



**ATLANTIC BEACH HOME OWNERS
ASSOCIATION NPC**

Our Reference:
Reply to Email:
Your Reference:

RM / HR1031
riaan@themis.co.za
HARRY WHITE

Via email: harry.white@abhwa.co.za

Date:

21 August 2018

Dear Harry

CAPTURE AND RELOCATION OF CARACAL AT ATLANTIC BEACH ESTATE

- 1 We refer to the above matter and to CapeNature's refusal to grant permits for the capture and relocation of the caracal which has been entering the Atlantic Beach Estate and preying on domestic cats within the confines of the Estate.
- 2 After CapeNature's refusal to issue the permits, we briefed Adv. Elsa van Huyssteen, a specialist in administrative law litigation, to consider the facts of the matter and CapeNature's refusal to issue the permits and to furnish us with an opinion on the prospects of applying to the High Court for the review and setting aside of CapeNature's refusal to issue the permits. Adv. Van Huyssteen has furnished a written opinion, dated 16 August 2018, in which she has comprehensively analysed the background facts, the relevant legislative provisions and case law. She has concluded that there are no sustainable grounds for an application to review and set aside CapeNature's refusal to grant the permits.
- 3 We concur with Adv. Van Huyssteen's opinion, namely that CapeNature appears to have considered all relevant factors and available information and has made a decision which cannot be described as capricious or arbitrary, is rationally related to the purpose for which CapeNature has been empowered, namely the conservation and management of the environment and that CapeNature's decision appears to be rationally connected to the relevant facts and information available to it. In view of the opinions held by Adv. Van Huyssteen and I, we would strongly advise against the launching of an application to review and set aside CapeNature's refusal to grant the requisite permits.
- 4 If your company chooses not to follow our advice and proceed with an application to review and set aside CapeNature's refusal to grant the permits, such application must be launched within 180 days after the date on which you were informed of CapeNature's refusal to grant

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the permits and the reasons therefore by virtue of the provisions of section 7(1)(b) of the Promotion of Administrative Justice Act, 3 of 2000. We pause to mention that full reasons have already been furnished by CapeNature for their decision.

- 5 If you were to launch a review application, we anticipate that the application will be opposed and we anticipate that the application will be highly publicised, given the publicity which the caracal issue has already attracted and the attention that the matter has received on social media.
- 6 The issue has drawn strong emotional responses from those who favour the capture and relocation of the caracal and from those opposed thereto. Regardless of the outcome of the review application, there is likely to be substantial adverse publicity for Atlantic Beach Estate if the review application is launched and the level of adverse publicity may well be aggravated if the Estate is unsuccessful in its review application. Furthermore, disgruntled members are likely to question the company's board of directors and management as to why the company elected to proceed with a review application, notwithstanding the advice of its legal representatives not to do so.
- 7 We estimate that the costs of an opposed review application (without any appeals) will run to between R300 000.00 and R500 000.00, depending on the number of parties who oppose the application and absent any unforeseen interlocutory applications.
- 8 Should you require any further information, please do not hesitate to contact us.

Yours sincerely



RIAAN WEINTJES
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