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ERF 38, 49 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION, CONSENT USE, DEPARTURE AND EXEMPTION OF RIGHT OF WAY SERVITUDE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF BUSHGIRL (PTY) LTD

38 GBH (4125/2022)

SW van der Merwe

13 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 12 April 2022 from Messrs WRAP Project Office on behalf of Bushgirl (Pty) Ltd, the owner of Erf 38, 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), C.(c) and C.(e) contained in Title Deed T34160/2021;
- **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 to subdivide the property into one General Residential Zone 3, four Residential Zone 1: Single Residential (SR1) erven and one Open Space Zone 3: Private Open Space erf;
- **consent use** in terms of Section 16(2)(o) of the By-Law to permit a boutique hotel, and
- **departure** in terms of Section 16(2)(b) of the By-Law 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- and Site Development Plans are attached as Annexure C and the title deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 38, Birkenhead is owned by Busgirl (Pty) Ltd who also owns the adjoining Erf 37, Birkenhead. It is intended to develop both properties and operate them in the same manner. The only difference is that the proposal for Erf 38 includes the conversion of the existing dwelling into a boutique hotel.

The property is zoned Residential Zone 1: Single Residential, measures 4,0858ha. The property is developed with a primary dwelling. Adjoining properties to the east and west is zoned Residential Zone 1 and developed with dwelling houses and associated outbuildings. The area to the north / north east of Birkenhead comprises of vacant agricultural zoned land. Marine Drive borders to the property to the south.

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 and the Environmental Management Overlay Zone (EMOZ) Coastal Protection Zone.

The proposed development entails conversion of the existing dwelling into a boutique hotel with 8 lettable rooms as well as the creation of four single residential properties to be used for self-catering (tourism accommodation) purposes. Access will be obtained from Marine Drive via a shared access with Erf 37, Birkenhead.

The proposed development comprises the following:

- removal of restrictive title deed conditions contained in Title Deed T34160/2021 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.*”
 - “C.(e) *That this erf not be subdivided except with the consent in writing of the Administrator.*”
- rezoning from Residential Zone 1 to Subdivisional Area Zone;
- subdivision to create 1 Residential Zone 3 erf (Portion A) 4 Residential Zone 1 erven measuring 600m² each and a Remainder Private Open Space Zone 3: Private Open Space measuring 35 848m²;
- consent use applicable to portion A to permit a boutique hotel;
- departure from 2m to 0m to accommodate garages on the lateral property boundary between portions B, C and D;
- 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 wishes to develop the property to its full potential comprising a boutique hotel and 4 single residential erven.
- ❖ Proposal will create more housing options in Birkenhead.
- ❖ Proposal will create new sustainable economic opportunities.
- ❖ Proposal will create employment opportunities, both short term (construction phase) and long term (proposed hotel).
- ❖ 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.
- ❖ Property is not listed on the Overstrand Heritage Register.

ENVIRONMENTAL MANAGEMENT OVERLAY ZONE (EMOZ) - COASTAL PROTECTION ZONE

Consistent with 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 will facilitate economic and sustainable urban development and will add economic activities in an area where without many options whilst employment opportunities are created.

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 4 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 it does not detract from the wilderness experience, these should be situated in the general vicinity of the north facing rocky coastline and on Duinefontein / Franskraal Mountains.

PLANNING PRINCIPLESSpatial justice

Proposed 4 residential erven, boutique hotel 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 restrictions are motivated as follows:

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

Clause C(a)

“That this erf be used for residential purposes only”

Danger Point Precinct Plan promotes eco resorts and boutique hotels that is restricted by the title deed condition. The proposed boutique hotel will allow the owners to unlock additional economic activity that requires removal of the residential purposes only 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 densification of the property comprising four single residential erven and a boutique hotel erf will be restricted by this condition. The conditions were originally intended to protect the natural aesthetic of Birkenhead area and to limit urban sprawl. More recently the Birkenhead Precinct Plan as adopted by Council promotes limited densification and tourism related development.

C(e) *“That this erf “not be subdivided except with the consent in writing of the Administrator”*

The proposed subdivision in accordance with the Overstrand Growth Management Strategy and Danger Point Precinct Plan requires removal of the no subdivision clause in 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	Five (5) objections and two (2) 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
Fire Services	30/08/2022	No objection.
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.
Health	30/09/2022	Applicant to apply for health certificate for accommodation establishment (hotel). COA (additional) application for food preparation on site needs to be completed.
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	05/03/2024	Attached as Annexure K.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Five letters of objection were received within the objection/comment period:

- ✚ 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
- ✚ P du Preez, owner of Erf 34, Birkenhead
- ✚ HS & AM Schrecker, owner of Erf 35 Birkenhead

Two letters of objection were received after the objection/comment period:

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

The objection letters are attached as Annexure E. Some of the objectors submitted one objection letter to the applications on both Erf 37 and Erf 38 Birkenhead. The main grounds of objection pertaining to Erf 38 are summarised below, followed by the Response from applicant 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 38, 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 long-standing permanent resident of 15 Marine Drive Birkenhead, Danger Point, 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. Erf 38 hotel is not needed as there is currently a designated property for hotel use and another is not required. We committed to this beautiful area and focused on protecting our fauna and flora.

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 3,5848ha of the entire 4,0858ha property meaning $\pm 88\%$ 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 hotel and residential erven has a combined area of 5400m² that is more restrictive than the primary rights in terms of the title deed that permit residential development at 25% coverage that equates to an area of 10214m² to be managed as a private nature reserve.

The objection regarding the proposed hotel is noted. It will be further discussed in the evaluation below.

POINT OF OBJECTION 3: COMMENTS RELATED TO LAND USE

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 Subdivisional 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 Subdivisional 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 (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 into the Hotel Business activities which are strictly against the law.

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.

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.

The application for the rezoning of the existing building structure positioned on Erf 38 from SR 1 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 of 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.

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.

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 residences 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 allowed.

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. 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.

Birkenhead township has agreed years ago that any property development will not exceed one house per ha. Concerning the application in paragraph c) the Zone 1 application of single residential properties should therefore adhere to one house per ha (if the property is 4 ha, therefore 4 houses in total)

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:

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 4,0858ha which in this case rounds up to 5 hectares. The proposal is however only to accommodate 4 dwelling units and 1 hotel that will also be zoned appropriately.

“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.”

The proposal to apply for a hotel is also aligned with the vision for the Danger Point area and aligned with the Precinct Plan. The township plan of 82 years ago as referenced by the objector is not set in stone and an application for consent must be considered. There is development frameworks and guidelines in place to ensure the area is developed effectively and ensure the heart of the area is maintained which is also of importance to the property owners.

The comment regarding the setting of a precedent is noted, but it should be reiterated that the proposal cannot create a precedent, as a town planning application are site-specific and the notion that if one property is rezoned or that one property is granted an additional right is not sufficient motivation to approve the rezoning of another property.

Each application is evaluated individually and site specific and considered if deemed fit to approve the application. The Overstrand Municipality is required to consider various factors that may influence their consideration of the proposed development.

The property owners may in the future apply for a liquor licence, although not included in this application.

The objector creates a positive notion that 60 employment opportunities will be created should the application be approved. These numbers were not confirmed by the property owners, but it is however expected that additional employment opportunities will be created, and it should be seen as a positive in the economic situation that the country finds itself.

RESPONSE FROM TOWN PLANNER

The applicant's comment is noted and agreed with save for comments pertaining to consistency of the proposed hotel with the Dangerpoint Precinct Plan. The desirability of the proposed hotel is discussed in the evaluation below.

Paragraph 3 of the applicant's motivation indicates that in addition to the proposed boutique hotel the property will be used for tourism accommodation purposes (i.e. self-catering) which is a primary right under the zoning.

The subdivision area zoning will not create a precedent as the zoning facilitate the proposed subdivisions as stipulated in the application only nor will it result in commercial development in the area. The zoning of the property upon implementation will reflect on the zoning map as Residential Zone 1: Single Residential, Open Space Zone 3: Private Open Space and General Residential Zone.

Residential Zone 1 permits the construction of a primary dwelling to be used for single family occupancy. Self-catering (tourism accommodation) is a primary right under the zoning, albeit limited to single family occupation in terms of the Overstrand Land Use Scheme, 2020.

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.

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. The municipal Engineering Services Department did not object on the basis of availability and capacity of services, subject to compliance with certain conditions.

The desirability of the boutique hotel will be discussed in the evaluation below.

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 development will not perpetuate apartheid spatial imbalances. The proposal create new housing options, increased population, short and long term employment opportunities, 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 rezoning and subdivision to create four single residential and one private open space erf is consistent with the provisions of the SDF, Overstrand Municipal Growth Management Strategy and Danger Point Precinct Plan.

Despite the applicant's motivation, the proposed boutique hotel is not consistent with the provisions of the Danger Point Precinct Plan, the Overstrand Municipal Growth Management Strategy of the Spatial Development Framework. This will be further discussed in the evaluation below.

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.

The application was circulated to Heritage Western Cape in accordance with the provisions of Section 38 of the National Heritage Resources Act. No response was forthcoming.

The property is situated within the Coastal Protection Zone. The high, medium and low risk zones are situated landward of the southern property boundary and is not affected by the proposed development. The response of the competent authority is discussed 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 house, 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 10214,5m² that could be used for residential purposes in accordance with the title deed.

The proposal provides for a General Residential Zone 1 (boutique hotel) erf, four 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 including outbuildings. The proposed development although it constitutes densification will create 5 erven with a combined area of 5400m² which is much more restrictive opposed to the current primary rights.

10.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The title deed T34160/2021 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"

Clause C.(e)

"That this erf may not be subdivided except with the consent in writing of the Administrator"

The applicant motivates that the Danger Point Precinct Plan promotes eco resorts and boutique hotels that is restricted by condition C(a). This statement is not correct as eco resorts / boutique hotels are recommended on the northern rocky coastline and the Duinefontein / Franskraal mountains. The proposed hotel will allow the owner to unlock additional economic activity, hence require removal of the restrictive condition. The proposed rezoning to Private Open Space will however require removal of the “residential purposes only” restriction.

It is further motivated that the restrictive title conditions were intended to protect the rural residential character of the Birkenhead area. Expansion took place in Birkenhead since the insertion of the title deed conditions. Hence the proposed removal of restrictive title deed condition to facilitate development in line with current policies and By-Laws.

Condition C.(b) and C.(c) restricts the proposed densification of the property. The conditions were originally intended to protect the natural aesthetic of Birkenhead area and to limit urban sprawl. More recently the Birkenhead Precinct Plan as adopted by Council promotes limited densification and tourism related development.

Condition C.(e) need to be removed to permit subdivision in accordance with the provisions of the Overstrand Municipal Growth Management Strategy and the Danger Point Precinct Plan.

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, one dwelling unit and no subdivision clauses will however benefit the property owner i.e. upgrade of development rights and increased 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), C.(c) and C.(e) contained in title deed T34160/2021.

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 comprises four single residential erven set within a remainder Private Open Space to be managed as a private conservation area as well as a General Residential Zone 3 erf to accommodate an eight-bedroom boutique hotel. Access to the property will be obtained from Marine Drive via a shared access with Erf 37. The development will be managed by a Homeowners Association (HOA).

The Township of Birkenhead had been established in the 1930's as town subject to 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 Danger Point Precinct Plan and Growth Management Strategy provides for residential densification in the Birkenhead precinct with potential for resorts, chalets, boutique hotel on the northern rocky coastline (i.e. I&J property) and Duinefontein / Franskaal Mountains to the north. In contrast with the applicant's motivation the proposed boutique hotel does not comprise residential densification. The location of the proposed hotel on the southern coastline is not consistent with the Danger Point Precinct Plan, Overstrand Municipal Growth Management Strategy and Spatial Development Framework for the following reasons:

- The hotel does not comprise residential densification
- The location on of the property is on the southern rocky coastline
- The property is not earmarked as an area for economic / commercial opportunities or a private resort
- The subject property is not situated within a commercial node
- Provision is made for a commercial node at the entrance to Birkenhead
- Erf 28 Birkenhead is reserved for development of a hotel in terms of the conditions of township establishment.

Although the proposal as per the motivation will contribute to economic development and employment opportunities the proposed rezoning to General Residential Zone and consent use to accommodate a boutique hotel amidst single residential properties with public facilities is not desirable.

The proposed erf size of Portion D that house the primary dwelling is not in line with the provisions of the Precinct Plan although it accommodates a primary dwelling larger than the minimum erf size of 600m². The applicant did not provide any motivation in relation to the erf size of 3000m². It appears though if this is required for parking for the boutique hotel. The proposed rezoning and consent use for a boutique hotel is not desirable and not supported. It is therefore recommended that the main dwelling be retained as a single residential property. The current dwelling with associated yard walls and swimming pool covers an area of ± 1100m². As such the applicant will be required to submit an amended Subdivision Plan for delegated approval by the Authorised Official to accommodate the proposed dwelling that shall generally provide for a 2m building line between the existing dwelling / outbuildings and the erf boundary.

The proposed residential erven provide a balance between development and protection of the 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 purpose 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.

In terms of the HPOZ predominantly single storey structures, fragmented / disaggregated opposed to monolithic building forms with a horizontal emphasis is encouraged. The Danger Point Precinct Plan encourage the erven to be clustered. The opinion is held that the proposed building design / layout is not in line with the intent of the HPOZ or Danger Point Precinct Plan as does not comprise of disaggregated building form but a monolithic building form with a horizontal emphasis contrary to the intent of the HPOZ and Danger Point Precinct Plan.

Having had regard to the above the departures onto the lateral property boundaries is not considered desirable as it will not result in fragmented building form but building form with a prominent horizontal emphasis. A condition will be imposed requiring the applicant to submit a site development plan to demonstrate the building design complies with the intent of the HPOZ, EMOZ and Danger Point Precinct Plan. 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.

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.

The proposed development provides for the residential erven to be set in a remainder private open space, which will be managed by a HOA in accordance with approval conditions that amongst others requires a maintenance management plan. 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.

The proposed access is supported by the Department of Transport.

The proposed development does not trigger NEMA.

The application was circulated to Heritage Western Cape that did not provide further comment.

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 and being taken into consideration:

	Comment	Response from town planner
2.1.3 2.1.4	Due to property'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.
2.1.5	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.

2.1.6	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.
2.1.7	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>

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.

The proposed rezoning to General Residential Zone, consent use to accommodate a boutique hotel, erf size of portion D and building line departure is not consistent with the provisions of the Danger Point Precinct Plan, the Overstrand Growth Management Strategy and the Spatial Development Framework and therefore not 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), C.(c) and C.(e) as contained Title Deed T34160/2021 applicable to Erf 38, 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 four (4) Residential Zone 1: Single Residential (SR1) erven (approximately 600m² each), one Residential Zone 1 erf to retain the existing dwelling and one (1) Open Space Zone 3: Private Open Space (OS3) erf (approximately 5848m²), **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law applicable accommodate a General Residential Zone 3 erf on Portion D **not be approved** in terms of the provisions of Section 61 of the By-Law;
6. 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;

7. that the application for **consent use** in terms of Section 16(2)(o) of the By-Law to accommodate a boutique hotel, **not be approved** in terms of the provisions of Section 61 of the By-Law;
8. that the approvals in paragraphs 2. to 4. above be subject to the following conditions:
 - (a) that the erf size of portion D be limited to an area not exceeding 1500m²;
 - (b) that a Homeowners Association (HOA) be established prior to the transfer of the first erf;
 - (c) 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;
 - (d) 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;
 - (e) that a revised site development plan be submitted for municipal approval demonstrating compliance with the Danger Point Precinct Plans, 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;
 - (f) that the conditions in the Services Report (attached as Annexure J), be complied with
 - (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;
 - (k) that the dwellings may only be provided with one kitchen.

- (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
9. that a right of way servitude be registered in favour of the subdivided portions and Erf 37, Birkenhead; and
10. 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 subject property is not situated in the commercial node.
- ❖ The boutique hotel does not comprise residential densification.
- ❖ 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.
- ❖ The rezoning to General Residential Zone and consent use to accommodate a boutique hotel with public facilities is not considered consistent with the SDF, Overstrand Municipal Growth Management Strategy and Danger Point Precinct Plan.
- ❖ The applicant did not motivate a deviation from the SDF.

14. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T34160/2021
Annexure E:	Objections 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: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

Locality Plan Erf 38, Birkenhead

 Subject property (Erf 38, Birkenhead)

Plan prepared by: Thian Jansen

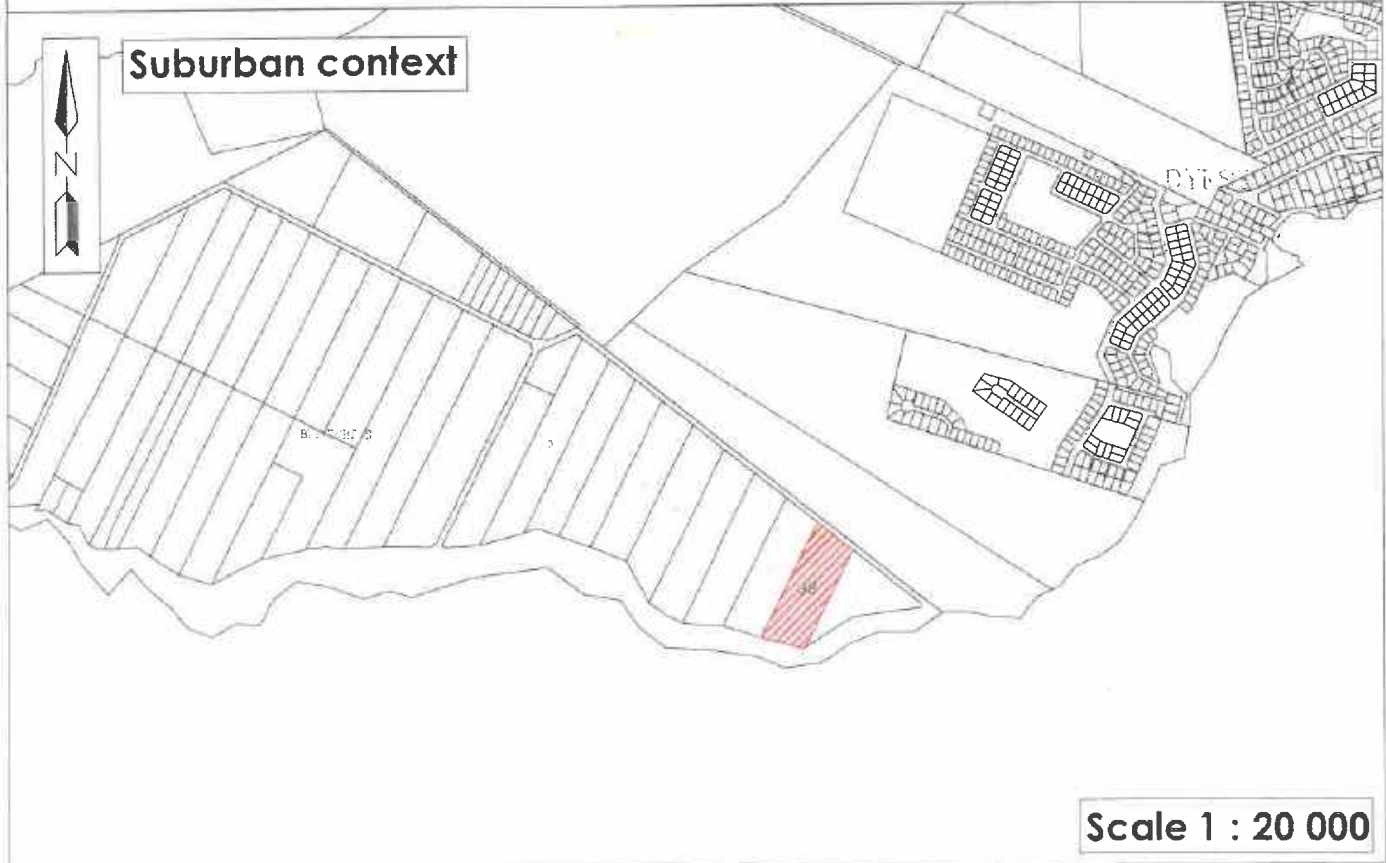
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Project Office 20
Town Planning & Project Management





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, c and e)
Erf extent	4.0858Ha
Current zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 38 Birkenhead, hereafter referred to as the subject property is owned by the Bushgirl (Pty) Ltd. The property owners are also the owners of Erf 37 Birkenhead adjacent to the application site. Their intent is to develop both properties and operate them in the same manner, with the only difference that a boutique hotel being will be included on the subject property. 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 convert the existing dwelling unit into a boutique hotel. In addition to utilising the property for the tourist accommodation purposes, the property owners envision subdividing the remaining property into six (6) erven, 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 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;



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- Rezoning;
- Subdivision;
- Consent Use;
- Departure;
- Exemption (Right of Way Servitude); and
- Establishment of a Homeowners 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 four 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."*
- Condition C(e) *"That this erf be subdivided except with the consent in writing of the Administrator."*

These title deed conditions mentioned above is required for removal as the proposed vision is not aligned with these conditions. The removal thereof would add value to the property and the surrounding area as it would also legally unlock economic activities on the subject property.

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 38 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 38 Birkenhead to one (1) General Residential Zone 3 erf, four (4) 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 as a hotel is not allowed in terms of the OMLUS on the zoning. To ensure the zoning of the subdivided properties are in correlation with the intent of the property owners, the following are proposed:



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Number of Properties	Proposed Zoning	Erf Extent
1	General Residential Zone 3	1 x 3000m ²
4	Single Residential Erven	4 x 600m ²
1	Open Space Zone 3: Private Open Space	1 x 35 848m ²

The proposal is in line with the Birkenhead 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 utilise the current main dwelling unit as a boutique hotel, within the proposed zoning - General Residential Zone 3. This will unlock economic activities in an area where there are little economic activities currently available. Refer **Plan 3 – Subdivision Plan & Plan 4 – Proposed Zoning Plan**.

4.4 Consent Use to allow a hotel on a subdivided portion in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

As mentioned, the property owners have the vision to convert the existing dwelling unit into a boutique hotel. The proposed boutique hotel will be located on a 3000m² General Residential Zone 3 erf. After the alterations proposed for the dwelling unit are completed, the boutique hotel will have 8 lettable rooms that prospective transient guest could use.

A hotel is not a primary right on General Residential Zone 3 in terms of the OMLUS, and requires consent from the OM. A hotel is defined as the following:

“means a property used for transient guests, where lodging and meals are provided, and may include –

- (i) a restaurant or restaurants;*
- (ii) associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and*
- (iii) premises which are licensed to sell alcoholic beverages for consumption on the property but does not include an off-sales facility;”*

The concept being that the boutique hotel will attract tourists to the Birkenhead area, that will in turn contribute to the economy of the Birkenhead area. The proposal of a boutique hotel will create a stable income source to eventual employees within the area.

The hotel will have sufficient on-site parking in-line with the parking requirements as determined by the OMLUS:

One bay per bedroom plus an additional 6 parking bays per 100 m² of public access areas. Additional parking may be required for any additional facilities to the satisfaction of the Municipality.



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There will be 19 parking bays provided for the hotel.

4.5 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 B, C and D are encroaching on the side building lines.

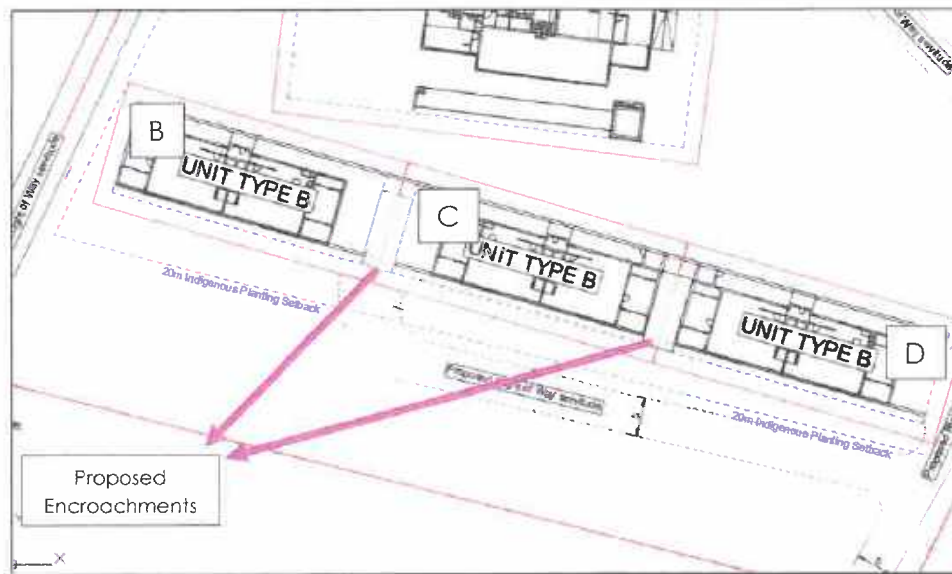


Figure 1: Proposed encroachments

Both these proposed encroachments are uninhabitable space as it will be used for a garage between Portion B and C, and a covered garden, between Portion C and D. 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.

4.6 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.



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The subject property has access to two proclaimed streets on either side of the property and there are two right of way servitudes proposed for the property to ensure all residents and guests have suitable access and egress.

The first right of way servitude proposed will ensure that all five residential properties have adequate access. The second is a shared right of way servitude with Erf 37 Birkenhead, half of the 5m right of way servitude will be located on Erf 38 Birkenhead and the other half will be located on Erf 37 Birkenhead. Both properties will enjoy access via the servitude area. The 2,5m servitude located on Erf 38 Birkenhead will be registered in favour of Erf 37 Birkenhead.

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.

4.7 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** 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;
- 5.3 Subdivision** into one (1) General Residential Zone 3 erf, four (4) 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 Consent Use** to allow a hotel on one 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 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.
- 5.6 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



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5.7 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 T34160/2021 (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.

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 being used for residential purposes and is improved with a dwelling unit. The property owners have the vision to utilise the subject property to its full potential. The proposed boutique hotel will allow the property owners to unlock additional economic activity on the subject property. The proposed development of the property is restricted by this condition and therefore requires removal.

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 eco resorts and boutique hotels are promoted in the area and it was determined that the particular title condition is restricting the property owners' vision. The condition made sense when no clear development guidelines existed, but since the insertion of the condition in 1966, the Overstrand Municipality has allowed several expansions to take place in the Birkenhead area. The proposed development is in line with the relevant 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.



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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 4 separate residential properties, and to be improved one dwelling unit. 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 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.

Title deed restriction

Condition C(e)

"That this erf be subdivided except with the consent in writing of the Administrator."

Motivation

The rationale for the proposed removal is that when the title deed was initially created, the Birkenhead area's natural aesthetic was determined to be priority. Since then, subdivision has been promoted as per the Danger Point Precinct Plan and the Overstrand Municipal Growth Management Strategy that states that the area is suitable for densification. The property owners' proposed vision was informed by the Birkenhead Precinct Plan incorporating several aspects thereof in the development proposal.

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These include the 4-dwelling units, the inclusion of a Private Open Space and the boutique hotel, which are all in line with the provisions of the Birkenhead Precinct Plan. To achieve the full potential of the subject property, subdivision is required and currently this specific title deed condition is restricting the subdivision.

Title deed condition background

The title deed condition was intended to protect the character of surrounding area and ensure properties are not developed to form high density urban developments. This is not the vision of the property owners as the sustainability of the area is just as important. Currently the restrictive title deed condition is limiting what is allowed to be done on the subject property and it is limiting the proposed development.

Status quo

The subject property's development is being restricted by the title deed condition. With new guidelines put in place by the Overstrand Municipality, informed decisions on the development of properties in the Birkenhead area can be made.

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> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</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>(f) whether the removal, suspension or amendment of the restrictive condition</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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will completely remove all rights enjoyed by the beneficiary or only some of those rights.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1, GR3 & OS3 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (a) 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.	Dwelling House	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.	None	Comply



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General Residential Zone 3: Flats (GR3)		
Land Use Restrictions		
Parameters	Proposal	Comply/ deviate
Primary use	Flats and Town House in accordance with 6.3.2 and residential buildings.	N/A
Consent use that may be applied for	Crèche, Day Care Centre, Home Occupation, Hotel , Institution, Place of Assembly, Place of Instruction, Place of Worship, Retirement Village, Tourist Accommodation and Transmission Apparatus	Applied for and motivated.
Development parameters		
Density	A minimum erf size of 3000m ² is applicable for densification.	3000m ² Comply
Floor factor and coverage	The maximum floor factor and coverage is determined in accordance with bulk zone, as specified in the table below: GR3 Floor Factor – 3.0 Coverage – 100%	Proposed Coverage: 820,4m ² / 27,34% 0.27 - Floor Factor Comply
Height	As Per the Danger Point Precinct Plan - 2 Storeys	2 Storeys Comply
Setback	As per the OMLUS – 12.5m As Per the Danger Point Precinct Plan – 20m street set back	20m Comply
Building lines	As per the OMLUS – The Municipality may require an 8,0 m setback from the centreline of the abutting street, provided that the Municipality may permit stoeps to be located within the setback line. (i) The street building line is 4,0 m.	(i) N/A (ii) Comply Comply

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	<p>(ii) The side building line is 4,5 m, provided that where a fourth storey is provided, the Municipality may require the fourth storey to be set back 6,0 m from the property boundary.</p> <p>(iii) The rear building line is 3,0 m, provided that where a fourth storey is provided, the Municipality may require the fourth storey to be set back 6,0 m from the property boundary.</p> <p>(iv) The general building line exemptions of 16.1 apply.</p>	(iii) Comply
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OPEN SPACE ZONE 3: PRIVATE OPEN SPACE (OS3)			
Primary use	Use of the property	Proposal	Comply
Consent uses	Private Open Space 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.	Private Open Space N/A	Comply N/A
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>			



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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.	Dwelling House	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.	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	- 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	(i) The street building line is determined in accordance with the net erf area: 400 m ² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m ² = 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
		-	Comply



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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 alter 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 existing building (proposed hotel) is 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 (4 residential properties and 1 hotel property) 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;*

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- c) any development or other activity which will change the character of a site
- 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, not only will the property owners be creating more housing options within Birkenhead, but they will also be creating new sustainable economic activities. These include construction work and long-term employment opportunities at the boutique hotel.

Even though it is a personal endeavour to develop the subject property, it will have a lasting positive impact on the surrounding area, in terms of economic activity and employment opportunities.

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 short- and long-term economic impact. The construction phase will employ several people that will assist in the construction of the development. The boutique hotel will bring long term employment opportunities to the Birkenhead area.

Opportunity cost



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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 positive impact on the surrounding area and will be 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 and 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



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Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	The proposal is to establish a boutique hotel and also 4 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



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SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
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 does 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

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C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
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,



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tourism and not harming functional ecosystems. In line with the PSDF strategy for opening up opportunities in the rural space economy the following dimensions exist. 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. The following is an extract of the MSDF – "Kleinbaai/Franskraal is comprised of Van Dyksbaai, Birkenhead, Kleinbaai, Klipfontein and Franskraal suburb, which in turn constitutes a suburb of the Greater Gansbaai. The area is well known for its shark diving industry and is becoming an increasingly popular tourist, holiday, residential and retirement destination." The proposed development and boutique hotel will add to the attraction of the area and provide additional overnight accommodation to these tourists and guests.

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".

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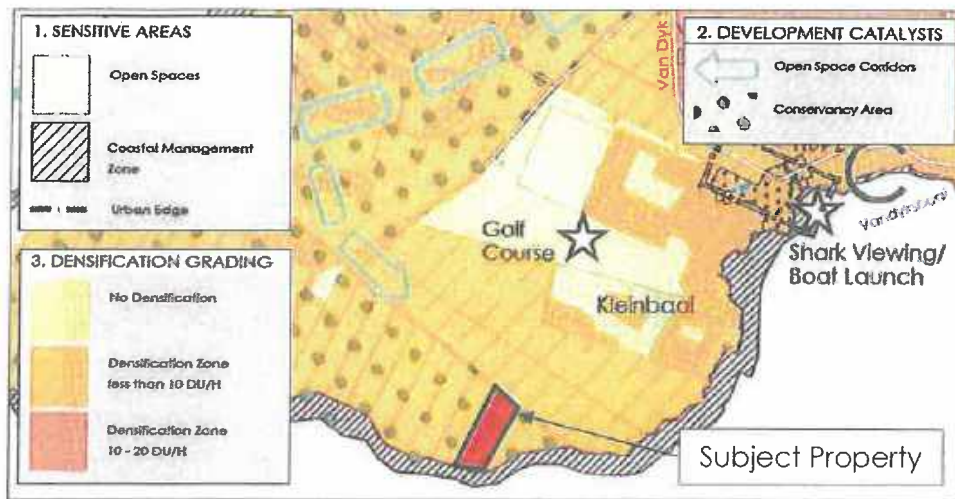


Figure 2: Overstrand Municipal Growth Management Strategy Extract

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:

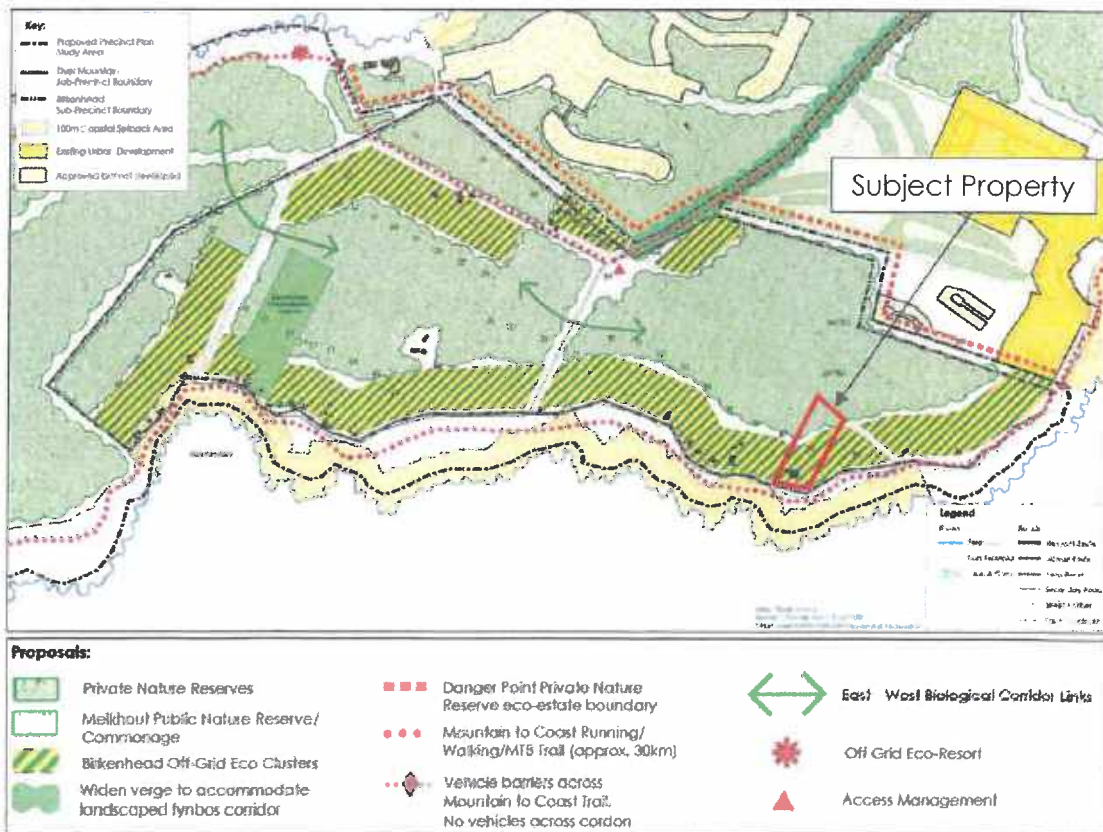


Figure 3: Birkenhead Sub-Precinct Plan Extract

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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;



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- The western boundary of Lord Roberts Drive road reserve;
 - 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.

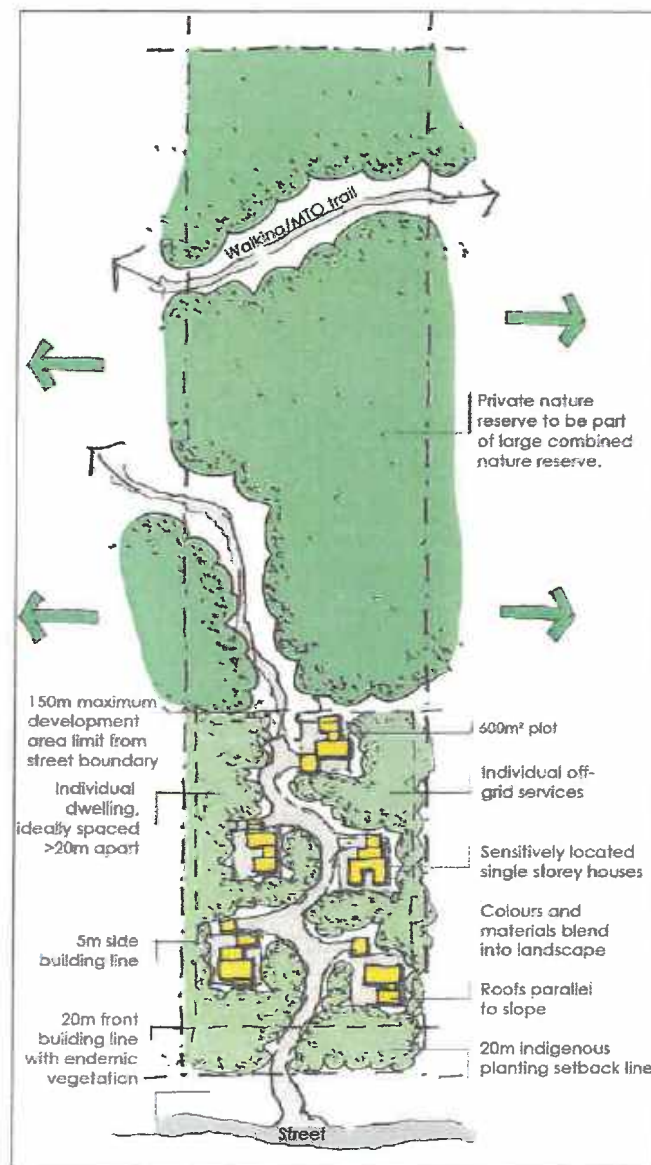


Figure 4: Plot Development Guide

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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 1 boutique hotel and 4 dwelling units. Both these proposals are 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 design of the proposed development. 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. (Refer **Annexure C – Architectural Drawing and 3Ds**) All structures will be set back 20m from Marine Drive with a maximum development area line of 150m is being adhered to.

File 21/98
Erf 38 Birkenhead
April 2022
Amended June 2022



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.

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 4 dwelling units, the inclusion of a Private Open Space and the boutique hotel 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 economic activities and also new housing options in the Birkenhead area, that will create a mixed-use environment.

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.

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.

New employment opportunities will be available once the boutique hotel is operational and open to the public which will also create a new tourist attraction that will attract more people to the Birkenhead 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 the development proposal, 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** 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;
- 15.3 Subdivision** into one (1) General Residential Zone 3 erf, four (4) 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 Consent Use** to allow a hotel on one 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 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;
- 15.6 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
- 15.7 Establishment of a Homeowners Association** in terms of Section 31 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

File 21/98
 Erf 38 Birkenhead
 April 2022
 Amended June 2022

Amended
Site Development Plan
Erf 38, Birkenhead

Erf 38 - 4,0858 Ha

Parking requirements:

One bay per bedroom plus an additional parking bay per 100m² of public access areas

19 parking bays are provided

Dwelling Unit

Two on-site parking bays per dwelling unit

2 Parking bays are provided

Coverage:

Hotel

Proposed - 27,34%

Dwelling Units

Allowed - 41,67% (as per Dandara Point Precinct Plan)
Proposed - 23,3%

Building Lines

Remainder of Erf 38

5m - Side Building Lines

150m - Maximum Development Setback

20m - Indigenous Plant Setback

Dwelling Units

2m - Side and Rear Building Lines (Not adjacent to street)

Departure from 2m side building line to 0m, on Portion B, C and D

Hotel

2m - Side and Rear Building Lines (Not adjacent to street)

Plan prepared by: Thabo Jansen
Based on plans prepared by Designman

All distances are approximate and subject to a survey

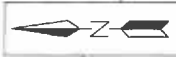
Tel: 028 313 1411

Email: admin@wrap.co.za

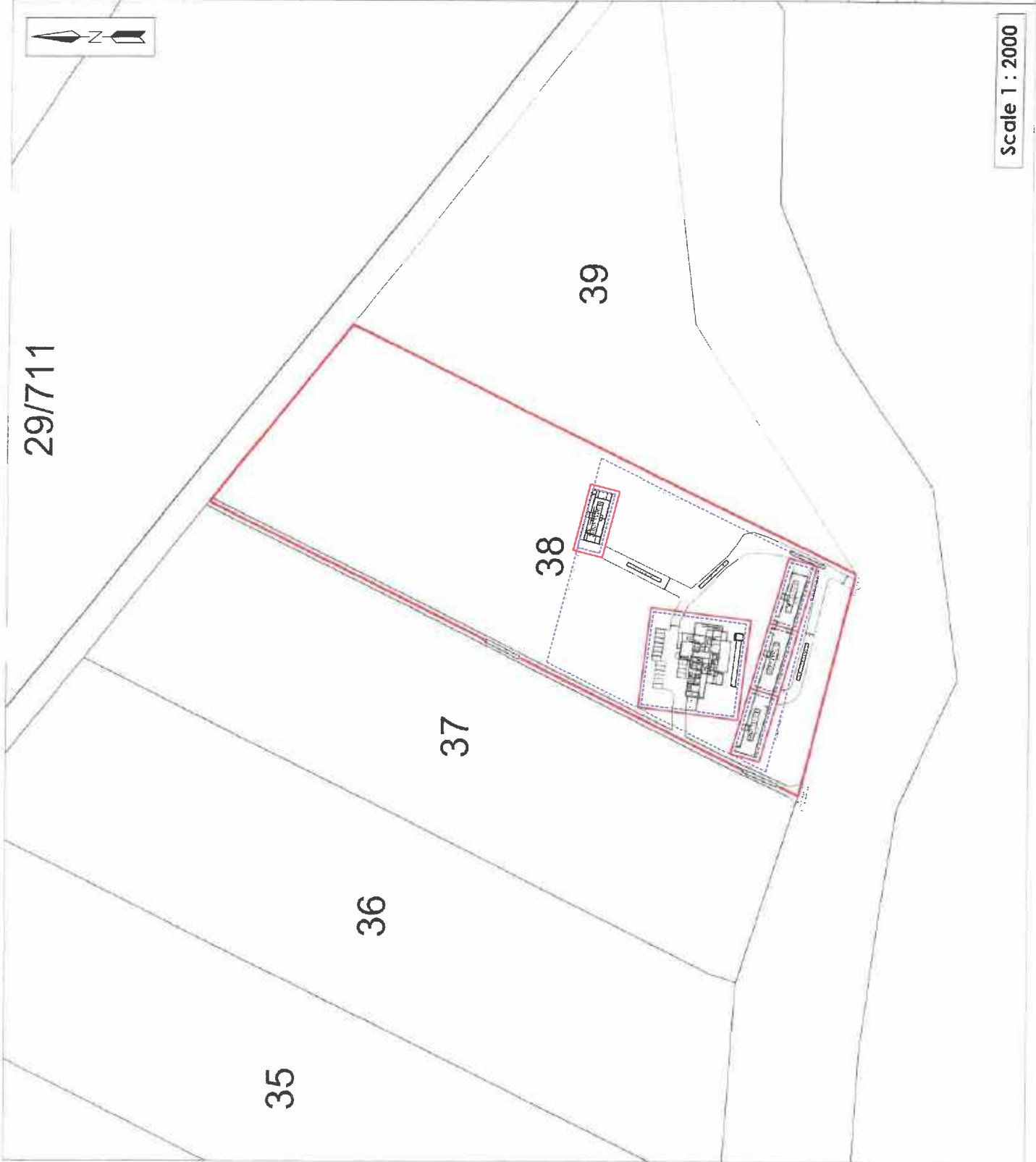
Unit B, Standard House, Corner of Royal and Dirkie Oys Street, Hermanus, 7200



Project Office
Town Planning & Project Management



29/711



Scale 1 : 2000

**Amended Inset Area
Site Development Plan
Erf 38, Birkenhead**

Parking requirements:

Hotel

One bay per bedroom plus an additional 6 parking bays per 100m² of public access area at

19 parking bays are provided

Dwelling Unit

Two on-site parking bays per dwelling unit

2 Parking bays are provided

Coverage

Hotel

Proposed - 27,34%

Dwelling Units

Allowed - 41,67% (as per Danger Point Precinct Plan)
Proposed - 23,3%

Building Lines

Remainder of Erf 38

5m - Side Building Lines

150m - Maximum Development Setback

20m - Indigenous Flora setback

Dwelling Units

7m - Side and Rear Building Lines (Not adjacent a street)

Departure from 2m side building line to 0m on Portion B, C and D

Hotel

2m - Side and Rear Building Lines (Not adjacent a street)

Plan prepared by: Thim Jansen
Based on plans by Designkies

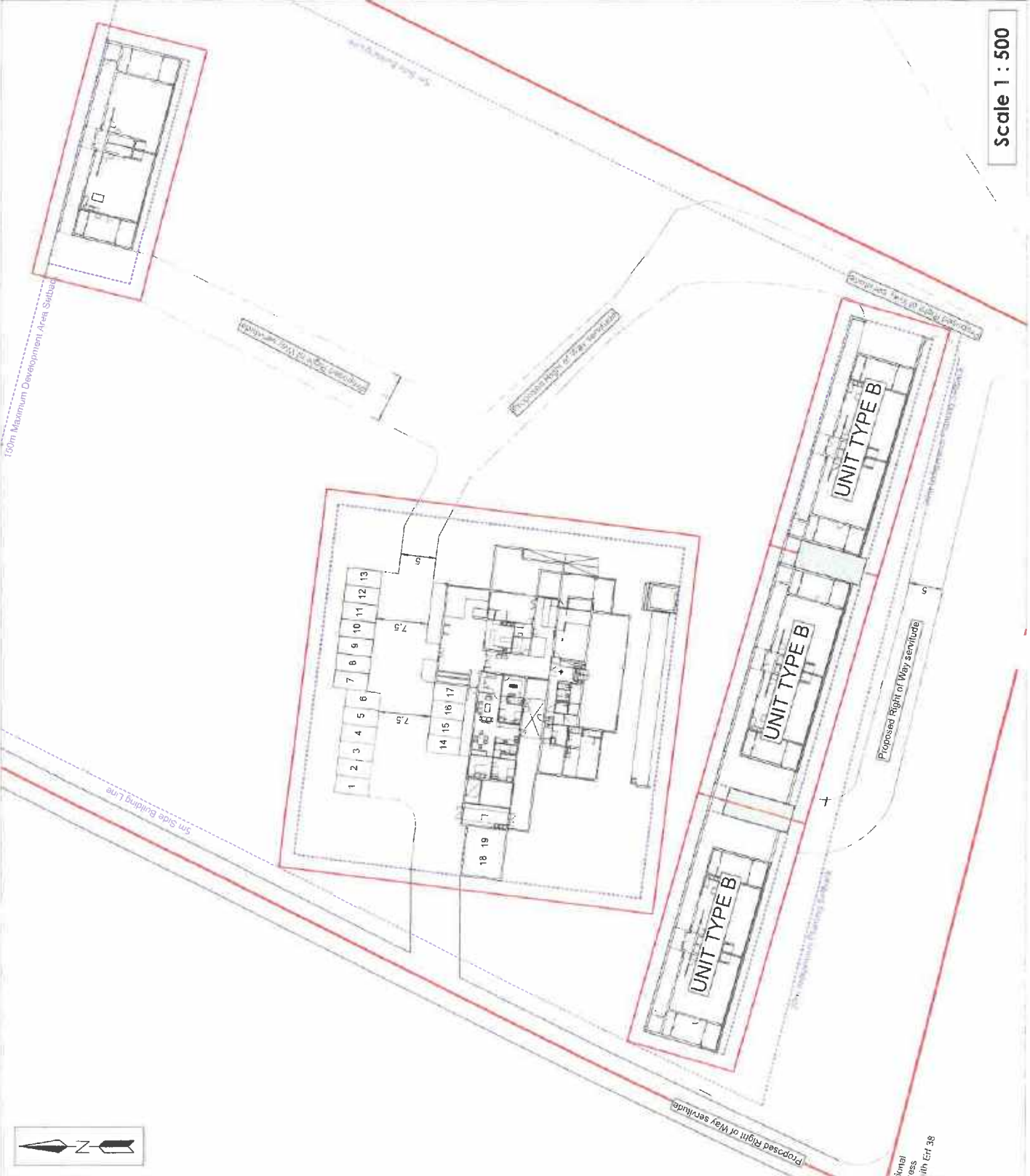
All distances are approximate and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za
Unit 6, Standard House, Corner of Royal and Dirkie Uys Street, Hermanus, 7200



Project Office
Town Planning & Project Management



Scale 1 : 500



ditional
Press
4th Erf 38

Proposed Subdivision Plan Erf 38 Birkenhead	
	Proposed Right of Way Servitude
	Portion A - Proposed Hotel (3000m ²)
	Portion B - Proposed Residential Unit (600m ²)
	Portion C - Proposed Residential Unit (600m ²)
	Portion D - Proposed Residential Unit (600m ²)
	Portion E - Proposed Residential Unit (600m ²)
	Remainder of Erf 38 Proposed Open Space (35 848m ²)

Plan prepared by: Triën 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, 7206



Project Office 2C
Team Planning & Project Management



SCALE 1 : 2000

294

Louise Raynor & Associates
 Suite 406
 Fourth Floor
 42 Keerom Street
 Cape Town
 8001

Prepared by me

[Signature]
 CONVEYANCER
 Louise Raynor
 LPCM81901

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 33 000 000,00	R. 1778,00
Reason for exemption	Category Exemption.....	Exemption i t o. Sec/Reg..... Act/Proc.....

T 00003416072021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ANTON LUTHER POSTHUMUS (LPCM No. 80715)

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at Cape Town on 22nd June 2021 granted to him/her by

LOUISE RAYNOR duly authorised hereto by virtue of a General Power of Attorney dated at Cape Town on 21st August 2014, PA 360/2017 registered at Cape Town and granted to me by

DATA / VERIFY
 04 -08- 2021
 YOLANDI OLIVIER

DATA / CAPTURE
 26 -07- 2021
 VUYELWA LAMANI

Lexis® Convey 18.0.1.8

[Handwritten initials]

Page 2

RENATA JUTGLAR TERMOTE

Born on 7 June 1954

Unmarried

And the appearer declared that his/her said principal had, on 11 April 2021, truly and legally sold by , 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 PROPRIETARY LIMITED

Registration Number: 2020/729468/07

or its Successors in Title or assigns, in full and free property

ERF 38 BIRKENHEAD

situate in the Overstrand Municipality

Division of Caledon, Province of the Western Cape

IN EXTENT 4,0858 (FOUR COMMA ZERO EIGHT FIVE EIGHT) Hectares

FIRST TRANSFERRED by Deed of Transfer Number T20174/1966 with Diagram No. 508/1965 annexed thereto and held by Deed of Transfer Number T114245/2004

- A. Subject to the conditions referred to in Deed of Transfer No. T8461/1929
- B. Subject further to the special condition contained in Deed of Transfer No. T 14051/1919, that the owners of Romans Bay, a portion of Klipfontein, will at all times have the right to use water out of any of the fountains on the property transferred hereby for domestic purposes, and that they will have access thereto via a public road, and that trespassing will by no means be allowed on any other portion of the above mentioned property.
- C. Subject further to the conditions contained in Deed of Transfer No. T20174/1966, imposed by the Administrator in terms of Ordinance No. 33 of 1934:

As being in favour of the registered owner of any erf in the Township and subject to the adjustment or changes made by the Administrator by virtue of the stipulations of Section 18(3) of Ordinance No. 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) Not more than ¼ 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 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1,57 metres of the lateral boundary common to any adjoining erf."

As being favour of the Administrator:

Page 3

"(e) That this erf be not subdivided except with the consent in writing of the Administrator."

As being in favour of the Local Authority:

- (f) That the owner of this erf shall be obliged to allow the drainage or sewerage of any other erf to be conveyed over this erf if deemed necessary by the local authority and in such manner and in such position as may from time to time be reasonably required by the said local authority.
- (g) That no building for human habitation shall be erected on this erf unless provision is made above ground for the storage of rain water, the said storage to have capacity of not less than 9100 litres."



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

RENATA JUTGLAR TERMOTE, Unmarried

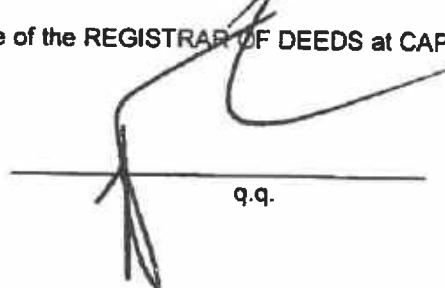
heretofore had to the premises, did in consequence also acknowledge her to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

BUSHGIRL PROPRIETARY LIMITED
Registration Number: 2020/729468/07

or its Successors in Title or 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 300 000,00 (THREE MILLION THREE 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
22 JUL 2021



q.q.

In my presence



REGISTRAR OF DEEDS

AM

TP. n. / thead 1244
(S. ud n. n. a. n. c.)
38 GBH

FILE NO.	ANNEXURE E 1/18
Birkenhead	
SCAN NO.	Swanepoel
COLLABORATOR NO.	1756404

Alida Conradie

From:
Sent:
To:
Subject:



Friday, 30 September 2022 22:51
Alida Conradie

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 0828092505 and
2. Birkenhead Owners Association - Email address arthur.s@mweb.co - Contact Number 0828092505

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

Arthur Swanepoel

01 OCT 2022
AS

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 . OR 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.

The solution for the Applications for erven 37 & 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 and likely, other owner 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 for 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.

38 GBH



BIRKENHEAD

TP-n./head
(S.ud n.bwe)

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.	Al 38 ✓
	Birkenhead
SCAN NO.	
	Birk Cons.
COLLABORATOR NO.	

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.



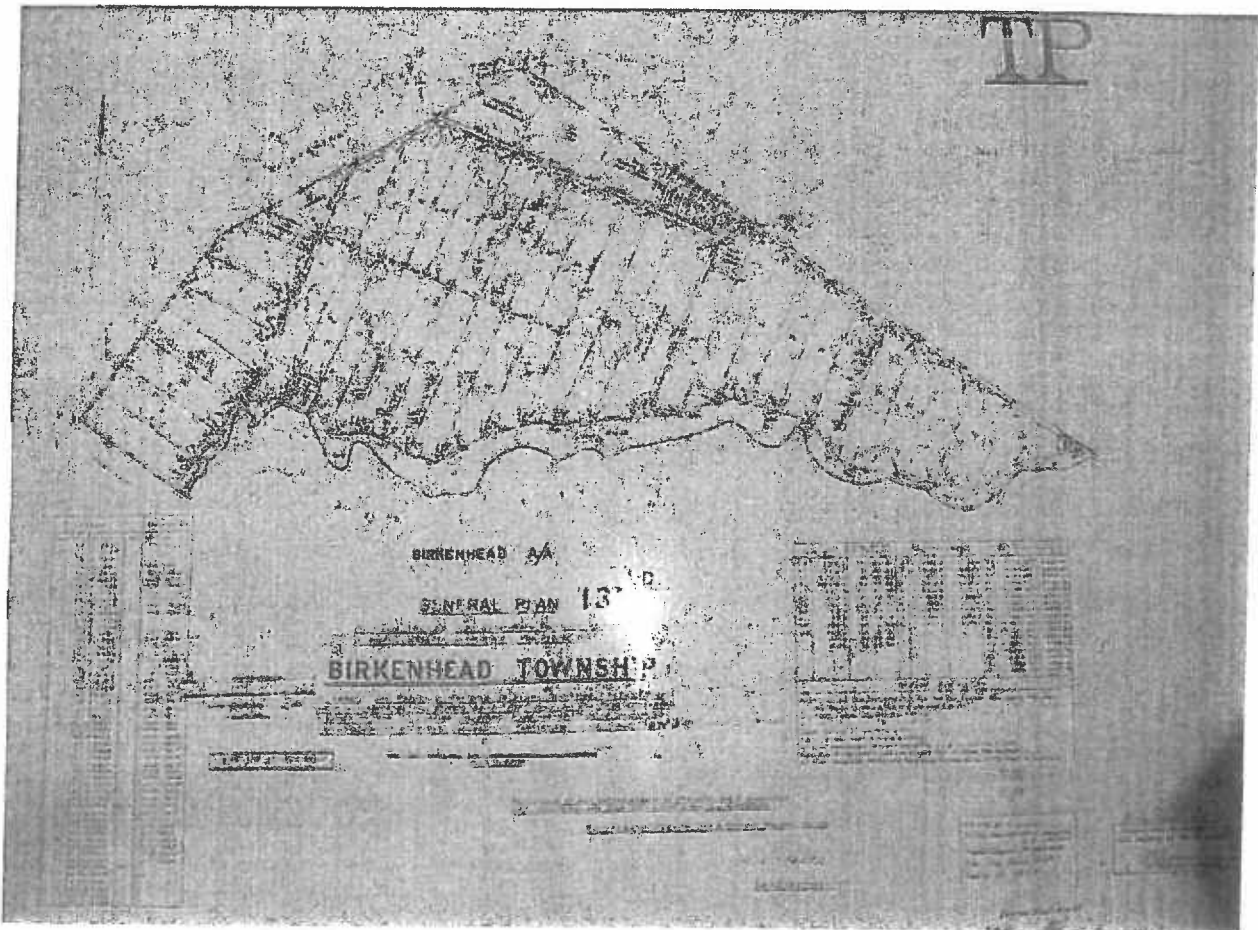
01 OCT 2022

BIRKENHEAD CONSERVANCY (BC)

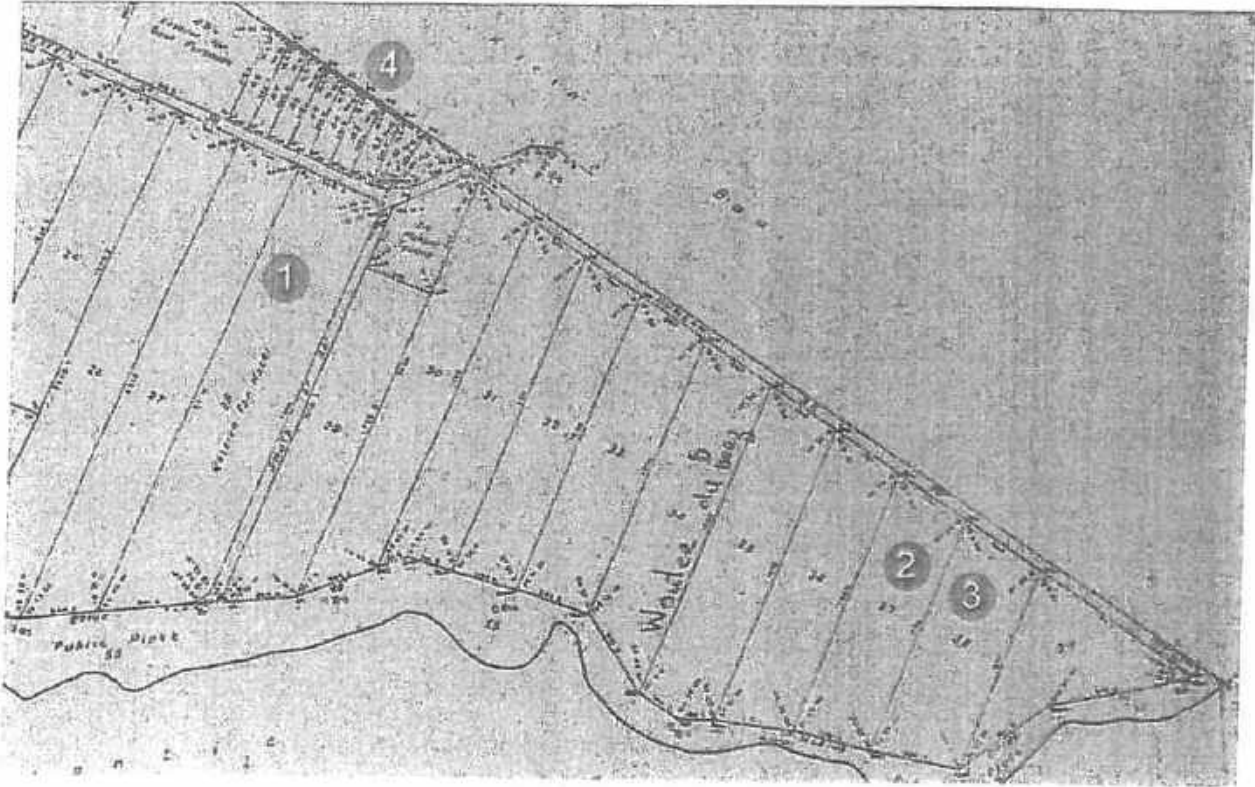
The application for the rezoning of the existing building structure positioned on Erf 38 from SR1 to General Residential Zone 3 is also unacceptable for the following reasons.

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.



38 CBH

TP. A. Theart
(S. ud m. n. d.)

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.	38 ✓
	Birkenhead
SCAN NO.	
	Michelle
COLLABORATOR NO.	
	1756253

A Conradie



From: Philippe Du Preez <
Sent: Friday, 30 September 2022 10:41
To: Alida Conradie
Subject: Erf 38 (49 Marine drive) Birkenhead

Herewith I, Dr Philippe du Preez on behalf of the Du Preez Trust who owns erf 34, Birkenhead, am responding to rezoning applications of above property. Birkenhead township has agreed years ago that any property development will not exceed one house per ha. Concerning the application in paragraph c) the Zone 1 application of single residential properties should therefore adhere to one house per ha (if the property is 4 ha, therefore 4 houses in total)

Erf 28 in Birkenhead has already been designated as a hotel erf many years ago. It is therefore not advisable to have another hotel (even boutique) nearby. In application d) for the boutique hotel I have no problem that the present dwelling will be used as a bread and breakfast business, but I object to have it duplicate a hotel for which erf 28 is already designated.

I can be contacted on above e-mail or

urs faithfully

Philippe du Preez

*TP. Du Preez
(S. du Preez)*

Erf 38 ✓	
COLLABORATOR NO.	Birkenhead
SCAN NO.	Philippe
FILE NO.	1755637

30 SEP 2022

TP

TP A/Heart
1256
(Sud w Name)
38 GBH



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.	Er 38 ✓
	Birkenhead
SCAN NO.	Greeff 38
COLLABORATOR NO.	175 6000

01 OCT 2022
TP

TP. N. Nkomo
1257
(S. Ud n Nene)
38 GBH

FILE NO.	Erf 38 14/18
	Birkenhead
SCAN NO.	
	Gabriel
COLLABORATOR NO.	
	1756242

Alida Conradie



From: alida.conradie@gnm.com
 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
R

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 provisions 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

1262 TP. N. Theart
(Sudman)



Project Office

Town Planning & Project Management

Our reference: 21/098
Your reference: 38GBH (4125/2022)

28 October 2022

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO.	EF 38 ✓
	Birkenhead
SCAN NO.	
	GBH 38
COLLABORATOR NO.	
	1712572

Attention: Mr Schalk van der Merwe

ERF 38, 49 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION, CONSENT USE AND DEPARTURE

Your letter dated 6 October 2022, refers.

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

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

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

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

P O Box 1247
Hermanus,
7200

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



WRAP Group Established 2002

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 38, 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 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. Erf 38 Hotel is not needed as there is currently a designated property for Hotel use and another is not required.

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

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 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 private open space that will form part of the natural area of Birkenhead.

The private open space will have an area of 3,5848ha of the entire 4.0858Ha property meaning ±88% of the property will be untouched and undeveloped and used for conservation purposes.

Comments related to Land Use

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

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.

The application for the rezoning of the existing building structure positioned on Erf 38 from SR 1 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.

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.

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.

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.

Birkenhead township has agreed years ago that any property development will not exceed one house per ha. Concerning the application in paragraph c) the Zone 1 application of single residential properties should therefore adhere to one house per ha (if the property is 4 ha, therefore 4 houses in total)

Response to comments

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

- **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 4.0858Ha which in this case rounds up to 5 hectares. The proposal is however only to accommodate 4 dwelling units and 1 hotel that will also be zoned appropriately.

"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."

The proposal to apply for a hotel is also aligned with the vision for the danger point area and aligned with the Precinct Plan. The township plan of 82 years ago as referenced by the objector is not set in stone and an application for consent must be considered. There is development frameworks and guidelines in place to ensure the area is developed effectively and ensure the heart of the area is maintained which is also of importance to the property owners.

The comment regarding the setting of a precedent is noted, but it should be reiterated that the proposal cannot create a precedent, as a town planning application are site-specific and the notion that if one property is rezoned or that one property is granted an additional right is not sufficient motivation to approve the rezoning of another property.

Each application is evaluated individually and site specific and considered if deemed fit to approve the application. The Overstrand Municipality is required to consider various factors that may influence their consideration of the proposed development.

The property owners may in the future apply for a liquor licence, although not included in this application.

The objector creates a positive notion that 60 employment opportunities will be created should the application be approved. These numbers were not confirmed by the property owners, but it is however expected that additional employment opportunities will be created and it should be seen as a positive in the economic situation that the country finds itself.

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 38, 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

A handwritten signature in cursive script, appearing to read 'T. Jansen', is written over a faint, larger version of the same signature.

T JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

File reference:	ERF 38 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 38, 49 MARINE DRIVE, BIRKENHEAD
Application Description	APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION, CONSENT USE AND DEPARTURE

ATTACHMENTS :

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

YOUR DEPARTMENT'S COMMENTS:

No objection from Solid Waste Planning as they will manage and remove their own solid waste.	
Note that the waste will need be disposed of at a registered disposal 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: 047/2022

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

TR. D. / heat
(S. J. d. v. N. v. d. W.)

FILE NO.	SI 38
	Birkenhead
SCAN NO.	GRH 38 ✓
COLLABORATOR NO.	1771263

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, CONSENT USE AND DEPARTURE ON ERF 38, 49 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

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*; and Condition C (e) – *that the erf be subdivided except with the consent in writing of the Administrator*. 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.
 - 2.1.1.2. The applicant indicated that **the rezoning and subdivision** will enable the property owners to utilise the current main dwelling unit as a boutique hotel (3000m²), within the proposed zoning – General Residential Zone 3. After the completion of the proposed alterations, the boutique hotel will have 8 lettable rooms that the prospective transient guest could use.

- 2.1.1.3. Furthermore, the applicant is requesting **consent use** to allow a hotel on a subdivided portion in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended. A hotel is not a primary right on General Residential Zone 3 in terms of the OMLUS and requires consent from the Overstrand Municipality. According to the applicant the hotel will have sufficient on-site parking in-line with the parking requirements as determined by the OMLUS.
- 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. 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 uninhabitable spaces used for a garage and a covered garden.
- 2.1.1.5. An 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, that will service both properties (Erf 37 and Erf 38) and the proposed 2,5m servitude on Erf 38 will be registered in favour of Erf 37.
- 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.
- 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. Furthermore, Section 63 of the NEM: ICMA further specifies relevant factors that must be taken into account by the competent authority where an environmental authorisation is required in terms of Chapter 5 of the NEMA for any activities proposed within or that may impact the CPZ. These prescribed factors (Section 63 of the NEM: ICMA) serve as guidance to municipalities and other land use decision makers to give effect to Section 62 of the NEM: ICMA.
- 2.1.5. 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.
- 2.1.6. 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.
- 2.1.7. 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. 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 the general public's ability to access CPP. Additionally, the applicant must be informed that they may not create any formal or informal walkways/pathways to the CPP outside of their property boundary.
- 2.1.8. 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; consent use; and permanent departure; 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 15:27:25
+02'00'

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

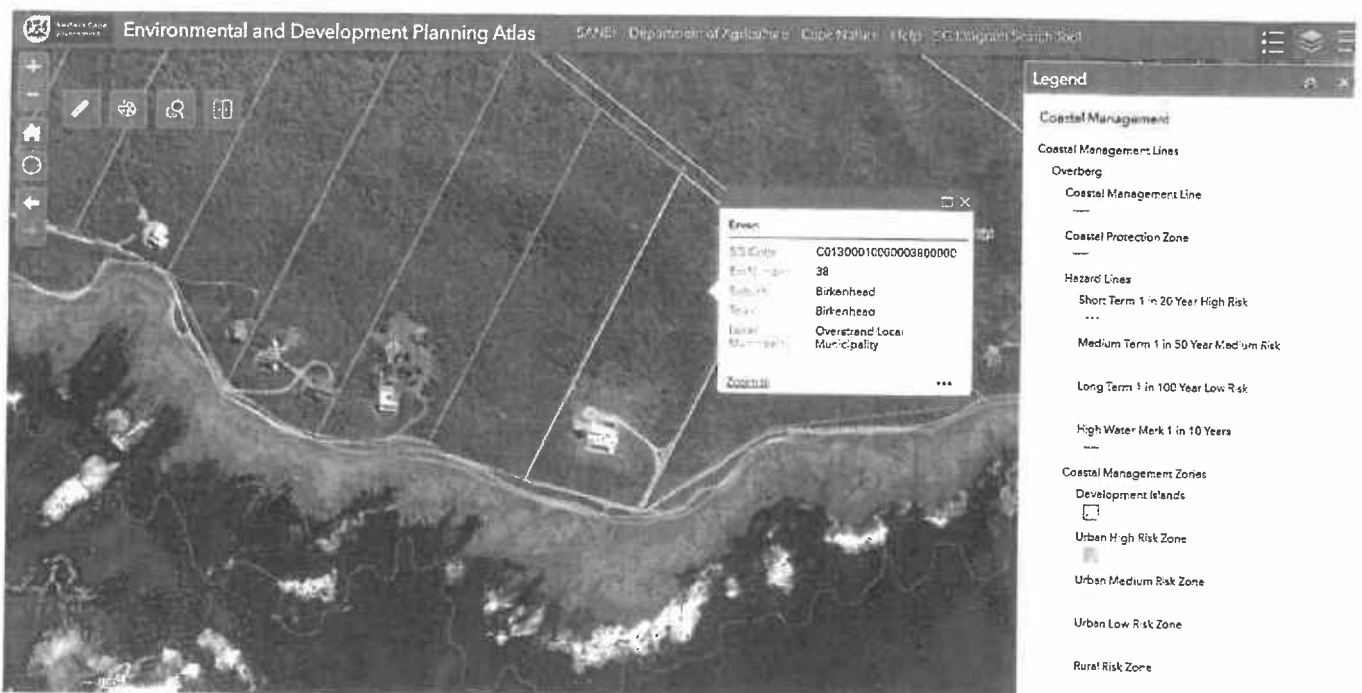


Figure 1 The proposed property in relation to coastal risk and the CML



**Western Cape
Government**

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-21/259 (Job 29828)

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

Attention: Ms A Conradie

Dear Madam

FILE NO. EL 38
Birkenhead
SCAN NO. 07
COLLABORATOR NO. 1768788



**TP-A Theart
(S vld merwe)**

ERF 38, 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 ($\pm 3000 \text{ m}^2$), 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 ($\pm 35.848 \text{ ha}$).
 - 3.4. Consent use to allow a boutique hotel on one of the subdivided portions.
 - 3.5. 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), (c) and (e) on the title deed T34160/2021 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:

25 OCT 2022

- 5.1. A servitude right of way is registered in favour of the subdivided portions over Remainder of Erf 38 at ±km1.18 LHS.

Yours Sincerely



SW CARSTENS

For DEPUTY DIRECTOR-GENERAL: ROADS

DATE: 24 OCTOBER 2022

ENDORSEMENTS

1. Overstrand Municipality
Attention: Ms A Conradie (e-mail: alida@overstrand.gov.za)
2. WRAP Project Office
Attention: L Truter (e-mail: admin@wrapgroup.co.za)
3. District Roads Engineer
Paarl
4. Mr S Bain (e-mail)
5. Ms PZ Govu (e-mail)
6. Mr J van der Merwe (e-mail)
7. Mr S Carstens (e-mail)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, REZONING, SUBDIVISION & DEPARTURE: ERF 38,
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 6.6	= R 171 837.60
Sewerage	R 17 555.00 x 6.6	= R 115 863.00
Roads	R 7 872.00 x 4	= R 31 488.00
Solid Waste	R 1 574.00 x 4	= R 6 296.00
TOTAL (inclusive of VAT)		= R 325 484.60

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 38. The developer may opt to install water link services (in full or partial) along any of the three pipeline routes proposed by the revised GLS capacity report dated 29 March 2023.
17. that the proposed development on Erf 38 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 38 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:	05 March 2024
Re:	ERF 38 BIRKENHEAD: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION, CONSENT USE AND DEPARTURE

The Environmental Section has the following comments on this application:

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 erven "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