4.2
PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

HBENG 210 & 220/575 (4336/2023)
H Olivier (028) 313 8900 Hermanus Administration
10 June 2026

1. EXECUTIVE SUMMARY

An application was received on 9 February 2023 by WRAP Project Office on behalf Benguela Cove Homeowner's Association on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- **Consent Use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow tourist facilities (operating of a pontoon boat as a recreational facility).
- **Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised land use activity as stipulated above.

The application was considered by the MPT on 30 September 2025 who resolved that the application not be approved.

The applicant and objectors were informed of their right of appeal, and on 7 November 2025 an appeal was received from the applicant (WRAP Project Office) against the MPT's decision. The objectors were also provided an opportunity to respond to the appeal received.

The Authorized Official's report with all relevant documents for consideration was forwarded to the Appeal Authority on 23 March 2026.

On 23 April 2026, the Appeal Authority referred the application back to the MPT for re-consideration.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

TIMELINE OF APPLICATION	
9 FEBRUARY 2023	APPLICATION RECEIVED.
30 SEPTEMBER 2025	APPLICATION SERVED BEFORE THE MPT – NOT BE APPROVED.
7 NOVEMBER 2025	APPEAL RECEIVED BY THE APPLICANT (WRAP PROJECT OFFICE)
23 MARCH 2026	APPEAL REPORT FORWARDED TO THE APPEAL AUTHORITY FOR A DECISION.
23 APRIL 2026	APPEAL AUTHORITY DECISION INDICATING THAT THE APPLICATION BE REFERRED BACK TO THE MPT FOR RE-CONSIDERATION.

Portions 210 and 220 of Farm Afdaks Rivier No .575 is zoned Open Space Zone 3: Private Open Space and Open Space Zone 1: Nature Reserve, respectively. There are amenities for residents on Portion 210 such as boat houses, a pool and tennis court. Portion 220 is next to the lagoon and a jetty boat slipway, and a club house was constructed in this area.

The proposal is to operate a pontoon boat from the jetty on a commercial basis, hence this application for consent use for tourist facility.

4. SUMMARY OF APPLICANT'S MOTIVATION

N/A

5. ADMINISTRATIVE COMPLIANCE

N/A

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

N/A

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION.

N/A

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

N/A

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

N/A

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The application was referred to the MPT by the Appeal Authority on the grounds that the MPT did not have sufficient information to arrive at a completely considered view. The Appeal Authority require that the MPT must seek the necessary clarity from the appellant to re-assess the application.

The reasons the MPT did not approve the application or considered the Administrative Penalty Fee application were as follows:

CONSENT USE

- "It is not possible to determine desirability of the proposal at this stage due to a lack of critical information, including:
  - The number of trips the pontoon will make per day,
  - The expected volume of visitors to the site on a daily basis,
  - How visitors will utilize communal area facilities, and
  - How access will be managed within the privately owned Benguela Cove Estate.
- The concerns raised by objectors regarding security risks, increased noise levels; impact on privacy, and the potential change to the character of this area are considered valid and reasonable.
- The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department."

DETERMINATION OF AN ADMINISTRATIVE PENALTY FEE

- "The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:
  - The HOA submitted the application, but
  - The operations appear to be managed by a separate party.
- It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its Constitution."

In the appeal submitted additional information in the format of an Operational Management Plan for the Lady Bonne Pontoon Boat was submitted. It is a 3-page document with substantial information. This information was however not available to the MPT when the decision was made. This information was also not available for comments in the public participation process.

The application was submitted by the planning consultant on behalf of the Benguela Cove Estate HOA. In the motivation for the Administrative Penalty Fee application and the application form, no clear detail was provided who was responsible for the illegal land use, and it was indicated that the property owner has not previously contravened the by-law. The HOA is the owner of the two properties concerned, and the applicant.

In the appeal process it was indicated by the appellant that it was confirmed in the response to the objections that BCI (Benguela Cove Investments) is the operator of the pontoon. It was however not indicated that BCI will be responsible for the payment of any administrative penalty fee.

The fact is, if it was always the intention that BCI would be responsible for the payment of an Administrative Penalty fee, then this should have reflected in the application form and motivation. The information provided was not accurate and misleading.

In dealing with the planning application there were also concerns regarding if the correct internal processes were followed by the HOA with its members to submit the

planning application to the municipality. In the appeal the appellant again contested this matter, and the appellant is also of the opinion that sufficient opportunity was not provided to comment on the Municipal Legal Branches comments, which stated that the HOA did not follow the correct internal processes.

This matter has not been resolved, and clarity must still be obtained.

In conclusion, additional information was submitted in the appeal process, which was not available to the public in the public participation process. This will require that a new public participation process will have to be followed.

The information in the Administrative Penalty Fee application (and motivation report) was not correctly completed and therefore misleading, as it was not indicated that BCI will be responsible for the Administrative Penalty Fee. It also did not indicate BCI was responsible for the illegal land use.

The only way to rectify the abovementioned concerns is for a new planning application to be submitted with a new public participation process.

13. RECOMMENDATION

1. that the application be **referred** back to the Administration.

2. that the applicant submit a new planning application to the Municipality for processing and consideration, which is correctly completed and with all additional information as was submitted by the applicant during the appeal application process.

14. REASONS FOR RECOMMENDATION

- Additional information was provided by the applicant in the appeal process, which was not part of the original public participation process.
- The information in the Administrative Penalty Fee application (and motivation) was not correctly completed and misleading, as it was not indicated that BCI will be responsible for the Administrative Penalty Fee.

15. ANNEXURES

Annexure A: Authorized Official report to appeal authority with annexures which include the following:
- Item served before the MPT on 30 September 2025
- MPT Minutes dated 30 September 2025
- Decision letters sent to applicant and objectors dated 17 October 2025.
- Appeal submitted by WRAP Project Office on behalf of Benguela Cove HOA.
- Objectors' response to appeal.

Annexure B: Appeal Authority decision dated 23 April 2026

SIGNATURES

AUTHOR:

Name:	**HENK OLIVIER**
SACPLAN Reg No:	**B/8128/2004**
Signature:	_____
Date:	_____

REGISTERED PLANNER

Name:	**H VAN DER STOEP**
SACPLAN Reg No:	**A/1708/2013**
Signature:	_____
Date:	_____

Annexure A 1/387

APPEAL AUTHORITY

APPEAL: PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF THE FARM AFDAKS RIVER 575, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNERS ASSOCIATION

HBENG 210 & 220/575 (4336/2023)
R Kuchar **(028) 313 8900** **Hermanus Administration**
20 February 2026

1. EXECUTIVE SUMMARY

An application was received on 9 February 2023 by WRAP Project Office on behalf Benguela Cove Homeowner's Association on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- **Consent Use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow tourist facilities (operating of a pontoon boat as a recreational facility).

- **Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised land use activity as stipulated above.

The proposal was considered by the Municipal Planning Tribunal on 30 September 2025, and it was resolved as follows:

RESOLVED:

1. *that the objections **be noted**;*

2. *that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, **not be approved**;*

3. *that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorised land use (operation of a pontoon boat), **not be imposed**; and*

4. *that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions.*

REASONS FOR THE RESOLUTION:

POINT 1

- *It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:*
  - *The number of trips the pontoon will make per day,*

- *The expected volume of visitors to the site on a daily basis,*
- *How visitors will utilise common area facilities, and*
- *How access will be managed within the privately owned Benguela Cove Estate.*

❖ *The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.*

❖ *The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.*

POINT 2

❖ *The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:*
- *the application was submitted by the HOA, but*
- *the operations appear to be managed by a separate party.*

❖ *It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its Constitution.*

Attached please find the Land Use Planning Report that served before the Overstrand Municipality Planning Tribunal on 30 September 2025 as Addendum AA and the Minutes dated 30 September 2025 as Addendum BB.

The decision letters to the applicant and objectors dated 17 October 2025 are also attached as Addendum CC.

One (1) appeal was received from WRAP Project Office on behalf of Benguela Cove Homeowners Association against the non-approval of the application by the Municipal Planning Tribunal. The appeal was received on 7 November 2025.

The appeal was lodged within the By-Law's prescribed twenty-one (21) day period and the required appeal application fees have been paid. The appeal is therefore regarded as valid. The appeal is attached as Addendum DD.

The objectors were provided with the opportunity to comment on the appeal, and seven (7) letters with comments were received in response to the appeal. .See attached as Addendum EE.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priority

Provision of democratic, accountable, and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

Sections 78 and 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020

6. Background/Discussion/Evaluation/Assessment

The application was for a Consent Use and Determination of an Administration Penalty.

Portions 210 and 220 of the Farm Afdaks River No. 575 is zoned Open Space Zone 3; Private Open Space and Open Space Zone 1: Nature Reserve respectively. There are amenities for residents on Portion 210 such as boat houses, a pool and tennis court. Portion 220 is next to the lagoon and a jetty boat slipway, and a club house was constructed in this area.

The application is to operate a pontoon boat from the jetty on a commercial basis, hence this application for consent use for tourist facility. The activity is already taking place; therefore, application is made for Determination of an Administrative Penalty.

Nine (9) letters of objection and one (1) support letter were received were received, and the applicant was provided with an opportunity to provide a response.

The Municipal Planning Tribunal considered the application for Consent Use and resolved not to approve the application. No Administrative Penalty Fee was made applicable.

The applicant and objectors were informed of their right of appeal against the decision, and an appeal was received from the applicant.

The appellant indicated that the appeal is against the decision of the MPT, the process followed prior to the MPT's decision and that the MPT erred in considering the merit of the application.

The objectors were provided an opportunity to respond to the appeal.

The points of appeal will be summarized and discussed below:

APPELLANT'S GROUND OF APPEAL 1

- *Appeal against reasons for refusal*

The MPT accepted the Municipal Town Planner's recommendation that the application lacked sufficient operational capacity to enable a proper assessment of its desirability, as follows:

1A. It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:

- ***The number of trips the pontoon will make per day,***
- ***The expected volume of visitors to the site on a daily basis,***
- ***How visitors will utilise common area facilities, and***
- ***How access will be managed within the privately owned Benguela Cove.***

It is acknowledged that the original motivation did not provide detailed quantitative information on the daily number of pontoon trips, the expected number of visitors, or the specific access and security arrangements for the operation. The absence of this information does however not render the application undesirable or incapable of assessment.

The activity was clearly defined as a low impact, small scale tourism operation, limited to a single pontoon vessel operating from an existing jetty within the Benguela Cove Wine Estate. In the motivation it was indicated that the pontoon accommodates 12 passengers and a crew of two, each trip lasts one hour and no additional structures, parking or physical alterations were proposed. At this stage the pontoon operates a maximum of 4 trips per day during daylight hours, depending on demand and weather. The scale is modest and within the estate's operational capacity.

The concerns about operational specifics are noted, but this are routinely addressed through conditions of approval, and the MPT could have imposed conditions limiting the number of trips per day and operating hours.

Formal access routes and parking arrangements can be made a condition of approval to ensure the Municipality has a method to control the use and if there is operation outside these controls impose penalties etc. This would then have ensured impacts on privacy, noise, security can effectively be managed.

Cape Nature and DEADP: Coastal Management confirmed the operating of a single pontoon vessel is acceptable and will not pose an environmental risk or alter the character of the surrounding area.

A pontoon operational guideline is submitted that can be implemented.

OBJECTOR'S RESPONSE

- The possible long-term implications of the tourist related use on the nature reserve and residential environment were never assessed.
- Appears that the Benguela Cove HOA receive no revenue from the pontoon boat operators.
- Appear that the pontoon boat was operated illegally in the past.
- There is no indication how the business activities will benefit homeowners and the estates infrastructure. Constitution clause 4.5 states members pay a levy to use for the benefit of its members.
- The application and scope of the application lack specificity, which would provide the applicant with "carte blanche".
- There are no toilette facilities to support tourism as the boat house is for private use for residents and members and not the general public.
- Not willing to financially subsidize the establishment of a tourist facility and additional pressure on infrastructure.
- There is no indication how the financial burdon will be dealt with, and there is no specific agreement.
- The municipality allowed the HOA to make homeowners aware of the application, is this legal?
- The application gives the impression that the homeowners is the applicant. It is unlikely the desire of Homeowners.
- There is a non-alignment of interest.
- The pontoon boat activities are undesirable.

- The WRAP document needs to describe in detail what it is that consent use is applied for, so that there is no confusion, and must be specific what boat will be used.

AUTHORISED OFFICIAL'S RESPONSE

The appellant confirms the application did not provide detailed quantitative information. A pontoon operational plan was then also only now submitted with the appeal, with additional information to show the scale and how the use will be managed.

The appellant also is of the opinion that the MPT could have considered the desirability and controlled the scale of the activities by stipulating restrictive or mitigating conditions. It would however be very difficult to stipulate such conditions, if the proposed scale is not known, how would it be possible to determine impact, and then mitigating conditions?

The above-mentioned confirms that the MPT's viewpoint that there was a lack of information to consider the desirability of the application, is correct.

The appellant's viewpoint is not supported.

APPELLANT'S GROUND OF APPEAL 1

Appeal against reasons for refusal

1B. Concerns raised by objectors regarding security risk, increased noise levels, impact on privacy, and the potential change to the character of the area are considered valid and reasonable.

The concerns by the objectors and mentioned in the municipal planner's report are acknowledged. These concerns were however comprehensively addressed in response to the objections and are respectfully not supported.

- *Security and Access control*

This was detailed under the response to the objections that access will be restricted at the gate, an employee can escort the guest to the clubhouse, operation will not interfere with residents' private movement and property access, and only pre-registered guests may enter, with the facility being supervised by the estate personnel at all times.

- *Noise impact*

The low speed the pontoon move at and the low noise of the motors would not generate noise disturbance and is speculative and unsubstantiated. No noise complaints have been received, and operation is during the day with no measurable increase in noise.

- *Privacy and Use of common area*

No activities is proposed within the private open space or recreational areas, guests will be supervised not to use common facilities such as the tennis court and swimming pool, and privacy of property owners will not be infringed. The Municipalities concern that visitors may utilize these spaces was speculative, and access is prohibited under the operational management plan.

- *Character of the area*

The pontoon is in line with SDF identifying Benguela Cove area as a tourism and eco-recreational node, encouraging controlled nature-based tourism. No new structures will be built having a visual impact or impacting the residential character. The concerns can be mitigated through existing management and operational controls.

OBJECTOR'S RESPONSE

- Experience that loud music has been played on board the pontoon during trips.
- Request MPT decision to be upheld to ensure ecological integrity of Bot River lagoon and residential amenity and character of Benguela Cove.
- The estate has a high environmental status, and combustion pollutants and noise still affect the marine ecosystem, birds and people.
- If the proposed operating detail of the pontoon is considered, approximately 4200kg CO_2 will be emitted, which will impact birdlife, marine life and fauna and flora.
- Non-compliance with the ROD, EMP and environmental requirements.
- Unauthorized clearing and disturbance of pristine fynbos and on the beach.
- It is not explained how operational impacts on homeowners will be managed, relating to security insurance and guarantees where security bridges arise.
- Tourists are high spirited with high noise levels.
- From a homeowner's perspective the impact on the estates character is unsettling.
- Against clause 3.1, 3.2 and 34 (points 1.1.6) of the Benguela Cove Constitution it is not explained how operational impacts on homeowners will be managed.
- Tourists roaming at the clubhouse prevents homeowners enjoying the facilities, as they are on view to the crowd, which infringe on privacy.
- Ecological impact on RAMSAR wetland.
- Increased activity at the promenade will create ecological harm (noise, light pollution, disturbances etc.
- Noise, light pollution, security and nuisance are undermined in the appeal.
- Lack of environmental oversight.
- The municipality should uphold its refusal and dismiss the appeal in full.
- There are concerns regarding the impact of day visitors.
- The application will fundamentally change the character of this private, low-density estate in the middle of nature. The vision was not to allow access to the public for public entertainment, impacting both residents and wildlife.
- No new EIA was submitted.
- Crime will increase, the noise footprint will increase, and traffic disturbances will be created with road safety concerns.
- With other approvals the ability to monitor and enforce restrictions by the competent authorities is limited.
- Potential restrictions will not be maintained and enforced.
- As permanent resident living close to the jetty, my experience is many concerns raised in objections are not borne out of practise. Objections often rely on technicalities or interpretations of the HOA Constitution that do not reflect the true impact on residents.
- The proposal allows more people to enjoy a unique natural environment of the Bot River Lagoon, and it would be unfortunate if the appeal is not upheld.
- The application will impact property values.

AUTHORISED OFFICIAL'S RESPONSE

The appellant indicated that some information was provided in the response on the objections regarding security control, and that is noted. However, the fact that the scale of the development and operational plan was not submitted with the application, left great uncertainty about the possible impact on security, noise, use of private common areas and impact on the character of the area. The MPT needs to make an informed decision, and due to the lack of information the objectors concerns could not merely be ignored. Additional Land Use rights is a privilege and not a right, and if it could have a negative impact on interested and affected parties, it should not be supported.

The MPT reasons are therefore valid, and the appellant's viewpoint is not supported.

APPELLANT'S GROUND OF APPEAL 1

- *Appeal against reasons for refusal*

1C. The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application and supported by the Municipal Legal Services Department.

The Municipal Legal Services Department advised that the Benguela Cove Homeowners Association may not have fully complied with its own requirements prior to submitting the application, as the matter was not tabled for consideration by the broader membership at a Special General Meeting.

This interpretation is respectfully disputed and the MPT erred by accepting the opinion.

Constitutional Authority of Trustees – In Terms of 9.1 of the Benguela Cove HOA Constitution updated on 20 April 2018 the Trustees Committee is vested with full powers to manage and control the business and affairs of the Association, including the use and regulation of common property.

Paragraphs 9.5.4, 9.5.5 and 9.5.6 expressly empower the Trustees:

- *"to make regulations for the advancement of the interests of members;"*
- *"for the regulation and control of the conduct of members and occupants while in the estate, and"*
- *"for governing the manner and methods of use of the common property by or on behalf of the Members of the Association."*

The Trustees are lawfully empowered to regulate and authorize the use of the property. The consent use does not involve alienation, subdivision or physical alienation of the land, and merely regularises an existing activity to ensure compliance with municipal planning legislation.

No Contravention of Clause 30 of the Constitution
This clause restricts the sale, alienation or physical alteration of common property without a special meeting, but this application does not include such actions and is only to maintain the existing use of the jetty and boathouse, which already form part of the approved estate.

Accordingly, a special resolution under Clause 30 were not required and the Trustees acted within their constitutional powers.

Relationship between the HOA and BCI
In the comments on objections and later submissions it was indicated BCI is a member of the HOA and registered levy paying owner of residential and commercial properties. BCI applied to the Trustees for consent to use Portion 210 and 220 for the pontoon operations, it was approved by the Trustees, confirming compliance with the Constitution. The Trustees approval did not amend the Constitution, nor did it require a member resolution, as it simply confirmed BCI's existing right as member to use common property.

Correspondence further clarified that in terms of paragraph 3.1, 3.2 and 9 of the constitution the trustees have full locus standi to advance and manage common property.

The trustees acted within their delegated constitutional authority in approving the use on the common property, no special resolution was required, the Municipal Legal Services Department interpretation was very restrictive and misapplied, and the relationship between the HOA and BCI is lawful, transparent and compliant with the HOA Constitution.

It is therefore not a valid refusal.

OBJECTOR'S RESPONSE

- The make-up of the Benguela Cove HOA with the owner, her husband and employee being 3 of the 4 trustees, and the and the fourth member being an unknown member to the homeowners lead to concerns and conflict of interest and creates division in the Benguela Cove HOA.
- Trustees' decisions on short term rental and apparently absence of tenders for certain services create concern. Also, decisions changing the character of Benguela Cove.
- It is not to say Benguela Cove HOA actions are improper, but perceptions must be considered given the nature of the appeal.
- The appeal is misleading and the HOA cannot be treated as a neutral applicant, due to its current make-up.
- A HOA as applicant is improper, has no mandate from homeowners for commercial rights and is not considered a legitimate or impartial applicant.
- BCI is using the HOA for its own purposes.
- There is no compelling reason why the homeowners should endorse the project, as there is no benefit to them.
- The homeowners did not initiate the application, the application serves commercial interests, and the HOA is being used as a mechanism to legitimize a commercial footprint. The appeal is thus procedurally defective.
- Not conceivable or defensible that the elected representatives of the HOA could submit an application of this nature on their behalf.
- Homeowners was not informed or voted on the application.
- There is a significant conflict of interest among most members and the Trustee Committee.

- The applicant principally relies on 3 provisions:
  - "to make regulations for the advancement of the interest of members" – No such interests is identifiable.
  - "for the regulation and control of the conduct of members and occupants while in the estate" – This provision is not implicated by the present application.
  - "for governing the manner and methods of use of the common property by or on behalf of the members of the Association" – While correct, the provision can only be interpreted in conjunction with the first.

- This is a misuse of the Constitution for commercial interests of BCI.
- Was not consulted with the application not the appeal.
- There was no consultation with homeowners or a HOA meeting to vote on these matters.

AUTHORISED OFFICIAL'S RESPONSE

In the objections received in the planning application process there was great concern by members of the HOA that they were not at all informed by the HOA of the application for Consent Use on the common property, nor were they invited to a HOA meeting to discuss and vote on the matter.

The applicant did provide some response on the objections, but due to the serious concern if the correct internal processes were followed, the comments of the Municipal Legal Services was requested, as it could have legal implications for the Municipality if the application were further processed.

The Municipal Legal Services Branch's opinion was that members had the right to be informed by way of a Special General Meeting of the intentions of the HOA.

The Municipal Town Planner informed the applicant that a resolution of a Special General Meeting had to be provided to the Municipality, or alternatively the applicant should provide reasons why it is the opinion that the application did not have to be tabled at a Special General Meeting of the Benguela Cove HOA.

The applicant provided a response indicating that it was not necessary to obtain a special resolution from the members of the HOA, and the Trustees acted within their authority to provide the consent.

The Municipal Legal Services was requested to provide their opinion on the applicant's response why a Special General Meeting was not required. The view was that the HOA did not comply with its own constitution and furthermore failed to provide Overstrand Municipality with a clear indication in terms of what power(s), in terms of the Constitution, the HOA acted to submit the planning application.

The appellant's additional comments do not proof the Municipal Legal Services opinion to be incorrect. It is the opinion that the reason for refusal is valid.

APPELLANT'S GROUND OF APPEAL 1

- *Appeal against reasons for refusal*

1D. The application lacks clarity on who will be held responsible for the Administration Penalty Fee, especially given that:

- ***The application was submitted by the HOA, but***
- ***The operations appear to be managed by a separate party.***

It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its Constitution.

Legal Framework: Section 90 of the By-Law
Section 90(7)(a) expressly empowers the Municipality, MPT or Appeal Authority to designate the person responsible for paying the administration penalty. It states:

The Authorized Official, the Municipal Planning Tribunal or Appeal Authority must notify ***the person who is in contravention of this By-Law of its decision,*** *and if it decides to impose an administrative penalty the notice must set out the administrative penalty* ***and the person who must pay it.***

The liability is therefore not automatically assigned to the landowner, but the person who benefitted from the contravention. Municipality can thus retain discretion to impose the penalty on the actual operator.

Application of Section 90 in this case
The HOA is the landowner and BCI is the operator of the pontoon and entity that derived commercial benefit from the use. There is a formal Trustee Committee Resolution authorizing the operational arrangement and this was disclosed to the Municipality in additional correspondence

The municipality can and should designate BCI as the responsible person.

Nature of the Contravention and Proportionality
The contravention only relate to the commencement of the land use, and the contravention penalty may not exceed 100% of the municipal valuation of the area used unlawfully in terms of Section 90(5)(b). The Lady Bonne operates under environmental controls, existing infrastructure and with prior notification to the authorities, and the use was not concealed.

The administrative penalty should reflect the minor and technical nature of the contravention and imposed on the operator as the party responsible.

Procedural fairness and Correction of the Record
Members of a HOA should not be held financially accountable, but this does not constitute a reason for refusal as it can be addressed through Section 90(7)(a).

The following condition of approval is proposed:

"In terms of Section 90(7)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, any administrative penalty imposed shall be payable by Benguela Cove Investments (Pty) Ltd, as the operator of the pontoon boat, and not by the Benguela Cove Homeowners Association."

This ensures compliance with the By-law, confirms the Municipalities discretion and safeguards the financial interests of the members of the HOA. The reason for refusal is invalid, and the responsibility can be fully and fairly be resolved.

OBJECTOR'S RESPONSE

The owner/operator was not mentioned once in the application.

The operation of the pontoon boat is not legal and has not stopped since the application has been submitted.

AUTHORISED OFFICIAL'S RESPONSE

The appellant's comments are noted regarding the perceived discretion of the Municipality to charge the operator BCI with the administrative penalty fee.

In the application motivation the following information was provided:

"The conduct of the person (allegedly) involved in the contravention.
The Lady Bonne has been operated without prior approval of a formal land use application.

Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning Law.
To the knowledge of this office, the property owner has not previously contravened the By-Law"

It was also not indicated in the applicant's response on the objection that the operator (BCI) will take responsible for the administrative fee.

Section 90 (1) of the By-Law states:

(1) "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned."

If BCI was to be responsible for the administrative penalty fee, their detail should have been in the penalty fee application. The opinion that the municipality should have used discretion is not supported, as it was not indicated in the application BCI is the responsible person or the applicant for the administrative penalty fee application.

This means the information provided in the application was not accurate and misleading.

The reason of the MPT is therefore considered valid.

APPELLANT'S GROUND OF APPEAL 2

- *Reasons why the decision-making authority erred in coming to the conclusion.*

The MPT's reasons for refusal are based on information that was not accurately conveyed to them.

Lack of operational detail –error of fact and remedy by condition

MPT erred when it concluded the desirability could not be determined as it lacked operational detail. This is incorrect for two reasons, the original motivation already described the vessel, passenger capacity, trip duration, no new infrastructure and parking was required. Any other remaining specifics such as trip frequency and operating hours are standard operational matters the municipality can manage with conditions.

Operator confirmed 4 trips per day at daylight only hours; this removes the alleged uncertainty and can be reinforced with conditions. The MPT elevated a defeasible administrative detail into a total planning reason, a condition of approval would have been appropriate.

Security, noise, privacy and character concerns – speculative, mitigable and unsupported by expert inputs.

The MPT accepted objectors' fears without weighing the factual safeguards in the record, being the access is restricted to pre-booked authorized guests, operate within the security regime, uses low-noise 4-stroke outboards and slow guided movement across the estuary. Will not introduce new built form or public access to private recreational areas.

Additionally environmental authorities raised no environmental objections, provided operation be limited to only one vessel. This directly rebuts claims of material noise or ecological harm.

The MPT relied on speculative impact rather than the documented operational controls and expert advice.

HOA constitutional compliance-misinterpretation of trustees' powers

The MPT relied on the Municipal Legal Branches view that the HOA should have convened a special general meeting before submitting the application. This is legally and factually flawed. The HOA Constitution vests the Trustee Committee with broad powers to manage and control the business and affairs of the association, specifically to regulate use of common property and make rules and approvals on behalf of members (paragraphs 9.1, 9.5.4 and 9.5.6).

The Trustee Committee did take a resolution and provided written resolution and a supporting letter explaining the trustee's authority that was submitted to the Municipality. No resolution was needed as no alienation, subdivision or alter of common property as envisaged by clause 30 were envisaged.

The MPT's insistence that a special general meeting was necessary misapplies clause 30 and conflates internal governance with statutory planning merit.

Unclear responsibility for the administrative penalty – incorrect treatment of municipal discretion under section 90

The MPT treated uncertainty over who should pay any administrative penalty as a reason to refuse. This approach ignores Section 90 of the By-Law, which allows the Municipality, the MPT or Appeal Authority to designate who must pay the penalty and to request further information if the evidence is insufficient.

The record identifies the HOA as owner/applicant and BCI as the operator, the additional correspondence confirms that the operator will assume operational responsibility. The Municipality may direct the administrative penalty at the party who carried out and benefitted from the contravention, not the membership at large. This is a procedural matter that could have been resolved through an explicit condition and does not justify refusal.

Overall "not desirable in current format" finding – cumulative error and remedy by targeted conditions

The MPT's conclusion aggravates the errors above; it treats remedial and procedural gaps as substantive planning defects and fails to apply the usual remedial toolset (conditions of approval, clarifying undertakings, or a modest administrative penalty payable by the operator).

The application is for a low intensity tourist use from existing infrastructure, supported by environmental authorities and the estate governance instruments. The correct planning approach was to identify discrete, fixable matters (operational limits, access protocols, a trustees' certification and an operator indemnity/undertaking) and to require these as conditions, not to refuse the application outright. The MPT therefore erred by applying an unduly rigid standard of perfection rather than one of proportionality and administrative fairness.

OBJECTOR'S RESPONSE

See responses under points of Appeal points 1A to 1D.

AUTHORISED OFFICIAL'S RESPONSE

The comments under points of Appeal 1A to 1D already proof the MPT's reasons for the decision as valid.

The appellant use the same arguments under Appeal 1 to proof the MPT erred. Their opinion is not supported and not considered valid.

APPELLANT'S GROUND OF APPEAL 3

- *Reasons why the appeal is based on and primarily concerned with the process followed prior to the MPT decision.*

The planning application 9 February 2023, acknowledged by the municipality on 13 February 2023 and after submission of additional information to the Municipality deemed complete on 27 March 2023.

In terms of Section 46(3)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, once the application is complete had to within 30 days period had to forward copies of notices and the application to every ***municipal department****, service department or organ of state.*

The statutory intent of Section 46 is to ensure that interdepartmental comments are sought and received timeously, providing both the decision-making authority and the applicant with a consistent and procedurally fair process. The provision ensures that all relevant departments have the opportunity to consider the proposal while maintaining certainty and predictability for the applicant.

Non-compliance with Section 46(3)(b) Late Referral and Comment by the Legal Services Department

Neither of the two sets of comments from the Legal Services Department were circulated to the applicant (WRAP).

The legal opinion is referenced as reasons for refusal by the MPT but was not formally provided for review and response.

WRAP was requested to comment on the legal opinion in February 2024 and requested the operators to comment on the opinion and a response was given in April 2024. WRAP however never saw the comments which were attached as an Annexure to the report.

The second set of comments was only received on 4 March 2025, a full 754 days after the application was deemed complete. These comments were also never shared with or allowed with the opportunity to be commented on by the applicant.

The timeframe is a direct contravention of Section 46(3)(b) of the By-Law, which mandates circulation of the application to all internal departments within 30 days of it being deemed complete.

The delay and lack of communication with the applicant constitute a procedural irregularity that materially affected the fairness and integrity of the process. Information was presented to the MPT without the applicant knowledge, verification or opportunity to provide contextual responses.

Violation of Section 56 – Applicant's Right to Reply

Section 56 of the By-Law sets out the applicant's statutory right to reply to all objection, comments or representations lodged with a Municipality.

This provision gives the applicant legal entitlement to receive, review and respond to all comments received, including interdepartmental comments, where relevant to the application's assessment.

The Legal Services Departments comments where not provided to WRAP prior to the MPT meeting, despite the fact that those comments formed the central basis of the Municipal Planners recommendation of refusal.

The applicant was thus deprived of submitting a formal written response to the legal interpretation, provide clarifying information or additional documentation, and to correct any factual inaccuracies or misunderstandings that subsequently informed the MPT's decision.

This procedural omission contravenes Section 56 and resulted in an unfair administrative process.

Material impact on the outcome

If statutory processes in terms of Section 56 were followed additional information could have been provided regarding the Trustees Committee Resolution, confirming the HOA's authority to lodge the application, and expand on the letter from the HOA Chairman (24 April 2024) explaining BCI's status as a member and operator acting under trustee's authorisation.

Additional contextual documentation demonstrating compliance the HOA Constitution could have been provided.

OBJECTOR'S RESPONSE

No comments provided.

AUTHORISED OFFICIAL'S RESPONSE

The appellant's comments regarding Section 46(3)(b) are noted.

The Municipal Planner considered the objections and comments thereon, and due to the conflict of opinions between members of the HOA and the HOA (applicant), requested that the Municipal Legal Services Branch comment on the requirements of the Benguela Cove HOA Constitution.

Section 54 (b) of the By-Law states:

"54 Further public notice

The Municipality may, at any stage during the processing of the application –
(a)....
(b) an application to be resent to the municipal departments for comment,

If new information comes to its attention which is material to the consideration of the application."

This additional comment was requested to ensure the HOA followed the correct internal processes to submit the land use planning application.

The appellants comment that the fact that the 2 sets of comments received from the Municipal Legal Services Branch was not forwarded to the applicant, and that it is considered a violation of Section 56 of the By-Law, is noted.

In the Municipal Legal Services Branch comments, it was indicated that, to comply with the Benguela Cove Constitution, the applicant had to provide proof that the consent use application was considered at a Special General Meeting. This

requirement was conveyed to the applicant via email by the Municipal Planner on 27 February 2024. Although the letter(s) of legal services branch comments were not forwarded to the applicant, the applicant was provided the opportunity to provide a detailed response regarding the opinion that the matter must be decided at a Special General Meeting of Benguela Cove HOA.

The applicant then provided a detailed response and indicated they do not consider it necessary for the application to be considered at a Special General Meeting of the HOA.

The appellants opinions that it had a material impact on the outcome is not supported, as the applicant did have an opportunity to explain their opinion of the workings of the Benguela Cove HOA, and their comments was included into the planning report to the MPT.

The comments that the application time frame was 754 days, are noted. The extended time frame was due to the two comments of the legal services branch that had to be obtained, to decide how the application should be further dealt with.

The applicant was already aware of the extended time frame when they responded in April 2024 on the Municipal Planners letter informing them about the first opinion of the Legal Services Branch.

The applicant did not use their remedy in terms of Section 59 (Failure to act within time period).

Section 59 reads as follows:

(1) *"An applicant may lodge an appeal to the Executive to the Executive Authority if the Municipal Planning Tribunal or Authorized Official fails to decide on an application within the period referred to in Section 58.*
(2) *Subject to Section 43(2), an applicant may not appeal to the Executive Authority if the Municipal Planning Tribunal or Authorized Official fails to decide on an application due to the fact that all required information to decide on the matter is not available."*

EVALUATION / ASSESSMENT

The appellant indicated that the appeal is against the decision of the MPT, the process followed prior to the MPT's decision and that the MPT erred in considering the merit of the application.

The appellant did submit an appeal application form within the 21-day prescribed period.

The appeal was forwarded to all persons who commented on the application. Seven letters with additional comments were received. The comments were summarized in this report.

Considering the above comments in the report, the reasons why the MPT did not support the application is valid reasons and the appellant does not proof the MPT erred in making its decision.

The appellants opinions about the long-time frame processing the application were discussed in detail, and it was required to advise the MPT on a technical/legal matter. The applicant however did not make use of the remedy in terms of Section 59 (Failure to act within time period) of the By-Law.

The appellant's comment that the fact that the two sets of comments from the Municipal Legal Services Branch which was attached to the report that was considered by the MPT, was not forwarded to the applicant, and that it is considered a violation of Section 56 of the By-Law, is noted.

It was discussed in detail in this report. Although the legal services branch comments were not forwarded to the applicant, the applicant was provided with an opportunity to respond to the main concern, which was that the application should have been tabled at a Special General Meeting of Benguela Cove HOA. A detailed response was provided to the Municipality by the applicant, and this was attached to the planning report considered by the MPT.

However, should the appeal authority be of the opinion that the appellant should have had the opportunity to respond to the two opinions of the Legal Services Branch, then the application could be referred to the MPT to provide the applicant an opportunity to respond to the legal opinions, and the MPT to consider it.

It must also be noted that the incorrect detail was indicated of the person that should be responsible for the penalty fee, and the applicant is of the opinion the MPT has the discretion to enforce the penalty on BCI (operator). This opinion is not supported, as it means that inaccurate information was provided in the application. The application as a whole should then have been submitted by BCI with the Power of Attorney from the HOA.

CONCLUSION

The opinion is held that the appeal submitted does not prove the decision of the MPT or the process followed prior to the MPT's decision was invalid, and that the MPT erred in considering the merit of the application.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Addendum AA: The item with annexures that served before the MPT on 30 September 2025
Addendum BB: MPT minutes dated 30 September 2025

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Addendum CC: Decision letters sent to applicant and objectors dated 17 October 2025
Addendum DD: Appeal submitted by WRAP Project Office on behalf of Benguela Cove HOA
Addendum EE: Objectors' response to appeal

RECOMMENDATION:

that the decision of the MPT on 30 October 2025, **be confirmed** and the appeal **be dismissed**.

4.6
PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

HBENG 210 & 220/575 (4336/2023)
H Olivier **(028) 313 8900** **Hermanus Administration**
28 July 2025

1. EXECUTIVE SUMMARY

An application was received on 9 February 2023 by WRAP Project Office on behalf Benguela Cove Homeowner's Association on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- **Consent Use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow tourist facilities (operating of a pontoon boat as a recreational facility).

- **Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised land use activity as stipulated above.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Portions 210 and 220 of Farm Afdaks Rivier No .575 is zoned Open Space Zone 3: Private Open Space and Open Space Zone 1: Nature Reserve respectively. There are amenities for residents on Portion 210 such as boat houses, a pool and tennis court. Portion 220 is next to the lagoon and a jetty boat slipway, and a club house was constructed in this area.

The proposal is to operate a pontoon boat from the jetty on a commercial basis, hence this application for consent use for tourist facility.

4. SUMMARY OF APPLICANT'S MOTIVATION

THE MOTIVATION FOR THE APPLICATION IS AS FOLLOWS:

- The Board of Trustees of the HOA submitted the application.
- The properties serve as recreational area for private homeowners and guests.
- The proposal is to operate a pontoon boat from the existing jetty on a commercial basis.

- The lagoon is a RAMSAR wetland and well suited for tourism.
- Application is also made for an Administrative Penalty fee as the pontoon boat is already operational on a commercial basis.
- The pontoon boat will provide a recreational activity that allows residents and visitors to enjoy the beauties of the Bot-Kleinmond Estuarine System. A trimaran designed boat will host guided boat tours.
- The pontoon caters for 12 passengers and 2 crew members, and the tours will last 60 minutes, therefore no onboard ablution will be required.
- The boat engines create minimal sound and the detachable fuel tanks eliminate possible fuel spills.
- The proposal is in line with the core values of Benguela Cove Lagoon Wine Estate which is nature conservation.
- The estate won various awards for their conservation efforts.
- Will be in line with the By-Law relating to the Control and Use of the Bot River and Klein River Estuaries.
- There are no restrictions in the Title deed prohibiting the application.
- No new services will be required.
- Access to the site is existing internal roads from the R43 Provincial Road.
- Will have no heritage impact.
- In line with the Bot/Kleinmond Estuarine Management Plan Draft January 2019 and most of the route is within the Recreational Zone 1.
- Application is in line with EMOZ.

SPLUMA PRINCIPLES

The application is measured against the principles in terms of Section 42 of SPLUMA, as follows:

Spatial Justice
Will not create spatial injustices.

Spatial Sustainability and Efficiency
Refers to protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas. The application will not impact on the afore said.

Spatial Resilience
Not in conflict with spatial planning policies.

Good Administration
A good streamlined public participation process was followed by the municipality.

DETERMINATION OF ADMINISTRATIVE PENALTY:

a) Nature, duration, gravity, and extent of the contravention

The boat carries 12 passengers and 2 crew members, and it is used to do guided tours of 60-minute duration.

b) The conduct of the person (allegedly) involved in the contravention

The Lady Bonnie has been operated without approval.

c) Report by a quantity surveyor in matters of unauthorised building/construction

No quantity surveyor was appointed as there is no unauthorised buildings/construction.

d) Whether the unlawful construction was stopped

The activity has not stopped as this would lead to a loss of income to the guides and the workers employed to operate the tourist attraction.

***e) Whether the person allegedly involved in the contravention has previously* contravened this By-Law or a previous planning law**

To our knowledge the property owner has not previously contravened the by -law.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Registered notices (1st round)	Yes	28 March 2023	5 May 2023
Registered notices (2nd round)	Yes	28 April 2023	2 June 2023
Internal departments	Yes	28 March 2023	5 May 2023
Ward councillor	Yes	28 March 2023	5 May 2023
Total comments	**NINE (9)**		
Total letters of support	**ONE (1)**		
Was public participation undertaken in accordance with Section 46 – 50 of the By-Law on Municipal Land Use Planning?			**Yes**
Was the application processed correctly (if no, elaborate below):			**Yes**
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			**Yes**

(It is to be noted that in the notification process the Homeowners Association was required to email a copy of the application to all property owners in Benguela Cove. They did not send the emails in the notification period in March, and a second notification was sent out in April 2023.)

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Overberg District Municipality: Health Department	27/03/2023	Approved.
Building Control	14/02/2023	No objection.

Fire Department	27/03/2023	No objection.
Environmental Management Services	10/05/2023	No objection.
Engineering Services	23/02/2023	See Annexure F.
Telkom	28/03/2023	See Annexure G.
Cape Nature	05/04/2023	See Annexure H.
Western Cape Government: DEADP: Coastal Management	2/08/2023	See Annexure I.
Western Cape Government: DEADP: Environmental Management	10/05/2023	See Annexure J.
BOCMA	23/11/2023	See Annexure K.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION.

One (1) **letter of support** was received from H & H Elcock, and nine (9) letters of objection were received during the public participation process. The applicant was provided with an opportunity to respond to the objections. See Annexures D and E respectively.

Objections were received forthcoming the public participation process from the following parties:

- *Lindfield Brokers (R Anderson)*
- *Brandsetter, M & M*
- *Birdlife South Africa (Dr G Murison)*
- *The Diessner Family Trust (M Diessner)*
- *Buchholz, V & IM*
- *Drs. Stroemer & Helgers*
- *Buchholz, NB*
- *Iris McCarthy Family Trust (CS McCarthy)*
- *Mkansi, M*

The objections, applicant's response and Municipal Town Planner's response can be summarized as follows:

(Summary is in the same numerical order as the applicant's response for ease of reference.)

OBJECTION 1 - Environmental Concerns, Historic ROD & EIA

COMMENT FROM RODNEY ANDERSON:

"The application is void ab initio on the first principal in that it takes no account of ensuring compliance with the provisions of the founding documents being the Department of Environmental Affairs Record of Decision (RoD) issued 15 December 2003 and the Environmental Management Plan dated March 2004."

"The Botrivier Vlei and Environs enjoy the status of Globally Important Bird Area as designated by Birdlife International and RAMSAR. This ensures the area has the status and protections of one of the foremost bird conservation sites in the world."

"This importance became a part of the legal protection and environmental controls issued· in the BC founding documentation. As set out in the environmental impact assessment Scoping Report incorporated in the binding 2003 Record of Decision.

These provisions cover the Private Nature Reserve being portions 10 to 18 et al of farm Afdaksriver no 575 Caledon comprising 31.5% of what is now Benguela Cove. Identified for the conservation of threatened Renostervelt Biome and nothing else."

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD AND ILSE MARIANNE BUCHHOLZ & DR. KLAUS STROEMER AND DR BEATE HELGERS:

"ACTIVITIES AND DEVELOPMENT RESTRICTIONS RELATING TO THE CONSENT APPLICATION

An environmental impact assessment for the proposed Benguela Cove Lagoon Wine Estate was conducted that resulted in the issuance of a Record of Decision (RoD) by DEADP. This RoD was approved on the impact assessment that included a number of specialist studies e.g. botanical survey, archaeological survey, avifaunal survey, etc.

Of importance in this consent use application (written by WRAP) is that the "beach area" of the Botrivier Lagoon along the southern and western boundaries of Benguela Cove Lagoon Wine Estate is designated as a Globally Important Birding Area (ZA097) by Birdlife International. This was based on extensive Specialist avifaunal studies conducted on the Botriviervlei, by KN Barnes during 1997 and 2003, the latter commissioned as a specialist study during the environmental impact assessment process for the Benguela Cove Lagoon Wine Estate.

Botriviervlei now enjoys the status of Globally Important Bird Area as designated by Birdlife International, giving the area status as one of the most important sites for bird conservation in the world. This importance formed an important part of the constraints and environmental controls incorporated in the outcome of the environmental impact assessment Scoping Report. This Scoping Report formed the body of information on which environmental authorization was given and specified in the Record of Decision EI2/2/I-213-Farm 575/10-18, Hermanus, dated 15 December 2003, that is applicable to all aspects of the Benguela Cove Lagoon Wine Estate development.

The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision:

a. *The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.*
b. *The erven boundaries were set well back from the high-water mark of the Botrivier Vlei to prevent human disturbance of bird life on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.*
c. *A boardwalk/demarcated walkway were placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.*
d. *A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.*
e. *No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.*
f. *No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the approved jetty.*
g. *The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.*
h. *The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project: Appendix K, Marine Studies Report dated S May 2003, pages 9&10; Appendix L, Botanical Report dated 12 May 2003 undertaken by Nick Helme; Appendix M, Avifaunal Report compiled by K N Barnes in March 2003; Appendix S, Archaeological Report dated August 2003 must be adopted and implemented.*
i. *The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.*
j. *Finally, the RoD stipulates that the Homeowners' Association/ or operator of the facility must implement and incorporate the conditions of authorizations given in this Record of Decision, as appropriate to the operational phase of the project.*

The existing restrictions above provide space for wildlife. Allowing tourist activities would negate this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat of wildlife. How can the above points be reconciled with the application?

There is also a bird nesting near the access road to the site which would be impacted by increased activities. How would an approval of the application be reconciled with the above restrictions?"

"ENVIRONMENTAL IMPACT ASSESSMENT
The initial application for the development of the estate included an environmental impact study. The application does not make it clear if a new EIA was conducted and is part of the application."

COMMENT FROM BIRD LIFE SOUTH AFRICA:

"Birdlife South Africa would also appreciate greater clarification on the permissible activities specific to the pontoon itself (when on the water), as well as the proposed route. The Bot River estuary is a Ramsar site, a wetland of international importance, and is ranked 8th in the country for its conservation importance. It is also a highly dynamic system, changeable in condition and consequently, its supported biodiversity, including its bird life. The route and activities of the pontoon require further detail and explanation to ensure the conservation and protection of this important system throughout, and Birdlife South Africa would be willing to engage on this further."

COMMENT FROM NICO BORIS BUCHHOLZ:

*" **Objection 2- Non-compliance ROD 15/12/2003- 220/575)***

The current application may not be allowed with regards to the ROD, 15/12/2003

- ***Objection 3 - Non-compliance of Environmental Development Plan (March 2004} - (220/575)***

The current application may not be in compliance with the Environmental Development Plan (March 2004)

- ***Objection 4- Disturbance to - Wildlife (220/575)***

Increased human activities will disturb wildlife, particularly the bird sanctuary on the wetlands of ERF 220/575 which is an internationally recognized RAMSAR site.

These existing restrictions provide space for wildlife. Allowing tourist activities would negate this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat. How can the below points be reconciled with the application?

- *The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision.*
- *The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.*
- *The erven boundaries were set well back from the highwater mark of the Botriviervlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.*
- *A boardwalk/demarcated walkway were placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of bird life on these areas.*
- *A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.*
- *No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.*
- *No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the two approved jetties.*
- *The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.*

- *The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by Enviro Africa, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project.*
- *The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.*
- *The Homeowners' Association I or operator of the facility must implement and incorporate the conditions of authorisation given in this Record of Decision, as appropriate to the operational phase of the project.*
- *There is also a bird nesting near the access road to the site which would be impacted by increased activities.*

- ***Objection 5 - Environmental Impact Assessment***

The initial application for the development of the estate included an environmental impact assessment. The application does not make it clear if a new EIA was conducted and is part of the application."

COMMENTS FROM CS MCCARTHY:

2. *The applicant needs to complete a NEMA checklist and obtain written confirmation from DEADP that the consent use does not trigger a NEMA EIA application in terms of the regulations."*

COMMENTS FROM MARCIA MKANSI:

"Firstly, I have concerns about the environmental impact of the boat. The emission from the boat has an impact on biodiversity."

APPLICANT'S RESPONSE

Response to ROD and EA comments:

The Environmental Affairs Record of Decision (RoD) issued 15th December 2003 indicates the following:

"The sites identified for the proposed jetties have been extensively investigated. The southern most jetty will be located approximately 270 meters north of the headland known as "South Cape". The gradient of the shore is relatively shallow; therefore, if the slipway is to be used at all levels, it would need to extend 50m into the water.

The northern most jetty located 770m meters north of "South Cape". This site is depositional zone, and foundations would require a short slipway as it is close to an existing channel."

The RoD approved the jetty that is used by Lady Bonnie to be launched, and the proposed use of the jetty is still in line with the RoD as a jetty. A Jetty is defined as a *"landing stage or small pier at which boats can dock or be moored."*

No additional development is being proposed to operate the proposed tourist facility, and the operation of the facility will not have an impact on the bird life and access to the jetty will only be obtained from existing boardwalks.

Response to Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers:

a. This noted and agreed with, the application will not alter the jetty's position.
b. This is noted and agreed with; the application will not alter the jetty's position or does not propose any additional development or structures.
c. The guests of the Lady Bonnie will be required to only utilise approved and existing walkways to gain access to the jetty to embark onto the Lady Bonnie.
d. No pets will be allowed on the Lady Bonnie.
e. This is noted and will be maintained by the operators of the Lady Bonnie.
f. This is not the proposal, only the approved jetties will be used.
g. This noted and agreed with.
h. This is noted and the proposed tourist facility is not predicted to have an impact on the operation and requirements set out by the RoD.
i. No amendment of the 'residential component' is being proposed. This is noted and agreed with.

Response to environmental concerns:

The motivational report addresses the environmental concerns, and the Lady Bonnie will be operated within the regulations as set out by the Bot/Kleinmond Estuarine Management Plan, refer to section 4.1 and 10.

Additionally, no additional development is being proposed to occur, and it would not impact the private nature reserve as mentioned in the comment as received.

The only proposal is to utilise the Lady Bonnie as indicated in the motivational report. The use of the Lady Bonnie would be to provide guests access to the lagoon/estuary and provide them with knowledgeable information regarding the estuary itself. No additional uses are sought.

The application was circulated to all relevant external departments. Should any commenting authorities require any additional information and / or environmental studies it will be adhered to. As there were existing authorisations in place it was not considered that any additional information would have been required when the application was submitted.

TOWN PLANNER'S RESPONSE

The original approval of Benguela Cove included the approval of an EIA ROD. This application was sent to DEADP: Development Management who indicated no additional environmental process is triggered.

DEADP: Coastal Management also provided support for the application, subject thereto that only one pontoon be allowed, and that Cape Nature must provide permission for the pontoon to use the lagoon.

Cape Nature was also requested to comment on the application, and they indicated that they do not object against the application, but should any new recreational infrastructure be developed, it should follow the correct environmental processes. No new infrastructure is proposed with this application.

The Municipal Environmental Branch also indicated their support for the application, due to the fact that existing infrastructure will be used.

Considering the above, the objections relating to requirements of the existing EIA ROD, possible new EIA ROD, concerns regarding the Ramsar Birdlife status of the area and the management of the private nature reserve portions, are noted. The departments/institutions responsible for environmental protection however support the application, and therefore the objections relating to environmental concerns do not proof the application not to be desirable.

OBJECTION 2 –New Development

COMMENT FROM RODNEY ANDERSON:

"The application for the development of the "beach area" can be seen to be void also to the extent that it is vague and lacks any contextual conservation significance. Any additional tourism facilities should be located at the BCI Commercial District."

COMMENT FROM BIRD LIFE SOUTH AFRICA:

"Birdlife South Africa asks for confirmation that the consent use application applies to the current use of both the pontoon boat (the Lady Bonnie) and existing structures, and for more detail thereof. It is unclear as to whether the application is seeking to develop additional tourism and/ or recreational facilities, or engage in other related activities, as defined through OMLUS.

Similarly, Birdlife South Africa requires corroboration that there is/ will be no increase to the development footprint associated with this consent use application, particularly in portion 220 (the beach area)."

COMMENT FROM NICO BORIS BUCHHOLZ:

- ***Objection 9- Scope of Application/ Lack of Specificity (210/575. 220/575):***

The applicant is seeking the broadest scope of approval by re-designating the land as a "tourist facilities" (OMLUS).

The activities allowed under this approval category are too broad, not restrictive enough, provide few guardrails, are easy to abuse and the consequences difficult to foresee.

The applicant must state what specific activities the applicant wants to engage in, instead of wanting to be issued "card blanche".

Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future. What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis), what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public? If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable.

- ***Objection 10- Lack of support facilities (e.g. toilets) (210/575, 220/575)***

There are no public toilet facilities to support tourism. The boat house is for the private use of residents and HOA members and their (non-commercial guests) and not for the general public.

APPLICANT'S RESPONSE

No additional structures are being proposed and only the existing structures are proposed to be used for the proposed tourist facility. The general public will not have access and only guests of the pontoon boat will be allowed access.

Response to Nico Boris Buchholz

The application is to legalise the operation of the pontoon boat; no additional uses are requested. The objector is mistaken to indicate that the applicants will have "carte blanche" to do as they please.

"Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future. What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis), what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public? If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable."

The above cannot occur as it was not applied for.

TOWN PLANNER'S RESPONSE

The objectors' comments are noted. It is not clearly defined in the motivation how many trips will be done on the pontoon per day. It is indicated that the visitors will be allowed to use the toilettes on portion 220 at the existing clubhouse. The lack of information regarding the number of trips does create some concern regarding the scale and impact of the tourist facility. The infrastructure on both properties was created to cater for residents, and it is reasonable to show concern to activities that could impact their amenities.

The applicant did comment that the only right being applied for is to allow paying customers on the pontoon for cruises on the lagoon, and no other uses can be allowed as it was not applied for.

OBJECTION 3 – Operations & Benguela Cove Homeowner's Association

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD + ILSE MARIANNE BUCHHOLZ:

BCHO constitution in relation to public property According to the Deeds register, plots 210 and 220 are "common property", i.e. they belong to all homeowners (HO). Article 30 of the BCHO Constitution clearly states the following:

"Neither the whole nor any portion of the common property shall be subjected to any rights, whether registered in the deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association ..."

This means that the Constitution prohibits changing usage unless ALL members benefit from this application. Streeter emphasized in various inquiries regarding this change that the change to a tourist facility is for the sole benefit of the owner of the pontoon boat.

Even if she retracts this statement, it is unthinkable that all HOs should have the right to exploit the designated area commercially for tourism purposes. Such use is prohibited for nature conservation reasons alone.

COMMENT FROM MARTIN DIESSNER:

" 8.1 Section 30 of the HOA's Constitution ("Constitution") expressly prescribes the dealings with the common property, which portion 210 and 220 fall under as explained in paragraph 3.1 above. Subsection 30.2.3 clearly states that, and I quote "Neither the whole ***nor any portion of the common property shall be subjected to any rights****, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof ... " (my emphasise in bold).*

8.1.1. The title deed of Portion 210 and 220 makes it clear that the HOA (via its trustees) is bound to be adhering to the Constitution.

8.1.2. The Constitution paragraph 2.4.4 considers Portion 210 and 220 as part of the common property.

8.1.3. The Constitution clause 30.2.3 prevents that the common is subjected to a consent use unless all Members of the HOA enjoy it.

8.1.4. Streeter, in her email dated 25 April 2023 (Appendix 4), clearly indicates in her answer to my question 5 that the consent use as a tourist facility, if approved, will only benefit the owner of the pontoon boat which is the developer BCI, and is not a consent use that will be enjoyable by all members of the HOA.

8.1.5. Therefore, in terms of the Constitution 30.2.3, the consent use must be denied by Overstrand as it would otherwise be considered to be a direct breach of the HOA's Constitution.

8.1.6. If BCI or any other member of the HOA would like to apply for a consent use in relation to any of the Portions falling under the Common Property, said members must assure that the consent use is to be enjoyed by all members of the HOA. However, it is questionable to permit every member of the HOA to run a commercial tourism boat operation from the HOA's jetty, or any other commercial tourist operation. One can only imagine what happens to the estate if some 120 members all start their own commercial tourist operation on those Portions, if permitted.

8.1.7. Alternatively, said members must propose a special resolution to amend the HOA's Constitution in accordance with the provisions of its section 20.7. Clearly, the Applicant has not exhausted its remedy to provide for an application that is not in violation of the HOA's Constitution, and therefore the Application must be rejected.

APPLICANT'S RESPONSE

The properties where the consent use is being applied for are owned by the **Benguela Cove Homeowners Association (BCHOA),** and the Pontoon Boat (Lady Bonnie) is operated by **Benguela Cove Investments (BCI)** and the pontoon boat is proposed to use the properties for access to the surface of the water. The operation of Lady Bonnie does not remove any rights of any member of the homeowners and does not have an impact on the access to these properties from any homeowners.

Response directed toward comments received from Martin Diessner:

- *"8.1.3. The Constitution clause 30.2.3 prevents that the common is subjected to a consent use unless all Members of the HOA enjoy it."*

Section 30.2.3 reads as follows:

"Subjected to any rights, whether registered in the Deeds Registry or not of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise or;"

No limitation is present that reads as stated by the objector.

- 8.1.6. – This is noted and agreed with, but they however will also be required to follow due process and application.

TOWN PLANNER'S RESPONSE

This point of objection is technical and relate to the interpretation of the Constitution of the Benguela Cove Estate. The Municipal legal Branch was requested to respond on the two opinions. Their interpretation is that it cannot necessarily be interpreted that each property owner would be allowed the same rights, purely for the fact that if the land use approval is approved for one pontoon the land use approval will have to be amended should more pontoons be operating on a commercial basis. What members of the HOA could have is expectations that the income generated by the pontoon also be to their financial benefit, seeing that as members they pay levies to maintain common properties.

It is also to be noted that the pontoon is stored on the Private Open Space when not on the water, and possibly also cleaned on the property. It is thus a commercial pontoon being stored on a private open space (common area).

OBJECTION 4 – Illegal operation of The Lady Bonnie

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD + ILSE MARIANNE BUCHHOLZ:

- *"APPLICATION IN REGARDS OF THE PONTOON BOAT (LADY BONNIE)*

The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General I(a) that "No person shall in the water area, without the prior written consent of the Council –

(a) Offer for reward or profit any show or entertainment or conduct any business or trade;
(c) Keep or use any vessel for the transport of passengers or goods for payment or reward."

Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations, but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

Every HO on the estate is aware of the fact that the developer BCI is in fact for the past years running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.co.za/boat-attractions even advertises the pontoon cruises which operate four times daily and are complimentary for two people when buying a case of wine with 6 bottles.

In fact, we know people who have received written confirmation of the price and conditions for a boat trip: The current rate this year is ZAR 250.00 P.P. and was ZAR 200.00 last year.

Streeter and Rea, in their capacity as trustees and representing the developer have been untruthful with regards to the charging of a fee whilst unlawfully operating the pontoon boat.

With regards to waving the administrative penalty, I believe that the By-Law arid the Estuary Regulation is clear. Therefore, the Overstrand Municipality has a duty to act in accordance with these regulations and not authorize the waiver of penalties."

COMMENT FROM DR. KLAUS STROEMER AND DR BEATE HELGERS:

Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations, but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

COMMENT FROM MARTIN DIESSNER:

"8.2. The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General I(a) that and I quote "No person shall in the water area, without the prior written consent of the Council - (a) offer for reward or profit any show or entertainment or conduct any business or trade; (c) keep or use any vessel for the transport of passengers or goods for payment or reward.

8.2.1. Streeter and Rea, both directors of BCI - which is the actual operator of the pontoon boat - stated that BCI does not charge passengers for the transport on their vessel.

8.2.2. Streeter did so in her email dated 25 April 2023 (Appendix 4) by answering question 7, and I quote her confirming: "The pontoon boat is not currently being charged for, and a price has not yet been determined."

8.2.3. Rea did so in his developer report (Appendix 5) as presented at the 29 April 2023 AGM of the HOA. He states and I quote: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations, but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

8.2.4. Everyone homeowner in the estate is aware of the fact that the developer BCI is in fact running a paid commercial operation with the pontoon boat. BCI's website at https;//www.benguelacove.eo.za/boat-attractions (Appendix 6) even advertises the pontoon cruises which operate four times daily and are complimentary for two people when buying a case of wine with 6 bottles.

8.2.5. We know of plenty of people that booked the pontoon cruise and directly paid for the transport of passengers on the pontoon boat. For example, I attach Appendix 7 which is a booking confirmation for 13 passengers each charged R250 with a total of R3 250.

8.2.6. Appendix 8 related to an invoice raised by developer BCI, the operator of the pontoon boat, to the customer. Please note that for reason of privacy I have redacted the customer's contact details.

8.2.7. How come that both Streeter and Rea state that the pontoon boat operates free of charge, however, customers is being charged a fee which is in violation of the law?

8.2.8. According to the Application, the pontoon boat is licensed to accommodate up to 12 passengers. The above mentioned booking clearly states 13 passengers, which shows that BCI is not only dishonest about their fee but also violating the permitted number of passengers which is in violation of the Overstrand Bylaw (Appendix 3) which states that "no person shall operate a boat on the estuary if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the license."

APPLICANT'S RESPONSE

In the submitted application, the operation of Lady Bonnie has been clearly declared, providing accurate information regarding the nature of the operations. It was emphasized that the operation of Lady Bonnie cannot be carried out without charging fees, as there are employees responsible for operating the tourist facility and ensuring a quality experience for the guests.

The submitted application is proof that the applicant adhered to the Estuary Regulations (appendix 3). The objections raised by concerned parties actually support the case for the desirability of pontoon cruises. They highlight the potential benefits such as job creation and the opportunity for visitors to explore and appreciate the natural beauty of the surrounding area.

Section 4.1 of the application clearly outlines the operational requirements that the Lady Bonnie operators will need to adhere to. These guidelines will ensure that the operations are carried out in a responsible and sustainable manner, taking into consideration the safety of guests, environmental conservation, and any other relevant regulations.

TOWN PLANNER'S RESPONSE

The comments regarding the Estuary Regulations are noted. Note that the Estuary Regulations attached to the Constitution refer to a By-Law controlled by the Overberg District Municipality. There was consultation with the District Municipality, and it was indicated that they do not deal with the control and use of the Bot River Estuary anymore.

It was established that a By-Law relating to the Control and use of the Bot River and Klein River Estuaries was approved in 2004, which requires some permits be obtained from the Overstrand Municipality. Should the application then be approved by the decision-making authority, a condition to such affect will have to be inserted in the conditions of approval.

The comments regarding the charging of fees for cruises on the lagoon are noted. All comments and opinions will not be discussed, as it would not provide any further clarity to the desirability of the application. It is however noted that the activity has been started illegally and is still ongoing. The applicant also stated in his report fees are charged to fund the running cost of the pontoon, so it does not appear that the fact is debated. The illegal operation of the activity will be considered, and the deciding authority will have to determine if a penalty fee will be required.

OBJECTION 5 – Security

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD + ILSE MARIANNE BUCHHOLZ:

"RESIDENTS SECURITY
Tourist activities will increase the amount of people on the estate, who will not be vetted, properly registered and meaningfully monitored, increasing the security/crime risk on the estate which eventually will result in higher security costs for the HO."

COMMENT FROM NICO BORIS BUCHHOLZ:

"Objection 6- Residents Security/ Crime (210/575, 220/575)

Tourist activities will increase the amount of people on the estate, who will unlikely, be vetted, properly registered and meaningfully monitored, increasing the security/ crime risk on the estate. These concerns apply to the protection and wellbeing of residents, private houses and items in the boat storage facilities. Once on the estate tourists will have unhindered access to the entire estate."

COMMENTS FROM MARCIA MKANSI:

"Secondly, the activities pose security issues to us homeowners, and no vetting of tourist is in place to avoid people with criminal records accessing the estate."

APPLICANT'S RESPONSE

The concerns raised regarding residents' security and potential crime risks associated with the proposed tourist activities are acknowledged. Ensuring the safety and well-being of residents within the estate is a top priority of the operators of the Lady Bonnie.

To address these concerns, it is important to clarify that access to the "Security Estate" will be strictly controlled. Only authorized guests, as determined by the operators of Lady Bonnie, will be granted access, and it will not be open to the general public.

It is understood that the prospect of access to the estate by tourists may raise security concerns. Therefore, measures will be implemented to mitigate potential risks. This includes implementing appropriate vetting and registration processes for all visitors and enhanced security protocols. The aim is to create a safe and secure environment for residents.

The management team work diligently to strike a balance between introducing tourism activities and safeguarding the residential community. These efforts will help minimize any negative impact on security and crime rates while providing residents with a controlled and enjoyable living environment.

TOWN PLANNER'S RESPONSE

A "hotel site" was approved next to the water's edge, which must still be developed. This means that guests to the hotel will also have to obtain access to the site via the security gates in future.

This application is however to provide access over a private open space, which is the recreational area for residents only and boat storage area to obtain access to the jetty and pontoon. This could impact privacy and security on the private open space. The concerns of the objectors are therefore not unfounded.

The lack of a clear program of how many trips will be catered for per day and how will security be improved at the recreational area and private clubhouse, was not addressed in this application. This is however an internal matter which can be resolved by the HOA and its members.

OBJECTION 6 – Fundamental change of character

COMMENT FROM NICO BORIS BUCHHOLZ:

"Objection 1- Fundamental Change of Character and Vision of The Estate:

When I purchased my property at Benguela Cove I gave consideration to the site development plan and the approved activities. I think I am entitled to have a reasonable expectation for this to remain unchanged. The proposed change may fundamentally impact the character and vision of the estate.

Benguela Cove was envisaged as a PRIVATE, RESIDENTIAL low density, rural, in "the middle of nature" estate, undisturbed by the daily activities of towns and cities with private access to the Botrivier Lagoon via a jetty and a boat ramp (210/575). Relatively untouched wetland area (220/575) which primarily serves as a habitat for wildlife and plants are an essential part of that vision. The vision was NOT to allow access of the general public and to be a place of tourist activities (as defined by OMLUS), of public entertainment, impacting both residents and wildlife. The application will result in changing that vision and to commercially exploit the estate by third parties and the natural habitat it tries to protect (with the exception of the boutique hotel by the developer and the commercial precinct which is located outside the security boom which controls access of the residents part of the estate). This is a residential and NOT a commercial estate and I strongly object to the mixing of both and blurring the lines."

APPLICANT'S RESPONSE

The comments from the objector's are noted and appreciated regarding the character and vision of Benguela Cove Estate. It is important to clarify that the proposed operation of Lady Bonnie will not compromise the private and residential nature of the estate, as access to the "Security Estate" will be strictly controlled. Only authorized guests, as determined by the operators of Lady Bonnie, will have access, and it will not be open to the general public.

Furthermore, it is essential to note that the proposed tourist facility does not fall under the category of a nuisance land use. Extensive research and analysis have been conducted to ensure that the operations of Lady Bonnie will not have a detrimental impact on the daily activities of the surrounding properties. While there may be an increase in the number of guests, it will be limited to the properties explicitly included in the application. Measures will be put in place to manage the flow of visitors and mitigate any potential disturbances.

It is understood and the objector's desire to maintain the original vision of Benguela Cove estate as a residential sanctuary in harmony with nature is respected. The intention behind the proposed operation of Lady Bonnie is not to blur the lines between residential and commercial aspects but to offer a unique and controlled experience for residents and their authorized guests. The operators of Lady Bonnie are committed to preserving the natural habitat and minimizing any adverse effects on wildlife and the environment.

TOWN PLANNER'S RESPONSE

The objections and applicants' response are noted.

As previously indicated some form of access will have to be provided to hotel guests in future via the estate gates. The hotel site is however actually zoned for such purpose.

However, the private open space was created as a private recreational area for residents. Although one pontoon with 12 guests on the lagoon will not change the character of the estate, the provision of access to possibly 12 guests per hour utilizing the private recreational area for an access point, could impact on the privacy of residents using their private facilities. It could thus impact the character of the surrounding area if the activities are not limited in scale and well managed.

OBJECTION 7 – Noise Impact

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD + ILSE MARIANNE BUCHHOLZ:

"NOISE DISTURBANCE
Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.

COMMENT FROM NICO BORIS BUCHHOLZ:

"Objection 7 - Resident Noise Disturbance:

Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents."

"Objection 8 - Resident Road Safety:

Tourist activities will result in increased road traffic, increasing the risk to residents in particular children playing and dogs."

APPLICANT'S RESPONSE

It is important to highlight that the operations of Lady Bonnie have been conducted without any previous concerns or complaints regarding noise. The operators have taken proactive measures to ensure that the activities are carried out in a manner that respects the tranquillity of the estate.

Moreover, managing road traffic effectively is of great importance to minimize disruptions and noise disturbances for the residents. Careful planning, traffic calming measures, and designated parking areas will be utilised to ensure a smooth flow of traffic and reduce any potential noise-related inconveniences.

The operators of the Lady Bonnie understand the significance of preserving the peaceful ambiance of the estate and will continue to monitor noise levels closely. Regular communication channels will be established to address any concerns or feedback from residents, allowing us to take prompt actions in response to their needs.

TOWN PLANNER'S RESPONSE

The comments are noted. Additional traffic with additional noise levels will be expected in the estate when the future hotel site is developed. However, additional traffic and noise to the recreational area and jetty was not expected by residents. The guests to the pontoon could also create extra noise levels at the recreational area and jetty.

It is not clear in the motivation submitted how guests will travel to the jetty area. It is indicated that "designated parking areas will be provided". It is not clear where these designated parking areas for guests will be, but it is assumed that vehicles will park at the commercial site.

The lack of this information makes it difficult to get an understanding of the overall possible increase in noise in this area.

OBJECTION 8 – Public Participation

COMMENT FROM NICO BORIS BUCHHOLZ:

"Objection 14- Municipality Consultation Model:

The municipality has delegated to the HOA to make individual HOA members aware of the application. Can this be legal, the normal process or it be reasonable to delegate the sole means of notification to the very party seeking the application?!

In addition, this is the party which in the past has failed to forward the identical application in a reasonable timeframe?! Please note that forwarding the application was done my email-only without any feedback loop.

What are the requirements governing the notification of affected parties?"

APPLICANT'S RESPONSE

This is a standardised proses to notify all homeowners in the area that is prescribed by the By-Law through section 48, 49 and 50.

This process was followed on instruction of the Municipality. Proof of notices is also available on request.

TOWN PLANNER'S RESPONSE

In terms of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020, it is required that registered notices be send out to surrounding effected property owners. Notices were sent out to property owners of 22 surrounding effected properties within Benguela Cove Estate, the HOA and the Fisherhaven Rate Payers Association.

As an additional measure, the HOA was also required to send out e-mail's informing all property owners in Benguela Cove Estate about the application. The HOA did not send out the e-mails in a timely manner and was therefore requested to again send out the e-mails to ensure all residents were informed of the application. The application therefore complies with the requirement of the relevant By-law.

OBJECTION 9 – Property Value

COMMENT FROM NICO BORIS BUCHHOLZ:

"Objection 13 - Impact on Property Value (210/575, 220/575)

The developer has a history of wanting to make Benguela Cove appealing to a much wider audience by changing the original vision of the estate from an exclusive, quiet area to that of a mass, high impact tourism site.

Specifically introducing facilities like mini golf, a splash park, multiple bus parking bays are testament of that changed vision towards commercialization. As the result of the proposed change, I am concerned that the value of my property will fall."

APPLICANT'S RESPONSE

This comment is not backed by any evidence and is merely as statement made by the objector. Historically the property values of the Benguela Cove Estate have seen persistent increase.

TOWN PLANNER'S RESPONSE

The comments are noted.

It is very difficult to prove that this application will negatively impact property values, as property values has just gone up in value in the last couple of years, as stated by the applicant.

OBJECTION 10 – General Questions / Comments

QUESTIONS FROM RODNEY ANDERSON:

1. *"Exactly which boat is intended be used if consent was granted?"*
2. *"How would the access of tourists affect the BC "Security Estate"?"*
3. *"How is compliance with the RoD and EMP to be achieved from now on?"*
4. *"Where are the permissions from Department of Environmental Affairs & Development Planning (DEADP) for the listed activities under National environmental Management Act 2014 (NEMA)?*

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD AND ILSE MARIANNE BUCHHOLZ & DR. KLAUS STROEMER AND DR BEATE HELGERS:

- *"UNCLEAR INTERPRETATION OF THE CONTENT OF THE APPLICATION*

The present application requests a permit that would allow a maximum interpretation of the consent use. In the medium and long term, this would lead to an uncontrollable commercial exploitation of the shoreline (plot 220), which would cause irreparable damage to the protected area.

In order to avoid later misinterpretations, the application must therefore describe exactly what the consent use is being requested for.

Page 2 of the application refers to the use of a trimaran boat. For which boat is consent use requested, for the currently used "Lady Bonnie" or for any other boat?

Are there any consent use matters included in the application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision?"

QUESTIONS FROM NICO BORIS BUCHHOLZ:

"Who Is the Applicant:

The application may give the impression that the proposed changes are the desire of the majority of individual home-/ plot owners. It is unlikely that commercialization and the resulting risk to security, safety and increased noise (see points above) is the desire of the majority of homeowners.

1. *HOA vs. HOA trustees vs. BCI /developer) vs. BCI {operator of winery and related activities):*

Whilst the HOA is the applicant, the dynamics of the application are more complex: Decisions on behalf of the HOA, like this application, are made by the Board of Trustees on a simple majority basis. The HOA has 4 trustees, 2 nominated by the developer (BCI), who also runs the winery and related tourist activities, and two voted for by HOA members (home and plot owners). As unsold developer plots entitles the developer to have one vote per plot towards trustee elections, one HOA trustee was essentially voted for by the developer, giving the developer (BCI) a majority to make decisions on behalf of the HOA. The potential for conflicts of interest is obvious.

In essence the developer may apply for changes on behalf of the HOA without necessarily representing the view of a majority of individual home-/plot owners.

As a consequence, the question that needs to be asked is who is set to benefit the most from the application? Of particular note is that the name of the developer was not mentioned once in the application!

2. *Relationship Developer vs. individual homeowners:*

In my opinion the relationship between the developer, represented by some members on the Board of Trustees and the majority of individual homeowners has been fractious and disagreeable, as the many legal cases are testament too. The application has to be viewed in this context.

3. *Non-Alignment of Interests*

The vision and interests for the estate between many individual home-/ plot owners and the operator of the winery and related tourist facilities may not be the same and diverging. One party may be interested in commercial expansion whilst the other focused on preserving the existing situation. Please note that outside the residential area the developer is running an extensive tourist facility. The reassignment of 210/575 and 220/575 would potentially expand those activities onto residential land. The developer and the HOA are separate entities, yet for the reasons mentioned this application blurs the lines and may allow the developer to use HOA land to further its own commercial interests.

4. No Consultation:

Similar to previous applications, please note that I and the majority of individual HOA members have at no stage been consulted by the applicant about this application. There would have been ample opportunities to do so and even vote on during recent HOA meetings. Hence the application cannot be viewed as the agreed desire of the majority of individual plot-/ homeowners.

5. Hotel:

Some land adjacent to ERF 220/575 is owned by the developer and operator of the winery/ tourist facility and as part of the existing site development plan has been approved to build a boutique hotel facility on. Plans are currently underway to do so. The approval of 220/575 as a tourist facility will create a corridor to link hotel with ERF 210/575 increasing human activity, impacting residents and wildlife. There is an alternative road to link hotel and jetty.

7. Pontoon Boat:

a. The owner/operator of the boat pontoon boat "Lady Bonny" is the same company that owns and runs the winery and related tourist activities and is also the developer. The application makes no mention of this. The HOA has no business interest or association with the boat. The application may give the impression that the HOA has an interest in the usage of the boat. Due to the reasons above the opposite is likely the case. Of note is that the owner/operator of the boat was not mentioned once in the application
b. Individual plot-/ homeowners were not consulted at the inception of the boat tours or ever since.
c. To me the boat operation of the pontoon boat and associated activities has always been undesirable, and I would like them to cease immediately.
d. The pontoon boat has continued to operate FOR HIRE (ZAR 250 per person as of May 2023) even after the application has been submitted. The determination of the operation of the boat as not being legal has not stopped its commercial usage. This also speaks to the inability of the authorities to effectively monitor and enforce rules and the operator to adhere to restrictions.

1. The WRAP document needs to describe in detail what it is that consent use is applied for, so that there can be no confusion as to the exact detail.
2. Which boat is "consent use" applied for, the existing Lady Bonny or another? Be specific and provide details of the craft to be used.
3. Are there any consent use matters included in the WRAP application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision."

QUESTIONS/ COMMENTS FROM CS MCCARTHY:

1. Prior to the HOA submitting this application, the application should have gone through the necessary process required to get consent from the homeowners as to whether or not the HOA may apply for this consent use.

3. *The application needs to define any ancillary land uses on the site that the operation of the pontoon boat may create.*

4. *The application needs to confirm the maximum number of BCI clients and staff that will be on the BCHOA land at any one time.*

5. *The application needs to include an SDP that demarcates the specific limited shoreline and land area from where the boat will be operated and stored as this use cannot apply to the whole erven.*

6. *The application needs to confirm that there will only ever be one pontoon boat operating.*

7. *The application needs to include an access plan for emergency vehicles in the event that the pontoon boat is involved in an emergency.*

8. *The application is incorrect and misleading as it states the pontoon boat is used for BCI guests and is not charged for, this is however incorrect. The boat is part of a commercial wine enterprise and is charged for at R250 p/p, see attached email quote received from BCI.*

9. *The existing clubhouse at the slipway and jetty belongs to the HOA and is by definition not available for the commercial use for any of its members, therefore the applicant should at its cost provide its own ablution facilities subject to the approval of the HOA or enter into a rental lease to rent and maintain the toilets and use of the clubhouse."*

COMMENTS FROM MARCIA MKANSI:

"Lastly, the estate imposes penalties on homeowners that are beyond the homeowners' control i.e. obligation to build which was not disclosed prior to purchase. Yet, they request their penalties to be erased for operating without consent. I find this request to be of double standards when they can not apply their minds to other exceptional cases. I therefore wish to see HOA lead by example and equally honour the penalties imposed."

APPLICANT'S RESPONSE

ANSWERS TO QUESTIONS RAISED BY RODNEY ANDERSON:

1. The Lady Bonnie, pontoon boat.

2. The access will be controlled and only guests that are authorised by the operators of the Lady Bonnie will be able to access the "Security Estate".

3. The proposed land use application is not predicted to have an impact on the RoD or EMP.

4. The application will be circulated to the mentioned department for their comment if there are any triggers.

ANSWERS TO QUESTIONS RAISED MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD + ILSE MARIANNE BUCHHOLZ:

- The application is to operate Lady Bonnie as a tourist facility, to provided guided tours. The application and motivation make this clear.

No access to the 'beach' will be allowed, no additional development is proposed, and no additional walkways are being proposed. The existing facilities will be used to operate the Lady Bonnie and only the Lady Bonnie.

ANSWERS TO QUESTIONS RAISED NICO BORIS BUCHHOLZ:

1. The comment is noted, however, there was never any false pretence made that all homeowners are in support of the proposal. The application was circulated to all the homeowners for their comment through the public participation process.

2. The **BCHOA** is the applicant in their capacity of the owners of the subject property, which is why their power of attorney was required. The operator of the Lady Bonnie is **BCI**, the remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

3. This is noted. The properties (Portions 210 and 220 of the farm Afdaks Rivier 575, Caledon) are not residential properties and are zoned as Open Space Zone 3: Private Open Space & Open Space Zone 1: Nature Reserve and not residential.

4. The need for consultation was not required as the members of the **BCHOA** were notified through the public participation process which is why they were afforded the opportunity to submit this comment.

5. This is an assumption being made and was not indicated in the application as it is not being proposed. Should the hotel/lodge be developed in future, the guests would be able to utilise the services available of the Lady Bonnie.

7.(a) This is noted and agreed with. As mentioned above, the **BCHOA** is the applicant in their capacity as the owners of the subject properties which are why their power of attorney was requested and **BCI** is the operator of the Lady Bonnie. The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

b. This is noted, the homeowners and member of the BCHOA are being involved through the public participation process to rectify this.

c. There has not been any complaint against the operation of the boat.

d. The boat employs staff and the operators of the boat are continuing to ensure these staff's livelihoods are supported.

1. The consent use is clear; the operators of Lady Bonnie would like to continue the operation thereof.

2. The Lady Bonnie and only that vessel.

3. The conservation use areas will not be affected by the operation of the Lady Bonnie.

ANSWERS TO QUESTIONS / COMMENTS RAISED CS MCCARTHY:

1. The **BCHOA** is the applicant in their capacity as owners of the subject properties which is why their power of attorney was required, and the operators of the Lady Bonnie is **BCI.** The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

3. The consent use is clear; the operators of Lady Bonnie would like to continue the operation thereof. No additional uses are being requested.

4. Refer to Section 4.1 of the motivational report. 12 Guests and 2 staff members.

5. Only Portions 210 and 220 of the farm Afdaks Rivier 575, Caledon may be used for the proposed use, it is clearly stated that only these two properties will be used.

6. The only vessel that will be used is the Lady Bonnie.

7. The application refers to the illegal use already occurring and is being applied for.

8. This comment is noted.

ANSWERS TO QUESTIONS / COMMENTS RAISED BY MARCIA MKANSI:

This is noted. The **BCHOA** is the applicant in their capacity as owners of the subject properties which are why their power of attorney was required. And the operator of the Lady Bonnie is **BCI**. The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

TOWN PLANNER'S RESPONSE

The **concerns** raised about **what boat will be used**, how tourist will obtain **access at the security gate** and the necessity if an **EIA is required** was addressed by the applicant and was also previously commented on in this report.

The applicant also clearly state that only existing infrastructure will be used and toilettes at the club house, the existing slipway, jetty and no access will be provided to the beach. One objector also questioned if BCI (the operator) will have to engage in some form of lease with the HOA, but no clear response was provided by the applicant.

It has been clarified that the HOA is the applicant, but that BCI (the developer) has been and will operate the pontoon in future.

Comments were provided on the working of the HOA with the four trustees, and the opinion that the developer controls the HOA and therefore makes decisions that is not in line with the wishes of other residents. This is noted, but it is for the residents to ensure the HOA functions in line with the approved Constitution for Benguela Cove, and if not, they should direct their complaints to the Community Schemes Ombud Service (CSOS).

The concerns regarding that the residents who form part of the HOA only became aware of the fact that the HOA applied for this consent use, after they received notices as part of the Town Planning application process by the Municipality, is of concern. It is to be noted that the notification process being followed is part of the Municipal process. Members of the HOA's should ensure that their own HOA follow processes and procedures in line with the requirements of their constitution.

The Municipal Legal Branch was requested to provide an opinion on this point, and it is their opinion that resident (members) should have been notified of a Special General Meeting of the intention of the HOA to submit a planning application on common property.

The applicant was requested to provide proof that the required processes were followed, or reasons why they feel the HOA trustees had the right to submit the planning application to the Municipality without following the above-mentioned process, before submitting this application to the Municipality.

The applicant did provide a detailed response to the above-mentioned request and is of the opinion that the correct processes were followed in terms of the Benguela Cove Estate Constitution. The comment will not be discussed in detail but is attached as Annexure M to this report.

The Municipal Legal Branch was again requested to provide an opinion on the applicant's comments. The final opinion of that Branch is, "I am of the view that the HOA did not comply with its own constitution and furthermore failed to provide Overstrand Municipality with a clear indication in terms of what power(s), in terms of the Constitution, the HOA acted to submit the planning application".

On **the illegal use** of the pontoon for commercial purposes, the applicant indicated that is the reason why they are now applying. The Planning Consultant will not elaborate on statements about the illegal operation of the pontoon and opinions objectors have of BCI and the Directors. It is the Municipal Town Planners opinion that these opinions will not proof the application to be desirable or not.

The comment that a penalty fee must be charged for the illegal land use are noted. The applicant did not provide a clear answer to this comment and only confirmed that the HOA is the applicant and BCI is the operator. It is also the Municipal Town Planners opinion that should this application be approved a penalty fee be charged. It is however concerning to see that in the motivation for the penalty fee application no clear indication is provided as to who is the responsible party for the illegal land use.

OBJECTION 11 - Comments received not linked to the land use application and should not affect the outcome of the Land Use Application

COMMENT FROM RODNEY ANDERSON:

"HERE ARE UNCERTAINTIES WHICH GENERATE LEGITIMATE CONCERNS.

Note: The nature of his application requires that the HOA members are well informed. This is essential, to ensure their informed consent, and requires clear plans and details of what activities are intended. This applicant has failed to do so.

The first questions below (1-4) were tendered by invitation prior to the Benguela Cove HOA AGM dated 29th April and were mainly fobbed off by Chair Ms. Streeter.

1. *What are the details of the 11-hectare (Renosterveld) area that is proposed to be cleared as "fire breaks" in terms of the budget? -NC*

2. *The RoD contains a clear prohibition against damaging the natural vegetation outside of residential erven and in the Private Nature Reserve generally? To this she replied, "We not going to pull them out we are just going to cut them down.*

3. *What environmental permission has been granted to do this work?-NC*

4. *What work was done (or to be done) to "clean up the beach"? To this she replied, "we are not going to use heavy equipment on the "beach".*

The Incriminating photographic evidence was taken on 6 March.

5. *Was an EIA done (or to be done) as is required for such work? -NC*

6. *Why is the homeowner's association used as the applicant for the application for consent use for the beach area and Lady Bonnie. -NC All the above questions were tendered in good faith."*

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD AND ILSE MARIANNE BUCHHOLZ & DR. KLAUS STROEMER AND DR BEATE HELGERS & NICO BORIS BUCHHOLZ:

- ***"ILLEGAL ACCESS AND MECHANICAL DISTURBANCE OF THE BEACH AND CONSERVATION AREA***

Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. These was documented photographically (Appendix 1). On the pictures you can see that a so-called digger-loader and workers are in the protected area and are doing some work.

It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning."

- ***"MONITORING AND ENFORCEMENT OF RESTRICTIONS***

Approval of "Portion 229 of Farm 575, Benguela Cove - Proposed Amendment of Approved Site Development Plan and Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.

I have little confidence that potential restrictions to the current application would allow monitoring and enforcement."

- ***FINANCIAL CONSEQUENCES FOR HOA***

The operation of a tourist facility would mean additional financial and administrative burdens for the HOA and an additional burden on the infrastructure. The application should therefore contain a detailed list of the additional costs to be expected and the distribution of these costs.

- ***Objection 12 - Impact on relationship with HOA not addressed (210/575, 220/575)***

The proposed change places additional burdens onto individual homeowners which have not been addressed by the applicant. The burden is administrative and financial. I am personally not willing to financially subsidize (through HOA levies) the establishment/ running of tourist facilities and the additional pressure on infrastructure this would amount to. Part of the application, in my view, should be a detailed agreement how the financial burden is paid for.

COMMENTS FROM MARCIA MKANSI:

"Thirdly, we pay a high amount of levy, and I don't see how the business benefits us in terms of reduced levies. It appears to me that we pay levy for someone to appropriate profit under the disguise of homeowners. I would like to know how this benefits us in terms of maintenance, reduced levies etc."

COMMENT FROM MARTINA AND MICHEAL BRANDSTETTER & VOLKHARD AND ILSE MARIANNE BUCHHOLZ & DR. KLAUS STROEMER AND DR BEATE HELGERS:

- ***MISLEADING APPLICATION***

The Application is misleading. The Application attempts to create the impression that the HOA and all of its members consent to the Application. There is no indication anywhere in the application that BCI owns and operates the pontoon (Lady Bonnie). Rather, it appears that this application is desired by the majority of HOA members, although the HO has never been consulted or even informed about the application by the Trustees. The developer controls the majority of the HOA's trustee board and has put this Application forward on behalf of the HOA, without the consent of the majority's members but in their very own business interests.

COMMENT FROM BIRD LIFE SOUTH AFRICA:

- *"Photographic evidence provided by local community members shows that there is clearing of natural vegetation underway on portion 220, including, potentially, the removal of milkwoods Sideroxylon inerme, a Protected Tree[1] The presence of a digger on the beach is also indicative of potential soil movement of more than Sm3, and there is evidence of extensive vehicle tracks and other disturbance. Given the timing, this has raised questions with respect to the scope and intent of this consent use application."*

[1] *It is illegal to damage, move, or destroy Protected Trees*

COMMENT FROM MARTIN DIESSNER:

8.3. *Lastly, the Application is misleading. Nowhere does it state that BCI is the operator of the pontoon boat. The Application attempts to create the impression that the HOA and all of its members consent to the Application. However, as per Streeter's email confirmation (Appendix 4), no members of the HOA have been consulted.*

Simply put:
The developer (and operator of the pontoon boat) controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members.

8.3.1. *Streeter and Rea, in their capacity as trustees, have undersigned the trustee resolution and power of attorney that are part of the Application.*

8.3.2. *The HOA's Constitution section 9 prevents the trustees (ie Streeter and Rea) to act in contravention of the Constitution. I quote section 9.5 which states "the Trustees may make regulations and rules* ***not inconsistent with this Constitution*** *..." (bold my emphasis)*

8.3.3. *Both Streeter and Rea (and the other trustees) have, in my opinion, violated the powers that the Constitution provides to them as trustees as the Application is unlawful and contravenes the Constitution clause 30.*

APPLICANT'S RESPONSE

- These comments do not pertain to the land use application, and this is not the correct forum to address or require addressing in terms of the By-Law.

- Application is submitted on Portions 210 and 220 of the farm Afdaks Rivier 575, Caledon and not Portion 229 of the farm Afdaks Rivier 575, Caledon.

- The application was submitted with the purpose of legalising the operations of Lady Bonnie. There has been no intention to mislead, and it was never claimed that all homeowners supported the application.

The powers of attorney of the application were signed by the **BCHOA** and are the applicant in their capacity as owners of the subject properties.

Refer to Annexure B, C, D and E for additional response to the general questions. The BCI have been approached to address these concerns being raised with reference to:

- Illegal access and mechanical disturbance of the beach and conservation area.
- Response to concerns regarding levies and benefits at Benguela Cove Estate; (BCI also pays levies like any member of the HOA and share the financial responsibility for maintaining the community infrastructure. The farming enterprises and maintenance agreement also help keeping maintenance cost low.)
- Impact on relationship with HOA not addressed; and
- Financial consequences for HOA. (BCI will carry all additional cost due to the tourist facilities and will not place that burden on the HOA. There will be no additional burden on the homeowners)

TOWN PLANNER'S RESPONSE

The comments/objections are not all relevant to determine the desirability of the application. Due to the structure of the applicant's response, each point will be discussed under their headings.

Concerns that property owners were not properly informed about the application was previously addressed.

The statements about the work done in the renosterveld and beach, and the applicability of EIA regulations have no relevancy to this application. If objectors have any concerns, they should direct their concerns to DEADP.

The comments regarding the enforcement of regulations on the SDP and Departure approval on Portion 229 has no relevancy on this application, as stated by the applicant. Should the objectors believe there are illegal activities, a formal complaint must be submitted to the Town Planning Branch of the Municipality to investigate.

The applicant indicates that no additional financial burden will be placed on the HOA for the tourist facilities and the operator will carry the cost for any additional burden.

The applicant did not clearly respond to the question how residents will benefit from the tourist facility but indicated that BCI also pays levies like any member of the HOA and share the financial responsibility for maintaining the community infrastructure. The farming enterprises and maintenance agreement also help keeping maintenance cost and levies low.

In response to the comment that it appears that the application was submitted by the HOA and members, the applicant indicated the HOA provided them with consent to submit the application. The applicant also indicates it was not the intention to mislead that all owners support the application. No further comment will be made on this point.

Other point of objection is the fact that members were not consulted with, and that the HOA decision to provide power of attorney to submit the application is not consistent with the Constitution Section 9 and Section 30.

This point has already been discussed under point Objection 10 Town Planners Response.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 above.

Internal and external departments

The application is supported by all internal municipal departments and external provincial and semi-state institutions.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

It will not create spatial injustices.

Spatial Sustainability

The proposed tourist activities should not have a negative impact on the environment or agricultural land.

The impact should however also be considered on the private facility of the private open space with tennis club, swimming pool and boat houses, which was constructed for the private use of residents. The influx of people to this site could impact privacy and increase noise.

Efficiency

For the operator it will be more efficient to make use of existing infrastructure to launch the operation of the pontoon. For the residents it is however not efficient as it creates security and privacy concerns, which will have to be addressed, and could require an additional financial burden on the HOA.

Spatial Resilience

The proposal is in line with spatial policies for this area.

Good Administration

Good procedure was followed and a public participation process as required in terms of the Planning By-Law was followed. There are however concerns that the HOA did not follow the correct procedure in terms of their Constitution to submit the application to the Municipality.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The proposal is consistent with the Overstrand Municipal Wide SDF, 2020.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

The area is already serviced, and no additional services will be required for this development.

10.7 Outcomes of investigations/applications i.t.o other legislation

N/A

10.8 Existing and proposed zoning comparisons and considerations

The surrounding area is within a private residential estate with private open spaces and residential plots. Any application that could negatively impact such character should not be considered for approval.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The Benguela Cove Wine Estate is a Residential Development with Agricultural land within the development. There is also a vacant hotel site, some private open spaces and nature areas within the development. Close to the entrance to the development there is a Special Zoned property that is utilized to Tourists Businesses and a Wine cellar.

Approximately half of the residential properties have been developed, whilst the rest are vacant.

Portion 210 within the development is zoned Open Space Zone 3: Private Open Space. It is developed with tennis courts, a swimming pool and boat storage. This area is a private area created for the residents within the development. Portion 220 to its northwest is zoned Open Space Zone 1: Nature Reserve and is an environmentally sensitive strip of land next to the lagoon. A jetty, boat slipway and clubhouse were constructed on a small portion of the strip next to Portion 210.

The application that was submitted is to operate a commercial pontoon to take tourists for boat trips on the lagoon. The clients will however have to make use of Portions 210 and 220 to access the pontoon at the jetty. Application was therefore made for a Consent Use for a Tourist facility on these portions for such operation, and a determination of an administrative penalty due to the fact that the pontoon boat has already been operating for a while on a commercial basis.

The application that was submitted to Town Planning indicates that the HOA is the applicant for this application.

The application went through a public participation process and one (1) letter of support, and nine (9) letters of objection were received. The objections, applicants' response and Municipal Town Planners response thereto were discussed in detail in the report.

The objections were addressed, but some of the objections will again be discussed in more detail as it could impact desirability.

The objectors were concerned about the **lack of information** with the application. It is not clearly defined in the motivation how many trips will be done by the pontoon per day. It is also not indicated how guests will be transported to the jetty or if they will travel to the jetty with their own vehicles. The lack of information does create concerns regarding the scale and impact of the tourist facility. The infrastructure on both properties was created to cater for residents, and it is reasonable for residents to show concern for activities that could impact their properties.

The objectors are also concerned about **security** of their properties. The undeveloped hotel site within the development would allow for some influx of people to such site in future. This application is to allow customers into the development but also to provide them with access over a private open space, which is the recreational area for residents only and boat storage area to obtain access to the jetty and pontoon. This could impact privacy and security on the private open space. The lack of a clear program of how many trips will be catered for per day and how will security be improved at the recreational area and private clubhouse, is of concern. The applicant indicates that good security processes will be followed, but no detail is provided.

The objectors are concerned about the **noise** impact. The lack of information about number of trips to the pontoon, how will people obtain access to the site, how would behaviour of visitors be controlled not to impact surrounding residents, were not addressed. The fact that the pontoon is being operated at this stage does not proof the concerns not to be valid, as the scale of existing and future operation of the business was not indicated in the motivation.

There were also objections regarding the change of the **character** of the area created as recreational zone for residents and their guests. This is mainly with regards to an influx of people to use the tourist facility, and the impact it could have with increased noise and impacting on the privacy of surrounding property owners. The lack of information regarding the precise operation of the tourist activity (pontoon) does give weight to the concerns of the objectors.

The objectors had major concerns regarding the **lack of in-house processes** followed by the HOA with this application, concerned that there is non-compliance with the Benguela Cove Constitution and concerns why application is made by the HOA and not BCI who is operating the pontoon on a commercial basis.

The application was submitted by the Homeowners Association. It was not indicated in motivation that BCI will operate the pontoon, and residents are concerned that it appears that residents are applying for the right. They are also concerned that they will be held responsible for any costs that may occur with the operation of the pontoon. BCI's involvement was not indicated in the motivation report, but in correspondence to the Municipality and the response received from the applicant on objections, it is indicated that BCI is operating the pontoon. The objectors' concerns are duly noted, and the HOA should have communicated this to its members.

The above concerns link directly with the comments that members were not informed by the HOA of the application before it was submitted to the Municipality. In Section 30 of the Benguela Cove Wine Estate Constitution it is clearly indicated how Common Property should be dealt with.

"30.1 Neither the whole nor any portion of the common property shall be:

30.2.3 subjected to any right, whether registered in the Deeds registry or not, of use, occupation, or servitude, save those enjoyed by the members of the Association in terms thereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or

30.2.4 built upon, improved, or enhanced in value by the construction of buildings, erection of facilities and amenities, other than as contained in this Constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association."

The planning consultant did not elaborate on this matter in the response on the objections. The Municipal Legal Branches opinion was requested on this matter, and the opinion is the HOA should have tabled the proposal at a special meeting to all members, since the application is on a common area. It is thus also not clear if the application is supported by most members of the HOA.

Some objectors also interpret condition 30.2.3 that should the Consent Use be allowed all members must have the same right to practise the use. The Town planning consultant however indicated that each person will then have to apply on its own to operate such a use from the common property. To a certain extend the applicant's opinion is supported, as if the planning approval for only one pontoon is supported, more pontoons can only be allowed by amending the land use rights. The conditions of approval from DEADP: Coastal Management anyway indicated that the commercial activities only be limited to one pontoon, which would then only allow for one operator.

The fact that a pontoon is allowed on a common area could however mean that members of the HOA can have expectations that the income made from the pontoon must benefit all members, as members pay levies to maintain common properties. This is however a matter that the HOA must deal with internally, and in compliance with the Benguela Cove Constitution.

As previously indicated to obtain more clarity about the interpretation of the Constitution and its procedures, the Municipal Legal Branch was requested to provide a response to the interpretation of the Constitution.

It is their opinion that residents (members) should have been notified of a Special General Meeting of the intention of the HOA to submit a planning application on common property.

The applicant was requested to provide proof that the required processes were followed or provide reasons why they feel the HOA trustees had the right to submit the planning application to the Municipality without following the above-mentioned process, before submitting this application to the Municipality. A further response was provided by the applicant maintaining that the HOA followed the correct internal processes. The Municipal Legal Branch was again requested to comment on the applicant's comments, and the following response was received,

"I am of the view that the HOA did not comply with its own constitution and furthermore failed to provide Overstrand Municipality with a clear indication in terms of what power(s), in terms of the Constitution, the HOA acted to submit the planning application".

The last point of objection that will be discussed is the **existing illegal land use and requirement for penalty fee.**

It was established that the Overberg District Council By-Law relating to the Control of use of the Bot River Estuary, is not relevant anymore. A By-Law relating to the control and use of the Bot River and Klein River Estuaries was approved in 2004. In terms of this By-law application will also have to be made for some permits to the Overstrand Municipality. If this application is supported, a relevant condition will have to be inserted that there be compliance with such By-Law.

The other concern is that BCI is operating the pontoon but that the HOA is now the applicant. In the Penalty fee application, it is indicated in the Motivation under the heading "conduct of the person (allegedly) involved in the contravention", that "The Lady Bonnie has been operated without prior approval of a formal land use application". It is then further indicated under the heading dealing with if the person involved in the illegal activities has previously contravened the By-Law, that *"To the knowledge of this office, the property owner has not previously contravened the By-Law"*. This creates the impression that the HOA will have to deal with any penalty fees. However, in some correspondence to the municipality and the applicant's response to the objections it is indicated the HOA is the landowner and applicant, and BCI is the operator. No further information is provided as to who will be responsible for a penalty fee.

Considering the above, the objectors concern about who the applicant is, is valid, as they as members of the HOA will then also have to help carry the cost of any administrative penalty fee.

DETERMINATION OF ADMINISTRATIVE PENALTY:

a) Nature, duration, gravity, and extent of the contravention

No clear indication was provided by the applicant how long the illegal activity has been operational. The date of submission of this application will then have to be used as measure, which is from 9 February 2023.

The gravity of the application is using the common properties to obtain access and use some toilettes to cater for a pontoon boat for commercial trips, which carry 12 clients and 2 personnel.

b) The conduct of the person (allegedly) involved in the contravention

The applicant did not provide a clear indication who the responsible person is. However, it is indicated in the motivation that "the property owner has no previous contravention", creating the impression the HOA is the person involved in the contravention.

c) Report by a quantity surveyor in matters of unauthorised building/construction

No report was provided.

d) Whether the unlawful conduct was stopped

The illegal activity is still ongoing.

e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

The applicant indicated that to their knowledge the property owner has no previous contraventions in terms of the By-Law.

What makes this application very difficult is that there is confusion as to who will have to be responsible for the penalty fee, should there be a positive recommendation on the application and a penalty fee is required. At this stage possible penalty fees will not be calculated, as it is not clear who will have to be kept responsible for paying any fees. It is also basically impossible to determine an administrative penalty fee, because for a land use the property value of land and the portion used for the illegal land use is used to determine a fee. Other than the possible use of the toilette facilities for commercial guest, guests will only traverse the properties to the pontoon. It is thus very difficult to determine a size of the property utilized for the commercial use.

Considering the above-mentioned information, there is concern to the impact on noise, security, and the character of the surrounding area. The lack of information in the application also creates more grey area, making it difficult to measure total impact. There also is a lack of clear internal processes in terms of the Benguela Cove Constitution that was supposed to be followed by the HOA, informing members of the proposal dealing with common property. There is also concern as to who the person is that must be held responsible for the illegal activities and any possible penalty fees.

It is therefore the opinion that the application in its existing format cannot be recommended for approval and that the application is not desirable.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, **not be approved.**

2. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorized land use (operation of a pontoon boat) , **not be imposed**.

3. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions.

14. REASONS FOR RECOMMENDATION

POINT 1

- Due to a lack of information about how many trips the pontoon will make per day, how many visitors will visit the site per day, how visitors will make use of facilities on common area and also how they will access the site within a private estate, it is impossible to measure desirability.
- The concerns about security, higher noise levels; impact on privacy of surrounding residents and ultimately the character of this area are valid concerns.
- The concerns by objectors that the Benguela Cove Estate HOA did not comply with the Benguela Cove Estate Constitution prior to submitting the application is supported by the Municipal Legal Services Department.

POINT 2

- It is not clear in the application who will be responsible for any administrative penalty fee, as the application was submitted by the HOA, but is operated by another party.
- Clarity must be provided about who takes responsibility, because if the HOA is charged with an Administrative Penalty Fee, members of the HOA will have to help to pay an administrative penalty fee for an application they did not consider in terms of internal processes of the HOA in line with the HOA Constitution.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objections received
Annexure E:	Applicant's response to objections
Annexure F:	Services Report
Annexure G:	Comment: Telkom
Annexure H:	Comment: Cape Nature
Annexure I:	Comment: DEADP (Coastal Management)

Annexure J:	Comment: DEADP (Environmental Management)
Annexure K:	Comment: BOCMA
Annexure L:	Municipal Legal Services Department opinion on application dated 21 February 2024
Annexure M:	Applicant's additional response on concerns that internal HOA processes in terms of Estate Constitution were not followed
Annexure N:	Municipal Legal Services Department comments on Applicant's response dated 4 March 2025

SIGNATURES

AUTHOR:

Name:	**HENK OLIVIER**
SACPLAN Reg No:	**B/8128/2004**
Signature:	_____
Date:	_____

REGISTERED PLANNER

Name:	**H VAN DER STOEP**
SACPLAN Reg No:	**A/1708/2013**
Signature:	_____
Date:	_____

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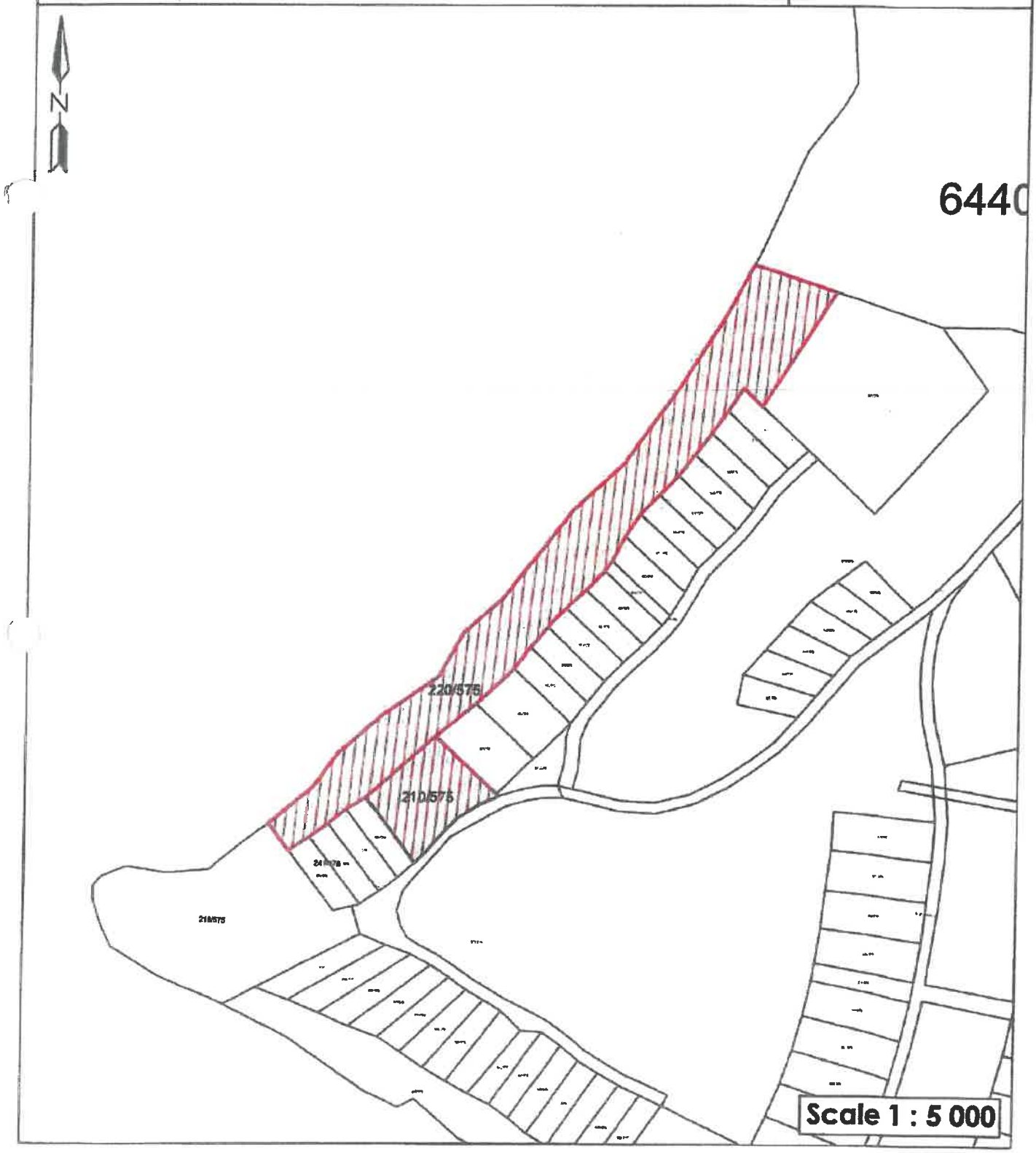
Annexure A 1/2

Locality Plan
Portion 210 and 220 of the Farm Afdaks Rivier 575, Caledon

Subject property (Portion 210 and 220 of the Farm Afdaks Rivier 575, Caledon)

Plan prepared by: Thian Jansen
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200

WRAP Project Office
Town Planning & Project Management





Aerial Map
Portion 210 and 220 of the Farm Afdaks Rivier 575, Caledon

Plan prepared by: Thian Jansen

All distances are approximate and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200

WRAP Project Office
Town Planning & Project Management

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Annexure B 1/18

MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020

2. PROPERTY DETAILS

Consultant	WRAP Project Office	
Erf Number	Portion 210 of the Farm Afdaks Rivier 575, Caledon	Portion 220 of the Farm Afdaks Rivier 575, Caledon
Extent	7555m²	4,0028ha
Zoning	Open Space Zone 3: Private Open Space	Open Space Zone 1: Nature Reserve

3. BACKGROUND AND INTENT

Portions 210 and 220 of the Farm Afdaks Rivier 575, Caledon, hereafter referred to as the subject properties, are located inside of the Benguela Cove Lagoon Wine Estate (refer **Plan 1 - Locality**). Both properties are owned by the Benguela Cove Homeowners Association (hereafter referred to as the property owners) and the Board of Trustees have appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney and Resolution**).

The subject properties serve as recreation areas for private homeowners and guests of the wine estate, mainly for access to the Bot River Estuary. Portions 210 of the Farm Afdaks Rivier 575, Caledon, is used for storing water vessels and features amenities like a tennis court and pool for residents.

Portions 220 of the Farm Afdaks Rivier 575, Caledon, improved with a jetty and boathouse, is proposed to be converted into a tourist facility offering pontoon boat experiences on the Bot River Estuary. (Refer **Annexure B – Approved Building Plans**)

The Bot-Kleinmond Estuarine System was ranked the 8th most Important Estuary in South Africa due to its size, habitat importance, zonal type rarity and biodiversity. With all its natural attractions, excellent location, well developed surroundings, and a surplus of outdoor activities, this is a RAMSAR wetland well suited for tourism.

According to RAMSAR the Bot-Kleinmond Estuarine System became South Africa's 23rd RAMSAR wetland on 31 January 2017. It comfortably met most of the 9 stated RAMSAR criteria : it regularly supports more than 20,000 waterbirds, it regularly supports 1% of the population of one species of waterbird, it supports a significant proportion of indigenous fish species - 20 of the 41 fish species recorded in the Bot-Kleinmond Estuarine System, are Southern African endemics, the wetland accounts for 12% of the total estuarine fish

nursery area along 900km of coastline from False Bay to Port Alfred, thus an important nursery and/or migration path on which fish stocks depend.

To ensure compliance with the OMLUS, approval of the following applications is required:

- Consent Use for a tourist facility; and
- Determination of an Administrative Penalty.

4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

4.1 Consent Use to allow a tourist facility in terms of Section T6(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The proposal is to establish a tourist facility that will allow property owners to expose their guests to the wine farm to the natural beauty of the surrounding area. A tourist facility, as defined by the OMLUS, is:

> *"**tourist facilities**" means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, **recreational facilities**, animal parks (domestic or otherwise) but does not include a hotel or overnight facilities,*
>
> *"**recreational facilities**" means the use of land to practice a particular sport or combination of sports and general recreation and includes a clubhouse and associated infrastructure and buildings, indoor and outdoor swimming pools and associated infrastructure, and a shooting and driving range but does not include any building or structure that is used for business, or any other use not aligned to or dependant on the sport concerned.*

These definitions align with the use of the Lady Bonnie pontoon boat for these two properties as the whole intent is to be able to provide a recreational activity that allows the resident and visitors to enjoy the beauties of the Bot-Kleinmond Estuarine System. The proposal is to utilise a trimaran designed boat to host guided boat tours on the Bot River Estuary.

The aim of the pontoon boat (hereafter referred to as the "Lady Bonnie") is to provide development in the tourism industry that brings a positive experience for local people as well as the tourists themselves. Lady Bonnie is able to accommodate 12 passengers and 2 crew members and the proposal to have the boat tours, last approximately 60 minutes which means that onboard ablution will not be required.

Sustainable Practices

The vessel is equipped with 2 x 40hp 4-stroke Honda outboards, minimizing sound and pollution. The motors will be fuelled by detachable fuel tanks that will eliminate possible fuel spills into the estuary as it will be refuelled off-site.

These two motors are extremely small and there are little to no wake erosion being expected. Additionally, the Lady Bonnie will be equipped with two recycle bins although there are rarely any rappers, papers etc. on board. Appropriate signage will also be added, advising users to recycle any waste. The boat does not have ablution facilities

and guests will be able to utilise the facilities available on Portion 220 of the Farm Afdaks Rivier Number 575, Caledon, that further eliminates any possible contamination.



Figure 1: Lady Bonnie Route

The proposal is deemed to be aligned with the core values of Benguela Cove Lagoon Wine Estate which is nature conservation. The estate has been awarded by the World Wildlife Fund (WWF) for Nature with the top award for excellence. It is for exceptional commitment to the collective conservation of threatened habitat in South Africa's Succulent Karoo and the Cape Floral Kingdom as well as for outstanding dedication to environmentally responsible farming practices.

These standards will be adhered to with this venture, and it will be on the top of the list when these tours will be hosted to ensure the environmental aspect is being adhered to.

The owners/operators have also acquainted themselves with the By-Law Relating to the Control and Use of the Bot River and Klein River Estuaries (Provincial Gazette, 6147/2004).

4.2 Determination of an administrative penalty in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As the Lady Bonnie has been operated without prior land use approval it is important to ensure compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. The inclusion of an application for the determination of an administrative penalty will ensure compliance.

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MOTIVATION

Section 90(3) of the By-law requires the following information:

The nature, duration, gravity and extent of the contravention.
The nature, gravity and extent are explained in Section 4.1 above.

The conduct of the person (allegedly) involved in the contravention.
The Lady Bonnie has been operated without prior approval of a formal land use application.

A report by a quantity surveyor in matters of unauthorised building/construction.
A quantity surveyor was not appointed as there are no unauthorised building/construction.

Whether the unlawful conduct was stopped.
The operations of the Lady Bonnie have not been halted as it would mean loss of income to the guides and workers employed to operate the tourist attraction.

Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.
To the knowledge of this office, the property owner has not previously contravened the By-Law.

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5. APPLICATION

Considering the above, application is made for the following:

5.1 **Consent Use** to allow a tourist facility in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

5.2 **Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

6. LAND USE ENVIRONMENT

The subject properties are part of the Benguela Cove Lagoon Wine Estate that is located on the banks of the Bot-Kleinmond Estuarine System. The Benguela Cove Lagoon Wine Estate is a unique estate that is home to an Agri-residential development where residential properties are mixed with a successfully operated wine farm. There are several different land uses surrounding the subject property. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

7. TITLE DEED

Title deed T77627/2017 which includes both properties (refer **Annexure C – Title Deed**) was perused and there are no restrictive conditions that prohibit the proposed tourist facility.

8. ZONING

The following zoning parameters were assessed in conjunction with the OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:

PORTIONS 210 OF THE FARM AFDAKS RIVIER NUMBER 575, CALEDON			
OPEN SPACE ZONE 3: PRIVATE OPEN SPACE (OS3)			
Land Use Restrictions			
	Parameters	**Proposal**	**Comply/ deviate**
Primary use	Private Open Space		
Consent use that may be applied for	Cemetery, Environmental Facilities, Recreational Facilities, Tourist Accommodation, Tourist Facilities, Transmission Apparatus (Subject to the provisions of Chapter 16.10), Urban Agriculture, Utility Services and Any Other Related Uses Permitted By The Municipality.	Tourist Facilities	Deviate and applied for
Development parameters			
a) A site development plan must be submitted in terms of 16.3 to the satisfaction of the Municipality.			
b) The Municipality may require an environmental study and/or environmental management plan in terms of 16.4.			
c) Prior to the approval of any building plans or engineering services, the Municipality must determine the development parameters applicable to a land unit when: (i) the zoning of a land unit to this zone is approved; (ii) any environmental impact report is considered; (iii) any environmental management plan is considered; and (iv) any site development plan is approved.			
d) No structure shall be erected, or use practised except such as is compatible with the "private open space" as defined.			
e) Structures/buildings may be erected with the written consent of the Municipality, should the Municipality deem it necessary, provided that the Municipality may impose conditions relating to design, architecture and development parameters.			

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PORTIONS 220 OF THE FARM AFDAKS RIVIER NUMBER 575, CALEDON			
OPEN SPACE ZONE 1: NATURE RESERVE (OS1)			
Land Use Restrictions			
	Parameters	**Proposal**	**Comply/ deviate**
Primary use	Nature Reserve and Conservation Use		
Consent use that may be applied for	Dwelling Units, Environmental Facilities, Transmission Apparatus (Subject to The Provisions Of Chapter 16.10), Tourist Accommodation, Tourist Facilities, Utility Service And Any Other Related Uses Permitted By The Municipality	Tourist Facilities	Deviate and applied for
Development parameters			
b) A site development plan must be submitted in terms of 16.3 to the satisfaction of the Municipality.			
b) The Municipality may require an environmental study and/or environmental management plan in terms of 16.4.			
c) Prior to the approval of any building plans or engineering services, the Municipality must determine the development parameters applicable to a land unit when: (i) the zoning of a land unit to this zone is approved; (ii) any environmental impact report is considered; (iii) any environmental management plan is considered; and (iv) any site development plan is approved.			
d) Structures/buildings may be erected with the written consent of the Municipality, should the Municipality deem it necessary, provided that the Municipality may impose conditions relating to design, architecture and development parameters.			

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9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity, Water, Sewage and Solid Waste
Services to the property includes electricity from ESKOM and municipal water from the Fisherhaven Reservoir. The proposal of this application will not affect these networks as no additional development is required.

The subject properties are connected to the existing sewer network and system of the estate.

Solid wastes are collected and moved to designated points and collected by the OM.

Access and Egress
Access from the R43 and egress to the subject properties are gained from an existing internal road network.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability.
The approval of this land use application is required to ensure that the property adheres to the requirements set out by the Overstrand Municipality to have the existing tourist facility approved. The boat tours will enable the property owners to attract more visitors to the area as more people visit the area. It would allow the property owners to continue supporting the livelihoods of the employees (crew) that have been employed to ensure the operation runs smoothly.

The property owners have tasked WRAP Project Office with submitting this application to ensure the proposed development aligns with policies, legislation, and title deed conditions, in pursuit of their vision.

Impact on views, sunlight and character of the area.
The proposed tourist facility at the subject property, situated in a unique location, is not predicted to impact on the nearby area or neighbouring property owners. Only the authorization for boat tours is sought and no new structures are planned.

Economic impact
The proposal allows the property owners to generate an income from the pontoon boat, which creates employment opportunities to crew members earning a living.

Opportunity cost
An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The proposal is not predicted to have a negative impact on surrounding properties.

Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental Impact

The subject properties are located adjacent the Bot/Kleinmond Estuarine System. The proposal is not to have a negative impact on the estuary and the proposal is in line with the Bot/Kleinmond Estuarine Management Plan Draft January 2019.

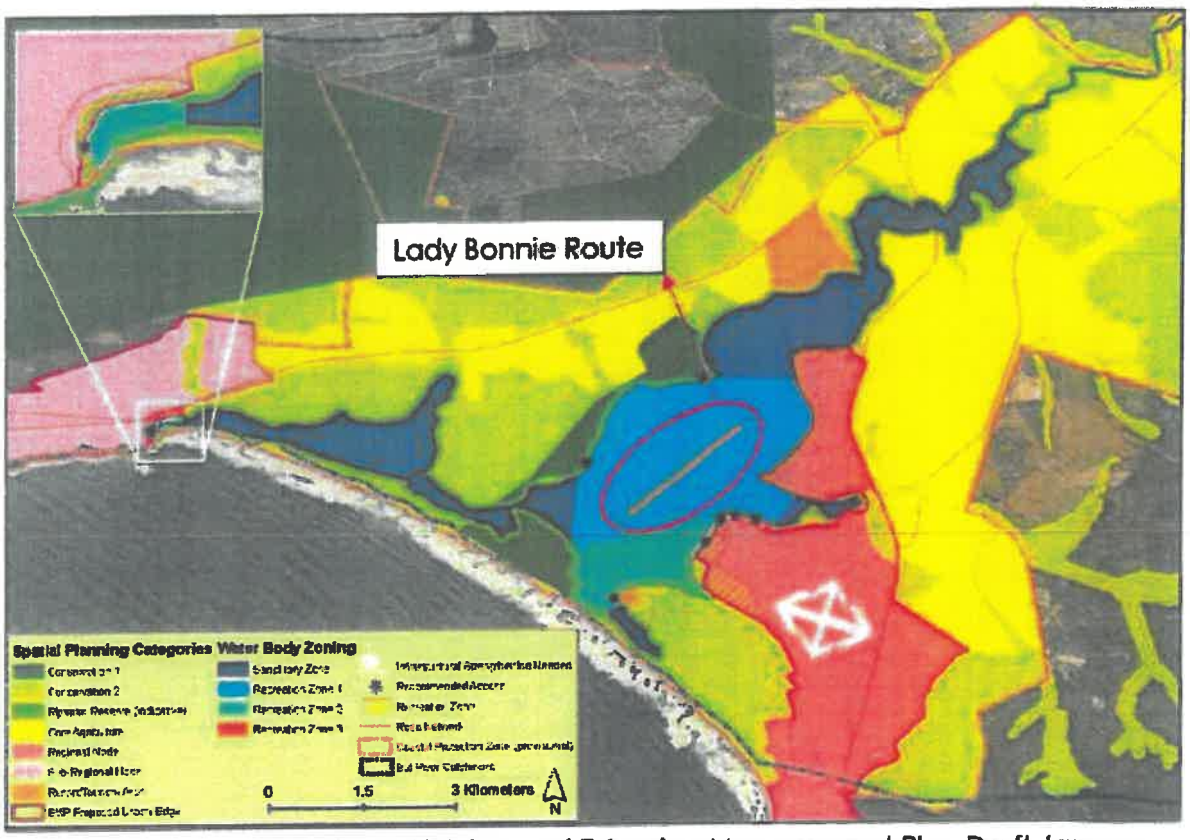


Figure 2: Extract from the Bot/Kleinmond Estuarine Management Plan Draft January 2019.

Majority of the route Lady Bonnie follows is located within the 'Recreation Zone 1' which is identified and aligned with the use of the Lady Bonnie on the estuary, and it is identified as the following:

ESTUARINE RECREATION ZONE 1 – (WATER BODY)		
Description / Location	**Specific Intent**	**Estuarine Management Guidelines**
GENERAL USE AREA Central zone between Beacons No.1 and 2, excluding backwater areas at Afdaks inlet and Rooisand NR. Upper reaches of the estuary, in the vicinity of the R43 road bridge and above.	a) Low impact recreational uses; b) Recreational line- fishing; c) Sailing; d) Protection of bird habitats on western shores from disturbance.	**Supported uses and activities:** Line fishing from the shore or from a boat or craft in compliance with MLRA regulations, permitting system and bag limits. Canoes, kayaks, paddle skis, rowing boats, sail craft, **motorised boats – speed limit 10 km/h**, subject to periodic review of guidelines, by-laws and public notices aimed at ensuring safety and security of all users. Bird watching, hiking, swimming, non-destructive scientific research. Rehabilitation of disturbed portions of the Riparian Buffer. **Non-supported uses and activities:** No capturing or removal of fish during mouth breaching events. No bait collecting. No cast- or throw-netting. No capturing of line fish species with cast nets, seine nets, gill nets, traps, gaffs or spears. Riparian Buffer: No removal of indigenous vegetation, no planting of any material (except where rehabilitation is underway), no fertilisers or pesticides. No jet boats. No jet skis. No kite surfing. No parasailing. No motorised boats exceeding the speed limit of 10 km/h. No skiing. No aquaculture. No sand mining. **Infrastructure and municipal services:** No new bridges or causeways. No launch sites, new jetties, wharfs or edge hardening on western shores of the Central zone. In other areas, launch sites, jetties, boardwalks, wharfs and edge hardening, subject to compliance with relevant legislation Cleaning services to address water-borne waste at public recreational nodes.

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The Bot/Kleinmond Estuarine Management Plan Draft January 2019 proposed some changes to the areas as identified in Photo 1, refer to the following:

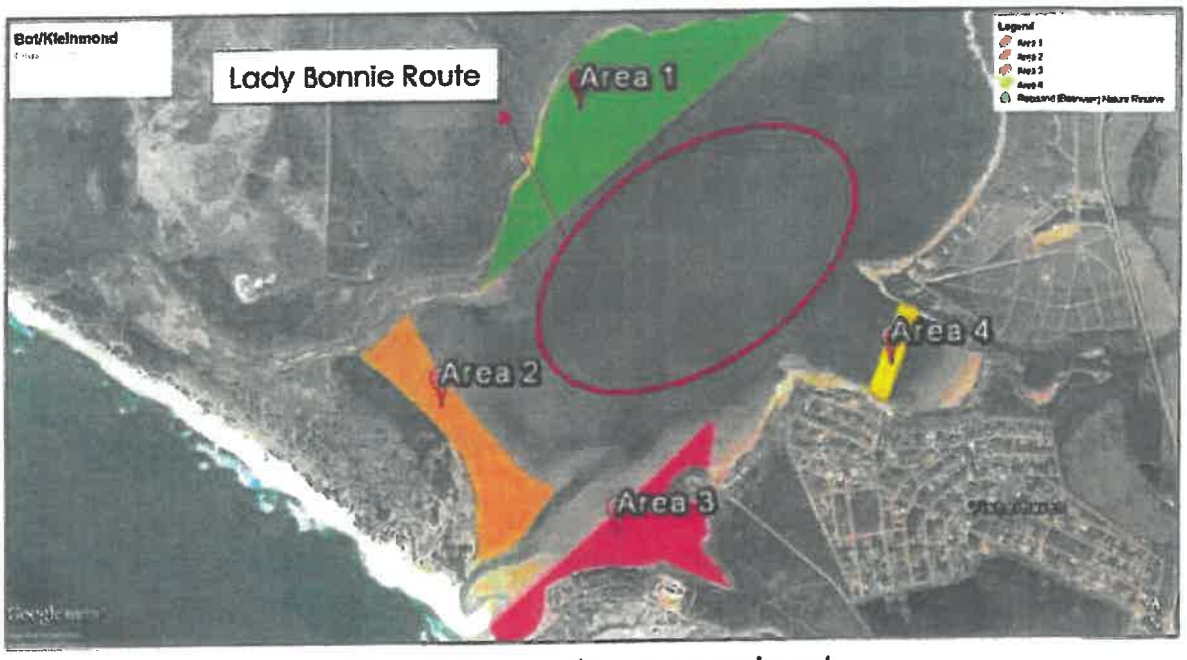


Figure 3: Proposed zone amendments

Area 1: Buffer to Rooisand Nature reserve, no watercraft propelled by engines;
Area 2: Buffer to bird habitat, no boating allowed;
Area 3: Recreational access; and
Area 4: Alleviate congestion at slipway, add to general boating zone.

To ensure compliance with these new zones, the Lady Bonnie will also avoid these 'no-go' areas entirely while complying with the other regulations of the area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

Portion 220 of the Farm Afdaks Rivier Number 575, Caledon is located within the 'Coastal Protection' EMOZ, managing the integrity of coastal ecosystems, ecosystem services, coastal dynamic processes, and biodiversity within Coastal Reserves.

To ensure compliance with the guidelines set out in the EMOZ, the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	**Applicable Environmental Management Overlay Zone (EMOZ)**	**Applicable to the application or not**
	Coastal Protection	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A

Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	N/A
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	N/A
SCHEDULE B **ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES**		
A) Activities Only Permitted With Council Consent	**Applicable Environmental Management Overlay Zone (EMOZ)**	**Applicable to the application or not**
	Coastal Protection	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open	X	There are no pools on the property.

spaces without the necessary approval from the Municipality.		
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	**Applicable Environmental Management Overlay Zone (EMOZ)**	**Applicable to the application or not**
	Coastal Protection	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.	X	The property has approval to launch vessels.
C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	**Applicable Environmental Management Overlay Zone (EMOZ)**	**Applicable to the application or not**
	Coastal Protection	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	The entire property is within the zone. All of the structures are located within the zone.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The entire property is within the zone. All of the structures are located within the zone.

The proposed consent use is not predicted to affect the EMOZ.

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11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)
Both properties are classified by the "LANDSCAPES HPOZ" of which the purpose is the following:

> *"Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:*
>
> - *To protect and enhance landscapes identified as having high natural, scenic and heritage significance and which contribute to the character and sense of place in the Overstrand and its economic base.*
> - *To promote the cultural, tourism, environmental and amenity potential of significant Overstrand landscapes."*

To ensure compliance with the HPOZ it is of importance that certain aspects need to be provided and addressed in terms of Overstrand Municipality Heritage Protection Overlay Zone Regulations, 2020:

Section 20 – 22 states the following -

"20
The Overstrand Municipality By-Law on Municipal Planning, 2020, will apply in respect of all applications, processes and decisions contemplated in these regulations.

21
In considering an application for written consent in order to undertake an activity in terms of the Heritage Protection Overlay Zone, the Municipality may require from an applicant whatever information it deems necessary in order for an informed decision to be made regarding the application.

22 This could include, inter alia:

22.1 statements of significance;
22.2 heritage research;
22.3 photographs, including contextual photographs;
22.4 results of public consultation;
22.5 impact assessments; and
22.6 comment from affected and interested bodies."

Statements of Significance
The heritage significance of the subject property is not large. The proposal is allowing the Lady Bonnie to continue operation.

Heritage Research
No additional heritage research was done.

Photographs, Including Contextual Photograph
Aerial maps were included into the application, refer to **Plan 3 – Aerial Plan**.

Results of Public Consultation
Regarding this application, an extensive public participation process will be followed. If any comments are received regarding the heritage aspect it will be addressed accordingly.

Impact Assessments
No impact assessments were conducted.

Comment From Affected and Interested Bodies
The application will be circulated to affected and interested bodies for comment.

11.3 Spatial Planning Policies
This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020 and it does not indicate any specific development opportunities for the Benguela Cove Lagoon Wine Estate.

The sensitivity of the estuary was highlighted within the MSDF, and the proposal will not have any negative effect on the estuary. The Benguela Cove Lagoon Wine Estate is also highlighted as a tourist attraction and the Lady Bonnie will only add to this while ensuring the environment is being protected.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice
Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to allow the Lady Bonnie to continue operation will not contribute to spatial injustices.

Spatial sustainability and Efficiency
Spatial sustainability refers to planning proposals that are ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes while limiting urban sprawl. This proposal will not have an impact on any of the aspects listed above, the property owners will also ensure that the area is being maintained.

Spatial resilience
This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration
The Overstrand Municipality has demonstrated a solid history of effectively incorporating public participation in its administrative processes. Public participation is a crucial aspect of the land use planning process. This process allows individuals who may be impacted upon by the proposal to provide feedback and raise any concerns or make suggestions that may lead to a more favourable outcome for all parties involved. All comments

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received will be carefully reviewed and taken into consideration before being addressed appropriately.

13. EVALUATION

This application is being submitted in accordance with the requirements set forth by the Overstrand Municipality to ensure that the Lady Bonnie can continue operation. It is evident that the property owners are ensuring that the tourist facility will be operated in line with the legislation which includes environmental and land use policies. The application as motivated above and throughout this report is regarded as a desirable enterprise that will add value to the area while creating economic activity and providing employment opportunities.

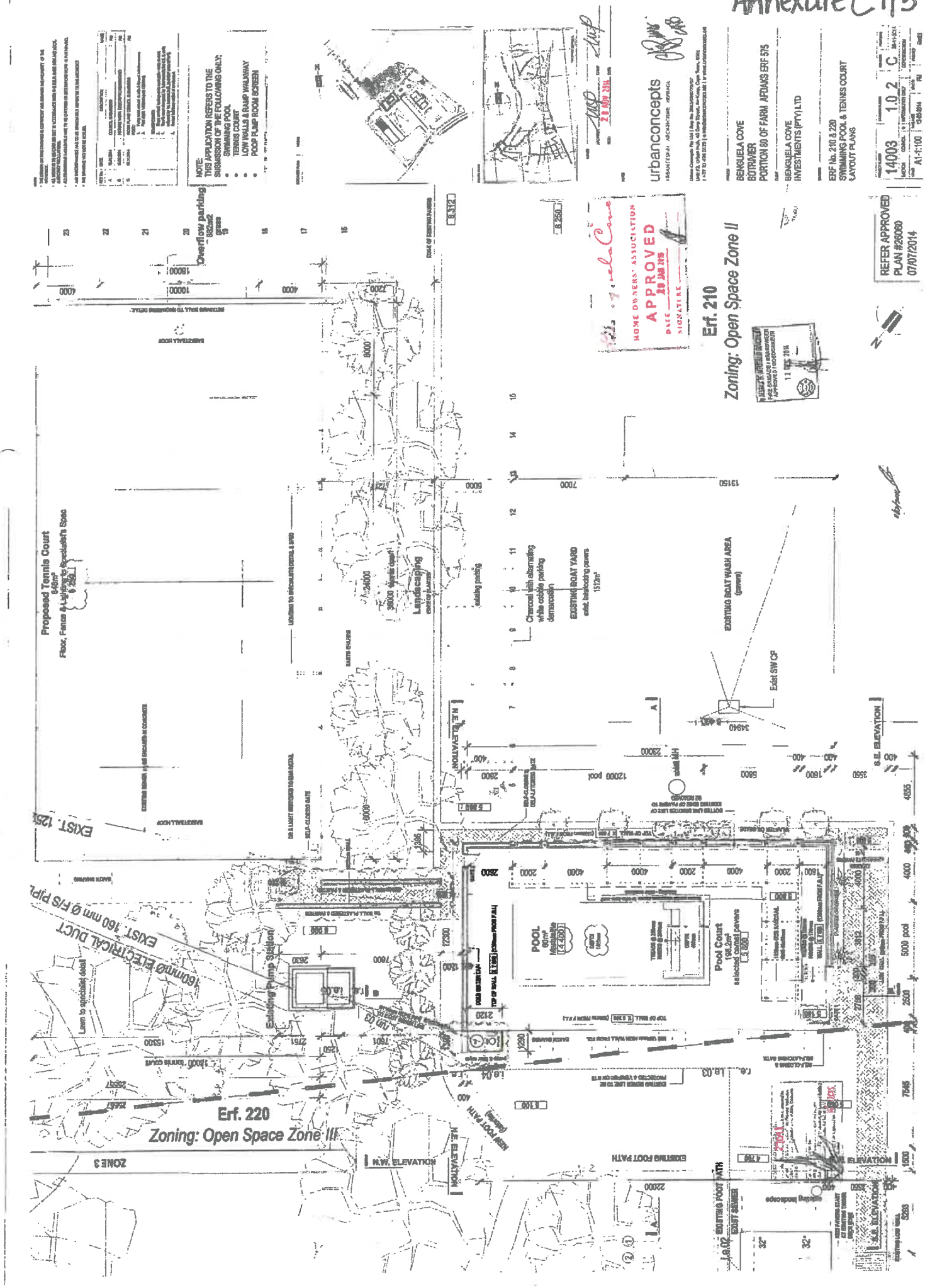
14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

14.1 **Consent Use** to allow a tourist facility in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and

14.2 **Waiving of the determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

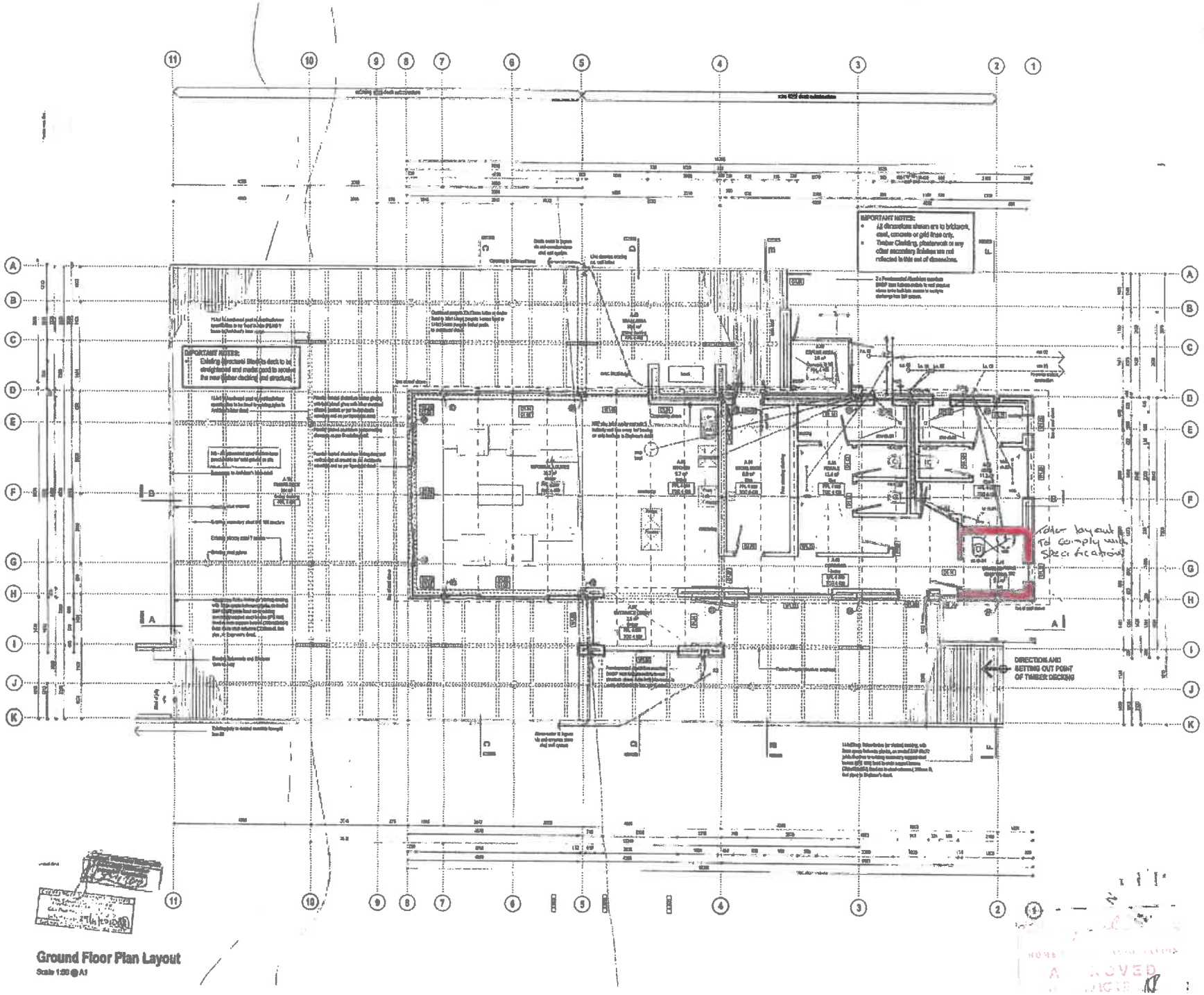
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Annexure C1/3



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urbanconcepts
APPROVED
BENGUELA COVE
BOTRIVIER
PORTION 66 OF FARM ARIANS ERF 215
BENGUELA COVE INVESTMENTS (PTY) LTD
ERF NOS 210 & 220
SWIMMING POOL & TENNIS COURT
SITE PLAN
14003
1:200
REFER APPROVED PLAN #280060
07/07/2014
NOTES
AREAS
SOLAR POOL WATER HEATING
EXISTING ROAD
EXISTING DRIVEWAY
EXISTING BERM
EXISTING CLUBHOUSE
EXISTING RESTAURANT
Zoning: Residential Zone I
Zoning: Open Space Zone II
Provide a comprehensive fire plan



MEMBER SCHEDULE

C2 100x100x4 SHS
127x64x14.9 kg/m TF CHANNEL
100x50x4 RHS
2 No. M12 THREADED ROD HANGERS

OVERCHARGE ADEQUACY

dhk Urban Concepts (Pty) Ltd
6th Flr, De Beauvoir Centre
9 Beauvoir Road
Cape Town 8001
[T] +27 (0) 21 421 6661
[F] +27 (0) 21 421 6670
[E]: urbanconcepts@dhk.co.za
[W] www.dhk.co.za

Benguela Cove Wine Estate - Clubhouse, Erf. No. 220
Botrivier

Benguela Cove Investments (Pty) LTD

Ground Floor Plan Layout

02099_1 WD.ch.101 4

APPROVED

Ground Floor Plan Layout
Scale 1:50 @ A1

120

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Annexure D 1/93

OVERSTRAND MUNISIPALITEIT / OVERSTRAND MUNICIPALITY
30 MAY 2023

Overstrand Municipality Town Planning. For Attention: Mr. Henk Oliver

E-Mail: enquiries@overstrand.gov.za, holivier@overstrand.gov.za

Dear Mr. Olivier,

Ref.: Portion 210 and 220 of Farm 575, Afdaksrivier

APPLICATION FOR THE APROVAL OF A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

We are owners of plot and house 135 at Benguela Cove and are founding members of the Benguela Cove Homeowners Association.

We are in receipt of the above application from your offices and wish to object, placing before you our comments and questions, for the record.

Herewith our comment and our objection:

The application above, concerning the portions below purports to being made by the Benguela Cove Homeowners Association (BCHOA)These are commercial interests.

Three of the four members of the current BCHOA trustee committee act in the commercial interests of the developer company and are conflicted as such.

The objective of the application is intended to benefit the commercial interests of the developer Benguela Cove Investments.

PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER No. 575, CALEDON DIVISION: INVESTIGATION AND COMMENT ON THE DOCUMENT: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY COMPILED BY WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNERS ASSOCIATION.

An application for consent use in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, has been lodged with the Overstrand Municipality by the WRAP Project Office on behalf of the Benguela Cove Homeowner's Association.

The application is *void ab initio* on the first principal in that it takes no account of ensuring compliance with the provisions of the founding documents being the Department of Environmental Affairs Record of Decision (RoD) issued 15th December 2003 and the Environmental Management Plan dated March 2004.

The application for the development of the "beach area" can be seen to be void also to the extent that it is vague and lacks any contextual conservation significance. Any additional tourism facilities should be located at the BCI Commercial District.

The Botrivier Vlei and Environs enjoy the status of Globally Important Bird Area as designated by Birdlife International and RAMSAR. This ensures the area has the status and protections of one of the foremost bird conservation sites in the world.

FILE NO. Ptns 210 & 220 Afdaks Rivier 575
SCAN NO. Rodney 186 3365

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This importance became a part of the legal protection and environmental controls issued in the BC founding documentation. As set out in the environmental impact assessment Scoping Report incorporated in the binding 2003 Record of Decision.

These provisions cover the Private Nature Reserve being portions 10 to 18 et al of farm Afdaksriver no 575 Caledon comprising 31.5% of what is now Benguela Cove. Identified for the conservation of threatened Renostervelt Biome and nothing else.

HERE ARE UNCERTAINTIES WHICH GENERATE LEGITIMATE CONCERNS.

Note: The nature of his application requires that the HOA members are well informed. This is essential, to ensure their informed consent, and requires clear plans and details of what activities are intended. This applicant has failed to do so.

The first questions below (1-4) were tendered by invitation prior to the Benguela Cove HOA AGM dated 29th April and were mainly fobbed off by Chair Ms.Streeter.

1. What are the details of the 11-hectare (Renosterveld) area that is proposed to be cleared as "fire breaks" in terms of the budget? -NC
2. The RoD contains a clear prohibition against damaging the natural vegetation outside of residential erven and in the Private Nature Reserve generally? To this she replied, "We not going to pull them out we are just going to cut them down."
3. What environmental permission has been granted to do this work?-NC
4. What work was done (or to be done) to "clean up the beach"? To this she replied, "we are not going to use heavy equipment on the "beach". The Incriminating photographic evidence was taken on 6 March.
5. Was an EIA done (or to be done) as is required for such work? -NC
6. Why is the homeowner's association used as the applicant for the application for consent use for the beach area and Lady Bonnie. -NC
   All the above questions were tendered in good faith.

Further Questions, not tendered for the AGM 29th:

Exactly which boat is intended be used if consent was granted?

How would the access of tourists affect the BC "Security Estate"?

How is compliance with the RoD and EMP to be achieved from now on?

Where are the permissions from Department of Environmental Affairs & Development Planning (DEADP) for the listed activities under National environmental Management Act 2014 (NEMA)?

The Constitution, Act 108 of 1996, granted to everyone environmental protection through the Bill of Rights.

We reiterate our strong objection to these proposals in total.

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Loretta Gillion

From: Henk Olivier
Sent: Tuesday, 30 May 2023 08:28
To: Loretta Gillion
Subject: FW: APPLICATION FOR CONCENT USE PORTIONS 210 AND 220 OF PORTION 80 OF FARM AFDAKS RIVIER No. 575 COMMENT AND OBJECTION
Attachments: APPLICATION FOR CONCENT USE 2023.pdf

Objection received

From:
Sent: Monday, May 29, 2023 5:29 PM
To: Henk Olivier <holivier@overstrand.gov.za>
Cc: Enquiries <enquiries@overstrand.gov.za>
Subject: APPLICATION FOR CONCENT USE PORTIONS 210 AND 220 OF PORTION 80 OF FARM AFDAKS RIVIER No. 575 COMMENT AND OBJECTION

Dear Mr Olivier,

Herewith our comment on the above matter..
Kindly acknowledge receipt.

Yours Faithfully,

Rodney Anderson Director

Lindfield Brokers (pty) Ltd. erf 135.
Benguela Cove.

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TP-A Theart (Holivier)

OVERSTRAND MUNISIPALITEIT
30 MAY 2023
OVERSTRAND MUNICIPALITY

Martina and Michael Brandstetter
81 Benguela Cove Estate
Hermanus 7200
e-mail:

Overstrand Municipality
Town Planning
Att: Mr. Henk Oliver
16 Paterson Street

Hermanus, 7200

via E-Mail: enquiries@overstrand.gov.za
holivier@overstrand.gov.za

29rd May, 2023

Dear Mr. Olivier,

Ref.: Portion 210 and 220 of Farm 575, Afdaksrivier
APPLICATION FOR THE APROVAL OF A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

We refer to the above matter and notice received from your office. The following is placed on record formally.

We are owners of plot and house 182 at Benguela Cove and members of the Benguela Cove Home Owner Association and writing to you to **comment and object** to the a.m. application.

Preliminary remark:

1. This application is being made on behalf of the Benguela Cover Home Owner Association (BCHOA), although portions of the motion do not concern the BCHOA at all. I refer here to the application in respect of the boat (named Lady Bonnie) owned by Benguela Cove Investment Ltd. (BCI) or an affiliated company.

2. Penny Streeter is the sole shareholder of BCI and Nick Rea is a director of BCI. Both are also trustees of the HOA. Together with an employee of BCI, Shantel Kent, they control BCHOA.

3. Streeter and Rea signed the application on behalf of the BCHOA, which is raising the question of a conflict of interest or using the HOA for their very own business interests.

4. The application is not compatible with the Constitution of the BCHOA. The corresponding passages are marked in the appendix.

FILE NO. Ptns 210 & 220
Afdaks Rivier 575 V
SCAN NO.
Brand
COLLABORATOR NO.
1863282

TP 30 MAY 2023

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Martina and Michael Brandstetter
81 Benguela Cove Estate
Hermanus 7200
e-mail,

REASONS AND COMMENTS FOR OUR OBJECTION.

1. ACTIVITIES AND DEVELOPMENT RESTRICTIONS RELATING TO THE CONSENT APPLICATION
   An environmental impact assessment for the proposed Benguela Cove Lagoon Wine Estate was conducted that resulted in the issuance of a Record of Decision (RoD) by DEADP. This RoD was approved on the impact assessment that included a number of specialist studies e.g. botanical survey, archaeological survey, avifaunal survey, etc.

   Of importance in this consent use application (written by WRAP) is that the "beach area" of the Botrivier Lagoon along the southern and western boundaries of Benguela Cove Lagoon Wine Estate is designated as a Globally Important Birding Area (ZA097) by Birdlife International. This was based on extensive specialist avifaunal studies conducted on the Botriviervlei, by K N Barnes during 1997 and 2003, the latter commissioned as a specialist study during the environmental impact assessment process for the Benguela Cove Lagoon Wine Estate

   Botriviervlei now enjoys the status of Globally Important Bird Area as designated by Birdlife International, giving the area status as one of the most important sites for bird conservation in the world. This importance formed an important part of the constraints and environmental controls incorporated in the outcome of the environmental impact assessment Scoping Report. This Scoping Report formed the body of information on which environmental authorization was given and specified in the Record of Decision E12/2/1-213-Farm 575/10-18, Hermanus, dated 15 December 2003, that is applicable to all aspects of the Benguela Cove Lagoon Wine Estate development.

The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision:

a. The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.
b. The erven boundaries were set well back from the high-water mark of the Botrivier Vlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.
c. A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.
d. A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.
e. No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.
f. No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the approved jetty.
g. The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.
h. The Record of Decision also specifically mentions that "the mitigation measures as

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Martina and Michael Brandstetter
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Hermanus 7200
e-mail

detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project: Appendix K, Marine Studies Report dated 5 May 2003, pages 9&10; Appendix L, Botanical Report dated 12 May 2003 undertaken by Nick Helme; Appendix M, Avifaunal Report compiled by K N Barnes in March 2003; Appendix S, Archaeological Report dated August 2003 must be adopted and implemented.

i. The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.

j. Finally, the RoD stipulates that the Homeowners' Association / or operator of the facility must implement and incorporate the conditions of authorizations given in this Record of Decision, as appropriate to the operational phase of the project.

The existing restrictions above provide space for wildlife. Allowing tourist activities would negates this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat of wildlife. How can the above points be reconciled with the application?
There is also a bird nesting near the access road to the site which would be impacted by increased activities.
How would an approval of the application be reconciled with the above restrictions?

2. <u>UNCLEAR INTERPRETATION OF THE CONTENT OF THE APPLICATION</u>
The present application requests a permit that would allow a maximum interpretation of the consent use. In the medium and long term, this would lead to an uncontrollable commercial exploitation of the shoreline (plot 220), which would cause irreparable damage to the protected area.
In order to avoid later misinterpretations, the application must therefore describe exactly what the consent use is being requested for.

Page 2 of the application refers to the use of a trimaran boat. For which boat is consent use requested, for the currently used "Lady Bonnie" or for any other boat?

Are there any consent use matters included in the application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision?

3. <u>ILLEGAL ACCESS AND MECHANICAL DISTURBANCE OF THE BEACH AND CONSERVATION AREA</u>
Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. These was documented photographically (Appendix 1). On the pictures you can see

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Hermanus 7200
e-mail

that a so-called digger-loader and workers are in the protected area and are doing some work. It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning.

4. BCHO CONSTITUTION IN RELATION TO PUBLIC PROPERTY
According to the Deeds register, plots 210 and 220 are "common property", i.e. they belong to all home owners (HO). Article 30 of the BCHO Constitution clearly states the following:

"Neither the whole nor any portion of the common property shall be subjected to any rights, whether registered in the deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association..."
This means that the Constitution prohibits changing usage unless ALL members benefit from this application.

Streeter emphasized in various inquiries regarding this change that the change to a tourist facility is for the sole benefit of the owner of the pontoon boat.

Even if she retracts this statement, it is unthinkable that all HOs should have the right to exploit the designated area commercially for tourism purposes. Such use is prohibited for nature conservation reasons alone.

5. ENVIRONMENTAL IMPACT ASSESSMENT
The initial application for the development of the estate included an environmental impact study. The application does not make it clear if a new EIA was conducted and is part of the application.

6. RESIDENTS SECURITY
Tourist activities will increase the amount of people on the estate, who will not be vetted, properly registered and meaningfully monitored, increasing the security/crime risk on the estate which eventually will result in higher security costs for the HO.

7. NOISE DISTURBANCE
Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.

8. MONITORING AND ENFORCEMENT OF RESTRICTIONS
Approval of "Portion 229 of Farm 575, Benguela Cove – Proposed Amendment Of Approved Site Development Plan And Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.
I have little confidence that potential restrictions to the current application would allow monitoring and enforcement.

9. FINANCIAL CONSEQUENCES FOR HO
The operation of a tourist facility would mean additional financial and administrative burdens for the HOA and an additional burden on the infrastructure. The application should therefore

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contain a detailed list of the additional costs to be expected and the distribution of these costs.

10. APPLICATION IN REGARDS OF THE PONTOON BOAT (LADY BONNIE)
The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General 1(a) that "No person shall in the water area, without the prior written consent of the Council –
(a) Offer for reward or profit any show or entertainment or conduct any business or trade;
(c) Keep or use any vessel for the transport of passengers or goods for payment or reward."

Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed

this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

Every HO on the estate is aware of the fact that the developer BCI is in fact for the past years running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.co.za/boat-attractions even advertises the pontoon cruises which operate 4x daily and are complimentary for two people when buying a case of wine with 6 bottles.
In fact we know people who have received written confirmation of the price and conditions for a boat trip. The current rate this year is ZAR 250.00 p.P. and was ZAR 200.00 last year.

Streeter and Rea, in their capacity as trustees and representing the developer have been untruthful with regards to the charging of a fee whilst unlawfully operating the pontoon boat.

With regards to waving the administrative penalty, I believe that the By-Law and the Estuary Regulation is clear. Therefore, the Overstrand Municipality has a duty to act in accordance with these regulations and not authorize the waiver of penalties.

11. MISSLEADING APLLICATION
The Application is misleading. The Application attempts to create the impression that the HOA and all of its members consent to the Application. There is no indication anywhere in the application that BCI owns and operates the pontoon (Lady Bonnie). Rather, it appears that this application is desired by the majority of HOA members, although the HO has never been consulted or even informed about the application by the Trustees. The developer controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members but in their very own business interests.

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Martina and Michael Brandstetter
81 Benguela Cove Estate
Hermanus 7200
e-mail,

In closing, we re-iterate that we appeal to the Overstrand Municipality to reject this Application altogether and prohibit the illegal operation of the boat Lady Bonnie.

Yours faithfully

M Brandstetter

Martina Brandstetter

Michael Brandstetter

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Appendix 2

Benguela Cove

BENGUELA COVE

HOME OWNERS' ASSOCIATION

CONSTITUTION

UPDATED 20TH APRIL 2018

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10 JAN 2019

[1] 07th April 2018 Marion Diesner, 20180407-Special-Resolution-06-New-Obligation-to-build

OVERSTRAND MUNICIPALITY
DEPARTMENT : TOWN PLANNING
P O BOX 20 , HERMANUS , 7200

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Appendix 2

Benguela Cove
LAGOON WINE ESTATE

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(A) AGRICULTURAL BENEFITS AGREEMENT

(B) **SERVICES AND MAINTENANCE**

(C) CONSTRUCTION ENVIROMENTAL MANAGEMENT PLAN

(D) URBAN AND ARCHITECTURAL DESIGN CONTROLS MANUAL VERSION 7

(E) BY-LAWS RELATING TO THE CONTROL AND USE OF THE BOT RIVIER ESTUARY
[Government Gazette N0. 5093, P.N. 480/1996 dated the 15th November 1996]

(F) BUILDER'S CODE OF CONDUCT

1. NAME

The name of the Association is: "Benguela Cove Home Owners Association"

2. DEFINITIONS

2.1 The headnotes to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

10 JAN 2019

[2] 07th April 2018, Martin Diesner, 20180407-Special-Resolution-14-Removal-of-esthetic-approval-clause

[3] 07th April 2018, Martin Diesner, 20180407-Special-Resolution-15-Deposits

[4] 07th April 2018, Martin Diesner, 20180407-Special-Resolution-21-New-designguidelines-

OVERSTRAND MUNICIPALITY
DEPARTMENT : TOWN PLANNING
P O BOX 20 , HERMANUS , 7200

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Benguela Cove LAGOON WINE ESTATE

Appendix 2

2.2 Words importing the singular shall include the plural and vice versa

2.3 Words importing the masculine shall include the feminine.

2.4 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

2.4.1 "the Developer" shall mean Benguela Cove Investments (Pty) Ltd, Registration No. 2002/004722/07, Ambition House, 107 Voortrekker Road, Bellville, Cape Town, 7535.

2.4.2 "the development" or "the estate" shall mean the land together with all improvements and services thereon.

2.4.3 "erf" shall mean a portion of private land owned by the Member within the development which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan.

2.4.4 "the common property" shall mean the land transferred to the H.O.A, which shall include Erven 222 to 227 inclusive, which is designated as Private Roads, Erven 205 to 211 and Erven 214 to 220 inclusive, which is designated as Private Open Spaces, Erf 221 which is designated as the Nature Reserve and Erf 212 which is designated as the Grazing Area, but shall exclude Erven 231 and 232, which is designated as the Agricultural Enterprise which shall be retained by the Developer for the cultivation of vines, olives and lavender fields, together with all the residential erven, the hotel, being Erf 228 and the commercial component, being Erf 229 within the development and all the dams, being Erf 213.

2.4.5 "The Agricultural Enterprise" shall mean the Vineyards, the Olive trees and the Lavender fields and dams. Situated on Erven 231, 232 and 213.

2.4.6 "The Commercial Component shall mean Erf 229 which includes the Public Area, being the Winery, Restaurant, Farm Stall, the Chapel and the Conference Facilities, but the Members shall have certain rights over these facilities as governed by the Agricultural Benefits Agreement.

2.4.7 "the general plan" shall mean the general plan relating to the land as approved by the surveyor general;

2.4.8 "the association" shall mean the Benguela Cove Lagoon Home Owners Association;

2.4.9 "the Act" shall mean the Companies Act No. 61 of 1973

2.4.10 "occupant" shall mean any person lawfully occupying an erf by virtue of his relationship to or with a Member of the Association.

2.4.11 UADRC" means the Urban and Architectural Design Review Committee.

OVERSTRAND MUNICIPALITY
DEPARTMENT : TOWN PLANNING
P O BOX 20 , HERMANUS , 7200

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Appendix 2

Benguela Cove

LAGOON WINE ESTATE

the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

8.7 The duration of the Trustees' appointment shall not be less than two years.

9. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

9.1 Subject to the express provisions of this constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not either by virtue of the provisions of the Companies Act, or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made, which aforementioned powers shall not include the Agricultrual Enterprise whatsoever.

9.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

9.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

9.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.

9.5 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:

9.5.1 as to the settlement of disputes, generally;

9.5.2 for the furtherance and promotion of any of the objects of the Association;

9.5.3 for the better management of the affairs of the Association;

9.5.4 for the advancement of the interests of Members;

9.5.5 for the regulation and control of the conduct of Members and occupants while in the estate, whether on erven or on the common property (excluding the Agricultural Enterprise which vests with the Developer);

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9.5.6	governing the manner and methods of the use of the common property by or on behalf of the Members of the Association or any occupant;

9.5.7 for the conduct of Trustee Committee meetings and general meetings;

9.5.8 to assist it in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time. Further to monitor and report on the services and maintenance provided by the Developer in terms of the Services and Maintenance Agreement which has been entrenched and is annexed hereto marked Annexure "b".

9.6 For the purpose of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

10. OTHER PROFESSIONAL OFFICERS (*existing clause*)

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

10. OBLIGATION TO BUILD[7] (*new clause added*)

10.1 The Member acknowledges that the erection of a dwelling and the establishment and landscaping of a garden on every erf shall:

10.1.1 in the case of a sale concluded as between the Developer and the first purchaser of an erf, commence within 24 (twenty four) months of the date of registration of transfer of the erf into the name of the said first purchaser and shall be completed within 36 (thirty six) months thereafter; or

10.1.2 in the case of a sale concluded between a Member other than the Developer, and a bona fide purchaser of an erf, commence within 12 (twelve) months of the date of registration of transfer of the erf into the name of the said bona fide purchaser and shall be completed within

[7] 07th April 2018, Martin Diesner, 20180407-Special-Resolution-06-Newest Obligation-to-build-clause. This new clause 10 was added after SR06 was approved Unfortunately the numbering is now "slightly off" since SR043 (that would have changed paragraph 9 and combined it with the old existing paragraph 10) was not passed

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19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.

19.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

20. VOTING

20.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of paragraph 4.1.2 hereof. The Developer shall be entitled to a single vote in respect to each erf held by it, in terms of the general plan and in accordance with the deeming provision of paragraph 4.1.1 above.

20.2 Save as expressly provided for in these presents, no person other than a Member duly registered, who is not under suspension and who has not had voting rights suspended in accordance with clause 26.1.3, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

20.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

20.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.

20.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member, subject to Clause 6.5 in favour of the Developer.

20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution

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20.7.1 which would have the effect of amending or repealing any part of this constitution, or

20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or

20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

20.8 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

21. FINANCIAL YEAR END

The financial Year End of the Association is the end of February each year.

22. ACCOUNTS

22.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members, of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours

22.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preseding financial year of the association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year of the Association Every such balance sheet shall be accompanied by proper extensive reports of the Trustee Committee and the Auditors, and

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30. DEALINGS WITH THE COMMON PROPERTY

30.1 Neither the whole nor any portion of the common property shall be:

30.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or

30.2.2 subjected to a mortgage; or

30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or[1]

30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

31.2 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any Member's erf in accordance with the UADC Manual.

32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL

32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of [illegible] and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without

[1] 05th April 2018, Marius Diessner, 20180407-Special-Resolution-09-Commonage-area-lease-design-business
05th April 2018, Marius Diessner, 20180407-Special-Resolution-10-ARC-Committee-[illegible]

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ANNEXURE 'E'

OVERBERG DISTRICT COUNCIL

BY-LAW RELATING TO THE CONTROL AND USE OF THE BOT RIVER ESTUARY

Definitions 1. In this by-law, unless inconsistent with the context – "authorised officer" means any person authorised by the Council to perform the functions of an authorised officer under this by-law or a member of the South African Police; "boat" or "vessel" means any conveyance capable of floating on or in water or designed to navigate on or in water and includes, but is not restricted to a motor boat, sailing boat, sailing board, rowing boat, canoe, paddleski, power boat, fishing boat, jet-driven boat, flat-bottomed boat, ferry, houseboat, water cycle and raft; "bow" means the front part of a vessel; "canoe" means a vessel designed to be propelled by means of paddles without any mechanical assistance; "Council" means the Overberg District Council; "due date" means 30 June of every year or such other date as may be determined by the Council; "estuary" means the Bot River Estuary within the area of jurisdiction of the Council; "helmsman" means a person who steers or controls a vessel; "houseboat" includes any vessel, irrespective of whether or not it is propelled under its own power, upon which facilities for day or night accommodation or for any kind of food preparation have been provided, or a vessel upon which any kind of toilet or washing facilities have been provided; "inland waters" such estuary within the area of jurisdiction of the local authority which promulgated this by-law; "vicinity of the estuary" includes the properties adjacent to or in the immediate vicinity of the estuary; "operate" or "control" or any like expression, in relation to a boat, means to launch, use, sail, navigate or moor a boat or to permit a boat to be launched, used, sailed, navigated or moored on the estuary, or to have a boat, or to permit a boat to be, on the estuary; "permission" means the written permission of the Council; "port" means the left side of the boat as seen from the stem; "power boat" means a vessel propelled by means of an engine or other mechanical apparatus, either in- or outboard, irrespective of whether or not such engine or apparatus is the main source of power; "registered boat" a boat issued with an identification number in terms of to section 6 of the by-law; "rowing boat" means a vessel designed to be propelled by means of oars without any mechanical assistance; "sail" or "under way" means the situation of a vessel when it is not anchored or moored or on dry land; "sailing boat" includes every boat which is under sail and is not propelled by mechanical power; "starboard" means the right side of the boat as seen from the stern; "stern" means the back part of a vessel; "visible" means visible by somebody with reasonable eyesight during a dark night when the atmosphere is clear; "water area" means the water level between the banks of the estuary at any specific time; "water ski" means to ski or skate on or in the water with or without the assistance of any kind of skating apparatus and where the water-skier is towed by a vessel by means of a towing-rope; "water-skier" or "skier" a person water-skiing.

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OPERATION OR CONTROL OF BOATS ON THE ESTUARY

No person shall operate or control any boat or vessel on the estuary, excluding a canoe, paddleski, sailing board and rowingboat, unless such boat has been licensed by the Council or a temporary permit has been issued for such boat in terms of this by-law and the identification number allocated by the Council is displayed according to the provisions of this by-law.

No person under the age of sixteen years shall operate and control I a boat equipped with a motor of 4.5 kW or more, unless such person is accompanied by a person over the age of sixteen years. Where any licensee of a boat allows any person who, in the opinion of an authorised officer, is not competent to operate or control such boat efficiently, to operate or control it, such officer may direct the licensee not to allow such person to operate or control such boat, and if the licensee thereafter continues to allow such person to operate or control such boat, he. shall be guilty of an offence.

No person shall operate a boat on the estuary —

(a) in a reckless or negligent manner;

(b) while under the influence of intoxicating liquor or a narcotic drug, or while the percentage of alcohol in his blood is 0,08 or more, expressed in grams per hundred millilitres of blood;

(c) while suffering from an infirmity which renders him unfit to do so;

(d) in a manner dangerous to the public or to the occupants of such boat or in a manner calculated to endanger or damage any property or facility, regard being had to all the circumstances of the case;

(e) in a manner which constitutes a nuisance;

(f) without reasonable consideration for the rights of other persons using such estuary;

(g) while it is leaking oil, petrol or any toxic or noxious substance;

(h) [illegible] carried on the licence;

if the boat is not registered and licensed by the Council and the identification number issued in respect of the boat, is not permanently affixed thereto in figures of a size and colour determined by the Council.

Equipment of vessels

No person shall use any vessel, excluding a canoe and paddleski, with regard to the provisions of subsection (l)(c) and a sailing board with regard to the provisions of subsection (l) (b) and (c), on the estuary unless the following equipment is on board;-

(a) An effective life-belt, life-buoy or other floating device for each person on board;

(b) sufficient and suitable oars, paddles or a pole to land the vessel;

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a pump or other suitable bailer, unless the vessel has been designed to float with the maximum permissible number of persons on board even if it is waterlogged; in the case of a power boat which is used to tow a water-skier, suitable water-skiing rear mirror and a red flag of 300 mm by 300 mm; in the case of a power boat, an effective whistle or siren which can be employed to prevent collisions; in the case of a power boat, an effective fire-extinguisher; an effective flame-arrester for each carburettor of any petrol engine on the vessel except an outboard engine; an effective silencer on the exhaust of an engine-driven vessel; the following lights, which must be visible at a distance of at least 200 meters, when the vessel is used between sunset and sunrise:

(i) in the case of a power boat or sailing boat, a white light visible from all directions;

(ii) in the case of vessels such as a sailing boat, canoe, sailing board and a paddleski, a lantern or flash-light which may be shown in order to prevent collisions; a suitable container for refuse;
a suitable anchor with a sufficient anchor line.

All life-saving apparatus on board a vessel in the water must be in good working condition and within easy reach for immediate and effective use.

Rules for boating

No person shall leave a vessel unattended in the water area unless it has been properly anchored, moored or removed to dry land a safe height above the water level.

No vessel shall be moored or launched at any place other than that indicated or approved by the Council and an authorised officer of the Council may move any vessel or moor it at any other place without the consent of the owner if he deems this to be in the public interest.

No vessel shall be moored to any other vessel or to a marker, buoy or other navigational aid.

The helmsman of any vessel must ensure that he can at all times exercise full control over the vessel while it is under way.

The helmsman of any vessel towing a line, cable or rope for any purpose whatsoever, must ensure that he does not thereby endanger any other person or cause any inconvenience.

No person shall handle a vessel or allow it to be handled in such a manner that it endangers or creates a nuisance to any other vessel or the occupants thereof or to other persons or property or installations in the water or at the water's edge.

No power boat which is under way and no person practicing water-skiing in the estuary, shall approach closer than 100 meters from any spot where people are swimming or closer than 100 meters from the side of the water or closer than 50 meters from any other vessel, unless –

(a) circumstances are such that the said distances cannot be maintained;

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(b) assistance is being given in an emergency situation; or

(c) the power boat or any water-skier towed by it is landing leaving the shore;

Provided that when the prescribed distances are not maintained, the power boat must immediately reduce its speed to less than 10 km per hour.

No person shall be on the bow, forward deck or gunwale of any power boat which is under way unless sufficient safety rails or guard rails have been installed, and no person shall jump or dive from any power boat which is under way, except when help is being given in an emergency or when it is necessary to moor or to land the power boat.

Where it is possible, a vessel shall be piloted in such a manner that the median line of the sailing area shall always be on the port side of the vessel, in other words all power boats must move in an anticlockwise direction.

(10) Whenever two vessels approach each other head-on or approximately head-on, each must be piloted in such a manner that it passes the other on its own port side and, subject to the provisions of subsection (7) at such a distance and at such a speed that the wake of either of the vessels shall not endanger the other.

(11) (a) No vessel shall pass another vessel which is proceeding in the same direction, unless it is safe to do so and such vessel shall, when it does so, pass the other vessel on its port side and, subject to the provisions of subsection (7), at such a distance and at such a speed that its wake shall not endanger the other vessel.

(b) A vessel which is passed shall maintain its speed and direction until the passing vessel is safely past.

(12) Whenever two vessels approach each other in a manner other than referred to in subsections (10) and (11), the vessel which finds the other on its port side shall maintain its speed and direction and the vessel which finds the other on its starboard side shall stay out of the way of the other vessel by changing its direction to starboard so as to pass the other vessel from the stern and shall if necessary stop or reverse to avoid a collision.

(13) (a) Whenever two sailing boats are approaching one another in such a way as to involve risk of collision, not withstanding the provisions of subsections (10), (11) and (12), they shall keep out of one another's way as follows:

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) when both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(b) For the purpose of this subsection, the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

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(14) To avoid a collision between vessels, a power boat shall give way to all other vessels, and a rowing boat or a canoe shall give way to a sailing boat when circumstances require it, not withstanding the provisions of subsections (9), (10), (11), (12) and (13): Provided that this by-law shall not give the right to the helmsman of any vessel to unnecessarily obstruct or interfere with the course of any other vessel.

(15) The helmsman of any vessel shall maintain a safe and cautious speed in the area where vessels are moored, where angling is taking place or where buoys and placed, and whenever visibility is obstructed due to fog or other causes he shall pilot the vessel under his control in such a manner that people, other vessels or other property are not endangered.

(16) No vessel shall follow closer than 100 meters in the wake of a water-skier.

(17) No vessel or vehicle which is propelled by means of a propeller above the water, shall be used in the water area.

(18) Except in the case of an emergency, no aeroplane shall land in or take off from the water area.

(19) No boat shall be left on any slipway except for purposes of repair.

Water-skiing — where allowed

(1) No person shall practice water-skiing on water unless an effective life-belt or other floating device is attached to his body.

No steel or metal cable or steel wire shall be used to tow a water-skier.

The helmsman of any vessel which tows a water skier-shall, before such water-skier is taken in tow, ensure that the water skier is familiar with the distress signal for water-skiers, namely drawing the hand across the throat.

No water-skiing shall be practised between sunset and sunrise and the Council may also prohibit water-skiing at other times.

No vessel shall tow a water-skier unless a second person older than 14 years is present in the vessel to observe the water-skier.

No water-skier shall drop a water-ski except at a spot where the discarded water ski does not constitute a danger to any other water-skier or vessel.

As soon as a water-skier drops the towing-line, the helmsman of the vessel towing the water-skier shall pull in the towing line immediately and if the water-skier has dropped the towing line by accident, the said helmsman shall turn the vessel immediately and take the water-skier in tow again or take him aboard.

Water-skiing shall be permitted in designated areas only in accordance with Proclamation 357 dated 28 September 1972 as published in Official Gazette 3691 dated 6 October 1972.

When a skier falls, a red flag measuring a minimum of 300mm x 300 mm shall be held up and kept up until the skier boards the boat or resume skiing.

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Registration and licensing of boats

(1) Any person intending to operate a boat on the estuary shall apply in writing on the prescribed form to the Council for a registration and licence for such boat.

(2) Any such application shall be accompanied by the fees, as determined from time to time by special resolution of the Council, which shall be refundable if the application is not approved.

(3) A boat in respect of which an application for a licence has been made, shall be submitted/for examination by an authorised officer of the Council at a date, place and time appointed by the authorised officer unless such applicant is advised by the authorised officer that such examination is not required.

(4) When considering applications for licensing, the Council may distinguish between riparian and non-riparian owners, boats belonging to land-owners, house-owners or residents, and boats belonging to non-land-owners, non-house-owners or non-residents, so as to limit the number of boats which may be licensed.

(5) The Council may approve or refuse to approve such application and may, in approving it, impose such conditions as to the manner of operation of or repairs or alterations to such boat as it may deem necessary in the interests of safety or to ensure compliance with this by-law.

(6) The Council shall refuse to approve an application if it is satisfied that the operation of such boat will -

(a) be a source of pollution in the estuary or the vicinity of the estuary;

(b) cause a nuisance;

(c) or constitute a danger to persons using it to the public or any section of the public.

(7) The registration of a boat not transferable from any person to another or from any boat to another except where an owner of a registered boat in terms of this by-law transfers his registration to another boat belonging to him with the written permission of the Council.

(8) The registration shall specify the name of the person to whom it is issued, the maximum number of persons permitted to be carried in the boat, the type and overall length of the boat, the maximum power of the engine and the identification number allocated to the boat.

(9) Registration and licensing will solely be at the discretion of the Council and reasons will be given if it refuses to register or license a boat.

(10) The Council reserves the right to limit the number of registrations issued per person.

Validity of licences and displaying of tokens

(1) The licence of a boat expires on the 30th of June every year and is valid for a period of twelve months or such shorter period as may be determined by the Council.

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(2) The licensee of a boat shall forthwith affix the license or cause it to be affixed to such boat in a manner acceptable to the Council.

Automatic lapsing or cancellation of licences

(1) A licence shall lapse automatically if a boat has been removed by or on the authority of the Council in terms of section 14.(4) on account of pollution being caused in the estuary.

(2) If the Council is of the opinion that a boat no longer qualifies for licensing in terms of this by-law or in terms of any conditions on which the licence was issued, the licence may be cancelled after notice of thirty days to that effect has been given to the licensee, at the address on the licence.

Cancellation of licences

(1) The Council may cancel any licence if –

(a) it is satisfied that the boat in respect of which such licence was issued is no longer safe or seaworthy, or is a source of pollution in the vicinity of the estuary, or is operated in a manner which constitutes a nuisance or danger to other boats or to the public or any section of the public;

(b) the boat is transferred, sold or disposed of or if the Council is satisfied that the licensee has ceased to exercise control over the said boat or to supervise it; or

(c) the licensee has been convicted of an offence relating to the operation or control of a boat in terms of this by-law.

(2) If the Council cancels any licences in terms of this by-law, the authorised officer shall forthwith notify the licensee of such cancellation, at the address on the licence.

Fixing of tariffs, fees and levies

(1) The Council may by special resolution determine tariffs, fees and levies for the licensing of boats and the provision of discs and tokens.

(2) In fixing tariffs, fees and levies in terms of subsection (1) the Council may distinguish between various classes of boats making use of the estuary or any facilities, or in respect of their size, method of propulsion or use, or may make any other distinctions which, in the opinion of the Council are relevant in fixing such tariffs or fees.

(3) Any application for the licensing of a boat or the use of any facilities by any boat shall be accompanied by the prescribed fees as determined by the Council.

Fouling and pollution of the estuary (1)

No person shall, while he is in the water area –

(a) use indecent, offensive or improper language;

(b) behave in an offensive, improper or disorderly manner;

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(c) stay, bathe or sunbathe in the nude or not properly clothed,

(d) whether on a vessel or not;

(e) wilfully or negligently do anything which will cause an inconvenience to any other person using the water area, or which may disturb the peace.

(2) No person, except with the permission of the Council and in compliance with the provisions of the Sea-shore Act, 1935 (Act 21 of 1935), shall allow any sewer pipe or tank to discharge into the estuary or allow any other waste water from any other source to drain into the estuary.

(3) No substance such as petrol, oil or any toxic or noxious substance shall be deposited or disposed of in the estuary.

(4) No bottles, cans, garbage or refuse of any kind whatsoever shall be thrown into the water or onto abutting land or any facility except in receptacles furnished for that purpose.

(5) No person shall by any act or omission, whether directly or indirectly, allow a nuisance or the creation or continuation of a source of danger, or allow any interference with the convenience or comfort of persons in the vicinity of the estuary.

(6) Any person fouling or polluting the estuary, any land adjacent thereto or any facility in connection therewith shall be guilty of an offence.

Powers of authorised officers

(1) Any person who operates an unlicensed boat on the estuary or contravenes any provision of this by-law, may be ordered by an authorised officer to remove such boat forthwith from the estuary or to cease such contravention, and non-compliance with such order shall constitute an offence.

(2) Any authorised officer shall have the right to board a boat at any time and to inspect it for the purposes of ensuring compliance with the provisions of this by-law.

(3) Any person who is authorised in writing by the Council may, in the water area –

(a) investigate and test, any vessel or part thereof or any equipment thereon in order to determine whether the vessel is suitable for navigation on or in the water and whether any particular provision of this by-law has been complied with;

(b) call for any information regarding the vessel from the helmsman and may, if the helmsman is unable to furnish the information, order him to remove the vessel forthwith from the water area until such time as the request can be complied with;

(c) require the helmsman to furnish his name and address or the name and address of the owner of the vessel and any other information required for identification purposes;

(d) require any other person in the vessel other than the helmsman, to furnish his name and address as

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well as any other information required for the identification of the helmsman or the owner of the vessel;

(e) if it appears to him that the helmsman of any vessel, owing to his physical or mental condition, irrespective of how this originated, is not capable of steering the vessel or in control of it, forbid the helmsman temporarily from continuing to steer or being in control of the vessel and may make any arrangements which in his opinion are necessary or advisable for the safe disposal of the vessel;

(f) if it appears to him that the load or number of persons transported in any vessel is more than the vessel was designed or built to carry or more than can be transported in reasonable safety under prevailing conditions, forbid the helmsman of such a vessel to proceed until the load or the number of persons has been reduced in the manner he considers necessary or advisable;

(g) if it appears to him that any vessel or part thereof is unnavigable in or on the water, order the helmsman to remove the vessel forthwith from the water area until such time the vessel or the part thereof has been made navigable in or on the water;

(h) if it appears to him that any of the equipment prescribed by this by-law is not on board the vessel or in a good working condition or not easily available for immediate use on board, order the helmsman to remove the vessel forthwith from the water area until such time as all the provisions of this by-law regarding equipment have been complied with;

(i) remove any fishing rod or line that has been left unattended, from the river, if, in his opinion, the rod or line constitutes a threat to the safety of others.

(4) (a) No person shall obstruct or interfere with any authorised officer whilst the latter is engaged in the execution of his duties, and

(b) no person shall refuse to furnish his/her correct name and address when requested to do so by an authorised officer.

Delegation of power

13. The Council may delegate and/or transfer any powers conferred on it under this by-law, with the exception of the power to levy or determine fees, to any person or persons or organisation, and such person or persons or organisation shall, after such delegation or transfer, have the same power as the Council would have had in terms of the provisions of this by-law.

Removal of boats from the estuary

14. (1) If the owner of an unlicensed boat fails to remove such boat from the estuary after having been requested to do so by the Council or any authorised officer, the Council may remove such boat forthwith.

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Appendix 3

Benguela Cove
LAGOON WINE ESTATE

(2) (a) In the event of the Council cancelling any licence, or if any licence expires or lapses in terms of this by-law, the owner of the boat, the licence of which has expired or lapsed or has been cancelled, shall immediately remove such boat from the estuary.

(b) If the owner of a boat, the licence of which has expired or lapsed or has been cancelled fails to remove such boat from the estuary within thirty days after such licence has expired or lapsed or after notification to him of the said cancellation, he shall be guilty of an offence and the Council may remove such boat forthwith.

(3) Any boat in or on the estuary for which the fees as prescribed by the Council are in arrears for more than thirty days, may be removed from the estuary by the Council after written notice of the Council's intention has been given to the owner or licensee.

(4) If, in the opinion of the Council, any boat constitutes a danger in the estuary or causes pollution by the discharge of petrol or oil, such boat may be removed forthwith by the Council.

(5) Where the Council is entitled to remove a boat, an authorised officer may make any arrangements considered necessary by him to ensure the removal of such boat, and the Council may recover the cost of such removal from the owner.

(6) If boats removed from the estuary in terms of the provisions of subsections (1), (2)(b) or (4) are not claimed within ninety days after such removal, or in the case of boats referred to in subsection (3), within ninety days after the said written notice has been given and all fees in arrears have been paid, the Council may confiscate such boat or boats by court order to claim fees in arrears.

Exception from liability in respect of injury and/or damage

(1) The Council shall not be liable for any injury which is sustained by any person using the estuary or any facility, or for damage to any property thereon, whatever the cause may be.

(2) (a) The Council as a whole, individual councillors, any person or independent contractor in the service of the Council or any authorised officer shall not, except in the event of any wilful act or omission on the part of the Council or the said persons, be liable for any loss or damage to property which is caused by or arises out of or in connection with anything which is done or performed in good faith in the exercise or performance of a power or duty conferred or imposed in terms of this by-law.

(b) If any question arises as to the good faith of any such person, his good faith shall be presumed unless the contrary is proved.

General

(1) No person shall in the water area, without the prior written consent of the Council -

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Appendix 3

Benguela Cove
LAGOON WINE ESTATE

(a) offer for reward or profit any show or entertainment or conduct any business or trade;

(b) keep or use any house boat;

(c) keep or use any vessel for the transport of passengers or goods for payment or reward;

(d) hold any fishing competition, or

(e) hold any race, meeting or regatta.

(2) When the Council grants its authority in terms of subsection (1), the Council may set the conditions which it sees fit in the circumstances in any particular case, to ensure the safety of the public,

(3) No person is allowed:

(a) to fish from any bridge;

(b) to scuba dive, spearfish or use fish nets other than a landing net or casting net in the estuary without a permit, or

(c) to catch fish without a licence.

(4) The following is prohibited;

(a) any form of organised power boat race on the water area of the estuary, and

(b) hovercraft, jet-driven craft (jetski's) and seaplanes are specifically excluded from using any part of the water area of the Botriver estuary.

Penalty

17. Any person who contravenes any of the provisions of this by-law or refuses to comply with any order lawfully given there under by the local authority shall be guilty of an offence and liable upon conviction to a penalty as prescribed in section 215 (3) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).

Waiver of by-law

18. The Council may, if it deems it desirable to do so, waive compliance with any provision of this by-law, or permit deviations, exceptions and exemptions in respect of any provisions of this by-law, subject to such conditions as it may deem fit.

P.N. 481/1996 15 November 1996

Signed by the Purchaser on the _____ day of _____

_____

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Appendix 4

From: penny.streeter@benguelacove.co.za
Subject: Re: Portions 210 & 220 of Farm 575, Benguela Cove (Consent Use, Determine Admin Penalty) // questions by Diessner Family Trust 246
Date: 25 April 2023 at 20:03
To: Martin Diessner martin.diessner@gmail.com, BC SA HOA hoa@benguelacove.co.za, hoaaccounts@benguelacove.co.za
Cc: Martin Diessner martin.diessner@me.com

Dear Martin, please find answers to your questions below. Please note that the notice was submitted late to owners and an extension to the time limit will be circulated shortly. I hope you don't mind but I would like to circulate your questions, which I feel address some of the questions from members via the whatsapp group, please confirm this is ok with you?

On 4/24/23, 9:54 PM, "Martin Diessner" <martin.diessner@gmail.com> wrote:

Dear Trustees,

We confirm the receipt of the below notice. Somehow the email ended up in junk folder, although we normally receive emails from the HOA without any issues. When you respond pls include <martin.diessner@me.com> which permits all incoming mail without any filter.

Before we consider responding to the application, can you please address the following items:

1) Please provide us with a copy of the title deed(s) relating to portion 210 and 220 of Benguela Cove. It appears that this is T77627/2017 in Annex C, however, Annex C is not included in the application.

The application being shared with the interested and affected parties have some information redacted due to the Protection of Personal Information act (POPI). These include the power of attorney and title deeds, but it is however still available at the municipality for inspection as indicated in the advertisement that was sent to the interested and affected parties.

2) Please provide us with a copy of the Annex A - power and resolution which is not included in the application.

See comment above.

3) Can you please elaborate why the HOA and not BCI has submitted this application to Overstrand Municipality? (Please confirm that BCI and not the HOA is the owner and operator of the pontoon boat)?

The properties from which the Lady Bonnie is operated are owned by the HOA and therefore the power of attorney from the HOA was required for the submission of the application. Benguela Cove Investments is the owner and operator of the pontoon boat.

4) Why is the consent use application necessary? If consent use is required in the future, then why is the pontoon boat operating now? Seems just contradictory.

The consent use is required to continue the operations of the Lady Bonnie as the operation is regarded as a recreational facility for which approval of a consent use for a tourist facility is required. The operations of the pontoon boat were discussed with Cape Nature and the Overstrand Municipality and their final comment on the consent required. A number of years have passed without any feedback forthcoming. Only recently the Overstrand Municipality indicated that the approval of a consent use for a tourism facility is required.

5) Will the consent use application be approved, the application [illegible] operate [illegible] consent use is required in the future?

Application only applies to the current operation of the pontoon boat.

6) How many staff does the HOA employ?

none

7) How much is currently being charged per person on the pontoon boat? Whatever that cost per person currently is, will that amount change if the application was to be approved? If so, what amount?

It is not currently being charged for and a price has not yet been determined.

8) Are and/or will any income of the tour operating business be shared with the HOA and/or any property owners of the Benguela Cove estate?

No this forms part of the activities of Benguela Cove Investments, the owner and operator of the commercial area and farm.

9) I am not on the HOA WhatsApp group and my wife does not recall having seen any survey amongst HOA members if the majority of the property owners support such an application, in particular property owners adjacent to the effected erven 210 and 220? Can you please advise if any property owners have been consulted prior to this application by the HOA and if yes provide more background?

No consultation with these owners has taken place.

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Appendix 4

10) Who is paying for the application, BCI or the HOA?

The cost of the application is being carried by BCI.

11) The application of consent use as tourist facility is rather wide (see application page 4 - shooting range, gift shop, cafes, etc). How is the HOA managing the risk that, if the application was to be approved, the consent use as tourist facility of the effected erven is not abused beyond the desired commercial boat operating facility? From the outset it appears that once the consent use is approved, anything that falls within the approved extension will be permitted?

The application has been submitted for a tourism facility and although the definition may be broad, it is indicated in the circulated advertisement and application document that the application only applies to the Pontoon Boat. No other tourism facility is included in the application.

Once we receive the above information, we will be able to determine if we need to comment/object to the application or not.

Many thanks

Martin Diessner
On Behalf of The Diessner Family Trust
Benguela Cove 246

On 12 Apr 2023, at 15:03, hoa@benguelacove.co.za wrote:

Dear Homeowners

Please find self – explanatory note for your attention.

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Appendix 5

Benguela Cove
HOME OWNERS ASSOCIATION

Developers report

We have seen an increase in building activity and plot resales to individuals who obviously intend to construct houses. BCI is also finalizing details to construct another four houses. Plot prices have now made an amazing recovery. Benguela Cove as well as being a great place to live is a great investment.

Benguela Cove Wines will shortly be available throughout South Africa via a respected retailer. Large volumes are being sold across the globe. We have again won numerous awards including 5 Star Platters.

BCI is working on a plan for an extension to the Cellar and the Agriculture Centre area surely a testament to our wines and our wine maker Johann Fourie.

An application has been made and paid by BCI for the operation of a ferry between the pontoon for a fee. All local authorities are aware of operations but we have decided to formalize this in order to charge, as it is not sustainable to have a running for free. This has been running successfully for a number of years and your support for the application will be appreciated. The transport methodology will not change, all guests are escorted to the pontoon. The boat is correctly licenced.

Benguela Cove is now very much on the map and the Estate is gradually maturing and a great place to live.

Benguela Cove Investments

Nick Rea

April 2023

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Appendix 6

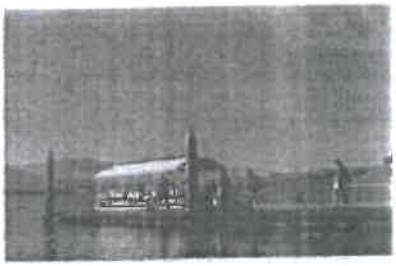
Attention: From 30 April, Benguela Adventure will be temporarily closed for the winter. Once the ice starts thawing, we'll be sure to open our doors again.

The pontoon boat cruise is complimentary for two people when you buy any case of wine - 6 bottles or more at Benguela Cove.

Pontoon cruise available Wednesday to Sunday - weather permitting, 10:00 | 12:00 | 14:00 | 16:00

Booking essential: 087 357 0637 | info@benguelacove.co.za

A perfect way to experience our nautical property is by taking a cruise on our pontoon. Climb aboard the Lady Bonnie and enjoy a scenic trip across the lagoon. Arrive an hour before the departure time to stock up on refreshments.





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Appendix 7

[redacted]
Subject: Fwd: Thank you for your reservation
Date: 28 April 2023 at 14:50
[redacted]

Sent from my iPhone

Begin forwarded message:

From: Benguela Cove <info@benguelacove.co.za>
Date: 27 April 2023 at 17:00:15 GMT+2
[redacted]
Subject: Thank you for your reservation

Benguela Cove
LAGOON WINE ESTATE

Reservation Confirmation

Hello [redacted],

Thank you for your reservation. We look forward to seeing you on Apr 29, 2023.

Below you will find information about your reservation.

All Aboard the Lady Bonnie - we can't wait to set sail with you.

Join us for a relaxed boat trip on the Lady Bonnie pontoon across the moody lagoon, as you take in the natural biosphere of our nautical estate and the surrounding mountains, vineyards and nature reserve.

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Appendix 7

- **WHAT TO WEAR:** It can get windy and chilly on the water depending on the season and weather, so bring a jacket or windbreaker just in case. Sunblock and a hat are recommended for hot days. In the summer months we often are able to moor at the sandbar opposite the estate so if you want to feel the sand between your toes then we recommend you wear flipflops.
- **WHAT YOU'LL SEE:** Azure waters, birds, possibly the free-roaming wild horses and if you are lucky in season, whales.
- **WHAT'S ON AT THE ESTATE:** there is so much to see and do for guests of all ages at Benguela Cove.
- **BEFORE YOUR CRUISE:** Buy your wine (at cellar door prices) for the trip from the Tasting Room, nothing beats sipping on a cool glass of Chardonnay whilst on board.

Pontoon cruise available Wednesday to Sunday 10:00 | 12:00 | 14:00 | 16:00 ***Weather permitting.**

***Contact our frienly team for information 087 357 0637 | info@benguelacove.co.za**

Pontoon Cruise

Reservation #2666

Apr 29, 2023 at 12:00 pm

13 guests for Ms [redacted] × R250.00

Benguela Cove
Hermanus
7200
South Africa

View Reservation →

Add to your calendar

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Appendix 7

Paid by	R3,250.00

Please do not hesitate to give us a call at 087 357 0637 or send an email to info@benguelacove.co.za if you have any questions at all.

Thanks,

Benguela Cove

Benguela Cove
R43 Bot River Lagoon, Hermanus, , 7200, South Africa
087 357 0637

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Appendix 8

Benguela Cove

LAGOON WINE ESTATE

Proforma Tax Invoice

TRCSBNV290423

Benguela Cove Lagoon Wine Estate,R43,Hermanus,7200
P.O.Box 327, Bellville, 7535.
VAT No: 4190187668

Customer	[redacted]ak
Vat no:	
Address	[redacted]
Address	Campsbay Zip 8005
Tel Contact	
Email Contact	[redacted]

Ref:	Pontoon Cruise
Date	29-Apr-23
Acc no	
Purchase order no:	

Qty	Description	Unit Price	Incl Total
13	Pontoon Cruise	250,00	3 250,00
	Banking Details:	**Total Excl**	**2 826,09**
	Absa Bank, Acc No: 4074545850, Branch Code: 421109	**VAT 15%**	**423,91**
	Please use your invoice number as reference.	**Total Inc**	**3 250,00**

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OVERSTRAND MUNISIPALITEIT
30 MAY 2023
OVERSTRAND MUNICIPALITY

TP-A Theart (H Olivier)

BirdLife SOUTH AFRICA
Giving Conservation Wings

BirdLife South Africa is a partner of BirdLife International, a global partnership of nature conservation organisations.
Member of IUCN (International Union for Conservation of Nature).
Reg No: 001 – 298 NPO
PBO Exemption No: 930004518

28th May 2023

To: Overstrand Municipality
Via email: lorette@overstrand.gov.za

Dear Sir/ Madam

Re. Application for consent use and determination of an administrative penalty for portions 210 and 220 (portions of portion 80) of Farm Afdaks Rivier No. 575, Caledon Division: WRAP Project Office on behalf of Benguela Homeowners' Association.

BirdLife South Africa is grateful for the opportunity to comment on the above stated consent use application; however, found the application to be somewhat unclear with respect to its scope and intent.

BirdLife South Africa asks for confirmation that the consent use application applies to the *current* use of both the pontoon boat (the Lady Bonnie) and existing structures, and for more detail thereof. It is unclear as to whether the application is seeking to develop additional tourism and/ or recreational facilities, or engage in other related activities, as defined through OMLUS.

Similarly, BirdLife South Africa requires corroboration that there is/ will be no increase to the development footprint associated with this consent use application, particularly in portion 220 (the beach area).

Photographic evidence provided by local community members shows that there is clearing of natural vegetation underway on portion 220, including, potentially, the removal of milkwoods *Sideroxylon inerme*, a Protected Tree[1]. The presence of a digger on the beach is also indicative of potential soil movement of more than 5m^3, and there is evidence of extensive vehicle tracks and other disturbance. Given the timing, this has raised questions with respect to the scope and intent of this consent use application.

BirdLife South Africa would also appreciate greater clarification on the permissible activities specific to the pontoon itself (when on the water), as well as the proposed route. The Bot River estuary is a Ramsar site, a wetland of international importance, and is ranked 8th in the country for its conservation importance. It is also a highly dynamic system, changeable in condition and consequently, its supported biodiversity, including its bird life. The route and activities of the pontoon require further detail and explanation to ensure the conservation and protection of this important system throughout, and BirdLife South Africa would be willing to engage on this further.

[1] It is illegal to damage, move, or destroy Protected Trees

Isdell House, 17 Hume Road
Dunkeld West, Gauteng 2196
PO Box: Private Bag X16, Pinegowrie
2123, South Africa
Tel: +27 (0)11 789 1122
Fax: +27 (0)11 789 5188
Email: info@birdlife.org.za
www.birdlife.org.za

Honorary Patrons: Mrs Gaynor Rupert, Dr Precious Motsi-Motsepe, Mr Mark Shuttleworth

30 MAY 2023

FILE NO. Plan'S 210 & 220 Afdaks Rivier 575
LAN NO.
Giselle
COLLABORATOR NO.
1863335

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BirdLife SOUTH AFRICA

Giving Conservation Wings

BirdLife South Africa is a partner of BirdLife International, a global partnership of nature conservation organisations.
Member of IUCN (International Union for Conservation of Nature).
Reg No: 001 – 298 NPO
PBO Exemption No: 930004518

We await further clarification on the above. Please do get in touch if you have any questions or need any information in the interim.

Kind Regards,

Dr Giselle Murison

Western Cape Estuaries Conservation Project Manager
BirdLife South Africa
Email. Giselle.murison@birdlife.org.za
Mobile: +27 (0) 71 603 3845

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OVERSTRAND MUNISIPALITEIT
29 MAY 2023
OVERSTRAND MUNICIPALITY

TP- M. Theail
(M. Olivier)

The Diessner Family Trust
246 Benguela Cove

Office of the Director: Infrastructure & Planning, Town Planning
S Mueller, Director Infrastructure and Planning
Via email to: loretta@overstrand.gov.za
Benguela Cove Home Owners' Association
Via email: hoa@benguelacove.co.za

FILE NO. PNR 210 & 220
Farm Afdaks Rivier 575
SCAN NO.
Farm 575
COLLABORATOR NO.
1862402

29 May 2023

To whom it may concern:

Re: PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION: APPLICATION FOR CONSENTUSE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION ("Application")

1. This letter contains written comments made in accordance with the provisions of Sections 51 and 52 of the Overstrand Municipality Amendment By Law on Municipal Land Use Planning in response to the above mentioned application.

2. My name is Martin Diessner, and I am a trustee of the Diessner Family Trust residing at 246 Benguela Cove, Botrivier Lagoon, R43, Hermanus. Our family trust is the owner of the consolidated erf 246 (with the underlying erven 171 and 172) and I am authorised to act on behalf of our trust as can be seen from attached Appendix 1.

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3. Our trust pays levies to the Benguela Cove Home Owners Association ("HOA") and we are a member of the HOA by virtue of its Constitution ("Constitution"). I attach a number of relevant pages from the Constitution as **Appendix 2** (latest version from April 2018).

   3.1. According to the HOA's Constitution paragraph 2.4.4, portion 210 and 220 (as referred to in the Application) are part of the land transferred to the HOA by the developer and that is also known as "*the common property*".

4. The HOA's Constitution contains annexure (E) which is the BY-LAW RELATING TO THE CONTROL ANDOISE OF THE BOT RIVIER ESTUARY [Government Gazette NO. 5093, P.N. +80/1996 dated 15th November 1996], in short "Estuary Regulation" which is attached as **Appendix 3**.

5. After having received the Application, we contacted Mrs Penny Streeter OBE ("Streeter") - who is the sole shareholder of the developer's company Benguela Cove Investments Pty Ltd ("BCI") as well as the Chair Person and trustee of the HOA - in order to get more clarity on the Application. Streeter responded to our questions which are marked up and attached as **Appendix 4**.

6. The HOA held its annual AGM on 29 April 2023, and I attach a marked up copy of the developer's report as **Appendix 5**. The report was presented by Mr Nick Rea ("Rea") who is a director of BCI as well as a trustee of the HOA.

7. The title deed T77627 of Portion 210 and 220 both contain the following title deed condition:

   7.1. "*The owner and his successors in title will be members of the Benguela Cove Homo Owners association established in terms of Section 29(1) of the Ordinance 15 of 1985, and* ***shall at all times be subject to the constitution thereof...***" (my emphasis in bold).

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7.2. Due to the title deed being rather long (84 pages) I do not attach it but can make it available if required.

8. We **object to the Application** for the following reasons:

8.1. Section 30 of the HOA's Constitution ("Constitution") expressly prescribes the dealings with the common property, which portion 210 and 220 fall under as explained in paragraph 3.1 above. Subsection 30.2.3 clearly states that, and I quote *"Neither the whole **nor any portion of the common property shall be subjected to any rights**, whether registered in the Deeds registry or not, **of use**, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof..."* (my emphasise in bold).

8.1.1. The title deed of Portion 210 and 220 makes it clear that the HOA (via its trustees) is bound to be adhere to the Constitution.

8.1.2. The Constitution paragraph 2.4.4 considers Portion 210 and 220 as part of the common property.

8.1.3. The Constitution clause 30.2.3 **prevents that the common is subjected to a consent use**, unless it is enjoyed by all Members of the HOA.

8.1.4. Streeter, in her email dated 25 April 2023 (**Appendix 4**), clearly indicates in her answer to my question 5 that the consent use as a tourist facility, if approved, will **only benefit the owner of the pontoon boat** which is the developer BCI, and **is not a consent use that will be enjoyable by all members of the HOA**.

8.1.5. Therefore, in terms of the Constitution 30.2.3, the consent use must be denied by Overstrand as it would otherwise considered to be a direct breach of the HOA's Constitution.

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8.1.6. If BCI or any other member of the HOA would like to apply for a consent use in relation to any of the Portions falling under the Common Property, said members must assure that the consent use is to be enjoyed by all members of the HOA. However, it is questionable to permit every member of the HOA to run a commercial tourism boat operation from the HOA's jetty, or any other commercial tourist operation. One can only imagine what happens to the estate if some 120 members all start their own commercial tourist operation on those Portions, if permitted.

8.1.7. Alternatively, said members must propose a special resolution to amend the HOA's Constitution in accordance with the provisions of its section 20.7. Clearly, the Applicant has not exhausted its remedy to provide for an application that is not in violation of the HOA's Constitution, and therefore the Application must be rejected.

8.2. The Estuary Regulation (**Appendix 3**) clearly state on page 10 & 11 under section General 1(a) that and I quote *"No person shall in the water area, without the prior written consent of the Council – (a) offer for reward or profit any show or entertainment or conduct any business or trade; (c) keep or use any vessel for the transport of passengers or goods for payment or reward."*

8.2.1. Streeter and Rea, both directors of BCI - which is the actual operator of the pontoon boat - stated that BCI does not charge passengers for the transport on their vessel.

8.2.2. Streeter did so in her email dated 25 April 2023 (**Appendix 4**) by answering question 7, and I quote her confirming: *"The pontoon boat is not currently being charged for and a price has not yet been determined."*

8.2.3. Rea did so in his developer report (**Appendix 5**) as presented at the 29 April 2023 AGM of the HOA. He states and I quote: *"An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a*

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fee. All local authorities are aware of operations but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

8.2.4. Everyone homeowner in the estate is aware of the fact that the developer BCI is in fact running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.co.za/boat-attractions (Appendix 6) even advertises the pontoon cruises which operate 4x daily and are complimentary for two people when buying a case of wine with 6 bottles.

8.2.5. We know of plenty of people that booked the pontoon cruise and directly paid for the transport of passengers on the pontoon boat. For example, I attach Appendix 7 which is a booking confirmation for 13 passengers each charged R250 with a total of R3,250.

8.2.6. Appendix 8 related to an invoice raised by developer BCI, the operator of the pontoon boat, to the customer. Please note that for reason of privacy I have redacted the customer's contact details.

8.2.7. How come that both Streeter and Rea state that the pontoon boat operates free of charge, however, customers are being charged a fee which is in violation of the law?

8.2.8. According to the Application, the pontoon boat is licensed to accommodate up to 12 passengers. The above mentioned booking clearly states 13 passengers, which shows that BCI is not only dishonest about their fee but also violating the permitted number of passengers which is in violation of the Overstrand Bylaw (Appendix 3) which states that *"no person shall operate a boat on the estuary if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the license."*

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8.3. Lastly, the Application is misleading. Nowhere does it state that BCI is the operator of the pontoon boat. The Application attempts to create the impression that the HOA and all of its members consent to the Application. However, as per Streeter's email confirmation (Appendix 4), no members of the HOA have been consulted. Simply put: The developer (and operator of the pontoon boat) controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members.

8.3.1. Streeter and Rea, in their capacity as trustees, have undersigned the trustee resolution and power of attorney that are part of the Application.

8.3.2. The HOA's Constitution section 9 prevents the trustees (ie Streeter and Rea) to act in contravention of the Constitution. I quote section 9.5 which states *"the Trustees may make regulations and rules* ***not inconsistent with this Constitution****..."* (bold my emphasis)

8.3.3. Both Streeter and Rea (and the other trustees) have, in my opinion, violated the powers that the Constitution provides to them as trustees as the Application is unlawful and contravenes the Constitution clause 30.

9. In closing, I re-iterate that we appeal to the Overstrand Municipality to reject this Application altogether:

9.1. The operator BCI violates the Constitution and the By-Law, and for that reason the operation of the pontoon boat should be stopped.

9.2. The HOA trustees violate the Constitution and abuse their powers by acting in contravention of the Constitution Section 30.

9.3. The members of the HOA are prejudiced as they do not benefit from the pontoon boat operation. The HOA has no staff operating the pontoon boat and the whole

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notion about the "*livelihoods of employees (crew) at stake*" is out of context and has nothing to do with the HOA, but with the developer. No member of the HOA has been consulted by BCI or the HOA's trustees prior to this application.

9.4. The developer BCI has alternative means to operate a tour boat if they seek to do so, i.e. by amending the Constitution via a special resolution, or choosing an alternative means of marketing the estate.

9.5. Streeter and Rea, in their capacity as trustees and representing the developer have been untruthful with regards to the charging of a fee whilst unlawfully operating the pontoon boat.

9.6. With regards to waving the administrative penalty, I believe that the By-Law and the Estuary Regulation is clear: "*Any person who contravenes any of the provisions of this by-law or refuses to comply with any order lawfully given there under by the local authority shall be guilty of an offence and liable upon conviction to a penalty as prescribed in section 215 (3) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).*" Therefore, we appeal to Overstrand to act in accordance with the law and reject the Applicants request to waive the determination of an administrative penality.

10. Please confirm the receipt of our letter.

With kind regards,

Martin Diessner
On behalf of The Diessner Family Trust
(246 Benguela Cove)
Email:
Phone:

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Appendix 1

THE DIESSNER FAMILY TRUST – IT021192/2014

RESOLUTION OF THE TRUSTEES PASSED ON 1 NOVEMBER 2014

The trustees resolve that:

Either Robyn or Martin Diessner may represent the trust in all matters relating to the ownership of the Trust's property at Benguela Cove Wine Estate, specifically including but not limited to attending meetings of the Estate, voting at such meetings, signing resolutions such as may be required.

MARTIN DIESSNER

ROBYN JOAN DIESSNER

MARTIN EDMONDS LUYT

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HOME OWNERS' ASSOCIATION

CONSTITUTION

UPDATED 20TH APRIL 2018

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[1] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-06-New-Obligation-to-build-clause

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(D) URBAN AND ARCHITECTURAL DESIGN CONTROLS MANUAL VERSION 7

(E) BY-LAWS RELATING TO THE CONTROL AND USE OF THE BOT RIVIER ESTUARY
[Government Gazette N0. 5093, P.N. 480/1996 dated the 15th November 1996]

(F) BUILDER'S CODE OF CONDUCT

1. NAME

The name of the Association is: "Benguela Cove Home Owners Association"

2. DEFINITIONS

2.1 The headnotes to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

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[2] 07th April 2018, Martin Diessner, 20180407-SpecialsResolution-14-Removal-of-esthetic-approval-clause
[3] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-15-Deposits
[4] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-21-New-design-guidelines

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2.2 Words importing the singular shall include the plural and vice versa

2.3 Words importing the masculine shall include the feminine.

2.4 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

2.4.1 "the Developer" shall mean Benguela Cove Investments (Pty) Ltd, Registration No. 2002/004722/07, Ambition House, 107 Voortrekker Road, Bellville, Cape Town, 7535.

2.4.2 "the development" or "the estate" shall mean the land together with all improvements and services thereon.

2.4.3 "erf" shall mean a portion of private land owned by the Member within the development which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan.

2.4.4 "the common property" shall mean the land transferred to the H.O.A, which shall include Erven 222 to 227 inclusive, which is designated as Private Roads, Erven 205 to 211 and Erven 214 to 220 inclusive, which is designated as Private Open Spaces, Erf 221 which is designated as the Nature Reserve and Erf 212 which is designated as the Grazing Area, but shall exclude Erven 231 and 232, which is designated as the Agricultural Enterprise which shall be retained by the Developer for the cultivation of vines, olives and lavender fields, together with all the residential erven, the hotel, being Erf 228 and the commercial component, being Erf 229 within the development and all the dams, being Erf 213.

2.4.5 "The Agricultural Enterprise" shall mean the Vineyards, the Olive trees and the Lavender fields and dams. Situated on Erven 231, 232 and 213.

2.4.6 "The Commercial Component shall mean Erf 229 which includes the Public Area, being the Winery, Restaurant, Farm Stall, the Chapel and the Conference Facilities, but the Members shall have certain rights over these facilities as governed by the Agricultural Benefits Agreement.

2.4.7 "the general plan" shall mean the general plan relating to the land as approved by the surveyor general;

2.4.8 "the association" shall mean the Benguela Cove Lagoon Home Owners Association;

2.4.9 "the Act" shall mean the Companies Act No. 61 of 1973.

2.4.10 "occupant" shall mean any person lawfully occupying an erf by virtue of his relationship to or with a Member of the Association.

2.4.11 UADRC" means the Urban and Architectural Design Review Committee.

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the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

8.7 The duration of the Trustees' appointment shall not be less than two years.

9. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

9.1 Subject to the express provisions of this constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not either by virtue of the provisions of the Companies Act, or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made, which aforementioned powers shall not include the Agricultrual Enterprise whatsoever.

9.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

9.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

9.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.

9.5 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:

9.5.1 as to the settlement of disputes, generally;

9.5.2 for the furtherance and promotion of any of the objects of the Association;

9.5.3 for the better management of the affairs of the Association;

9.5.4 for the advancement of the interests of Members;

9.5.5 for the regulation and control of the conduct of Members and occupants while in the estate, whether on erven or on the common property (excluding the Agricultural Enterprise which vests with the Developer);

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9.5.6 governing the manner and methods of the use of the common property by or on behalf of the Members of the Association or any occupant;

9.5.7 for the conduct of Trustee Committee meetings and general meetings;

9.5.8 to assist it in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time. Further to monitor and report on the services and maintenance provided by the Developer in terms of the Services and Maintenance Agreement which has been entrenched and is annexed hereto marked Annexure "b"...

9.6 For the purpose of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

10. OTHER PROFESSIONAL OFFICERS (*existing clause*)

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

10. OBLIGATION TO BUILD[7] (*new clause added*)

10.1 The Member acknowledges that the erection of a dwelling and the **establishment** and **landscaping** of a garden on every erf shall:

10.1.1 in the case of a sale concluded as between the Developer and the first purchaser of an erf, commence within 24 (twenty four) months of the date of registration of transfer of the erf into the name of the said first purchaser and shall be **completed** within 36 (thirty six) months **thereafter**; or

10.1.2 in the case of a sale concluded between a Member other than the Developer, and a bona fide purchaser of an erf, commence within 12 (twelve) months of the date of registration of **transfer** of the erf into the name of the said bona fide **purchaser** and shall be completed within

[7] 07th April 2018, Martin Diemaer, 20180407-Special-Resolution-06-New-Obligation-to-build-clause. This new clause 10 was added after SR06 was approved. Unfortunately, the numbering is now "slightly off" since SR04 5 (that would have changed paragraph 9 and combined it with the old/ existing paragraph 10) was not passed

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19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.

19.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

20. VOTING

20.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of paragraph 4.1.2 hereof. The Developer shall be entitled to a single vote in respect to each erf held by it, in terms of the general plan and in accordance with the deeming provision of paragraph 4.1.1 above.

20.2 Save as expressly provided for in these presents, no person other than a Member duly registered, who is not under suspension and who has not had voting rights suspended in accordance with clause 26.1.3, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

20.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

20.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.

20.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member, subject to Clause 6.5 in favour of the Developer.

20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution

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20.7.1 which would have the effect of amending or repealing any part of this constitution, or

20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or

20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

20.8 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

21. FINANCIAL YEAR END

The financial Year End of the Association is the end of February each year

22. ACCOUNTS

22.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members, of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

22.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preseding financial year of the association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year of the Association. Every such balance sheet shall be accompanied by proper extensive reports of the Trustee Committee and the Auditors, and

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30. DEALINGS WITH THE COMMON PROPERTY

30.1 Neither the whole nor any portion of the common property shall be:

30.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or

30.2.2 subjected to a mortgage; or

30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or[1]

30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

31.2 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any Member's erf in accordance with the UADC Manual.

32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL

32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of [illegible] and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without

[1] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-09-Common-use-area-lease-to-agri-business

[2] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-10-ARC-Committee-[illegible]

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ANNEXURE 'E'

OVERBERG DISTRICT COUNCIL

BY-LAW RELATING TO THE CONTROL AND USE OF THE BOT RIVER ESTUARY

Definitions 1. In this by-law, unless inconsistent with the context – "authorised officer" means any person authorised by the Council to perform the functions of an authorised officer under this by-law or a member of the South African Police; "boat" or "vessel" means any conveyance capable of floating on or in water or designed to navigate on or in water and includes, but is not restricted to a motor boat, sailing boat, sailing board, rowing boat, canoe, paddleski, power boat, fishing boat, jet-driven boat, flat-bottomed boat, ferry, houseboat, water cycle and raft; "bow" means the front part of a vessel; "canoe" means a vessel designed to be propelled by means of paddles without any mechanical assistance; "Council" means the Overberg District Council; "due date" means 30 June of every year or such other date as may be determined by the Council; "estuary" means the Bot River Estuary within the area of jurisdiction of the Council; "helmsman" means a person who steers or controls a vessel; "houseboat" includes any vessel, irrespective of whether or not it is propelled under its own power, upon which facilities for day or night accommodation or for any kind of food preparation have been provided, or a vessel upon which any kind of toilet or washing facilities have been provided; "inland waters" such estuary within the area of jurisdiction of the local authority which promulgated this by-law; "vicinity of the estuary" includes the properties adjacent to or in the immediate vicinity of the estuary; "operate" or "control" or any like expression, in relation to a boat, means to launch, use, sail, navigate or moor a boat or to permit a boat to be launched, used, sailed, navigated or moored on the estuary, or to have a boat, or to permit a boat to be, on the estuary; "permission" means the written permission of the Council; "port" means the left side of the boat as seen from the stem; "power boat" means a vessel propelled by means of an engine or other mechanical apparatus, either in- or outboard, irrespective of whether or not such engine or apparatus is the main source of power; "registered boat" a boat issued with an identification number in terms of to section 6 of the by-law; "rowing boat" means a vessel designed to be propelled by means of oars without any mechanical assistance; "sail" or "under way" means the situation of a vessel when it is not anchored or moored or on dry land; "sailing boat" includes every boat which is under sail and is not propelled by mechanical power; "starboard" means the right side of the boat as seen from the stern; "stern" means the back part of a vessel; "visible" means visible by somebody with reasonable eyesight during a dark night when the atmosphere is clear; "water area" means the water level between the banks of the estuary at any specific time; "water ski" means to ski or skate on or in the water with or without the assistance of any kind of skating apparatus and where the water-skier is towed by a vessel by means of a towing-rope; "water-skier" or "skier" a person water-skiing.

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OPERATION OR CONTROL OF BOATS ON THE ESTUARY

No person shall operate or control any boat or vessel on the estuary, excluding a canoe, paddleski, sailing board and rowingboat, unless such boat has been licensed by the Council or a temporary permit has been issued for such boat in terms of this by-law and the identification number allocated by the Council is displayed according to the provisions of this by-law.

No person under the age of sixteen years shall operate and control I a boat equipped with a motor of 4,5 kW or more, unless such person is accompanied by a person over the age of sixteen years. Where any licensee of a boat allows any person who, in the opinion of an authorised officer, is not competent to operate or control such boat efficiently, to operate or control it, such officer may direct the licensee not to allow such person to operate or control such boat, and if the licensee thereafter continues to allow such person to operate or control such boat, he. shall be guilty of an offence.

No person shall operate a boat on the estuary—

(a) in a reckless or negligent manner;

(b) while under the influence of intoxicating liquor or a narcotic drug, or while the percentage of alcohol in his blood is 0,08 or more, expressed in grams per hundred millilitres of blood;

(c) while suffering from an infirmity which renders him unfit to do so;

(d) in a manner dangerous to the public or to the occupants of such boat or in a manner calculated to endanger or damage any property or facility, regard being had to all the circumstances of the case;

(e) in a manner which constitutes a nuisance;

(f) without reasonable consideration for the rights of other persons using such estuary;

(g) while it is leaking oil, petrol or any toxic or noxious substance;

(h) if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the licence;

if the boat is not registered and licensed by the Council and the identification number issued in respect of the boat, is not permanently affixed thereto in figures of a size and colour determined by the Council.

Equipment of vessels

No person shall use any vessel, excluding a canoe and paddleski, with regard to the provisions of subsection (l)(c) and a sailing board with regard to the provisions of subsection (l) (b) and (c), on the estuary unless the following equipment is on board;-

(a) An effective life-belt, life-buoy or other floating device for each person on board;

(b) sufficient and suitable oars, paddles or a pole to land the vessel;

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a pump or other suitable bailer, unless the vessel has been designed to float with the maximum permissible number of persons on board even if it is waterlogged; in the case of a power boat which is used to tow a water-skier, suitable water-skiing rear mirror and a red flag of 300 mm by 300 mm; in the case of a power boat, an effective whistle or siren which can be employed to prevent collisions; in the case of a power boat, an effective fire-extinguisher; an effective flame-arrester for each carburettor of any petrol engine on the vessel except an outboard engine; an effective silencer on the exhaust of an engine-driven vessel; the following lights, which must be visible at a distance of at least 200 meters, when the vessel is used between sunset and sunrise:

(i) in the case of a power boat or sailing boat, a white light visible from all directions;

(ii) in the case of vessels such as a sailing boat, canoe, sailing board and a paddleski, a lantern or flash-light which may be shown in order to prevent collisions; a suitable container for refuse; a suitable anchor with a sufficient anchor line.

All life-saving apparatus on board a vessel in the water must be in good working condition and within easy reach for immediate and effective use.

Rules for boating

No person shall leave a vessel unattended in the water area unless it has been properly anchored, moored or removed to dry land a safe height above the water level.

No vessel shall be moored or launched at any place other than that indicated or approved by the Council and an authorised officer of the Council may move any vessel or moor it at any other place without the consent of the owner if he deems this to be in the public interest.

No vessel shall be moored to any other vessel or to a marker, buoy or other navigational aid.

The helmsman of any vessel must ensure that he can at all times exercise full control over the vessel while it is under way.

The helmsman of any vessel towing a line, cable or rope for any purpose whatsoever, must ensure that he does not thereby endanger any other person or cause any inconvenience.

No person shall handle a vessel or allow it to be handled in such a manner that it endangers or creates a nuisance to any other vessel or the occupants thereof or to other persons or property or installations in the water or at the water's edge.

No power boat which is under way and no person practicing water-skiing in the estuary, shall approach closer than 100 meters from any spot where people are swimming or closer than 100 meters from the side of the water or closer than 50 meters from any other vessel, unless –

(a) circumstances are such that the said distances cannot be maintained;

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(b) assistance is being given in an emergency situation; or

(c) the power boat or any water-skier towed by it is landing leaving the shore;

Provided that when the prescribed distances are not maintained, the power boat must immediately reduce its speed to less than 10 km per hour.

No person shall be on the bow, forward deck or gunwale of any power boat which is under way unless sufficient safety rails or guard rails have been installed, and no person shall jump or dive from any power boat which is under way, except when help is being given in an emergency or when it is necessary to moor or to land the power boat.

Where it is possible, a vessel shall be piloted in such a manner that the median line of the sailing area shall always be on the port side of the vessel, in other words all power boats must move in an anticlockwise direction.

(10) Whenever two vessels approach each other head-on or approximately head-on, each must be piloted in such a manner that it passes the other on its own port side and, subject to the provisions of subsection (7) at such a distance and at such a speed that the wake of either of the vessels shall not endanger the other.

(11) (a) No vessel shall pass another vessel which is proceeding in the same direction, unless it is safe to do so and such vessel shall, when it does so, pass the other vessel on its port side and, subject to the provisions of subsection (7), at such a distance and at such a speed that its wake shall not endanger the other vessel.

(b) A vessel which is passed shall maintain its speed and direction until the passing vessel is safely past.

(12) Whenever two vessels approach each other in a manner other than referred to in subsections (10) and (11), the vessel which finds the other on its port side shall maintain its speed and direction and the vessel which finds the other on its starboard side shall stay out of the way of the other vessel by changing its direction to starboard so as to pass the other vessel from the stern and shall if necessary stop or reverse to avoid a collision.

(13) (a) Whenever two sailing boats are approaching one another in such a way as to involve risk of collision, not withstanding the provisions of subsections (10), (11) and (12), they shall keep out of one another's way as follows:

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) when both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(b) For the purpose of this subsection, the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

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(14) To avoid a collision between vessels, a power boat shall give way to all other vessels, and a rowing boat or a canoe shall give way to a sailing boat when circumstances require it, not withstanding the provisions of subsections (9), (10), (11), (12) and (13): Provided that this by-law shall not give the right to the helmsman of any vessel to unnecessarily obstruct or interfere with the course of any other vessel.

(15) The helmsman of any vessel shall maintain a safe and cautious speed in the area where vessels are moored, where angling is taking place or where buoys and placed, and whenever visibility is obstructed due to fog or other causes he shall pilot the vessel under his control in such a manner that people, other vessels or other property are not endangered.

(16) No vessel shall follow closer than 100 meters in the wake of a water-skier.

(17) No vessel or vehicle which is propelled by means of a propeller above the water, shall be used in the water area.

(18) Except in the case of an emergency, no aeroplane shall land in or take off from the water area.

(19) No boat shall be left on any slipway except for purposes of repair.

Water-skiing — where allowed

(1) No person shall practice water-skiing on water unless an effective life-belt or other floating device is attached to his body.

No steel or metal cable or steel wire shall be used to tow a water-skier.

The helmsman of any vessel which tows a water skier-shall, before such water-skier is taken in tow, ensure that the water skier is familiar with the distress signal for water-skiers, namely drawing the hand across the throat.

No water-skiing shall be practised between sunset and sunrise and the Council may also prohibit water-skiing at other times.

No vessel shall tow a water-skier unless a second person older than 14 years is present in the vessel to observe the water-skier.

No water-skier shall drop a water-ski except at a spot where the discarded water ski does not constitute a danger to any other water-skier or vessel.

As soon as a water-skier drops the towing-line, the helmsman of the vessel towing the water-skier shall pull in the towing line immediately and if the water-skier has dropped the towing line by accident, the said helmsman shall turn the vessel immediately and take the water-skier in tow again or take him aboard.

Water-skiing shall be permitted in designated areas only in accordance with Proclamation 357 dated 28 September 1972 as published in Official Gazette 3691 dated 6 October 1972.

When a skier falls, a red flag measuring a minimum of 300mm x 300 mm shall be held up and kept up until the skier boards the boat or resume skiing.

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Registration and licensing of boats

(1) Any person intending to operate a boat on the estuary shall apply in writing on the prescribed form to the Council for a registration and licence for such boat.

(2) Any such application shall be accompanied by the fees, as determined from time to time by special resolution of the Council, which shall be refundable if the application is not approved.

(3) A boat in respect of which an application for a licence has been made, shall be submitted/for examination by an authorised officer of the Council at a date, place and time appointed by the authorised officer unless such applicant is advised by the authorised officer that such examination is not required.

(4) When considering applications for licensing, the Council may distinguish between riparian and non-riparian owners, boats belonging to land-owners, house-owners or residents, and boats belonging to non-land-owners, non-house-owners or non-residents, so as to limit the number of boats which may be licensed.

(5) The Council may approve or refuse to approve such application and may, in approving it, impose such conditions as to the manner of operation of or repairs or alterations to such boat as it may deem necessary in the interests of safety or to ensure compliance with this by-law.

(6) The Council shall refuse to approve an application if it is satisfied that the operation of such boat will -

(a) be a source of pollution in the estuary or the vicinity of the estuary;

(b) cause a nuisance;

(c) or constitute a danger to persons using it to the public or any section of the public.

(7) The registration of a boat not transferable from any person to another or from any boat to another except where an owner of a registered boat in terms of this by-law transfers his registration to another boat belonging to him with the written permission of the Council.

(8) The registration shall specify the name of the person to whom it is issued, the maximum number of persons permitted to be carried in the boat, the type and overall length of the boat, the maximum power of the engine and the identification number allocated to the boat.

(9) Registration and licensing will solely be at the discretion of the Council and reasons will be given if it refuses to register or license a boat.

(10) The Council reserves the right to limit the number of registrations issued per person.

Validity of licences and displaying of tokens

(1) The licence of a boat expires on the 30th of June every year and is valid for a period of twelve months or such shorter period as may be determined by the Council.

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(2) The licensee of a boat shall forthwith affix the license or cause it to be affixed to such boat in a manner acceptable to the Council.

Automatic lapsing or cancellation of licences

(1) A licence shall lapse automatically if a boat has been removed by or on the authority of the Council in terms of section 14.(4) on account of pollution being caused in the estuary.

(2) If the Council is of the opinion that a boat no longer qualifies for licensing in terms of this by-law or in terms of any conditions on which the licence was issued, the licence may be cancelled after notice of thirty days to that effect has been given to the licensee, at the address on the licence.

Cancellation of licences

(1) The Council may cancel any licence if –

(a) it is satisfied that the boat in respect of which such licence was issued is no longer safe or seaworthy, or is a source of pollution in the vicinity of the estuary, or is operated in a manner which constitutes a nuisance or danger to other boats or to the public or any section of the public;

(b) the boat is transferred, sold or disposed of or if the Council is satisfied that the licensee has ceased to exercise control over the said boat or to supervise it; or

(c) the licensee has been convicted of an offence relating to the operation or control of a boat in terms of this by-law.

(2) If the Council cancels any licences in terms of this by-law, the authorised officer shall forthwith notify the licensee of such cancellation, at the address on the licence.

Fixing of tariffs, fees and levies

(1) The Council may by special resolution determine tariffs, fees and levies for the licensing of boats and the provision of discs and tokens.

(2) In fixing tariffs, fees and levies in terms of subsection (1) the Council may distinguish between various classes of boats making use of the estuary or any facilities, or in respect of their size, method of propulsion or use, or may make any other distinctions which, in the opinion of the Council are relevant in fixing such tariffs or fees.

(3) Any application for the licensing of a boat or the use of any facilities by any boat shall be accompanied by the prescribed fees as determined by the Council.

Fouling and pollution of the estuary (1)

No person shall, while he is in the water area –

(a) use indecent, offensive or improper language;

(b) behave in an offensive, improper or disorderly manner;

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(c) stay, bathe or sunbathe in the nude or not properly clothed,

(d) whether on a vessel or not;

(e) wilfully or negligently do anything which will cause an inconvenience to any other person using the water area, or which may disturb the peace.

(2) No person, except with the permission of the Council and in compliance with the provisions of the Sea-shore Act, 1935 (Act 21 of 1935), shall allow any sewer pipe or tank to discharge into the estuary or allow any other waste water from any other source to drain into the estuary.

(3) No substance such as petrol, oil or any toxic or noxious substance shall be deposited or disposed of in the estuary.

(4) No bottles, cans, garbage or refuse of any kind whatsoever shall be thrown into the water or onto abutting land or any facility except in receptacles furnished for that purpose.

(5) No person shall by any act or omission, whether directly or indirectly, allow a nuisance or the creation or continuation of a source of danger, or allow any interference with the convenience or comfort of persons in the vicinity of the estuary.

(6) Any person fouling or polluting the estuary, any land adjacent thereto or any facility in connection therewith shall be guilty of an offence.

Powers of authorised officers

(1) Any person who operates an unlicensed boat on the estuary or contravenes any provision of this by-law, may be ordered by an authorised officer to remove such boat forthwith from the estuary or to cease such contravention, and non-compliance with such order shall constitute an offence.

(2) Any authorised officer shall have the right to board a boat at any time and to inspect it for the purposes of ensuring compliance with the provisions of this by-law.

(3) Any person who is authorised in writing by the Council may, in the water area –

(a) investigate and test, any vessel or part thereof or any equipment thereon in order to determine whether the vessel is suitable for navigation on or in the water and whether any particular provision of this by-law has been complied with;

(b) call for any information regarding the vessel from the helmsman and may, if the helmsman is unable to furnish the information, order him to remove the vessel forthwith from the water area until such time as the request can be complied with;

(c) require the helmsman to furnish his name and address or the name and address of the owner of the vessel and any other information required for identification purposes;

(d) require any other person in the vessel other than the helmsman, to furnish his name and address as

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well as any other information required for the identification of the helmsman or the owner of the vessel;

(e) if it appears to him that the helmsman of any vessel, owing to his physical or mental condition, irrespective of how this originated, is not capable of steering the vessel or in control of it, forbid the helmsman temporarily from continuing to steer or being in control of the vessel and may make any arrangements which in his opinion are necessary or advisable for the safe disposal of the vessel;

(f) if it appears to him that the load or number of persons transported in any vessel is more than the vessel was designed or built to carry or more than can be transported in reasonable safety under prevailing conditions, forbid the helmsman of such a vessel to proceed until the load or the number of persons has been reduced in the manner he considers necessary or advisable;

(g) if it appears to him that any vessel or part thereof is unnavigable in or on the water, order the helmsman to remove the vessel forthwith from the water area until such time the vessel or the part thereof has been made navigable in or on the water;

(h) if it appears to him that any of the equipment prescribed by this by-law is not on board the vessel or in a good working condition or not easily available for immediate use on board, order the helmsman to remove the vessel forthwith from the water area until such time as all the provisions of this by-law regarding equipment have been complied with;

(i) remove any fishing rod or line that has been left unattended, from the river, if, in his opinion, the rod or line constitutes a threat to the safety of others.

(4) (a) No person shall obstruct or interfere with any authorised officer whilst the latter is engaged in the execution of his duties, and

(b) no person shall refuse to furnish his/her correct name and address when requested to do so by an authorised officer.

Delegation of power

13. The Council may delegate and/or transfer any powers conferred on it under this by-law, with the exception of the power to levy or determine fees, to any person or persons or organisation, and such person or persons or organisation shall, after such delegation or transfer, have the same power as the Council would have had in terms of the provisions of this by-law.

Removal of boats from the estuary

14. (1) If the owner of an unlicensed boat fails to remove such boat from the estuary after having been requested to do so by the Council or any authorised officer, the Council may remove such boat forthwith.

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(2) (a) In the event of the Council cancelling any licence, or if any licence expires or lapses in terms of this by-law, the owner of the boat, the licence of which has expired or lapsed or has been cancelled, shall immediately remove such boat from the estuary.

(b) If the owner of a boat, the licence of which has expired or lapsed or has been cancelled fails to remove such boat from the estuary within thirty days after such licence has expired or lapsed or after notification to him of the said cancellation, he shall be guilty of an offence and the Council may remove such boat forthwith.

(3) Any boat in or on the estuary for which the fees as prescribed by the Council are in arrears for more than thirty days, may be removed from the estuary by the Council after written notice of the Council's intention has been given to the owner or licensee.

(4) If, in the opinion of the Council, any boat constitutes a danger in the estuary or causes pollution by the discharge of petrol or oil, such boat may be removed forthwith by the Council.

(5) Where the Council is entitled to remove a boat, an authorised officer may make any arrangements considered necessary by him to ensure the removal of such boat, and the Council may recover the cost of such removal from the owner.

(6) If boats removed from the estuary in terms of the provisions of subsections (1), (2)(b) or (4) are not claimed within ninety days after such removal, or in the case of boats referred to in subsection (3), within ninety days after the said written notice has been given and all fees in arrears have been paid, the Council may confiscate such boat or boats by court order to claim fees in arrears.

Exception from liability in respect of injury and/or damage

(1) The Council shall not be liable for any injury which is sustained by any person using the estuary or any facility, or for damage to any property thereon, whatever the cause may be.

(2) (a) The Council as a whole, individual councillors, any person or independent contractor in the service of the Council or any authorised officer shall not, except in the event of any wilful act or omission on the part of the Council or the said persons, be liable for any loss or damage to property which is caused by or arises out of or in connection with anything which is done or performed in good faith in the exercise or performance of a power or duty conferred or imposed in terms of this by-law.

(b) If any question arises as to the good faith of any such person, his good faith shall be presumed unless the contrary is proved.

General

(1) No person shall in the water area, without the prior written consent of the Council –

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(a) offer for reward or profit any show or entertainment or conduct any business or trade;

(b) keep or use any house boat;

(c) keep or use any vessel for the transport of passengers or goods for payment or reward;

(d) hold any fishing competition, or

(e) hold any race, meeting or regatta.

(2) When the Council grants its authority in terms of subsection (1), the Council may set the conditions which it sees fit in the

circumstances in any particular case, to ensure the safety of the public,

(3) No person is allowed:

(a) to fish from any bridge;

(b) to scuba dive, spearfish or use fish nets other than a landing net or casting net in the estuary without a permit, or

(c) to catch fish without a licence.

(4) The following is prohibited;

(a) any form of organised power boat race on the water area of the estuary, and

(b) hovercraft, jet-driven craft (jetski's) and seaplanes are specifically excluded from using any part of the water area of the Botriver estuary.

Penalty

17. Any person who contravenes any of the provisions of this by-law or refuses to comply with any order lawfully given there under by the local authority shall be guilty of an offence and liable upon conviction to a penalty as prescribed in section 215 (3) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).

Waiver of by-law

18. The Council may, if it deems it desirable to do so, waive compliance with any provision of this by-law, or permit deviations, exceptions and exemptions in respect of any provisions of this by-law, subject to such conditions as it may deem fit.

P.N. 481/1996 15 November 1996

Signed by the Purchaser on the _____ day of _____

_____

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Appendix 4

From: penny.streeter@benguelacove.co.za
Subject: Re: Portions 210 & 220 of Farm 575, Benguela Cove (Consent Use, Determine Admin Penalty) // questions by Diessner Family Trust 246
Date: 25 April 2023 at 20:03
To: Martin Diessner martin.diessner@gmail.com, BC SA HOA hoa@benguelacove.co.za, hoaaccounts@benguelacove.co.za
Cc: Martin Diessner martin.diessner@me.com

Dear Martin, please find answers to your questions below. Please note that the notice was submitted late to owners and an extension to the time limit will be circulated shortly. I hope you don't mind but I would like to circulate your questions, which I feel address some of the questions from members via the whatsapp group, please confirm this is ok with you?

On 4/24/23, 9:54 PM, "Martin Diessner" <martin.diessner@gmail.com> wrote:

Dear Trustees,

We confirm the receipt of the below notice. Somehow the email ended up in junk folder, although we normally receive emails from the HOA without any issues. When you respond pls include <martin.diessner@me.com> which permits all incoming mail without any filter.

Before we consider responding to the application, can you please address the following items:

1) Please provide us with a copy of the title deed(s) relating to portion 210 and 220 of Benguela Cove. It appears that this is T77627/2017 in Annex C, however, Annex C is not included in the application.

The application being shared with the interested and affected parties have some information redacted due to the Protection of Personal Information act (POPI). These include the power of attorney and title deeds, but it is however still available at the municipality for inspection as indicated in the advertisement that was sent to the interested and affected parties.

2) Please provide us with a copy of the Annex A - power and resolution which is not included in the application.

See comment above.

3) Can you please elaborate why the HOA and not BCI has submitted this application to Overstrand Municipality? (Please confirm that BCI and not the HOA is the owner and operator of the pontoon boat)?

The properties from which the Lady Bonnie is operated are owned by the HOA and therefore the power of attorney from the HOA was required for the submission of the application. Benguela Cove Investments is the owner and operator of the pontoon boat.

4) Why is the consent use application necessary? If consent use is required in the future, then why is the pontoon boat operating now? Seems just contradictory.

The consent use is required to continue the operations of the Lady Bonnie as the operation is regarded as a recreational facility for which approval of a consent use for a tourist facility is required. The operations of the pontoon boat were discussed with Cape Nature and the Overstrand Municipality and their final comment on the consent required. A number of years have passed without any feedback forthcoming. Only recently the Overstrand Municipality indicated that the approval of a consent use for a tourism facility is required.

5) Will the consent use for this facility be approved, be applicable to all HOA members or just to BCI? In other words, could any other HOA member operate a similar commercial boat operation or is the consent use limited to be employed by BCI as operator only?

Application only applies to the current operation of the pontoon boat.

6) How many staff does the HOA employ?

none

7) How much is currently being charged per person on the pontoon boat? Whatever that cost per person currently is, will that amount change if the application was to be approved? If so to what amount?

It is not currently being charged for and a price has not yet been determined.

8) Are and/or will any income of the tour operating business be shared with the HOA and/or any property owners of the Benguela Cove estate?

No this forms part of the activities of Benguela Cove Investments, the owner and operator of the commercial area and farm.

9) I am not on the HOA WhatsApp group and my wife does not recall having seen any survey amongst HOA members if the majority of the property owners support such an application, in particular property owners adjacent to the effected erven 210 and 220? Can you please advise if any property owners have been consulted prior to this application by the HOA and if yes provide more background?

No consultation with these owners has taken place.

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Appendix 4

10) Who is paying for the application, BCI or the HOA?

The cost of the application is being carried by BCI.

11) The application of consent use as tourist facility is rather wide (see application page 4 - shooting range, gift shop, cafes, etc). How is the HOA managing the risk that, if the application was to be approved, the consent use as tourist facility of the effected erven is not abused beyond the desired commercial boat operating facility? From the outset it appears that once the consent use is approved, anything that falls within the approved extension will be permitted?

The application has been submitted for a tourism facility and although the definition may be broad, it is indicated in the circulated advertisement and application document that the application only applies to the Pontoon Boat. No other tourism facility is included in the application.

Once we receive the above information, we will be able to determine if we need to comment/object to the application or not.

Many thanks

Martin Diessner
On Behalf of The Diessner Family Trust
Benguela Cove 246

> On 12 Apr 2023, at 15:03, hoa@benguelacove.co.za wrote:
>
> Dear Homeowners
>
> Please find self – explanatory note for your attention.

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Appendix 5

Benguela Cove
HOME OWNERS ASSOCIATION

Developers report

We have seen an increase in building activity and plot resales to individuals who obviously intend to construct houses. BCI is also finalizing details to construct another four houses. Plot prices have now made an amazing recovery. Benguela Cove as well as being a great place to live is a great investment.

Benguela Cove Wines will shortly be available throughout South Africa via a respected retailer. Large volumes are being sold across the globe. We have again won numerous awards including 5 Star Platters.

BCI is working on a plan for an extension to the Cellar and the Agriculture Centre area surely a testament to our wines and our wine maker Johann Fourie.

An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations but we have decided to formalize this in order to charge as it is not sustainable to have it running for free. This has been running successfully for a number of years and your support for the application will be appreciated. The transport methodology will not change, all guests are escorted to the pontoon. The boat is correctly licenced.

Benguela Cove is now very much on the map and the Estate is gradually maturing and a great place to live.

Benguela Cove Investments

Nick Rea

April 2023

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Appendix 6

Attention: From 30 April, Benguela Adventure will be temporarily closed for the winter. Once the frost starts thawing, we'll be sure to open our doors again.

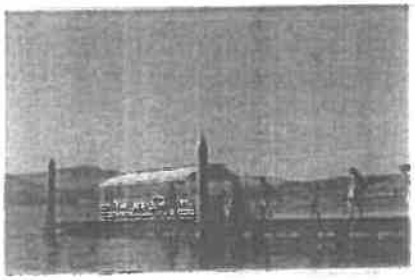
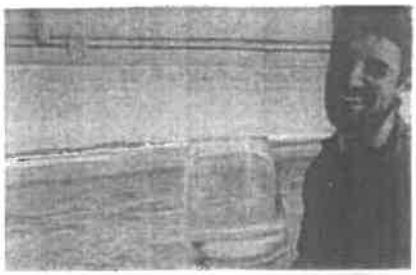
The pontoon boat cruise is complimentary for two people when you buy any case of wine - 6 bottles or more at Benguela Cove.

Pontoon cruise available Wednesday to Sunday - weather permitting, 10:00 | 12:00 | 14:00 | 16:00

Booking essential: 087 357 0637 | info@benguelacove.co.za

A perfect way to experience our nautical property is by taking a cruise on our pontoon. Climb aboard the Lady Bonnie and enjoy a scenic trip across the lagoon. Arrive an hour before the departure time to stock up on refreshments.






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Appendix 7

[redacted]
Subject: Fwd: Thank you for your reservation
Date: 28 April 2023 at 14:50
[redacted]

Sent from my iPhone

Begin forwarded message:

From: Benguela Cove <info@benguelacove.co.za>
Date: 27 April 2023 at 17:00:15 GMT+2
[redacted]
Subject: Thank you for your reservation

Benguela Cove
LAGOON WINE ESTATE

Reservation Confirmation

Hello [redacted],

Thank you for your reservation. We look forward to seeing you on Apr 29, 2023.

Below you will find information about your reservation.

All Aboard the Lady Bonnie - we can't wait to set sail with you.

Join us for a relaxed boat trip on the Lady Bonnie pontoon across the moody lagoon, as you take in the natural biosphere of our nautical estate and the surrounding mountains, vineyards and nature reserve.

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- **WHAT TO WEAR:** It can get windy and chilly on the water depending on the season and weather, so bring a jacket or windbreaker just in case. Sunblock and a hat are recommended for hot days. In the summer months we often are able to moor at the sandbar opposite the estate so if you want to feel the sand between your toes then we recommend you wear flipflops.
- **WHAT YOU'LL SEE:** Azure waters, birds, possibly the free-roaming wild horses and if you are lucky in season, whales.
- **WHAT'S ON AT THE ESTATE:** there is so much to see and do for guests of all ages at Benguela Cove.
- **BEFORE YOUR CRUISE:** Buy your wine (at cellar door prices) for the trip from the Tasting Room, nothing beats sipping on a cool glass of Chardonnay whilst on board.

Pontoon cruise available Wednesday to Sunday 10:00 | 12:00 | 14:00 | 16:00 ***Weather permitting.**

***Contact our frienly team for information 087 357 0637 | info@benguelacove.co.za**

Pontoon Cruise

Reservation #2666

Apr 29, 2023 at 12:00 pm

13 guests for Ms [redacted] × R250.00

Benguela Cove
Hermanus
7200
South Africa

View Reservation →

Add to your calendar

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Appendix 7

Paid by	R3,250.00

Please do not hesitate to give us a call at 087 357 0637 or send an email to info@benguelacove.co.za if you have any questions at all.

Thanks,

Benguela Cove

Benguela Cove
R43 Bot River Lagoon, Hermanus, , 7200, South Africa
087 357 0637

© Benguela Cove 2023

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Appendix 8

Benguela Cove

LAGOON WINE ESTATE

Proforma Tax Invoice

TRCSBNV290423

Benguela Cove Lagoon Wine Estate,R43,Hermanus,7200
P.O.Box 327, Bellville, 7535.
VAT No: 4190187668

Customer	[redacted]ok
Vat no:	
Address	[redacted]
Address	Campsbay Zip 8005
Tel Contact	
Email Contact	[redacted]

Ref:	Pontoon Cruise
Date	29-Apr-23
Acc no	
Purchase order no:	

Qty	Description	Unit Price	Incl Total
13	Pontoon Cruise	250,00	3 250,00

Banking Details:
Absa Bank, Acc No: 4074545850, Branch Code: 421109
Please use your invoice number as reference.

Total Excl	**2 826,09**
VAT 15%	**423,91**
Total Inc	**3 250,00**

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Volkhard + Ilse Marianne Buchholz

23rd May, 2023

TP - A Theart (H Olivier)

OVERSTRAND MUNISIPALITEIT
24 MAY 2023
OVERSTRAND MUNICIPALITY

Overstrand Municipality
Town Planning
Att: Mr. Henk Oliver
16 Paterson Street

Hermanus, 7200

via E-Mail: enquiries@overstrand.gov.za
holivier@overstrand.gov.za

Dear Mr. Olivier,

Ref.: Portion 210 and 220 of Farm 575, Afdaksrivier
APPLICATION FOR THE APROVAL OF A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

We refer to the above matter and notice received from your office. The following is placed on record formally.

We are owners of plot and house 182 at Benguela Cove and members of the Benguela Cove Home Owner Association and writing to you to **comment and object** to the a.m. application.

Preliminary remark:

1. This application is being made on behalf of the Benguela Cover Home Owner Association (BCHOA), although portions of the motion do not concern the BCHOA at all. I refer here to the application in respect of the boat (named Lady Bonnie) owned by Benguela Cove Investment Ltd. (BCI) or an affiliated company.

2. Penny Streeter is the sole shareholder of BCI and Nick Rea is a director of BCI. Both are also trustees of the HOA. Together with an employee of BCI, Shantel Kent, they represent the majority of the BCHOA.

3. Streeter and Rea signed the application on behalf of the BCHOA, which is raising the question of a conflict of interest or using the HOA for their very own business interests.

REASONS AND COMMENTS FOR OUR OBJECTION.

1. ACTIVITIES AND DEVELOPMENT RESTRICTIONS RELATING TO THE CONSENT APPLICATION
   An environmental impact assessment for the proposed Benguela Cove Lagoon Wine Estate was conducted that resulted in the issuance of a Record of Decision (RoD) by DEADP. This RoD was

182 Benguela Cove
Hermanus, 7200
E-Mail:

FILE NO. Ptns 210 & 220 Afdaksrivier 575
SCAN NO.
COLLABORATOR NO. 19601186

24 MAY 2023

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Volkhard + Ilse Marianne Buchholz

approved on the impact assessment that included a number of specialist studies e.g. botanical survey, archaeological survey, avifaunal survey, etc.

Of importance in this consent use application (written by WRAP) is that the "beach area" of the Botrivier Lagoon along the southern and western boundaries of Benguela Cove Lagoon Wine Estate is designated as a Globally Important Birding Area (ZA097) by Birdlife International. This was based on extensive specialist avifaunal studies conducted on the Botriviervlei, by K N Barnes during 1997 and 2003, the latter commissioned as a specialist study during the environmental impact assessment process for the Benguela Cove Lagoon Wine Estate

Botriviervlei now enjoys the status of Globally Important Bird Area as designated by Birdlife International, giving the area status as one of the most important sites for bird conservation in the world. This importance formed an important part of the constraints and environmental controls incorporated in the outcome of the environmental impact assessment Scoping Report. This Scoping Report formed the body of information on which environmental authorization was given and specified in the Record of Decision E12/2/1-213-Farm 575/10-18, Hermanus, dated 15 December 2003, that is applicable to all aspects of the Benguela Cove Lagoon Wine Estate development.

The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision:

a. The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.
b. The erven boundaries were set well back from the high-water mark of the Botrivier Vlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.
c. A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.
d. A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.
e. No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.
f. No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the two approved jetties.
g. The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.
h. The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project: Appendix K, Marine Studies Report dated 5 May 2003, pages 9&10; Appendix L, Botanical Report dated 12 May 2003 undertaken by Nick Helme; Appendix M, Avifaunal Report compiled by K N Barnes in March 2003; Appendix S, Archaeological Report dated August 2003 must be adopted and implemented.
i. The RoD further stipulates that the residential component of this application must adhere

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to the setback lines identified by the avifaunal specialist along the lagoon frontage.

j. Finally, the RoD stipulates that the Homeowners' Association / or operator of the facility must implement and incorporate the conditions of authorizations given in this Record of Decision, as appropriate to the operational phase of the project.

The existing restrictions above provide space for wildlife. Allowing tourist activities would negates this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat of wildlife. How can the above points be reconciled with the application?
There is also a bird nesting near the access road to the site which would be impacted by increased activities.
How would an approval of the application be reconciled with the above restrictions?

2. UNCLEAR INTERPRETATION OF THE CONTENT OF THE APPLICATION
The present application requests a permit that would allow a maximum interpretation of the consent use. In the medium and long term, this would lead to an uncontrollable commercial exploitation of the shoreline (plot 220), which would cause irreparable damage to the protected area.
In order to avoid later misinterpretations, the application must therefore describe exactly what the consent use is being requested for.

Page 2 of the application refers to the use of a trimaran boat. For which boat is consent use requested, for the currently used "Lady Bonnie" or for any other boat?

Are there any consent use matters included in the application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision?

3. ILLEGAL ACCESS AND MECHANICAL DISTURBANCE OF THE BEACH AND CONSERVATION AREA
Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. These was documented photographically (Appendix 1). On the pictures you can see that a so-called digger-loader and workers are in the protected area and are doing some work. It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning.

4. BCHO CONSTITUTION IN RELATION TO PUBLIC PROPERTY
According to the Deeds register, plots 210 and 220 are "common property", i.e. they belong to all home owners (HO). Article 30 of the BCHO Constitution clearly states the following:

"Neither the whole nor any portion of the common property shall be subjected to any rights, whether registered in the deeds registry or not, of use, occupation or servitude, save those

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enjoyed by the Members of the Association..."
This means that the Constitution prohibits changing usage unless ALL members benefit from this application.

Streeter emphasized in various inquiries regarding this change that the change to a tourist facility is for the sole benefit of the owner of the pontoon boat.

Even if she retracts this statement, it is unthinkable that all HOs should have the right to exploit the designated area commercially for tourism purposes. Such use is prohibited for nature conservation reasons alone.

5. ENVIRONMENTAL IMPACT ASSESSMENT
The initial application for the development of the estate included an environmental impact study. The application does not make it clear if a new EIA was conducted and is part of the application.

6. RESIDENTS SECURITY
Tourist activities will increase the amount of people on the estate, who will not be vetted, properly registered and meaningfully monitored, increasing the security/crime risk on the estate which eventually will result in higher security costs for the HO.

7. NOISE DISTURBANCE
Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.

8. MONITORING AND ENFORCEMENT OF RESTRICTIONS
Approval of "Portion 229 of Farm 575, Benguela Cove – Proposed Amendment Of Approved Site Development Plan And Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.
I have little confidence that potential restrictions to the current application would allow monitoring and enforcement.

9. FINANCIAL CONSEQUENCES FOR HO
The operation of a tourist facility would mean additional financial and administrative burdens for the HOA and an additional burden on the infrastructure. The application should therefore contain a detailed list of the additional costs to be expected and the distribution of these costs.

10. APPLICATION IN REGARDS OF THE PONTOON BOAT (LADY BONNIE)
The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General 1(a) that "No person shall in the water area, without the prior written consent of the Council –
(a) Offer for reward or profit any show or entertainment or conduct any business or trade;
(c) Keep or use any vessel for the transport of passengers or goods for payment or reward."

Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed

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this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

Every HO on the estate is aware of the fact that the developer BCI is in fact for the past years running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.co.za/boat-attractions even advertises the pontoon cruises which operate 4x daily and are complimentary for two people when buying a case of wine with 6 bottles.
In fact we know people who have received written confirmation of the price and conditions for a boat trip. The current rate this year is ZAR 250.00 p.P. and was ZAR 200.00 last year.

Streeter and Rea, in their capacity as trustees and representing the developer have been untruthful with regards to the charging of a fee whilst unlawfully operating the pontoon boat.

With regards to waving the administrative penalty, I believe that the By-Law and the Estuary Regulation is clear. Therefore, the Overstrand Municipality has a duty to act in accordance with these regulations and not authorize the waiver of penalties.

11. MISSLEADING APLLICATION

The Application is misleading. The Application attempts to create the impression that the HOA and all of its members consent to the Application. There is no indication anywhere in the application that BCI owns and operates the pontoon (Lady Bonnie). Rather, it appears that this application is desired by the majority of HOA members, although the HO has never been consulted or even informed about the application by the Trustees. The developer controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members but in their very own business interests.

In closing, we re-iterate that we appeal to the Overstrand Municipality to reject this Application altogether and prohibit the illegal operation of the boat Lady Bonnie.

Yours faithfully

V. Buchholz 07 — (Volkhard Buchholz)

Ilse Buchholz — (Ilse M. Buchholz)

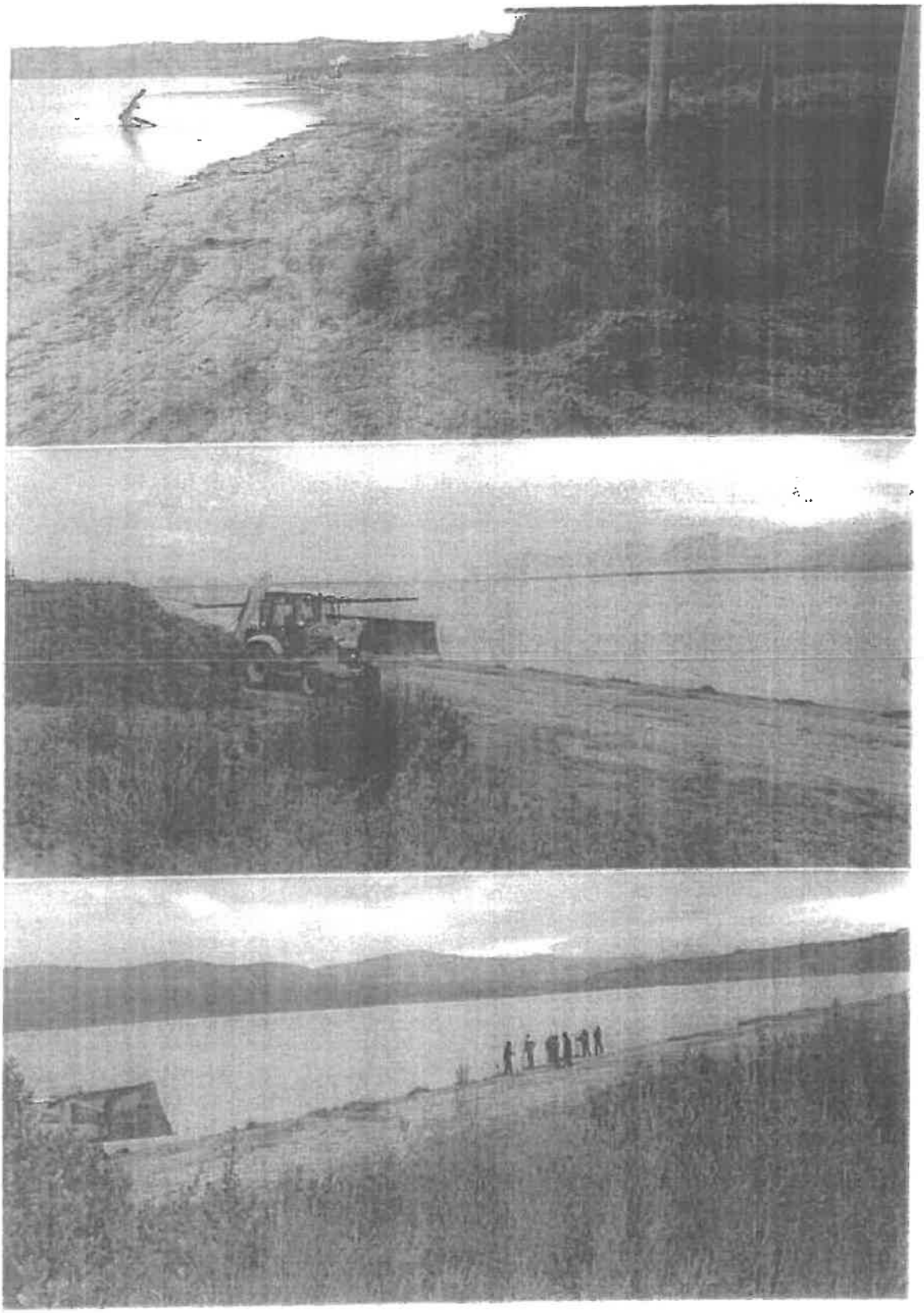
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E-Mail:

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ANNEX 1

Diggerloader and workers on the shoreline of plot 220



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Diggerloader and workers on the shoreline of plot 220



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OVERSTRAND MUNISIPALITEIT
23 MAY 2023
OVERSTRAND MUNICIPALITY

23rd May, 2023

TP- A Theart
(H Olivier)

Overstrand Municipality
Town Planning
Att: Mr. Henk Oliver
16 Paterson Street

Hermanus, 7200

E-Mail: enquiries@overstrand.gov.za
holivier@overstrand.gov.za

Dear Mr. Olivier,

Ref.: Portion 210 and 220 of Farm 575, Afdaksrivier
APPLICATION FOR THE APROVAL OF A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

We refer to the above matter and notice received from your office. The following is placed on record formally.

We are owners of plot and house 240 at Benguela Cove and members of the Benguela Cove Home Owner Association and writing to you to **comment and object** to the a.m. application.

REASONS AND COMMENTS FOR OUR OBJECTION.

1. Botrivierviei enjoys the status of globally Important Bird Area as designated by Birdlife International, giving the area status as one of the most important sites for bird conservation in the world. This importance formed an important part of the constraints and environmental controls incorporated in the outcome of the environmental impact assessment Scoping Report. This Scoping Report formed the body of information on which environmental authorization was given and specified in the Record of Decision E12/2/1-213-Farm 575/10-18, Hermanus, dated 15 December 2003, that is applicable to all aspects of the Benguela Cove Lagoon Wine Estate development. We are proud to be a part of this wonderful nature-side as a houseowner on Benguela and fell rsesponsible. Tourist facilities in this area, especially along the shoreline of the *Botriverviei* are according to the regulation not possible.

2. The Application is misleading it attempts to create the impression that the HOA and all of its members consent to the Application. Nowhere in the application is it indicated that BCI is the owner and operator of the boat Lady Bonnie. Rather, it appears that this application is desired by the majority of HOA members, although the HO has never been consulted or even informed about the application by the Trustees. There were no minutes of the trustee meetings concerning this application. The developer controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members

FILE NO. Ptns 210 & 220
Afdaksrivier 575
SCAN NO.
COLLABORATOR NO.
859830

23 MAY 2023

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3. The present application requests a permit that would allow a maximum interpretation of the consent use. In the medium and long term, this would lead to an uncontrollable commercial exploitation of the shoreline (plot 220), which would cause irreparable damage to the protected area.
   In order to avoid later misinterpretations, the application must therefore describe exactly what the consent use is being requested for.

4. Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. This is not true. For the past years people are always charges a fare. This can be also seen on the Benguela Website. This years the fare is 250 Rand p.P.

5. Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. A digger-loader and workers are in the protected area and are doing some work.
   It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning.

Based on the above statements, we request that the application be rejected in its entirety and prohibit the illegal operation of the boat Lady Bonnie.

Yours faithfully

Dr. Klaus Stroemer
Dr. Beate Helgers

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22 MAY 2023
OVERSTRAND MUNICIPALITY

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Nico Boris Buchholz

Tel. (home):
e-mail:

House 130
Benguela Cove
Hermanus
South Africa

FILE NO. PINS 210 & 220
Farm Afdaks River 575
SCAN NO.
COLLABORATOR NO.
1859586

Overstrand Municipality
Town Planning Section
loretta@overstrand.gov.za

May 20, 2023

Ref.: Portions 210 an 220 (Portions of Portion 80) of farm Afdaks Rivier No 575, Caledon Division: "Application for consent use and determination of an administrative penalty: Wrap project office on behalf of Benguela Cove Homeowner's Association"

Dear Sir or Madam,

I am writing to you regarding the above subject.
The purpose of this letter is to **object to the application.**

I am the home owner of plot 130 – Benguela Cove and a member of the HOA.

In general, if approved, the proposed changes may have a significant negative impact on the lifestyle, safety and security of some residents, the wildlife and the environment of the estate.

Objections:

Objection 1 – Fundamental Change Of Character And Vision Of The Estate:
When I purchased my property at Benguela Cove I gave consideration to the site development plan and the approved activities. I think I am entitled to have a reasonable expectation for this to remain unchanged. The proposed change may fundamentally impact the character and vision of the estate.
Benguela Cove was envisaged as a PRIVATE, RESIDENTIAL low density, rural, in "the middle of nature" estate, undisturbed by the daily activities of towns and cities with private access to the Botrivier Lagoon via a jetty and a boat ramp (210/575). Relatively untouched wetland area (220/575) which primarily serves as a habitat for wildlife and plants are an essential part of that vision.
The vision was NOT to allow access of the general public and to be a place of tourist activities (as defined by OMLUS), of public entertainment, impacting both residents and wildlife. The application will result in changing that vision and to commercially exploit the estate by third parties and the natural habitat it tries to protect (with the exception of the boutique hotel by the developer and the commercial precinct which is located outside the security boom which controls access of the residents part of the estate).
This is a residential and NOT a commercial estate and I strongly object to the mixing of both and blurring the lines.

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Objection 2 – Non-compliance ROD 15/12/2003 – 220/575)
The current application may not be allowed with regards to the ROD, 15/12/2003

Objection 3 – Non-compliance of Environmental Development Plan (March 2004) – (220/575)
The current application may not be in compliance with the Environmental Development Plan (March 2004)

Objection 4 – Disturbance to – Wildlife (220/575)
Increased human activities will disturb wildlife, particularly the bird sanctuary on the wetlands of ERF 220/575 which is an internationally recognized RAMSAR site.
These existing restrictions provide space for wildlife. Allowing tourist activities would negates this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat. How can the below points be reconciled with the application ?
The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision.

- The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.
- The erven boundaries were set well back from the highwater mark of the Botriviervlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.
- A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.
- A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.
- No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.
- No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the two approved jetties.
- The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.
- The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by Enviro Africa, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project
- The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.
- The Homeowners' Association / or operator of the facility must implement and incorporate the conditions of authorisation given in this Record of Decision, as appropriate to the operational phase of the project.

There is also a bird nesting near the access road to the site which would be impacted by increased activities.

Objection 5 – Environmental Impact Assessment:
The initial application for the development of the estate included an environmental impact assessment. The application does not make it clear if a new EIA was conducted and is part of the application.

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Objection 6 – Residents Security/ Crime (210/575, 220/575)
Tourist activities will increase the amount of people on the estate, who will unlikley be vetted, properly registered and meaningfully monitored, increasing the security/ crime risk on the estate.
These concerns apply to the protection and wellbeing of residents, private houses and items in the boat storage facilities.
Once on the estate tourists will have unhindered access to the entire estate.

Objection 7 – Resident Noise Disturbance:
Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.

Objection 8 – Resident Road Safety:
Tourist activities will result in increased road traffic, increasing the risk to residents in particular children playing and dogs.

Objection 9 – Scope of Application/ Lack of Specificity (210/575, 220/575):
The applicant is seeking the broadest scope of approval by re-designating the land as a "tourist facilities" (OMLUS).
The activities allowed under this approval category are too broad, not restrictive enough, provide few guardrails, are easy to abuse and the consequences difficult to foresee.
The applicant must state what specific activities the applicant wants to engage in, instead of wanting to be issued "card blanche".
Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future.
What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities ? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis), what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public ?
If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable.

Objection 10 – Lack of support facilities (e.g. toilets) (210/575, 220/575)
There are no public toilet facilities to support tourism.
The boat house is for the private use of residents and HOA members and their (non commercial guests) and not for the general public.

Objection 11 – No monitoring & Enforcement Of Activities and Restrictions (210/575, 220/575)
Approval of "Portion 229 Of Farm 575, Benguela Cove – Proposed Amendment Of Approved Site Development Plan And Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.
I have little confidence that potential restrictions to the current application would be monitored and enforced..

Objection 12 – Impact on relationship with HOA not addressed (210/575, 220/575)
The proposed change places additional burdens onto individual homeowners which have not been addressed by the applicant. The burden is administrative and financial.
I am personally not willing to financially subsidize (through HOA levies) the establishment/ running of tourist facilities and the additional pressure on infrastructure this would amount to.
Part of the application, in my view, should be a detailed agreement how the financial bourdon is paid for.

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Objection 13 – Impact on Property Value (210/575, 220/575)
The developer has a history of wanting to make Benguela Cove appealing to a much wider audience by changing the original vision of the estate from an exclusive, quiet area to that of a mass, high impact tourism site. Specifically introducing facilities like mini-golf, a splash park, multiple bus parking bays are testament of that changed vision towards commercialization.
As the result of the proposed change I am concerned that the value of my property will fall.

Objection 14 – Municipality Consultation Model:
The municipality has delegated to the HOA to make individual HOA members aware of the application. Can this be legal, the normal process or it be reasonable to delegated the sole means of notification to the very party seeking the application ?! In addition this is the party which in the past has failed to forward the identical application in a reasonable timeframe ?! Please note that forwarding the application was done my email-only without any feedback loop.
What are the requirements governing the notification of affected parties ?

Points To Note:

To fully understand the application and the applicant consider the following:

1. Who is The Applicant:
   The application may give the impression that the proposed changes are the desire of the majority of individual home-/ plot owners. It is unlikely that commercialization and the resulting risk to security, safety and increased noise (see points above) is the desire of the majority of homeowners.
2. HOA vs. HOA trustees vs. BCI (developer) vs. BCI (operator of winery and related activities):
   Whilst the HOA is the applicant, the dynamics of the application are more complex.
   Decisions on behalf of the HOA, like this application, are made by the Board of Trustees on a simple majority basis. The HOA has 4 trustees, 2 nominated by the developer (BCI), who also runs the winery and related tourist activities, and two voted for by HOA members (home and plot owners). As unsold developer plots entitles the developer to have one vote per plot towards trustee elections, one HOA trustee was essentially voted for by the developer, giving the developer (BCI) a majority to make decisions on behalf of the HOA. The potential for conflicts of interest are obvious.
   In essence the developer may apply for changes on behalf of the HOA without necessarily representing the view of a majority of individual home-/plot owners.
   As a consequence the question that needs to be asked is who is set to benefit the most from the application ?
   Of particular note is that the name of the developer was not mentioned once in the application !
3. Relationship Developer vs. individual homeowners:
   In my opinion the relationship between the developer, represented by some members on the Board Of Trustees and the majority of individual homeowners has been fractious and disagreeable, as the many legal cases are testament too. The application has to be viewed in this context.
4. Non-Alignment of Interests:
   The vision and interests for the estate between many individual home-/ plot owners and the operator of the winery and related tourist facilities may not be the same and diverging. One party may be interested in commercial expansion whilst the other focused on preserving the existing situation.
   Please note that outside the residential area the developer is running an extensive tourist facility. The reassignment of 210/575 and 220/575 would potentially expand those activities onto residential land.
   The developer and the HOA are separate entities, yet for the reasons mentioned this application blurs the lines and may allow the developer to use HOA land to further its own commercial interests.

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5. No Consultation:
   Similar to previous applications, please note that I and the majority of individual HOA members have at no stage been consulted by the applicant about this application. There would have been ample opportunities to do so and even vote on during recent HOA meetings. Hence the application cannot be viewed as the agreed desire of the majority of individual plot-/ home owners.
6. Hotel:
   Some land adjacent to ERF 220/575 is owned by the developer and operator of the winery/ tourist facility and as part of the existing site development plan has been approved to build a boutique hotel facility on. Plans are currently underway to do so.
   The approval of 220/575 as a tourist facility will create a corridor to link hotel with ERF 210/575 increasing human activity, impacting residents and wildlife. There is an alternative road to link hotel and jetty.
7. Pontoon Boat:
   a. The owner/operator of the boat pontoon boat "Lady Bonny" is the same company that owns and runs the winery and related tourist activities and is also the developer. The application makes no mention of this. The HOA has no business interest or association with the boat. The application may give the impression that the HOA has an interest in the usage of the boat. Due to the reasons above the opposite is likely the case.
      Of note is that the owner/operator of the boat was not mentioned once in the application
   b. Individual plot-/ home owners were not consulted at the inception of the boat tours or ever since.
   c. To me the boat operation of the pontoon boat and associated activities has always been undesirable and I would like them to cease immediately.
   d. The pontoon boat has continued to operate FOR HIRE (ZAR 250 per person as of May 2023) even after the application has been submitted. The determination of the operation of the boat as not being legal has not stopped its commercial usage. This also speaks to the inability of the authorities to effectively monitor and enforce rules and the operator to adhere to restrictions.
8. 220/575 Activities.
   There is plenty of evidence that the applicant has either scant regard for or knowledge of the purpose of 220/575. "Beach clearing" activities are testament of that. There is photographic evidence that exists of extreme disturbance of the beach area by a digger loader in front of the clubhouse located at Jetty 1. It must be pointed out that this disturbance is illegal as no permission was obtained from Department of Environmental Affairs and Development Planning for what constitutes a listed activity under NEMA 2014 as amended.
   If existing rules and restrictions are not followed, a logical conclusion could be that future restrictions, as the result of this application, may not be followed either.

Further Specific Points Contained In The Application:

1. The WRAP document needs to describe in detail what it is that consent use is applied for, so that there can be no confusion as to the exact detail.
2. Which boat is "consent use" applied for, the existing Lady Bonny or another? Be specific and provide details of the craft to be used.
3. Are there any consent use matters included in the WRAP application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision.

In summary, I object to the commercial exploitation of this private, residential estate and due to the reasons outlined above I am strongly opposed to the proposed changes contained in the application.

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Please contact me if I can be of assistance to you.

Best regards



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Office of the Director:
Infrastructure & Planning
Town Planning

OVERSTRAND MUNISIPALITEIT
08 MAY 2023
OVERSTRAND MUNICIPALITY

5 May 2023

Dear Sir/Madam

OBJECTION: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

We hereby confirm our objection to the present application for consent use and determination of an administrative penalty: wrap project office on behalf of Benguela Cove Homeowner's Association.

We have reviewed this application with Mr Paul Olden of Urban Dynamics Western Cape and object as follows:

1. Prior to the HOA submitting this application, the application should've gone through the necessary process required to get consent from the homeowners as to whether or not the HOA may apply for this consent use.
2. The applicant needs to complete a NEMA checklist and obtain written confirmation from DEADP that the consent use does not trigger a NEMA EIA application in terms of the regulations.
3. The application needs to define any ancillary land uses on the site that the operation of the pontoon boat may create.
4. The application needs to confirm the maximum number of BCI clients and staff that will be on the BCHOA land at any one time.
5. The application needs to include an SDP that demarcates the specific limited shoreline and land area from where the boat will be operated and stored as this use cannot apply to the whole erven.
6. The application needs to confirm that there will only ever be one pontoon boat operating.
7. The application needs to include an access plan for emergency vehicles in the event that the pontoon boat is involved in an emergency.
8. The application is incorrect and misleading as it states the pontoon boat is used for BCI guests and is not charged for, this is however incorrect. The boat is part of a commercial wine enterprise and is charged for at R250 p/p, see attached email quote received from BCI.
9. The existing clubhouse at the slipway and jetty belongs to the HOA and is by definition not available for the commercial use for any of its members, therefore the applicant should at its cost provide its own ablution facilities subject to the approval of the HOA or enter into a rental lease to rent and maintain the toilets and use of the clubhouse.

Sent on behalf of the Iris McCarthy Family Trust
Owner of portion 179

FILE NO. FINS 2108 220
Farm Nebleskrijd 515
SCAN NO.
COLLABORATOR NO.
1854715

CS McCarthy
Email:
Tel:

- 5 MAY 2023

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Karin Hope

From: Reply2Request <reply2request@icloud.com>
Sent: Monday, 24 April 2023 16:11
To: Martin Diessner
Subject: Fwd: Booking for weekend of 28th April.

Begin forwarded message:

From: Cinzia Sebastian-Beckett <cinzia.sebastian-beckett@benguelacove.co.za>
Date: 24 April 2023 at 11:29:42 GMT+2
To: Reply2Request <reply2request@icloud.com>, BC SA Info <info@benguelacove.co.za>
Subject: RE: Booking for weekend of 28th April.

Good morning Jarod

Thank you for getting in touch with us. We can definitely accommodate your guests with a lunch and pontoon cruise.
Just be aware that our pontoon is always weather permitted.

No drinks is offered on the pontoon but they are welcome to purchase drinks from the tasting room to take on board.
We do charge R250 per person for the pontoon cruise, and it goes out on the following time slots 10h00 | 12h00| 14h00| 16h00

Let us know which time slot will be suitable for your guests and will reserve it for them.

Awaiting on your feedback.

Kind regards,
Cinzia Sebastian-Beckett
Customer Service Consultant
E-Mail: cinzia.sebastian-beckett@benguelacove.co.za
Web: www.benguelacove.co.za

E-Mail: cinzia.sebastian-beckett@benguelacove.co.za
Web: www.benguelacove.co.za

IMPORTANT

172|387 91|93

THIS E-MAIL AND THE INFORMATION THAT IT CONTAINS, MAY BE CONFIDENTIAL, LEGALLY PRIVILEGED AND PROTECTED BY LAW. ACCESS BY THE INTENDED RECIPIENT ONLY IS AUTHORISED.

-----Original Message-----
From: Reply2Request <reply2request@icloud.com>
Sent: Monday, 24 April 2023 10:47
To: BC SA Info <info@benguelacove.co.za>
Subject: Booking for weekend of 28th April.

Hi there

We are arranging a sight seeing tour for some overseas visitors and would like to make a booking for lunch for 5 people on Sat 29th April.

We'd also like to show them the lagoon and I believe that a tour / cruise may be possible.

Could you advise on pricing for lunch and a cruise for 5 and lunch only for Sat 29th April for 1pm and we can then confirm what's suitable. Please also advise on duration of the cruise and if it includes any drinks.

Look forward to hearing from you.

Regards

Jarod

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OVERSTRAND MUNISIPALITEIT
08 MAY 2023
OVERSTRAND MUNICIPALITY

92/93

Loretta Gillion

From: Marcia Mkansi <
Sent: Thursday, 04 May 2023 19:38
To: Loretta Gillion
Subject: Re-circulation: Portions 210 & 220 of 575, Benguela Cove (consent use, admin penalty)
Attachments: Re-circulation_Notice to HOA.pdf; Re-circulation_Ptn 210 & 220 of 575, Benguela Cove (consent use, admin penalty).pdf

TP. D.Mbeali
(M.Olivier)

Dear Loretta

Good morning!

I am a home owner requested to send you my comments regarding the circular mentioned on the subject matter.

Firstly, I have concerns about the environmental impact of the boat. The emission from the boat have an impact on ·o diversity.

Secondly, the activities pose security issues to us homeowners, and no vetting of tourist is in place to avoid people with criminal records accessing the estate.

Thirdly, we pay a high amount of levy and I don't see how the business benefits us in terms of reduced levies. It appears to me that we pay levy for someone to appropriate profit under the disguise of homeowners. I would like to know how this benefits us in terms of maintenance, reduced levies etc.

Lastly, the estate impose penalties on homeowners that are beyond the homeowners' control i.e. obligation to build which was not disclosed prior to purchase. Yet, they request their penalties to be erased for operating without consent. I find this request to be of double standards, when they can not apply their minds to other exceptional cases. I therefore wish to see HOA lead by example and equally honour the penalties imposed.

FILE NO. PINS 210 & 220
Fasm. Notaberijiel 575
SCAN NO.
COLLABORATOR NO.
185469

I will appreciate your acknowledgment and feedback.

Best Regards
ırcia

---------- Forwarded message ---------
From: <hoa@benguelacove.co.za>
Date: Fri, 28 Apr 2023 at 16:09
Subject: Re-circulation: Portions 210 & 220 of 575, Benguela Cove (consent use, admin penalty)
To: <marcia.mkansi@gmail.com>

Dear Homeowner

Attached please find new notice for the usage of Lady Bonnie. It has been resent in order to give the homeowners sufficient time to make comment.
Unfortunately I was on leave when it was initially sent through.

TP - 5 MAY 2023

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Loretta Gillion

OVERSTRAND MUNISIPALITEIT
24 APR 2023
OVERSTRAND MUNICIPALITY

From: Harry Elcock < >
Sent: Sunday, 23 April 2023 19:05
To: Loretta Gillion
Cc: hoa@benguelacove.co.za
Subject: Portion 210 and 220 of farm Afdaks River 575 Caledon Division Application

Dear Loretta

I received the application for Consent Use and Determination of an Administration Penalty relating to Lady Bonny boat tours on the lagoon from the HOA on 12 April 2023.

My name is Harry Elcock. My wife and I live permanently at 186 Benguela Cove, on the beachfront close to were the Lady Bonny operates. Other than this email address, my mobile number is

My interest in the application is being a resident and living very close to where the Lady Bonny launches and in clear te of her lagoon boat trips.

My reason for commenting is to fully support this application. We first took residence in 2009, initially as a holiday home and then as permanent residents for more than 3 years now and are fully familiar with these wonderful boat trips that a significant number of people enjoy.

It gives us great pleasure seeing tourists enjoying this beautiful lagoon and the operations of the Lady Bonny do not hinder us in the slightest, despite living right on the beachfront all year round.

We feel that these tours promote tourism and spending in the local economy which is good for commerce and employment in the region and for exposure of the Benguela Cove estate.

If there are any objections to this application from other residents, then this could surely only be out of spite or selfishness, from owners who are more than likely not SA residents and who are only on the estate for a few months of the year. The Lady Bonny operates all year round, even in Winter, when there are many beautiful days for tourists to get out onto the water and take in the splendour of the surroundings all year round.

summary, we support this application 100% and look forward to hearing in due course that it has been formally pproved.

Kind regards
Harry and Hansie Elcock
186 Benguela Cove

FILE NO. Ptn 210 & 220 Afdaksriver 575 ✓
SCAN NO. Elcock
COLLABORATOR NO. 1849393

24 APR 2023

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OVERSTRAND MUNISIPALITEIT
10 AUG 2023
OVERSTRAND MUNICIPALITY

Annexure E 1/42

Project Office

Town Planning & Project Management

Our Reference: 22/164
Your reference: Ptn 210 & 220 Farm 575, HBENG

7 August 2023

FILE NO. Ptn's 210 & 220 Afdaksrivier 575
SCAN NO.
COLLABORATOR NO. 1898625

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr H Olivier

APPLICATION FOR THE CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY ON PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON

Your email dated 8 June 2023, refers.

The comments and objections were received, are addressed herein. Where required the Benguela Cove Investments provided feedback on certain aspects.

These responses are attached as:

- Annexure B - Financial Consequences for HOA;
- Annexure C - Impact on relationship with HOA not addressed;
- Annexure D - Response to Concerns Regarding Levies and Benefits; and
- Annexure E - Illegal access and mechanical disturbance of the beach and conservation area.

It should be noted that there was a letter of support received which is acknowledged.

10 AUG 2023

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LETTER OF SUPPORT
PUBLIC PARTICIPATION

Comment from Harry and Hansie Elcock:

My reason for commenting is to fully support this application. We first took residence in 2009, initially as a holiday home and then as permanent residents for more than 3 years now and are fully familiar with these wonderful boat trips that a significant number of people enjoy.

It gives us great pleasure seeing tourists enjoying this beautiful lagoon and the operations of the Lady Bonny do not hinder us in the slightest, despite living right on the beachfront all year round.

We feel that these tours promote tourism and spending in the local economy which is good for commerce and employment in the region and for exposure of the Benguela Cove estate.

If there are any objections to this application from other residents, then this could surely only be out of spite or selfishness, from owners who are more than likely not SA residents and who are only on the estate for a few months of the year. The Lady Bonny operates all year round, even in Winter, when there are many beautiful days for tourists to get out onto the water and take in the splendour of the surroundings all year round.

In summary, we support this application 100% and look forward to hearing in due course that it has been formally approved.

Environmental Officer: Coastal Management
Department of Environmental Affairs and Development Planning
Western Cape Government

The following is noted:

- *No further boats will be allowed to operate within the Botriver Estuarine System only Lady Bonnie.*
- *CapeNature has previously been consulted and agreed on the usage of the boat within the estuarine system.*

As such, we do not object against the usage of Lady Bonnie within the Botriver Estuary provided that the condition of approval state that this will be the only boat within the estuarine system. **(Refer annexure A)**

Response to objections to the Consent Use and Determination of an Administrative Penalty.

OBJECTION ENVIRONMENTAL CONCERNS, HISTORIC ROD AND EIA	RESPONSE TO COMMENT AND OBJECTIONS
Comment from Rodney Anderson: *"The application is void ab initio on the first principal in that it takes no account of ensuring compliance with the provisions of the founding documents being the Department of Environmental Affairs Record of Decision (RoD) issued 15th December 2003 and the Environmental Management Plan dated March 2004."* *"The Botrivier Vlei and Environs enjoy the status of Globally Important Bird Area as designated by Birdlife International and RAMSAR. This ensures the area has the status and protections of one of the foremost bird conservation sites in the world."* *"This importance became a part of the legal protection and environmental controls issued in the BC founding documentation. As set out in the environmental impact assessment Scoping Report incorporated in the binding 2003 Record of Decision.* *These provisions cover the Private Nature Reserve being portions 10 to 18 et al of farm Afdaksriver no 575 Caledon comprising 31.5% of what is now Benguela Cove. Identified for the conservation of threatened Renostervelt Biome and nothing else."*	**Response to RoD and EA comments:** The Environmental Affairs Record of Decision (RoD) issued 15th December 2003 indicates the following: *"The sites identified for the proposed jetties have been extensively investigated. The southern most jetty will be located approximately 270 meters north of the headland known as "South Cape". The gradient of the shore is relatively shallow, therefore, if the slipway is to be used at all levels, it would need to extend 50m into the water.* *The northern most jetty located 770m meters north of "South Cape". This site is depositional zone and foundations would require a short slipway as it is close to an existing channel."* The RoD approved the jetty that is used by Lady Bonnie to be launched and the proposed use of the jetty is still in line with the RoD as a jetty. A Jetty is defined as a *"landing stage or small pier at which boats can dock or be moored."* No additional development is being proposed to operate the proposed tourist facility, and the operation of the facility will not have an impact on the bird life and access to the jetty will only be obtained from existing boardwalks.

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Comment from Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers:	Response to Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers:
"ACTIVITIES AND DEVELOPMENT RESTRICTIONS RELATING TO THE CONSENT APPLICATION *An environmental impact assessment for the proposed Benguela Cove Lagoon Wine Estate was conducted that resulted in the issuance of a Record of Decision (RoD) by DEADP. This RoD was approved on the impact assessment that included a number of specialist studies e.g. botanical survey, archaeological survey, avifaunal survey, etc.* *Of importance in this consent use application (written by WRAP) is that the "beach area" of the Botrivier Lagoon along the southern and western boundaries of Benguela Cove Lagoon Wine Estate is designated as a Globally Important Birding Area (ZA097) by Birdlife International. This was based on extensive Specialist avifaunal studies conducted on the Botriviervlei, by KN Barnes during 1997 and 2003, the latter commissioned as a specialist study during the environmental impact assessment process for the Benguela Cove Lagoon Wine Estate.* *Botriviervlei now enjoys the status of Globally Important Bird Area as designated by Birdlife International, giving the area status as one of the most important sites for bird conservation in the world. This importance formed an important part of the constraints and environmental controls incorporated in the outcome of the environmental impact assessment Scoping Report. This Scoping Report formed the body of information on which environmental authorization was given and specified in the Record of Decision EI2/2/I-213-Farm 575/10-18, Hermanus, dated 15 December 2003, that is applicable to all aspects of the Benguela Cove Lagoon Wine Estate development.* *The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision:*	a. This noted and agreed with, the application will not alter the jetty's position. b. This is noted and agreed with, the application will not alter the jetty's position or does not propose any additional development or structures. c. The guests of the Lady Bonnie will be required to only utilised approved and existing walkways to gain access to the jetty to embark onto the Lady Bonnie. d. No pets will be allowed on the Lady Bonnie. e. This is noted and will be maintained by the operators of the Lady Bonnie. f. This is not the proposal, only the approved jetties will be used. g. This noted and agreed with. h. This is noted and the proposed tourist facility is not predicted to have an impact on the operation and requirements set out by the RoD. i. No amendment of the 'residential component' is being proposed. This is noted and agreed with. **Response to environmental concerns:** The motivational report addresses the environmental concerns, and the Lady Bonnie will be operated within the regulations as set out by the Bot/Kleinmond Estuarine Management Plan, refer to section 4.1 and 10. Additionally, no additional development is being proposed to occur and it would not impact the private nature reserve as mentioned in the comment as received. The only proposal is to utilise the Lady Bonnie as indicated in the motivational report. The use of the Lady Bonnie would be to provide guests access to the lagoon/estuary and provide them with

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a. *The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.* b. *The erven boundaries were set well back from the high-water mark of the Botrivier Vlei to prevent human disturbance of bird life on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.* c. *A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.* d. *A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.* e. *No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.* f. *No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the approved jetty.* g. *The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.* h. *The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project: Appendix K, Marine Studies Report dated S May 2003, pages 9&10; Appendix L, Botanical Report dated 12 May 2003 undertaken by Nick Helme; Appendix M, Avifaunal Report compiled by K N Barnes in March 2003; Appendix S, Archaeological Report dated August 2003 must be adopted and implemented.* i. *The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.*	knowledgeable information regarding the estuary itself. No additional uses are sought. The application was circulated to all relevant external departments. Should any commenting authorities require any additional information and / or environmental studies it will be adhered to. As there were existing authorisations in place it was not considered that any additional information would have been required when the application was submitted.

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j. *Finally, the RoD stipulates that the Homeowners' Association/ or operator of the facility must implement and incorporate the conditions of authorizations given in this Record of Decision, as appropriate to the operational phase of the project.*

The existing restrictions above provide space for wildlife. Allowing tourist activities would negate this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat of wildlife. How can the above points be reconciled with the application?

There is also a bird nesting near the access road to the site which would be impacted by increased activities. How would an approval of the application be reconciled with the above restrictions?"

"ENVIRONMENTAL IMPACT ASSESSMENT
The initial application for the development of the estate included an environmental impact study. The application does not make it clear if a new EIA was conducted and is part of the application."

Comment from Bird Life South Africa:
"Birdlife South Africa would also appreciate greater clarification on the permissible activities specific to the pontoon itself (when on the water), as well as the proposed route. The Bot River estuary is a Ramsar site, a wetland of international importance, and is ranked 8th in the country for its conservation importance. It is also a highly dynamic system, changeable in condition and consequently, its supported biodiversity, including its bird life. The route and activities of the pontoon require further detail and explanation to ensure the conservation and protection of this important system throughout, and Birdlife South Africa would be willing to engage on this further."

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Comment from Nico Boris Buchholz:

" *Objection 2- Non-compliance ROD 15/12/2003- 220/575)*
The current application may not be allowed with regards to the ROD, 15/12/2003

- *Objection 3 - Non-compliance of Environmental Development Plan (March 2004) - (220/575)*
The current application may not be in compliance with the Environmental Development Plan (March 2004)

- *Objection 4- Disturbance to - Wildlife (220/575)*
Increased human activities will disturb wildlife, particularly the bird sanctuary on the wetlands of ERF 220/575 which is an internationally recognized RAMSAR site.

These existing restrictions provide space for wildlife. Allowing tourist activities would negate this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat. How can the below points be reconciled with the application?

- *The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision.*
- *The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.*
- *The erven boundaries were set well back from the highwater mark of the Botriviervlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.*
- *A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of bird life on these areas.*

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- *A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.*
- *No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.*
- *No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the two approved jetties.*
- *The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.*
- *The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by Enviro Africa, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project.*
- *The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.*
- *The Homeowners' Association I or operator of the facility must implement and incorporate the conditions of authorisation given in this Record of Decision, as appropriate to the operational phase of the project.*
  There is also a bird nesting near the access road to the site which would be impacted by increased activities.

- *Objection 5 - Environmental Impact Assessment:*
  The initial application for the development of the estate included an environmental impact assessment. The application does not make it clear if a new EIA was conducted and is part of the application."

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Comments from CS McCarthy: 2. *The applicant needs to complete a NEMA checklist and obtain written confirmation from DEADP that the consent use does not trigger a NEMA EIA application in terms of the regulations."* **Comments from Marcia Mkansi:** *"Firstly, I have concerns about the environmental impact of the boat. The emission from the boat have an impact on bio diversity."*	

OBJECTION NEW DEVELOPMENT	RESPONSE TO COMMENT AND OBJECTIONS
Comment from Rodney Anderson: *"The application for the development of the "beach area" can be seen to be void also to the extent that it is vague and lacks any contextual conservation significance. Any additional tourism facilities should be located at the BCI Commercial District."* **Comment from Bird Life South Africa:** *"Birdlife South Africa asks for confirmation that the consent use application applies to the current use of both the pontoon boat (the Lady Bonnie) and existing structures, and for more detail thereof. It is unclear as to whether the application is seeking to develop additional tourism and/ or recreational facilities, or engage in other related activities, as defined through OMLUS.* *Similarly, Birdlife South Africa requires corroboration that there is/ will be no increase to the development footprint associated with this consent use application, particularly in portion 220 (the beach area)."*	No additional structures are being proposed and only the existing structures are proposed to be used for the proposed tourist facility. The general public will not have access and only guests of the pontoon boat will be allowed access. **Response to Nico Boris Buchholz:** The application is to legalise the operation of the pontoon boat, no additional uses are requested. The objector is mistaken to indicate that the applicants will have "carte blanche" to do as they please. *"Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future. What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities ? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis),*

Comment from Nico Boris Buchholz: • *Objection 9- Scope of Application/ Lack of Specificity (210/575. 220/575): The applicant is seeking the broadest scope of approval by re-designating the land as a "tourist facilities" (OMLUS).* *The activities allowed under this approval category are too broad, not restrictive enough, provide few guardrails, are easy to abuse and the consequences difficult to foresee.* *The applicant must state what specific activities the applicant wants to engage in, instead of wanting to be issued "card blanche".* *Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future. What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities ? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis), what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public? If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable.* • *Objection 10- Lack of support facilities (e.g. toilets) (210/575, 220/575) There are no public toilet facilities to support tourism. The boat house is for the private use of residents and HOA members and their (non-commercial guests) and not for the general public.*	*what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public? If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable."* The above cannot occur as it was not applied for.

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OBJECTION OPERATIONS & BENGUELA COVE HOME OWNERS ASSOCIATION	RESPONSE TO COMMENT AND OBJECTIONS
Comment from Martina and Micheal Brandstetter & Volkhard + Ilse Marianne Buchholz: *BCHO constitution in relation to public property According to the Deeds register, plots 210 and 220 are "common property", I.e. they belong to all home owners (HO). Article 30 of the BCHO Constitution clearly states the following:* *"Neither the whole nor any portion of the common property shall be subjected to any rights, whether registered in the deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association ... "* *This means that the Constitution prohibits changing usage unless ALL members benefit from this application. Streeter emphasized in various inquiries regarding this change that the change to a tourist facility is for the sole benefit of the owner of the pontoon boat.* *Even if she retracts this statement, it is unthinkable that all HOs should have the right to exploit the designated area commercially for tourism purposes. Such use is prohibited for nature conservation reasons alone.* **Comment from Martin Diessner:** *" 8.1 Section 30 of the HOA's Constitution ("Constitution") expressly prescribes the dealings with the common property, which portion 210 and 220 fall under as explained in paragraph 3.1 above. Subsection 30.2.3 clearly states that, and I quote "Neither the whole* ***nor any portion of the common property shall be subjected to any rights,*** *whether*	The properties where the consent use is being applied for are owned by the **Benguela Cove Home Owners Association (BCHOA),** and the Pontoon Boat (Lady Bonnie) is operated by **Benguela Cove Investments (BCI)** and the pontoon boat is proposed to use the properties for access to the surface of the water. The operation of Lady Bonnie does not remove any rights of any member of the homeowners and does not have an impact on the access to these properties from any homeowners. **Response directed toward comments received from Martin Diessner:** • *"8.1.3. The Constitution clause 30.2.3 prevents that the common is subjected to a consent use, unless it is enjoyed by all Members of the HOA."* *Section 30.2.3 reads as follows:* *"subjected to any rights, whether registered in the Deeds Registry or not of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise or;"* No limitation is present that reads as stated by the objector. • 8.1.6. – This is noted and agreed with, but they however will also be required to follow due process and application.

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registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof ... " (my emphasise in bold).

8.1.1. The title deed of Portion 210 and 220 makes it clear that the HOA (via its trustees) is bound to be adhere to the Constitution.

8.1.2. The Constitution paragraph 2.4.4 considers Portion 210 and 220 as part of the common property.

8.1.3. The Constitution clause 30.2.3 prevents that the common is subjected to a consent use, unless it is enjoyed by all Members of the HOA.

8.1.4. Streeter, in her email dated 25 April 2023 (Appendix 4), clearly indicates in her answer to my question 5 that the consent use as a tourist facility, if approved, will only benefit the owner of the pontoon boat which is the developer BCI, and is not a consent use that will be enjoyable by all members of the HOA.

8.1.5. Therefore, in terms of the Constitution 30.2.3, the consent use must be denied by Overstrand as it would otherwise be considered to be a direct breach of the HOA's Constitution.

8.1.6. If BCI or any other member of the HOA would like to apply for a consent use in relation to any of the Portions falling under the Common Property, said members must assure that the consent use is to be enjoyed by all members of the HOA. However, it is questionable to permit every member of the HOA to run a commercial tourism boat operation from the HOA's jetty, or any other commercial tourist operation. One can only imagine what happens to the estate if some 120 members all start their own commercial tourist operation on those Portions, if permitted.

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8.1.7. Alternatively, said members must propose a special resolution to amend the HOA's Constitution in accordance with the provisions of its section 20.7. Clearly, the Applicant has not exhausted its remedy to provide for an application that is not in violation of the HOA's Constitution, and therefore the Application must be rejected.	

OBJECTION **ILLEGAL OPERATION OF THE LADY BONNIE**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Martina and Micheal Brandstetter & Volkhard + Ilse Marianne Buchholz: • *"APPLICATION IN REGARDS OF THE PONTOON BOAT (LADY BONNIE)* *The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General I(a) that "No person shall in the water area, without the prior written consent of the Council –* *(a) Offer for reward or profit any show or entertainment or conduct any business or trade;* *(c) Keep or use any vessel for the transport of passengers or goods for payment or reward."* *Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations but we have decided to formalize this In order to charge; as it is not sustainable to have it running for free."* *Every HO on the estate Is aware of the fact that the developer BCI is in fact for the past years running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.co.za/boat-*	In the submitted application, the operation of Lady Bonnie has been clearly declared, providing accurate information regarding the nature of the operations. It was emphasized that the operation of Lady Bonnie cannot be carried out without charging fees, as there are employees responsible for operating the tourist facility and ensuring a quality experience for the guests. The submitted application is proof that the applicant adhered to the Estuary Regulations (appendix 3). The objections raised by concerned parties actually support the case for the desirability of pontoon cruises. They highlight the potential benefits such as job creation and the opportunity for visitors to explore and appreciate the natural beauty of the surrounding area. Section 4.1 of the application clearly outlines the operational requirements that the Lady Bonnie operators will need to adhere to. These guidelines will ensure that the operations are carried out in a responsible and sustainable manner, taking into consideration the safety of guests, environmental conservation, and any other relevant regulations.

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attractions even advertises the pontoon cruises which operate 4x daily and are complimentary for two people when buying a case of wine with 6 bottles.

In fact, we know people who have received written confirmation of the price and conditions for a boat trip: The current rate this year is ZAR 250.00 P.P. and was ZAR 200.00 last year.

Streeter and Rea, in their capacity as trustees and representing the developer have been untruthful with regards to the charging of a fee whilst unlawfully operating the pontoon boat.

With regards to waving the administrative penalty, I believe that the By-Law arid the Estuary Regulation is clear. Therefore, the Overstrand Municipality has a duty to act in accordance with these regulations and not authorize the waiver of penalties."

Comment from Dr. Klaus Stroemer and Dr Beate Helgers:
Streeter and Rea, both directors of BCI; which is the owner and operator of the pontoon boat, stated that BCI does not charge passengers for the transport on their vessel. Streeter confirmed this in an answer to a HO and Rea did so in his developer report presented at the AGM of the HOA on 29-04-2023 were he said: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations but we have decided to formalize this In order to charge; as it is not sustainable to have it running for free."

Comment from Martin Diessner:
"8.2. The Estuary Regulation (Appendix 3) clearly state on page 10 & 11 under section General l(a) that and I quote "No person shall in the water area, without the prior written consent of the Council - (a) offer for reward or profit any show or entertainment or conduct any business or

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trade; (c) keep or use any vessel for the transport of passengers or goods for payment or reward.

8.2.1. Streeter and Rea, both directors of BCI - which is the actual operator of the pontoon boat - stated that BCI does not charge passengers for the transport on their vessel.

8.2.2. Streeter did so in her email dated 25 April 2023 (Appendix 4) by answering question 7, and I quote her confirming: "The pontoon boat is not currently being charged for and a price has not yet been determined."

8.2.3. Rea did so in his developer report (Appendix 5) as presented at the 29 April 2023 AGM of the HOA. He states and I quote: "An application has been made and paid by BCI for the operating of Lady Bonnie (the pontoon) for a fee. All local authorities are aware of operations, but we have decided to formalize this in order to charge; as it is not sustainable to have it running for free."

8.2.4. Everyone homeowner in the estate is aware of the fact that the developer BCI is in fact running a paid commercial operation with the pontoon boat. BCI's website at https://www.benguelacove.eo.za/boat-attractions (Appendix 6) even advertises the pontoon cruises which operate 4x daily and are complimentary for two people when buying a case of wine with 6 bottles.

8.2.5. We know of plenty of people that booked the pontoon cruise and directly paid for the transport of passengers on the pontoon boat. For example, I attach Appendix 7 which is a booking confirmation for 13 passengers each charged R250 with a total of R3,250.

8.2.6. Appendix 8 related to an invoice raised by developer BCI, the operator of the pontoon boat, to the customer. Please note that for reason of privacy I have redacted the customer's contact details.

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8.2.7. How come that both Streeter and Rea state that the pontoon boat operates free of charge, however, customers are being charged a fee which is in violation of the law? *8.2.8. According to the Application, the pontoon boat is licensed to accommodate up to 12 passengers. The above mentioned booking clearly states 13 passengers, which shows that BCI is not only dishonest about their fee but also violating the permitted number of passengers which is in violation of the Overstrand Bylaw (Appendix 3) which states that "no person shall operate a boat on the estuary if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the license."*	

OBJECTION **SECURITY**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Martina and Micheal Brandstetter & Volkhard + Ilse Marianne Buchholz: *"RESIDENTS SECURITY* *Tourist activities will increase the amount of people on the estate, who will not be vetted, properly registered and meaningfully monitored, increasing the security/crime risk on the estate which eventually will result in higher security costs for the HO."* **Comment from Nico Boris Buchholz:** *"Objection 6- Residents Security/ Crime (210/575, 220/575)* *Tourist activities will increase the amount of people on the estate, who will unlikely be vetted, properly registered and meaningfully monitored, increasing the security/ crime risk on the estate. These concerns apply to the protection and wellbeing of residents, private houses and items in the boat storage facilities. Once on the estate tourists will have unhindered access to the entire estate."*	The concerns raised regarding residents' security and potential crime risks associated with the proposed tourist activities are acknowledged. Ensuring the safety and well-being of residents within the estate is a top priority of the operators of the Lady Bonnie. To address these concerns, it is important to clarify that access to the "Security Estate" will be strictly controlled. Only authorized guests, as determined by the operators of Lady Bonnie, will be granted access, and it will not be open to the general public. It is understood that the prospect of access to the estate by tourists may raise security concerns. Therefore, measures will be implemented to mitigate potential risks. This includes implementing appropriate vetting and registration processes for all visitors and enhanced security protocols. The aim is to create a safe and secure environment for residents.

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Comments from Marcia Mkansi: *"Secondly, the activities pose security issues to us homeowners, and no vetting of tourist is in place to avoid people with criminal records accessing the estate."*	The management team, work diligently to strike a balance between introducing tourism activities and safeguarding the residential community. These efforts will help minimize any negative impact on security and crime rates while providing residents with a controlled and enjoyable living environment.

OBJECTION **FUNDAMENTAL CHANGE OF CHARACTER**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Nico Boris Buchholz: *"Objection 1- Fundamental Change of Character And Vision Of The Estate:* *When I purchased my property at Benguela Cove I gave consideration to the site development plan and the approved activities. I think I am entitled to have a reasonable expectation for this to remain unchanged. The proposed change may fundamentally impact the character and vision of the estate.* *Benguela Cove was envisaged as a PRIVATE, RESIDENTIAL low density, rural, in "the middle of nature" estate, undisturbed by the daily activities of towns and cities with private access to the Botrivier Lagoon via a jetty and a boat ramp (210/575). Relatively untouched wetland area (220/575) which primarily serves as a habitat for wildlife and plants are an essential part of that vision. The vision was NOT to allow access of the general public and to be a place of tourist activities (as defined by OMLUS), of public entertainment, impacting both residents and wildlife. The application will result in changing that vision and to commercially exploit the estate by third parties and the natural habitat it tries to protect (with the exception of the boutique hotel by the developer and the commercial precinct which is located outside the security boom which controls access of the residents part of the estate). This is a residential and NOT a commercial estate and I strongly object to the mixing of both and blurring the lines."*	The comments from the objector's are noted and appreciated regarding the character and vision of Benguela Cove Estate. It is important to clarify that the proposed operation of Lady Bonnie will not compromise the private and residential nature of the estate, as access to the "Security Estate" will be strictly controlled. Only authorized guests, as determined by the operators of Lady Bonnie, will have access, and it will not be open to the general public. Furthermore, it is essential to note that the proposed tourist facility does not fall under the category of a nuisance land use. Extensive research and analysis have been conducted to ensure that the operations of Lady Bonnie will not have a detrimental impact on the daily activities of the surrounding properties. While there may be an increase in the number of guests, it will be limited to the properties explicitly included in the application. Measures will be put in place to manage the flow of visitors and mitigate any potential disturbances. It is understood and the objector's desire to maintain the original vision of Benguela Cove estate as a residential sanctuary in harmony with nature is respected. The intention behind the proposed operation of Lady Bonnie is not to blur the lines between residential and commercial aspects but to offer a unique and controlled experience for residents and their authorized guests. The operators of Lady Bonnie are committed

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	to preserving the natural habitat and minimizing any adverse effects on wildlife and the environment.

OBJECTION **NOISE IMPACT**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Martina and Micheal Brandstetter & Volkhard + Ilse Marianne Buchholz: *"NOISE DISTURBANCE* *Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.* **Comment from Nico Boris Buchholz:** *"Objection 7 - Resident Noise Disturbance:* *Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents."* *"Objection 8 - Resident Road Safety:* *Tourist activities will result in increased road traffic, increasing the risk to residents in particular children playing and dogs."*	It is important to highlight that the operations of Lady Bonnie have been conducted without any previous concerns or complaints regarding noise. The operators have taken proactive measures to ensure that the activities are carried out in a manner that respects the tranquillity of the estate. Moreover, managing road traffic effectively is of great importance to minimize disruptions and noise disturbances for the residents. Careful planning, traffic calming measures, and designated parking areas will be utilised to ensure a smooth flow of traffic and reduce any potential noise-related inconveniences. The operators of the Lady Bonnie understand the significance of preserving the peaceful ambiance of the estate and will continue to monitor noise levels closely. Regular communication channels will be established to address any concerns or feedback from residents, allowing us to take prompt actions in response to their needs.

OBJECTION **PUBLIC PARTICIPATION**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Nico Boris Buchholz: *"Objection 14- Municipality Consultation Model:* *The municipality has delegated to the HOA to make individual HOA members aware of the application. Can this be legal, the normal*	This is a standardised proses to notify all homeowners in the area that is prescribed by the By-Law through section 48, 49 and 50. This process was followed on instruction of the Municipality. Proof of notices is also available on request.

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process or it be reasonable to delegated the sole means of notification to the very party seeking the application ?! *In addition this is the party which in the past has failed to forward the identical application in a reasonable timeframe ?! Please note that forwarding the application was done my email-only without any feedback loop.* *What are the requirements governing the notification of affected parties ?"*	

OBJECTION **PROPERTY VALUE**	**RESPONSE TO COMMENT AND OBJECTIONS**
Comment from Nico Boris Buchholz: *"Objection 13 - Impact on Property Value (210/575, 220/575)* *The developer has a history of wanting to make Benguela Cove appealing to a much wider audience by changing the original vision of the estate from an exclusive, quiet area to that of a mass, high impact tourism site.* *Specifically introducing facilities like mini-golf, a splash park, multiple bus parking bays are testament of that changed vision towards commercialization. As the result of the proposed change, I am concerned that the value of my property will fall."*	This comment is not backed by any evidence and is merely as statement made by the objector. Historically the property values of the Benguela Cove Estate have seen persistent increase.

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GENERAL QUESTIONS / COMMENTS	RESPONSE TO QUESTIONS
Questions from Rodney Anderson: 1. *"Exactly which boat is intended be used if consent was granted?"* 2. *"How would the access of tourists affect the BC "Security Estate"?"* 3. *"How is compliance with the RoD and EMP to be achieved from now on?"* 4. *"Where are the permissions from Department of Environmental Affairs & Development Planning (DEADP) for the listed activities under National environmental Management Act 2014 (NEMA)?* **Comment from Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers:** • *"UNCLEAR INTERPRETATION OF THE CONTENT OF THE APPLICATION* *The present application requests a permit that would allow a maximum interpretation of the consent use. In the medium and long term, this would lead to an uncontrollable commercial exploitation of the shoreline (plot 220), which would cause irreparable damage to the protected area.* *In order to avoid later misinterpretations, the application must therefore describe exactly what the consent use is being requested for.* *Page 2 of the application refers to the use of a trimaran boat. For which boat is consent use requested, for the currently used "Lady Bonnie" or for any other boat?* *Are there any consent use matters included in the application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the*	**Answers to questions raised by Rodney Anderson:** 1. The Lady Bonnie, pontoon boat. 2. The access will be controlled and only guests that are authorised by the operators of the Lady Bonnie will be able to access the "Security Estate". 3. The proposed land use application is not predicted to have an impact on the RoD or EMP. 4. The application will be circulated to the mentioned department for their comment if there are any triggers. **Answers to questions raised Martina and Micheal Brandstetter & Volkhard + Ilse Marianne Buchholz:** • The application is to operate Lady Bonnie as a tourist facility, to provided guided tours. The application and motivation make this clear. No access to the 'beach' will be allowed, no additional development is proposed, and no additional walkways are being proposed. The existing facilities will be used to operate the Lady Bonnie and only the Lady Bonnie. **Answers to questions raised Nico Boris Buchholz:** 1. The comment is noted, however, there was never any false pretences made that all home owners are in support of the proposal. The application was circulated to all the home owners for their comment through the public participation process.

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beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision?"	2. The **BCHOA** is the applicant in their capacity of the owners of the subject property, which is why their power of attorney was required. The operator of the Lady Bonnie is **BCI**. The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.
Questions from Nico Boris Buchholz: *"Who Is The Applicant:* *The application may give the impression that the proposed changes are the desire of the majority of individual home-/ plot owners. It is unlikely that commercialization and the resulting risk to security, safety and increased noise (see points above) is the desire of the majority of homeowners.*	3. This is noted. The properties (Portions 210 And 220 of the farm Afdaks Rivier 575, Caledon) are not residential properties and is zoned as Open Space Zone 3: Private Open Space & Open Space Zone 1: Nature Reserve and not residential.
1. *HOA vs. HOA trustees vs. BCI /developer) vs. BCI {operator of winery and related activities):* *Whilst the HOA is the applicant, the dynamics of the application are more complex:* *Decisions on behalf of the HOA, like this application, are made by the Board of Trustees on a simple majority basis. The HOA has 4 trustees, 2 nominated by the developer (BCI), who also runs the winery and related tourist activities, and two voted for by HOA members (home and plot owners). As unsold developer plots entitles the developer to have one vote per plot towards trustee elections, one HOA trustee was essentially voted for by the developer, giving the developer (BCI) a majority to make decisions on behalf of the HOA. The potential for conflicts of interest are obvious.* *In essence the developer may apply for changes on behalf of the HOA without necessarily representing the view of a majority of individual home-/plot owners.* *As a consequence the question that needs to be asked is who is set to benefit the most from the application? Of particular note is that the name of the developer was not mentioned once in the application !*	4. The need for consultation was not required as the members of the **BCHOA** were notified through the public participation process which is why they were afforded the opportunity to submit this comment. 5. This is an assumption being made and was not indicated in the application as it is not being proposed. Should the hotel/lodge be developed in future, the guests would be able to utilise the services available of the Lady Bonnie. 7. a. This is noted and agreed with. As mentioned above, the **BCHOA** is the applicant in their capacity as the owners of the subject properties which is why their power of attorney was requited and **BCI** is the operator of the Lady Bonnie. The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand. b. This is noted, the home owners and member of the BCHOA are being involved through the public participation process to rectify this. c. There has not been any complaint against the operation of the boat.

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2. *Relationship Developer vs. individual homeowners:*
In my opinion the relationship between the developer, represented by some members on the Board of Trustees and the majority of individual homeowners has been fractious and disagreeable, as the many legal cases are testament too. The application has to be viewed in this context.

3. *Non-Alignment of Interests*
The vision and interests for the estate between many individual home-/ plot owners and the operator of the winery and related tourist facilities may not be the same and diverging. One party may be interested in commercial expansion whilst the other focused on preserving the existing situation. Please note that outside the residential area the developer is running an extensive tourist facility. The reassignment of 210/575 and 220/575 would potentially expand those activities onto residential land. The developer and the HOA are separate entities, yet for the reasons mentioned this application blurs the lines and may allow the developer to use HOA land to further its own commercial interests.

4. *No Consultation:*
Similar to previous applications, please note that I and the majority of individual HOA members have at no stage been consulted by the applicant about this application. There would have been ample opportunities to do so and even vote on during recent HOA meetings. Hence the application cannot be viewed as the agreed desire of the majority of individual plot-/ home owners.

5. *Hotel:*
Some land adjacent to ERF 220/575 is owned by the developer and operator of the winery/ tourist facility and as part of the existing site development plan has been approved to build a boutique hotel facility on. Plans are currently underway to do so. The approval of 220/575 as a tourist facility will create a corridor to link hotel with ERF 210/575

d. The boat employs staff and the operators of the boat are continuing to ensure these staff's livelihoods are supported.

1. The consent use is clear, the operators of Lady Bonnie would like to continue the operation thereof.

2. The Lady Bonnie and only that vessel.

3. The conservation use areas will not be affected by the operation of the Lady Bonnie.

Answers to questions / comments raised CS McCarthy:

1. The **BCHOA** is the applicant in their capacity as owners of the subject properties which is why their power of attorney was required and the operators of the Lady Bonnie is **BCI.** The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

3. The consent use is clear; the operators of Lady Bonnie would like to continue the operation thereof. No additional uses are being requested.

4. Refer to Section 4.1 of the motivational report. 12 Guests and 2 staff members.

5. Only Portions 210 and 220 of the farm Afdaks Rivier 575, Caledon may be used for the proposed use, it is clearly stated that only these two properties will be used.

6. The only vessel that will be used is the Lady Bonnie.

7. The application refers to the illegal use already occurring and is being applied for.

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increasing human activity, impacting residents and wildlife. There is an alternative road to link hotel and jetty. *7. Pontoon Boat:* *a. The owner/operator of the boat pontoon boat "Lady Bonny" is the same company that owns and runs the winery and related tourist activities and is also the developer. The application makes no mention of this. The HOA has no business interest or association with the boat. The application may give the impression that the HOA has an interest in the usage of the boat. Due to the reasons above the opposite is likely the case. Of note is that the owner/operator of the boat was not mentioned once in the application* *b. Individual plot-/ home owners were not consulted at the inception of the boat tours or ever since.* *c. To me the boat operation of the pontoon boat and associated activities has always been undesirable and I would like them to cease immediately.* *d. The pontoon boat has continued to operate FOR HIRE (ZAR 250 per person as of May 2023) even after the application has been submitted. The determination of the operation of the boat as not being legal has not stopped its commercial usage. This also speaks to the inability of the authorities to effectively monitor and enforce rules and the operator to adhere to restrictions.* *1. The WRAP document needs to describe in detail what it is that consent use is applied for, so that there can be no confusion as to the exact detail.* *2. Which boat is "consent use" applied for, the existing Lady Bonny or another? Be specific and provide details of the craft to be used.* *3. Are there any consent use matters included in the WRAP application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to*	8. This comment is noted. **Answers to questions / comments raised by Marcia Mkansi:** This is noted. The **BCHOA** is the applicant in their capacity as owners of the subject properties which is why their power of attorney was required. And the operator of the Lady Bonnie is **BCI**. The remarks made regarding the **BCHOA** is more 'political' and is not regarded as linked to the matter at hand.

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anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision."

Questions/ Comments from CS McCarthy:

"

1. *Prior to the HOA submitting this application, the application should've gone through the necessary process required to get consent from the homeowners as to whether or not the HOA may apply for this consent use.*

3. *The application needs to define any ancillary land uses on the site that the operation of the pontoon boat may create.*

4. *The application needs to confirm the maximum number of BCI clients and staff that will be on the BCHOA land at any one time.*

5. *The application needs to include an SDP that demarcates the specific limited shoreline and land area from where the boat will be operated and stored as this use cannot apply to the whole erven.*

6. *The application needs to confirm that there will only ever be one pontoon boat operating.*

7. *The application needs to include an access plan for emergency vehicles in the event that the pontoon boat is involved in an emergency.*

8. *The application is incorrect and misleading as it states the pontoon boat is used for BCI guests and is not charged for, this is however incorrect. The boat is part of a commercial wine enterprise and is charged for at R250 p/p, see attached email quote received from BCI.*

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9. *The existing clubhouse at the slipway and jetty belongs to the HOA and is by definition not available for the commercial use for any of its members, therefore the applicant should at its cost provide its own ablution facilities subject to the approval of the HOA or enter into a rental lease to rent and maintain the toilets and use of the clubhouse."* **Comments from Marcia Mkansi:** *"Lastly, the estate impose penalties on homeowners that are beyond the homeowners' control i.e. obligation to build which was not disclosed prior to purchase. Yet, they request their penalties to be erased for operating without consent. I find this request to be of double standards, when they can not apply their minds to other exceptional cases. I therefore wish to see HOA lead by example and equally honour the penalties imposed."*	

COMMENTS RECEIVED NOT LINKED TO THE LAND USE APPLICATION AND SHOULD NOT AFFECT THE OUTCOME OF THE LAND USE APPLICATION.	RESPONSE TO COMMENT AND OBJECTIONS
Comment from Rodney Anderson: *"HERE ARE UNCERTAINTIES WHICH GENERATE LEGITIMATE CONCERNS.* *Note: The nature of his application requires that the HOA members are well informed. This is essential, to ensure their informed consent, and requires clear plans and details of what activities are intended. This applicant has failed to do so.* *The first questions below (1-4) were tendered by invitation prior to the Benguela Cove HOA AGM dated 29th April and were mainly fobbed off by Chair Ms. Streeter.* *1. What are the details of the 11-hectare (Renosterveld) area that is proposed to be cleared as "fire breaks" in terms of the budget? -NC*	• These comments do not pertain to the land use application, and this is not the correct forum to address or require addressing in terms of the By-Law. • Application is submitted on Portions 210 And 220 of the farm Afdaks Rivier 575, Caledon and not Portion 229 of the farm Afdaks Rivier 575, Caledon. • The application was submitted with the purpose of legalising the operations of Lady Bonnie. There has been no intention to mislead, and it was never claimed that all home owners supported the application. The powers of attorney of the application were signed by the **BCHOA** is the applicant in their capacity as owners of the subject properties.

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2. The RoD contains a clear prohibition against damaging the natural vegetation outside of residential erven and in the Private Nature Reserve generally? To this she replied, "We not going to pull them out we are just going to cut them down. *3. What environmental permission has been granted to do this work?-NC* *4. What work was done (or to be done) to "clean up the beach"? To this she replied, "we are not going to use heavy equipment on the "beach"* *The Incriminating photographic evidence was taken on 6 March.* *5. Was an EIA done (or to be done) as is required for such work? -NC* *6. Why is the homeowner's association used as the applicant for the application for consent use for the beach area and Lady Bonnie. -NC All the above questions were tendered in good faith."* **Comment from Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers & Nico Boris Buchholz:** • *"ILLEGAL ACCESS AND MECHANICAL DISTURBANCE OF THE BEACH AND CONSERVATION AREA* *Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. These was documented photographically (Appendix 1). On the pictures you can see that a so-called digger-loader and workers are in the protected area and are doing some work.* *It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning."*	Refer to Annexure B, C, D and E for additional response to the general questions. The BCI have been approached to address these concerns being raised with reference to: • Illegal access and mechanical disturbance of the beach and conservation area; • Response to concerns regarding levies and benefits at Benguela cove estate; • Impact on relationship with HOA not addressed; and • Financial consequences for HOA.

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- *"MONITORING AND ENFORCEMENT OF RESTRICTIONS*
  Approval of "Portion 229 of Farm 575, Benguela Cove - Proposed Amendment of Approved Site Development Plan And Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.

  I have little confidence that potential restrictions to the current application would allow monitoring and enforcement."

- *FINANCIAL CONSEQUENCES FOR HOA*
  The operation of a tourist facility would mean additional financial and administrative burdens for the HOA and an additional burden on the infrastructure. The application should therefore contain a detailed list of the additional costs to be expected and the distribution of these costs.

- *Objection 12 - Impact on relationship with HOA not addressed (210/575, 220/575)*

  The proposed change places additional burdens onto individual homeowners which have not been addressed by the applicant. The burden is administrative and financial. I am personally not willing to financially subsidize (through HOA levies) the establishment/ running of tourist facilities and the additional pressure on infrastructure this would amount to. Part of the application, in my view, should be a detailed agreement how the financial burden is paid for.

Comments from Marcia Mkansi:
"Thirdly, we pay a high amount of levy and I don't see how the business benefits us in terms of reduced levies. It appears to me that we pay levy for someone to appropriate profit under the disguise of homeowners. I

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would like to know how this benefits us in terms of maintenance, reduced levies etc."

Comment from Martina and Micheal Brandstetter & Volkhard and Ilse Marianne Buchholz & Dr. Klaus Stroemer and Dr Beate Helgers::

- *MISLEADING APPLICATION*

  The Application is misleading. The Application attempts to create the impression that the HOA and all of its members consent to the Application. There is no indication anywhere in the application that BCI owns and operates the pontoon (Lady Bonnie). Rather, it appears that this application is desired by the majority of HOA members, although the HO has never been consulted or even informed about the application by the Trustees. The developer controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members but in their very own business interests.

Comment from Bird Life South Africa:

- *"Photographic evidence provided by local community members shows that there is clearing of natural vegetation underway on portion 220, including, potentially, the removal of milkwoods Sideroxylon inerme, a Protected Tree[1] The presence of a digger on the beach is also indicative of potential soil movement of more than Sm3, and there is evidence of extensive vehicle tracks and other disturbance. Given the timing, this has raised questions with respect to the scope and intent of this consent use application."*

[1] *It is illegal to damage, move, or destroy Protected Trees*

Comment from Martin Diessner:

8.3. Lastly, the Application is misleading. Nowhere does it state that BCI is the operator of the pontoon boat. The Application attempts to

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create the impression that the HOA and all of its members consent to the Application. However, as per Streeter's email confirmation (Appendix 4), no members of the HOA have been consulted.

Simply put:
The developer (and operator of the pontoon boat) controls the majority of the HOA's trustee board and have put this Application forward on behalf of the HOA, without the consent of the majority's members.

8.3.1. Streeter and Rea, in their capacity as trustees, have undersigned the trustee resolution and power of attorney that are part of the Application.

8.3.2. The HOA's Constitution section 9 prevents the trustees (ie Streeter and Rea) to act in contravention of the Constitution. I quote section 9.5 which states "the Trustees may make regulations and rules **not inconsistent with this Constitution** ... " (bold my emphasis)

8.3.3. Both Streeter and Rea (and the other trustees) have, in my opinion, violated the powers that the Constitution provides to them as trustees as the Application is unlawful and contravenes the Constitution clause 30.

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Conclusion

These objections have revealed the concerns of the home owners and members of the BCHOA. The application is submitted to allow the continuation of the operation that will have a positive impact on the economy as well as invite more tourist to visit the Overstrand and increase the overall appeal of the area.

Considering the response to objections, it is recommended that the planning application be approved as submitted.

Yours faithfully

T JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

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ANNEXURE A

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From: Mercia J Liddle
To: WRAP
Subject: RE: PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON
Date: Wednesday, 02 August 2023 13:08:20
Attachments: image001.png

Good day Thian,

Our telephonic conversation between you, leptieshaam Bekko and myself earlier today and your email below refers.

The following is noted

- No further boats will be allowed to operate within the Botriver Estuarine System only Lady Bonnie.
- CapeNature has previously been consulted and agreed on the usage of the boat within the estuarine system.

As such, we do not object against the usage of Lady Bonnie within the Botriver Estuary provided that the condition of approval state that this will be the only boat within the estuarine system.

Kind Regards

Mercia Liddle
Environmental Officer: Coastal Management
Department of Environmental Affairs and Development Planning
Western Cape Government

4th Floor, Leeusig, 1 Dorp Street, Cape Town, 8000
Tel: +27 (0)21 483 4627
Email: mercia.liddle@westerncape.gov.za
Website: www.westerncape.gov.za/eadp

Western Cape Government
FOR YOU

Be 110% Green. Read from the screen.

From: WRAP <admin@wrapgroup.co.za>
Sent: Wednesday, 2 August, 2023 12:43 PM
To: Mercia J Liddle <Mercia.Liddle@westerncape.gov.za>
Subject: PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON

Good afternoon Mercia

Thank you for you time earlier.

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As discussed, there will only be 1 boat (The Lady Bonnie) and no additional vessels will ever be used.

If you need to state that this needs to be a condition of approval you are more than welcome to do so as a way to ensure the municipality only ever approves the Lady Bonnie.

Kind Regards,
THIAN JANSEN
PROFESSIONAL TOWN PLANNER
Email: admin@wrapgroup.co.za
T: +27 (28) 313 1411 | M: +27 (72) 122 7704
Unit B, Standard House, Cnr Royal and Dirkie Uys Street
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ANNEXURE B

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FINANCIAL CONSEQUENCES FOR HOA

The operation of a tourist facility would mean additional financial and administrative burdens for the HOA and an additional burden on the infrastructure. The application should therefore contain a detailed list of the additional costs to be expected and the distribution of these costs.

We understand the homeowner concerns regarding the approval of the Lady Bonnie pontoon boat for conducting tours on the Botriver lagoon and its potential impact on the Homeowners Association's (HOA) costs and burden. We would like to address these concerns and clarify that the operation of the boat and its associated services, which are owned and operated by Benguela Cove Investments, will not lead to any costs being passed onto the HOA.

Benguela Cove Investments, as the operator of the commercial area, is committed to ensuring that all costs associated with the pontoon boat service are borne entirely by their company. They have consistently paid their levies as a responsible member of the homeowners association, and they will continue to do so. As such, any expenses arising from the operation of the boat will be solely accounted for by Benguela Cove Investments.

It's essential to note that the boat's operation will not impose any further burden on the infrastructure or amenities used by the homeowners association. Benguela Cove Investments will utilize the jetty in the same manner as any other member of the HOA, and they are fully aware of their responsibilities in maintaining and using the shared facilities.

Regarding the potential financial and administrative burdens for the HOA, we assure you that Benguela Cove Investments is responsible for handling all expenses related to the operation of the tourist facility. They have been diligent in conducting a thorough analysis of the associated costs, and they are prepared to cover these expenses without any reliance on the HOA's resources.

The Lady Bonnie pontoon boat offers a unique opportunity to enhance tourism and local business in the area, providing benefits for the community as a whole. We believe that working collaboratively with Benguela Cove Investments can lead to a successful arrangement without imposing any adverse effects on the homeowners association.

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ANNEXURE C

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Objection 12 - Impact on relationship with HOA not addressed (210/575, 220/575)

The proposed change places additional burdens onto individual homeowners which have not been addressed by the applicant. The burden is administrative and financial. I am personally not willing to financially subsidize (through HOA levies) the establishment/ running of tourist facilities and the additional pressure on infrastructure this would amount to. Part of the application, in my view, should be a detailed agreement how the financial bourdon is paid for.

Thank you for sharing the owner concerns regarding the Lady Bonnie Boat and its impact on the homeowners association (HOA). We understand that transparency and addressing potential burdens are essential when considering any new development within the community.

First and foremost, it's important to clarify that the Lady Bonnie Boat and its activities are entirely funded by Benguela Cove Investments, the owner of the commercial area. As a member of the homeowners association, Benguela Cove Investments contributes fully to the infrastructure costs through its levy payments, just like any other owner. This means that they share the financial responsibility for maintaining the community's infrastructure and amenities.

Regarding your objection that the proposed boat service may place additional burdens on individual homeowners, we want to assure you that Benguela Cove Investments has carefully considered the impact on the infrastructure. It is not anticipated that the running of the boat service will cause any strain on the community's infrastructure. Therefore, there will be no increase in costs to the homeowners association due to the boat service.

As rightly pointed out, financial transparency is crucial. We would like to reiterate that the Lady Bonnie Boat and its operations are self-sustaining, independently funded by Benguela Cove Investments. The boat service will not be subsidized by the homeowners association or any individual homeowner. There will be no financial burden on any homeowner to support the tourist facilities or the boat's running expenses.

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ANNEXURE D

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"Thirdly, we pay a high amount of levy and I don't see how the business benefits us in terms of reduced levies. It appears to me that we pay levy for someone to appropriate profit under the disguise of homeowners. I would like to know how this benefits us in terms of maintenance, reduced levies etc."

Subject: Response to Concerns Regarding Levies and Benefits at Benguela Cove Estate

I hope this letter finds you well. On behalf of Benguela Cove Investments, I would like to address the concerns raised by the homeowners regarding the levies and benefits at Benguela Cove Estate.

Firstly, we appreciate the opportunity to clarify our role in the estate and the contributions made as a mixed-use residential, commercial, and farming business. As a levy-paying member of the homeowners' association, we understand that our levies, along with those of other homeowners, are essential for the overall upkeep and operation of the entire estate. We share the common goal of maintaining a well-managed and thriving community.

While it is true that the commercial and farming activities we conduct are integrated into the estate and contribute to its functioning, we acknowledge that the benefits might not be immediately apparent to individual homeowners. We would like to assure all homeowners that our presence and activities have a positive impact on the estate as a whole, which in turn benefits the entire community.

The levies paid by all members, including Benguela Cove Investments, are primarily used for various essential services such as maintaining common facilities, providing security, landscaping, and other shared amenities that enhance the quality of life for all residents. Our farming enterprise plays a role via the Services and Maintenance agreement in reducing certain maintenance and operational costs within the estate. These cost savings help in keeping levies at a reasonable level for all homeowners.

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ANNEXURE E

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"ILLEGAL ACCESS AND MECHANICAL DISTURBANCE OF THE BEACH AND CONSERVATION AREA

Already now, while the application is pending illegal work has been carried out on the "beach" on the plot 220. These was documented photographically (Appendix 1). On the pictures you can see that a so-called digger-loader and workers are in the protected area and are doing some work.

It must be pointed out that this disturbance is totally illegal as no permission was obtained from Department of Environmental Affairs and Development Planning."

Subject: Response to Allegations of Illegal Access and Mechanical Disturbance of the Beach and Conservation Area

I am writing in response to the owner allegations of illegal access and mechanical disturbance of the beach and conservation area on plot 220. I represent the homeowners association and the farm team involved in the clean-up activity in question.

First and foremost, we would like to clarify that the images presented as evidence of illegal activity are misleading and fail to demonstrate any wrongdoing on our part. The team responsible for the clean-up fully understands the sensitivity of the area, its conservation issues, and the importance of protecting the bird life within the vicinity. They are committed to adhering to all relevant environmental regulations and guidelines.

It is crucial to note that our team does not undertake any work without first conducting a thorough inspection of the entire area to identify and avoid any nesting bird sites or other environmentally sensitive locations. Our commitment to conservation and protection of the ecosystem is a top priority during all our activities.

Regarding the specific clean-up activity, the farm team was tasked with removing accumulated debris on the shores of the lagoon and particularly underneath the clubhouse and the jetty. The use of a digger-loader was restricted to an area that was less than 100 meters from the jetty. We can confirm that no work was conducted in proximity to the Milkwoods, and no nesting birds were present during the operation.

Moreover, during the clean-up process, debris and rubbish were manually removed by hand and carefully placed into the digger-loader for disposal. The machine was not used for any mechanical disturbance on the main beach or shorelines.

We understand the concerns raised about the necessity of obtaining permission from the Department of Environmental Affairs and Development Planning before conducting any activity in the protected area. We want to assure you that the farm team was acting in good faith and believed they were within the scope of permissible activities for beach and conservation area clean-up.

In conclusion, we firmly deny any intentional illegal access or mechanical disturbance of the beach and conservation area. Our actions were geared towards maintaining the ecological balance and preserving

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the beauty of the surroundings. We are committed to learning from this incident and working closely with the appropriate authorities to ensure all future activities are conducted within the bounds of the law and environmental best practices.

Please do not hesitate to reach out to us if you have any further questions or concerns. We look forward to resolving this matter amicably and continuing our dedication to the conservation and protection of the environment.

Annexure F

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COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR: CONSENT USE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: PORTION 210 & 220 (PORTIONS OF PORTION 80) OF FARM AFDAKSRIVIER N0.575, DIVISION CALEDON (4336/2023)

Electricity	:	Eskom area
Stormwater	:	No services available
Water	:	No services available
Sewer	:	No services available
Roads and traffic	:	No services available

Conditions:

1. that the developer arrange with ESKOM for the provision of electricity and that he complies with all conditions as may be set by ESKOM;

2. that the developer will be responsible to obtain the necessary approval, licences and permits from the applicable authorities (Department of Environmental Affairs, health, BOCMA etc.) for the registration and licensing dams and for the use of any other water resources and the extraction thereof;

3. that the developer is responsible to provide potable water to the development that complies with SANS0241 standards and that relevant proof be submitted to the Senior Manager: Engineering Services, Overstrand Municipality;

4. that waste water disposal be done in a safe and healthy manner and that plans thereof be submitted to the Municipality and Department Of Environmental Affairs for approval;

5. that the developer complies to all the conditions set by Department Of Environmental Affairs and BOCMA.

6. that the conditions set by the Department of Transport and Public Works be adhered to.

p.p. R Andersen
DENNIS HENDRIKS
SENIOR MANAGER:
ENIGINEERING SERVICES

16/05/2023
DATE

Annexure G 1/3

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OVERSTRAND MUNISIPALITEIT
04 APR 2023
OVERSTRAND MUNICIPALITY

open serve

TP: N. Theart
(M. Olivia)

61 Oak Avenue, Highveld,
Port Elizabeth
Private Bag X881, Pretoria, Gauteng, 0001
Techno Park, Centurion 0157,

Our reference: WWIP_WCN+1228_23
Your reference: Ptn 210 & 220 of Farm 575, HBENG
Enquiries: P. Ngqakayi
TEL: 0437056236/0813922403
EMAIL: Portian@openserve.co.za

FILE NO. PTNS 210 & 220/575
N Fdalcenivia.
SCAN NO.
COLLABORATOR NO.
1841326

3 April 2023

Attention: S. MULLER

Overstrand
P. O BOX 20
HARMANUS
7200

OPTIC FIBRE & COPPER PLANT AFFECTED

RE: PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVER NO 575, CALEDON DIVISION: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNERS ASSOCIATION

With reference to your application received 18 March 2023.

As important cables are affected, please contact our representative **Marius Makler** telephone number **081 348 2317,** I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for **6 months** only, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Open Serve infrastructure will be affected, consequently the conditions below and on the attached legend will apply.

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the requ est and cost of the applicant.

Telkom SA SOC Limited: Reg no 1991/005476/30. Directors: MS Moloko (Chairperson), SN Maseko (Group Chief Executive Officer), D Reyneke (Acting Group Chief Financial Officer), N Kapila*, PCS Luthuli, DD Mokgatle, KW Mzondeki, F Petersen-Cook, KA Rayner, A Samuels, SP Sibisi, H Singh, RG Tomlinson, LL Von Zeuner. Company Secretary: AC Ceba *India

TP 03 APR 2023

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Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

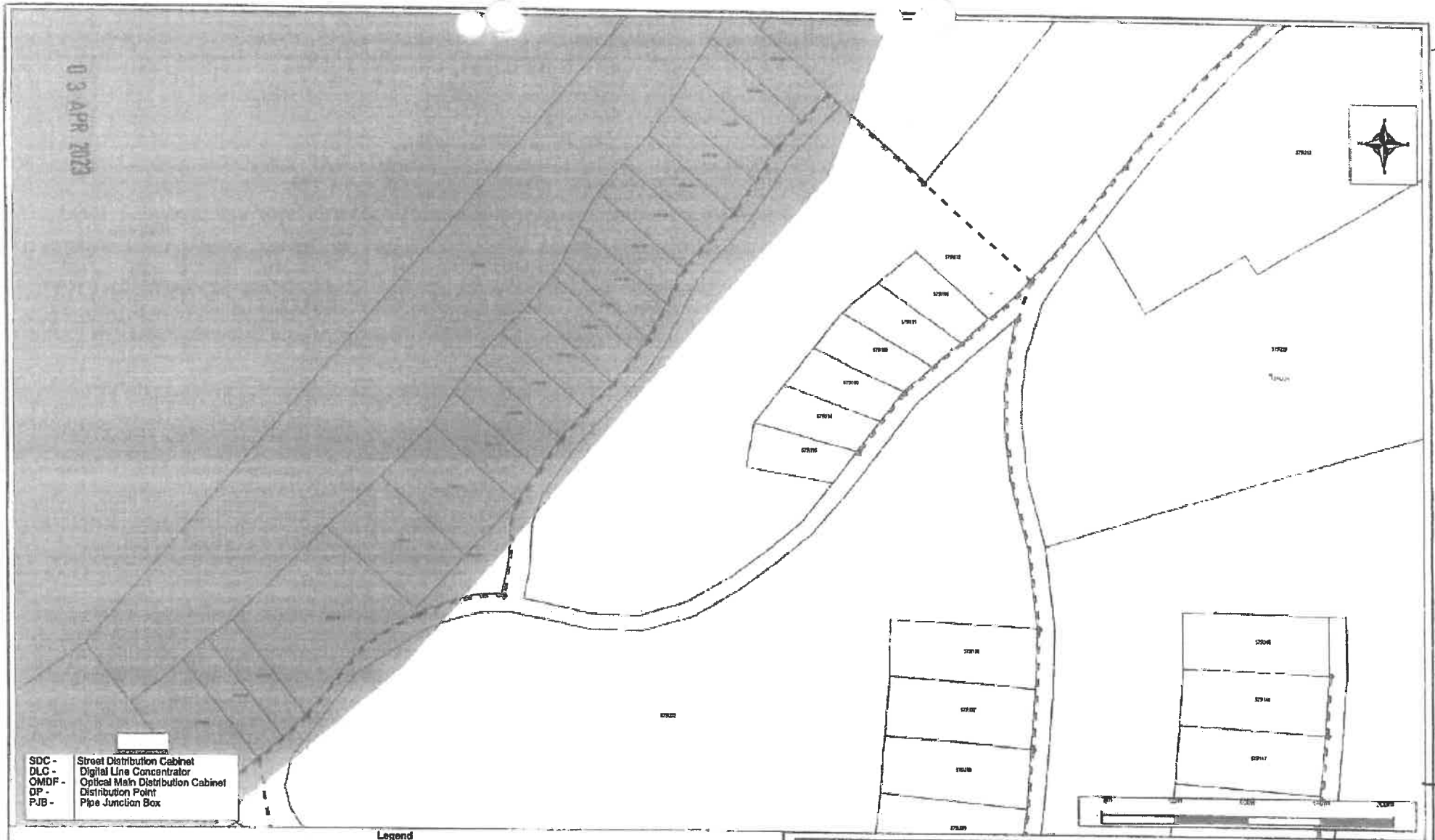
All Open Serve rights remain reserved.

Yours faithfully

P Ngqakayi

For Selwyn Bowers
Operations Manager
Wayleave Management: Southern and Western Region

Telkom SA SOC Limited: Reg no 1991/005476/30. **Directors:** MS Moloko (Chairperson), SN Maseko (Group Chief Executive Officer), D Reyneke (Acting Group Chief Financial Officer), N Kapila*, PCS Luthuli, DD Mokgatle, KW Mzondeki, F Petersen-Cook, KA Rayner, A Samuels, SP Sibisi, H Singh, RG Tomlinson, LL Von Zeuner.
Company Secretary: AC Ceba *India



SDC - Street Distribution Cabinet
DLC - Digital Line Concentrator
OMDF - Optical Main Distribution Cabinet
DP - Distribution Point
PJB - Pipe Junction Box

Legend

Existing Manhole	Existing SDC	Existing Indoor DP	Existing Underground Route
Planned Manhole	Planned SDC	Planned Indoor DP	Planned Underground Route
To Be Abandoned Manhole	To Be Recovered SDC	To Be Recovered DP	To Be Abandoned Underground Route
Existing Jointing Pit	Existing DLC	Existing DP	Existing Overhead Route
Planned Jointing Pit	Planned DLC	Planned DP	Planned Overhead Route
To Be Abandoned Jointing Pit	To Be Recovered DLC	To Be Recovered DP	To Be Recovered Overhead Route
Existing PJB	Existing Pillar Joint	Existing Pole	Existing Mini OMDF
Planned PJB	Planned Pillar Joint	Planned Pole	Planned Mini OMDF
To Be Abandoned PJB	To Be Recovered Pillar Joint	To Be Recovered Pole	Existing Strut and Stay

Region		Select a bitmap	TELKOM REGIONAL EXECUTIVE		
Exchange area					
Drawn By					
Checked By		Date	03/04/2023		
Approved		Project No.			
Details					
Drawing No.					
Scale	1:3451	Page Size	A4	Sheet No	1 of 1

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Annexure H 1/2

CapeNature

OVERSTRAND MUNISIPALITEIT
29 MAY 2023
OVERSTRAND MUNICIPALITY

CONSERVATION INTELLIGENCE

postal	16 17th Avenue, Voëlklip, Hermanus, 7200
physical	16 17th Avenue, Voëlklip, Hermanus, 7200
website	www.capenature.co.za
enquiries	Rhett Smart
telephone	087 087 8017
email	rsmart@capenature.co.za
reference	LS14/2/6/1/7/2/575-210&220_consent_Fisherhaven
date	28 May 2023

FILE NO. PTNS 210&220 Farm Afdaks Rivier 575
SCAN NO. PTN 210
COLLABORATOR NO. 1862428

Overstrand Municipality
P.O. Box 20
Hermanus
7200

TP-N Ahearle
(H Olivier)

Attention: Henk Olivier
By email: loretta@overstrand.gov.za

Dear Mr Olivier

Application for Consent Use and Administrative Fine for Tourist Facilities on Portions 210 and 220 of Farm Afdaks Rivier 575, Benguela Cove Estate, Fisherhaven
(Overstrand Municipality ref. no.: Ptn 210 & 220 of Farm 575, HBENG/4336/2023)

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

The application is for tourist facilities (defined to include recreational facilities) which consists of the existing activity of boat cruises on the Bot River Estuary for guests of Benguela Estate. Although not explicitly referred to, the structures located on the two subject properties which facilitate the provision of the boating activity, namely jetty/boardwalk, slipway and boathouse need to form part of the application. The other recreational activities located these two properties are not mentioned and we wish to query if these also require authorisation as tourist facilities, since it is for public use e.g. clubhouse, tennis courts, swimming pool.

The development of the structures within 100 m of the high water mark (5 m contour) of the estuary require environmental authorisation. If the tourist facilities already received environmental authorisation with the initial authorisation for Benguela Cove Estate, the record of decision/environmental authorisation should be included as an appendix for confirmation. Structures below the high water mark require a lease in terms of the Sea Shore Act from CapeNature. There is currently no Sea Shore Lease in place for this property and therefore is non-compliant. As a minimum the jetty and slipway extend below the high water mark of the estuary. It is further noted that additional activities have been reported to CapeNature which will be followed up.

The operation of the boat below the high water mark is beyond the scope of this application, as the application only relates to the two cadastres which do not extend below the high water mark. The operation of the boat is controlled by the Bot River Estuary Management Plan (EMP) compiled in terms of the National Environmental Management: Integrated Coastal

The Western Cape Nature Conservation Board trading as **CapeNature**
Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

29 MAY 2023

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Management Act. The zonation of the EMP defines the sections of the estuary which can be accessed by the boat.

In conclusion, CapeNature does not object to the consent use application. Environmental impacts associated with the recreational facilities can be determined from the environmental process followed in order to assist with determining the penalty for unlawful activities. An application for a Sea Shore Lease must be submitted to CapeNature for the attention of Rowena Crowe (rcrowe@capenature.co.za) accompanied by an environmental authorisation.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely



Rhett Smart
For: Manager (Landscape Conservation Intelligence)

cc. Steve Gildenhuys, CapeNature
Rowena Crowe, CapeNature

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Annexure I 1|6

Western Cape Government

Department of Environmental Affairs and Development Planning
Mercia Liddle
Biodiversity and Coastal Management
Mercia.Liddle@westerncape.gov.za | Tel: 021 483 4627
CMU Reference: 17/1/8(CMU 0019/2023)

TP-A Theart (H Olivier)

OVERSTRAND MUNISIPALITEIT
31 MAY 2023
OVERSTRAND MUNICIPALITY

The Office of the Director: Infrastructure & Planning
Town and Spatial Planning
Overstrand Municipality
P.O. Box 20
HERMANUS
7200

FILE NO. Plns 210 & 220
Afdaks Rivier 575
SCAN NO.
WCG
COLLABORATOR NO.
1864279

Attention: Mr H Olivier

Tel: 028 313 8900
Email: alida@overstrand.gov.za

RE: REQUEST FOR COMMENT FROM THE SUB-DIRECTORATE: COASTAL MANAGEMENT ON THE APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY ON FARM 210/575 AND FARM 220/575, BOTRIVIER, OVERBERG DISTRICT.

Dear Madam

Your request for comment from the Sub-directorate: Coastal Management on the above-mentioned pre-application basic assessment report received on 29 March 2023, refers.

1. CONTEXT

1.1. The Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("NEM: ICMA") is a Specific Environmental Management Act under the umbrella of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"). The NEM: ICMA sets out to manage the nation's coastal resources, promote social equity and best economic use of coastal resources whilst protecting the natural environment. In terms of Section 38 of the NEM: ICMA, the Department of Environmental Affairs and Development Planning ('the Department') is the provincial lead agency for coastal management in the Western Cape as well as the competent authority for the administration of the "Management of public launch sites in the coastal zone (GN No. 497, 27 June 2014) "Public Launch Site Regulations".

1.2. The Department, in pursuant of fulfilling its mandate, is implementing the Provincial Coastal Management Programme ("PCMP"). The PCMP is a five (5) year strategic document, and its purpose is to provide all departments and organisations with an integrated, coordinated and uniform approach to coastal management in the Province.

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The Department is in the process of finalising the next generation PCMP that includes priority objectives for the next 5 years. This PCMP was adopted on 19 May 2023 and may be viewed at Western Cape draft PCMP 2022-2027.

1.3. A key priority of the PCMP is the Estuary Management Programme, which is predominantly implemented through the Estuary Management Framework and Implementation Strategy ("EMFIS") project. The Department is implementing estuary management in accordance with the NEM: ICMA and the National Estuarine Management Protocol ("NEMP"). Relevant guidelines, Estuarine Management Plans, Mouth Management Plans need to be considered when any listed activities are triggered in the Estuarine Functional Zone. The Department is in the process of approving a series of Estuarine Management Plans. Both draft and approved plans may be viewed at DEA&DP: Coastal Management.

1.4. The facilitation of public access to the coast is an objective of the NEM: ICMA as well as a Priority in the WC PCMP. The Department developed the Provincial Coastal Access Strategy and Plan, 2017 ("PCASP") and commissioned coastal access audits per municipal district to assist municipalities with identifying existing, historic, and desired public coastal access. These coastal access audits also identify hotspots or areas of conflict to assist the municipalities with facilitating public access in terms of Section 18 of the NEM: ICMA. The PCASP as well as the coastal access audits are available on the Departmental website at DEA&DP: Coastal Management.

1. COMMENT

2.1 The sub-directorate: Coastal Management ("SD: CM") has reviewed the information as specified above and have the following commentary:

2.1.1. The applicant is requesting consent use in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020, and the determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the unauthorised land use activities as stipulated above. The subject properties serve as recreation areas for private landowners and guests of the wine estate, mainly for access to the Botriver Estuary. Furthermore, Farm 210/575 is used for storing water vessels and features amenities like a tennis court and pool for residents, while Farm 220/575 improved with a jetty and boathouse, is proposed to be converted into a tourist facility offering pontoon boat experiences on the Botriver Estuary. Both properties are owned by the Benguela Cove Homeowners Association and the title deeds don't have any restrictive conditions that prohibits the proposed tourist facility.

2.1.2. According to the Western Cape Biodiversity Spatial Plan (2017), both subject properties partially fall within an Ecological Sensitive Area. These areas are not essential for meeting biodiversity targets but play an important role in supporting the functioning of protected areas or CBAs and are often vital for delivering ecosystem services. The management objective of such sites is to maintain them in a natural or near-natural state, with no further

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loss of habitat. Degraded areas should be rehabilitated and only low impact, biodiversity-sensitive land uses are appropriate.

2.1.3. Be advised that Farm 220/575 is located within the Coastal Protection Zone ("CPZ") as defined in Section 16 of the NEM: ICMA and the purpose of the CPZ is to avoid increasing the effect or severity of natural hazards in the coastal zone and to protect people and properties from risks arising from dynamic coastal processes, including the risk of sea level risks. Due to the subject property's location within the CPZ, Section 63 of the NEM: ICMA must be considered where an authorisation is required in terms of Chapter 5 of the NEMA. Furthermore, Section 62 of the NEM: ICMA obliges all organs of state that regulates the planning of land to apply that legislation in a manner that gives effect to the purpose of the CPZ. As such, Section 63 of the NEM: ICMA must be considered by local authorities for land use decision making.

2.1.4. In terms of coastal risk modelling commissioned by the SD: CM, Farm 220/575 is located seaward of the Overberg coastal management line ("CML"). The delineation of the CML is based on the methodology that was informed by various factors including Section 25(B) of the NEM: ICMA, taking into consideration ownership and zonation of vacant land. As the proposed property is located along a sheltered bay as indicated by the applicant, erosion is not a concern, however, impacts from inundation, flooding, storm surges and sea level rise as a result of climate change must be considered. Furthermore, in terms of the Departmental Risk Zones (see Figure 1 below) Farm 220/575 is also located within the Rural Risk Zone.

2.1.5. Farm 210/575 is not located within the CPZ and is landward of the Overberg District CML, however it is located within the Rural Risk Zone as depicted in Figure 1 below. Furthermore, the applicant failed to indicate how the concerns as a result of impacts of climate change were considered for this application.

2.1.6. Be advised Farm 220/575 is located within the Estuarine Function Zone ("EFZ") which equates to the 5m contour around an estuary. This area is used as a delineation boundary within estuaries as it encapsulates most dynamic areas influenced by long-term estuarine sedimentary processes. It provides a buffer zone that allows an estuary to swell within the floodplain of an estuary in the event of flood events, inundation as well as sea-level rise due to climate change. It also allows for the inclusion of some terrestrial fringe vegetation that contribute detritus to the system and refuge areas for many animal species during floods.

2.1.7. Although the applicant considered the draft Bot/Kleinmond Estuarine Management Plan (2019), it should be noted that the Western Cape EMFIS Best Practise Activity Guidelines (2019) recommends in item 1.3., *no development should be approved to take place in the EFZ or the highly dynamic littoral active zone*. These Guidelines further recommend that developments must take into consideration any adopted coastal management lines and applicable controls, and/or coastal risk lines where high risk areas are identified.

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Avoiding development in at-risk or sensitive areas will help to maintain the ecological integrity of the estuarine environment, prevent disruption of the natural coastal processes, maintain aesthetic quality, and ultimately protect coastal developments and people.

2.1.8. In terms of the Departmental Circular, DEA&DP 0004/2021, regarding '*The consideration of coastal risk in land use decisions as well as the way forward with respect to the establishment and implementation of Coastal Management Lines in terms of the NEM: ICMA*', a precautionary approach must be adopted with respect to land use decisions within risk areas. The Circular also recommends development parameters to be considered for general risk and general estuarine risk areas. This includes maintaining coastal quality; reducing public liability; reducing risk to human life; preventing intensification of development in general risk areas but allow exercising of existing rights within reason; prevention of encroachment that will impact on the integrity of the shoreline ecology; and enables safe evacuation in an emergency. The Circular further advises that any new development be set far back from the EFZ as possible and existing coastal processes and indigenous vegetation within the EFZ must be maintained.

2.1.9. With the country experiencing more severe weather conditions, the applicant must be cognisant that in the event of any erosion or accretion on the subject property, Section 15 of the NEM: ICMA states:

(1) No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person.

(2) No person may construct, maintain or extend any structure, or take measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the NEMA or any other specific environmental management Act.

As such, the applicant must be informed in terms of Section 15 of the NEM: ICMA the applicant may not erect any protection measures against erosion or accretion outside of their property boundary.

2.1.10. Considering the location of the subject properties, the applicant must be informed of risk pertaining to the loss of property should the high-water mark of the sea move inland of the property boundary or during a flooding event. In this regard, Section 14 of the NEM: ICMA and the Advisory Note from the office of the Chief Surveyor General, dated 15 October 2021, is applicable.

2.1.11. It must be noted that no alternatives were submitted with the application and the SD: CM would advise that the proposed development be located landward of the CPZ and CML and be set further inland from the rural risk zone to provide an adequate buffer from storm surges.

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2.1.12. The SD: further recommends that the applicant adequately considers the impacts of climate change on the proposed development and that they inform the exact location of the footprint and design of the proposed structure.

2.1.13. If the nature of the development does not require that it be placed within the EFZ, then an alternative location must be sought. Where no location alternatives are possible and the development needs to occur within the EFZ or broader Littoral Active Zone, an EIA must be conducted to identify and mitigate impacts, and an EA obtained where necessary. No location alternatives were submitted with this application and the SD: CM would advise the proposed tourist facility to be located landward of the CML, Rural Risk Zone and EFZ.

2.1.14. Based on the above, the SD: CM does not support the consent use for a tourist facility on Farm 220/575 as requested, as the said development is proposed to be within the CPZ, EFZ, Rural Risk Zone and seaward of the Overberg CML.

2.1.15. Be advised the determination of the administrative penalty and whether such a penalty should be issued is at the discretion of the municipality.

2.1.16. The applicant must be reminded of their general duty of care and the remediation of environmental damage, in terms of Section 28(1) of NEMA, which, specifically states that: "*...Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment...*" together with Section 58 of the NEM: ICMA which refers to one's duty to avoid causing adverse effects on the coastal environment.

3. The SD: CM reserves the right to revise or withdraw its comments and request further information from you based on any information that may be received.

Yours faithfully

Ieptieshaam Bekko

Digitally signed by Ieptieshaam Bekko
Date: 2023.05.30 14:24:25 +02'00'

Ieptieshaam Bekko
CONTROL ENVIRONMENTAL OFFICER
SUB-DIRECTORATE: COASTAL MANAGEMENT
DATE: 30 May 2023

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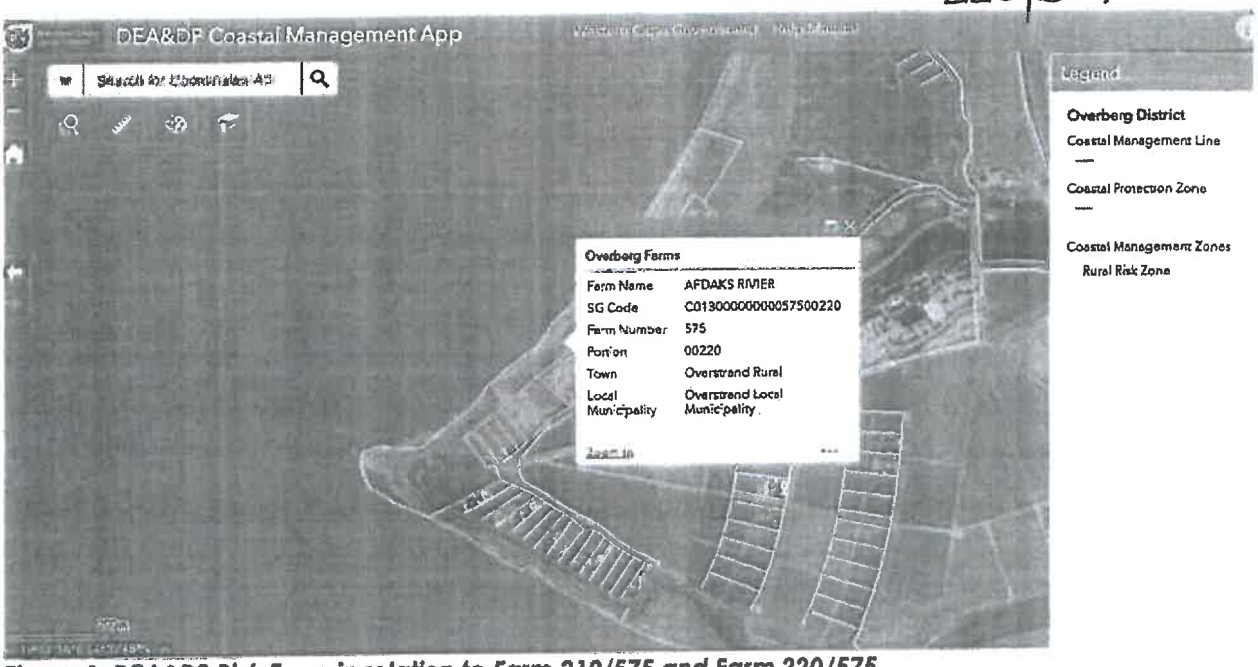


Figure 1: DEA&DP Risk Zone in relation to Farm 210/575 and Farm 220/575

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Annexure J1|2

Western Cape Government

Department of Environmental Affairs and Development Planning
D'mitri Matthews
Directorate: Development Management, Region 1
D'mitri.Matthews@westerncape.gov.za | Tel: 021 483 8350

REFERENCE: 16/3/3/6/6/E2/27/1109/23
DATE: 10 May 2023

The Municipal Manager
Overstrand Municipality
P. O. Box 20
HERMANUS
7200

Attention: L. Isaacs

Tel.: +27 (0) 313 8900
Email: loriaanisaacs@overstrand.gov.za

Dear Madam

RE: APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED), WITH RESPECT TO THE PROPOSED APPLICATION FOR CONSENT USE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PORTION 210 AND PORTION 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER, CALEDON (OVERSTRAND)

1. The electronic correspondence dated 28 March 2023, as received by the Department on the same day, refers.

2. Following the review of the new information contained in the electronic correspondence, this Department notes the following:

   2.1 The application is for the consent use to operate a pontoon boat as a recreational facility, that will be used for guided boat tours.

3. Your attention is therefore drawn to the listed activities in terms of the NEMA EIA Regulations 2014 (as amended) as defined in Listing Notices ("LN") 1, 2 and 3 of 7 April 2017. Be advised that, based on the information provided, the proposed development on the abovementioned property, **does not** constitute any listed activities as defined in terms of the NEMA EIA Regulations 2014 (as amended). Environmental Authorisation is therefore not required prior to the proposed development.

4. The above-mentioned is based on the following:

   4.1 The pontoon boat will be used for guided tours and not overnight accommodation.

5. However, should any future development trigger any listed activity in terms of the EIA Regulations, 2014 (as amended), an application form for Environmental Authorisation must be submitted to the Competent Authority and the Environmental Authorisation obtained prior to the development proposal being commenced with on the proposed site. The relevant application forms are available on this Department's website: www.westerncape.gov.za/eadp.

6. You are further reminded of your general duty of care towards the environment in terms of section 28(1) of NEMA which states:

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"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."

7. Please note that the applicant must comply with any other statutory requirements that may be applicable to the undertaking of the activity.

8. Kindly quote the abovementioned reference number in any future correspondence concerning the proposed development.

9. This Department reserves the right to revise or withdraw its comments and request further information based on any information received.

Yours faithfully

Marbe Coetzee
Digitally signed by Marbe Coetzee
Date: 2023.05.10 10:40:45 +02'00'

pp
HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

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Annexure K

BREEDE-OLIFANTS

Cnr Mountain Mill & East Lake Road, Worcester 6850, Private Bag X3055 Worcester 6849
Enquiries: Vhengani Ligudu Tel: +27 23 346 8000 Fax: +27 23 347 2012 E-mail: vligudu@bocma.co.za

REFERENCE NO: 4/10/1/G40G/AFDAKS RIVER 575/210& 220
Date: 23 November 2023

The Municipal Manager
Overstrand Municipality
P. O. Box 20
HERMANUS
7200

Attention: Mr H Olivier

RE: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINSTRATIVE PENALTY: PORTIONS 210 AND 220 (PORTIONS OF PORTION) OF FARM AFDAKS RIVIER NO. 575, CALEDON.

With reference to the above-mentioned document received by this office on the **01/11/2023**, requesting comments.

This office has reviewed the above mentioned application and has no objections on the proposed activities subject to the following comments:

1. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered.
2. The properties are located along the Bot River Estuary, please note that an Estuary is not a watercourse in terms of the National Water Act, 1998 (Act 36 of 1998) and therefore water uses are not triggered by the use of Lady Bonnie boat.
3. Please consult the Department of Environmental Affairs and Development Planning regarding the use of Estuary for recreational purposes.
4. The minimising of waste must be promoted and alternative methods for waste management must be investigated.

This office reserves the right to revise initial comments and request further information based on any additional information that may be received. The onus remains with the registered property owner to confirm adherence to any other relevant legislation that any activities might trigger and/or need authorization.

Please do not hesitate to contact the above official should there be any queries.

Yours faithfully

Ligudiwc
MR JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (Acting)

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Annexure L1|4

Henk Olivier

From: Andre Olivier
Sent: Wednesday, 21 February 2024 09:23
To: Henk Olivier
Cc: Jacques Wilkinson; Riaan Marinus
Subject: RE: Benguela Cove

Morning Henk

My take on the questions posed by members of the Benguela HOA.

1. **Whether the HOA followed the correct processes/ procedures when submitting a planning application with regard to the Common Property.**

   a. In terms of **clause 2.4.4** of the **Constitution** **"common property"** means all land transferred to the HOA. In this regard **clause 29** confirms that this has in fact been done. This includes Erven 210 and 220.

   b. **Clause 3.1** determines that the **main business** of the HOA is to promote, advance and protect the interests of Members in the development. This is confirmed and expanded on by **clause 3.2** which clearly determines that the **main object and purpose of the HOA** is to provide for the "control over and protection and maintenance of the "**common property**" of areas regarded as "common to all Members".

   c. All **registered owners** are members of the HOA – see **clause 4.1**. If, in terms of **clause 4.5** all members shall be **jointly liable** for **any expenditure** incurred in connection with the main object **or**(?) purpose of the HOA for **anything** done by the HOA with the intention of benefitting its Members, then this surely means that the members have a constitutional right to be **informed** as to what the HOA does or intends doing in the development? **Common sense** dictates that Members cannot be saddled with responsibilities and liabilities only and not have any say or a right to be informed as to how liabilities are to be incurred.

      Despite the provisions of **clause 9.1,** which seems to give the HOA unfettered powers with regard to the management and control of the business and affairs of the HOA this seems to be tempered by **clause 9.5.4** which clearly states that whatever rules and regulations the HOA may make, said rules and regulations must be made for the **advancement of the interests of Members,** which in terms of **clause 9.5.5** necessarily includes the conduct of Members on the **common property** and, in terms of **clause 9.5.6** the manner and methods of **use** of the **common property** by Members of the HOA.

   d. In my opinion **clause 30.2.4** is probably the most important provision which confirms the rights of members of the HOA because it states that the common property shall not be built upon etc **"...without the sanction of a special resolution of the Members of the HOA".**

      In considering the above it is correct that the HOA "owns" the common property, but it does not mean that it owns the common property to the **exclusion** of the members of the HOA because all the members are charged monthly levies to cover all expenses which are incurred or anticipated which includes expenses regarding the **common property**. It stands to reason that without the levies paid by the Members, it will not be possible for the HOA to cover the costs of maintaining the common property and in this regard, it would appear that the Developer apparently attends to the Services and Maintenance of the Development.

As to this question I am of the opinion that given the proven constitutional rights of Members of the HOA they had the **right** to be informed by way of a **Special General Meeting** of the intention of the HOA to submit a Planning Application for whatever reason concerning the **common property.**

Furthermore, I doubt whether the HOA will be able to rely on **clause 14.4.**

2. **Do all Members of the HOA have the right to use common property for the same purpose, ie, to operate a boat for paying tourists?**

a. If I understood your question correctly, it would appear that the Developer has decided to operate a pontoon excursion for tourists on the river without having complied with the development's constitutional requirement that such an idea first had to have been canvassed and discussed with the Members on a Special General Meeting of the HOA? In addition to this it would appear that the money generated by the pontoon is/will be claimed by the Developer alone in other words, the money is not shared /will not be shared with the HOA and ultimately the Members?

Well again, and in furtherance of the exposition above, the Benguela Cove development consists of the HOA and the registered owners as Members of the HOA. The HOA and the Members are 2 sides of the same coin, ie, the one cannot exist without the other.
Furthermore, and as demonstrated above, the constitution of the development makes provision for the rights and duties of both the HOA and the Members – it can never be that the HOA only has rights and the Members only duties. In the matter at hand **Erven 210 and 220** are **common property** to which the Owners qua Members of the HOA enjoy an unassailable right of access, use and enjoyment.

As I see it the question posed seems a bit vague namely: should all Members of the Association have the right to use the common property for the same purpose, ie, to operate a boat for paying tourists? If this is indeed the question then my answer from a purely **practical point** of view will be **no** because if every Member in that development wants to launch a boat (pontoon?) it will obviously be chaos, to say the least. On the other hand, from a **legal point** of view they (probably) have the right given their constitutional rights to use and enjoy the common property.

If the real question is whether the Developer must/should share the income generated from its pontoon excursions, then the answer is probably **yes,** because the Developer must necessarily make use of the **common property** in order to:

1. Transport the tourists across the common property of the development to and from the launch site.
2. Use the common property as the launch site of the pontoon.
3. Use the common property in order for the tourists to board and disembark the pontoon.

Given the above, and assuming that the HOA decided to permit the **Developer** to use the common property for its own private business without having taken into account the rights of the Members, then it would appear that the HOA is in contravention of the constitution, especially **clauses 3.1; 3.2; 9.5.4; 9.5.6.**

I furthermore assume that this issue was never tabled at a General or perhaps more aptly a **Special General Meeting** which in itself is constitutionally irregular given the fact that all matters which affect or might affect the rights and duties of the Members must be canvassed on a meeting. The foregoing is of course subject to whether the **Trust Committee** decides to convene such a meeting given the fact that it has a discretion whether or not to convene such a meeting – please refer to **clause 12.4: "...whenever they think fit..."** II

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How the Members (excluding the Developer as an Owner and Member of the HOA) will be able to overcome this challenge is unknown because it would appear that the **Developer** (also supposedly an **ordinary** registered owner of at least one erf and therefore an (**ordinary**) member of the HOA) has somehow managed to ingrain itself into the **Trust Committee** and to have obtained certain rights with regard to the management and control of the development inclusive of the **common property** – please refer to **clause 11.3** where the Developer **must** be present at all meetings of the Committee and seemingly represented by **at least 50%** of the quorum.
If, for instance an issue is tabled at a Meeting, and the Developer represents at least 50% of the quorum how will any decision which might be adverse to the Developer ever be taken and more importantly, passed? It seems as if the Trust Committee and the Developer **"rule the roost"** in this development and that the rights of the ordinary members are to a large degree only **token**.

Regards

Andre Olivier
Legal Advisor
Overstrand Municipality/Munisipaliteit

T: +27 (0) 28 313 8903 | F: +27 (0) 86 400 6638
E: aolivier@overstrand.gov.za

From: Henk Olivier <holivier@overstrand.gov.za>
Sent: Monday, February 19, 2024 12:39 PM
To: Andre Olivier <aolivier@overstrand.gov.za>
Subject: Bengule Cove

Andre

Vind aangeheg die lugfoto van die twee erwe soos versoek, e nook n afskrif van die Soneringskaart in wit en swart. Die erf nommers is gemerk, zoom maar net bietjie in.

Kinds Regards/Vriendelike Groete

Henk Olivier
Town Planner

Overstrand Municipality
A 1 Magnolia Street, Hermanus, 7200 | P P.O Box 20, Hermanus, 7200
T +27 (0) 28 313 8900 | F +27 (0) 28 312 1894
E holivier@overstrand.gov.za

To be a centre of excellence for the community"

From: holivier@overstrand.gov.za <holivier@overstrand.gov.za> **On Behalf Of** scans@overstrand.gov.za
Sent: Monday, February 19, 2024 12:20 PM
To: Henk Olivier <holivier@overstrand.gov.za>
Subject: Message from KM_C558

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Outlook

Interpretation Benguela Cove Constitution: Portion 210 and 220 farm 575, Benguela Cove

From Henk Olivier <holivier@overstrand.gov.za>
Date Wed 14-Feb-24 9:55 AM
To Andre Olivier <aolivier@overstrand.gov.za>
Cc Loretta Gillion <loretta@overstrand.gov.za>

1 attachment (2 MB)
SKM_C55824021409240.pdf;

Andre

The Benguela Cove HOA applied to the municipality on common property to enable the Developer (BCI) to utilize a pontoon for tourist facility (commercial) purposes, for boat trips for paying customers on the lagoon. In the public participation process of the Municipality objections were received from residents/members of the HOA that they were not informed about the application prior to the application being submitted to the Municipality. They are also of the opinion that the processes in terms of the Benguela Cove Constitution were not correctly followed (no special meeting was held with members.). Please see the attached Constitution specifically Sections 9.5 and Section 30.

My questions are as follows?

1. Did the HOA follow correct process i.t.o the Constitution when submitting the planning application on common property, without tabling the proposal at a special meeting of its members of the Association for a vote.
2. Some objectors make the interpretation that Section 30,2.3 implies that should any additional rights be approved on common properties, all members of the Association should have the right to use the common property for the same purpose. In this case operate a boat for paying tourists.

I also attach a copy of a map showing the position of the two relevant portions in Benguela Cove.

Town Plannings concern is that should we further process the application and decide on the application, there could be some form of legal implication for the Municipality.

Kinds Regards/Vriendelike Groete

Henk Olivier
Town Planner

Overstrand Municipality
A 1 Magnolia Street, Hermanus, 7200 | P P.O Box 20, Hermanus, 7200
T +27 (0) 28 313 8900 | F +27 (0) 28 312 1894
E holivier@overstrand.gov.za|

To be a centre of excellence for the community

From: holivier@overstrand.gov.za <holivier@overstrand.gov.za> **On Behalf Of** scans@overstrand.gov.za
Sent: Wednesday, February 14, 2024 9:25 AM

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OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
25 APR 2024
-DOCUMENT CONTROL-
OVERSTRAND MUNICIPALITY

Annexure M 1/52

Project Office

Town Planning & Project Management

FILE NO. PNW 210 &
220/575 Farm
SCAN NO. Afdaks Rivier
COLLABORATOR NO.
2036630

Our Reference: 22/164
Your Reference: Ptn 210 & 220 of Farm 575, HBENG

24 April 2024

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr Henk Olivier

PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON: APPLICATION FOR A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith the response to your letter dated 27 February 2024 as received from the Chairman of the Benguela Cove Homeowners Association:

"BACKGROUND

1. *The Benguela Cove Lagoon Wine Estate is a mixed-use development which were / are developed as such for residential, agricultural and commercial purposes by Benguela Cove investments Pty Ltd (BCI) as developer in terms of the rezoning of the property and subsequent registration of the Benguela Cove Home Owners` Association Constitution.*
2. *Par 3.1 of the Constitution states that the main business of the Association is to promote, advance and protect the interests of its Members, relative to their ownership in the development. In addition Par 3.2 of the Constitution confirms that the main object and purpose of the Association is to provide for the promotion and enforcement of standards in keeping with the character of the Benguela Cove Lagoon wine Estate development in such a way that Members derive the maximum collective benefit by control over and protection and maintenance of the common property of areas regarded as common to all Members and to apportion the expenses in relation thereto between the Members by the charging of levies to the Members.*
3. *BCI is a Member of the HOA, which was reconfirmed by arbitration order during October 2020. BCI is paying monthly levies as registered owner of the commercial as well as all unsold residential portions.*

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4. *BCI is a private company with one of its` purposes to derive profit subject to the contents of the Constitution.*
5. *Portions 210 & 220 are defined in the Constitution as common property. The aforesaid portions were transferred to The HOA during 2018. It follows that the HOA as registered owner of the aforesaid portions is obliged to comply with paras 3.1 & 3.2 of the Constitution and to manage these portions to the benefit of all the residential owners and BCI.*
6. *The Trustee Committee shall manage and control the business and affairs of the HOA subject to the provisions of the Constitution – par 9.1.The Trustees are fully entitled to make regulations for the advancement of the interests of its members (par 9.5.4), the regulation and control of the common property (par 9.5.5) & for governing the manner and methods of use of the common property by or on behalf of the Members of the HOA (par 9.5.6).*
7. *Conduct Rule 14 contains the provisions regarding the Jetty & Mooring Slipway. The use of the area shall be reserved for owners and / or occupiers and their guests. BCI as owner cannot be excluded from this provision.*

FACTS

BCI wishes to use Portions 210 & 220 as a member of the HOA in accordance with the Constitution.

1. *By virtue of its` ownership and nature of business, such use can only be for commercial purposes.*
2. *The registered owner of the abovementioned properties is the HOA and BCI consequently approached the Trustees Committee to consent to the proposed use.*
3. *The application to the Trustee Committee was made on 20 January 2023.*
4. *BCI is fully aware of the provisions of Annexure E to the Constitution and no deviation was applied for.*
5. *The Trustees duly considered and supported the application. It was so resolved on 20 January 2023 (copy of resolution annexed hereto).*

CONCLUSION

In view of the aforesaid:

1. *BCI as member of the HOA is fully entitled to the use of Portions 210 & 220. It would be unconstitutional to refuse BCI to use the aforesaid properties as long as the provisions of the Constitution including Annexure E had been complied with*
2. *BCI`s application for consent was not unconstitutional.*
3. *The Trustees had full locus standi to consider BCI`s application for consent.*
4. *The Trustees` consent was in terms of paras 3 , 9, Conduct Rule 14 and Annexure E of the Constitution.*
5. *The aforementioned consent did not have the effect that any provision of the Constitution was amended. The Trustee Committee`s consent is a ratification of BCI`s entitlement to use Portions 210 & 220.*
6. *Consequently, it was unnecessary to obtain a special resolution or even an ordinary resolution from the members of the HOA.*
7. *Clearly there is no prejudice to the residential members of the HOA."*

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ANNEXURES:

Annexure A: Benguela Cove Home Owners` Association Constitution
Annexure B: Annexure E of Benguela Cove Home Owners` Association Constitution
Annexure C: Trust Resolution

We trust that you will find the above in order. Should you require any additional information, please do not hesitate to contact us.

Yours faithfully

Jansen

THIAN JANSEN –
PROFESSIONAL TOWN PLANNER (A/2858/2019)

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Annexure A: Benguela Cove Home Owners` Association Constitution

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Benguela Cove
LAGOON WINE ESTATE

BENGUELA COVE

HOME OWNERS' ASSOCIATION

CONSTITUTION

UPDATED 20TH APRIL 2018

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1. NAME
2. DEFINITIONS
3. OBJECT AND PURPOSE
4. MEMBERSHIP
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8. OFFICE OF TRUSTEES
9. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE
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11. PROCEEDINGS OF THE TRUSTEE COMMITTEE
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21. FINANCIAL YEAR END

[1] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-06-New-Obligation-to-build-clause

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Benguela Cove
LAGOON WINE ESTATE

22. ACCOUNTS
23. AUDIT
24. INDEMNITY
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28. RATES AND TAXES
29. TRANSFER OF THE COMMON PROPERTY
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ANNEXURES:

(e) By-laws relating to the control and use of the Bot River Estuary

(A) AGRICULTURAL BENEFITS AGREEMENT

(B) SERVICES AND MAINTENANCE

(C) CONSTRUCTION ENVIROMENTAL MANAGEMENT PLAN

(D) URBAN AND ARCHITECTURAL DESIGN CONTROLS MANUAL VERSION 7[4]

(E) BY-LAWS RELATING TO THE CONTROL AND USE OF THE BOT RIVIER ESTUARY

[Government Gazette N0. 5093, P.N. 480/1996 dated the 15th November 1996]

(F) BUILDER'S CODE OF CONDUCT

1. NAME

The name of the Association is: "Benguela Cove Home Owners Association".

2. DEFINITIONS

2.1 The headnotes to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

---

[2] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-14-Removal-of-esthetic-approval-clause
[3] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-15-Deposits
[4] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-21-New-design-guidelines-edition-7

2.2 Words importing the singular shall include the plural and vice versa.

2.3 Words importing the masculine shall include the feminine.

2.4 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

2.4.1 "the Developer" shall mean Benguela Cove Investments (Pty) Ltd, Registration No. 2002/004722/07, Ambition House, 107 Voortrekker Road, Bellville, Cape Town, 7535.

2.4.2 "the development" or "the estate" shall mean the land together with all improvements and services thereon.

2.4.3 "erf" shall mean a portion of private land owned by the Member within the development which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan.

2.4.4 "the common property" shall mean the land transferred to the H.O.A, which shall include Erven 222 to 227 inclusive, which is designated as Private Roads, Erven 205 to 211 and Erven 214 to 220 inclusive, which is designated as Private Open Spaces, Erf 221 which is designated as the Nature Reserve and Erf 212 which is designated as the Grazing Area, but shall exclude Erven 231 and 232, which is designated as the Agricultural Enterprise which shall be retained by the Developer for the cultivation of vines, olives and lavender fields, together with all the residential erven, the hotel, being Erf 228 and the commercial component, being Erf 229 within the development and all the dams, being Erf 213.

2.4.5 "The Agricultural Enterprise" shall mean the Vineyards, the Olive trees and the Lavender fields and dams. Situated on Erven 231, 232 and 213.

2.4.6 "The Commercial Component shall mean Erf 229 which includes the Public Area, being the Winery, Restaurant, Farm Stall, the Chapel and the Conference Facilities, but the Members shall have certain rights over these facilities as governed by the Agricultural Benefits Agreement.

2.4.7 "the general plan" shall mean the general plan relating to the land as approved by the surveyor general;

2.4.8 "the association" shall mean the Benguela Cove Lagoon Home Owners Association;

2.4.9 "the Act" shall mean the Companies Act No. 61 of 1973.

2.4.10 "occupant" shall mean any person lawfully occupying an erf by virtue of his relationship to or with a Member of the Association.

2.4.11 UADRC" means the Urban and Architectural Design Review Committee.

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Benguela Cove
LAGOON WINE ESTATE

3. OBJECT AND PURPOSE

3.1 The main business of the Association is to promote, advance and protect the interests of its Members, relative to their ownership of erven in the development.

3.2 The main object and purpose of the Association is to provide for:

- the promotion and enforcement of standards in keeping with the character of the Benguela Cove Lagoon Wine Estate development, in such a way that Members derive the maximum collective benefit.
- control over and protection and maintenance of the common property of areas regarded as common to all Members, and to apportion the expenses in relation thereto between the Members by the charging of levies to the Members,

3.3 It is recorded that the agricultural property within the development designated for the cultivation of vines, olives trees and lavender fields are under the direct control and ownership of the Developer, notwithstanding the fact that the Developer has granted the H.O.A and its Members certain rights and benefits, which are governed by the Agricultural Benefits Agreement annexed hereto marked Annexure "A". It is further recorded that notwithstanding the aforementioned ownership of the Developer, the Developer shall be unconditional obliged to develop the agricultural enterprise and commercial facilities in order to fulfil its obligations to the H.O.A and its Members in terms of the aforementioned Agricultural Benefits Agreement.

4. MEMBERSHIP

4.1 Membership of the Association shall be limited to registered owners of erven in the development which Membership shall commence simultaneously with the transfer of an erf in the development into the name of the registered owner; provided that:

4.1.1 a person who is entitled to obtain in terms of the provisions of Section 43 of Act No. 47 of 1937 a Certificate of Registered Title to any such erf shall be deemed to be registered owner thereof;

4.1.2 when any such owner is more than one person or entity, all the registered owners of that erf shall be deemed, jointly and severally, to be one Member of the Association.

4.2 When a Member ceases to be the registered owner of an erf, he shall immediately cease to be a Member of the Association.The registered owner of an erf may not resign as a Member of the Association.

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Benguela Cove
LAGOON WINE ESTATE

4.3 The rights and obligations of a Member are not transferable and every Member shall;

4.3.1 to the best of his ability further the aims and objects of the Association and;

4.3.2 observe and be bound by, this constitution and all rules and regulations made by the Association or by the Trustee Committee from time to time.

4.4 Nothing contained in this constitution shall prevent a Member from ceding his rights in terms of this constitution as security, to the mortgagee of that Member's erf.

4.5 Each Member of the Association shall be jointly liable for any expenditure incurred in connection with the main object or purpose of the Association and for anything done by the Association with the intention of benefiting its Members.The Association shall charge monthly levies to cover all expenses which are incurred or anticipated, and which shall be borne by each Member equally, as to a 1/126 share per erf until such time as the buildings are completed on the Hotel Site, the Public Areas and the Commercial Components, thereafter the Association shall charge monthly levies to cover all services to be provided, which shall amount to approximately 1/136 of the total costs save for the Hotel and Commercial Components, which shall be levied at 6/136 each respectively of the total costs. It is hereby recorded the H.O.A has entered into a Services and Maintenance Agreement with the Developer and that all Members have been made aware of such agreement as per Annexure " b ". It is further recorded that the Agricultural Enterprise shall be liable and obliged to meet all of its own costs and/or expenses from services received and all maintenance of its Enterprise and thus will not be liable to pay any levies to the H.O.A.

4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:

4.6.1 The property, or any part thereof, shall not be transferred without the written consent of the Benguela Cove Home Owners' Association of which the Purchaser and his successors in title, for so long as they are the registered owners of the property, shall be obliged to be a Member and bound by its constitution, rules and regulations.

4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be effected to the property, nor shall the access to the property be altered, without the prior written approval of the Association.

4.7 A consent to transfer an erf as contemplated above shall be withheld by the Trustee Committee until the following have been complied with:

4.7.1 Levies and any other amounts due to the Association by the registered owner (and all

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occupants claiming through him) of the property sought to transferred, have been paid up to date to transfer or that provision has been made to the satisfaction of the Trustee Committee 'for the payment thereof against registration of transfer

4.7.2 All structures and improvements on the property sought to be transferred, not approved of by the UADRC of the Association as contemplated herein, have been removed to the satisfaction of the UADRC or the approval of the UADRC has been given in respect of such structures or improvements, as contemplated herein.

4.8 The Trustee Committee may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

4.9 Every Member must register with the intranet of the Association at www.mybenguela.com, which is a digital medium that provides information, regulations and notifications with regards to the Association and its Members. Members are to register and maintain their contact details in a dedicated Member Directory to be used as the address for all electronic and registered email/postal notifications and Correspondence. Electronic notifications and correspondence sent via the intranet or to the Member's email address are deemed to have been sent to the correct electronic address as registered with the Member Directory at the time of sending. In the event of a dispute, the sending and receiving of emails is governed by section 23 of the Electronic Communications and Transactions Act 25 of 2002.[5]

5. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the
Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

TRUSTEES

6. TRUSTEE COMMITTEE

6.1 There shall be a Trustee Committee for the Association which shall consist of 4 (FOUR) Members.

[5] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-03-Duty-to-register-with-Intranet

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6.2 A Trustee Member shall be an individual, but need not himself be a Member of the Association.A Trustee Member, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.

6.3 The Trustee Committee shall consist of not less than two representatives of the Developer and/or a 50% [fifty per centum] representation of the Developer at all times.

6.4 At a meeting of the trustees 50% (Fifty Per centum) of the number of trustees, but not less than two shall form a quorum. If the number of trustees falls below the number necessary to form a quorum, the remaining trustees who shall not be less than two, may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.

6.5 In the event of any decision resulting in a deadlock, the Chairman shall have the casting vote, providing that in the event that the decision shall affect the obligations of the Developer in terms of the Agricultural Benefits Agreement and/or any decision which may affect the Agricultural Enterprise in any manner whatsoever, such decision shall not be valid and binding, unless the Developer forms part of the quorum and the Developer shall further have the right to veto any such decision.

7. REMOVAL & ROTATION OF TRUSTEE MEMBERS

7.1 Save as forth in 7.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office upon the election or re-election of the new trustees, but each trustee will be eligible for re-election to the Trustee Committee at such meeting.

7.2 A Trustee shall be deemed to have vacated his office as such upon:

7.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

7.2.2 his making any arrangement or compromising with his creditors;

7.2.3 his conviction for any offence involving dishonesty;

7.2.4 his becoming of unsound mind or being found lunatic;

7.2.5 his resigning from such office in writing delivered to the Trustee committee at trustees@mybenguela.com[6];

7.2.6 his death;

7.2.7 his being removed from office as provided in Section 220 of the Act, provided that any-

[6] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-04-Trustee-resigning-via-email

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thing done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

7.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.

8. OFFICE OF TRUSTEES

8.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

8.2 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

8.3 Within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment,

provided that the office of the Chairman or Vice- Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices.

In the event of any vacancy occurring in any of the aforesaid offices at any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement to such office.

8.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or by the Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

8.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or by the Trustee Committee.

8.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman,ViceChairman, as

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the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

8.7 The duration of the Trustees' appointment shall not be less than two years.

9. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

9.1 Subject to the express provisions of this constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not either by virtue of the provisions of the Companies Act, or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made, which aforementioned powers shall not include the Agricultrual Enterprise whatsoever.

9.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

9.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

9.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.

9.5 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:

9.5.1 as to the settlement of disputes, generally;

9.5.2 for the furtherance and promotion of any of the objects of the Association;

9.5.3 for the better management of the affairs of the Association;

9.5.4 for the advancement of the interests of Members;

9.5.5 for the regulation and control of the conduct of Members and occupants while in the estate, whether on erven or on the common property (excluding the Agricultural Enterprise which vests with the Developer);

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9.5.6 governing the manner and methods of the use of the common property by or on behalf of the Members of the Association or any occupant;

9.5.7 for the conduct of Trustee Committee meetings and general meetings;

9.5.8 to assist it in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time. Further to monitor and report on the services and maintenance provided by the Developer in terms of the Services and Maintenance Agreement which has been entrenched and is annexed hereto marked Annexure " b".

9.6 For the purpose of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

10. OTHER PROFESSIONAL OFFICERS (*existing clause*)

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

10. OBLIGATION TO BUILD[7] (*new clause added*)

10.1 The Member acknowledges that the erection of a dwelling and the establishment and landscaping of a garden on every erf shall:

10.1.1 in the case of a sale concluded as between the Developer and the first purchaser of an erf, commence within 24 (twenty four) months of the date of registration of transfer of the erf into the name of the said first purchaser and shall be completed within 36 (thirty six) months thereafter; or

10.1.2 in the case of a sale concluded between a Member other than the Developer, and a bona fide purchaser of an erf, commence within 12 (twelve) months of the date of registration of transfer of the erf into the name of the said bona fide purchaser and shall be completed within

[7] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-06-New-Obligation-to-build-clause. This new clause 10 was added after SR06 was approved. Unfortunately, the numbering is now "slightly off" since SR045 (that would have changed paragraph 9 and combined it with the old/existing paragraph 10) was not passed.

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36 (thirty six) months of the date of registration of transfer of the erf into the name of the said bona fide purchaser.

10.2 The date for the commencement and/or the completion of the building works may be extended by the Association, which extension will only be valid if reduced to writing and signed by Association and the Member. Completion shall have occurred only upon the issue of a certificate of completion by the local municipal authorities, the issue of design guideline approval by the designated architect confirming that the UADRC guidelines have been complied with and the issue of a landscaping certificate by the Association.

10.3 If a Member fails to comply with the provisions of clauses 10.1 and 10.2 relating to the commencement and completion of the construction of his dwelling, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this Constitution and/or at law, at its election, require the Member to landscape and irrigate the erf at the cost and expense of the Member, failing which the Association shall be entitled to do same on the Member's behalf and recover from the Member all amounts so disbursed.

10.4 Notwithstanding anything to the contrary aforegoing:

10.4.1 and notwithstanding the fact that a Member is up to date with payment of his levies and any other amount that may be due to the Association, in the event that the construction of the dwelling and the establishment and landscaping of the garden are not completed within the period stipulated in 10.1 above (or within such extended period as set out in 10.2 above):

10.4.1 1 the rights to the use of the common property by the Member shall automatically be, suspended until such time as the construction of the dwelling and the establishment and landscaping of the garden have been completed which shall be evidenced by a certificate of completion and a landscaping certificate referred to in 10.2 above;

10.4.1.2 The Member's building deposit shall be forfeited to the Association who shall be entitled to utilize such deposit in its sole and absolute discretion.

10.4.2 in the event that the buildings have not been erected in accordance with the approved building plans and/or architectural design guidelines, the Association shall be entitled

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without prejudice to its other rights in terms of this Constitution or in law, to impose such fine as it may determine expedient from time to time on the Member which amount shall be payable by the Member on demand.

10.5 Notwithstanding anything to the contrary aforegoing, and in addition to any provision herein contained, if construction of the dwelling and the establishment and landscaping of the garden have not been completed within the time period prescribed in this clause or within such extended period as may be granted as set out above, the Association shall, in its sole discretion be entitled to give notice in writing to the Member to complete the construction of the dwelling, and the establishment and landscaping of the garden within a period of 7 (seven) months from the date of such notice, and failing compliance with such notice, the Association shall have the right to impose a monthly penality in the discretion of the Association, to be determined by the Trustees from time to time, which shall be payable by the defaulting member in addition to any other levie which may be payable.

10.6 The stipulations contained in this clause 10 shall be binding on the Member and his successors in title and the Member shall include such stipulations in a Deed of Alienation for the sale of the erf to a purchaser thereof.

10.7 The Association shall be entitled to withhold its consent to the transfer of the erf unless the proposed Member has undertaken in writing to be bound by this Constitution with effect from the date on which the Member's obligations cease.

10.8 The aforegoing obligations relating to the erection of a dwelling on each erf shall not apply to the erven still registered in the name of the Developer

11. PROCEEDINGS OF THE TRUSTEE COMMITTEE

11.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.

11.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter then no meeting of the Trustee Committee needs be held for that quarter.

11.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 2 (two) Trustees where there are 4 (four) Trustees and 3 (three) Trustees where there are more than 4 (four)

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Trustees, providing that the Developer is present at all times and represented by at least 50% [fifty per centum] of such quorum.

11.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

11.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting.All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies.The Trustee Committee Minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors,The Association Members and Local Authority.

11.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.

11.7 Save as otherwise provided in this constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

11.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

GENERAL MEETINGS

12. GENERAL MEETINGS OF THE ASSOCIATION

12.1 The Association shall before the month of May in each calendar year, hold a general meeting as its Annual General Meeting. In addition to any other general meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of paragraph 13 below

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12.2 Such annual general meeting shall be held at such time and place subject to the aforegoing provisions, as the Trustee Committee shall decide from time to time.

12.3 All general meetings other than annual general meetings shall be called special general meetings.

12.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on the request of not less than 5 (five) Members.

13. NOTICE OF MEETING

13.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called with not less than 21 (twenty one) days notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

13.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

13.1.2 in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 95% (ninety five percent) of the total voting rights of all Members.

14. SERVICE OF NOTICES

14.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf owned by him.

14.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

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14.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted; and proof of the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

14.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

14.5 Notification for the service of any Association correspondence shall be permitted to take place via email.[8]

15. VENUE OF MEETINGS

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

16. QUORUM

16.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such, that of the Members entitled to vote, one-half of the total votes of all Members of the Association entitled to vote shall be represented at the meeting, save that not less than 5 (five) Members must be present in person or by proxy.

16.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

17. AGENDA AT MEETINGS

17.1 In addition, to any other matters as would be required by the Act to apply to a company or to these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

17.1.1 the consideration of the Chairman's report to the Trustee's Committee;

[8] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-07-Notification-via-email

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17.1.2 the election of the Trustee Committee;

17.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

17.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

17.1.5 the consideration of the report of the Auditors.

18. PROCEDURE AT GENERAL MEETINGS

18.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

18.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

18.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

19. PROXIES

19.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association.The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any Member and where a trust, by any trustee.

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19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.

19.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

20. VOTING

20.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of paragraph 4.1.2 hereof. The Developer shall be entitled to a single vote in respect to each erf held by it, in terms of the general plan and in accordance with the deeming provision of paragraph 4.1.1 above.

20.2 Save as expressly provided for in these presents, no person other than a Member duly registered, who is not under suspension and who has not had voting rights suspended in accordance with clause 26.1.3, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

20.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

20.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.

20.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member, subject to Clause 6.5 in favour of the Developer.

20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution

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20.7.1 which would have the effect of amending or repealing any part of this constitution, or

20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or

20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

20.8 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

21. FINANCIAL YEAR END

The financial Year End of the Association is the end of February each year.

22. ACCOUNTS

22.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members, of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

22.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preseding financial year of the association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year of the Association. Every such balance sheet shall be accompanied by proper extensive reports of the Trustee Committee and the Auditors, and

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there shall be attached to the notice sent to Members convening each Annual General Meeting draft copies of such accounts, balance sheet and reports, with the audited accounts, balance sheet and reports (all of which shall be framed in accordance with the provisions of the Companies Act) and any other documents required by law to accompany same, to be sent to Members at least 72 hours prior to the Annual General Meeting via electronic communication.[9]

23. AUDIT

23.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

23.2 The Auditors shall perform such duties as are performed by Auditors of any registered company

24. INDEMNITY

24.1 All Members of the Trustee Committee and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman,Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

24.2 Every Member of the Trustee Committee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a Trustee Member, his duties as Chairman of Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

24.3 A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Members of the Trustee Committee, whether in their capacities as Trustee Members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the

[9] 21st February 2018, Martin Diessner, Special Resolution 20180224-01

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insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

25. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association and every Trustee Member shall be deemed by virtue of his Membership or, as the case may be, his holding office as a Trustee Member, to have waived as against every other Trustee Member, the Trustee Committee, the Chairman or Vice-Chairman, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee Member, or any reference to such Member or Trustee Member, made at any Trustee Committee meeting or general meeting, or otherwise in the performance or exercise of any right, function, duty power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member of Trustee Member, whether such statement be true or false.

26. BREACH

26.1 Any Member who fails to make payment to the Association on due date therefore of any monthly levy or other amount payable by such Member, or who otherwise breaches or fails in observance of any of the provisions of these presents may, if so determined by a Resolution passed by not less than 1/2 (one half) of the trustees present at the meeting of the trustees committee:

26.1.1 be ordered to pay such outstanding amounts and or

26.1.2 be ordered to pay the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation be ordered to pay such interest as may be determined on the outstanding amount as in each case shall have been determined at such Trustees Committee meeting.

26.1.3 be denied voting rights at any general meeting

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26.2 The Member concerned shall be invited to attend such Trustee Committee meeting by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings other than as allowed by the chairman of the meeting.

27. WATER, ELECTRICITY, REFUSE REMOVAL & FIBRE NETWORK

27.1 Each erf shall have a local authority water supply of water for household use and shall be obliged to pay the local authority for such water consumed. Where the Association is billed directly by the local authority for such water then a sub-meter shall be installed by the Association, to the cost of the Association, who shall pay to the Association for all water used, in the manner determined by the Association.

27.2 All water consumed in respect of the common area, excluding the agricultural areas, in that the Developer is the owner of the dams, shall be paid for by the Association, out of its funds or levies collected. As regards the irrigation water sources on the Property, these are for exclusive use of the agricultural areas. Where the Developer allows irrigation water from its water sources on the property to be used for common area irrigation purposes, such water shall be metered and paid for by the Association.

28. RATES AND TAXES

Each owner of an erf shall pay such rates and taxes as are levied in respect of his erf to the relevant local authority.

29. TRANSFER OF COMMON PROPERTY

It is recorded that the Developer has transfered the common property to the Association which shall be responsible for the maintenance and upkeep thereof, except for the agricultural areas for the purpose of cultivating vines, olives and lavender, the upkeep of which shall be the responsibility of the Developer[10]. It is recorded as understood that the Developer on behalf of the Association, has entered into a long term Services and Maintenance Agreement with the H.O.A, to provide all services and maintenance to the common property.

[10] Special Resolution 20180407-19, Martin Diessner, 20180407-Special-Resolution-19-Common-use-area-transfer-complete-maintenance-HOA

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30. DEALINGS WITH THE COMMON PROPERTY

30.1 Neither the whole nor any portion of the common property shall be:

30.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or

30.2.2 subjected to a mortgage; or

30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or[11]

30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

31.2 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any Member's erf in accordance with the UADC Manual.

32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL

32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects[12] and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without

[11] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-09-Common-use-area-lease-to-agri-business
[12] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-10-ARC-Committee-Haydn-Ellis-Associates

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the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereinafter set out.

32.2 No owner of any erf shall be entitled to alter any construction thereon or to alter or vary the design or facade of his building, dwelling or improvements so constructed, without the prior written approval of the said UARCC.

32.3 Any registered owner within the development shall be obliged to pay a fee as outlined in the UARCC[13], for such review and approval of the Architectural Plans to Urban Concepts.

32.4 **Scrutinizing of House garden layout plan:** It is recorded that the Trustee Committee has further appointed Johan De Villiers and Associates as landscape architects The new landscape drawings will be checked to assess that the layout complies with the Landscape guidelines. A report will by compiled and issued to the Client. Where revisions are required we would also contact the Landscape Planner involved and note the corrections. The revised drawings will be rechecked and signed off. Fixed fee cost per dwelling to scrutinize the garden layout plans. Any registered owner within the developement shall be obligated to pay a fee as outlined in the Landscape guidelines[14] for such review and approval.

32.5 **Enviromental controls:** It is recorded that the Trustee committee has further appointed Charel Bruwer to manage the ECO startup with Urban Concepts,. to include site visits, environmental awareness training of contractors staff, necessary reports and final environmental sign off on completion of construction. The registered owner shall be obliged to pay for site visits (as necessary) to ensure compliance with environment controls, of no more than R2,000.00 (two thousand rand),[15] plus VAT thereon for such review and approval. This fee will escalate by 5% in January annually. Registered Owners must be aware that on some residential sites there may need to be a botanical search and rescue of sensitive plants. In these cases the Registered owner will be obliged to pay the fees of a botanist to remove and protect these plants.

32.6 Only dwellings which comply with the Urban and Architectural standards as set forth in the Urban and Architectural Review Control Manual, annexed hereto marked Annexure "d", may be built on the estate

~~32.7 The Aesthetics approval procedure shall consist of the following.~~

~~32.7.1 The designation of a suitably qualified and experienced registered architect as review authority for all building plans, it being recorded thatUrban Concepts Pty Ltd have been duly appointed first incumbents.~~

~~32.7.2 All building plans shall be drafted by registered architects only~~ [16]

[13] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-11-UARCC-fee-amendment
[14] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-12-Landscaping-fee-amendment
[15] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-13-Environmental-fee-amendment
[16] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-14-Removal-of-esthetic-approval-clause

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33. SECURITY AND BUILDING DEPOSITS[17]

33.1 Every purchaser of an erf shall pay a security deposit to the Association in such amount as may be determined by the Association.

33.1.1 The security deposit is to ensure that the Association, once established, shall have sufficient funds to execute its obligations.

33.1.2 The security deposit shall be payable within 7 (seven) days by the purchaser, upon acceptance of an offer to purchase of an erf.

33.1.3 Payment of the deposit constitutes a suspensive condition, and failure to pay such a deposit within the stipulated time period shall render the offer to purchase null and void at the election of the Association who shall be entitled to refuse to consent to the transfer of the erf in question, and to be of no force and effect whatsoever.

33.1.4 The Trustees shall cause all security deposits received by the Association to be deposited to the credit of an interest bearing account(s) with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or for further or other investment purposes.

33.1.5 All interest attracted by such an account shall accrue to the Association.

33.1.6 In the event of the purchaser alienating the property after the purchase thereof, the aforementioned security deposit shall be refunded to the purchaser, without interest, 4 (four) weeks after the new owner has taken transfer and paid his security deposit, and all rates and levies clearance certificates have been obtained. Such a purchaser must also have complied with all the standard terms and conditions of the Constitution, its accompanying annexures and any ordinary or special resolutions to be passed during the time of ownership of the erf.

33.2 Every purchaser of a vacant erf shall pay a building deposit to the Association in such amount as may be determined by the Association.

33.2.1 The building deposit is to ensure that a every purchaser of a vacant erf shall, in carrying out any building construction and/or improvements on his erf, shall comply with his obligations in terms of the Constitution and its accompanying annexures and shall not cause any damage whatsoever to any roads, pavements, common property infrastructure nor the property of another Member during the construction of any dwelling or building.

33.2.2 The purchaser shall pay the building deposit within 7 (seven) days of the acceptance of an offer to purchase of an erf.

33.2.3 Payment of the deposit constitutes a suspensive condition, and failure to pay such a deposit within the stipulated time period shall render the offer to purchase null and void at the election of the Association who shall be entitled to refuse to consent to the transfer of the erf in question.

33.2.4 The Trustees shall cause all building deposits received by the Association to be deposited to the credit of an interest bearing account(s) with a registered commercial bank in the name of the Association.

33.2.5 All interest attracted by such an account shall accrue to the Association.

[17] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-15-Deposits

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33.2.6 On the completion of any construction and/or improvements and the submission of an occupational certificate by the local municipal authority, the deposit shall be refunded to the Member, without interest.

33.3 An increase in the security deposit or the building deposit or any other value adjustment to any deposit shall be at the entire discretion of the Trustees to determine from time-to-time.

33.4 Interest on all deposit monies invested shall be used by the Association for any lawful purpose(s) in the interest of the Association.

34. CONDUCT RULES

USE OF PROPERTY AND/OR COMMON PROPERTY AND/OR AGRICULTURAL PROPERTY AND/OR COMMERCIAL COMPONENT

1.1 No owner or occupier of an Erf may, without the prior consent of the Trustees:

1.1.1 use the Erf for any purpose other than residential purposes.

1.1.2 permit any advertisement, name or lettering of any unsightly size, colour or character to be painted on or affixed to any wall, building or structure on the property and no advertisement, name or lettering of any kind shall be painted on or affixed to the roof of any building on the property, save for any advertising allowed by the Trustees for the commercial use of the Hotel and the Commercial Component.

1.1.3 erect, store or leave or allow to be erected, kept, stored or left any article or thing on any part of the common property;

1.1.4 remove any shrub, tree or plant on or in the common property;

1.1.5 erect any washing lines nor hang any washing or other items on any part of the building or the common property so as to be visible from outside the building or from any other Erfnor be exposed to view on the premises in any unsightly manner whatsoever.

1 1.6 that no noisy, injurious or objectional trade or business of any kind shall be carried on in any such dwelling house or building or on the Commercial component and such building shall, at all times, be kept in such a state as not to be a nuisance or annoyance to any owner and/or occupier and surrounding neighbours.

1.1.7 build any fires for braaing purposes of any sort on the common property, unless in the designated braaing areas.

1.2 An owner or occupier shall not place or do anything on any part of the common property or on the balcony, stoep or patio of his home which, in the Trustees' opinion, is aesthetically displeasing or undesirable when viewed from outside the building.

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1.2 An owner or occupier shall not deposit, throw or permit or allow to be deposited or thrown on the common property any rubbish, including dust, food, scraps, cigarette butts or any other litter.

1.3 The Owner and/or Occupier shall have the benefit of exclusive use and access for recreational purposes over the agricultural property to be retained by the Developer and the aforementioned Rules of Conduct shall control and govern the conduct of any person whilst in and/or on the agricultural property. In the event of any Member, Occupier and/or guest of any Members transgressing any of the Conduct Rules and any of the conditions set out in the Agricultural Benefits Agreement, the Trustee Committee shall have the right to terminate and/or suspend all benefits bestowed onto such Member.

2. DAMAGE, ALTERATIONS OR ADDITIONS TO A HOME, THE AGRICULTURAL PROPERTY AND TO THE COMMON PROPERTY

2.1. An owner or occupier of a home shall not mark, paint, drive nails or screws or the like into or otherwise damage or alter any part of the common property without first obtaining the prior written consent of the Trustees.

2.2. To ensure uniformity of appearance, the prior written consent of the Trustees must be obtained and must be submitted to the UARCC.

2.3. All internal building alterations are to be approved by the Trustees Committee.An approved plan together with payment of the requisite fee, is to be submitted prior to commencement of construction.Any building construction shall be regulated and governed by the Builder's Code of Conduct which is annexed hereto marked "F"

2.4 Owner or occupier of a home shall ensure:

2.4.1 any broken window pane is replaced within 3 days of breaking from whatsoever cause;

2.4.2. that all curtains are to be lined with a white or cream fabric. Blinds are to have a white or cream backing unless they are wooden blinds.

3. BEHAVIOUR OF OWNERS, OCCUPIERS, GUESTS

3.1. All owners and occupiers shall ensure that their use of their property, the Agricultural Property, the commercial property and the common property and its facilities is at all times conducted in such a manner as not to:

3.1.1. cause a nuisance, disturbance or inconvenience or annoyance to any other owner or occupier, particularly in the form of loud music, radio or TV or irritable audible noisome sound.This rule shall not be applicable to the Hotel and the commercial component.

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3.1.2. detrimentally affect the rights and interests of other owners or occupiers.

3.2. Owners and occupiers shall be responsible for the behaviour of their children and guests and shall be liable for any damage caused by them. Any damage caused by such children or guests shall be repaired at the cost of the owner or occupier concerned, within 14 days of notice by the Trustees, to the satisfaction of the Trustees.

3.3 No children are permitted to play in the parking area, stairwells & landings or any common property that may be designated by the Trustees from time to time.

4. REFUSE DISPOSAL

4.1 An owner or occupier of a property shall:

4.1.1. maintain in a hygienic and dry condition, a receptacle for refuse within his property.

4.1.2. ensure that before refuse is placed in such receptacle it is securely wrapped, or in the case of tins or other containers, completely drained.

4.1.3. for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the Trustees.

4.1.4. when the refuse has been collected, promptly return such receptacle to his property.

4.1.5. ensure that no garbage and/or garden rubble may be left outside the property except for collection on the date of collection. It may not be left out overnight.

5. VEHICLES

5.1 No owner or occupier shall park or stand any vehicle upon the common property or permit or allow any vehicle to be parked or stood upon the common property without the written consent of the Trustees. The Trustees may cause to be removed, wheels clamped or towed away from the development at the risk and expense of the owner of the vehicle parked, standing or abandoned on the common property without the Trustees written consent.

5.2. Owners and occupiers of their properties shall ensure that their vehicles and the vehicles of their visitors and guests do not drip oil or brake fluid and/or any other fluid or liquid of whatever nature on the common property or in any other way deface the common property. If dripping occurs, its removal will be for the account of the owner or occupier concerned.

5.3. No owner or occupier will be permitted to dismantle or effect major repairs to any vehicle on any portion of the common property, but may be permitted to attend to minor repairs and reconditioning of vehicles in enclosed garages only

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5.4 Only vehicles owned by owners or occupiers may be washed on the common property.The use of hose pipes and taps for the purpose of washing vehicles is restricted to owners or occupiers.

5.5 Hooters shall not be sounded within the Development other than in emergencies.

5.6 Vehicles may be parked only on such areas of the scheme as are specifically designated or approved by the Trustees for that purpose and in such a way that the flow of traffic and access to and egress from driveways are not obstructed.

5.7 No trucks, caravans, trailers, boats or other heavy vehicles may be parked within the Development without the prior written consent of the Trustees. It is recorded that the H.O.A shall be the registered owner of one of the jetties and all of the boat houses.The H.O.A shall monitor the usage and allocate mooring rights accordingly to the Members.The H.O.A shall enter into agreements of lease with its Members for the leasing of such boat houses.

5.8 Vehicles parking or entering the Development are subject to the express condition that it is parked at the owner's risk and responsibility and that no liability shall attach to the Trustees or its agents or any of their employees for any loss or damage of whatever nature which the owner, or any person claiming through or under him, may suffer in consequence of his vehicle having been parked on the common property;

5.9 Motor vehicles of visitors may only be parked on such areas as are specifically demarcated for that purpose.Where parking areas are demarcated for visitors, such areas may only be used for visitors parking and under no circumstances may any owner or any Member of their families park their vehicles in such areas;

5.10 Owners shall ensure that their visitors park in the correct place and do not cause any obstruction either in relation to garages or otherwise;

5.11 Bicycles, motor cycles, tricycles, roller skates, skateboards and the like may not be left on any portion of the common property.

6. PARKING

6.1 Parking is to be confined to the specified parking area allocated to each owner/occupier and owners and/or tenants are under no circumstances and/or without specific permission of the Trustees allowed to park in the visitors' parking bays whatsoever.

6.2 Guests are to use only those bays reserved and specifically demarcated for visitors.A breach of this rule will entitle the Trustees to have any offending vehicle towed away from the Development at the risk and at the expense of the owner of the vehicle or alternatively the owner of the property.

6.3 Under no circumstances will parking in front of any fire hydrants be permitted.A breach of this rule will likewise entitle the Trustees to have any offending vehicle removed or towed away to a public road

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or garage at the expense and Risk of the owner of the vehicle or alternatively the owner of the property.

7 ANIMALS, REPTILES AND BIRDS (DOMESTIC PETS, RESTRICTED TO DOGS)

7.1 No animals, reptiles, birds (other than a bird in a cage) shall be kept or harboured in the estate unless expressly authorised in writing by the Trustees subject to the provisions of clause 7.2 herein. When granting such authority, the Trustees may prescribe any reasonable condition. Should any prescribed condition be breached, the Trustees may immediately withdraw such authority.

7.2 Any owner shall be restricted to two domestic pets only. In the event of such owner on date of occupation having more than two domestic pets, the owner shall immediately notify the Trustees hereof. Such domestic pets, providing that it does not exceed three pets, shall be entitled to remain in the development for the duration of their life. On the demise of such pets, the owner shall not be entitled to replace them and shall thereafter be restricted to having two domestic pets as aforementioned herein.

7.3 Any pet that causes any nuisance, disturbance, inconvenience and/or annoyance to any other owner and/or occupier, particularly in the form of barking, shall be permanently removed from the development.

7.4 Any owner/occupier who has been granted authority to keep or harbour any animal, reptile or pet shall ensure that such animal, reptile or pet does not foul any part of the common property or otherwise cause any nuisance. Owners/occupiers concerned will be responsible for cleaning up any fouled common property and/or for any damages incurred by such animal.

7.5 Cats are specifically not allowed on the Estate due to the abundant bird life which is prevalent to the Bird Life Reserve.Any pets in the agricultural property and the other common areas must be under control at all times.The Members shall be aware of the sensitive areas pertaining to the flora and fauna and shall ensure that their pets do not in anyway cause damage thereto. Dogs shall not allowed into the grazing areas, being erf 212 without a leash, in order to protect and preserve the existing buck.The H.O.A reserves the right to restrict these rights should it find that the dogs are creating a disturbance.

7.6 It is further recorded that the grazing areas and nature reserve shall be protected with electrical fencing and the H.O.A shall not in any way whatsoever be liable for any damages and/or injuries sustained by the Members, any occupiers and/or guests and/or the Members' pets and/or any other animals whatsoever brought onto the estate.

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8. LEVIES

8.1 Levies are due in advance on the first day of each month and are payable within 7 days after which interest at a rate determined by the Trustees will be payable thereon.

8.2 The Members shall be obliged to sign a Debit Order, which is annexed to the Agreement of Sale, to ensure such timeous payment of the aforementioned levies.

9. INSURANCE

9.1 The Home Owners' Association shall have no responsibility whatsoever for the insurance of the contents of any particular property, which shall at all times be the sole responsibility of the owner/occupier in question.

9.2 An owner/occupier shall not do or permit to be done on his property or on the common property anything which will or may increase the rate of premium payable by the trustees on any insurance policy or which may tend to vitiate any such insurance policy nor bring onto the premises or building any hazardous substances and/or any form of machinery whatsoever.

9.3 An owner/occupier shall not store or harbour upon the common property or any part thereof or in his property any goods which may vitiate any fire insurance policy held by the Homeowners Association or increase the premium payable in respect of such policy.

10. LETTING OF UNITS

10.1 All tenants of residential homes and other persons granted rights of occupancy by any owner of the relevant erf are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy, which Consent shall not be unreasonably withheld.

10.2 No letting shorter than 6 [six] months shall be allowed whatsoever, without the written consent of the Trustees.The owner shall be obliged to notify the Trustees of any short term occupancy for security purposes.

11. ERADICATION OF PESTS

11.1 An owner shall keep his property free of white ants, borer and other wood destroying insects and to this end shall permit the trustees, the managing agent and their duly authorised agents or employees, to enter upon his property from time to time for the purpose of inspecting the property and taking such action as

may be reasonably necessary to eradicate any such pests.The costs of inspection, eradicating any such pests as may be found within the property, replacement of any woodwork or other material forming part of such property which may be damaged by any such pests shall be borne by the owner of the property concerned.Any Member intending to use any pesticides must first obtain the written approval of the agricultural property owner, being the Developer, to ensure that such pesticide is not harmful to the vineyards.

12. WALKWAYS

The walkways giving access to the vineyards, the lavender fields and olive trees are for the exclusive use and enjoyment of the Members and for the use of maintenance/gardening staff and may not be used by any member of the public for gaining access or used as a thoroughfare.

During the periods of chemical treatments and/or extensive maintenance period of harvesting and pruning of the vineyards, which may result in access to such vineyards being temporarily closed and access to all pets being denied to ensure their safety.Written Notice shall be furnished to all the Members prior to the chemical treatment of the vineyards.

13. ACTIVITIES ON COMMUNAL AREAS

No hobbies or other activities may be conducted on the communal areas if they cause nuisance to other owners and/or occupiers.The Trustees shall be the final adjudicators resolving complaints of this nature.

14. JETTY AND MOORING SLIPWAY

14.1 An owner/occupier/his visitor/s and/or children shall not be allowed to attend and/or partake of the following on such aforementioned areas.

14.1.1 No glass bottles or containers are allowed.

14.1.2 No braaing, except in designated areas.

14.1.3 No loud music.

14.1.4 Only authorised personnel are permitted access so designated by the Trustees

14.1.5 Littering is not permitted, all refuse is to be removed.

14.1.6 Only controlled games shall be permitted, with parents overseeing any children under the age of 12 [twelve] years old.

14.1.7 No animals are allowed, without being accompanied by its owner.

14.1.8 An owner and/or occupier shall be obliged to accompany any guest.

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14.1.9 The use of such area shall be reserved for owners and/or occupiers and their guests.

14.1.10 The operating hours of such area are between 06H00 to 21H00.Any usage after 21H00 to 06H00 shall be regarded as a violation of the conduct rules.

14.1.11 Any child under the age of 12 (twelve) must be accompanied by an adult at all times and have the appropriate life preserve strapped onto his body whilst in the Bot River.

14.1.12 Certain Boat Storage Areas shall be built by the Developer on the common areas on behalf of the H.O.A, which may be rented from the H.O.A at a levy which shall be a market related rental and such levy to be agreed upon between the parties.

14.1 13 All Members shall comply with the rules of operation of their boats and the likes as laid down by the appropriate authority and duly governed by the Overberg District Council, By-Laws relating to the control and use of the Bot River Estuary as framed under PN. 480/1996 dated the 15th November 1996, and annexed hereto marked Annexure "e"

15. GENERAL

15.1 The Board of Trustees or its agents shall not be liable for any injury or loss or damage of any description which any owner or occupier of property or any Member of his family, his employee or servant or his relative, friend, acquaintance, visitor, invitee or guest may sustain, physically or to his or their property, directly or indirectly, in or about the common property or in the individual property by reason of any defect in the communal area, its amenities or for any act done or for any neglect on the part of the Trustees of any of the Trustees employees, servants, agents or contractors.

15.2 The Trustee or its agent's representatives and servants shall not be liable or responsible in any manner whatsoever for the receipt or the non-receipt and delivery or non-delivery of goods, postal matter or any other property.

15.3 No firearms or pellet guns may be discharged in the development whatsoever.

15.4 An owner shall not use or permit his home to be used for any purpose which is injurious to the reputation of the development.

15.5 All complaints, violation of these rules, or any other cause of concern must be in written form, addressed to the Chairman of the Home Owners' Association and sent to trustees@mybenguela.com or submitted through the Intranet of the Association.[18]

16. COMMERCIAL UNIT

16.1 The Developer reserves a right to further amend its rules so as to accommodate the Hotel on Erf 228, the Commercial Component and Public Facilities being Erf 229, which comprises of the winery, the Public

[18] 07th April 2018, Martin Diessner, 20180407-Special-Resolution-18-Complain-submission-via-email-intranet

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tasting facilities, the restaurant, the conference facilities, the farm stall, sales and manager's office and chapel and the like, once such components have been built.

16.2 It is recorded that the Hotel,Wine Cellar, the Tasting Rooms, Restaurant, the Farm Stall, the Chapel and Conference Facilities etc, are designated for Commercial Use and may be utilised as a bed and breakfast facility, private functions including weddings, various functions and film shoots.

Signed by the Purchaser on the _____ day of _____

_____

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Annexure B: Annexure E of Benguela Cove Home Owners` Association Constitution

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ANNEXURE 'E'

OVERBERG DISTRICT COUNCIL

BY-LAW RELATING TO THE CONTROL AND USE OF THE BOT RIVER ESTUARY

Definitions 1. In this by-law, unless inconsistent with the context – "authorised officer" means any person authorised by the Council to perform the functions of an authorised officer under this by-law or a member of the South African Police; "boat" or "vessel" means any conveyance capable of floating on or in water or designed to navigate on or in water and includes, but is not restricted to a motor boat, sailing boat, sailing board, rowing boat, canoe, paddleski, power boat, fishing boat, jet-driven boat, flat-bottomed boat, ferry, houseboat, water cycle and raft; "bow" means the front part of a vessel; "canoe" means a vessel designed to be propelled by means of paddles without any mechanical assistance; "Council" means the Overberg District Council; "due date" means 30 June of every year or such other date as may be determined by the Council; "estuary" means the Bot River Estuary within the area of jurisdiction of the Council; "helmsman" means a person who steers or controls a vessel; "houseboat" includes any vessel, irrespective of whether or not it is propelled under its own power, upon which facilities for day or night accommodation or for any kind of food preparation have been provided, or a vessel upon which any kind of toilet or washing facilities have been provided; "inland waters" such estuary within the area of jurisdiction of the local authority which promulgated this by-law; "vicinity of the estuary" includes the properties adjacent to or in the immediate vicinity of the estuary; "operate" or "control" or any like expression, in relation to a boat, means to launch, use, sail, navigate or moor a boat or to permit a boat to be launched, used, sailed, navigated or moored on the estuary, or to have a boat, or to permit a boat to be, on the estuary; "permission" means the written permission of the Council; "port" means the left side of the boat as seen from the stem; "power boat" means a vessel propelled by means of an engine or other mechanical apparatus, either in- or outboard, irrespective of whether or not such engine or apparatus is the main source of power; "registered boat" a boat issued with an identification number in terms of to section 6 of the by-law; "rowing boat" means a vessel designed to be propelled by means of oars without any mechanical assistance; "sail" or "under way" means the situation of a vessel when it is not anchored or moored or on dry land; "sailing boat" includes every boat which is under sail and is not propelled by mechanical power; "starboard" means the right side of the boat as seen from the stern; "stern" means the back part of a vessel; "visible" means visible by somebody with reasonable eyesight during a dark night when the atmosphere is clear; "water area" means the water level between the banks of the estuary at any specific time; "water ski" means to ski or skate on or in the water with or without the assistance of any kind of skating apparatus and where the water-skier is towed by a vessel by means of a towing-rope; "water-skier" or "skier" a person water-skiing.

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OPERATION OR CONTROL OF BOATS ON THE ESTUARY

No person shall operate or control any boat or vessel on the estuary, excluding a canoe, paddleski, sailing board and rowingboat, unless such boat has been licensed by the Council or a temporary permit has been issued for such boat in terms of this by-law and the identification number allocated by the Council is displayed according to the provisions of this by-law.

No person under the age of sixteen years shall operate and control l a boat equipped with a motor of 4.5 kW or more, unless such person is accompanied by a person over the age of sixteen years. Where any licensee of a boat allows any person who, in the opinion of an authorised officer, is not competent to operate or control such boat efficiently, to operate or control it, such officer may direct the licensee not to allow such person to operate or control such boat, and if the licensee thereafter continues to allow such person to operate or control such boat, he. shall be guilty of an offence.

No person shall operate a boat on the estuary —

(a) in a reckless or negligent manner;

(b) while under the influence of intoxicating liquor or a narcotic drug, or while the percentage of alcohol in his blood is 0,08 or more, expressed in grams per hundred millilitres of blood;

(c) while suffering from an infirmity which renders him unfit to do so;

(d) in a manner dangerous to the public or to the occupants of such boat or in a manner calculated to endanger or damage any property or facility, regard being had to all the circumstances of the case;

(e) in a manner which constitutes a nuisance;

(f) without reasonable consideration for the rights of other persons using such estuary;

(g) while it is leaking oil, petrol or any toxic or noxious substance;

(h) if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the licence.

if the boat is not registered and licensed by the Council and the identification number issued in respect of the boat, is not permanently affixed thereto in figures of a size and colour determined by the Council.

Equipment of vessels

No person shall use any vessel, excluding a canoe and paddleski, with regard to the provisions of subsection (l)(c) and a sailing board with regard to the provisions of subsection (l) (b) and (c), on the estuary unless the following equipment is on board;-

(a) An effective life-belt, life-buoy or other floating device for each person on board;

(b) sufficient and suitable oars, paddles or a pole to land the vessel;

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a pump or other suitable bailer, unless the vessel has been designed to float with the maximum permissible number of persons on board even if it is waterlogged; in the case of a power boat which is used to tow a water-skier, suitable water-skiing rear mirror and a red flag of 300 mm by 300 mm; in the case of a power boat, an effective whistle or siren which can be employed to prevent collisions; in the case of a power boat, an effective fire-extinguisher; an effective flame-arrester for each carburettor of any petrol engine on the vessel except an outboard engine; an effective silencer on the exhaust of an engine-driven vessel; the following lights, which must be visible at a distance of at least 200 meters, when the vessel is used between sunset and sunrise:

(i) in the case of a power boat or sailing boat, a white light visible from all directions;

(ii) in the case of vessels such as a sailing boat, canoe, sailing board and a paddleski, a lantern or flash-light which may be shown in order to prevent collisions; a suitable container for refuse;
a suitable anchor with a sufficient anchor line.

All life-saving apparatus on board a vessel in the water must be in good working condition and within easy reach for immediate and effective use.

Rules for boating

No person shall leave a vessel unattended in the water area unless it has been properly anchored, moored or removed to dry land a safe height above the water level.

No vessel shall be moored or launched at any place other than that indicated or approved by the Council and an authorised officer of the Council may move any vessel or moor it at any other place without the consent of the owner if he deems this to be in the public interest.

No vessel shall be moored to any other vessel or to a marker, buoy or other navigational aid.

The helmsman of any vessel must ensure that he can at all times exercise full control over the vessel while it is under way.

The helmsman of any vessel towing a line, cable or rope for any purpose whatsoever, must ensure that he does not thereby endanger any other person or cause any inconvenience.

No person shall handle a vessel or allow it to be handled in such a manner that it endangers or creates a nuisance to any other vessel or the occupants thereof or to other persons or property or installations in the water or at the water's edge.

No power boat which is under way and no person practicing water-skiing in the estuary, shall approach closer than 100 meters from any spot where people are swimming or closer than 100 meters from the side of the water or closer than 50 meters from any other vessel, unless –

(a) circumstances are such that the said distances cannot be maintained;

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(b) assistance is being given in an emergency situation; or

(c) the power boat or any water-skier towed by it is landing leaving the shore;

Provided that when the prescribed distances are not maintained, the power boat must immediately reduce its speed to less than 10 km per hour.

No person shall be on the bow, forward deck or gunwale of any power boat which is under way unless sufficient safety rails or guard rails have been installed, and no person shall jump or dive from any power boat which is under way, except when help is being given in an emergency or when it is necessary to moor or to land the power boat.

Where it is possible, a vessel shall be piloted in such a manner that the median line of the sailing area shall always be on the port side of the vessel, in other words all power boats must move in an anticlockwise direction.

(10) Whenever two vessels approach each other head-on or approximately head-on, each must be piloted in such a manner that it passes the other on its own port side and, subject to the provisions of subsection (7) at such a distance and at such a speed that the wake of either of the vessels shall not endanger the other.

(11) (a) No vessel shall pass another vessel which is proceeding in the same direction, unless it is safe to do so and such vessel shall, when it does so, pass the other vessel on its port side and, subject to the provisions of subsection (7), at such a distance and at such a speed that its wake-shall not endanger the other vessel.

(b) A vessel which is passed shall maintain its speed and direction until the passing vessel is safely past.

(12) Whenever two vessels approach each other in a manner other than referred to in subsections (10) and (11), the vessel which finds the other on its port side shall maintain its speed and direction and the vessel which finds the other on its starboard side shall stay out of the way of the other vessel by changing its direction to starboard so as to pass the other vessel from the stern and shall if necessary stop or reverse to avoid a collision.

(13) (a) Whenever two sailing boats are approaching one another in such a way as to involve risk of collision, not withstanding the provisions of subsections (10), (11) and (12), they shall keep out of one another's way as follows:

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) when both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(b) For the purpose of this subsection, the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

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(14) To avoid a collision between vessels, a power boat shall give way to all other vessels, and a rowing boat or a canoe shall give way to a sailing boat when circumstances require it, not withstanding the provisions of subsections (9), (10), (11), (12) and (13): Provided that this by-law shall not give the right to the helmsman of any vessel to unnecessarily obstruct or interfere with the course of any other vessel.

(15) The helmsman of any vessel shall maintain a safe and cautious speed in the area where vessels are moored, where angling is taking place or where buoys and placed, and whenever visibility is obstructed due to fog or other causes he shall pilot the vessel under his control in such a manner that people, other vessels or other property are not endangered.

(16) No vessel shall follow closer than 100 meters in the wake of a water-skier.

(17) No vessel or vehicle which is propelled by means of a propeller above the water, shall be used in the water area.

(18) Except in the case of an emergency, no aeroplane shall land in or take off from the water area.

(19) No boat shall be left on any slipway except for purposes of repair.

Water-skiing — where allowed

(1) No person shall practice water-skiing on water unless an effective life-belt or other floating device is attached to his body.

No steel or metal cable or steel wire shall be used to tow a water-skier.

The helmsman of any vessel which tows a water skier-shall, before such water-skier is taken in tow, ensure that the water skier is familiar with the distress signal for water-skiers, namely drawing the hand across the throat.

No water-skiing shall be practised between sunset and sunrise and the Council may also prohibit water-skiing at other times.

No vessel shall tow a water-skier unless a second person older than 14 years is present in the vessel to observe the water-skier.

No water-skier shall drop a water-ski except at a spot where the discarded water ski does not constitute a danger to any other water-skier or vessel.

As soon as a water-skier drops the towing-line, the helmsman of the vessel towing the water-skier shall pull in the towing line immediately and if the water-skier has dropped the towing line by accident, the said helmsman shall turn the vessel immediately and take the water-skier in tow again or take him aboard.

Water-skiing shall be permitted in designated areas only in accordance with Proclamation 357 dated 28 September 1972 as published in Official Gazette 3691 dated 6 October 1972.

When a skier falls, a red flag measuring a minimum of 300mm x 300 mm shall be held up and kept up until the skier boards the boat or resume skiing.

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Registration and licensing of boats

(1) Any person intending to operate a boat on the estuary shall apply in writing on the prescribed form to the Council for a registration and licence for such boat.

(2) Any such application shall be accompanied by the fees, as determined from time to time by special resolution of the Council, which shall be refundable if the application is not approved.

(3) A boat in respect of which an application for a licence has been made, shall be submitted/for examination by an authorised officer of the Council at a date, place and time appointed by the authorised officer unless such applicant is advised by the authorised officer that such examination is not required.

(4) When considering applications for licensing, the Council may distinguish between riparian and non-riparian owners, boats belonging to land-owners, house-owners or residents, and boats belonging to non-land-owners, non-house-owners or non-residents, so as to limit the number of boats which may be licensed.

(5) The Council may approve or refuse to approve such application and may, in approving it, impose such conditions as to the manner of operation of or repairs or alterations to such boat as it may deem necessary in the interests of safety or to ensure compliance with this by-law.

(6) The Council shall refuse to approve an application if it is satisfied that the operation of such boat will -

(a) be a source of pollution in the estuary or the vicinity of the estuary;

(b) cause a nuisance;

(c) or constitute a danger to persons using it to the public or any section of the public.

(7) The registration of a boat not transferable from any person to another or from any boat to another except where an owner of a registered boat in terms of this by-law transfers his registration to another boat belonging to him with the written permission of the Council.

(8) The registration shall specify the name of the person to whom it is issued, the maximum number of persons permitted to be carried in the boat, the type and overall length of the boat, the maximum power of the engine and the identification number allocated to the boat.

(9) Registration and licensing will solely be at the discretion of the Council and reasons will be given if it refuses to register or license a boat.

(10) The Council reserves the right to limit the number of registrations issued per person.

Validity of licences and displaying of tokens

(1) The licence of a boat expires on the 30th of June every year and is valid for a period of twelve months or such shorter period as may be determined by the Council.

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(2) The licensee of a boat shall forthwith affix the license or cause it to be affixed to such boat in a manner acceptable to the Council.

Automatic lapsing or cancellation of licences

(1) A licence shall lapse automatically if a boat has been removed by or on the authority of the Council in terms of section 14.(4) on account of pollution being caused in the estuary.

(2) If the Council is of the opinion that a boat no longer qualifies for licensing in terms of this by-law or in terms of any conditions on which the licence was issued, the licence may be cancelled after notice of thirty days to that effect has been given to the licensee, at the address on the licence.

Cancellation of licences

(1) The Council may cancel any licence if –

(a) it is satisfied that the boat in respect of which such licence was issued is no longer safe or seaworthy, or is a source of pollution in the vicinity of the estuary, or is operated in a manner which constitutes a nuisance or danger to other boats or to the public or any section of the public;

(b) the boat is transferred, sold or disposed of or if the Council is satisfied that the licensee has ceased to exercise control over the said boat or to supervise it; or

(c) the licensee has been convicted of an offence relating to the operation or control of a boat in terms of this by-law.

(2) If the Council cancels any licences in terms of this by-law, the authorised officer shall forthwith notify the licensee of such cancellation, at the address on the licence.

Fixing of tariffs, fees and levies

(1) The Council may by special resolution determine tariffs, fees and levies for the licensing of boats and the provision of discs and tokens.

(2) In fixing tariffs, fees and levies in terms of subsection (1) the Council may distinguish between various classes of boats making use of the estuary or any facilities, or in respect of their size, method of propulsion or use, or may make any other distinctions which, in the opinion of the Council are relevant in fixing such tariffs or fees.

(3) Any application for the licensing of a boat or the use of any facilities by any boat shall be accompanied by the prescribed fees as determined by the Council.

Fouling and pollution of the estuary (1)

No person shall, while he is in the water area –

(a) use indecent, offensive or improper language;

(b) behave in an offensive, improper or disorderly manner;

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(c) stay, bathe or sunbathe in the nude or not properly clothed,

(d) whether on a vessel or not;

(e) wilfully or negligently do anything which will cause an inconvenience to any other person using the water area, or which may disturb the peace.

(2) No person, except with the permission of the Council and in compliance with the provisions of the Sea-shore Act, 1935 (Act 21 of 1935), shall allow any sewer pipe or tank to discharge into the estuary or allow any other waste water from any other source to drain into the estuary.

(3) No substance such as petrol, oil or any toxic or noxious substance shall be deposited or disposed of in the estuary.

(4) No bottles, cans, garbage or refuse of any kind whatsoever shall be thrown into the water or onto abutting land or any facility except in receptacles furnished for that purpose.

(5) No person shall by any act or omission, whether directly or indirectly, allow a nuisance or the creation or continuation of a source of danger, or allow any interference with the convenience or comfort of persons in the vicinity of the estuary.

(6) Any person fouling or polluting the estuary, any land adjacent thereto or any facility in connection therewith shall be guilty of an offence.

Powers of authorised officers

(1) Any person who operates an unlicensed boat on the estuary or contravenes any provision of this by-law, may be ordered by an authorised officer to remove such boat forthwith from the estuary or to cease such contravention, and non-compliance with such order shall constitute an offence.

(2) Any authorised officer shall have the right to board a boat at any time and to inspect it for the purposes of ensuring compliance with the provisions of this by-law.

(3) Any person who is authorised in writing by the Council may, in the water area –

(a) investigate and test, any vessel or part thereof or any equipment thereon in order to determine whether the vessel is suitable for navigation on or in the water and whether any particular provision of this by-law has been complied with;

(b) call for any information regarding the vessel from the helmsman and may, if the helmsman is unable to furnish the information, order him to remove the vessel forthwith from the water area until such time as the request can be complied with;

(c) require the helmsman to furnish his name and address or the name and address of the owner of the vessel and any other information required for identification purposes;

(d) require any other person in the vessel other than the helmsman, to furnish his name and address as

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well as any other information required for the identification of the helmsman or the owner of the vessel;

(e) if it appears to him that the helmsman of any vessel, owing to his physical or mental condition, irrespective of how this originated, is not capable of steering the vessel or in control of it, forbid the helmsman temporarily from continuing to steer or being in control of the vessel and may make any arrangements which in his opinion are necessary or advisable for the safe disposal of the vessel;

(f) if it appears to him that the load or number of persons transported in any vessel is more than the vessel was designed or built to carry or more than can be transported in reasonable safety under prevailing conditions, forbid the helmsman of such a vessel to proceed until the load or the number of persons has been reduced in the manner he considers necessary or advisable;

(g) if it appears to him that any vessel or part thereof is unnavigable in or on the water, order the helmsman to remove the vessel forthwith from the water area until such time the vessel or the part thereof has been made navigable in or on the water;

(h) if it appears to him that any of the equipment prescribed by this by-law is not on board the vessel or in a good working condition or not easily available for immediate use on board, order the helmsman to remove the vessel forthwith from the water area until such time as all the provisions of this by-law regarding equipment have been complied with;

(i) remove any fishing rod or line that has been left unattended, from the river, if, in his opinion, the rod or line constitutes a threat to the safety of others.

(4) (a) No person shall obstruct or interfere with any authorised officer whilst the latter is engaged in the execution of his duties, and

(b) no person shall refuse to furnish his/her correct name and address when requested to do so by an authorised officer.

Delegation of power

13. The Council may delegate and/or transfer any powers conferred on it under this by-law, with the exception of the power to levy or determine fees, to any person or persons or organisation, and such person or persons or organisation shall, after such delegation or transfer, have the same power as the Council would have had in terms of the provisions of this by-law.

Removal of boats from the estuary

14. (1) If the owner of an unlicensed boat fails to remove such boat from the estuary after having been requested to do so by the Council or any authorised officer, the Council may remove such boat forthwith.

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(2) (a) In the event of the Council cancelling any licence, or if any licence expires or lapses in terms of this by-law, the owner of the boat, the licence of which has expired or lapsed or has been cancelled, shall immediately remove such boat from the estuary.

(b) If the owner of a boat, the licence of which has expired or lapsed or has been cancelled fails to remove such boat from the estuary within thirty days after such licence has expired or lapsed or after notification to him of the said cancellation, he shall be guilty of an offence and the Council may remove such boat forthwith.

(3) Any boat in or on the estuary for which the fees as prescribed by the Council are in arrears for more than thirty days, may be removed from the estuary by the Council after written notice of the Council's intention has been given to the owner or licensee.

(4) If, in the opinion of the Council, any boat constitutes a danger in the estuary or causes pollution by the discharge of petrol or oil, such boat may be removed forthwith by the Council.

(5) Where the Council is entitled to remove a boat, an authorised officer may make any arrangements considered necessary by him to ensure the removal of such boat, and the Council may recover the cost of such removal from the owner.

(6) If boats removed from the estuary in terms of the provisions of subsections (1), (2)(b) or (4) are not claimed within ninety days after such removal, or in the case of boats referred to in subsection (3), within ninety days after the said written notice has been given and all fees in arrears have been paid, the Council may confiscate such boat or boats by court order to claim fees in arrears.

Exception from liability in respect of injury and/or damage

(1) The Council shall not be liable for any injury which is sustained by any person using the estuary or any facility, or for damage to any property thereon, whatever the cause may be.

(2) (a) The Council as a whole, individual councillors, any person or independent contractor in the service of the Council or any authorised officer shall not, except in the event of any wilful act or omission on the part of the Council or the said persons, be liable for any loss or damage to property which is caused by or arises out of or in connection with anything which is done or performed in good faith in the exercise or performance of a power or duty conferred or imposed in terms of this by-law.

(b) If any question arises as to the good faith of any such person, his good faith shall be presumed unless the contrary is proved.

General

(1) No person shall in the water area, without the prior written consent of the Council –

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(a) offer for reward or profit any show or entertainment or conduct any business or trade;

(b) keep or use any house boat;

(c) keep or use any vessel for the transport of passengers or goods for payment or reward;

(d) hold any fishing competition, or

(e) hold any race, meeting or regatta.

(2) When the Council grants its authority in terms of subsection (1), the Council may set the conditions which it sees fit in the

circumstances in any particular case, to ensure the safety of the public,

(3) No person is allowed:

(a) to fish from any bridge;

(b) to scuba dive, spearfish or use fish nets other than a landing net or casting net in the estuary without a permit, or

(c) to catch fish without a licence.

(4) The following is prohibited;

(a) any form of organised power boat race on the water area of the estuary, and

(b) hovercraft, jet-driven craft (jetski's) and seaplanes are specifically excluded from using any part of the water area of the Botriver estuary.

Penalty

17. Any person who contravenes any of the provisions of this by-law or refuses to comply with any order lawfully given there under by the local authority shall be guilty of an offence and liable upon conviction to a penalty as prescribed in section 215 (3) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).

Waiver of by-law

18. The Council may, if it deems it desirable to do so, waive compliance with any provision of this by-law, or permit deviations, exceptions and exemptions in respect of any provisions of this by-law, subject to such conditions as it may deem fit.

P.N. 481/1996 15 November 1996

Signed by the Purchaser on the _____ day of _____

_____

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Annexure C: Trust Resolution

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POWER OF ATTORNEY

I, the undersigned

NAME AND SURNAME: PENELOPE STREETER

ID/ PASSPORT NUMBER: 670801 0931 188

In my capacity as the authorized representative of **BENGUELA COVE HOMEOWNERS ASSOCIATION**, the owner of **PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER NUMBER 575, CALEDON**, hereby nominate, constitute and appoint WRAP Project Office (Pty) Ltd (Reg No 2022/349604/07), with power of substitution, to be the duly authorised attorney and agent in name, place and stead, which may be necessary in order to sign documents and to perform all such acts which may be necessary in connection with the following applications:

APPLICATION FOR CONSENT USE FOR A TOURIST FACILITY TO ALLOW THE OPERATION OF PONTOON BOAT FROM THE PROPERTIES

and generally for effecting the purposes aforesaid, to do or cause to be done whatever shall be requisite, as fully and effectual, for all intents and purposes as I might or could do if personally present and acting herein – hereby ratifying, allowing, confirming, promising and agreeing to ratify, allow and confirm all and whatsoever my said Agent shall lawfully do, or cause to be done, by virtue of these presents.

SIGNED AT BELLVILLE **ON THIS** 20 **DAY OF** JANUARY **2023**

WITNESS

WITNESS

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BOARD OF TRUSTEES RESOLUTION

The Trustees of **BENGUELA COVE HOMEOWNERS ASSOCIATION**, the owners of **PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER NUMBER 575, CALEDON** authorises

NAME AND SURNAME: PENELOPE STREETER

ID/PASSPORT NUMBER: 670801 0931 188

In his/her capacity as Trustee to act on behalf of the Board of Trustees regarding the

APPLICATION FOR CONSENT USE FOR A TOURIST FACILITY TO ALLOW THE OPERATION OF A PONTOON BOAT FROM THE PROPERTIES

SIGNED AT Bellville. **ON THIS** 20th **DAY OF** January **2023**

TRUSTEE

WITNESS

TRUSTEE

WITNESS

TRUSTEE

TRUSTEE

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Outlook

Annexure N 1/4

RE: REMINDER [2]: Benguela Cove: Application portion 219 and 220 farm 575: Interpretation Constitution

From Jacques Wilkinson <jwilkinson@overstrand.gov.za>
Date Tue 04-Mar-25 2:28 PM
To Loretta Gillion <loretta@overstrand.gov.za>; Riaan Marinus <rmarinus@overstrand.gov.za>; Henk Olivier <holivier@overstrand.gov.za>
Cc Andre Olivier <aolivier@overstrand.gov.za>

Dear Loretta

The captioned matter and my meeting with Henk, last week, have reference.

In respect of the questions previously posed by Henk to Andre Olivier, I can do no better than to agree with Andre's reasoning and the advice proffered. All that remains for me to consider, is the subsequent issue raised by Henk's email to WRAP, of 27 February 2024, and whether WRAP's response thereto, dated 24 April 2024, adequately addressed this issue, being:

a. Did the HOA comply with the provisions of the Constitution by informing all members of the HOA by way of a Special General Meeting of the HOA's intention to submit a planning application in respect of common property for the benefit of one member of the HOA, i.e. BCI?
b. In the event that HOA could not prove compliance as stated above, did the HOA provide to Overstrand Municipality ("OM") a clear indication in terms of what power(s), in terms of the Constitution, the HOA acted to submit the planning application?

For the reasons set out below, I am respectfully of the opinion that the HOA did not meet either of the aforesaid two requirements.

1. As set out in the opinion provided by Andre, it is clear that the Constitution compels the HOA to hold a Special General Meeting in order to obtain a "special resolution of the Members of the Association" for purposes of clause 30.2.4. For the sake of brevity, I will not repeat the arguments (convincingly) proffered by Andre herein, but (as stated herein above) find myself in agreement therewith. Therefore, in the absence of proof by the HOA , as requested in Henk's abovementioned email, that all members of the HOA were informed of a Special General Meeting, and a resolution taken at such meeting in accordance with the provisions of clause 30.2.4 of the Constitution, with the necessary quorum having attended, it is clear that the HOA failed to adhere to the provisions of the Constitution.

2. The question which then bears answering, is whether the aforementioned letter from WRAP gave a clear indication of what power(s), in terms of the Constitution, the HOA acted upon to submit the planning application.
   2.1 WRAP's submissions, in paragraphs 1 to 7 of its letter under the heading "Background", in respect of the HOA, the Constitution, and BCI, are noted.
   2.2 It is, however, important to note the following submissions and their implications in particular:
      i) *In re* paragraph 4: BCI's purpose to derive profit is indeed subject to the provisions of the Constitution.
      ii) *In re* paragraph 5: It is submitted that the reference to "residential owners and BCI" should in fact read, "residential owners, including BCI", this being so as the HOA's obligation to manage the common property to the benefit of all its member, in accordance with the provisions of clauses 3.1 and 3.2 of the Constitution, is an obligation owned to ALL its members, of which BCI is but one.
      iii) *In re* paragraph 7: Conduct Rul 14 does indeed contain provisions relating to the Jetty and Mooring Slipway. From the content of Conduct Rule 14 it is clear that these

facilities exist for the use and benefit of all HOA members, subject to the terms of use as set out in the Rule.

2.3 Paragraphs 1 to 5 under the heading "Facts", set out the steps which were followed by BCI to obtain permission for the intended use of Portions 210 and 220. Save for the following comments, the remainder of the contents of these paragraphs are merely noted:

i) It is unclear whether the "ownership and nature of business" refers to the HOA or to BCI. Be that as it may, the HOA has an obligation to manage common property to the benefit of all members (see clause 3 of the HOA Constitution).

ii) Permission for the intended use of Portions 210 and 220 can, therefore, not only be extended to one member, i.e. BCI, but must apply to all members. Phrased differently, if BCI is allowed to use Portions 210 and 220 for the intended purpose, the permission would have to be extended to all members which would create an impractical and untenable situation.

2.4 Paragraphs 1 to 7 under the heading "Conclusion", then goes on to argue, with respect unconvincingly so, why BCI's proposed use of Portions 210 and 220 of the common property need not have gone through the process set out in, *inter alia*, clause 30.2.4. The following are the main contentions and the reasons why they do not pass muster:

i) *In re* paragraph 1: This is true both of BCI, as well as every other member of the HOA. It can, therefore, not be raised in justification of BCI's intended use of the common property.

ii) *In re* paragraph 2: For the reasons set out herein above, and further discussed in detail by Andre, this statement is factually inaccurate.

iii) *In re* paragraphs 3 and 4: Again, as stated herein above, the meeting at which it was considered was not constituted correctly.

iv) *In re* paragraph 5: Any "entitlement" which BIC may have cannot be to the exclusion of other members of the HOA. Furthermore, the issue is not whether provisions of the Constitution were amended, but rather the fact that provisions were not adhered to.

v) *In re* paragraphs 6 and 7: Whether prejudice is suffered by specific members of the HOA, is not the determining factor for the process which had to be followed.

In light of the foregoing, I am of the view that the HOA did not comply with its own constitution and furthermore failed to provide OM with a clear indication in terms of what power(s), in terms of the Constitution, the HOA acted to submit the planning application.

Regards

Jacques Wilkinson

Principal Legal Advisor
Legal Services
Office of the Municipal Manager
T: +27 (0) 28 313 8917 | **F:** +27 (0) 28 313 8931
E: jwilkinson@overstrand.gov.za

OVERSTRAND
Overstrand Municipality
A: 1 Magnolia Street, Hermanus, 7200 | **P:** P.O Box 20, Hermanus, 7200
T: +27 (0) 313 8000 | **F:** +27 (0) 312 1894
E: enquiries@overstrand.gov.za | **W:** www.overstrand.gov.za

Vision Statement: "*To be a centre of excellence for the community*"

From: Loretta Gillion <loretta@overstrand.gov.za>
Sent: Tuesday, 19 November 2024 09:30
To: Jacques Wilkinson <jwilkinson@overstrand.gov.za>; Riaan Marinus <rmarinus@overstrand.gov.za>
Subject: REMINDER [2]: Benguela Cove: Application portion 210 and 220 farm 575: Interpretation Constitution
Importance: High

290|387 3|4

From: Loretta Gillion
Sent: Wednesday, October 9, 2024 8:51 AM
To: Jacques Wilkinson <jwilkinson@overstrand.gov.za>
Cc: Riaan Marinus <rmarinus@overstrand.gov.za>; Henk Olivier <holivier@overstrand.gov.za>
Subject: FW: Benguela Cove: Application portion 210 and 220 farm 575: Interpretation Constitution
Importance: High

Dear Jacques

Reminder for your outstanding comments on the above application.

Your urgent attention to this matter will be highly appreciated.

Regards

Loretta Gillion
Administrative Officer: Town & Spatial Planning
Directorate: Planning & Development, Overstrand Municipality, Hermanus
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | E: loretta@overstrand.gov.za

From: Loretta Gillion
Sent: Friday, September 6, 2024 10:05 AM
To: Jacques Wilkinson <jwilkinson@overstrand.gov.za>
Cc: Riaan Marinus <rmarinus@overstrand.gov.za>; Henk Olivier <holivier@overstrand.gov.za>
Subject: FW: Benguela Cove: Application portion 210 and 220 farm 575: Interpretation Constitution
Importance: High

Dear Jacques

Herewith a reminder that your comments in this regard is still outstanding. Kindly provide at your earliest convenience.

Regards

Loretta Gillion
Administrative Officer: Town & Spatial Planning
Directorate: Planning & Development, Overstrand Municipality, Hermanus
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | E: loretta@overstrand.gov.za

From: Henk Olivier <holivier@overstrand.gov.za>
Sent: Wednesday, July 17, 2024 4:17 PM
To: Jacques Wilkinson <jwilkinson@overstrand.gov.za>
Cc: Andre Olivier <aolivier@overstrand.gov.za>; Loriaan Isaacs <loriaanisaacs@overstrand.gov.za>; Loretta Gillion <loretta@overstrand.gov.za>
Subject: Benguela Cove: Application portion 210 and 220 farm 575: Interpretation Constitution

Jacques

I am sending this e-mail to you as I know Andre probably have lots of work to finalize.

Attached please find three e-mails dated 14, 21 and 27 February 2024 respectively. The content is self-explanatory

The applicant has now provided a further response indicating their further opinion on the matter. (letter dated 25 April 2024).

You will see Andre Olivier's original comments on this matter (e-mail dated 21 February 2024). Please provide your comments on the latest letter received dated 25 April 2024.

I have already prepared a planning report to table at the Planning Tribunal. The applicant wants to proceed with the application, and I recommend that the report be tabled before the Planning Tribunal, with your comments and our recommendation. ***Should you believe the application be dealt with in another manner, please advise.***

Kinds Regards/Vriendelike Groete

Henk Olivier
Town Planner

OVERSTRAND

Overstrand Municipality
A 1 Magnolia Street, Hermanus, 7200 | P P.O Box 20, Hermanus, 7200
T +27 (0) 28 313 8900 | F +27 (0) 28 312 1894
E hollvier@overstrand.gov.za

ISO *' To be a centre of excellence for the community"*

From: holivier@overstrand.gov.za <holivier@overstrand.gov.za> **On Behalf Of** scans@overstrand.gov.za
Sent: Wednesday, July 17, 2024 3:32 PM
To: Henk Olivier <holivier@overstrand.gov.za>
Subject: Message from KM_C558

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Addendum BB

MINUTES : MUNICIPAL PLANNING TRIBUNAL **30 SEPTEMBER 2025**

4.6
PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

HBENG 210 & 220/575 (4336/2023)
H Olivier **(028) 313 8900** **Hermanus Administration**
28 July 2025

EXECUTIVE SUMMARY

An application was received on 9 February 2023 by WRAP Project Office on behalf Benguela Cove Homeowner's Association on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- **Consent Use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow tourist facilities (operating of a pontoon boat as a recreational facility).

- **Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised land use activity as stipulated above.

RESOLVED:

1. that the objections **be noted**;

2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, **not be approved**;

3. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorised land use (operation of a pontoon boat), **not be imposed**; and

4. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions.

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REASONS FOR THE RESOLUTION:

POINT 1

- It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:
  - The number of trips the pontoon will make per day,
  - The expected volume of visitors to the site on a daily basis,
  - How visitors will utilise common area facilities, and
  - How access will be managed within the privately owned Benguela Cove Estate.
- The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.
- The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.

POINT 2

- The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:
  - the application was submitted by the HOA, but
  - the operations appear to be managed by a separate party.
- It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its Constitution.

RESPONSIBLE OFFICIAL : **H OLIVIER**

The meeting adjourned at 11:25

ADDENDUM CC 294/387

DIRECTORATE: PLANNING & DEVELOPMENT
TOWN & SPATIAL PLANNING

Munisipaliteit • U-Masipala • Municipality
OVERSTRAND

ENQUIRIES | NAVRAE: H Olivier (Town Planner)
FILE REF | LêÊRVERW: HBENG 210 & 220/575
APP ID | AANSOEK ID: 4336/2023
DATE | DATUM: 17 October 2025

REGISTERED MAIL

WRAP Project Office
Attention: Thian Jansen
PostNet Hermanus Suite 170
Private Bag X16
HERMANUS
7200

admin@wrapgroup.co.za

Dear Sir

DECISION LETTER TO APPLICANT

PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

1. The application received on 9 February 2023 refers.

2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 September 2025.

3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED:

"1. that the objections be noted;

*2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, **not be approved;***

*3. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorised land use (operation of a pontoon boat), **not be imposed**; and*

4. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions."

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4. Reasons for the above decision are as follows:

POINT 1

- It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:
  - The number of trips the pontoon will make per day,
  - The expected volume of visitors to the site on a daily basis,
  - How visitors will utilise common area facilities, and
  - How access will be managed within the privately owned Benguela Cove Estate.
- The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.
- The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.

POINT 2

- The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:
  - the application was submitted by the HOA, but
  - the operations appear to be managed by a separate party.
- It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R4171-00).

5.2 The appeal form is available at request or alternatively on the Municipal website.

5.3 Contact details are as follows:

Physical address:	16 Paterson Street, Hermanus, 7200
Postal address:	PO Box 20, Hermanus, 7200
E-mail address:	loretta@overstrand.gov.za

Yours faithfully

R KUCHAR

DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING

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DIRECTORATE: PLANNING & DEVELOPMENT
TOWN & SPATIAL PLANNING

ENQUIRIES | NAVRAE: H Olivier (Town Planner)
FILE REF | LêÊRVERW: HBENG 210 & 220/575
APP ID | AANSOEK ID: 4336/2023
DATE | DATUM: 17 October 2025

Munisipaliteit • U-Masipala • Municipality
OVERSTRAND

REGISTERED MAIL

Dear Interested & Affected Party

DECISION LETTER TO PERSONS WHO COMMENTED

PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

1. Your **comment / objection** against the above application refers.

2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 September 2025.

3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED:

*"1. that the objections **be noted**;*

*2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, **not be approved**;*

*3. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorised land use (operation of a pontoon boat), **not be imposed**; and*

4. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions."

Tel: 028 313 8900 | E-mail: loretta@overstrand.gov.za
PO Box 20 | HERMANUS 7200
www.overstrand.gov.za

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4. Reasons for the above decision are as follows:

POINT 1

- ❖ It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:
  - The number of trips the pontoon will make per day,
  - The expected volume of visitors to the site on a daily basis,
  - How visitors will utilise common area facilities, and
  - How access will be managed within the privately owned Benguela Cove Estate.
- ❖ The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.
- ❖ The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.

POINT 2

- ❖ The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:
  - o the application was submitted by the HOA, but
  - o the operations appear to be managed by a separate party.
- ❖ It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R4171-00).

5.2 The appeal form is available at request or alternatively on the Municipal website.

5.3 Contact details are as follows:

Physical address:	16 Paterson Street, Hermanus, 7200
Postal address:	PO Box 20, Hermanus, 7200
E-mail address:	loretta@overstrand.gov.za

Yours faithfully

R KUCHAR

DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING

Addendum DD 298/387

Project Office

Town Planning & Project Management

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
07 NOV 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP - A Theart (H Olivier)

Our Reference: 22/164
Your reference: Ptn 210 & 220 Farm 575, HBENG

7 November 2025

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr H Olivier

APPEAL APPLICATION: PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON

Attached please find a copy of the Appeal submitted in terms of Section 78 & 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Also attached please find proof of payment to the amount of R4 171.00 for the application fees.

We trust that you will find the above in order. Should you require any additional information, please do not hesitate to contact us.

Yours faithfully

Jansen

THIAN JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

FILE NO. Ptns 210 & 220 Farm 575
SCAN NO.
COLLABORATOR NO. 2901245

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Absa Online: Notice of payment

07 November 2025

Dear WRAP PROJECT OFFICE (PTY) LTD

Subject: Notice of payment: Overstrand Municipal

Please be advised that you made a payment to Overstrand Municipal as indicated below.

Transaction number:	**8093747CFB-137**
Payment date:	**2025-11-07**
Payment made from:	**Current account**
Payment made to:	**Overstrand Municipal**
Beneficiary's bank name:	**ABSA BANK**
Beneficiary's account number:	**3220000035**
Bank branch code:	**632005**
For the amount of:	**4,171.00**
Immediate interbank payment :	**N**
Reference on beneficiary statement:	**Ptn 210 & 220 of 575**
Additional comments by payer:	

Please remember that the following apply to Absa Online payments to non-Absa bank accounts.

- Payments made on weekdays before 15:30 will be credited to the receiving bank account by midnight of the same day but may not be credited to the beneficiary's bank account at the same time.
- Payments made on weekdays after 15:30 will be credited by midnight of the following day.
- Payments made on a Saturday, Sunday or public holiday will be credited to the account by midnight of the first following weekday.

If you need more information or assistance, please call us on 08600 08600 or +27 11 501 5110 (international calls).

If you have made an incorrect internet banking payment, please send an email to digital@absa.co.za

Yours sincerely

General Manager: Digital Channels

This document is intended for use by the addressee and is privileged and confidential. If the transmission has been misdirected to you, please contact us immediately. Thank you.

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© Kopiereg. Absa Bank Beperk, Registrasie Nommer 1986/004794/06. Alle regte voorbehou

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PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON

APPEAL

Appeal prepared for:
BENGUELA COVE HOMEOWNERS ASSOCIATION

Application prepared by:

WRAP Project Office
PostNet Hermanus Suite 170
Private Bag X16 | Hermanus | 7200
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

Author
Thian Jansen (A/2858/2019)

Submitted
November 2025

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APPEAL FORM

OVERSTRAND MUNICIPALITY APPEAL FORM

OVERSTRAND	TOWN & SPATIAL PLANNING APPEAL FORM (Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020) *16 Paterson Street / PO Box 20 **HERMANUS**, 7200 Tel: 028 313 8900*

KINDLY NOTE:
Please complete this form using BLOCK capitals and ticking the appropriate boxes.
Append this form to your letter of appeal which must comply with Annexure E of the Application Form as attached.

PART A: APPEAL

Are you appealing against the decision made by the authorised employee or Tribunal?	**Y**	N	If yes, indicate in Part E if the appeal is lodged against the whole decision or part thereof. If the latter applies provide a description of the part.
Are you appealing against the condition(s) of approval imposed by the authorised employee or Tribunal?	Y	**N**	If yes, list relevant condition(s) and provide a description in Part E.
Is your appeal based on and primarily concerned with the process followed prior to the authorised employee or Tribunal decision?	**Y**	N	If yes, specify in Part E.
Is your appeal based on and primarily concerned with the merits of the land development or land use application on which it is believed that the authorised employee or Tribunal erred in coming to the conclusion?	**Y**	N	If yes, specify in Part E.

Date of decision		Date receiving notice of decision	
Who took the original decision?		Authorised employee	Municipal Planning Tribunal

PART B: APPELLANT'S DETAILS

First name(s)	**THIAN**		
Surname	**JANSEN**		
Company name	**WRAP PROJECT OFFICE**		
Postal address	**POSTNET HERMANUS SUITE 170**		
Postal code	**PRIVATE BAG X16, HERMANUS,**	Tel / Cell:	**0283131411**
E-mail address	**ADMIN@WRAPGROUP.CO.ZA**		

PART C: APPELLANT'S PROPERTY DESCRIPTION *(Property that is affected by proposed development)*

Farms	**N/A – APPEAL AGAINST THE DECISION**		
Physical Address			
GPS Coordinates		Town/City	

PART D: PROPERTY DESCRIPTION OF PROPOSED LAND DEVELOPMENT

Farms	**PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON**		
Physical Address	**R43, BOTRIVER LAGOON WALKER BAY, HERMANUS, 7200**		
GPS Coordinates	**-34.3478, 19.1264**	Town/City	**HERMANUS**

PART E: APPEAL MOTIVATION AND REASONS*

- **REFER TO ATTACHED APPEAL MOTIVATION AND SUPPORTING DOCUMENTS**

PART F: APPEAL FEE *(valid from 1 July 2025 to 30 June 2026)*

Erven 150m² and smaller	**R412.00**	Proof of payment must be submitted with appeal. Appeal deposit is refundable should the appeal be upheld.
Erven between 150m² and 400m²	**R773.00**	
Erven larger than 400m²	**R4171.00**	

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APPEAL FORM

BANKING DETAILS	
Name:	Overstrand Municipality
Bank:	ABSA
Account no.:	322 00000 35
Payment Reference:	Erf number and suburb / Farm number and portion

PART G: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION

Complete the following checklist and attach all the information and documentation relevant to the appeal.

Y	N	Proof of payment of appeal fees	Y	N	Motivation and reasons for appeal
Y	N	Copy of decision and proof of notification	Y	N	Other (specify) – REFER TO ANNEXURE LIST

SECTION H: DECLARATION

I hereby wish to confirm the following:

1. That the information contained in this appeal form and accompanying documentation is complete and correct.
2. I'm aware that it is an offense in terms of Section 84 of the said legislation to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.

Appellant's signature:	Jansen	Date:	**7 NOVEMBER 2025**
Full name:	**THIAN JANSEN**		

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APPEAL

1. ABBREVIATIONS

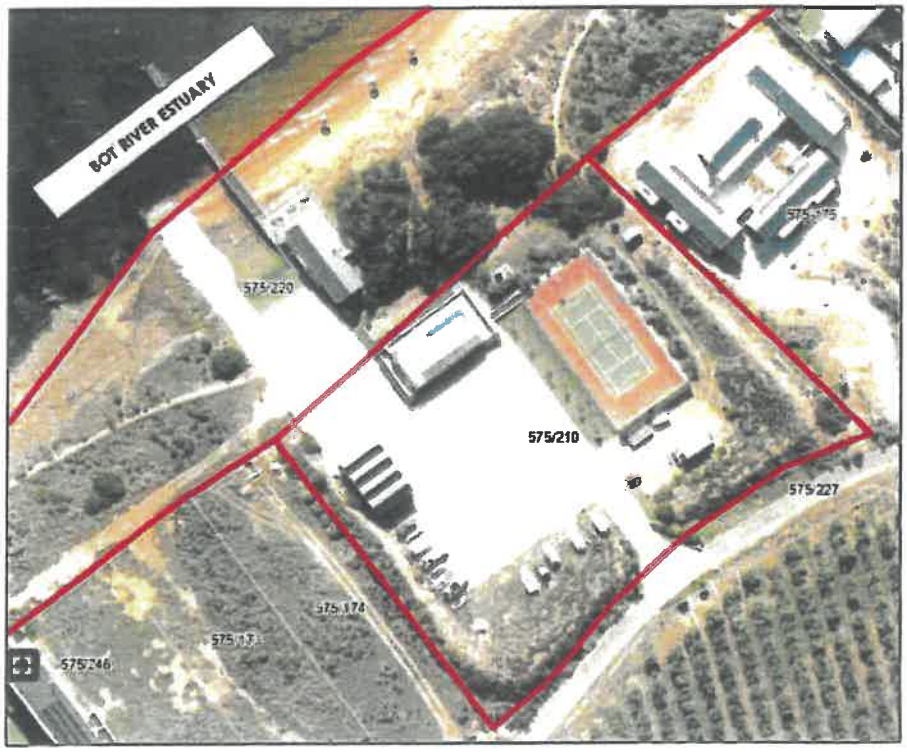
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
OMLUS	Overstrand Municipality Land Use Scheme, 2020
MSDF	Overstrand Spatial Development Framework, 2020

2. PROPERTY DETAILS

Erf Number	Portion 210 of the Farm Afdaks Rivier 575, Caledon	Portion 220 of the Farm Afdaks Rivier 575, Caledon
Extent	7555m²	4,0028ha
Zoning	Open Space Zone 3: Private Open Space	Open Space Zone 1: Nature Reserve

3. BACKGROUND

Portions 210 and 220 of the Farm Afdaks Rivier 575, Caledon (hereafter referred to as the subject properties), are located within the Benguela Cove Lagoon Wine Estate (refer to Plan 1 – Locality). Both properties are owned by the Benguela Cove Homeowners Association (hereafter referred to as the property owners). The Board of Trustees appointed WRAP Project Office to submit the original land use application and to act as the authorised agent for this appeal (refer to **Annexure A – Power of Attorney and Resolution**).



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The subject properties serve as recreational areas for private homeowners and guests of the wine estate, primarily for access to the Bot River Estuary. Portion 210 of the Farm Afdaks Rivier 575, Caledon, is used for storing water vessels and contains amenities such as a tennis court and swimming pool for residents of the estate.

Portion 220 of the Farm Afdaks Rivier 575, Caledon, which is improved with a jetty and boathouse, was proposed to be used as a tourist facility offering pontoon boat experiences on the Bot River Estuary. To ensure compliance with the Overstrand Municipality Land Use Scheme (OMLUS), approval of the following applications was required to regularise the existing operation:

- Consent Use for a tourist facility in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- Determination of an Administrative Penalty in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The application was considered by the Municipal Planning Tribunal (MPT) and subsequently refused on 30 September 2025. The refusal has the effect that the continued operation of the pontoon boat is unlawful, resulting in immediate financial implications for the operator and potential loss of employment for staff members dependent on the activity (refer to **Annexure B – Overstrand Municipality's Decision Letter**).

THE ENTIRE DECISION IS HEREBY APPEALED

This appeal is submitted in terms of Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020, which provides any person whose rights are affected by a decision taken under delegated authority the right to appeal to the Municipal Manager as the Appeal Authority.

The appeal is founded on the relevant planning and environmental policy frameworks, as well as the applicable legislative norms and principles, including the Spatial Planning and Land Use Management Act (SPLUMA, Act 16 of 2013), the Western Cape Land Use Planning Act (LUPA, Act 3 of 2014), and the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The motivation below demonstrates that the proposal remains consistent with the objectives of sustainable spatial development, environmental management, and good administrative practice, and that the reasons for refusal can be appropriately addressed through the imposition of reasonable conditions of approval.

4. COMPLIANCE OF THE APPEAL WITH SECTION 79 OF THE BY-LAW

The compliance of this appeal with the relevant subsections of Section 79 of the By-Law are as follow:

Section	Provision	Compliance
79 (1)	*"An appeal that is not lodged within the time period contemplated in Section 78 (2) or that does not comply with this section, is invalid."*	The decision letter is dated 17 October 2025 and notification was received on the same day. Twenty-one calendar days were granted within which an appeal may be submitted and this submission is made on or before the 7th of November 2025 and complies with the relevant time frame.
79 (2)	*"An appeal must set out the grounds on which the appellant believes the decision-maker erred in coming to the conclusion it did."*	The grounds on which is believed the decision maker erred in coming to the conclusion it did, will be motivated in Section 5 of this report.
79 (5)	*"Any person who lodge an appeal or apply for intervener status to the Municipal Manager must submit proof of payment of appeal fees as may be determined by the Municipality"*	The appeal fee of R4171.00 was paid and proof of payment is submitted with this appeal.

5. REASONS FOR THE APPEAL AND GROUNDS BELIEVED THE DECISION MAKER ERRED IN COMING TO ITS DECISION

It is of importance to take note that the appellant is appealing the entire decision of the Municipal Planning Tribunal.

5.1. REASONS PROVIDED FOR REFUSAL

Section 4 of the refusal letter states the reasons for refusal as the following:

" *POINT 1*

- *It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:*
  - *The number of trips the pontoon will make per day,*
  - *The expected volume of visitors to the site on a daily basis,*
  - *How visitors will utilise common area facilities, and*
  - *How access will be managed within the privately owned Benguela Cove Estate.*

- *The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.*

- *The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.*

POINT 2

- *The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:*

  - *the application was submitted by the HOA, but*
  - *the operations appear to be managed by a separate party.*

- *It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its"*

5.2. APPEAL MOTIVATION

The decision was made by the Municipal Planning Tribunal, based on the opinion, motivation and recommendation of the Municipal Planner.

The main reason for refusal was that the Municipality considered the application lacking sufficient operational clarity to enable a proper assessment of its desirability. The MPT found that the motivation report did not provide adequate detail regarding the scale and nature of the proposed tourist activity, including:

- The number of trips the pontoon would undertake per day;
- The anticipated number of visitors accessing the site;
- How guests would utilise existing common area facilities; and
- How visitor access and security would be managed within the private Benguela Cove Estate.

Due to this perceived absence of information, the MPT concluded that it was not possible to fully assess the potential impacts on noise, privacy, and security, or to determine whether the proposal would alter the established residential character of the estate.

Furthermore, the Municipal Legal Services Department advised that the Benguela Cove Homeowners Association (HOA) may not have fully complied with its own Constitutional requirements prior to submitting the application, as the matter was not tabled for consideration by the broader membership. The Tribunal accepted this interpretation, noting that this raised procedural concerns regarding the internal authorisation of the application.

A secondary reason for refusal related to the administrative penalty, where uncertainty existed as to who would be responsible for payment. The application was lodged by the HOA as property owner, while the operations are conducted by Benguela Cove Investments (BCI). The Municipality considered it procedurally irregular and potentially unfair for HOA members to bear any financial liability arising from an application they had not formally approved in terms of internal HOA processes.

As a result of the above, the MPT resolved that the application, in its current form, could not be supported and should be refused.

5.2.1. REPLICATION AGAINST REASONS FOR REFUSAL

Each of the reasons for refusal will be addressed individually to ensure that every point is adequately considered. The information presented in this appeal responds directly to the information and reasoning provided to the MPT by the Municipal Planner in formulating the recommendation for refusal of the application.

" ❖ *It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:*

- *The number of trips the pontoon will make per day,*
- *The expected volume of visitors to the site on a daily basis,*
- *How visitors will utilise common area facilities, and*
- *How access will be managed within the privately owned Benguela Cove Estate."*

It is acknowledged that the original motivation did not provide detailed quantitative information on the daily number of pontoon trips, the expected number of visitors, or the specific access and security arrangements for the operation. The absence of this information does however not render the application undesirable or incapable of assessment.

The proposed activity was clearly defined as a low-impact, small-scale tourism operation, limited to a single pontoon vessel (Lady Bonnie) operating from an existing jetty within the Benguela Cove Lagoon Wine Estate. The motivation confirmed that:

- The pontoon accommodates a maximum of twelve (12) passengers and two (2) crew members;
- Each tour lasts approximately one hour; and
- No additional structures, parking, or physical alterations were proposed.

At present, the Lady Bonnie operates a maximum of four (4) trips per day during daylight hours, depending on demand and weather conditions. This demonstrates that the scale of activity is modest, well within the estate's existing operational capacity, and not comparable to large-scale commercial boating or public tourism ventures.

While the Municipal Planner and objectors raised concerns about the absence of operational specifics, such matters are routinely addressed through conditions of approval

if it was deemed to be a factor in the outcome of the application rather than constituting grounds for outright refusal. The Overstrand Municipality via the MPT has the discretion to impose conditions limiting:

- The number of trips per day;
- Operating hours;

In addition, formal access routes and parking arrangements can be made a condition of approval to ensure that the Municipality has a method to control the use and if it is done outside of the controls the municipality can be made aware and impose penalties etc.

These standard regulatory tools ensure that any operational impacts on privacy, noise, or security can be effectively managed without prejudicing the estate's character or residents' enjoyment of their properties.

In addition, CapeNature and DEADP: Coastal Management have both confirmed that the operation of a single pontoon vessel within the Bot River Estuary is acceptable from an environmental and ecological perspective, subject to standard controls already in place. Their expert opinions confirm that the operation does not pose an environmental risk nor alter the character of the surrounding area.

Accordingly, while the Municipality's concern regarding the lack of detailed operational information is noted, it is submitted that this issue does not justify refusal. The perceived uncertainty could have been resolved through the inclusion of appropriate conditions of approval, ensuring that the operation remains low-impact, environmentally sound, and compatible with the surrounding residential environment.

To provide guidelines, the operator of the pontoon boat has provided the following information that can be implemented if approval is granted (Refer to **Annexure C** - Pontoon Operational Guideline)

" ❖ *The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable."*

The concerns raised by objectors and repeated in the Municipal Planner's report regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are acknowledged. These concerns were however comprehensively addressed in the Response to Objections submitted on 7 August 2023 and are respectfully not supported by factual evidence.

- **Security and Access Control**

The operation of the Lady Bonnie does not permit the general public access into the Benguela Cove Estate. Access to the jetty area and clubhouse is strictly controlled by estate security, and only authorised guests of the pontoon operator are permitted entry under pre-approved bookings. Each visitor is requested to meet at the tasting room, which is also open to the general public, where they are verified upon arrival, ensuring no unauthorised access

to the estate. An employee escort the guest to the clubhouse and no unauthorised travelling is allowed within the estate.

This process was detailed in the applicant's earlier response to objections, where it was confirmed that:

- Access will be restricted to the "Security Estate," controlled at the gate where only an employee can escort the guest of the pontoon boat to the clubhouse.
- The operation will not interfere with residents' private movement or property access.
- Only pre-registered guests may enter, and the facility remains under the supervision of the estate's personnel at all times.

Accordingly, the claim that the pontoon operation will compromise safety or increase security risks is unfounded. The proposed activity operates within an existing private security framework and is, in fact, subject to tighter control than most comparable tourist facilities.

Noise Impact

The Lady Bonnie is powered by two 40hp 4-stroke Honda outboard motors, selected specifically for their low-noise and low-emission performance. The operation involves slow, guided movement across the estuary at no more than 10 km/h, in full compliance with the Bot/Kleinmond Estuarine Management Plan and the By-Law Relating to the Control and Use of the Bot River and Klein River Estuaries (2004).

The claim that the pontoon will generate noise disturbance is therefore speculative and unsubstantiated. To date, the Lady Bonnie has operated without any noise complaints. Moreover, as the tours are limited to daylight hours (09:00–17:00) and only four trips per day, the activity will not cause a measurable increase in noise within the estate.

Privacy and Use of Common Areas

No public activity is proposed within the private open space or recreation areas of the estate. Guests are escorted directly to and from the pontoon under supervision and do not utilise common facilities such as the tennis court or swimming pool.

The pontoon operation therefore has no direct interaction with the residential component of the estate and will not infringe upon the privacy of property owners. The Municipality's concern that visitors may utilise these spaces was speculative, as such access is expressly prohibited under the operational management procedures.

Character of the Area

The Lady Bonnie represents a low-intensity, environmentally responsible tourism activity aligned with the estate's existing recreational and conservation ethos. The Overstrand Spatial Development Framework (2020) identifies the Benguela Cove area as a tourism and eco-recreation node, encouraging controlled nature-based tourism.

The proposal does not introduce new built structures, commercial signage, or noise-generating uses that could alter the visual or residential character of the area. On the contrary, the controlled and educational nature of the tours complements the estate's existing identity as an environmentally conscious, nature-oriented development.

While the concerns expressed by objectors were considered in good faith, they are addressed and mitigated through existing management and operational controls. The operation is small in scale, environmentally compatible, and integrated within the private, secure setting of the estate.

All matters relating to security, privacy, and character can be managed effectively through conditions of approval should the Municipality deem it necessary, ensuring continued alignment with the estate's high residential and environmental standards.

" ❖ *The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department."*

The refusal states that the Benguela Cove Homeowners Association (HOA) did not comply with its Constitution prior to submitting the application and that the application should have been tabled at a Special General Meeting of members. The Municipal Legal Services Department's opinion was that the Trustees did not have the authority to act without a special resolution.

This interpretation is respectfully disputed and the MPT erred by accepting the opinion.

Constitutional Authority of the Trustees

In terms of Paragraph 9.1 of the Benguela Cove HOA Constitution (updated 20 April 2018), the Trustee Committee is vested with full powers to manage and control the business and affairs of the Association, including the use and regulation of common property. Paragraphs 9.5.4, 9.5.5, and 9.5.6 expressly empower the Trustees:

- *"to make regulations for the advancement of the interests of members;"*
- *"for the regulation and control of the conduct of members and occupants while in the estate;"* and
- *"for governing the manner and methods of use of the common property by or on behalf of the Members of the Association."*

Therefore, the Trustees are lawfully empowered to regulate and authorise the use of common property, provided that such actions do not involve the alienation, subdivision, or physical alteration of such land. The consent use application does not constitute any of these actions, it does not transfer ownership, create a servitude, or authorise any new building works. It merely regularises an existing activity to ensure compliance with municipal planning legislation.

No Contravention of Clause 30 of the Constitution

Clause 30 of the Constitution restricts the sale, alienation, or physical alteration of common property without a special resolution of members. However, the application:

- Did not dispose of or encumber any portion of the common property;
- Did not propose new construction or structural improvement; and
- Maintained the existing use of the jetty and boathouse, which already form part of the approved estate layout.

Accordingly, the application did not trigger the requirement for a special resolution under Clause 30. The Trustees acted within their constitutional powers by approving the use and authorising WRAP Project Office to lodge the planning application and this appeal on behalf of the HOA.

Relationship Between the HOA and BCI

The involvement of Benguela Cove Investments (BCI) as the operator was clearly defined in the additional correspondence submitted to the Municipality on 7 August 2023 in the response to objections submitted and, on the 24 April 2024, As recorded therein:

- BCI is a member of the HOA and a registered levy-paying owner of commercial and unsold residential properties within the estate;
- BCI applied to the Trustees for consent to use Portions 210 and 220 for the *Lady Bonnie* pontoon operations;
- The Trustees considered and approved this application on 20 January 2023, confirming compliance with the Constitution.
- The Trustees' approval did not amend the Constitution, nor did it require a member resolution, as it simply confirmed BCI's existing right as a member to use common property subject to estate rules.

The correspondence further clarified that, in terms of Paragraphs 3.1, 3.2, and 9 of the Constitution, the Trustees have full *locus standi* to advance and protect the collective interests of members and to manage the common property for their mutual benefit.

It is therefore submitted that:

- The Trustees acted within their delegated constitutional authority in approving the use of the common property for the pontoon activity and in authorising the submission of the planning application.
- The application did not require a special resolution, as it did not alter ownership, introduce new structures, or modify the approved layout plan.
- The Municipal Legal Services Department's interpretation was overly restrictive and misapplied to a routine land use compliance matter.
- The relationship between the HOA (as landowner) and BCI (as operator) is lawful, transparent, and compliant with the HOA Constitution and estate management provisions.

For these reasons, the allegation of non-compliance with the HOA Constitution is respectfully rejected, and it is submitted that this ground does not constitute a valid basis for refusal of the application.

" ❖ *The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:*

- *the application was submitted by the HOA, but*
- *the operations appear to be managed by a separate party.*

❖ *It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its"*

It is noted that the Municipality's reason for refusal includes concern that the application "lacks clarity on who will be held responsible for the administrative penalty fee" and that it would be "unfair and procedurally irregular for members of the HOA to be held financially accountable."

This matter is regulated by Section 90 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, which governs the determination of administrative penalties.

Legal Framework: Section 90 of the By-Law

Section 90(7)(a) expressly empowers the Municipality, the Municipal Planning Tribunal, or the Appeal Authority to designate the person responsible for paying the administrative penalty. The section states:

> *"The Authorised Official, the Municipal Planning Tribunal or Appeal Authority must notify* ***the person who is in contravention of this By-Law of its decision****, and if it decides to impose an administrative penalty, the notice must set out the administrative penalty* ***and the person who must pay it.****"*

This provision confirms that the liability for payment is not automatically assigned to the landowner, but rather to the person who committed or benefited from the contravention. The Municipality therefore retains discretion to impose the penalty on the actual operator of the unauthorised land use activity.

Application of Section 90 to this Case

In this instance:

- The Benguela Cove Homeowners Association (HOA) is the registered owner of the land and the lawful applicant.
- Benguela Cove Investments (BCI) is the operator of the *Lady Bonnie* pontoon and the entity that has derived commercial benefit from the use.

The relationship between the HOA and BCI was formalised through a Trustee Committee resolution dated 20 January 2023, authorising BCI's use of Portions 210 and 220 in accordance with the HOA Constitution. This operational arrangement was fully disclosed to the Municipality in the additional correspondence dated 24 April 2024 (refer to **Annexure D – Additional Information Letter**)

In light of this, and in terms of Section 90(7)(a), the Municipality can and should designate BCI as the responsible person for payment of any administrative penalty, should such a penalty be imposed.

Nature of the Contravention and Proportionality

The contravention relates exclusively to the commencement of a land use prior to approval and does not involve unauthorised construction, structural alteration, or environmental harm. Section 90(5)(b) specifies that the penalty for a land use contravention may not exceed 100% of the municipal valuation of the area used unlawfully.

Given that the area in question is limited to a small portion of the estuarine jetty and mooring space, the scale and gravity of the contravention are minimal. The *Lady Bonnie* operates under environmental controls, existing infrastructure, and with prior notification to the authorities. The purpose of this application was to regularise the use, not to conceal it.

Accordingly, any administrative penalty imposed should be:
- Nominal, reflecting the minor and technical nature of the contravention; and
- Imposed on the operator (BCI) as the party responsible for the ongoing activity.

Procedural Fairness and Correction of the Record

The concern raised by the Tribunal that "it would be unfair and procedurally irregular for members of the HOA to be held financially accountable" is agreed with in principle. This concern does however not constitute a reason for refusal, as it can be fully addressed through the proper application of Section 90(7)(a).

The following condition of approval is therefore proposed for clarity and procedural fairness:

"In terms of Section 90(7)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, any administrative penalty imposed shall be payable by Benguela Cove Investments (Pty) Ltd, as the operator of the pontoon boat, and not by the Benguela Cove Homeowners Association."

This condition ensures compliance with the By-Law, confirms the Municipality's discretion, and safeguards the financial interests of HOA members.

The By-Law provides a clear mechanism for assigning responsibility for penalties and does not justify refusal of a consent use application. The operator's role and responsibility are well defined, transparent, and legally supportable. It is therefore respectfully submitted that this ground for refusal is invalid, as the issue of penalty responsibility can be fully and fairly resolved through a condition of approval in line with Section 90(7)(a) of the By-Law.

6. REASON WHY THE DECISION-MAKING AUTHORITY ERRED IN COMING TO THE CONCLUSION

We are of opinion that the reasons for refusal provided by the Municipal Planning Tribunal are based on information not accurately conveyed to them as decision-making authority as indicated in the abovementioned replication to these reasons, which are summarised as follows:

6.1. Lack of operational detail — error of fact and remedy by condition

The MPT concluded desirability could not be assessed because the application lacked operational detail (number of trips, visitor volumes, access arrangements). This is incorrect for two reasons: (a) the original motivation already described the vessel, passenger capacity (12 passengers + 2 crew), trip duration and that no new physical infrastructure or parking was required; and (b) any remaining specifics (e.g. trip frequency and operating hours) are standard operational matters that the Municipality can and routinely does manage by condition of approval.

The operator has confirmed a maximum of four trips per day and daylight-only hours, information that removes the alleged uncertainty and which can be reinforced by conditions (maximum trips, hours, guest vetting, access. controls). The MPT therefore elevated a defeasible administrative detail into a fatal planning reason, when a conditional approval would have been the appropriate, proportionate response.

6.2. Security, noise, privacy and character concerns — speculative, mitigable and unsupported by expert inputs

The MPT accepted objector fears about security, noise and change of character as reasonable without weighing the factual safeguards in the record. The operation: (a) restricts access to pre-booked, authorised guests only; (b) operates within the estate security regime; (c) uses low-noise 4-stroke outboards and slow, guided movement across the estuary; and (d) does not introduce new built form or public access to private recreational areas.

Additionally, environmental authorities (CapeNature / DEADP Coastal Management) raised no environmental objections, provided operations remain limited to the one vessel, a strong technical endorsement that directly rebuts claims of material noise or ecological harm. The Tribunal therefore relied on speculative impacts rather than the documented operational controls and expert advice.

6.3. HOA constitutional compliance — misinterpretation of trustees' powers

The MPT relied on the Municipal Legal Branch's view that the HOA should have convened a special general meeting before submitting the application. This is legally and factually flawed: the HOA Constitution vests the Trustee Committee with broad powers to "manage and control the business and affairs of the Association" and specifically empowers trustees to regulate the use of common property and to make rules and approvals on behalf of members (paragraphs 9.1; 9.5.4–9.5.6).

The Trustee Committee considered and resolved on 20 January 2023 and provided a written resolution and supporting letter explaining the trustees' authority and reasons, documents that were submitted to the Municipality. The submitted evidence therefore shows trustees acted within their delegated authority and that no special resolution was required because the proposal did not alienate, subdivide or alter common property as envisaged by clause 30. The MPT's insistence that a special general meeting was necessary misapplies clause 30 and conflates internal governance issues with statutory planning merit.

6.4. Unclear responsibility for the administrative penalty — incorrect treatment of municipal discretion under Section 90

The MPT treated uncertainty over who should pay any administrative penalty as a reason to refuse. That approach ignores Section 90 of the Municipal Planning By-Law, which expressly allows the Municipality, the MPT or Appeal Authority to designate who must pay the penalty and to request further information if the evidence is insufficient.

The record identifies the HOA as owner/applicant and BCI as the operator; the additional correspondence confirms that the operator (BCI) will assume operational responsibility. Under the By-Law the Municipality may (and should) direct the administrative penalty at the party who carried out and benefited from the contravention (the operator), not the membership at large. This is a procedural matter that can be resolved through an explicit condition (or an undertaking) and does not justify refusal.

6.5. Overall "not desirable in current format" finding — cumulative error and remedy by targeted conditions

The MPT's conclusion that the application is "not desirable in its current format" aggregates the errors above: it treats remedial and procedural gaps as substantive planning defects and fails to apply the usual remedial toolset (conditions of approval, clarifying undertakings, or a modest administrative penalty payable by the operator).

The application is for a low-intensity tourist use from existing infrastructure, supported by environmental authorities and the estate governance instruments. The correct planning approach was to identify discrete, fixable matters (operational limits, access protocols, a trustees' certification and an operator indemnity/undertaking) and to require these as conditions, not to refuse the application outright. The MPT therefore erred by applying an unduly rigid standard of perfection rather than one of proportionality and administrative fairness.

7. REASON WHY THE APPEAL IS BASED ON AND PRIMARILY CONCERNED WITH THE PROCESS FOLLOWED PRIOR TO THE MUNICIPAL PLANNING TRIBUNAL DECISION

The application for the Consent Use and Determination of an Administrative Penalty was submitted on 9 February 2023 and officially acknowledged by the Overstrand Municipality on 13 February 2023. Following the submission of additional information requested by the Municipality, the application was deemed complete on 27 March 2023.

In terms of Section 46(3)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning (2020), once an application is deemed complete, the Municipality must, within 30 days, forward copies of the notice and application to every **municipal department**, service provider and organ of state with an interest in the application.

Section 46(3) provides as follows:

"46. Notice of applications in terms of integrated procedures:
...

(3) The Municipality must, within **30 days of having notified the applicant that the application is complete**, simultaneously—

a) cause public notice of the application to be given in terms of Section 47(1); and
b) forward a copy of the notice together with the relevant application to every **Municipal Department**, service provider and organ of state that has an interest in the application, unless it has been determined by the Municipality that a procedure in terms of another law, as determined in Subsection (1), is considered to be public notice in terms of this By-law."

The statutory intent of Section 46 is to ensure that interdepartmental comments are sought and received timeously, providing both the decision-making authority and the applicant with a consistent and procedurally fair process. The provision ensures that all relevant departments have an opportunity to consider the proposal while maintaining certainty and predictability for the applicant.

7.1 Non-Compliance with Section 46(3)(b) – Late Referral and Comment by the Legal Services Department

The Municipal Legal Services Department provided two separate sets of comments on this application. Unfortunately:

- Neither of these comments was circulated to WRAP Project Office, the appointed agent, for comment during the assessment phase;
- Both legal opinions are referenced as a reason for refusal by the Municipal Town Planner but was never formally provided for review or response by the applicant before the decision was finalised;
- WRAP Project Office was requested to comment on the first legal opinion in February 2024. WRAP Project Office requested the operators to comment on the opinion and a response was given in April 2024. WRAP Project Office has however never directly saw the comments which were attached as an annexure to the report considered by the MPT; and
- The second set of comments was only received by the Municipal Town Planner on 4 March 2025 — a full **754 days** after the application was deemed complete. These comments were never shared with or allowed the opportunity to be commented on by the applicant.

This timeframe is in direct contravention of Section 46(3)(b) of the By-Law, which mandates circulation of the application to all internal departments within 30 days of it being deemed complete.

The inordinate delay and lack of communication with the applicant constitute a procedural irregularity that materially affected the fairness and integrity of the process. It also resulted in information being presented to the MPT without the applicant's knowledge, verification, or opportunity to provide contextual responses.

7.2 Violation of Section 56 – Applicant's Right to Reply

Section 56 of the same By-Law sets out the applicant's **statutory right to reply** to all objections, comments or representations lodged during the process.

Section 56(1) states:

"Copies of **all objections, comments or representations** lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section."

This provision gives the applicant a **legal entitlement** to receive, review and respond to all comments received, including interdepartmental comments, where relevant to the application's assessment.

In this case, the Municipality failed to provide the applicant (WRAP Project Office) with the **Legal Services Department's comments** prior to the MPT meeting, despite the fact that those comments formed the **central basis** for the Municipal Planner's recommendation of refusal.

The applicant was thus deprived of a fair opportunity to:

- Submit a formal written response to the legal interpretation;
- Provide clarifying information or additional documentation; and
- Correct any factual inaccuracies or misunderstandings that subsequently informed the MPT's decision.

This procedural omission directly contravenes Section 56 and resulted in an unfair administrative process.

7.3 Material Impact on the Outcome

Had WRAP Project Office been given the opportunity to respond within the statutory timeframe, as envisaged by Section 56, the applicant would have been able to provide additional information or more evidence:

- Provide additional information regarding the Trustee Committee Resolution, confirming the HOA's authority to lodge the application;
- Expand on the letter from the HOA Chairman (24 April 2024) explaining BCI's status as a member and operator acting under trustee authorisation; and

- Additional contextual documents demonstrating compliance with the HOA Constitution.

Consequently, the MPT's decision was based on incomplete and untested information, a procedural flaw that undermines both the substantive fairness and the rationality of the outcome.

8. RELIEF SOUGHT

The relief sought by the property owner and appellant is for the appeal authority to reconsider the decision of the Municipal Planning Tribunal and to approve the application for the consent use and impose an administrative penalty payable on the operators in terms of Section 90(7)(c) of the By-Law.

9. RECOMMENDATION

It is recommended that the appeal authority upholds this appeal and that the following is approved:

9.1 **Consent Use** to allow a tourist facility in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and

9.2 **Determination of an administrative penalty** on the operator in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

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ANNEXURE A: POWER OF ATTORNEY

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TRUSTEE RESOLUTION NO:20251030-01 PASSED BY THE TRUSTEES OF BENGUELA COVE HOME OWNERS ASSOCIATION ON 30 OCTOBER 2025

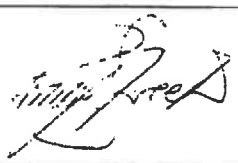
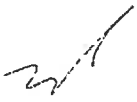
WHEREAS:

1. The Benguela Cove Homeowners Association ("the HOA") submitted an application for consent use to allow tourist facilities (specifically, the operation of a pontoon boat as a recreational facility) on the above-mentioned properties;
2. The Municipal Planning Tribunal issued a decision on 30 September 2025, refusing the application and declining to impose an administrative penalty;
3. The Trustees have reviewed the Municipal Planning Tribunal's decision and the reasons provided;
4. The Trustees believe there are substantial grounds to appeal the decision, including but not limited to:
    a. The ability to provide additional clarifying information regarding operational details cited as lacking in the decision;
    b. Concerns regarding procedural fairness and the level of consideration afforded to the HOA's submissions;
    c. The significance of the pontoon boat facility to the amenities, lifestyle, and value of the Benguela Cove Estate;
5. In terms of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020, an appeal must be lodged with the Appeal Authority (the Executive Mayor) within 21 days of notification, accompanied by the prescribed appeal fee of R4,171.00.

RESOLVED THAT:

1. The Trustees of the Benguela Cove Homeowners Association hereby formally resolve to appeal the decision of the Municipal Planning Tribunal dated 30 September 2025, refusing the application for consent use in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020;
2. The Trustees hereby authorize and instruct the HOA's appointed representatives and legal advisors to prepare and lodge all necessary appeal documentation with the Appeal Authority within the prescribed 21-day period;
3. The Trustees hereby authorize the payment of the appeal fee in the amount of R4,171.00 from HOA funds;The Trustees further authorize the engagement of appropriate professional consultants, planners, and legal representatives to prepare a comprehensive appeal submission addressing all grounds of appeal;
4. The Trustees commit to providing all necessary information, documentation, and cooperation required to support the appeal process;
5. The Trustees confirm that this resolution has been duly considered and approved in accordance with the HOA's Constitution and all applicable procedures.

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TRUSTEE COMMITTEE MEMBERS	SIGNATORIES
1. Shantel Kent	
2. Penelope Marion Streeter	
3. Nicholas Rea	
4. Andre Loedolff	

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DIRECTORATE: PLANNING & DEVELOPMENT
TOWN & SPATIAL PLANNING

Munisipaliteit • UMasipala • Municipality
OVERSTRAND

ENQUIRIES | NAVRAE: H Olivier (Town Planner)
FILE REF | LêERVERW: HBENG 210 & 220/575
APP ID | AANSOEK ID: 4336/2023
DATE | DATUM: 17 October 2025

REGISTERED MAIL

WRAP Project Office
Attention: Thian Jansen
PostNet Hermanus Suite 170
Private Bag X16
HERMANUS
7200

admin@wrapgroup.co.za

Dear Sir

DECISION LETTER TO APPLICANT

PORTIONS 210 AND 220 (PORTIONS OF PORTION 80) OF FARM AFDAKS RIVIER NO. 575, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOMEOWNER'S ASSOCIATION

1. The application received on 9 February 2023 refers.

2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 September 2025.

3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED:

"1. that the objections be noted;

2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 for a Consent use to allow tourist facilities (operating a pontoon boat as a recreational facility) on Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575, Division Caledon, not be approved;

3. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Portions 210 & 220 (Portions of Portion 80) of Farm Afdaks River No.575 for the unauthorised land use (operation of a pontoon boat), not be imposed; and

4. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above decisions."

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4. Reasons for the above decision are as follows:

POINT 1

- It is not possible to determine the desirability of the proposal at this stage due to a lack of critical information, including:
  - The number of trips the pontoon will make per day,
  - The expected volume of visitors to the site on a daily basis,
  - How visitors will utilise common area facilities, and
  - How access will be managed within the privately owned Benguela Cove Estate.
- The concerns raised by objectors regarding security risks, increased noise levels, impacts on privacy, and the potential change to the character of the area are considered valid and reasonable.
- The objection that the Benguela Cove Estate Homeowners Association (HOA) failed to comply with the requirements of its own Constitution prior to submitting the application, is supported by the Municipal Legal Services Department.

POINT 2

- The application lacks clarity on who will be held responsible for the Administrative Penalty Fee, especially given that:
  - the application was submitted by the HOA, but
  - the operations appear to be managed by a separate party.
- It would be unfair and procedurally irregular for the general members of the HOA to be held financially accountable for a penalty arising from an application that was not processed in accordance with the internal procedures of the HOA and its

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R4171-00).

5.2 The appeal form is available at request or alternatively on the Municipal website.

5.3 Contact details are as follows:

Physical address:	16 Paterson Street, Hermanus, 7200
Postal address:	PO Box 20, Hermanus, 7200
E-mail address:	loretta@overstrand.gov.za

Yours faithfully

R KUCHAR

DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING


WRAP

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Operational Management Plan: Lady Bonnie Pontoon Boat

1. Purpose

The purpose of this Operational Management Plan is to outline the procedures and controls for the operation of the *Lady Bonnie* pontoon boat within the Benguela Cove Lagoon Wine Estate and the Bot River Estuary. The plan ensures safe, environmentally responsible, and guest-friendly operations that comply with the Overstrand Municipality Land Use Scheme and relevant environmental regulations.

2. Operational Overview

- **Operator:** Benguela Cove Investments (Pty) Ltd
- **Owner of the properties:** Benguela Cove Homeowners Association (BCHOA)
- **Vessel Name:** *Lady Bonnie*
- **Vessel Capacity:** 12 passengers and 2 crew members
- **Trip Duration:** Approximately 60 minutes – 90 minutes
- **Number of Trips:** Maximum of 4 trips per day
- **Operating Hours:** Between 09:00 and 17:00 (daylight hours only)
- **Departure Point:** Jetty located on Portion 220 of the Farm Afdaks Rivier 575, Caledon
- **Use Type:** Low-impact tourist facility providing guided pontoon tours of the Bot River Estuary

3. Guest Management Procedures

➢ **Pre-Trip Preparation:**
  - Guests arrive 30 minutes prior to departure at the Benguela Cove Wine Estate tasting room.
  - Complete indemnity and registration forms.
  - Provide beverages and safety briefing.
  - Record guest details in the vessel logbook.
  - Escort the guests to the clubhouse and pontoon boat.

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- **Boarding:**
  - Escort guests safely to the pontoon using the designated access walkway.
  - Crew provides a safety and health briefing prior to departure.
- **Post-Trip:**
  - Escort guests back to the tasting room or designated arrival point.
  - Ensure guest satisfaction and record any feedback or incidents in the logbook.

4. **Navigation and Route Management**

- The approved pontoon route is indicated on the site plan (Annexure A).
- Operators must follow the prescribed route to prevent environmental disturbance.
- Avoid approaching the estuary mouth during open flow conditions.
- Maintain vigilance for changing channel conditions after storms or wind events.
- Return via the same designated route after each trip.

5. **Environmental and Safety Management**

- Operations must comply with the **Bot/Kleinmond Estuarine Management Plan (2019).**
- Refuelling is conducted off-site to prevent spills.
- No waste or greywater may be discharged into the estuary.
- Two recycling bins are provided onboard for guest waste.
- Engines: 2 x 40hp 4-stroke Honda outboards (low-noise, low-emission).
- No fishing, swimming, or other unauthorised activities are permitted during tours.

6. **Security and Access Control**

- Access to the pontoon is restricted to authorised guests and staff only.

- No public walk-in access is permitted.
- Estate security will verify guest lists before allowing entry.
- The pontoon and jetty areas remain under the supervision of estate security at all times.

7. **Record Keeping and Compliance**

- A daily operational log must be maintained, recording:
  - Trip times, number of passengers, and crew on duty.
  - Weather and water conditions.
  - Any incidents, maintenance actions, or safety issues.
- The logbook must be available for inspection by the Overstrand Municipality or relevant authorities upon request.

8. **Emergency Procedures**

- Crew to be trained in basic first aid and emergency response.
- Life jackets to be worn by all passengers during tours.
- A safety briefing must precede every trip.
- The pontoon is equipped with:
  - Life jackets for all passengers.
  - Fire extinguisher and first-aid kit.
  - Two-way communication device.

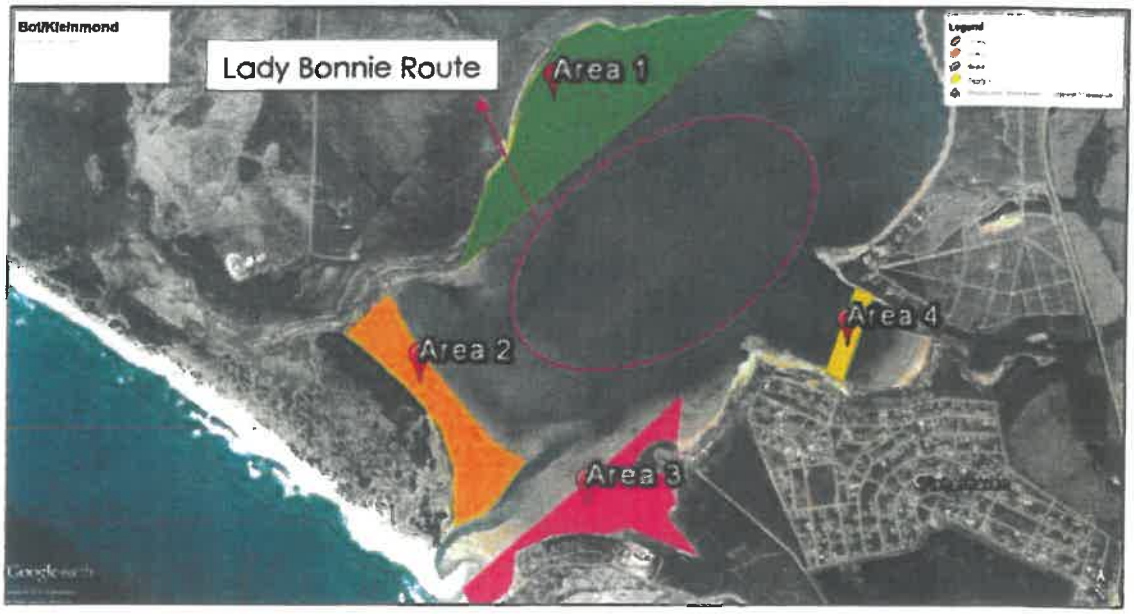
9. **Review and Amendment**

This Operational Management Plan will be reviewed annually by Benguela Cove Investments in consultation with the BCHOA to ensure continued compliance with environmental and municipal requirements.

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ANNEXURE A

The Bot/Kleinmond Estuarine Management Plan Draft January 2019 proposed some changes to the areas as identified in Photo 1, refer to the following:



Area 1: Buffer to Rooisand Nature reserve, no watercraft propelled by engines;

Area 2: Buffer to bird habitat, no boating allowed;

Area 3: Recreational access; and

Area 4: Alleviate congestion at slipway, add to general boating zone.

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Project Office

Town Planning & Project Management

Our Reference: 22/164
Your Reference: Ptn 210 & 220 of Farm 575, HBENG

24 April 2024

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr Henk Olivier

PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON: APPLICATION FOR A CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith the response to your letter dated 27 February 2024 as received from the Chairman of the Benguela Cove Homeowners Association:

"BACKGROUND

1. *The Benguela Cove Lagoon Wine Estate is a mixed-use development which were / are developed as such for residential, agricultural and commercial purposes by Benguela Cove investments Pty Ltd (BCI) as developer in terms of the rezoning of the property and subsequent registration of the Benguela Cove Home Owners` Association Constitution.*
2. *Par 3.1 of the Constitution states that the main business of the Association is to promote, advance and protect the interests of its Members, relative to their ownership in the development. In addition Par 3.2 of the Constitution confirms that the main object and purpose of the Association is to provide for the promotion and enforcement of standards in keeping with the character of the Benguela Cove Lagoon wine Estate development in such a way that Members derive the maximum collective benefit by control over and protection and maintenance of the common property of areas regarded as common to all Members and to apportion the expenses in relation thereto between the Members by the charging of levies to the Members.*
3. *BCI is a Member of the HOA, which was reconfirmed by arbitration order during October 2020. BCI is paying monthly levies as registered owner of the commercial as well as all unsold residential portions.*

Unit B, Standard House,
Cnr Royal and Dirkie Uys Street
Hermanus

PostNet Hermanus Suite 170
Private Bag X16, Hermanus,
7200

Tel: +27 (0)28 313 1411
Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

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4. *BCI is a private company with one of its` purposes to derive profit subject to the contents of the Constitution.*
5. *Portions 210 & 220 are defined in the Constitution as common property. The aforesaid portions were transferred to The HOA during 2018. It follows that the HOA as registered owner of the aforesaid portions is obliged to comply with paras 3.1 & 3.2 of the Constitution and to manage these portions to the benefit of all the residential owners and BCI.*
6. *The Trustee Committee shall manage and control the business and affairs of the HOA subject to the provisions of the Constitution – par 9.1.The Trustees are fully entitled to make regulations for the advancement of the interests of its members (par 9.5.4), the regulation and control of the common property (par 9.5.5) & for governing the manner and methods of use of the common property by or on behalf of the Members of the HOA (par 9.5.6).*
7. *Conduct Rule 14 contains the provisions regarding the Jetty & Mooring Slipway. The use of the area shall be reserved for owners and / or occupiers and their guests. BCI as owner cannot be excluded from this provision.*

FACTS

BCI wishes to use Portions 210 & 220 as a member of the HOA in accordance with the Constitution.

1. *By virtue of its` ownership and nature of business, such use can only be for commercial purposes.*
2. *The registered owner of the abovementioned properties is the HOA and BCI consequently approached the Trustees Committee to consent to the proposed use.*
3. *The application to the Trustee Committee was made on 20 January 2023.*
4. *BCI is fully aware of the provisions of Annexure E to the Constitution and no deviation was applied for.*
5. *The Trustees duly considered and supported the application. It was so resolved on 20 January 2023 (copy of resolution annexed hereto).*

CONCLUSION

In view of the aforesaid:

1. *BCI as member of the HOA is fully entitled to the use of Portions 210 & 220. It would be unconstitutional to refuse BCI to use the aforesaid properties as long as the provisions of the Constitution including Annexure E had been complied with*
2. *BCI`s application for consent was not unconstitutional.*
3. *The Trustees had full locus standi to consider BCI`s application for consent.*
4. *The Trustees` consent was in terms of paras 3 , 9, Conduct Rule 14 and Annexure E of the Constitution.*
5. *The aforementioned consent did not have the effect that any provision of the Constitution was amended. The Trustee Committee`s consent is a ratification of BCI`s entitlement to use Portions 210 & 220.*
6. *Consequently, it was unnecessary to obtain a special resolution or even an ordinary resolution from the members of the HOA.*
7. *Clearly there is no prejudice to the residential members of the HOA."*

ANNEXURES:

Annexure A: Benguela Cove Home Owners` Association Constitution
Annexure B: Annexure E of Benguela Cove Home Owners` Association Constitution
Annexure C: Trust Resolution

We trust that you will find the above in order. Should you require any additional information, please do not hesitate to contact us.

Yours faithfully

THIAN JANSEN –
PROFESSIONAL TOWN PLANNER (A/2858/2019)

Addendum EE

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OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
17 DEC 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP-A Theart (H Olivier)

Overstrand Municipality
Town Planning
16 Paterson Street

Hermanus, 7200

via E-Mail: enquiries@overstrand.gov.za
loretta@overstrand.gov.za
holivier@overstrand.gov.za

Ref.: Portions 210 and 220 of Farm 575, Afdaksrivier
Comments on the Appeal of Benguela Cove Home Owner Association (BCHOA) against the decision of the Municipality

We refer to the above matter and the notice received from your office and hereby formally place our comments on record.

We are the owners of Plot and House 254 (consolidated 188 and 189) at Benguela Cove and are members of the Benguela Cove Home Owners' Association (BCH245OA). We submit this letter to provide our comments on the BCHOA's appeal against the Municipality's recent decision.

---

1. Scope of the Appeal – Use of Portions 210 and 220

The original application from 2023 and the current appeal concern Benguela Cove Investments (BCI) via BCHOA securing the tourist development of plots 210 and 220 along the lagoon (Beach) and the operation of an excursion boat exclusively for its own business purposes, which are not in the interests of the independent Benguela Home Owners (HO).

In our opinion BCI is using the Benguela Home Owners Association (BCHOA) which in our opinion it has sole control, as a vehicle for the application. The resolution submitted by the trustees may be legally correct, but in our opinion it is actually proof that BCI is using this body for its own purposes.

We, and to our knowledge, other BCHOA members as well, were never informed by the Trustees about the plans, applications, and appeal of the Benguela Home Owner Association (BCHOA).

Based on the documents available to us, we are concerned that the map extract included in the appeal submission (dated 7 November 2025) does not appear to reflect the full extent and character of Portion 220. Portion 220 spans several hundred meters along the lagoon and effectively connects the existing boathouse area to a plot at the far end of the portion owned by BCI for future development of a hotel.

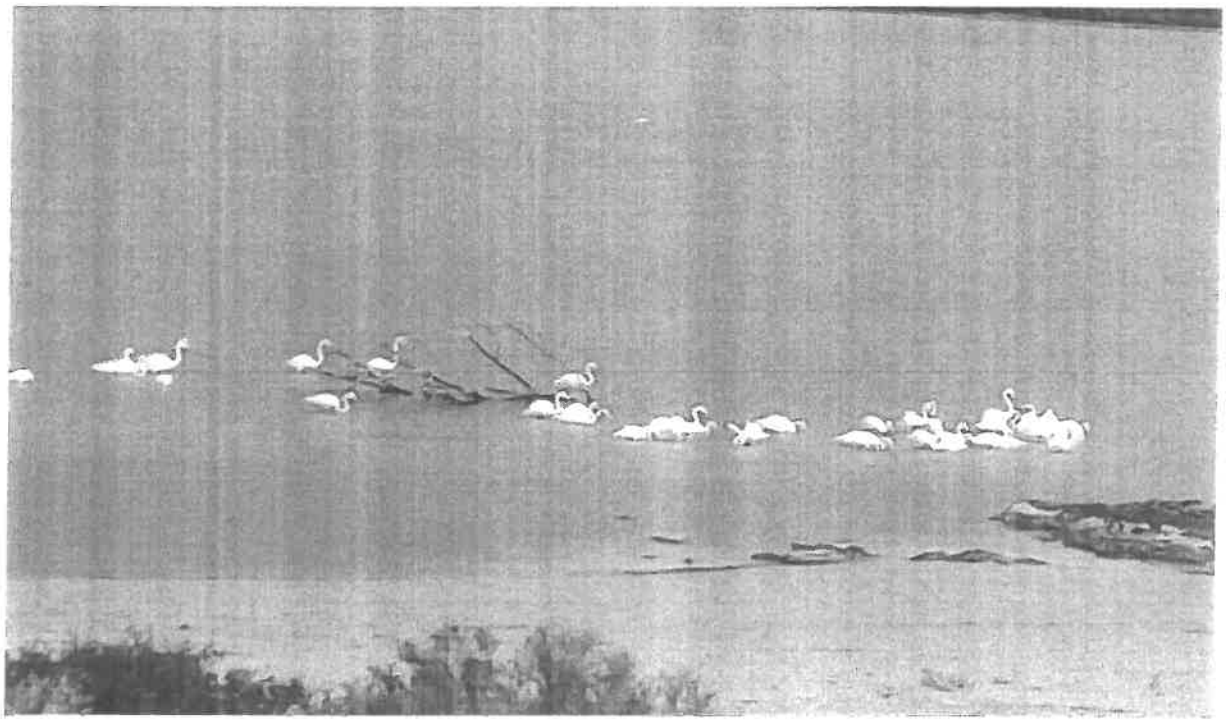
FILE NO. Ptns 210 & 220|575
SCAN NO.
COLLABORATOR NO. 2933770

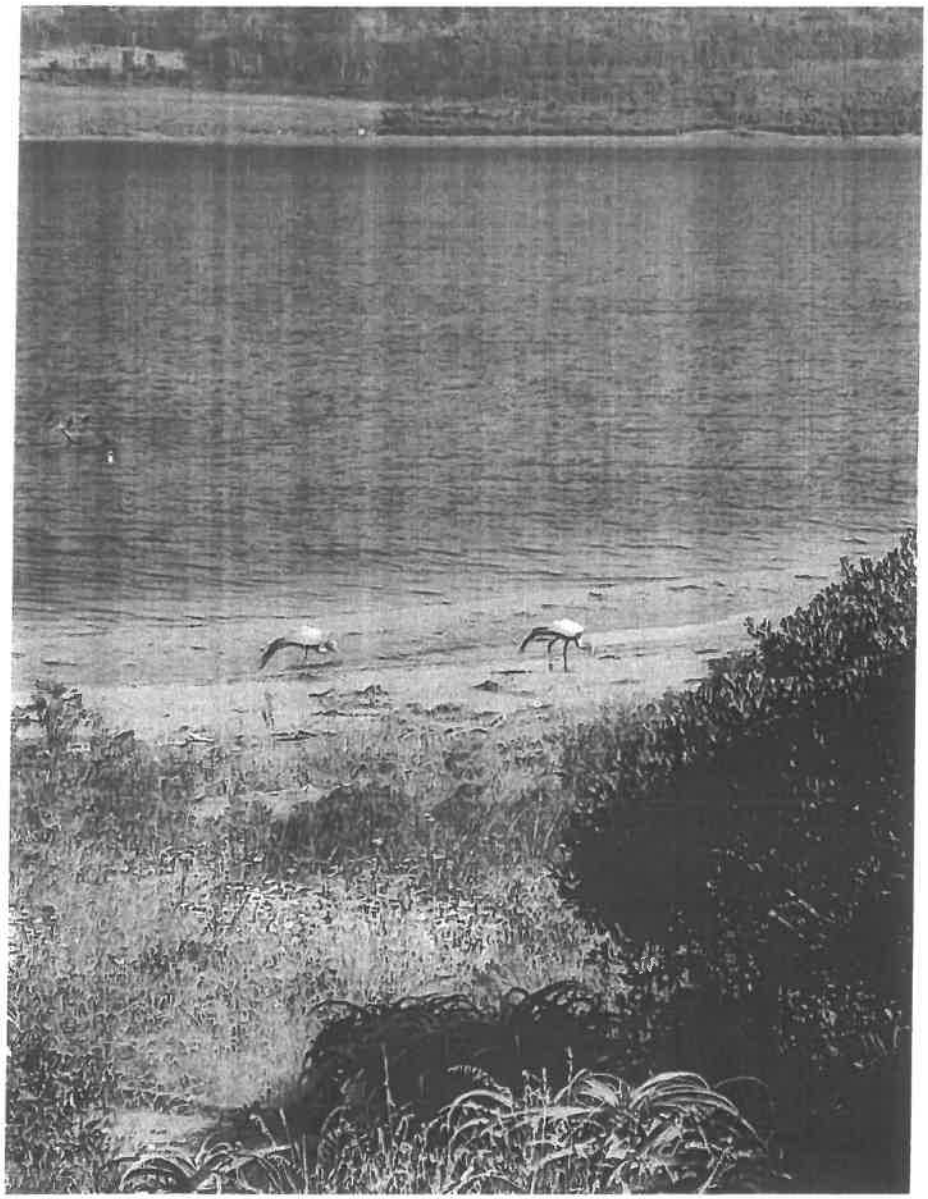
TP 10/12/25
TP 17 DEC 2025

From our perspective as homeowners, this raises questions about potential future tourist-related use of the beach area by hotel guests and **day visitors**. We believe that the possible long-term implications for the nature reserve and the residential environment should be fully assessed.

In our objection submitted on 23 May 2023, we explained that the Botriver Lagoon is a protected biotope. In our understanding, any intensification of tourist activity in this area may require assessment and, potentially, the involvement of additional authorities. We respectfully request that the Municipality confirm the applicable regulatory requirements.

To illustrate the ecological sensitivity of the area, We attach below a photograph showing birdlife regularly observed on the section of beach in question.
The picture shows flamingos that regularly forage here, and that will lose part of their habitat due to the tourist use of the beach.





Globally and in South Africa, the Blue Crane is classified as vulnerable. They are also regular visitors to the beach. So are Pelicans from time to time, and many other types of rare birds.

---

2. Relationship between BCI and the BCHOA Trustee Structure

According to the BCHOA constitution, the trustee structure is intended to consist of four trustees: two representing homeowners and two representing BCI.

At present, the trustees are:

1. Mrs. Penny Streeter	Owner and/or director of Benguela Cove Investment (BCI)
2. Mr. Nick Rea	Husband/Partner of Penny Streeter
3. Ms. Shantel Kent	Employee of BCI or a company controlled by Mrs Streeter
4. Mr. Andre Leodolf	Unknow to most HO.

We understand that several trustees have close professional or personal associations with BCI. This arrangement has led to concerns among some homeowners regarding potential conflicts of interest, particularly where BCHOA decisions may also have implications for BCI's commercial activities.

We do not assert any improper conduct; however, I believe the appearance of overlapping roles can create uncertainty about impartiality. We therefore ask the Municipality to take note of this context when evaluating the appeal.

---

3. Examples of Decisions Raising Perceived Conflicts of Interest

Homeowners have expressed concerns about certain decisions made by the trustees in recent years. These include, for example:

- Changes to rental regulations that now permit short-term rentals (including daily rentals via online platforms), which may benefit certain business activities of BCI.
- The apparent absence of competitive tenders for certain services, although the constitution indicates that such processes should be used. To my knowledge services are organised and billed by BCI.
- Decisions and practices that some homeowners feel have shifted Benguela's character in a more commercial or tourism-oriented direction.

We do not suggest that these actions were improper, but note that they can create the perception that BCHOA decisions may not always prioritise independent residential interests. We request that these perceptions be taken into account given the nature of the current appeal.

Additionally, there have been instances reported by homeowners where municipal conditions particularly noise-related conditions referenced in municipal documents dated 3 April 2019 (File Ref. HBENG 229/575(3817) and 27 January 2021 (App ID: 2948/2019) did not appear to be fully complied with. We respectfully ask the Municipality to review whether existing conditions and enforcement mechanisms are sufficient to protect residential amenity.

---

4. Pontoon Boat

It is our understanding that the excursion boat is owned and operated by BCI (or an associated company) for commercial purposes. We further understand that the BCHOA does not receive revenue from this operation, although the jetty—belonging to the BCHOA—is commercially used for boarding. We also experienced in the past that loud music had been played on board during trips on the lagoon.

We also understand that the commercial district may not currently contribute financially to the BCHOA in the same manner that residential properties do. I submit this only as context and request that the Municipality consider whether the governance arrangements relating to the boat's operation are appropriate.

Operation of the Boat in the Past

Homeowners have raised concerns that the boat may have been operated by BCI in earlier years without required approvals. Evidence supporting these concerns was submitted by several homeowners during the 2023 objection process. We respectfully ask the Municipality to review this material as part of its consideration of the appeal.

---

5. Request

We reaffirm the objections set out in our submission of 23 May 2023. We respectfully request that the Municipality uphold its original decision in order to protect:

- the ecological integrity of the Botriver Lagoon, and
- the residential amenity and character of Benguela Cove.

We thank you for your attention to this matter and for considering the concerns of independent homeowners like us and others.

Yours sincerely,

Sean Mac Dermott

PumaTech Properties (Pty) Ltd

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Loretta Gillion

From:	Sean Mac Dermott <seanm@pumatech.co.za>
Sent:	Wednesday, 10 December 2025 16:49
To:	Enquiries; Loretta Gillion; Henk Olivier
Cc:	Kim Mac Dermott
Subject:	Fw: BCHOA - Appeal - Stand 245 Comments
Attachments:	BCHOA - Appeal - Stand 245 Comments.pdf

Good day Overstrand Municipality,

Please find attached my comments regarding the BCHOA appeal to the Municipality. We appreciate you taking the time to review our concerns/comments.

Kind Regards
Sean Mac Dermott
Stand 245 (Consolidated 188 and 189)
PumaTech Properties (Pty) Ltd

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
17 DEC 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

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TP - A Theart (H Olivier)

183 Caledon Road
ERF 575
Benguela Cove
Hermanus
7200

FILE NO. Ptns 210 & 220|575
SCAN NO.
COLLABORATOR NO. 293292|

The Municipal Manager
Overstrand Municipality
P. O. Box 20
Hermanus
7200

Ref: Ptn 210 & 220 Farm 575, HBENG

Per e-mail

11th December 2025

RE: APPEAL COMMENT: PORTIONS 210 AND 220 OF THE FARM AFDAKS RIVIER 575, CALEDON

I am here acting on my personal capacity as a homeowner, in response to the appeal and communication dated 7th November 2025. First, I would like to express my appreciation for the collaborative investment efforts between master owners and homeowners. This message is intended as constructive feedback and a contribution towards the development and sustainability of the Benguela Estate, rather than a critique of the master owners.

This response is submitted in terms of Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020, which provides any person whose rights are affected by a decision taken under delegated authority the right to respond to the Municipal Manager as the Appeal Authority.

The response is founded on the relevant planning and environmental policy frameworks, Benguela constitution (clauses 3.1, 3.2, and 4.5), as well as the applicable legislative norms and principles, including the Spatial Planning and Land Use Management Act (SPLUMA, Act 16 of 2013), the Western Cape Land Use Planning Act (LUPA Act 3 of 2014), and the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

TP 17 DEC 2025

TP 11|12|25

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The response below demonstrates that the proposal remains inconsistent with the objectives of sustainable spatial development, environmental management, and good administrative practice, and thus, the concerns remain unresolved. See my comments, **without prejudice of rights**, regarding the matters raised by the appellant (left column) and my response (the right column) of the table below.

Appellant	Homeowner
*"The refusal has the effect that the continued operation of the pontoon boat is unlawful, resulting in immediate financial implications for the operator and potential loss of employment for staff members dependent on the activity (refer to **Annexure B - Overstrand Municipality's Decision Letter**). Wine Estate were send to the complainant in my email dated 17 November 2021."*	As a committed and patriotic member of the community, I commend initiatives that promote employment and entrepreneurship, particularly in a country where unemployment remains at 33%. However, these proposed employment and business activities come at the expense of homeowners, whose levies fund the estate's infrastructure, roads, and overall upkeep. The WRAP projects have not demonstrated how their profits will ease the financial and maintenance burden currently carried by homeowners, nor have they indicated any intention to reduce levies using the proceeds generated. It is risky to expect homeowners to sustain an environment that enables profitability without receiving any direct benefits in return. The constitution of the estate's provides the following *"clause 4 .5 Each Member of the Association shall be jointly liable for any expenditure incurred in connection with the main objective or purpose of the Association and for anything done by the Association with the intention of benefiting its Members."* Against this clause, the appellant should detail how the pontoon aligns with the 'benefits of its members' and 'objective and purpose of the estate"? Is BCI equal to all homeowners or homeowners equal to BCI? The appeal document identifies BCI as a member of HOA, but not as a collective representation of HOA.
POINT I *The proposed activity was clearly defined as a low-impact, small-scale tourism operation, limited to a single pontoon vessel (Lady Bonnie) operating from an existing jetty within the Benguela Cove Lagoon Wine Estate. The motivation confirmed that:* *• The pontoon accommodates a maximum of twelve (12) passengers and two (2) crew members;* *• Each tour lasts approximately one hour; and*	The issue at hand is sustainability and protected marine, flora and fauna. The estate is positioned as a **WWF Conservation Champion** and certified by **Travelife Gold.** The latter sustainable ambition was the main attraction to the estate. Although 4-stroke engines are cleaner than older 2-strokes, with lower unburned fuel emissions and better fuel economy; nonetheless, combustion pollutants and noise still affect **marine ecosystems, birds, and people.** Please note that even though modern 4-stroke outboards are cleaner than 2-strokes (and many older models), they still emit:

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• *No additional structures, parking, or physical alterations were proposed.* *At present, the Lady Bonnie operates a maximum of four (4) trips per day during daylight hours, depending on demand and weather conditions. This demonstrates that the scale of activity is modest, well within the estate 's existing operational capacity, and not comparable to large-scale commercial boating or public tourism ventures."*	• **Carbon monoxide (CO)** • **Nitrogen oxides (NO_x)** • **Volatile organic compounds (VOCs)** • **Particulate matter** Small marine engines can emit significant pollutants, and one hour of operation can produce emissions comparable to many cars—**on a per engine-hour basis**—especially in terms of regulated pollutants (NOx, VOCs) even with EPA-compliant engines. The response to point one compromises Benguela's value proposition on sustainability. Take pontoon's operational details as default comparable and demonstrable example: **Time Period — Estimated CO_2 Emitted** **1 hour use** — ~35 kg **Daily (4h)** — ~140 kg **Weekly (7d)** — ~980 kg **Monthly (30d)** — ~4,200 kg (≈ 4.2 t) **Likely ecological impacts (birdlife, marine life, endemic flora & fauna)** These are qualitative but grounded in well-known impact pathways: **Birdlife** • **Disturbance / displacement:** frequent boat traffic and noise (engine sound, wakes) cause birds to flush from feeding/roosting areas; chronic disturbance reduces feeding efficiency and breeding success for sensitive species (especially shorebirds, waders, waterfowl). • **Collision risk:** small but non-zero risk of collisions with low-flying birds (higher at dusk/dawn or in dense colonies). • **Habitat degradation:** increased human presence on shorelines used for nesting can reduce nesting success. **Marine life** • **Noise and vibration:** outboard engines produce underwater noise that can disturb fish and

	invertebrates, affect communication and behaviour, and stress sensitive species. • **Propeller strike:** risk to turtles, large rays or mammals in shallow waters; also damage to seagrass beds from propellers. • **Water pollution / fuel spills:** even small fuel/oil drips can harm larvae and plankton; chronic hydrocarbon loading affects water quality. • **Wake and shoreline erosion:** repeated wakes near shallow, vegetated shorelines can erode banks and damage intertidal plants and invertebrate habitats. **Endemic flora & fauna** • **Habitat fragmentation and trampling:** landings and frequent human access to sensitive shore areas can trample endemic plants and disturb small terrestrial fauna. • **Invasive species:** hulls/gear can move invasive plants/animals between water bodies, threatening local endemics. • **Cumulative stress:** small, repeated disturbances can push narrow-range endemic species toward decline, especially on islands or isolated lakes. **Relevant carbon calculators & conversion factor considered:** • UK Government — Greenhouse Gas Conversion Factors 2023 (useful conversion factors for petrol, diesel, upstream WTT): GOV.UK+1 • EPA — Emission Factors for Greenhouse Gas Inventories (US EPA emission factor technical reference; useful for alternative numbers). Environmental Protection Agency • myclimate cruise/ship calculators — a respected NGO carbon calculator for marine trips (good for comparison / voluntary offset calculations). myclimate CO_2 Calculator CarbonFootprint.com — consumer carbon calculator with a boat/travel section (useful for quick public estimates). Carbon Footprint

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"These standard regulatory tools ensure that any operational impacts on privacy, noise, or security can be effectively managed without prejudicing the estate's character or residents' enjoyment of their properties."	Annexure C does not explain how operational impacts on homeowners will be managed, including matters relating to securities, insurance, and guarantees where security bridges arise. Please note that tourists are often in high spirits, and noise is one aspect of their celebratory expression. Rather, the annexture addresses safety and security and operational details of the pontoon and tourists but does not address impact on homeowners. Furthermore, prejudice to the estate's character can viewed from the homeowner perceptive, and from this standpoint, the proposal is unsettling.
Safety and security *"The operation of the Lady Bonnie does not permit the general public access into the Benguela Cove Estate. Access to the jetty area and clubhouse is strictly controlled by estate security, and only authorised guests of the pontoon operator are permitted entry under preapproved bookings. Each visitor is requested to meet at the tasting room, which is also open to the general public, where they are verified upon arrival, ensuring no unauthorised access to the estate. An employee escort the guest to the clubhouse and no unauthorised travelling is allowed within the estate."* ***Noise impact*** *"The claim that the pontoon will generate noise disturbance is therefore speculative and unsubstantiated. To date, the Lady Bonnie has operated without any noise complaints. Moreover, as the tours are limited to daylight hours (09:00-17:00) and only four trips per day, the activity will not cause a measurable increase in noise within the estate."* ***Privacy and Use of Common Areas*** *"No public activity is proposed within the private open space or recreation areas of the estate. Guests are escorted directly to and from the pontoon under supervision and do not utilise common facilities such as the tennis court or swimming pool."* *"The pontoon operation therefore has no direct interaction with the residential component of the estate and will not infringe upon the privacy of property owners. The Municipality's concern that visitors may utilise these spaces was speculative, as such access is expressly prohibited under the operational management procedures."* ***Character of the Area*** *"The Lady Bonnie represents a low-intensity, environmentally responsible tourism activity aligned with the estate's existing recreational and conservation*	Against clauses 3.1, 3.2, and 34(points 1.1.6) of the Benguela constitution, Annexure C does not explain how operational impacts on homeowners will be managed, including matters relating to securities, insurance, and guarantees where security bridges arise. Please note that tourists are often in high spirits, and noise is one aspect of their celebratory expression, impact to be felt by homeowners. Additionally, the high number of tourists roaming at the clubhouse prevents homeowners and their guests from fully enjoying the tennis court, pool, and other facilities, as they are consistently overcrowded and on view to the crowd. It will infringe on privacy.

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ethos. The Overstrand Spatial Development Framework (2020) identifies the Benguela Cove area as a tourism and eco-recreation node, encouraging controlled nature-based tourism."	

I trust that the above will be factored in your re-consideration of the appeal.

Yours Faithfully
Marcia Mkansi

Loretta Gillion 347|387

From: Marcia Mkansi <marcia.mkansi@gmail.com>
Sent: Thursday, 11 December 2025 17:41
To: Loretta Gillion
Subject: Re: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove
Attachments: Response to Municipality.pdf

Dear Loretta,

Good afternoon!

Please find attached my contribution for your consideration.

Best Regards
Marcia

On Wed, 10 Dec 2025 at 13:40, Loretta Gillion <loretta@overstrand.gov.za> wrote:

Dear Ms Marcia

The days are calculated as 21 calendar days (not working days) meaning the last day to comment on the appeal is tomorrow - **11 December 2025**.

Regards

oretta Gillion

Administrative Officer: Town & Spatial Planning

Directorate: Planning & Development, Overstrand Municipality, Hermanus

A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20

T: 028 313 8900 | E: loretta@overstrand.gov.za

From: Marcia Mkansi <marcia.mkansi@gmail.com>
Sent: Tuesday, 09 December 2025 19:29
To: Loretta Gillion <loretta@overstrand.gov.za>
Subject: Re: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove

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Dear Loretta,

Good afternoon!

Please confirm how 21 days is calculated. Is't from the date we received the email? Meaning our 21 days expires 20 December?

Your clarification will be highly appreciated

Best regards

Marcia

On Thu, 20 Nov 2025 at 14:10, Loretta Gillion <loretta@overstrand.gov.za> wrote:

Dear Interested & Affected Party

This Municipality's decision letter dated 17 October 2025 refers.

An appeal has been received on 7 November 2025 from the Applicant against the decision made by the Municipal Planning Tribunal on 30 September 2025.

A copy of the appeal is attached for your information. **You are hereby afforded the opportunity to comment on the appeal within 21 days of this notification.**

Kindly note that in terms of Section 79.(13)(a) of the Overstrand By-law on Municipal Land Use Planning, the Municipality's decision is suspended until the appeal has been finalised and you have been advised accordingly.

Regards

Loretta Gillion

Administrative Officer: Town & Spatial Planning

Directorate: Planning & Development, Overstrand Municipality, Hermanus

A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20

T: 028 313 8900 | E: loretta@overstrand.gov.za



Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200

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E: enquiries@overstrand.gov.za

W: www.overstrand.gov.za

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Please consider the environment before printing this correspondence.

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TP - A Theart (H Olivier)

OBJECTION LETTER

Rodney & Ebeline Anderson – Plot 135, Benguela Cove
To: Overstrand Municipality – Town Planning
Att: Mr Henk Olivier

Re: *Objection to Appeal: Consent Use & Administrative Penalty – Portions 210 & 220, Farm 575*

Dear Mr Olivier,

We submit the following formal objection to the Appeal lodged by WRAP Project Office on behalf of the Benguela Cove Homeowners Association (BCHOA). We also confirm that we fully align with the concerns raised by other homeowners, including the detailed submission from the neighbour at Plot 182.

This objection expands upon our earlier submission and places additional ecological evidence, photographic documentation, and legal considerations on record.

1. The Appeal is Misleading – The HOA Cannot Be Treated as a Neutral Applicant

Three of the four current HOA trustees have direct commercial ties to Benguela Cove Investments (BCI), including:
• an owner/director of BCI,
• her partner, and
• her employee (as confirmed in the neighbour's objection).

This composition creates inherent conflicts of interest. The HOA cannot lawfully front for a development application that directly benefits BCI at the expense of the homeowners.

The Appeal incorrectly presents the HOA as an independent custodial body acting for the estate. Evidence strongly indicates:
• the homeowners did not initiate the application;
• the application serves commercial, not residential, interests;
• the HOA is being used as a mechanism to legitamise a commercial footprint that would otherwise not be permissible.

This alone renders the Appeal procedurally defective.

FILE NO. Ptn 210 & 220 Farm 575
SCAN NO.
COLLABORATOR NO. 2928295

TP 10 DEC 2025

2. Non-Compliance With the ROD, EMP, and Environmental Requirements

The Record of Decision (ROD, 2003) governs all development at Benguela Cove. It is binding and has not been amended (see attached ROD).

Key ROD requirements include:
- 31.5% of the property must remain designated as Private Nature Reserve;
- no disturbance of natural vegetation outside the approved development footprint;
- no ad hoc clearing, cutting, thinning, or alteration of shoreline vegetation;
- strict control of boardwalks, pathways, and any movement near the waterline;
- mandatory rehabilitation and ecological oversight.

None of these obligations have been properly met.

2.1 Unauthorised clearing and disturbance of pristine fynbos.

Contrary to repeated assurances, heavy machinery, tractors, trailers and workers have entered undisturbed fynbos areas. Vegetation has been flattened or removed. This is in direct breach of the ROD and the EMP.

Work has also taken place in the beach and intertidal zone, where no machinery or disturbance is permitted without a coastal EIA. None has been obtained.

We have submitted photographs showing these infringements in our previous objection.

2.2 New informal tracks cut into natural vegetation

Unauthorized tracks have been carved through fynbos and dune vegetation. This occurred:
- without ecological approval;
- without consideration of the ROD conditions;
- with minimal attempt at rehabilitation.

The Appeal's claims of "environmentally conscious management" are inconsistent with the conditions observed on the ground.

2.3 Minimal and inadequate rehabilitation

The ROD requires ongoing rehabilitation, invasive species management, protection of sensitive dune systems, and ecological monitoring. Only annual alien clearing has been undertaken.

Superficial rehabilitation attempts have been made; none meet the standard required by the ROD or EMP.

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3. Ecological Impacts on a Ramsar Wetland and "Globally Important Bird Area" (GIBA)

The ROD acknowledges the exceptional sensitivity of this ecosystem and requires that foraging, breeding, and roosting habitat must not be disturbed.

We submit further photographic evidence collected from Portion 210/220 showing some of the more than 130 bird species recorded in the Benguela Cove–Botriver Estuary system, including:

- African Fish Eagles (pair)
- Great White Pelicans
- Cape Cormorants
- Blue Cranes (South Africa's national bird, Near Threatened)
- Greater Flamingos (as captured by our neighbour)
- Water Thick-knee (*Burhinus vermiculatus*)

In addition to these photographed species, the Critically Endangered Black Harrier is also frequently seen hunting over the fynbos and nature reserve at Benguela Cove, confirming the ecological importance and sensitivity of this area.

These species rely on the shallow shoreline, reedbeds, mudflats, and surrounding fynbos for feeding and resting. Increased disturbance threatens their ecological patterns and, in some cases, their conservation status.

The Appeal's attempt to redefine this sensitive shoreline as a "low-impact recreational area" is scientifically incorrect and ecologically irresponsible.

4. The Proposed Promenade and Increased Activity Will Cause Irreversible Ecological Harm

A pedestrian link between the clubhouse and the proposed hotel node would:
- channel continuous foot traffic through sensitive foraging habitat;
- increase noise, light pollution, human presence, and night-time disturbance;
- fragment fragile shoreline vegetation and dune ecosystems;
- displace protected bird species;
- violate the ROD requirement to keep the shoreline intact and undisturbed.

Any such development would require a separate environmental assessment, yet the Appeal ignores this.

5. Noise, Light Pollution, Security, and Nuisance Impacts are undermined in the Appeal

Residents have repeatedly raised concerns regarding:
• loud music and amplified sound from the commercial area and the pontoon boat;
• increased tourist traffic;
• the misappropriation of "security estate" infrastructure for commercial activity;
• the growing mismatch between a residential lifestyle estate and expanding tourism operations.

These concerns were raised at past AGMs and in formal complaints but were not meaningfully addressed by the HOA trustees.

Noise disturbance and light pollution adjacent to a Ramsar environment is not a matter that can be casually dismissed.

6. Governance Failures – The HOA as Applicant is Improper

The Appeal's portrayal of the HOA as an "appropriate and unbiased applicant" is fundamentally incorrect and misleading.

The HOA:
• has no mandate from homeowners to apply for commercial or tourism-related rights;
• is materially conflicted in its composition due to direct ties to BCI;
• has failed to comply with municipal noise conditions (2019 & 2021);
• has not fulfilled its statutory and fiduciary duty as environmental custodian of the estate.

In light of these failures, the HOA cannot be regarded as a legitimate or impartial applicant. Its involvement compromises the transparency, legality, and integrity of the entire application process, and goes to the heart of why the Appeal cannot stand.

7. The Application Remains Void Ab Initio

The application is invalid because it:
• conflicts directly with the ROD and EMP;
• is based on non-compliance with environmental legislation;
• relies on unauthorised disturbance already undertaken;
• misrepresents the HOA's mandate and authority.

The Appeal does not address these fundamental defects.

8. Photographic Evidence Attached

We attach photographic documentation showing disturbance and ecological sensitivity in nature reserve and along the shoreline:

1. Photograph showing the newly formed track cut through pristine fynbos in the nature reserve from north ridge down to the shoreline.
2. African Fish Eagles perched and hunting along the shoreline.
3. Great White Pelican and Cape Cormorants using the affected area.
4. Blue Crane in natural wetland vegetation adjacent to Portion 210/220.
5. Greater Flamingos foraging precisely where increased activity is proposed.
6. Water Thick-knee (*Burhinus vermiculatus*) observed along the shoreline habitat.

These images demonstrate the ecological sensitivity and importance of the area that the Appeal overlooks or understates.

9. Unauthorised Activities & Lack of Required Environmental Oversight

The recent disturbances inside the proclaimed Nature Reserve and along the beach/intertidal zone are not authorised by the ROD. No approval exists for new tracks, vegetation clearing, earthmoving, or machinery access in these sensitive conservation areas. These actions fall outside the permitted development footprint and directly contradict the environmental protections required by the ROD. Furthermore, the original environmental practitioner, Charel Bruwer, has retired, and we are not aware of any newly appointed ECO/EMP manager as required. In the absence of the mandated environmental practitioner, **no such** activities may legally occur, making the current disturbances clear non-compliance with the ROD and environmental legislation.

10. Conclusion

For all reasons above, and those submitted in prior objections:

We request that the Municipality uphold its refusal of the application and dismiss the Appeal in full.

This is necessary to:
- protect the ecological integrity of the Botriver Lagoon;
- comply with the binding ROD and EMP;
- prevent irreversible damage to a Ramsar wetland and GIBA;
- safeguard the residential character of Benguela Cove;
- prevent unlawful invasive commercialisation of protected natural areas.

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Thank you for your consideration.

Yours sincerely,
Rodney & Ebeline Anderson
Plot 135, Benguela Cove

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Figure 1 – Unauthorised Track Formation

Photograph showing the newly formed track cut through pristine fynbos in the nature reserve.



Figure 2 – African Fish Eagles

Photographic evidence demonstrating avifaunal sensitivity of the affected area.

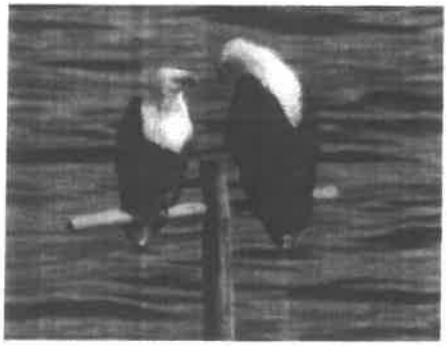


Figure 3 – Great White Pelican & Cape Cormorant

Photographic evidence demonstrating avifaunal sensitivity of the affected area.



Figure 4 – Blue Crane

Photographic evidence demonstrating avifaunal sensitivity of the affected area.



Figure 5 – Greater Flamingos

Photographic evidence demonstrating avifaunal sensitivity of the affected area.



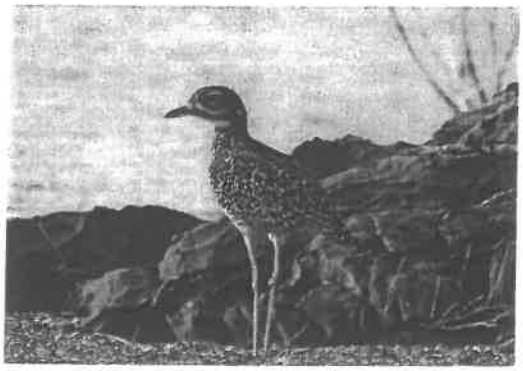
Figure 6 – Pelican Feeding Flock

Photographic evidence demonstrating avifaunal sensitivity of the affected area.



Figure 7 – Water Thick-knee (Burhinus vermiculatus)

Photographic evidence demonstrating avifaunal sensitivity of the affected area.



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BRUWER

Verwysing Reference Isithitho: E12/2/1-213-FARM 576/10-18, HERMANUS

Navrae Enquiries Imibuzo: ZAAHIR TOEFY/JOY GARMAN

Datum Date Umhla: Of Issue 15 December 2003

Departement van Omgewingsake en Ontwikkelingsbeplanning
Department of Environmental Affairs and Development Planning
ISebe leMicimbi yeNdalo esiNggongileyo noCwangciso loPhuhliso

Woodlands Heights Investments (Pty) Ltd
P O Box 23640
Claremont
7735

Attention: Mike Nixon

Tel : (021) 683 9061
Fax: (021) 683 4215

Dear Sir

APPLICATION: **THE CHANGE OF LAND USE FROM AGRICULTURE TO ANY OTHER LAND USE FOR THE DEVELOPMENT OF RESIDENTIAL UNITS, A WINERY, A RESTAURANT, A LODGE, JETTIES AND THE ESTABLISHMENT OF A NATURE RESERVE ON PORTIONS 10 – 18 OF FARM AFDAKSRIVIER NO. 575, CALEDON.**

With reference to your application, find below the Record of Decision in respect of this application.

RECORD OF DECISION

A. DESCRIPTION OF ACTIVITY:

The proposed development entails the change of land use from agriculture to any other land use for the development of residential units, a winery, a restaurant, a lodge, two jetties and the establishment of a nature reserve on portions 10 – 18 of Farm Afdaksrivier no. 575, Caledon.

The major portion of the property (51%) will be allocated to agriculture which will involve the planting and cultivation of vineyards. Olive trees will be planted in selected locations and along access roads. Lavender used for commercial purposes will also be planted on the estate. The remaining agricultural areas will be used as additional grazing areas for game. Stables as well as three dams will be located within the agricultural zone. The dams will be used for irrigation and to create areas of visual interest.

The proposed single residential development makes provision for 124 erven. The residential erven will vary from 1500 m^2 to 4000 m^2 and will constitute 9% of the total site. The footprint of the buildings will be between 250m^2 and 800m^2. The density of

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Privaatsak X9086, Kaapstad 8000

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Ifowuni: ztoefy@dawowcape.gov.za
Ifaksi:

this part of the development in relation to the overall area of the site will be one unit to 2 hectares. The erven are clustered over the site in linear arrangements. Boardwalks or a suitably constructed hiking trail will be established on the lower portion of the erven abutting the lagoon for the residents and their visitors to use. Setback lines were determined by the avifaunal specialist for residential erven located on the shoreline. The lodge will consist of 40 units and a tennis court and will be located on the lagoon and adjacent to the area identified for nature conservation.

31,5 % of the site will be proclaimed a Private Nature Reserve in order to conserve the remaining indigenous vegetation. Boardwalks will be erected in the conservation area as part of the lagoon hiking and leisure walkways and they will provide access to the proposed jetties.

The winery will be positioned within the ridgelines of the site so that a ridgeline serves as a visual barrier between the winery and the residential development at the southern position of the site. The winery will be based on the concept of gravity feed to minimise power consumption.

Private roads within the estate will be constructed in accordance with the standards of the local authority. Internal roads will consist of surfaced minor roads with a pavement design that will lead to the erven while gravel roads will allow access to the maintenance areas and stables.

The sites identified for the proposed jetties have been extensively investigated. The southernmost jetty will be located approximately 270 meters north of the headland known as "South Cape". The gradient of the shore is relatively shallow, therefore, if the slipway is to be used at all levels, it would need to extend 50 meters into the water.

The northernmost jetty will be located 770 meters north of "South Cape". This site is a depositional zone and foundations would require placement on bedrock to prevent undermining of the structure. This jetty would require a short slipway as it is close to an existing channel.

The closest source of potable water is the Fisherhaven Reservoir which is located approximately 2,5km south of the site. The external works would consist of a 150mm diameter pressure pipeline from the Fisherhaven Reservoir. 150mm diameter and 110m diameter pipes will be needed to service the erven on the site.

Solid waste will be collected by the estate management and stored at a single refuse collection point on site. The waste will be removed as necessary either by the estate or the Overstrand Municipality and taken to the Karwyderskraal regional landfill site.

The Overstrand Municipality's preferred option for the management of sewage involves the pumping of sewage from the site to the municipal treatment works at Hawston. Treated sewage effluent will also be pumped from the Hawston treatment works to a dam at Benguela Cove, with a capacity of 125 000m^3, for irrigation purposes. The system on site will consist of gravity fed pipeline networks that will discharge into 2 pump stations. A mini pump station will be required to pump sewage from the northern half of the site to the southern pump station. A medium sized pump station, located on the southern portion of the site, will be required to pump the effluent to the Hawston treatment works which is situated approximately 4,5km south of the site.

Department of Environmental Affairs & Development Planning
Chief Directorate: Environmental Affairs

These are activities identified in Schedule 1 of Government Notice No. R1182 of 5 September 1997, as amended, being:

Item 1 (c) - The construction, erection or upgrading of - with regard to any substance which is dangerous or hazardous and is controlled by national legislation –
(ii) manufacturing, storage, handling, treatment or processing facilities for any such substance (this is for the temporary above ground construction phase fuel tanks and the storage of fuel on the site during the construction phase)

Item 1(d) The construction, erection or upgrading of roads, railways, airfields and associated structures;

Item 1(e) The construction, erection or upgrading of marinas, harbours and all structures below the high-water mark of the sea and marinas, harbours and associated structures on inland waters;

Item 1(m) The construction, erection or upgrading of public and private resorts and associated infrastructure;

Item 2(c) The change of land use from agricultural or zoned undetermined use or an equivalent zoning to any other land use;

hereinafter referred to as "the activity"

B. LOCATION:
The activity will be located on portions 8 to 10 of Farm Afdakersrivier, No. 575, Caledon.

Co-ordinates: Latitude: 34° 20' 00" South
Longitude: 19° 08' 00" East

(hereinafter referred to as "the property/site")

C. APPLICANT;
Mr Mike Nixon
Woodlands Heights Investments (Pty) LTD
P O Box 23640
Claremont
7735
Tel: (021) 683 9061
Fax: (021) 683 4215

D. CONSULTANT:
Mr Charel Bruwer
ENVIROAFRICA
6 Green Street
Onrusrivier
7201
Tel: (028) 316 2888
Fax: (028) 316 3791

Department of Environmental Affairs & Development Planning
Chief Directorate: Environmental Affairs

E. SITE VISIT(S):
Date: 6 November 2002
Persons Present: Zaahir Toefy of the Department Of Environmental Affairs & Development Planning ("DEA&DP")

F. DECISION:
In terms of Sections 22 and by virtue of powers delegated by the Minister in terms of Sections 28 & 33 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), the relevant authority (as defined in GN No R1183 of 5 September 1997, as amended), hereby grants **authorisation with the conditions** contained in this Record of Decision, for the execution of the activity described above.

This Authorisation has been granted in terms of section 22 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) solely for the purposes of undertaking the activity referred to above, and does not exempt the holder thereof from compliance with any other relevant legislation.

G. CONDITIONS OF AUTHORISATION:

1. The activity, including site preparation, may not commence before the statutory thirty (30) day appeal period expires.
2. One week's notice, in writing, must be given to the Directorate: Environmental Management, (hereinafter referred to as "this Directorate"), before commencement of construction activities.
   - 2.1 Such notice shall make clear reference to the site location details and reference number given above.
   - 2.2 The said notice must also include proof of compliance with the following conditions described herein:

     Conditions: 1, 8 & 11
3. One week's notice, in writing, must be given to the Directorate: Environmental Management, (hereinafter referred to as "this Directorate"), before commencement of operation activities.
   - 3.1 Such notice shall make clear reference to the site location details and reference number given above.
   - 3.2 The said notice must also include proof of compliance with the following conditions described herein:

     Conditions: 10
4. An integrated waste management approach must be used that is based on waste minimisation and must incorporate reduction, recycling, re-use and disposal where appropriate. Any solid waste shall be disposed of at a landfill licensed in terms of section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
5. The mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by EnviroAfrica and in the Botanical Survey dated 12 May 2003, undertaken by Nick Helme as well as recommendations in the Specialist Avifaunal report compiled by K.N. Barnes in March 2003 must be adopted and implemented.

Department of Environmental Affairs & Development Planning
Chief Directorate: Environmental Affairs

6 The residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.

7 The applicant must obtain all the necessary permits relating to the construction of the dams and other water related issues from the Department of Water Affairs and Forestry and comply with any conditions prescribed in terms of any legislation that is administered by that Department.

8 The applicant must compile and submit an acceptable construction phase Environmental Management Plan ("EMP") for the installation of the services and roads and for the establishment of residential units, the winery, the restaurant, the conference center, the jetties, the private nature reserve and any associated infrastructure to this Directorate. The EMP must:

8.1 Address, but not be limited to, the demarcation of the site, the erection of a camp site for construction teams, establishment of working and storage areas, environmental awareness training of employees, protection of flora, fauna, avifauna, natural features and any archaeological material of significance that may be discovered, cultural issues (e.g. protection of archaeological artefacts), erosion prevention methods, refuse and waste management, dust and noise control, effluent and storm water management, materials used, the handling, storage and transport of fertilizers or other hazardous materials, site rehabilitation and/or revegetation, fencing, fire prevention measures, pollution control measures, penalties, claims and damages.

8.2 Incorporate the mitigation measures/recommendations made on pages 37 to 40 of the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those in the following Specialist Reports, where appropriate to the construction phase of the project:

Appendix L: Botanical Report dated12 May 2003;

Appendix M: Avifaunal Report dated March 2003;

Appendix S: Archaeological Report dated August 2003;

8.3 Be submitted to this Directorate at least three weeks prior to construction activities commencing. This must be approved prior to any land clearing and construction commencing.

8.4 Describe the level and type of competency required of the Environmental Control Officer ("ECO");

8.5 Define and allocate the roles and responsibilities of the ECO referred to above, and the Environmental Site Agent *where applicable*;

8.6 Determine the frequency of site visits;

8.7 Any substantial changes, updates or upgrades to the EMP must be communicated to the Chief Directorate: Environmental Affairs within 14 days of such changes, updates or upgrades being made to the EMP by the applicant.

8.8 Be included in all contract documentation for the construction phase of the development.

9 The applicant must appoint a suitably experienced Environment Control Officer (or Site Agent where appropriate) before commencement of any land clearing or

construction activities to ensure that the mitigation/rehabilitation measures and recommendations referred to in this Record of Decision are implemented and to ensure compliance with the provisions of the construction phase EMP.

10 The applicant must compile and submit an acceptable operational phase EMP for the entire property. This must be approved by this Directorate before any of the development components become operational.

The EMP must:

10.1 Address, but not be limited to, the protection of flora, fauna, avifauna, natural features and any archaeological material of significance that may be discovered, landscaping and revegetation of indigenous plants and trees, erosion prevention methods, rehabilitation of areas disturbed containing sensitive vegetation, refuse and waste management, effluent and storm water management, materials used, handling, storage and transport, safety and security measures, the management of the private nature reserve, fencing, the complete removal of all alien invasive plants and fire management measures, the management of activities onfin the lagoon, pollution control measures, monitoring and reporting.

10.2 Incorporate the mitigation measures/recommendations made on pages 37 to 40 of the Scoping Report dated August 2003 compiled by EnviroAfrica, as well as those in the following Specialist Reports, where appropriate to the operational phase of the project:

Appendix K: Marine Studies Report dated 5 May 2003, pages 9 and 10;

Appendix L: Botanical Report dated12 May 2003;

Appendix M: Avifaunal Report dated March 2003;

Appendix S: Archaeological Report dated August;

10.3 Incorporate the conditions of authorisation given in this Record of Decision, as appropriate to the operational phase of the project. The Home Owners' Association / or operator of the facility must implement and ensure compliance with this EMP.

10.4 Any substantial changes, updates or upgrades to the EMP must be communicated to the Chief Directorate: Environmental Affairs within 14 days of such changes, updates or upgrades being made to the EMP by the applicant.

11 The applicant must, within five calendar days of the date of issue of this Record of Decision:

- Inform the relevant local authority as well as all interested and affected parties, ("I & AP's") registered during the Scoping and Impact Assessment processes in writing of the outcome of this application and, if requested, provide copies of this Record of Decision within a reasonable time before expiry of the thirty day appeal period;
- Include in such information the provisions of Regulation 11 of Government Notice No. R 1183 of 5 September 1997, as amended, which reads as follows:

(1) An appeal to the Minister or provincial authority under section 35(3) of the Act must be done in writing within 30 days from the date on which the

record of decision was issued to the applicant in terms of regulation 10(1);

(2) An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them which are certified as true by a commissioner of oaths.

- Include the date on which the record of decision was issued to the applicant in terms of regulation 10(1) and the date by which appeals must reach the Minister.
- Inform all I & AP's that a signed and certified Appeal Questionnaire, is obtainable from the Minister's office at tel. (021) 483 4700, email lvdberg@pawc.wcape.gov.za or URL http://www. westerncape.gov.za/eadp must accompany the appeal.
- If the applicant should appeal against this Record of Decision, he must inform all interested and affected persons that such an appeal is being lodged with the Minister and if requested, the applicant/appellant must provide those persons with reasonable access to a full copy of the appeal within a reasonable time before expiry of the thirty day appeal period.

12 This Directorate must be notified, within 30 days thereof, of any change of ownership and/or project developer, as well as any change of address of the owner and/or project developer.

13 All outdoor advertising associated with this activity, whether on or off the property concerned, must comply with the South African Manual for Outdoor Advertising Control (SAMOAC) available from:

The Director: Environmental Impact Management
Department of Environmental Affairs and Tourism
Private Bag X447, Pretoria, 0001.

14 The applicant shall be responsible for ensuring compliance with the conditions contained in the Record of Decision by any person acting on his behalf, including but not limited to, an agent, servant, employee or any person rendering a service to the applicant in respect of the activity, including but not limited to contractors and consultants.

15 The owner and/or developer must notify this Directorate and any other relevant authority, in writing, within 24 hours thereof if any condition of this authorisation is not adhered to.

16 Departmental officials shall be given access to the property referred to in B above for the purpose of assessing and/or monitoring compliance with the conditions contained in this Record of Decision, at all reasonable times.

H. **RECOMMENDATIONS:**
Consult with WCNCB regarding the establishment of the Private Nature Reserve and any other aspect of the overall development that should involve their input (eg. Pet Policy, selection and application of herbicides/fertilizers, buffer zones between cultivated land and natural vegetation, placement of boardwalks, horse trails, lagoon frontage issues, lagoon usage, approval of plant species selected for landscaping and screening, stormwater management to mitigate impacts on lagoon).

Department of Environmental Affairs & Development Planning
Chief Directorate: Environmental Affairs

I. KEY FACTORS AFFECTING THE DECISION:

Biophysical

The terrain of the site is fairly undulating with minor cliff scarps in places along the Bot River. 70% of the site consists of previously ploughed land in various stages of vegetation. Most of the ploughed land is essentially a grassland, but about 25% has been recolonised by shrubby species such as Renosterbos. The remaining natural vegetation on this site is the highly conservation worthy Overberg Renosterveld. It is generally in very good condition except for a few areas of dense alien vegetation. Seven rare plants have been recorded from the natural areas with a total species count of over 170. Most of the housing development will not take place within areas of the highly sensitive natural vegetation. However, where development in these areas does occur, the implementation of the mitigation measures as prescribed in the Botanical Specialist's report dated 12 May 2003 will significantly reduce the impact on the vegetation.

In 1998 the Botrivierviei earned the status of a "Globally Important Bird Area" from Birdlife International, thereby making it one of the most important sites for bird conservation in the world. It qualified for this status as it regularly supports more than 20 000 waterbirds as well as 1% of the Afrotropical populations of six species. The avifaunal specialist made certain recommendations in order to mitigate the impacts of the development on the avifauna and mentioned that further consultation will be required regarding the design and location of boardwalks, hiking trails and horse trails to ensure the disturbance to bird populations is kept to a minimum. The existing fauna on the site will be accommodated in the existing natural vegetation areas which will be proclaimed a Private Nature reserve.

Hydrology

Groundwater flow from the site towards the lagoon is evident in the strong seepage observed at numerous points along the lagoon edge. Consequently soakaways or septic tanks would not be appropriate for this development. The development will be linked to the municipal sewage disposal system.

Socio-economic

This development has the potential to draw an additional sector of tourism to the country with associated spin-offs in revenue and job creation. The detail of these activities and design criteria have been thoroughly investigated by the design team in conjunction with the environmental specialists on the Client's team of consultants.

Archaeological

The archaeological assessment revealed that some Early Stone Age and Middle Stone Age implements had been unearthed in the extensively ploughed fields. The area is largely disturbed and the material found is of low significance as the discovery of these tools are fairly common in this area.

Visual

Attention was given to the architectural and urban design detail to minimise the visual impact of the proposed development. The winery and restaurant complex was moved from the highest point of the site to lower down the slope to reduce the visual impact when viewed from the R43 to Hermanus. The final positioning of the winery was within the ridgelines to create a visual barrier between the winery and the residential

development at the southern position of the site. The largest portion of the residential dwellings will not be visible from the R43 to as they are tucked away below the view line. A proposal has been made by the engineering consultant to use low level lighting which will reduce the visual impact at night.

Alternatives
The main alternatives considered during the process consisted of the "no go" alternative, the positioning of the winery, the positioning of the jetties, setback lines and the placement of development sites, alternatives for water supply and lastly architectural and design alternatives. These were assessed with the input from various specialist studies. These inputs have been incorporated into the final design of the development in an iterative manner. The "no go" alternative was discarded as this may result in portions 10 to 18 being sold off to individual owners, thereby increasing the opportunities for fragmentation of the existing habitat.

Public Participation
An extensive public participation process was followed for the development which included:

- Notices placed in the Hermanus Times informing the public of the proposed development and public meetings.
- The identification and registration of interested and affected parties (I&AP's) to raise concerns and identify issues and impacts.
- These concerns, issues and impacts were combined into an Issues Report where they were addressed. This report was referred back to the I&AP's for comment.
- These issues, concerns and impacts, as well as any others identified by the study team, were then addressed more extensively in a draft Scoping Report.
- A copy of the draft Scoping Report was made available to the I&AP's at a venue that was negotiated with them at a public meeting.
- The executive summary of the draft Scoping Report was sent to all registered I&AP's for their written comment.
- A background information document (BID), which was made widely available, was compiled containing enough information to enable I&AP's to contribute to the process in an informed manner.
- Comments received form I&AP's were incorporated into the final Scoping Report.

J. DURATION AND DATE OF EXPIRY:
This authorisation shall lapse if the activity does not commence within two (2) years of the date of issue of this authorisation.

K. APPEAL:
In terms of Section 35 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), formal, motivated appeals must be directed within thirty (30) days of the date of the issuing of this Record of Decision, to:

The Minister of Agriculture, Environmental Affairs and Development Planning
Western Cape Province
Private Bag X9179
Cape Town
8000
Fax: (021) 483-3890

Department of Environmental Affairs & Development Planning
Chief Directorate: Environmental Affairs

Appeals must comply with the provisions of regulation 11 of Government Notice No. R. 1183 of 5 September 1997, as amended.

If the appellant is not the applicant, the latter must be informed of the appeal within the appeal period referred to above and must provide the applicant with reasonable access to a full copy of the appeal, if requested.

A signed and certified Appeal Questionnaire, obtainable from the Minister's office at tel. (021) 483 4700, email lvdberg@pawc.wcape.gov.za or URL http://westerncape.gov.za/eadp must accompany the appeal.

If any condition imposed in terms of this authorisation is not being complied with, the authorisation may be withdrawn after 30 days written notice to the applicant in terms of Section 22(4). Failure to comply with any of these conditions is also an offence and may be dealt with in terms of Sections 29, 30 and 31 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) as well as any other appropriate legal mechanisms.

Provincial Government, Local Authority or committees appointed in terms of the conditions of the application or any other public authority or organisation shall not be held responsible for any damages or losses suffered by the developer or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the developer with the conditions of authorisation as set out in this document or any other subsequent document emanating from these conditions of authorisation.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully

DIPOLELO ELFORD
CHIEF DIRECTOR: ENVIRONMENTAL AFFAIRS

DATE OF DECISION: 14/12/03

Copies to: (1) Charel Bruwer (EnviroAfrica) Fax: (028) 316 3791
(2) Ken Stead (Overplan Associates) Fax: (028) 313 0809
(3) Riaan Kuchar (Overstrand Municipality) Fax: (028) 425 1014

Loretta Gillion 369|387

From: Rodney Anderson <rodney@hermanusgateway.co.za>
Sent: Wednesday, 10 December 2025 08:51
To: Loretta Gillion; Henk Olivier
Cc: Ebeline; chair@botfriends.org.za; charel@enviroafrica.co.za
Subject: Objection to Appeal: Consent Use & Administrative Penalty – Portions 210 & 220, Farm 575
Attachments: Objection to Appeal- Consent Use & Administrative Penalty – Portions 210 & 220, Farm 575 final word.pdf; Benguela cove ROD.pdf

Dear Henk and Loretta

Please find attached our objection against the Consent Use & Administrative Penalty – Portions 210 & 220, Farm 575.
Kindly acknowledge receipt.

Regards
Rodney and Ebeline Anderson

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370|387

Volkhard + Ilse Buchholz

07th December, 2025

TP - A Theart (H Olivier)

Overstrand Municipality
Town Planning
16 Paterson Street

Hermanus, 7200

via E-Mail: enquiries@overstrand.gov.za
loretta@overstrand.gov.za
holivier@overstrand.gov.za

Ref.: Portions 210 and 220 of Farm 575, Afdaksrivier
Comments on the Appeal of Benguela Cove Home Owner Association (BCHOA) against the decision of the Municipality

We refer to the above matter and the notice received from your office and hereby formally place our comments on record.

We are the owner of Plot and House 182 at Benguela Cove and members of the Benguela Cove Home Owners' Association (BCHOA). We submit this letter to provide our comments on the BCHOA's appeal against the Municipality's recent decision.

At the outset of my commentary, we would like to point out that English is not our native language. In the event that the translation of German words into English has a different meaning, we emphasize that it is not our intention to offend anyone or to make any insinuations. The following comments are solely our opinion and reflect our perceptions and the perceptions of other homeowners.

---

1. Scope of the Appeal – Use of Portions 210 and 220

The original application from 2023 and the current appeal concern Benguela Cove Investments (BCI) via BCHOA securing the tourist development of plots 210 and 220 along the lagoon (Beach) and the operation of an excursion boat exclusively for its own business purposes, which are not in the interests of the independent Benguela Home Owners (HO).

In our opinion BCI is using the Benguela Home Owners Association (BCHOA) in which in our opinion it has sole control, as a vehicle for the application. The resolution submitted by the trustees may be legally correct, but in our opinion it is actually proof that BCI is using this body for its own purposes.

182 Benguela Cove
Benguela Cove Wine Estate
Hermanus, 7200
Telephone: +27 63 657 2129

FILE NO. Ptn 5 210 & 220 Farm 575
SCAN NO.
COLLABORATOR NO. 2927118

TP 9 DEC 2025

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Volkhard + Ilse Buchholz

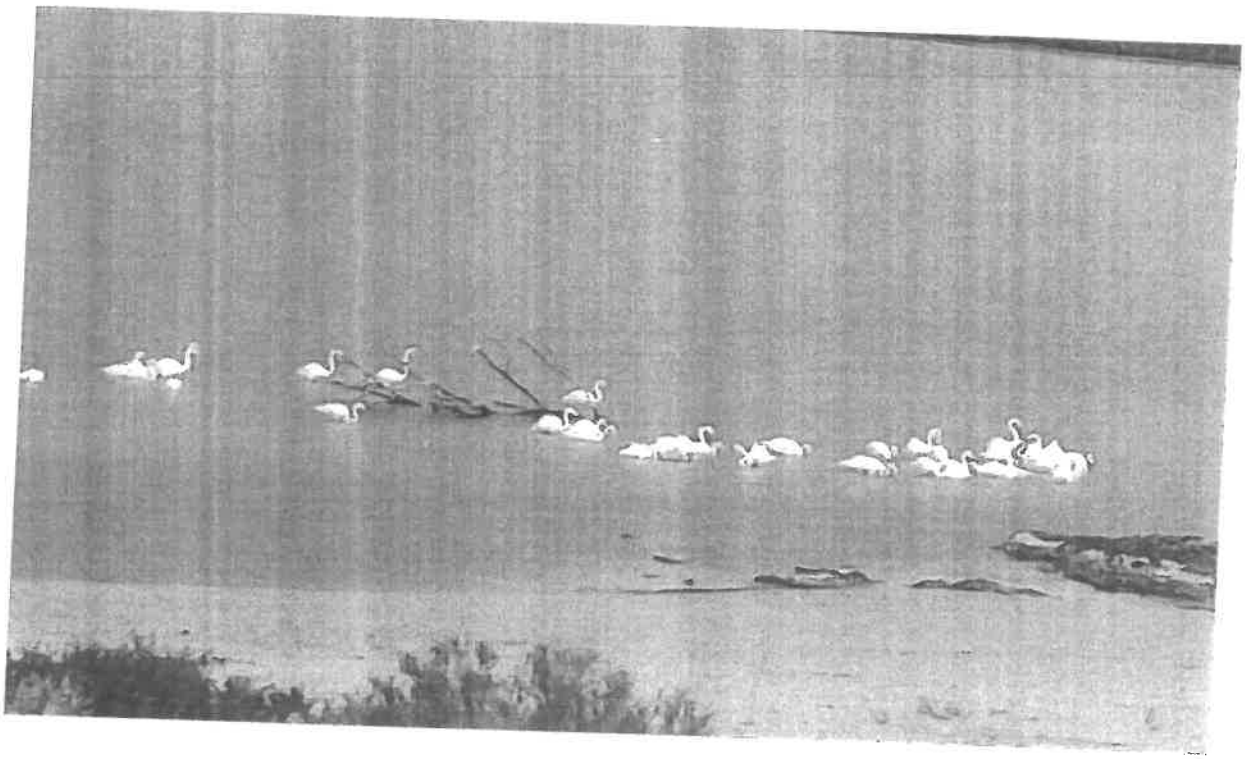
We, and to our knowledge other BCHOA members as well, were never informed by the Trustees about the plans, applications, and appeal of the Benguela Home Owner Association (BCHOA).

Based on the documents available to us, we are concerned that the map extract included in the appeal submission (dated 7 November 2025) does not appear to reflect the full extent and character of Portion 220. Portion 220 spans several hundred meters along the lagoon and effectively connects the existing boathouse area to a plot at the far end of the portion owned by BCI for future development of a hotel.

From our perspective as homeowner, this raises questions about potential future tourist-related use of the beach area by hotel guests and **day visitors**. We believe that the possible long-term implications for the nature reserve and the residential environment should be fully assessed.

In our objection submitted on 23 May 2023, we explained that the Botriver Lagoon is a protected biotope. In our understanding, any intensification of tourist activity in this area may require assessment and, potentially, the involvement of additional authorities. We respectfully request that the Municipality confirm the applicable regulatory requirements.

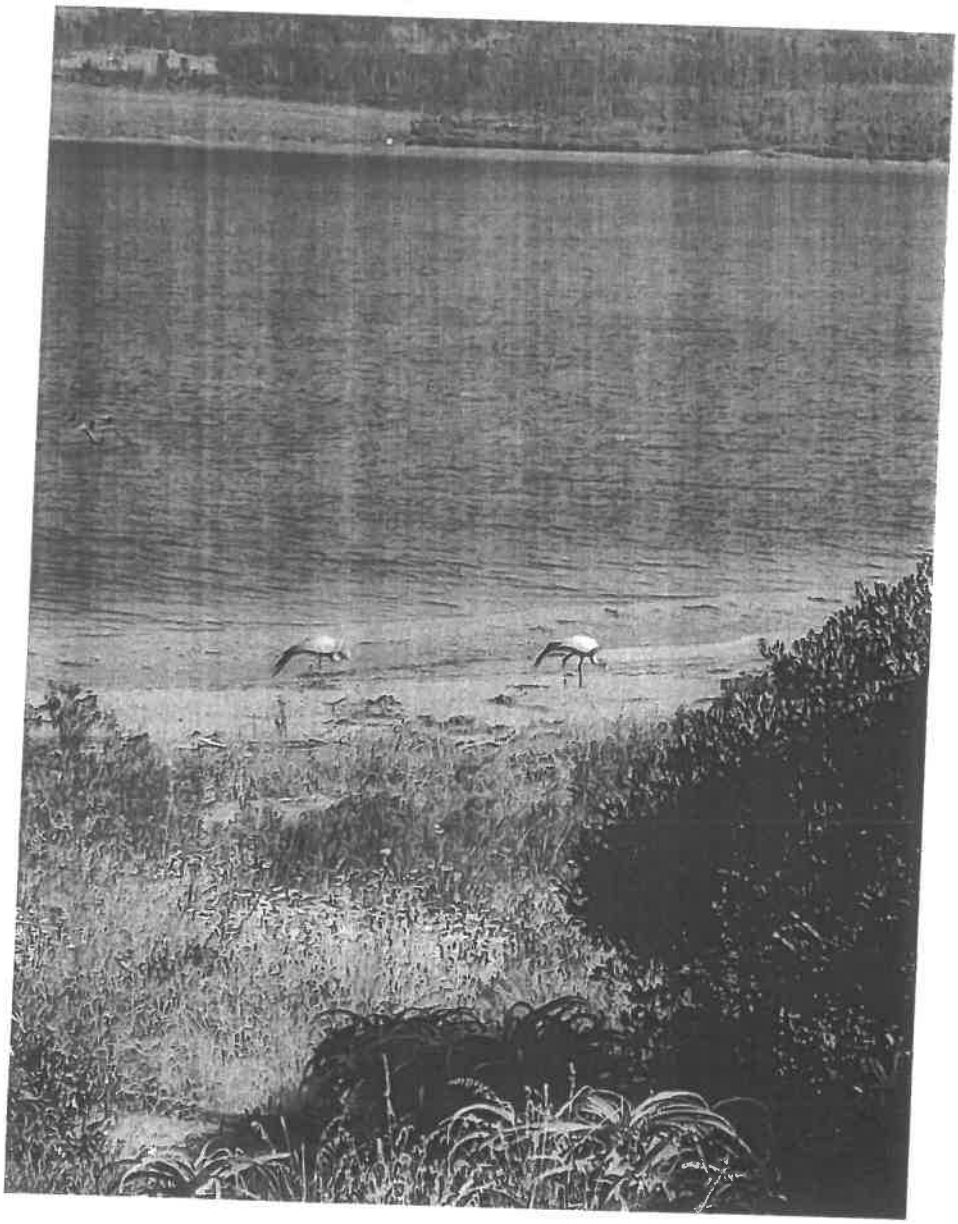
To illustrate the ecological sensitivity of the area, We attach below a photograph showing birdlife regularly observed on the section of beach in question.
The picture shows flamingos that regularly forage here and that will lose part of their habitat due to the tourist use of the beach.



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Globally and in South Africa, the Blue Crane is classified as vulnerable. They are also regular visitors to the beach. So are Pelicans from time to time and many more other types of rare birds.

2. Relationship between BCI and the BHOA Trustee Structure

According to the BHOA constitution, the trustee structure is intended to consist of four trustees: two representing homeowners and two representing BCI.

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At present, the trustees are:

1.	Mrs. Penny Streeter	Owner and/or director of Benguela Cove Investment (BCI)
2.	Mr. Nick Rea	Husband/Partner of Penny Streeter
3.	Ms. Shantel Kent	Employee of BCI or a company controlled by Mrs Streeter
4.	Mr. Andre Leodolf	Unknow to most HO.

We understand that several trustees have close professional or personal associations with BCI. This arrangement has led to concerns among some homeowners regarding potential conflicts of interest, particularly where BCHOA decisions may also have implications for BCI's commercial activities.

We do not assert any improper conduct; however, I believe the appearance of overlapping roles can create uncertainty about impartiality. We therefore ask the Municipality to take note of this context when evaluating the appeal.

---

3. Examples of Decisions Raising Perceived Conflicts of Interest

Homeowners have expressed concerns about certain decisions made by the trustees in recent years. These include, for example:

- Changes to rental regulations that now permit short-term rentals (including daily rentals via online platforms), which may benefit certain business activities of BCI.
- The apparent absence of competitive tenders for certain services, although the constitution indicates that such processes should be used. To my knowledge services are organised and billed by BCI.
- Decisions and practices that some homeowners feel have shifted Benguela's character in a more commercial or tourism-oriented direction.

We do not suggest that these actions were improper, but note that they can create the perception that BCHOA decisions may not always prioritise independent residential interests. We request that these perceptions be taken into account given the nature of the current appeal.

Additionally, there have been instances reported by homeowners where municipal conditions particularly noise-related conditions referenced in municipal documents dated 3 April 2019 (File Ref. HBENG 229/575(3817) and 27 January 2021 (App ID: 2948/2019) did not appear to be fully complied with. We respectfully ask the Municipality to review whether existing conditions and enforcement mechanisms are sufficient to protect residential amenity.

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4. Pontoon Boat

It is our understanding that the excursion boat is owned and operated by BCI (or an associated company) for commercial purposes. We further understand that the BCHOA does not receive revenue from this operation, although the jetty—belonging to the BCHOA—is commercially used for boarding. We also experienced in the past that loud music had been played on board during trips on the lagoon.

We also understand that the commercial district may not currently contribute financially to the BCHOA in the same manner that residential properties do. I submit this only as context and request that the Municipality consider whether the governance arrangements relating to the boat's operation are appropriate.

Operation of the Boat in the Past

Homeowners have raised concerns that the boat may have been operated by BCI in earlier years without required approvals. Evidence supporting these concerns was submitted by several homeowners during the 2023 objection process. We respectfully ask the Municipality to review this material as part of its consideration of the appeal.

---

5. Request

We reaffirm the objections set out in our submission of 23 May 2023. We respectfully request that the Municipality uphold its original decision in order to protect:

- the ecological integrity of the Botriver Lagoon, and
- the residential amenity and character of Benguela Cove.

We thank you for your attention to this matter and for considering the concerns of the independent homeowners.

Yours sincerely,

V. Buchholz

Ilse Buchholz

182 Benguela Cove
Benguela Cove Wine Estate
Hermanus, 7200
Telephone: +27 63 657 2129

375|387

Loretta Gillion

From: VC Buchholz <volbuchholz@hotmail.com>
Sent: Tuesday, 09 December 2025 10:07
To: Loretta Gillion
Cc: Enquiries
Subject: AW: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove
Attachments: 2025-12-07 Comments to appeal.pdf

Dear Mrs Gillion,
please find attached our comments to the appeal in the a.m. matter.

Best regards and wishes for the upcoming holidays.

Volkhard + Ilse Buchholz
182 Benguela Cove

Telephone: 063 657 2129

Von: Loretta Gillion <loretta@overstrand.gov.za>
Gesendet: Donnerstag, 20. November 2025 13:09
An: Loretta Gillion <loretta@overstrand.gov.za>
Betreff: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove

Dear Interested & Affected Party

This Municipality's decision letter dated 17 October 2025 refers.

An appeal has been received on 7 November 2025 from the Applicant against the decision made by the Municipal Planning Tribunal on 30 September 2025.

A copy of the appeal is attached for your information. **You are hereby afforded the opportunity to comment on the appeal within 21 days of this notification.**

Kindly note that in terms of Section 79.(13)(a) of the Overstrand By-law on Municipal Land Use Planning, the Municipality's decision is suspended until the appeal has been finalised and you have been advised accordingly.

Regards

Loretta Gillion
Administrative Officer: Town & Spatial Planning
Directorate: Planning & Development, Overstrand Municipality, Hermanus
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | E: loretta@overstrand.gov.za

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Loretta Gillion 3/6/387

From: Klaus Strömer <dr.stroemer@t-online.de>
Sent: Saturday, 06 December 2025 10:00
To: Loretta Gillion
Subject: Re: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove
Attachments: SKM_C55825112013500.pdf; APPEAL DOCUMENT - HBENG 210 & 220.575 - 7.11.2025.pdf

FILE NO. Ptns 210&220
Farm 575
SCAN NO.
COLLABORATOR NO.
29255 09

The Municipal M a n a g e r
Overstrand Municipality
P O Box 20
HERMANUS
7200

We comment to the appeal as an affected party and house owner of Benguela Cove 240

- There is no identifiable or compelling reason why the homeowners should endorse such a project.
- The benefits accrue exclusively to the operator of the excursion vessel.
- A clear and material conflict of interest exists among the majority of the members of the Trustee Committee.
- Any further burden on the natural environment should be avoided.

The applicant asserts that the homeowners have an interest in the proposed activity. This assertion forms a central foundation of the application. In the absence of such an interest, it is neither conceivable nor defensible that the elected representatives of the HOA could submit an application of this nature on their behalf.

Yet, to date, the homeowners have not been informed of the matter—neither through a circular nor at a meeting—nor has the issue been presented for a vote. Consequently, at best, only a presumed and highly questionable interest on the part of the homeowners can be inferred.

Despite careful consideration, I am unable to identify any plausible interest a homeowner—who has deliberately chosen to reside in a secluded, tranquil, and protected natural area—might have in supporting additional overtly commercial activities. This includes not only tolerating such activities but actively initiating them for their own supposed benefit. It should be noted that no fee for the use of the common facilities is envisaged, from which the HOA could at least derive a financial advantage.

It must regrettably be emphasized once more that, due to the formal structure of our constitution, the majority composition of the Trustee Committee overlaps with the ownership of BCI. Since no reasonable or substantial interest in a commercial use of our natural environment can be attributed to the average homeowner—while, conversely, the benefits accrue almost exclusively to the owner of the wine estate and restaurant operation—a significant conflict of interest among most members of the Trustee Committee must be presumed.

TP 8 DEC 2025

Should this conflict be deemed legally irrelevant, the substantive grounds on which the homeowners allegedly based their decision to submit the application must nonetheless be made transparent. This has not occurred.

In the objection letter, the applicant refers on page 8 to duties conferred by the bylaws. The applicant principally relies on three provisions:

1. **"to make regulations for the advancement of the interests of members"**
   As demonstrated above, no such interest is identifiable.
2. **"for the regulation and control of the conduct of members and occupants while in the estate"**
   This provision is not implicated by the present application.
3. **"for governing the manner and methods of use of the common property by or on behalf of the Members of the Association"**
   While correct, this provision can only be interpreted in conjunction with the first.

In the present case, however, the will of the homeowners was neither sought nor established; instead, a decision was taken without consultation. This constitutes a misuse of the Constitution for commercial interests of BCI.

Best regards

Dr. Klaus Stroemer and Dr. Beate Helgers

> On 20. Nov 2025, at 13:09, Loretta Gillion <loretta@overstrand.gov.za> wrote:
>
> **Dear Interested & Affected Party**
>
> This Municipality's decision letter dated 17 October 2025 refers.
>
> An appeal has been received on 7 November 2025 from the Applicant against the decision made by the Municipal Planning Tribunal on 30 September 2025.
>
> A copy of the appeal is attached for your information. **You are hereby afforded the opportunity to comment on the appeal within 21 days of this notification.**
>
> Kindly note that in terms of Section 79.(13)(a) of the Overstrand By-law on Municipal Land Use Planning, the Municipality's decision is suspended until the appeal has been finalised and you have been advised accordingly.
>
> Regards
>
> ***Loretta Gillion***
> *Administrative Officer: Town & Spatial Planning*
> *Directorate: Planning & Development, Overstrand Municipality, Hermanus*
> A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
> T: 028 313 8900 | E: loretta@overstrand.gov.za

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Nico Boris Buchholz

House 130
Benguela Cove
Hermanus
South Africa

Tel. (home): +27-810663624
e-mail: nicobuchholz@hotmail.com

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TP - A Theart (H olivier)

Overstrand Municipality
Town Planning Section
loretta@overstrand.gov.za

December 07, 2025

Ref.: Portions 210 an 220 (Portions of Portion 80) of farm Afdaks Rivier No 575, Caledon Division: "Application for consent use and determination of an administrative penalty: Wrap project office on behalf of Benguela Cove Homeowner's Association"

Dear Sir or Madam,

I am writing to you regarding the above matter. The purpose of this correspondence is to record my objection to the appeal. I am the owner of House 130, Benguela Cove.

Having reviewed the appeal, I respectfully note that it does not appear to address the concerns I raised in my original objection.

I would like to highlight the following points:

1. **Representation of the HOA in the Appeal**
   a. My understanding is that the Benguela HOA is administered by four trustees, who make decisions by simple majority. Two trustees are appointed by Benguela Cove Investments (BCI) as the developer, and two are elected by HOA members. As BCI retains voting rights associated with unsold plots and houses, its influence on the election of trustees may be significant. In this context, I believe it is appropriate to note the potential for perceived conflicts of interest.
   b. I was not consulted as an HOA member regarding either the original application or the appeal. Based on communication with other members, it appears that many individual HOA members may also not have been consulted. For this reason, I am concerned that the application and appeal may not necessarily reflect the broader views of the HOA membership.
2. **Nature of the Application and Appeal**
   From my perspective, the application and appeal appear to focus primarily on the commercial objectives of the developer. I have not identified provisions that clearly outline direct benefits for individual HOA members. This forms part of the basis for my objection.

Please refer to the objection below.

TP - 8 DEC 2025

FILE NO. Ptns 210 & 220|575
SCAN NO.
COLLABORATOR NO. 2926465

379/387

Kindly let me know if any further information is required.

Best regards



380|387

Nico Boris Buchholz

Tel. (home): +27-810663624
e-mail: nicobuchholz@hotmail.com

House 130
Benguela Cove
Hermanus
South Africa

Overstrand Municipality
Town Planning Section
loretta@overstrand.gov.za

May 20, 2023

Ref.: Portions 210 an 220 (Portions of Portion 80) of farm Afdaks Rivier No 575, Caledon Division: "Application for consent use and determination of an administrative penalty: Wrap project office on behalf of Benguela Cove Homeowner's Association"

Dear Sir or Madam,

I am writing to you regarding the above subject.
The purpose of this letter is to **object to the application.**

I am the home owner of plot 130 – Benguela Cove and a member of the HOA.

In general, if approved, the proposed changes may have a significant negative impact on the lifestyle, safety and security of some residents, the wildlife and the environment of the estate.

Objections:

Objection 1 – Fundamental Change Of Character And Vision Of The Estate:
When I purchased my property at Benguela Cove I gave consideration to the site development plan and the approved activities. I think I am entitled to have a reasonable expectation for this to remain unchanged. The proposed change may fundamentally impact the character and vision of the estate.
Benguela Cove was envisaged as a PRIVATE, RESIDENTIAL low density, rural, in "the middle of nature" estate, undisturbed by the daily activities of towns and cities with private access to the Botrivier Lagoon via a jetty and a boat ramp (210/575). Relatively untouched wetland area (220/575) which primarily serves as a habitat for wildlife and plants are an essential part of that vision.
The vision was NOT to allow access of the general public and to be a place of tourist activities (as defined by OMLUS), of public entertainment, impacting both residents and wildlife. The application will result in changing that vision and to commercially exploit the estate by third parties and the natural habitat it tries to protect (with the exception of the boutique hotel by the developer and the commercial precinct which is located outside the security boom which controls access of the residents part of the estate).
This is a residential and NOT a commercial estate and I strongly object to the mixing of both and blurring the lines.

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Objection 2 – Non-compliance ROD 15/12/2003 – 220/575)
The current application may not be allowed with regards to the ROD, 15/12/2003

Objection 3 – Non-compliance of Environmental Development Plan (March 2004) – (220/575)
The current application may not be in compliance with the Environmental Development Plan (March 2004)

Objection 4 – Disturbance to – Wildlife (220/575)
Increased human activities will disturb wildlife, particularly the bird sanctuary on the wetlands of ERF 220/575 which is an internationally recognized RAMSAR site.
These existing restrictions provide space for wildlife. Allowing tourist activities would negates this deliberate step and there will be pressure to "clean-up the beach" in order to make it appealing to customers, destroying the natural habitat. How can the below points be reconciled with the application ?
The following controls and constraints are applicable to give effect to the requirements contained in the said Record of Decision.

- The positions of the two approved jetties are specified in relation to the headland point of reference known as South Cape.
- The erven boundaries were set well back from the highwater mark of the Botriviervlei to prevent human disturbance of birdlife on the northern, west and southern boundaries of the conservation area of the Benguela Cove property development.
- A boardwalk/demarcated walkway was placed well back from the beach areas surrounding Benguela Cove to prevent disturbance of birdlife on these areas.
- A pet policy is in force where cats are not allowed on the properties and dogs must be contained in fenced erven or kept on a leash when outside the erven.
- No access to the lagoon edge is allowed from the boardwalk/walkway apart from the footprints of the two jetties that provide boating access to the Botriviervlei.
- No boats or watercraft may be beached anywhere on the waterside perimeter of Benguela Cove but may only be moored to the two approved jetties.
- The Botrivier Lagoon Management Plan in force at the time must be adhered to at all times.
- The Record of Decision also specifically mentions that "the mitigation measures as detailed on pages 37 to 40 in the Scoping Report dated August 2003 compiled by Enviro Africa, as well as those specified in the following Specialist Reports, must be incorporated also in the operational phase of the project
- The RoD further stipulates that the residential component of this application must adhere to the setback lines identified by the avifaunal specialist along the lagoon frontage.
- The Homeowners' Association / or operator of the facility must implement and incorporate the conditions of authorisation given in this Record of Decision, as appropriate to the operational phase of the project.

There is also a bird nesting near the access road to the site which would be impacted by increased activities.

Objection 5 – Environmental Impact Assessment:
The initial application for the development of the estate included an environmental impact assessment. The application does not make it clear if a new EIA was conducted and is part of the application.

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Objection 6 – Residents Security/ Crime (210/575, 220/575)
Tourist activities will increase the amount of people on the estate, who will unlikley be vetted, properly registered and meaningfully monitored, increasing the security/ crime risk on the estate.
These concerns apply to the protection and wellbeing of residents, private houses and items in the boat storage facilities.
Once on the estate tourists will have unhindered access to the entire estate.

Objection 7 – Resident Noise Disturbance:
Tourist activities and increased road traffic will increase the noise footprint on the estate and disturb residents.

Objection 8 – Resident Road Safety:
Tourist activities will result in increased road traffic, increasing the risk to residents in particular children playing and dogs.

Objection 9 – Scope of Application/ Lack of Specificity (210/575, 220/575):
The applicant is seeking the broadest scope of approval by re-designating the land as a "tourist facilities" (OMLUS).
The activities allowed under this approval category are too broad, not restrictive enough, provide few guardrails, are easy to abuse and the consequences difficult to foresee.
The applicant must state what specific activities the applicant wants to engage in, instead of wanting to be issued "card blanche".
Informal, legally not relevant and binding assurances by the Board of Trustees representing the developer are not enough to keep in restrict what might be planned in the future.
What stops the general integration of 210/575 & 220/575 into winery related, sponsored and commercial for trade/profit activities ? What stops turning the boat ramp into a public ramp, what stops water sport equipment rental, what stops public functions at the boathouse (turning it into a "pop-up restaurant"), what stops entertainment functions (concerts) on the beach, what stops renting out beach chairs, what stops beach sports (e.g. volleyball/ tennis), what stops ice-cream or hamburger stands, what stops the HOA owned swimming pool and tennis courts to be used by the general public ?
If an approval was given, it needs to state what specific activities are approved. A general approval for all "tourist activities" with some exceptions is NOT acceptable.

Objection 10 – Lack of support facilities (e.g. toilets) (210/575, 220/575)
There are no public toilet facilities to support tourism.
The boat house is for the private use of residents and HOA members and their (non commercial guests) and not for the general public.

Objection 11 – No monitoring & Enforcement Of Activities and Restrictions (210/575, 220/575)
Approval of "Portion 229 Of Farm 575, Benguela Cove – Proposed Amendment Of Approved Site Development Plan And Departure" has shown that the ability to monitor and enforce restrictions by the competent authorities is limited.
I have little confidence that potential restrictions to the current application would be monitored and enforced..

Objection 12 – Impact on relationship with HOA not addressed (210/575, 220/575)
The proposed change places additional burdens onto individual homeowners which have not been addressed by the applicant. The burden is administrative and financial.
I am personally not willing to financially subsidize (through HOA levies) the establishment/ running of tourist facilities and the additional pressure on infrastructure this would amount to.
Part of the application, in my view, should be a detailed agreement how the financial bourdon is paid for.

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Objection 13 – Impact on Property Value (210/575, 220/575)
The developer has a history of wanting to make Benguela Cove appealing to a much wider audience by changing the original vision of the estate from an exclusive, quiet area to that of a mass, high impact tourism site. Specifically introducing facilities like mini-golf, a splash park, multiple bus parking bays are testament of that changed vision towards commercialization.
As the result of the proposed change I am concerned that the value of my property will fall.

Objection 14 – Municipality Consultation Model:
The municipality has delegated to the HOA to make individual HOA members aware of the application. Can this be legal, the normal process or it be reasonable to delegated the sole means of notification to the very party seeking the application ?! In addition this is the party which in the past has failed to forward the identical application in a reasonable timeframe ?! Please note that forwarding the application was done my email-only without any feedback loop.
What are the requirements governing the notification of affected parties ?

Points To Note:

To fully understand the application and the applicant consider the following:

1. Who Is The Applicant:
   The application may give the impression that the proposed changes are the desire of the majority of individual home-/ plot owners. It is unlikely that commercialization and the resulting risk to security, safety and increased noise (see points above) is the desire of the majority of homeowners.
2. HOA vs. HOA trustees vs. BCI (developer) vs. BCI (operator of winery and related activities):
   Whilst the HOA is the applicant, the dynamics of the application are more complex.
   Decisions on behalf of the HOA, like this application, are made by the Board of Trustees on a simple majority basis. The HOA has 4 trustees, 2 nominated by the developer (BCI), who also runs the winery and related tourist activities, and two voted for by HOA members (home and plot owners). As unsold developer plots entitles the developer to have one vote per plot towards trustee elections, one HOA trustee was essentially voted for by the developer, giving the developer (BCI) a majority to make decisions on behalf of the HOA. The potential for conflicts of interest are obvious.
   In essence the developer may apply for changes on behalf of the HOA without necessarily representing the view of a majority of individual home-/plot owners.
   As a consequence the question that needs to be asked is who is set to benefit the most from the application ?
   Of particular note is that the name of the developer was not mentioned once in the application !
3. Relationship Developer vs. individual homeowners:
   In my opinion the relationship between the developer, represented by some members on the Board Of Trustees and the majority of individual homeowners has been fractious and disagreeable, as the many legal cases are testament too. The application has to be viewed in this context.
4. Non-Alignment of Interests:
   The vision and interests for the estate between many individual home-/ plot owners and the operator of the winery and related tourist facilities may not be the same and diverging. One party may be interested in commercial expansion whilst the other focused on preserving the existing situation.
   Please note that outside the residential area the developer is running an extensive tourist facility. The reassignment of 210/575 and 220/575 would potentially expand those activities onto residential land.
   The developer and the HOA are separate entities, yet for the reasons mentioned this application blurs the lines and may allow the developer to use HOA land to further its own commercial interests.

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5. No Consultation:
   Similar to previous applications, please note that I and the majority of individual HOA members have at no stage been consulted by the applicant about this application. There would have been ample opportunities to do so and even vote on during recent HOA meetings. Hence the application cannot be viewed as the agreed desire of the majority of individual plot-/ home owners.
6. Hotel:
   Some land adjacent to ERF 220/575 is owned by the developer and operator of the winery/ tourist facility and as part of the existing site development plan has been approved to build a boutique hotel facility on. Plans are currently underway to do so.
   The approval of 220/575 as a tourist facility will create a corridor to link hotel with ERF 210/575 increasing human activity, impacting residents and wildlife. There is an alternative road to link hotel and jetty.
7. Pontoon Boat:
   a. The owner/operator of the boat pontoon boat "Lady Bonny" is the same company that owns and runs the winery and related tourist activities and is also the developer. The application makes no mention of this. The HOA has no business interest or association with the boat. The application may give the impression that the HOA has an interest in the usage of the boat. Due to the reasons above the opposite is likely the case.
      Of note is that the owner/operator of the boat was not mentioned once in the application
   b. Individual plot-/ home owners were not consulted at the inception of the boat tours or ever since.
   c. To me the boat operation of the pontoon boat and associated activities has always been undesirable and I would like them to cease immediately.
   d. The pontoon boat has continued to operate FOR HIRE (ZAR 250 per person as of May 2023) even after the application has been submitted. The determination of the operation of the boat as not being legal has not stopped its commercial usage. This also speaks to the inability of the authorities to effectively monitor and enforce rules and the operator to adhere to restrictions.
8. 220/575 Activities.
   There is plenty of evidence that the applicant has either scant regard for or knowledge of the purpose of 220/575. "Beach clearing" activities are testament of that. There is photographic evidence that exists of extreme disturbance of the beach area by a digger loader in front of the clubhouse located at Jetty 1. It must be pointed out that this disturbance is illegal as no permission was obtained from Department of Environmental Affairs and Development Planning for what constitutes a listed activity under NEMA 2014 as amended.
   If existing rules and restrictions are not followed, a logical conclusion could be that future restrictions, as the result of this application, may not be followed either.

Further Specific Points Contained In The Application:

1. The WRAP document needs to describe in detail what it is that consent use is applied for, so that there can be no confusion as to the exact detail.
2. Which boat is "consent use" applied for, the existing Lady Bonny or another? Be specific and provide details of the craft to be used.
3. Are there any consent use matters included in the WRAP application that concerns public or residents or boating access to the conservation area below the formal approved walkway as well as to anywhere on the beach areas, apart from the footprints of the two jetties in the positions specified in the DEADP Record of Decision.

In summary, I object to the commercial exploitation of this private, residential estate and due to the reasons outlined above I am strongly opposed to the proposed changes contained in the application.

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Please contact me if I can be of assistance to you.

Best regards



Loretta Gillion 386|387

From: Nico Buchholz <nicobuchholz@hotmail.com>
Sent: Monday, 08 December 2025 08:10
To: Loretta Gillion
Subject: Re: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove
Attachments: 2025-12-08 - Objection to Appeal.docx.pdf

Dear Sir or Madam,

with regards to the appeal of "Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove" I continue to object to the application and appeal.
Please find my correspondence attached.

Best regards
Nico Buchholz

On 20/11/2025 12:09, Loretta Gillion wrote:

Dear Interested & Affected Party

This Municipality's decision letter dated 17 October 2025 refers.

An appeal has been received on 7 November 2025 from the Applicant against the decision made by the Municipal Planning Tribunal on 30 September 2025.

A copy of the appeal is attached for your information. **You are hereby afforded the opportunity to comment on the appeal within 21 days of this notification.**

Kindly note that in terms of Section 79.(13)(a) of the Overstrand By-law on Municipal Land Use Planning, the Municipality's decision is suspended until the appeal has been finalised and you have been advised accordingly.

Regards

Loretta Gillion
Administrative Officer: Town & Spatial Planning
Directorate: Planning & Development, Overstrand Municipality, Hermanus
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | E: loretta@overstrand.gov.za



Overstrand Municipality
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(426 OLIVIER A. THOART)

Loretta Gillion

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From: Harry Elcock <harry@comparisure.co.za>
Sent: Thursday, 20 November 2025 14:58
To: Loretta Gillion
Subject: RE: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove

Dear Loretta

Thank you for affording me the opportunity to comment on the appeal.

I was surprised that the original application was rejected and wish to record my full support for the appeal.

As a permanent resident on the estate, living close to the jetty, my daily experience is that many of the concerns raised in objections are not borne out in practice. In my view, the objections often rely on technicalities or interpretations of the HOA constitution that do not reflect the true impact on residents.

It would be deeply unfortunate if the appeal were not upheld, as the proposal allows more people to enjoy the unique natural environment of the Bot River Lagoon and our estate and contributes positively to tourism in the Overstrand area.

In summary, I fully support the appeal.

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
21 NOV 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Regards
Harry

From: Loretta Gillion <loretta@overstrand.gov.za>
Sent: Thursday, 20 November 2025 14:15
To: Harry Elcock <harry@comparisure.co.za>
Subject: APPEAL - Portions 210 & 220 (Ptn of Ptn 80) of Farm Afdaksrivier No 575 - Benguela Cove

You don't often get email from loretta@overstrand.gov.za. Learn why this is important

Dear Interested & Affected Party

Mr H Elcock

This Municipality's decision letter dated 17 October 2025 refers.

An appeal has been received on 7 November 2025 from the Applicant against the decision made by the Municipal Planning Tribunal on 30 September 2025.

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FILE NO.
PTNS 210+220 OF 575 AFDAKS.
SCAN NO.
COLLABORATOR NO.
2911822

Regards

Loretta Gillion

21 NOV 2025

Annexure B

SECRETARIAT
S Swart
23 APR 2026
07:30
RECEIVED

Munisipaliteit • U-Masipala • Municipality
OVERSTRAND

Memo

Office of the Executive Mayor

To : **MR R KUCHAR,** *Divisional Manager: Town and Regional Planning*

Cc : **Dr DGI O'NEILL,** *Municipal Manager*

Date : **23 April 2026**

RE : **APPEAL AUTHORITY DECISION: APPEAL: PORTIONS 210 AND 2020 (PORTIONS OF PORTION 80) OF THE FARM AFDAKS RIVER 575, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF BENGUELA COVE HOME OWNERS ASSOCIATION**

Points noted:

1. We note that the MPT site a number of critical information that was lacking in order to arrive at an informed determination.
2. We do not have clarity on MPT engagement with the Appellant with the intention to get the necessary clarity.

We therefore make the following decisions:

1. That the MPT did not have sufficient information arrive at a completely considered view.
2. That the Appeal is referred back to the MPT.
3. That the MPT must seek the necessary clarity from the Appellant and re-assess the Application.

D.G.I. O'NEILL (PERS. NR/NO: 3468)
MUNISIPALE BESTUURDER
MUNICIPAL MANAGER
DATUM / DATE: 26/04/2026

Yours In Governance

Cllr A KLAAS
EXECUTIVE MAYOR

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