

# MIDBRAK CONSERVANCY CONSTITUTION

## A voluntary association

### Introduction

The Midbrak Conservancy is a voluntary association of people whose desire as the Organisation is:

- Conservation of the remaining indigenous flora and fauna in the region identified in Annexure “A” hereto, including fynbos, thicket, marine, dune and estuary biomes;
- Restoration of areas that are affected by alien and/or invasive vegetation and fauna species, or by human activity;
- Awareness creating through lectures, education initiatives, signposting and electronic media;
- Benefit orientated use, by allowing reasonable use of the Midbrak Conservancy areas by occupants and visitors to the area, whilst ensuring that there is not a significant impact on the environment.

Definitions relevant to this Constitution are contained in Annexure “B” hereto, alternatively in the remainder of the Constitution.

## 1 Name & Legal Status

1.1 The name of the conservancy is the Midbrak Conservancy, hereafter referred to as the “Organisation”. The Organisation shall have no shortened name.

1.2 The defined area of the Organisation (hereafter called “Area”) is set out in Annexure “A” of this Constitution.

1.3 The Organisation shall:

- 1.3.1 exist in its own right, separately from its constitutive Members and Office Bearers;
- 1.3.2 constitute a body corporate that has an independent legal personality, and as such constitute an incorporated body with limited liability;
- 1.3.3 continue to exist irrespective of any change in Members and/or Office Bearers from time to time: thus having perpetual succession;

- 1.3.4 be able to hold property apart from its Members, whether that be by ownership, possession or other property related right and irrespective of the nature of the property;
  - 1.3.5 be capable of suing and being sued in its own name;
  - 1.3.6 be capable of acquiring legal rights (including assets) and becoming subject to legal obligations (including liabilities) in the same manner as an individual natural person with full legal capacity, such rights and obligations being held separately from its members;
  - 1.3.7 Constitute a voluntary association of natural and/or juristic persons: an *universitas*; and
  - 1.3.8 Have the lawful objectives set out in this constitution.
- 1.4 The Organisation shall not have the object of carrying on a business for the acquisition of gain: provided that this shall not prevent the Organisation from realising a profit: provided further that the Organisation shall never distribute such profit, any income or property to its Members or Office Bearers either during its existence or upon its dissolution or winding-up.

## **2 Objectives**

The objectives of the Organisation, a non-profit organisation, are to fulfil a communal, social and environment role by doing the following:

- 2.1 promoting the preservation of the fauna and flora and to bring about a clean and healthy environment in accordance with section 24 of the Bill of Rights contained in Chapter 2 of the RSA Constitution;
- 2.2 co-operating with other bodies, organisations and government spheres in the control, management, rehabilitation, studying and monitoring of the Area;
- 2.3 gathering and collation of information, initiating and prompting training and specific conservational actions;
- 2.4 introducing and conveying to the residents of and visitors to the Area, what the value and benefit of the diverse natural assets contained in the Area are, and what the value and benefit of the nature and environmental conservation is;
- 2.5 protecting and promoting the interests and rights of residents and the land owners of the Area, by planning, obtaining and making inputs regarding the development and conservation of the natural and environmental assets within the Area, and to take appropriate steps for effective law enforcement pertaining thereto;

- 2.6 setting up, facilitating, assisting and promoting the integration of priorities and projects for conservation and training opportunities, skills empowerment and development, socio-economic development and eco-tourism; and to get involved as contractor, representative or service provider in the furtherance of the objectives in this clause 2.6;
- 2.7 receiving, and collecting means, and funds in furtherance of the objectives of the Organisation;
- 2.8 carrying on public benefit activities on a non-profit basis in furtherance of the objectives in this clause 2 and the Introduction to this Constitution;
- 2.9 promoting the key aims identified in the Introduction to this Constitution: conservation, rehabilitation, awareness and benefit conveyance of natural flora and fauna for residents, occupiers and visitors;
- 2.10 acting as a working arm of the community, through operational activities either by members providing services or through the obtaining of contractors to perform environmental actions pertaining to the Area;
- 2.11 undertaking ancillary and related activities to achieve the aims and objectives set out in this Constitution.

### **3 Membership**

- 3.1 Membership of the Organisation is open to:
  - 3.1.1 any owner of immovable property situated within the Area;
  - 3.1.2 any occupier of immovable property within the Area; or
  - 3.1.3 to any other interested party who is not an owner or occupier of immovable property within the Area, provided they subscribe to the objectives of the Organisation; and
  - 3.1.4 provided that in all instances that that Member does not have a conflict of interest with the objectives and aims of the Organisation as set out in this Constitution; and
  - 3.1.5 provided further that the Member is a natural person, has been approved by the Management Committee and has provided a valid e-mail address in their application.
- 3.2 A prospective member may apply to become a Member of the Organisation subject at all times to the following conditions:

- 3.2.1 the Management Committee approves the application for membership of such a prospective member;
  - 3.2.2 the prospective member accepts that they are at all times bound to the terms and conditions of the Constitution of the Organisation as amended from time to time; and
  - 3.2.3 the prospective member accepts that their membership may be terminated should they infringe any aspect of the Organisation's Constitution or in any way harm the reputation of the Organisation, such termination being in the sole and absolute discretion of the Committee.
- 3.3 Membership of the Organisation will cease:
- 3.3.1 by written resignation of the Member submitted to the Secretary; or
  - 3.3.2 by virtue of a decision of the Management Committee, should a Member act in contravention of (per 3.2.2) or no longer subscribe to, the objectives of the Organisation, such decision being in the sole and absolute discretion of the Management Committee.

## **4 Management of the Organisation**

### **Management Committee & Executive Committee: make-up and election**

- 4.1 The Organisation is governed by a Management Committee, consisting of the following Office Bearers:
  - 4.1.1 Chairperson;
  - 4.1.2 Vice Chairperson;
  - 4.1.3 Secretary;
  - 4.1.4 Treasurer; and
  - 4.1.5 a Committee not exceeding 6 (Six) additional members.
- 4.2 To be eligible for election to the Management Committee, the following requirements must be met:
  - 4.2.1 the person must be a Member of the Organisation;

- 4.2.2 the person must be 18 (Eighteen) years or older; and
- 4.2.3 the person must not have a conflict of interest with the objectives, aims and other terms and conditions of the Constitution.
- 4.3 The Management Committee is elected by an ordinary majority vote (50% plus 1 vote) at the first meeting of the Organisation and annually thereafter at the AGM on the same basis. Members of Management Committee serve 1 (One) year from election and are eligible for re-election.
- 4.4 Until such time as the Management Committee determines otherwise, the Executive Committee shall be the persons elected to the Office Bearer positions in 4.1.1 up to and including 4.1.4: provided that the Chairperson must always be part of the Executive Committee.
- 4.5 Vacancies on the Management Committee are filled by co-option: the Management Committee may replace (but is not obliged) an Office Bearer who has resigned or been removed with a new Office Bearer. The Management Committee may, when necessary, co-opt additional members to the Management Committee (provided they are or become a Member) for a specific purpose or a specific period and such co-opted members have full sitting and voting rights at meetings during the period of co-option: provided that the number of positions allowable per 4.1 are not exceeded and the Management Committee's decision to appoint such additional member is unanimous.
- 4.6 Membership of Management Committee ceases in the following circumstances:
- 4.6.1 should a member fail to attend 2 (Two) or more consecutive Management Committee meetings without acceptable apology/reason;
- 4.6.2 or by a unanimous Management Committee decision should such a member act in contravention of the Constitution; or
- 4.6.3 an Office Bearer may resign from office in writing. The Office Bearer shall simultaneously with resignation deliver all documents and information that pertains or belongs to the Organisation to one of the Offices Bearers listed in 4.1.1 up to and including 4.1.4.
- 4.7 The Chairperson or in their absence, the Vice-chairperson, shall preside over all AGM or SGM meetings of the Organisation and at Committee Meetings. In the absence of both these Office Bearers at either of these types of meetings, the Committee may elect a chairperson for the meeting concerned.

## **Management Committee Meetings & Quorums**

- 4.8 The Management Committee is tasked with implementing the Constitution and the mandate of the AGM or SGM. The Management Committee is the forum where decisions about the implementation of the objectives, aims and mandates of the Organisation are made.
- 4.9 Subject to instructions and delegations as may be determined by the Management Committee, the function of the Executive Committee is to manage the daily administration and to act on behalf of the Management Committee in matters of urgency.
- 4.10 The Management Committee shall meet not less than 4 (Four) times per year, every third month commencing on the 15<sup>th</sup> February, followed by the 15<sup>th</sup> May, then the 15<sup>th</sup> August, and finally the 15<sup>th</sup> November. The Chairperson shall have the discretion to alter these dates up to 2 (Two) weeks before or after the aforementioned four dates. If any of these dates fall on a public holiday, Saturday or Sunday, the meeting will move to the next business day.
- 4.11 The Chairperson shall call Committee meetings by written notice (including the possibility of using e-mail notices) to the chosen domicile addresses of the Office Bearers, which notice shall be no less than 10 (Ten) days prior to any of the anticipated or amended dates specified in 4.10, or such other meeting as may be required. Such notice must stipulate the date, time and place of the anticipated meeting, and may indicate what the agenda of such meeting will be if it is not one of the four main meetings provided for 4.10 – if it is, then an agenda must be provided.
- 4.12 A quorum is a prerequisite for a legally effective Management Committee meeting to be constituted and for legally effective decisions to be made. A quorum for a Management Committee meeting shall be constituted if – at the date, time and place stipulated in the written notice referred to in 4.11 – 50% (Fifty percent) plus 1 (One) of the Office Bearers is present at the Management Committee meeting.
- 4.13 Should a quorum fail to be constituted at such Management Committee meeting, the meeting shall be re-convened 7 (Seven) days later at the same time and place: provided that written notice has again been sent to all the Office Bearers on the Management Committee. The Office Bearers that then attend the meeting shall then constitute a quorum provided at least 2 (Two) members of the Management Committee are present.
- 4.14 Management Committee meetings may be conducted partly or entirely by effective electronic communication and participation may also be allowed via effective electronic communication: by ‘effective’ is meant that all Office Bearers (and participants, if any) can effectively

participate in deliberations and decisions and view documents, presentations and similar items as if they were present in the room where the meeting is being conducted.

4.15 All other meetings that fall outside the quarterly meetings specified in 4.10, shall be special meetings. Special meetings may be called by the Chairperson or 2 (Two) Office Bearers acting in concert. The requirements for calling a special meeting are as follows:

4.15.1 the convener/s of the special meeting must notify the remaining Office Bearers per 4.11 including the agenda for such meeting;

4.15.2 in the event the special meeting is one of urgency, the meeting may be called on 3 (Three) business days' notice provided the Chairperson's prior approval is obtained and the remainder of 4.11 is complied with; and

4.15.3 in the event the one of the matters that needs to be tabled at a committee meeting is that of the appointment of a new office bearer, 20 (Twenty) days' notice of the meeting must be given, irrespective of whether it constitutes a quarterly meeting or a special meeting. If one of the matters pertains to the removal of an existing Office Bearer, 20 (Twenty) days' notice of the meeting must be given, irrespective of whether it constitutes a quarterly meeting or a special meeting.

#### **Voting at Management Committee meetings**

4.16 Voting shall take place by show of hands, and each executive Office Bearer shall have 1 (One) vote.

4.17 Office Bearers may have their viewpoints heard and deliberated upon. The meeting may have invited observers who may contribute to the deliberations, but may not vote.

4.18 Decisions shall be made by voting passed by an ordinary majority of Office Bearers, save and except those decisions that may be identified in this Constitution as requiring a higher voting threshold for a decision to be made.

4.19 In the event of a deadlock due to an equal number of votes for and against a decision, the Chairperson will have a second and deciding vote in order to break the deadlock.

4.20 Voting shall not be confidential.

4.21 Minutes will be taken at every meeting of the Management Committee to record the Management Committee's decisions. The minutes of each meeting will be sent to all Office Bearers at least 2 (Two) weeks before the next meeting in order for them to consider the minutes. The minutes will be confirmed – or amended and then confirmed – at the next meeting of the Management Committee as a true record of the previous meetings proceedings, and shall thereafter be signed by the Chairperson and Secretary as a true record thereof.

- 4.22 All Members of the Organisation must abide by the decisions of the Management Committee, provided they are not contrary to the Constitution or the mandate of an AGM or SGM.

### **Round-robin resolutions**

- 4.23 The Management Committee may also make effective decisions by means of a round-robin resolution. The procedure for a round-robin resolution obviates the necessity of the Office Bearers actually getting together at a duly convened meeting in order to make a decision. The procedure for a round-robin resolution is as follows:
- 4.23.1 the Office Bearer concerned passes the motion for a proposed resolution (with content) on to the Chairperson;
  - 4.23.2 the Chairperson formulates the resolution and verifies with the Office Bearer whether they are satisfied with the formulation of the proposed resolution;
  - 4.23.3 if the Office Bearer concerned is satisfied, the Secretary will then circulate the resolution in writing to the chosen addresses of each Office Bearer and give each Office Bearer 7 (Seven) days from circulation to sign the resolution;
  - 4.23.4 the Secretary shall ensure that they get a written acknowledgement of receipt (a delivery receipt is sufficient for e-mail) of the proposed resolution as each Office Bearer must at least have received the resolution in order to consider it properly – they need not however vote or react to the resolution as non-signature by the lapse of the reaction period is deemed to be dissention;
  - 4.23.5 round-robin resolutions may be faxed or e-mailed to all the executive Office Bearers at their respective chosen addresses, and returned signed by scanned e-mail to the sender's e-mail address;
  - 4.23.6 round-robin resolutions may be signed in counter-parts;
  - 4.23.7 round-robin resolutions may be taken (and have the same legal effect) as an ordinary majority (or other requisite majority) attained at a duly convened Management Committee meeting.

## **5 Authority and Duties of the Management Committee**

- 5.1 The Management Committee shall carry out the powers on behalf of the Organisation, but shall always do so in accordance with:
- 5.1.1 the resolutions of the Members decided at the AGM or SGM;
  - 5.1.2 the laws of the Republic of South Africa;



5.1.3 the objectives of the Organisation set out in this Constitution; and

5.1.4 the provisions of the Constitution of the Organisation.

5.2 The Management Committee must/ may and has the general authority to:

5.2.1 must promote the objectives and to handle the management of the Organisation;

5.2.2 must acquire and dispose of assets and property to the benefit of the Organisation;

5.2.3 may appoint an Executive Committee, consisting of the Chairman and 3 (Three) members from the Management Committee, and until such time, the provisions of 4.4 shall apply;

5.2.4 must report fully at the annual general meeting on the activities and proposed planning and submit a certified annual financial statement;

5.2.5 must convene prescribed AGM and SGM meetings and give effect to the resolutions of the AGM or SGM meetings;

5.2.6 must determine policy and other measures for the application thereof in:

- liaison with the media, press releases and general advertising;
- negotiating and collaborating with donors and other bodies, organisation or government spheres;
- appointment of nature and environmental officials/ rangers and consistent effective law enforcement.

5.2.7 must apply financial control and in particular the following duties:

5.2.7.1 accept full responsibility for the sound financial management of the Organisation, maintaining of accounting records of all liabilities, loans, membership contributions, assets acquired, received, held or alienated;

5.2.7.2 maintain comprehensive and accurate records of all funds received or expended, all financial transactions and to appoint an accounting officer as contemplated in sections 60 of Act 69 of 1994 and to determine the remuneration by agreement;

5.2.7.3 ratify the financial statement (balance sheet & income statement) and arrange signature by Chairman and Treasurer;

- 5.2.7.4 open bank accounts with a reputable financial institution and make investments. Arrange signing authorities for the Treasurer, 2 (Two) Management Committee members and the Chairperson, All cheques will be signed by either the Treasurer or Chairperson and countersigned by one of two other authorised Management Committee members;
- 5.2.7.5 incur no expenditure which exceeds an authorised budget of available funds. Funds may only be utilised to meet administrative expenditure or in achieving the objectives of the Organisation;
- 5.2.7.6 employ, pay and discharge staff, advisers, agents and contractors in accordance with decided initiatives and approved budgets;
- 5.2.8 over and above the co-opting of Management Committee members in terms of 4.5 the Management Committee may appoint a sub-committee/s from the body of Members to manage specific projects to achieve certain objectives. The Committee shall have the power to delegate particular duties to such sub-committees. Members of a sub-committee need not be Office Bearers of the Management Committee. Decisions made by sub-committees are required to be ratified by the Management Committee, before they are acted upon, and all expenditure by the sub-committee requires Management Committee approval before being incurred: therefore ratification should be sought by the sub-committee of their decisions and anticipated expenditure as soon as possible by passing such decisions on to the Management Committee for consideration forthwith. At least 1 (One) – but not more than 2 (Two) – Office Bearers of the committee must serve on the sub-committee, and at least 2 (Two) additional Members that do not serve on the Management Committee, must form part of a sub-committee before a sub-committee will be allowed to be constituted. Formation of a sub-committee and the delegation of specific powers to it must be recorded as a decision in the minutes of the Management Committee;
- 5.2.9 may liaise with and co-operate with any such other bodies, (e.g forums, trusts, institutions and different spheres of government), necessary to fulfil its functions. Where this requires that the Organisation be represented on such body or bodies, the Management Committee shall nominate a representative or representatives from its ranks. The representative(s) shall report back to Management meetings on his/her/their participation in other body or bodies;
- 5.2.10 may take steps and perform all actions necessary to establish, register and operate an autonomous trust to facilitate and assist in raising funds in order to be able to execute certain allocated projects on behalf of the Organisation;

- 5.2.11 purchase, rent, exchange, alienate or encumber any property required to achieve the objectives of the Organisation: subject to 5.4;
- 5.2.12 collect, receive, generate, invest and expend funds and may obtain loans, possible grants, donations, bequests, sponsorships, contributions or other income, capital and assets;
- 5.2.13 the Management Committee shall have the power to make regulations (but not obliged) for the proper management of the Organisation, including – without limiting the generality hereof – procedures for application, approval and termination of membership with the Organisation: provided always that such by-laws are not contrary to the Organisation’s Constitution, the resolutions of the Members taken at the AGM or SGM and the laws of the Republic of South Africa; and
- 5.2.14 may otherwise do all possible to achieve the objectives and aims of the Organisation and to ensure good management.
- 5.3 The specific and/or core duties, functions and powers of each Office Bearer shall be determined by the members at the AGM, complemented by the definitions in this Constitution. Until such time as these core duties, functions and powers of each Office Bearer are determined by an AGM, the definition clause for the specific Office Bearer shall apply, and the remainder shall be determined by the Management Committee.
- 5.4 Notwithstanding anything herein contained, where the Committee intends to encumber, exchange or alienate any asset/s which constitute the majority in current value of the combined current value of all the assets of the Organisation, the Committee shall refer such matter to the Members at a duly convened SGM or AGM for consideration and a decision, which decision can only be effected by a 75% (Seventy Five percent) majority vote in favour of the alienation or encumbrance. Commensurate fair value must be obtained for any such encumbrance, alienation or exchange. The provisions of this clause apply *mutatis mutandis* (subject to the necessary changes) if the Committee encumbers, exchanges or alienates (or intends to) the majority of assets of the Organisation in a piecemeal fashion over a period of 1 (One) year from the date of the first asset so encumbered or disposed of.

## **6 Subscriptions, income, property and funds**

- 6.1 The Organisation shall keep a record of everything it owns, any income and/or expenditure.
- 6.2 Members shall not be required to pay a membership fee on joining the Organisation. Those members that existed before this amendment to the Constitution shall continue as members, however shall not be entitled to a refund. Membership subsequent to this adoption of this amended Constitution shall be determined in accordance with 3.1.
- 6.3 The Organisation has the authority to collect, receive, generate, invest en expend funds and may act to obtain loans, possible grants, donations, bequest, sponsorships, contributions or and other income and assets.
- 6.4 Members and/or Office Bearers of the Organisation shall not acquire any rights that belong to the Organisation (of whatsoever nature) nor shall they acquire any right, title or interest in the property (of whatsoever nature), claims, income, capital or funds of the Organisation.
- 6.5 Further to 1.4, the Members or Office Bearers have no rights to any compensation or property solely by virtue of them being Members or Office Bearers of the Organisation. Nor shall Members or Office Bearers have any right to financial gain from this Organisation. Nor shall the Organisation give any money, funding, loans, property (of whatsoever nature) to any Member or Office Bearer: provided that the Organisation may compensate a Member or Office Bearer a reasonable amount for work done for the Organisation or for expenses incurred by a Member or Office Bearer for or on behalf of the Organisation, both instances subject to the following conditions:
- 6.5.1 The prior consent of the Committee is obtained;
- 6.5.2 The consent relates to a specific anticipated expense or work requested, and does not constitute a general consent;
- 6.5.3 The extent of the expense or compensation is determined and presented to the Committee at the time of requesting prior consent; and
- 6.5.4 The work or expense is at all times directly related to the objectives of the Organisation.
- 6.6 No Member or Office Bearer shall be liable for the debts of the Organisation.
- 6.7 The Organisation is prohibited from accepting any donation, which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation.

## **7 Member Meetings and Functions**

### **7.1 AGM**

7.1.1 There shall be an AGM for Members of the Organisation which shall be held annually within 3 (Three) months after closure of the financial year at a time, date and venue determined by the Management Committee.

7.1.2 The purpose of an AGM is (without limitation):

7.1.2.1 for the Management Committee to report back to Members on the achievements and work over the year;

7.1.2.2 to make any changes that are required to be made to the Constitution; and

7.1.2.3 to enable Members to decide on the policies of and possible initiatives for the Organisation.

7.1.3 The Organisation should deal with the following matters at the AGM:

7.1.3.1 whether a quorum has been attained and take an attendance and apologies register;

7.1.3.2 agree to the items that need to be discussed and deliberated at the Members' meeting;

7.1.3.3 read, amend (if necessary and agreed) and confirm the previous meeting minutes with matters arising (whereafter the Chairperson and Secretary shall sign same);

7.1.3.4 Chairperson's report;

7.1.3.5 Treasurer's report and budget for the forthcoming year;

7.1.3.6 changes (if any) that members may want to make to the Constitution;

7.1.3.7 elect the Office Bearers for the Committee;

7.1.3.8 general matters; and

7.1.3.9 adjournment of meeting.

### **7.2 SGM (Special General Meetings)**

7.2.1 The SGM is a meeting of Members that is held outside of the annual AGM.

7.2.2 SGM's may be called in the following instances:

7.2.2.1 when not less 6 (Six) Members (that qualify as such) request such a meeting in writing;  
or

7.2.2.2 when the Management Committee calls the meeting in order to obtain guidance, a mandate or decision from the general body of Members,

and – in both instances – where the matter/s to be addressed at the meeting hold sufficient urgency that they cannot wait for the next AGM to be dealt with. The purpose and reason for

the request for a SGM must be specifically stated (and carried through in the notice) and only the matters in question is discussed at the SGM.

7.2.3 There is no obligation or frequency that SGMs are to be convened.

### **7.3 Member meetings decisions, notices & quorums**

7.3.1 Members shall be notified in writing at least 15 (Fifteen) days prior to the date of an AGM or 10 (Ten) days prior to a SGM of the meeting. Such notice shall indicate the date, time and place as well as the agenda for the meeting. Written notice shall be deemed to be given (irrespective of whether the Member actually receives the notice) in any one of the following events:

7.3.3.1 notice in the local press;

7.3.3.2 by the distribution of pamphlets (in whatever manner the Management Committee deems fit);

7.3.3.3 e-mail notices to addresses provided by Members;

7.3.3.4 SMS or 'Whatsapp' notices to mobile numbers provided by Members; or

7.3.3.5 only if the cost is recoverable, written notices to those Members who are ordinarily resident in the Area for 75% (Seventy Five percent) of a normal calendar year.

7.3.2 Effective notice shall be deemed to be given so long as either one of the notice methods in 7.3.3.3 or 7.3.3.4 is used, and in furtherance thereof all Members shall be required to specify either an e-mail address or mobile number where they will be prepared to receive notices of AGMs or SGMs when they apply to become a Member. The use of the methods of notification in 7.3.3.1, 7.3.3.2 and 7.3.3.5 is not a prerequisite for effective notification, but merely complementary to 7.3.3.3 and 7.3.3.4. In the case of 7.3.3.5 Members who specifically indicate that they are ordinarily resident on their written application form for membership and therefore that they are willing to receive written notice, will receive such notice so long as they are so ordinarily resident, live within the Area, the costs are recoverable, accept that it is merely a courtesy notice and still provide an e-mail address or mobile number for the deemed receipt of a notice as provided for in 7.3.3.3 or 7.3.3.4.

7.3.2 20% (Twenty percent) of the entire body of Members, or 20 (Twenty) Members (whichever is the lesser) shall constitute a quorum at an AGM or SGM. A quorum is a prerequisite for a legally effective members meeting (AGM or SGM) to be constituted and for legally effective decisions to be made. A quorum for a Members meeting (AGM or SGM) shall be constituted if – at the date, time and place stipulated in the written notice referred to in 7.3.1 – the minimum Members stipulated above are present.

- 7.3.3 Should a quorum fail to be constituted at such a Members meeting as anticipated in 7.3.2, the meeting shall be re-convened 7 (Seven) days later at the same time and place: provided that written notice has again been given to all the Members. The Members that then attend the meeting shall then constitute a quorum provided at least 3 (Three) Members and 2 (Two) Management Committee members are present.
- 7.3.4 The proceedings of all AGM and SGMs shall be duly minuted as a record of what was discussed, deliberated and decided.
- 7.3.5 The Secretary of the Organisation shall convene all SGM and AGMs.
- 7.3.6 The Management Committee shall endeavour to arrange annually not less than 2 (Two) activities promoting environmental issues that involve Members and/or the general public.
- 7.3.7 Only Members over 18 (Eighteen) years old or over are eligible to vote at any AGM or SGM meeting.
- 7.3.8 The AGM and SGM meetings are to be chaired by the Chairperson and in their absence by the Vice-chairperson. If both are unavailable, a chairperson for the AGM or SGM meeting shall be elected from members of the Management Committee present.

#### **7.4 Voting at AGM or SGM**

- 7.4.1 All resolutions at AGM or SGM meetings will be taken by an ordinary majority vote (50% plus 1) and in the event of a tie in votes, the Chairperson will have a deciding vote. Member resolutions that require a higher threshold to be passed, will be identified in the Constitution as such.
- 7.4.2 Only Members have the right to vote. As all Office Bearers also have to be Members, they are entitled to vote as Members at a Members meeting.
- 7.4.3 Each Member shall only have 1 (One) vote. Voting shall be done by show of hands.
- 7.4.4 The request for a matter to be placed on the agenda for decision and deliberation is done by requesting same in writing to the Management Committee to be placed on the agenda of the SGM (complying with 7.2.2) or AGM as the case may be, and such matter must be clearly stated in the written notice of the meeting to the body of Members.
- 7.4.5 Before any civil legal action may be instituted by the Organisation such proposed decision must be approved by special resolution requiring a two thirds majority of those Members present and entitled to vote at a duly convened Members meeting (SGM or AGM).

## **7.5 Round-robin resolutions for AGMs or SGMs**

7.5.1 The AGM or SGM may also make effective decisions by means of a round-robin resolution. The procedure for a round-robin resolution obviates the necessity of the Members actually getting together at a duly convened AGM or SGM meeting in order to make a decision. The procedure for a round-robin resolution is as follows:

- 7.5.1.1 either the Management Committee or at least 10 (Ten) Members pass the motion for a proposed resolution (with content) on to the Chairperson and requests that it be done by round-robin;
- 7.5.1.2 the Chairperson formulates the resolution and verifies with the Management Committee or 10 (Ten) Members (as the case may be) whether they are satisfied with the formulation of the proposed resolution;
- 7.5.1.3 if the Management Committee or 10 (Ten) Members concerned is satisfied, the Secretary will then circulate the resolution in writing to the chosen e-mail addresses of each Member and give each Member 14 (Fourteen) days from circulation to sign the resolution;
- 7.5.1.4 the Secretary shall ensure that they get a written acknowledgement of receipt (a delivery receipt is sufficient for e-mail) of the proposed resolution as each Member must at least have received the resolution in order to consider it properly – they need not however vote or react to the resolution as non-signature by the lapse of the reaction period is deemed to be dissention;
- 7.5.1.5 round-robin resolutions may be faxed or e-mailed to all the Members at their respective chosen addresses, and returned signed by scanned e-mail to the sender's e-mail address;
- 7.5.1.6 round-robin resolutions may be signed in counter-parts;
- 7.5.1.7 round-robin resolutions may be taken (and have the same legal effect) as an ordinary majority (or other requisite majority) attained at a duly convened AGM or SGM meeting.

## **8 Financial matters**

8.1 The financial year of the Organisation will be from the 1<sup>st</sup> November to the 31<sup>st</sup> October the following year. The Organisation shall draw up financial statements in accordance with the NPO Act within 6 (Six) months of its financial year end, subject to 8.2.



- 8.2 Those actions set out in provisions of this clause (and the entire Constitution) that would require compliance and registration under the NPO Act, will only be carried out upon registration under the said act.
- 8.3 The Treasurer shall receive all cash donations and gifts, donations in kind, bequests and the proceeds of all fundraising activities and deposit these funds into a reputable bank or building society interest earning account as soon as possible, but no later than 3 (Three) days from the receipt of the funds or subscription amount.
- 8.4 In the event that funds over R3000.00 (Three thousand rand) are received on any one day, such amount will be deposited at latest before 12:00 noon on the next day into the Organisation's bank account.
- 8.5 The Treasurer shall at all times keep a receipt book in their possession and ensure that it is duly completed and the original provided to the Member of the Organisation or public as the case may be, and a copy kept for accounting records.
- 8.6 No other Office Bearer or Member may receive any of the items listed in 8.3, but shall direct the member or the Organisation to the Treasurer. The Treasurer may only delegate this duty to another person in his/her absence and then only with the acceptance of the other person in writing, which acceptance must be lodged with the Secretary. The Treasurer will resume such duty upon his/ her return.
- 8.7 Only the Management Committee may authorise any withdrawal of funds. Requests for emergency funds may be authorised by the Executive Committee provided they do not exceed R3000.00 (Three thousand rand). This authorisation must be ratified by the Management Committee at their next committee meeting and minuted.
- 8.8 All donations in kind or gifts that do not constitute monetary gifts, must be stored in a central safe place and a detailed inventory thereof maintained by the Treasurer. The value of the donation in kind must be the current value of thereof and recorded in the inventory by the Treasurer.
- 8.9 All cheques must either be signed by the Treasurer or Chairperson on the one hand, and counter-signed by one of two executive Office Bearers resolved on by the Committee, once authority for the expenditure has been obtained or is allowed in terms of the Constitution.
- 8.10 Donations in monetary or kind must always be utilised for the furtherance of the objectives of the Organisation and its objectives set out in 2 or to meet administrative expenditure allowed in terms of this Constitution.

## **9 Minutes**

- 9.1 The Secretary shall duly record the minutes of each meeting (whether that be AGM, SGM or Management Committee meetings) which, after having been approved, shall be signed by the Chairman and Secretary.
- 9.2 All minutes, financial statements, cash books, receipt books, and other documents of the Organisation are for safekeeping by the Treasurer and Secretary in accordance with their responsibilities.
- 9.3 The abovementioned documentation is open to perusal by Members and donors.

## **10 Constitution**

- 10.1 Each member of the Management Committee must keep a copy of the Constitution for perusal by the public.
- 10.2 Any proposed amendment to the Constitution must timeously placed on the agenda of an AGM or SGM meeting as a special item.
- 10.3 This Constitution may be amended by a two thirds majority vote of those Members present and entitled to vote at any duly convened SGM or AGM meeting of the Organisation, provided that a written notice relevant to that meeting type ( as set out in 7.3.1) has been given, which notice must specify the proposed amendment/s and it has been dispatched to each Member at their chosen domicile e-mail or mobile address.
- 10.4 All effected amendments must be submitted to the liaison of the Organisation at the local office of Cape Nature.
- 10.5 The Management Committee however, has the authority to amend Annexure “A”, to include new territory, to be confirmed at the next AGM or SGM.

## **11 Legal Entity, Liability of Members & Office Bearers and representation**

- 11.1 As the Organisation is a voluntary association of persons, and therefore has an identity and existence separate and distinct from its Members or Office Bearers and other characteristics set out in 1.3, the liability of Members and Office Bearers are limited to the extent set out herein.

- 11.2 Other than to the extent of subscriptions that a Member may have paid, no Member shall be personally liable for the Organisation's obligations, liabilities or debts irrespective of their nature or what cause they arise from, subject to 11.4.
- 11.3 No Office Bearer shall be personally liable for the Organisation's obligations, liabilities or debts irrespective of their nature or what cause they arise from, subject to 11.4.
- 11.4 No Member (including all envisaged types of members in this Constitution), Office Bearer, nor the Management Committee (or part thereof), shall be personally liable for damages arising from the acts or omissions of any other Member of the Organisation, or for any damages or loss suffered or incurred by the Organisation on any grounds whatsoever – liability of whatsoever nature and arising from whatsoever cause – other than as a result of his/her own individual wilful act or default: provided further that in the case of Office Bearers, acts or omissions which occur whilst the Office Bearer is performing functions of the Organisation in good faith shall not attract personal liability for the Office Bearer/s.
- 11.5 Office Bearers may not bind the Organisation to any person or entity, unless duly authorised by the Management Committee, or by the AGM or SGM of Members.

## **12 Dissolution**

- 12.1 The Organisation may by special resolution requiring a 75% (Seventy Five percent) majority of those Members present and entitled to vote, at a properly constituted Members meeting (SGM or AGM), elect to dissolve or wind-up the Organisation. The motivated item for dissolution has to have been placed on the agenda in the written notice of the AGM or SGM meeting as a special item. First and second meeting quorum levels are required.
- 12.2 In the event of cessation of activities due to lack of interest in and concomitant disintegration of the Organisation, the remaining Members and/or Office Bearers (who are also required to be Members), may attempt to convene a meeting of Members (SGM or AGM) for a decision one way or the other (75% majority decision), and if unsuccessful (including and after insufficient attendance to constitute a quorum at the second meeting called), make a decision at their own discretion (ordinary majority) regarding the dissolution, termination or winding-up of the Organisation.
- 12.3 In the event the Organisation is dissolved or wound-up, any assets and funds remaining after all obligations and liabilities have been met, must be transferred to another deserving, registered, conservation orientated, non-profit organisation with similar objectives to the Organisation, which shall include any animal or wildlife welfare non-profit organisation.

## **13 Miscellaneous Provisions**

### **13.1 Severability**

The terms and provisions of this Constitution are severable: should any provision be found to wholly or partially unlawful, void or unenforceable, such unlawfulness, voidness or unenforceability shall not affect the Constitution or its remaining provisions, all of which remain valid and of force and effect, the offending term or provision being severable.

### **13.2 Interpretation**

Headings to clauses are for convenience only and shall not be used in applying interpretation.

For the purposes of this Constitution (and unless expressly stated otherwise), a reference to one gender shall include the other (and vice versa), the reference to the singular shall include the plural (and vice versa) and words referring to natural persons shall include juristic, quasi-juristic or legal persona (and vice versa, and if the context doesn't expressly indicate otherwise). In the event the numerals are followed by words and there is a conflict between the numerals and the words, the words shall prevail.

### **13.3 Substantive provisions**

Any right or obligation that may exist or be implied in any definition or addendum to this Constitution shall be treated as if a substantive provision imposing such right or obligation (as the case may be) in the main body of Constitution.

### **13.4 Calculation of days**

For the calculation of days in terms of this Constitution, the first day shall be excluded and the last day included in such computation, unless such last day falls on a Saturday, Sunday or public holiday, in which case the last day shall fall on the next day which is not a Saturday, Sunday or public holiday.

Subject to the above computation method, reference to "days" shall mean calendar days, and where working or business days are used, this shall exclude Saturday, Sundays and public holidays.

### **13.5 Schedules and Addenda**

All addenda and schedules to this Constitution shall be deemed to be part of this Constitution.

### 13.6 Governing law

The Parties agree and consent to this Constitution being governed by and construed in accordance with the laws of the Republic of South Africa.

13.7 An official of the local office of the Cape Nature Conservation (closest or most relevant to the Organisation's Area or objectives) has a seat on all Management Committee meetings and must be timeously provide with agenda and minutes. The seat is an observer function and to convey input for the progress of the Organisation, but shall not allowed to vote.

13.8 The Director of Cape Nature Conservation, Cape Town, shall be provided with a copy:

13.8.1 the minutes of the AGM;

13.8.2 the annual financial report; and

13.8.3 the names of elected Management Committee members.

## **14 Domicile and notices**

14.1 In terms of the NPO Act the Office Bearers must provide (in writing) their physical, residential and business addresses. This will be done once the Organisation decides to register as a non-profit organisation.

14.2 The Office Bearers choose such domicile addresses for the purposes of legal and other notices. Save for legal process or notices that are required to be physically served, all notices and communications may be conveyed by e-mail to the mandatory e-mail address supplied by the Office Bearer in writing.

14.3 All notices shall be given in writing to the respective Office Bearers. Office Bearers shall be entitled to change their domicilium address from time to time by notice in writing to the Secretary of the Committee (including their e-mail address or mobile number). No post box or post restante addresses will be permitted as domicile addresses.

14.4 In the case of a notice sent by e-mail, such e-mail shall be deemed to have been received by the recipient Office Bearer within 1 (One) hour of the Organisation sending it to the Office Bearer. In the case of a notice sent by registered post, such notice shall be deemed to have been received with 5 (Five) business days from the date of posting of such notice.

14.5 The provisions of 14.2 up to and including 14.4 shall apply *mutatis mutandis* (subject to the necessary changes) to legal and other notices to Members: provided that 7.3.1 and 7.3.2 shall override 14.2 up to and including 14.4 in a case of conflict in respect of notices of AGM or SGM meetings.

The area of the Organisation shall consist of the following residential areas in the Mossel Bay Municipality or areas within these Areas:

- Little Brak River
- Riverside
  
- Fraaiuitsig
  
- Reebok
  
- Tergniet

## **Definitions**

The following definitions apply to this Constitution:

- “Area” – is the region falling within the jurisdiction of the Organisation as set out in Annexure “A” and which area the Organisation is tasked to conserve, repair and create awareness about;
- “Constitution” – this document recording the legal status, functions and functionality, powers and diverse matters of the voluntary association of persons constituting the Organisation, and as amended from time to time by the Members, and includes any annexures and schedules thereto;
- “Organisation” – the Midbrak Conservancy, a voluntary association of persons with perpetual succession and legal status separate from its constitutive members;
- “RSA Constitution” – the Constitution of the Republic of South Africa Act 108 of 1996, as amended from time to time;
- “Chairperson” – the chairperson elected annually by the Organisation to be principally responsible for overseeing and managing the functioning of the Organisation in accordance with this Constitution, the laws of the Republic of South Africa, the needs of the Organisation and the Area managed by it and the mandate of the members of the Organisation, as well as presiding over meetings of the Management Committee, Executive Committee and Members: subject to the provisions of this Constitution and any resolution made at an the AGM or SGM concerning the duties of the Chairperson;
- “Treasurer” – the treasurer elected annually by the Organisation to be principally responsible for the financial affairs of the Organisation, including (without limiting the generality hereof) financial reporting, bank account control, drawing up (or managing the drawing up) of financial statements, the collection of donations and subscriptions, budgets and expenditure: subject to the provisions of this Constitution and any resolution made at an the AGM or SGM concerning the duties of the Treasurer;
- “Vice-chairperson” – the person elected annually to support the Chairperson with all their functions and in the event of the absence of the Chairperson to assume the role of the Chairperson to ensure the smooth functioning and management of the Organisation and meetings that the Chairperson would normally preside over: subject to the provisions of this



Constitution and any resolution made at an the AGM or SGM concerning the duties of the Vice-chairperson. For all purposes the Vice-chairperson will assume the role and powers of the Chairperson in the latter's absence including having a casting vote at meetings where the Chairperson would normally have same;

- “Secretary” – the secretary elected annually by the Organisation to be principally responsible for the communications, advertisement, public relations and arranging public functions, taking and distribution of minutes of AGM, SGM and Committee Meetings, and convening member meetings, and any support function to the Chairman and Treasurer to ensure their tasks are completed timeously: subject to the provisions of this Constitution and any resolution made at an the AGM or SGM concerning the duties of the Secretary;
- “Member” – any natural that meets the requirements of 3.1 and includes members that qualified as members prior to the present amendment to this Constitution;
- “NPO Act” – the Non-Profit Organisations Act 71 of 1997, as amended from time to time;
- “Management Committee” – the persons elected at the first Member's meeting of the Organisation (and subsequently annually at the AGM) to serve in the running of the Organisation and the management of initiatives to achieve the objectives and aims of the Organisation;
- “Executive Committee” – the persons elected as Chairperson, Vice-chairperson, Treasurer and Secretary at the AGM, until such time as the Management Committee determines otherwise (if at all) provided that the Chairperson shall always be a member of the Executive Committee. The Executive Committee – unlike the Management Committee – is tasked with the daily activities of managing the Organisation and acting in matters of urgency;
- “Office Bearer” – any member of the elected and currently serving Management Committee.