

Explanation to Owners re Changes to By-Laws

Overview

The by-laws are effectively a contract between the Owners Corporation and each Owner, and owners amongst themselves. This is your opportunity to take ownership of the by-laws and express your views. After all, when you purchased your unit, you had to accept the terms of the by-laws, but now by-laws and their amendment are in your control.

In the drafting, I have put my personal views aside, and endeavoured to reflect what I think the views of the owners in general meeting would be, but any owner is entitled to put forward a motion to amend any part of the draft, and allow the members to decide the issue.

The intention in drafting the amendments to the by-laws was for several reasons, namely to:

- comply with the new act, which requires a review of by-laws, to ensure the by-laws align with the new act and regulations, and adopting the recommended by-laws as appropriate;
- divide the by-laws into chapters, dealing with discrete issues respectively, and insert an index with page numbers;
- include details of the relevant clauses of the development application and Restrictions placed on the title to Common Property as a result of the Development Application dealing with short term letting;
- insert by-laws governing the security system installed;
- generally, to simplify and tidy up the language, and re-draft in plain English.

Changes re name, insertion of chapters, index etc

The list below outlines basic changes to the by-laws.

Issue	Detail
Name of by-laws	Name inserted at commencement, namely "Erko Apartments", which aligns with domain name.
Chapters	<ul style="list-style-type: none"> • The By-laws are divided into chapters with each having a heading, each clause has a heading, each main heading now called a chapter; • Changes to Chapter Headings; • Applications to Owners Corporation for Consent" given a chapter number of its own; • Minor changes to the headings themselves to shorten them, and make them more descriptive.
Index	Index created which indexes both chapter and clause number to the relevant page number.

Key Changes in new by-laws

Whilst there have been a myriad of changes from the old by-laws, the list below are the key or potentially contentious changes.

Issue	Chapter, Clause or Schedule Number	Reason/Notes
Definitions	Chapter 1	<p>These are some of the additions:</p> <ul style="list-style-type: none"> • Assistance Animal-defined as per s 9 Disability Discrimination Act and includes a Guide and Hearing Dog • Bedroom-defined as in the act (s 137);

		<ul style="list-style-type: none"> • Bin-defined as per model by-laws • Breach notice-new document being a formal notice to comply with a by-law under s146 of the act, issued by Strata Manager, and a pre-cursor to NSW Civil and Administrative Tribunal proceedings; • Bicycle Storage Area-defined; • Building Work-defined to simplify by-laws • Changes to Common Property-includes all nature of building works to Common Property (which includes most walls and ceilings of a lot) and erection of structures on Common Property. • Common Property Rights By-Law-defined as in the Act. • Cosmetic Work-defined the same as the Act (s109) • Debt-defined being a reasonable charge raised by the Owners Corporation against a lot Owner as authorized by the by-laws; • Development Consent-the consent granted by Sydney City Council to the development; • Electrical Vehicle Outlet-defined (to simplify chapter 9); • Enforcement Action-defines the action the Owners Corporation may take for breach of the visitor parking rules; • Fine-defined and relates to breach of visitor parking rules. Amounts of fine included • Fobs defined to include Remotes and Swipes; • Loading Dock-defined; • Minor Renovations; included because of changes brought in by the Act • Owners Corporation Rules-defined • Planter Box-Addition of definitions of “Planter Box” and the like (moved from old By-Law 26) • Public Authority-defined as per the Act • Repetitive Breaches of By-Laws-defined to align with the procedure for enforcement of by-laws in the scheme • Resident-defined; • Restriction as to User-the instrument registered with Land and Property Information under s88B of the Conveyancing Act • Special Resolution defined as in the Act; • Screening Device-Addition of “Screening Device” from old chapter 24, and consequential simplification to the by-laws as a result; • Strata Committee Rules; • Warning Notice; • Washing-defined as per model by-laws; • Regulations defined to mean <i>the Strata Schemes Management Regulations 2016</i>; • Waste-defined as per model by-laws;
Breach of By-Laws	Chapter 3 Clauses 3.16 to 3.20 inclusive.	Enforcement action for a breach or repetitive breaches now align with procedures currently followed for a breach or repetitive breaches, undertaking work on a lot, recovery of debts etc.

Smoke and Smoking	Clause 4.6	Adopts Option A of the model by-laws contained in schedule 3 of the Regulations.
Animals	Chapter 9	Animals must be on a leash at all times in the buildings, except in the podium area on level two (2).
Evidence	Clause 15.13 15.14	This enables the Owners Corporation to require evidence from an owner re suspected by-law breaches. Without this power, some suspected by-law breaches would not be enforceable for lack of evidence.
Changes to Common Property	Chapter 14	Prohibits any change to Common Property unless permitted or consented to. Permits: <ul style="list-style-type: none"> • cosmetic work (clause 14.11), and; • locking devices (clause 14.8) without consent, • minor renovations (clause 14.13) with consent, and; • consequential by-laws as a result (i.e. responsibility for damage etc), all to align with the new act.
Powers of Owners Corporation	Chapter 15	Details powers of Owners Corporation to enter property, and also to obtain evidence re suspected breach of a by-law.
Fire Alarms	Chapter 18 Clause 18.6	Liability imposed on owner of a lot where a breach of by-laws has occurred, thereby triggering the fire alarm, and occasioning damage to Common Property or a fee imposed by the fire brigade. The cost of damage and the fee payable to the Fire Brigade can be recovered as a debt.
Security System & Cameras	Chapter 23	<p>Security Cameras Explanation for Members</p> <p>The installation of security cameras and associated equipment requires rules governing the procedures and protocols relating to their use.</p> <p>In summary, the proposed by-laws cover the following issues:</p> <p>Ownership</p> <ul style="list-style-type: none"> • Footage constitutes a record owned and controlled by Owners Corporation, and kept safe by the Building Manager. <p>Use</p> <ul style="list-style-type: none"> • Must be reasonable in the circumstances and balance safety and security issues against privacy rights. • Must be for security purposes only and for the safety and security of lot owners, residents, and visitors, and: • can be used to enforce potential serious or repetitive by-law breaches involving the security, safety or amenity of residents, but cannot be used to enforce minor by-law infringements. • Must only permit surveillance over common property but excludes the podium area and lifts, as this could be seen as an unreasonable invasion of privacy. • Visual recording only, no sound, and accordingly, no recording of private conversations. <p>Access</p>

		<ul style="list-style-type: none"> • Process to access <ul style="list-style-type: none"> • Username • Password • Reason to be recorded when accessed. <p>Viewing:</p> <ul style="list-style-type: none"> • only by Building Manager, or • any two members of the Strata Committee, <p>When:</p> <ul style="list-style-type: none"> • Live feeds permitted, but only for the purposes of security, safety or amenity of residents; • All other viewing: <ul style="list-style-type: none"> • only in relation to an issue of security, safety or amenity of residents, or repetitive breaches of the by-laws; • when a complaint or evidence of an unauthorized entry, theft, damage to common property or threat to the personal safety of any owner, resident or occupier received. • Footage must be available to a lot owner (see act re access to strata records), <ul style="list-style-type: none"> • on written request to Building Manager with reasons, and; • only when a complaint or evidence of an unauthorized entry, theft, damage to common property or threat to the personal safety of any owner, resident or occupier received. • Any additional costs incurred for retrieving footage for owners / residents to be paid for by the lot owner / resident. • Records must be made available by Building Manager to an authorised Law enforcement authority on request, engaged in the course of uncovering or investigating a crime; • Recordings must be held in a secure area under the control of the Building Manager. <p>Retention</p> <ul style="list-style-type: none"> • No footage to be retained for any period longer than the turnover period of the system installation (the system automatically over-writes existing footage when the spool is full), unless excepted as below: • Exception: footage of reported incidents is to be saved and retained until destruction approved by Executive Committee • Exception: footage relating to an issue of security, safety or amenity of residents or when a complaint or evidence of an unauthorized entry, theft, damage to common property or threat to the personal safety of any owner, resident or occupier is received. • Exception: footage of serious or repetitive by-law breaches involving the security, safety or amenity of residents, may be
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		<p>retained and used by the Owners Corporation to assist with by-law compliance action.</p> <p>Cameras</p> <ul style="list-style-type: none"> • Positioning of Cameras <ul style="list-style-type: none"> • Must be positioned as to cover areas of common property only (excepting podium and internal lift areas), and not trespass on private property; • Exception: in relation to storage area and parking spaces <p>Signage</p> <ul style="list-style-type: none"> • Signage advising that building residents and visitors will be monitored by CCTV at each building entry. • Signage to be of appropriate size • Signage must properly notify all residents of the video surveillance, and areas under surveillance.
Loading Dock	Chapter 24	Inserted to align with terms of Development Application.
Pre-Meeting Electronic Voting	Chapter 28	Enable Owners Corporation and Strata Committee to adopt pre-meeting electronic voting as permitted by the act.
Common Property Memorandum	Schedule One	This memorandum sets out what is Common Property, and an owners property, and is approved by the Department of Fair Trading and Land and Property Information, and is attached here for easy reference.
Terms of Development Consent and Restrictions on Title	Schedule Two	These are encapsulated in this schedule, to enable easy access and understanding.