

The Element Newhaven Owners' Association (TENOA)

Extraordinary General Meeting (EGM)

Monday 15th March 2021 8pm (by Zoom)

Chairman: Rodney Matthews

1. The Chairman declared that with 17 attending in person and representing 90 properties, the meeting was quorate and called the meeting to order.

2. Explanation of Process

The Chairman explained that the meeting had been convened to discuss and vote on one issue only, namely the proposal to amend appendix 2 of the 2017 constitution concerning the committee, the amended text of which had been circulated earlier¹, and explained how the meeting would be conducted. He then asked if there were questions about procedure.

Paton Dunlop said he wanted to propose an amendment to the one put forward by the committee. The Chairman explained that, unfortunately, the proposal had been submitted too late to be considered at the meeting. In the circumstances it could not be put before the members (present on zoom in person or by proxy) for their proper attention. There being no other questions the chairman proceeded to explain the background and rationale for the amended text that had been circulated and was before the meeting.

3. Presenting and discussing the Motion (added as an appendix at the end of these minutes)

a) The chairman made the following points with the help of a presentation on screen.

- Prior to the adoption of the 2017 Constitution there were only a total of six elected committee members, and that the committee elected their own chairman and secretary. At the time when the new constitution was being drafted, the committee had received legal advice that the chairman and secretary should be elected by members at the AGM on an annual basis. So, because the total number of elected committee members was not reduced at the time, this resulted in a committee of six elected members plus an elected chairman and secretary, making a total of eight.
- In order to maintain both continuity and allow for regular change in an orderly fashion, it was necessary to make the term of office three years, renewable once, making the potential term of service on the committee a total of six years. A rota was set up at the first meeting of the newly elected committee to set that in motion. However, in practice this had not worked and people had stepped down before they were due to do so, which meant that the principle of maintaining both continuity and change in membership was not sustained.
- In addition, despite repeated requests for volunteers to agree to be nominated for election, it was clear that people were reluctant to take on a commitment for so long.
- Hence, the amended appendix two of the constitution means that the total number of people on the committee reverts to six as it was prior to the 2017 constitution, but now consisting of an elected chair and secretary, and four elected members.
- He went on to explain that in order to make sure the principle of both continuity of membership and regular change of membership, the term of office would necessarily reduce to two years and renewable for another two, making a maximum term of service on the committee four years. He hoped that this would make it easier for TENOA members to volunteer to stand for election.
- He finally explained how the new rota system would be set up after the next AGM which it is hoped, can take place in August in the courtyard garden.

b) The motion to alter the text of the existing appendix 2 of the constitution, as previously circulated and attached at the end of these minutes, was Proposed by Rodney Matthews (TENOA Chairman), and seconded by Ken Webb (TENOA Secretary)

c) The chairman invited members present to comment on or ask any questions about the proposed changes. The following two points were raised.

¹ The text of the amendment is attached to this minute

- Alan Rickmann asked what safeguards will be in place to prevent the owners of Ocean Apartment from dominating the committee.
 - Paton Dunlop explained that the amendment he had proposed was to separate the two changes proposed in the current motion; to keep the number of elected members at six and to reduce the number of years that they would be elected to serve.
- d) The chairman invited Linda Gilroy to sum up for the proposal before answering the above points. She explained that she had recently been coopted onto the committee. She observed that the current number of four means that each member feels unfettered in being able to contribute the discussion and that any more would tend to lengthen the time in committee. Having owned her property since 2013 she said she knew how dysfunctional both the committee and the property managers were when she first started attending TENOA meetings. And, as someone who had attended many meetings on various committees, she remarked on how well organised the meetings of the current TENOA committee that she had attended were. These were focused both on helping the Element to prosper but also on calling the factors to account. She noted that Ocean Apartments, as such, were not represented on the committee. TEF, as Element Factors are present, but only at some of the meetings and only for the discussion on their report and business concerning them so that they could be questioned in person. She commended the change to the constitution being proposed to the meeting.
- e) The Chairman addressed the two matters that had been raised (item 5 above)
- Regarding the proposal to keep the number of elected members at six and to reduce the period of time for which they were elected, he pointed out that the maths for a smooth rolling rota of members simply did not work out under that arrangement. You either have to have six members elected for a three year term or four members elected for a two year term.
 - He noted that the question about Ocean Apartments was important. He pointed out that the contract between TENOA and TEF can be terminated by either party. So if, at any time, it became clear to TENOA that TEF were not fulfilling their job adequately it would be perfectly possible for TENOA to serve notice and terminate their contract. He noted that the several owners of apartments managed by Ocean Apartments have every right to maintain their vested interests in their properties, just as all owners do. So they have every right to exercise their own vote. There is however a very distinct legal separation between Ocean Apartments and TEF. It is not possible for a member of TEF to be a member of the committee. Being aware of the possibility of a conflict of interest, in the operation of the factoring business, TEF make sure they do not prioritise the work needed for properties they manage as Ocean Apartments. But the fact that the owners of Ocean Apartments properties do have vested interest in the good maintenance and management of the Element as a whole has been of benefit to all owners.
- f) A supplementary point was raised by Paton Dunlop with respect to Linda Gilroy's summation. As someone who keeps a regular eye on all the minutes he noted the fact that frequently not just a single representative but four of the TEF team attend, and not just for part of the meeting but for all of the meeting. The chairman intervened and pointed out that that was factually incorrect, and this was not the time to comment on the minutes of the meetings. Evan Simpson, one of the long standing owners who had also served on committee supported Linda Gilroy's observations about how the current committee and TEF are working together very well. He also attested to the fact that TEF are only present for the item when their reports are scrutinised. This was backed up further by David Gardner, another ex-committee member.

4. **Voting on the motion to amend Appendix 2 of the constitution**

The Chairman reminded those present that, according to the constitution, for the motion to be carried 75% of those present or represented by those present in the meeting needed to be in favour of the motion. He also underlined that an abstention was, in effect, a vote against the motion.

- a) Instructions on Voting procedure: The chairman explained that, to simplify the process, a vote would be represented by a raised hand. He would first ask those in favour to raise their hands, then those against and then those abstaining. He explained that the tellers, knowing how many votes each attendee held, including any proxy votes, would count the number of hands held up and be able to add up the total number of votes in each case.

- b) Appointing the tellers: The chairman said that Alastair Byres and Brian Grigor had been nominated and agreed to act as tellers. He asked the meeting to indicate by a show of hands all who were in favour. All indicated they were in favour.
- c) The vote took place as explained.
- d) **Declaration of Result:** the tellers announced that the total number of votes cast, including proxies, was 90 of which 85 were in favour of the motion, 4 were against the motion, and one abstained. Thus the percentage of those eligible to vote in the meeting was 94.44% The chairman declared the motion to have passed.

5. Declaration of Conclusion of Business - announced by Chairman

MOTION: To alter the Constitution adopted and signed on 1st November 2017

To delete the whole text of Appendix 2 'Constitution of the Committee' and to insert in its place the following text (the changes being the words in **bold text**):

Appendix 2 Constitution of the Committee

- The Committee shall be formed of up to **four** Members plus Chairman and Secretary elected at the AGM by ballot on a rota basis here described, the object of the rotation being to preserve continuity of experience whilst ensuring the injection of fresh ability each year.
- Committee members shall be elected to serve for an initial period of **two** years. At the end of the first such **two** year term a retiring Committee member may stand for re-election alongside other nominated candidates for a further period of **two** years. At the end of a second term if re-elected such a Committee member will be ineligible to stand again until the following AGM, a total of **four** years being the maximum continuous service on the Committee. A Committee member is permitted to serve only whilst being a Member.
- Notwithstanding the right of every vote holder to cast a ballot in the election of members of the Committee, with multiple vote holders casting their entitled block votes, in order to avoid any potential conflict of interest perceived or actual no Member shall be eligible to stand for election as a Committee member who is a director or employee of the currently contracted Factor.
- To safeguard the pattern of rotation from being interrupted, where more than one candidate is elected having not previously immediately served one **two** year period the Committee itself shall determine who shall fill each nominally allotted place of two years only or to considered eligible for re-election after an initial **two** years.
- In the event of a vacancy caused by resignation of a Committee member the Committee shall have the power to co-opt a Member to serve until the next AGM in his/her place. In order to maintain the continuity of the rotation system, the co-opted member may then be nominated for election at the AGM alongside other members but if elected will continue to serve only for a period otherwise previously allotted to the Committee member whose place he/she has filled.

*(Note: Where the word in this text is highlighted it represents a change from the word in the original Constitution, as indicated by the explanation for the change. Where six was in the original the proposed number is **four**; three becomes **two**. There is the no other alteration to the original. In the amended text these words will not be in bold, but in but just normal typeface).