



HOME OWNERS ASSOCIATION

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3 August 2021

Dear Owners and Residents,

COMMUNICATION TO OWNERS AND RESIDENTS – 3 AUGUST 2021

In many respects, it has been a long and tumultuous winter. Our thoughts are with all our residents and their families who may have been affected in some way or another by recent events. We trust that the imminent change in seasons will soon bless us with a soothing spring and a rejuvenating summer.

1. **Manager's report**

Attached hereto are the Reserve Manager's monthly reports for May and June, which we trust will give residents a view on activities on the reserve. As always, residents are invited to bring any matter, problems or suggestions to Harry's attention. Or just give him a pat on the back for a job well done!

2. **Building review**

A word of thanks to all the residents who responded to the recent building survey conducted by the municipality and to everyone who took the opportunity to submit as-built plans to the Aesthetic Committee. Pieter and his team, together with the review architects and the town planning consultant are collating information and preparing a submission to the municipality for a pre-assessment of an application to increase the total floor area of houses on the reserve. A successful pre-assessment will be a good indication of the chances of a successful application. We will revert to residents in this regard as the matter develops.

3. **Revised architectural guidelines**

The Aesthetic Committee, together with the review architects, HD Arch Studio, have recently reviewed the guidelines, which will be available on our website soon. As was the case with previous reviews, residents are reminded that these guidelines are living documents, which require updating from time to time. Residents are nevertheless invited to contact Pieter or Harry with any constructive comments or suggestions in this regard.

Home Owners Association Executive Committee Members

Jaco Lötter(Chairperson), **Raoul Hodges**(Finance) , **Pieter Smit** (Aesthetics, Architectural Guidelines)
Mark Bowden (Environmental, Fire Control, Security), **Kobus Steyn** (Estate Maintenance)

4. **Revised Constitution**

A revision of the Constitution was initiated by previous Executive Committees, and it is one of the objectives of this year's Committee to finalise this process. A draft of the amended Constitution is currently in circulation for comment amongst the current Committee members, as well as former Exco chairmen. An amended draft will thereafter be circulated to residents for comment. With this input, we will then prepare a draft to be voted on at our 2021 Annual General Meeting. In terms of our Constitution, such amendments require a 75% majority vote at the meeting.

5. **Change in Exco**

Residents are informed of the recent resignation from the Exco of Ilse Nel, and we thank her for her calm and caring contribution to our community during her tenure on the Committee. Although our Constitution does not provide for the filling of a vacancy on the Exco, we have decided, in accordance with best practice, and considering the importance of the vacant portfolios, to co-opt a member to the Committee. This, incidentally, is also one of the changes proposed to the current Constitution. We are grateful to Mark Bowden for accepting our request to take care of matters for the remainder of the year. Mark is no stranger to the Committee, having served last year, and we are pleased to entrust him with the security and environmental portfolios.

6. **Pets**

"One wishes that it had never become necessary to reach this point"

- Deputy Chief Justice Raymond Zondo, 8 July 2021

The Committee recently had the unfortunate duty to execute an order of the Western Cape High Court in a matter concerning pets on the reserve. Notwithstanding the emotive and polarising issue of pets on the reserve, the matter had by now been conclusively decided, following an unsuccessful vote to amend the Constitution in 2018, two applications to the Community Schemes Ombud Service (CSOS) in 2019 resulting in an order confirming the validity of the Association's Constitution and Rules, and a High Court Order in 2021. The legal costs of the recent High Court application alone amount to approximately R90 000,00.

Residents are again reminded of the relevant parts of the CSOS order (which has the status of an order of Court), particularly paragraphs 20 and 21 thereof:

- *"The Executive Committee and the HOA are not entitled to unilaterally change or condone non-compliance with the conditions of the development, the Constitution or laws applicable to the resort. The HOA through Excom must ensure that members comply with the provisions applicable to zoning of the Development"* (paragraph 20);
- *"In allowing members to keep pets contrary to the Constitution, Excom failed to discharge this obligation"* (paragraph 20);
- *"The Constitution is the founding document of the scheme and the supreme law in the resort. Until such time that the constitution is amended, no pets should be allowed on the resort"* (paragraph 20);
- *If the Excom members do not discharge this obligation, the HOA members should convene a special meeting to decide on the future of the Excom members"* (paragraph 21); and
- *"... failing which Excom members must be brought to book in their personal capacity if gross negligence can be shown"* (paragraph 21).

The supremacy of our Constitution and Rules, the duty of all members of the Association to adhere thereto, and the obligations of the Exco cannot be any clearer.

Residents who want to change the rules and the Constitution to allow for the keeping of pets, or any other change for that matter, have every right to promote that idea, within the legal confines of our Constitution. If so requested, this Exco should reasonably facilitate this process impartially and unbiased, as was done before.

7. **MORE REGULAR ENGAGEMENTS?**

Many residents, I count myself amongst them, have felt frustrated with length of our Annual General Meetings, sometimes in excess of 3 hours. It must, however, be acknowledged that this is the only time when members have an opportunity to express their views in an open forum, and that should be respected. We are therefore grateful to Pieter Maritz, who proposed that more regular engagements should provide members with more opportunities to directly engage with Exco and that this might limit the discussions at the AGM.

These discussions will have to take place via electronic medium. We are not sure how many members might take up the opportunity to participate, but we believe that we should give it a try. We will arrange the first session towards the end of August, and we will communicate the details thereof closer to the time.

Kind regards,



THE EXECUTIVE COMMITTEE
NAUTILUS BAY COASTAL RESERVE

Per: PJ Lötter (Chairman)