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# Submission to residents’ meeting on 24 June 2019

# concerning proposed changes to Management Structure

**Introduction**

The proposal set out in the attachment sent to residents on 4 June, is virtually identical to one submitted by Evergreen management to the previous Management Committee (Mancom) in 2018.

Those proposals were referred back to Evergreen’s legal department because, among other things, they sought to either remove or dilute the influence of resident members of Mancom.

**A brief history on the formation of Mancom**

Prior to the formation of the current Mancom, residents and Evergreen management consulted through a forum called the Residents’ Committee (Rescom).

Early in 2014, a group of concerned residents motivated the formalisation of the Management Association as provided for in the Retired Persons Act, which governs the operation of our village.

In terms of the Act, every person to whom a housing interest is alienated (i.e. by way of a Life Right Agreement [LRA]) automatically becomes a member of the Management Association. So, every person who is here today and who has an LRA, is a member of the Management Association.

There were several reasons that the group to which I have referred, felt that the then Rescom should be replaced with a more effective Management structure as envisaged in the legislation.

Consequently, the group convened a Special General meeting of the Management Association (i.e. residents) which was held in April 2014. The first Management Committee (which is a sub-committee of the Management Association) was elected.

Following discussions between the new Mancom and Evergreen management, it was agreed that Mancom’s five sub-committees would cover all the activities related to the running of the village. Consequently, Rescom agreed that it be disbanded and that its role and tasks be incorporated into the sub-committees of the new Management Committee. This was mentioned in my report, as Chairman of Mancom, to the AGM in 2015.

**Delegation of powers by the Management Association**

Clearly, it would be impractical to have a group of 65 residents trying to run a village and the legislation acknowledges this by providing for the appointment of a sub-committee of the Management Association which we call Mancom.

Mancom, subject to the broad directions given by the Management Association, usually at AGMs, is responsible for overseeing all aspects of running the village.

Residents, understandably, are also not interested in getting involved in day to day operational matters and the legislation consequently permits the appointment of a Managing Agent to which such responsibilities can be delegated. The Management Association, at successive AGM’s, has agreed to the continuation of Evergreen Lifestyle Villages as Managing Agent.

**Developments in later LRA’s**

I have, in the past, been asked by certain residents to advise them on aspects of their LRA’s.

In doing so, I came across the following clause in an LRA in 2015:

Clause 8.2 *“The Management Association has ceded all its powers, duties and obligations, as provided for in the Retired Persons Act, to the Managing Agent.”*

I was not aware of this and consequently asked Evergreen Management to provide me with information / evidence of the cession. They are unable to do so because the simple fact is that the Management Association has never ceded (note – not delegated) it’s powers.

I found it worrying that LRA’s continue to include this misstatement.

A more recent LRA from 2017 also proved of interest in that it made no mention of either the Management Association or the Managing Agent (in contrast with earlier LRA’s ).

Instead, a new definition had been inserted defining the term “*operator*” as:  
 *Evergreen management or such other person appointed by the seller from time to time to manage the scheme on behalf of the Seller and Developer.*

Note that there is no mention of the interests of residentsor of the fact that, in terms of the Act, the Managing Agent is appointed by the Management Association and, importantly, on an annual basis*.*

There is a clear pattern in the development of LRA’s over the years, the intention of which appears to be

* the circumvention of the provisions of the Act and its regulations and, thereby
* the removal of the power vested in the Management Association.

**Our collective investment in the village**

We, the current residents, have a significant combined investment in the village, comprising what are essentially, interest free loans, amounting to something well over R200 million at a conservative estimate.

Consequently, we should be able to influence **major** decisions affecting the future of our village.

**The proposal**

The proposal recommends reverting to a structure that was discarded some years ago because it wasn’t effective.

It suggests that there will merely be a name change from Mancom to Rescom. That is not quite true as Mancom will continue to exist but the proposal is silent as to what purpose Mancom will serve.

What is clear, however, is that the representation of residents on Mancom will be a minority one.

There is nothing in the proposal that states why it will result in an improvement nor does it mention how it “will make for a stronger bond and better insight and understanding between Evergreen and the Village”

**Conclusion**

Last year, in an effort to improve the relationship between Evergreen management and Mancom, I personally approached Evergreen and undertook to try and persuade residents to accept a structure not too dissimilar from the one in the proposal submitted by Joan.

There were two provisos to this undertaking:

1. that Evergreen share, confidentially with me, certain legal opinions they had obtained on interpretations of the Act, and,
2. that I was persuaded that the opinions were soundly based.

Evergreen refused to share the opinions with me - this poses the question. “Why not?”

There is an unfortunate history of mistrust between Mancom and Evergreen brought about by factors to which I have already referred as well as Evergreen’s refusal to share their legal opinions with Mancom despite Mancom having shared one with them. That attitude is hardly conducive to developing a mutually beneficial working relationship.

My recommendation is to create whatever management structure enhances the operation of the village to the benefits of the residents on the one hand and Evergreen management on the other.

In doing so, however,

1. it must not entrench the patently untrue statement that the Management Association has ceded its powers to the Managing Agent, and
2. the right of Management Association to appoint the Managing Agent must be preserved unless the Management Association formally choses to cede that right.

**David Walker**

19-6-19