

LAKE VIEW ESTATE

COMMUNITY MANAGEMENT STATEMENT

The Lake View Estate is established under the provisions of the Community Land Development Act 1989 (CLDA) and controlled by the Community Land Management Act 1989 (CLMA). A Community Association (CA) is constituted as a corporation under s.8 CLDA as a part of registration with of the development plan, in our case DP271106. The members of the corporation are the proprietors (or owners) of each development lot. The functions of a CA are defined in CLMA Schedule 1. On a day to day basis, the CA is run by an Executive Committee (EC) assisted by a Managing Agent.

A CA is governed by a Community Management Statement (CMS), the by-laws and other particulars governing a community scheme (Definitions, CLMA). The CMS is binding on the CA itself, any subsidiary body within the community scheme (we don't have any) and every proprietor, lessee, occupier or mortgagee of every lot (s.13 CLMA). A CA may serve notice on the proprietor or occupier of a lot who fails to comply with any of the by-laws (s.13A CLMA) and the Tribunal may fine a person up to five penalty units if they continue to fail to comply (s.97C CLMA). So the CMS is important.

The CMS can only be amended by a special resolution (at a general meeting). However, any change that would affect the development itself or change the Architectural and Landscape Standard requires a unanimous resolution (s.14 CLMA).

Unfortunately, the CMS is legalese and difficult to read and it can be difficult to find information in it. This document attempts to summarise the important aspects of the CMS as it affects owners and occupiers.

What follows is a summary of the main points. If, however, this summary differs in any way from the CMS, then the latter is what matters. All care has been taken to avoid significant omissions, ambiguities and inaccuracies but no responsibility can be taken for any. These notes tend to use the more readily understood terms "owner" and "resident" although the Acts and the CMS refer to the "proprietor" and "occupier" respectively as the correct legal terms.

Architectural and Landscape Standard

An important theme in the CMS is the "Architectural and Landscape Standard", in other words, the styles, the look and the feel, of architecture, buildings and landscaping in the development. The standard for Lake View is defined by the plans submitted by the developer to the Dubbo Regional Council as a part of obtaining the development authority for the scheme (by-law 1.2.1 refers). More practically, it is the look in terms of design, building materials, colour, and fittings and the general style of the gardens and surrounds for the houses and the communal facilities. CCMS 1.2.2 states that the Architectural and Landscape Standard is binding on the CA, each owner and occupier, each mortgagee and each lessee of a community lot.

Any owner can apply to the CA for an amendment to the Architectural and Landscape Standard. CMS 1.3.5 states that the CA can approve a change with a special resolution (75% majority). However, s.17 CLMA requires a unanimous resolution to modify any part of the CMS fixing the architectural and landscape standard. If there is a discrepancy, the Act overrides the CMS. Having said this, there would appear to be no impediment to a simple majority at a general meeting determining if a variation was within the existing standard or not.

Importantly, though, there is no right for an owner or occupier to do whatever they wish on their own lot. The close living does require that the estate as a whole is considered.

Note that MAAS, as the developer, can make modifications to the Architectural and Landscape Standard while they are still the owner of a lot. This has allowed, for example, solar panels to become a part of the standard even though none are shown on the original plans.

CMS 4.2.1 states that, except with the approval of the CA, an owner or occupier may not construct, install or maintain anything on a lot which can be seen from outside the lot and which in the reasonable opinion of the CA is not in keeping with the building on or landscaped areas of the lot.

CMS 4.2 also prohibits matters such as erecting a garden shed, greenhouse, animal house or similar without permission. It does not allow the erection of an additional clothes line.

Works Approval

CMS 1.4.1 requires that every new construction, building modification, landscape construction or landscape modification must comply with the Architectural and Landscape Standard. Minor modifications inside any house do not need approval by the CA. CMS 1.4.4 specifies many of the features of any external works that must be considered in any Works Approval, such as colours, materials and harmony with existing structures and landscape, ie that the works will meet the Architectural and Landscape Standard.

Works approval is vested in the CA at a general meeting. Although the CA could have delegated works approval to the EC, it has not done so to date. Accordingly, any and all works approval requires a general meeting of the CA. *It should be noted, however onerous this might appear, that any owner, other than MAAS while it still owns a lot, must have Works Approval from the CA for new constructions or modifications to either a building or the landscaping. (Separate Council approval may be required for some building works but this is not covered by the CMS).*

It should also be noted that neither MAAS (once a lot has sold) nor the Managing Agent can give works approval. Any works approval must be in writing to be valid.

CMS 4.1.7 (p) requires EC approval for TV and similar aerials or dishes, solar panels etc., energy conservation equipment or solar hot water systems on the outside of any building on a development lot.

Restricted Community Property

CMS 2.1 provides that MAAS is allowed to continue its work as developer.

Private Association Services and Service Easements

CMS 2.2 and 3.6 refer to the provision of water and electricity etc.. to lots via easements in the common property and/or community metering. CMS 4.9 covers private storm water drainage easements and avoiding a nuisance to neighbours. (The original development can reasonably be assumed to have addressed these issues).

Car Parking and Other Vehicle Rules

CMS 2.3 and 4.2.1 (b)-(d). These are the basis for the rules on parking within the estate. In essence, only visitors may use the visitor parking. It is not permitted to park a vehicle on community property other than in designated spaces, ie visitor parking and not on a road. It is not permitted to park caravans, trailers or boats other than on a lot. CMS 3.1 refers to the roads within the estate,

maintenance of the roads by the CA and their use by residents and visitors. CMS 3.1.7 set a maximum speed limit of 10kph within the estate. See the vehicle rules elsewhere on this website.

Community Association Property and Facilities

CMS 3.2 and 3.3 provides for the maintenance and use of community property and facilities including the access ways (road), recreation area and swimming pool.

Clubhouse, Swimming Pool and Barbeques

CMS 3.2 particularly covers the Clubhouse, Swimming Pool and Recreation Area (Barbeques). Occupiers (but not owners) may book the Clubhouse. The swimming may be used between 6am and 10pm daily. Guests *must* be accompanied by a resident when using the pool. No glass is permitted within the swimming pool enclosure. Young children must be adequately supervised. Rules for the Clubhouse and Swimming Pool are given in more detail on the Lake View website

Garbage

CMS 3.5 covers rubbish bins and collection. More detail on rubbish is given separately on the Lake View website.

Insurance

CMS 3.7 mirrors the CLMA and requires the CA to carry appropriate insurance cover for buildings on the community property and the need to review insurances annually.

In addition, CMS 3.7.4 requires each owner to insure their own house for its replacement value and to provide a copy of a current insurance certificate to the CA annually. The CA has the right to recover costs if it has to insure a house and recover that cost from the owner.

Executive Committee

The EC is established by CLMA Division 2, Part 2. It has the full authority of the CA unless it is a restricted matter, ie one that requires a unanimous or special resolution or a general meeting. CMS 3.8(d) states that an owner may attend an EC meeting but may not address the meeting *unless authorised by the EC to do so*. Meetings of the EC are not general meetings, where any member of the CA does have a right to be heard.

Responsibility for Visitors

CMS 4.1 refers to Authorised Visitors, a term defined at the very end of the CMS, as a person on the community parcel (land) with the express or implied consent of an owner or an occupier or of the CA. Visitors must comply with by-laws and can be asked to leave if they do not do so. An owner or occupier is responsible for any damage to community property caused by their guests.

Pets

CMS 4.1 allows for pets to be kept, but permission is required for more than two pets (other than fish in tanks). Dogs must be on a leash if on any community property.

Noise and General Behaviour

CMS 4.2 prohibits noise or other behaviour likely to interfere with the peaceful enjoyment of others. It also prohibits inadequate clothing or language likely to cause offence or embarrassment to others. It prohibits obstructing others in the lawful use of community facilities or causing damage to or

otherwise interfering with the operation of community property including equipment, lawns, plants, trees or gardens.

Maintenance of a Lot

CMS 4.3 requires owners and occupiers to maintain a lot in good condition including weeding private gardens. Owners and occupiers are not permitted to maintain or store untidy, unsightly or unhealthy rubbish, plant, vehicles etc..

Security

CMS 4.4 prohibits any gate or other form of direct access from a lot to neighbouring land outside the estate.

Obligations of Owners and Occupiers

CMS 4.6 covers the obligations of owners and occupiers on a number of matters:

- a. to comply, at their own cost, with the CMS and any requirements, notices or orders of the Dubbo Regional Council;
- b. notify the EC of any damage to community property and compensate the CA as required;
- c. ensure the CA is notified in writing of any third party leasing arrangements for their lot;
- d. ensure any property agent responsible for a third party lease has a copy of the CMS and outlines to any tenants the tenants responsibilities under the CMS.

Right of the CA to Enter Agreements

CMS 4.6 authorises the CA to enter into agreements with third parties to maintain community property etc.. including engaging a managing agent.

Further Rules

CMS 4.7 allows the CA to make further rules or amend those rules. If the rules are to be by-laws and included in the CMS, a special resolution (75% majority) is required. However, rules not included in the CMS itself, may be made at a general meeting or an EC meeting with only a simple majority. Rules which are not by-laws must nevertheless be consistent with the CMS and the CLMA.

Work Health and Safety

CMS 4.8 covers work, health and safety on community property. It also requires owners and occupiers to ensure nothing on their lot causes a fire hazard.

By-Laws Required by the Public Authority

CMS Part 5 requires the CA to maintain the fire hydrants and states that the common storm water and sanitary drainage pipework is community property (and therefore a community responsibility).

Definitions

Part 6 of the CMS is a list of definitions of terms and Part 7 defines the access ways and common property.