

**POSOL RESIDENTS MANAGEMENT COMPANY LIMITED**

**MINUTES OF EXTRAORDINARY GENERAL MEETING  
TUESDAY 24<sup>th</sup> JUNE 2014**

**Present:** Mr M Abrams (Chairman)  
Mr I H Currie (Director & Company Secretary)  
Mr N Hewitson  
Mr G Saunders  
Mr M Sandall  
Mr M Farndell

**85 Members in person (As per the attendance register)**

**In Attendance:** Miss S Simpson – Branch Manager (Countrywide)  
Mr T Bond – Verisona Law

The meeting opened at 8.00pm with Mr Mark Abrams in the Chair.

Mr Abrams welcomed all those present at the EGM and proceeded to advise the meeting of the reasons why the POSOL Board of Directors felt the need to call an EGM of its members at this time.

At this point in the meeting Mr Abrams handed over to Mr Hewitson and opened the floor to questions.

Mr Hewitson advised the meeting that the purpose of the EGM was to vote on the proposed resolution only and that no other issues or topics would be discussed by the POSOL Board.

Mr Hewitson went on to advise that Mr Thomas Bond of Verisona Solicitors was present in the audience that evening to answer any legal questions relating to the resolution that may arise.

He stated that several postal proxies had been received prior to the meeting. In addition, a few votes had been received by email however email votes did not count and he proceeded to read legal advice obtained from Verisona solicitors stating why proxy votes by email were not an accepted form of voting in accordance with POSOL's Articles of Association and Company Law.

**Mr LATTA (51 Newlyn Way);** asked how many email votes that had been received and subsequently disallowed.

**Mr Hewitson (POSOL);** advised that 3 votes had been received and that the owners who had submitted them had been advised accordingly.

**Mr AUSTIN (48 Bryher Island);** requested confirmation of what a quorum was and what percentage of the vote is required in order to pass the proposed resolution.

**Mr Currie (POSOL);** advised that the resolution was an ordinary resolution and as such in accordance with Company Law, 50% of the votes received were required.

**Mrs TEMPERLEY (40 Newlyn Way);** asked whether POSOL was in a position to reveal the full content of the proposed parking policy to shareholders.

**Mr Hewitson (POSOL);** commented that the parking policy was in final draft. It was currently with solicitors and the Board of Directors would be reviewing it further at the July Board meeting.

**Mr MORRIS (66 Newlyn Way);** asked the POSOL Board to tell the meeting under what remit/covenant they were introducing the parking policy.

**Mr MILLS (23 Carbis Close);** commented that it was impossible for shareholders to vote on the resolution if they did not know exactly what they were voting for.

**Mr Hewitson (POSOL);** reiterated to the meeting that the purpose of the EGM was to vote on the proposed resolution. It was not to discuss any other issue or policy. The vote would be on the proposed resolution which was "To authorise the directors to withdraw up to £100, 000 from the total sinking fund reserve and use it for the sole purpose of pursuing litigation against the shareholders who breach and/or fail to remedy breaches of covenants and regulations".

**Mr MILLS (23 Carbis Close);** commented that some of the breaches of covenants were probably relatively minor and therefore he did not want POSOL to defend them. He added that details of the offending shareholders and breaches in the 2 cases referred to in the Chairman's letter should be made known to all POSOL shareholders so that they could decide on how to vote.

**Mr Hewitson (POSOL);** advised the meeting that the wording of the letter had evidently caused some confusion as there were no two specific cases that POSOL was taking to Court and therefore there was no information to release. He added that there were several breaches around the estate but POSOL had not taken any Court action nor was it intending to do so at this current moment in time. POSOL had already discussed the enforcement of covenants with its legal advisors who had stated that should they decide that at any point that any breach was serious enough to warrant legal action then the costs could be in the region of £40,000 - £60,000. Mr Hewitson reminded the meeting that the Board had convened the EGM to hear the opinions of the shareholders and that any decision to take any legal action would predominantly be decided by the outcome of the vote that evening.

**Mr SEPHTON (10 Mullion Close);** pressed POSOL for further details about the inaccuracies in the letter. He requested an indication on the total amount spent on legal costs over the last five years.

**Mr Hewitson (POSOL);** commented that he was unable to answer that question as he did not have the financial information to hand, however the legal costs had been recently increased in the 2014-2015 budget because of POSOL seeking to introduce new policy and enforce the estate covenants. He stated that to his knowledge the last legal action by POSOL against a shareholder was about 5 years ago and was in relation to a motor home being parked on the estate. The matter had proceeded to Court but had been settled out of Court, but naturally both sides had incurred costs. He added that several years ago a group of Bryher Island shareholders, led by Mike Slack had joined together and applied to join the Board as they were concerned by the amount of money being spent on legal advice and cases. Nick Hewitson had been part of that group. Now as a serving Director he could see that the POSOL Board did everything possible to negotiate and avoid legal action however it was clear that there were a growing number of shareholders who considered themselves not to be bound by any legal covenant, policy or otherwise.

**Mr SEPHTON (10 Mullion Close);** asked POSOL to confirm the outcome of the legal action it had previously taken.

**Mr Hewitson (POSOL);** advised that unfortunately POSOL had lost the cases.

**Mr ENGLAND (28 Tintagel Way);** referred to the inaccuracies in the letter focusing on the alleged POSOL Board's reference to spend upwards of £100,000 and therefore in his opinion all postal proxy votes should be deemed as invalid.

**Mr Hewitson (POSOL);** commented that the letter, the proxy and the resolution clearly stated that the POSOL Board wanted authorisation to spend "up to £100,000". Mr England refused to accept this whereupon Mr Hewitson read the letter and resolution to the floor for clarification.

**Mr PALMER (20 Newlyn Way);** advised that he had some general concerns over the actual purpose of the covenants and use of the sinking fund and put forward the following questions for the POSOL Board's response;

1. What is the purpose of the covenants in 2014? The covenants were drafted by Swan Hill solicitors in the mid 1980's primarily to give the developer comfort that the estate would remain as built until the last property was sold. There had been many changes and adaptations to houses on the estate since it was completed. Given the time that had elapsed, how do the shareholders and Board see the purpose of the covenants in 2014?
2. How rigorously do the POSOL shareholders wish the Board to pursue breaches of Covenant? Who will decide which ones to enforce and on what basis/criteria? Would it be a matter of personal taste or could objective tests be applied?
3. How much should the shareholders authorise the Board to spend on pursuing breaches of covenant and how will the decision be taken? If the covenants are to be enforced then what was the protocol involved in their enforcement? Are shareholders prepared to see their money potentially wasted on making a point if POSOL were to loose?
4. How will the potential expenditure of £100,000 be financed? The sinking fund is designated for the maintenance and replacement of POSOL's capital assets i.e. the marina pontoons and piles. The question therefore being should it be now used for legal advice?

Mr Palmer added that he accepted that the POSOL Board had to accept the legal advice it had received but he personally was not in agreement with it.

**Mr Hewitson (POSOL);** thanked Mr Palmer for his input and proceeded to respond to each of the questions that had been raised.

1. POSOL believes that the purpose of the covenants in 2014 is the same as it was in 1988 and every year since; to protect shareholders who have bought into Port Solent.
2. POSOL considers legal action as a last resort where all other methods of communication, mediation etc have failed. POSOL would only resort to legal action to resolve a breach of covenant if it felt that the breach was significant enough to have a detrimental effect to the marina estate itself, the residents of Port Solent or it received complaints from shareholders. It is unable to define any issues on which it may or may not take action moving forward as these are currently unknown.
3. Mr Hewitson referred back to the EGM Resolution, which was all POSOL wanted the shareholders to consider and vote upon.
4. Mr Currie (POSOL) advised that there were 2 ways in which the monies to take legal action could be obtained. The first was to essentially borrow funds currently available in the reserve fund, and it was possible by resolution to change the title of the "sinking fund" to "sinking and Legal fund". The idea of using reserve fund monies if required was that funds were readily available. If the reserves were not used then the POSOL Board would be obliged to increase the 2015-2016 service charge legal fund provision to £100,000 and recover the monies in the annual service charge payments.

Mr Palmer asked whether it was prudent to change the use of the fund for such a significant amount of money. Mr Hewitson reiterated that this was the very reason that the EGM had been called so that POSOL could hear the views of its shareholders and take a vote on the resolution put forward.

**Mr LATTA (8 Carbis Close);** commented that he believed that disputes and covenant breaches should be resolved between neighbours without the need to involve POSOL. He stated that he believed that many of the issues relating to breaches over unapproved alterations were already covered by Portsmouth City Council Planning Regulations anyway and that there was no need for POSOL to take legal action to resolve them.

There was an overwhelming disagreement to his comment from the floor.

**Mr Hewitson (POSOL);** reiterated that legal action would only be used as a last resort. He stated that POSOL actively encouraged discussion between neighbours but that in a lot of cases neighbours preferred to hide behind POSOL as they were concerned by the impact a neighbour disagreement could have on their lives and preferred not to be directly involved.

**Mr WOOD (46 Bryher Island);** stated he believed that it was time that POSOL tackled the issues where shareholders were in breach as there was unfortunately a growing number of people around the estate who had no consideration for their neighbours, POSOL and the covenants. He added that POSOL had his full support behind the principle of taking a decisive step to resolve breaches through legal action where required, but commented that he felt the meeting to pass the resolution had been called in a too much of a hurry. He added that he felt POSOL should have taken the time to compile a dossier of facts and costs so that shareholders could have given the matter proper consideration prior to voting on the resolution. He made reference to the meeting being called in a rush due to a number of "shenanigans ongoing behind the scenes".

**Mrs STIMSON (24 Carbis Close);** insisted that the POSOL Board outline the terms and conditions of the parking policy.

**Mr LATTA (8 Carbis Close);** asked whether POSOL intended to spend all £100,000 on enforcing the parking policy.

**Mr Hewitson (POSOL);** advised that the purpose of the meeting was to discuss and vote on the resolution only and that details of the parking policy would be circulated to all POSOL shareholders and residents very shortly. He added that the content of the policy would not be discussed that evening during the EGM. He added that when the parking policy comes into operation, POSOL may come across incidences where it needs to move quickly and enforce elements of it if vehicle owners are not complying and complaints are received. As such this was one of the reasons why the EGM had been called so that POSOL could gauge shareholders' opinion.

**Mr WOOD (46 Bryher Island);** commented that he felt the shareholders had all had insufficient time to digest the matter and that in general the POSOL Board of Directors was very much out of touch with the needs/wants of the shareholders.

**Mr WEST (32 Bryher Island);** advised that having listened to the Board's proposal and the various arguments put forward by other shareholders he believed there were 3 main issues in contention;

1. Firstly he would like to remind everyone present that the Board of Directors were all volunteers who give up a considerable amount of their own personal free time and put in considerable effort to try to maintain Port Solent to its very best for the benefit of all 423 shareholders.
2. That all 423 shareholders should be reminded that on purchasing their property at Port Solent they legally undertook to abide by the covenants whether they agreed with them or not. Those covenants were amended and extended as the estate developed because of the various problems that arose from the time the original covenants were drafted. The covenants in the latter part of the estate were not drafted to be restrictive, they were drafted to protect the owners buying into Port Solent.
3. That there is a general divide between theory and practise. It is clear that the covenants do their best to protect the interests of POSOL shareholders but they do not cover all eventualities. The POSOL Board is doing everything possible to try to stop the further erosion of covenants and it is recommended that the meeting gives full support to the POSOL Board to do this for the benefit of all.

**Mr Hewitson (POSOL);** advised that POSOL was not in a position to make reference to specific cases for shareholders to vote upon as POSOL had not decided to take any shareholder to Court. He stated that POSOL would not start any legal process if it was aware that it was definitely likely to lose. POSOL would always seek legal advice prior to taking any action. He reiterated that the Directors were not prepared to take personal financial liability for any action hence why POSOL was

seeking to take the views of its shareholders. The vote that evening would decide the future position of the POSOL Board in relation to the enforcement of Covenants etc.

**Mr MOULSDALE (28 Coverack Way);** commented that £100,000 was a considerable sum and that the shareholders should be involved in the decision making.

**Mrs REEDER (26 Carbis Close);** asked what would happen if a third case cropped up and POSOL had already spent £100,000 on two previous cases.

**Mr Hewitson (POSOL);** commented that POSOL would not necessarily take on a third case. Theoretically, if POSOL had won the two previous cases it would be in a much stronger position to enforce the covenants and precedent would have already been set giving POSOL a stronger negotiating position. If POSOL had lost the two cases it would not contemplate taking on a third.

**Mrs SHORROCK (9 Carbis Close);** reiterated that should POSOL win legal cases then the outcome in general strengthened its overall position when dealing with such matters.

**Mr WALSH (20 Coverack Way);** commented that he wanted more information and specific details prior to voting as spending £100,000 on legal cases was too big a risk.

**Mr Hewitson (POSOL);** stated that the figure of £100,000 was based on advice given by Verisona Solicitors and a Barrister whom POSOL had already consulted and was likely to cover legal fees, court fees and damages awarded. Mr Hewitson advised that the POSOL was purely seeking the opinion of shareholders and that should any shareholder feel they were unable to support the resolution then they should vote NO.

**Mr THEOBALD (81 Bryher Island);** stated that he felt the whole matter was being rushed and any such decision should have been put to the AGM later in the year.

**Mr Hewitson (POSOL);** once again explained why it was necessary to obtain a decision prior to taking any legal action. Should POSOL need to take any action they would need to act quickly and would not be able to wait several months to consult with shareholders before doing so. POSOL would need to be seen to be acting reasonably and that meant in a timely manner.

**Mrs STIMSON (24 Carbis Close);** vehemently claimed that POSOL had already spent £700 on legal advice and had obtained an injunction against one property on the estate.

**Mr Currie (POSOL);** advised Mrs Stimson she was incorrect and that POSOL had not obtained an injunction against any POSOL shareholder.

**Mr SILLENCE (36 Newlyn Way);** referred to the compilation of the Covenants Working Group and how residents, who were not members of the POSOL Board, were also involved in the decision making process. He commented that the remit of the Covenants Working Group was to encourage development across the estate but ensure it was in keeping with the marina environment and that the overall appearance and aesthetics of the estate were preserved. He stated that Portsmouth City Council had no remit over POSOL's covenants and the two were entirely independent of each other. An alteration gaining PCC approval would not automatically gain POSOL consent and, on the estate, the POSOL covenants took precedence.

**Mr BOND (VERISONA SOLICITORS);** advised the floor that the matter at hand and being discussed that evening related to enforcement. He added that while discussion and negotiation were required, they were often futile in resolving breaches of covenants and POSOL needed to know whether it had the power to act and do something to remedy a breach as soon as it arose. Lengthy delays in further consultations would only serve to weaken any case POSOL had in dealing with the breach.

**Mr WHITE (38 Bryher Island);** advised that he had served as a POSOL Director until very recently. He recognised the time and effort put in by each serving Director in a bid to protect the

estate for its shareholders. He asked the meeting not to criticise the efforts of the Board but support it by taking those who knowingly and intentionally breached the covenants to Court if necessary. The matter only involved a simple YES or NO vote and the outcome was purely dependent on the shareholders themselves.

**Mr FOSTER (28 Carne Place);** asked what would happen if POSOL took someone to Court and won. What would be the effect on POSOL?

**Mr Hewitson (POSOL);** advised that if POSOL lost a case then it would potentially render the estate covenants unenforceable and its shareholders would be free to do whatever they like, whenever and wherever. However, if POSOL were to win that the covenant would be enforceable and fewer shareholders and residents would attempt to push the boundaries. It was inevitable that at some point the covenants would need to be tested in a Court of Law and that the court ruling would essentially decide the future of POSOL and the estate.

**Mr LATTA (8 Carbis Close);** supported the argument that the POSOL Board worked exceptionally hard for the residents and as such he proposed an alteration to the EGM resolution whereby the Board was allowed to spend up to the £24,000 legal fees budget but any additional spend would be agreed on a case by case basis.

**Mrs SHORROCK (9 Carbis Close);** commented that the question was not a monetary one but about the fundamental principle of wanting the covenants to remain in place to protect shareholders or not.

There was overwhelming agreement from the meeting.

**Mr JACQUES (79 Bryher Island);** asked the meeting whether it supported POSOL and if so could shareholders move to the vote.

**Mr RUNDLE (1 Kelsey Head);** advised that he had been an estate resident since the early 1990s, and that the covenants were a continual issue. He commented that the covenants are subjective due to the way that they were originally written by the developer and POSOL has had to enforce them as best it can. However, it is very difficult to put a policy in place to cover something so subjective and the shareholders need to have faith in the Directors they have elected to represent them and use common sense in their decision making in which covenants to enforce.

**Mr WYNN (11 Tintagel Way);** stated that he believed all sorts of covenants had already been breached and no action had been taken. He cited satellite dishes, over length boars and campervans as examples.

**Mrs WALL (3 Bryher Island);** asked who would be the decision makers in taking shareholders to court, and whether POSOL would take someone to Court who already had permission from Portsmouth City Council for works they had done to their property.

**Mr Hewitson (POSOL);** reiterated that PCC's permissions were entirely separate to POSOL's requirements and covenants, and that POSOL, as decision makers, may decide to take a shareholder to Court but it would only be as a very last resort as he had already previously stated during the meeting.

**Mr WHITE (38 Bryher Island);** commented that he noted that there was such opposition and mistrust of the POSOL Board spending up to £100,000 on a potential legal issue that may or may not arise. However, it was surprising there was no issue whatsoever to the Board actually being trusted with a £500,000 service charge budget to spend each financial year.

**Mr ENGLAND (28 Tintagel Way);** advised the meeting that he believed an alternative proposal to the one put forward by POSOL was required. His suggestion was to issue financial penalties to those shareholders in breach.

**Mr Hewitson (POSOL);** thanked the shareholders for their comments and contributions to the meeting and proposed that the resolution be put to the vote.

**At the Extraordinary General Meeting of POSOL Residents Management Company Limited held on Tuesday 24th June 2014, the Resolution to authorize the Directors to withdraw up to £100,000 from the total Sinking Fund Reserves and use for the sole purpose of pursuing litigation against Shareholders who breach and/or fail to remedy breaches of covenants and regulations was passed.**

**The vote was carried with 135 votes FOR and 82 AGAINST. The Chairman voted 4 discretionary proxy votes FOR the motion.**

The meeting closed at 9.30pm.