

## 4.2

**ERF 3770, 1 NERINE CRESCENT, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION: WRAP  
PROJECT OFFICE ON BEHALF OF AP BOTHA**

3770 KBB (4110/2022)

B Minnaar  
3 May 2024

(028) 313 8900

Hermanus Administration

**1. EXECUTIVE SUMMARY**

The item previously served before the Municipal Planning Tribunal (MPT) on 25 April 2024 and was **referred back** to the Town Planner for approval. The recommendation by the MPT will be discussed in Section 13 of this report.

An application has been received on 8 April 2022 from WRAP Project Office on behalf of AP Botha in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of a restrictive title condition Clause B.7. as contained in Title Deed T47643/2021 applicable to Erf 3770, Betty's Bay in order to accommodate the proposed new dwelling house on the 2m Scheme building line.

The restrictive title deed condition B.7. read as follows:

*"No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street building line which forms a boundary of this erf, nor within 5m of the rear or 3m of the lateral boundary common to any adjoining erf provided that with the consent of the local authority:"*

A Locality Plan of the property concerned is attached as Annexure A. Motivation Report from the applicant in support of the proposal is attached as Annexure B and the Site Development Plan is attached as Annexure C. The Title Deed is attached as Annexure D.

**2. DECISION AUTHORITY**

Authorised official.

**3. BACKGROUND / SITE HISTORY**

The property is zoned Residential Zone 1: Single Residential (SR1) measure 1117m<sup>2</sup> in extent and is located at 1 Nerine Crescent in the Betty's Bay area.

The applicant intends to develop a proposed new dwelling house on the vacant stand.

**4. SUMMARY OF APPLICANT'S MOTIVATION**

Only the key points of the Motivation Report are summarised as follows (the detailed report is attached as Annexure B):

- ❖ The property owner acquired the subject property in 2021 and envisaged to develop the property with a dwelling unit.
- ❖ Upon scrutiny of the title deed, it was realised that the title deed contained more restrictive building lines than the Overstrand Municipality Land Use Scheme 2020 (OMLUS).
- ❖ An application is therefore lodged for the removal of restrictive title deed conditions.
- ❖ Only one condition contained in Title Deed T47643/2021 restricts the proposed development of the dwelling house to be within the applicable land use scheme parameters.
- ❖ The rationale is therefore to remove the applicable title deed condition restricting the proposed development.
- ❖ The property owner has no intension of encroaching over the OMLUS building lines.
- ❖ The subject property is located in an area that is predominantly zoned for residential purposes and is located adjacent to a public open space.
- ❖ Restrictive title deed conditions were originally intended to act as limiting development parameters. This changed with the implementation of comprehensive zoning scheme and land use schemes. Any amendment or removal of these conditions requires the consent of the Administrator. This authority now vests with the Overstrand Municipality.
- ❖ In this instance, the title deed restrictive condition is now more restrictive than the OMLUS building lines. The proposal is therefore to align with the scheme building lines as permitted on all other Single Residential Zoned properties.
- ❖ The subject property will be connected to the electricity network and the Overstrand Municipality water network. Additionally, a sewer conservancy tank will be installed that will be serviced by the Overstrand Municipality. Solid waste will be collected on a weekly basis by the Overstrand Municipality.
- ❖ The character of the area will not be impacted as the proposed dwelling house will be in line with the OMLUS development parameters.
- ❖ The property is not listed in the Overstrand Municipality Heritage Register.
- ❖ The property is however located within the Coastal Protection Zone as well as the Protected Area Buffer in terms of the EMOZ.
- ❖ The property is also located within the Coastal Strip HPOZ, and the purpose of the zone is to ensure that any land use application resulting in additional rights complies with the existing character and contextual significance. The proposal is not predicted to negatively affect the coastal strip.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	<b>Yes</b>	21 July 2022	26 August 2022
Local newspaper	<b>Yes</b>	22 July 2022	26 August 2022
Notices	<b>Yes</b>	21 July 2022	26 August 2022
Ward councillor	<b>Yes</b>	21 July 2022	26 August 2022
Total objections	<b>TWO (2)</b>		
Total letters of support	<b>NONE</b>		

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

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

Name	Date received	Summary of comments
Building Control	24 June 2021	No objection.
Environmental Management Services	26 August 2022	No objection.
Services Report	7 October 2022	Attached as Annexure G.
BGMCA	6 September 2022	Attached as Annexure H.
Cape Nature	23 September 2022	Attached as Annexure I.
Western Cape Government: EADP (Coastal Management)	17 October 2022	Attached as Annexure J.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

During the public participation process, one (1) objection was received by the adjacent property owner on Erf 3771 and one (1) comment was received from the Betty's Bay Ratepayers' Association. See Annexure E.

The applicant was provided the opportunity to respond to the comment and objection received. See Annexure F.

The objections, the applicant's reply and the Municipal Town Planners response thereon can be summarized as follows:

### **COMMENT - BETTY'S BAY RATEPAYERS' ASSOCIATION**

*"We, the Betty's Bay Ratepayers' Association have no objection to the application for the REMOVAL OF RESTRICTIVE TITLE DEED CONDITION in relation of ERF 3770 NERINE CRESCENT BETTY'S BAY.*

*We do however want to place on record that there seems to be an ever-increasing desire/request by new property owners to overreach the building regulations/bylaws/title deed conditions etc with regards to new buildings and this is concerning as our rules/guidelines are in place for good reason."*

APPLICANT'S RESPONSE

*"This comment is noted, but it is important to note that the property owner is not seeking any departure from the parameters of the Overstrand Municipality Land Use Management Scheme (OMLUS).*

*The title deed conditions are more restrictive than the parameters of the OMLUS and the property owner only wishes to remove the restrictive title deed conditions pertaining to building lines to allow them to build up to 2m from the side boundary line."*

TOWN PLANNER'S RESPONSE

The town planner is in agreement with the applicant with regards to the development parameters of the title deed being more restrictive than the Overstrand Municipality Land Use Scheme 2020. The property owner therefore only proposes to bring the new dwelling house in line with the OMLUS development parameters as per any other single residential erf is restricted to.

OBJECTION - DR P WILLIAMS

*"We herewith wish to raise my objection to the proposed removal of restrictive title deed condition on erf 3770, 1 Nerine crescent, Betty's Bay.*

*We are the owners of adjacent erf 3771, 3 Nerine Crescent.*

*We object to 3770 going over their restricted building line as we have designed our proposed new home with the recommended municipal building lines in mind and believe by encroaching the building line simply because they are squeezing in a sea view, would impede on our privacy.*

*We have been contacted telephonically by the owners' architect to request this and we have already denied this request.*

*The architects request to go over the building line is to maximize sea views, however by doing this it encroaches on the properties surrounding erf 3770 and we therefore oppose it in the strongest sense. Furthermore, the property is 1200sqm+ in size. Encroaching on the building line seems highly unnecessary and affects the overall spatial look and feel of betty's bay and particularly the row of seafront properties."*

APPLICANT'S RESPONSE

*"We acknowledge the contents of the objection and would like to refer the objector to the motivational report. Consent of the objector was required to be able to follow a shortened application process, which was denied by the objector, prior to submission of this application.*

*The property owner only wish is to be aligned with the development parameters applicable to other single residential properties in the Overstrand Municipality as stated in the motivational report.*

*There are no other departures required and the property owner will adhere to the Overstrand Municipality Land Use Management Scheme building lines of 2m.*

*The title deed building line is more restrictive than the Overstrand Municipality; Land Use Management Scheme's building line.*

*The property owner is sensitive to and is considerate to the privacy of the neighbours as it goes both ways. The owner would never want to impede on any person's privacy which is the reason why there are no additional departures requested as the property owner only wishes to be aligned with the Land Use Management Scheme's building lines as the Site Development Plan clearly indicates.*

*Both properties are vacant (Erf 3770 and Erf 3771), and should the application be approved, it would allow the proposed dwelling on Erf 3770 to be built 2m away from the boundary, which will create a minimum distance of 4m between the two future dwellings, should Erf 3771 ever be developed.*

*We are of the opinion that 4m is ample space to ensure the privacy of both properties are maintained as it is more than other single residential properties are exposed to in other parts of the Overstrand.*

*The objector states that they have designed their future home "with the recommended municipal building lines in mind", which also applies to the owner of Erf 3770. They will also not be encroaching on the "municipal building lines" and are only requesting the removal of the restrictive title deed building line condition."*

#### TOWN PLANNER'S RESPONSE

The building lines stipulated in the title deed are more restrictive than the building line parameters in terms of the Overstrand Municipality Land Use Scheme 2020. It is noted that the owner wishes to develop his property which is in line with the OMLUS development parameters as per all other single residential zoned properties in the Overstrand area.

#### **8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

Refer to paragraph 7 above.

#### **9. MUNICIPAL ASSESSMENT OF COMMENTS**

Refer to paragraph 7 above.

#### **COMMENT – MUNICIPAL ENVIRONMENTAL MANAGEMENT SERVICES**

The Environmental Management Section (EMS) has no objection to this application.

The EMS would like to take this opportunity to inform the applicant that the property is also within the EMOZ Coastal Protection: Urban Low Risk Zone. Please refer to map attached. The regulations for the Urban Low Risk Zone are found as 4.8.1.2.3. (Page 19.) and must be considered during the new dwelling design process.

Also, please note that the erf is located within the Bettys Bay Beachfront Maintenance Management Plan area. The plot should therefore not be stripped of all vegetation, only the required development footprint should be cleared to ensure maintain the stability of the dune system.

APPLICANT'S RESPONSE

The client acknowledges the comment and agrees to comply with the recommendation.

TOWN PLANNER'S RESPONSE

The proposal will remain subject to the regulations for the Urban Low Risk Zone as found in section 4.8.1.2.3. of the Overstrand Municipality Environmental Management Overlay Zone Regulations 2020.

It is herewith considered that the comments and objections have been adequately answered and resolved.

## **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

The application will not further perpetuate spatial injustices.

#### Spatial sustainability

The proposal is located within the EMOZ Coastal Protection: Urban Low Risk Zone and must be restricted to the development parameters thereof during the new dwelling design process. A portion of the property is located in the littoral active zone which is a dynamic system where free movement of sand must not be interfered with as per NEM: ICMA.

#### Efficiency

The proposal is intended to maximize the utilisation of the property to ensure the property owner's requirements are met.

#### Spatial resilience

Not applicable to this application.

#### Good administration

The application followed the required planning procedures, and a good public participation process has been followed.

**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**

Inconsistent with the Zoning Scheme, but consistent with the Spatial Development Framework.

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

N/A

**10.6 Impact on Municipal engineering services**

The existing services are available and have been viewed positively by the Engineering Department.

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

A letter of non-support was received from the Western Cape Government: Environmental Affairs and Development Planning: Sub-directorate: Coastal Management on 17 October 2022.

The subject property falls within the Coastal Protection Zone (CPZ). The purpose of this zone is to avoid the increasing affect or severity of natural hazards in the coastal zone and to protect people and properties from risks arising from dynamic coastal processes. A portion of the subject property is also located within the Littoral Active Zone (LAZ) which is a dynamic system where free movement of sand must not be interfered with. It is also essential to note that the impacts of climate change such as decreased rainfall, which the vegetation would be subject to changing climate conditions, specifically hotter and dryer conditions. Vegetation will eventually die off and will reduce in footprint. This loss of vegetation will result in further dune instability and increase the mobility thereof. It can therefore be expected that the littoral active zone will extend further inland. Cognisance must be given to previous properties in the Betty's Bay area that were negatively impacted by mobile sand resulting in undermining the integrity of structures.

It is therefore considered that the applicant & property owner adhere to the development considerations of Low-Risk Urban Coastal Areas during the development design process (Attached as Annexure J) in order to reduce coastal risk.

**10.8 Existing and proposed zoning comparisons and considerations**

N/A

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

***The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.***

The subject restrictive conditions do not have any significant value to person or entity. The conditions stipulated are deemed too restrictive taking into consideration the extent of the property (1117m<sup>2</sup>). The removal of the conditions will not alter the character of the surrounding areas.

***The personal benefits which accrue to the holder of rights in terms of the restrictive condition.***

No person will benefit from the condition if it is to remain in place.

***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.***

The property owner will gain in the removal of the restrictive title deed condition as it will allow the property owner to develop the property to its full extent.

***The social benefit of the restrictive condition remaining in place, and / or being removed/amended.***

There is no social benefit if the restrictive condition remains in place. The title deed restrictions were put in place to regulate the building parameters on a land unit before there were land use schemes applicable. The Overstrand Municipality has adopted and amended its land use scheme which restricts the developments to new building parameters, therefore making the title deed restriction condition obsolete. Therefore, the social benefit of removing the restrictive conditions allows the property owner to develop their property in accordance with the Overstrand Municipality Land Use Scheme, 2020.

***Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.***

There is no beneficiary of the right, however, to keep the restrictive title deed condition in place will reduce the chance of negative effects that the property owner will incur with regards to mobile dune systems and their impact on the Betty's Bay coastal residents.

With that said, the proposal to remove the restrictive title deed condition is therefore not supported due to the safety risk to the property owners, the integrity of the proposed structure as well as the expected increase in dune instability.

## 12. THE DESIRABILITY OF THE PROPOSAL

The subject property is located within the Betty's Bay area measuring 1117m<sup>2</sup> in extent. The area is predominantly zoned for residential purposes. The property is a corner erf and abuts two neighbouring residential properties. The property is also adjacent to an open space zone which is municipal property (beach fronting with mobile sand dunes).

The proposal is to develop the property with a new dwelling house with three storeys. The proposed dwelling is positioned in such a way to increase beachfront view for the property owner. The positioning of the dwelling is well within the Overstrand Land Use Scheme building line parameters. However, the property is subject to restrictive title deed conditions (building lines) that are more restrictive than the Overstrand Municipality Land Use Scheme, 2020.

The proposal encroaches over the 3m southern lateral building line by 0.5m and encroaches the north-eastern lateral building line by 1m. These encroachments are considered minor encroachments as the building footprint remains within the applicable title deed building lines and land use scheme building lines. The only environments that are proposed, is the 0.5m overhang on the southern portion of the property and the stairs encroaching 1m on the north-eastern side of the property.

These encroachments are minor in nature and would not negatively impact the surrounding property owner in terms of views or privacy. The initial process that was followed was a departure / relaxation of the restrictive title deed conditions. This process is however subject to the consent provided by the immediately affected adjacent property owners. Since one of the neighbours provided their objection, the following step was to submit a revised land use planning application for the removal of title deed restrictions.

The application process then followed the correct administrative processes. During public participation, the neighbouring property owner (Erf 3771) objected as they have built their property within the applicable title deed building lines and states that their privacy will be affected. The objection is noted but is not considered valid as only the overhang encroaches over the applicable 3m lateral title deed building line.

The proposal was circulated to Cape Nature & BGCMA to which both provided their confirmation of no objection subject to certain considerations stipulated in their comment (refer to Annexure H). The Environmental Management Services Department provided their confirmation of no objection, subject to compliance with the mitigating measures stipulated in the regulations for the Urban Low Risk Zone and found as 4.8.1.2.3. (Page 19).

Furthermore, the proposal was circulated to Western Cape Government: Department of Environmental Affairs and Development Planning (Biodiversity and Coastal Management) due to the property being situated within the Coastal Protection Zone (CPZ) and partially within the Littoral Active Zone (LAZ) which is a dynamic system where free movement of sand must not be interfered. Due to the property being located within these zones, the aforementioned provincial department does not provide their support.

The proposal for the removal of title deed restrictive condition B.7. in order to bring the proposed development rights in line with the Overstrand Municipality Land Use Scheme 2020 would be considered for approval under normal circumstances, as the applicable encroachments are considered to be minor.

When the proposed dwelling house is approved in the current position, and when the building process begins, it is required that the vegetation be removed to construct the dwelling house. The only vegetation that may be removed however is those that are located within the building footprint. Noting the aforementioned, a portion of the property is located within the littoral active zone (mobile sand dune system). The reduced vegetation and the hotter and dryer climate will result in the increased likelihood of erosion the sand dune system impacting on the property owner and the increased likelihood of negatively impacting the structural integrity of the proposed dwelling house.

It is the considered opinion that the application should therefore not be supported.

### 13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3770, Betty's Bay for the removal of restrictive title deed condition B.7. as contained in Title Deed T47643/2021 to accommodate the proposed new dwelling house on the 2m Scheme building line, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
2. that the dwelling house be repositioned further from rear property boundary and applicable building lines (land use scheme and title deed building lines).
3. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

### 14. REASONS FOR RECOMMENDATION

- ❖ The subject property is 1117m<sup>2</sup> in extent allowing more than enough space to position the property away from the mobile dune system as well as away from the applicable building lines (title deed or land use scheme building lines).
- ❖ The encroachments over the applicable title deed restrictive building lines are considered minor encroachments, however the subject property is located in the Urban Low Risk Zone and can therefore not be the only evaluation point.
- ❖ The property is situated within the EMOZ Coastal Protection: Urban Low Risk Zone and within the Littoral Active Zone (LAZ) which is the mobile sand dune system. There are no mitigating measures considered / proposed as stipulated in the regulations for the Urban Low Risk Zone 4.8.1.2.3. (Page 19.).

- ❖ The position of the proposed dwelling is too close to the mobile dunes. The vegetation located within the footprint of the proposed dwelling house is required to be removed before the building process. The vegetation is a natural buffer (mitigating measure) to ensure that the mobile dune system does not negatively impact the property owner. Due to the location of the proposed dwelling, there will be less vegetation to reduce the impact of the of mobile sand dune system. Without mitigating measures in place to reduce the sand dune system, the property owner will be subject to increased disruption. Furthermore, the effects of climate change resulting in hotter and dryer weather may lead to increase erosion thereby having a major impact on the structural integrity of the proposed dwelling house.

**THE MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 25 APRIL 2024 RESULTED IN THE FOLLOWING:**

The MPT scrutinized the application, and they referred the application back to the municipal town planner in order to identify whether the Municipality may approve the relaxation of the building lines instead of approving the application for the removal of title deed restrictive conditions.

In terms of the title deed, the Municipality is granted the authority to approve the relaxation of restrictive title deed condition “parameters”. With that said, the applicant initially submitted an application for the relaxation of the title deed restrictive conditions. Due to the neighbouring property owner not consenting to the relaxation of the restrictive title deed conditions, the application was revised to propose the removal of restrictive the title deed restrictive conditions.

The request by the MPT to approve the application for relaxation of the restrictive title deed conditions can therefore not be approved due to the neighbouring property owner not providing their consent.

With that said, instead of granting the removal of the title deed restrictive condition, the municipality may amend the title deed condition to accommodate the encroachment of the staircase on the north-eastern lateral title deed building line and the overhang on the southern lateral title deed building line.

**The condition may be amended stipulating the following:**

*“No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street building line which forms a boundary of this erf, nor within 5m of the rear or 3m of the lateral boundary common to any adjoining erf (except for the staircase situated 2m from the north-eastern boundary and the overhang situated 2.5m from the southern boundary) provided that with the consent of the local authority.”*

**REASONS FOR MPT RECOMMENDATION:**

Reasons for the recommendation to be stipulated by the MPT.

**15. ANNEXURES**

Annexure A: Locality Plan

- Annexure B: Motivation Report  
 Annexure C: Site Development Plan  
 Annexure D: Title Deed T47643/2021  
 Annexure E: Comment and objection received  
 Annexure F: Applicant's response to comment & objection received  
 Annexure G: Services Report  
 Annexure H: BGCMA  
 Annexure I: Cape Nature  
 Annexure J: Western Cape Government: DEA&DP (Biodiversity and Coastal Management)  
 Annexure K: Comment: Environmental Management Services Department

**SIGNATURES****AUTHOR:**

Name: **B MINNAAR**

SACPLAN Reg No: **C/8630/2021**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**REGISTERED PLANNER:**

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Annexure A





## MOTIVATION

## 1. ABBREVIATIONS

<b>OM</b>	Overstrand Municipality
<b>OMLUS</b>	Overstrand Municipality Land Use Scheme, 2020
<b>BY-LAW</b>	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
<b>PSDF</b>	Western Cape Provincial Spatial Development Framework, 2014
<b>LUPA</b>	Western Cape Land Use Planning Act, 2014.
<b>MSDF</b>	Overstrand Spatial Development Framework, 2020
<b>SR1</b>	Residential Zone 1: Single Residential

## 2. PROPERTY DETAILS

<b>Consultant</b>	WRAP Project Office
<b>Erf Number</b>	Erf 3770 Betty's Bay
<b>Restrictive title deed conditions</b>	Condition 7
<b>Extent</b>	1117m <sup>2</sup>
<b>Zoning</b>	Residential Zone 1: Single Residential

## 3. BACKGROUND AND INTENT

Erf 3770 Betty's Bay, hereafter referred to as the subject property, is located at the corner of Morea Road and Nerine Crescent, Betty's Bay (refer **Plan 1 – Locality Plan**). The property owner (Alwyn Botha) appointed WRAP Project Office to submit this land use application on his behalf (refer **Annexure A – Power of Attorney**).

The property owner acquired the subject property in 2021 and has a vision to develop the property with a dwelling unit. The property owner appointed a professional architectural draughtsperson to design the proposed dwelling unit within the Overstrand Municipality Land Use Scheme (OMLUS) building lines. Only after scrutiny of the title deed was it realised that the title deed contains more restrictive building lines than the OMLUS.

As a result, the following application is required:

- Removal of a restrictive title deed condition.



## MOTIVATION

### 4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's vision is achieved. The following is proposed:

**4.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

One title deed condition prohibits the property owner to utilise his property to its full extent as described in Section 3 and the rationale for the removal of the condition is discussed below:

<b>Restrictive Title Deed Conditions</b>
Condition 7 – <i>"No building or structure or any portion thereof except boundary walls and fences shall, except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 5m of the rear or 3m of the lateral boundary common to any adjoining erf provided that with the consent of the local authority"</i>

The rationale for the removal of the restrictive title deed condition is to enable the property owner to achieve the development intent highlighted in Section 3 and not be restricted in the future by the title deed building line. The title deed condition is more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of the restrictive title deed condition will be discussed in detail in Section 7 of this report.

The property owner has no intention of encroaching on the OMLUS building lines.

### 5. APPLICATION

Considering the above, application is made for the following:

**5.1 Removal of restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

### 6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes and is located adjacent a public open space. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposal is only to allow the property owner the same development parameters as other Single Residential properties in the Overstrand Area.

### 7. TITLE DEED

Title deed T47643/2021 (refer **Annexure B**) was perused and the condition that is proposed to be removed is restricting the property owner from utilising his property to its full extent.



## MOTIVATION

7.1 **Title deed restrictions**

**Condition 7** – "No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 5m of the rear or 3m of the lateral boundary common to any adjoining erf provided that with the consent of the local authority"

**Motivation****The rationale for the proposed removal**

The subject property is currently vacant and is proposed to be developed with a single dwelling unit. The property owner has the vision and opportunity to build up to the OMLUS lateral building line. The proposed development of the property is restricted by the condition mentioned above. The proposal is to remove the restrictive condition, this will align the scheme and title deed building lines and allow the property owner to build up 2m on the southern side of his property.

**Title deed condition background**

The restrictive title deed condition was originally intended to act as a limiting development parameter, but this has however changed with the implementation of more comprehensive zoning and land use schemes. Any amendment or removal of these conditions require the consent of the Administrator. This authority now vests with the Overstrand Municipality.

**Status quo**

The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand area's residential properties are managed in a similar manner. The title deed condition is more restrictive than the OMLUS and the property owner has a vision and plans to expand beyond this condition. The proposal is to align with the scheme building line with what is allowed on other Single Residential properties in the Overstrand area.

The current and future development of the property is being restricted by the title deed condition. The condition made sense when no clear development guidelines existed. With the restrictive condition being more restrictive than the policies of the Overstrand Municipality, the property owner is not able to utilise his property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

<b>LUPA, Section 39(5) (a-f)</b>	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest</i>	No person or entity will be affected financially by the removal of the restrictive title deed condition.

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**MOTIVATION**

in the person as the owner of a dominant tenement;	
(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;	No person is personally benefitting from the condition.
(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;	The property owner will be gaining from the removal of the restrictive condition as it will allow him to utilise his property to its full extent.
(d) the social benefit of the restrictive condition remaining in place in its existing form;	These restrictive conditions do not have a social benefit.
(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and	
(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.	There is no specific beneficiary of the condition, and no person or entity will be affected if it is removed.

**8. ZONING**

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law:



## MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
<b>Primary use</b>	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House	Comply
<b>Consent use</b>	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
<b>Development parameters</b>			
<b>Coverage</b>	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m <sup>2</sup> and greater = 50%	Area of site = 1117m <sup>2</sup> Proposed Dwelling = 233.35m <sup>2</sup> Coverage = 233.35m <sup>2</sup> / <b>20.89%</b>	Comply
<b>Building lines</b>	(i) The street building line is determined in accordance with the net erf area: 400 m <sup>2</sup> and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m <sup>2</sup> = 2m	Street, side and rear boundaries are adhered to.	Comply
<b>Height</b>	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Proposed – Two Storey at 8,0m	Comply
<b>Garages and carports</b>	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Two parking bays	Comply

5/12



6/12

**MOTIVATION****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**

The subject property will be connected to the electric network, as well the OM's water network. A sewer conservancy tank will be installed that will be serviced by the OM. The implementation of this proposal will not greatly impact on these networks.

Solid waste is collected by the OM on a weekly basis.

**Access and Egress**

Access and egress to the subject property is proposed from Nerine Street.

**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 need for the land use application was to ensure that the property meets all the needs of the property owner. The desirability is more often a personal feeling of the property owner. The intent is to build a dwelling house that is in-line with the development parameters of the OMLUS. This is however being restricted due to the title deed conditions. The proposal will not affect any other person, as the proposal is to align the development parameters of the subject property with the development parameters set out in the OMLUS. The proposed dwelling will not benefit any other users or person, but it will increase the property value and, in the future, may yield additional income for the OM.

To achieve his vision, the property owner has appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

**Impact on views, sunlight and character of the area**

The subject property is located in a residential setting and the proposed dwelling house will comply with the OMLUS's development parameters ensuring that no views, sunlight, or the character of the area is affected.

**Economic impact**

There is little to no impact on the economy. The building of the proposed dwelling house will temporarily employ a contractor that will use workers to assist in the construction phase. Building materials will be purchased at local suppliers.

**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



## MOTIVATION

affected parties when an application is approved. The development will not affect the property values of surrounding properties.

### Impact on heritage

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

## 11. POLICIES AND REGULATIONS

### 11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the 'Coastal Protection Zone' and 'Protected Area Buffer' EMOZ. 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	Protected Area Buffer	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	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	X	N/A
Placement of religious symbols or memorabilia.	X	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	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	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	X	N/A

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## MOTIVATION

Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	X	N/A
Feeding, disturbing / pursuit of fauna.	X	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	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.			N/A
Staying overnight.	X	X	A dwelling house will be constructed on the property.
The discharging of domestic effluent / grey water into all natural systems.	X	X	N/A
Tampering with security / surveillance infrastructure.	X	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	X	N/A
Littering	X	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	X	N/A
Dog walking / exercising of dogs in non-designated zones.	X	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	Protected Area Buffer	
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	X	N/A



## MOTIVATION

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	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	X	This is noted and all water will be managed on-site.
<b>B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>		<b>Applicable to the application or not</b>
	<b>Coastal</b>	<b>Protected Area Buffer</b>	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	X	N/A
Commercial filming.	X	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	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	X	N/A
Launching of vessels at registered launch sites.	X		N/A
<b>C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>		<b>Applicable to the application or not</b>
	<b>Coastal</b>	<b>Protected Area Buffer</b>	
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	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	X	N/A



16/12

**MOTIVATION**

Encroachment of private buildings, structures, infrastructure, access routes.	X	X	The subject property is located within this zone.
Commercial Harvesting/collection and removal of any natural resource.	X	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	X	The subject property is located within this zone.

**11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)**

The subject property is located within the Coastal Strip HPOZ, and the purpose of the zone is to ensure that any land use application resulting in additional rights complies with the existing character and contextual significance.

The proposal is not predicted to affect the coastal strip as the proposal is in line with the OMLUS's development parameters.

**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.

**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 for a dwelling will not contribute to spatial injustices.

**Spatial sustainability**

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a main dwelling will enable the property to be utilised to its proposed extent and no more. The proposed dwelling will comply with the OMLUS development parameters.

**Efficiency**

This proposal is intended to maximise the usage of the subject property and ensure the property owner's requirements are met.

**Spatial resilience**

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

11/12

**MOTIVATION****Good administration**

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process. The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.

**RECOMMENDATION****13. EVALUATION**

The property owner bought the property to construct a dwelling house that has uninterrupted views of the South Atlantic Ocean, as illustrated in the annexed plans. There is however a restrictive condition that is more restrictive than the provisions of the OMLUS. The proposal is to remove the 3 m lateral restriction to be in line with the OMLUS. The removal of the restrictive title deed condition was motivated in terms of SPLUMA and LUPA.

The proposed land use is not out of context with the surrounding area and is not seen as an intrusive land use. The proposed dwelling house will also not impede on views, sunlight or negatively affect the character of the area. The proposal for a dwelling house is in harmony with all relevant spatial planning policies which illustrates that the property owner did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

**14. RECOMMENDATION**

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

- 14.1 Removal of restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



Annexure D 1/5

CHRIS FICK & ASSOCIATES  
236  
M47653/TT/he

Prepared by me,

*Chris Fick*  
Conveyancer  
Christiaan Ludolph Nelson Fick  
(LPCM 81828)

The endorsement		
	Amount	Office fee
Purchase price/Value	R. 1,685 000 5	R. 1783
Mortgage capital Amount	R.	R.
Reason for exemption	Exempt 166	
	Act	section Act

VERBOD

R. 1 000 000

000026925 / 2021

2021-09-23

*Chris Fick*

DATA / CAPTURE  
04-10-2021  
NOLUVO MTYATYAMBA

T 000047643 / 2021

### DEED OF TRANSFER

Be it hereby made known that

**MARYKA VERMAAK**

appeared before me, Registrar of Deeds, at Cape Town, he, the said appearer, being duly authorised thereto by a power of attorney dated at Pretoria on 18 July 2021 and granted to him by

**Andries Nicolaas Kruger**  
**Identity Number 541014 5096 08 3**  
**Married out of community of property**

and the appearer declared that

*[Handwritten mark]*

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the said principal/s had on **1 July 2021**, truly and legally sold and that he, the said appearer, in his capacity as attorney aforesaid, did by these presents cede and transfer to and on behalf of

**Alwyn Petrus Botha**  
**Identity Number 760818 5009 08 4**  
**Married out of community of property**

his heirs, executors, administrators or assigns,  
in full and free property

**Erf 3770 Bettys Bay,**  
**situate in the Overstrand Municipality,**  
**Division Caledon, Province of the Western Cape;**

**In Extent: 1 117 (One Thousand One Hundred and Seventeen) square metres;**

**First transferred by Deed of Transfer No T 33671/1977 with General Plan No. TP 8266 relating thereto and held by Deed of Transfer No T 67071/2004.**

- A. Subject to the conditions referred to in Deed of Transfer No T 26686/1970.
- B. Subject further to the following conditions contained in Deed of Transfer No T 33671/1977 imposed by the Administrator of the Cape Province under Ordinance 33 of 1934 with the approval of the Bettys Bay Township Extension No. 2, namely:
1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Notice No. 623 dated 14<sup>th</sup> August 1970.

TR235

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2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf, any provisions thereof which are more restrictive than any Conditions of title applicable to this erf, shall take precedence. Furthermore, nothing in these conditions shall be construed as overriding the provisions of section 146 of Ordinance No. 51 of 1952, as amended.
3. The owner of this erf shall, without compensation be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or even inside or outside this township to be conveyed across this erf, if deemed necessary by the local authority in such manner and position as may from time to time be reasonable required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
4. The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
5. No building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
6. This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the Scheme subject to the conditions and restrictions stipulated by the Scheme.

TR235



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7. No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5 m to the street line which forms a boundary of this erf, nor within 5 m of the rear or 3 m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority:
- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3 m in height, measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for a distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12 m shall be measured from the point furthest from the street abutting the erf.
  - (ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
8. On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.
9. In the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf.

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Wherefore the appearer, renouncing all the right and title the said

**Andries Nicolaas Kruger**

heretofore had to the premises, on behalf as aforesaid, did, in consequence, also acknowledge the said

**Andries Nicolaas Kruger**

to be entirely dispossessed of and disentitled to the same; and that, by virtue of these presents, the said

**Alwyn Petrus Botha**

his heirs, executors, administrators or assigns now is/are and henceforth shall be entitled thereto, conformably to local custom; the State, however, reserving its rights; and the appearer finally acknowledged that the purchase price amounts to **R1 685 000,00 (One Million Six Hundred and Eighty Five Thousand Rand)**.

In witness whereof, I, the said registrar, together with the appearer, q.q., have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the office of the Registrar of Deeds, in Cape Town,  
on 23 September 2021.

  
q.q.

In my presence,

  
Registrar of Deeds

TR235





Annexure E 1/2

**L Gillion**

**From:** Petal Petersen Williams |  
**Sent:** Tuesday, 02 August 2022 15:22  
**To:** L Gillion  
**Subject:** objection erf 3770

TP n. / head  
Cit. ud Stage



To whom it may concern

We herewith wish to raise my objection to the proposed removal of restrictive title deed condition on erf 3770, 1 nerine crescent, Bettys bay.

We are the owners of adjacent plot erf 3771, 3 nerine crescent.  
We object to 3770 going over their restricted building line as we have designed our proposed new home with the recommended municipal building lines in mind and believe by encroaching the building line simply because they are squeezing in a sea view, would impede on our privacy.  
We have been contacted telephonically by the owners architect to request this and we have already denied this request. The architects request to go over the building line is to maximize sea views, however by doing this it encroaches on the properties surrounding erf 3770 and we therefore oppose it in the strongest sense. Furthermore, the property is 1200sqm+ in size. Encroaching on the building line seems highly unnecessary and affects the overall spatial look and feel of betty's bay and particularly the row of seafront properties.

Best Wishes  
Petal and Ashton

**Dr Petal Petersen Williams, PhD**  
Specialist Scientist | South African Medical Research Council  
Honorary Research Associate | Department of Psychiatry and Mental Health | University of Cape Town  
Tel: Cell: 4  
Francie van Zijl Drive Parow Valley | Cape Town | Western Cape  
[www.samrc.ac.za](http://www.samrc.ac.za)



**PLOS ONE**  
Editorial Board

FILE NO.	ET 370
	Betty's Bay ✓
SCAN NO.	
	KBB 3770
COLLABORATOR NO.	
	172511

TP - 2 AUG 2022

**BBRA / BBV**

Betty's Bay Ratepayers' Association  
Bettiesbaai Belastingbetalersvereniging

2/2

TP-A Theart  
(Huld.stoep)



25082022

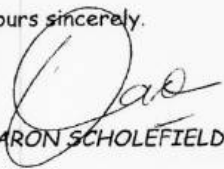
To whom it may concern

iro: ERF 3770 NERINE CRESCENT BETTY'S BAY

We, the Betty's Bay Ratepayers Association have no objection to the application for the **REMOVAL OF RESTRICTIVE TITLE DEED CONDITION** iro **ERF 3770 NERINE CRESCENT BETTY'S BAY**.

We do however want to place on record that there seems to be an ever increasing desire/request by new property owners to overreach the building regulations/bylaws/title deed conditions etc wrt new buildings and this is concerning as our rules/guidelines are in place for good reason.

Yours sincerely,

  
KARON SCHOLEFIELD (PROPERTY PORTFOLIO REPRESENTATIVE)

FILE NO. EL 3770-KBB
SCAN NO. KBB 3770
COLLABORATOR NO. 1737333

Chairman: Wayne R Jackson  
0829281260

Secretary/Treasurer: Adrian de Kock  
082 940 4619

BBRA, P O Box 48, Betty's Bay, 7141

BBV, Postbus 48, Bettysbaai, 7141

TP 26 AUG 2022



Annexure F 1/4



# Project Office

Town Planning & Project Management

TP - D. Theod  
(H. J. du Stoop)

Our Reference: 22/33  
Your reference: 3770 KBB

31 August 2022

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

FILE NO. ERF 3770
Betty's Bay -
SCAN NO.
KBB 3770
COLLABORATOR NO.
1743911

Attention: Ms H van der Stoep

**ERF 3770, BETTY'S BAY - APPLICATION FOR THE REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION**

Your email dated 30 August 2022, refers.

Two comments were received, both are addressed herein.

An internal department also provided a recommendation.

06 SEP 2022

TP

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Unit B, Standard House,  
Cnr Royal and Dirkie Uys Street  
Hermanus

P O Box 1247  
Hermanus,  
7200

Tel: +27 (0)28 313 1411  
Email: admin@wrapgroup.co.za  
Web: www.wrapgroup.co.za



WRAP Group Established 2002



**Response to objections to removal of a restrictive title deed condition**

**Comments from Betty's Bay Ratepayers' Association**

"We, the Betty's Bay Ratepayers Association have no objection to the application for the REMOVAL OF RESTRICTIVE TITLE DEED CONDITION iro ERF 3770 NERINE CRESCENT BETTY'S BAY.

We do however want to place on record that there seems to be an ever-increasing desire/request by new property owners to overreach the building regulations/bylaws/title deed conditions etc wrt new buildings and this is concerning as our rules/guidelines are in place for good reason."

**Response to comment**

This comment is noted, but it is important to note that the property owner is not seeking any departure from the parameters of the Overstrand Municipality Land Use Management Scheme (OMLUS).

The title deed conditions are more restrictive than the parameters of the OMLUS and the property owner only wishes to remove the restrictive title deed condition pertaining to building lines to allow them to build up to 2m from the side boundary line.

**Objection from Dr Petal and Ashton Williams**

"We herewith wish to raise my objection to the proposed removal of restrictive title deed condition on erf 3770, 1 Nerine crescent, Bettys Bay.

We are the owners of adjacent plot erf 3771, 3 Nerine Crescent.

We object to 3770 going over their restricted building line as we have designed our proposed new home with the recommended municipal building lines in mind and believe by encroaching the building line simply because they are squeezing in a sea view, would impede on our privacy.

We have been contacted telephonically by the owners' architect to request this and we have already denied this request.

The architects request to go over the building line is to maximize sea views, however by doing this it encroaches on the properties surrounding erf 3770 and we therefore oppose it in the strongest sense. Furthermore, the property is 1200sqm+ in size. Encroaching on the building line seems highly unnecessary and affects the overall spatial look and feel of betty's bay and particularly the row of seafront properties."

**Response to comment**

We acknowledge the contents of the objection and would like to refer the objector to the motivational report. Consent of the objector was required to be able to follow a shortened application process, which was denied by the objector, prior to the submission of this application.

The property owner only wish is to be aligned with the development parameters applicable to other single residential properties in the Overstrand Municipality as stated in the motivational report.

There are no other departures required and the property owner will adhere to the Overstrand Municipality Land Use Management Scheme building lines of 2m.



The title deed building line is more restrictive than the Overstrand Municipality Land Use Management Scheme's building line.

The property owner is sensitive to and are considerate to the privacy of neighbours as it goes both ways. The owner would never want to impede on any person's privacy which is the reason why there are no additional departures requested as the property owner only wishes to be aligned with the Land Use Management Scheme's building line as the Site Development Plan clearly indicates.

Both properties are vacant (Erf 3770 and Erf 3771), and should the application be approved, it would allow the proposed dwelling on Erf 3770 to be built 2m away from the boundary, which will create a minimum distance of 4m between the two future dwellings, should Erf 3771 ever be developed.

We are of the opinion that 4m is ample space to ensure the privacy of both properties are maintained as it is more than other single residential properties are exposed to in other parts of the Overstrand.

The objector states that they have designed their future home "with the recommended municipal building lines in mind", which also applies to the owner of Erf 3770. They will also not be encroaching on the "municipal building lines" and are only requesting the removal of the restrictive title deed building line condition.

**INTERNAL DEPARTMENT:  
EMS Comment**

*The Environmental Management Section (EMS) has no objection to this application.*

*The EMS would like to take this opportunity to inform the applicant that the property is also within the EMOZ Coastal Protection: Urban Low Risk Zone. Please refer to map attached. The regulations for the Urban Low Risk Zone are found as 4.8.1.2.3. (page 19.) and must be considered during the new dwelling design process.*

*Also, please note that the erf is located within the Bettys Bay Beachfront Maintenance Management Plan area. The plot should therefore not be stripped of all vegetation, only the required development footprint should be cleared to ensure maintain the stability of the dune system.*

**Response to comment**

The client acknowledges the comment and agrees to comply with the recommendation.

**Attached please find a letter of support received.**

**Conclusion**

The comment received from the Betty's Bay Ratepayers' Association is noted and considered not applicable to the application as no departures from the building lines are requested, but only the removal is being applied for.

The objection received from the adjacent owners is noted, but it seems as if the objector did not consider the contents of the motivation correctly. The owner of Erf 3770 has taken great care to ensure the scheme building lines are not encroached upon. They were not



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aware of the more restrictive title deed building lines when they purchased the property and only wishes to remove the restrictive condition that will allow them to build to 2m from the erf boundary line.

After consideration and responding to the objections received, it is recommended that the planning application be approved as submitted.

Yours faithfully

A handwritten signature in black ink, appearing to read "I. Jansen", is written over the typed name.

**I. JANSEN**  
**PROFESSIONAL TOWN PLANNER (A/2858/2019)**

## Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION:  
ERF 3770, BETTY'S BAY (4110/2022)**

Stormwater (SW) : In Order  
Electricity : Eskom Area  
Water : In Order  
Sewer : In Order  
Roads and traffic : In Order

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the developer's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigates and determine the limitations of the site in terms of drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
5. that any additional and / or extended vehicle entrance will be for the owner's account;
6. that, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Kleinmond) for written approval;
7. that stormwater be allowed to discharge through Erf 3770, Betty's Bay, unobstructed.

*D.P. R. Lachlan*  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

*07/10/2022*  
**DATE**

Annexure H 1/2



**BREED-GOURITZ**  
CATCHMENT MANAGEMENT AGENCY

Corner Mountain Mill & East Lake Roads, Worcester, 6850 | Private Bag X3055 Worcester 6850

Enquiries: F Smith    Tel: 023 346 8000    Fax: 023 347 2012    E-mail: fsmith@bgcma.co.za

Our Reference no: 4/10/1/G40B/Erf 3770 Betty's Bay, Caledon RD    Date: 6 September 2022

Overstrand Municipality  
P. O. Box 20  
**Hermanus**  
7200

*TP-n. Steep  
(in. ud Steep)  
cc/ H. Blignaut*

For Attention: Ms H van der Steep

Madam,

**ERF 3770, 1 NERINE CRESCENT, BETTY'S BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION: WRAP PROJECT OFFICE (obo AP BOTHA)**

With reference to your electronic letter dated 22/07/2022, with file reference number 3770 KBB, and Motivational report by WRAP, with file reference number 22/33 dated JUNE 2022, herewith the following:

1. It is understood that erf 3770 is partially located within quaternary catchment G40B, and partially within the coastal dune area.



Erf 3770 Betty's Bay

- Legend
- Erf
- Rivers
- \*\* Non-Perennial
- Wetlands (NFEPA)
- Natural
- Quaternary Catchments

FILE NO. Erf 3770 ✓
Betty's Bay
SCAN NO.
KBB 3770
COLLABORATOR NO.
1743916

Map Centre: Lon: 18 56 27 E  
Lat: 34 27 38 S  
Scale: 1:1 511  
Date created: September 6, 2022  
Western Cape Government  
FOR YOU

- 6 SEP 2022

www.bgcma.co.za

2. For practical reasons, the comment provided herein relates to the section which falls within quaternary catchment G40B.
3. Based on the abovementioned, the BGCMA has no objection against the removal of the restrictive Title Deed condition, as the following have been considered:
  - The erf 3770 does not directly fall within the regulated area – within a NFEPA wetland and/or in close proximity to a watercourse.
  - The proposed construction would primarily fall within the coastal dune area.
  - The use of a conservancy tank for the treatment of raw sewage is acceptable, provided the BGCMA is furnished with a copy of the Service Level Agreement (SLA) between the applicant and the Overstrand LM.
  - It is proposed to contain any pool backwash water and raw sewage.
  - The proposed construction would not pose any detrimental affect on any water resource as it would located within the coastal dune area.
4. In addition – the proposed development should adhere to all other relevant sections of the NWA, 1998 (Act 36 of 1998), not contained within this letter.

○ Please be advised that the comment provided is in the interest of responsible water resource management. The BGCMA reserves the right to revise initial comments and request further information based on any additional information that might be received.

Please do not hesitate to contact this office if you have any further queries.

Please ensure to quote the above reference in doing so.

Yours faithfully,



**JAN VAN STADEN**  
CHIEF EXECUTIVE OFFICER (ACTING)

Annexure I 1/2



TP- n/hoort  
(11. ud Skoep)

## CONSERVATION INTELLIGENCE

postal 16 17th Avenue, Voëlkop, Hermanus, 7200  
 physical 16 17th Avenue, Voëlkop, Hermanus, 7200  
 website [www.capenature.co.za](http://www.capenature.co.za)  
 enquiries Rhett Smart  
 telephone 087 087 866 8017  
 email [rsmart@capenature.co.za](mailto:rsmart@capenature.co.za)  
 reference LS14/2/6/1/7/2/3370\_title deed restrictions\_Bettys Bay  
 date 22 September 2022

Overstrand Municipality  
 P.O. Box 20  
 Hermanus  
 7200

Attention: Hanneen van der Stoep  
 By email: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

Dear Ms van der Stoep

FILE NO.	Erf 3370 ✓
	Bettys Bay
SCAN NO.	KBB 3370
COLLABORATOR NO.	1750944

**Application for Removal of Title Deed Restrictions to Reduce Boundary Lines, Erf 3370, Betty's Bay**  
 (Overstrand Municipality ref: 3370 KBB; 4110/2022)

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 reduction in the distance from the boundary within which development is not permissible as contained within title deed restrictions. The initial purpose of the title deed restrictions was a means to restrict development of the property. The proposed dwelling will only result in a minor encroachment on these building lines and stay within the standard land use scheme building lines.

The development will consist of expression of primary rights and there will be a negligible difference in the impact on biodiversity as a result of the encroachment. The property is not within a wetland according to the national wetland mapping and falls outside of the coastal management line. Further regarding the coastal setback, the site is behind the 1 in 50 year medium term medium risk hazard line and accordingly urban medium risk zone but in front of the 1 in 100 year long term high risk hazard line and accordingly urban low risk zone. The development of the house can be considered acceptable, however we recommend that mitigation measures should be factored into the design for the long term changes.

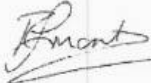
In conclusion, CapeNature does not object to the application.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

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

23 SEP 2022

Yours sincerely

A handwritten signature in black ink, appearing to read "Rhett Smart", with a horizontal line underneath.

**Rhett Smart**  
**For: Manager (Landscape Conservation Intelligence)**

Annexure J 1/24



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: 043/2022

The Office of the Director: Infrastructure & Planning  
Town and Spatial Planning  
Overstrand Municipality  
P.O. Box 20  
HERMANUS  
7200

TP - n. Shead  
(H. van der Stoep)

FILE NO.	EF 3770
	Betty's Bay
SCAN NO.	
	KBB 3770
COLLABORATOR NO.	
	1763110

**Attention: Ms. H van der Stoep**

Tel: 028 313 8900

Email: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

**RE: REQUEST FOR COMMENT FROM THE SUB-DIRECTORATE: COASTAL MANAGEMENT ON THE APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION ON ERF 3770, 1 NERINE STREET, BETTY'S BAY.**

Dear Madam

Your request for comment from the Sub-directorate: Coastal Management on the above-mentioned pre-application basic assessment report received on 22 July 2022, 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. The Department is in the process of finalising the next generation PCMP that includes

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priority objectives for the next 5 years. This PCMP was recently subjected to stakeholder engagement and may be viewed at <https://www.westerncape.gov.za/eadp/files/atoms/files/DRAFT%20Western%20Cape%20Provincial%20Coastal%20Management%20Programme%202022-2027.pdf>.

- 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 <https://www.westerncape.gov.za/eadp/about-us/meet-chief-directorates/environmental-sustainability/biodiversity-and-coastal-management>.

## 2. 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 subject property is currently vacant and is proposed to be developed with a single dwelling unit, but current and future development of the property is being restricted by the title deed condition. The applicant is requesting the removal of a title deed condition to allow the property owner to build up to 2m from the southern boundary of his property.
  - 2.1.2. According to the Western Cape Biodiversity Spatial Plan (2017), there are no critical biodiversity or ecological sensitive areas within the subject property however the coastal boundary of the property forms part of the Penguin Nature Reserve and the coastal area forms part of the Betty's Bay Marine Protected Area.
  - 2.1.3. Be advised that the subject property is located within the Coastal Protection Zone ("CPZ") as defined in Section 16 of the NEM: ICMA and delineated by the Department in the project for the coastal management line. 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, S63 should be considered by local authorities for land use decision making.

- 2.1.4. Be advised that the coastal (southern) boundary as well as a portion of the subject property is located within the littoral active zone ("LAZ"). The NEM: ICMA regards the LAZ to be a dynamic system where free movement of sand must not be interfered with. It is essential that the competent authority not only consider the impact(s) of the proposed development on the receiving environment, but also the impact(s) that the environment, including dynamic coastal processes would have on any developments on the subject property and any development located thereon.
- 2.1.5. It is also essential that the impacts of climate change be considered. It is anticipated that due to decreased rainfall, the vegetation response would be subject to changing climatic conditions, specifically hotter and dryer conditions. The vegetation will die off and will reduce in footprint. This loss of vegetation on the dunes will cause further instability and result in increased mobility of the dunes. It is therefore expected that the littoral active zone will be extended further inland.
- 2.1.6. In terms of the coastal risk modelling commissioned by the SD: CM, the subject property is located landward of the **Overberg coastal management line** ("CML"). The delineation of the CML is based on the methodology that was informed by various factors including S25(1B) of the NEM: ICMA, taking into consideration ownership and zonation of vacant land. Although the property is located landward of the CML, it is located within the low-risk zone as per the Departments' coastal risk modelling for the Overberg CML project (See figures 1 and 2 below).
- 2.1.7. 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 the LAZ. The Circular also suggests development parameters to be considered for the low-risk area. This includes reducing public and private liability, minimise risk to human life and prevent intensification of development but allow exercising of existing rights.
- 2.1.8. Additionally, cognisance must be given to previous properties within Betty's Bay that was negatively impacted by mobile sand resulting in undermining of the integrity of the structure(s).
- 2.1.9. Based on the above, the SD: CM does not support the removal of the restrictive condition of the title deed pertaining to the relaxation of the building line.
- 2.1.10. Additionally, the applicant should be informed that they may not create any formal or informal walkways/pathways to the CPP through the littoral active zone, with any future development on the subject property, as this active area performs an important ecological function. The activities on the subject property may in no way impede on the general public's ability to access coastal public property.

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2.1.11. 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.

2.1.12. Considering the location of the subject property, the applicant must also be informed of risk pertaining to the loss of property should the high-water mark of the sea move inland of the property boundary. 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.

3. 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.

4. 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

**leptieshaam  
Bekko**

Digitally signed by  
leptieshaam Bekko  
Date: 2022.10.14 14:41:23  
+02'00'

**leptieshaam Bekko  
CONTROL ENVIRONMENTAL OFFICER  
SUB-DIRECTORATE: COASTAL MANAGEMENT  
DATE: 14 October 2022**

5/24



Figure 1 depicting the extent of the low-risk zone

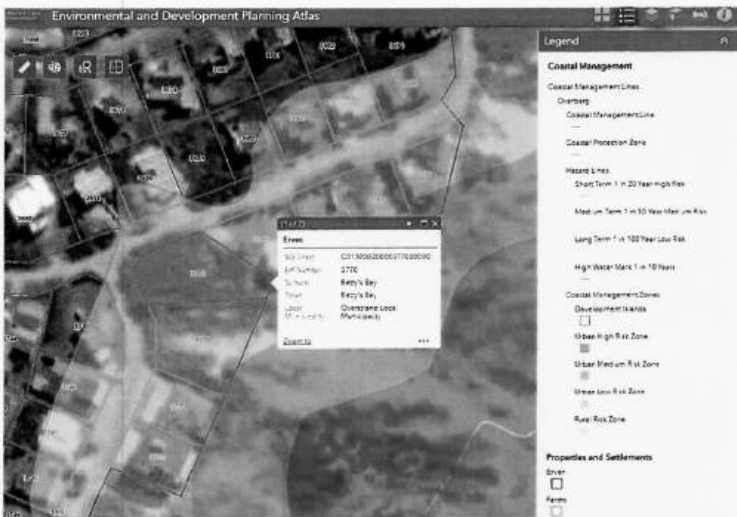


Figure 2 depicting the proposed property in relation to the low-risk zone

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Western Cape  
Government

Department of Environmental Affairs and Development Planning

Reference number: 17/P  
& 17/6/10

**CIRCULAR: DEA&DP 0004/2021**

**TO ALL MAYORS AND MUNICIPAL MANAGERS OF COASTAL MUNICIPALITIES**

**RE: 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 NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008) ("NEM: ICMA")**

**1. PURPOSE**

- 1.1 The coastal zone has always attracted people, whether for recreational purposes or for the natural resources that can be harvested from the coast or adjacent marine area. However, this concentration of people necessitates the concentration of developmental activities that are often in conflict with the natural dynamic nature of the coast, or the biophysical sensitivities associated with the coastline. It is for this reason that Section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") have always stated that "Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure."
- 1.2 The Western Cape Government, together with the rest of government, is under obligation to protect and preserve the inherent value of the Western Cape's coastal zone. This implies that it has the responsibility to arrest on-going degradation driven by uninformed decision-making or irresponsible development, whilst promoting development that is responsive to the dynamic nature and risks associated with the coastal zone.
- 1.3 The NEM: ICMA provides for various tools for and specifies provisions that guide responsible land use decision making in the coastal zone that is cognisant of the sensitivities of the receiving environment. One such tool is the establishment of coastal management lines along the provincial coastline.
- 1.4 The delineation of the draft coastal management lines was informed by the relevant provisions of the NEM: ICMA as well as scientific data related to coastal risk and coastal dynamic processes.

1.5 The aim of this circular is to:

- 1.5.1 advise/guide Mayors, Municipal Managers and land use decision makers of coastal municipalities on the relevant considerations of the NEM: ICMA as well as the scientific data that have been gathered during the process towards the establishment and delineation of coastal management lines in the Province;
- 1.5.2 provide guidance to land use decision makers on the consideration of the recommendations flowing from the process towards the establishment and delineation of coastal management lines in the Province with respect to development that is located within areas that is at risk to dynamic coastal processes; and
- 1.5.3 inform all Mayors and Municipal Managers of coastal municipalities of the proposed process for the establishment of the draft coastal management lines in the Province in terms of Section 25 of the NEM: ICMA.

## 2. THE LEGAL FRAMEWORK

- 2.1 The Department of Environmental Affairs and Development Planning ("the Department"), as the designated provincial lead agency for coastal management in terms of Section 38 of the NEM: ICMA, supports the Member of the Executive Council ("MEC") with fulfilling various legal obligations in terms of the NEM: ICMA including, *inter alia*, the establishment of coastal management lines along the provincial coastline.
- 2.2 In fulfilling this obligation, the MEC had the Department embark on a process towards the establishment of coastal management lines by the MEC for the West Coast, Overberg and Garden Route Municipal Districts, taking into account, amongst other considerations, dynamic coastal processes, impact(s) from sea level rise as well as other sensitivities along the coast.
- 2.3 In all three (3) municipal districts the process was guided by a steering committee that was comprised of officials from the Department, relevant municipal officials from both the District and Local municipalities and relevant organs of state including CapeNature, SANParks, and others.
- 2.4 During the consultation process with municipal officials, various challenges were raised with respect to the inclusion of coastal management lines into municipal zoning/land use schemes.
- 2.5 Section 25(3) of the NEM: ICMA requires that local municipalities, within whose area of jurisdiction a coastal management line has been established must delineate the coastal management line on a map or maps that form part of its zoning scheme to enable the public to determine the position of the coastal management line in relation to existing property boundaries.
- 2.6 To create a legal framework for the implementation of coastal management lines that also responds to the challenges raised by the municipalities, the Department is embarking on a process to develop a policy for the implementation of the coastal management lines that will provide the foundation for a legislative framework and will further guide municipalities to consider the coastal management line and associated coastal risk information layers. This legislative framework includes possible new regulations in terms of the NEM: ICMA. This process

will partly run in parallel to the process for the establishment of the coastal management lines in the Province.

- 2.7 The recent impacts of dynamic coastal processes, including the impact of sea level rise, coastal erosion, and the occurrence of more frequent and more extreme storm surges along our provincial coastline, have resulted in an urgent need to, in the interim, provide guidance to land-use decision makers on how to consider coastal risk in land use decisions.
- 2.8 In response to numerous requests from municipal officials and Councillors via the Municipal Coastal Committees, this circular has been developed as a guide for the consideration of the NEM: ICMA and coastal risk in land use decisions.

### 3. GUIDE TO CONSIDER THE NEM: ICMA AND COASTAL RISK IN LAND USE DECISIONS

3.1 The following is informed by provisions of the NEM: ICMA as well as the recommended development parameters in the project reports for the establishment of coastal management lines for the West Coast, Overberg and Garden Route District Municipalities.

3.2 The coastal zone, which comprises various zones, is informed by the ecological functioning of coastal ecosystems and the ecosystem services that they provide. It is important to understand the extent and nature of these ecosystems as this will determine the limitations of development within these areas.

3.3 Where land use decisions are made that did/do not consider or did/do not adequately consider available information pertaining to coastal processes and the associated risk(s), such development may be impacted by coastal processes (e.g., impact of erosion and / or moving sand on private property) and there is the risk that a Municipality could be held liable for damages suffered. In this respect it is important to take heed of Section 15(1) of the NEM: ICMA that states:

*"...15(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..."*

3.4 The NEM: ICMA defines various zones and contains provisions applicable to these various zones that must be acknowledged and implemented by authorities when considering land use decisions. These are depicted in **Annexure A: Figure 1** include:

3.4.1 **'Coastal Public Property'** – this zone is defined in Section 7 of the NEM: ICMA and comprises, *inter alia*, beaches, admiralty reserve, reclaimed land, and others. Coastal public property is held in trust by the state to improve public access to the seashore; protect sensitive ecosystems; secure the natural functioning of dynamic coastal ecosystems; and to protect people, property and economic activities from risks arising from dynamic processes, including the risk of sea level rise, as well as to facilitate any other objects of the NEM: ICMA.

- i) Any coastal land owned by the municipality that does not comprise coastal public property either by definition, reclamation or extension, should be retained and should not be sold. The leasing of such land for private purposes is also discouraged. Such land

should be maintained to ensure the functioning of ecological processes and ecological services along the coast and to facilitate public access to the seashore.

- ii) Encroachments onto coastal public property should not be condoned nor rectified. All efforts should be made to ensure that coastal public property is not privatised.
- iii) No person may construct, maintain, or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for by the NEM: ICMA, the National Environmental Management Act (Act No. 107 of 1998) or any other specific environmental management act.
- iv) Where municipal or any other state infrastructure, by its nature, is required to be located within coastal public property, cognisance must be given to the location of such infrastructure in relation to dynamic coastal processes, e.g., public amenities related to the use of the seashore must not be in a sand movement corridor, as such infrastructure will be compromised by the impact of sandblasting.

3.4.2 '**Littoral Active Zone**' – this zone is defined in the NEM: ICMA and is located adjacent to the seashore (extending inland from the high-water mark), is unstable and dynamic because of natural processes; and is characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated. The risk information layers for the Garden Route District includes spatial layers for blowouts and mobile dunes that are components of the littoral active zone, as depicted in **Annexure A: Figure 2**.

- i) This zone is extremely dynamic. A precautionary approach must be adopted with respect to land use decision making within this zone.
- ii) Coastal dunes provide important ecological services as they play an integral role in supplying the beach with sand and protecting inland areas from coastal water intrusion. Coastal dunes absorb the impact and protect inland areas from high energy storms and act as a resilient barrier to the destructive forces of wind and waves.
- iii) Any development within the littoral active zone will impede the ecological processes relating to beach replenishment, the cycle of erosion and accretion that occur naturally along sandy shores and will negatively impact the ability of coastal dunes to mitigate the impact of sea level rise as well as the increase in the magnitude and frequency of storm surges currently being experienced along the coast.
- iv) Mobile sand is extremely destructive and will damage infrastructure located within a sand corridor (i.e., within the littoral active zone) as it will negatively impact the integrity of structures. Development within this zone will constantly require regular maintenance with respect to the removal of sand from infrastructure such as roads and from within private property. Development, specifically residential development, in this zone is not recommended.
- v) In the context of climate change, as well as the impact of erosion as a result of recent storm surge events along our coastline, it is important to ensure that the ecological integrity of littoral active zones, especially coastal dunes, remains intact.
- vi) As such, new development that by its nature does not require to be located on coastal dunes, especially primary dunes, should be restricted (e.g., residential development).

Municipal infrastructure to facilitate public access to the seashore must consider these ecological processes and must ensure that such infrastructure (e.g., boardwalks, ablation facilities, parking, etc.) is appropriately placed and engineered.

- vii) Where private property that is already developed is located on sandy shores within the littoral active zone and coastal risk areas, restrictions must be considered on such properties to ensure that no further buildings are erected on or close to the seaward property boundary of such property. This must be informed by the level of risk the property is exposed to (i.e., low, medium, or high).

3.4.3 '**Coastal Protection Zone**' – The composition of the coastal protection zone ("CPZ") is defined in Section 16 of the NEM: ICMA. The CPZ extends from the low-water mark inland comprising of various zones including coastal public property, the littoral active zone, protected areas along the coast and other areas. As part of the process to establish coastal management lines in the West Coast, Overberg and Garden Route District Municipal areas, recommendations to the MEC to determine or adjust the boundary of the CPZ in certain areas, have also been included. The recommendations in respect of the determination or adjustment of the CPZ may be viewed spatially on the Departments' web-based viewer at the following URL:

<https://westerncape.gov.maps.arcgis.com/apps/webappviewer/index.html?id=8f2793f9e36e423e85dd0337a554c02f>

- i) The purpose of the CPZ is specified in Section 17 of the NEM: ICMA and is established to ensure that the land that is adjacent to coastal public property or that plays a significant role in coastal ecosystems is managed, regulated, or restricted in a manner that is consistent with the purpose of the CPZ. This includes protecting the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property; avoiding increasing the effect or severity of natural hazards, protecting people, property and economic activities from risks arising from dynamics coastal processes including sea-level rise as well as storm surges, and the natural processes of erosion and accretion. The CPZ also serves to maintain the natural functioning of the littoral active zone, maintain the productive capacity of the coastal zone and to make land available to organs of state to perform functions such as sea rescue operations, or temporarily depositing objects and materials washed up by coastal waters.
- ii) The CPZ is an area where coastal considerations must inform all planning and land-use decision-making. Section 62 of the NEM: ICMA obliges all organs of state that regulate planning or development of land, to apply legislation in relation to land in the CPZ in a manner that gives effect to the purpose of the CPZ, as specified in Section 17 of the NEM: ICMA.
- iii) Section 63 of the NEM: ICMA (**Annexure B**) further specifies relevant factors that must be taken into account by the competent authority where an environmental authorisation is required in terms of Chapter 5 of the NEMA for any activities proposed within or that may impact the CPZ. These prescribed factors (Section 63 of the NEM: ICMA [**Annexure B**]) serve as guidance to municipalities and other land use decision makers to give effect to Section 62 of the NEM: ICMA.

3.4.4 '**Estuarine Functional Zone**' – is defined, in the NEMA EIA Regulations, 2017 (GN No. 324 of 07 April 2017) as the area in and around an estuary which includes the open water area, estuarine habitat (such as sand and mudflats, rock and plant communities) and the surrounding floodplain area, as defined by the area below the five (5) metre topographical contour (referenced from the indicative mean sea level). The estuarine functional zone therefore consists of habitats that are located adjacent to an estuary but that supports both the physical and biological processes within an estuarine system.

- i) The estuarine functional zone is important for a range of ecological services such as flood attenuation and disaster reduction but also plays a vital role in the economy of a municipal area with respect to activities such as tourism and subsistence and small-scale fishing, etc.
- ii) Estuaries are particularly vulnerable to impacts of climate change and the preservation and management of the estuarine functional zone (through the estuary management plans) is therefore critically important.
- iii) Historic development within the estuarine functional zone has resulted in an increased need to actively manipulate ecological processes, such as breaching of an estuary, to protect human life. To ensure the resilience of coastal communities, especially within the estuarine functional zone, development, and densification of urban areas within this zone should be prohibited.

3.4.5 '**Coastal Risk Information Layers**' – The Department has developed Coastal Risk Information Layers (depicted in **Annexure C**) that comprises spatial information pertaining to coastal processes and coastal risk consisting of three areas/sub-layers related to the projected coastal risk horizons. The coastal risk information layers, in addition to items 3.4.1 to 3.4.3 above, were considered with the delineation of the draft coastal management lines and must therefore be taken into consideration in land use decisions to ensure that the relevant factors, including the best available information, are taken into account.

On the Department's web-based viewer that is accessible via the URL specified in item 3.4.3, the coastal risk information layers are accessible in the 'Layer List' under 'Coastal Management' where the information for each coastal district is accessible. For the West Coast and Overberg Districts the coastal risk information layers is depicted as 'Hazard Lines' and 'Risk Zones'. For the Garden Route District, the coastal risk information layers were disaggregated into 'Erosion Lines' and 'Wave run-up' lines, as well as separate spatial layers for the constituents of the littoral active zone.

The sub-layers in the coastal risk information layers comprise the following:

- i) High risk areas – these areas are indicative of coastal risk (e.g., risks emanating from sea level rise, storms, waves, wind, erosion etc.) with a 20-year return period – i.e., a coastal risk with a 5% chance of taking place in any given year during the ensuing 100 years. On the Department's web-based viewer that is accessible via the URL specified in item 3.4.3, this area is located seaward of the **red** line and is shaded in **red** in urban areas.
- ii) Medium risk areas – coastal risk (e.g., risks emanating from sea level rise, storms, waves, wind, erosion etc.) with a 50-year return period – i.e., a coastal risk with a 2% chance of taking place in any given year during the ensuing 100 years. On the Department's web-

based viewer that is accessible via the URL in item 3.4.3, these areas are located between the **red** and **orange** lines and is shaded in **orange** in urban areas.

- iii) Low risk areas - coastal risk (e.g., risks emanating from sea level rise, storms, waves, wind, erosion etc.) with a 100-year return period – i.e., a coastal risk with a 1% chance of taking place in any given year during the ensuing 100 years. On the Department's web-based viewer that is accessible via the URL in item 3.4.3, these areas are located between the **orange** and **yellow** lines and is shaded in **yellow** in urban areas.
- iv) General risk areas – along the coastline these areas are demarcated in rural areas (as defined in the Western Cape Land Use Planning Guideline Rural Areas, 2019) where the principle of avoidance of risk must be applied. The general risk areas comprise the high, medium, and low risks areas, the littoral active zone and the coastal protection zone. The consideration of Section 63 of the NEM: ICMA must therefore be applied in these areas. Along estuaries these areas include the estuarine functional zone with an additional buffer to allow for floods and other sensitivities linked to the estuary. These areas are depicted in **purple** on the Department's web-based viewer and may also be referred to as the 'General Risk Zone' that is accessible via the URL in item 3.4.3.

3.5 The impact of recent storm events has resulted in large scale erosion along certain stretches of coastline that correspond to the projected risk horizon of the high-risk areas. This was specifically evident in Yzerfontein (West Coast District) and Myoli Beach (Garden Route District). It is therefore important to maintain ecological corridors along the coast to ensure that ecological infrastructure or important coastal features such as coastal dunes remain intact to serve as storm surge buffering thereby protecting communities against the impact of dynamic coastal processes.

3.6 It is imperative that any development that is proposed along the coast, be scrutinised and that caution is applied when considering such proposals. Any further development that is at risk from coastal processes within both the high and medium risk areas, unless warranted, should therefore be discouraged and/or prohibited.

3.7 Where development already exist in high-risk areas, strategic management options, including retreat or land swaps, may need to be considered by the municipality. In view of the coastal risk information layers, the coastal management line project reports suggested development considerations related to resilient building designs, setbacks and ecological buffers that are based on land use and the risk associated with each sub-layer (**Annexure D**).

**Annexure D, tables (1-5) provide for development considerations to reduce coastal risk for both built-up areas as well as proposed new developments within each risk area referred to in item 3.4.5 i) to iv) above. These development considerations have been adapted from those developed in the coastal management line project reports for the Overberg and Garden Route Municipal Districts.**

4. The MEC, supported by the Department, established the coastal management line for the City of Cape Town in March 2021 and will proceed with the establishment of the coastal management lines for West Coast, Overberg, and Garden Route District Municipalities. Pending the establishment of these coastal management lines in terms of Section 25 of the NEM: ICMA per coastal District by the MEC, the contents of this circular must be considered in all land use decisions that are proposed within the coastal protection zone. The spatial information referred

to above, has been provided to municipalities and is also accessible on the Department's web-based viewer at the following URL:

<https://westerncape.gov.maps.arcgis.com/apps/webappviewer/index.html?id=8f2793f9e36e423e85dd0337a554c02f>.

5. Municipalities are encouraged to include this spatial information in Municipal Spatial Development Frameworks (SDFs). It is acknowledged that the scale of the coastal risk information layers is more appropriate for inclusion in local municipal SDFs, however it is essential that the coastal management lines, whether draft or established, with the associated coastal risk information also be included in district municipal SDFs as far as is reasonably possible. This is to ensure alignment between the district and local municipal SDFs and to provide local municipalities with strategic guidance with an approach to address development within areas at risk to coastal processes, in line with the development considerations in **Annexure D**.
6. The National Department for Forestry, Fisheries and the Environment (DFFE) have recently concluded the National Coastal Climate Change Vulnerability (CoVu) Assessment. The objective of the project was to develop the National Coastal Spatial Vulnerability Index for South Africa's coastline and estuaries from physical hazards attributable to climate change, such as sea level rise, flooding, erosion or storm events. The majority of the required input data was sourced from existing projects and data sources, including the LIDAR used to generate the coastal risk information layers for the Province referred to in this circular. Data and information generated in the CoVu project include extreme wave run-up for 1-in-10, 1-in-30 and 1-in-50 years storms for rocky shores at a 500m (or higher) resolution and erosion lines (for 1-in-10yr, 1-in-50yr and 1-in-100yrs) for the national coastline, generated at an appropriate resolution (depending on elevation models) and where possible. This information was distributed by DFFE to municipalities in the form of the CoVu Decision Support Tool.
7. Due to the magnitude of the CoVu assessment and the modeling methods used, the coastal risk information layers generated by the Department are at a finer scale than the data generated in the CoVu assessment. This has resulted in occasional differences in the risk information generated between the Departments' data and the CoVu assessment. It is therefore advised that municipalities first consider the data generated by the Department and thereafter apply the CoVu assessment to further support decision making.

#### **8. WAY FORWARD FOR THE ESTABLISHMENT OF COASTAL MANAGEMENT LINES**

- 8.1 The process for the establishment of the coastal management lines in the Province will proceed with issuing written notices of intent to do so from the MEC to the relevant Mayors and Municipal Managers within the West Coast, Overberg and Garden Route Districts. Thereafter, the notice of intent by the MEC to establish the coastal management lines for the West Coast, Garden Route and Overberg Districts will be published in terms of Section 53 of the NEM: ICMA.
- 8.2 The Sub-Directorate: Coastal Management of the Department will facilitate the public participation consultation process and will engage with municipal officials regarding the process for the establishment of the coastal management lines. During this process, possible amendments to the draft coastal management line will be considered.

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- 8.3 The Sub-Directorate: Coastal Management, together with the other relevant components of the Department, will engage with and support the municipalities with the delineation of the coastal management lines in zoning/land use schemes as required in terms of Section 25(3) of the NEM: ICMA.
- 8.4 Concurrently with the establishment process, the Department will also engage with municipal officials for the development of an appropriate legal framework for the implementation of coastal management lines (as referred to in item 2.6). This framework includes the development of a 'Policy for the implementation of coastal management lines for the Province' that has already been commenced with.
9. Should Municipalities require assistance in relation to this circular, with the coastal information layers or any associated information please contact the Department's Sub-Directorate: Coastal Management at the following contact details:
- Ms I Bekko or Ms M Liddle  
Email: [coastal.enquiries@westerncape.gov.za](mailto:coastal.enquiries@westerncape.gov.za)

Yours faithfully

Ayub  
Mohamed

Digitally signed by  
Ayub Mohamed  
Date: 2021.12.30  
12:20:49 +02'00'

**Ayub Mohamed**  
**ACTING HEAD OF DEPARTMENT**  
**Date: 30 December 2021**

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ANNEXURE A

Figure 1: Image depicting components of the coastal zone as per the NEM: ICMA

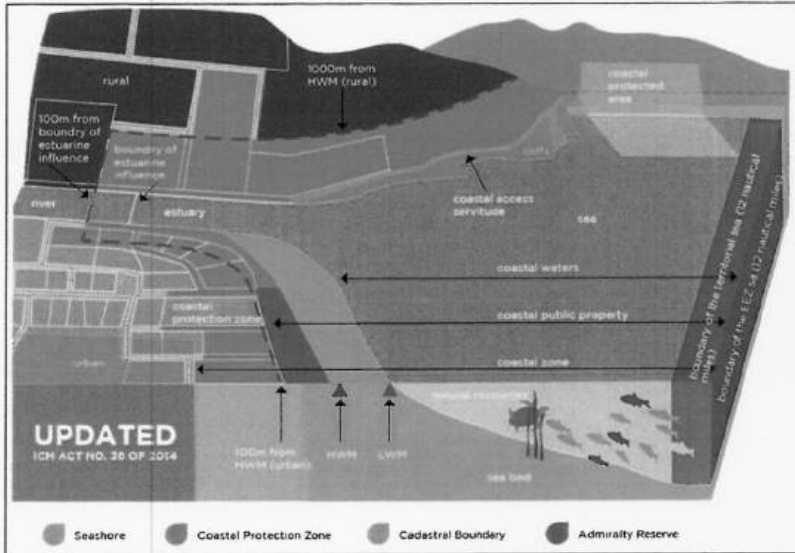


Figure 2: Depiction of components of the littoral active zone from the Departmental online viewer



**ANNEXURE B****Relevant Sections of the NEM: ICMA****Section 17 Purpose of the Coastal Protection Zone (CPZ)**

17. The coastal protection zone is established for enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order to-

- (a) protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property;
- (b) avoid increasing the effect or severity of natural hazards in the coastal zone;
- (c) protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise;
- (d) maintain the natural functioning of the littoral active zone;
- (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
- (f) make land near the seashore available to organs of state and other authorized persons for-
  - (i) performing rescue operations; or
  - (ii) temporarily depositing objects and materials washed up by coastal waters.

**Section 63 (Considerations for) Environmental Authorisations for Coastal Activities**

63 (1) Where an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors, including -

- (a) the representations made by the applicant and by interested and affected parties;
- (b) the extent to which the applicant has in the past complied with similar authorisations;
- (c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
- (d) the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;
- (e) the socio-economic impact if the activity -
  - (i) is authorised;
  - (ii) is not authorised;
- (f) .....
- (g) the likely impact of coastal environmental processes on the proposed activity;
- (h) whether the development or activity-
  - (i) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;
  - (ii) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
  - (iii) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
  - (iv) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
  - (v) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
  - (vi) would substantially prejudice the achievement of any coastal management objective; or
  - (vii) would be contrary to the interests of the whole community;
- (i) whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land;
- (j) whether the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area; and
- (k) the objects of this Act, where applicable.

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(2) .....

(3) .....

(4) .....

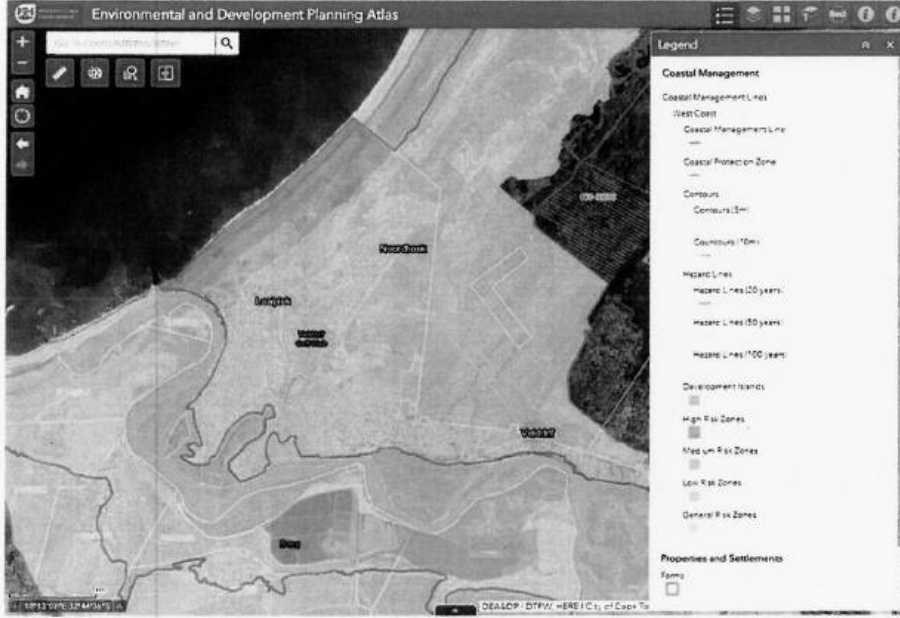
(5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

(6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the *Gazette* list such activities requiring a permit or licence.

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**ANNEXURE C**

**Depiction of Coastal Risk Information Layers from the Departmental online viewer**



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## ANNEXURE D

Table 1: Suggested development considerations to reduce coastal risk for High-Risk Urban areas

HIGH RISK COASTAL URBAN AREAS		
AREA	INTENTION	
<b>High Risk</b>	<ul style="list-style-type: none"> <li>• Maintain coastal quality</li> <li>• Limit public and private liability</li> <li>• Increase public awareness of the potential risks to property and human life</li> <li>• Prevent intensification of development in the high-risk area. Where existing rights are implemented, it must be tempered, and extreme caution must be applied taking liability and risk to human life into account</li> <li>• Prevent encroachment that will impact on the integrity of the shoreline ecology and exacerbate negative impacts</li> <li>• Enable safe evacuation in an emergency</li> </ul>	
<b>Primary Use</b>	<b>With special consent</b>	<b>Not Recommended</b>
<b>As per base land use controls</b>	<ul style="list-style-type: none"> <li>• Where buildings lie partly in two coastal risk areas, the higher risk area will apply</li> <li>• Infill subdivisions</li> <li>• Public resorts</li> </ul>	Industry, schools, libraries, health facilities, refuse sites & Wastewater Treatment Works (WWTW)
<b>Additional Considerations</b>		
<ul style="list-style-type: none"> <li>• All structures on properties larger than 400m<sup>2</sup> in the high-risk area require approval from a professionally registered engineer. Structures on smaller properties may obtain similar design approval based on predetermined standard conditions.</li> <li>• Structures must preferably be elevated on pilings, posts, piers-and-joists, column or similar foundations – with the lowest floor of habitable structures/buildings constructed above a pre-determined risk level.</li> <li>• Lower uninhabitable floors (i.e., garages, basements) of structures/buildings must be permeable – i.e., have openings to allow for the entry and exist of flood waters – to allow effective interior and exterior hydrostatic pressure equalisation during and post inundation.</li> <li>• Habitable basements or rooms will only be permitted if an engineer has made the necessary design arrangements to ensure that coastal risk is addressed and reduced by implementing responsible mitigation measures to the satisfaction of the Municipality.</li> <li>• Consideration during conceptual building design must be given to issues of privacy, overshadowing and visual impact and the apportionment and positioning of higher risk site areas for parking, open space and recreational areas.</li> <li>• Any new development must be designed and positioned within reason to limit potential flood damage and risk to human life, including but not limited to positioning buildings in suitably acceptable elevated portions of properties.</li> <li>• Development must be designed and constructed, within the framework of applicable building controls, in such a way that buildings and structures are positioned furthest from the foreshore whether limited by rear space, side space or the building line (up to the maximum allowed in the applicable scheme).</li> <li>• Building design must demonstrate reasonable risk reduction measures and should include innovative solutions (adaptable buildings, re-locatable buildings, flood-proofed buildings, flood resistant and resilient construction etc.) without increasing and transferring risks to adjacent properties.</li> <li>• Key mechanical and electrical services/structures (e.g., sewer (and water) infrastructure like pump stations, substations, transformers, generators, geysers and distribution boards) must be located above a pre-determined risk level.</li> <li>• After construction, any exposed ground area must be stabilised by the use of ground covering plants or mulches to minimise the risk of erosion.</li> <li>• On request from the municipality, a storm water management plan might be required to be submitted along with building plans.</li> <li>• Hardened surfaces to be minimised and suitable permeable alternative utilised to maximise natural infiltration and reduce overland flow and associated velocities with concomitant risk of erosion and damage.</li> <li>• Only fully enclosed / self-contained effluent storage and treatment systems will be permitted if links to sewer mains are not possible. These must be located either on the landward side of structures or either</li> </ul>		

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side of structures and recommended by a Registered Engineer to ensure suitable sealing and safety. These areas must be monitored to ensure that planning and environmental authorisations are implemented in accordance with the conditions of authorisation.

- Development should be sited to minimise the removal of trees and endemic vegetation.
- Existing coastal processes, including dune migration and littoral drift should not be impeded and indigenous vegetation must be maintained.
- Dunes must be protected and rehabilitated where necessary to reinforce and strengthen natural barriers.
- Exotic species of vegetation should be limited to feature trees or shrubs within an indigenous setting.
- Fencing or other barriers must be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.
- Consolidated access points/paths to the beach preferably on raised wooden / recyclable plastic boardwalks to reduce negative impact on dunes and associated vegetation.
- Limit and preferably avoid expansion of existing footpaths and volumes of existing structures and buildings within the risk area.
- Municipal engineering infrastructure (e.g., WWTW, Substation, Pumps and Reservoirs) to be located outside the risk area, unless related to public amenity (e.g., playground).
- Collective/integrated response by adjacent properties or developments to optimise resources and prevent spill over effect.

**Table 2: Suggested development considerations to reduce coastal risk for Medium Risk Urban areas**

MEDIUM RISK COASTAL URBAN AREAS		
AREA	INTENTION	
<b>Medium Risk</b>	<ul style="list-style-type: none"> <li>• Reduce public and private liability</li> <li>• Minimise risk to human life</li> <li>• Prevent intensification of development in medium risk area. Exercising of existing rights to be tempered.</li> </ul>	
<b>Primary Use</b>	<b>With special consent</b>	<b>Not Recommended</b>
<b>As per base land use controls</b>	<ul style="list-style-type: none"> <li>• Where buildings lie partly in two coastal risk areas, the higher risk area will apply</li> <li>• Infill subdivisions, Public resorts</li> </ul>	Industry, schools, libraries, health facilities, refuse sites & WWTW
<b>Additional Considerations</b>		
<ul style="list-style-type: none"> <li>• All structures on properties larger than 400m<sup>2</sup> in the medium risk area require approval from a professionally registered engineer. Structures on smaller properties may obtain similar design approval based on predetermined standard conditions.</li> <li>• Structures must preferably be elevated on pilings, posts, piers-and-joists, column or similar foundations – with the lowest floor of the structure to be above a pre-determined risk level.</li> <li>• Lower floors of structures/buildings must be permeable – i.e., have openings to allow for the entry and exist of flood waters – to allow effective interior and exterior hydrostatic pressure equalisation during and post inundation.</li> <li>• Consideration during conceptual building design must be given to issues of privacy, overshadowing and visual impact and the apportionment and positioning of higher risk site areas for parking, open space and recreational areas.</li> <li>• Any new development must be designed and positioned within reason to limit potential flood damage and risk to human life, including but not limited to positioning buildings in suitably acceptable elevated portions of properties.</li> <li>• Development must be designed and constructed, within the framework of applicable building controls, in such a way that buildings and structures are positioned furthest from the foreshore whether limited by rear space, side space or the building line (up to the maximum allowed in the applicable scheme).</li> <li>• Building design must demonstrate reasonable risk reduction measures and should include innovative solutions (adaptable buildings, re-locatable buildings, flood-proofed buildings, flood resistant and resilient construction etc.) without increasing and transferring risks to adjacent properties.</li> </ul>		

- Key mechanical and electrical services/structures (e.g., sewer (and water) infrastructure like pump stations, substations, transformers, generators, geysers and distribution boards) must be located above a pre-determined risk level.
- After construction, any exposed ground area must be stabilised by the use of ground covering plants or mulches to minimise the risk of erosion.
- On request from the municipality, a storm water management plan might be required to be submitted along with building plans.
- Hardened surfaces to be minimised and suitable permeable alternative utilised to maximise natural infiltration and reduce overland flow and associated velocities with concomitant risk of erosion and damage.
- Only fully enclosed / self-contained effluent storage and treatment systems will be permitted if links to sewer mains are not possible. These must be located either on the landward side of structures or either side of structures and recommended by a Registered Engineer to ensure suitable sealing and safety. These areas must be monitored to ensure that planning and environmental authorisations are implemented in accordance with the conditions of authorisation.
- Development should be sited to minimise the removal of trees and endemic vegetation.
- Existing coastal processes, including dune migration and littoral drift should not be impeded and indigenous vegetation must be maintained.
- Exotic species of vegetation should be limited to feature trees or shrubs within an indigenous setting.
- Fencing or other barriers must be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.
- Municipal engineering infrastructure (e.g., WWTW, Substation, Pumps and Reservoirs) to be located outside the risk area, unless related to public amenity (e.g., playground).

**Table 3: Suggested development considerations to reduce coastal risk for Low-Risk Urban areas**

LOW RISK URBAN COASTAL AREAS		
AREA	INTENTION	
<b>Low Risk</b>	<ul style="list-style-type: none"> <li>• Reduce public liability</li> <li>• Avoid reasonable risk to human life</li> <li>• Prevent intensification of development in low-risk area but allow exercising of existing rights.</li> </ul>	
<b>Primary Use</b>	<b>With special consent</b>	<b>Not Recommended</b>
<b>As per base land use controls</b>	<ul style="list-style-type: none"> <li>• Where buildings lie partly in two coastal risk areas, the higher risk area will apply</li> <li>• Infill subdivisions</li> <li>• Public resorts</li> </ul>	WWTW
<b>Additional Considerations</b>		
<ul style="list-style-type: none"> <li>• Structures must preferably be elevated on pilings, posts, piers-and-joists, column or similar foundations – with the lowest floor of the structure to be above a pre-determined risk level.</li> <li>• Lower floors of structures/buildings must be permeable – i.e., have openings to allow for the entry and exist of flood waters – to allow effective interior and exterior hydrostatic pressure equalisation during and post inundation.</li> <li>• Consideration during conceptual building design must be given to issues of privacy, overshadowing and visual impact and the apportionment and positioning of higher risk site areas for parking, open space and recreational areas.</li> <li>• Building design must demonstrate reasonable risk reduction measures and should include innovative solutions (adaptable buildings, re-locatable buildings, flood-proofed buildings, flood resistant and resilient construction etc.) without increasing and transferring risks to adjacent properties.</li> <li>• Key mechanical and electrical services/structures (e.g., sewer (and water) infrastructure like pump stations, substations, transformers, generators, geysers and distribution boards) must be located above a pre-determined risk level.</li> <li>• After construction, any exposed ground area must be stabilised by the use of ground covering plants or mulches to minimise the risk of erosion.</li> <li>• On request from the municipality, a storm water management plan might be required to be submitted along with building plans.</li> </ul>		

- Hardened surfaces to be minimised and suitable permeable alternative utilised to maximise natural infiltration and reduce overland flow and associated velocities with concomitant risk of erosion and damage.
- Only fully enclosed / self-contained effluent storage and treatment systems will be permitted if links to sewer mains are not possible. These must be located either on the landward side of structures or either side of structures and recommended by a Registered Engineer to ensure suitable sealing and safety. These areas must be monitored to ensure that planning and environmental authorisations are implemented in accordance with the conditions of authorisation.
- Municipal engineering infrastructure (e.g., WWTW, Substation, Pumps and Reservoirs) to be located outside the risk area, unless related to public amenity (e.g., playground).

**Table 4: Suggested development management parameters for General Risk (Rural) areas**

GENERAL RISK COASTAL AREAS (RURAL AREAS)		
AREA	INTENTION	
<b>General Risk (rural areas)</b>	<ul style="list-style-type: none"> <li>• Maintain coastal quality</li> <li>• Prevent development, but allow exercising of existing rights in respect to single residential dwelling on agricultural land</li> </ul>	
<b>Primary Use</b>	<b>With special consent</b>	<b>Not Recommended</b>
<b>As per base land use controls.</b>	<ul style="list-style-type: none"> <li>• Intensification of development within development islands</li> <li>• Agricultural support functions</li> <li>• Public resorts</li> </ul>	General residential ( <i>urbanisation</i> ) ( <i>density to be defined</i> ), Commercial, Industry, school
<b>Additional Considerations</b>		
<ul style="list-style-type: none"> <li>• Structures must preferably be elevated on pilings, posts, piers-and-joists, column or similar foundations – with the lowest floor of the structure to be above a pre-determined risk level.</li> <li>• Lower floors of structures/buildings must be permeable – i.e., have openings to allow for the entry and exist of flood waters – to allow effective interior and exterior hydrostatic pressure equalisation during and post inundation.</li> <li>• Building design must demonstrate reasonable risk reduction measures and should include innovative solutions (adaptable buildings, re-locatable buildings, flood-proofed buildings, flood resistant and resilient construction etc.) without increasing and transferring risks to adjacent properties.</li> <li>• Key mechanical and electrical services/structures (e.g., sewer (and water) infrastructure like pump stations, substations, transformers, generators, geysers and distribution boards) must be located above a pre-determined risk level.</li> <li>• After construction, any exposed ground area must be stabilised by the use of ground covering plants or mulches to minimise the risk of erosion.</li> <li>• On request from the municipality, a storm water management plan might be required to be submitted along with building plans.</li> <li>• Hardened surfaces to be minimised and suitable permeable alternative utilised to maximise natural infiltration and reduce overland flow and associated velocities with concomitant risk of erosion and damage.</li> <li>• Only fully enclosed / self-contained effluent storage and treatment systems will be permitted if links to sewer mains are not possible. These must be located either on the landward side of structures or either side of structures and recommended by a Registered Engineer to ensure suitable sealing and safety. These areas must be monitored to ensure that planning and environmental authorisations are implemented in accordance with the conditions of authorisation.</li> <li>• Development should be sited to minimise the removal of trees and endemic vegetation.</li> <li>• Existing coastal processes, including dune migration and littoral drift should not be impeded and indigenous vegetation must be maintained.</li> <li>• Exotic species of vegetation should be limited to feature trees or shrubs within an indigenous setting.</li> <li>• Fencing or other barriers must be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.</li> <li>• Consolidated access points / paths to the beach preferably on raised wooden / recyclable plastic boardwalks to reduce negative impact on dunes and associated vegetation.</li> <li>• Limit and preferably avoid expansion of existing footpaths and volumes of existing structures and buildings within the risk area.</li> </ul>		

**Table 5: Suggested development considerations to reduce coastal risk for General Risk (Estuarine) areas**

GENERAL RISK ESTUARINE AREAS	
AREAS	INTENTION
<b>General Estuarine Risk</b>	<ul style="list-style-type: none"> <li>• Maintain coastal quality</li> <li>• Reduce public liability</li> <li>• Reduce risk to human life</li> <li>• Prevent intensification of development in general risk area, but allow exercising of existing rights</li> <li>• Prevent encroachment that will impact on the integrity of the shoreline ecology</li> <li>• Enable safe evacuation in an emergency</li> </ul>
<b>Primary Use</b>	With special consent Not Recommended
<b>As per base land use controls.</b>	<ul style="list-style-type: none"> <li>• In-fill sub-divisions</li> </ul> Industry, school, WWTW, discharge of effluent from land-based sources into estuaries
<b>Additional Controls</b>	
<ul style="list-style-type: none"> <li>• All structures on properties larger than 400m<sup>2</sup> in the general estuarine risk area require approval from a professionally registered engineer. Structures on smaller properties may obtain similar design approval based on predetermined standard conditions.</li> <li>• Structures must preferably be elevated on pilings, posts, piers-and-joists, column or similar foundations in a manner that does not impede the lateral flow of water and that does not increase the opportunity for the accumulation of flood related debris – with the lowest floor of the structure to be above a predetermined risk level.</li> <li>• Lower floors of structures/buildings must be permeable – i.e., have openings to allow for the entry and exist of flood waters – to allow effective interior and exterior hydrostatic pressure equalisation during and post inundation.</li> <li>• Building design must demonstrate reasonable risk reduction measures and should include innovative solutions (adaptable buildings, re-locatable buildings, flood-proofed buildings, flood resistant and resilient construction etc.) without increasing and transferring risks to adjacent properties.</li> <li>• Any new development must be designed and positioned within reason to limit potential flood damage and risk to human life, including but not limited to positioning buildings in suitably acceptable elevated portions of properties.</li> <li>• Any new development must be set as far back from the estuarine functional zone as possible. Either rear space or building line, which ever furthest away from the estuary, will be relaxed (up to the maximum allowed in the applicable scheme).</li> <li>• Key mechanical and electrical services/structures (e.g., sewer (and water) infrastructure like pump stations, substations, transformers, generators, geysers and DB boards) must be located above a predetermined risk level.</li> <li>• After construction, any exposed ground area must be stabilised by the use of ground covering plants or mulches to minimise the risk of erosion.</li> <li>• On request from the municipality, a storm water management plan might be required to be submitted along with building plans.</li> <li>• Hardened surfaces to be minimised and suitable permeable alternative utilised to maximise natural infiltration and reduce overland flow and associated velocities with concomitant risk of erosion and damage.</li> <li>• Only fully enclosed / self-contained effluent storage and treatment systems will be permitted if links to sewer mains are not possible. These must be located either on the landward side of structures or either side of structures and recommended by a Registered Engineer to ensure suitable sealing and safety. These areas must be monitored to ensure that planning and environmental authorisations are implemented in accordance with the conditions of authorisation.</li> <li>• Development should be sited to minimise the removal of trees and endemic vegetation.</li> <li>• Exotic species of vegetation should be limited to feature trees or shrubs within an indigenous setting.</li> <li>• Fencing or other barriers must be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.</li> </ul>	

- Existing coastal processes and indigenous vegetation within the estuarine functional zone must be maintained.
- Consolidated access points / paths to the beach preferably on raised wooden / recyclable plastic boardwalks to reduce negative impact on dunes and associated vegetation.
- Limit and preferably avoid expansion of existing footpaths and volumes of existing structures and buildings within the risk area.
- Municipal engineering infrastructure (e.g., WWTW, Substation, Pumps and Reservoirs) to be located outside the risk area, unless related to public amenity (e.g., playground).
- Collective/integrated response by adjacent properties or developments to optimise resources and prevent spill over effect.



File reference:	3770 KBB (4110/2022)
Date:	22 July 2022
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## INTERNAL MEMORANDUM

<b>From</b>	: Town Planning Department
<b>Town Planner</b>	: Hanneen van der Stoep

**TO:**

<u>Area Manager</u>	Building Control Department	District Health	<u>Electrical Department</u>	<u>Environmental Officer</u>
Fire Department	<u>Infrastructure and Planning</u>	Local Heritage Committee	<u>Operational Services</u>	Property Administration
Tourism	Traffic Department	<u>Ward Councillor</u>	<u>Waste Management</u>	

<b>Applicant</b>	WRAP PROJECT OFFICE (obo AP BOTHA)
<b>Property Details</b>	ERF 3770, 1 NERINE CRESCENT, BETTY'S BAY
<b>Application Description</b>	APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION

**ATTACHMENTS :**

<ol style="list-style-type: none"> <li>1. Notice</li> <li>2. Locality Plan</li> <li>3. Motivation</li> <li>4. Site Development Plan</li> </ol>	<p><i>Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.</i></p>
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**YOUR DEPARTMENT'S COMMENTS:**

<p>The Environmental Management Section (EMS) has no objection to this application.</p> <p>The EMS would like to take this opportunity to inform the applicant that the property is also within the EMOZ Coastal Protection: Urban Low Risk Zone. Please refer to map attached. The regulations for the Urban Low Risk Zone are found as 4.8.1.2.3. (page 19.) and must be considered during the new dwelling design process.</p> <p>Also, please note that the erf is located within the Bettys Bay Beachfront Maintenance Management Plan area. (Refer <a href="https://www.overstrand.gov.za/en/documents/strategic-documents/management-plans/2457-management-plan-for-the-bettys-bay-beach-final-draft/file">https://www.overstrand.gov.za/en/documents/strategic-documents/management-plans/2457-management-plan-for-the-bettys-bay-beach-final-draft/file</a>)</p> <p>The plot should therefore not be stripped of all vegetation, only the required development footprint should be cleared to ensure maintain the stability of the dune system.</p> <p>Kind regards,          Tamzyn Zweig          Environmental Officer          Hangklip-Kleinmond Administration</p>
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Signature:		Date:	26 August 2022
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Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo by not later than the date stipulated below. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

*Building Control Department to confirm that all structures on the property/ies are in accordance with the approved building plans.*

<b>COMMENTS REQUIRED BY:</b>	<b>26 August 2022</b>
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