means ballast, rocks, stone, shingle, gravel, sand, clay, earth or similar material.

19.3 An approval given under an Encumbrance shall be deemed to be the grant of a works approval in respect of the matters so approved.

### 20. Application

20.1 A person may apply to the Estate Management Corporation, for a works approval.

### 21. Grant of Approvals

21.1 The Estate Management Corporation may, in its absolute discretion refuse or, subject to the conditions it thinks fit, grant a works approval.

21.2 Where the Estate Management Corporation refuses to grant a works approval it shall refund to the applicant the fee, if any, paid by the applicant under By-law 20.

### 22. Variation Of Approvals

22.1 Where, after the grant of a works approval, the Estate Management Corporation is of the opinion that a change in circumstances is such that the conditions of the approval should be varied (including by the addition of a new condition), it may, by notice in writing addressed to the holder of the approval at his or her last known address or place of business, vary a condition of the approval.

22.2 Where notice is given to the holder of an approval under By-law 22.1, the approval is deemed to have been varied in accordance with the terms of the notice from the date on which the notice is given.

### **23. Cancellation and Suspension of Approvals**

- 23.1 The Estate Management Corporation may, by notice in writing addressed to the holder of an works approval at his or her last known address or place of business, cancel or suspend his or her approval if it is of the opinion that action taken under the approval is being performed in a manner:
- (a) likely to be injurious to any part of the common property or the Estate;
  - (b) which constitutes a public nuisance; or
  - (c) which may cause injury to any person.

### **24. Register of Approvals**

- 24.1 The Estate Management Corporation shall establish and maintain a register of all works approvals.
- 24.2 The Estate Management Corporation shall enter or cause to be entered in the register established under By-law 24.1 details of :
- (a) the location and description of works in respect of which a works approval has been granted;
  - (b) the date of issue of each works approval;
  - (c) the name and address of the person to whom the works approval was granted; and
  - (d) such other information and particulars as the Estate Management Corporation thinks fit.

## **PART 6 - USE AND MAINTENANCE OF WATERWAY AND COMMON PROPERTY**

### **25. Maintenance of Waterway**

- 25.1 A person shall not conduct an activity or perform an action or omit to do anything which causes or is likely to cause pollution of the Waterway or the Island, including without limitation the deposit of any litter, waste or refuse into the Waterway or onto the Island or the release of any noxious substance or liquid, including, without limitation, detergent.

### **26. Control Of Waterway**

- 26.1 Where, in the opinion of the Estate Management Corporation, a watercraft is not securely moored or is otherwise potentially causing a danger to a person, a watercraft or property on or within the Waterway, it may direct the owner of the watercraft to remedy the lack of secure mooring or to do those things the Estate Management Corporation thinks necessary to avoid any such danger, within a time specified by the Estate Management Corporation.
- 26.2 Where,
- (a) a direction is given by the Estate Management Corporation under By-law 26.1;
  - (b) a watercraft is moored or anchored in contravention of these By-laws or is otherwise in contravention of these By-laws; or
  - (c) a watercraft may, in the opinion of the Estate Management Corporation, cause a danger to the common property or the Estate,

the person so directed shall moor, unmoor, anchor, move or remove the watercraft in accordance with the directions of the Estate Management Corporation.

26.3 A person shall not fail to comply with a direction of the Estate Management Corporation under this By-law 26.

26.4 Where:

(a) a person fails to comply with a direction of the Estate Management Corporation under this By-law; or

(b) there is no person on board a watercraft that is in contravention of this By-law,

the Estate Management Corporation may moor, unmoor, anchor, move or remove the watercraft as it thinks fit, and for that purpose may cast off or loose a warp or rope, or unshackle or loosen a chain, by which the watercraft is moored or fastened.

26.5 The Estate Management Corporation is not liable to any person, merely by reason of the existence of any power in these By-laws, where it fails to give a direction or to take action in respect of a breach of these By-laws.

## **27. Use, Interference And Damage To Common Property**

27.1 A person shall not use:

(a) a fitting or appliance in or about; or

(b) a structure erected on,

the common property, for a purpose other than that for which such fitting, appliance or structure is provided.

27.2 The Estate Management Corporation may take all such steps and do all such acts as it considers necessary for:

(a) the general benefit and safety and security of; or

(b) the avoidance of injury to,

a person, watercraft or property in or on the common property.

27.3 The Estate Management Corporation may give:

(a) to the owner of a watercraft; or

(b) to a person,

in the Estate such directions as it thinks fit for the purpose of enforcing these By-laws and that owner or person shall comply with such directions.

## **28. Use Of Waterway**

28.1 A person shall not navigate, or allow the movement of, a watercraft in the Waterway:

(a) subject to (b), at a speed exceeding 4 knots;

(b) in a manner likely to cause injury or damage to any watercrafts or to a person or an object;

(c) in a manner likely to cause a hazard or undue inconvenience to the navigation of another watercraft in the Waterway; or

(d) in a manner which is careless, negligent or reckless.

28.2 A person shall not -

- (a) cast, place or leave or cause to be cast, placed or left, an anchor or similar device ("Anchor") whether from a watercraft or a buoy, in, on, over, through or across a portion of the bottom or bed of a Mooring Area or the common property; or
- (b) moor a watercraft so that it will or may extend into or over the common property, or construct a berth for a watercraft which will permit a watercraft moored to it to extend into or over the common property, except with the approval of the Estate Management Corporation.

28.3 Where an Anchor is cast, placed or left or caused to be cast, placed or left in contravention of By-law 28.2 the Estate Management Corporation may, by notice in writing, direct the person in control of such Anchor, the owner of a watercraft to which it relates or the owner of a Mooring Area in which it is located, to remove such Anchor and restore the site to its former condition within the period, if any, specified in the notice.

28.4 Where a person to whom notice is given in accordance with By-law 28.3 fails to comply with the notice, the Estate Management Corporation may remove the Anchor and also restore the site and the costs incurred in so doing shall be recoverable by the Estate Management Corporation from the person as a debt due and payable to the Estate Management Corporation, in addition to the penalty, if any, which may be imposed for a breach of these By-laws.

28.5 A person shall not:

- (a) moor, anchor or place a watercraft, or place a vehicle or other thing, so as to obstruct or impeded the use by others of a Mooring Area or the common property; or
- (b) place, anchor or moor a watercraft in the approach channel to the Waterway or in the common property.

28.6 A person navigating or using a watercraft in the Waterway shall not cause, permit or suffer a boom, spar or other projection to be rigged out of its stowed position so as to extend so far from the side of the watercraft that it may cause injury to a person or object in the Waterway.

## 29. Noise Nuisance

29.1 A person shall not in or on a watercraft that is:

- (a) under-way;
- (b) engaged in dredging or in providing any other service in the Waterway; or
- (c) at a Mooring Area;

make noise, whether by the use of machinery or equipment or in any other manner, so as to cause nuisance and shall not permit his or her servant or agent or a child under his or her supervision to do so.

29.2 A noise is a nuisance for the purposes of this By-law if it occasions undue stress, annoyance or irritation to a person or persons in or on or in the vicinity of, a watercraft or lot.

29.3 Whether a disturbance, distress, annoyance or irritation causes a nuisance is to be determined in accordance with the sensitivity of a reasonable person, having regard to the time, place, intensity and frequency of the noise complained of.

## 30. Nuisance Or Hazardous Activity

30.1 Where -

- (a) a noise is a nuisance within the meaning of By-law 29; or
- (b) the consequence of an action or failure to take an action by a person is the creation of a nuisance (other than noise) or a hazard to a person or property in or in the vicinity of the Waterway,

the Estate Management Corporation may, by notice in writing, direct:

- (c) the owner of the watercraft on or from or in relation to which the nuisance or hazard is caused:-
  - (i) to take to or remove the watercraft from a Mooring Area;
  - (ii) where the nuisance or hazard is created or associated with the loading or unloading of the watercraft, the manner in which all or any cargo of the watercraft shall be loaded or unloaded;
  - (iii) as to the steps to be taken by him or her for the abatement, mitigation or prevention of nuisance or a hazard, including but not limited to a direction that machinery or equipment shall no longer be used or shall be used subject to such conditions as are approved by the Estate Management Corporation; or
  - (iv) the owner in respect of a Mooring Area as to the steps to be taken by him or her for the delivery, loading, unloading or removal of goods or the abatement, mitigation or prevention of a hazard, noise or other nuisance.

## PART 7 - JETTIES AND OTHER STRUCTURES

### 31. Use Of Jetties

- 31.1 A person shall not, except in accordance with these By-laws, or pursuant to a right or privilege granted by the Estate Management Corporation, obstruct or impede the use of or access to a jetty by another person.
- 31.2 A person shall not moor or fasten a watercraft to a part of a jetty except to bollards, cleats or other fastenings provided for that purpose.
- 31.3 A person shall not cause a watercraft under his or her control to lie alongside a jetty unless the watercraft is properly moored or fastened to the jetty.
- 31.4 A person shall not use or interfere with a fitting or appliance on a jetty except for the purpose for which the fitting or appliance is provided.

## **32. Control Of Jetties**

- 32.1 The Estate Management Corporation may perform those acts and give those directions it thinks necessary for the general benefit and safety of persons, watercrafts and property at or on a jetty.
- 32.2 The Estate Management Corporation may give to the person in control of a watercraft at a jetty or to a person upon or alongside a jetty, the directions it thinks fit for the purpose of enforcing these By-laws.
- 32.3 Where the Estate Management Corporation is of the opinion that a watercraft is not securely moored at a jetty, it may direct the person in control of the watercraft to securely moor the watercraft immediately or within the period the Estate Management Corporation directs.

## **PART 8 - THE LOCK**

### **33. Lock Levies**

- 33.1 The Estate Management Corporation may charge owners of lots within the Estate levies for the upkeep and maintenance of the lock and the employment of a person or persons as lock master or lock masters.
- 33.2 A levy charged under clause (1) is payable notwithstanding that contributions are required to be made other than according to a unit entitlement under the Act.

### **34. Restriction Of Watercrafts**

- 34.1 Where the Estate Management Corporation or a lock master is satisfied that a watercraft -

- (a) presents an undue risk of injury to:
  - (i) the Waterway;
  - (ii) the Island; or
  - (iii) property or persons within the Waterway; or
- (b) is undesirable because of -
  - (i) the size, design or type of watercraft;
  - (ii) the trade or service in which the watercraft is engaged; or
  - (iii) any other reason whatsoever,

the Estate Management Corporation or the lock master may, notwithstanding that a lock permit may have been granted in respect of such watercraft, by verbal or written direction to the owner of the watercraft -

- (c) absolutely prohibit the entry to, or the mooring or berthing of the watercraft in, the Waterway; or
- (d) authorise the entry, mooring or berthing of the watercraft at a berth within the Waterway on such terms and conditions as the Estate Management Corporation or lock master directs.



- 34.2 A lock master may refuse entry of a watercraft to the Waterway if -
- (a) it is in breach of any of these By-laws;
  - (b) it is not comprehensively insured or is not subject to a contract of third party personal/property insurance (the obligation to provide evidence of which shall rest with the master or owner of the watercraft); or
  - (c) a current lock permit has not been granted in respect of the watercraft.
- 34.3 The Owner of a watercraft shall obey any and all directions of a lock master whilst the watercraft is waiting or preparing to enter the lock, in the lock, or departing from the lock.

## **PART 9 - NOTICES**

### **35. Service Of Notices**

- 35.1 Except as otherwise provided by these By-laws, a notice or other document required or permitted by or under these By-laws to be given or served upon a person may be given or served in accordance with the articles of the Estate Management Corporation in force from time to time pursuant to the provisions of the Act;

### **36. Exhibition Of By-laws**

- 36.1 The Estate Management Corporation shall display, exhibit or publish:-
- (a) these By-laws and regulations that relate to the common property or the operation of the lock by notices displayed at the office of the Estate Management Corporation;
  - (b) such of those By-laws and regulations as the Estate Management Corporation thinks appropriate by notice displayed at that part of the Estate or common property to which such By-laws and regulations apply.

### **37. No Unauthorised Advertisement**

- 37.1 A person shall not, except with the written permission of the Estate Management Corporation -
- (a) erect or maintain in or about the common property a signboard, notice board or other structure for the exhibition of bills or notices; or
  - (b) exhibit on, affix to, or maintain a bill or notice on a part of the common property.

## **PART 10 - MISCELLANEOUS**

### **38. Conduct**

- 38.1 A person shall not in or about or in the vicinity of the Waterway or any other part of the common property:
- (a) behave in a riotous, disorderly, indecent, offensive, threatening or insulting manner;
  - (b) sing an obscene song or ballad or write or draw an indecent or obscene word, figure or representation;
  - (c) use profane, indecent or obscene language;
  - (d) use threatening, abusive or insulting words;

- (e) wilfully break, destroy or damage a building, erection, fitting, appliance, tree, plant, seed or other thing;
- (f) write upon, mark or deface a building, structure, erection, fitting, appliance, tree, plant, seed or thing;
- (g) place or leave litter, decaying food, goods or things;
- (h) discharge or place or cause to be discharged or placed rubbish or any other substance or object overboard from a watercraft, from a lot or from any other place within the Estate, into the Waterway (including lawn cuttings and the run-off of fertiliser from a lot)
- (i) light fires or burn material except in a facility provided for that purpose;
- (j) breach, ignore or disobey the provisions or directions contained in any sign or notice posted or located in the Estate by or on behalf of the Estate Management Corporation or the Committee; or
- (k) park a motor vehicle within the meaning of the Motor Vehicles Act in an area that is not designated and, in the case of land in the common property, marked as, a car parking area.

### **39. Fuelling**

39.1 A person shall not use or allow to be used -

- (a) a berth, marina berth, wharf, dock, jetty or other structure; or
- (b) a vehicle, apparatus, equipment or other facility on or within the Waterway,

for delivering fuel to watercrafts except under and in accordance with a lock permit or an approval granted by the Estate Management Corporation.

### **40. Width of By-laws**

40.1 The application or width of any one By-law shall not be restricted by any other By-law unless expressly so provided.

### **41. Certain Activities Prohibited**

41.1 A person shall not swim in or dive into the Waterway.

41.2 A person shall not fish, by any means, in the Waterway.

41.3 A person shall not :

- (a) cause a watercraft or goods to be fumigated or smoked in the Waterway except with the permission of the Estate Management Corporation in writing and under the supervision of such persons, if any, under whose supervision such fumigation or smoking is required to be carried out under a law of the Territory or of the Commonwealth;
- (b) use drags or grapplings for the purpose of lifting articles or things from the bed of the Waterway or disturb the bed of the Waterway in any way whatsoever, except with the consent of the Estate Management Corporation;
- (c) bring, or cause to be brought, a vehicle onto, or move a vehicle or cause a vehicle to be moved upon, a structure erected in or on the common property within the Waterway if the vehicle is likely to damage the structure or part of the structure;

- (d) remove or in any way interfere with lifesaving gear, a life-hook, a life-buoy, or other lifesaving apparatus within the Waterway, except for the purpose of saving life;
- (e) soil, deface mark or injure or drive nails, screws or any other object into, the common property or a structure under the control of the Estate Management Corporation without the consent of the Estate Management Corporation; or
- (f) without the consent of the Estate Management Corporation write, paint or place a placard or other printed or written material upon a building, shed, waiting room, fence, wharf, berth, marina berth or other structure in or on the common property or under the control of the Estate Management Corporation.

41.4 A person shall not enter on, or cause or permit any other person or thing to enter on, the Island, without prior written approval from the Estate Management Corporation. The Estate Management Corporation has an absolute discretion whether or not to give an approval, and if such approval is given, may be subject to any conditions that the Estate Management Corporation thinks fit.

## **42. Estate Management Proclamations**

42.1 Where the Estate Management Corporation is empowered to specify or proclaim a matter under these By-laws, it shall do so by creating an instrument in writing signed by or on behalf of the Estate Management Corporation recording the terms thereof and:

- (a) keep that instrument at the office of the Estate Management Corporation; and
- (b) deliver a copy of that instrument to each affected owner of a lot within the Estate as a notice to that Owner.

## **43. Restrictions on use of common property**

43.1 Where the Estate Management Corporation has granted a lease of any part of the common property pursuant to section 42A of the Act or granted a privilege in respect of any part of the common property pursuant to section 44 of the Act, it may notify:-

- (a) the terms and conditions of such grant;
- (b) the restrictions on other persons arising by reason of such grant, including a restriction on persons entering a part of the common property.

43.2 In addition to the requirements of by-law 42.1 the notification under By-law 43.1 may be made, either in full or in summary, on one or more notices erected at or near the part of the common property to which the privilege and restriction applies.

43.3 A person acting contrary to such restriction shall be deemed to have breached these By-laws.

## **44. Applications**

44.1 The Estate Management Corporation may approve a form of instrument for the purpose of making an application pursuant to these By-laws.

44.2 An application shall be sufficiently made for these By-laws if, in addition to the requirements of the By-law to which it relates, it is made on the approved form and payment is made of the fee for such application or the matter to which it relates.

45. Waiver

45.1 The Estate Management Corporation may permit a thing to be done (with or without conditions) notwithstanding a prohibition or restriction under the By-laws or may waive compliance with any By-law or any obligation or requirement pursuant to these By-laws, whether in a particular instance, for a class of persons, for a type of watercraft, for an area of the Estate, for a period of time or otherwise.

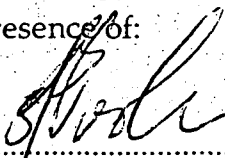

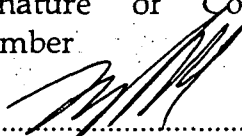
45.2 Without limiting By-law 45.1, the Estate Management Corporation may issue a temporary lock permit in respect of watercraft ("the Visiting watercraft") at the request of an owner of a Mooring Area or the holder of a lock permit, if the watercraft to which the lock permit relates is not within, and will not be within, the Waterway whilst the Visiting watercraft is in the Waterway.

46. Approvals

46.1 A reference in these By-laws to "approval" or "approved" is to an approval by the Estate Management Corporation in writing.

47. Numbering Of By-Laws

47.1 Section 57 of the Interpretation Act does not apply to or in relation to these By-laws.

<p>The Common Seal of The Proprietors of Units Plan 2000/015 trading as Bayview Marina Estate is affixed in accordance with its constitution in the presence of:</p>		<p>COMMON SEAL OF THE PROPRIETORS Unit Plan No. 2000/015 Trading As BAYVIEW MARINA ESTATE</p>	
<p></p>	<p>PETER WOOD</p>	<p></p>	<p>COMMITTEE MEMBER</p>
<p>Signature of Committee Member</p>	<p>Name of Committee Member</p>	<p>Office held</p>	<p>was here unto affixed in the presence of</p>
<p></p>	<p>TREVOR WYNN</p>	<p>COMMITTEE MEMBER</p>	<p>and</p>
<p>Signature of Committee Member</p>	<p>Name of Committee Member</p>	<p>Office held</p>	<p>and</p>
		<p>on the (DATE) 13/11/11</p>	