

Mutual Heights

Darling Street, Cape Town
<http://www.mutualheights.net>

News from your Trustees

Edition 18

January 2010

Dear Fellow Owner,

First, I hope it is not too late to wish you a prosperous New Year; may it bring you the joy and fulfilment that you seek; and, may it signal the end of our shared damp problems ... !

I am writing to update you on the progress that we have made regarding the ingress of damp into the building. As I indicated in the last letter, we are now working with a restoration and construction company to test their abilities to deal with the problem, and to establish the best repair protocols from which estimates and budgets can be developed. On this side things are going as well and as quickly as expected.

Just as important, and much longer in its history, is the work we have been doing on the legal issues. This has taken a considerable amount of time and effort. Once again we are indebted to Paul Rippon and Charles Keefer, who have had numerous meetings with a number of attorneys, and who – with the chosen attorneys – have now elicited an opinion from Senior Counsel (this is the first step in the typical South African legal process, to ask a qualified and experienced senior lawyer to look at all the evidence that is available, and to advise on the key issues and the prospects for success).

Let me first summarise the opinion that we have received:

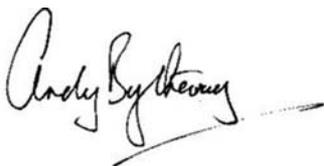
- Counsel confirms that your trustees are entitled and obliged to act against the developer, because the problems are principally within the portion of the building that is “common property” (see the note below concerning damage within sections that are *not* “common property”).
- Counsel’s opinion is that we have a firm and persuasive case against the developer. The legal issues are diverse and multifaceted, but from all perspectives it seems that our argument(s) have a good chance of succeeding.

So much for the common property. You may be concerned to know the situation in regard to specific damage *within your unit*, if you have suffered consequential damage. We are advised that owners could initiate their own claims against the developer (at their own cost, of course) but that there is little merit in doing so at the moment. We recommend that you await the outcome of the actions of your trustees concerning the common property, on your behalf. There is no point in investing in significant remedial works within units until the exterior has been dealt with. If you agree, then there is no further action that you need to take at this stage.

At a previous AGM it has already been agreed that your trustees can proceed with claims against the developer, should that prove feasible and worthwhile. We are now determined to do so.

We will of course continue to keep you informed. Do please feel free to contact me or Charles Keefer directly should you wish to do so.

With warm regards,
on behalf of the Trustees,



(Professor) Andy Bytheway,
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