

Strandmeer Home Owners Association

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Dear Sirs

OPINION

- 1 We have been requested to provide an opinion as to whether the residents of Strandmeer could walk their dogs on common areas in the development and to express a view on the duty of the trustees.
- 2 The development known as "Strandmeer" has been established on the subdivided portions of Portion 33 of Farm Matjesfontein NR, No. 304 and includes private roads and private open spaces. An owners' association has accordingly been established, known as the Strandmeer Homeowners Association, with a constitution as its founding document.
- 3 We attach copies of general plan of subdivision and the constitution of the Strandmeer Homeowners Association referred to in this opinion.
- 4 We will first deal with the provisions of the Regulations issued in terms of the section 27(2) of the Disaster Management Act, 2002 published under GN 318 in Government Gazette 43107 dated 2020/03/18 as amended by GNR398 published in Government Gazette 43148 2020/03/25 and further amended by GNR419 published in Government Gazette 43168 2020/03/26

Regulations

- 5 Regulation 11B governs the restriction of movement of persons and goods and determines that:
 1. (a) *For the period of lockdown-*
 - (i) *every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention;*

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EXECUTIVE CONSULTANTS: AC Alexander RD Barendse VMM Cadman M Chenia HS Coetzee PJ Conradie N Hancock WH Janse van Rensburg J Latsky NW Muller J Neser JM Witts-Hewinson

CONSULTANTS: A Abercrombie JMA Evenhuis[™] Prof A Govindjee JH Jacobs EJ Kingdon FF Kolbe M Kraus Q Moeletsi S Naidoo S Parbhoo C Pepermans J Sweet H Vrey

SENIOR ASSOCIATES: S Adams RS Alho KF Anderson A Bezuidenhout KA Biddulph C Bodenstien JL Botha JJ Brink CF Brockman JC Cameron LY Coffee E Cornelius BP Cripps N Dhana DV Durand C Dutilleux T Erasmus NK Fletcher RA Geswindt AJ Giliam A Govuza B Hayath GT Howard SJ Jamieson TC Jegels SM Kelly N Loopoo AW MacPherson MP Manaka B Mangale V Manko S Mcetywa N Mia V Moodaley W Murray J Naidoo Z Ngakane VT Ngcobo BS Nhlapho AL Pereira J Roberts J Strydom KB Thabanelo YA van Leeve M Werner ER West K Weyers CA Wood

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[#]British [™]Dutch [§]Cape Town Managing Partner

- 6 Regulation 11 A defines:
- 6.1 *'lockdown' as the restriction of movement of persons during the period for which this regulation is in force and effect namely from 23H59 on Thursday, 26 March 2020, until 23H59 on Thursday 16 April 2020, and during which time the movement of persons is restricted; and*
- 6.2 *'movement' as entering or leaving a place of residence or, in the case of people not ordinarily resident in the Republic, their place of temporary residence while in the Republic.*
- 7 Regulation 11(B)4 specifically determines that any place or premises normally open to the public **such as** public parks, beaches and swimming pools are closed. The wording is wide enough to cover rivers.
- 8 People working in essential services are technically the only ones who can move about with fewer restrictions than everyone else, but are required to carry an identity document and a permit.
- 9 Any person failing to comply with the Regulations are guilty of an offence.
- 10 On Wednesday 25 March 2020 Health Minister, Dr Zweli Mkhize confirmed that no jogging or dog-walking will be allowed during the 21-day lockdown. The follows his announcement on Wednesday morning that people would be allowed to jog and walk dogs responsibly. However, during the Justice, Crime Prevention and Security (JCPS) Cluster media briefing held on Wednesday afternoon, Police Minister Bheki Cele said the morning remarks by Mkhize had been reversed following a ministers' meeting on Wednesday afternoon. At the briefing Cele said: *"I hope we are now all clear. Your dogs will be walked around your house, not beyond that."*
- 11 We have perused the general plan of subdivision of and it is clear that the general property such as the private roads and private open spaces cannot be regarded as a person's place of residence or house. The roadway should only be used strictly for purposes of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention. Running or jogging does not fall within any of the permitted activities. If any owner wants to jog or take his or her dog for a walk, he or she has to do so within the boundary of his erf.
- 12 We also refer you to an article published by Sindisiwe Shaba in the Daily Maverick published on 30 March 2020 titled Lockdown: Rules and Regulations: Getting arrested during lockdown is easier than you think. This article confirms that individuals are not allowed to leave their homes except under strictly controlled circumstances, such as to seek medical care, buy food, medicine and other supplies or collect a social grant. Walking a dog and jogging outdoors are prohibited.
- Responsibility of Executive Committee/Trustees**
- 13 We have perused the constitution of the Strandmeer Homeowners Association. The Constitution provides *inter alia* that:
- 13.1 " the Owners Association is a body corporate and that its objectives are to-
- 13.1.1 *through the elected executive committee set and enforce **standards for high density communal life within the Township Area**, in such a way that all members may derive the maximum collective benefit therefrom by concentrating on the promotion of a sympathetic and conjugal atmosphere; and*
- 13.1.2 *control and maintain the common services and land, and in particular the private open spaces, the private road and its reserve area "*.
- 13.2 The powers of the Association, except where they have to be executed by the General Meeting, must be executed by the Executive Committee ("Excom"). Excom may impose rules and regulations on its members.

- 13.3 One must bear in mind that the pandemic is unprecedented and one would rather be cautious than negligent. We propose that Excom issues a circular advising residents that they are only allowed to use the private roads for the sole purpose of obtaining essential goods or services, collecting a social grant, or seeking emergency, life-saving or chronic medical attention. Running or jogging does not fall within any of the permitted activities and should be prohibited. The same applies to visiting the beach or the river. Should any further directives be issued by Government permitting running or walking of dogs, the rules could be reviewed.

Yours faithfully

LUCIA ERASMUS
CLIFFE DEKKER HOFMEYR INC