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ERF 37, 47 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION, DEPARTURE AND EXEMPTION OF THE REGISTRATION OF A RIGHT OF WAY SERVITUDE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSHGIRL (PTY) LTD

37 GBH (4124/2022)**SW van der Merwe****12 September 2024****(028) 313 8900****Hermanus Administration**

1. EXECUTIVE SUMMARY

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), has been received on 19 April 2022 from Messrs WRAP Project Office on behalf of Bushgirl (Pty) Ltd, the owner of Erf 37, Birkenhead in terms of the Overstrand Municipality Municipal Land Use Planning Amendment By-law 2020 for the following:

- **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law for removal of conditions C.(a), C.(b) and C.(c) contained in Title Deed T63771/2021;
- **rezoning** in terms of Section 16(2)(a) of the By-law from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA);
- **subdivision** in terms of Section 16(2)(d) of the By-law into five Residential Zone 1: Single Residential (SR1) erven and one Open Space Zone 3: Private Open Space erf, and
- **departure** in terms of Section 16(2)(b) to encroach the lateral building line from 2m to 0m to accommodate a garage between Portion A and Portion B and a covered garden between Portion C and Portion D.

The application also entails registration of a right of way servitude, which is exempted from an application in terms of Section 26 of the By-Law.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, the proposed Subdivision Plan is attached as Annexure C and the title deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 37, Birkenhead is owned by Busgirl (Pty) Ltd who also owns the adjoining Erf 38, Birkenhead. It is intended to develop both properties and operate it in the same manner. The main difference is that on Erf 38 a boutique hotel is proposed in addition to the proposed Single Residential and Private Open Space erven. The property is zoned Residential Zone 1: Single Residential, measures 4,0676ha and is currently undeveloped. Adjoining properties to the east and west are zoned Residential Zone 1 and developed with dwelling houses and associated outbuildings. The area to the north / north east of Birkenhead comprises vacant agricultural zoned land. Marine Drive borders to the property to the south.

The application property is zoned Residential Zone 1. The title deed conditions in terms of the township establishment limit the use and development of the property. The property is also situated within the Heritage Protection Overlay Zone (HPOZ) Coastal Strip and Landscape of High Natural, Scenic and Heritage Significance (HPOZ) and the Environmental Management Overlay Zone (EMOZ) Coastal Protection Zone.

The proposed development entails subdivision into five single residential properties to be used for self-catering (tourism accommodation). Access will be obtained from Marine Drive via a shared access with Erf 38, Birkenhead

The proposed development comprises the following:

- removal of restrictive title deed conditions contained in Title Deed T63771/2021 that reads as follows:
 - “C.(a) *That this erf be used for residential purposes only.*”
 - “C.(b) *That only one dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.*”
 - “C.(c) *Not more than ¼ of the area of this erf be built upon.*”
- rezoning from Residential Zone 1 to Subdivisional Area Zone;
- subdivision to create 5 Residential Zone 1 erven measuring 600m² each and a Remainder Private Open Space Zone 3: Private Open Space measuring 37 676m²;
- departure to accommodate a garage on the property boundary between portions A and B;
- departure to accommodate a covered garden on the property boundary between portions C and D, and
- registration of a right of way servitude (exempted in terms of Section 26 of the By-Law).

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation (refer to Annexure B) is summarised as follows:

- ❖ Proposal is in line with the Danger Point Precinct Plan.
- ❖ Property owner wish to develop the property to its full potential.
- ❖ Proposal will create more housing options in Birkenhead.
- ❖ Proposal to align with building design and siting guidelines as per the Danger Point Precinct Plan, thereby ensuring that views, sunlight and character of the area is not negatively impacted upon.
- ❖ Short term economic impact will be employment opportunities (construction phase).
- ❖ Long term economic impact will be additional rates and taxes to be collected by the municipality.
- ❖ Proposal will have a positive impact in the area and will increase the population.
- ❖ The property is not listed on the Overstrand Heritage Register.
- ❖ The proposal does not trigger listed activities in terms of NEMA.

ENVIRONMENTAL MANAGEMENT OVERLAY ZONE (EMOZ) - COASTAL PROTECTION ZONE

The proposed development will not negatively impact upon the EMOZ.

HERITAGE PROTECTION OVERLAY ZONE (HPOZ), COASTAL STRIP

Wall heights of the proposal will not impact upon view lines and massing and therefore complies with the character and contextual significance of the area.

SPATIAL PLANNING POLICIES

PSDF

The proposal facilitates economic and sustainable urban development and will add economic activities in an area without many options, whilst also creating employment opportunities.

OVERSTRAND SDF

The SDF provides a shared spatial vision that the development should comply with. Little development growth is predicted, whilst urban development should be determined in line with the growth management strategy.

OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY

Proposes densification less than 10 du/ha and the creation of a conservancy. The proposed density is 1 du/ha with the remainder 33676m² to be managed as a private conservation area, thereby consistent with the OMGMS.

DANGER POINT PRECINCT PLAN

The proposal is motivated to be consistent with the following precinct plan policies, namely

- A: Danger Point Sub Precinct (refer to section 4 of precinct plan)

- **Policy one: Density**
The proposed 5 single residential erven is in line with the densification proposals for Birkenhead.
- **Policy three: Development Boundaries and Set Back Lines**
Proposal compliant, i.e. 20m setback from road boundaries, 5m setback from all common boundaries, development contained within 150m development setback line from Marine Drive and Lord Robberts, 600m² erven will be created that could be alienated.
- **Policy four: Building Design and Siting Guidelines**
In accordance section 4.4 of the *motivation report*.

B: Whole Precinct

- **Policy four: Nature Areas on Private Land**
Private open space to function as a private nature reserve.
- **Policy five: Off-Grid Eco Resorts**
Provides for hotels, lapa's, bush camps, chalets provided that is does not detract from the wilderness experience, these should be situated in the general vicinity of the north facing rocky coastline on Dangerpoint and on Duinefontein / Franskraal Mountains.

PLANNING PRINCIPLES

Spatial justice

Proposed 5 dwelling units and private open space will not perpetuate apartheid spatial imbalances.

Spatial sustainability

Proposal will create new housing options, increased population ensuring viable communities.

Efficiency

The proposal will maximise the use of the property to its full potential.

Spatial Resilience

The proposal is not in conflict with spatial planning policies that adhere to the principle of spatial resilience.

Good Administration

The proposal will be subject to public participation allowing interested and affected parties to comment within the permissible timeframes.

- ❖ Proposal will create additional housing options in line with the SDF and provisions of the Birkenhead Precinct Plan, whilst maximising the use of the property for conservation purposes.
- ❖ Proposal allows the owner to unlock development potential whilst the majority of the property will be used for conservation purposes, adding value to the surrounding area.
- ❖ The proposal will not have a negative impact on the surrounding area, being in line with the applicable policies and legislation in the area.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

Clause C.(a)

“That this erf be used for residential purposes only”

Danger Point Precinct Plan promotes tourism that is restricted by the title deed condition. Expansion took place in Birkenhead since the insertion of the condition in 1966. The proposal being in line with the policies and bylaws is restricted by the title deed conditions.

Clause C.(b)

“That only one dwelling together with such outbuildings as are ordinarily required or be used therewith, be erected on this erf.”

Clause C.(c)

“Not more than ¼ of this erf be built upon”

The proposed development of the property for five residential erven will be restricted by this condition being more restrictive than the title deed.

❖ In terms of Section 39(5) of LUPA the following is motivated:

(a) 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 in the person as the owner of a dominant tenement

No person or entity will be affected financially by the removal.

(b) Personal benefits which accrue to the holder of rights in terms of the restrictive condition

No person is personally benefitting from these conditions as these conditions were included to either protect the area or restrict the development of the property.

(c) Personal benefits which will accrue to the person seeking the removal of the restrictive condition

The property owner will be gaining from the removal as it will allow them to utilise their property to its full extent.

(d) The social benefit of the restrictive condition remaining in place in its existing form

The restrictive condition remaining in place does not have a social benefit.

(e) The social benefit of the removal or amendment of the restrictive conditions

On a small scale more residents will be active in the community, thus improving security and supporting local businesses.

- (f) Will the removal, suspension or amendment of the restrictive conditions completely remove all rights enjoyed by the beneficiary or only some of those rights

There is no specific beneficiary and no person or entity will be affected if the condition is removed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	26 August 2022	30 September 2022
Gazette	Yes	26 August 2022	30 September 2022
Notices (<i>possibly affected property owners</i>)	Yes	26 August 2022	30 September 2022
Notices (<i>persons mentioned in title deed</i>)	Yes	26 August 2022	30 September 2022
Internal Departments	Yes	26 August 2022	30 September 2022
Ward councillor	Yes	26 August 2022	30 September 2022
Total comments	Four (4) objections and three (3) late objections		
Total letters of support	NONE		
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?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			Yes

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

Name	Date received	Summary of comments
Building Control	29/08/2022	No objection. Building plan application must comply with all applicable law.
Local Heritage	31/08/2022	No objection.
Waste Management	29/08/2022	Attached as Annexure G.

Fire Services	30/08/2022	No objection, subject to compliance with the provisions of SANS 10400-A:2016, SANS 10400-T:2020 and the By-Law relating to fire safety.
Heritage Western Cape	30/08/2022	No triggers for the National Heritage Resources Act.
Health	30/09/2022	Applicant to comply for health certificate should dwellings be used for any other purposes than residential. Accommodation establishments require certificate
OpenServe (Telkom)	04/10/2022	Services not affected.
Department of Environmental Affairs and Development Planning: <i>Environmental Management</i>	11/10/2022	No listed activities.
Department of Environmental Affairs and Development Planning: <i>Coastal Management</i>	31/10/2022	Attached as Annexure H.
Department of Transport and Public Works	24/10/2022	Attached as Annexure I.
Engineering Services	04/04/2023	Attached as Annexure J.
Environmental Section	07/03/2024	Attached as Annexure K.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four letters of objections were received within the objection/comment period:

- ✚ HS & AM Schrecker, owner of Erf 35 Birkenhead
- ✚ A Swanepoel on behalf of the Arthur Swanepoel Realisasie Trust, owner of Erf 36, Birkenhead and A Swanepoel on behalf of the Birkenhead Owners Association
- ✚ Birkenhead Conservancy
- ✚ M Ritter, owner of Erf 17, Birkenhead

Three late objections were received after the closing date for objections/comments:

- ✚ G da Silva, on behalf of Da Silva Foundation Trust, owner of Erf 16, Birkenhead
- ✚ J Greeff, resident of Erf 17, Birkenhead
- ✚ P Spengler, owner of Erf 5, Birkenhead

The objection letters are attached as Annexure E. Some of the objectors submitted a single objection letter to the applications on both Erf 37 and Erf 38 Birkenhead. The main grounds of objection pertaining to Erf 37 are summarised below, followed by the applicants comment and the town planners' response.

POINT OF OBJECTION 1: COMMENTS RELATED TO WATER

The applicant has, inter alia, requested that a potable water supply facility (i.e. potable water pipeline) be provided by the Local Authority. My wife, HS Schrecker, registered owner of Erf 35, Birkenhead, and I are concerned that we may be expected to share in the cost of this pipeline. We object any of future demand that we, as neighbours, help bear the cost of a potable water supply facility. We have invested heavily in our private rainwater system and we believe we can remain self-sufficient at present, and hopefully, also in future years. There is merit in a pipeline that can provide added security against the threat of veld fires.

RESPONSE FROM APPLICANT

The comments are noted. There will however be no obligation on the surrounding property owners to share the cost of the pipeline as discussed in Section 9 of the report. The property owners of Erf 37, Birkenhead will be required to pay bulk services development contributions that will be used or partly used for the construction of the pipeline.

RESPONSE FROM TOWN PLANNER

The applicant's comment is noted and agreed with.

POINT OF OBJECTION 2: COMMENTS RELATED TO NATURE

As a resident and property owner of Erf 17 Marine Drive, Birkenhead we object to any development of either hotels or lodges or residential units. We agreed not to develop or exceed one unit per ha. The zone 1 single residential properties should adhere to one house per ha if the property is 4 ha.

With this remarkable landscape and uniquely diverse culture in the Overberg, it is not difficult to see why the responsibility of our landowners is to conserve and protect our environment from uncontrolled development for future generations by preventing environmental ruin.

We live here because it is unique and we want to be close to nature, but nature is disappearing. We need to consider the carrying capacity of this peninsula. Many humans are creating impacts that are destroying the non-human denizens and the reasons we live here. We count on environmental conservation to manage and protect our public lands, not bend backward to developers to make a lot of money at the expense of the fauna and flora that makes this place so special and unique. What legacy do we leave our children? Don't we want them to experience wild nature as we've been privileged to do?

RESPONSE FROM APPLICANT

The density of the proposed development was guided by the *Danger Point Precinct Plan*. The proposed density was created to ensure the natural area is protected; the proposal is to create a large private open space that will form part of the natural area of Birkenhead.

The private open space will have an area of 3,7676ha of the entire 4,0676ha property meaning $\pm 92\%$ of the property will be untouched and undeveloped and used for conservation purposes.

RESPONSE FROM TOWN PLANNER

The applicant's comment is noted and agreed with. Further, it must be borne in mind that the Danger Point Precinct Plan is a guideline document only. The density of the proposal is consistent with the Precinct Plan that provides for a density of one dwelling unit per ha (rounded up). The proposed residential erven has a combined area of 3000m² that is more restrictive than the primary rights in terms of the title deed that permit residential development at 25% coverage or 10169m² applicable to Erf 37.

POINT OF OBJECTION 3: COMMENTS RELATED TO LAND USE

The subdivision of rental units is accepted but that they should be reduced from 5 Rental Units to the agreed 4 Rental Units per hectare for each Erf 37 & Erf 38.

The Subdivisional Area Zone (SA) may in future also allow for more subdivisions of land within the zone.

Erf 37 & Erf 38 Residential Zone One restricts the occupants to a Single Residential Family Units.

Transient Lodgers as occupants cannot according to the below temporarily occupy these Single Residential Units on any short day to day temporary accommodation. The legal aspects surrounding Single Residential Zone 1 (SRI) are applicable and defined below. (Refer to definitions). Based on the above we can clearly see that all the residential units will be integrated in to the Hotel Business activities which is strictly against the law.

We do not agree with the development of a lodge on Erf 37 as this is a residential area. We would like to preserve and leave the beautiful unique landscape we are living in.

One of the four title deed conditions that prohibit the land use rights sought by the property owners is: Condition C(a) "That this erf be used for residential purposes only. This statement is quite clear and unambiguous. We the Birkenhead Conservancy (BC) support this clause and accept that residential unit's development is being planned.

However, in terms Spatial Development Framework (SDF) for the Birkenhead Township it was previously agreed that only one Residential Unit would be allowed per full complete hectare. This in turn means that only 4 Residential units with the zoning of SR 1 (Single Residential Zone One) can be meet this stipulation. This is application of 5 units for each property is hence out of line and that only 4 Units would be accepted from a Birkenhead Conservancy (BC) perspective.

In summary, the Birkenhead Conservancy is not against the development of these Subdivided Rental Units provided that the development remains within the ambit of prior determinations and consensus achieved for this this unique, historic balk head peninsula.

RESPONSE FROM APPLICANT

The proposal is to utilise the proposed subdivided properties for single residential properties. The zoning allows the properties to be utilised primarily for the following:

Crèch, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.

The proposal is aligned with the primary land uses indicated above. The units may be used for either transient guests or be sold individually and accommodate a single family permanently.

Referring to Section 12.3 - *Danger Point Precinct Plan*:

“4.1 POLICY ONE: DENSITY – i) Owners who wish to develop their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3.01 hectares will be calculated as 4 hectares.”

The property has an extent of 4,0676ha which in this case rounds up to 5 hectares thus it is allowed to subdivide Erf 37 to accommodate 5 dwelling units - which is aligned with the current proposal.

The subdivisional area will only exist for a moment before the property is rezoned to the proposed zonings – Single residential and Private Open Space. The proposal is the final iteration that the property owners are applying for.

RESPONSE FROM TOWN PLANNER

The applicant’s comment is noted and agreed with. It must also be pointed out that the application does not involve the development of a lodge on Erf 37. The development comprises five single residential erven that will be utilized in accordance with the zoning that also permits self-catering as a primary right. In terms of the Overstrand Land Use Scheme, self-catering is limited to single family occupation.

In accordance with a Senior Council legal opinion regarding the “residential purposes” combined with ‘one dwelling unit restriction’ in the title deed, residential purposes is also limited to single family occupation. Therefore self-catering that is a primary right is not prohibited by the “residential purposes” restriction.

The statement that subdivisional area zone will permit further subdivision is not correct as it is limited to the subdivisions the subject of this application. Following implementation, the zoning status is not subdivisional area zone but will reflect on the zoning map as five Residential Zone 1 erven situated within a single Open Space Zone 3: Private Open Space erf.

POINT OF OBJECTION 4: COMMENTS RELATED TO ADMINISTRATIVE PROCEDURES

Die betrokke posstuk met die aansoek rakende opheffing van beperkings het ek eers op die 27 of 28 September 2022 ontvang twee dae voor sluiting van besware. Daar is wel een saak waar erf no 5 en Lord Robert straat betrek word.

4.3 boulyne ens.

Dit is vir my onvanpas om die minste te sê vir iemand wat aansoek doen vir opheffing van beperkings vir homself MEER beperkings vir Ander voorstel.

Namens Everal BK maak ek beswaar teen die voorstel.

RESPONSE FROM APPLICANT

The standard notification processes were followed as determined by the By-Law. On-site notices were also present on the properties and the registered letter were sent out prior to the commencement of the public participation process.

It is not clear what the objector means by “meer *beperkings* vir ander voorstel” as it was not part of the application?

RESPONSE FROM TOWN PLANNER

The public participation complied with the legislative requirements in terms of the Overstrand Municipal Land Use Planning Amendment By-Law 2020 comprising the service of registered letters, site notices and advertisement in the local paper. It is also clear that the objector received the notice prior to the expiry date, thus had sufficient chance to submit comment within the timeframe stipulated within the notice.

The point of objection regarding more restrictions is not clear as the applicant applies for the removal of restrictive title conditions pertaining to the application property only.

POINT OF COMMENT

Mr A Swanepoel on behalf of the Arthur Swanepoel Realisasie Trust and the Birkenhead Owners Association stated *I have no objections to either of the Applications for Erf 37 & 38 - As per "Subject"*

I welcome that there is (at last) interest to invest and enhance the sparse build environment of the Birkenhead Peninsula, given the many advantages for such improvements.

I do, however raise the following for your awareness/attention:

Electricity: The Erf 38 Property is connected to the Municipal Electricity network but not to my awareness so, for Erf 37 (Being a vacant erf)? Will the current supply have adequate capacity for all the existing supply points, as well as for the new, additional, sub-divided erven?

Water: Will there be sufficient capacity for the new, additional, sub-divided erven for both erven 37 & 38?

Please refer to:

*Water-Plans-Sep2022 which I assume will also apply to the Birkenhead Peninsula
COMMENTS - CONVENTIONAL APPROACHES FOR FUTURE DEVELOPMENT
VERSUS A DIFFERENT APPROACH-September2022*

RESPONSE FROM APPLICANT

The application was circulated to the relevant departments including the Engineering Department of the Overstrand Municipality that requested a capacity report be conducted for sewage and water. It was further requested that an investigation be done to determine the availability of electricity capacity.

RESPONSE FROM TOWN PLANNER

The applicant's comment is noted and agreed with. Following receipt of additional reports pertaining to capacity of water, sewage and electricity the Municipal Engineering Services Department did not object on the basis of availability and capacity of services, subject to compliance with certain conditions.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Refer to paragraph 7 above.

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

Refer to paragraph 7 above.

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:

Spatial Justice

The proposed 5 dwelling units and private open space will not perpetuate apartheid spatial imbalances. The proposal creates new housing options, increased population, thus ensuring viable communities.

Spatial sustainability

The property is situated within the urban edge. The proposal will not impact on agricultural land or unacceptably impact on the natural environment. Development is contained towards the south of the property, leaving a private open space remainder.

Efficiency

The proposal will maximise the use of the property to its full potential, ensuring optimal and efficient utilisation of the property.

Spatial Resilience

The proposal is consistent with the applicable strategic policy documents, which adheres to the principle of spatial resilience.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public 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

The proposed residential development is consistent with the provisions of the SDF, Overstrand Municipal Growth Management Strategy and Danger Point Precinct Plan.

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

N/A

10.6 Impact on municipal engineering services

The property will be connected to the municipal electrical network at the cost of the applicant.

The property will be connected to the municipal water network in accordance with the recommendations of the GLS report, at the cost of the applicant.

The property is situated in a sewer priority area for installation of waterborne sewage. In the interim sewage disposal will be dealt with by means of conservancy tanks in accordance with the provisions of the services report until such time that water borne sewage disposal becomes available in the area.

The property owner is responsible for collection and transport of solid waste to an approved municipal waste transfer station.

The development is supported by the Engineering Services Department on the basis of availability and capacity of relevant services, subject to conditions, including the payment of a bulk development contribution levy.

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

The proposed development does not trigger the provisions of NEMA or the National Heritage Resources Act as was confirmed by the competent authority.

The property is situated within the Coastal Protection Zone. The high risk zone is situated landward of the southern property boundary. The medium and low risk zones are situated on the southern property boundary. The proposed development will be set back behind the 20m buffer from the southern property boundary thereby avoiding the medium and low risk zone. The comment of the competent authority is dealt with in the evaluation below.

10.8 Existing and proposed zoning comparisons and considerations

The property is zoned Residential Zone 1: Single Residential with a primary right for the construction of a dwelling, second dwelling unit and associated outbuildings, subject to compliance with building lines. The title deed of the property restricts development amongst others to one dwelling unit and 25% coverage. The latter amounts to an area of 10169m² can be used for residential purposes in accordance with the title deed.

The proposal provides for five single residential erven situated within a private open space remainder. The residential erven will be limited to two storey's and a maximum floorspace of 250m². The proposed development although it constitutes densification will create 5 single residential erven with a total area of 3000m² (600m² each) to be used for residential purposes which is much more restrictive opposed to the current primary rights.

10.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The title deed T63771/2021 applicable to property contains the following restrictions proposed for removal namely:

Clause C(a)

"That this erf be used for residential purposes only"

Clause C(b)

"That only one dwelling together with such outbuildings as are ordinarily required or be used therewith, be erected on this erf."

Clause C(c)

"Not more than ¼ of this erf be built upon"

The applicant motivates that the Danger Point Precinct Plan promotes tourism that is restricted by condition C(a). The proposal is in line with the policies and bylaws but restricted by the title deed conditions. Expansion took place in Birkenhead since the insertion of the title deed conditions. Hence the proposed removal of restrictive title deed condition c(a).

Removal of condition C(b) and C(c) is required as limits the proposed development.

The applicant's interpretation of Clause C(a) is not correct. The terms of a Senior Council legal opinion "residential purposes" in conjunction with "one dwelling" restriction limits the use to single family occupation – self-catering is a primary right, but also limited to single family occupation. The proposed rezoning to private open space however triggers removal of the restrictive condition.

The financial or other value of the rights

The applicant motivates that no person or entity will be affected financially by the removal. The removal of the residential purposes and one dwelling unit restriction will however benefit the property owner (i.e. upgrade of development rights) and will improve property value as a result of densification.

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

According to the applicant no person is personally benefitting from these conditions as these conditions were included to either protect the area or restrict the development of the property.

The original holder of rights became null and void when the municipality took over its functions. The municipality will gain no personal benefit with the removal of the restrictions, whilst property owners in Birkenhead will benefit though increased property value and improved security. The property owner will benefit as the removal of the restrictive condition will facilitate development of the property (i.e. densification) in accordance with the Danger Point Precinct Plan.

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

There will be no social benefit for the retention of the restrictive conditions.

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights?

The application only removes title deed conditions C(a), C(b) and C(d) contained in Title Deed No. T63771/2021

11. THE DESIRABILITY OF THE PROPOSAL

The Danger Point Precinct Plan was adopted by Council on 3 December 2014. The aforesaid provides a policy framework providing for limited densification. The development proposal in accordance with the policy framework comprises five single residential erven set within a remainder Private Open Space to be managed as a private conservation area by a Homeowners Association (HOA).

The Township of Birkenhead had been established in the 1930's with conditions of establishment that has been carried over into the title deeds and registered in favour of all owners within the township. Birkenhead to date remain primarily undeveloped, save for a few dwelling houses, most of which is not permanently occupied. Only one of the commercial erven at the entrance to Birkenhead had been developed as a restaurant / tourist facility. The area is subject to poaching with poachers traversing private properties, thus safety and security is a concern in the area.

The application property forms part of a sensitive coastal environment of outstanding natural beauty with potential for biodiversity conservation / recreational corridor with limited off grid development with minimal impact on the natural environment in accordance with the Danger Point Precinct Plan. Save for the siting of the proposed dwellings, the proposal is consistent with the SDF, Growth Management Strategy and Danger Point Precinct Plan. The proposed development strikes a balance between development and protection of natural environment and will enhance the character of the area (i.e. additional inhabitants, capital investment resulting in improved rates and security) thus also beneficial for the town of Birkenhead, including the greater Gansbaai region. The proposal will also ensure that the remainder private open space is managed as a private conservation area in accordance with an Environmental Management and Alien Clearing Plan.

The property is also situated in the Heritage Protection Overlay Zone (HPOZ) Coastal Strip as well as the HPOZ Landscape of Significance. The main purposed of the HPOZ Coastal Strip is to ensure that development complies with the existing character and contextual significance (i.e. as a transition zone, to protect natural, environmental and scenic qualities, protection of views between the mountain and coast through massing and form of buildings and to protect the character of holiday home vernacular along the coastal strip. The purpose of the HPOZ Landscape of Very High Natural, Scenic and Heritage Significance is to ensure that land use application's resulting in additional rights complies with the existing character and contextual significance.

The HPOZ encourage predominantly single storey structures, that is fragmented/disaggregated opposed to monolithic building forms with a horizontal emphasis. The Danger Point Precinct Plan encourages the erven to be clustered.

The proposed building design / siting / layout is not in line with the intent of the HPOZ or precinct plan as does not comprise of fragmented/disaggregated building form but a monolithic building form with a horizontal emphasis. This is further exacerbated by the departures for garages onto the lateral property boundaries, thus not consistent with the before said document.

The proposed residential erven is situated in two clusters, thus the subdivision could be supported. The proposed building line departures onto the lateral property boundaries for the aforesaid reasons are not desirable. A condition will be imposed requiring the applicant to submit a site development plan to demonstrate the building design / lay-out / siting complies with the intent of the HPOZ, EMOZ and Danger Point Precinct Plan that provides for a fragmented/disaggregated building form / design to the satisfaction of the municipality. This will also ensure that the development will not detract the character / contextual significance of the area, negatively impact upon views etc.

The application for removal of restrictive title conditions to permit densification is considered desirable as per the evaluation in paragraph 10.9 above. In order to ensure the further development adheres to the density requirements of the Danger Point Precinct Plan a condition will be imposed to restrict development of one dwelling unit with one kitchen only, since the floorplan provided consist of double units.

Although the proposal will result in densification the combined development footprint and height will be more restricted, compared to the existing primary rights. The opinion is therefore held that the proposal will have visually less impact upon the character of the area opposed to the extent of development permitted under the current primary rights, thus in line with the vision of the EMOZ, HPOZ and Precinct Plan as it will ensure protection of the natural environment and character of the area.

The proposed development provides for the residential erven to be set in a remainder private open space. The proposal also permits a further portion of the private open space to be included in a future nature reserve which is part of the long-term strategic vision for the area. The proposal therefore strikes a balance between the built environment whilst also protecting the natural environment. The development and maintenance of the property will occur in accordance with the Environmental Management Plan (EMP) and Alien Clearing Plan. The HOA will be responsible to ensure development and management of the property in accordance with the EMP.

The development is supported from an engineering services' point of view subject to compliance with conditions of approval, amongst others payment of a bulk services levy.

Access will be obtained from Marine Drive via a shared access with Erf 38. The proposal is supported by the Department of Transport subject to the registration of a shared right of way with Erf 38 Birkenhead.

The proposed development does not trigger NEMA or the provisions of the National Heritage Resources Act.

The property is situated in the Coastal Protection Zone (CPZ) in terms of the Integrated Coastal Management Act (ICMA). The proposed development will be situated outside of the identified risk zones in terms of the CPZ. The Department of Environmental Affairs and Development Planning, Biodiversity and Coastal Management did not object provided that the following matters be taken into consideration:

	Comment	Response from town planner
2.1.3	Due to propety's location within the Coastal Protection Zone (CPZ) Section 63 of NEM ICMA must be considered where authorisation is required in terms of NEMA.	The proposal does not trigger NEMA but the applicant indicated that ICMA will be taken in consideration.
2.1.4	In terms of risk modelling erosion is not a concern but sea level rise, storm surges and impacts from salt spray to be considered.	The point of comment is noted and will be taken in consideration.

2.1.5	Applicant to be informed regarding risk pertaining to loss of property should the high-water mark of the sea move inland.	Noted. The southern property boundary is situated just below the 10m contour. The proposed erven will be situated between the 10m and 15m contour, thereby eliminating the associated risks bearing in mind that the buffer of the rocky coastline.
2.1.6 2.1.7	The proposed development must not impede the general public's ability to access the CPZ, continued coastal access must be secured and existing public access may not be negatively impeded.	The comment is noted. The only access to the property is from a public road in front of the property. Thereby public access to the coast will not be negatively impacted upon.
2.1.8	The applicant may not create formal pathways outside the property boundary.	Noted. The proposal does not entail any development outside the property boundaries.
2.1.9	The applicant did not include an Environmental or Maintenance Management Plan with regard to the private open space. The relevant authority should be consulted in this regard. Rezoning to private open space is a concern as it creates the perception that of privatisation of the coastline which is not supported.	<p>The competent authority stated that NEMA is not triggered and did not raise any further requirements.</p> <p>The property is privately owned and zoned for single residential purposes. The private open space portion (currently zoned residential) will be owned and managed by the HOA and cannot be considered as privatisation of the coastline. The property borders a public road from that facilitates public access to the coast.</p>
2.1.10	Proposed site layout to be reconsidered and setback as far as possible. Development layout to be clustered so as not to comprise a linear development. Furthermore, the title deed should indicate that no further development will be allowed on the property.	<p>The layout of the subdivided erven cannot be considered as the precinct plan based amongst others on heritage and botanical specialist inputs recommends development in a 150m corridor from Marine Drive. A 20m setback from southern property boundary will ensure the coastal corridor and indigenous vegetation is maintained, whilst the proposed erven will be located outside the risk zones.</p> <p>The erven is laid out in two clusters, whilst a condition is imposed to ensure that siting of the proposed dwellings has a fragmented/disaggregated building form.</p>

The property is situated within the Coastal Protection Zone EMOZ. The main purpose of the EMOZ is as follows:

- Purpose 1: Managing the integrity of coastal ecosystems, ecosystem services, coastal dynamic processes and biodiversity within coastal reserves.
- Purpose 2: Managing public access for the enhancement of social, economic and recreational opportunities within the coastal environment.
- Purpose 3: Managing the character, sense of place and aesthetic value of coastal property.
- Purpose 4: Instituting appropriate controls for the protection of people, property, and economic activities within the coastal environment.

The proposed development subject to approval of an amended Site Development Plan will ensure that the siting of the dwelling / proposed development not negatively impact upon the EMOZ due to the following:

- ❖ the development will not impact upon public access to the coast;
- ❖ the development will have a 20m landscaped buffer from the western property boundary,
- ❖ the development will be situated outside the risk zones pertaining to sea level rise;
- ❖ the amended site layout will ensure that the character or sense of place is not negatively impacted upon, and
- ❖ the applicant will be required to submit an alien clearing plan and construction management plan for municipal approval, prior to commencement of the development.

Having had regard to the applicant's motivation as well as the evaluation above, read together with the approval conditions, the proposed development will not detract from the character of the area, the visual amenity of the locality or vested rights of adjoining property owners. The proposed investment in the property will facilitate a development that is consistent with the spatial planning vision and carry capacity of the property and considered beneficial for the town of Birkenhead as a whole. The proposal is therefore considered desirable.

12. RECOMMENDATION

1. that the objections / comments be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), for the **removal of restrictive title deed conditions** C(a), C(b) and C(d) as contained in Title Deed T63771/2021 applicable to Erf 37, Birkenhead, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for **rezoning** in terms of Section 16(2)(a) of the By-Law from Residential Zone: Single Residential (SR1) to Subdivisional Area, **be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law in five (5) Residential Zone 1: Single Residential (SR1) erven of 600m² in extent each and a Remainder Open Space Zone 3: Private Open Space (OS3), **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for **departure** in terms of Section 16(2)(b) of the By-Law in order to relax the 2m lateral building line applicable to the Residential Zone 1 erven to 0m, **not be approved** in terms of the provisions of Section 61 of the By-Law,
6. that the approvals in paragraphs 2. to 4. above be subject to the following conditions:
 - (a) that a Homeowners Association (HOA) be established prior to the registration of the first erf;
 - (b) that the constitution of the HOA be submitted for municipal approval, which constitution must provide for the development, upkeep and maintenance of the property in accordance with an approved Environmental Management Plan and Alien Clearing Plan and Architectural Guidelines;
 - (c) that Architectural Guidelines be submitted for municipal approval prior to submission of building plans demonstrating compliance with the development parameters as per the Danger Point Precinct Plan;
 - (d) that a revised site development plan be submitted for municipal approval demonstrating compliance with the Danger Point Precinct Plan, the EMOZ and HPOZ and shall as a minimum indicate the position and coordinates of the five single residential erven, the 20m buffer and 150m setback from Marine Drive as well as the placement of the dwellings on the erven to ensure fragmented/disaggregated building form to the satisfaction of the municipality;
 - (e) that the conditions in the Services Report (attached as Annexure J), be complied with
 - (f) That all the conditions from Department of Transport and Public Works (attached as Annexure I), be adhered to;
 - (g) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (h) that the use of the remainder Open Space Zone 3 portion be limited to conservation use as per the Overstrand Land Use Scheme, 2020 and be maintained in accordance with an approved Environmental Management and Alien Clearing Plan;
 - (i) that an Environmental Management Plan and Alien Clearing plan be submitted for municipal approval prior to commencement of the development that address both construction and operational phases of

the development, including rehabilitation;

- (j) that the total floorspace of the dwellings, garages included may not exceed 250m² per single residential erf;
 - (k) that the dwellings may only be provided with one kitchen; and
 - (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
7. that a right of way servitude be registered in favour of the subdivided portions and Erf 38 Birkenhead; and
 8. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with regard to the above conditions of approval.

13. REASONS FOR RECOMMENDATION

Reasons for approval

- ❖ The application has followed due procedure.
- ❖ The development is consistent with the applicable strategic policy documents.
- ❖ The development is consistent with the planning principles.
- ❖ The development does not detract from the character of the surrounding area.
- ❖ The development does not unacceptably detract from the vested rights of adjoining property owners

Reasons for non-approval

- ❖ The building placement and design is not consistent with the Danger Point Precinct Plan, the HPOZ and EMOZ regulations in that the proposal entails large monolithic buildings with a horizontal emphasis opposed to fragmented building form with lesser impact.

14. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Subdivision Plan
Annexure D:	Title Deed T63771/2021
Annexure E:	Objection received
Annexure F:	Comment from applicant
Annexure G:	Comment: Waste Management
Annexure H:	Comment: Department of Environmental Affairs and Development Planning: <i>Coastal Management</i>
Annexure I:	Comment: Department of Transport and Public Works
Annexure J:	Services Report
Annexure K:	Environmental Section

SIGNATURE

REGISTERED PLANNER

Name:

S VAN DER MERWE

SACPLAN Reg No:

A/1850/2014

Signature:

Date:

Locality Plan Erf 37, Birkenhead

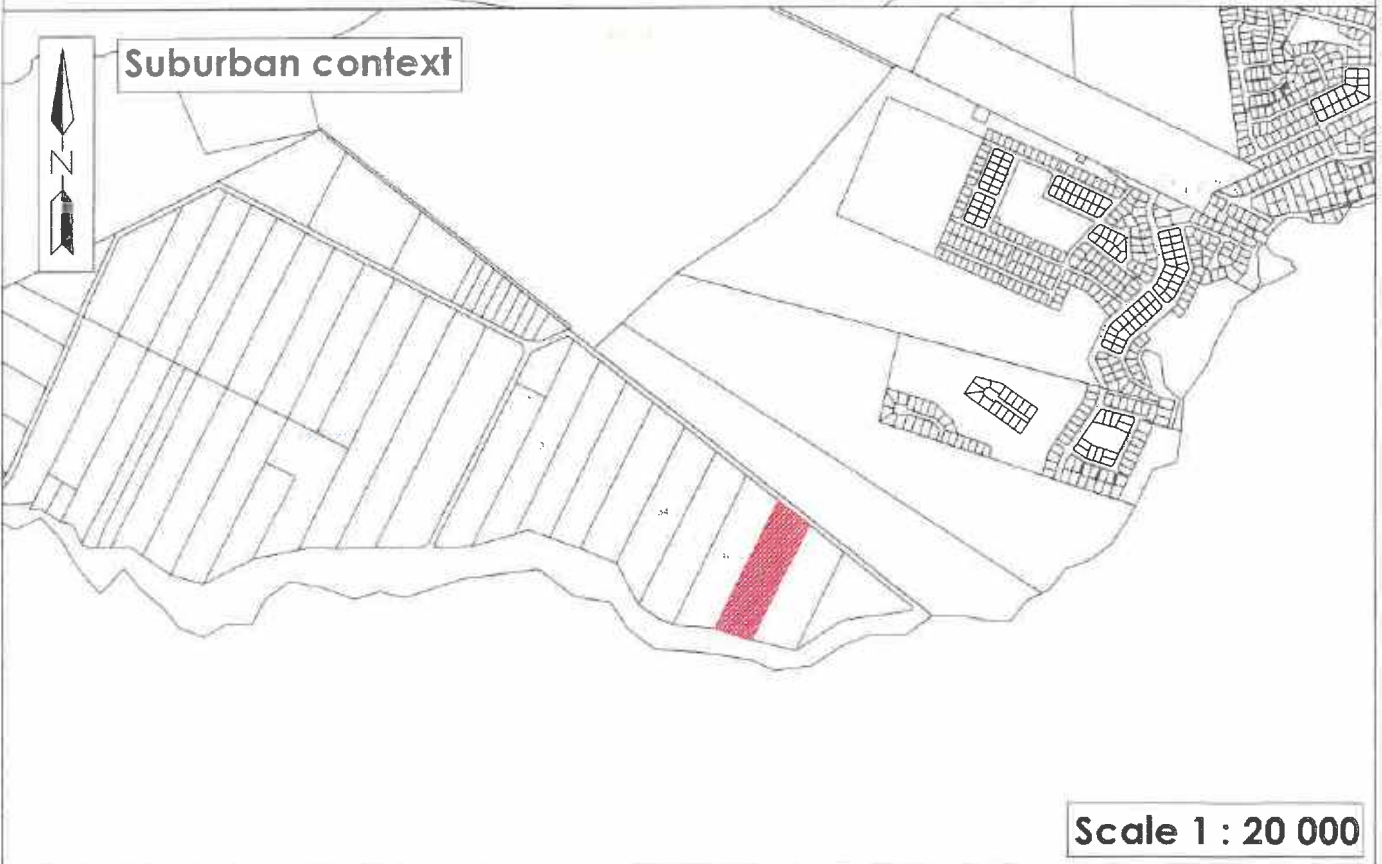
 Subject property (Erf 37 Birkenhead)

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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





MOTIVATION

1 ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
DEADP	Western Cape Department of Environmental Affairs and Development Planning
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SDP	Site Development Plan
SR1	Residential Zone 1: Single Residential

2 SUMMARY OF STATUS QUO AND PROPOSED PROPERTY DETAILS

Consultant	WRAP Project Office
Restrictive title deed conditions	C (a, b and c)
Erf extent	4.0676Ha
Current zoning	Residential Zone 1: Single Residential

3 BACKGROUND AND INTENT

Erf 37 Birkenhead, hereafter referred to as the subject property is owned by the Bushgirl (Pty) Ltd. The property owners are also the owners of Erf 38 Birkenhead adjacent to the subject property. Their intent is to develop both properties and operate them in the same manner, with the only difference that a boutique hotel is proposed on Erf 38 Birkenhead. The property owners appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners envision utilising the subject property to its maximum potential and has the vision to subdivide the property into six (6) properties, namely five (5) residential properties and one (1) private open space that will be the predominant use of the property.

By including the private open space, it will allow the property owners to fully utilise the subject property while ensuring the majority of the property is kept as pristine natural area inside of the Birkenhead Sub-Precinct. A right of way servitude is proposed between Erf 37 Birkenhead and Erf 38 Birkenhead that will service both properties and an exemption of a right of way servitude is also proposed to be included within the application.

To ensure the property owners' vision for the property is achieved, the following applications will be required in terms of the OM By-Law:

- Removal of restrictive title deed conditions;
- Rezoning;
- Subdivision;



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- Departure;
- Exemption (Right of Way Servitude); and
- Establishment of a Homeowner's Association.

4 PROCEDURE TO ACHIEVE THE PROPERTY OWNERS' INTENT

WRAP was appointed to compile and submit a land use planning application to materialise the intent highlighted in Section 3 of this report. The following is proposed:

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

There are three title deed conditions that prohibit the land use rights sought by the property owners as described in Section 3 and the rationale for the removal of these conditions is discussed below:

- Condition C(a) *"That this erf be used for residential purposes only."*
- Condition C(b) *"That only one dwelling together with such outbuilding as are ordinarily required or be used therewith, be erected of this erf."*
- Condition C(c) *"Not more than 1/4 the area of this erf be built upon."*

These title deed conditions mentioned above is required for removal as the proposed vision is not aligned with these conditions. The removal thereof would ensure the subject property has the same development parameters as other residential properties within the OM area.

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

4.2 Rezoning of Erf 37 Birkenhead from Single Residential Zone 1: Single Residential to Subdivisional Area Zone (SA) in terms of Section 16(2)(e) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

4.3 Subdivision of Erf 37 Birkenhead to five (5) Residential Zone 1: Single Residential erven and one (1) Open Space Zone 3: Private Open Space erf in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The property owners envision utilising the subject property to its maximum potential. The subject property currently has a zoning of Residential Zone 1: Single Residential, which is not aligned with the proposal to utilise a portion of the property as a Private Open Space. To ensure the zoning of the subdivided properties are in correlation with the intent of the property owners, the following are proposed:

Number of Properties	Proposed Zoning	Erf Extent
5	Single Residential Erven	5 x 600m ²
1	Open Space Zone 3: Private Open Space	1 x 37 676m ²



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The proposal is in line with the Danger Point Precinct Plan as motivated in Section 11.3 of this report. Environmental protection is an important aspect for the OM and for the property owners. The private open space will form part of the 'private conservation area' within the Birkenhead area and will not be used for urban development.

In addition, creating a naturally protected area, the rezoning and subdivision will enable the property owners to create 5 residential properties. The property owners' intent is to sell these properties to individuals that will increase the population of the Birkenhead area and possibly unlock economic activities in an area. Refer **Plan 3 – Subdivision Plan & Plan 4 – Proposed Zoning Plan.**

4.4 Permanent Departure of side building lines of the subdivided portions in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The appointed architects (DesignMen) spent copious amount of time designing structures that will be built as far as possible into the natural ground level below the ridge lines hiding the structures from the rear of the subject property.

To ensure the proposed development has an uninterrupted appearance, the buildings of the residential units were placed next to one another encroaching on their side building lines. Referring to the subdivision plan – attached as Plan 3 as identification Portion A, B, C, D and E are encroaching on the side building lines.

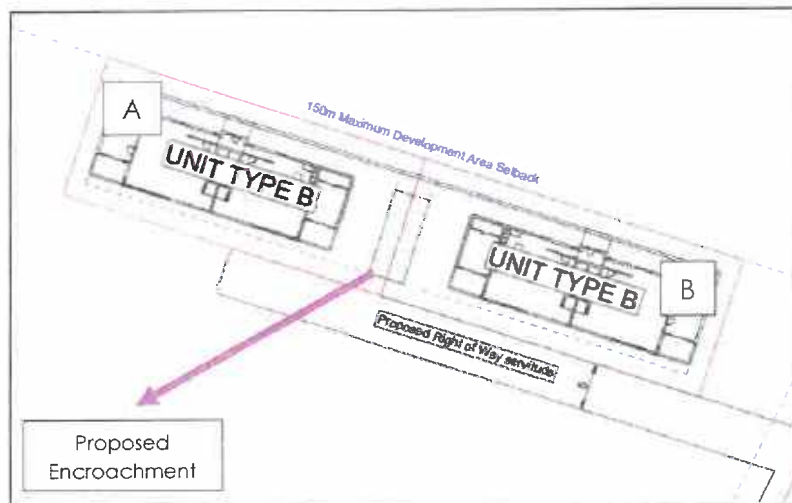


Figure 1: Proposed encroachments



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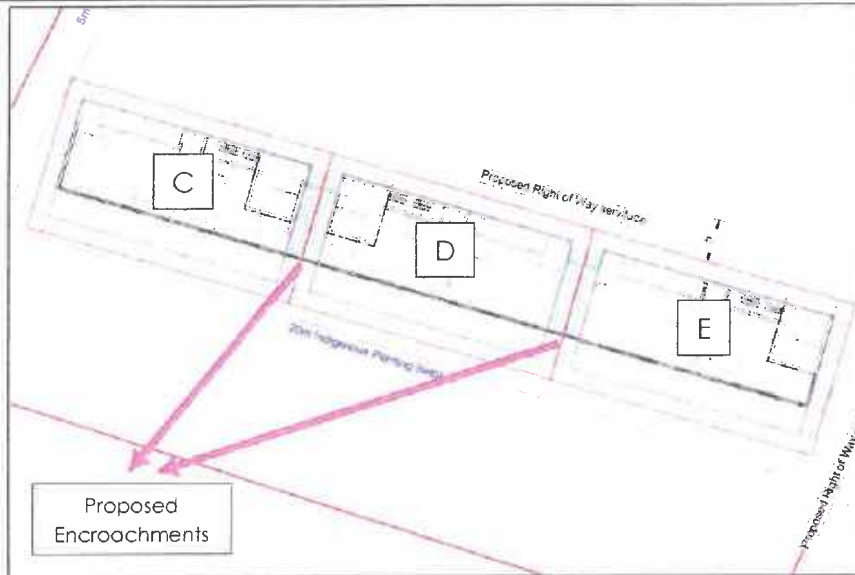


Figure 2: Proposed encroachments

These proposed encroachments are uninhabitable space as it will be used for a garage between Portion A and B, and a covered garden, between Portion C and D, and also Portion D and E. The proposal is to depart from the **2m** side building line to **0m** to accommodate the encroachments.

These are not proposed to be utilised for any other function and the only reason was to create one large roof that will be covered by indigenous plants that will create a natural feel and look for the entire area.

4.5 Exemption of right of way servitude in terms of Section 26(1)(h)(v) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The subject property has two proclaimed streets on either side of the property, there is a right of way servitudes proposed for the property, that will ensure all residents and guests have suitable access. This is a shared right of way servitude with Erf 38 Birkenhead, where the 5m will be shared amongst Erf 37 and 38 Birkenhead, the 2,5m located on Erf 37 Birkenhead will be in favour of Erf 38 Birkenhead.

The first task of the right of way servitude will ensure that all five residential properties have adequate access. The second task will be to ensure the residents of Erf 37 Birkenhead have access to the entire property up to the Northern Boundary.

All portions create is proposed to gain access across the remainder (Open Space Zone 3: Private Open Space), these portions will gain access via the means of a proposed right of way servitude in their favour.



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- 4.6 Establishment of a homeowner's association** and approval of constitution in terms of Section 31 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

To ensure the development and residential estate is properly managed, a homeowner's association is required to be established which includes the approval of a homeowners' constitution by the Municipality in terms of Section 31 of the By-Law.

5 APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.2 Rezoning** of Single Residential Zone 1: Single Residential to Subdivisional Area Zone (SA) in terms of Section 16(2)(e) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.3 Subdivision** into five (5) Residential Zone 1: Single Residential erven and one (1) Open Space Zone 3: Private Open Space erf in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.4 Permanent Departure** of side building lines of the subdivided portions in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.5 Exemption of right of way servitude** in terms of Section 26(1)(h)(v) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.6 Establishment of a Homeowners Association** in terms of Section 31 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 also zoned Residential Zone 1: Single Residential. The surrounding area's zonings are illustrated in Plan 2 (zoning plan). The proposed development is not out of the ordinary for the Birkenhead area as it is earmarked as an urban development zone within the Overstrand Municipal Growth Management Strategy.

7 TITLE DEED

Title deed T63771/2021 (refer **Annexure B – Title Deed**) was perused and there are several restrictive title deed conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit the property owners to develop their property.



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Title deed restriction

Condition C(a)

"That this erf be used for residential purposes only."

Motivation

The rationale for the proposed removal

The subject property is currently proposed to be used for residential purposes, should the future owners of the residential properties be interested in practicing their home occupation or renting out their properties for transient guest it would be restricted by the condition.

Title deed condition background

The restrictive title deed condition was originally intended to protect the rural residential character of the Birkenhead area. This restrictive condition was transferred into the current title deed of the subject property. Any amendment or removal of this condition requires the consent of the Administrator. This authority now sits with the Overstrand Municipality.

Status quo

The Danger Point Precinct Plan indicates that tourism should be welcomed in the area, and it was determined that the condition is restricting the property owners' vision. The condition made sense when no clear development guidelines existed, since the insertion of the condition in 1966 the Overstrand Municipality has allowed several expansions to take place in the Birkenhead area. With the proposed development being in line with the policies and by-laws. With the restrictive condition being more restrictive than the policies and precinct plans of the Overstrand Municipality, the property owners are not able to utilise his property to its full extent.

Title deed restriction

Condition C(b)

"That only one dwelling together with such outbuilding as are ordinarily required or be used therewith, be erected of this erf."

Condition C(c)

"Not more than 1/4 the area of this erf be built upon."

Motivation

The rationale for the proposed removal

With the proposed subdivision, the property owners envision 5 separate residential properties. In terms of the Danger Point Precinct Plan guidelines, the Overstrand Municipality will allow a density of 1 dwelling unit per hectare. The proposed development of the property would be restricted by this condition and therefore the condition requires removal.

The Danger Point Precinct Plan and OMLUS both have development parameters in terms of the allowable coverage and the title deed condition is more restrictive.

Title deed condition background

The restrictive title deed condition was originally intended to protect the natural aesthetic of the Birkenhead area and limit urban sprawl to occur. Since then, the Birkenhead Precinct Plan provides guidelines on the number of units that may be developed on a

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property in the Birkenhead area. Any amendment or removal of this condition requires the consent of the Administrator. This authority now sits with the Overstrand Municipality.

Status quo

As mentioned, the Birkenhead Precinct Plan is used as a guideline on the number of dwelling units allowed on a specific property in the Birkenhead area, this also allows the municipality to determine if a proposed development is within these guidelines. Currently the restrictive condition is limiting the property owners to utilise their property to its full potential. As it stands now, only one dwelling unit may be constructed on the property with only ¼ coverage (25%), which is more restrictive than the current planning policies and legislation applicable.

Regarding the requirement set out in LUPA, the following information is required to be addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<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 in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of these restrictive title deed restrictions.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions were included to either protect the area or restrict the development of the property.
<i>(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;</i>	The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	The restrictive condition does not have a large social impact. On a small scale more residents will be active in the community improving security and supporting the local businesses.
<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	
<i>(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.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.



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8 ZONING

The following zoning parameters were assessed in conjunction with the SR1 & OS3 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law: The **current zoning** of the entire subject property is:

Residential Zone 1: Single Residential			
Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Vacant	Comply
Consent use that may be applied for	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	Vacant	Comply



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OPEN SPACE ZONE 3: PRIVATE OPEN SPACE (OS3)		
Use of the property	Proposal	Comply
<p>Primary use Private Open Space</p> <p>Consent uses Cemetery, Environmental Facilities, Recreational Facilities, Tourist Accommodation, Tourist Facilities, Transmission Apparatus (Subject to the provisions of chapter 16.10), Urban Agriculture, Utility Services and any other related uses permitted by the Municipality.</p>	<p>Private Open Space</p> <p>N/A</p>	<p>Comply</p> <p>N/A</p>
Development Parameters		
<p>a) A site development plan must be submitted in terms of 16.3 to the satisfaction of the Municipality. – This is noted</p> <p>b) The Municipality may require an environmental study and/or environmental management plan in terms of 16.4. – This is noted</p> <p>c) Prior to the approval of any building plans or engineering services, the Municipality must determine the development parameters that apply when:</p> <ul style="list-style-type: none"> i) the zoning of a land unit to this zone is approved; ii) any environmental impact report is considered; iii) any environmental management plan is considered; and iv) any site development plan is approved. - This is noted <p>d) No structure shall be erected, or use practised except such as is compatible with the “private open space” as defined. – This is noted</p> <p>e) Structures/buildings may be erected with the written consent of the Municipality, should the Municipality deem it necessary, provided that the Municipality may impose conditions relating to design, architecture and development parameters.</p>		
Residential Zone 1: Single Residential Land Use Restrictions		
Parameters		
Primary use	Proposal	Comply/ deviate
Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House	Comply

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Consent use that may be applied for	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	None	Comply
Development Parameters			
Coverage as per the Danger Point Precinct Plan	Bulk: Maximum of 250m ² including all garages and outbuildings - With a maximum erf size of 600m ² Meaning the allowed coverage is = 41,67%	Proposed coverage for each residential property – 193,76m² / 23.3%	Comply
Height	<ul style="list-style-type: none"> - The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m; - and/or 2 Storey 	8,0m	Comply
Building lines	<ul style="list-style-type: none"> (i) The street building line is determined in accordance with the net erf area: 400 m² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m² = 2m 	N/A – Residential Properties are not adjacent to a street.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	0m	Applied and motivated
Parking	Two on-site parking bays per dwelling unit, provided that on erven less than 400 m ² , only 1 on-site parking bay needs to be provided.	2 parking bays required for each dwelling unit	Comply



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9 SERVICES

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

Electricity

The subject property is connected to the municipal electricity network, and the proposal is not proposed to affect this.

Water

The property owners are aware of the lack of water infrastructure within the area. It is proposed that the bulk services contributions, with the consent of the Overstrand Municipality be used extend the water line installed for the I&J abalone farm to the west of the subject property, to the subject property. Feedback from the OM's Engineering Department will be obtained and the installation thereof will be for the property owners' account being deducted from the Bulk Services Development Contributions.

Sewage

The proposed buildings will be connected to a conservancy tank, the proposal is to construct new conservancy tanks that will be serviced by the OM at the cost of the property owners.

Solid Waste

The property owner will be responsible for the collection and transportation of the solid waste to a registered Overstrand Municipality transfer station.

Access, egress, and parking

Vehicular access and egress to the subject property is gained from Marine Drive on the southern side of the subject property and the approval and implementation of this application will not alter this.

Each portion (5 residential properties) will have a right of way servitude registered in their favour to access their respective property, refer to the SDP, attached as **Plan 5 – SDP**.

10 NOTIFICATION OF INTEND TO DEVELOP (NID)

The National Heritage Resources Act, under section 38 contains the following provisions and the proposed development will trigger an application to Heritage Western Cape:

"Heritage resources management

38.

(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as—

- a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;*
- b) the construction of a bridge or similar structure exceeding 50 m in length;*
- c) any development or other activity which will change the character of a site*

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-
- i. **exceeding 5 000 m² in extent**; or
 - ii. *involving three or more existing erven or subdivisions thereof; or*
 - iii. *involving three or more erven or divisions thereof which have been consolidated within the past five years; or*
 - iv. *the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;*
 - d) **the re-zoning of a site exceeding 10 000 m² in extent**; or
 - e) *any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,*

A Notice of Intent to Develop has been compiled and submitted to Heritage Western Cape. The Record of Decision will be submitted to the Overstrand Municipality upon receipt.

11 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 and desirability for the development arose from the property owners' vision to utilise their property to its full potential. Desirability is somewhat of a personal endeavour as the one that benefits is mostly the person/people that has the vision.

With the proposed development the property owners will be creating more housing options within Birkenhead area. There will be additional rates and taxes being collected by the OM and the construction of these proposed properties will create short term employment opportunity.

Even though it is a personal endeavour to develop the subject property, it will have a lasting positive impact on the surrounding area.

Impact on views, sunlight, and character of the area

To ensure the proposed development does not affect the views, sunlight and character of the surrounding area, the architect will utilise the Building Design and Siting Guidelines found within the Danger Point Precinct Plan. By aligning with these guidelines, it will ensure the proposed development does not have a substantial impact of the surrounding area.

Economic impact

The proposed development will have two impacts on the economic will be short term and long term. The construction phase will employ several employees that will assist in building the proposal. The OM will be continually collecting rates and taxes from these new proposed properties in the future.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal which leads to the devaluation or foregoing valued land use rights of interested and affected parties when an application is approved. The proposed development will have a



MOTIVATION

positive impact on the surrounding area and will increasing the population of the Birkenhead area.

Impact on heritage

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

Environmental impact

No listed activities in terms of the National Environmental Management Act are triggered by this proposal.

12 POLICIES AND REGULATIONS

12.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

Coastal Protection Zone

The subject property is located within the Coastal Protection Zone, 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	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas:	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid	X	N/A

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Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.		
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	The proposal is to establish 5 dwelling units that will be used for overnight accommodation.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	N/A

SCHEDULE B
ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES



MOTIVATION

A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	This is noted and will not occur on the subject property.
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	The proposed open space is set to be included into the natural conservation area of the Birkenhead sub-precinct.
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.	X	N/A
C) Council Authorisation Pending Consent Use Application / Lease	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not

**MOTIVATION**

Agreement / Applicable Tariffs as applicable	Coastal	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	The entire proposed development is located within the coastal protection zone.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The entire proposed development is located within the coastal protection zone.

12.2 Heritage Protection Overlay Zone

The subject property is located within this zone, specifically the Coastal Strip Heritage Protection Overlay Zone.

The purpose of this strip is to ensure that any land use application resulting in additional rights complies with the existing character and contextual significance, which specifically includes the 'first line of erven facing the coast' which includes the subject property.

The wall height will not negatively affect the view lines and massing that is being protected inside of this zone and no further impacts are expected.

12.3 Spatial Planning Policies

The compliance of this proposal with the applicable spatial development policies will be illustrated. These policies are instrumental in guiding spatial development and providing prescripts of what constitutes sound planning development patterns in rural areas.

PSDF**Policy objectives**

The PSDF outlines that the rural space economy is not only about agricultural development but is about a broad-based agrarian transformation, diversifying rural economic activities, tourism and not harming functional ecosystems. In line with the PSDF strategy for opening opportunities in the rural space economy the following dimensions exist.



MOTIVATION

The compliance of this proposal with the policy proposals in the PSDF which are pertinent to this proposal are recorded below.

Throughout the PSDF, economic development and sustainable urban development are widespread terms used and focussed on. Economic development is an aspect that is important to ensure the Provincial economy contributes positively to the National economy.

The continual growth of the Provincial economy means that economic activity should be stimulated in other spheres of the government. This application to add additional economic activities into areas where there are not many options available, will have a positive impact on the Overstrand Municipality as more employment options are created. This application then relates to the development of economic activity and the proposal of sustainable urban development not attempting to create sprawled growth, but rather controlled growth, which is in line with the PSDF.

MSDF

The SDF's purpose is to ensure compliance with national, provincial and district legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development land uses and direction within the urban edge. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which the development proposal should ideally attempt to synchronise with.

The Birkenhead area is seen as a small settlement within the Overstrand Municipality, with little development growth predicted and urban development should be determined in line with the Overstrand Municipal Growth Management Strategy. No further guidance is given with regard to the proposed development.

Overstrand Municipal Growth Management Strategy

The subject property is located within a 'Less than 10 Dwelling Units Per Hectare Densification Zone' and also a 'Conservancy Area'. This application is consistent with the Overstrand Municipal Growth Management Strategy as only 1 unit per hectare is being proposed.

The proposal is also to maintain the natural beauty of the area and the private open space will ensure the area is conserved and protected and included into the "Private Natural Reserves".



MOTIVATION

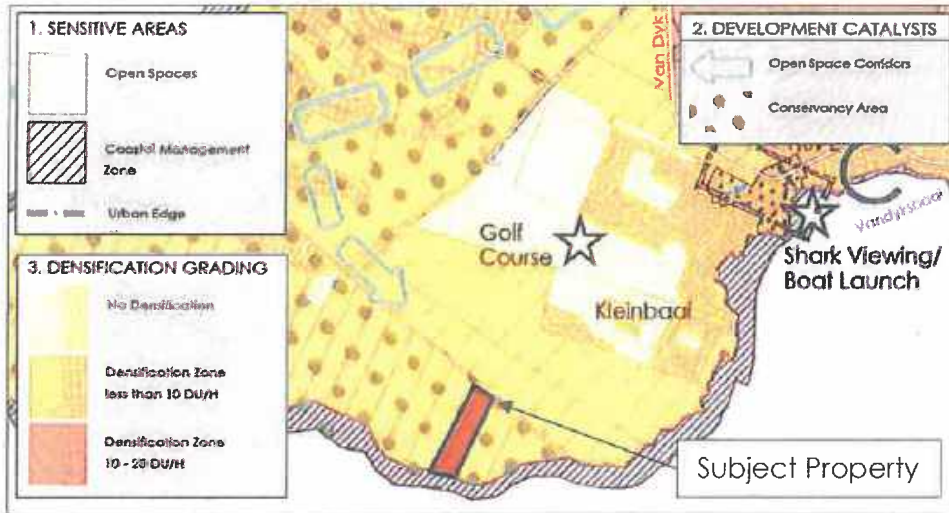


Figure 3: Overstrand Municipal Growth Management Strategy Extract

Danger Point Precinct Plan

The Danger Point Precinct Plan was developed and introduced to assist the Overstrand Municipality with their decision making for future urban development in the Danger Point study area and the Birkenhead sub-precinct. The subject property is located in the Birkenhead sub-precinct. See illustration of the surrounding area in Figure 4:

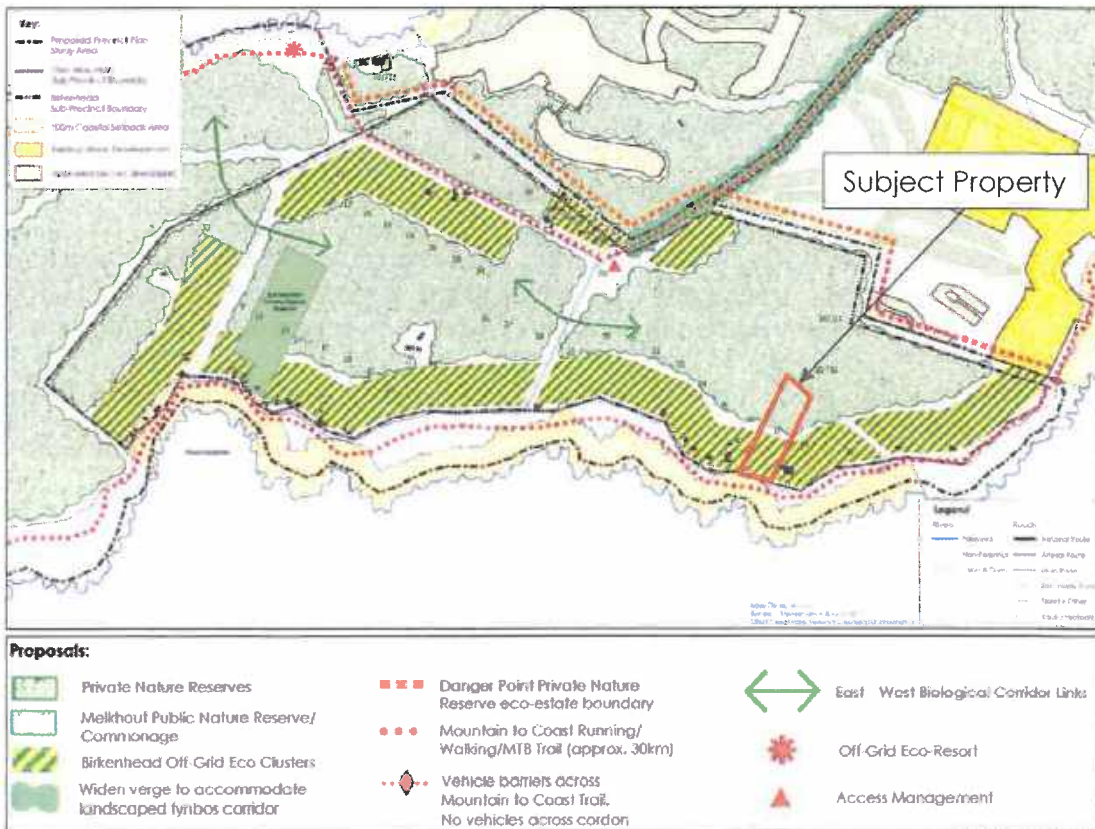


Figure 4: Birkenhead Sub-Precinct Plan Extract



MOTIVATION

In addition to assisting the Overstrand Municipality's decision making, the precinct plan also included several policies that need to be adhered to. These policies acted as guidelines to ensure the application are consistent with these policies and to ensure that sustainable developments are proposed.

The following policies are relevant to the proposed development of the subject property:

3.4 POLICY FOUR: NATURE AREAS ON PRIVATE LAND

All private land not used for urban development purposes should be included in private conservation areas on preferably, protected nature areas, and an authority such as the municipality, CapeNature, a homeowner's association or improvement district as relevant be mandated to manage them.

Implementation:

- ii. Where landowners submit development applications making the balance of their land available for inclusion in such private nature reserves should be made a condition of approval.

3.5 POLICY FIVE: OFF-GRID ECO RESORTS

- i. A limited number of off-grid low key eco-resorts in the form of **boutique hotels or bush camps and chalets providing high quality tourist accommodation** that does not detract from the wilderness experience of these locations can be considered. These should be located in the general vicinity of the north facing rocky coastline on Danger Point and on Duinefontein/Franskraal Mountains.
- ii. The number, size and scale of these resorts should be determined on each site's merits when applications are made.

Implementation:

As and when owners decide to make development applications.

4.1 POLICY ONE: DENSITY

- i. Owners who wish to develop their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3.01 hectares will be calculated as 4 hectares;

Implementation:

The density policy will be implemented on a piecemeal basis as and when those owners who wish to increase the densities on their properties submit applications.

4.3 POLICY THREE: DEVELOPMENT BOUNDARIES AND SET BACK LINES

- i. 20 m setback from all road boundaries to be landscaped with endemic vegetation;
- ii. 5m setback from all common property boundaries;
- iii. 150m maximum development line from the following street boundaries:
 - Marine Drive;
 - The western boundary of Lord Roberts Drive road reserve;



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- Van Blommenstein Street, excluding government owned properties;
- iv. Additional dwellings constructed on the parent properties in line with the proposed increased density policy may be alienated by subdivision or sectional title;
- v. Such erven or sections created in this way around individual dwellings may not be larger than 600m²; and,
- vi. Access and other requirements such as garden extensions across the parent property may be facilitated by way of servitudes in favour of the relevant users.

Implementation

- i. The setback lines should be implemented on an ad-hoc basis as conditions of approval as and when applications for further development are made; and,
- ii. Property owners may also voluntarily decide to make a portion of their properties available for incorporation into a nature reserve formally on a contractual basis or informally without submitting development applications.

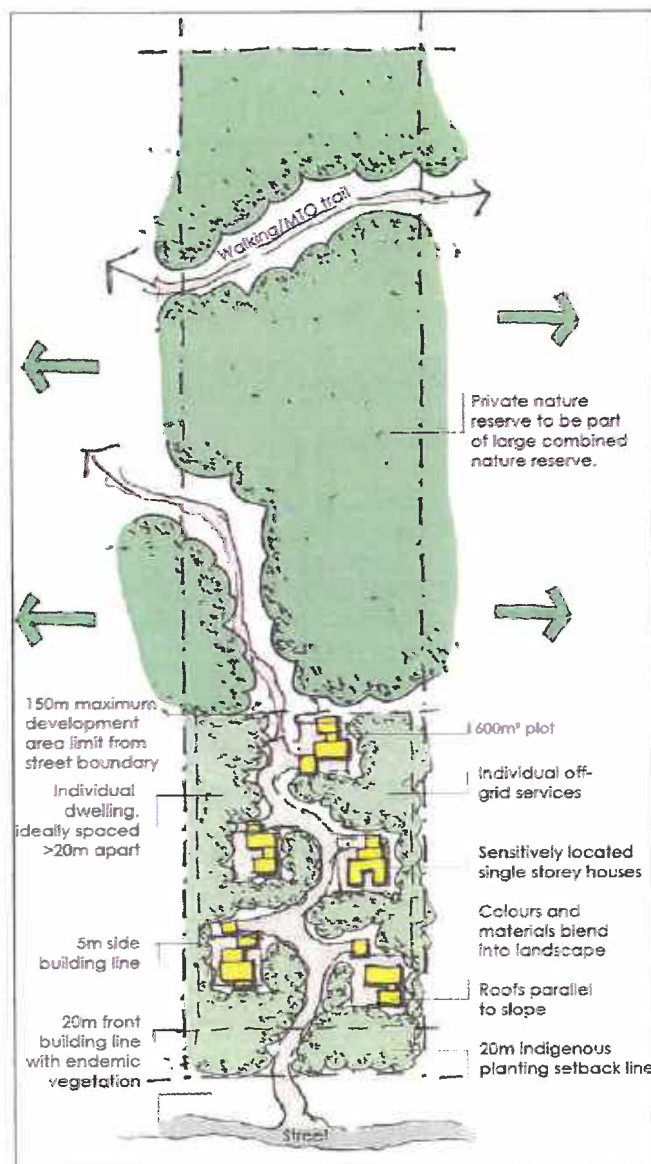


Figure 5: Plot Development Guide

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4.4 POLICY FOUR: BUILDING DESIGN AND SITING GUIDELINES

The following guidelines should be implemented in new development proposals including the submission of building plans in terms of existing rights on properties and where, relevant, retrofitted on alterations and additions to existing buildings:

- i. Location: The height of ridge lines of buildings, except for protuberances such as chimneys, to be generally below topographical ridgelines and should sit "in" rather than "on" the landscape;
- ii. Layout: Dwellings may be clustered or separated within the maximum development and set back lines;
- iii. Roofs: Slope shall be largely parallel with the average ground slope on the property;
- iv. Height: New applications for maximum number of units, as per policy one. Building plans submission in terms of existing rights: Two storeys but if visual impact of 2nd storey on viewsheds from surrounding properties and policy one to be taken into account in final design and approval;
- v. Bulk: Maximum of 250m² including all garages and outbuildings;
- vi. Massing: No single component of a building shall be larger 100m². Larger footprints shall than this should be broken into smaller components that may be attached by corridors and walkways;
- vii. Materials: Found materials on site where possible, natural, stone, wood, masonry – no cement or face bricks;
- viii. Colours: walls: natural or earthy or light-coloured plaster;
- ix. Roofs: dark –green (Graaff-Reinet) or charcoal;
- x. Lighting: all luminaires to be 50% shaded so that only downwards and not horizontal or vertical light is cast;
- xi. Boundary walls and fences: not more than 30% shall be solid with the balance as planted palisade or "clearvu" fencing;
- xii. Retaining walls: shall not be higher than 1.0m without stepping back and should be landscaped and built or faced with natural materials; and,
- xiii. Where necessary reference shall be made to the National Building Regulations and the municipality's zoning scheme and by-laws for clarity on definitions such as height and bulk.

Compliance with the Danger Point Precinct Plan:

The proposal entails the development of the subject property to accommodate 5 dwelling units. This proposal is in line with the policies set out by the precinct plan.

To ensure compliance with the building lines and setbacks the precinct plan's requirements were incorporated into the proposed development. The appointed architect spent copious amount of time designing structures that will be built as far as possible into the natural ground level below the ridge lines hiding the structures from the rear of the subject property. (Refer **Annexure C – Architectural Drawing and 3Ds**) All structures will be setback 20m from Marine Drive with a maximum development area line of 150m is being adhered to.



MOTIVATION

In addition, the initial proposal for the building design is set to adhere to the Danger Point Precinct Plan. This is proposed to be scrutinized once building plans are submitted if the proposal is approved.

Various design options were considered, it was however determined to minimize the visual impact from the North (the view of the sea) was important. DesignMen provided clear 3D elevations that illustrates the proposed development across both Erven 37 and 38 Birkenhead of which are owned by the same owner.

**MOTIVATION**

13 PLANNING PRINCIPLES

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

Spatial justice

Spatial justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the 5-dwelling units and the Private Open Space does not perpetuate apartheid spatial development imbalances.

Spatial sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. The proposed development will create new housing options in the Birkenhead area, that will increase the population in the area and will ensure the area remains viable and continually expanding.

Efficiency

This proposal is intended to maximise the usage of the subject property. With this proposal, the property owners will be able to utilise their property to its full potential. As it currently stands, the restrictive title deed conditions limit development of the subject property.

Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience as indicated within Section 11 of this report.

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 suggestion that may result in an enhance outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



RECOMMENDATION

14 EVALUATION

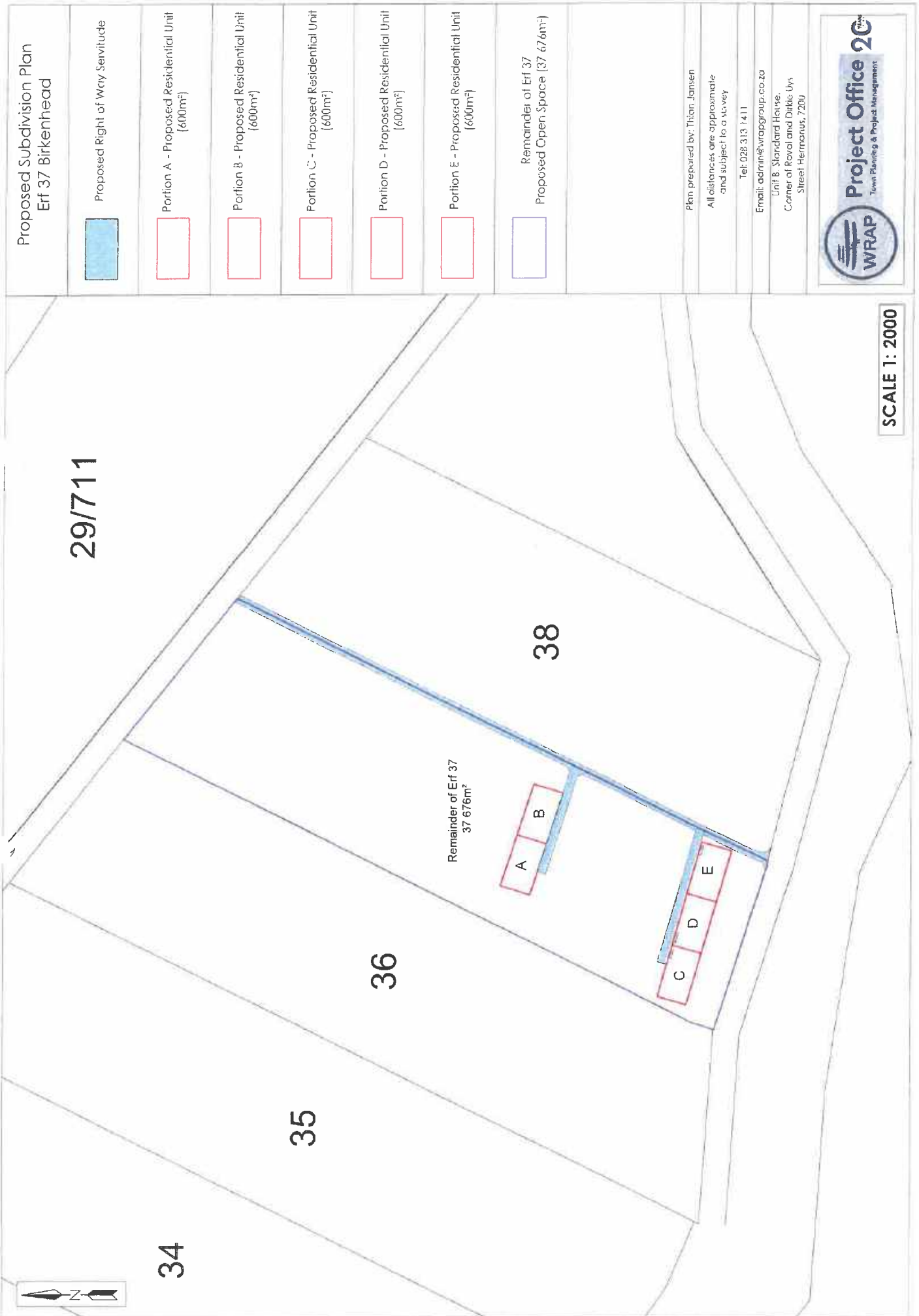
The development proposal will create additional housing opportunities in the Birkenhead area that are in line with the SDF and the provisions of the Birkenhead Precinct Plan. The proposal will allow the property owners to unlock the potential of the subject property and to utilise the majority of the subject property for conservation purposes which will add value to the subject property and the surrounding area. The proposal is also in-line with other policies and legislation that will ensure the proposal is not having a negative effect on the surrounding properties or area.

The proposal and vision of the property owners were adequately motivated and is deemed desirable for the Birkenhead area and will be compatible with the existing uses of the area.

15 RECOMMENDATION

Considering the merits of this motivation, it is recommended that the following be approved:

- 15.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.2 Rezoning** of Single Residential Zone 1: Single Residential to Subdivisional Area Zone (SA) in terms of Section 16(2)(e) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.3 Subdivision** into five (5) Residential Zone 1: Single Residential erven and one (1) Open Space Zone 3: Private Open Space erf in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.4 Permanent Departure** of side building lines of the subdivided portions in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.5 Exemption of right of way servitude** in terms of Section 26(1)(h)(v) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 15.6 Establishment of a Homeowners Association** in terms of Section 31 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



Proposed Subdivision Plan
Erf 37 Birkenhead



Proposed Right of Way Servitude

Portion A - Proposed Residential Unit
(600m²)



Portion B - Proposed Residential Unit
(600m²)



Portion C - Proposed Residential Unit
(600m²)



Portion D - Proposed Residential Unit
(600m²)



Portion E - Proposed Residential Unit
(600m²)



Remainder of Erf 37
Proposed Open Space (37 676m²)



Plan prepared by: Thim Jansen

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,

Corner of Royal and Dirkie Uys

Street Hermanus, 7200



Project Office 20
Town Planning & Project Management

SCALE 1: 2000

Doman & Kogler Attorneys
49 Riebeeck Street
Worcester
6850

Prepared by me



CONVEYANCER
CARL CHRISTIAAN BURGER
LPCM NO. 79394

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 3,200,000,00	R. 1,778,00
Reason for exemption	Category Exemption	Exemption i t o. Sec/Reg..... Act/Proc.....

DATA / CAPTURE
22 -12- 2021
LINDA NCAPAI

T 000063771 / 2021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

RONEL ELS
LPCM No. 86228

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorneys granted to him/her by

1. **CHRISTIAAN ANDRIES JOHANNES STEYN**
Identity Number 600515 5130 084
Unmarried
2. **JOHN STEYN**
Identity Number 661229 5231 084
Married out of community of property

DATA / VERIFY
04 -01- 2022
VUYELWA LAMANI

which said Power of Attorneys were signed at Pretoria on 26 October 2021 and at Melbourne Australia on 1 November 2021

Page 2

And the appearer declared that his/her said principals had, on 15 October 2021, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

BUSHGIRL (PTY) LTD
Registration Number 2020/729468/07

or its assigns, in full and free property

ERF 37 BIRKENHEAD, IN THE OVERSTRAND MUNICIPALITY,
 DIVISION CALEDON, PROVINCE OF THE WESTERN CAPE

IN EXTENT 4,0676 (FOUR COMMA ZERO SIX SEVEN SIX) Hectares

FIRST TRANSFERRED by Deed of Transfer No. T20174/1966 with Diagram SG No. 507/1965 annexed thereto and held by Deed of Transfer No. T12423/2011

- A. SUBJECT to the conditions referred to in Deed of Transfer Number T8461/1929.
- B. SUBJECT FURTHER to the special condition contained in Deed of Transfer Number T14051/1919, that the owners of Romans Bay, portion of Klipfontein, shall at all times have the right to take water for domestic purposes only from any of the fountains on the property hereunder transferred and that access thereto shall be by the public road, and that no other portion of the abovementioned property shall be accessed in any way.
- C. SUBJECT FURTHER to the conditions contained in the said Deed of Transfer Number T20174/1966, imposed by the Administrator in terms of Ordinance Number 33 of 1934:

As being in favour of the registered owner of any erf in the Township subject to amendment or change by the Administrator in terms of the provisions of Section 18 (3) of Ordinance Number 33 of 1934:

- "(a) That this erf be used for residential purposes only.
- (b) That only one dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected of this erf.
- (c) That no more than ¼ of the area of this erf be built upon.
- (d) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 15 feet to the street line which forms a boundary on this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."

WHEREFORE the said Appearer, renouncing all rights and title which the said

- 1. CHRISTIAAN ANDRIES JOHANNES STEYN, Unmarried
- 2. JOHN STEYN, Married as aforesaid

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

BUSHGIRL (PTY) LTD
Registration Number 2020/729468/07

or its assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R3 200 000,00 (THREE MILLION TWO HUNDRED THOUSAND RAND).


IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, 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 at CAPE TOWN on

17 DEC 2021


a.g.

In my presence


REGISTRAR OF DEEDS





Doman & Kogler Attorneys
49 Riebeeck Street
Worcester
6850

F 7, 6
①
B

Prepared by me

CONVEYANCER
WILLEM HERMANUS DOMAN
80915 LPCM

POWER OF ATTORNEY TO PASS TRANSFER

We, the undersigned

1. **CHRISTIAAN ANDRIES JOHANNES STEYN**
Identity Number 600515 5130 084
Unmarried
2. **JOHN STEYN**
Identity Number 661229 5231 084
Married out of community of property

do hereby nominate and appoint

Ronel Els LPCM 86228 and/or Michelle Van Wyk LPCM 80385 and/or Carl Christiaan Burger LPCM 79394 and/or Robert Christopher Ferrandi LPCM 83111 and/or Leanne Kim Williams LPCM 96605 and/or Tertia Lizette Kriel LPCM 86380 and/or Harris Geoffrey Hardcastle LPCM 98545 and/or Andrea Cristine Tomasicchio LPCM 87225

with power of substitution to be our true and lawful Attorney and Agent in our name, place and stead to appear at the Office of the REGISTRAR OF DEEDS at CAPE TOWN or any other competent official in the Republic of South Africa and then and there to act as our Attorney and Agent and to pass transfer to:

BUSHGIRL (PTY) LTD
Registration Number 2020/729468/07

the property described as:

ERF 37 BIRKENHEAD, IN THE OVERSTRAND MUNICIPALITY,
DIVISION CALEDON, PROVINCE OF THE WESTERN CAPE

IN EXTENT 4,0676 (FOUR COMMA ZERO SIX SEVEN SIX) Hectares

HELD BY Deed of Transfer T12423/2011



the said property having been sold by us on 15 October 2021, to the said transferee/s for the sum of R3 200 000,00 (Three Million Two Hundred Thousand Rand)

and further cede and transfer the said property in full and free property to the said Transferee; to renounce all right, title and interest which the Transferor heretofore had in and to the said property, and generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, to all intents and purposes, as the Transferor might or could do if personally present and acting therein; hereby ratifying, allowing and confirming all and whatsoever the said Agent/s shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at Melbourne ^{AUSTRALIA} on 1 November 2021
in the presence of the undersigned witnesses.

AS WITNESSES:

1. *[Signature]* *[Signature]*
JOHN STEYN

MARY FRANCES NICHOLSON
1 Calgary Court, Glen Waverley Vic
Legal Assistant

2. *[Signature]*
ANNA MARIA STEYN

CERTIFICATE BY NOTARY PUBLIC

Signed before me on this 1st day of November 2021 by the abovementioned JOHN STEYN who identified himself to me by production of his AUSTRALIAN passport No. N8962772.

Signature *[Signature]*
Full names: CLIVE MAXWELL NICHOLSON
1 Calgary Court, Glen Waverley
Capacity: Victoria, Australia
Notary Public
Telephone No. +61 419 004 875
Address: _____



[Handwritten mark]





APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country
Australia

This public document

2. has been signed by
Clive Maxwell Nicholson

3. acting in the capacity of
Notary Public

4. bears the seal/stamp of
Clive M. Nicholson, Notary Public

Certified

5. at Melbourne
6. the 12th day of November, 2021

7. by Gail Booker
Department of Foreign Affairs and Trade

Melbourne
Australia

8. No. MFAF-RI-125937

9. Seal/Stamp

10. Signature

G. Booker



This Apostille only certifies the authenticity of the signature (where applicable) and the capacity of the person who has signed the public document, and, where appropriate, the identity of the seal or stamp which the public document bears. This Apostille does not certify the content of the document for which it was issued. This Apostille can be verified at <https://orao.dfat.gov.au/pages/verifyapostille.aspx>

R



Doman & Kogler Attorneys
49 Riebeeck Street
Worcester
6850

Prepared by me


CONVEYANCER
WILLEM HERMANUS DOMAN
80915 LPCM

POWER OF ATTORNEY TO PASS TRANSFER

We, the undersigned

1. **CHRISTIAAN ANDRIES JOHANNES STEYN**
Identity Number 600515 5130 084
Unmarried
2. **JOHN STEYN**
Identity Number 661229 5231 084
Married out of community of property

do hereby nominate and appoint

Ronel Els LPCM 86228 and/or Michelle Van Wyk LPCM 80385 and/or Carl Christiaan Burger
LPCM 79394 and/or Robert Christopher Ferrandi LPCM 83111 and/or Leanne Kim Williams
LPCM 96605 and/or Tertia Lizette Kriel LPCM 86380 and/or Harris Geoffrey Hardcastle
LPCM 98545 and/or Andrea Cristine Tomasicchio LPCM 87225

with power of substitution to be our true and lawful Attorney and Agent in our name,
place and stead to appear at the Office of the REGISTRAR OF DEEDS at CAPE
TOWN or any other competent official in the Republic of South Africa and then and
there to act as our Attorney and Agent and to pass transfer to:

BUSHGIRL (PTY) LTD
Registration Number 2020/729468/07

the property described as:

ERF 37 BIRKENHEAD, IN THE OVERSTRAND MUNICIPALITY,
DIVISION CALEDON, PROVINCE OF THE WESTERN CAPE

IN EXTENT 4,0676 (FOUR COMMA ZERO SIX SEVEN SIX) Hectares

HELD BY Deed of Transfer T12423/2011





Page 2

the said property having been sold by us on 15 October 2021, to the said transferee/s for the sum of R3 200 000,00 (Three Million Two Hundred Thousand Rand)

and further cede and transfer the said property in full and free property to the said Transferee; to renounce all right, title and interest which the Transferor heretofore had in and to the said property, and generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, to all intents and purposes, as the Transferor might or could do if personally present and acting therein; hereby ratifying, allowing and confirming all and whatsoever the said Agent/s shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at Pretoria on 26 Oct 2021
in the presence of the undersigned witnesses.

AS WITNESSES :

1.	 <hr/>	 <hr/> CHRISTIAAN ANDRIES JOHANNES STEYN
2.	 <hr/>	 <hr/> JOHN STEYN



Ben S
Transfer Duty

TDREP

Declaration

Reference Details

Transfer Duty Reference Number: TDE048E895

Details

Details of Seller / Transferor / Time Share Company		Details of Seller / Transferor / Time Share Company	
Surname / Registered Name	STEYN	Full Name	CHRISTIAAN ANDRIES JOHANNES
ID Number	6005155130084	Date of Birth (CCYYMMDD)	1960-05-15
Passport Country	ZAF	Passport Number	
Company / CC / Trust Reg No.		Marital Status	NOT MARRIED

Details of Seller / Transferor / Time Share Company		Details of Seller / Transferor / Time Share Company	
Surname / Registered Name	STEYN	Full Name	JOHN
ID Number	6612295231084	Date of Birth (CCYYMMDD)	1966-12-29
Passport Country	AUS	Passport Number	NB982772
Company / CC / Trust Reg No.		Marital Status	M.O.C OF PROPERTY
Marital Notes if applicable	South Africa	Spouse Initials	

Details of Purchaser / Transferee		Details of Purchaser / Transferee	
Full Name	BUSHGIRL (PTY) LTD	Surname / Registered Name	BUSHGIRL (PTY) LTD
Company / CC / Trust Reg No.	202072946807	Marital Notes if applicable	

Details of the Property			
Date of Transaction/Acquisition (CCYYMMDD)	2021-10-15		
Total Fair Value	R	3 200 000.00	Total Consideration
			R 3 200 000.00

Calculation of Duty and Penalty / Interest	
Transfer Duty Payable on Natural Person	R 3 200 000.00

Property Description	
1	ERF 37 BIRKENHEAD, IN THE OVERSTRAND MUNICIPALITY, DIVISION CALEDON, PROVINCE OF THE WESTERN CAPE IN EXTENT 4,0676 (FOUR COMMA ZERO SIX SEVEN SIX) Hectares

Receipt

Receipt Details		Receipt Details	
Transfer Duty Reference Number	TDE048E895	Receipt No.	1200895954
Receipt Amount	R 168000.00		

Declaration by Convoyancer / Attorney

I certify that this is a true copy of the transfer duty declaration / receipt / exemption certificate drawn from the SARS eFiling site, which will be retained by me for 5 years from the date of registration of transfer.

Willem Hermanus Doman
 Please ensure you sign over the 2 lines of "X" above

Date (CCYYMMDD) 2021/11/24

For enquiries go to www.sars.gov.za or call 0800 00 SARS (7277)

A Conradie

37 GBH



From: Malan Schrecker
Sent: Friday, 30 September 2022 12:16
To: Alida Conradie
Cc: Hester Schrecker
Subject: Erven 37 and 38, Birkenhead

TP - n/heard
(5. Jd n/heard)

Comment from
AM and HS SCHRECKER
Address: Erf 35, Birkenhead
Mobile phone number

Regarding the application for rezoning etc. of Erf 37, we place the following on record:

→ applicant has, inter alia, requested that a potable water supply facility (i.e. potable water pipeline) be provided by the Local Authority.

My wife, HS Schrecker, registered owner of Erf 35, Birkenhead, and I are concerned that we may be expected to share in the cost of this pipeline.

We object to any future demand that we, as neighbours, help bear the cost of a potable water supply facility.

We have invested heavily in our private rainwater system and we believe we can remain self-sufficient at present, and hopefully, also in future years.

There is merit in a pipeline that can provide added security against the threat of veld fires.

Regards,
AM Schrecker Pr Eng

ERF 37 Birkenhead
COLLABORATOR NO.
GBH 37
SCAN NO.
1755653
FILE NO.

30 SEP 2022
TP

TP N. Theart 1145
(S. van der Merwe) 37 GBH

FILE NO.	AF 37	2/18
Birkenhead		
SCAN NO.	Arthur 37	
COLLABORATOR NO.	1756404	

Alida Conradie



From: Alida Conradie
Sent: Friday, 30 September 2022 22:51
To: Alida Conradie
Subject: ERF 37, 47 MARINE DRIVE AND ERF 38, 49 MARINE DRIVE - APPLICATIONS FOR

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE : MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSH GIRL (PTY) LTD

Attachments: Water-Plans-Sep2022.docx; COMMENTS-COVENTIONAL APPROACHES FOR FUTURE DEVELOPMENT VERSUS A DIFFERENT APPROACH-September2022.docx

For Attention: Mr SW van der Merwe – Senior Town Planner

- Sent by A Swanepoel for and on behalf of:
1. Arthur Swanepoel Realisasie Trust - Email address arthur.s@mweb.co.za - Contact Number
 2. Birkenhead Owners Association - Email address arthur.s@mweb.co - Contact Number

- My personal interest stems from the following roles I have:
1. Trustee - Arthur Swanepoel Realisasie Trust being the owner of Erf 36 Marine Drive that is adjacent to Erf 37 – being one of the erven for which the first Application is being made for.
 2. Secretary: Birkenhead Owners Association

Dear Mr van der Merwe

I have no objections to either of the Applications for Erf 37 & 38 – As per “Subject”

I welcome that there is (at last) interest to invest and enhance the sparse build environment of the Birkenhead Peninsula, given the many advantages for such improvements.

I do, however raise the following for your awareness/attention:

With reference to the WRAP Project Office - Town Planning & Project Management – Documents made available:

Section 9. SERVICES:

Electricity: The Erf 38 Property is connected to the Municipal Electricity network but not to my awareness so, for Erf 37 (Being a vacant erf)?

Will the current supply have adequate capacity for all the existing supply points, as well as for the new, additional, sub-divided erven ?

Water: Will there be sufficient capacity for the new, additional, sub-divided erven for both erven 37 & 38?

Please refer the two attachments:

- Water-Plans-Sep2022 which I assume will also apply to the Birkenhead Peninsula
- COMMENTS - CONVENTIONAL APPROACHES FOR FUTURE DEVELOPMENT VERSUS A DIFFERENT APPROACH-September2022

Kindly acknowledge receipt of this submission.

Thank you.

Kind regards

01 OCT 2022

AS

Arthur Swanepoel

SOURCE: Final 5 year IDP 2017_2021 approved-20170726

8.1 Water Services Development Plan (WSDP)

Status

The first WSDP for Overstrand Municipality was approved by Council in May 2009.

The latest version of the Overstrand WSDP was for 2016/17, and was approved by Council in May 2016.

- The overarching objective of the WSDP is to progressively plan and ensure efficient, affordable, economical, and sustainable access to water services to all residents, to promote economic development.

SOURCE: Final IDP review 2013-14 approved

WATER AND SANITATION

Our purpose

To provide consumers with potable water and appropriate sanitation services.

Water services quality

- We commit ourselves to supply - where the infrastructure allows - water that meets the standards set out for drinking water (SANS 0241) and treat effluent to a standard prescribed by law before disposal thereof back into our water sources.
- We have a water quality programme in terms of which potable water is frequently sampled at various places and tested by an independent laboratory. The results of our treated water and effluent are reported monthly to the Department of Water Affairs and thus monitored nationally.
- We strive to annually obtain Blue Drop status for all our water purification works and Green Drop for our waste water treatment plants

- Develop and maintain the water services infrastructure to ensure all households, including indigents, have access to clean and reliable basic water supply and appropriate sanitation services.
- Ensure accurate and reliable metering systems and an open and transparent approach to the cost of water services.

COMMENTS ON THE CONVENTIONAL APPROACHES FOR FUTURE DEVELOPMENT VERSUS A DIFFERENT, MORE WORKABLE APPROACH

The following was included in the Precinct Plan – 2014

Important development principles:

- Proposals for future development must apply equally to all property owners.
- Proposals must be capable of working on an individual basis in first instance.

Comment:

This conventional approach - relying on unanimity (agreement) by all "Interested & Affected Parties" – is unrealistic; hence unachievable.

This is primarily, because different owners have different aspirations as to how they want to live and utilise their properties and varying financial capabilities – referring mainly to the owners of some 40 Residential-zoned Birkenhead erven (often referred to as "the Birkenhead Small-holdings")

The likely categories of these owners being:

- A. Owners who have no aspiration for any future developments and accept the Status Quo of the Precinct Plan's "Off-grid" services only viz:
 - "Only harvested rainwater" being available as their only resource and
 - "No electricity"
- B. Owners who have no aspiration for any future developments - or may have, but have no financial capability to do so - but would like to have access to:
 - A Potable water supply (Water being "fit for Human Consumption" (not being so for "Harvested rainwater" as per the Water Research Council) and
 - Electricity
- C. Owners who have aspiration for future developments and would like to have access to:
 - A Potable water supply (Water "fit for Human Consumption" (not being so for "Harvested rainwater" as per the Water Research Council) and
 - Electricity (with varying numbers for such delivery points depending on the number of sub-divided erven they have in-mind)

The argument and thinking for this approach (in favour of the usual, conventional approach) for the development of conventional Infrastructure Services, is that:

1. No person should pay for such development costs who elects not to want to use such services that others may want to use (hence being unfair) and
2. No person, who wants to have access to such services, should now be denied the opportunity, because many other persons elect to not support a future development for additional capacity for conventional Infrastructure Services.

Given the aforementioned reality a different approach is required in order for Overstrand to be able to determine and quantify any future Development level for conventional Infrastructure Services, as the nature of such developments, cannot be done in small increments and need to be done for a longer term period.

Applications for even 3/ & 38 for a potable water-supply – by a supply from the additional supply-line that was primarily developed for I & J along Van Blommenstein Street - cannot be seen as a viable, longer-term solution for other possible applications - similarly for “Application For Removal Of Restrictive Title Deed Conditions, Rezoning Sub-Division And Departure” for sub-division as per C. above – given its limited capacity to service too many additional erven.

To enable “fairness & equity” across all owners in this “C-category”, who may apply for sub-division in the foreseeable future - Overstrand Municipality must be able to accommodate all such applications fairly and uniformly.

The implication for the aforementioned is that Overstrand Municipality cannot plan any future Development level for conventional Infrastructure Services, in a vacuum; hence it must obtain the relevant information from owners, as per A. to C. above.

What this will require w.r.t owners – relative to the longer-term planning for such conventional Infrastructure Services – is that they are granted a once-off opportunity, to opt for access to such anticipated development/expansion of the planned-for, conventional Infrastructure Services.

Owner Development Bulk Contributions could be according to Overstrand Municipality’s Bulk Contribution Policy and Tariffs.

To legalize any such Infrastructure services rights, if granted, the way therefore may be compulsory Title Deed additions, as prescribed by Overstrand Municipality

Any declining by owners of such a once-off option, implies the risk for them, never ever having access to any such conventional Infrastructure Services, unless there is available capacity for what ever reason such additional capacity may have arisen; either by design for a marginally greater capacity; or owner cancellation of access to such services.

In such a situation, it would require a reasonable number of users who, initially, may have declined such a once-off option, to later persuade Overstrand Municipality to again develop additional conventional Infrastructure Services.

Such developments would invariably, be significantly more expensive due to “Cost of delay” as well as later changes to Overstrands Tariff Policy & Tariffs Rates for Development Contributions.



37 GBH

BIRKENHEAD

TP. n. Theart
(S. Ud n. one)

Conservancy
Bewarea

BIRKENHEAD CONSERVANCY COMMENTS ON THE PROPOSED

Erf 38, 49 Marine Drive & Erf 37, 47 Marine Drive, Birkenhead, Application for the Removal of Restrictive Conditions, Rezoning, Subdivision and Departure.

FILE NO.	Erf 37 Birkenhead
SCAN NO.	Bewarea 37
COLLABORATOR NO.	1756385

30 September 2022

Version 1.0

The Birkenhead Conservancy (BC) has taken note of the abovementioned application received from WRAP Project Office Town Planning and Project Management on the 26th August 2022 and would like the following comments to be considered.

One of the four title deed conditions that prohibit the land use rights sought by the property owners is

Condition C(a) ***"That this erf be used for residential purposes only.***

This statement is quite clear and unambiguous. We the Birkenhead Conservancy (BC) support this clause and accept that residential units development is being planned.

However, in terms Spatial Development Framework (SDF) for the Birkenhead Township it was previously agreed that only one Residential Unit would be allowed per full complete hectare. This in turn means that only 4 Residential units with the zoning of SR1 (Single Residential Zone One) can be meet this stipulation. This is application of 5 units for each property is hence out of line and that only 4 Units would be accepted from a Birkenhead Conservancy (BC) perspective.



Birkenhead Conservancy / Bewarea Steering Committee
www.birkenheadconservancy.org

P.O Box 939, Gansbaai, 7220

Page 1 of 4

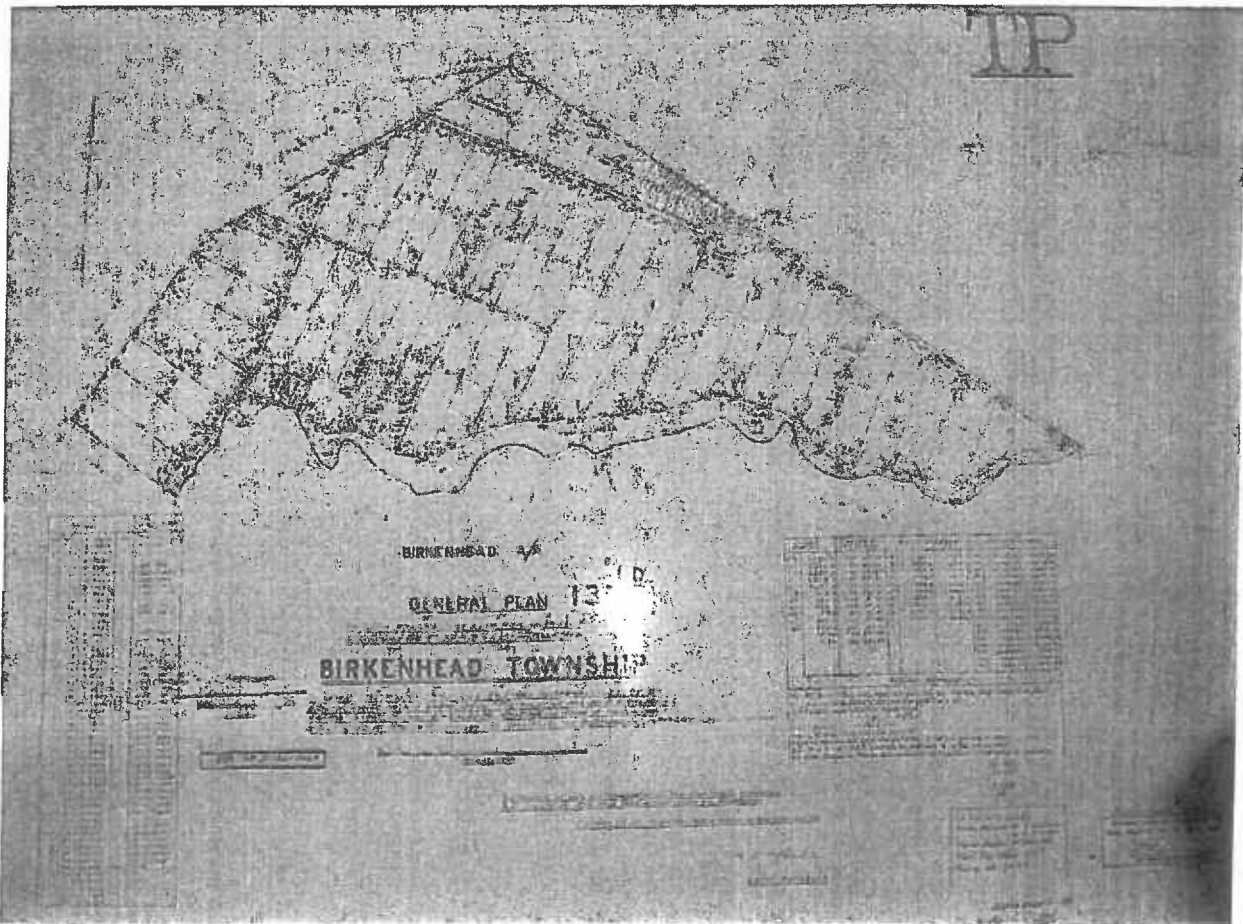
01 OCT 2022 P

BIRKENHEAD CONSERVANCY (BC)

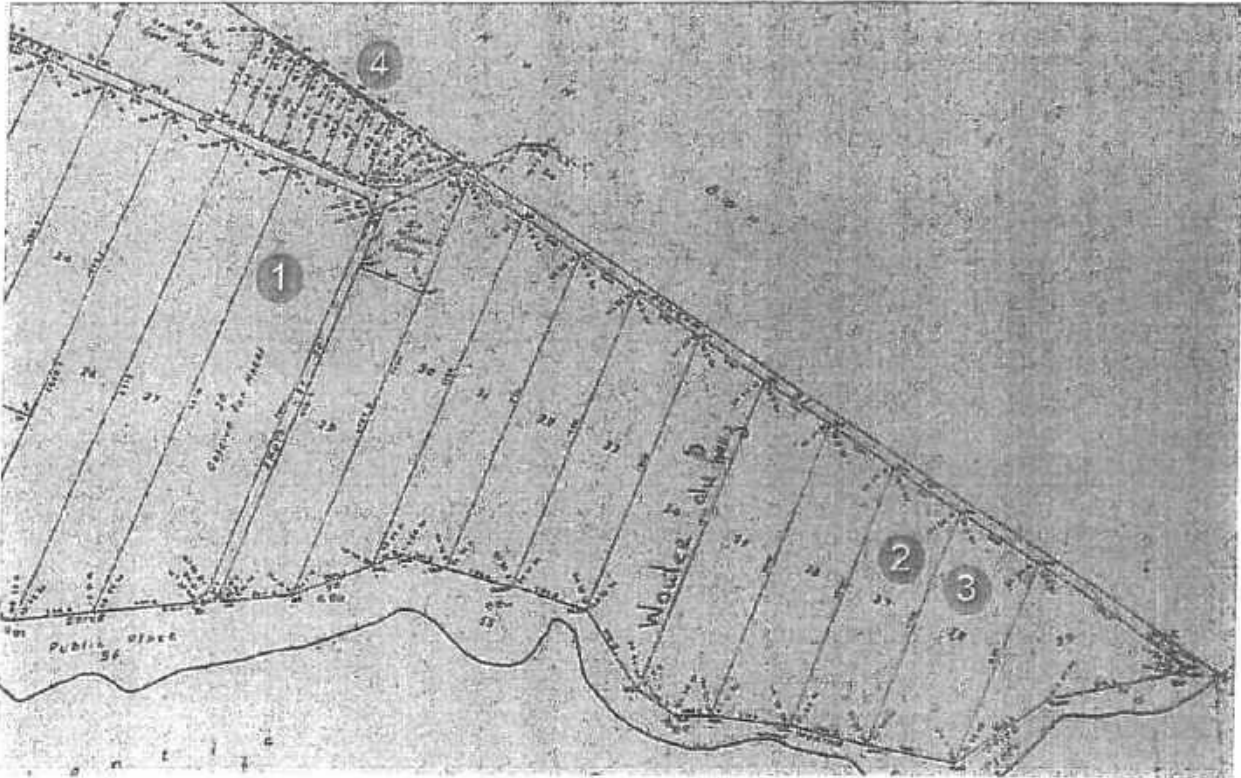
The application for the rezoning of the existing building structure positioned on Erf 38 from SR1 to General Residential Zone 3 is also unacceptable for the following reasons.

Reason 1: The Birkenhead Township was carefully planned and constituted on the 21st March 1940 (Vide diagram Number 4062/1939 annexed to Certificate of the Registered Title No 2597)

In this Birkenhead Township Plan, areas for various activities were clearly defined.



**BIRKENHEAD CONSERVANCY
(BC)**



Point 1: The plan already made provision for a Hotel along Smuts Drive on Erf 28.

Point 2 & 3 : These plots were clearly earmarked to be non-business related Residential Units.

Point 4: These plots were designated for business and or trading opportunities.

Based on the above no additional Hotel and or business orientated activity areas were envisioned. So why now should we now simply accept this deviation to this Township plan 82 years later.

Reason 2: If we the owners of the plots allow this material rezoning change to take place outside this constituted Township Plan we would then open ourselves to a possible flood of other Zoning change applications.

Reason 3: If this material zoning change would be approved then it would mean that precedence would have been set for this Birkenhead Township opening its way for other deviations to the set plan

Reason 4: Operating a business enterprise in this unique pristine coastline would create more vehicular traffic along the Marine Drive gravel road leading to more noise and dust pollution.

**BIRKENHEAD CONSERVANCY
(BC)**

Reason 5: The proposed development of 8 Guest Rooms, 9 Residential Units and 1 Hotel can be seen to be operating as one business rental and accommodation enterprise with restaurant facilities.

Reason 6: The application of a Liquor Dispensing licence adjacent to these residential temporary accommodation units may bring about un-social behaviour.

Reason 7:

The proposed development of 8 Guest Rooms, 9 Residential Units and 1 Hotel can be seen to be operating as one business rental and accommodation enterprise with restaurant facilities.

Reason 8:

The proposed development of 8 Guest Rooms, 9 Residential Units and 1 Hotel will increase the number of people allocated to the running a servicing of these units. 24 Hour Staff, Maintenance, Managers and Restaurant operations together with the total number of residence for these two plots could exceed (16+36+8) 60 people at any one time without other external visitors arriving.

Reason 9:

Any Subdivision of the original plots as defined on the Birkenhead Township plan will be a once off occurrence once the maximum permissible units per hectare , per plot has been met. A clause would have to be inserted to ensure that no further subdivision of these subdivided plots will be allow. This is key and a

Reason 10:

The purchasing of plots in this area by owners was all based on this constituted Birkenhead Township known plan and now we are introducing uncertainty.

Summary

In summary, the Birkenhead Conservancy is not against the development of these Subdivided Rental Units provided that the development remains within the ambit of prior determinations and consensus achieved for this this unique, historic balk head peninsula.

We are however against another potential Hotel business enterprise residing amongst the Residential Units in this newly to be rezoned area deviating from the original 1940 Birkenhead Township plan.



1154

11/18

37 GBH

TP. D. Theart
(S. Ud n. n. n.)

Erf 38, 49 Marine Drive & Erf 37, 47 Marine Drive, Birkenhead, Application for the Removal of Restrictive Conditions, Rezoning, Subdivision and Departure.

30 September 2022

As a resident and property owner of Erf 17 Marine Drive, Birkenhead we object to any development of either Hotels or lodges or residential units. We agreed not to develop or exceed one ha per ha. The zone1 single residential properties should adhere to one house per ha if the property is 4 ha.

With this remarkable landscape and uniquely diverse culture in the Overberg, it is not difficult to see why the responsibility of our landowners is to conserve and protect our environment from uncontrolled development for future generations by preventing environmental ruin.

We live here because it is unique and we want to be close to nature, but nature is disappearing. We need to consider the carrying capacity of this peninsula. Many humans are creating impacts that are destroying the non-human denizens and the reasons we live here. We count on environmental conservation to manage and protect our public lands, not bend backward to developers to make a lot of money at the expense of the fauna and flora that makes this place so special and unique. What legacy do we leave our children? Don't we want them to experience wild nature as we've been privileged to do?

Michelle Ritter

Owner of Erf 17 , 15 Marine Drive

FILE NO.	37
	Birkenhead
SCAN NO.	Ritter 37
COLLABORATOR NO.	1756253

01 OCT 2022

TP



TP1155 Incond
(S. ud w Name)
37 GBH

FILE NO.	EF 37 ✓	12/18
	Birkenhead	
SCAN NO.		
	Da Silva 37	
COLLABORATOR NO.		
	1756242	

Alida Conradie

From: Alida Conradie
Sent: Saturday, 01 October 2022 00:46
To: Alida Conradie
Subject: 37GBH (4124/2022) 38GBH Comments on the proposed development of Erf 38, 49 Marine Drive & Erf 37, 47 Marine Drive, Birkenhead

Hi Alida,

Application for the Removal of Restrictive Conditions, Rezoning, Subdivision and Departure.
Erf 38, 49 Marine Drive & Erf 37, 47 Marine Drive, Birkenhead

As the owner of Erf 16, 37 Van Blommenstein Road, Birkenhead I would like to add my comments for consideration on the above matter.

1. The development of another Hotel & Lodges and Restaurant is not aligned with the Township Plan of 1940.
2. The subdivision of rental units is accepted but that they should be reduced from 5 Rental Units to the agreed 4 Rental Units per hectare for each Erf 37 & Erf 38.
3. The changing of the Zoning for Erf 38 to Subdivisitional Area Zone (SA) from Single Residential Zone 1 is not acceptable as it will encourage other business to operate within these Zones along the peninsula.
4. The Subdivisitional Area Zone (SA) may in future also allow for more subdivisions of land within the zone.
5. We have already a defined a site reserved for a hotel development along Smuts Road on Erf 28 which should be explored as there is already easily tarred road access.
6. Erf 37 & Erf 38 Residential Zone One restricts the occupants to a Single Residential Family Units
7. Transient Lodgers as occupants cannot according to the below temporarily occupy these Single Residential Units on any short day to day temporary accommodation
8. The legal aspects surrounding Single Residential Zone 1 (SR1) are applicable and defined below

The Overstrand Land Use Scheme is the regulatory document.

It had been promulgated as Schedule 2 of the Overstrand Municipality Municipal Land Use Planning Amendment By-law, 2020

I refer to the development parameters under Residential Zone 1, read together with the applicable definitions (in the front) and the general requirements in terms of Section 16.

Specifically refer to the requirements pertaining to guest rooms, guest houses and self-catering. All of the aforesaid to be conducted from a dwelling house under the primary rights or second dwelling unit (in some cases).

I am also aware that the Land Use Scheme does not override any conditions of title. As such, even though the Land Use Scheme provides for primary rights in some cases an application for removal or amendment of a restrictive title condition might be applicable.

Definitions:

“business premises” means a property from which business or services are conducted and includes a shop, a supermarket, a restaurant, the sale of alcoholic beverages, a plant nursery, offices, service trade, a financial institution and building for similar uses and the sale of any small and big items but excludes a

01 OCT 2022

place of assembly, a place of entertainment, an institution, a service station, a motor repair garage, an industry, an industrial hive, a noxious trade, a risk activity, an adult entertainment business or a bottle store

“consent use” means a land use permitted in terms of a particular zoning with the approval of a Municipality;

“dominant use” means the primary or consent and other lawful uses permitted on the property;

“dwelling house” means a self-contained, inter-leading group of rooms used for the accommodation and housing of a single family (together with adequate sanitary facilities and a kitchen and such outbuildings as are ordinarily used therewith), provided further that a dwelling house may not have more than two kitchens;

“dwelling unit” means a unit containing one or more inter-leading rooms with adequate sanitary facilities and a kitchen, used for the accommodation and housing of a single family, and may be included in or separate from the main building on the property;

“guest rooms” means a limited number of rooms forming part of a dwelling house that are let to transient guests or lodgers, provided that the dominant use of the dwelling house/unit concerned shall remain the accommodation of a single family;

“land use” means the purpose for which land is or may be utilised lawfully in terms of a zoning scheme or in terms of any other approval, permit or consent issued by a competent authority, and includes any conditions related to the land use;

“lodging” means bedroom accommodation which is available for payment and the services ordinarily related to such accommodation, and “lodger” has a corresponding meaning;

“occupant” means any person who inhabits a building, structure or land, or any person who is in charge of it or manages it, and includes the agent of any person absent from the area or whose whereabouts are unknown

“outbuilding” means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit and includes a building designed to be used for the garaging of motor vehicles, for storage purposes and any normal activities in so far as these are usually and reasonably required in the connection with the main dwelling as well as the accommodation of recreational activities such as a pool room, braai room, lapa and gazebo and the practising of hobbies (which may not cause a nuisance and/or disturbance and/or noise and/or damage to a neighbouring property or properties or premises); outbuildings are primary uses under each zoning except in open space zones where the Municipality may permit outbuildings should it be deemed necessary;

“overlay zone” or “overlay zoning” means a category of zoning applicable to a particular land unit or area, which:

- (i) stipulates development parameters for a land unit or area, in addition to the underlying zoning or base zone requirements;
- (ii) may include further development parameters in a particular area or zone

which may be more or less restrictive than for land units which are not covered by the overlay zoning;

“owner” in relation to property means a person or entity in whose name the property is registered in the deeds registry;

“primary use” in relation to land or buildings means any use specified in this land use scheme as a primary use, meaning that it is a use that is permitted without the need to first obtain the Municipality’s consent;

“room” means a part or division of a building enclosed by walls, floor, roof and ceiling;

“second dwelling unit” means a dwelling unit which may, in terms of this land use scheme, be erected on a land unit where a dwelling house is permitted, and such second dwelling unit may be a separate structure or may be contained in the same structure as the dwelling house, provided that:

(i) the second dwelling unit must be situated on the same land unit;

(ii) the second dwelling unit shall comply with the requirements specified in this land use scheme;

(iii) the Municipality may require the payment of a bulk services levy or such other levy as it may determine when permitting the erection of a second dwelling unit;

(iv) where a wendy house or outbuilding is used for accommodation purposes, such wendy house or outbuilding shall be considered a second dwelling unit for the purpose of this scheme;

“self-catering accommodation” means sole occupancy unit(s) for transient guests, consisting of one or more rooms and self-contained public areas, e.g. kitchen, dining area and lounge;

“single family” (a) one person maintaining an independent household; or

(b) two or more persons related by blood, marriage or civil union maintaining a common household; or

(c) not more than five unrelated persons without dependants maintaining a common household; but does not exclude up to six foster children, or dependants under legal guardianship as part of a household;

“tourist accommodation” means the letting of rooms or individual unit(s) (including a dwelling house/unit) on a temporary basis to transient guests where a daily or weekly tariff is applicable and includes a guest house, backpackers establishment, camp sites, and associated amenities, provided that the use complies with the requirements of any other relevant legislation;

“used” in addition to its ordinary meaning includes designed or intended to be used;

“use right” in relation to a land unit means the right to utilise the land in accordance with its zoning, including any lawful approval for a departure, consent use, condition of approval or any other approval granted in respect of the rights to utilise the land;

“use zone” means that part of the scheme which has been shown on the zoning map by means of a specific notation, bordering or symbol or any other distinguishing manner in order to identify the permitted land use;

“utilisation” in relation to land means the lawful use of land for the purpose or for the improvement of land as prescribed and “utilise” has a corresponding meaning;

“zoning”, when used as a noun, means the category of directives regulating the development of land and setting out the purpose for which the land may be used, as

determined by this land use scheme;

“zoning map” means an approved map or maps indicating the land units within the Municipality’s area of jurisdiction and applicable zoning and overlay zones as contemplated in section 1.2.2

“zoning scheme” means the law for the zoning of land which has been approved in terms of Planning Law, consisting of Overstrand Municipality Land Use Scheme regulations and a register, with or without a map as contemplated in Chapter 1;

GENERAL PURPOSE OF THE LAND USE SCHEME

Is to provide control over use rights

Uses not permitted

3.2.3 Subject to any provisions to the contrary in the Land Use Scheme and/or any statutory condition of title, property may not be used for any purpose without the approval of the Municipality.

Additional dwelling units

5.1.3 The provisios of Chapter 16.10 apply

CHAPTER 6: RESIDENTIAL ZONES

6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)

Use of the property

6.1.1 The following use restrictions apply to property in this zone:

- a) **Primary uses** are: crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.

9. Self-catering

The provisions of Chapter 16.10 apply

10. Self-catering accommodation ***

16.10.21 The following provisions shall apply where a portion of the property is used for the purposes of self-catering accommodation:

- 11.a) It shall be utilised for single family occupation;
- 12.b) Self-catering shall be restricted to either the main dwelling or the second dwelling unit, if a second dwelling unit exists on the property (but not both);
- 13.c) Self-catering will not be permitted if there is a home occupation or guest rooms;
- 14.d) No activities constituting a source of nuisance shall be carried out, and

15. e) The Municipality may impose additional conditions in order to minimise any potential public nuisance.

16. Point 1.

17. Note that the entire building and not just a portion thereof, is being used for the owner's business purpose of accommodation and temporary lodging.

18. Point 2.

19. Referring to "a" accommodation of a single family, this we believe is being vastly exceeded by numerous families and or groups of people staying over changing every day

20. "single family" (a) one person maintaining an independent household; or
(b) two or more persons related by blood, marriage or civil union maintaining a common household; or

Based on the above we can clearly see that all the residential units will be integrated in to the Hotel Business activities which is strictly against the law.

Kind regards,
Gabriel da Silva (Authorised Trustee)

DA SILVA FOUNDATION TRUST

Reg. IT 2304 / 2008

M: 0824487590

1160 P. N. Theard
(S. udman)
37 GBH

17/18

Alida Conradie



From:
Sent: Saturday, 01 October 2022 00:56
To: Alida Conradie
Subject: Reference 37GBH (412/2022) & Reference 38GBH (4125/2022) Joey Greeff of 15 Marine Drive, Birkenhead

Dear Alida,

Regarding: Application for removal of restrictive title deed conditions, rezoning, subdivision
As a long-standing permanent resident of 15 Marine Drive Birkenhead, Dangerpoint I do not agree with the removal of restrictive title deed conditions, rezoning subdivision, and development application of property ERF 38, 49 Marine Drive Birkenhead and ERF 37, 47 Marine Drive, Birkenhead

We do not agree with the development of a lodge on Erf 37 as this is a residential area. We would like to preserve and leave the beautiful unique landscape we are living in. Erf 38 Hotel is not needed as there is currently a designated property for Hotel use and another is not required.

We are committed to this beautiful area and focused on protecting our fauna and flora.
Yours sincerely

Mrs J.Greeff

FILE NO.	37 31 ✓
	Birkenhead
SCAN NO.	
	Greeff 37
COLLABORATOR NO.	
	175 6000

01 OCT 2022

TP

Alida Conradie

From: Pierre Spengler
Sent: Wednesday, 05 October 2022 16:13
To: Alida Conradie
Subject: Aansoek opheffing van beperkings erf 37 Birkenhead.



TP. n. Aheath
 (S. Jd n. n. n.)

Aandag Mnr. SW van der Merwe

Goeie middag namens Everal BK (erf no 5 Birkenhead). Wil ek net iets onder U aandag bring. Die betrokke posstuk met die aansoek rakende opheffing van beperkings het ek eers op die 27 of 28 September 2022 ontvang twee dae voor sluiting van besware .

Daar is wel een saak waar erf no 5 en Lord Robert straat betrek word.

4.3 boulyne ens.

Dit is vir my Onvanpas om die minste te sê vir iemand wat aansoek doen vir opheffing van beperkings vir homself MEER beperkings vir Ander voorstel.

Namens Everal BK maak ek beswaar teen die voorstel.

Vriendelike Groete

Pierre Spengler namens Everal BK en erf no.5 Birkenhead

FILE NO.	EF 37
	Birkenhead
SCAN NO.	
COLLABORATOR NO.	1758042

06 OCT 2022
 TP



Project Office

Town Planning & Project Management

TP. N. Aheat
(S. van der Merwe)

Our reference: 21/119

Your reference: 37GBH (4124/2022)

28 October 2022

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO.	Er 37 ✓
	Birkenhead
SCAN NO.	
	GBH 37
COLLABORATOR NO.	
	1772580

Attention: Mr Schalk van der Merwe

ERF 37, 47 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE

Your letter dated 6 October 2022, refers.

Several comments and objections were received, which are addressed herein:

- 1) AM Schrecker;
- 2) A Swanepoel on behalf of:
 - Trustee - Arthur Swanepoel Realisasie Trust
 - Secretary: Birkenhead Owners Association
- 3) G da Silva;
- 4) J Greeff;
- 5) Birkenhead Conservation Trust;
- 6) M Ritter; and
- 7) P Spengler (late).

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

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Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

20 YEARS
EST. 2002

WRAP Group Established 2002

WRAP - 4 NOV 2022



Comments related to Water

The applicant has, *inter alia*, requested that a potable water supply facility (i.e. potable water pipeline) be provided by the Local Authority.

My wife, HS Schrecker, registered owner of Erf 35, Birkenhead, and I are concerned that we may be expected to share in the cost of this pipeline. We object any of future demand that we, as neighbours, help bear the cost of a potable water supply facility.

We have invested heavily in our private rainwater system and we believe we can remain self-sufficient at present, and hopefully, also in future years.

There is merit in a pipeline that can provide added security against the threat of veld fires.

Response to comments

The comments are noted. There will however be no obligation on the surrounding property owners to share the cost of the pipeline as discussed in Section 9 of the report.

The property owners of Erf 37, Birkenhead will be required to pay Bulk Services Development Contributions that will be used or partly used for the construction of the pipeline.

Comments related to Nature

As a resident and property owner of Erf 17 Marine Drive, Birkenhead we object to any development of either Hotels or lodges or residential units. We agreed not to develop or exceed one unit per ha. The zone 1 single residential properties should adhere to one house per ha if the property is 4 ha.

With this remarkable landscape and uniquely diverse culture in the Overberg, it is not difficult to see why the responsibility of our landowners is to conserve and protect our environment from uncontrolled development for future generations by preventing environmental ruin.

We live here because it is unique and we want to be close to nature, but nature is disappearing. We need to consider the carrying capacity of this peninsula. Many humans are creating impacts that are destroying the non-human denizens and the reasons we live here. We count on environmental conservation to manage and protect our public lands, not bend backward to developers to make a lot of money at the expense of the fauna and flora that makes this place so special and unique. What legacy do we leave our children? Don't we want them to experience wild nature as we've been privileged to do?

Response to comments

The density of the proposed development was guided by the Danger Point Precinct Plan. The proposed density was created to ensure the natural area is protected; the proposal is to create a large private open space that will form part of the natural area of Birkenhead.

The private open space will have an area of 3,7676ha of the entire 4,0676ha property meaning $\pm 92\%$ of the property will be untouched and undeveloped and used for conservation purposes.

Comments related to Land Use

The subdivision of rental units is accepted but that they should be reduced from 5 Rental Units to the agreed 4 Rental Units per hectare for each Erf 37 & Erf 38.

The Subdivisional Area Zone (SA) may in future also allow for more subdivisions of land within the zone.

Erf 37 & Erf 38 Residential Zone One restricts the occupants to a Single Residential Family Units.

Transient Lodgers as occupants cannot according to the below temporarily occupy these Single Residential Units on any short day to day temporary accommodation.



The legal aspects surrounding Single Residential Zone 1 (SRI) are applicable and defined below. (Refer to definitions)

Based on the above we can clearly see that all the residential units will be integrated in to the Hotel Business activities which is strictly against the law.

We do not agree with the development of a lodge on Erf 37 as this is a residential area. We would like to preserve and leave the beautiful unique landscape we are living in.

One of the four title deed conditions that prohibit the land use rights sought by the property owners is: Condition C(a) "That this erf be used for residential purposes only. This statement is quite clear and unambiguous. We the Birkenhead Conservancy (BC) support this clause and accept that residential units development is being planned.

However, in terms Spatial Development Framework (SDF) for the Birkenhead Township it was previously agreed that only one Residential Unit would be allowed per full complete hectare. This in turn means that only 4 Residential units with the zoning of SR 1 (Single Residential Zone One) can be meet this stipulation. This is application of 5 units for each property is hence out of line and that only 4 Units would be accepted from a Birkenhead Conservancy (BC) perspective.

In summary, the Birkenhead Conservancy is not against the development of these Subdivided Rental Units provided that the development remains within the ambit of prior determinations and consensus achieved for this this unique, historic balk head peninsula.

Response to comments

The proposal is to utilise the proposed subdivided properties for single residential properties. The zoning allows the properties to be utilised primarily for the following:

- **Crèche; Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.**

The proposal is aligned with the primary land uses indicated above. The units may be used for either transient guests or be sold individually and accommodate a single family permanently.

Referring to Section 12.3 - Danger Point Precinct Plan:

"4.1 POLICY ONE: DENSITY – i) Owners who wish to develop their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3.01 hectares will be calculated as 4 hectares:"

The property has an extent of 4,0676ha which in this case rounds up to 5 hectares thus it is allowed to subdivide Erf 37 to accommodate 5 dwelling units - which is aligned with the current proposal.

The subdivisional area will only exist for a moment before the property is rezoned to the proposed zonings – Single residential and Private Open Space. The proposal is the final iteration that the property owners are applying for.

Comments related to Administrative Procedures

Die betrokke posstuk met die aansoek rakende opheffing van beperkings het ek eers op die 27 of 28 September 2022 ontvang twee dae voor sluiting van besware.

Daar is wel een saak waar erf no 5 en Lord Robert straat betrek word.

4.3 boulyne ens.

Dit is vir my Onvanpas om die minste te sê vir iemand wat aansoek doen vir opheffing van beperkings vlr homself MEER beperkings vir Ander voorstel.

Namens Everal BK maak ek beswaar teen die voorstel.



Response to comments

The standard notification processes were followed as determined by the By-Law.

On-site notices were also present on the properties and the registered letter were sent out prior to the commencement of the public participation process.

It is not clear what the objector means by "meer beperkings vir ander voorstel" as it was not part of the application?

No Objection: Awareness

*I have no objections to either of the Applications for Erf 37 & 38 - As per "Subject"
I welcome that there is (at last) interest to invest and enhance the sparse build environment of the Birkenhead Peninsula, given the many advantages for such improvements.*

I do, however raise the following for your awareness/attention:

Electricity: The Erf 38 Property is connected to the Municipal Electricity network but not to my awareness so, for Erf 37 (Being a vacant erf)?

Will the current supply have adequate capacity for all the existing supply points, as well as for the new, additional, sub-divided erven ?

Water: Will there be sufficient capacity for the new, additional, sub-divided erven for both erven 37 & 38?

Please refer to:

Water-Plans-Sep2022 which I assume will also apply to the Birkenhead Peninsula

COMMENTS - CONVENTIONAL APPROACHES FOR FUTURE DEVELOPMENT VERSUS A DIFFERENT APPROACH-September2022

Response to comments

The application was circulated to the relevant departments including the engineering department of the Overstrand Municipality that requested a capacity report be conducted for sewage and water.

It was further requested that an investigation be done to determine the availability of electricity capacity.

Conclusion

The property owners submitted a proposal for the development of Erf 37, Birkenhead which is aligned with the relevant By-Laws, Development Frameworks and Guideline documents of the Overstrand Municipality. This legislation and frameworks were created to ensure the area is protected and the application and proposal acknowledges the importance of the area.

Considering the response to objections, it is recommended that the planning application be approved as submitted.

Yours faithfully

T. JANSEN

PROFESSIONAL TOWN PLANNER (A/2858/2019)



Project Office

Town Planning & Project Management

Our Reference: 21/119

31 January 2023

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr Schalk van der Merwe

ERF 37 BIRKENHEAD, 47 MARINE DRIVE: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE

Your email dated 30 November 2022 and the comments from DEADP was considered and herewith our response:

Comment:

"2.1.2. According to the Western Cape Biodiversity Spatial Plan (2017), there are no critical biodiversity ("CBA") or ecological sensitive areas ("ESA") within the subject property, however, the coastal boundary of the property is adjacent to an EAS: Coastal Corridor. These areas are not essential for meeting biodiversity targets but play an important role in supporting the functioning of protected areas or CBAs and are often vital for delivering ecosystem services. As such, these areas should remain intact as far as possible."

Response:

The property is being developed in alignment with the management legislation of the area. Majority of the property will remain intact and untouched as ±37 676m² (94,19%) will be used for conservation/open space purposes.

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

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Web: www.wrapgroup.co.za

20
YEARS
EST. 2002

Comment:

Point 2.1.3 notes that 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.

Response:

No authorisation in terms of NEMA is required as per point 1 above, but the property owners will however take the considerations of ICMA into account.

Comment:

Point 2.1.4 refers to the fact that erosion is not of concern but matters such as storm surges, salt spray etc. must be considered

Response:

This is noted and will be taken into account.

Comment:

Loss of property due to inland movement of the high-water mark: Point 2.1.5 cautions to the possible shifting of the high-water mark and subsequent loss of property as a result.

Response:

This is noted and will be taken into account.

Comment:

Coastal access: Points 2.1.6 and 2.1.7 refer to the Department's Coastal Access Audit (CAA) and public vehicle access along the coastal boundary and that the proposed development must not impede on the general public's ability to access the Coastal Protection Zone (CPP) Continued coastal access must be secured and the proposal may not negatively impede existing public access.

Response:

This is noted and will be taken into account. The properties' only access point is the public road in front of the property.

Comment:

Applicant cannot create new walkways or boardwalks to the CPP outside their property boundary (Point 2.1.8)

Response:

This is noted and will be taken into account. The property owner is not proposing any new walkways or boardwalks.

**Comment:**

"2.1.9. In terms of the proposed private open space, the applicant did not include any Environmental or Maintenance Management Plan. Additionally, the SD: CM advises that the relevant authority in this regard should be consulted. The SD:CM supports that no further development be considered on the property, however, proposed rezoning to 'private' open space is of concern as it creates the perception of privatisation of the coastline which is not supported."

Response:

The property is privately owned and the entire property is zoned for residential purposes. The open spaces not being developed will form part of the larger open space system in the Birkenhead area. It will however never be owned by a single entity and the open space will be managed and maintained by the individual property owners. The open spaces will also never be developed.

Comment:

"2.1.10. The SD:CM recommends that the proposed layout/site development plan be reconsidered. It is recommended that the proposed development be setback as far as possible and that the proposed development comprise a cluster type of development and not a linear development. It is further recommended that the area proposed for 'open space' be located seaward of the proposed development to maintain the coastal corridor as far as possible. Furthermore, the title deed should indicate that no further development will be allowed on the property."

Response:

The property owners have a vision to develop the property and to create the proposed development. Several development proposals were considered before the submitted proposal was decided upon. The property owners appointed architects to the project that aided in the design process of the proposal.

The recommendation that the proposed layout needs to change cannot be considered as the setback being proposed are in-line with the development parameters of the Overstrand Municipality's Precinct Plan for the Birkenhead area and in-line with other developed properties in the area. The setback of 20m is being adhered to, ensuring the coastal corridor is maintained and indigenous flora is protected.

The development parameters of the Overstrand Municipality's policies limit further development as the proposal is proposing the maximum development potential of the property. Should it however be required from the Overstrand Municipality, it can be made a condition of approval that 37's title deed reflect that the remainder of the property may not be used for any other purposes than a private open space.

Yours faithfully

T. JANSEN

PROFESSIONAL TOWN PLANNER (A/2858/2019)

File reference:	ERF 37 GBH
Date:	26 August 2022
	MM



INTERNAL MEMORANDUM

From	:	Town Planning Department
Town Planner	:	SW van der Merwe (Senior Town Planner)

TO:

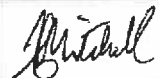
<u>Area Manager</u>	<u>Building Control Department</u>	<u>District Health</u>	<u>Electrical Department</u>	<u>Environmental Officer</u>
<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local heritage Committee</u>	<u>Operational Services</u>	Property Administration
Tourism	<u>Traffic Department</u>	<u>Ward Councillor (Ald. R de Coning)</u>	<u>Waste Management</u>	

Applicant	MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSHGIRL (PTY) LTD
Property Details	ERF 37, 47 MARINE DRIVE, BIRKENHEAD
Application Description	APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE

ATTACHMENTS :

1. Notice	
2. Locality Plan	
3. Motivation	
4. Site Development Plan	

YOUR DEPARTMENT'S COMMENTS:

No objection from Solid Waste Planning.	
Note that as no municipal waste collection service is rendered in the area, the owner will be responsible for the removal and disposal of any waste generated. The waste will need be disposed of at a registered facility.	
Signature:	
Date:	29 September 2022

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.

COMMENTS REQUIRED BY: 30 SEPTEMBER 2022



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: 046/2022

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

TP-D./Heart
(S. van der Merwe)

FILE NO.	EF 37 ✓
	Birkenhead
SCAN NO.	GBH 37
COLLABORATOR NO.	1771268

Attention: Mr. S W van der Merwe

Tel: 028 313 8900

Email: alida@overstrand.gov.za

mmiller@overtstrand.gov.za

RE: REQUEST FOR COMMENT FROM THE SUB-DIRECTORATE: COASTAL MANAGEMENT ON THE APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE ON ERF 37, 47 MARINE DRIVE, OVERSTRAND.

Dear Sir

Your request for comment from the Sub-directorate: Coastal Management on the above-mentioned pre-application basic assessment report received on 30 August 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.

31 OCT 2022

TP

The Department is in the process of finalising the next generation PCMP that includes 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 applicant intends to subdivide the subject property into 6 properties, namely five residential properties as well as one private open space and as such the applicant is proposing a) the removal of restrictive title deed conditions; b) rezoning; c) subdivision; d) permanent departure; e) exemption (right of way servitude).
- 2.1.1.1. The applicant is requesting the removal of the following title deed conditions in order to have the same development parameters as the other residential properties within the Overberg Municipal area: Condition C(a) – that the erf be used for residential purposes only; Condition C(b) – that only one dwelling together with such outbuilding as are ordinarily required or be used therewith, be erected on this erf; Condition C(c) – not more than ¼ of the area of this Erf be built upon.
- 2.1.1.2. The restrictive title deed condition was originally intended to protect the rural character of the Birkenhead area and this restrictive condition was transferred into the current title deed of the subject property. The Danger Point Precinct Plan indicates that tourism should be welcomed in the area, and it was determined that the condition is restricting the property owners' vision.
- 2.1.1.3. The applicant indicated that rezoning and subdivision will enable the property owners to create five residential properties which they intend to sell to increase the population of the Birkenhead area and possibly unlock economic activities.

- 2.1.1.4. The proposal also includes a request for permanent departure of the side building lines of the subdivided portions in terms of section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015.
- 2.1.1.5. A right of way servitude is proposed between Erf 37 and Erf 38 that will service both properties and an exemption of a right of way servitude is also proposed to be included within the proposal.
- 2.1.1.6. To ensure that the proposed development has an uninterrupted appearance, the applicant is proposing that the buildings of the residential units be placed next to one another encroaching on their side building line. These encroachments will be unhabitable spaces used for a garage and a covered garden.
- 2.1.1.7. The applicant stated that the proposed private open space will form part of the 'private conservation area' within the Birkenhead area and will not be used for urban development.
- 2.1.1.8. The proposal is said to be in line with Danger Point Precinct plan as motivated in section 11.3 of the report and the applicant stated no listed activities in terms of NEMA are triggered by the proposal.
- 2.1.2. According to the Western Cape Biodiversity Spatial Plan (2017), there are no critical biodiversity ("CBA") or ecological sensitive areas ("ESA") within the subject property, however, the coastal boundary of the property is adjacent to an EAS: Coastal Corridor. These areas are not essential for meeting biodiversity targets but play an important role in supporting the functioning of protected areas or CBAs and are often vital for delivering ecosystem services. As such, these areas should remain intact as far as possible.
- 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 lines. 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. Due to the subject property's location within the CPZ, Section 63 of the NEM: ICMA must be considered where an authorisation is required in terms of Chapter 5 of the NEMA. Furthermore, Section 62 of the NEM: ICMA obliges all organs of state that regulates the planning of land to apply that legislation in a manner that gives effect to the purpose of the CPZ. As such, Section 63 of the NEM: ICMA should be considered by local authorities for land use decision making.

- 2.1.4. 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") (See Figure 1 below). The delineation of the CML is based on the methodology that was informed by various factors including Section 25(1B) of the NEM: ICMA, taking into consideration ownership and zonation of vacant land. As the proposed property is located along a rocky coastline, erosion is not a concern, however, impacts from salt spray, storm surges and sea level rise, as a result of climate change must be considered. As such, as a precautionary approach, it is recommended that consideration be given to locating the proposed development inland of the existing structures.
- 2.1.5. 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.
- 2.1.6. The Department, in terms of the Western Cape Provincial Coastal Access Strategy and Plan, commissioned the Coastal Access Audit ("CAA") for the Overberg District Municipal Region (2019). This CAA was conducted in collaboration with both the Local and District Municipalities and was aimed at identifying areas of conflict, areas where the public currently and historically access the coast, as well as identify infrastructure requirements to facilitate such public access to the coast. According to the Overberg CAA, the subject area the subject area has vehicle access along the coastal boundary of the subject property (see Figure 2 below). There is a gravel road along the rocky shore towards Danger Point Lighthouse. The road is well maintained and has several points at which the sea may be accessed. Refuse bins are provided at all points where the road meets the seashore. The applicant must note that the proposed development may in no way impede on the general public's ability to access CPP.
- 2.1.7. Section 18(9) of the NEM: ICMA states that each municipality approving the rezoning, subdivision, or development of a land unit within or abutting coastal public property must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal public property. As such, the proposed development may not negatively impede existing public access.
- 2.1.8. Additionally, the applicant must be informed that they may not create any formal or informal walkways/pathways to CPP outside of their property boundary.
- 2.1.9. In terms of the proposed private open space, the applicant did not include any Environmental or Maintenance Management Plan. Additionally, the SD: CM advises that the relevant authority in this regard should be consulted. The SD:CM supports that no further development be considered on the property, however, proposed rezoning to 'private' open space is of concern as it creates the perception of privatisation of the coastline which is not supported.

- 2.1.10. The SD:CM recommends that the proposed layout/site development plan be reconsidered. It is recommended that the proposed development be setback as far as possible and that the proposed development comprise a cluster type of development and not a linear development. It is further recommended that the area proposed for 'open space' be located seaward of the proposed development to maintain the coastal corridor as far as possible. Furthermore, the title deed should indicate that no further development will be allowed on the property.
- 2.1.11. Based on the above, the SD: CM does not object to the removal of the restrictive conditions of the title deed; the rezoning and subdivision of the subject erf; permanent departure for the purpose of low-density development, provided that all the above-mentioned items are taken into consideration.
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: 2022.10.31 16:35:06
+02'00'

leptieshaam Bekko
CONTROL ENVIRONMENTAL OFFICER
SUB-DIRECTORATE: COASTAL MANAGEMENT
DATE: 31 October 2022

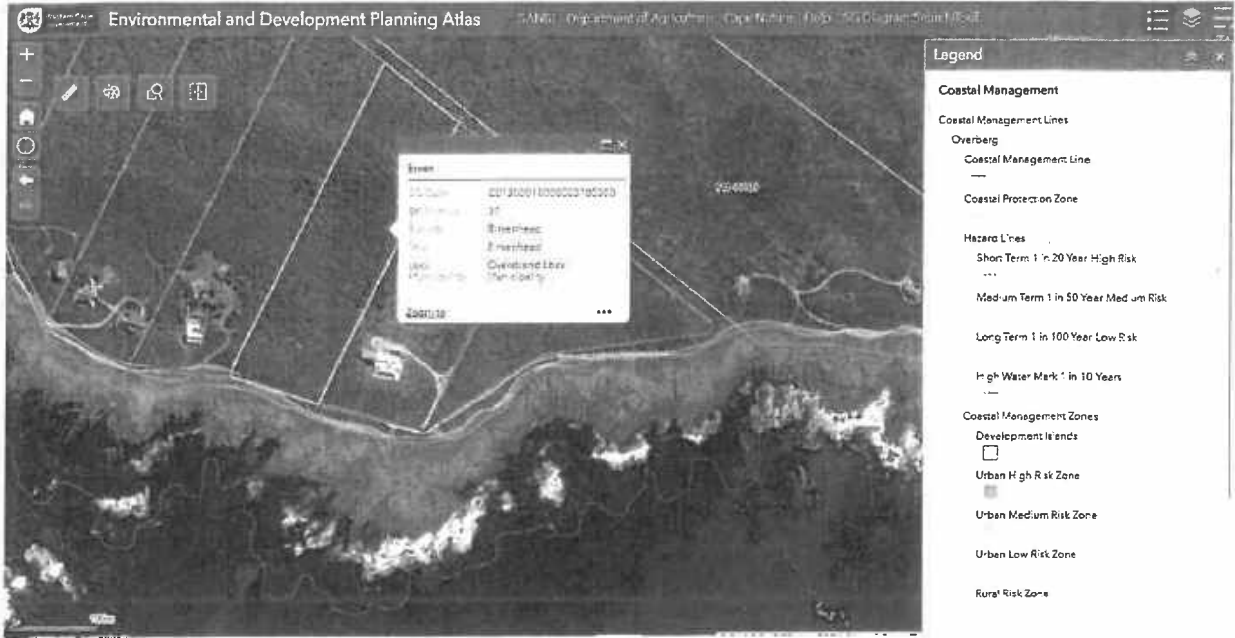


Figure 1 depicting the proposed property in relation to coastal risk and the CML

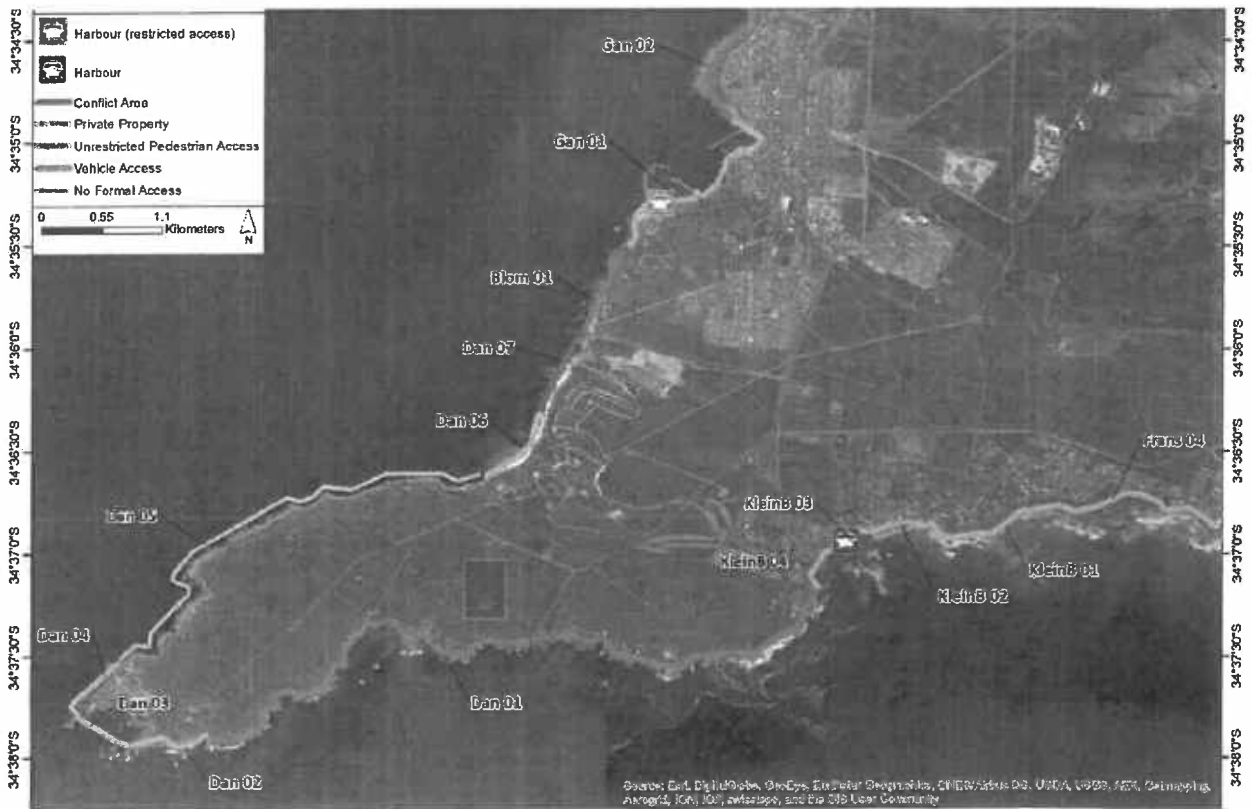


Figure 2: The coastline from the Overberg CAA depicting vehicle access along the subject area (Dan 01)



**Western Cape
Government**



ANNEXURE I

Transport and Public Works
Vanessa Stoffels
Chief Directorate: Road Planning
Vanessa.Stoffels@westerncape.gov.za | Tel: 021 483 4669

Ref: TPW/CFS/RP/LUD/REZ/SUB-21/260 (Job 29829)

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

FILE NO. <i>Er 37</i>
<i>Birkenhead</i>
SCAN NO.
COLLABORATOR NO.
<i>1768779</i>

Attention: Ms A Conradie

Dear Madam

ERF 37, BIRKENHEAD: PROPOSED REZONING, SUBDIVISION, PERMANENT DEPARTURE, AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

1. The letter 37 GBH to this Branch dated 26 August 2022.
2. The subject property is in Birkenhead and takes access off Minor Road 4020.
3. The proposal is for the following:
 - 3.1. Removal of the restrictive title deed conditions.
 - 3.2. Rezoning of the subject property from Single residential zone 1 to Subdivisional area.
 - 3.3. Subdivision of the subject property into Portion A ($\pm 600 \text{ m}^2$), Portion B ($\pm 600 \text{ m}^2$), Portion C ($\pm 600 \text{ m}^2$), Portion D ($\pm 600 \text{ m}^2$), Portion E ($\pm 600 \text{ m}^2$) and the Remainder ($\pm 37.676 \text{ ha}$).
 - 3.4. Permanent departure from the 2m side building line of the subdivided portions to 0m.
4. This Branch gives its consent for the removal of the restrictive title deed conditions C. (a), (b) and (c) on the title deed T63771/2021 for the subject property.
5. This Branch offers no objection to the proposal in terms of the Land Use Planning Act 3 of 2014 on condition that:
 - 5.1. A shared right of way servitude with Erf 38 is registered in favour of Erf 37 at $\pm \text{km}1.06 \text{ LHS}$.

Yours Sincerely

SW CARSTENS
For **DEPUTY DIRECTOR-GENERAL: ROADS**
DATE: 24 OCTOBER 2022

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, REZONING, SUBDIVISION & DEPARTURE: ERF 37,
BIRKENHEAD**

Water	:	Refer to conditions & GLS report
Sewer	:	Refer to conditions & GLS report
Roadsand Traffic	:	Refer to conditions
Stormwater	:	Refer to conditions
Electricity	:	Refer to conditions

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

- 1.1 **Developments containing Sectional Title Units/ Commercial Buildings** (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

- 1.2 **Developments with free standing properties** (property that is subdivided and plots to be sold individually).

- 1.3 The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (**2022/2023**) is as follows:

Freehold erven:

Water	R 26 036.00 x 4	= R 104 144.00
Sewerage	R 17 555.00 x 4	= R 70 220.00
Roads	R 7 872.00 x 4	= R 31 488.00
Solid Waste	R 1 574.00 x 4	= <u>R 6 296.00</u>
TOTAL (inclusive of VAT)		= <u>R 212 148.00</u>

Please note the above figures:

- a) **Are estimated amounts which exclude evaluation/ investigation levies and connection fees.**

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b) Are only valid for the current financial year and are subject to annual tariff adjustments.

c) Exclude the cost of Electrical Bulk and Link services, Gansbaai Electrical Department should be contacted regarding the cost;

2. that the developer at his cost constructs the internal municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided;
 - 2.1 the Director: Infrastructure and Planning may require the developer to construct internal, link, and/or bulk municipal services to a higher capacity than warranted by the development for purposes of allowing other existing or future developments to also utilise such services, provided:
 - 2.2 the rates and prices of such work be established in terms of a system which is fair, equitable, transparent and cost effective;
 - 2.3 if link municipal services have already been provided, the developer to contribute towards the cost thereof, the Director: Infrastructure and Planning to determine the amount of such contribution in terms of a system which is fair and equitable;
3. that servitudes for municipal services be registered in favour of the Council at the developer's cost in respect of all main services to be taken over by the Council and all existing municipal services concerned crossing private property;
4. that the developer indemnifies and keep the Council indemnified against all actions, proceedings, claims and demands, costs, damages and expenses arising out of the establishment of the township, the provision of services to the township or the use of servitude areas or municipal property:
 - 4.1 for a period which shall commence on the date that the installation of the services to the township are commenced with and shall expire after completion of the maintenance period;
 - 4.2 the insurance to be to an amount which shall not be less than that required by the SAACE;
 - 4.3 such indemnification against loss, claims or damages, to include claims pertaining to consequential damages by third parties and whether as a result of the damage to or interruption of or interference with the Council's services or apparatus or otherwise;
5. that a plan of all the existing services be submitted to the Director: Infrastructure and Planning, by the developer and that any of the

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services that need to be relocated, be done by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning:

- 5.1 way-leaves must be obtained from the Operational Manager;
- 5.2 such way-leaves to be obtained prior to any excavation on public property or property where existing services are located;
6. that the developer may enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at an agreed cost, subject to the following:
 - 6.1 such costs to be established in accordance with a system which is fair, equitable, transparent, competitive and cost effective;
 - 6.2 such costs shall be set-off against (part or full) development contributions payable in respect of engineering services;
 - 6.3 to the extent that such costs exceed the development contributions payable, the Council will refund the developer the difference with interest calculated at the prime rate, when funds are available;
7. that plans of all the internal municipal civil and electrical (high and low voltage supply) services and such link services as required by the Director: Infrastructure and Planning, prepared by an ECSA registered professional engineer/technologist, be submitted to the Director: Infrastructure and Planning for his prior approval;
8. the "Guidelines for the Provision of Engineering Services in Residential Townships" (Blue Book), SABS 1200 specifications and the Design and Construction Standards for civil and electrical services of the Council to be used as the standard design and construction criteria with which such plans must comply;
9. the Director: Infrastructure and Planning to be notified in writing of all deviations from the Standard Design and Construction Criteria when plans are submitted for his approval and such deviations to be separately approved in writing by the Director: Infrastructure and Planning;
10. the successful completion of such works to be supervised and certified by an independent professional civil engineer/technologist i.e. a professional civil engineer/technologist who has no direct financial interest in the development, other than payment as standard professional fees for the work concerned; and
11. such independent professional civil engineer/technologist to furnish the Director: Infrastructure and Planning with satisfactory proof of his professional indemnity insurance to an amount which shall not be less than that required by the SAACE and which insurance shall be valid for the relevant contract and maintenance period;

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12. that all municipal civil and electrical services installed or constructed by the developer, be maintained after completion thereof for a maintenance period, as described in the General Condition of Contract for Works of Civil Engineering Construction - 2004, of 12 months, and
13. that a Certificate of Completion together with as-built services plans be provided by the independent professional engineer/technologist to the Overstrand Municipality. As-built plans to be on quality paper, together with a DXF file thereof;
14. that a service agreement may be required by the Director: Infrastructure and Planning prior to the approval of any service plans;
15. that the water and sewer reticulation be provided/upgraded according to the report prepared by GLS consulting engineers and/or the Overstrand Water & Sewer Master Plan.
16. that the developer will be responsible for the provision of water supply services to proposed development on Erf 37. The developer may opt to install water link services (in full or partial) along any the three pipeline routes proposed by the revised GLS capacity report dated 29 March 2023.
17. that the proposed development on Erf 37 must be provided with an internal sewer main line, to which the services of the development must connect to, which goes into a communal tank, which must comply with the relevant legislation.
18. that the developer supply information to the Department: Operational Services, on the size of the communal tank as well as a report showing the proposed amount of sewerage to be generated from the property.
19. that the electricity reticulation and supply be provided according to the master plan and the electrical services report by Lyners Consulting Engineers at the developer's cost. Transfer of the newly created erven can only proceed once electricity is available;
20. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
21. that stormwater be allowed to discharge through Erf 37 Birkenhead unobstructed;

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22. that damage to the existing roads, used as routes for access to the development, for the provision of services, be repaired by the developer.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE



Memo

To:	Alida Conradie (Town Planning)
From:	Penelope Aplon (Environmental Management)
Date:	07 March 2024
Re:	ERF 37 BIRKENHEAD: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE

EMOZ:

The site is located within Coastal Protection Environmental Management Overlay Zone (EMOZ). The main purposes of this EMOZ are as follow:

Purpose 1: Manage the integrity of coastal ecosystems, ecosystem services, coastal dynamic processes and biodiversity within Coastal Reserves.

Purpose 2: Managing public access for the enhancement of social, economic and recreational opportunities within the coastal environment

Commercial / Retail / Trading / Tourism Nodes are identified as a primary use for development nodes to achieve this purpose.

Purpose 3: Managing the character, sense of place and aesthetic value of coastal property

Design and development of new buildings, infrastructure and utility services within development nodes must complement the natural character of the coastal reserves or improve the sense of place when existing development is replaced. The Danger Point Precinct plan provides guidance on building design.

Purpose 4: Instituting appropriate controls for the protection of people, property, and economic activities within the coastal environment

Climate change and sea level rise should be factored in with the design of any new structures within the coastal zone.

The EMOZ regulations contains 3 schedules which lists Schedule A: prohibited activities, Schedule B: activities requiring Council consent, Schedule C: general regulations.

Schedule A: Prohibited activities	
Applicable Prohibited activity	Comments
Planting or harbouring of declared alien invasive plant species on properties located within and adjacent to this EMOZ	The property should have an Invasive Alien clearing plan.
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	The property should have an Invasive Alien clearing plan.
Planting or harbouring of locally important emerging weed species within and adjacent to this EMOZ	The property should have an Invasive Alien clearing plan.
Feeding, disturbing / pursuit of fauna	Prohibited
Staying overnight	Please refer to the definition of staying overnight, which is only applicable to municipal open space even "staying overnight" means sleeping or otherwise taking shelter in any building, informal structure, infrastructure or vegetation on Municipal open space properties between the hours of 20:00 and 06:00;
The discharging of domestic effluent / grey water into all natural systems.	Prohibited
Schedule B: Activities only permitted with Council consent	
B) PERMIT UPON APPROVAL BY DELEGATED AUTHORITY AND / RECEIPT OF TARIFF	
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure	This may require a lease agreement with Property Administration.
Construction or placement of any temporary object, building, shelter, path or structure.	This will require the submission of building plans.
C) COUNCIL AUTHORISATION PENDING Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	
Encroachment of private buildings, structures, infrastructure, access routes	This may require a lease agreement with Property Administration
Construction or placement of any permanent object, building, shelter, pathway or structure.	This will require building plan approvals.

**Schedule C: GENERAL REGULATIONS APPLICABLE TO OVERLAY
ZONES IN THE OVERSTRAND MUNICIPAL REGION**

Based on the NEMA 'Precautionary' and 'Duty of Care' principles, the Municipality may also direct the developer/owner/applicant to prepare and submit Construction and Operational EMPs to prevent mitigate and manage any adverse impacts in sensitive EMOZ zones, for consideration and approval by the Municipality.

The Environmental Management Section will require the submission of Construction Management Plan given the locality of the site.

EIA implications:

The current Town Planning application does not require an Environmental Authorization. However, development on newly established erven which is not part of the 1939 and 1940 General Plan for the Birkenhead township, may require environmental authorization from DEA&DP where EIA listed activities are triggered or development is outside the township development parameters.



Penelope Aplon