

# Mutual Heights

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

## News from your Trustees

Edition 23

December 2012

Dear Fellow Owner,

I am sorry that it has been some time since I communicated with you, but we have not been idle. After a period of relative inactivity on the "legal front" (for reasons beyond our control) we now have some movement. At the same time, I can report on the Damp works that we have completed, and provide you the results of the damp survey. First, an important notice:

**Owners and residents are notified that in order to progress our legal claim for damages, arising from the failure of the developer to properly waterproof the building, we must facilitate INSPECTIONS OF ALL UNITS by representatives of the defendants – Old Mutual Properties, Murray and Roberts, and the Rigging Corporation. A timetable for inspections will be developed by our Management Office, in conjunction with the attorneys.**

**It is of the UTMOST importance that you make access available within the periods allocated. If you deny access, or fail to co-operate in providing access, you will be JEOPARDISING our chances of winning our claim. If we lose this claim, we will ALL suffer significant losses and incur significant costs.**

**Your trustees hope that this message is VERY clear – there will be no excuses, no delays, EVERY EFFORT must be made to open the door when your time comes.**

**Owners who do not comply with this request may have to carry the cost of arranging special access at a later time.**

### Damp works

Following the first completely successful work on the Longmarket elevation, which solved problems in one apartment that had become uninhabitable, the waterproofing blew off the tower in the winter storms and exposed the timber structure. We moved quickly and the tower has been completely re-covered with modern waterproofing material, and again seem to have been completely successful. We are lucky to have such an effective contractor (Sky Riders) and we expect to continue to ask them to assist us.

### Survey

Earlier in the year we asked you to report on the present circumstances in your apartments, repeating a survey that was undertaken in 2008. An analysis was presented at the AGM. In case you were not there, there is a PowerPoint presentation available at:

[http://www.mutualheights.net/Documents/Damp\\_Map\\_2012\\_01.pptx](http://www.mutualheights.net/Documents/Damp_Map_2012_01.pptx)

It compares the two years 2008 and 2012, and also provides an analysis of severity by elevation and by level. This indicates that our priority must be to attend to the Longmarket elevation, working down from the work that has already been done on that side. But whether we actually start on this work depends on other things, including the funds available and the legal process.

### Legal report

Trustees have a legal obligation to attend to any problems in the common areas that might, or that do, impact on the privately owned sections. Hence it is critical to continue to monitor the problem and to be VERY clear where the priorities lie. Equally, where there is work to be done on the common property, the law requires that the cost is shared by all owners whether they benefit from the common property or not. You may be assured that raising a special levy to deal with all the problems with the

exterior of the building, at our own cost, is quite out of the question. The cost of the special levy would be prohibitive. This is why we are committing our efforts to the claim for damages.

There are three routes that might deal with the claim:

1. We sue in the High Court. The trial would probably be scheduled for the early part of 2014 (yes, that is 20-fourteen not 2013) and would take about 20 days. Our costs for legal services would amount to about R800,000, for the trial alone. We have no control over the choice of Judge that would preside, and s/he may have no appreciation of the details of construction work.
2. We go to arbitration. We can choose the arbitrator (with the agreement of the defendants) and the process can initiate sooner. The nature and details of the process can, to some extent, be negotiated so as to manage costs and effort involved, but they would be of the same order of magnitude as the trial.
3. We settle directly with the Defendants. This would be a round-table discussion, facilitated by the attorneys, working outside of the legal system and the conventions of arbitration

It has been recommended to trustees, and we have accepted, that at this stage we proceed down the trial route, simply to force discovery of the facts. We do not have to go to trial if it then appears that we do not need to, but it is going to be very helpful to get access to the work schedules, contracts, and meeting notes that inform us as to what actually happened when the conversion to residential occupation was done.

That is the overview, and it leads me to the issue of INSPECTION. You have seen the notice at the start. The defendants have the right to inspect the damage accruing from the ingress of damp, so as to be sure that there really is a problem and to collect any evidence that they might use in their defence. We have had one attempt to provide access with very disappointing results. As you may imagine, some owners are not local, some residents are always going to be away, and some apartments have (we suspect) not actually been opened for years.

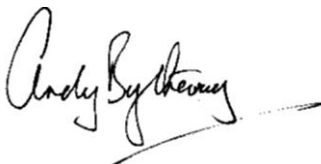
Despite the fact that the problem is on the exterior of the building, and that any damage to the interior of a section is for the owner to deal with, we are advised that we must NOT obstruct the inspection of interiors by representatives of the defendants. On the contrary, we must make every possible effort to provide access to all sections.

## **Fire Alarm system**

The Fire Alarm system is being upgraded with the latest technology, and the work is going very well. We are hoping that the majority of the work will be completed before the end of the year.

Enough for now, I hope you feel adequately informed, do please keep the lines of communication open. We are listening ...

With warm regards,  
on behalf of the Trustees,



(Professor) Andy Bytheway,  
Chairman of the Trustees, Mutual Heights, Cape Town.

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<http://www.mutualheights.net>

Check out "Mutual Building" on Wikipedia

[http://en.wikipedia.org/wiki/Mutual\\_Building](http://en.wikipedia.org/wiki/Mutual_Building)