

A close-up photograph of a pair of red-handled pliers with silver metal jaws, positioned over a bundle of colorful electrical cables (red, blue, yellow, green, white). The background is a light-colored, textured surface.

INSTALLATION OF GENERATORS *within a Sectional Title Scheme*

The Trustees of Troubled Waters Body Corporate requested to be advised if they can make a rule that private generators are not allowed to be used for the generation of power for individual Sections within their Sectional Title Scheme.

They initially allowed generators to be housed in garages, but as this created health and safety issues, they considered to allow placement of generators within exclusive use areas. The noise and fumes would however increase the nuisance factor.

In my opinion, three aspects are to be considered:

1. What resolution or whose consent is required for an owner to install a generator?
The answer depends on the location of the installation.
2. The nuisance-factor and health related issues: *Therefor the effect on the aesthetics (placement/location), air pollution and noise.*
3. Exceptional circumstances and individual needs.

What resolution or whose consent is required for an owner to install a generator?

If the installation is to be made on common property, a distinction must be drawn between common property and an exclusive use common property area.

The Prescribed Conduct Rules as contained in Annexure 2 to the Regulations under the Sectional Titles Schemes Management Act, 8 of 2011 (“ST SMA”) is silent on this aspect and

merely deals with minor damage caused to common property, such as with the installation of a locking- or safety device (see Prescribed Conduct Rule 4).

Conduct Rule 5 deals with a change that affects the external appearance of a Section or exclusive use area. In both instances Trustees’ permission is required.

The Trustees therefore do not have authority to consent to the installation of a generator on common property (since generators are not covered in the aforesaid Conduct Rules) under the abovementioned Rules, unless the Conduct Rules are amended to include provision for the installation of generators.

Prescribed Management Rule 30 (Annexure 1 to the Regulations under the ST SMA) allows an owner to construct or place any structure or building improvement on an exclusive use area if authorised by ordinary resolution of the members of the Body Corporate and members/trustees may prescribe reasonable conditions in regard to the use or appearance of the structure or building improvement and may withdraw any consent if the member or occupier of a Section breaches any such condition.

Unless the Rules of a Body Corporate provide for installation of generators, the Trustees are not authorised to consent to its installation.

If the generator is to be installed within an exclusive use area, then the members can authorise such installation by ordinary resolution.

The nuisance-factor and health related issues:

Prescribed Management Rule 30 stipulates that a member or occupier of a Section may not use a Section or exclusive use area so as to cause a nuisance and further stipulates that a law or by-law relating to the use of a Section or an exclusive use area is not to be contravened.

The noise factor, air pollution and influence on the aesthetic appearance of the common property is to be taken into consideration by Trustees and/or members when any consent is granted as well as common law principles concerning the law of neighbours and/or any applicable legislation.

Noise Control Regulations and the South African National Standards (SANS10103 of 2008) are applicable and which Regulations are applied for the measurement and rating of environmental noise with respect to annoyance and to speech communication.

The reasonableness-standard applies, which pivots on a balancing of the mutual- and reciprocal rights and obligations of neighbours. By-laws such as the City of Tshwane Metropolitan Municipality's Noise Management Policy may be applicable. This policy provides inter alia for certain noise level standards and noise control criteria and identifies noise-controlled areas.

Without delving into the technicalities of the by-laws and/or ancillary regulations, the bottom line is that noise created by equipment, in this case a generator, may not exceed the prevailing ambient noise levels at another property (section).

The aesthetic factor would normally not be a major issue as the generator can be placed out of sight or can be concealed.

A further nuisance factor is the smell of fumes emanating from the generator which can also be a health hazard. The appropriate placement of the generator can again assist to neutralise

this factor.

Exceptional circumstances and individual needs:

There may be exceptional circumstances where a member or occupant requires a generator as back-up source for medical equipment in the event of a power failure.

Under such circumstances and if the Trustees are not in a position to authorise the installation, the member or occupant concerned would be advised to approach CSOS for appropriate relief.

In order to create a rule for a total prohibition on the use of generators the management rules will have to be amended (by unanimous resolution of members) in order to amend the operation of PMR 30 referred to above.

Trustees are best advised to consider amendment of the Conduct Rules (by special resolution of members) to make provision for installation of equipment such as generators, water tanks, air-conditioning, gas installations, etc. in order to avoid future disputes.

The nuisance factor caused by noise of generators can, to a large extent, be managed in terms of appropriate rules where rules can be formulated to allow operation merely between certain hours, for a certain period and under certain circumstances. One can accept that there will always be some nuisance associated with the use of generators in Community Schemes and it is advisable to manage its use with rules that balance the rights and needs of respective members within the Scheme.

Members must be accommodated to have access to generator power during power failures in order to keep them operational as far as electrical equipment, communication equipment and fridge/freezers are concerned.

By ELMO STUART, EY STUART INC.