

## **Building Management Statement**

**Note: This management statement has effect as an agreement under seal binding:**

- **Each owner for the time being of any part of the building or its site, and**
- **A mortgagee in possession or lessee of any such part of the building or its site.**

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## INTRODUCTORY

### 1 Building management statement

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#### 1.1 What is a building management statement?

- (a) A building management statement is a set of rules that regulate the management and operation of buildings which are subdivided into separate segments but are contained within a single building envelope.
- (b) A building management statement confers rights and imposes obligations on an owner within the building and contains provisions about a wide range of issues including meetings, financial management and the maintenance of shared areas and facilities within the building.

#### 1.2 About the Building

##### (a) What are the different components of the Building?

As at the date of registration of this management statement, the Building is intended to comprise two distinct components. The owner of each component is a member of the committee and must comply with this management statement. The components are:

Component	Description	Member
Lot 100	A stratum lot comprising the part of the building which consists of the shopping centre known Ashfield Mall and its associated access ways, car parks and pedestrian plaza.	Lot 100 owner
Lot 101	A stratum lot comprising the parts of the building which consist of residential accommodation and retail shops to be known as Ashfield Central.	Lot 101 Owner

##### (b) Management structure

The Building Management Committee is responsible to operate and manage the Building on behalf of the members. Each member is a member of the committee. Each member appoints a representative to attend and vote for them at meetings. See clauses 3 to 8 for more information.

##### (c) Who assists the committee perform its functions?

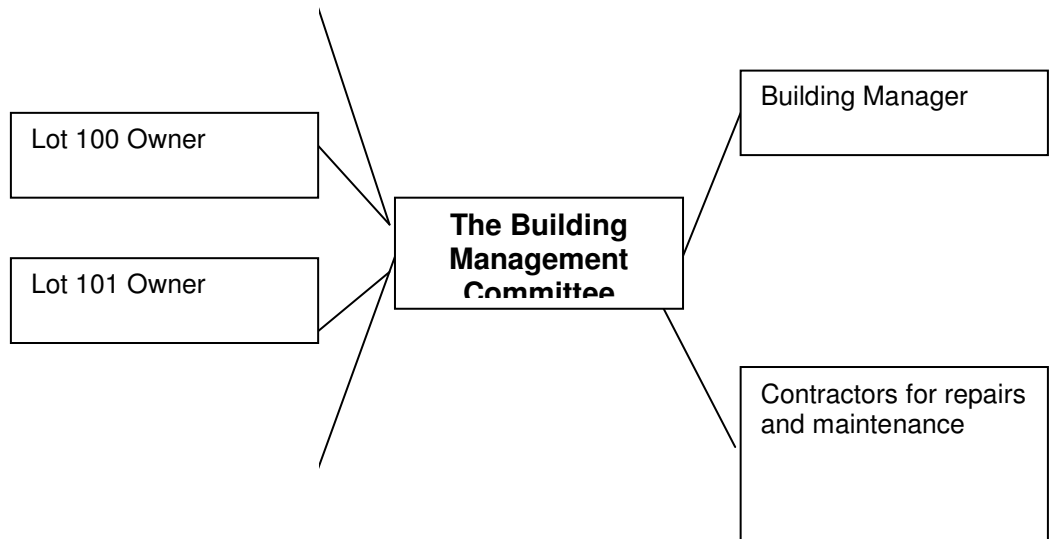
The committee has the power to appoint various persons to assist it perform its functions. For example, the committee may:

- (i) appoint a building manager to assist in the operation and management of the Building and perform secretarial and financial functions; and
- (ii) enter into contracts with various service providers for the operation, maintenance, repair and replacement of Shared Facilities and Shared Areas.

The powers of the committee are explained in more detail in clause 3 of this management statement.

##### (d) Overview of management structure

In summary, the management structure for the Building looks like this:



These parties are members of the committee. They each appoint a representative to attend and vote for them at meetings and emergency meetings.

The committee may appoint a building manager and other parties to assist in the operation and management of the Building.

### 1.3 Parties Bound

This management statement has effect as an agreement under seal binding:

- (a) the Lot 100 Owner;
- (b) the Lot 101 Owner; and
- (c) any other person in whom the fee simple of any part of the Building or its site (being a part affected by this management statement) is vested for the time being, or the mortgagee in possession or lessee of any such part.

## 2 Definitions and Interpretation

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### 2.1 Definitions

In this management statement, unless a contrary intention appears:

**Building** means the improvements erected, or to be erected, on the land.

**Building Management Committee** means the committee to be formed under clause 3.1.

**Governmental Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Insurance** means all insurances required to be effected under clause 8.1 and any other insurance determined by Unanimous Resolution to be Insurance.

**Lot 100 Owner** means the owner of Lot 100.

**Lot 101 Owner** means the owner of Lot 101.

**Manager** means the person for the time being appointed by the Building Management Committee under clause 3.4.

**Management Fee** means the cost of the management of the Building under this management statement not exceeding an amount which would be considered unreasonable by an independent member of the Property Council of Australia experienced in managing a building commensurate with the Building.

**Owner** means either the Lot 100 Owner or the Lot 101 Owner and **Owners** means both of those parties.

**Plan** means the deposited plan with which this management statement was registered.

**Schedule** means a schedule to this management statement.

**Shared Costs** means the following expenses in relation to the Building:

- (a) maintenance and repair costs (except to the extent attributable to a part of the Building comprising an Owner's lot);
- (b) renovation or replacement costs (except to the extent attributable to a part of the Building comprising an Owner's lot);
- (c) insurance premiums and excesses or deductibles on insurance claims; and
- (d) all other amounts determined by the Building Management Committee by Unanimous Resolution to be Shared Costs.

**Unanimous Resolution** is a resolution made by the Building Management Committee and in respect of which no Owner present and entitled to vote casts their vote against the resolution.

### 2.1 Interpretation

In this management statement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this management statement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association or corporation and any Governmental Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to this management statement;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this management statement or any part of it;
- (i) a reference to an officer of an association or body which has ceased to exist includes the most senior officer of the organisation established in place of the association or body to serve substantially the same purposes; and
- (j) a reference to a business day means any day other than Saturday, Sunday or a public holiday throughout New South Wales.

## **COMPULSORY MATTERS**

### **3 Establishment of Building Management Committee**

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#### **3.1 Building Management Committee**

- (a) There is hereby established a Building Management Committee comprised of:
  - (i) 1 representative of the Lot 100 Owner;
  - (ii) 1 representative of the Lot 101 Owner.
- (b) Each Owner must give to each other Owner written notice of:
  - (i) its physical address,
  - (ii) telephone and facsimile numbers,
  - (iii) an email address, and
  - (iv) the name, physical address, telephone and facsimile numbers and email address of the person who for the time being is to represent it at meetings of the Building Management Committee.
- (c) An Owner may at any time give to each other Owner written notice of the name, address, telephone and facsimile numbers and email address of a replacement representative.

#### **3.2 Office Bearers**

The Building Management Committee must appoint one of its members to act as chairman for each meeting and any other office bearer as the Building Management Committee considers necessary from time to time.

#### **3.3 Functions of Committee**

The functions of the Building Management Committee established under clause 3.1 are to:

- (a) consider any proposal submitted to the Building Management Committee by an Owner in accordance with clause 10.1;
- (b) consider a request by an Owner that a dispute be referred to arbitration in accordance with clause 12.3;
- (c) consider a request under clause 18;
- (d) consider and determine any other matter which the Owners unanimously determine should be considered by the Building Management Committee.

#### **3.4 Manager**

The Building Management Committee may appoint a suitably qualified person to act as manager but such appointment will not relieve the Building Management Committee of its obligations under this management statement.

### **4 Meetings of Committee**

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#### **4.1 Convening meetings**

- (a) The Building Management Committee must convene a meeting if:
  - (i) required by Unanimous Resolution made at an earlier meeting;
  - (ii) requested by notice in writing by either Owner setting out the issue or proposal required to be addressed; or

- (iii) no other meeting has been held in the preceding 12 month period on each anniversary of the date of registration of this management statement.
- (b) At least 7 days' notice of a meeting must normally be given. In the case of an emergency, shorter notice may be given.

#### **4.2 Preparation of notices**

The Building Management Committee must prepare and distribute:

- (a) notices of meetings and agendas for meetings, and
- (b) minutes of all its meetings and distribute those minutes to the Owners within 14 days of the relevant meeting.

#### **4.3 Quorum**

At any meeting of the Building Management Committee a quorum will consist of a representative of each Owner. If a quorum is not present within half an hour from the time appointed for a meeting, the meeting must be adjourned for 2 business days to be held at the same time of day and at the same place notified for the original meeting. The quorum for the adjourned meeting will be that number of representatives present at the time appointed for the adjourned meeting.

#### **4.4 Voting**

At all meetings of the Building Management Committee a member is entitled through its representative to cast one vote.

#### **4.5 Building Management Committee Decisions**

All decisions of the Building Management Committee must be made by Unanimous Resolution.

### **5 Service of Notices and other documents**

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#### **5.1 Service**

A notice, approval, consent or other communication in connection with this management statement:

- (a) must be in writing; and
- (b) if served on an Owner, must be left at the address of the addressee, or sent by prepaid ordinary post to the address of the addressee or by facsimile to the facsimile number of the addressee notified by the addressee to the other Owner in accordance with clause 3.1(b) or if the addressee notifies another address or facsimile number then to that address or facsimile number;
- (c) if served on the Building Management Committee, must be served on both Owners.

#### **5.2 Date when effective**

Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

#### **5.3 Receipt of Notices**

A letter or facsimile is taken to be received:

- (a) if posted on the third day after posting;
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.



## **6 Disputes**

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### **6.1 Notice of Dispute**

- (a) Subject to clause 6.1(b), an Owner at any time may write to the other Owner, notifying the other Owner of a dispute or complaint concerning a matter in this management statement. The representatives of the other Owner must always be notified.
- (b) The Owners agree that any decision made by the Building Management Committee by a valid resolution in accordance with this management statement will not be the subject of referral for decision pursuant to this Clause 6.
- (c) The written notice referred to in paragraph (a) must:
  - (i) identify the subject matter of the dispute or complaint;
  - (ii) set out the facts upon which the dispute or complaint is based;
  - (iii) identify the provisions of the Statement relevant to the dispute or complaint;
  - (iv) have annexed copies of all correspondence and background information relevant to the dispute or complaint; and
  - (v) contain any particulars of the quantification of the dispute or complaint.

### **6.2 Committee to meet**

- (a) Upon the giving or receipt of the notification in clause 6.1(a) (as the case may be), the Building Management Committee must immediately deliver to each Owner a notice convening a meeting of the Building Management Committee to discuss the matter to be held on the next business day being at least 7 days after the notice of the meeting.
- (b) The Building Management Committee must meet at the time specified in the notice, unless otherwise agreed by Unanimous Resolution to discuss and mutually reach a decision on the matter.

### **6.3 Referral to Arbitration**

- (a) If the matter is not settled within 28 days from the time of the giving or receipt of the notification in clause 6.1(a) (which period may be extended by the written consent of both Owners) by mediation or conciliation between the Owners or by referral by an Owner to an expert of the appropriate professional discipline, then either Owner may request the Building Management Committee immediately give notice convening a further meeting of the Building Management Committee to discuss whether the dispute or complaint be referred within a further period of 10 days, to arbitration.
- (b) Either Owner may within a period of 14 days from the meeting referred to in clause 6.3(a) refer the dispute or complaint to arbitration in accordance with the provisions of the New South Wales Commercial Arbitration Act 1984 ("Arbitration Act").
- (c) In the case of referral of the dispute or complaint to arbitration in accordance with the provisions of the Arbitration Act the arbitrator will be the person holding the office of President of the Institute of Arbitrators or his/her nominee or if that office is abolished the person holding the equivalent office or his/her nominee.

- (d) The award made by such Arbitrator will be final and binding on both parties. Such award is to be a condition precedent to any legal proceedings which will be limited to enforcement of the award.

#### **6.4 No money to be withheld**

Provided the Building Management Committee has complied with its obligations in this management statement in relation to the matter the subject of the complaint or dispute, money that is or becomes due and payable by the Owners under this management statement must not be withheld because of arbitration proceedings.

#### **6.5 Information Confidential**

An Owner must not divulge any confidential information obtained from another Owner under this clause 6.

### **7 Payments**

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#### **7.1 Contribution to Shared Costs**

- (a) Each Owner must contribute to the Shared Costs in the manner set out in this clause 7 and in the proportions set out in Schedule A.
- (b) Each Owner must pay to the Building Management Committee (or the Manager if the Building Management Committee has appointed a manager) its Share of the applicable part of the Shared Costs within 14 days after service of a request for payment by the Building Management Committee or the Manager.

#### **7.2 Records and Books**

- (a) The Building Management Committee must cause proper records and books of account to be kept of all of the amounts payable under this management statement and must enter all matters and transactions usually entered in books of account kept by property managers.
- (b) The records and books of account must be made available during normal business hours upon reasonable notice for inspection by an Owner or its representative on the Building Management Committee.

#### **7.3 Application of Payment**

The Building Management Committee must deposit all amounts received from Owners by the Building Management Committee (or the Manager) under this clause 7 into a trust account with a bank agreed upon by the Owners, acting reasonably, and must apply all amounts towards the payment of all invoices, statements and accounts relating to the Shared Costs for which such amounts were paid.

### **8 Insurance**

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#### **8.1 Required Insurance**

- (a) The Owners must effect and maintain the following insurance in accordance with this management statement:
  - (i) industrial special risks insurance for the structure of the Building in accordance with Clause 3 of Schedule 8A of the *Conveyancing Act 1919*;
  - (ii) public liability insurance for liability for the respective ownership of the Building limited to not less than \$50,000,000 for any one claim; and

(iii) any other insurance deemed necessary by the Building Management Committee including without limitation those policies referred to in Clause 4 of Schedule 8A of the *Conveyancing Act 1919*.

(b) All policies are to be taken out with an Insurer agreed by Unanimous Resolution.

## 8.2 Basis of Apportionment

Premiums for the Insurance are to be paid by the Owners in the proportions set out in Schedule A.

## 8.3 Total Destruction of the Building

If the Building is totally destroyed or damaged so extensively to render the repair or making good of such damage impractical or undesirable the following alternatives will apply:

(a) the Owners must, from the insurance money available and, to the extent this may be insufficient, from their own money in the relevant proportions, reinstate the Building substantially in accordance with the approved design prepared in connection with registration of the Plan; or

(b) if the Owners, acting reasonably:

(i) agree that the Building is to be rebuilt to a different design, and

(ii) agree upon the plans and specifications relating to that different design,

then the Owners must from the insurance money available and, to the extent that this may be insufficient, from their own money in the relevant proportions, prepare the land for the new building and then construct the building in accordance with the agreed plans and specifications; or

(c) if the Owners, acting reasonably, agree that:

(i) the Building is not to be reinstated, and

(ii) the Building is not to be rebuilt to a different design,

the Owners must promptly demolish the Building and clear the land of all improvements, structures, rubbish and debris and, following the demolition and clearance being carried out to the satisfaction of the Owners, then neither Owner will have any claim against the other Owner and, without limitation, none of the persons bound by this management statement will have any right against another Owner under this clause 8.3; and

(d) if the Owners, acting reasonably, are unable to reach agreement under paragraph (b) or (c), then paragraph (a) applies.

## 8.4 Partial Destruction

If the Building or any part of the Building is partially destroyed or damaged the Owners must, from the insurance money available and, to the extent that this may be insufficient, from their own money in the relevant proportions, repair, replace and make good the whole of the destroyed or damaged portion of the Building and nearly as possible to the condition in which it was immediately prior to the damage or destruction with such modifications as the Owners agree, acting reasonably, or as may be required by any competent authority.

## 8.5 Additional Insurance Provisions

(a) All money received by the Owners and settlement of any claim under the Insurance will be paid into a bank agreed by the Owners, and in default of

agreement the bank agreed under clause 7.3, in an account in the names of the Owners jointly in the relevant proportions.

- (b) The money will be held in that account and will be applied by the Owners in the following order of priorities:
  - (i) first in payment to an Owner in the relevant proportions of all expenditure, directly or indirectly associated with the rebuilding or demolition and clearing or repairing, replacement and making good, as the case may be, of the Building; and
  - (ii) as to any balance to be equitably apportioned between the Owners having regard to their respective interests in the Building at the date immediately prior to the incident giving rise to the insurance claim.
- (c) For the purposes of this clause 8.5 the relevant proportion in the case of damage will be determined having regard to the part or parts of the Building which has been damaged. In the case of total destruction the relevant proportion will be determined in accordance with Schedule A.

#### **8.6 Insurance not to be avoided**

An Owner must not at any time do permit or omit or suffer to be done committed or omitted any act, matter or thing upon the Building or to bring or keep anything on the Building so that any Insurance may be rendered void or voidable or the rate or premium of any Insurance be liable to be increased unless, in the latter case, the relevant Owner promptly pays all additional premiums required.

**SCHEDULE A  
SHARED COSTS**

<b>Lot 100 Owner</b>	<b>Lot 101 Owner</b>
70%	30%

**EXECUTION PAGE**

**EXECUTED by Perpetual Trustee Company Limited**

**ACN 000 001 007** by its attorney pursuant to  
Power of Attorney dated  
registered Book                      No.

who states that he/she has received no notice  
of revocation of the Power of Attorney,  
in the presence of:

.....  
Signature of witness  
Name of witness (*please print*)

.....  
Signature of Attorney  
Name & Title of Attorney (*please print*)

**EXECUTED by Abacus Group Holdings Limited**

**ACN 080 604 619** by its attorney pursuant to  
Power of Attorney registered Book                      No.  
who states that he/she has received no notice  
of revocation of the Power of Attorney,

in the presence of:

.....  
Signature of witness  
Name of witness (*please print*)

.....  
Signature of Attorney  
Name & Title of Attorney (*please print*)

**EXECUTED** by ANZ Fiduciary Services Pty Limited

ACN 100 709 493  
(mortgagee under mortgage no. AD896236)

**EXECUTED** by ANZ Fiduciary Services Pty Limited

ACN 100 709 493  
(mortgagee under mortgage no. AD896236 and mortgage AD896287)