

South Yarra Project (Subdivision and Management) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1^o 30 October 1985

(Brought in by Mr Fordham and Mr Jolly)

A BILL

to make provision for the subdivision and management of certain land at South Yarra, to amend the *South Yarra Project Act 1984* and for other purposes.

South Yarra Project (Subdivision and Management) Act 1985

Whereas the *South Yarra Project Act 1984* made provision for certain matters relating to development of certain land at South Yarra:

And whereas it is expedient in the public interest to make further provision for that development.

The Parliament of Victoria therefore enacts as follows:

Purpose.

1. The purpose of this Act is to provide a legal structure for the subdivision and management of certain land at South Yarra.

5 Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.**3. In this Act—**

- “**By-laws**” in relation to an item in Schedule One, means the by-laws set out in the part of Schedule Three applying to that item as amended and in force for the time being. 5
- “**Car park management prescription**” means a management prescription forming part of a development plan for the maintenance and operation of areas set aside for the accommodation of stationary vehicles. 10
- “**Common allotment**” in relation to an item in Schedule One, means the land specified in column four of that item. 10
- “**Common property**” in relation to an item in Schedule One means the leased property and common allotments specified in that item. 15
- “**Development plan**” means a development plan as amended and in force for the time being under the Melbourne Metropolitan Planning Scheme relating to the South Yarra land or any part of the South Yarra land. 15
- “**Leased property**” in relation to an item in Schedule One means land the subject of a leasehold interest created by this Act and specified in column five of that item. 20
- “**Open space management prescription**” means a management prescription forming part of a development plan for the control, maintenance or care of open space. 25
- “**Primary allotment**” in relation to an item in Schedule One, means an allotment (other than a common allotment) specified in column two of that item. 25
- “**South Yarra land**” means the land bounded by Toorak Road, River Street, Alexandra Avenue and Chapel Street in South Yarra. 30

Objectives.**4. The objectives of this Act are—**

- (a) to provide a means for establishing and regulating the rights and obligations of the owners and occupiers of the South Yarra land both among themselves and in relation to the public; and 35
- (b) to provide a means for controlling and managing common property; and
- (c) to provide a basis upon which legal rights and obligations arising in respect of each stage of the development of the South Yarra land can be conferred or imposed. 40

Act to bind Crown.**5. This Act binds the Crown.**

Effect of approval of subdivision.

6. (1) Upon the approval by the Registrar of Titles under the *Transfer of Land Act 1958* of a plan of subdivision referred to in column one of an item in Schedule One—

- 5 (a) there is incorporated a body corporate under the name specified in column three of that item; and
- (b) the common allotment or common allotments specified in column four of that item vest in the body corporate; and
- 10 (c) a leasehold interest in the leased property described in the terms and conditions of lease set out in the part of Schedule Two referred to in column five of that item vests in the body corporate subject to and in accordance with those terms and conditions.

15 (2) The *Companies (Victoria) Code* does not apply to a body corporate specified in Schedule One.

 (3) A body corporate specified in Schedule One has perpetual succession and a common seal and is capable of suing and being sued in its corporate name.

20 (4) The members of a body corporate specified in column three of an item in Schedule One are—

- (a) the registered proprietor or registered proprietors for the time being of the primary allotments specified in column two of that item; and
- 25 (b) in the event of the consolidation of two or more primary allotments or of two or more parcels of the land which at any time formed part of a primary allotment specified in column two of that item, the registered proprietor or registered proprietors for the time being of the land delineated on the plan of consolidation; and
- 30 (c) in the event of the subdivision of a primary allotment or any part of the land which at any time formed part of a primary allotment specified in column two of that item (other than a subdivision in strata), the registered proprietor or registered proprietors for the time being of each allotment created by the subdivision; and
- 35 (d) in the event of the subdivision in strata of a primary allotment or of any part of the land which at any time formed part of a primary allotment specified in column two of that item, the body corporate (but not the members of the body corporate) created by virtue of the *Strata Titles Act 1967* upon the registration of the plan of strata subdivision;
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45 (5) A person who has at any time been a member of a body corporate specified in column three of an item in Schedule One continues, notwithstanding ceasing to be a member, to be entitled to any right

accrued, and to be subject to any liability or obligation incurred, while such a member.

(6) Without restricting the generality of sub-section (3), a body corporate specified in column three of an item in Schedule One may sue for and in respect of any damage or injury to common property specified in that item caused by any person, whether or not that person is a member of the body corporate or has any interest in the common property.

(7) A body corporate specified in column three of an item in Schedule One and the control, management, administration, use and enjoyment of the body corporate and of the common property vested in the body corporate is regulated in accordance with this Act and the by-laws specified in column six of that item.

(8) The vesting of land or an interest in land under sub-section (1) is exempt from stamp duty under the *Stamps Act 1958*.

(9) In this section, “**registered proprietor**” in relation to a primary allotment or land which at any time forms or formed part of a primary allotment specified in column two of an item in Schedule One, means a person appearing from the Register Book to be a proprietor of—

(a) an estate in fee simple; or

(b) an estate for life—

in the primary allotment or land.

Register Book.

7. (1) The Registrar of Titles shall give effect to the vesting of a common allotment in a body corporate specified in column three of an item in Schedule One without an application and without payment of a fee.

(2) The Registrar of Titles shall make such other entries in the Register Book as the Registrar thinks appropriate for the purposes of this Act.

Implied rights and easements.

8. (1) Upon approval by the Registrar of Titles of a plan of subdivision specified in column one of an item in Schedule One each primary allotment and common allotment specified in that item has as appurtenant to it all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, garbage disposal, air and all other services of whatsoever nature (including telephone, radio, television and similar services) and for window cleaning and other maintenance works over all other primary allotments and common allotment specified in that item, as may from time to time be necessary for the reasonable use or enjoyment of the whole or any part of the primary allotment or common allotment.

(2) The rights created by sub-section (1) are easements and carry with them all ancillary rights necessary to make them effective.

(3) A person exercising a right created by sub-section (1) must make good all damage done in the exercise of the right.

5 (4) A person exercising a right created by sub-section (1) is entitled to exercise that right only over such part or parts of the encumbered allotments as is reasonable in the circumstances.

Application of *Strata Titles Act 1967*.

10 9. (1) The provisions of sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 30, 31, 32, 33 and 44 of the *Strata Titles Act 1967* apply to a body corporate specified in column three of an item in Schedule One as if—

- (a) a reference in those sections to “common property” or “the parcel” were a reference to common property (within the meaning of this Act) referred to in that item; and
- 15 (b) a reference in those sections to “unit on a registered plan” or “unit” were a reference to a primary allotment or, if the context so requires, any part of a primary allotment specified in that item; and
- 20 (c) a reference in those sections to “unit entitlement” or “unit liability” were a reference to unit entitlement or unit liability (if any) set out in by-laws applying to that item; and
- (d) a reference in those sections to “by-laws” were a reference to by-laws (within the meaning of this Act) referred to in that item; and
- 25 (e) the reference in section 15 (1) (d) to sections 28 and 29 did not appear; and
- (f) in section 19 the words “, or in the case of a member which is a body corporate by virtue of the *Strata Titles Act 1967* by any member of that body corporate,” appeared after the words “licensee or invitee”; and
- 30 (g) in section 23 the words “, or in the case of a member which is a body corporate by virtue of the *Strata Titles Act 1967*, on the application of a member of that body corporate or a purchaser or mortgagee from such member,” appeared after the words “mortgagee of a unit”; and
- 35 (h) in section 30—
 - (i) in sub-section (1) the words “a member of the body corporate (including in the case of a member which is a body corporate by virtue of the *Strata Titles Act 1967* any member of that body corporate)” appeared after the words “a creditor of the body corporate”; and
 - 40 (ii) in sub-section (2) the words “section 16 of this Act” appeared in place of the words “this Act”; and
- (i) in section 32—

- (i) in sub-section (1) the words “in a prominent position on or near the common property” appeared in place of the words “at or near the front building alignment of the parcel”; and
- (ii) in sub-sections (1) (a), (1) (b) and (2) (a) the words “recorded in the Register Book” appeared in place of the words “shown on the registered plan”; and 5
- (iii) in sub-section (3) the words “The notification shall be in a form acceptable to the Registrar and the Registrar shall amend the Register Book accordingly” appeared in place of the words “The notification shall be in the form prescribed by the regulations and the Registrar shall amend the registered plan accordingly”. 10

Duties of body corporate.

10. (1) The duties of a body corporate specified in column three of an item in Schedule One, in addition to the duties set forth in section 15 of the *Strata Titles Act* 1967, include the following: 15

- (a) To observe and comply with the provisions of the car park management prescription and the open space management prescription; 20
- (b) To insure against any liability that may be incurred by any person arising out of or in connexion with the use by that person, or the occupation or ownership by the body corporate, of the common property referred to in that item;
- (c) To observe and comply with the terms and conditions upon which any leased property is vested in the body corporate pursuant to this Act; 25
- (d) To keep in safe custody the duplicate certificate of title of any common allotment vested in the body corporate.

(2) The body corporate, for the purposes of effecting any insurance under sub-section (1) (b), is deemed to have an insurable interest in the subject matter of that insurance. 30

Powers of body corporate.

11. (1) The powers of a body corporate specified in column three of an item in Schedule One, in addition to the powers set forth in section 16 of the *Strata Titles Act* 1967 include the following: 35

- (a) To exercise any powers conferred by, or arising in consequence of, the terms and conditions upon which any leased property referred to in that item is vested in the body corporate pursuant to this Act; 40
- (b) To control, manage, maintain and administer common property referred to in that item for the benefit of all persons having rights to its use and enjoyment;

- (c) Subject to this Act and to any restrictions and requirements from time to time in force under the Melbourne Metropolitan Planning Scheme, to carry out works and improvements on common property referred to in that item;
- 5 (d) To expend or apply any revenue from, or from the use of, common property referred to in that item in connexion with the performance of any duty or the exercise of any power conferred by this Act or the by-laws.
- (2) A body corporate specified in an item in Schedule One may, subject to this Act and the by-laws specified in that item, apply for, or join in an application for, an amendment to any development plan or management prescription from time to time in force under the Melbourne Metropolitan Planning Scheme.
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Additional duties and powers of strata titles bodies corporate.

- 15 12. (1) The duties of a body corporate within the meaning of the *Strata Titles Act 1967* which, by virtue of this Act, becomes a member of a body corporate specified in column three of an item in Schedule One include, in addition to the duties set forth in section 15 of the *Strata Titles Act 1967*, the duty—
- 20 (a) to observe and comply with the provisions of the car park management prescription;
- (b) to observe and comply with the by-laws referred to in that item;
- 25 (c) to pay to the body corporate so specified any amount which that body corporate determines to be payable pursuant to section 16 of the *Strata Titles Act 1967*, and any such amount is an administrative expense for the purposes of section 16 of that Act.
- (2) The powers of a body corporate within the meaning of the *Strata Titles Act 1967* which, by virtue of this Act, becomes a member of a body corporate specified in column three of an item in Schedule One include, in addition to the powers set forth in section 16 of the *Strata Titles Act 1967*, the power—
- 30 (a) to use, exercise and enjoy the rights and privileges pertaining to membership of the body corporate so specified; and
- 35 (b) to control and regulate the use, exercise and enjoyment of those rights and privileges by its own members—
- but such a power shall not be exercised except in accordance with a resolution of the first-mentioned body corporate or on such other authority as the first-mentioned body corporate may from time to time, by resolution, determine.
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Body corporate not to sell &c. or hold certain property.

13. (1) A body corporate specified in column three of an item in Schedule One—

- (a) must not sell, transfer, mortgage or otherwise dispose of the common property specified in that item or any part of it or any interest in it unless authorized by this Act; and 5
- (b) has no power to hold any real property other than the common property specified in that item.

Rules.

14. (1) A body corporate specified in an item in Schedule One may, by special resolution, make rules for and with respect to any of the following: 10

- (a) The care, protection and management of common property specified in that item;
- (b) The preservation of good order and decency on common property specified in that item; 15
- (c) The provision of all necessary services and facilities on common property specified in that item;
- (d) The safety of persons on common property specified in that item; 20
- (e) The issuing of permits or licences and entering into agreements in relation to common property specified in that item;
- (f) The imposition, collection and receipt of tolls, fees, rents and other charges for or in respect of entry upon, or use of, common property or any specified part or parts of common property specified in that item by any persons, animals or vehicles or any improvements, services or facilities thereon; 25
- (g) Imposing a penalty, not exceeding two penalty units, for a contravention of the rules; 30
- (h) Any other matter relating to the control, management, maintenance and administration of common property specified in that item.

(2) A rule of a body corporate specified in an item in Schedule One is void if it is inconsistent with the provisions of this Act or the *Strata Titles Act 1967* (other than the by-laws under that Act) or the Melbourne Metropolitan Planning Scheme or the by-laws referred to in that item. 35

(3) A rule of a body corporate that imposes a toll, fee, rent or other charge is void—

- (a) if a copy of the rule has not been submitted to the Governor in Council within 14 days after it is made; or 40
- (b) if it is disallowed by the Governor in Council within 28 days after a copy is submitted to the Governor in Council.

- (4) A body corporate incorporated by virtue of this Act must—
- (a) keep a record of its rules as in force for the time being; and
 - (b) make a copy of the rules available for inspection by any person at the body corporate's address for service of documents during normal business hours; and
 - (c) on application made by a person and on payment of such reasonable fee (if any) as is fixed by the rules, give the person a copy of the rules as then in force.

By-laws of body corporate.

10 **15.** (1) The by-laws of a body corporate specified in column three of an item in Schedule One are the by-laws referred to in column six of that item as in force for the time being.

15 (2) A body corporate may, by unanimous resolution, make by-laws, including by-laws amending or repealing by-laws referred to in sub-section (1).

(3) If a body corporate specified in column three of an item in Schedule One makes or amends a by-law under sub-section (2), the by-law so made or repealed is void if it—

- 20 (a) is inconsistent with the provisions of this Act or the *Strata Titles Act 1967* (other than the by-laws under that Act) or the Melbourne Metropolitan Planning Scheme; or
- 25 (b) relates or purports to relate to matters other than—
 - (i) the control, management, administration, use or enjoyment of a primary allotment or the common property referred to in that item;
 - (ii) the regulation of the body corporate;
 - 30 (iii) the exercise of the powers or performance of the duties by the body corporate or the conferring or imposing on the body corporate of powers or duties incidental to those conferred or imposed by or under this Act or the *Strata Titles Act 1967*; or
- 35 (c) prohibits or restricts or purports to prohibit or restrict any devolution of or dealing with a primary allotment referred to in that item in Schedule One.

(4) An addition to, or amendment or repeal of, the by-laws or any of them under sub-section (2) has no effect until the record of the by-laws kept by the body corporate in accordance with sub-section (5) has been altered accordingly.

40 (5) A body corporate specified in an item in Schedule One must—

- (a) keep a record of its by-laws as in force for the time being; and

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- (b) make a copy of the by-laws available for inspection by any person at the body corporate's address for service of documents during normal business hours; and
- (c) on application made by a person, and on payment of such reasonable fee (if any) as is fixed by the by-laws, give the person a copy of the by-laws then in force. 5
- (6) The by-laws specified in an item of Schedule One are binding on—
- (a) the body corporate specified in that item; and
- (b) the members of that body corporate; and 10
- (c) insofar as they prohibit certain acts, any other person in actual occupation of a primary allotment so specified as if the person were a member of that body corporate—
- and enure for the benefit of the body corporate and each member of the body corporate. 15
- (7) A body corporate incorporated by virtue of this Act and each member of such a body corporate is entitled to apply by summons to the Supreme Court for an order—
- (a) enforcing the performance of or restraining the breach of any by-law of the body corporate; or 20
- (b) awarding damages for any loss or damage arising out of the breach of any by-law of the body corporate—
- by any person on whom the by-law is binding.
- Unit entitlement and unit liability.**
16. (1) The unit entitlement or unit liability of a member of a body corporate incorporated by virtue of this Act as determined by its by-laws may be amended or altered only— 25
- (a) by unanimous resolution of the members of the body corporate; or
- (b) by operation of the by-laws of the body corporate upon consolidation or subdivision of land; or 30
- (c) by order of the Supreme Court upon the application of the body corporate, an administrator or a member.
- (2) In determining an application to amend or alter the unit entitlement of a member of a body corporate specified in an item in Schedule One, the Supreme Court shall have regard to the value of the primary allotments at the time the application is made. 35
- (3) In determining an application to amend or alter the unit liability of a member of a body corporate specified in an item in Schedule One, the Supreme Court shall have regard to the amount which it would be just and equitable to require each member to contribute towards the expenses of the body corporate in controlling managing and administering the common property referred to in that item, in paying 40

any premiums of insurance and in discharging or performing any other obligation which the body corporate is or may be required to discharge or perform under this Act or its by-laws.

- 5 (4) On an application to the Supreme Court under sub-section (1) (c), a person claiming to have any interest in the whole or any part of a primary allotment or land which at any time forms or at any time formed part of a primary allotment affected or that may be affected by the application has a right to appear and be heard.

Destruction of or damage to common property.

- 10 17. (1) If a building or other improvement on common property referred to in an item in Schedule One is damaged or destroyed, the Supreme Court may, on the application of a body corporate referred to in Schedule One, an administrator or member of the body corporate or a registered mortgagee of a primary allotment referred to in Schedule
15 One, by order settle a scheme, including provisions for the reinstatement in whole or in part of the building or other improvement.

- 20 (2) On any application to the Supreme Court under sub-section (1), a person claiming to have any estate or interest in the whole or any part of a primary allotment or land which at any time forms or at any time formed part of a primary allotment or the common property or any insurer who has effected insurance on the building or other improvement on the common property or any part of the common property has the right to appear and be heard.

- 25 (3) In the exercise of its powers under sub-section (1), the Supreme Court may make such orders as it deems expedient or necessary for giving effect to the scheme including any one or more of the following orders:

- 30 (a) An order directing the application of any insurance money;
(b) An order directing payment of money by or to a body corporate specified in Schedule One or by or to any person;
(c) An order for payment of costs as it thinks fit; or
(d) An order imposing such terms and conditions as it thinks fit.

- 35 (4) The Supreme Court may from time to time cancel, vary, modify or discharge any order made by it under this section.

Rights in relation to open space.

- 40 18. (1) Any person is entitled to enter upon by means of defined access ways and use between the hours of sunrise and sunset any area forming part of common property referred to in an item in Schedule One, being an area described as public open space in an open space management prescription, subject to compliance with the rules of the body corporate referred to in that item relating to the area as in force for the time being.

(2) A person who—

(a) is a member of a body corporate specified in column three of an item in Schedule One; or

(b) is a member of a body corporate under the *Strata Titles Act* 1967 that is a member of a body corporate so specified—

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may use at any time the common property referred to in any item of Schedule One that is described as public open space in an open space management prescription subject to the by-laws referred to in that item and the rules of the body corporate so specified.

Amalgamation of common property.

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19. (1) Two bodies corporate each of which is specified in column three of an item in Schedule One may, by unanimous resolution of each body corporate, recommend to the Governor in Council that the common property or part of the common property vested in one of those bodies corporate be vested in the other of those bodies corporate.

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(2) The Governor in Council may, by Order published in the *Government Gazette*, direct that the common property or part of the common property referred to in a recommendation under sub-section (1) be vested in the body corporate in accordance with the recommendation and that Schedules One, Two and Three be amended in accordance with the particulars set out in the Order.

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(3) If an Order is made under sub-section (2), Schedules One, Two and Three are amended in accordance with the Order.

(4) If, on the making of an Order under sub-section (2), an item in Schedule One is deleted, the body corporate that was specified in that item ceases to exist.

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(5) A body corporate in which, by reason of an Order under sub-section (2), a common allotment or leasehold interest vests, shall forthwith notify the Registrar of Titles in writing of the making of the Order.

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Amalgamation of items in Schedule One.

20. (1) The Governor in Council may, on the unanimous recommendation of each of two or more bodies corporate specified in column three of two or more items in Schedule One, by Order published in the *Government Gazette*, direct that those bodies corporate be amalgamated and form a new body corporate in which is vested the common property referred to in those items and that a new item be included in Schedule One subject to and in accordance with the particulars set out in the Order.

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(2) If an Order is made under sub-section (1), Schedules One, Two and Three are amended in accordance with the Order.

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(3) A body corporate that was specified in an item in Schedule One that is deleted by reason of an Order under sub-section (1), ceases to exist.

5 (4) A body corporate created by reason of an Order under sub-section (1) shall forthwith notify the Registrar of Titles in writing of the making of the Order.

Additions to and amendment of Schedules.

21. (1) Upon—

10 (a) the approval under the *Transfer of Land Act* 1958 by the Registrar of Titles of a plan of subdivision of the South Yarra land or any part of the South Yarra land; and

(b) an Order of the Governor in Council published in the *Government Gazette* declaring—

15 (i) that the plan of subdivision so approved is the plan specified in column one of a new item in Schedule One; and

(ii) that the particulars for inclusion in Schedules One, Two and Three are as set out in the Order—

20 Schedules One, Two and Three are amended in accordance with the Order.

(2) The Governor in Council may, on the unanimous resolution of a body corporate specified in column three of an item in Schedule One by Order published in the *Government Gazette*, direct that that item or the part of Schedule Two or Three that relates to that item be amended
25 in accordance with the Order.

(3) The Governor in Council must not make an Order under sub-section (2) unless satisfied that there are circumstances making it necessary or desirable so to do.

30 (4) A body corporate referred to in sub-section (2) must forthwith notify the Registrar of Titles in writing of the making of an Order under that sub-section.

South Yarra Project Act 1984.

22. Section 6 of the *South Yarra Project Act* 1984 is amended as follows:

No. 10153.

35 (a) In sub-section (6), after “conveyance” insert “or transfer”;

(b) After sub-section (7) insert—

40 “(8) In this section a reference to a management company includes a reference to a body corporate specified in column three of an item in Schedule One to the *South Yarra Project (Subdivision and Management) Act* 1985.”.

**SCHEDULE ONE
PLANS OF SUBDIVISION**

<i>Item:</i>	<i>Column One— Plan of Subdivision</i>	<i>Column Two— Primary Allotments</i>	<i>Column Three— body corporate</i>	<i>Column Four— Common Allotment</i>	<i>Column Five— Leased Property</i>	<i>Column Six— By-laws</i>
1	Plan of Sub- division—Sur- veyor's reference 1035/IS prepared by licensed sur- veyor Evan Edwin Pitt and dated 1 August 1985	Lots 1, 2, 3, 4 & 5 on plan referred to in column one	South Yarra Project Body Corporate No. 1	Lot 6 on plan referred to in col- umn one	Part 1 of Schedule Two	Part 1 of Schedule Three

SCHEDULE TWO

TERMS AND CONDITIONS OF LEASE

Part 1—Leased property referred to in item 1 of Schedule One.

1. (1) The term of the Lease is ninety-nine (99) years commencing on the date upon which the plan of subdivision referred to in item 1 of Schedule One was approved by the Registrar of Titles under the *Transfer of Land Act 1958* (“the Commencement Date”).

(2) In this lease—

“**by-law**” means a by-law set out in part one of Schedule Three.

“**designated car parking areas**” means the areas shown cross-hatched on plans 1, 2 and 3 in clause 15 of this part of this Schedule.

“**leased property**” means—

(a) the areas shown hatched on the numbered primary allotments shown on plans 1, 2 and 3 in clause 15 of this part of this Schedule; and

(b) the portion of primary allotment numbered 4 on the plan from time to time appropriated and set aside by the registered proprietor of that primary allotment under clause 14 of this part of this Schedule as a means of access to the areas shown hatched and the area shown cross-hatched on those plans.

“**lessee**” means the body corporate specified in column three of item one in Schedule One.

“**lessor**” means each registered proprietor of a primary allotment specified in column two of item one in Schedule One.

“**primary allotment**” means a primary allotment specified in column two of item one in Schedule One.

2. The lessee acknowledges that—

(a) parts of the primary allotments of which the lessor is the registered proprietor are set aside, designated and appropriated as car parking areas (“the Designated Car Parking Areas”) for the benefit and use of the lessor and the successors in title of the lessor, the registered proprietors from time to time of any allotment or unit created by a subdivision or strata subdivision of any such primary allotment and the lawful occupiers of any such primary allotment, allotment or unit (“the Car Park Users”); and

(b) the Car Park Users are entitled to the exclusive use and occupation of the Designated Car Parking Areas and the Designated Car Parking Areas are not included in the Leased Property.

3. The lessee shall make available for the use and occupation of the lessor and the successors in title of the lessor the car parking areas allocated to the lessor by the By-Laws (“the Allocated Car Parking Areas”) in accordance with the rights given to the lessor and the successors in title of the lessor pursuant to the By-Laws notwithstanding that such car parking areas form part of the Leased Property.

4. The lessee shall permit the Car Park Users at all times to go and pass and repass through the Leased Property for the purpose of access to and egress from the Designated Car Parking Areas and the Allocated Car Parking Areas and such other areas in which there are situated storage areas heating or air-conditioning plant and any other services or facilities which are appurtenant to or benefit any primary allotment, unit or any part thereof.

5. The lessee shall supervise, clean and maintain or cause to be supervised, cleaned and maintained in good and proper repair the Leased Property including the Allocated Car Parking Areas and the Designated Car Parking Areas so as to ensure that those areas can be used properly for the purposes of parking cars throughout the term hereby created.

6. The lessee shall provide or cause to be provided throughout the term hereby created a system of security to secure the whole of the Leased Property including the Allocated Car Parking Areas and the Designated Car Parking Areas and to secure each separate area from the other areas where required.

7. The lessee shall keep open or cause to be kept open throughout the term the Leased Property for public car parking between the hours of 7 a.m. and 9 p.m. on days other than Saturdays, Sundays and bank holidays and between the hours of 7 a.m. and 1 p.m. on

Schedule Two—continued

Saturdays and shall otherwise provide access to the Car Park Users of the Designated Car Parking Areas and Allocated Car Parking Areas twenty-four (24) hours a day.

8. The lessee shall throughout the term insure the Leased Property in the name of the lessor and the lessee under a policy of insurance with a reputable and solvent insurer for the full replacement value against the risks of damage by fire, storm, tempest, rainwater, flood, water discharge, vehicle or aircraft impact, explosion, earthquake, riots, strikes and malicious damage, in respect of liability for public risk and in respect of any other risks and for such amounts as the lessor may from time to time reasonably require.

9. (1) The lessee shall not assign or part with possession of or mortgage the Leased Property or any part thereof but may sub-let the whole of the Leased Property upon and subject to the terms and conditions set out in sub-clause (2).

(2) The form and terms and conditions of the sub-lease are to be approved by the lessor in writing. In particular and without limiting the foregoing such sub-lease shall contain a provision that—

- (a) it shall not be assigned or transferred without the consent in writing of the lessor first had and obtained and the sub-lessee shall not be entitled to further sub-let the Leased Property;
- (b) the sub-lessee shall provide the Car Park Users with access to and egress from, twenty-four hours a day, the Designated Car Parking Areas and the Allocated Car Parking Areas;
- (c) the sub-lessee shall provide or cause to be provided a system of security to secure the whole of the Leased Property including the Allocated Car Parking Areas and the Designated Car Parking Areas and to secure each separate area from the other areas where required;
- (d) the sub-lessee shall secure, supervise, clean and maintain in good and proper repair or cause to be supervised, cleaned and maintained in good and proper repair the Leased Property including the Allocated Car Parking Areas and the Designated Car Parking Areas;
- (e) the sub-lessee shall be obliged to provide and maintain and to supervise such procedures and equipment as are necessary to facilitate the access and egress referred to in paragraph (b) hereof and the security referred to in paragraph (c) hereof;
- (f) the sub-lessee shall be obliged to comply with the By-laws;
- (g) the sub-lessee shall be obliged to comply with the car park management prescription.

10. This Lease shall not be varied, altered or amended save in accordance with or by the amendment of the *South Yarra Project (Subdivision and Management) Act 1985*.

11. During the term hereby created the lessee shall observe and perform such obligations required to be carried out under the By-Laws and shall ensure at all times that any sub-lessee of the Leased Property does the same.

12. If at any time during the term hereby created any of the lessor or the successors in title of the lessor in relation to the primary allotments decide to further develop or redevelop the said primary allotments or any part thereof in such a manner as will disturb or interfere with the rights granted hereunder or the use and occupation of the Leased Property for the purpose of car parking and any lifts ancillary thereto the lessor and the successors in title of the lessor shall have the right to carry out such redevelopment or development works notwithstanding that the use and enjoyment of the Leased Property may be interfered with and affected and during the period of any such works the lessor, the successors in title of the lessor and their lawful servants, agents, consultants and contractors shall have the right to enter upon and use the Leased Property for the purposes of such works and shall have the right to further develop or redevelop the Leased Property for the purposes of such works and alter the physical configuration of the same and upon completion of such works the rights and obligations created hereunder shall continue notwithstanding the form and layout of the Leased Property is different from the form and layout at the date hereof.

13. If during the period of any works as referred to in clause 12 hereof, the lessee or any person claiming through the lessee suffers any financial loss and damages as a result of such works, the lessor shall pay to the lessee or such person compensation in respect of such loss and damage and if in the event of any dispute difference or disagreement arising in relation to the liability to pay such compensation or the quantification thereof

Schedule Two—*continued*

upon such dispute difference or disagreement shall be referred to the arbitration of the President for the time being of the Law Institute of Victoria or the nominee of the President who shall determine and resolve such dispute difference or disagreement.

14. (1) The registered proprietor for the time being of primary allotment numbered Lot 4 shall appropriate and set aside a means of access for vehicular and pedestrian traffic over that primary allotment to the leased property and, subject to sub-clause (3), may from time to time vary or change such means of access.

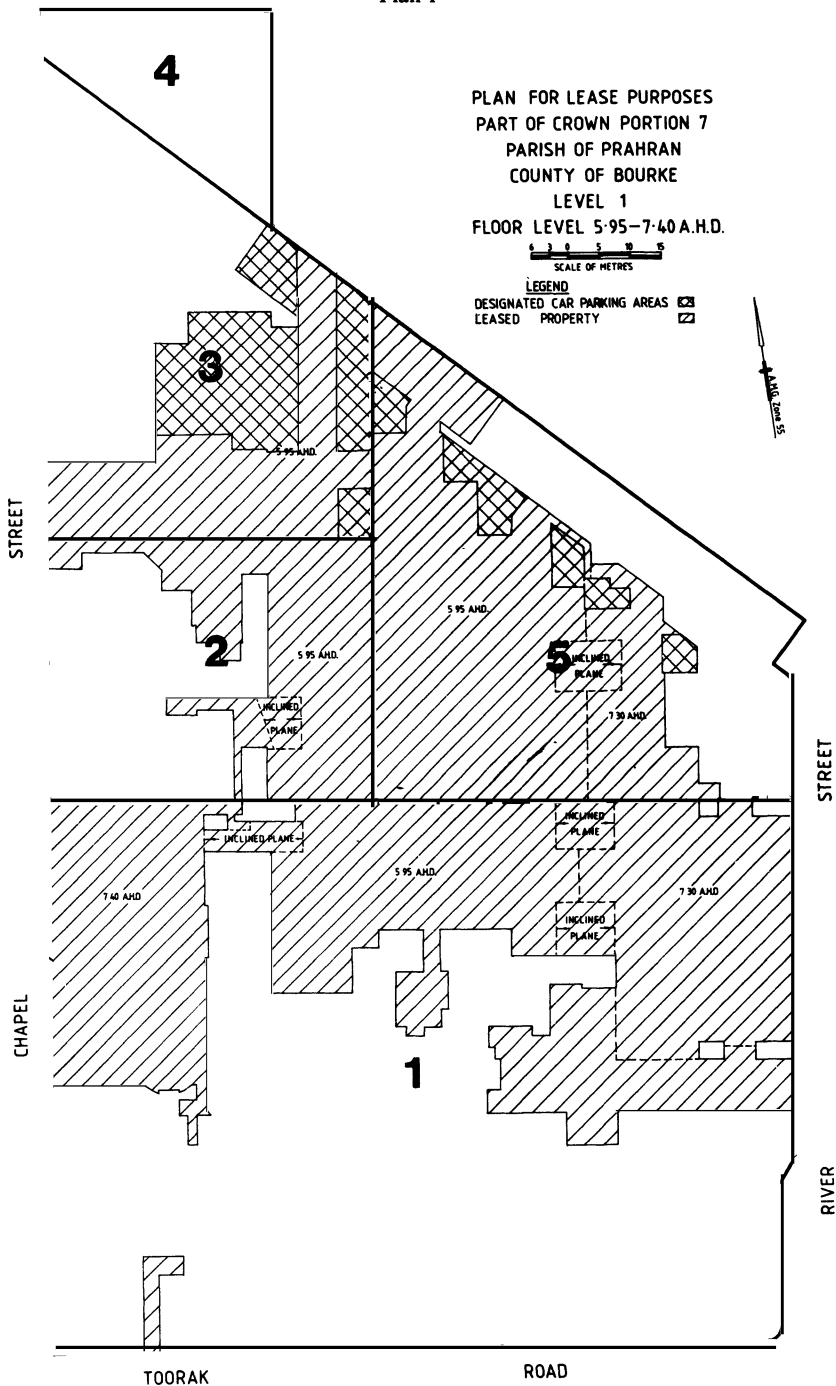
(2) The appropriation and setting aside of the means of access over primary allotment numbered Lot 4 and any variation or change thereof shall be by notice in writing to the lessor and the lessee and may be identified by means of a plan or otherwise as appropriate.

(3) The aforesaid means of access over primary allotment numbered Lot 4 shall at all times be adequate to enable reasonable access and egress by vehicles and pedestrians to and from the areas shown hatched and the area shown cross-hatched on plan 2 in clause 15 of this Schedule.

15. The plans of the leased property are as follows:

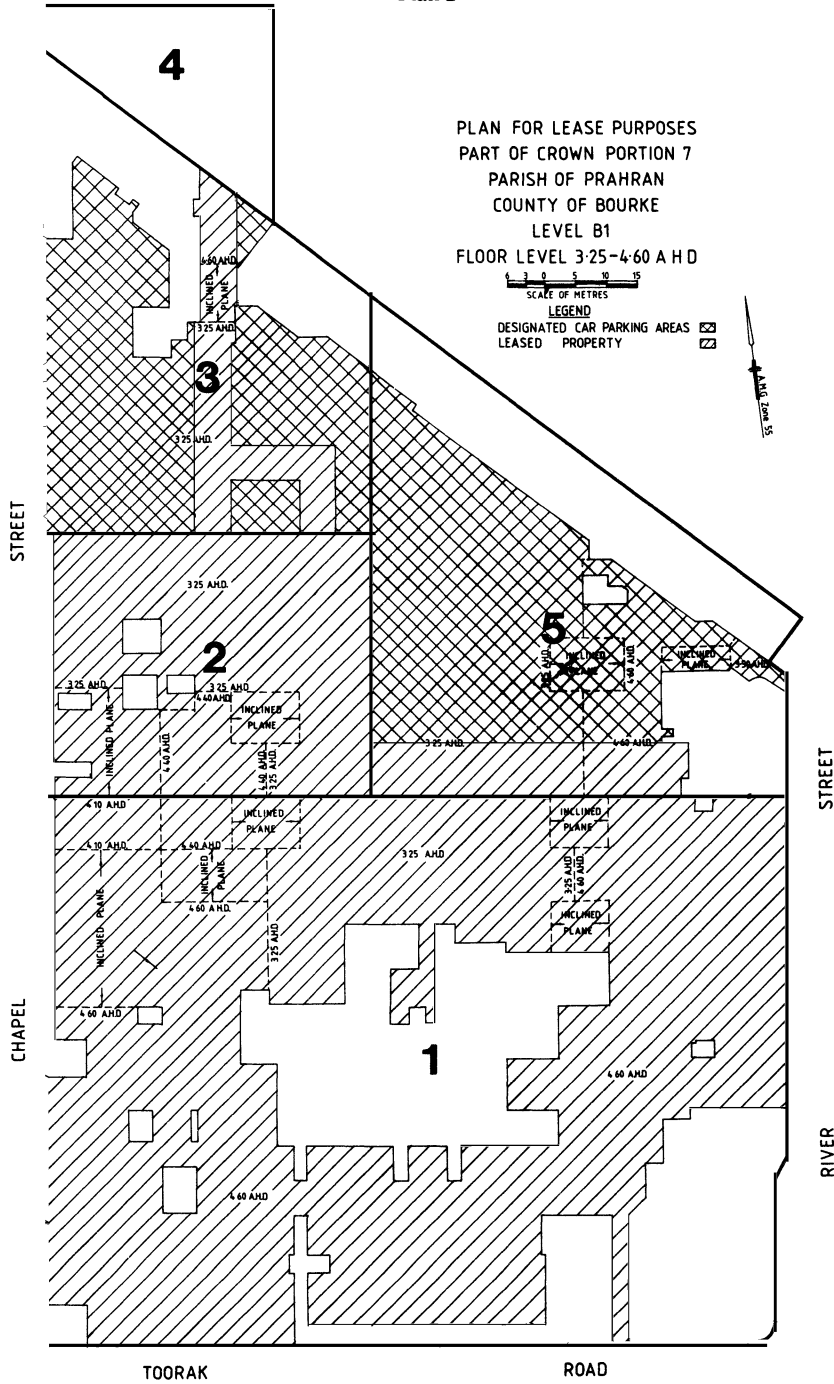
Schedule Two—continued

Plan 1



Schedule Two—continued

Plan 2



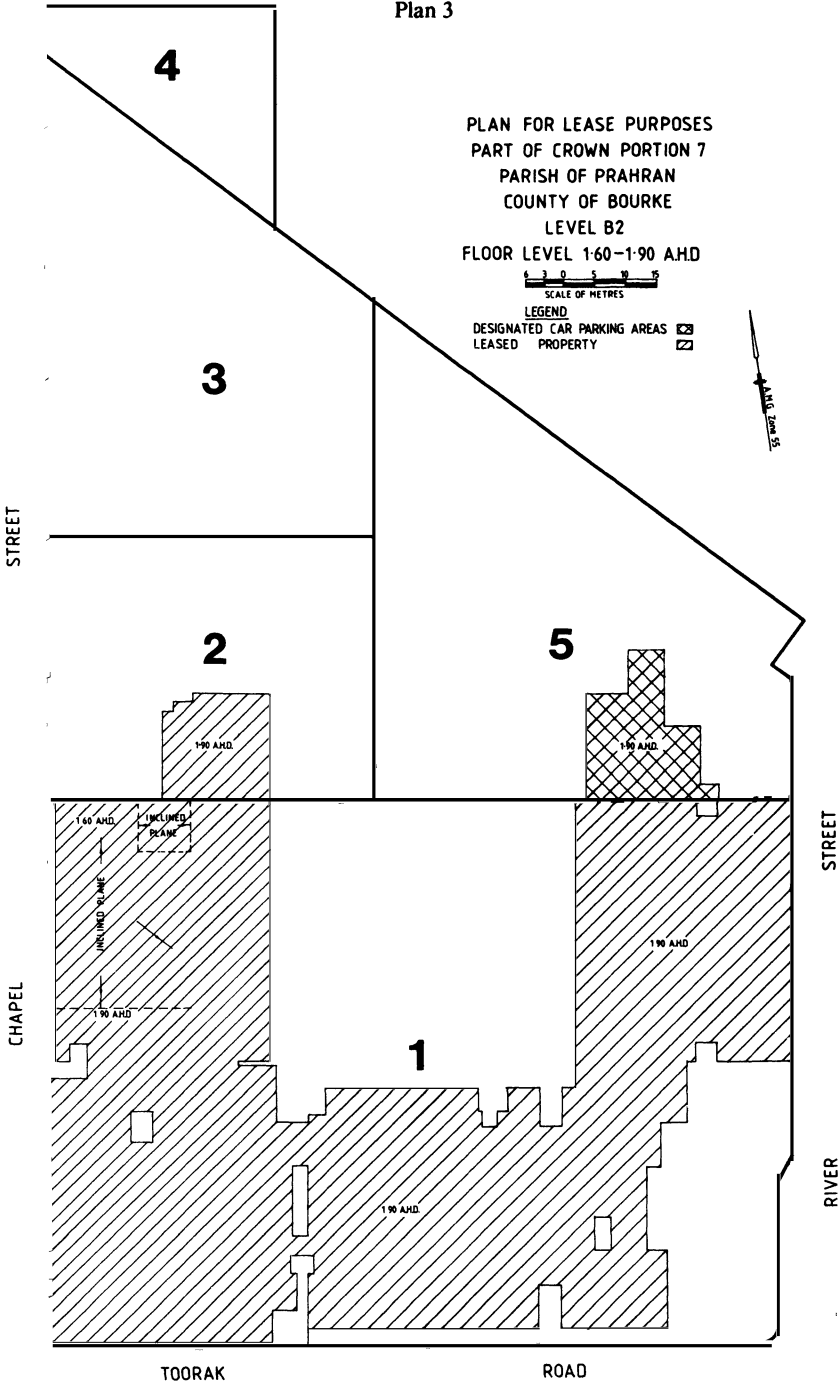
Schedule Two—continued

Plan 3

PLAN FOR LEASE PURPOSES
 PART OF CROWN PORTION 7
 PARISH OF PRAHRAN
 COUNTY OF BOURKE
 LEVEL B2
 FLOOR LEVEL 1.60-1.90 AHD



LEGEND
 DESIGNATED CAR PARKING AREAS [diagonal lines]
 LEASED PROPERTY [cross-hatch]



TOORAK

ROAD

CHAPEL STREET

RIVER STREET

RIVER

SCHEDULE THREE

BY-LAWS

Part 1—By-laws referred to in item 1 of Schedule One.

1. (1) In these by-laws, the expressions “car park management prescription”, “development plan” and “open space management prescription” have the same meaning as in the *South Yarra Project (Subdivision and Management) Act 1985*.

(2) In these by-laws “body corporate”, “common allotment”, “common property” and “leased property” respectively mean the body corporate, a common allotment, common property or leased property referred to in item 1 of Schedule One.

2. The address of the body corporate for service of documents for the purposes of section 32 of the *Strata Titles Act 1967* is c/o Ellison Hewison & Whitehead, 379 Collins Street, Melbourne.

3. The unit entitlement and unit liability of the members of the body corporate are as set out in the following Table as amended from time to time (“the Table to By-law 3”).

TABLE TO BY-LAW 3

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Registered Proprietor of Lot No.</i>	<i>Unit Entitlement</i>	<i>Unit Liability</i>
1	100 000	100 000
2	100 000	100 000
3	100 000	100 000
4	100 000	100 000
5	100 000	100 000
TOTAL	500 000	500 000

4. Upon approval by the Registrar of Titles of a plan of consolidation of two or more allotments or parcels specified in column 1 of the Table to By-law 3 the Table shall be amended—

- (a) to specify the plan of consolidation in column 1 in place of the allotments or parcels that have been consolidated; and
- (b) to specify in columns 2 and 3 respectively opposite the plan of consolidation the total unit entitlement and total unit liability of the allotments or parcels that have been consolidated.

5. Upon approval by the Registrar of Titles of a plan of subdivision of an allotment or parcel specified in column 1 of the Table to By-law 3 the Table shall be amended—

- (a) to specify in column 1 each allotment on the plan of subdivision in place of the allotment or parcel that has been subdivided; and
- (b) to specify in columns 2 and 3 respectively opposite each allotment on the plan of subdivision the unit entitlement and unit liability of the registered proprietor of such allotment as notified to the body corporate in accordance with By-law 11 by the registered proprietor of the allotment or parcel that has been subdivided, or in default of such notification as determined by the body corporate in accordance with By-law 12.

6. (a) The outgoing and liabilities of the body corporate shall be borne by the members of the body corporate in the same proportion that their respective unit liability bears to the total unit liability.

- (b) The income of the body corporate (if any) shall be distributed or credited to the members of the body corporate in the same proportion that their respective unit entitlement bears to the total unit entitlement.

7. (1) The body corporate shall keep a plan or plans (as amended from time to time) of the leased property which shows each car parking space located on the leased property.

(2) A plan referred to in sub-clause (1) as amended from time to time is in these by-laws called “the car park plan”.

Schedule Three—*continued*

8. The members of the body corporate are entitled to the exclusive use and occupation of the car parking spaces shown on the car park plan in accordance with the following Table as amended from time to time ("the Table to By-law 8") and subject to such restrictions as from time to time may be noted on the car park plan by unanimous resolution of the body corporate.

TABLE TO BY-LAW 8

<i>Column 1</i>	<i>Column 2</i>
<i>Registered Proprietor of Lot No.</i>	<i>Entitlement (by reference to spaces shown on car park plan)</i>
1	Car spaces numbered "1"
2	Car spaces numbered "2"
3	Car spaces numbered "3"
4	Car spaces numbered "4"
5	Car spaces numbered "5"

9. Upon approval by the Registrar of Titles of a plan of consolidation of two or more allotments or parcels specified in column 1 of the Table to By-law 8—

- (a) the car park plan shall be amended to show the car spaces set aside for the registered proprietor or proprietors of the allotments or parcels that have been consolidated appropriately re-numbered as car spaces set aside for the registered proprietor of the land delineated on the plan of consolidation;
- (b) the Table to By-law 8 shall be amended—
 - (i) to specify the plan of consolidation in column 1 in place of the allotments or parcels that have been consolidated; and
 - (ii) to specify in column 2 opposite the plan of consolidation the manner in which the car spaces have been re-numbered in accordance with paragraph (a) hereof.

10. Upon approval by the Registrar of Titles of a plan of subdivision of an allotment or parcel specified in column 1 of the Table to By-law 8—

- (a) the car park plan shall be amended to allocate (by appropriate numbering or otherwise) the car spaces set aside for the registered proprietor of the allotment or parcel that has been subdivided between the registered proprietors of the allotments created by the subdivision in the manner notified to the body corporate in accordance with By-law 11 by the registered proprietor of the allotment or parcel that has been subdivided, or in default of such notification by the body corporate in accordance with By-law 13;
- (b) the Table to By-law 8 shall be amended—
 - (i) to specify in column 1 each allotment on the plan of subdivision in place of the allotment or parcel that has been subdivided; and
 - (ii) to specify in column 2 opposite each such allotment the manner in which the car spaces (if any) have been allocated in accordance with paragraph (a) hereof.

11. The registered proprietor of an allotment or parcel specified in column 1 of the Table to By-law 3 may prior to the approval by the Registrar of Titles of a plan of subdivision of the allotment or parcel notify the body corporate by notice in writing—

- (a) of the unit entitlement and unit liability of each allotment created by the subdivision provided that the total unit entitlement and total unit liability of all allotments created by the subdivision shall equal the unit entitlement and unit liability of the allotment or parcel that has been subdivided;
- (b) identifying the car spaces on the car park plan (if any) to be allocated to each allotment to be created by the subdivision provided that the total car spaces allocated to all allotments shall equal in number and correspond in location with the car spaces set aside for the registered proprietor of the allotment or parcel that has been subdivided.

Schedule Three—*continued*

12. If the registered proprietor of an allotment or parcel that has been subdivided does not give notice pursuant to By-law 11 the body corporate shall determine by resolution—

- (a) the unit entitlement and unit liability of each allotment created by the subdivision so that the total unit entitlement and unit liability of all allotments created by the subdivision equals the unit entitlement and unit liability of the allotment or parcel that has been subdivided; and
- (b) the number and location of the car spaces (if any) to be set aside for the use of the registered proprietor of each allotment created by the subdivision so that the total car spaces set aside equals in number and corresponds in location with the car spaces set aside for the registered proprietor of the allotment or parcel that has been subdivided.

13. Each member of the body corporate may at all times use and enjoy the common property for any purpose for which it may lawfully be used.

14. The body corporate shall subject to any rules made by it admit members of the public to the areas shown on the plan forming part of the open space management prescription as public open space and permit members of the public to use and enjoy the said public open space between sunrise and sunset.

15. The body corporate shall comply with requirements of the car park management prescription and the open space management prescription.

16. The body corporate may upon the unanimous resolution of the members apply to the responsible authority administering the Melbourne Metropolitan Planning Scheme for an amendment to the car park management prescription, the open space management prescription or the development plan.

17. The body corporate shall perform and observe the terms and conditions of the lease set out in Schedule Two to the Act.

18. The body corporate shall properly maintain the common property and keep the same clean and tidy and keep all chattels, fixtures and fittings used or intended for use in connexion therewith in a state of good and serviceable repair.

19. The body corporate shall upon the written request of a member or the registered mortgagee of an allotment or parcel specified in column 1 of the Table to By-law 3 produce to such member or registered mortgagee, or such other person as is authorized in writing by such member or mortgagee, the current policy or policies of insurance effected by the body corporate and the receipt or receipts for the last premium or premiums in respect thereof.

20. The by-laws set forth in the First Schedule to the *Strata Titles Act 1967* apply, subject to the modifications and adaptations set out hereunder, and such other modifications and adaptations as may be necessary in the context, as if they were set out in full in this Schedule:

- (a) By-laws 1, 2, 3, 4 and 32 shall not apply.
- (b) The by-laws shall apply as if—
 - (i) a reference to “common property” were a reference to common property as defined by this Act;
 - (ii) a reference therein to a “unit” were a reference to an allotment or parcel specified in column 1 of the Table to By-law 3;
 - (iii) A reference to “this Act” or “the Act” were a reference to the *Strata Titles Act 1967*.
- (c) By-law 5 (a) shall apply as if the words “not vested in it by virtue of the Act” appeared after the words “chattel real”.

