

SHELLEY POINT HOME OWNERS' ASSOCIATION

ENCROACHMENT: IMPLEMENTATION OF THE PROVISIONS OF THE CONSTITUTION AND THE RULES

1. Context

- 1.1 The aim with this framework for the Implementation of the Provisions of the Constitution and the Rules of the Home Owners' Association (HOA) (Framework), is to inform Members and Residents of:
- The terms and conditions pertaining to Encroachment onto Communal Property contained in the Rules of the HOA;
 - The process and procedures to be followed by Members when contemplating an Encroachment onto Communal Property; and
 - The approach of the HOA regarding corrective actions required to rectify existing encroaching practices, with a measure of consistency and with due regard to historical realities.

2. Definitions and Application

- 2.1 The following Definitions contained in the Constitution and the Rules need to be emphasised for purposes of this Framework:
- 2.1.1 *Communal Property* is defined in the Constitution of the HOA as property of the HOA which may be used by Members, Residents, and the Public, subject to the provisions of this Constitution, the Rules, and the restrictions applicable to the Public Servitudes within the perimeter of the Estate.
- 2.1.2 *Encroachment* is defined in the Rules, with regard to Coastal Public Property adjacent to the Estate and any part of the Communal Property (including, but not limited to, Primary Dunes, Admiralty Land, Littoral Active Zones and identified Sensitive Coastal Areas), as the following actions, or activities (irrespective of whether the Encroachment is of a temporary or permanent nature): placement of an item; erection of a fence, wall, barrier, swimming pool, bridge or boardwalk; landscaping, gardening, planting, maintenance or removal of vegetation; placement, movement, or removal of a dune; dumping, infilling or excavation of any material or disposal of soil, rubble or garden refuse.
- 2.2 This Framework does not apply to Coastal Access Land and Public Servitudes within the perimeter of the Estate and Coastal Public Property adjacent to the Estate, as the Home Owners' Association has no jurisdiction to allow any Encroachment onto these properties. Notwithstanding, the HOA appeals to Members and Residents to refrain from encroaching onto these properties without receiving prior permission from the relevant authorities. The HOA is furthermore obliged to report unauthorised encroachment.
- 2.3 This Framework does not apply to the Encroachment onto any Building Line, as the terms and conditions and the related processes, are determined in the Building Design and Construction Rules (BDCR) and the related Statutory Provisions, as applicable.
- 2.4 This Framework applies to Encroachment onto Communal Property adjacent to the Cadastral Boundaries of Private Property (Erven and Unit Erven).

3. Encroachment: Related Rules of the Estate and Delegation of Authority

- 3.1 Encroachment, of whatsoever nature, onto Communal Property is not allowed without the prior written permission of the HOA.

- 3.2 The HOA is authorised to remove unauthorised Encroachment and to recover the reasonable cost of the removal from the Member (See paragraph 4.1.5, 4.6.13 to 4.6.15 of the General Rules and paragraph 4.3.1.4 of the BDCR). The HOA may in addition impose a Penalty in accordance with the relevant Schedule of Transgressions and Penalties contained in the Rules.
- 3.3 Members contemplating an Encroachment onto Communal Property, must apply for permission to the Design and Review Committee of the HOA (DRC), who will as delegated authority of the HOA, consider applications against the criteria approved by the HOA at a General Meeting of the Members.

4. HOA Criteria and Corrective Actions

- 4.1 With a view to giving effect to the provisions of the Constitution and the Rules the Trustee Committee has resolved that the actions prohibited in terms of the Definition of Encroachment will not be allowed, except as indicated below.
- 4.2 The DRC is permitted to consider and allow the following forms of Encroachment on Communal Property only (irrespective of whether the Encroachment is of a temporary or permanent nature):
- Paving, Wooden Bridge or Boardwalk (to specification and matching existing infrastructure), as the case may be, to link private property with designated HOA walkways (See paragraph 4.6 BDCR regarding Boardwalks);
 - Landscaping (planting of indigenous and non-invasive plants, of heights not interfering with the sea view from any other Erf, related movable landscaping decorations, and the like), which must be maintained by the Member as per the instructions of the HOA from time to time, failure of which may lead to the withdrawal by the HOA of previously granted approvals;
 - Movable garden furniture (no brick and mortar structures may be used);
 - Irrigation (limited to the approved Encroaching area); and
 - Garden lighting (not causing a nuisance or discomfort to neighbours or Fauna, and compliant with the provisions of paragraph 4.3.12 of the General Rules).
- 4.3 The Trustee Committee has furthermore resolved that regarding corrective actions required to rectify existing unapproved encroaching practices, Members will be afforded a respite of 6 months from the date of approval of this Framework to apply for ex post facto approval.
- 4.4 The DRC may, with due regard to the criteria contemplated in paragraph 4.2 above, approve existing unauthorised Encroachment, subject to certain corrective actions.
- 4.5 Corrective actions imposed by the DRC in terms of paragraph 4.4 must be fair and equitably applied to all Members, considering:
- The circumstances of the case, especially the irreversible impact past Encroachment practices might have had on the environment; and
 - The implementation of the actions within the timeframes determined by the DRC.

Resolved at the Trustee Committee Meeting held on the 29th of April 2022

Chairperson

