

4.2

ERF 5629 (A PORTION OF ERF 4576), 1 PODALYRIA ROAD, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND AMENDMENT OF CONDITION IN RESPECT OF AN EXISTING APPROVAL: WRAP PROJECT OFFICE ON BEHALF OF JD & CJ SMIT

5629 KBB (4417/2023)

**H van der Stoep
26 August 2025**

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 22 June 2025 from WRAP Project Office on behalf of JD & CJ Smith on Erf 5629 (a portion of Erf 4576), Betty's Bay for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.7.(a)(i) and B.7.(a)(ii) as contained in Title Deed No. T27446/2021 of the property to accommodate a proposed new dwelling.

The restrictive title deed conditions read as follows:

"B. ONDERHEWIG VERDER aan die volgende voorwaardes vervat in Transportakte Nr. T33675/1977 opgelê deur die Administrateur van die Provinsie Kaap die Goeie Hoop ingevolge Ordonnansie Nr. 33 van 1934 by die goedkeuring van BETTYSBAAI DORP UITBREIDING NR. 6, welke voorwaardes as volg lees:-

7. *Except with the prior consent of the Administrator –*

- (a) *no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 8m to the street line which forms a boundary of this erf, nor within 5m of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-*
 - (i) *an outbuilding not exceeding 3m in height measured from the floor to the wall-plate may be erected within the above prescribed rear space and within the above prescribed lateral space for a distance of 12m measured from the rear boundary of the site; provided that in the case of a corner erf, the distance of 12m shall be measured from the point furthest from the streets abutting the erf.*
 - (ii) *an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."*

- ❖ **Amendment of condition in respect of an existing approval** in terms of Section 16(2)(h) of the By-Law, to allow the owners to position the proposed new dwelling in a previously approved "no-go" environmental zone.

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

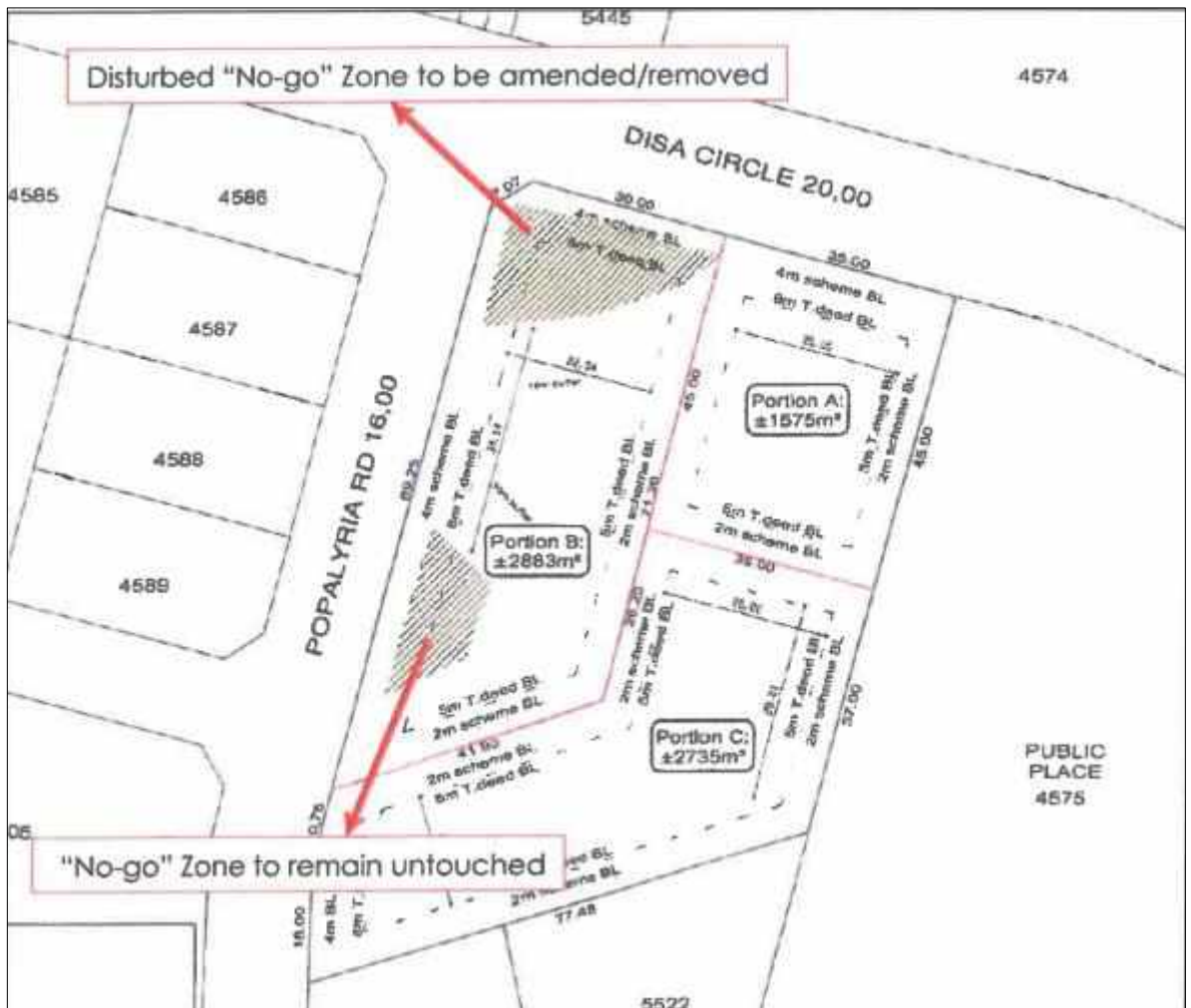
2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The subject property was subdivided in 2020 into three portions. The subject property was described as Portion B with two "no-go" environmental zones containing sensitive flora identified in a botanical survey conducted in 2006.

The property owners have regrettably disrupted the upper "no-go" zone. Refer to the figure below for an illustration of the area. As the previous approval provided a condition that the subdivision was linked to the plan, and it mandated that the "no-go" zones remain undisturbed.



4. SUMMARY OF APPLICANT'S MOTIVATION

CONTEXTUAL INFORMATION

Zoning of Erf:	Residential 1: Single Residential
Area in extent:	2884m ²
Title Deed Number:	T27446/2021

REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

The property owners bought the property in 2021 with the intention to develop it for themselves, but only after they were in consultation with an architect, they became aware of the restrictive title deed building lines that are more restrictive than the OMLUS building lines and therefore very limiting. As the title deed of the subject property has several title deed conditions that are restricting the proposed intention for the development property, the property owners want to remove these conditions.

The rationale for the proposed removal:

The subject property is currently a vacant site, and the property owners have the vision to develop thereon a dwelling house for their family. The property owners have the vision and opportunity to expand on their rights as determined by the development parameters as set out in terms of the OMLUS by building a dwelling house closer to the boundary than what is currently allowed in terms of the title deed. The property is orientated to overlook the ocean to the east. Several aspects of the proposed development are however being restricted by the condition mentioned above and therefore the proposal is made to remove the restrictions.

Title deed condition background:

The restrictive title deed condition was originally intended to protect the residential character of the Betty's Bay area, but the intention of the property owners is to increase the residential viability of their property.

Status quo:

The current OMLUS has clear development guidelines in place to ensure that the whole of the Overstrand Municipal Area's residential properties is managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

The current and future development of the property is being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the land use scheme and policies of the Overstrand Municipality, the property owners will not be able to utilise their property to its full extent.

ADDITIONAL CONSIDERATIONS FOR REMOVAL OF RESTRICTIONS: LUPA SECTION 39(5)(a-f)

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

No person or entity will be affected financially by the removal of the restrictive title deed condition.

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

No person is directly benefitting from this condition as the condition is only restricting the property owners.

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

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

The social benefit of the restrictive condition remaining in place.

This restrictive condition does not have a social benefit.

The social benefit of the removal of the restrictive condition.

This restrictive condition does not have a social benefit.

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

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

Amendment of conditions in respect of an existing approval

The subject property was part of a subdivision in 2020 where Erf 4576, Betty's Bay was subdivided into three portions. The subject property was identified as Portion B and located thereon were two "no-go" environmental zones that was identified as areas that contained sensitive flora through a botanical survey conducted in 2006.

The property owners have regrettably disrupted the upper "no-go" zone. As the previous approval provided a condition that the subdivision was linked to the plan, and it mandated that the "no-go" zones remain undisturbed. The current proposal seeks to amend the approved plan/condition by removing the upper "no-go" environmental zone due to its disturbance. Allowing this condition to be amended would permit the property owners to situate their proposed dwelling house in this area.

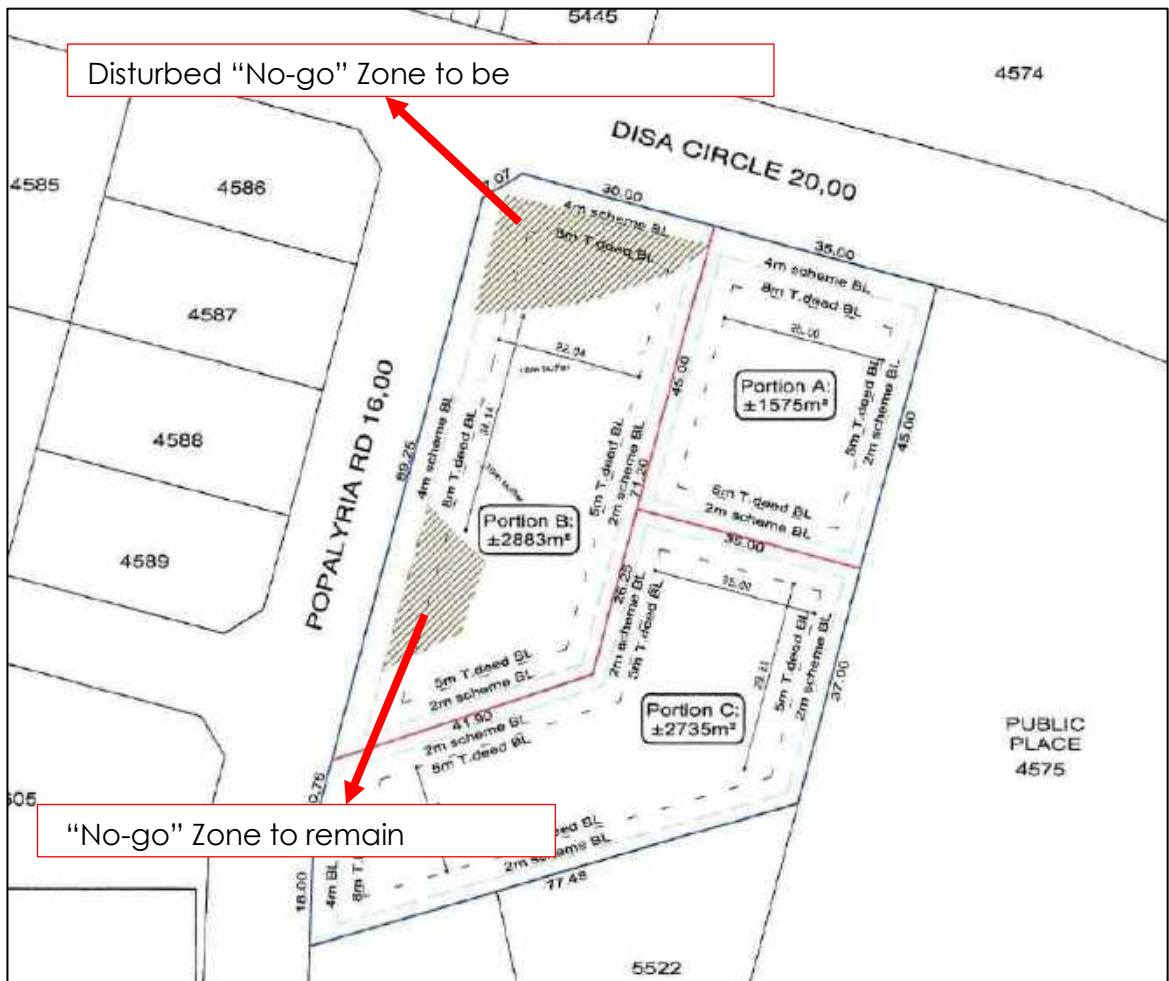


Figure 1: Historic subdivision approval

SERVICES:

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

Electricity, Water, Sewage and Solid Waste

The subject property will be connected to the existing networks in the area, which include electricity, water and sewage. The proposal of this application is not anticipated to impact on the existing services in the area.

Solid waste will be collected every week by the OM.

Access and Egress

Access and egress to the property will be gained from Popalyria Way.

NEED AND DESIRABILITY:

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

Need and desirability

The need for the land use application was a result of addressing all the land use requirements and ensuring the property meet the requirements of the property owners. To achieve this, the property owners are required to apply for the removal of the restrictive title deed condition.

Socio-economic impact	The removal of the restrictive title deed conditions and amendment of the previous conditions are not predicted to have a socio-economic impact.
Compatibility with surrounding uses	The proposal is to improve the property in-line with the development parameters as set out within the OMLUS.
Impact on external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community. In fact, the proposed property will increase the number of inhabitants in the area and increase the safety aspect within the community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the structures being proposed will be required to be compliant with the regulations and development parameters set out in the OMLUS. It is not predicted to have any impact on views, sunlight, or the character of the area

Economic impact

The proposal does not have an economic impact. The Overstrand Municipality will be able to collect higher rates and taxes once the application is approved, and the property improved with a dwelling.

Opportunity cost

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

Environmental Impact:

The property is not located in an environmentally important area.

POLICY DOCUMENTS:**Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)**

The subject property is located within the Urban Conservation Zone, which purpose is to protect and manage undeveloped conservation-worthy public owned land within the Overstrand Municipal urban edge, and adjacent buffer areas, while promoting the retention of viable priority ecological corridors in areas that are to be developed, to ensure an integrated 'conservation and development' approach that will enhance living conditions for the communities of the Overstrand. As the property is privately owned it is deemed that the development thereof will not have an impact on the Urban Conservation EMOZ.

Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The property is not located within the HPOZ.

Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

PLANNING PRINCIPLES:**Spatial justice**

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to increase the developable space is not predicted to aid in the elevation of past spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal to removal of restrictive title deed conditions intends to ensure the subject property is utilised to its maximum capabilities in-line with the OMLUS.

Efficiency

This proposal is intended to maximise the usage 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 suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	14 December 2023	14 February 2024
Government Gazette	Yes	14 December 2023	14 February 2024
Email notices & site notice	Yes	14 December 2023	14 February 2024
Internal departments	Yes	14 December 2023	14 February 2024
Ward Councillor	Yes	14 December 2023	14 February 2024
Total comments	FIVE (5)		
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 (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Building Control	18/12/2023	No objection. All buildings to comply with NBR and all other applicable law.
Engineering Services	20/02/2024	See Annexure G.
Municipal Environmental Management Services	15/05/2024	See Annexure H.
Western Cape Government: EADP (Environmental) – ROD	22/05/2025	See Annexure I.
Cape Nature	05/06/2025	See Annexure J.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

The application was duly advertised in the local newspaper and Government Gazette. E-mail notifications were sent out to surrounding neighbours and the Betty's Bay Ratepayers Association.

Five (5) letters of objection were received forthcoming the public participation process from the following parties:

- ✚ **Betty's Bay Ratepayers Association**
- ✚ **SC Viljoen**
- ✚ **AJ Kritzinger**
- ✚ **SA Fourie**
- ✚ **Dr WL Grundill**

The applicant was provided with an opportunity to respond to the objections. See Annexures E and F respectively.

OBJECTION – BOTANIST & ENVIRONMENTAL

Betty's Bay Ratepayers Association, SC Viljoen & Dr W.L. Grundill

- *Revised Botanical study not attached to documents circulated.*
- *The disturbed portion should therefore be considered for a Section 28 duty of care investigation together with contracting the services of a professional botanist to relocate any endangered species found at their own cost.*
- *Do not believe that the buyer did not have knowledge of the no go areas.*
- *The Botanist review of the initial Botanical Report is not accepted – it does indicate that the area can reestablished itself within 10 years.*
- *The property is large enough so that the dwelling can be moved outside the no-go areas.*

APPLICANT'S RESPONSE

The application was circulated to external and internal environmental departments. Both of which submitted comments that are required to be addressed by the owners and/or their representatives.

It should be noted that a complete version of the application was available at the municipal offices for review.

The owners will comply with any of the requirements that are put forward by these departments.

TOWN PLANNER'S RESPONSE

The environmental assessment report went through the NEMA process, which included public participation process and the right to appeal. Documentation was available to the public to comment on and respond to the information provided.

The objectors are correct in terms of relocation of the proposed dwelling outside the no-go area. There is no reason for the applicant to relocate the proposed dwelling and have the no-go area to re-establish naturally in conjunction with the Botanist who compiled the Botanical Report in 2006. It does seem that the Botanist in his amended report dated 2023 feels that instead of disturbing any more area, rather make use of the disturbed area to safeguard the remaining natural vegetation.

The Botanist Report, 2023 does indicate that the disturbed no go area can be reestablished, and it is proposed that this is the best route to take to give the area a chance to regenerate its natural state.

OBJECTION – BUILDING LINES

Betty's Bay Ratepayers Association, SC Viljoen & Dr W.L. Grundill

The general building line in the immediate area is 5m on all sides of any given plot.

APPLICANT'S RESPONSE

The motivational report included reasons for the proposal to reduce the title deed building lines from 5m to 4m.

It is acknowledged that 5m is a standard in Betty's Bay restriction, but the owners only wish to align with the Overstrand Municipality Land Use Management Scheme.

TOWN PLANNER'S RESPONSE

Erven east of Podalyria Road has an 8m street building line and lateral and rear building lines of 5m. Erven to the west of the mentioned Road has a street building line of 5m and lateral and rear building lines of 3m. The different building lines are related to the extent of the erven, since the erven west of Podalyria is smaller than erven west of the Road. The 8m street building line applicable to Erf 5629 is extensive for a very low-density residential area.

It is correct that buildings along the Road are set back 5m, which became the standard setback street building line along Podalyria Road. The relaxation of the street building line to 4m will be out of place in that area and will impact on the street view and character of the area. The removal of the condition of the 8m street boundary will be considered but not the 4m street building line as proposed due to the above-mentioned reasons. The erf is vacant, and the owner can design his dwelling to still optimize his views without transgressing the 5m street building line as indicated by the objector.

OBJECTION – NO-GO AREA

AJ Kritzinger & SA Fourie

- *The applicant must have known that the area is a no-go area, as it was clearly indicated as such on the advertisement board erected by the seller on the property itself.*
- *The no go area revealed that an endangered and rare orchid grows there.*
- *The no-go area should be restored to its original status.*

APPLICANT'S RESPONSE

- ❖ The no-go zone was not included in the title deed as one objector indicated.
- ❖ The application was circulated to external and internal environmental departments. Both of which submitted comments that are required to be addressed by the owners and/or their representatives.

- ❖ The owners will comply with any of the requirements that are put forward by these departments.

TOWN PLANNER'S RESPONSE

It is correct that the no-go areas were not included as a condition in the Title Deed of Erf 5629. The original subdivision application was to create five (5) portions, but due to the Biodiversity Report 2006 and input from various departments, the application was scaled down to three (3) portions. The result was a positive evaluation of the amended application because the high biodiversity areas will be protected.

There are conflicting reports on whether the present owner was informed of the no-go areas when purchasing the property, this aspect is not clear in the motivation report submitted whether the present owner knew of the no go areas before purchasing the property. Irrespective of who is correct, the no go area needs to be re-established, and the owner or seller should bear the cost, whoever was at fault regarding the information of the no go areas applicable to the property. The latter was the basis on which the subdivision application was approved.

OBJECTION – TRAFFIC

Betty's Bay Ratepayers Association & SA Fourie

The corner of Disa circle/Podalyria has rather restrictive views to the right thus turning onto Disa Circle would be further hampered should these buildings lines be relaxed.

APPLICANT'S RESPONSE

The concerns related to the views from Disa Circle are noted.

The application will be circulated to the municipal engineering department that will also provide comment. It should however be noted that 4m building lines are standard and the owners will still be allowed to erect boundary walls.

TOWN PLANNER'S RESPONSE

The application was circulated to the Engineering Department with a positive outcome. Podalyria Road has a road reserve of 15m, and Disa Circle has a road reserve of 20m which is extensive and sufficient to accommodate residential traffic. The residential erven (5629 and 4586) at the intersection of the mentioned roads have splays to ensure visibility at the intersection. The street building lines, whether 8m or 4m, will have little impact on views.

OBJECTION – GENERAL COMPLAINTS

SA Fourie

Not to be unduely negative towards the owner of property 5629, Betty's Bay, I would like the following important reasons to be noted and taken into consideration when the request for the proposed changes to the title deed and building lines of erf 5629 are considered:

1. I can not agree that the requirements of the title deed for this property where "regrettably" disrupted as the owner must have received a copy of the title deed upon registration of the property into his name, it was thus openly ignored when the top part of the stand was excavated and fenced off.
The top western corner was clearly marked as a "no go" area, not to be developed or damaged due to very sensitive endemic flora (serruria) occurring there.
This area should thus be restored to its original status and not be damaged any further.
2. The building lines was indicated as 8m on the title deed plan for the street facing northeren and western sides of the property. Now 4m is asked for versus the normal 5m requirement for street facing buildings in Betty's Bay. As per item 10 (traffic impact), I can not agree with the 4m as is already very difficult to turn eastwards out of Popalyria into Disa Circle due to the extreme gradient of Popalyria on this corner.
This thus totally unacceptable and 4m should not be granted.
3. The large size of this stand does definitely not warrant the proposed building so high up on this stand, as it is long enough in the seaward direction to never have his view impaired by future neighbouring buildings at all.

b. Ref. General Complaints:

1. I can NOT AGREE with item "12 - Good Administration": What makes me lately extremely unhappy with the OM municipality's administration and control, is that everybody seems to just do what they like on their stands - without taking the municipal laws and title deed requirements into account and then it just gets allowed and approved by you.
2. Examples is the montrosities of buildings that were "illegally" constructed using containers in the Disa Circle area on the following stands:
erf 4605 (do they now have an approved plan for the current container building and since when is septic tanks again allowed in BB ?) **Approved.**
erf 4661 **Approved.**
erf 4619 (do they have an approved plan ?) **Approved.**
erf 4627 **Approved.**
3. Another complaint is the number if partly build houses where there was no progress and finishing of the partly built structures during the last year:
erf 3502 **Approved**
erf 3503 **Approved: new owner**
erf 4656 **Approved**
erf 4610 **Approved**
erf 4618 **Approved**
erf 4666 **Approved**
erf 4670 **Approved: new owner.**
4. Refer erf 3482 - Since when are you allowed to build on the full area within the building lines and does the height of this building fall within the average gradient of the stand's 8m allowed height ? **Application compliant with all applicable law and approved 2023 and inspections done in 2023 and 2024 and so far found to be compliant.**
5. These situations totally degrades the value of our existing properties, that were build and taxed with-in the normal municipal regulations.

APPLICANT'S RESPONSE

These comments are not related to the application.

TOWN PLANNER'S RESPONSE

Comments relating to points 1 and 3 of the objection:

The fact that the present owner knew of the no go area cannot be verified. It is agreed that the no-go area can be rehabilitated as per the Botanist report 2025. The other aspect mentioned by the objector is that the erf is large enough and does not warrant the proposed building so high up on this stand, is not a reason for objection. Any erf owner can locate a dwelling on his erf subject to the development parameters, irrespective the extent of the erf.

The objection pertaining the 8m street building line as per title deed – the objector does not have any objection with regard to the relaxation to 5m but does not support the 4m street building line, based on the extreme gradient of the intersection of Disa Circle and Podalyria Road. Podalyria Road has a road reserve of 15m, and Disa Circle has a road reserve of 20m which is extensive and sufficient to accommodate residential traffic and thus it may be more of clearing the road reserves of plant material to ensure proper view corridors for oncoming traffic.

The comments under the heading of General Complaints refer to building structures and should be taken up with the Building Control Department.

OBJECTION – DEPARTMENTAL COMPLAINTS

Overstrand Municipality: Environmental Management Services

- 1) *The EMS approved the 2020 Subdivision Application on the condition that the “no-go” area recommended by the Botanical Report (Helme, 2006) be adhered to. Prior to the approval of the subdivision application, a site visit was conducted with the current owner (now the seller to the applicant) and a qualified botanist to ensure that the 2006 report was still relevant – which it was. In 2020 the “no-go” area was bulldozed. Following extensive correspondence between the Overstrand Town Planning compliance, Environmental Management it was agreed that the area would be rehabilitated, with the guidance of a botanical specialist. Approximately 380m² of Critically Endangered vegetation was cleared with earthmoving machinery. Active rehabilitation of the “no-go” area has not occurred.*
- 2) *The EMS conditions of approval is that the application be submitted to the Department of Environmental Affairs and Development Planning via the National Environmental Management Act (NEMA) Applicability Checklist to determine whether Environmental Authorisation for the New Dwelling is required considering the 2020 subdivision and the clearance of indigenous vegetation as per the NEMA Environmental Impact Assessment Regulations (2014, as amended) Listing Notice 1, Activity 13.*

Cape Nature

“CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

CapeNature recommended that the development proposal should be sent to the Department of Environmental Affairs and Development Planning (DEA&DP) to confirm whether NEMA listed activities are applicable. Consequently, a NEMA Section 24 Application was undertaken for approval of the unlawful activities which had commenced.

Botanical input was provided regarding the area which had initially been set aside as a no-go area and since developed to supplement the initial botanical assessment in 2006. The outcome of the botanical input was that the development of the no-go area could be considered acceptable provided further disturbance to the natural habitat does not take place following completion of the construction of the house.

CapeNature is therefore satisfied that the impacts on biodiversity were addressed in the NEMA process, and we do not object to the application.”

APPLICANT’S RESPONSE

Comments received from the following authorities will be dealt with by the Environmental Consultant:

- Overstrand Municipality: Environmental Officer Environmental Management Department
- Cape Nature: Rhett Smart Manager (Landscape Conservation Intelligence)

TOWN PLANNER’S RESPONSE

The application for subdivision was approved based on the protection of the no go areas. The no go areas were bull dozed as indicated in the comments received from the Environmental Department: *It is also clear that an area of 380m² was cleared of vegetation and it was agreed that the area would be rehabilitated with the guidance of the botanical specialist.* This has not occurred.

Both the Environmental Department and Cape Nature resorted to the NEMA Regulations and NEMA Section 24 (fine clause) to address the disturbance of the no go area, which consist of a Red Data Specie.

The applicant did submit an Environmental Study and obtained environmental authorisation, 24G, dated 22 May 2025.

8. SUMMARY OF APPLICANT’S REPLY TO COMMENTS

See Point 7 above.

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

See Point 7 above.

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

10.1 **Background**

The property (Erf 5629 portion of Erf 4576) was subdivided into three (3) portions; approval dated 18 November 2020.

The application was originally submitted to subdivide the mother Erf 4576 into five (5) portions, however due to the sensitive environment, a Botanical Study, dated 2006 recommended that the proposed 5 portions be limited to 3 subdivided portions. The present application erf was identified with a red data specie (Surruria adscendens) and restrictions were placed on the erf in terms of areas that cannot be developed e.g. two no-go areas.

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The principle is based on the safeguarding of high potential agricultural land and high biodiversity areas. The property is located within the urban edge, in a proclaimed town and therefore high potential agricultural land is not applicable. The integrity of biodiversity no go areas identified on the erf has been compromised with the clearing of one of the no go areas. Thus is the sustainability of the development of the erf in question.

Efficiency

The proposed development will make use of municipal services where available.

Spatial Resilience

The proposed development will have to comply with the National Building Regulations and forward planning documents to ensure the environmental viability of the erf and viability of the built structure. The proposal however is not in line with the Environmental Overlay Zone which does earmark the area as Urban Conservation, Category D read with the Botanical Survey, dated 2006.

Good Administration

The application complies with the administrative procedure as determined by the Municipality

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

Same as Point 10.2 above.

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

Overstrand Municipality Environmental Protection Overlay Zone (EMOZ):

The applicant did respond to the EMOZ as follows:

“As the property is privately owned it is deemed that the development thereof will not have an impact on the Urban Conservation EMOZ”.

The response is not correct, in terms of the EMOZ, section 8.5.1.1.4, Category D: Private Property – which reads as follows:

- Private property within priority conservation-worthy ecological corridors from mountain to coast and/or across priority conservation-worthy areas identified in accordance with the Overstrand Environmental Management Framework.
- In the face of development pressure, the Municipality may, if it deems it necessary, upon receipt of a development proposal or application that does not involve any activities identified under the NEMA listing notices, require that specialist biodiversity and/or other relevant studies be undertaken by the developer/owner in order to inform development planning and retain priority ecological corridors and habitats.

The application has an impact on the Urban Conservation EMOZ.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services are provided by the Municipality.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application can be accommodated in terms of the Overstrand By-Law, 2020, however no departure was requested in terms of the Environmental Overlay Zone.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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

There is no financial value to be gained by the community should the restrictive condition be removed.

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

The owner and applicant will gain a benefit in that it does not need to relocate the proposed building.

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

The owner will accrue financial benefits due to the fact that it does not need to reestablish the disturbed area, Architect fees in submitting new building plans in a new location and clearing of land.

The social benefit of the restrictive condition remaining in place

The social benefit should the condition remain in place that the status quo remain in place and the no go area is reestablished.

The social benefit of the removal of the restrictive condition

The social benefit relates to the applicant in maximising the views at the proposed location applied for.

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

The removal of the restrictive condition will only remove the rights in terms of the title deed building lines; the remaining conditions will remain in place.

12. THE DESIRABILITY OF THE PROPOSAL

The subdivision approved in 2020 to subdivide Erf 4576 into three (3) portions of which the present application relates to one of the approved portions. The application is for the removal of Conditions B.7.(a)(i) and (ii) of Title Deed T27446/2021, dealing with building lines and the amendment of an approval condition.

REMOVAL OF RESTRICTIVE CONDITIONS B.7.(A)(I) & (II)

The Township Betty's Bay Extension 6 was established 1972 and in terms of the Title Deed: Condition 7 is twofold in dealing with buildings allowed with **Administrator** consent and buildings allowed with the consent of the **Local Authority**;

The Administrator consent is necessary to depart from the Title Deed building lines should a structure transgress the applicable building lines; however, it makes the exception regarding outbuildings that fall in the realm of the Local Authority that does not need the consent of the Administrator.

Lateral and rear building lines

The Title Deed does allow outbuildings within the lateral and rear building lines subject to the following: that buildings may only be 3m in height from floor level to wall-plate with no window and doors. The Overstrand Land Use Scheme restricts buildings within the lateral and rear building lines to garages and carports with neighbours' consent and any other outbuilding is subject to a departure process, which includes public participation. The latter is not a requirement of the Title Deed. The Title Deed regarding outbuildings is more lenient than the Overstrand Land Use Scheme. Therefore, the request to remove the 5m Title Deed restriction on lateral and rear building lines is supported and be subject to the Overstrand Land Use Scheme.

Street building line

The application to remove the restriction from an 8m street Title Deed building line to 4m Overstrand Land Use Scheme building line is not supported. The reason being that most of the buildings along Disa Circle and Podelyria Road are located 5m from the street boundary and have created a specific character and street view along these roads. It is proposed rather to amend the 8m street building line to a 5m street building line, in view of character established for the area.

Condition 7.(a) currently read as follows:

7. Except with the prior consent of the Administrator –
 - (a) no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 8m to the street line which forms a boundary of this erf, nor within 5m of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-

It is proposed to **amend** Condition 7(a) as follows:

7. Except with the prior consent of the Administrator –
 - (a) no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than ~~8m~~ 5m to the street line which forms a boundary of this erf, ~~nor within 5m of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-~~

The **removal** of Condition 7.(a)(i) and(ii) is recommended since it is adequately dealt with by the Overstrand Land Use Scheme.

Amendment of approval condition:

The application for subdivision was originally for five (5) erven in 2008 and not approved based on a botanical survey carried out on the property by Nick Helme Botanical Surveys. Red Data Book species have been identified and are discussed in this document. A locality map on page 6 of the report indicates the areas where these species are located. Mr Helme suggests that as a mitigating measure, development should be restricted outside these areas with no-development buffers of at least 10m. It is however felt that any development which includes these species on an erf of 1500m² will compromise the viability of the species.

The subdivision application in 2019 was downscaled to three (3) portions due to the botanical survey and allow for bigger erven that have sufficient developable area without disturbing the no-go areas and 10m buffer around the no-go areas. The application was approved 17 November 2020. The decision letter dated 18 November 2020 is attached as Annexure K. Conditions 1.(a) and 1.(b) of the Resolution restricted any development of the identified no-go areas.

The no-go area identified and the acceptance of the conditions by the previous owner was the basis on which the application for subdivision was approved. This aspect was conveyed to the objectors and accepted, and no appeals were lodged against the approval of 18 November 2020. The applicant did not adhere to the conditions and cleared the northern western corner of approximately 340m². The Environmental Management Services Department contacted the owner, and, in the discussion, it was agreed that the no-go area will be re-established and rehabilitated with the assistance of the Botanist.

The applicant (new owner) purchased the property in 2021 cleared the no go area in the northwestern corner of the property. The appointed Architect inform the present owner of the title deed conditions and subsequently the owner became aware of the no go areas applicable to the erf. A Town Planning consultant was appointed to deal with the approval conditions and the transgression thereof. In this process, an Environmental Consultant was appointed to address the NEMA transgressions. An updated Botanical Survey was conducted by the Botanist Mr Helme, which also did the 2006 Botanical Study.

The application for the amendment of the conditions did incorporate comments from Mr. Helme who did the initial survey in 2006. See Annexure L. The comment indicated that the no-go area can be reestablished but will take approximately 10 years and suggested rather make use of the area now disturbed *vis a vie* of disturbing a natural area on the erf for the development. This comment is noted but does not reflect duty of care. The fact that the area can be rehabilitated should be considered, since the erf is big enough for the applicant to relocate the proposed dwelling to an area not detrimental to the environment. Should this be the case, the proposed dwelling will also not transgress any building lines. This being said the proposed amendment of the street building line will allow the applicant to ensure that the no go areas and the proposed 10m buffer can be attained.

The Record of Decision granting environmental authorisation by the Western Cape Government: EADP (Environmental) received on 23 May 2025 is noted. See Annexure I.

The applicant did lodge an 24G application: **Unlawful commencement of a listed activity: Unlawful clearance of indigenous vegetation.** In the description of the document, it indicates that an area of 450m² was cleared without awareness of the designated no-go areas on the property. It also mentions that the findings of the Botanist were never conveyed to the new buyer, neither were secured in the Title Deed and as such the new property owner was completely unaware of this.

The document also makes reference to an amended report from the same Botanist, Mr Helme whether the area cleared should be rehabilitated or whether a new area should be cleared for the proposed development. The new Report dated October 2024, the botanist highlights that the area cleared has partly been rehabilitated since 2021 and it contains indigenous vegetation cover about 40-60%, whilst the undisturbed areas containing more than 90% of vegetation cover.

The Botanist indicated that disturbance of any other parts of the site that are currently covered with natural vegetation is not supported. He further recommended that it is essential that the total allowable development footprint be fenced off during construction to prevent accidental damage to the surrounding natural areas. It is also recommended that the disturbed area on the southern boundary be allowed to rehabilitate naturally. No gardening, mowing or disturbing of vegetation outside the allowable development footprint should be undertaken and all invasive vegetation be removed by hand.

Taken the aforementioned information provided in the ROD approval, the reasons for the approval, Point 3 of the ROD are as follows:

NEED AND DESIRABILITY

It states that the application aligns with the PSDF objectives regarding meeting the needs of new residents and creating economic opportunities through rental income and goes further to emphasize potential development through proper planning addressing housing needs and the importance of prioritizing places that offer significant economic prospects. How is this relevant to this application? Surely reference should be made to the MSDF and the fact that any person has right to a dwelling is not disputed.

BIODIVERSITY IMPACTS

The main reason of issuing the ROD is the findings of the Botanist in the amended report indicating that rather to disturb anymore natural vegetation, the proposed development should rather be located on the disturbed area, however also indicated that the disturbed area will be able to reestablish itself taking approximately 10 years as indicated in the amended report. The area to be developed be restricted to 250m².

The reasons also refer to the no-go area of higher botanical sensitivity, however the Botanical Report clearly indicated that it is a Red Data specie and in terms of SANBI Red List of Species the *serruria adscendens* is near threatened. In the evaluation done in 2020, the plant seedbanks can regenerate. It is disturbing however that Section 28 of NEMA – Duty of care has not been considered, especially since the Botanist report indicates that the plant can reestablished itself if given time. The remainder of the natural vegetation is not classified as near threatened and thus is there no reason for the proposed dwelling to relocate to a more suitable area on the erf.

SENSE OF PLACE

It is correct that the land use of a single residential dwelling is in line with the surrounding areas, however the location of the proposed dwelling on the 4m street building line will have an impact on the street view and adversely impact on the sense of place.

The remainder of the reasons are noted.

CONCLUSION:

Building lines are there for a reason in order to;

Ensuring Safety and Accessibility

One of the primary purposes of building lines is to ensure the safety and accessibility of properties. Setbacks provide space for emergency services, pedestrian walkways, and vehicular access, contributing to the overall safety and functionality of the built environment.

Preserving Aesthetic Appeal and Privacy

Building lines also play a role in preserving the aesthetic appeal of neighbourhoods and ensuring privacy between properties. By establishing uniform setbacks, building lines help create a cohesive and visually pleasing streetscape while providing adequate space between structures for light, ventilation, and privacy.

In this case the proposed 4m street building line will be out of place and have an impact on the visual street scape.

The fact that the present owner was not informed of the no go area, the situation must be rectified since it is possible. The fact that an ROD was issued, does not rectify the present situation. No reason was provided that the disturbed area cannot be reestablished successfully.

The application is partly recommended.

13. RECOMMENDATION

1. that the objections 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 on Erf 5629 Betty's Bay for the removal of restrictive title deed conditions B.7.(a)(i) and B.7.(a)(ii) as contained in Title Deed No. T27446/2021 of the property to accommodate a proposed new dwelling, **be partially approved**, in terms of the provisions of Section 61 of the By-Law; subject to the following conditions:
 - (a) that Condition 7(a) contained in Title Deed No. T27446/2021, **be amended** to read as follows:
 7. *Except with the prior consent of the Administrator-*
 - (a) *no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 5m to the street line which forms a boundary of this erf:-*

- (b) that Conditions 7.(a)(i) and(ii) contained in Title Deed No. T27446/2021, **be removed** it is adequately dealt with by the Overstrand Land Use Scheme;
 - (c) that this approval is not an approval in terms of any other legislation;
 - (d) that a building plan be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
 - (e) that the amended title deed be submitted for record purposes to the Municipality;
 - (f) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (h) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with, and
 - (i) that all the conditions in the Services Report (attached as Annexure G), be complied with.
3. that the application in terms of Section 16.(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 5629 Betty's Bay for the amendment of conditions (1.)(a) and (b) in respect of an existing approval dated 18 November 2020 to allow the owners to position the proposed new dwelling in a previously approved "no-go" environmental zone, **not be approved**, in terms of the provisions of Section 61 of the By-Law, and that the disturbed area be rehabilitated in conjunction with the Botanist, Mr Helme and the Municipal Environmental Section.
 4. 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 Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

POINT 2 - 3

- ❖ The amendment of the title deed street building line to 5m street building line will be in line with the surrounding smaller erven.
- ❖ The Title Deed lateral building lines are less restrictive pertaining outbuilding structures than the Land Use Scheme, therefore the impact of outbuildings are better regulated in terms of the Land Use Scheme.
- ❖ The amendment of the conditions is not in line with the reasoning and motivation of the approved subdivision in creating three erven.
- ❖ The relaxation of the Title Deed lateral building lines to the Overstrand Land Use scheme will enable the applicant more manoeuvrability in locating the proposed dwelling in an optimal position outside the no go areas and 10m buffer as proposed in the 2006 Botanical Report.

- ❖ The disturbed no go area has been vacant since 2020 and has according to the ROD partially reestablished itself. It is thus possible that the Red Data specie seeds may still be in the ground and reestablished itself if given the time.
- ❖ The erf is big enough for the applicant to relocate the building to a more appropriate location on the erf.
- ❖ Although the ROD was issued to legalize the disturbance of the no-go area, the aspect of Duty of Care was not addressed and the Botanist indicating the re-establishment of the disturbed area is possible. Taking into consideration that the plant was identified as near threatened.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T27446/2021
Annexure E:	Objections received
Annexure F:	Applicant's response to the objections received
Annexure G:	Services Report
Annexure H:	Municipal Environmental Management Services
Annexure I:	Comment: Western Cape Government: EADP (Environmental) - ROD
Annexure J:	Comment: Cape Nature
Annexure K:	Approval letter dated 18 November 2020
Annexure L:	Botanical survey of Erven 4570 & 4576 Betty's Bay dated 21 November 2006
Annexure M:	Revised Botanical Input – Erf 5629 Betty's Bay dated 6 September 2023

SIGNATURE

REGISTERED PLANNER

Name: **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature: _____

Date: _____

1. Locality Plan Erf 5629 - Betty's Bay

Plan prepared by: Thian Jansen

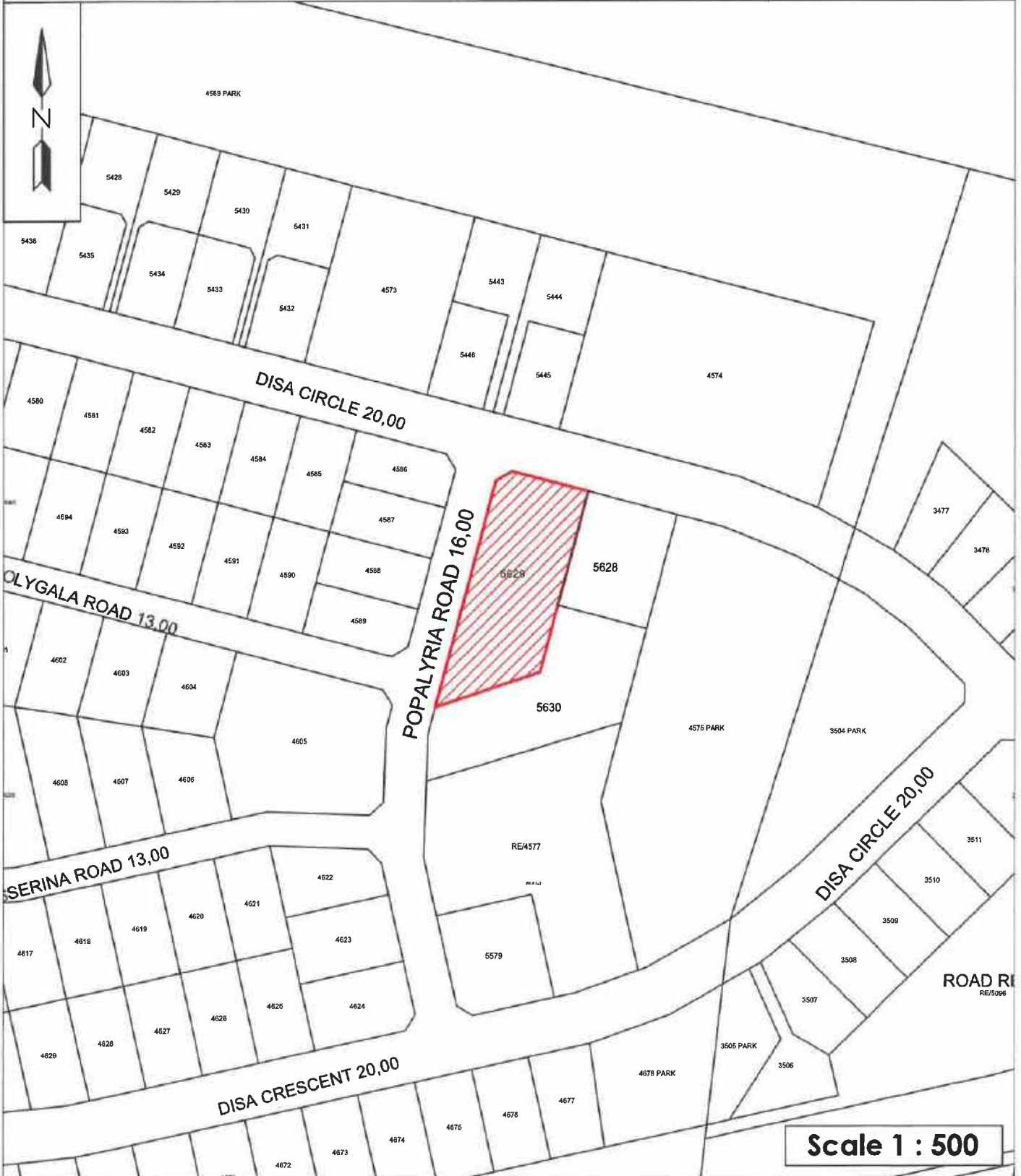
Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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



Project Office
Town Planning & Project Management



Scale 1 : 500

3. Aerial Plan
Erf 5629 - Betty's Bay



Plan prepared by: Thian Jansen

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,

Corner of Royal and Dirkie Uys

Street Hermanus, 7200



Project Office

Town Planning & Project Management



MOTIVATION

1. ABBREVIATIONS

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

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 5629 Betty's Bay
Extent	2884m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 5629 Betty's Bay, hereafter referred to as the subject property, is situated in Popalyria Way, Betty's Bay (refer **Plan 1 – Locality Plan**). The property owners have appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners bought the property in 2021 with the intention to develop it for themselves, but only after they were in consultation with an architect, they became aware of the restrictive title deed building lines that are more restrictive than the OMLUS building lines and therefore very limiting.

As the title deed of the subject property has several title deed conditions that are restricting the proposed intention for the development property, the property owners want to remove these conditions. To ensure compliance with the OMLUS, approval of the following application is required:

- Removal of restrictive title deed conditions; and
- Amendment of conditions in respect of an existing approval.



4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's requirements are met. The following is proposed:

4.1 Removal of a restrictive title deed condition in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

There are numerous title deed conditions that prohibit the property owners from utilising their property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions	
Condition B.7.(a)	<p>"7. Except with the prior consent of the Administrator –</p> <p>(a) no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 8m to the street line which forms a boundary of this erf, nor within 5m of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-</p> <p>(i) an outbuilding not exceeding 3m in height measured from the floor to the wall-plate may be erected within the above prescribed rear space and within the above prescribed lateral space for a distance of 12m measured from the rear boundary of the site; provided that in the case of a corner erf, the distance of 12m shall be measured from the point furthest from the streets abutting the erf.</p> <p>(ii) an outbuilding in terms of sub-paragraph may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."</p>

The rationale for the removal of the restrictive title deed condition is to enable the property owners to achieve their development intent highlighted in Section 3 and not be restricted in the future. Some of the title deed conditions are more restrictive than what is allowed in terms of the OMLUS.

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

4.2 Amendment of conditions in respect of an existing approval in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

The subject property was part of a subdivision in 2020 where Erf 4576, Betty's Bay was subdivided into three portions. The subject property was identified as Portion B and located thereon were two "no-go" environmental zones that was identified as areas that



MOTIVATION

contained sensitive flora through a botanical survey conducted in 2006, refer **Annexure D: Historic Approval & Annexure D: Historic botanical survey.**

The property owners have regrettably disrupted the upper "no-go" zone. Refer to the figure below for an illustration of the area. As the previous approval provided a condition that the subdivision was linked to the plan, and it mandated that the "no-go" zones remain undisturbed. The current proposal seeks to amend the approved plan/condition by removing the upper "no-go" environmental zone due to its disturbance. Allowing this condition to be amended would permit the property owners to situate their proposed dwelling house in this area.

The author of the 2006 botanical survey was contacted and he provided his comment, refer **Annexure E: Botanist Revised comment.** He provided his support to have the proposed dwelling house located in the position.

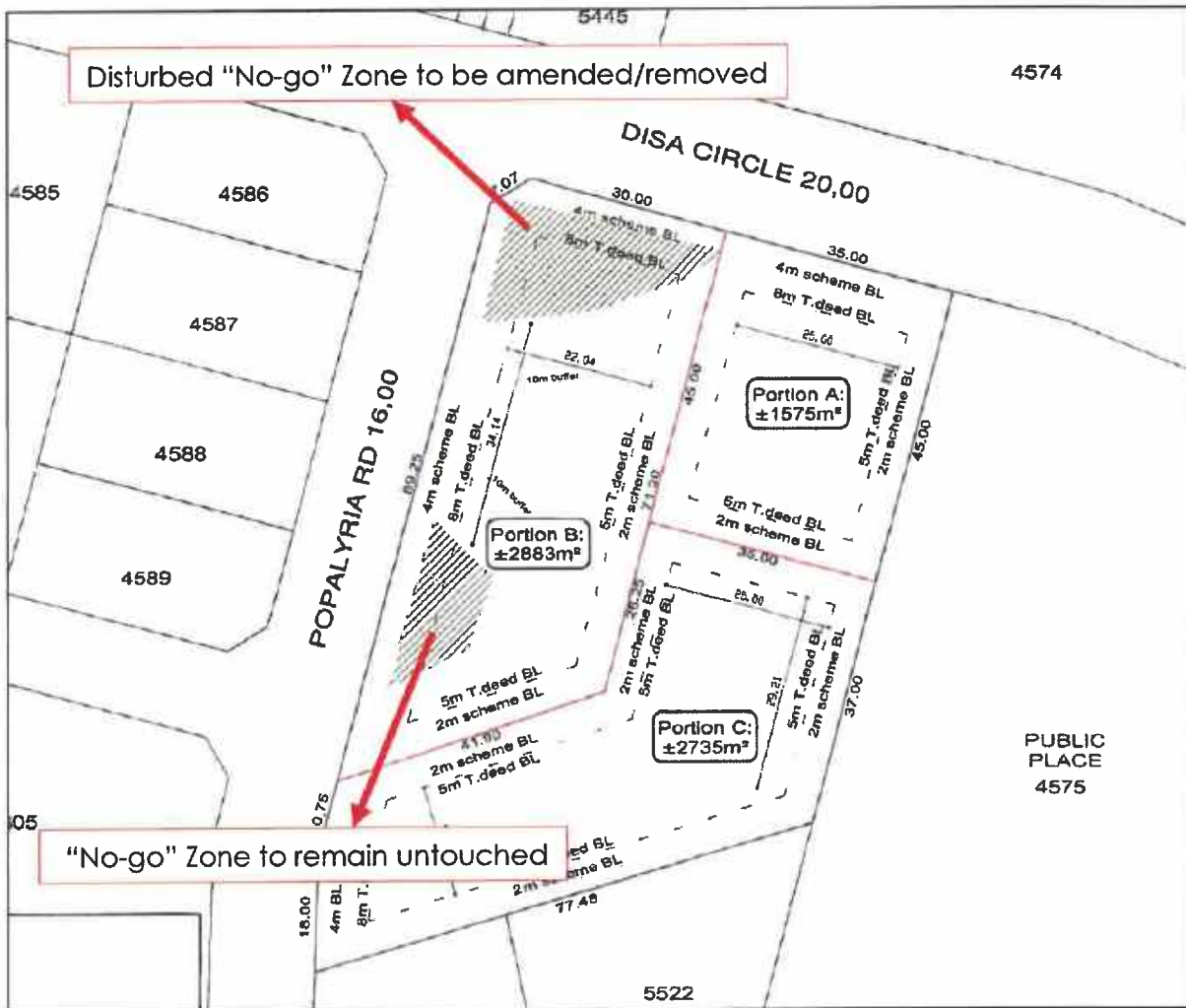


Figure 1: Historic subdivision approval.



MOTIVATION

5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 5.2 Amendment of conditions in respect of an existing approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

6. LAND USE ENVIRONMENT

The subject property is located in Betty's Bay in an area which is surrounded by Residential Zone 1: Single Residential and Public Open Spaces properties. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

7. TITLE DEED

Title deed T27446/2021 (refer **Annexure B**) was perused and there is a restrictive condition that was inserted into the original title deed and transferred into the current title deed. This title deed condition prohibits that the applicant's intent with the subject property can be realised.

Title deed restriction

Condition B.7.(a)

"7. Except with the prior consent of the Administrator –

- (a) no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 8m to the street line which forms a boundary of this erf, nor within 5m of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-
 - (i) an outbuilding not exceeding 3m in height measured from the floor to the wall-plate may be erected within the above prescribed rear space and within the above prescribed lateral space for a distance of 12m measured from the rear boundary of the site; provided that in the case of a corner erf, the distance of 12m shall be measured from the point furthest from the streets abutting the erf.
 - (ii) an outbuilding in terms of sub-paragraph may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no



MOTIVATION

windows or doors are inserted in any wall facing such boundary."

Motivation

The rationale for the proposed removal

The subject property is currently a vacant site, and the property owners have the vision to develop thereon a dwelling house for their family. The property owners have the vision and opportunity to expand on their rights as determined by the development parameters as set out in terms of the OMLUS by building a dwelling house closer to the boundary than what is currently allowed in terms of the title deed. (Refer to **Plan 4 – Site Plan** and **Annexure C – Architectural Drawings and Elevations**). The property is orientated to overlook the ocean to the east. Several aspects of the proposed development are however being restricted by the condition mentioned above and therefore the proposal is made to remove the restrictions.

Title deed condition background

The restrictive title deed condition was originally intended to protect the residential character of the Betty's Bay area, but the intention of the property owners is to increase the residential viability of their property.

Status quo

The current OMLUS has clear development guidelines in place to ensure that the whole of the Overstrand Municipal Area's residential properties is managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

The current and future development of the property is being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the land use scheme and policies of the Overstrand Municipality, the property owners will not be able to utilise their property to its full extent.

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

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 the restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is directly benefitting from this condition as the condition is only restricting the property owners.

**MOTIVATION**

<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>	This restrictive condition does not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed.

8. ZONING

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



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL			
Land Use Restrictions			
Parameters	Proposal	Comply/ deviate	
Primary use	Dwelling House	Comply	
Consent use	N/A	N/A	
Development parameters			
Coverage	Existing Extent = 2284m ² Main Dwelling incl garage - ±250m ² Proposed Total Building Area - ±250m ² Proposed Coverage – 10,95% Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.	Comply	
Building lines	The street building line and rear building line is being adhered to. Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.	Comply	
Height	The proposed dwelling will adhere to the 8,0m building line.	Comply	
Garages and carports	Two double garages are being proposed for the dwelling House.	Comply	





MOTIVATION

9. SERVICES

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

Electricity, Water, Sewage and Solid Waste

The subject property will be connected to the existing networks in the area, which include electricity, water and sewage. The proposal of this application is not anticipated to impact on the existing services in the area.

Solid waste will be collected every week by the OM.

Access and Egress

Access and egress to the property will be gained from Popalyria Way.

10. NEED AND DESIRABILITY

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

Need and desirability.

The need for the land use application was a result of addressing all the land use requirements and ensuring the property meet the requirements of the property owners. To achieve this, the property owners are required to apply for the removal of the restrictive title deed condition.

Socio-economic impact	The removal of the restrictive title deed conditions and amendment of the previous conditions are not predicted to have a socio-economic impact.
Compatibility with surrounding uses	The proposal is to improve the property in-line with the development parameters as set out within the OMLUS.
Impact on the external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community. In fact, the proposed property will increase the number of inhabitants in the area and increase the safety aspect within the community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.



MOTIVATION

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the structures being proposed will be required to be compliant with the regulations and development parameters set out in the OMLUS. It is not predicted to have any impact on views, sunlight, or the character of the area.

Economic impact

The proposal does not have an economic impact. The Overstrand Municipality will be able to collect higher rates and taxes once the application is approved and the property improved with a dwelling.

Opportunity cost

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

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the Urban Conservation Zone, which purpose is to protect and manage undeveloped conservation-worthy public owned land within the Overstrand Municipal urban edge, and adjacent buffer areas, while promoting the retention of viable priority ecological corridors in areas that are to be developed, to ensure an integrated 'conservation and development' approach that will enhance living conditions for the communities of the Overstrand.

As the property is privately owned it is deemed that the development thereof will not have an impact on the Urban Conservation EMOZ.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The property is not located within the HPOZ.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.



MOTIVATION

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by 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 that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to increase the developable space is not predicted to aid in the elevation of past spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal to removal of restrictive title deed conditions intends to ensure the subject property is utilised to its maximum capabilities in-line with the OMLUS.

Efficiency

This proposal is intended to maximise the usage 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 suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



RECOMMENDATION

13. EVALUATION

The proposal needs to be evaluated on the basis that the current situation does not allow the utilisation of all the available space on the subject property efficiently. The property owners have a vision that is being restricted by the title deed conditions of the subject property.

The new dwelling house will not add any new land use rights as the subject property is set to be utilised for residential properties. This proposal is in harmony with all relevant spatial planning policies which illustrates that the applicant did not arbitrarily invent this application but had due consideration for relevant spatial planning policies.

14. RECOMMENDATION

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

- 14.1 Removal of a restrictive title deed condition B.7.(a)** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.2 Amendment of conditions in respect of an existing approval** in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.1 Site Plan
 Erf 5629 - Betty's Bay

Property Extent - 2284m²

Proposed Dwelling House - 250m²

Coverage - 10,95%

Plan prepared by: Thian Jansen

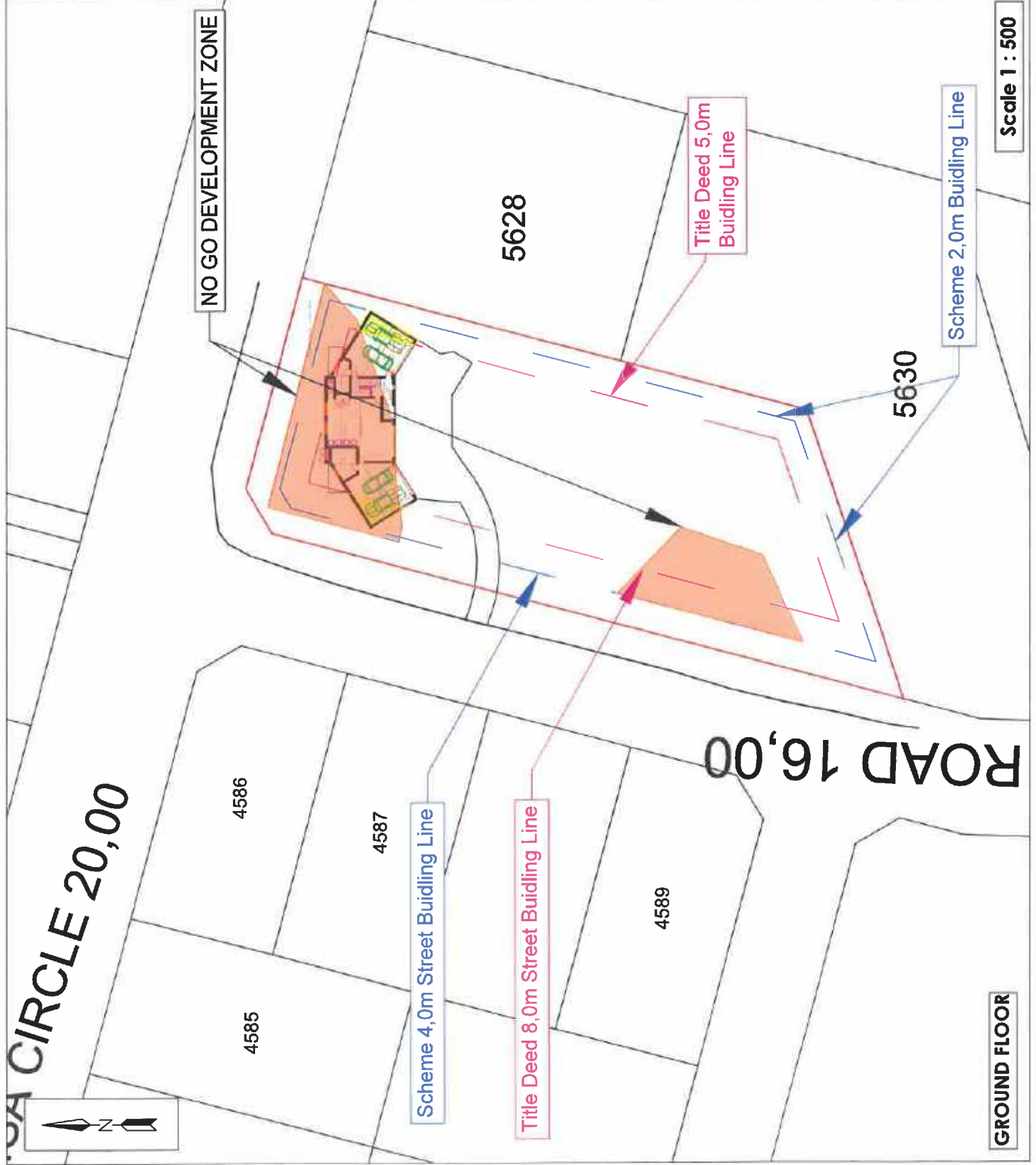
All distances are approximate and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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

Project Office
 Town Planning & Project Management

Scale 1 : 500

GROUND FLOOR

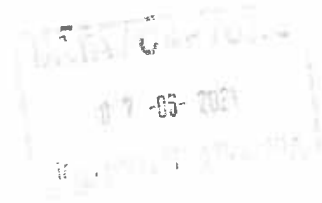
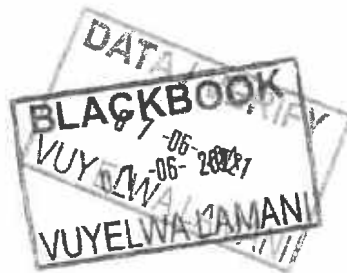
323

Guthrie & Theron
 Posbus 393
 Kleinmond
 7195

Opgestel deur my


 TRANSPORTBESORGER
 WILLEM JOHANNES ANDRÉ DU TOIT
 (M87102)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R 570 000,00	R 707,00
Reason for exemption	Category Exemption.....	Exemption i f o. Sec/Reg..... Act/Proc.....



T 000027446 / 2021

TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT

Maruzelle Germishuys (92461)

voor my verskyn het, REGISTRATEUR VAN AKTES te KAAPSTAD, hy/sy die genoemde komparant synde behoorlik daartoe gemagtig kragtens 'n Volmag aan hom/haar verleen deur

DANIEL HARVEY MEYER
 Identiteitsnommer 510428 5115 080
 Getroud, welke huwelik beheer word deur die wette van AMERIKA en
 behoorlik bygestaan deur sy gade BRYCEA DENISE MEYER Gebore
 25 April 1958 vir sover dit nodig mag wees

wat Volmag geteken te Kleinmond op 11 Maart 2021

En genoemde Komparant het verklaar dat sy/haar prinsipaal, op 2 November 2020, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy/sy, in sy/haar voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

1. **JACQUES DUMONT SMIT**
Identiteitsnommer 690516 5100 086
Getroud buite gemeenskap van goed
2. **CHANTALE-MARIE JOSE SMIT**
Identiteitsnommer 700627 0012 081
Getroud buite gemeenskap van goed

hulle Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volkome en vrye eiendom

**ERF 5629 ('N GEDEEL TE VAN ERF 4576) BETTYSBAAI
IN DIE OVERSTRAND MUNISIPALITEIT
AFDELING CALEDON
PROVINSIE WES-KAAP**

GROOT 2884 (TWEË DUISEND AGT HONDERD VIER EN TAGTIG) Vierkante meter

SOOS SAL BLYK uit SG Diagram No. 74/2021 hierby aangeheg en gehou kragtens Transportakte Nommer T6001/1993

- A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T26686/1970.
- B. ONDERHEWIG VERDER aan die volgende voorwaardes vervat in Transportakte Nr. T 33675/1977 opgelê deur die Administrateur van die Provinsie Kaap die Goeie Hoop ingevolge Ordannansie Nr. 33 van 1934 by die goedkeuring van BETTYSBAAI DORP UITBREIDING NR. 6, welke voorwaardes as volg lees:-
 1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the Regulations published under Provincial Notice No. 623 dated 14 August 1970.
 2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf, any provisions thereof which are more restrictive than any conditions of title applicable to this erf shall take precedence. Furthermore, nothing in these conditions shall be construed as overriding the provisions of Section 146 or Ordinance No. 15 of 1952, as amended.

Bladsy 3

3. The owner of this erf shall, without compensation, be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or erven inside or outside this Township to be conveyed across this erf, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
4. The owner of this erf shall be obliged, without compensation, to receive such material and permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority.
5. No building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
6. This erf shall be used solely for the purpose of erecting thereon one dwelling, a residential building or an institution, or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the Local Authority approve, provided that if the erf is included within the area of a Town Planning Scheme, the Local Authority may permit such other uses as are permitted by the scheme, subject to the conditions and restrictions stipulated by the scheme:
7. Except with the prior consent of the Administrator -
 - (a) no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 8m. to the street line which forms a boundary of this erf, nor within 5m. of any other boundary common to any adjoining erf, provided that with the consent of the local authority:-
 - (i) an outbuilding not exceeding 3m. in height measured from the floor to the wall-plate may be erected within the above prescribed rear space and within the above prescribed

Bladsy 4

lateral space for a distance of 12m. measured from the rear boundary of the site; provided that in the case of a corner erf, the distance of 12m. shall be measured from the point furthest from the streets abutting the erf.

- (ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
- (b) not more than 25% of the area of this erf shall be built upon.
 - (c) no building erected on this erf shall exceed 2 storeys in height excluding any floor used exclusively for the parking of cars.
 - (d) no residential building or institution may be erected on this erf, unless provision shall simultaneously be made, to the satisfaction of the local authority, for parking bays to accommodate not less than one motor-car for every flat or in the case of other residential accomodation for every two bedrooms contained in the building provided that-
 - (i) if situated under the building the said parking area shall not be enclosed for more than 50% of its perimeter.
 - (ii) the said parking area and the access and exit thereto shall be located, hardened and surfaced to the satisfaction of the local authority.
 - (iii) if in erecting his buildings the owner provides lock-up garages on the erf, the required parking area may be reduced by one parking bay for each garage up to a maximum of 75% of the original area rquired in terms of the foregoing.
8. On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.

9. In the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similiar purposes, shall be subject to the conditions herein set forth as if it were the original erf.

WESHALWE die komparant afstand doen van al die regte en titel wat

DANIEL HARVEY MEYER , Getroud soos vermeld

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat hy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

1. **JACQUES DUMONT SMIT , Getroud soos vermeld**
2. **CHANTALE-MARIE JOSE SMIT , Getroud soos vermeld**

hulle Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hulle dat die verkoopprijs die bedrag van R570 000,00 (VYF HONDERD EN SEWENTIG DUISEND RAND) beloop.

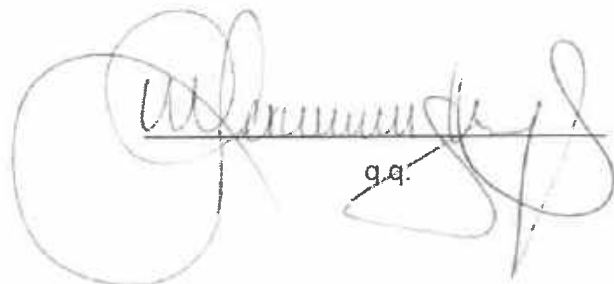
TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die Ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op hede die 2 June 2021

In my teenwoordigheid



REGISTRATEUR VAN AKTES


 g.g.

Chairman
Wayne Jackson 0829281260
Secretary
Karon Scholefield 0823226722



Betty's Bay Ratepayers Association
4233 Adenandra Road
Betty's Bay
7141

FILE NO. EPF 5629 KBB ✓
SCAN NO. KBB 5629
COLLABORATOR NO.
1997601

Dear Loretta
Administrator: Town & Spatial Planning
Overstrand Municipality
loretta@overstrand.gov.za

ERF 5629 PODALYRIA ROAD BETTYS' BAY

The Bettys Bay Ratepayers Association has the following input after liaising with our conservation portfolio representative, Liezel Bohdanowicz –

- Sufficient corridor remains to the east of the residential erf's
- The public comment document makes reference to the revised comment from the botanist - Annexure E, but this document was not provided and therefore does not fulfill its duty to inform comment sufficiently. It is therefore not known if the botanist was contracted to provide further on-site surveys after degradation occurred of any endangered species that remains from its original findings. The disturbed portion should therefore be considered for a section 28 duty of care investigation together with contracting the services of a professional botanist to relocate any endangered species found at own cost.
- the corner of Disa Circle/Podalyria has rather restrictive views to the right thus turning onto Disa Circle would be further hampered should these building lines be relaxed
- the general building line in the immediate area is 5m on all sides of any given plot

We trust that the above pointers will be taken into consideration when a final decision is taken.

Yours sincerely,

(K SCHOLEFIELD)

BETTY'S BAY RATEPAYERS' ASSOCIATION: SECRETARY/PROPERTY PORTFOLIO REPRESENTATIVE

(WR JACKSON)

BETTY'S BAY RATEPAYERS' ASSOCIATION: CHAIRMAN

when a final decision is taken.

OVERSTRAND MUNISIPALITEIT
REKORDBEHÉER
15 FEB 2024
DOCUMENT CONTROL

Date: FEBRUARY 2024

Date: FEBRUARY 2024

Date: FEBRUARY 2024

TP 14 FEB 2024

Loretta Gillion

From: Roche Viljoen <>
Sent: Tuesday, 13 February 2024 10:59
To: Loretta Gillion
Subject: ERF 5629, 1 PODALYRIA ROAD, BETTY'S BAY

OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

13 FEB 2024

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

TP-A Theart
(H vld Stoep)

Naam: SC Viljoen
Adres: Erf 4586, Disa Sirkel, Bettysbaai
Epos:

Belang: Eienaar van eiendom op erf 4586**Redes vir kommentaar:** Voorgestelde boulyn afstande en opsetlike skade aan beskermde gebied.

1. Opheffing van beperkende titelakte voorwaardes

Dit is my en my eggenoot se indruk dat ander eiendom langs Podalyriaweg wat elk 'n kwart van erf 5629 se grootte is, boulyn beperkings van 5m vanaf enige straat het. Dit maak dus nie sin dat erf 5629 (2884 vierkante meter) se bestaande boulyne van 8m vanaf straat grense verander word na 4m nie.

Die motivering genoem in die aansoek is sodat die eienaar se voornemende plan vir 'n woonhuis (so hoog as moontlik teen helling) toegelaat kan word. Die grootte van erf 5629 voorsien genoeg spasie om 'n woonhuis effens laer teen helling te beplan, sonder dat uitsig belemmer word.

Ek is dus gekant teen die vermindering van boulyn afstand vanaf straat grense.

2. Wysiging van voorwaarde om 'n gebou in 'n goedgekeurde "no-go" omgewingsone te posisioneer

Agtergrond:

In 2012 tydens my en my eggenoot se oorweging om die eiendom op erf 4586 te koop as woning vir aftrede later (en wat binnekort op 1 Maart 2024 gebeur), was ons belangrikste oorweging die volgende:

Die woonhuis op erf 4586 het lieflike uitsig na die suidekant, maar wat versper sal word wanneer erf 4587 ontwikkel word. Die uitsig na die oostekant is daarom baie waardevol. Ons was ingelig aangaande die beperking van oprigting van geboue op die boonste deel van erf 4576. Hierdie bepaling van die "no-go" omgewingsone, het ons gelei tot die koop van die eiendom op erf 4586. Toe erf 4576 onderverdeel word in 2020, was die beperking oorgedra na erf 5629. Ons was gerus dat die waarde van ons eiendom behoue sou bly.

Ons glo nie die verskoning van onkunde en onbewustheid van die beperking is geregtig as rede vir opheffing van die beperking nie. So ook maak die aansoek se motivering dat skade reeds aangerig is en dat dit die eienaar se voornemende plan vir 'n woonhuis sal toelaat, nie sin nie. Dit skep eerder 'n president dat oortreding van goedgekeurde reëls vergoed word en nie gestraf word nie. Die gebied met beskermde en bedreigde plantegroei was summier vernietig terwyl dit duidelik op erf 5629 se titelakte aangedui word.

Die botanis se omswaai van mening en aanbeveling nou, dat 'n woonhuis in die "no-go" gebied opgerig word, is nie oortuigend nie. Die gebied moet eerder herstel word deur die eienaar, al neem dit langer as 10 jaar om te herstel.

Ek is dus gekant teen die opheffing van die beperking weens die opsetlike skade aan die beskermde gebied asook die nadelige finansiële impak op ons eiendom se waarde.

Baie dankie vir geleentheid om kommentaar lewer.

Bevestig asb ontvangs van hierdie boodskap.

Groete,
 SC Viljoen

FILE NO. Erf 5629 ✓
KBB
SCAN NO. Viljoen
COLLABORATOR NO. 1996354

3/11

Loretta Gillion

From: Anton Kritzinger < >
Sent: Tuesday, 13 February 2024 10:02
To: Loretta Gillion
Subject: ERF 5629 restriction of limitations COMMENT



TP-A Theart
(Hild Stoep)

Dear Ms Loretta

My comments on and objections to the above mentioned application are as follows:

The applicant must have known very well that THAT portion of erf 5629 was/IS a no go area, as it was clearly indicated as such on the advertisement board erected by the seller on the property itself.

Despite such knowledge, the very first thing the buyer did was to bulldoze ONLY the no go area bordering on Disa Circle.

My visit to Cape Nature regarding the rationale for a no go area revealed that an endangered and rare orchid grows there and apparently only there. This would seem to be a rational ground for declaring that portion a no go area. For some unfathomable reason the buyer fenced off the area after bulldozing it.

WRAP indicated that the owner "unfortunately" disturbed the portion, and now wants relaxation of the limitation because the portion has already been disturbed! What other transgressions will the owner commit - height limitations? By the way, I am not concerned about restrictions of my ocean views, unless a three-storey building is erected. This is not my motivation for commenting and objecting. Most people come to the extremely rustic Betty's Bay for the natural wonders here - such as are left. We enjoy the animals and floral wonders here. Still, there are property owners who have no regard for this (like the owner who cut down an entire swathe of Milkwoods to improve their sea view some years ago).

I suggest that the buyer builds the house 8 metres further down the erf where there is ample space and sea views. Then the owner can enjoy the view over two no go areas on their erf.

Who knows ... the orchids might still survive the bulldozing. They will definitely not survive building activities in that area.

AJ KRITZINGER
30 Disa Circle Erf 5445

FILE NO. Erf 5629 ✓
KBB
SCAN NO. Kritzinger
COLLABORATOR NO. 1996373

TP 13 FEB 2024

OVERSTRAND MUNISIPALITEIT
 REKORDBEHEER
 30 JAN 2024
 DOCUMENT CONTROL
 OVERSTRAND MUNICIPALITY

4/11

Loretta Gillion

From: Fanie Fourie < >
Sent: Monday, 29 January 2024 20:03
To: Loretta Gillion; Dean O'Neill
Cc: Louis Coetzee; wayrayjack@gmail.com
Subject: Re: Erf 5629, 1 Popalyria Way, Bettys's Bay + General Complaints.
Attachments: image001.png

FILE NO. Erf 5629
 Betty's Bay
 SCAN NO.
 COLLABORATOR NO.
 1988681
 would like the following important

TP-n./ihead
(1. ud Skoop)

Dear Mr ONeil,

a. Ref Erf 5629:

Not to be unduely negative towards the owner of property 5629, Betty's Bay, reasons to be noted and taken into consideration when the request for the proposed changes to the title deed and building lines of erf 5629 are considered:

1. I can not agree that the requirements of the title deed for this property where "regrettably" disrupted as the owner must have received a copy of the title deed upon registration of the property into his name, it was thus openly ignored when the top part of the stand was excavated and fenced off.
 The top western corner was clearly marked as a "no go" area, not to be developed or damaged due to very sensitive endemic flora (serruria) occuring there.
 This area should thus be restored to its original status and not be damaged any further.
2. The building lines was indicated as 8m on the title deed plan for the street facing northeren and western sides of the property. Now 4m is asked for versus the normal 5m requirement for street facing buildings in Betty's Bay.
 As per item 10 (traffic impact), I can not agree with the 4m as is already very difficult to turn eastwards out of Popalyria into Disa Circle due to the extreme gradient of Popalyria on this corner.
 This thus totally unacceptable and 4m should not be granted.
3. The large size of this stand does definitely not warrant the proposed building so high up on this stand, as it is long enough in the seaward direction to never have his view impaired by future neighbouring buildings at all.

b. Ref. General Complaints:

1. I can NOT AGREE with item "12 - Good Administration": What makes me lately extremely unhappy with the OM municipality's administration and control, is that everybody seems to just do what they like on their stands - without taking the municipal laws and title deed requirements into account and then it just gets allowed and approved by you.
2. Examples is the montrosities of buildings that were "illegally" constructed using containers in the Disa Circle area on the following stands:
 erf 4605 (do they now have an approved plan for the current container building and since when is septic tanks again allowed in BB ?)
 erf 4661
 erf 4619 (do they have an approved plan ?)
 erf 4627
3. Another complaint is the number if partly build houses where there was no progress and finishing of the partly built structures during the last year:
 erf 3502
 erf 3503
 erf 4656
 erf 4610

TP
30 JAN 2024

erf 4618
erf 4666
erf 4670

4. Refer erf 3482 - Since when are you allowed to build on the full area within the building lines and does the height of this building fall within the average gradient of the stand's 8m allowed height ?

5. These situations totally degrades the value of our existing properties, that were build and taxed with-in the normal municipal regulations.

I hope that you will really take my viewpoints seriously into account with your final decisions and take positive action against illegal structures where necessary.

SA Fourie,

Popalyria Way,
Betty's Bay

On Tue, 12 Dec 2023, 08:23 WRAP, <admin@wrapgroup.co.za> wrote:

ERF 4588

SA Fourie

Good morning

ERF 5629, 1 PODALYRIA ROAD, BETTY'S BAY:

APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND AMENDMENT OF CONDITION IN RESPECT OF AN EXISTING APPROVAL:

WRAP PROJECT OFFICE ON BEHALF OF JD & CJ SMIT

Attached, please find the following:

- Notice
- Locality Plan
- Motivation
- Site Development plan

Please note that we are publishing similar notices in the Overstrand Herald on 14 December 2023 and in the Official Gazette on 14 December 2023.

Objections must be submitted to Overstrand Municipality by **Friday, 14 February 2024.**

Yours faithfully

Thian Jansen

PROFESSIONAL TOWN PLANNER

Email: admin@wrapgroup.co.za

T: +27 (28) 313 1411 | M: +27 (72) 122 7704

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

PostNet Hermanus Suite 170, Private Bag X16

Hermanus, 7200

www.wrapgroup.co.za



Loretta Gillion

From: Louis Coetzee
Sent: Tuesday, 30 January 2024 12:33
To: Fanie Fourie
Cc: wayrayjack@gmail.com; Loretta Gillion; Riaan Kuchar; Stephen Muller; Tracy Brewell; Sherwin Rossouw; Gerrit; Marilize Bosman
Subject: RE: Erf 5629, 1 Popalyria Way, Bettys's Bay + General Complaints.

Good day

Although your objection and complaint has been attached to the current building plan application record for Erf 5629 under review, please note that objections to the "APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND AMENDMENT OF CONDITION IN RESPECT OF AN EXISTING APPROVAL" must be lodged with the Town Planning department (rkuchar@overstrand.gov.za). This is a separate application to the building plan under review.

Your general complaints (3.b.2) have been answered in red (taking POPIA into consideration) next to the original text.

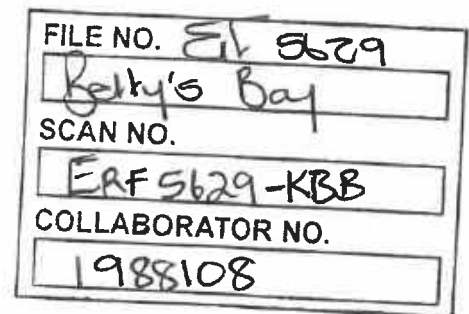
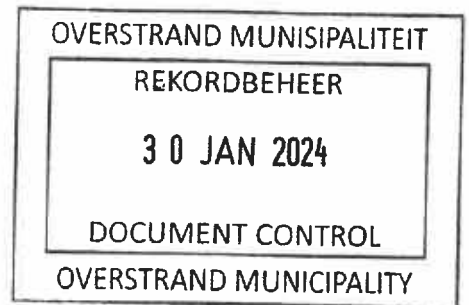
Building Control is also in the process to ensure that the structures built follow the approved plans. Any deviations from the approved plans will be addressed by Building Control. An Occupancy certificate cannot be issued if the built structure does not follow the approved building plan application.

Partly built structures (3.b.3) are problematic, not only in Overstrand but nationally. Many owners start out building but run out of finances. The Building Act No 103 of 1977 makes provision for this in that the approved building plan lapses after one year if there is no activity on site. Even this is problematic because the owner only needs to lay one brick on top of another brick to prove that there was building activity to keep the building plan active and alive.

Kind regards
 Vriendelike groete

*TP - D. Theale
 (H. Ud Soep)*

Louis Coetzee
 Senior Manager: Building Control
 Directorate Infrastructure and Planning
 Offices in Hermanus, Gansbaai, Kleinmond
 Overstrand Municipality
T: +27 (0) 28 313 8091 | **Cell:** 083 892 4254
lcoetzee@overstrand.gov.za
www.overstrand.gov.za/en/building-control



From: Fanie Fourie <>
Sent: Monday, January 29, 2024 8:03 PM
To: Loretta Gillion <loretta@overstrand.gov.za>; Dean O'Neill <mm@overstrand.gov.za>
Cc: Louis Coetzee <lcoetzee@overstrand.gov.za>; wayrayjack@gmail.com
Subject: Re: Erf 5629, 1 Popalyria Way, Bettys's Bay + General Complaints.

TP
 30 JAN 2024

Dear Mr O'Neil,

a. Ref Erf 5629:

Not to be unduly negative towards the owner of property 5629, Betty's Bay, I would like the following important reasons to be noted and taken into consideration when the request for the proposed changes to the title deed and building lines of erf 5629 are considered:

1. I can not agree that the requirements of the title deed for this property where "regrettably" disrupted as the owner must have received a copy of the title deed upon registration of the property into his name, it was thus openly ignored when the top part of the stand was excavated and fenced off.
The top western corner was clearly marked as a "no go" area, not to be developed or damaged due to very sensitive endemic flora (serruria) occurring there.
This area should thus be restored to its original status and not be damaged any further.
2. The building lines was indicated as 8m on the title deed plan for the street facing northern and western sides of the property. Now 4m is asked for versus the normal 5m requirement for street facing buildings in Betty's Bay.
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This thus totally unacceptable and 4m should not be granted.
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erf 4605 (do they now have an approved plan for the current container building and since when is septic tanks again allowed in BB ?) Approved.
erf 4661 Approved.
erf 4619 (do they have an approved plan ?) Approved.
erf 4627 Approved.
3. Another complaint is the number of partly build houses where there was no progress and finishing of the partly built structures during the last year:
erf 3502 Approved
erf 3503 Approved: new owner
erf 4656 Approved
erf 4610 Approved
erf 4618 Approved
erf 4666 Approved
erf 4670 Approved: new owner.
4. Refer erf 3482 - Since when are you allowed to build on the full area within the building lines and does the height of this building fall within the average gradient of the stand's 8m allowed height ? Application compliant with all applicable law and approved 2023 and inspections done in 2023 and 2024 and so far found to be compliant.
5. These situations totally degrades the value of our existing properties, that were build and taxed with-in the normal municipal regulations.

I hope that you will really take my viewpoints seriously into account with your final decisions and take positive action against illegal structures where necessary.

SA Fourie.

Popalyria Way,
Betty's Bay

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ERF 4588

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ERF 5629, 1 PODALYRIA ROAD, BETTY'S BAY:

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Yours faithfully

Thian Jansen

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

PostNet Hermanus Suite 170, Private Bag X16

Hermanus, 7200

www.wrapgroup.co.za



Loretta Gillion

re: Erf 5629 Betty's Bay

From: Family Grundill
Sent: Monday, 22 January 2024 07:25
To: Dean O'Neill; Loretta Gillion
Subject: Proposal by WRAP group to alter restrictive title deed restrictions on erf 5629 and alter road building lines .

Good day Mr O'Neill, Municipal Manager, and Ms L.Gillon

I received an email regarding the above matter . I live at erf 4589, directly opposite erf 5629.

Firstly, the road is referred to as "Popalyria". This is wrong! The road was named by Prof Vogts as "Podalyria" in honour of the podalyria calyptrata indigenous plant with beautiful purple flowers. Somewhere a finger fault has crept in, but the roads involved must be correctly named in a legal document, for obvious reasons. The original Surveyor General plan must be consulted.

Secondly, when the subdivision was done a few years ago ,we residents living next to this property were promised in no uncertain terms that the environmental assessment identifying the rare ,threatened serruria that was identified would be preserved for the Kogelberg biosphere. The area where the abode is now proposed was exactly there. It was simply bulldozed, leveled and fenced!. This was in direct contravention of the subdivision conditions. Was anyone held accountable for this destruction of endangered fynbos?

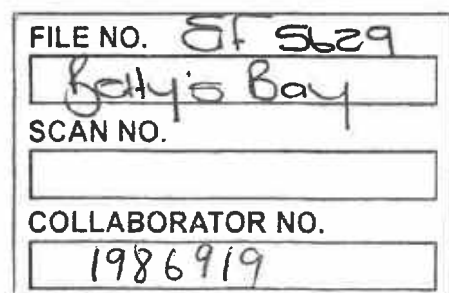
What are the chances that the remaining virgin area will also simply get bulldozed and shoulders shrugged when it is discovered by Overstrand. There is a serious credibility issue here. I object to this proposal. This is an erf that is large, four times bigger than the adjacent single residential erven, so there is more than enough space to build a residential house.

Thirdly the proposed change in street building lines to 4 meter is not in keeping with the rest of Bettys Bays 5 meter street building line . I object to this proposal.

Dr W.L.Grundill, erf 4589, Corner of Polygala and Podalyria roads, Bettys Bay



TP. n. /theal
(H. ud Sloop)



TP 22 JAN 2024

Annexure F 1/3



Project Office

Town Planning & Project Management

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
15 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Our Reference: 23/35
Overstrand Municipality Reference: 5629 KBB

5 April 2024

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

*TP. N. Theaile
(H. ud Stoep).*

Attention: Ms Hanneen van der Stoep

ERF 5629, 1 PODALYRIA ROAD, BETTY'S BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND AMENDMENT OF CONDITION IN RESPECT OF AN EXISTING APPROVAL: JD & CJ SMIT

Your letter dated 19 February 2024, refers.

The comments and objections received are addressed herein.

FILE NO.	<i>5629</i>
	<i>Betty's Bay</i>
SCAN NO.	
COLLABORATOR NO.	<i>2031175</i>

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

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

PostNet Hermanus Suite 170
Private Bag X16, Hermanus,
7200

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



WRAP Group Established 2002

TP 15 APR 2024

Objections Received: Botanist and Environmental	Response to objections
Betty's Bay Ratepayers Association SC Viljoen Dr W.L. Grundill	<p>The application was circulated to external and internal environmental departments. Both of which submitted comments that is required to be addressed by the owners and/or their representatives.</p> <p>It should be noted that a complete version of the application was available at the municipal offices for review.</p> <p>The owners will comply with any of the requirements that are put forward by these departments.</p>
Objections Received: Building Lines	Response to objections
Betty's Bay Ratepayers Association SC Viljoen Dr W.L. Grundill	<p>The motivational report included reasons for the proposal to reduce the title deed building lines from 5m to 4m.</p> <p>It is acknowledged that 5m is a standard in Betty's Bay restriction, but the owners only wish to align with the Overstrand Municipality Land Use Management Scheme.</p>
Objections Received: No-Go Area	Response to objections
AJ Kritzinger SA Fourie	<p>The no-go zone was not included into the title deed as one objector indicated.</p> <p>The application was circulated to external and internal environmental departments. Both of which submitted comments that is required to be addressed by the owners and/or their representatives.</p> <p>The owners will comply with any of the requirements that are put forward by these departments.</p>
Objections Received: Traffic	Response to objections
Betty's Bay Ratepayers Association SA Fourie	<p>The concerns related to the views from Disa Circle is noted. The application will be circulated to the municipal engineering department that will also provide comment.</p> <p>It should however be noted that 4m building lines are standard and the owners will still be allowed to erect boundary walls.</p>
Objections Received: General Complaints	Response to objections
SA Fourie	These comments are not related to the application.

DEPARTMENTAL OBJECTIONS RECEIVED

Comments received from the following authorities will be dealt with by the Environmental Consultant:

- Overstrand Municipality: Environmental Officer Environmental Management Department
- Cape Nature: Rhett Smart Manager (Landscape Conservation Intelligence)

Conclusion

The objections received focused mainly on the environmental aspects and the impact the proposal will have. As addressed above, the owners are currently in process formulating mitigation measures to address the concerns and comment of the environmental authorities (internal and external).

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

Yours faithfully



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

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS & AMENDMENT OF CONDITION IN RESPECT OF AN
EXISTING APPROVAL: ERF 5629, BETTY'S BAY (4417/2023)**

Electricity	:	Eskom Area
Water	:	Refer to conditions
Sewer	:	Refer to conditions
Stormwater	:	Refer to conditions
Roads and traffic	:	Refer to conditions

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. 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*;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Kleinmond for written approval;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that no reservation of on-street parking be allowed.
6. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
7. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE

DIRECTORATE: INFRASTRUCTURE AND PLANNING
DIREKTORAAT: INFRASTRUKTUUR EN BEPLANNING

ENVIRONMENTAL MANAGEMENT SECTION

NAVRAE | ENQUIRIES: Tamzyn Zweig: tzweig@overstrand.gov.za



15/2/2024

To whom it may concern,

RE: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND AMENDMENT OF CONDITION IN RESPECT OF AN EXISTING APPROVAL

- 1) The EMS approved the 2020 Subdivision Application on the condition that the “no-go” area recommended by the Botanical Report (Helme, 2006) be adhered to. Prior to the approval of the subdivision application, a site visit was conducted with the current owner (now the seller to the applicant) and a qualified botanist to ensure that the 2006 report was still relevant – which it was. In 2020 the “no-go” area was bulldozed. Following extensive correspondence between the Overstrand Town Planning compliance, Environmental Management it was agreed that the area would be rehabilitated, with the guidance of a botanical specialist. Approximately 380m² of Critically Endangered vegetation was cleared with earthmoving machinery. Active rehabilitation of the “no-go” area has not occurred.
- 2) The EMS conditions of approval is that the application be submitted to the Department of Environmental Affairs and Development Planning via the National Environmental Management Act (NEMA) Applicability Checklist to determine whether Environmental Authorisation for the New Dwelling is required considering the 2020 subdivision and the clearance of indigenous vegetation as per the NEMA Environmental Impact Assessment Regulations (2014, as amended) Listing Notice I, Activity 13.

Regards,

Tamzyn Zweig

Environmental Officer
Environmental Management Department
Kleinmond – Hangklip Administration
Overstrand Municipality
M: +27 (0) 83 286 4999 | T: +27 (0) 28 271 8420
tzweig@overstrand.gov.za



Western Cape Government

Department of Environmental Affairs and Development Planning
Shafeeq Mallick
Rectification
Shafeeq.mallick@westerncape.gov.za | Tel: 021 483 8339

24G Application: 14/2/4/2/2/E2/1/0019/24

ENVIRONMENTAL AUTHORISATION

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
23 MAY 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Email: chantales@citadel.co.za

The Owner
69 Spitfire Avenue
BETTY'S BAY
0157

FILE NO. Erf 5629- K88
SCAN NO. 2667353
COLLABORATOR NO.

TP - A Theart
(Huid stoep)

Attention: Jacques Dumont Smit

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: THE UNLAWFUL CLEARANCE OF INDIGENOUS VEGETATION ON ERF 5629 BETTY'S BAY

With reference to your application dated 15 November 2024 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below in accordance with the preferred alternative as described in the application and environmental assessment dated 15 November 2024.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

FILE NO.
NO.
RATOR NO.

TP 23 MAY 2025

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

C/o Mr Jacques Dumont Smit

69 Spitfire Avenue

Pierre Van Ryneveld

BETTY'S BAY

0157

Cell: (082) 908 1702

Email: chantales@citadel.co.za

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as "the holder".

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. 985 of 4 December 2014 -</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</i></p>	<p>Approximately ±450 m² of indigenous vegetation has been cleared on site.</p>
<p>As similarly listed in Government Notice No. 324 of 7 April 2017 -</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is</i></p>	<p>Approximately ±450 m² of indigenous vegetation has been cleared on site.</p>

<p><i>required for maintenance purposes undertaken in accordance with a maintenance management plan. (i) Western Cape Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; ii. Within critical biodiversity areas identified in bioregional plans.</i></p>	
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The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Erf 5629 Betty's Bay.

The SG digit code is: C01300020000562900000

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
A	34° 21' 20.45" South	18° 53' 26.72" East
B	34° 21' 26.35" South	18° 53' 26.96" East
C	34° 21' 20.64" South	18° 53' 28.16" East
D	34° 21' 22.93" South	18° 53' 27.26" East
E	34° 21' 22.94" South	18° 53' 25.94" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 21' 20.49" South	18° 53' 26.90" East
2	34° 21' 20.74" South	18° 53' 26.78" East

3	34° 21' 20.81" South	18° 53' 26.53" East
4	34° 21' 21.06" South	18° 53' 27.70" East
5	34° 21' 20.61" South	18° 53' 27.75" East

Refer to Annexure 1: Locality Plan and Annexure 2: Site Plan.
Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

LORNAY ENVIRONMENTAL CONSULTING

C/o Ms Michelle Naylor

Unit 5/1F

Hemel & Aarde Wine Village

HERMANUS

7200

Cell: (083) 245 6556

Email: michelle@lornay.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The applicant purchased the property in November 2020 and initiated vegetation clearance in October 2021. The agreement of sale was finalized in November 2020, prior to the completion of the subdivision of the parent property. No infrastructure has been established on the cleared site. The applicant has installed basic fencing to protect the area from unauthorized entry. The vegetation clearance of approximately 450m² and the minor levelling and platforming of the site has been undertaken in order to build a single residential dwelling.

Prior to the subdivision of the parent erf, a Botanical specialist was appointed by the former landowner to inform the proposed subdivision at the time – which subsequently formed Erf 5629 Bettys Bay.

Original parent erf which was assessed in 2006 by Nick Helme, in order to inform the proposed subdivision. This survey was undertaken to inform the subdivision application which resulted in the subject erf – Erf 5629 Bettys Bay. The red polygon indicates Erf 5629 (Annexure 1).

In October 2021, approximately $\pm 450\text{m}^2$ of natural vegetation was cleared without awareness of the designated no-go areas on the subject property. At the time, the applicant was unaware of the 2006 botanical specialist report referred to above, which highlighted the sensitive areas on the subject property. The above findings were never conveyed to the new buyer, neither were they secured in the Title Deed and, as such, the new property owner was completely unaware of this.

As a result, in October 2021, the applicant and property owner cleared an area of approximately 450m^2 and undertook minor excavation to create a building platform, in order to construction their single residential dwelling on site. After the above activities took place, the same botanist was consulted regarding whether the area cleared should be rehabilitated and elsewhere on site cleared for the development or whether the disturbed area should be used. In his new report dated October 2024, the botanist highlights that the area cleared has partly rehabilitated since 2021, and it contains indigenous vegetation cover of about 40-60 %, whilst the undisturbed areas containing >90 % of vegetation cover.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activity/ies specified in Section C above in accordance with and restricted to Alternative 2 described in the application and assessment report dated 15 November 2024 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision for continuation of the listed activities.
3. The development must be concluded within two years from the date of continuation of the listed activity.

4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

PART II

Written notice to the competent authority

6. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of the clearance and construction activities.
 - 6.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 6.2 The notice must also include proof of compliance with the following condition:
Condition 7

PART III

Notification and administration of an appeal

7. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 7.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1 the outcome of the application;
 - 7.1.2 the reasons for the decision as included in Annexure 3;
 - 7.1.3 the date of the decision; and
 - 7.1.4 the date when the decision was issued.

7.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2025* detailed in Section I below.

7.3 draw the attention of all registered I&APs to the manner in which they may access the decision.

7.4 provide the registered I&APs with:

7.4.1 the name of the holder (entity) of this Environmental Authorisation;

7.4.2 name of the responsible person for this Environmental Authorisation;

7.4.3 postal address of the holder;

7.4.4 telephonic and fax details of the holder;

7.4.5 e-mail address, if any, of the holder; and

7.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2025*.

8. The listed activities may not continue within the prescribed appeal period from the date the holder notifies I&APs of this Environmental Authorisation. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

PART IV

Management of the activity/development

9. The draft Environmental Management Programme ("EMPr") of June 2024 compiled by Lornay Environmental Consulting and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

10. The EMPr must be included in all contract documentation for all phases of implementation.

PART V

Monitoring

11. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") or site agent where appropriate, before continuation of any land clearing or construction activities to ensure compliance with the EMPr and the conditions contained herein.

12. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and must be made available to anyone on request.
13. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

14. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and submit Environmental Audit Reports to the competent authority annually and upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

The holder must, within 7 (seven) days of the submission of the report to the competent authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

PART VII

Activity/ Development Specific Conditions

15. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains include meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.

16. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.

H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, and a new application for Environmental Authorisation must be submitted to the competent authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

4. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr, must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. APPEALS

Appeals must comply the *National Appeal Regulations, 2025* (Government Notice No. R. 5985 in Government Gazette No. 52269 of 13 March 2025). Please note the provisions of Regulation 1(2) & (3) of the *National Appeal Regulations, 2025* when calculating the period of days.

1. The holder (applicant) of this decision must submit an appeal to the Appeal Administrator, any registered Interested and Affected Parties (I&AP's) and the decision maker (Competent Authority who issued the decision) within **20 calendar** days from the date this decision was sent by the decision maker.
2. The I&AP's (not the holder of this decision) must submit an appeal to the Appeal Administrator, the holder (applicant) of the decision and the decision maker within **20 calendar days** from the date this decision was sent to the registered I&APs by the holder (applicant) of the decision.
3. All appeals submitted must:
 - a. be in writing in the appeal form obtainable from the Departmental website;
 - b. include supporting documents referred to in the appeal; and
 - c. include proof of payment of the prescribed non-refundable appeal fee, if prescribed.
4. The holder (applicant) of the decision must:
 - a. notify registered I&AP's and affected organs of state of any appeal received, and make the appeal available to them, within **5 calendar days** after the 20-day appeal period ends.
 - b. Submit proof of this notification to the Appeal Administrator within 5 calendar days after sending the last notification.

5. The applicant, where applicable, the decision-maker, or any person notified under regulation 4 of the *National Appeal Regulations, 2025* may submit a Responding Statement within **20 calendar days** from the date they received the appeal, in the form obtainable from the Department website to the Appeal Administrator and to the appellant, where the appellant is not the applicant.
 6. Appeals, Responding Statements and supporting documents must be submitted to the Appeal Administrator by means of one of the following methods:
 - a. **By e-mail:**
DEADP.Appeals@westerncape.gov.za or
 - b. **By hand** where that person submitting does not hold an electronic mail account:
Attention: Mr. Marius Venter
 Room 809, 8th Floor Utilitas Building,
 1 Dorp Street, Cape Town, 8001
- Note:** You are also requested to submit an electronic copy (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Administrator via email or to the address listed above.
7. A prescribed appeal form, responding statement form as well as assistance regarding the appeal processes is obtainable from the relevant website of the appeal authority: <http://www.westerncape.gov.za/eadp> or the office of the Minister at: Tel. (021) 483 3721 or email DEADP.Appeals@westerncape.gov.za

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, appointed in terms of the conditions of this Environmental Authorisation, shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the

conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully


Zaidah Toefy
(53677480)

Digitally signed
by Zaidah Toefy
(53677480)
Date: 2025.05.22
10:22:14 +02'00'

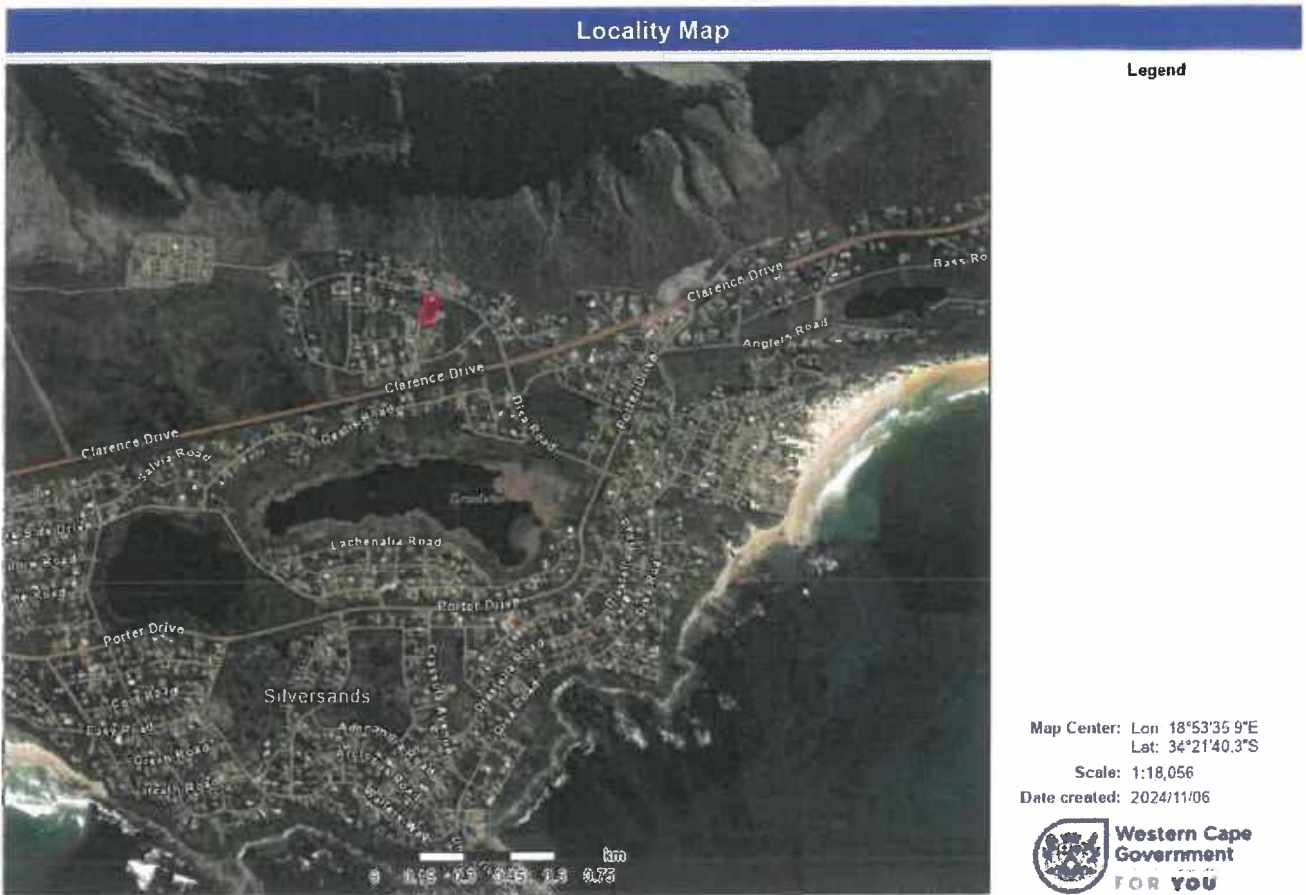
MRS Z TOEFY
HEAD OF RECTIFICATION
DIRECTORATE: ENVIRONMENTAL GOVERNANCE

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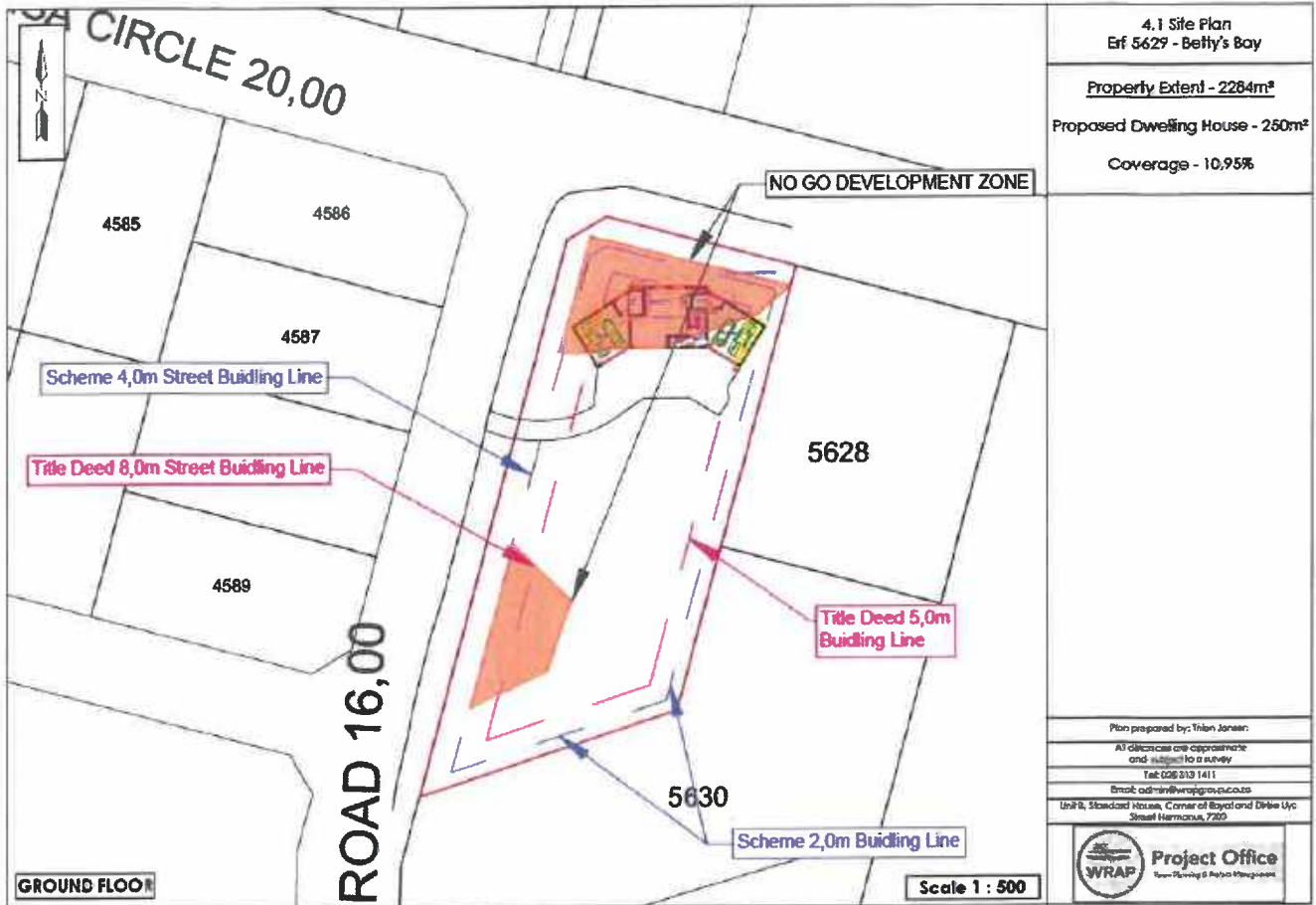
(1) Michelle Naylor (EAP)

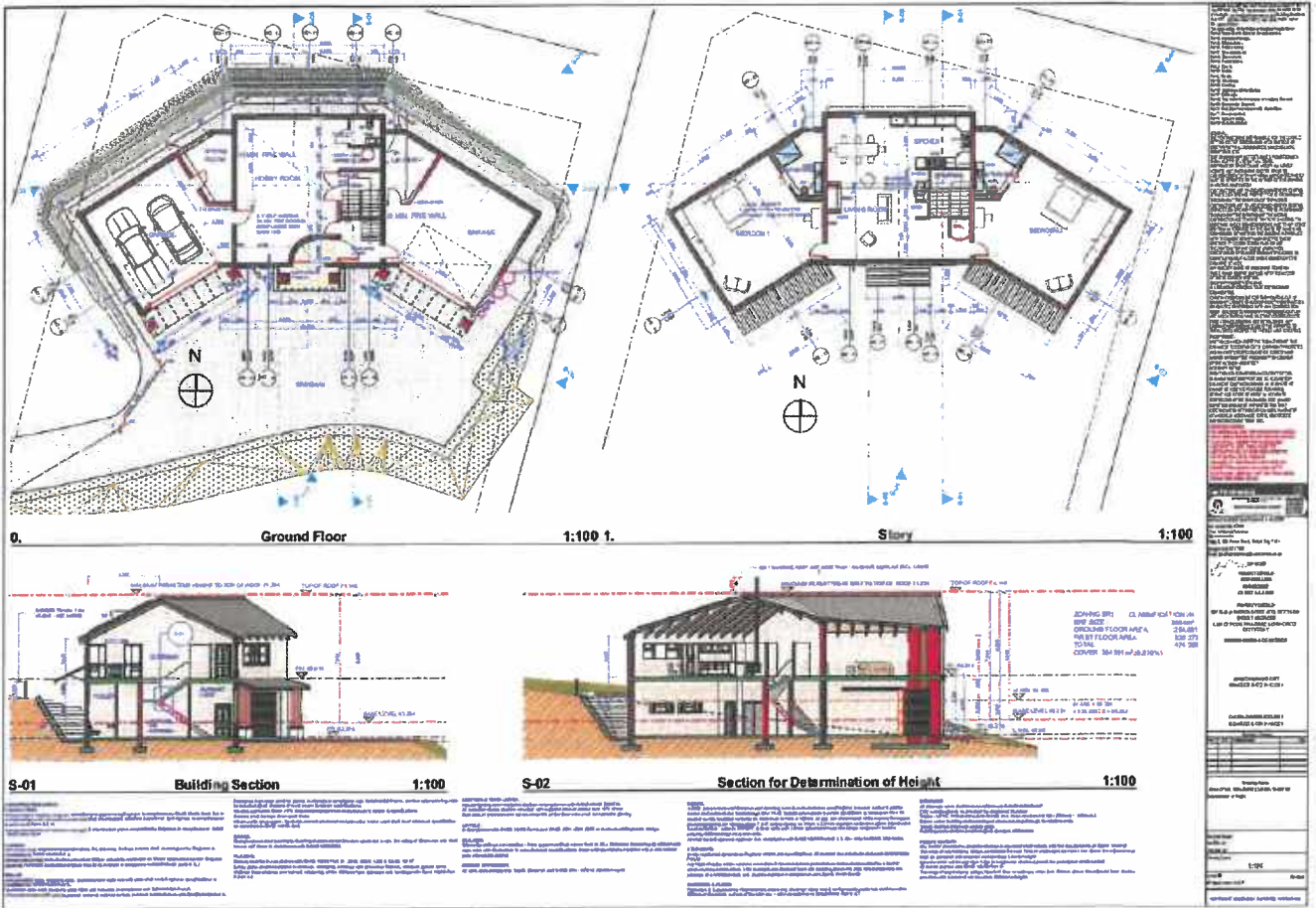
Email: michelle@lornay.co.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLANS





FOR OFFICIAL USE ONLY:**S24G REFERENCE:****14/2/4/2/2/E2/1/0019/24****ANNEXURE 3: REASONS FOR THE DECISION**

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R25 000 (Twenty-five thousand rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application form and assessment report dated 15 November 2024.
- b) The Environmental Management Programme ("EMPr") of June 2024 submitted together with the s24G application report.
- c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) The site visit conducted on 26 March 2025
Attended by: Officials of the Directorate: Environmental Governance

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activities unlawfully commenced.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 13 August 2024.
- the placing of a newspaper advertisement in the **Hermanus Times**.

An I&AP, one of the neighbouring residents to Erf 5629, provided comment, as indicated below:

"Five years ago when the large erf was subdivided and Erf 5629 was created, the surrounding residents were assured that two areas of fynbos containing a rare endangered *Serruria* would be preserved as no development areas. However, the one area bordering on Disa circle was simply bulldozed flat and all plants removed. This is an environmental crime similar to that of removing milkwood trees. The Kogelberg Biosphere is a World heritage site and needs to be meticulously preserved for the present and future. The subdivision of the large original erf was against the better judgment of the original town planners who realized this was a watercourse off the mountain and significant conservation area. The subdivision was purely for altruistic reasons. There is no shortage of vacant residential erven in Bettys Bay. Photographic evidence exists of the original erf as it was prior to the subdivision.

There is now one area left that is marked as 'protected' and "no development". With the rare fynbos on, what protection will be provided for this portion? Or will shoulders be shrugged when this is also bulldozed in "error". All these decisions cannot be made from behind a desk. A proper in situ environmental assessment needs to be done prior to any permissions. The erf is large, about 4x bigger than the other residential erven in the area so there is ample space to erect a single residential house. Has an assessment been done of the damaged bulldozed area? Perhaps with the recent rains regeneration of the endangered *Serruria* would be possible and needs to be checked by a botanist."

The EAP indicated that, according to the freshwater specialist, there are no watercourses or wetlands on site. The clearance of vegetation was reported to the then Overstrand Environmental Management Section (EMS) in December 2021 and several site visits and communications were conducted with Mr. Smith to determine the way forward. Mr. Smith stated that – upon the purchase of the property - he was not made aware of the “No-Go Area” as a condition of approval of the subdivision of original Erf 4576 in 2020.

Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- CapeNature
- Breede-Olifants Catchment Management Agency (BOCMA)
- Overstrand Municipality
- Overberg District Municipality

CapeNature indicated that the NEMA S24G Report used the previous botanical studies to inform the application although they were not compiled for the purposes of assessing the retrospective impact as a result of the activity contemplated in the S24G application. CapeNature notes that both Figure 1 and Figure 2 in the S24G Report appear to be incorrect as they are labelled as indicating the site boundaries, however they only encompass part of the site. It is assumed that the proposed disturbance footprint will be in accordance with the proposed layout plan for the dwelling. However, there was also clearing in the north-western corner which took place which is not part of the footprint.

Although the 2023 botanical input was for a planning application, it provides recommendations for the current proposal and includes reference to the existing disturbance as referred to above. None of the botanical studies included impact assessments as this is not required for planning applications. The S24G Report has however included an impact assessment based on the botanical studies undertaken with a rating of medium before mitigation and low after mitigation. CapeNature recommended that the botanical specialist must provide confirmation of agreement with the ratings and recommendation provided in the S24G Report.

The site is mapped as a wetland in the National Wetland Map. The 2006 botanical study indicated that the site is well drained, and the vegetation communities did not include any wetland vegetation communities. On this basis, it is motivated that there are no wetlands on site. While the botanical study provides evidence of the lack of wetlands, the presence of wetlands needs to be determined in accordance with the standard methodology including both soil and vegetation indicators. Comment should be provided by the Breede Olifants

Catchment Management Agency (BOCMA) in this regard. CapeNature therefore recommends that a wetland delineation study must be undertaken to verify the presence or lack of wetlands. If wetlands are present, an assessment must be undertaken.

In conclusion, CapeNature recommended that a screening tool report and a site sensitivity verification report must be compiled as part of the application. The botanical studies must be accompanied by an addendum by the specialist which verifies the impact ratings and the recommendations. A wetland delineation study must be undertaken to verify the presence or absence of wetland and comment must be obtained from BOCMA.

The EAP responded that a Freshwater Screening Report has been conducted. The findings indicated that there are no watercourses or wetland present on site, therefore there are no freshwater habitat impacted as a result of unauthorised clearance.

The BOCMA indicated that, even though no construction had begun on this property, this communication in any case, is shared with the Compliance section of the BOCMA, who could assist with the investigation into the matter. BOCMA indicated that the comment provided is in the interest of responsible water resource management.

The EAP reaffirmed that the Freshwater Assessment confirmed that there are no wetlands or watercourse on site and that no further application is required in terms of the *National Water Act, 1998 (Act 36 of 1998)*.

The Overberg District Municipality's (ODM) department of Environmental Management Services (EMS) took cognisance of the S24G application for the unlawful clearance of vegetation to build a single residential development. It is acknowledged that the proposed development is situated within the urban edge of the Betty's Bay area and that the applicant has a development right.

The Western Cape Biodiversity Spatial Plan, 2017 (WCBSP) categorise the site as Ecological Support Area 2 (EAS2). The Overberg District Municipality's Spatial Development Framework (SDF) clearly define Spatial Planning Categories (SPCs) to reflect how the area should be developed spatially to ensure sustainability. These SPCs are linked with the Biodiversity Spatial Plan Categories as defined in the WCBSP. ESA2 are classified as Buffer and should be restored or manage to minimise impact on Ecological infrastructure functioning, especially, soil and water related services.

The current application falls within Hangklip Sandstone Fynbos which is listed as critically endangered in the revised national list of ecosystems that are threatened and in need of protection, published 18 November 2022. The ODM's SDF promote the conservation of

critically endangered ecosystem types and therefore support the proposal to limit the development footprint to the area which have already been impacted.

The ODM therefore has no objection against the proposed development and support the mitigation proposal as stipulated in the Botanical Assessment.

The previous EMS, now the Environmental Management & Conservation (EMC) Division of the Overstrand has taken into account the feedback received from the Botanical Specialist, Nick Helme who conducted the original botanical survey in 2006. As per the recommendations of Mr. Helme in correspondence dated 6 September 2023 addressed to Greeff Architecture, that included a site plan for a new dwelling within the no-go area, the following as per this correspondence must be implemented to reduce further negative impacts to the remaining vegetation on site:

- 1. There should be no further clearance of vegetation by mechanical means (i.e. no earth-moving machinery that will remove the topsoil and associated seedbank).*
- 2. The area earmarked for the development of the new dwelling must be clearly demarcated to prevent further damage to the undisturbed vegetation.*

As the property is categorised within the Overstrand EMOZ Regulations: Urban Conservation area (Category D: Private Property), the following must be implemented/adhered to:

- 1. Only locally endemic plant species may be planted on the property should the owner wish to plant in the areas in the area for earmarked for the development. Areas outside of the development area must remain as natural vegetation. Should fire management be required, thinning/reduction of fuel load should occur by non-mechanical means, i.e. thinning, reducing fuel load by means of hand-tools only.*
- 2. Alien Invasive Plant Species (AIPS) must be removed by non-mechanical methods on a regular basis. Should the control of AIPS entail the application of herbicides, this must be conducted as required.*

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

2. Alternatives

Alternative 1 - The option of not implementing or continuing with the activity ("No-Go" Alternative)

Ceasing the activity and allowing the area to rehabilitate itself – this would result in the applicant exercising their right to develop their single residential dwelling elsewhere on the property and not where the existing impact/disturbance remains. This is thus deemed an unfeasible and unreasonable alternative.

Alternative 2 (Preferred alternative)

This is the preferred option, where the landowner obtains retrospective authorisation to continue with the activity in the current disturbed location. The applicant was not aware of the environmental restrictions on the property due to failure of incorporating the necessary information on the title deed. The applicant intends to rehabilitate the disturbed area once house is completed.

3. Environmental Impact Assessment (EIA) and Mitigation Measures

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

3.1. Need & Desirability

The construction of the dwelling aligns with the Provincial Spatial Development Framework (PSDF) objectives by providing housing to meet the needs of new residents and creating economic opportunities through rental income. This supports both residential development and economic growth, as outlined in the framework's objectives.

The PSDF aims to prioritize areas of potential development through proper planning, addressing housing needs, and promoting economic opportunities. The framework emphasizes the importance of prioritizing places that offer significant economic prospects.

The activity relates to the development of a residential dwelling on an erf zoned for residential purposes and is thus not in conflict with the intended land use.

3.2. Biodiversity Impacts

The applicant cleared critically endangered vegetation on site where he intended to build his residential dwelling on the property. According to the botanical specialist findings, the primary construction phase botanical impact of development would be

permanent loss of all or most of the existing natural and partly natural vegetation in the development footprint. The botanist indicated support of using the pre-existing disturbed area in the northwest corner of this erf as the primary development footprint on this site, notwithstanding the fact that this is in an area marked in his 2006 botanical survey as a No-Go area of higher botanical sensitivity. The botanist indicated that Rehabilitation of this area is possible, but not to a point where the more sensitive and threatened species will return within ten years. In this regard it is essential that the total allowable development footprint (as shown in the site plans) be fenced off during construction to prevent accidental damage to surrounding natural areas. It is also recommended that the disturbed area along the southern boundary be allowed to rehabilitate naturally, which it should do over time.

The remaining portion of the site population of the single plant Species of Conservation Concern (*Serruria adscendens*) should not be further impacted by the proposed development.

3.3. Sense of Place / Heritage

The activity is in line with surrounding residential land use and will not impact the surrounding environment's sense of place. No heritage impacts or concerns were identified.

3.4. Pollution / Waste Impacts

The activity does not result in the production of waste or any pollution. Construction related waste will be dispensed of in accordance with the EMPr.

3.5. Socio-economic Impacts

The clearance of vegetation on site does not result in any negative socio-economic impact beyond the construction phase.

4. NEMA Principles

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

-----END-----



CONSERVATION INTELLIGENCE: SOUTH

postal 16 17th Avenue, Voëlklip, Hermanus, 7200
 physical 16 17th Avenue, Voëlklip, Hermanus, 7200
 website www.capenature.co.za
 enquiries Rhett Smart
 telephone 087 087 8017
 email rsmart@capenature.co.za
 reference LS14/2/6/1/7/2/5629_amendment_Bettys Bay
 date 5 June 2025

Overstrand Municipality
 P.O. Box 20
 Hermanus
 7200

TP - A Theart
 (H vld Stoep)



Attention: Hanneen van der Stoep
 By email: loretta@overstrand.gov.za

Dear Ms van der Stoep

Additional Information for the Application for Removal of Title Deed Restrictions and Conditions of Approval on Erf 5629, 1 Podalyria Road, Betty's Bay (Overstrand Municipality ref. no.: 5629 KBB, 4417/2023)

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

CapeNature recommended that the development proposal should be sent to the Department of Environmental Affairs and Development Planning (DEA&DP) to confirm whether NEMA listed activities are applicable. Consequently, a NEMA Section 24 Application was undertaken for approval of the unlawful activities which had commenced.

Botanical input was provided regarding the area which had initially been set aside as a no-go area and since developed to supplement the initial botanical assessment in 2006. The outcome of the botanical input was that the development of the no-go area could be considered acceptable provided further disturbance to the natural habitat does not take place following completion of the construction of the house.

CapeNature is therefore satisfied that the impacts on biodiversity were addressed in the NEMA process and we do not object to the application.

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

The Western Cape Nature Conservation Board trading as CapeNature

Board Members: Ms Marguerite Loubser (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Mr Tom Blok, Mr Marvyn Burton, Ms Reyhana Gani, Dr Colin Johnson, Ms Ayanda Mvandaba, Prof Nicolaas Olivier, Mr Paul Slack

FILE NO.	Erf 5629-KBB
SCAN NO.	2676170
COLLABORATOR NO.	

TP - 6 JUN 2025

Regards

RSmart

Rhett Smart

For: Manager: Landscape Conservation Intelligence South

Navrae:
 Enquiries H van der Stoep (Senior Town Planner)

Lêerverwysing:
 File Reference: 4576 KBB

Datum:
 Date: 18 November 2020

Plan Active
 J McLachlan
 PO Box 296
HERMANUS
 7200

REGISTERED MAIL

planactive@hermanus.co.za

Dear Sir

DECISION LETTER TO APPLICANT

**ERF 4576, 1 PODALYRIA STREET, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA:
 APPLICATION FOR SUBDIVISION: MESSRS PLAN ACTIVE ON BEHALF OF DH MEYER**

1. The application received on 1 June 2020 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Authorised Official on 17 November 2020.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

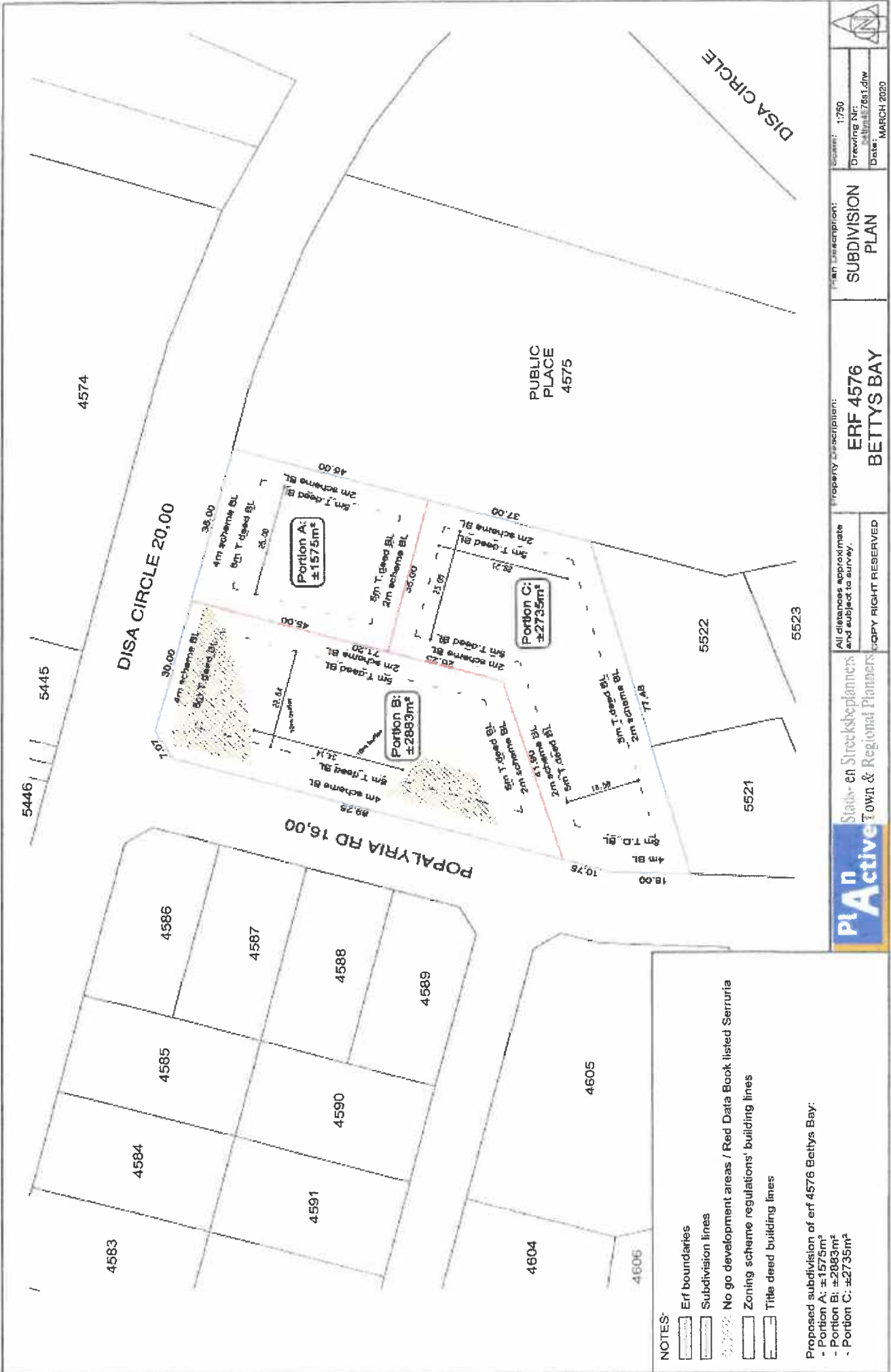
- "1. that the subdivision in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) of Erf 4576, Betty's Bay into three (3) portions, namely Portion A ($\pm 1575\text{m}^2$ in extent), Portion B ($\pm 2883\text{m}^2$ in extent), and Portion C ($\pm 2735\text{m}^2$ in extent), **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions;
- (a) that subdivision be in line with Drawing No. bettys4576s1.drw, dated March 2020, as submitted with the application,
 - (b) that the applicant appoint an Environmental Impact Practitioner (EIP) to ensure the compliance of the no-go area in terms of stock piling and disturbance or transgression by builders on the areas;
 - (c) that building plans be submitted to the Building Department for approval, and that all conditions of the Environmental Management, Building- and the Fire Departments be complied with at that stage;
 - (d) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (f) that all the conditions in the Services Report (attached as Annexure F), be complied with.

2. *that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision."*
4. Reasons for the above decision are as follows:
- The application has followed due procedure.
 - The proposal will not impact on the rights of surrounding property owners or the character of the existing surrounding built environment.
 - The application is in line with the surrounding erf sizes and will have no impact on the character of the township.
 - The proposed erven will comply with the Title Deed conditions, which is stricter than the Zoning Scheme.
 - The environmentally sensitive areas have been depicted on the proposed subdivision plan and will not be developed.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3351-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).
- 5.3 Contact details are as follows:
- | | |
|--------------------|--|
| Physical address : | 16 Paterson Street, Hermanus, 7200 |
| Postal address : | PO Box 20, Hermanus, 7200 |
| E-mail address : | loretta@overstrand.gov.za |
6. Kindly note that the rights are still not in place until the prescribed 21 days of registration of this letter have passed and it is confirmed by our offices that there has been no appeal received against the proposal.

Yours faithfully



S MÜLLER
DIRECTOR : INFRASTRUCTURE AND PLANNING



Scale: 1:750
 Drawing Nr: 2019/17651.dwg
 Date: MARCH 2020

SUBDIVISION PLAN

ERF 4576 BETTYS BAY

Property Description:
 All distances approximate and subject to survey.
 COPYRIGHT RESERVED

PIA Active Status - en Streetkwaliteitsplanners
 Town & Regional Planners

NOTES:

- Erf boundaries
- Subdivision lines
- No go development areas / Red Data Book listed Serruria
- Zoning scheme regulations' building lines
- Title deed building lines

Proposed subdivision of erf 4576 Bettys Bay:

- Portion A: ±1575m²
- Portion B: ±2883m²
- Portion C: ±2735m²

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION: ERF 4576, BETTY'S BAY**

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

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).

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

The contribution according to the current policy (2020/2021) is as follows:

Freehold erven:

Water	R 23 957.00 x 2	=	R 47 914.00
Sewerage	R 16 153.00 x 2	=	R 32 306.00
Roads	R 7 243.00 x 2	=	R 14 486.00
Stormwater	R 8 357.00 x 2	=	R 16 714.00
Solid Waste	R 1 448.00 x 2	=	R 2 896.00
Electricity	R 33 586.00 x 2	=	<u>R 67 172.00</u>
TOTAL (inclusive of VAT)		=	R 181 488.00

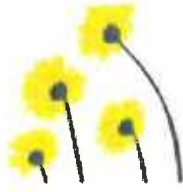
Note:

- 1.3 The above figures are estimates**
- 1.4 The above figures do not include evaluation/Investigation levies and connection fees**
2. that each property should have their own water connection and conservancy tanks as per Municipal specification;

3. 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*;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that stormwater be allowed to discharge through the proposed Erven, Betty's Bay, unobstructed;
6. that no on-street parking be allowed.

p.p. R Croxson
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

06/08/2020
DATE



NICK HELME BOTANICAL SURVEYS

PO Box 22652 Scarborough 7975

Ph: 021 780 1420 Fax: 021 780 1868 cell: 082 82 38350 email: botaneek@iafrica.com

VAT Reg. # 4930216892

**BOTANICAL SURVEY OF ERVEN 4570 AND 4576,
BETTY'S BAY.**

Prepared for : Headland Town & Regional Planners, Bellville

Client : Mr N. Meyer

21 Nov 2006

1. INTRODUCTION AND STUDY AREA

This botanical assessment was commissioned in order to help inform decisions on an application to subdivide erven 4570 and 4576, Betty's Bay. Each erf is approximately 0.7ha in extent, and both lie at the upper, western end of Betty's Bay, along Disa Crescent, and both overlook Grootvlei. The sites lie at the southern base of the Voorberg, which falls within the Kogelberg State Forest, and which forms part of the core area of the Kogelberg Biosphere. The site thus borders on the core area of the Biosphere, and from the information I have available (GIS data from CPU of CapeNature) I assume that the erven fall within the Transitional area of the Biosphere, where urban density should be reduced and development should be environmentally sensitive. The Rooiels to Kleinmond coastal strip has been identified as a sensitive environmental area in the new EIA Supplementation Guidelines (G. Pence – pers. comm), which means that all development applications will have to go through at least a basic assessment process in future.

Altitude is about 30–40masl. Erf 4576 slopes gently to the south, and has no wetlands on the site, although there is a wetland corridor just east of the site. Erf 4570 has a significant wetland covering the southwestern half of the site, and the site slopes moderately to the south.



Plate 1: View looking south over Erf 4576, showing approximate lower edge of site in yellow. The most sensitive botanical areas occur in the foreground.

The sites were visited on 14 November 2006. The vegetation on site is regarded as mature (about seven to twelve years old), and although the survey was conducted in early summer it is felt that a significantly accurate picture of the vegetation could be obtained, partly as a result of extensive previous work in the area, and partly due to the relatively low proportion of rare bulbs and annuals in this vegetation type.

2. TERMS OF REFERENCE

The terms of reference for this study were those recommended by The Botanical Society of South Africa and CapeNature.

- Produce a baseline analysis of the botanical attributes of the property as a whole.
- This report should clearly indicate any constraints that would need to be taken into account in considering the development proposals further.
- The baseline report must include a map of the identified sensitive areas as well as indications of important constraints on the property. It must also:
 - Describe the broad ecological characteristics of the site and its surrounds in terms of any mapped spatial components of ecological processes and/or patchiness, patch size, relative isolation of patches, connectivity, corridors, disturbance regimes, ecotones, buffering, viability, etc.
 - In terms of biodiversity pattern, identify or describe:

Community and ecosystem level

- a. The main vegetation type, its aerial extent and interaction with neighbouring types, soils or topography;
- b. The types of plant communities that occur in the vicinity of the site
- c. Threatened or vulnerable ecosystems (*cf. new SA vegetation map/National Spatial Biodiversity Assessment, etc.*)

Species level

- a. Red Data Book species (give location if possible using GPS)
- b. The viability of and estimated population size of the RDB species that are present (include the degree of confidence in prediction based on availability of information and specialist knowledge, i.e. High=70-100% confident, Medium 40-70% confident, low 0-40% confident)

- c. The likelihood of other RDB species, or species of conservation concern, occurring in the vicinity (include degree of confidence).

Other pattern issues

- b. Any significant landscape features or rare or important vegetation associations such as seasonal wetlands, alluvium, seeps, quartz patches or salt marshes in the vicinity.
 - c. The extent of alien plant cover of the site, and whether the infestation is the result of prior soil disturbance such as ploughing or quarrying (alien cover resulting from disturbance is generally more difficult to restore than infestation of undisturbed sites).
 - d. The condition of the site in terms of current or previous land uses.
- In terms of **biodiversity process**, identify or describe:
 - a. The key ecological “drivers” of ecosystems on the site and in the vicinity, such as fire.
 - b. Any mapped spatial component of an ecological process that may occur at the site or in its vicinity (i.e. *corridors* such as watercourses, upland-lowland gradients, migration routes, coastal linkages or inland-trending dunes, and *vegetation boundaries* such as edaphic interfaces, upland-lowland interfaces or biome boundaries)
 - c. Any possible changes in key processes, e.g. increased fire frequency or drainage/artificial recharge of aquatic systems.
 - d. Would the conservation of the site lead to greater viability of the adjacent ecosystem by securing any of the functional factors listed in the first bullet?
 - Would the site or neighbouring properties potentially contribute to meeting regional conservation targets for both biodiversity pattern and ecological processes?

3. THE VEGETATION

The original natural vegetation in the study area is a combination of two different vegetation types, due to its position at the base of the mountains. It is probably best described as Hangklip Sand Fynbos, with elements of Kogelberg Sandstone Fynbos (Mucina & Rutherford 2003), with the latter elements being more typical of the mountain areas.

Hangklip Sand Fynbos is restricted to the low lying sandy flats between Rooiels and Stanford (mostly on neutral and acid sands), with outliers on the southern Cape Peninsula. The latest National Spatial Biodiversity Assessment (NSBA; Rouget *et al* 2004) has determined that at least 32% of this Hangklip Sand Fynbos vegetation has been lost (1996 data; the situation has deteriorated since then, and this figure is probably closer to 40% now), with ongoing loss and pressures (urbanization, agriculture, quarrying), and thus ranks it as a Vulnerable vegetation type. Only 17% of this vegetation type is formally conserved, with a conservation target of 30%, which can be interpreted as meaning that roughly 50% of every site with this vegetation type should be conserved in order to achieve regional conservation targets. This ranking is similar to a Red Data Book ranking for individual species, the only difference being that it refers to entire ecosystems.

Kogelberg Sandstone Fynbos is well conserved (59% conserved, being 195% of the national target, and 83% remaining), and consequently has a Least Threatened ecosystem status (Rouget *et al* 2004).

Invasive alien vegetation is not currently a feature of the sites, and the only species noted was rooikrans (*Acacia cyclops*), and this species occurs only as scattered small plants (<0.1% cover).

3.1 Erf 4576

This site is well drained, with white acid sands and very occasional rocks. Dominant species include *Elegia filacea*, *Rhus lucida* (blink taaibos), *Erica axillaris*, *Erica serrata*, *Erica muscosa*, and *Leucadendron salignum*. Additional species include *Pteridium aquilinum* (bracken), *Osyris speciosa*, *Leucadendron gandogeri*, *Restio egregius*, *Restio festuciformis*, *Hypodiscus aristatus*, *Staberoha cernua*, *Chondropetalum aggregatum*, *Pentaschistis curvifolia*, *Tetraria bromoides*, *Capelio tabularis*, *Metalasia muricata* and *M. densa* (blombos), *Erica coccinea* (hangertjies), *Erica tenella*, *Erica imbricata*, *Chrysanthemoides monilifera* (bietou), *Pelargonium cucullatum*, *Pterocelastrus tricuspidatus* (kershout), *Cliffortia atrata*, *Psoralea pinnata* (bloukeur), *Anthospermum aethiopicum*, *Chionanthus foveolatus* (bastard ironwood), *Watsonia borbonica*, *Protea cynaroides* (king protea), *Morella quercifolia* (maagpynbossie), *Lanaria lanata* (wolbos), *Berkheya barbata*, *Hermas villosa*, and *Aspalathus calycina*. On the few large rocks are *Crassula flava*, and *Lachenalia* sp. (viooltjie).

The following species are largely restricted on site to the upper third of the site: *Serruria adscendens*, *Brunia albiflora* (coffee bush), *Leucadendron xanthoconus*, *Hermas villosa*, *Penaea mucronata*, and *Psoralea aphylla*.

The bulk of the site is considered to be of Moderate regional conservation value, with a very limited number of rare species, and because it is (and will become more so) partly isolated from the core mountain area by its position.

3.1.1 Rare species

Only one Red Data Book listed plant species was recorded on this site, and there is a low to moderate likelihood of others being present, but unrecorded (primarily due to seasonal and fire cycle constraints).

Serruria adscendens (Proteaceae; see Plate 2) is largely restricted to the sandy flats between the mountains and the sea in the area from Hanglip to Stanford, and has consequently been affected by urbanization, alien plant invasion, and agriculture. The species has been recently Red Data Book listed as Near Threatened (Rebelo et al – in prep.). The species is not well represented on site, and is present only in the areas indicated in Figure 1. A total of about fifteen plants occur on site, with large populations on the lower slopes of the mountain behind the site.



Plate 2: *Serruria adscendens* is a 0.4m tall member of the Protea family, and is Red Data Book listed as Near Threatened.



Figure 1: Aerial photo of erf 4576, indicating approximate boundary, and position of no go development areas. The remainder of the site is of Moderate regional conservation value, and presents no significant botanical constraints to development.

3.2 Erf 4570

The vegetation on this erf site consists of two distinct plant communities, although both are categorised as part of the Hangklip Sand Fynbos. The driving factor in this system is the degree of seasonal moisture in the soil, which produces a distinct wetland plant community, and a distinct non-wetland plant community.

The wetland plant community covers the lower 40% of the site, primarily in the southwest (see Figure 2). Characteristic species include *Neesenbeckia punctoria*, *Brunia albiflora* (coffee bush), *Elegia asperiflora*, *Psoralea pinnata* (bloukeur), *Osmitopsis asteriscoides* (vleikruid), *Platycaulos compressus*, *Erica perspicua*, *Cliffortia odorata* (wildewingerd), and *Morella integra*. All these species are restricted to permanently wet sites. All wetlands have a Very High ecological value, and should not be disturbed. DWAF recommends a minimum 23m buffer for all wetlands.



Plate 3: View of erf 4570, looking west. Yellow line shows approximate edge of minimum wetland buffer, with drier sands to the right. Both areas have relatively high conservation value, and the wetland is particularly sensitive, especially to a reduction in surface and subsurface water flow.

The better drained, often stony portion of the site occupies about 60% of the site, and is dominated by a number of indigenous species, including *Pentaschistis curvifolia*,

Restio egregius, *Staberoha cernua*, *Chondropetalum aggregatum*, *Elegia filacea*, *Erica axillaris*, *Erica serrata*, *Serruria adscendens*, *Spatalla curvifolia*, and *Leucadendron salignum*. Additional species include *Pteridium aquilinum* (bracken), , *Rafnia capensis* ssp. *pedicellata*, *Osyris speciosa*, *Tetraria bromoides*, *Capelio tabularis*, *Metalasia erubescens* (blombos), *Erica muscosa*, *Erica tenella*, *Edmondia sesamoides*, *Penaea mucronata*, *Pelargonium cucullatum*, *Hypodiscus aristatus*, *Lanaria lanata* (wolbos), *Berkheya barbata*, *Hermas villosa*, *Phaenocoma prolifera* (pink sewejaartjies), and *Aspalathus calycina*. Due to the presence of at least two Red Data listed species this area has a High regional conservation value.

3.2.1 Rare or localised species

Two Red Data Book listed plant species was recorded in the drier parts of the site. *Spatalla curvifolia* (Proteaceae) is RDB listed as Near Threatened (Rebelo et al – in prep.; Near Threatened is the lowest category of threat), as although it is still fairly common in parts of its range, it is threatened by urbanization, alien vegetation, and agricultural expansion (mainly vineyards). The species is common on the drier sands, with at least 60 plants noted, and this is thus regarded as a viable and significant population.

Serruria adscendens (Proteaceae) is largely restricted to the sandy flats between the mountains and the sea in the area from Hanglip to Stanford, and has consequently been affected by the same factors as *Spatalla curvifolia*. The species has thus also been recently RDB listed as Near Threatened (Rebelo et al – in prep.). The species is common in the same areas as the *Spatalla*, and at least 70 plants are found on site, with large, viable populations just north of the site as well.

There is a low likelihood of further threatened or localised species occurring on site, notably in the form of bulbs, which are typically highly seasonal in terms of flowering. The Vulnerable *Mimetes hirtus* (Proteaceae) occurs in the wetland immediately in front of this erf, but is not currently present on the study site.

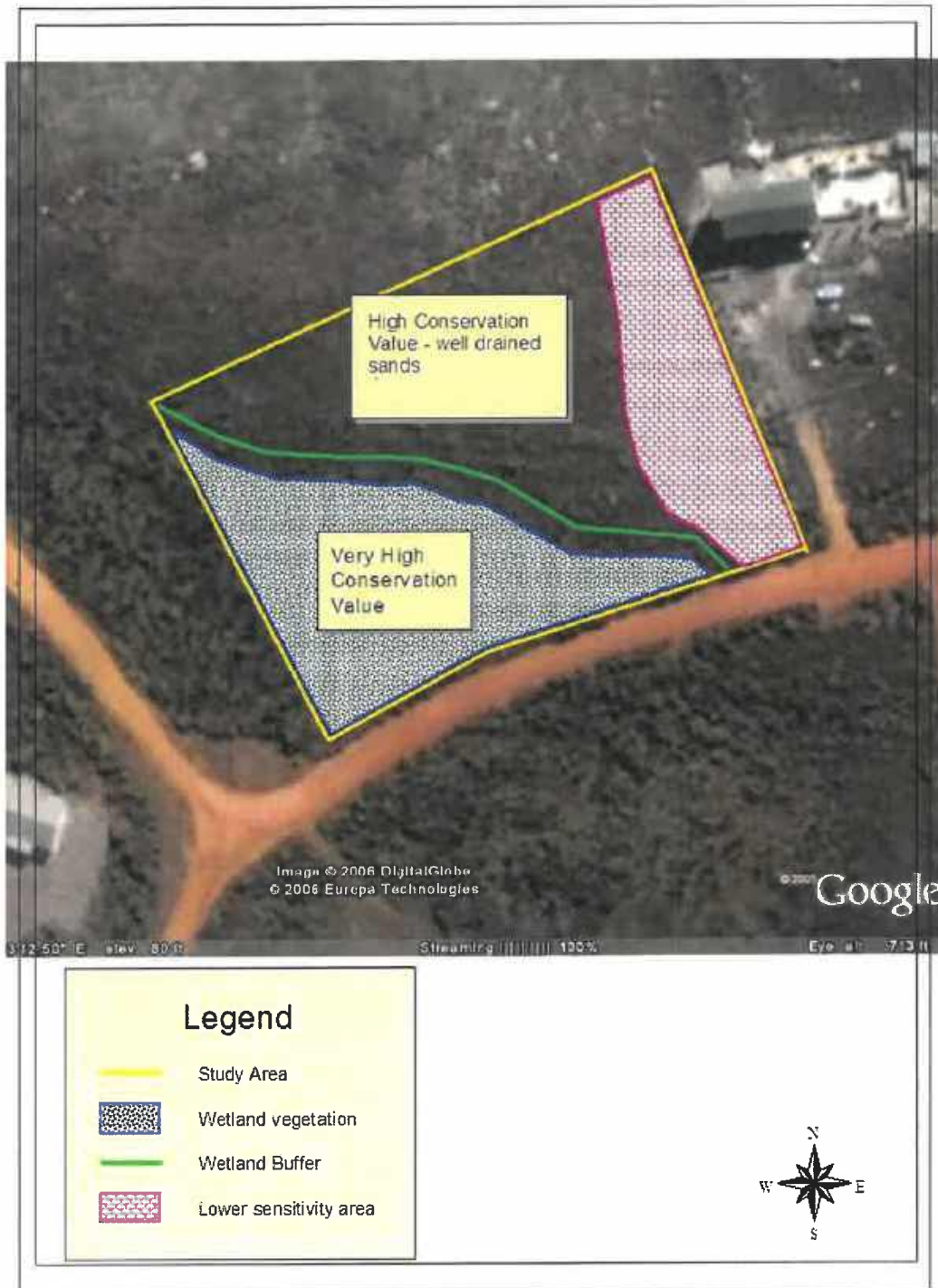


Figure 2: Aerial image of Erf 4570, showing extent of wetland area, proposed wetland buffer, and preferred development area (lower sensitivity area). Note that numerous plants of two Red Data Book listed plants occur in the High conservation value area.

4. COMMENTS ON CONTEXT OF THE SITE

Erf 4570 is situated adjacent to the Kogelberg Biosphere Reserve Core Area, and would appear to be within the Transitional area of the Biosphere, and as such is an important area, where urban density is supposed to be reduced, and in this regard it would appear to be unwise to approve a subdivision. If subdivision is approved, it must be for a maximum of two large erven with all development footprints along the eastern boundary. Erf 4576 is slightly further down the slope, and is not on the edge of the Biosphere Core, and thus has fewer constraints from a regional perspective.

There are no clear, major edaphic (soil) interfaces on the sites, but they are part of an important upland - lowland link which connects Grootvlei to the mountains. Upland – lowland gradients like this are regarded as important elements of ecological processes (see Terms of Reference), and should be conserved where possible (de Villiers 2005). The maintenance of links like this are important for pollinators and seed dispersers, such as insects and birds, and a row of houses could theoretically prove to be an obstacle for certain insects. The upland-lowland link also has drainage implications for Erf 4570, outlined below.

The ecological viability of the permanent wetland area on Erf 4570 could be negatively affected by what happens on this site, as the catchment areas for the wetlands are partly on the site (see Terms of Reference). Degradation of the wetlands in the Betty's Bay area is an ongoing, major problem for a number of rare plants and animals, and this alteration takes the form of habitat loss, alteration of moisture regime, pollution, and reduced fire frequency. The wetland community on the site will be severely negatively affected by any development on the upslope side. This can be seen on the adjacent property (to the east) where downslope vegetation is dying due to artificial drying out associated with the large house on the site. Any development on Erf 4570 thus needs to be carefully planned to avoid impacts on the wetlands.

5. CONCLUSIONS

- Figures 1 and 2 should be used as planning guidelines.
- Erf 4576 presents few botanical constraints to development, whilst Erf 4570 presents significant botanical constraints to development.
- The following mitigation measures must be applied to any approvals.

Mitigation of development for Erf 4576

- Two well demarcated populations of a Red Data Book listed plant species occur on this erf, and these should be buffered by at least 10m from any development. It is proposed that the erf could be subdivided, with development footprints specified for all erven, and these development restrictions should be written into the Title Deeds. The sensitive areas can fall within individual erven, but the sensitive areas may not be developed and must be identified as conservation areas.
- The approved erven should be subject to strict environmental controls, including the condition that no formal gardens be allowed on the site, with development disturbance restricted to an area within 2m of the house walls. Each house site should thus have a maximum designated development envelope of no more than 300m², which includes decks, parking areas, yards, etc. These restrictions should go into the Title Deeds.
- As it is understood that the proponent does not wish to personally develop any subdivided erven any ROD issued in terms of this application will not necessarily be binding on the future purchasers, and thus an EMP cannot be mandatory at this stage. Management of the subdivided erven is thus unlikely to be regulated, and the only controls lie in what is put into the Title Deeds.
- Fire is one of the key ecological drivers in Fynbos systems such as this. One of the requirements for the persistence of the Red Data Book listed plant species, and other reseeding plant species, is that the vegetation be burnt at least once every fifteen to twenty years, as these species require fire in order to stimulate germination. Without fire for more than twenty years, these and various other species, are likely to become locally extinct, which is an indirect and significant negative effect of urbanization that is usually overlooked. It is thus essential that the design of the houses take this into account, as there is highly likely to be a wildfire in the area at least once every twenty years.
- The biodiversity specialists must approve the final layout in writing, and should contribute to layout design until this point is reached.

Mitigation of development for Erf 4570

- Development within wetlands and their immediate catchments and appropriate buffer areas should be strongly discouraged, particularly in instances like this where the wetland feeds important downstream wetlands. It must thus be noted that the entire western half of the site is an important catchment for the wetlands in the southwestern portion (and supports at least two Red Data listed plant species), and no development should be undertaken here.
- A cut-off drain should on no account be constructed across the site, as this will have a very negative impact on the subsoil drainage, and will almost certainly lead to local extinction of the wetland plant species on site.
- A buffer of at least 5m has been identified in Figure 2, and no development should occur within this buffer area.
- It is strongly recommended that all development footprints be kept to the eastern boundary of the site (within the area identified in Figure 2 as being of Lower Sensitivity), to minimise impacts on the wetland, and to concentrate disturbance in one area. It may thus be necessary to limit the total number of erven to two large erven.
- Development footprints must be specified for all erven, and these development restrictions should be written into the Title Deeds. The sensitive areas can fall within individual erven, but the sensitive areas (wetlands and buffer, and the bulk of the western part of the site) may not be developed, and must be identified as conservation areas.
- The approved erven should be subject to strict environmental controls, including the condition that no formal gardens be allowed on the site, with development disturbance restricted to an area within 2m of the house walls. Each house site should thus have a maximum designated development envelope of no more than 300m², which includes decks, parking areas, yards, etc. These restrictions should go into the Title Deeds.
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6. REFERENCES

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6 Sep 2023

Greeff Architecture

Betty's Bay

ATT: Marius Greeff

Dear Marius

Botanical Input - Erf 5629, Bettys Bay

Thank you for asking me to comment on this erf, and specifically on the proposed layout of the 250m² house, as shown in Figure 1.

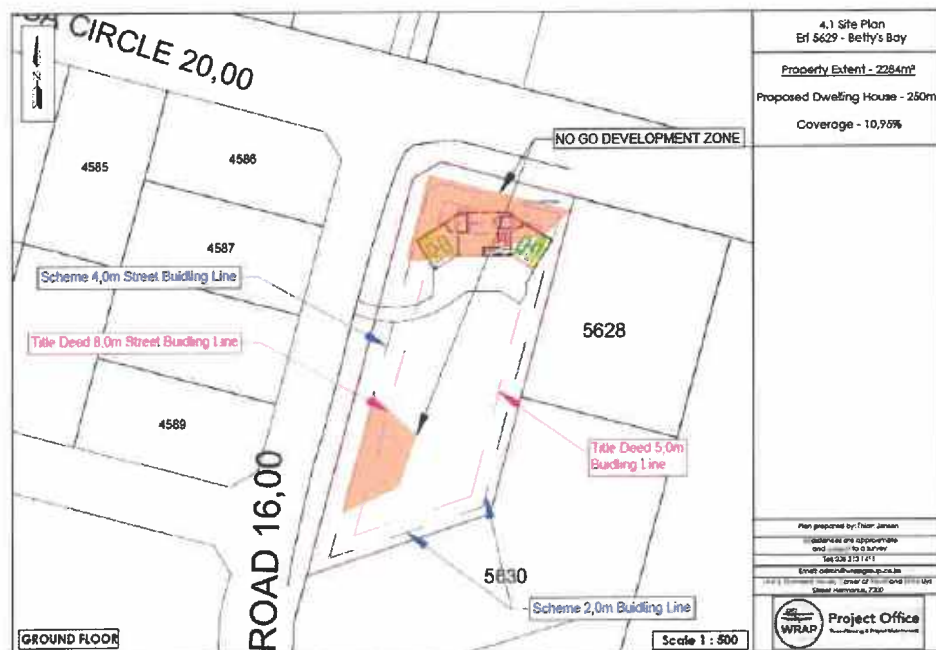


Figure 1: Proposed development layout.

I am in support of using the pre-existing disturbed area in the northwest corner of this erf as the primary development footprint on this site, notwithstanding the fact that this is in an area marked in my 2006 botanical survey as a No Go area of higher botanical sensitivity. Rehabilitation of this area is possible, but not to a

point where the more sensitive and threatened species will return within ten years. According to Google Earth time series imagery the area was disturbed in late 2021, and a further area along the southern and southeastern boundary was disturbed between July and October 2022.

Disturbance of any other parts of the site that are currently covered with natural vegetation is not supported. In this regard it is essential that the total allowable development footprint (as shown in Figure 1) be fenced off during construction to prevent accidental damage to surrounding natural areas. It is also recommended that the disturbed area along the southern boundary be allowed to rehabilitate naturally, which it should do over time, provided that natural vegetation surrounds the area, as at present. No gardening, mowing or disturbing of vegetation outside the allowed development footprint should be undertaken. All invasive alien vegetation (as per NEMBA) on erf 5629 should also be removed by hand on a regular basis (at least very six months).

Yours sincerely



Nick Helme