

12.

**OVERSTRAND: AMENDMENT OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, ADOPTION OF THE OVERSTRAND MUNICIPALITY LAND USE SCHEME AND OVERLAY ZONES AND INCORPORATION INTO THE SAID BY-LAW**

15/2

R Kuchar

Senior Manager: Town &amp; Spatial Planning

11 May 2020

(028) 313 8900

**1. Executive Summary**

To submit to Council the following:

Reviewed Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme and Overlay Zones for adoption by Council and after adoption:

Rescinding of the following policies:

- Overstrand Policy on Playschools on single residential erven, 2001 (Executive Committee Meeting, dated 7 August 2001);
- Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional dwelling units and accommodation for farm workers/staff on agricultural land units within the jurisdiction area of the Overstrand Municipality, 2009 (Council dated 1 September 2009);
- Policy for Conducting an Accommodation Establishment on a single residential erf, 2001 (Executive Committee meeting, dated 31 May 2001); and
- Determination of the zoning of various erven to be aligned with the Fernkloof Nature Reserve Proclamation, 2000.

**2. Service Delivery and Budget Implementation Plan – IGNITE**

Public Services: Plan no 22; Page no 20  
Town Planning / Spatial Development

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Promotion of Tourism, Economic and Social Development

**4. Delegated Authority**

None

**5. Legal Requirements**

Section 17 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

Section 24 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

Section 22 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)

Section 13 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015

**6. Background/Discussion/Comments/Conclusion****Background**

Overstrand Municipality adopted the Overstrand Municipality By-Law on Municipal Land Use Planning in 2015 (Council resolution dated 28 October 2015). The Overstrand Integrated Zoning Scheme was adopted in 2011 (Mayoral Committee Meeting dated 4 May 2011), and approved by the Department of Environmental Affairs and Development Planning in 2013 in terms of the Land Use Planning Ordinance of 1985.

However, new legislation had been enacted being:

- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), as amended, and
- Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), as amended.

In order to comply with the new legislation, the Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Integrated Zoning Scheme were reviewed by aligning aforementioned documents with the new legislation.

During this process, various erven were identified as part of Fernkloof Nature Reserve and the current zoning did not align with the land use.

The drafting of an Environmental Overlay Zone and Heritage Protection Overlay Zone was done and will form part of the Overstrand Municipality Land Use Scheme, previously known as the Overstrand Integrated Zoning Scheme.

During the process the Stanford Urban Conservation Area was reviewed and updated and will form part of the Overstrand Heritage Protection Overlay Zone.

Some policies are to be rescinded, following the incorporation of same, after having been updated where necessary into the Overstrand Municipality Land Use Scheme.

A thorough public participation process was followed during the process of reviewing the documents. This process included two public advertisements

and various public open days, where National, Provincial and Local Authorities and the public were invited to submit comments or to make inputs.

The process of reviewing the documents was done in the following stages:

**Stage 1:**

Determination and preparing of the Environmental and Heritage Overlay Zones to be incorporated into the Overstrand Land Use Scheme. Public meetings were held in August/September 2015 and April 2016, respectively.

**Stage 2:**

The amendment of the Overstrand Municipality By-Law on Municipal Planning, Overstrand Land Use Scheme, incorporation of the Overlay zones and integration of the Land Use Scheme with the Overstrand Municipality By-Law on Municipal Planning. The aforementioned was advertised and distributed during December 2016 for a period of sixty (60) days for comments and inputs. (See Annexure A for comments received). The comments were addressed in the comments and responses table. (See Annexure B)

**Stage 3:**

Revisions of the Overstrand Municipality By-Law on Municipal Planning, Overstrand Municipality Land Use Scheme and Overlay Zone. The amendments proposed and accepted deemed substantial and the Municipality embarked on a second round of public participation starting in September 2019 with the closing date of 2 December 2019. (See Annexure C for the amendments to the document). Comments were received (See Annexure D) and addressed in the Comments and Response Table (See Annexure E).

The processes of the reviewing of the documents were extensive due to the complexity of alignment and compliance with the following acts:

- Public participation was done in terms of the Municipal Systems Act, 2000,
- Spatial Land Use Management Act, 2013 (SPLUMA),
- Western Cape Land Use Planning Act, 2014 (LUPA) and
- Overstrand Municipality By-Law on Municipal Planning, 2015.

In addition, some of the legislation were amended during the process and in some cases the process was delayed while waiting for changes to be promulgated. The By-Law and Land Use Scheme incorporates all legislative amendments up to March 2020.

**Discussion**

The main aim of the review was to comply with the requirement of Section 24(1) of SPLUMA that requires Municipalities to develop and implement a single land use scheme within five (5) years of SPLUMA coming into effect

and thus all Municipalities are required to be SPLUMA compliant by 30 June 2020 (see Annexure F). This time frame has given the Municipality the opportunity to enter into an extensive public participation process to establish the needs of the community of the Overstrand and evaluate development trends. This enables the Overstrand By-Law on Planning and the Land Use Scheme to be more accommodating in terms of mixed uses and flexibility enabling development within the context of the environmental and heritage sensitive areas within the Overstrand. The review also aligns with the objectives of the IDP and SDF.

Secondly the new legislation proposed sections that had to be amended accordingly in the Planning By-Law.

The current reviewed Overstrand Municipality By-Law on Municipal Land Use Planning incorporate the Land Use Scheme as a Schedule to the By-Law as required in terms of Section 24(1) of the Spatial Planning and Land Use Management Act, 2013.

**The main areas of change were the following:**

➤ **Overstrand Municipality By-Law on Municipal Land Use Planning:**

The Council adopted the operational procedures of the Municipal Tribunal and the Appeal Authority during a Special Mayoral Committee Meeting, dated 27 July 2016, which procedures excluded verbal/oral hearings. The exclusion of verbal/oral hearings has been deleted in the Overstrand By-Law on Municipal Planning to align the By-Law with the decision dated 27 July 2016. (See Annexure G.)

The validity of the approval time period from five (5) years to ten (10) years, as amended by SPLUMA in March 2020.

The addition of the Overstrand Municipality Land Use Scheme as a schedule to the By-Law.

➤ **Overstrand Municipality Land Use Scheme:**

• **Overlay Zones**

The addition of the overlay zones to the Land Use Scheme. The environmental overlay zone was drafted to ensure alignment between the environmental and planning legislation to ensure environmental sensitive development and ensure conservation of areas worthy of conservation. It also aligns with the Critical Biodiversity areas as determined by Cape Nature. The Heritage Overlay is to guide development in terms of aesthetics and protection of scenic routes. The baseline document is the Heritage Survey Report, dated 2009.

- Definitions

The definition alignment of the Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme.

The rewording of some of the definitions, specifically a single family home occupation and land uses within the various land use categories. This was necessary to be more specific to eliminate misunderstandings and misinterpretation of the definitions and to be in line with the Provincial model zoning scheme, where applicable.

- Demarcation of bulk areas

The demarcation of bulk areas in the central business districts of Hermanus, Kleinmond and Gansbaai. The latter two towns did not have areas demarcated and to align the land use maps with the written document, the bulk areas needed to be established. The bulk area of Hermanus has been extended to incorporate historical approvals already compliant with the development parameters of the bulk area.

The Land Use Scheme maps from part of the adoption of the scheme as determined by SPLUMA.

The amendments were done to create a more flexible and more land uses under the various categories document that can accommodate the various needs of the communities residing in the Overstrand.

- Zoning Amendments:

Erven 4771, 4833, 4831, 249 and 1253 Hermanus: were identified by the Overstrand Environmental Section as an integral part of Fernkloof Nature Reserve that should have the zoning of Open Space Zone 1 Nature Reserve. The erven have specific environmental characteristics that need additional protection due to its locality to the coast and the existing Fernkloof Nature Reserve. These erven serve as ecological corridors and coastal buffer zones. Although the erven have been included in the proclamation of Fernkloof 2000, the zoning has not been amendment and the determination of the erven is to align it with the use as per the proclamation.

## **Conclusion**

The documentation is aligned with planning legislation and promotes a mixed use and compact urban area. The rural area, outside of the urban edge, will be protected by the overlay zones and contributes to an environmentally

sensitive and sustainable By-Law on Municipal Planning and Land Use Scheme.

The documentation is also aligned with the objectives of the Spatial Development Framework 2020, still to be adopted by Council.

#### **7. Financial Implications**

N/A

#### **8. Staff Implications**

N/A

#### **9. Comments from other Departments, Divisions and Administrations**

N/A

#### **10. Annexures**

- Annexure A: Comments received (2016)
- Annexure B: Comments and responses table (2016)
- Annexure C: Amendments to Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme and Overlay Zones – Advertised December 2019
- Annexure D: Comments received (2019)
- Annexure E: Comments and response table (2019)
- Annexure F: Circular WC 22 of 2019/2020
- Annexure G: Council's decision dated 27 July 2016
- Annexure H: Draft Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme and Overlay Zones for adoption by Council and after adoption (*see Memory Stick*)

#### **RECOMMENDATION TO THE COUNCIL :**

1. that the reviewed Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme and Overlay Zones **be adopted**;

2. that the following policies **be rescinded**:
  - Overstrand Policy on Playschools on Single Residential erven, dated 2001 (Executive Committee Meeting, dated 7 August 2001);
  - Policy on Guidelines and requirements in respect of applications for the erection/establishment of additional dwelling units and accommodation for farm workers/ staff on agricultural land units within the jurisdiction area of the Overstrand Municipality, dated 2009 (Council dated 1 September 2009); and
  - Policy for conducting an accommodation establishment on a single residential erf, dated 2001(Executive Committee meeting, dated 31 May 2001);
3. that the determination of the zoning of various erven to be aligned with Fernkloof Nature Reserve Proclamation, 2000, **be approved**;
4. that the determination of bulk areas of the towns of Hermanus, Kleinmond and Gansbaai, **be approved**; and
5. that minor amendments **be delegated** to the Municipal Manager, should it be required.

**RESPONSIBLE OFFICIAL :**

**R KUCHAR**

**TARGET DATE FOR IMPLEMENTATION :**

**11 JUNE 2020**

**TARGET DATE TO INFORM APPLICANT :**

**N/A**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

Copy - Directorate Town Planning



AH Erasmus  
PO Box 1496  
Hermanus  
7200

10 January 2017

L Wallace  
Smuller  
TP- Rina  
Mayor  
Speaker

The Municipal Manager  
Overstrand Municipality  
(By Hand)

Dear Sir,

**By-Law on Municipal Land Use Planning : 2016**

I wish to comment as follows;

1. **Dwelling house/dwelling unit:** I am against the single family per dwelling house or dwelling unit regulation. Difficult economic times in South Africa force extended families or friends to stay together. The national government requested municipalities on more than one occasion to support efforts that could alleviate poverty. These Cabinet resolutions are supported by SALGA.
2. **Legal Authority:** I believe that municipalities do not have the legal authority or mandate to regulate who a home owner could accommodate in his/her house. It is a basic human right to accommodate friends and/or an extended family in ones own home if they experience poverty and they have no other destiny. Is the Overstrand Municipality's viewpoint that these poor people should rather be left on the street whilst big dwellings remain under utilized because of municipal restrictions? I believe that the municipality should obtain a legal opinion from a constitutional law expert as well as from the Human Rights Commission before finalization of the By-law. I believe that they will support my viewpoint.
3. **Law Enforcement:** A municipality should not have policies, regulations or rules unless it is serious about executing the aforesaid. How will the municipality ensure that only single families live in a dwelling house/dwelling unit? Will law enforcement officers visit the suspicious premises and evaluate the ID books to ensure that those who live there are direct relatives (single family)? What about the existing situation in brown and black communities where more than one family already live together. Will the municipality act in this regard? This is very sensitive because Overstrand Municipality has already been identified as the most segregated municipality.
4. **Final Remarks:** To all the decision makers who will finalize this By-Law, please remember the following well known viewpoint: "A man is judged by the way he treats his fellow men".

FILE NO:	13/30
SCAN NO:	
COLLABORATOR NO:	984132

TP 10 JAN 2017

Recommendations

1. That the stipulation of a single family per dwelling house/dwelling unit be excluded from the By-Law.
2. That the Council's legal advisors' opinion be included in the council report if he/she is of the opinion that the council has the legal authority to regulate who could live in a home owner's dwelling house/dwelling unit. That the legal opinion of a constitutional law expert and the Human Rights Commission be obtained as well.
3. That the single family per dwelling house/dwelling unit be referred to all ward committees for discussion before the council finalizes the By-Law.

Kind regards

Abel H Erasmus

Copy - The Mayor  
- Clr Anton Coetzee  
- Town Planning Directorate ✓



4/46

Annexure A

### Don't we have a definition of what are our outside structures into dwelling houses as a form of income?

Dear "Whoever's in Charge", please explain the reason for the only one household per property policy.

Many of us have granny cottages that have always been on the property, but we can't rent them out to alleviate our home loan/ debt/ have our staff live in, give granny our own cooking nook, as security or even let to our septoid and zans, many of them have ydosi, tube and desper, ate for a roof over their heads, and will never quality for free housing.

At the same time, there is a high rental demand and thousands of low cost houses are being built, creating more of these water usage and electricity consumption, just as our cottage tenants would (in case that's the problem).

According to my calculation, in addition to the pre-existing house, cottage and semi-rural pool, say to add in wcoskton, etc, etc, etc, etc,

equals about 26-32 persons) would fit onto any property, with still being in accordance with the public use of the overbuilding. But that's even letting in the cottage to a single person.

Don't we already have rules according to dwelling size, which includes the cottage?

Sure, the logic of being able to make economic use of our cottages is obvious? Christman is counting, the hands of dropping, pipes and in terms, rules and things, the amount of increase on structure and other policies doesn't matter but in some kind of way can be gained for every one if all we want to have a second household is granted. Even left a justice those will be exist the cottages for now.

#### FISHERMANS

... ..

The government policy for a long time has been to let the correct Overseas Investment Zoning Scheme.

... ..

... ..

... ..

or more rooms with adequate sanitary facilities and a kitchen, which may be used for long or short-term accommodation purposes, and may be included in, or separate from, the main building on the property.

It is this clear that a single residential property can have a dwelling house and dwelling unit which can accommodate two families. However only one family per unit is allowed, contrary to the current zoning scheme. The public's further wish to see that the Integrated Zoning Scheme Regulation and other planning documents on the Overseas Investment Policy's website. These documents are located under Strategic Documents.

Any member of the public can also make an appointment with the Town Planning Officer to enquire about any further information or to discuss their views.

Source  
Hermann  
Time  
5/02/6/51

Def of a Family?  
No definition in the  
Town Planning documents

### Single Residential Zoning policy unacceptable

Deputy Mayor Alan Kuchan, Director of Town Planning, recent confirmation of the single dwelling policy with regard to well as the Overseas Integrated Zoning Scheme. I do not support the policy that provides for only one family per dwelling unit. I am aware of numerous municipalities, especially those in the areas where the residents are predominantly Indian, where it is a problem if more than one family live in the large dwelling house. I also witnessed this in Durban.

The Durban North and Midland areas are predominantly characterised by well equipped with multi-family or family units. It is commonplace that big apartments with happy families live together in the same block.

I would like our mayor to defend this policy. I believe that the opinion of the people should be taken into account.

I have several friends who are young and who have no other alternative than to move in with their parents. My children will always be dependent on their parents and I will not be able to purchase a house for them. In my house I would strongly object to the scrapping of the draft of the councilors who approved this policy should feel ashamed of themselves.

ABEL BRASLUS  
EASTCOTE  
Stephen Miller, Director of Infrastructure Planning, a response:  
In reply, the reference to a policy regarding

dwelling houses is misleading. The policy which is being referred to is the Overseas Integrated Zoning Scheme which was previously approved under the Urban Use Planning Ordinance 15 of 1985. However, the Integrated Zoning Scheme needs to be approved in terms of the Spatial Planning and Zoning Act as part of the Municipal Planning Bylaw. This will, in the near future, be advertised so that the general public can comment on and make proposals. I am sorry that the writer of the letter to submit his comment on the Overseas Integrated Zoning Scheme through a public participation process where the public was invited to make comments when the Scheme Regulations were drafted before adoption.

None of the comments received, made any reference to single dwelling accommodating a single family to be changed or being of draconian nature.

The Town Council, consisting of representatives of all the political parties represented in Council, adopted the regulations after considering the document together with comments received.

Comments must also be given to different zones of the Zoning Scheme, allowing for different applicable parameters to be adhered to. The relevant zoning applicable in this instance is that of single residential.

Further, the writer refers to Municipalities where it is stated that more than one family is allowed per dwelling unit. It was not considered what the relevant zoning were in these cases mentioned.

Now, the Town referred to has exactly the same conditions of one family per dwelling unit as the Single Residential Zoning. Some of these are even more restrictive than Overseas Integrated Zoning Scheme, by allowing only one dwelling per single residential unit as a primary right whereas Overseas Integrated Zoning allows for two dwelling units as a primary right.

Overseas Integrated Zoning Scheme is definitely not as draconian as the writer has expressed.

Nov and Resident

Source  
Hermannus  
Times  
29/9/2016



CapeNature

TR A Theent  
C H Adstree  
P Roux



## SCIENTIFIC SERVICES

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reference SSD14/26/11712/zoning scheme\_Overstrand  
date 1 March 2017

Overstrand Municipality  
P.O. Box 20  
Hermanus  
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Attention: Petrus Roux  
By email: [petrusroux@overstrand.gov.za](mailto:petrusroux@overstrand.gov.za)

FILE NO:	1/3/20
SCAN NO:	
COLLABORATOR NO:	999721

Dear Petrus

**Overstrand Municipality Amendment By-Law on Municipal Land Use Planning**  
(Overstrand Municipality ref. no.: Overstrand By-law)

CapeNature would like to thank you for the opportunity to comment on the Amendment to the Overstrand Municipal Land Use By-Law and would like to make the following comments:

The primary amendments to the municipal land use by-law include minor amendments to the municipal land use planning by-law and the municipal zoning scheme and integration of the two and the addition of overlay zones, which together will form the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning. CapeNature will not comment on the other amendments as they do not pertain to us.

**Overstrand Municipality By-Law on Municipal Land Use Planning**

CapeNature only has one comment on the Municipal Land Use Planning By-Law gazetted in December 2015 and the proposed minor amendments. This relates to Section 82 which refers to the provision of land for parks, open space and other uses as a requirement related to an approval of a development application by the municipality.

This section could have positive outcomes for biodiversity, provided that the areas which are approved for development do not result in significant impacts on biodiversity. The provision can be considered as similar to a biodiversity offset, however as it is a planning application the focus is on provision of open space. We strongly recommend however that in implementing Section 82 that the applicant attempts to identify an open space area that also is most suitable in terms of biodiversity conservation where possible. Certain applications may invoke both Section 82 of the by-law as well as require a biodiversity offset in terms of NEMA and will therefore likely require alignment.

**Overstrand Municipality Land Use Scheme**

Minor amendments have been made to the Overstrand Municipality Land Use Scheme, 2013. We do not have any records of any official comment was provided for the initial 2013 land use scheme therefore we will provide comments land use scheme, not only the amendments. The existing land use scheme will form the base zones for the overlay zones and therefore is important for the context of the overlay zones as well as provisions for conservation land use.

The Western Cape Nature Conservation Board trading as CapeNature

Board Members: Ms Moris McOmbring-Hodges (Chairperson), Dr Collin Johnson (Vice Chairperson), Mr Marvyn Burton, Prof Denver Hendricks, Dr Bruce McKenzie, Adv Mandla Mdhidlu, Mr Danie Nel, Prof Aubrey Reddinghuis, Mr Paul Slack, Prof Kamilla Swart-Arries

1 MAR 2017

Our focus is primarily on the zones related to conservation use. There is only one zone which has been allocated with the primary use of conservation which is Open Space Zone 1: Nature Reserve (OS1). Based on the terminology of the zone, it is assumed that this only applies to nature reserves declared in terms of the National Environmental Management: Protected Areas Act (NEM:PAA – Act 57 of 2003), however this is not clarified anywhere else, however we have made this assumption going forward in our comments.

CapeNature supported the Proposed Standard Draft Zoning Scheme By-Law (SDZSBL) as compiled by the Western Cape Department of Environmental Affairs and Development Planning (provincial GN 7391, May 2015). The aim was for the SDZSBL to be used or adapted by the municipalities in the Western Cape as the new zoning scheme each municipality is required to implement in terms of the new legislation.

The Overstrand Municipality has not adopted or adapted the SDZSBL. The SDZSBL proposed two separate zones for conservation, one for proclaimed conservation areas and another for conservation areas without formal protection. CapeNature supported the provision of two conservation zones, as the formal protected areas would be protected under the NEM:PAA, whereas there would still be provision for other conservation areas whereby the protection would be afforded through the zoning scheme regulations and restrictions.

The primary uses for OS1 are natural reserve and conservation use which are supported. Several consent uses are listed, each of which can be contemplated within a particular context, however they could be considered inappropriate and result in unacceptable impacts outside of certain thresholds. No thresholds have been provided for the consent uses, however a site development must be submitted and approved and may require and environmental study and/or environmental management plan. The development rules apply on a case by case basis, however it would be preferred if there were guidelines to refer to. It should be noted that Norms and Standards have been gazetted for private nature reserves, which provide for a maximum coverage of 0.5% for residential and tourism related facilities within a nature reserve.

Declared Section 23 NEM:PAA nature reserves would include provincial nature reserves, local authority nature reserves and privately owned nature reserves and must all be zoned as OS1. Any land uses or activities which take place on the nature reserve would need to comply with NEM:PAA, which would include a NEM:PAA protected area management plan (PAMP), which would provide for adequate development control if correctly implemented. This would alleviate the concerns related to the lack of thresholds for consent uses within OS1, however all nature reserves would need to have an approved PAMP in order to implement this.

In addition to Section 23 NEM:PAA nature reserves, all Forest Nature Reserves declared in terms of the National Forests Act, 1988 should be zoned as Natural Environment Zone. Should any of the above mentioned nature reserves have been incorrectly zoned when the previous zoning schemes were put in place, this should be rectified in the conversion to the new zoning scheme e.g. if any existing forest nature reserve had been zoned as Agriculture at the time of implementation of the LUPO zoning schemes.

All declared local authority nature reserves and nature reserves of privately owned land must become compliant with NEM:PAA, which is undertaken through the CapeNature Stewardship Programmes. This would also apply to all new proposed nature reserves.

In terms of catering for biodiversity conservation outside of NEM:PAA protected areas, the other zones would not provide for adequate protection in themselves for the area to be considered a conservation area or to be protected from significant impacts on biodiversity in terms of the zoning scheme. Other controls would be necessary, such as biodiversity stewardship or overlay zones.

The CapeNature Stewardship Programme does provide for other options apart from declared nature reserves which is the top tier of highest priority conservation areas. Lower

priority conservation areas sign agreements with CapeNature as Biodiversity Agreements or Biodiversity Partnership Areas (tier 2 and 3 respectively). Biodiversity Management Agreements are similar to Biodiversity Agreements but require a Biodiversity Management Plan for Ecosystems in terms of NEMBA. The above three categories could be accommodated in any of the zones which allow for conservation use, however the land use and development controls to protect biodiversity would need to be contained within the stewardship agreements, as the other zones are not restrictive enough (see below).

The fifth option available is a Protected Environment, which is a Section 27 NEM:PAA protected area, which is similar to a conservancy in that it can include multiple properties and landowners as well as provide for other land uses within its boundary except that it must comply with NEM:PAA. As Protected Environments are declared in terms of NEM:PAA, it is recommended that all areas within a Protected Environment which are zoned for conservation in the management plan must be rezoned to OS3, as this would be equivalent to a declared nature reserve.

In terms of other zones in the Overstrand zoning scheme, there are others which allow for conservation as a primary use, which include Rural Zone 2: Conservation Usage (R2), Resort Zone: Holiday Resorts (RZ), and as a consent use on Rural Zone 1: Agricultural Smallholdings (R1). There is also scope for biodiversity conservation or ecological support function on properties zoned Agriculture Zone 1: Agriculture (AGR1), Open Space Zone 2: Public Open Space (OS2) and Open Space Zone 3: Private Open Space (OS3).

We do however support the R2 zone which does provide for a biodiversity conservation function within the rural landscape and based on information provided to date includes the smallholdings between Rooi-els, Pringle Bay and Betty's Bay, which are of very high biodiversity importance, and present difficulties in terms of limiting degradation of the biodiversity based on existing rights. The restriction of development on the properties to a maximum of 800 m<sup>2</sup> and a maximum coverage of 25% (whichever is more restrictive) should provide for a level of protection, in combination with the overlay zones.

Further to the above, properties which are zoned agriculture and then apply for rezoning or subdivision require the approval from the Department of Agriculture in terms of the Subdivision of Agricultural Land Act (Act 70 of 1970). CapeNature has an agreement with the Department of Agriculture regarding land which is rezoned out of Agriculture to a conservation zoning that this land is required for biodiversity conservation purposes and is generally only supported where the property will be declared a NEM:PAA nature reserve.

The Department of Agriculture does not support rezoning to a conservation use for enhanced development rights for tourism or residential purposes. Applications for developments on rezoned land is only supported if it is aligned with the permissions for Agricultural land in terms of tourism and residential development (i.e. no enhanced development rights with the rezoning).

CapeNature is currently in negotiation with the Department of Agriculture and DEA&DP Planning to determine guidelines for development in privately owned conservation areas and initial proposals are in line with the permissions for Agriculture zoning for smaller properties, with incremental additional rights for larger properties. The latter is unlikely to be relevant for the Overstrand Municipality for new nature reserves. The Rural Land Use Planning and Management Guidelines (compiled by DEA&DP) once finalized should be referred to in this regard.

The above is relevant to land which is listed on the agricultural register, which would include all private properties outside the urban edge. For properties inside the urban edge, there will not be a requirement for approval by the Department of Agriculture. CapeNature would however support the same principles for development within nature reserves within the

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urban edge as outside the urban edge. The Urban Conservation Environmental Management Overlay Zone discussed below addresses this as well.

CapeNature does not object to the existing zoning scheme of the municipality, although we do prefer two zones for conservation as per the provincial zoning scheme template. These concerns can however be addressed through other tools such as biodiversity stewardship and the overlay zones as discussed below.

#### Environmental Management Overlay Zones

The Overstrand Municipality proposes to add Environmental Management Overlay Zones (EMOZs) and Heritage Protection Overlay Zones (HPOZs) to the zoning scheme to provide additional development controls in addition to the base zones in areas of environmental sensitivity and heritage importance respectively.

CapeNature will focus on the EMOZs which are related to our mandate, of which there are five EMOZs, namely: Coastal Protection EMOZ; Mountain Catchment EMOZ; Protected Area Buffer EMOZ; Riverine EMOZ; and Urban Conservation EMOZ.

The municipal land use planning by-law includes the regulations for the overlay zones and the maps delineating the extent of the maps. CapeNature has not had any inputs on the process of developing the five EMOZs and the criteria and protocol for delineating them, and there is no reference thereto in the regulations, only the provision of the end product, which are the maps.

The primary concerns CapeNature has with the EMOZs is the delineation thereof. These could be clarified if we were provided with the documentation related to the development of the EMOZs. These concerns include:

- The Coastal Protection EMOZ is generally acceptable as it includes the entire coastline varying in width and is narrowest in the urban areas
- The Mountain Catchment EMOZ does not refer to Declared Mountain Catchment Areas according to the Mountain Catchment Areas Act (Act 63 of 1970), but instead refers to areas which are functionally mountain catchment areas, which should be indicated in the text. The map should indicate declared nature reserves as a reference as mountain catchments would form a supporting function to these. The mountain catchments should include all the sandstone mountain ranges within the municipality. The Kogelberg consists mostly of existing nature reserve and declared Mountain Catchments, however we wish to query why the Franskraal/Gansbaai mountain range has been excluded. An explanation could be a lack of significant watercourses flowing from these mountains.
- The Protected Area Buffer EMOZ should again indicate the formal protected areas, as the protected areas themselves are the reference point for the protected area buffers.
- The Riverine EMOZ is accepted. Most of the rivers in the Kogelberg area are within protected areas which provides for adequate protection.
- The Urban Conservation EMOZ is presumably for properties within the urban edge, however evidently it includes an area outside the urban edge. The rationale behind this delineation should be provided. More specifically:
  - Pringle Bay/Betty's Bay: The properties outside the urban edge linking the two towns have been included. In this case it is assumed that the delineation was to ensure the integrity of the corridor between the Kogelberg and Hangklip is retained. The other smallholdings within this area are included in the Protected Area Buffer EMOZ which is supported. Privately owned property on the eastern edge of Betty's Bays urban edge should be included as Category D.
  - Kleinmond includes conservation worthy area on municipal land within the urban edge but then excludes this from the EMOZ.
  - Hawston: Category D could be extended to the properties between Fisherhaven and Meerensee
  - Stanford: Includes an extensive and seemingly random selection of properties outside the urban edge which cannot be easily interpreted.

- o Danger Point Peninsula: The EMOZ is generally is under-represented. The Birkenhead subdivisions should be represented as Category D. It should include a corridor linking the Franskraal Mountains with Danger Point

In general the regulations provided for the various EMOZs are supported. They are thorough, detailed and provide for sufficient restrictions in order to achieve the land management objects within each of the respective EMOZs. More specific comments are provided below.

The Coastal Protection EMOZ gives effect to the Provincial Coastal Management Lines which was undertaken on a district municipal scale. It is queried if this is the intended level of implementation for the Provincial Coastal Management Lines across the province. In terms of the proposed development restrictions, CapeNature queries the inclusion of wastewater treatment works (WWTW) within special consent use for high, medium and low risk zones in urban areas. This can only be included for consideration for particular components of WWTW such as outflow pipes, but should exclude primary components of these facilities such as maturation ponds. Many of the consent uses should generally be refused and only approved under special circumstances e.g. public resorts in the General Estuarine Risk Zone.

The Mountain Catchment and Protected Area Buffer EMOZs do not provide extensive detailed regulations. In terms of the prohibited activities, it is recommended that development on the crest of a mountain ridge or hill should be added as a restriction to the Protected Area Buffer, as this will impact on the wilderness experience within the protected area. Additionally, establishment of informal settlements or temporary relocation areas should be prohibited in the buffer as this will significantly impact on the protected area and ability to implement management objectives.

For the Riverine EMOZ, we support the buffer zone for conservancy sewage tanks and biological processing sewage plants, however we recommend that it should be added that no soak-aways/french drains should be permitted.

It is noted that the Urban Conservation EMOZ has identified four separate categories for the properties located therein, three for municipal land and one for private land. The municipal land has been divided according to conservation value and accordingly responsibilities within the municipal departments. CapeNature supports this approach.

We do however wish to state that we would still support the inclusion for additional areas to be declared as local authority nature reserve as has been proposed previously and to ensure NEM:PAA compliance through the CapeNature Stewardship Programme. CapeNature encourages the municipality to engage with us on this matter and that the Urban Conservation EMOZ and stewardship can be jointly implemented across the municipality and the relevant approach can be identified on a case by case basis.

The regulations for the Urban Conservation EMOZ are fairly detailed and thorough as well as sufficiently restrictive to ensure the protection of biodiversity in these areas. Consideration should be given to framing these areas within the context of the options available for conservation apart from formal protected areas.

The various EMOZs will require additional resources for implementation. In this regard, stewardship can be considered to be complementary as it can assist with achieving the goals of the EMOZ through the oversight role. It is also noted that provision is made for co-management agreements for the implementation of the EMOZ. This is supported as it will also assist with the implementation of the EMOZ, and there is a relatively active non-governmental sector within the Overstrand Municipality which can provide this support.

In conclusion CapeNature is in support of the EMOZs and recommends that these need to be framed within the existing protected area and conservation areas framework. We do not object to the base zoning scheme, provided our interpretation is correct that OS1 is restricted to declared NEM:PAA protected areas.

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

Yours sincerely



**Rhett Smart**  
**For: Manager (Scientific Services)**

cc. Ruida Stanvliet, CapeNature  
Garth Mortimer, CapeNature  
Steve Gildenhuys, CapeNature

12/46



Western Cape  
Government

MINISTRY OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND  
DEVELOPMENT PLANNING



TP - A Theart  
Ring

REFERENCE: 3/6/2 (2017/43)

Director: Infrastructure & Planning  
Oversstrand Municipality  
PO Box 20  
HERMANUS  
7200

FILE NO:	113/20
SCAN NO:	
COLLABORATOR NO:	1010567

FOR ATTENTION: R. KUCHAR

**COMMENT ON THE REVISION OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2016 AND THE OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2013**

1. Your request for comment dated 1 December 2016, refers.
2. In 2005 the Overstrand Municipality embarked on a process to prepare a new Integrated Overstrand Zoning Scheme (ISZS) in terms of applicable planning legislation, which at that time was the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985).
3. This process culminated in the completion of a draft zoning scheme and zoning maps, which were advertised for public comment, after which comments were received and incorporated.
4. After an extensive public participation process and consultation with Departmental officials, the Minister of Local Government, Environmental Affairs and Development Planning subsequently approved the Overstrand Municipality Zoning Scheme (2013), which came into effect on 1 January 2014 and repealed the following older order Zoning Scheme Regulations:
  - 4.1 The Zoning Scheme Regulations promulgated in terms of section 7(2) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) in Provincial Notice No. 1047/1988 as published in Provincial Gazette No. 4563 of 5 December 1988, where they are applicable to the Overstrand Municipal area.

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- 4.2 The Zoning Scheme Regulations promulgated in terms of Section 8 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) in Provincial Notice No. 1048/1988 as published in Provincial Gazette No. 4563 of 5 December 1988, where they are applicable to the Overstrand Municipal area.
  - 4.3 Regulations promulgated in terms of section 64(1) of the Black Communities Development Act, 1984 (Act No.4 of 1984) and published in Government Notice R1897/1986 in Government Gazette No. 10431 of 12 September 1986, and Provincial Notice 733/1989 in Provincial Gazette No. 4606 of 22 September 1989, in respect of the Zwelihle Town Planning Scheme.
  5. Since 2013, however, a new suite of national, provincial and municipal planning laws were promulgated, namely the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA) and the Overstrand Municipality By-law on Municipal Land Use Planning (December 2015).
  6. Sections 24 and 25 of SPLUMA detail the objective, purpose and content of a land use scheme, which further reinforces the development principles applicable to land use management i.e. spatial justice, spatial sustainability, efficiency, spatial resilience and good administration.
  7. LUPA similarly sets out the purpose and content of a zoning scheme, aligned to the SPLUMA principles.
  8. After detailed consideration of the content of the Overstrand Municipality Land Use Scheme, it is evident that this scheme, which was drafted under repealed planning legislation, does not always adhere to the minimum requirements of SPLUMA and LUPA and in several instances duplicates matters already regulated for in the planning by-law.
  9. Specific remarks for your consideration:
-

SOME SPECIFIC COMMENT ON THE PROPOSED AMENDMENTS TO THE ZONING SCHEME		
1	Definition of agriculture	'is packed' is duplicated
	Definition of aquaculture	Should this not form part of the definition of agriculture?
	Definition of authority use	Suggest 'necessary services'
	Definition of bottle store	Will a shop that sells liquor/ alcoholic beverages as a secondary concern e.g. SPAR, not be a bottle store and not be allowed? How would one deal with the sale of wine at a cellar on a farm? You define a brewery (which includes a place where wine is made), but the word only appears once in the scheme, i.e. in the definition and not in any use zone? You also exclude it from the less formal residential zone. How will you be treating a tavern in such an area?
	Definition of fertilizing plant	Spelling mistake - fertilizer Is 'drayliks' a proper word - could only find mention of 'dry licks' when referencing fertilizer types.
	Definition of home occupation	Unclear as to the meaning of 'usual or principal' and 'calling'
	Definition of land unit	Definition differs from the LUPA definition and does not, for instance, include servitude and leases.
	Definition of main road	It should be noted that although the Western Cape Transport Infrastructure Act has repealed Ordinance 19 of 1976, the Act has not been implemented yet and this may have an impact on

		the definition as it stands.
	Definition of Planning Law	Should the definition not be expanded to include the Overstrand Municipality By-Law on Municipal Land Use Planning?
	Definition of residential building	The inclusion of the word 'and' conflicts with the earlier use of 'limited to'.
	Definition of a service trade	Correction (iii) Not likely, in the event of fire, to cause excessive combustion, give result in poisonous fumes or cause explosions.
	Definition of servitude	The LUPA definition should be used.
	Definition of subdivision	Spelling mistake - subdivision & dividing
	Definition of subdivisional area	The reference to structure plan should be excluded.
	Definition of use right	The definition is outdated and does not conform to LUPA.
1.1.1	Notice	The whole scheme has to be published if it is by-law in terms of the MSA not just a notice of its adoption.
1.1.3	Components	Makes reference to record and not a register as contemplated in section 24 of LUPA.
2.1.1(a) & (b)	Submission	Contents are already covered and addressed in your planning by-law. This comment is applicable to several sections in this scheme.
2.3.2	Consolidation	Already covered in LUPA and your by-laws.
2.3.3	Public participation	This does not comply with the minimum requirements of section 44(1)(e) of LUPA whereby notice

		must be served on each person whose rights or legitimate expectations will be affected if the matter or application is approved.
2.3.4	Consolidation	The submission of comments to the applicant is already covered and regulated for in your planning by-law.
2.3.5 & 6	Consolidation	Submission and consideration to and by the "Council" is <u>not SPLUMA compliant</u> . It constitutes a land use application to be considered and determined by the MPT or authorised official.
2.4.2	Petitions	Does not correlate with what has already been provided for in your planning by-laws.
2.5	Decisions	Council does not make land use decisions. It does not even refer to the relevant consideration stipulated in 66 of the by-law: General criteria for consideration of applications.
2.5.2	Procedures for decisions	Repetition of 'info account'
2.6	Conditions of approval	Should be deleted, as this is exhaustively covered in the planning by-laws. The Council does not impose conditions, as the MPT/AO/AA does this.
2.7.2	Validity of information	Refer to Promotion of Access to Information, 2000 (Act 2 of 2000).
2.8.1	Appeals	Does not conform to section 51 of SPLUMA or your by-law.
3.1.4	Use Zones	"Property with a particular zoning, is subject to the provisions specified for that zone in this

		document". This sentence does not make sense?
3.1.6	Keeping of household pets	Not relevant to the use zone section and, if regulated by another By-law, should not be mentioned in the Scheme.
3.1.7	Bulk Zones	Council is not the decision maker here. <u>(NB from this point onwards, any reference to the Council as the decision-maker should be rectified by the Municipality).</u>
3.2.2	Consent uses	Already covered in the planning by-laws.
3.2.6	Uses not permitted	What about addition of "without the approval of the municipality"?
3.2.7	Uses not permitted	This is a repeat of 3.2.1.?
3.2.10(b)	Occasional uses	If it is a temporary departure you would need an application and notification of some kind in order to, at least be able to impose conditions.
3.2.12	Associated uses	How? Is this an application type?
3.2.13	Building plans	This is already covered in the NBR. May also be difficult to prove this in court.
3.2.14	Building plans	Uses are not approved in terms of the scheme, but in terms of your planning by-law.
3.2.15	Non-conforming uses	This is already in your by-law.
5.1.2 (a)	Floor space	'Accommodation' should be replaced by the word 'buildings'. The additional floor space might be for non-residential purposes.
5.2.2(a)	Floor space	'Accommodation' should be replaced by the word 'buildings'. The additional floor space might

		be for non-residential purposes.
5.3.2(a)	Floor space	'Accommodation' should be replaced by the word 'buildings'. The additional floor space might be for non-residential purposes.
6.1.9	Sectional Title	A zoning scheme does not concern itself with land ownership or access to land. Its primary function is merely the management of the use of land and this is done regardless of the ownership of the land in question.
6.2.8	Restrictions	Densification???
		The meaning here is unclear and could lead to interpretational issues. Furthermore, it is really a policy issue that should not be regulated in the zoning scheme by-law.
6.3.8	Restrictions	The reference to 'densification' is unclear and could lead to interpretational issues. Furthermore, it is really a policy issue that should not be regulated in the zoning scheme by-law.
6.4.6	Restrictions	The reference to 'densification' is unclear and could lead to interpretational issues. Furthermore, it is really a policy issue that should not be regulated in the zoning scheme by-law.
14.3	Undetermined Zone	Is it a "holding area" for non-conforming uses? 14.3.5. is already covered in your by-law.
15.1.1	Adoption and amendment of overlay	This one of the few places where Council can take a decision,

	zones	<p>since creating a new overlay zone or amending the content of an existing overlay zone constitutes an amendment of the by-law.</p> <p>The scheme is not clear on the process to be followed, i.e. sections 12 and 13 of the Municipal Systems Act. Should there be existing overlay zones in a scheme and you wish to make it applicable to an area or land unit, the process to be applied would be a rezoning application.</p>
16.5	Owners' Associations	This is already provided for in the planning by-law and the scheme should perhaps only cover those additional matters not addressed in the by-law. Duplication can lead to interpretational issues.
16.6	Boundary Walls.	It is suggested that this be made a permission, as it may not require a consent use procedure?
17.1.3(b)	Hotel	1 bay per bedroom plus an additional 10 parking bays per 100m <sup>2</sup> of public access areas is very onerous. Consider 0.6 bays per room, as many visitors travel by bus.
17.1.4	Parking bays	<p>What about parking bays at 30 or 60 degree angles?</p> <p>The dimensions for parking and loading bays could also be removed from the scheme completely, as these are design parameters regulated by the Engineering Division.</p>
17.1.7(a)	Disabled parking	3.7m instead of 3.5m

17.1.7(f)	Disabled parking	1.5m access aisle instead of 1.0m
17.2.1	Loading bays	Is the deviation a departure? Perhaps make it a permission in terms of the scheme.
17.3.4	Infrastructure and services	This is already provided for in the planning by-law and should not be duplicated. It should also be covered in a policy on development charges, and it is suggested that the term development charges is used, which is consistent with SPLUMA and your planning by-law. The same goes for the clearance certificates, which in your by-law are described as municipal certification.
17.3	Infrastructure and services	Provided that the 'new development' is as a result of the approval of a land use application?
18.1.4	Subdivision not confirmed	This is already regulated in section 23(4) of your planning by-law?
18.1.6	Subdivision of Residential properties	This is policy matter and should not be regulated for?
19.1.5	Transitional Arrangements	Architectural Guidelines are policy matter and should perhaps not be regulated for.
20.1	Annexures	An amendment to the scheme is done in terms of the MSA when said scheme is a by-law.
Overlay Zones	This Department would caution against elevating policy type provisions/design guidelines to regulation. It becomes law and will thus require a departure to deviate, which can result in an increasing administrative burden.	

10. General remarks for consideration:

- 10.1 There are several spelling mistakes in the document, which indicates that it may have been converted from a PDF format and will need to be corrected.
- 10.3 It is suggested that the name of the document be a "Zoning Scheme" as provided for in LUPA which regulates Land Use Planning in the Western Cape.
11. It is important to note that the publication of by-laws is regulated by section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) which prescribes that a by-law passed by a municipal council —
- (a) must be published promptly in the Provincial Gazette, and, when feasible, also in a local newspaper or in any other practical way to bring the contents of the by-law to the attention of the local community; and
  - (b) takes effect when published or on a future date determined in or in terms of the by-law.
12. Furthermore, it should be noted that the associated zoning map and zoning register, as integral components to the zoning scheme (or land use scheme as per SPLUMA), should be implemented as part of the zoning by-law process. The official version of the zoning scheme map is incorporated in and made part of this By-law and the publication of this By-law in the *Provincial Gazette*, in terms of section 29(2) of LUPA, constitutes notice of the approval of the zoning scheme map.
13. In the last instance, your attention is drawn to section 28 of LUPA, which provides that a municipality must, within 30 days of approval of a zoning scheme, submit to the Premier written notice of the decision, a copy of the approved scheme and a report setting out the response of the municipality to the comments submitted in terms of section 26(4) or 27(2) of LUPA.

Yours sincerely



Anton Breckell

MINISTER

Date:

23/3/2017



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7 July 2017

Dear Paul/ Jaco  
Urban Dynamics Western Cape

### DHEC: RESPONSES TO COMMENTS RECEIVED ON DRAFT OVERSTRAND EMOZ

I refer to Jaco van Tonder's request by e-mail for my written responses to comments received dated 28 June 2017.

The responses are on comments received from CapeNature (dated 1 March 2017), DEA&DP (dated 23 March 2017) and from the Overstrand Environmental Management Section (dated 1 March 2017).

My responses are made within the environmental briefing framework that was conveyed to me which included the following principles that the draft EMOZ should:

- Be strategic;
- Be uncomplicated and uncomplex;
- Take into account the limitations of the municipality's capacity and resources; and
- Be regarded as a 'work in progress' as there was no existing model and that it was assumed that the experience of implementation would assist in perfecting it.

Furthermore, I must point out that towards the end of the project, a good number of additions and amendments were made by the municipal officials to the work that I had presented. On the latter I was minimally consulted and therefore I would not be in a position to provide the necessary insights on these matters.

### Responses to CapeNature Comments:

The document has no page numbers or paragraph numbers. My responses are according to the numerical count of the paragraphs and pages. Where a paragraph has not received a response, I have no response.

#### Page 1:

- Par 4: This statement is supported.

#### Page 2:

- Par 6: It is agreed that OS 1 areas should have some additional conservation status to justify and ensure conservation management measures are implemented.
- Par 8: The approach recommended here is agreed with.
- Par 9 to 14: Agreement with these points.

#### Page 3:

- Par. 15,17,18 and 21: Agreement with these points.

#### Page 4:

- **Par. 22:** Agreement with these points.
- **Par.25:** The process of development of the EMOZ took into account the following:
  - Overlaying the biodiversity layers for the Overstrand as used for the EMF.
  - The environmental focus areas as identified in the EMF.
  - Study of the aerial images of the Overstrand.
  - Consultation with Kogelberg Biosphere Reserve Board, Whale Coast Conservation and existing precinct plans where they existed.
  - Consultation with the local CapeNature officials as well as the Overstrand Environmental officials.
  - Notes made at Public Participation Meetings
  - Own environmental knowledge of the Overstrand.

With the above information, draft priority areas were broadly mapped and after consultation with the Overstrand Environmental and Planning sections, refined with according to the capacity of the Overstrand.

The various EMOZ layers are still essentially a result of a desktop study of existing documented environmental knowledge/data with the additional knowledge inputs of the various persons consulted with environmental and/or town planning knowledge. It was accepted that detailed EMOZ outlines were not possible within the scope of the project, but that with experience gained with the practical implementation of the EMOZ's and additional knowledge gained, the EMOZ delineation could be refined and amended over time.

The above process was documented during the course of the project and should be added to the final project documentation.

- **Par.26:**
  - **Second bullet: Regarding the exclusion of the Franskraal/Gansbaal mountains:** During the EMOZ development, a further EMOZ was considered (Sensitive Development EMOZ) that took into account environmentally important rural areas that had in many ways been impacted and transformed but still retained some very conservation-worthy areas. The idea was that developments in these areas should be strongly guided to retain viable ecological corridors and/or ensure the conservation of important natural heritage remnants. This EMOZ layer was however discarded the general opinion was that too little capacity existed within the municipality to support the necessary administrative and technical input to achieve the objectives of this EMOZ. As these mountains are an important mountain catchment for the local area (threatened by invasive alien vegetation and inappropriate land use that is poorly monitored by the mandated authorities), consideration should possibly be given to including them in the Mountain Catchment EMOZ.
  - **Fifth Bullet: Urban Conservation EMOZ:** Many Overstrand in-house changes were made to this section. I am therefore unable to comment on this section.

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**Page 5:**

- **Par. 30:** Agreement with these points, except that in certain situations it could be impractical to use conservancy sewage tanks as the sewage tanker trucks may not be able to reach the conservancy tanks.
- **Par. 32 and 34:** Agreement with these points.

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**Page 6:**

- **Par. 35:** Agreement with this point.

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**Responses to DEA&DP Comments:**

Could not pick up any pertinent environmental management issues in these comments.

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**Responses to Overstrand Environmental Section Comments – Penelope Apton:****Page 1 & 3 - BGCMA Comment on Conservancy Sewage Tanks (CST) and Biological Treatment Plants (BTP)**

I can just respond by saying that in discussions with Patrick van Coller on this subject, we tend to agree. My view and experience on the subject is that:

CSTs are probably the safest provided they are properly constructed, tested for leaks from time to time and they are emptied timeously. However, they cannot be used in situations where they cannot be reached by a sewage pump truck. In such situations BTPs could be considered, but if this too is impractical and where the throughput is low and watercourses/wetlands are at a sufficient distance, soakaway/French drains could be considered as an exception.

BTPs can be extremely efficient and cause no pollution, provided that:

- They are provided by an approved dealer that can properly install and effectively (and quickly) maintain them when something goes wrong.
- Furthermore, the manager/ landowner that controls the BTP must undertake the regular smaller maintenance tasks on the BTP to ensure that polluted matter is not exuded from the system at any time. He/she should keep a register/schedule of this maintenance and test & record the quality of outflow water at regular intervals to ensure that the system is operating efficiently.
- The aforementioned register/schedule should be audited on a regular basis on behalf of the local authority at the cost of the operator.

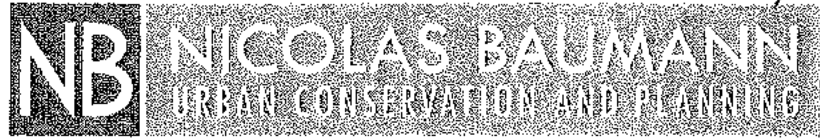
No further response necessary to other comments.

---

Kind regards



Duncan H.W. Heard  
DIRECTOR  
(Cert. Sci. Nat.) | (Member IAIAAs)



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**RESPONSE TO COMMENTS RECEIVED FROM THE OVERSTRAND MUNICIPALITY DATED  
 16 APRIL 2016 AND FORWARDED BY URBAN DYNAMICS ON 22 APRIL 2016**

Note: The majority of comments received have been incorporated into the draft regulations dated 5 May 2016. Only 'disputed' items are included below.

- Comments from the Municipality were received for the following sections: Introduction, Scenic Drives, Landscapes of Significance, Rooi Els, Kleinmond and Stanford. Not Betty's Bay, Hawston, Onrust, Hermanus heritage core area and coastal strip, Gansbaai or Baardskeerdersbos.
- A comment was also received from Petrus Roux, dated 13 May, related largely to the height issue in Stanford.

**1. INTRODUCTION**

**1.1.1.**

- Recommendation that word 'may' replaces 'shall'.

This is an recurrent suggestion. It is understood that regulations are specifically proposed to strengthen the guidelines and to limit flexibility. 'Shall' is thus regarded as more appropriate than 'may'.

- "Change in land use" could have a detrimental impact on heritage significance and should be included.
- Removing of mature trees could have an impact on heritage significance and should be included.
- Removal/alternation of historical landscapes or landscape features including boundary fences could have an impact on heritage significance and should be included.
- Any below ground excavation in HPOZ's could have an archaeological impact. This would have to be reworked to the satisfaction of an archaeologist i.e. below ground excavation related to a site of high heritage significance, not any shallow ground excavation.
- 1.1.3. The paragraph is preceded by the word 'may'. If the structure is of high significance, the municipality may request that a SACAP registered professional supervise the work.

**1.1.5 The issue of 'may' replacing 'shall' refers.**

## 2. SCENIC DRIVES

The draft regulations include scenic routes of regional and local significance and scenic corridors.

- 2.5.1 Buildings on stilts to be avoided. The suggestion that this be deleted is queried as stilts can have a substantial negative impact on place character. Possibly the height of stilts could be limited to 1.5m.
- 2.5.2 Setback lines from scenic drives to be resolved if there is conflict with the town planning scheme. Certain municipal services which have minimal visual impact, e.g. electricity poles, should be exempt from the restrictions.
- 2.5.3 Protective measures, (permeable fencing) can be used as protective measures, rather than the materials specified which would have a negative visual/heritage impact.
- 2.5.4 The location of security fencing set back from the boundary line is considered an important intervention to avoid a high barrier effect along scenic drives.
- 2.5.5 The control of vegetation is important in enhancing significant views.

Alien vegetation refers specifically to alien invasive intervention.

A high wall is regarded as a solid wall in excess of 1.5m

Officials to negotiate with existing landowners where removal of vegetation would significantly enhance views. Agreements need to be established to ensure that the control of vegetation outside urban areas, and within identified HOPZ's is a municipal, not a provincial function.

## 3. LANDSCAPES OF HIGH SIGNIFICANCE

- 3.5.4 Height of new buildings not to exceed 8m above base level.

The term base level is regarded as problematic as there is no control of what constitutes the height of the 'base' which can be lifted and therefore substantially increasing the height and massing of a building. The term 8m above natural ground level, measured at any point immediately adjacent to the structure, is recommended.

## 4. ROOIELS

- 4.5.1 'Careful consideration' is recommended by the municipal town planners. As indicated above, the intention of regulations is to regulate and to minimise flexibility or differences of interpretation.
- 4.5.3 The suggestion by the municipal planners is that buildings on stilts be screened rather than the stipulation for a 1.5m height restriction. The purpose is to ensure that buildings in HPOZ's respond positively to the terrain, rather than be perched above it and thus the restriction on the limitation of stilt heights is recommended.
- 4.5.4 As above, it is recommended that the 8m height restriction be strictly applied, "as measured from the highest point to natural ground level at any point adjacent to the structure".

- 4.5.6 The 2.1m proposed for visually permeable fencing is regarded as excessive and could impact negatively on the natural flow of the landscape and result in a barrier effect. The 1.8m restriction is recommended.

## 5. KLEINMOND

- 5.5.1 Comments related to Rooi Els apply.
- 5.5.3 As above. Height restriction preferred to the use of screens. The preferred restriction is a building height of 7.2m and a wall plate height of 4.5m to be applied to the facade facing onto the coastal path. This allows for a two story structure and is a slight restriction on the 8m permitted as allowed in the TPS but which results in substantial massing along this sensitive interface.
- 5.5.4 As above. The 2.1m height is regarded as excessive.
- 5.5.6 It is recommended that the roof pitch stipulation (35° to 45°) should be adhered to.
- 5.5.7 Large glazed surfaces on the front facades are regarded as inappropriate along this sensitive interface and the 1.5m setback is recommended.
- 5.5.8 It is recommended that foreign architectural styles should not be permitted, rather than being discouraged. Similarly an orthogonal alignment with buildings parallel to the street is recommended.

## 5. STANFORD

- 5.1 'Careful consideration'. The comments made above apply.
- 5.2 As above, 'mean' ground level is preferred to 'base' level which could be manipulated.
- 5.12 It is recommended that third party advertising not be permitted in the HPOZ to minimize visual clutter.

### COMMENTS ON STANFORD FROM PETRUS RUX, DATED 13 MAY 2016 WERE RECEIVED

- 5.2 Height Issue. The request for an increase in height from 6.8m to 7.2m from the architects was discussed at a well attended meeting with the Stanford Heritage Committee on the 25<sup>th</sup> April and debated at length. Consensus was achieved that the height should remain at 6.8, with the wall plate height at 4.5m. Any increase above these heights would result in the perception of a two storey structure which would be at variance with the predominant streetscape character of Stanford.

12 May 2016



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**RESPONSE TO COMMENTS ADDRESSED TO THE MUNICIPAL MANAGER BY THE STANFORD HERITAGE COMMITTEE (SHC) DATED 27 FEBRUARY 2017: COMMENTS ON THE REVISION OF THE OVERSTRAND BY LAW ON MUNICIPAL LAND USE PLANNING 2016, AND THE OVERSTRAND MUNICIPALITY ZONING SCHEME 2013**

The following response relates to the request by Urban Dynamics to address the comments raised by the Stanford Heritage Committee referred to above.

**A. INSUFFICIENT PROTECTION OF THE RURAL HISTORIC CHARACTER OF THE VILLAGE**

The issue of the need to protect the rural context of Stanford as defined in the submission and as illustrated in the attached diagram has been discussed in a number of meetings with the SHC. The need to provide a buffer or transition zone to a core heritage area is also an issue which has been raised in a number of contexts, including metropolitan Cape Town. While the need for such protection is acknowledged, the legal means to achieve this has not been established. The Overstrand Heritage Survey identified a number of farms in the Klein River catchment area regarded as having heritage significance but the number and spatial spread of these structures was not considered sufficient to warrant the designation of a Heritage Protection Overlay Zone (HPOZ). It is rather suggested that a protective mechanism be identified as part of the planning framework contained in the SDF. The need for a meeting between the SHC, the Overstrand Municipality, and the councillor and the relevant officials, as requested in the submission is supported.

**B. COMMENTS ON THE PROPOSED CLAUSES WITHIN THE STANFORD HPOZ**

**19.4.2 Buildings within the single residential zone to be restricted to 6.8m... no portion should exceed the height prescribed.**

It is common practice to refer to height measured from a particular level. While this might not be a factor on a flat level site it is an issue on a sloping site.

The need to refer to the base level was raised by the Overstrand municipal officials. The requirement to remove the reference is not sufficiently motivated by the SHC and is not supported.



**19.6.3 Garages must be set back 4m from the street boundary.**

Amendment supported.

**19.7.3 To encourage disaggregation of buildings, buildings do not need to be connected.**

Amendment supported.

**19.8.3 Roof cover materials must be either Victorian profile .... No fibre cement products are permitted. Roof colours .....**

Amendment supported.

**19.9.1 Doors, windows and openings should not exceed 30% of any facade facing the street ....**

The need to delete this clause is not motivated by the SHC, and is not supported.

Substantial openings onto street facades would impact on the predominant wall to opening/solid to void relationships characteristic of Stanford and could have a negative heritage impact.

**19.10.1.3 Aluminium doors, windows or frames must be powder coated. Steel and plastic.....**

Amendment supported.

**19.10.1.4 Paint colours must be white or pastel colours. Accent colours are permitted ...**

The use of "preferably" as opposed to "must" has been the subject of extensive discussion. It has been emphasized by the legal consultant that regulations are legally binding, do not generally allow for discretion on the part of officials and that the use of 'preferable' is thus not appropriate.

**19.10.1.5 Alternatively colours must be compatible with the overall street architecture.**

The requirement to delete this clause is not motivated by the SHC.

**19.10.2.5 IBR roofs**

Amendment supported.

**19.11.1 The maximum height of boundary walls and fences or hedges...**

The issue of visual permeability was the subject of extensive discussion with the SHC and municipal officials.

Any boundary treatment that would impact negatively on positive house street relationships could have a negative heritage impact. The removal of the clause

referring to minimum openings could result in a sense of solidity and the reduction of visual permeability and is not supported.

**19.11.2 The maximum height of walls and fences or hedges on other than on street boundaries .....**

Deletion of hedges supported.

**19.11.3 Building plans of walls and fences...**

Fences, if visually impermeable, could have a negative heritage impact, and the amendment is thus not supported.

**19.11.4.2 Natural stone.**

Amendment supported.

**19.13.3 Water tanks and exterior elements must not be visible from the street, nor protrude ...**

Supported in principle but difficult to manage as "practically" is subject to potential abuse.

**19.13.4 No freestanding .... of renewable energy.**

Grammatical error to be corrected.

**19.14.1 No person shall fell... a mature tree more than 50mm in diameter**

The issue of alien/invasive vegetation has been discussed at length. While some trees (Norfolk pines) might be regarded as 'alien' they are an integral component of the cultural landscape, particularly in Hermanus. The specification of 'non-invasive trees' is, however, supported..

**19.15.1 No alteration or covering of the lei-water system will be permitted.**

Amendment supported.

**19.16.1 All signage must comply with the Overstrand by-law.**

Amendment supported.

**COMMENTS RELATED TO THE PROPOSED CLAUSES IN THE LANDSCAPES HERITAGE PROTECTION OVERLAY ZONE**

The clause refers to a range of landscapes of high significance, not only in the Stanford area. The replacement of the OHAC with the SHC is thus not supported. Rather the SHC should be added in relation to the rural areas surrounding Stanford.

It is self evident that any interventions which trigger the NHRA must be submitted to HWC.

**20.3.1 All land use planning and building plan applications must be submitted to the OHAC for approval**

Amendment supported.

HWC have inevitable capacity issues and will not want to comment on land use planning and building applications which do not trigger the NHRA.

**25.6 Implementation timeframes for all work approval to include ...**

**26. Written approval may take the form of a permit or stamped plan...**

Amendment supported.

**27. Approval in terms of HPOZ ..... required by law...**

Supported in principle.

**28. Additional requirements may include ...**

The numbering system has been checked.

The additional clause is supported, with proviso: Further constraints or conditions within the Stanford HPOZ as specified in the regulations pertaining to Stanford.

**29. The municipality shall not give approval to any development activity ....**

As indicated above, HWC will not comment on any submission which does not trigger the NHRA.

**OTHER COMMENTS ON THE PROPOSED BY-LAWS**

**7. Supported.**

**8. Supported.**

**10.2.9.1 Building heights are restricted to 8m ...**

Amendment supported.

**10.2.9.2 Wall plates ....**

Amendment supported.

**General Comment 1**

The inclusion of the SHC for the rural areas surrounding Stanford is supported.

**General Comment 2**

As indicated above HWC will not comment on applications which do not trigger the NHRA.

**General Comment 3**

Noted.

The comprehensive and thorough comment from the SHC is welcomed. The role played by the SHC in the conservation of the heritage of Stanford and its context is considered to be exemplary.

Nicolas Baumann

12 July 2017

## Comments on Draft Environmental Overlay Zone

### General comments:

pg 8 20.5.1.2: repeat of authority

pg 10 20.5.6 include (IAS) in heading

pg 10: 20.5.6.1 Review sentence.

Pg 12: 20.6.1.5 Council may request the submission of an EMP, but an EIA is only required if the NEMA EIA regulations are triggered.

Pg 42 check with Patrick van Coller regarding BGCMA's position on conservancy tanks/biological treatment plants

### Maps

Plan 5.7 B Erf 4725 Onrus is a private property. The category has to change.

### Oversight

Municipal land falling in a EMOZ other than the Urban Conservation EMOZ has not been categorized into Category A, B or C

### Estuarine Risk Zones:

- With new dwellings/developments within the estuarine risk zone a 1:100 year flood line determination must be done
- Expansion of existing dwelling, 1:100 year flood line determination must be conducted if expansion will take place estuary side of existing dwelling.

TP-ATheat  
(Hvd Stoep)  
of Louw

FILE NO:	1/3/20
SCAN NO:	
COLLABORATOR NO:	999692



Heritage Committee

PO Box 539 STANFORD 7210 lizhochfelden@gmail.com 028 341 0164 www.stanfordconservation.co.za



P O Box 539, Stanford 7210

Stanford Heritage Committee: Email: [lizhochfelden@gmail.com](mailto:lizhochfelden@gmail.com); Tel: (028) 341-0164  
Stanford Conservation Trust: Email: [Milkwood@maxitec.co.za](mailto:Milkwood@maxitec.co.za); Tel (028) 341-0430

27<sup>th</sup> February, 2017

The Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: Hanneen van der Stoep: [hvdstoep@overstrand.gov.co.za](mailto:hvdstoep@overstrand.gov.co.za)

Attention Ms Van der Stoep

Dear Sir

**COMMENTS ON THE REVISION OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2016, AND THE OVERSTRAND MUNICIPALITY ZONING SCHEME, 2013.**

Advert published 4 December 2016 for 60 day comment. Deadline for comment extended to 1 March 2017 via a notice on the Overstrand Municipality website.

We would like place on record that, although the Stanford Heritage Committee (SHC) and the Stanford Conservation Trust are registered as Interested & Affected Parties in the revision of the above-mentioned by-

20 MAR 2017  
20 MAR 2017

law, neither parties were informed about the availability of the by-law document for comment. A mere advert in the Hermanus Times is not generally considered to be effective public participation, and could be challenged. Furthermore, members of the SHC attended two public meetings and one closed meeting with the municipality's Heritage consultant, but we have to date not received any minutes or any record of those meetings, or any response to comments made at the meetings - which is a requirement of a public participation process. We only became aware of the availability of the documents in mid-December via an email forwarded to us as a courtesy by our ward councillor, Mr Dudley Coetzee (refer to the copy of the email inserted below).

We further wish to point out that none of the Environmental Overlay Zone proposals were presented at any of these meetings and therefore no opportunity was afforded to give feedback. Although we have commented on the current environmental overlay zoning proposals, we reserve the right to make further comment once the correct public participation procedure has been followed.

>>> Loriaan Isaacs 2016/12/01 11:13 AM >>>

Dear Councillors

Attached find notice for your perusal.

The documentation is also made available on Filr under PORTFOLIO\_MAYORAL\_COUNCIL MEETINGS and in the folder REVISION OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2016 AND THE OVERSTRAND MUNICIPALITY ZONING SCHEME, 2013.

Please note that the documentation is also available on the internet for the delegates who do not have access to Filr or have the training to use Filr. The online link is: <http://www.overstrand.gov.za/en/documents/town-planning>. CD's will be made available to departments and ward councillors on request.

For and on behalf of Mr. Riaan Kucher

Stadsbeplanning Munisipaliteit / Overstrand / Municipality	/	Town	Planning
Patersonstraat Tel 028 313 8900	16 /	Hermanus /	16 Paterson Street

The historic core of Stanford was designated as a Conservation Area in 1995 under the then National Monuments Act. This area is now deemed a Heritage Area in terms of the National Heritage Resources Act (NHRA) of 1999. The Stanford Heritage Committee (SHC) is registered as a Conservation Body by Heritage Western Cape (HWC) in terms of Section 25(1) b of the NHRA. The SHC therefore must be consulted on all development proposals within the Stanford Heritage Area and on development proposals on Graded buildings, buildings over 60 years old, and on any developments on sites greater than 5 000<sup>2</sup> in extent situated outside the said Heritage Area.

The SHC commends the work done by Nicholas Baumann towards the protection of the only proclaimed heritage area in the Overstrand, but wishes to state that in our opinion the Stanford HPOZ as proposed does not provide sufficient protection to maintain the rural historic character of the village. For this reason we request a meeting between the SHC, the Overstrand Municipality (OM) town planning department, the director for infrastructure and planning, the chair of the infrastructure and planning portfolio committee, the councillor for Ward 11 and any other officials you deem necessary to be part of the deliberations.

We have to assume that full consultation has taken place between OM and HWC on the formulation of the HPOZ regulations as national legislation, including the NHRA, takes precedence over any regulations promulgated at local authority level, and HWC are the provincial delegated body responsible for enforcement of the terms of the NHRA in the Western Cape. Ideally, HWC should be invited to participate in any meeting between OM and the SHC.

It is noted that the proposed Stanford HPOZ encompasses a larger urban area than is covered by the Heritage Area (as deemed in terms of the NHRA). This extended area, covering both banks of the Klein River, the green belt to the south-west of De Bruyn Street, as well as an area of partially developed (the "Overberg Agri" premises) but otherwise undeveloped and Provincial road reserve land adjacent to the R43 Hermanus-Gansbaai road, is, in our opinion, welcome as it affords a further element of protection of the views of and from the Heritage Area.

It is extremely important that all parties understand the challenges a Heritage Area poses and that sympathetic and creative town planning principles should prevail, rather than trying to make "one size fits all" modern town planning rules apply to an area where the historical town layout often does not allow for modern rules without destroying the historical ambience.

Our comments on the heritage architectural aspects of the Stanford HPOZ proposals are recorded in this letter. Some of these comments are repeats of our previous comments on the draft document submitted to the consultants in April 2016. A number of those previous comments have been incorporated in this latest document but, as some extremely important comments have not been taken into account, we look forward to an in-depth discussion with the OM, as requested, before the by-laws for HPOZs (and more specifically the Stanford HPOZ) are finalised.

**COMMENTS (IN RED) ON THE VARIOUS PROPOSED CLAUSES IN THE STANFORD HERITAGE PROTECTION OVERLAY ZONE (Stanford HPOZ):**

**19.4.2 Buildings within the single residential zone to be restricted to 6.8m... no portion should exceed the height prescribed**

- Change to read: *Buildings within the single residential zone to be restricted to a roof apex height of 6.8m*
- Delete ~~no portion should exceed the height prescribed~~

**19.4.3 Buildings within the single residential zone... measured from base level**

- The definition of "base level" in your latest Draft Heritage Protection Overlay Zone reads as follows (p.5)

- 1.2 "Base level" means the mean point between the highest point on the site and the lowest point as defined in the Zoning Scheme.
- This is contradictory to the definition of a base level in the current Gazetted Overstrand Zoning Scheme Regulations, which states the following (p. 9).  
*"base level" of a building means an imaginary plane drawn horizontally at the average ground level of the building or vertical division;*
  - Please correct the Draft HPOZ accordingly.
  - The following addition to the definition in the gazetted regulations would be appreciated:  
*... Means an imaginary plane drawn horizontally at the average natural ground level of the site under the building...*

**19.4.3.2 From base level to top of structure: 6.8m**

- Please amend to read: *...from base level to top of apex of roof: 6.8m*

**19.5.1 Parking provision standards/ ratios may be relaxed..... A minimum parking ratio of 4 bays per 100m2 GLA will apply in the commercial zone.**

- Please amend this sentence to read: *A minimum parking ratio of 4 bays per 100m2 GLA will not apply where this has a detrimental effect on the street fabric of the commercial zone in the Heritage Area, and where alternative public parking is available in the vicinity.*
- Motivation:
  - The global tendency is to increase pedestrian traffic in a commercial area (Hermanus CBD is an example). In a heritage village such as Stanford, where parking provisions are already more than adequate, this should also be the case.
  - The Stanford Revitalisation Plan (in principle agreed upon by the municipality in 2014 and incorporated into the 2017 – 2022 IDP) provides for more than sufficient parking in Shortmarket and Longmarket Streets in the vicinity of the Market Square – adjacent to the zoned commercial area.

**19.5.3 Relaxation of parking provisions will be subject to alternative parking arrangements provided for in the Zoning Scheme**

- Please delete entirely as the Stanford Revitalisation Plan will make provision for alternative parking arrangements. (See Para. 19.5.1 above).

**19.5.5. Standard application processes for off-site parking.....**

- Please delete entirely as the Stanford Revitalisation Plan will make provision for off-site parking. (See Para. 19.5.1 above).

**19.6.2 In case of a new building construction ... or alterations to an existing building .... a building line must be prescribed by council to protect the building line generally observed in the immediate context**

- Please amend accordingly: *In case of a new building construction ... or alterations to an existing building .... a zero street building line must be prescribed by council is permitted if approved by the SHC and endorsed by HWC in order to protect the street building line generally observed in the immediate context. The town planning setback line will therefore also not be applicable.*

**19.6.3 Garages must be set back 4m from street**

- Please amend as follows: *Garages and carports must be set back 4m from the street boundary or set back at least 2 m from the street-facing elevation of the building, except where not physically possible.*

*Please add the following clause:*

19.7.3 To encourage disaggregation of buildings, buildings do not need to be connected.

**19.8.3 ... roof cover materials must be either Victorian profile.... No fibre cement products are permitted. Roof colours.....**

- Please amend as follows: *roof cover materials must be either Victorian profile.... No fibre cement products are permitted. "Clip-lock" and IBR type roofing is permitted if not visible from the street and only on roofs with a pitch less than 5 degrees. Roof colours.....*

*Please delete the following clause:*

~~19.9.1 Doors, windows and openings should not exceed 20% of any facade facing the~~

**19.10.1.3 Aluminium doors, windows or frames must be powder coated. Steel and plastic...**

- Please amend as follows: *Aluminium doors, windows or frames must be powder coated or may be colour-anodised aluminium. Steel and plastic...*

**19.10.1.4 Paint colours must be white or pastel shades. Accent colours are permitted to emphasize architectural features and on recessed walls set back from the street boundary. Striped verandah roofs are permitted**

Please amend as follows: *Paint colours should preferably ~~must~~ be white or pastel shades. Darker colours must be submitted to the SHC for comment to ensure that the tone colour is sympathetic to the immediate context. Accent colours are permitted to emphasize architectural features and on recessed walls set back from the street boundary. Striped veranda roofs are permitted.*

*Please delete the following clause:*

- **19.10.1.5** – reference to alternative colours

**19.10.2.5** *IBR roofs*

- Please amend as follows: *IBR or 'clip-lock' roofs, unless on a pitch less than 5 degrees and not visible from the street*

**19.11.1** *The maximum height of boundary walls and fences or hedges on street boundaries must be 1.2 metres measured from pavement level. For security reasons palisade fencing, with openings of at least 20mm, will be permitted up to a height of 1.8m. The solid vertical components must not exceed 20mm in width.*

- Please amend as follows: *The maximum height of solid boundary walls ~~and fences or hedges~~ on street boundaries must be a maximum of 1.2 metres measured from pavement level. For security reasons, visually permeable palisade fencing, not more than 50% solid, with openings ~~at least 20mm~~, will be permitted up to a height of 1.8m on the street boundary. ~~The solid vertical components must not exceed 20mm in width.~~ Gates for vehicle or pedestrian access must be similarly permeable if higher than 1.2m.*
- Please add the following: *Walls higher than 1.2m should be set back at least to the street building line.*

**19.11.2** *The maximum height of walls and fences or hedges on other than on street boundaries...*

- Please delete the following: *The maximum height of walls and fences ~~or hedges~~...*

**19.11.3** *Building plans of walls and fences...*

- Please amend the following: *Building plans of walls and metal or timber palisade fences, (except wire fencing which is visually permeable) ~~and fences~~...*

**19.11.4.2 Natural stone**

- Please add the following: *No artificial stone cladding will be permitted.*

**19.12.3 Water tanks and exterior elements must not be visible from the street, nor protrude....**

- Please amend as follows: *Water tanks, satellite dishes, TV aerials, external geysers and other exterior elements must not be visible from the street, nor protrude.... Water tanks that cannot practically be located elsewhere and are consequentially visible from the street must be screened by a suitable trellis and/or planting.*

**19.13.4 No freestanding... of renewable energy**

- Please correct grammatical error: *No freestanding... or renewable energy*

**19.14.1 No person shall fell... a mature tree more than 50m in diameter...**

- Please amend as follows: *No person shall fell... a non-invasive mature tree more than 250mm in diameter as measured at chest height.*

**19.15.1 No alteration or covering of the 'leiwater' system will be permitted...**

- Please amend as follows: *No alteration or covering (other than for driveway or pedestrian access to adjacent properties) of the 'leiwater' system, placement of structures in the system, or rerouting of the system will be permitted without the permission of the Municipality and the consent of the SHC and/or HWC*

**19.16.1 All signage must comply with the Overstrand signage by-law**

- Please add the following: *All signage must comply with the Overstrand signage by-law and must be submitted to the SHC for comment*

**COMMENTS ON THE VARIOUS PROPOSED CLAUSES IN THE LANDSCAPES HERITAGE PROTECTION OVERLAY ZONE (Landscape HPOZ):**

In addition to the SHC's consultative role on development proposals within the Stanford Heritage Area, we are also consulted on all development proposals on Graded buildings, buildings more than 60 years old and on any developments on sites greater than 5 000 m<sup>2</sup> in extent situated outside the Heritage Area (within an area as defined by the "turquoise blue" line on the attached map).

It is clear from the wording of Section 20 and by reference to Plan B that the rural area mentioned above is included in the Landscapes HPOZ proposals. Therefore, although any reference to a Conservation Body in the

draft documentation is worded as "Overstrand Heritage and Aesthetics Committee" (OHAC), in relation to the rural area surrounding Stanford this reference should be amended to read Stanford Heritage Committee and not OHAC. Our comments here are made on that basis.

A further comment – no mention is made that all development proposals of the types mentioned above must be submitted to HWC.

**FURTHER COMMENTS ON THE LANDSCAPE HPOZ (APPLICATION AND APPROVAL PROCEDURES):**

- 20.3.1** *All land use planning and building plan applications must be submitted to the Overstrand Heritage and Aesthetics Committee for approval.*
- Please add the following: *All applications within the Stanford HPOZ and surrounding rural area must be submitted to the Stanford Heritage Committee for comment and thereafter to Heritage Western Cape.*
- 25.6** *This sentence does not make sense and needs to be reworded.*
- 25** *Written approval may take the form of a permit or stamped plan, or permit in combination with stamped plan*
- Please amend as follows: *Written approval may take the form of a permit or municipal stamped plan, or a permit from HWC (where NHRA legislation applies) in combination with a municipal stamped plan.*
- 27** *Approval in terms of the HPOZ.....required in law.*
- Please add the following: *Particular attention is drawn to the requirements of the National Heritage Resources Act of 1999 and to any regulations issued by Heritage Western Cape.*
- 28** *Additional requirements may include.....*
- Please check your numbering system. *28.3 should be 28.2.1 etc*
  - Please add the following before 28.2 (new clause): *Further constraints or conditions within the Stanford HPOZ*
- 29** *The municipality shall not give approval to any developmental activity....*

Please include the following at the end of the last sentence....., *unless and until a permit has been obtained from Heritage Western Cape after an initial submission for comment to the relevant local conservation body (OHAC or SHC).*

**OTHER COMMENTS ON THE PROPOSED BY-LAWS:**

**7** *Any land use, planning... located within a Heritage Overlay Zone must be referred to the Overstrand Heritage and Aesthetics Committee for comment... prior to a decision... by the municipality.*

• Please include the following: *... by the municipality. In the case of the Stanford HPOZ, the applications must be submitted to the Stanford Heritage Committee for comment.*

**8** *Such activities will only be permitted following comment from the Overstrand Heritage and Aesthetics Committee and Municipal approval*

• Please amend as follows: *Such activities will only be permitted following comment from the Overstrand Heritage and Aesthetics Committee or the Stanford Heritage Committee (as appropriate) and Municipal approval*

**10.2.9.1** *Building heights are restricted to 8m as measured from the top of the structure to base level*

• Please add the following *... with the exception of buildings within the Stanford HPOZ where more restrictive height restrictions are applicable*

**10.2.9.2** *Wall plate of 5.5m*

• Please add the following *... with the exception of buildings within the Stanford HPOZ where more restrictive height restrictions are applicable*

**General comment 1:**

It is clear from the wording of Section 20 and by reference to Plan B that the rural area mentioned above is included in the Landscapes HPOZ proposals. Therefore, although any reference to a Conservation Body in the draft documentation is worded as "Overstrand Heritage and Aesthetics Committee" (OHAC), that reference should, in relation to the rural area surrounding Stanford, be amended to read Stanford Heritage Committee (SHC) and not to OHAC. Our comments here are made on that basis.

**General comment 2:**

No mention is made that all development proposals of the types mentioned above must be submitted to HWC.

**General comment 3:**

Please correct all reference to the Stanford Heritage and Aesthetics Committee in the proposed by-laws to Stanford Heritage Committee.

We look forward to hearing from you

Yours faithfully,

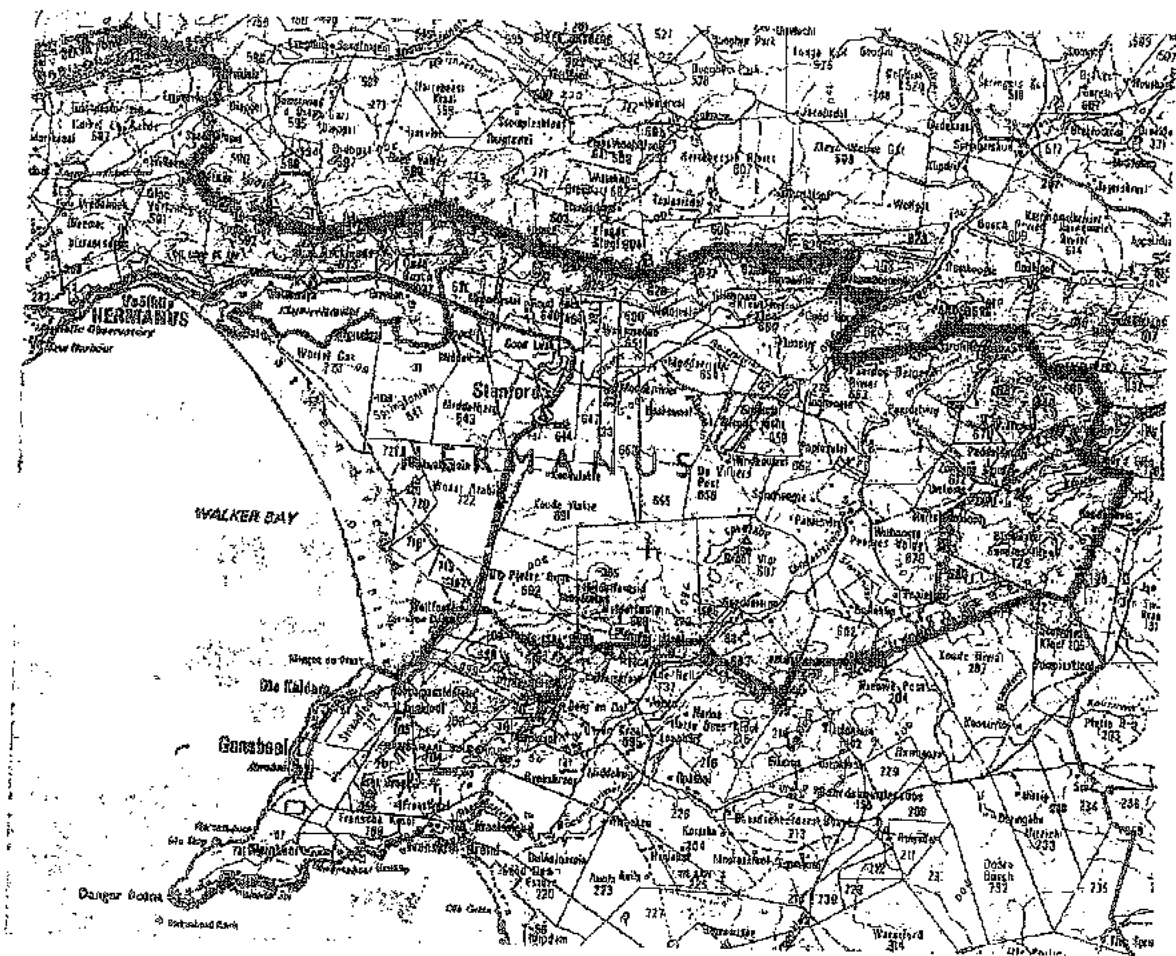


Liz Hochfelder  
Chair: Stanford Heritage Committee



Bea Whittaker  
Chair: Stanford Conservation

c.c. Ms Penelope Meyer, Legal Advisor, HWC. By e-mail: [Penelope.Meyer@westerncape.gov.za](mailto:Penelope.Meyer@westerncape.gov.za)  
Petrus Roux: [petrusroux@overstrand.gov.za](mailto:petrusroux@overstrand.gov.za)  
Petronella Ferreira: [pferreira@overstrand.gov.za](mailto:pferreira@overstrand.gov.za)



Stanford Heritage Committee:

Rural area surrounding Stanford administered by Overstrand Municipality's Stanford Administration office (area outlined in turquoise blue)

46/46

TR A Theart  
CH vd Stoep)

**Enquiries:** Jonathan. Windvogel  
**Telephone:** 021 483 9736  
**e-mail:** [jonathan.windvogel@westerncape.gov.za](mailto:jonathan.windvogel@westerncape.gov.za)  
**Date:** 17 March 2017

Overstrand Municipality  
 16 Paterson Street  
**HERMANUS**  
 7200  
[hvdstoep@overstrand.gov.za](mailto:hvdstoep@overstrand.gov.za)

FILE NO:	1/3/20
SCAN NO:	
COLLABORATOR NO:	1012045

Dear Sir/Madam

**RE: REVISION OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2016 & THE OVERSTRAND LAND USE SCHEME.**

Heritage Western Cape has received a number of requests for input on the heritage requirements of Spatial Development Frameworks as well as Zoning Scheme By-Laws from Local Authorities.

The National Heritage Resources Act, Act 25 of 1999, (the NHRA) provides in Sections 30 and 31 thereof for the establishment of heritage areas and registers. HWC is in the process of drafting regulations in terms of Sections 30(8) and 31(7) to provide for the public participation process required in order to establish such areas and registers.

It is intended that workshops will be held with Local Authorities during April 2017 in order to obtain input on the regulations from Local Authorities and also to further explain how HWC envisages that these heritage areas and registers will be utilised to manage heritage resources.

It is considered that any provision in SDFs regarding Heritage Protection Zones does not comply with the NHRA and that these HPZs would have to be established as heritage areas and administered in terms of the NHRA, and not in terms of the town planning scheme.

Your Council will be contacted shortly with details of the proposed workshops.

**Mxolisi Dlamuka**  
**Chief Executive Officer**  
**HERITAGE WESTERN CAPE**

[www.westerncape.gov.za/cas](http://www.westerncape.gov.za/cas)

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COMMENTS AND RESPONSES PART A

Comment on advert placed in 2016 regarding the adoption of the Overlay zones, the adoption of the Zoning Scheme as part of the By-law.

PROVINCIAL COMMENT - PART A - COMMENT ON DRAFT LAND USE SCHEME		
Section	Content	Response on comment
Definitions	Aquaculture To be inserted in definition of Agriculture	It will be inserted in Agricultural Industry, due to the extent of such a development and impact. It is not considered as a primary right.
Definitions	Authority Use Suggest necessary services	To confined -community needs may not be necessary but relevant
Definitions	Bottle Store Shop that sells liquor not be a bottle store Sale of wine on a farm Taverns in less formal residential zone is excluded	Bottle Store: includes hard liquor Same To be included as a consent use: Tavern entails on consumption
Definitions	Home Occupation Unclear to its meaning of usual, principle and calling	Definition has been changed and restricted to development parameters specifically for home occupation on Residential Zone erven
Definitions	Land Unit Definition differ from LUPA	Rectified to include leases and servitudes
Definitions	Main Road Definition may change once Act replacing the Ordinance of 1976 is repeated	This has been catered for in the definition
Definitions	Planning Law It does not include Municipal By law on Planning	Has been included
Definitions	Residential building Conflict in definition with limited to and	Definition has been changed to keep the limitation but exclude the and.
Definitions	Service trade Definition: grammar	Corrected
Definitions	Servitude LUPA def. should be used	The def. is more extensive in LUS and no reason was given why LUPA should be used.
Definitions	Subdivision Grammar	Rectified
Definitions	Subdivisional area Reference to Structure Plan	Rectified

Definitions	Use Right	Out-dated	Remains due to reference thereto in the def. land use
1.1.1	Notice	The whole scheme have to be published	Amended to read as follows: "from date of publication "in the Provincial Gazette.
1.1.3	Components	Record be substituted with register	Noted and rectified
2.1.1[a]&[b] and 2.3.2	Submission and consolidation	Covered in By-Law	Noted and removed
2.3.3	Public Participation	Does not comply with LUPA	Do not agree, it is covered in 2.4.1
2.3.4	Consolidation	Already covered in By-Law	Noted and removed
2.3.5 and 6	Consolidation	Consolidation	Noted and removed
2.4.2	Petitions	Not compliant	Do not agree, the LUS is more extensive
2.5	Decisions	Not Council	Removed (2.5.2)
2.5.2	Procedures	Repetition	Removed
2.6	Conditions of approval	Covered in By-Law	Removed
2.7.2	Validity of information	Promotion of Access	Rectified
2.8.1	Appeals	Appeals	Removed
3.1.4	Use Zones	Sentence does not make sense	The sentence has reference to conditions with reference to more detailed description of land uses in the scheme
3.1.6	Keeping of household pets	Not relevant if regulated by another by-law	It is relevant since the By -Law is less detailed than the scheme
3.1.7	Bulk Zones	Reference to Council incorrect	It has been amended throughout the document
3.2.2	Consent uses	Already covered in planning by-law	Removed
3.2.6	Uses not permitted	Add without the approval of the municipality	Add
	Same as above	Duplication	Corrected
3.2.10(b)	Occasional uses	Need an application	Will be governed by the Events By-law
3.2.12	Associated uses	Is it an application type	Removed
3.2.13	Building plans	Uses are approved in terms of the By-law	Amended
3.2.14	Building plans	Uses approved in terms of the by-law	Deleted
3.2.15	Non-conforming uses	In by-law	deleted
5.1.2 (a))	Floor space	Accommodation should be replaced by building	Do not find the reference
6.1.9	Sectional title	The scheme does not concern itself with ownership, but use of land	This reference remain due to pressure and enquiries of non-reference in the use scheme
6.2.8	Restrictions	Meaning unclear and should be a policy issue.	Removed, has been amended as follows: Minimum erf size of 300sqm is applicable: point 6.2.2
6.3.8	Restrictions	Densification -policy issue	Removed, amended as above: point 6.3.2
6.4.6	Restrictions	Same as above	Removed, amended as above: point 6.4.2

14.3	Undetermined zone	"Holding area for non-confirming use" Covered in By Law	No it is not a holding area. Undetermined zone is a specific zoning category, whilst non confirming use relates to the land use. The Municipality has an undetermined category, which relates to the zoning in previous Scheme regulations which had to be catered for.
15.1.1	Overlay zone	Council may approve, but process is not clear to be followed	The Overstrand Municipality follows the procedure of the Municipal Systems Act, SPLUMA, LUPA and the By-Law.
16.5	Owners Association	Already provided for in By-Law	Delete
16.6	Boundary walls	Replace consent with permission	Done
17.1.3(b)	Hotel	Consider 0,6 parking bay per room	The 1 bay per bedroom remains in place due to the historical fabric of the CBD where parking was considered on street. Thus, any new development must provide sufficient parking on site to eliminate on street parking by guests. Most Hotels have facilities open to the public and a combined parking scenario is put in place.
17.1.4	Parking bays	What about parking at a 30 and 60 degree	The parking bay measurements has been amended to Engineering Departments requirements and parking policy
17.1.7(a)	Disabled parking	3,7m instead of 3,5m	Amended in accordance with SANS 104:00-S
17.2.1	Loading Bays	A departure, rather a permission	Amended, subject to Engineering Department
17.3.4	Infrastructure and services	Provided for in the By-law and applicable policy	Amended to comply with minimum standards as laid down by the Municipality from time to time
17.3	Infrastructure and services	Provided that new development as a result of a new application	Amended to comply with minimum standards as laid down by the Municipality from time to time
18.1.4	Subdivision not confirmed	Already regulated by By law	Removed
18.1.6	Subdivision of residential properties	Policy matter	It is a cross reference to the policy document, but more detailed and must remain in place to ensure that the character of the Overstrand residential areas remains in place
19.1.5	Transitional Arrangements	It is a policy matter	The Architectural Guidelines is part of the conditions of approval and may be more restrictive than the Scheme and it is essential that it remains in place and is not subject to the replacement of the development parameters of the Scheme. This has been questioned by Home Owners and residents of closed communities and needs to be clarified as per point 19.1.5

	Annexures (20.1)	Amendment to the scheme is done in terms of the MSA when said scheme is a by-law	Noted
In general	Name of document should read Zoning scheme	To be consistent with LUPA which has reference to a zoning scheme	In terms of SPLUMA it refers to Land Use Management System and not zoning scheme. The Municipality will be using the reference as stipulated in SPLUMA, a Land Use Management Scheme.
In general	Amendment to the scheme is done in terms of the MSA when said scheme is a by-law		Noted
In general	Zoning Map and register integral part and gazetted		Noted
In general	Approval of zoning scheme	Within 30 days of approval – Minister must be notified	Noted
<b>PROVINCIAL COMMENT - PART B – COMMENT ON OVERLAY ZONES</b>			
<b>Section</b>		<b>Content</b>	<b>Response on comment</b>
In general	Overlay Zones	The Department would caution against the elevation policy type provisions/design guideline regulation. It becomes law and will thus require a departure to deviate, which can result in an increasing administrative burden	Noted

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PRINGLE BAY RATES ASSOCIATION		
Section	Content	Response on comment
In general Preservation of existing vistas and wildlife access:	I support a mandate to negotiate amendments to the Overstrand Zoning Scheme (as gazetted on 29 November 2013) in order to preserve existing mountain and sea vistas and maintain free wildlife access from mountain reserves to the seashore and prevent impairment of natural construction material and limitations to the location and construction of enclosing walls and fences. Due to periodic fires it is also necessary to maintain free access to mountain slopes to facilitate fire control.	The Township was established and 1940 and the township establishment conditions made provisions for boundary walls and fences. This inherent right of every property owner is reflected in the Constitution and the National Building regulations that every owner has a right to protect himself ensure the safety of his property and individuals. Should this aspect be entertained, this will entail the removal of existing boundary walls and fences as approved by means of a building plan and the only way the Municipality will be enforced the latter is by means of a High Court application. This will have financial implications for the Overstrand Municipality and every owner of Pringle Bay will have to consent to such a restrictive condition. This aspect can only be dealt with from the goodwill of an owner in the township of Pringle Bay. Boundary walls play an integral part in fire and security and safety. This is entrenched in the Constitution.
In general Preservation of Infrastructure	Zoning regulations need to be introduced for the following: - Which encourage absorption of rainfall within the boundaries of the property by limiting hard paving. - Design of driveways and parking areas needs to be guided in a way that ensures that water is to channelled directly onto the gravel roads	The LUS is for the whole of the Overstrand Municipal area of jurisdiction. This aspect needs to be addressed on another platform.
In general Lighting Regulations:	The preservation of the night sky has always be important in conserving the Hangklip environment. It is recommended that all external lights be shielded as to prevent upward or lateral projection of light toward the boundary.	The respect for the night sky is noted. The one aspect relevant is that properties against the mountain will still influence the properties in the valley. Thus one would have to look at the principle that above a certain contour that no external lights are allowed as to ensure that every owner has the same night sky vision. The aspect of upward lighting from external lights to a boundary may be considered with every owner's consent; however the restriction of lateral shielding towards the boundary will is not viable since it defeats the whole purposes of safeguarding a property with regard to movement on the erf perimeter.

CapeNature		
Section	Content	Response on comment
Section 82: Overstrand Municipality By-Law on Municipal Planning	It is recommended in a development the applicant identify the most suitable in terms of biodiversity conservation	The environmental overlay and NEMA are applicable.
In general Overstrand Municipality Land Use Scheme	Cape Nature supports the Proposed Standard Draft Zoning Scheme developed by the Western Cape Department of Environmental Affairs and Development with two separate categories of Open Space Zone 1. At present the Scheme only makes provision for proclaimed nature reserves and not conservation areas.	The scheme that was advertised did make provision for conservation areas under Open Space Zone 1. Therefore it is not necessary to create two separate categories. The latter is dealt with by the Environmental Overlay.
In general Overstrand Municipality Land Use Scheme	The consent uses as per Open Space Zone 1 may not be appropriate as no minimum thresholds have been established. The norms and standards for private nature reserves allows a maximum coverage of 0,5% for residential and tourism related facilities.	Noted, however there is sufficient legislation that covers the environmental impact.
In general Overstrand Municipality Land Use Scheme	Local Nature Reserves are legislated by NEM: PAA	Noted
In general Environmental Overlay zone	All declared local authority nature reserves should be compliant with NEM:PAA, which is undertaken through the Cape Nature Stewardship Programmes	Noted, however the Environmental Services will determine whether a stewardship is required or feasible.
In general Environmental Overlay zone	Catering for Biodiversity areas outside Open Space Zone 1, the other categories do not make sufficient provision safe guarding biodiversity.	Environmental Overlay zone caters for these areas
In general Environmental Overlay zone	The subdivision of agricultural land. Cape Nature has an agreement with Dept. of Agriculture that land that is rezoned out of agriculture to conservation that it must be declared a NEM: PAA Nature Reserve.	The agreement is not between the Municipality and the Department of Agriculture and is outside the Municipality's mandate.
In general Environmental Overlay zone	The determination of guidelines in rural area for development on privately owned conservation areas is negotiated between Cape Nature and the DEAP.	Land Use on any property is a municipal function. This negotiation is not binding on the Overstrand Municipality in terms of planning. has not taken place with the Overstrand municipality.

In general	Environmental Overlay zone	No consultation took place during the process	Mr. D Heard, consultant of the Environmental Overlay Zone indicated that there was consultation with Cape Nature in his comment dated 7 July 2017, therefore local Cape Nature officials were consulted. Comment was
In general	Coastal Protection Overlay	Wastewater treatment works as a consent use for high, medium and low risks zones in urban areas. Primary components should be excluded	These works are reliant on topography, gradient etc. Unfortunately these works cannot always be in areas that are not environmentally sensitive. The NEMA process will determine the location.
In general	Mountain Catchment and protected Area Buffer Overlay	Development on the crest of a mountain ridge or hill should be added as a restriction. No informal or temporary settlements should be allowed.	The development on a crest is already catered for in terms of contour line specification and visual impact assessments. The informal settlement and or temporary accommodation will be site specific and in terms of the NEMA regulations
In general	Riverine Overlay	No soak always or septic tanks be allowed.	This is not always possible since the Municipality does not service conservancy tanks in rural areas. The Water Act does not prohibit septic tanks as long it is compliant with the Water Act.
In general	Inclusion of additional areas in the local authority nature reserve	Cape nature supports the inclusion through a stewardship approach.	The stewardship approach will only be followed if it deemed viable by the Municipal Environmental section.
<b>Section</b>	<b>STANFORD CONSERVATION HERITAGE COMMITTEE COMMENT ON HPOZ</b>		
	<b>Content</b>	<b>Response on comment</b>	
	Heritage Western Cape	All development proposals should be referred to Heritage Western Cape	Legislation already addresses the type of applications to be submitted and does not need to be reflected again.
20.3.1	All land use applications be submitted to Overstrand Heritage	Stanford Heritage must be included	Not all land use applications needs to go to any of the Heritage Committees, only where legislation requires it and the Overstrand Heritage Survey Report supports it.
25.6		Sentence needs to be reworded	Proposed amendment: Implementation of timeframes for finalising the project.
26	Written approval by means of approved plan (stamped) or permit	Insertion of a permit from HWC where NHRA legislation applies with a municipal stamped plan	A stamped plan is sufficient. HWC should issue their type of approval. Should HWC is involved, approvals in all relevant legislation applies. It is not a Municipal function and or mandate to determine procedures of other legislation.
27	Add to sentence	Add Particular attention is drawn to the requirements of the National Heritage Resources Act of 1999 and to any regulations issued by Heritage Western Cape	It is not necessary, since all relevant legislation is applicable not only NHRA regulations.

28	Additional requirements	Add before 28.2 Further constraints or conditions within the Stanford HPOZ	Amendment to the proposal: Further constraints or conditions within the Stanford HPOZ as specified in the regulations pertaining to Stanford
29	The Municipality shall not give any approval to any developmental activity...	To be added; unless and until a permit has been obtained from HWC after an initial submission for comment to the relevant local conservation body	The HWC will only comment if any application triggers their legislation. Please note that the Municipality deals with land use issues and the approvals, not HWC and or the local conservation bodies. Their comments will be obtained when required and or necessary.
7	Any land Use..	Stanford Heritage Committee must be included	Included
8	Such activities...	Stanford Heritage Committee must be included	Included
10.2.9.1	Building heights are restricted...	Add with the exception of Stanford HPOZ	Not necessary as it is already addressed in the Overstrand Land Use Management Scheme
10.2.9.2	Wall plate..	Add with the exception of Stanford HPOZ	Included
General comment		The OHAC should be replaced with SHC in and around the area of Stanford	The OHAC will not be replaced, but the SHC be included
General Comment		Add HWC	Not relevant since the HWC will only comment on applications as stipulated in their legislation
General Comment		Rectify Stanford Heritage Committee and not Stanford Heritage and Aesthetics Committee	Noted
19.4.2	Buildings within the single residential zone be restricted...	Changed to buildings within the single residential zone to be restricted to a roof apex height of 6,8m. Delete No point be..	It is not in line with the Stanford Heritage character, since it will allow parapets higher than the 6,8m height.
19.4.3	Buildings within single... measured from base level	Difference in Zoning Scheme and HPOZ	Overstrand Zoning Scheme is applicable and same as 19.4.2
19.4.3.2	From base level to top of structure	Amend to read to apex of roof: 6.8m	Noted and amended
19.5.1	Parking provisions may be relaxed.. Minimum of 4 bays/ 110 sq. GLA	Amend: the minimum requirements of 4 bays per 100 sq. GLA will not apply where this has a detrimental effect on the street fabric of the commercial zone in the Heritage Area, and where alternative parking is available in the vicinity.	Not supported and will be dealt with on a merit basis. The Land Use Scheme makes provision for alternative methods of parking. This requirement is to be constant across the Overstrand.
19.5.3	Relaxation of parking requirements..	Delete entire point, since the SRP addresses this issue	The Stanford Revitalization Plan is a draft and has not gone through a public participation process and cannot override the LUS
19.5.5	Standard application processes for off-site parking	Delete entire point, since the SRP addresses this issue	The By-Law makes provision for such a process as well as the Scheme Regulations and has financial implications for the

19.6.2	In case of a new building...	Amend: In case of a new building construction.. or alteration to an existing building.. a zero street building line is permitted if approved by the SHC and endorsed by the WCH in order to protect the street building line generally observed in the immediate context. The town planning setback line will therefore also not be applicable.	Municipality. The decision making lies with the Council. The proposed amendment cannot be accommodated as a generic regulation and will be dealt with on merit case by case.
19.6.3	Garages must be set back 4m from the street	Amend: Garages and carpports must be set back 4m from the street boundary or set back at least 2m from the street facing elevation of the building, except where not physically possible.	Applications will be dealt with on merit, since the traffic flow and visibility may be impeded.
	Add	To encourage disaggregation of buildings, buildings do not need to be connected.	This aspect will lead to separate units, which is not in line with the single residential zoning. This aspect is protected due to the requirement that dwellings be interleading. The clause can therefore not be added
19.8.3	.. roof cover materials.. No fibre cement products are permitted.	Amend as follows: roof cover materials must be either.. No fibre cement products are permitted. "Clip-lock " and IBR type roofing is permitted of not visible from the street and only on roofs with a pitch less than 5 degrees.	Accepted
19.9.1	Doors , windows and openings .. exceed 30% ..	Should be deleted	The requested deletion is not motivated. Substantial openings onto the street facades would impact on the predominant wall to opening/solid to void relationships characteristics of Stanford and could have a negative heritage impact. Not supported
19.10.1.3	Aluminium doors	Amend: aluminium doors .... Power coated or may be colour-anodised aluminium.	Accepted
19.10.1.4	Paint colours	Amend: Paint colours should preferable and not must be ...	The document legal and binding and does not generally allow for discretion on the part of the officials and that the use of preferable is not appropriate.
19.10.1.5	Alternatively colours	Delete	This request was not motivated by the SHC and is not supported.
19.10.2.5	IBR roofs	Amend: IBR of clip-lock, unless on a pitch less than 5 degrees and not visible form the street.	Accepted
19.11.1	The maximum height of	Amend: remove and fences or hedges, with	Any boundary treatment that would impact negatively on

	boundary walls..	openings at least 20mm, The solid vertical components must not exceed 20mm in width.	positive street relationships could have a negative heritage impact. The result could be solidity and the reduction of visual permeability. Not supported
19.11.2	The maximum height	Delete hedges	Accepted
19.11.3	Building plans	Delete and fences	Fences, if visually impermeable could have a negative heritage impact. Not supported
19.11.4.2	Natural stone	Add: No artificial stone cladding be permitted	Amended accordingly
19.13.3	Water tanks	Amend: and add: satellite dishes, TV aerials, external geysers and other... Water tanks cannot always be accommodated elsewhere and should thus be screened by a suitable trellis and/or planting	The LUS make provision for the structures and is thus not necessary to repeat.
19.13.4	No freestanding..	Correct grammatical error Of be replaced with or	Accepted
19.14.1	No person shall fell	Amend: No person shall fell.. a non-invasive mature tree more than 250mm in diameter as measured at chest height	Delete, since it is not a land use issue.
19.15.1	No alteration or covering	Amend: No alteration or covering (other than for driveway or pedestrian access to adjacent properties) of the leiwater system, placement of structures in the system, or rerouting of the system will be permitted without the permission of the Municipality and the consent of the SHC and /or HWC.	Partly supported, however the comments will be obtained from the SHC and not their consent, as it is not their mandate to give consent. Insert after consultation with the SHC and or HWC
19.16.1	Signage	Signage must comply with By-Law and submitted to SHC	For comments: Accepted

Heritage Western Cape		
Section	Content	Response on comment
In general	Heritage Overlay Zone It is considered that the overlay zone does not comply with the HRA and that it has to be established as heritage areas and administered in terms of the HRA and not the zoning scheme	It should be noted that the HRA has its own procedures and thus the overlay is not established in terms of the HRA, but in terms of the provisions of SPLUMA, LUPA and the Overstrand By-Law. IT is thus not in contradiction of the HRA, but a parallel process. The HRA is still applicable together with the Overlay's as proposed.
Heritage Western Cape		
Section	Content	Response on comment
In general	Dwelling House The stipulation of a single family should be deleted. Many people have extended families to care for in these economic times	The definition of a single family has been incorporated into the zoning scheme and does not exclude extended families. However all land use management schemes does make provision for the single family unit to ensure that the erf and its services can cater for what is has been designed for. The practical implications in a residential neighbourhood are to ensure character and service provision for its intended use. The higher density zonings are designed with that in mind. The proposal is must be investigated and addressed.

OVERSTRAND MUNICIPALITY  
BY-LAW ON MUNICIPAL LAND USE PLANNING 2015

GENERAL EXPLANATORY NOTE:

[ ] Words in bold in square brackets indicate deletions from the existing enactment.

\_\_\_\_\_ Words with a solid line indicate insertions in the existing enactment.

To amend the provisions in the Overstrand By-Law on Municipal Land Use Planning 2015

BE IT ENACTED by the Council of the Overstrand Municipality as follows:

**By amending the Index as follows:**

- 16 Application for land development **[required]** and other approvals
- 27. Ownership of public places and land required for municipal **[engineering services and social facilities]** services, infrastructure and amenities
- 53. **[Amendments prior to approval]** Request to be granted intervener status.
- 58. **[Decision-making period]** Timeframe pertaining to an Application
- 61. **[Determination of]** Decision pertaining to an Application
- 69. Municipal decision-making structures with respect to applications and appeals
- 87. **[Objections to compliance notice]** Complaints and objections
- 90. **[Subsequent application for authorisation of activity]** Application for rectification of a contravention of this By-law (by way of administrative penalty)

Schedule 2 :Overstrand Municipality Land Use Scheme

**By amending the Definitions as follows:**

**By Inserting the following new definitions:**

"land use scheme" means the Zoning Scheme as contained in Schedule 2: Overstrand Municipality Land Use Scheme (as amended);

"notice period" means the period as made provision for in this by-law and/or other applicable legislation

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

(i) Stipulates development parameters for a land unit or area, in addition to the underlying zoning or base zone requirements;

(ii) May include further development parameters in a particular area or zone which may be more or less restrictive than for land units which are not covered by the overlay zoning;

"Spatial Planning and Land Use Management Regulations" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015, promulgated in terms of the Spatial Planning and Land Use Management Act and published in Notice R239/2015 in Government Gazette 38594 of 23 March 2015;

**By deleting the following definitions in their entirety:**

**["occasional use", in relation to departure, means a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event;]**

**["overlay zone" means an area or precinct in a zoning scheme that is demarcated for the purpose of conserving natural resources or promoting certain types of development which is subject to conditions, requirements or restrictions in addition to those of the zoning;]**

**"emergency" includes a situation which arises as a consequence of floods; strong winds; severe rainstorms; fires; earthquakes and industrial accidents/incidents which may require the relocation of people and/or human settlements as a whole to reasonably safe identified sites;**

**"Land Use Planning Act" means the Land Use Planning Act, No 3 of 2014, (as amended);**

**"Spatial Planning and Land Use Management Act" means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), (as amended);**

**By amending section 3 (a) and (d) (iii) as follows:**

- (a) appoint an intergovernmental steering committee to compile a draft [or amend its] Municipal Spatial Development Framework; or
- (d) in writing inform the Provincial Minister of—
  - (iii) the process contemplated in Sub-section 3 (c) [that will be followed in the drafting or amendment of the Municipal Spatial Development Framework including the process for public participation];

**By amending section 4(3)(b)(ii) as follows:**

- (3) (b) (ii) the Department(s), nominated by the Head of Department; and

**By amending section 6(h) as follows:**

- (h) [oversee] ensure the incorporation of amendments to the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework to address comments obtained during the process of drafting thereof;

**By amending section 8(2)(d) as follows:**

- (2)(d) provide detailed policy and the recommended development parameters for land use planning;

**By amending section 13(1) as follows:**

13. (1) The owner [of land] or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in Section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.

**By amending and renumbering section 16 as follows:****16. Application for land development required and other approvals**

- (2)(a) a rezoning of land;
- (e) a consolidation of land that is not exempted in terms of Section 26;
- [(p) an occasional use of land;]
- (p) [(q)] to disestablish [a home]an owners' association;

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(g) [(r)] to rectify a failure by [a home] an owners' association to meet its obligations in respect of the control over or maintenance of services;

(r) [(s)] a permission required for the reconstruction of an existing building that constitutes a non – conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building;

(s) determination of an administrative penalty.

**By amending section 22(5)(d) as follows:**

22 (5) (d) effect the registration of transfer of a land unit or land units as indicated on the registration diagram / diagrams, or, General Plan; by obtaining of a Certificate of Registered or Consolidated Title; [registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.]

**By amending and renumbering section 25 as follows:**

[(2)](1)The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval and/or the general plan or diagram, in relation to a land unit or units indicated on the general plan or diagram [of which no transfer has]which has or have not been registered as per the provisions of the Deeds Registries Act.

[(3)](2)When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed.

[(4)](3)The Municipality must notify the Surveyor-General of an approval in terms of Subsection (1), and the Surveyor-General must endorse the records of the Surveyor General's office to reflect the amendment or cancellation of the subdivision, and where applicable, the closure of the public place as contemplated in Subsection (2).

[(5)](4) The [An] approval of a subdivision in respect of which an amendment or cancellation has been [is] approved in terms of Subsection (1), remains valid for the remainder of the period contemplated in Section 22(5) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of Subsection (1).

**By amending and renumbering section 26 as follows:**

(1) (f) the conveyancing of land in order to effect transfer to the beneficiaries of an approved Municipal housing project;

(1) (g) [(f)] the subdivision of land in order to effect its transfer between spheres of government [from a local authority, a provincial or national government];

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(1) ~~(h)~~ ~~[(g)]~~ (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil, petroleum product pipelines, and boreholes by or on behalf of an organ of state or service provider;

**By amending section 27 as follows:**

**27. Ownership of public places and land for municipal [engineering services and social facilities] services, infrastructure and amenities**

**By amending section 28 (3)(a) and (b) as follows:**

(3) The Municipality may pay a claim if—

(a) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;

(b) in the case of personal injury, the claimant has furnished proof of the quantum of his/her damages, but subject to the right of the Municipality to obtain legal advice as to the correctness of said quantum;

**By amending section 29(a) as follows:**

(a) allow **[without compensation]** that the following be conveyed across his or her land unit, as may be reasonably required, in respect of other land units:

**By amending section 30 as follows:**

(1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit; to apply for a certificate of registered title or a certificate of consolidated title, as the case may be, unless the Municipality has issued a certificate in terms of this Section.

(2) The registration of any property; the application for a certificate of registered title or a certificate of consolidated title, as the case may be, resulting from a land development application may not be effected unless the municipality has certified that all requirements and conditions for the approval have been complied with.

(3) Proof must be furnished **[provided]** to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, prior to the transfer of the first [last] erf to the owners' association as contemplated in Section 31.

(4) The Surveyor – General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this Section without written confirmation from municipality that the subdivision or consolidation is exempted by the [a] municipality in accordance with this Section.

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**By amending and renumbering section 31 as follows:**

31. (1) The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant upon the transfer of the first sub-divided property to the new owner. [for an area determined in the conditions.]

[7](4) The constitution of an owners' association may contain other objectives as set by the association but may not contain provisions that are in conflict with any law.

[8](5) The constitution of an owners' association may be amended when necessary provided that an amendment that may affect any rights of the Municipality or a provision referred to in Subsection (3), is approved by the Municipality.

(6) The constitution of an owners' association takes effect upon the registration of transfer of ownership of the first land unit to a person other than the developer.

[9](7) An owners' association which comes into being by virtue of Subsection (1)— (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and (b) is upon registration of the first land unit, automatically constituted.

[10](8) The design guidelines contemplated in Subsection (3) (d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

[11](9) If an owners' association fails to meet any of its obligations contemplated in Subsection (3), the Municipality may take appropriate action to rectify the failure and recover from the members referred to in Subsection [(7)](3) (a), the amount of any expenditure incurred by it in respect of those actions.

[12](10) The amount of any expenditure so recovered is, for the purposes of Subsection (9), considered to be expenditure incurred by the owners' association

**By amending section 35 as follows:**

(1) The Municipality may, [of its own accord or] on application in terms of Section [13] 16 (2) by notice in the Provincial Gazette amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.

(6) The Municipality must cause a notice of the decision to remove, suspend or amend a restrictive condition to be published in the Provincial Gazette after the decision comes into operation as contemplated in Subsection (5) and notify the Registrar of Deeds of the decision.

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**By amending and renumbering section 36 as follows:**

36 (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette **[as contemplated in Section 35(1)]**, submit the following to the Registrar of Deeds:

(c) a copy of the notification **[of the approval]** as published in the Provincial Gazette

(2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette as contemplated in Section 35 (6), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

**By amending section 39 as follows:**

(1) An application must be accompanied by the following documents, where applicable:

**By amending section 45 as follows:**

(2) The owner **[of land]** must in writing inform the Municipality as to whether he or she has withdrawn his or her power of attorney granted to another person to make an application on his or her behalf.

(3) When an application has been withdrawn the application will be considered finalised and a new application, if any, may be submitted.

(4) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-law and prior to the submission of the planning report to the Authorised official or Municipal Planning Tribunal—

(a) at the applicant's own initiative;

(b) as a result of objections and comments made during the public notification process; or

(c) at the request of the Municipality.

(5) Should an amendment to an application be considered material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resubmitted to municipal departments, other organs of state and service providers.

(6) In the event that an amended application is submitted in accordance Subsection (5) the Municipality may require payment of additional application fees.

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**By amending section 48 as follows:**

(1) Notice of an application contemplated in Section 47(1) and Subsection (2) must be served—

(c) on each person whose rights or legitimate expectations will be affected by the [approval of the] application.

**By amending section 50 as follows:**

(1) (g) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or

**By amending and renumbering section 51 as follows:**

(1) All petitions must clearly state—

[(a) the contact details of the authorised representative of the signatories of the petition;

(b) the full name and physical address of each signatory; and

(c) the objection and reasons for the objection.

(2) Notice to the person contemplated in Subsection (1)(a), constitutes notice to all the signatories to the petition]

(a) (i) The full name, surname, national identity number and physical address of each signatory;

(ii) The full name, surname, postal address, telephone number and facsimile of no more than two specified persons to whom further communication relating to the application may be directed; provided that where such information is not made available, the Municipality shall direct further communication only to the first person who signed such petition and whose address is known; and only the first objector will be recorded as the legal objector; and

(iii) Each page of a petition containing the signature of a petitioner shall contain at least a summary of the objection.

(iv) the interest of the body or person in the application;

(v) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is prepared to act in regard to the application or appeal as the Municipality may direct.

(b) The reasons for the petition must be set out in sufficient detail —

(i) the facts and circumstances which explain the comments contained within the petition;

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- (ii) the undesirable effect which the application will have on the area and/or demonstrate that she or he will be adversely affected by the decision;
- (iii) any aspect of the application which is not considered consistent with applicable policy.

(2) Any written notification by the Municipality to petitioners shall be regarded as sufficient if such notification is sent to the persons contemplated in Sections 50 (1)(f) and 51 (1)(a)(ii).

(3) A petition that does not comply with the above requirements or as contemplated in Sections 53 (3) and 53 (4), will not be considered and processed as a valid petition and will not be regarded as an objection.

**By amending section 53 as follows:**

**53. Request to be granted intervener status [Amendments prior to approval ]**

**[(1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—**

- (a) at the applicant's own Initiative;**
- (b) as a result of objections and comments made during the public notification process; or**
- (c) at the request of the Municipality. ]**

**[(2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.]**

(1) A person contemplated in Subsection (3) may, within the period contemplated in Subsection (4), submit a petition on the prescribed form and with proof of payment, to the Municipal Manager to be granted intervener status.

(2) Upon receipt of a petition the Municipal Manager must direct the petition to the delegated authority.

(3) A person may submit a petition only if he or she has not been given notice of the application in terms of Sections 48, 50(f) or 50(g) and –

- (a) if the application has not yet been resolved – the petitioner has an interest in the application; or
- (b) if the application has been resolved – the petitioner has a pecuniary or proprietary interest which is or has been or may be adversely affected or is able to demonstrate that she or he will be adversely affected by the decision or an appeal with regard to the decision.

(4) A petition will be invalid if submitted –

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(a) more than seven days after the petitioner became aware of the application or resolution with regard to an application or may reasonably have been expected to have become aware of the application or resolution with regard to an application; or,

(b) after 21 days from the date of the decision of the Authorised Official or Municipal Planning Tribunal, or,

(c) if an appeal has been submitted, from the date of the decision of the Appeal Authority.

(5) A petitioner must submit the required information as contemplated for in Section 51 (1)(a) and (b).

(6) The Authorised Official, Municipal Planning Tribunal or Appeal Authority, as the case may be, may direct a copy of the petition and the information contemplated in Subsection (5) to the existing parties to the proceedings for comment.

(7) The Authorised Official, Municipal Planning Tribunal or Appeal Authority may –

(a) refuse a petition if submitted late or as contemplated in terms of Subsection (3) and (4);

(b) in the event that a question arises as to whether the petition should be granted–

(i) the Municipal Planning Tribunal or the Authorised Official must decide the validity of the petition if the application has not yet been decided; or

(ii) the Appeal Authority if the application has been decided.

(8) In deciding whether to grant a petitioner intervener status, the Municipal Planning Tribunal, Authorised Official or Appeal Authority, as the case may be, must consider at least whether –

(a) the petitioner qualifies in terms of Subsections (3) and (4);

(b) no existing party to the proceedings adequately represents the interest of the petitioner;

(c) the petitioner represents other persons who have a similar interest in the proceedings and whom are not otherwise represented;

(d) refusal of the petition would impede the ability of the petitioner to protect his or her interests;

(e) the petitioner's objection, comments or representations are relevant to the proceedings; are different from those of the existing parties, and may assist the decision-maker; and

(f) granting the petition would not cause undue delay or otherwise prejudice the interests of any party to the proceedings.

(9) The decision-maker must notify the petitioner and the existing parties to the proceedings of the outcome of the petition.

(10) There is no appeal against a decision to either grant or refuse a petition.

(11) A person who is granted intervener status is regarded as an appellant.

**By amending and renumbering section 58 as follows:**

**58 Timeframes pertaining to applications [Decision-making period]**

(1) The administrative phase commences only after a complete land development and or land use application has been submitted to a municipality and the components of the said administrative phase contemplated in Subsection (2), for which the municipality is responsible, may not exceed than 12 months.

(2) The administrative phase is the phase during which all public participation notices have to be published and responded to; parties have to be informed; public participation processes finalised; intergovernmental participation processes finalised and the application referred to the Municipal Planning Tribunal or Authorised Official for consideration and decision-making

(3) [1] When the power to take a decision is delegated to an authorised employee and no [integrated process in terms] provision of any other law has to be complied with the authorised employee must decide on the application within 60 days after completion of the administrative phase contemplated in Subsection (2).

(4) [2] When the power to take a decision is not delegated to an authorised employee and no [integrated process in terms] provision of any other law has to be complied with the Municipal Planning Tribunal must decide on the application within 90 days after completion of the administrative phase contemplated in Subsection (2).

(5) [3] The authorized employee or Tribunal, as the case may be, may extend the period contemplated in Subsections (3) or (4) in exceptional circumstances which may include the following:

(b) if additional information is required in order to consider the application.

[(b) In the case of the Tribunal, if an oral hearing is to be held.]

**By amending section 61 as follows:**

**61. [Determination of] Decision pertaining to an application**

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**By amending and renumbering section 64 as follows:**

(1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.

(2) The Municipality may, of its own accord or on application by the applicant or an interested party, upon good cause shown, condone an error in a procedure, if the condonation does not have a material and adverse effect on, or unreasonably prejudices, another party.

**By amending section 66 as follows:**

(g) a registered planner's written assessment in terms of Section 66 of LUPA, 2014, including; [application in terms of the By-Law:]

- (i) an amendment of a Spatial Development Framework or Land Use Scheme
- (ii) an approval of an overlay zone contemplated in the land use scheme
- (iii) a phasing, amendment or cancellation of a subdivision plan or part thereof
- (iv) a determination of a zoning

**By amending section 67 as follows:**

(2)(w) the payment of an administrative penalty as contemplated in Section 90 in respect of the unlawful use of land;

**[(w) requirements for an occasional use that must specifically include –**

- (i) parking and the number of ablution facilities required;**
- (ii) maximum duration or occurrence of the occasional use; and**
- (iii) parameters relating to a consent use in terms of the zoning scheme;]**

(3) If a Municipality imposes a condition contemplated in Subsection (2)(a), an engineering services agreement must be concluded between the Municipality and the owner of the land prior to commencement of the construction of engineering infrastructure [concerned before the construction of infrastructure commences on the land].

**[(12) The Municipality may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.]**

**By amending section 69 as follows:**

**69. Municipal planning decision-making structures in respect of applications and appeals**

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**By amending section 73 (2)(b) as follows:**

(2)(b) the member tenders his or her resignation in writing to the chairperson of the Tribunal or, if the member who resigns is the chairperson of the Tribunal, to the Council;

**By amending and renumbering section 77 as follows:**

**[(3) Any person who wishes to make a verbal representation to the Tribunal must, 14 days prior to a meeting, request the Administrator in writing to make a representation at the meeting.]**

**[4] (3) If a request for verbal representation is allowed in terms of the rules and procedures then the Chairperson must consider and decide the request and if approved, impose any reasonable conditions **[that it may deem fit].****

**By amending and renumbering section 79 as follows:**

**(4) [(6)]** The notice must allow persons 21 days from date of notification of the appeal to comment on the appeal.

**(5) [(4)]** Any person who lodge an appeal or apply for intervener status to the Municipal Manager must submit proof of payment of appeal fees as may be determined by the Municipality.

**(6) [(5)]** The notice must be served in accordance with Section 115 of the Municipal Systems Act and in accordance with the additional requirements as may be determined by the Municipality.

**[(7) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.]**

**[(8) A person or body who has received notice of the appeal may comment on the appeal within 21 days of being notified.]**

**(7) [(9)]** The Municipality may refuse to accept any comments after the closing date.

**(8) [(10)]** The Municipality, after receipt of an appeal—

**(9) [(11)]** The authorised employee must complete the pre-hearing process (all the necessary documentation must be obtained, the applicant and objectors must be informed and the appeal referred to the Appeal Authority) within [30]150 days of receipt of the notice of appeal [draft a report assessing the appeal and submit it to the Appeal Authority within 30 days of receipt of the comments contemplated in Subsection (6) and (8), as the case may be.].

**(10) [(12)]** The Appeal Authority must decide on the appeal within 60 days from the expiry of the period contemplated in Subsection **[(11)] (9).**

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(11) The Appeal Authority may extend the period contemplated in Subsection (10) in exceptional circumstances.

(12) [(13)] The parties to the appeal must be notified in writing of the decision of the Appeal Authority within 21 days from the date of the decision as contemplated in Subsection (10) and (11) [12].

(13)[(14)] The Municipality must—

**By amending section 83 as follows:**

(1)(c) conditions imposed in terms of this By-law or **[previous planning legislation]** any law repealed by the Land Use Planning Act.

**By amending section 84 as follows:**

(1) Any person who—

(a) contravenes or fails to comply with Section 16(1), 16(5) and 84(2);

(b) fails to comply with a compliance notice issued in terms of Section **[87] 85;**

(d) upon registration of transfer of the first land unit arising from a subdivision to a person other than a developer fails to transfer all common property, including private roads and private places originating from the subdivision to the owners' association;

(2) An owner who permits land to be used in a manner set out in Subsection (1)(c) and who does not cause the use to be ceased or take reasonable steps to ensure that the use ceases, or who **[permits a person to]** breaches the provisions of a land use [zoning] scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(4) The Municipality **[must]** may adopt fines and contravention penalties duly approved by the district courts within the Municipalities jurisdiction, to be imposed in the enforcement of this by – law.

**By amending section 85 as follows:**

(2)(c) rectify the contravention of or non-compliance with a condition of approval within a specified period.

(2)(d) apply in terms of Section 90 for the determination of an administrative penalty;

**[85 (6) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within 30 days of receipt of the notice.]**

(6) If relevant, the notice may advise the owner or other person of their right to apply for rectification of the contravention as contemplated in Section 90, and may state that the Municipality intends to institute the measures contemplated in Section 84 in the event that

the owner or other person fails to apply for rectification of the contravention within a specified time.

(7) The notice may invite the owner within a specified time to inform the Municipality what steps have been taken to comply with the notice.

**By amending section 86 as follows:**

(1) (b) describe the activity [concerned] and the land on which it is being carried out;

(1) [(f) provide for an opportunity for a person to lodge representations contemplated in terms of Section 85(6) with the contact person stated in the notice;]

(f) [(g)] issue a warning to the effect that—

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice. [unless the Municipality has agreed to suspend the operation of the compliance notice in terms of Section 87.]

**By amending and renumbering section 87 as follows:**

**87. [Objections to compliance notice] Complaints**

[(1) Any person or owner who receives a compliance notice in terms of Section 85 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.

(2) Subject to the consideration of any objections or representations made in terms of Subsection (1) and any other relevant information, the Municipal Manager — (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.]

(1) A person, who is, or may be, affected by an alleged contravention of this By-Law, must in writing and using the prescribed form or in a manner determined by a policy, request the Municipality to investigate the alleged contravention and to act in accordance with the provisions of this Section.

(2) A complaint lodged in terms of this section must be contained in an affidavit stating:

(a) the name, surname, address and contact details of the complainant;

(b) the origin (i.e address / location / source) of the alleged contravention;

(c) the nature of the alleged contravention;

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(d) when the alleged contravention was first noticed and/or;

(e) the duration and frequency of the alleged contravention;

(f) the name and address of the alleged perpetrator.

(3) Upon receipt of a complaint, the municipality must investigate the complaint

(4) The municipality must inform the complainant of the outcome of the investigation within 30 days of the investigation having been completed and the steps to be taken to remedy the contravention in the event that the municipality is of the opinion that a provision of this By-Law has been or is being contravened

**By amending section 88 as follows:**

If a person fails to comply with a compliance notice the Municipality may—

(b) apply to a [the High] Court of competent jurisdiction for an order restraining that person from continuing with the illegal activity; and/or to demolish, remove or alter any building, structure or work illegally erected or constructed and/or to rehabilitate the land concerned without the payment of compensation; or,

(c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and [then act in terms of] take any of the other steps contemplated in Section [87] 85.

**By amending section 89(2) as follows:**

(2) If the person or owner fails to cease with the activity with immediate effect [immediately], the Municipality may apply to a [High] Court [with] of competent jurisdiction for an urgent interdict or any other relief as may be necessary.

**By amending and renumbering of section 90 as follows:**

90. [Subsequent application for authorisation of activity] Application for administrative penalty

[(1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Section 16(2), unless the person is instructed under Section 86 to demolish the building work.

(2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.]

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

(2) A person making an application contemplated in Subsection (1) must –

- (a) submit an application;
- (b) pay the prescribed fee;
- (c) provide the information contemplated in Subsections (3); and
- (d) comply with the duties of an applicant in Section 84.

(3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-

- (a) the nature, duration, gravity and extent of the contravention;
- (b) the conduct of the person (allegedly) involved in the contravention;
- (c) a report by a quantity surveyor in matters of unauthorised building/construction;
- (d) whether the unlawful conduct was stopped; and
- (e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

(4) The report regarding the/an administrative penalty must be considered by the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be.

(5) If the Authorised Official, the Municipal Planning Tribunal or Appeal Authority decides to impose an administrative penalty on a person who has contravened this By-Law, it must determine an amount which –

- (a) for building work in contravention of this By-Law – may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out, as determined by the Municipality;
- (b) for land use in contravention of this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the Municipality; and
- (c) for building work and land use in contravention of this By-Law – must comprise the penalties in both paragraphs (a) and (b).

(6) When determining an appropriate administrative penalty, the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, must take into consideration for the information provided by the applicant in Subsection (3), and should the information be insufficient the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, may request additional information.

(7) The Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, must notify the person who is in contravention of this By-Law of its decision and if it decides to impose an administrative penalty, the notice must –

(a) set out the administrative penalty;

(b) include the provisions of Section 62;

(c) state that the person must pay the administrative penalty to the Municipality within 30 days of the effective date of decision contemplated in Section 62 or within such further period that the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, may decide;

(d) state that the payment of an administrative penalty in terms of this Section does not limit the Municipality's power to investigate the offence and/or institute a criminal prosecution; and

(e) state that, without further notice, the Municipality may apply to a court of competent jurisdiction for an order confirming the administrative penalty and/or other appropriate relief including the costs of the application.

(8) The Municipality may apply to a Court of competent jurisdiction for an order confirming the order of the Municipality.

**By inserting into the By-law:**

Schedule 2 : Overstrand Municipality Land Use Scheme (OMLUS)

**Short Title:**

The By-law is called the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2019.

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## OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2019

## GENERAL EXPLANATORY NOTE:

[ ] Words in bold and in square brackets indicate deletions from the existing enactment.

\_\_\_\_\_ Words with a solid line indicate insertions in the existing enactment.

To amend the provisions in Overstrand Municipality Zoning Scheme, 2013

BE IT ENACTED by the Council of the Overstrand Municipality as follows:

By amending the Index as follows:

- [2.2] APPLICATION FOR A CONSENT USE
- 2.3 APPLICATION FOR THE CONSOLIDATION OF LAND UNITS
- 2.5 DECISIONS
- 2.6 CONDITIONS OF APPROVAL
- 2.8 APPEALS
- 4.1 SUMMARY OF USE ZONES AND DEVELOPMENT RULES]
  
- [2.4] 2.2 ADDITIONAL REQUIREMENTS RELATING TO PUBLIC PARTICIPATION
- [2.7] 2.3 VALIDITY OF INFORMATION
- [2.9] 2.4 ERRORS ON ZONING MAPS
  
- [19.1] 4.1 INTERPRETATION
  
- 16.1 GENERAL ENCROACHMENTS [ENCROACHMENT OF BUILDING LINES]
- 16.6 BOUNDARY WALLS [EARTH BANKS AND RETAINING STRUCTURES]
- 16.8 AESTHETICS AND MAINTENANCE OF PROPERTY AND PLACEMENT OF VEHICLES
  
- 16.10 GENERAL DEVELOPMENT PARAMETERS
  
- CHAPTER [20] 19: GENERAL PROVISIONS APPLICABLE TO ANNEXURES
  
- 19.1 [20.1] ANNEXURES

**By amending the definitions as follows:**

**A**

**"additional dwelling units"** means dwellings in the Agriculture Zone 1, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned; **[and additional dwelling units may be used for long or short term accommodation purposes;]**

**"agricultural industry"** means an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products (whether land or marine based, such as aquaculture) are grown, harvested and raised where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products or promotion of tourism related activities, and includes, inter alia: dairies, wineries, distilleries, olive processing facilities, breweries and other facilities required for the processing of agricultural products, where produce packed is not produced on the land unit, but does not include service trades;

**"agriculture"** means the cultivation of land for crops and plants, including plantations, the keeping and breeding of animals, beekeeping, bird farming or the operation of a game farm, and may comprise[s] natural veld and includes only such activities and buildings as are reasonably connected to the main farming activities such as residential accommodation for the farmer, farm manager and farm labourers and the packing of agricultural produce grown on the property but excludes intensive horticulture, intensive animal farming, agricultural industry, and a farm shop;

**"animals"** include livestock such as any cattle, sheep, goats, horses, mules, donkeys, rabbits and wild animals;

**"animal care centre"** means a place for the care of pets and other animals, operated on either a commercial or welfare basis, and includes a boarding kennel(s), a commercial kennel(s), **[and]** pet training, a pound, **[centres;]** and **[includes a]** a crematorium for animals;

**["associated", when used in the context of an associated use or purpose, means use, purpose, building or activity which is normally ancillary and subservient to the lawful primary use of the property;]**

**"atrium"**, which consists of a floor and a roof or ceiling, means a covered courtyard comprising a void within a building that extends for one or more floors in height, but does not contain floors that penetrate into the void; **[An atrium consists of a floor and a roof or ceiling];**

**"authority use"** means a use which is practiced by or on behalf of a public authority, **[and]** the characteristics of which are such that it cannot be classified or defined under other uses in this land use [zoning] scheme, and includes, but is not limited to, a use practiced by:

- (i) The [State]National Government (as defined in the Constitution) including but not limited to, [such as] a military training centre and installation, a police station and a prison;
- (ii) The Provincial Government (as defined in the Constitution) including but not limited to, [such as] a road station and road camp;
- (ii) [The] Local Government (as defined in the Constitution) including but not limited to [, such as] fire services and municipal depots with related uses or any use necessary to provide mandated services (including limited accommodation for staff who are

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required for standby emergencies, municipal offices, clinics, [library] libraries and any other associated use(s) approved by [Council] the municipality;

**"average ground level"** means the average of the highest and lowest existing ground level immediately abutting the outer perimeter of a building and [Council] the municipality may:

- (i) Determine the average ground level from measurements supplied on a building plan; or
- (ii) Deem a level to be the average ground level from the contour plan, local height bench mark or other information held by [Council] the municipality; or
- (iii) Require the owner or applicant to commission a registered land surveyor to measure levels of the ground or interpolate levels, in order to provide [Council] the municipality with sufficient information so that it can determine the average ground level for the purposes of this land use [zoning] scheme;

## B

**"backpackers"** means an accommodation facility that provides communal facilities including dormitories and may offer a range of alternative sleeping arrangements;

**"bar"** means primarily an enterprise for the sale and consumption of alcoholic beverages to [the by] customers [upon] on the premises where age restriction applies [upon the premises where the liquor is sold] and may include the [the making available] provision of meals [of food to customers] and a place of entertainment, but does not include the sale of alcoholic beverages for off-site consumption [A place of entertainment;] (In this context pub and tavern have the same meaning);

**"base level"** of a building means an imaginary plane drawn horizontally at the average ground level of the building or vertical division, (for the purpose of an uncovered stoep and /or deck, a separate base level will be applicable);

**"brewery"** means a place where beer or wine is made and may include a selling point to the general public; tasting [and conference facilities,] as well as the provision of light meals (which is subservient to the main use) but does not include a distillery, restaurant and / or pub;

**"builder's yard"** means a land unit which is used for the storage of material and equipment which:

- (i) Is required or normally used for construction work;
- (ii) Was obtained from the demolition[s] of structures or excavations of [ground] land;
- (iii) Is necessary for, or is normally used; for land development, such as storage of material used for building roads, for installing essential services, or for any other construction work (e.g. sand or bricks), whether for public or private purposes; and
- (iv) [It] includes the administrative component of such undertaking but [does not include] excludes any accommodation, other than a caretaker's accommodation;

**"building line"** means an imaginary line on a land unit, which defines a distance from a specified cadastral line, within which the erection of buildings and structures are prohibited, except with Municipal [the necessary Council the municipality] approval;

## C

**"camping site"** means a property or part thereof on which tents and/or caravans are used for the short term accommodation of visitors and holiday makers, and includes ablution, cooking and other associated facilities for the use by [of] such visitors, [and] infrastructure

related to the operation of the camping site, and may include accommodation facilities for the owner, manager and staff with the [permission] consent of [Council] the municipality;

“**carport**” means a building or structure [, which is] (covered or uncovered) with two open sides, primarily used for the housing of motor vehicle's and / or trailers and boats;

“**car wash**” means any structure or structures where vehicles are washed and/or valeted;

“**caravan**” means a mobile vehicle which has been equipped or converted for living and sleeping purposes; [and which is mobile;]

“**community facilities**” means a property or place that provides for a range of social uses and functions generally directed at serving [community needs such as] educational, religious, welfare, health, and generally the needs of a community;

“**consent use**” means the secondary use right that is permitted in terms of the provisions pertaining to a particular zone, subject to [only with] the consent of [the Council] the municipality;

“**consolidation**” means the process of preparing a diagram for approval by the Surveyor General from two or more diagrams [(representing several)] which represent at least two contiguous pieces of land), which [have] has been prepared for the purpose of obtaining a certificate of consolidated title thereto from the Registrar of Deeds, and "consolidate" has the same meaning;

“**coverage**” means the total area or percentage area of a land unit which may be covered by buildings and / or covered by a roof; provided that the following portions of buildings shall be disregarded in the calculation of coverage:

- (iv) Eaves not projecting more than 1.0 m [from the wall of the building over the building line];
- (v) Minor decorative features not projecting more than 250 mm. [A portion of a building where the ceiling is at ground level or lower.]

“**crèche**” means the use of a portion of a dwelling house or outbuildings by the occupant to provide day care, pre-school, play group or after school care services for a limited number of children provided that the primary use of the property shall prevail, subject to the applicable legislation; [means a facility for the day care of young children in the absence of their parents, and may provide care for more children than are permitted in a day care centre, subject to any applicable legislation of the Department of Education, provided that the primary use of the property shall prevail;]

## D

“**dairy**” means a building for the storage, processing and distribution of milk and related products, and [but does not] includes an agricultural building where cows or other animals are milked;

“**day-care centre**” means a facility for the day-care of young children in the absence of their parents, and may provide care for more children than are permitted in a crèche, subject to any applicable legislation, provided that the primary use of the property shall prevail; [means the use of a portion of a dwelling house or outbuildings by the occupant to provide day care, pre-school, play group or after school care services for a limited number of children provided that the primary use of the property shall prevail;]

**"distillery"** means a place where hard liquor is distilled and may include a selling point to the general public, tasting facilities and the provision of light meals, which is subservient to the main use, but does not include a restaurant and or pub;

**"dwelling house"** means a self contained inter-leading group of rooms, used for the accommodation and housing of a single family, together with adequate sanitary facilities and kitchen, and such outbuildings as are ordinarily used therewith, **[which may be used for long or short term accomodation]**, provided further that a dwelling house may not have more than two kitchens;

**"dwelling unit"** means a unit containing one or more inter-leading rooms, with adequate sanitary facilities and a kitchen, used for the accommodation and housing of a single family, **[which may be used for long or short term accomodation]**, and may be included in or separate from the main building on the property;

## E

**"encroachment agreement"** means an agreement between an owner and the Overstrand municipality relating to the projection of portions of a building, structure or activity from the owner's property onto or over **[Council] the municipality's** property;

**"environmental impact assessment"** means a report as stipulated in terms of applicable environmental legislation concerning the impact on the environment of specified proposed activities, or any other studies required by **[Council] the municipality** and includes heritage issues;

**"environmental management plan"** means a report concerning the impact on the environment of specified or, proposed activities and monitoring measures on the environment in order to guide the implementation of a proposal, ongoing maintenance after implementation and sustainable utilisation of the resources on the land unit; and shall include:...

**"erection"** ("erect" has a corresponding meaning) in relation to a building or structure includes:

- (i) the building of a new building or structure;
  - (ii) the alteration, or conservation, or renovation, or addition to, a building or structure; and
  - (iii) the **[re-erection] re-construction** of a building or structure which has completely or partially been demolished;
- [and "erect" has a corresponding meaning;]**

**"existing ground level"** means the level of the land surface on a land unit:

- (i) in its unmodified / natural state; or
- (ii) as established from a plan containing contours lodged with an official agency such as the municipality or government department which, in **[Council] the municipality's** opinion, depicts the existing level of the ground at or before the commencement date; or
- (iii) in a state which has been graded, with **[Council] the municipality's** approval, for the purpose of development; or
- (iv) as determined by **[Council] the municipality**, if in its opinion it is not possible to ascertain the existing level of the ground due to irregularities or disturbances of the land, and **[Council] the municipality** may require the owner or applicant to commission a registered land surveyor to measure levels of the ground or interpolate levels, in order to provide **[Council] the municipality** with sufficient information so that

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it can determine the most appropriate existing ground level for the purpose of administering this land use [zoning] scheme;

**"existing use"** means the use or uses which, in the opinion of [Council] the municipality, is or are practiced lawfully on the land unit, structure or building or part thereof;

## F

**"fertilizer plant"** means the production, packaging and storing of fertilizer (organic, synthetic or bio fertilizer) not produced on the farm and includes dry licks and mineral blocks;

**"flats"** means a building containing two [three] or more dwelling units, together with such outbuildings as are ordinarily associated therewith, [provided that in those zones where flats are permissible, less than three dwelling units shall also be permitted];

**"floor area"** means the area, measured in square meters, taken up by a building or part thereof, and covered by a roof, slab or projection, and shall be measured from the external faces of the external walls or similar support. The total floor area of a building which consists of 1 (one) or more storeys shall include all storeys; basements and balconies, but shall exclude garages and carports.

**"floor space"** in relation to any building means the area of the floor which is covered by a slab, roof or projections, provided that:

- (iii) a projection of eaves and a projection which [projection] acts as a sunscreen or an architectural feature which does not exceed 1,0 m beyond the exterior wall or similar support shall be excluded;
- (iv) any common pedestrian thoroughfare which is covered by a roof and which provides access through a building [concerned] from a parking, public street or an open space to some other parking, public street or open space and which is accessible to the general public during normal business hours shall be excluded;
- (vii) in the case of multi-level buildings, any stairwells, lift wells, light wells or other wells and any atrium shall only be counted once; and
- (viii) [and provided further that] floor space shall be measured from the outer face of the exterior walls or similar supports of such building, and where the building consists of more than one level, the total floor space shall be the sum of the floor space of all levels, including that of basements;

## G

**"gazebo"** means a lightweight, freestanding, open- sided structure or pavilion for use in the garden; usually as a sunshade, and includes any built structure covered by a roof or, thatched or retractable awing;

**"greenhouse"** means a structure [with the sides] predominantly made of transparent material, such as glass, Perspex, shaded cloth or plastic for the purpose of [growing] cultivating plants under controlled environmental conditions;

**"gross density"** means a measure of the number of dwelling units in a specified area, and is calculated, for the purposes of this land use [zoning] scheme, as follows:

**"guest house"** means a dwelling house, or second dwelling unit which is used for the purpose of [temporary] lodging of transient guests [or lodgers] on compensation; and may provide [the provision of] meals for guests; [visitors or tourists], [and] is occupied by the owner or occupant, or manager of the property, and [may include an in-house cash bar

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and restaurant, provided that these] may include associated facilities which are only for the use of the bona fide guests [or lodgers and may not be] and not accessible to the general public, but does not include a hotel, guest rooms, residential building or boarding house;

"guest rooms" means a limited number of rooms forming part of a dwelling house [or dwelling unit] that are let [on a permanent or temporary basis] to transient guests or lodgers, provided that the dominant use of the dwelling house / unit concerned shall remain for the living accommodation of a single family;

H

"harbour usage" means a building, structure(s) or areas for the docking, launching and mooring of boats and yachts, [shops and boat yards] and includes supplementary and associated uses such as shops and boat yards, boat houses, boat repair facilities, slip ways, dry docks, harbour offices, fuelling facilities, warehouses, piers, naval infrastructure and utilities, and cranes;

"heavy vehicle service station": means a facility for vehicles (above 3500 kg) and associated uses that includes the retail supply of fuel, oil, tyres or spares, general repairs, exhaust fitment, washing of vehicles, and a shop of which the floor area does not exceed 50% of the total floor space of all buildings on the land unit; but does not include spray painting, panel beating, blacksmithing or body work;

"hobby" means an activity done regularly in one's leisure time for pleasure, excluding activities creating noise, health and nuisance not related to a commercial venture;

"holiday accommodation" means a harmoniously designed and built development, used for holiday and recreational purposes, whether in private or public ownership, which:

- (i) Consists of a single enterprise in which accommodation is supplied [by means of short term renting] on a temporary basis and or by means of time sharing only;
- (ii) May include the provision of a camping site, mobile home park and dwelling units;
- (iii) May also accommodate a restaurant, and/or shop; [and] indoor and outdoor recreation facilities for the use of paying lodgers and occupants of the establishment; but
- (iv) [Does not Include] excludes a hotel or conference centre;

"home occupation" means the practising of [an occupation, profession, art or trade or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this zoning scheme for a home occupation; but does not include adult entertainment] a non-residential use conducted from a dwelling provided that the dominant use of the dwelling concerned shall remain the accommodation of a single family, provided that the use and property complies with the requirements contained in this land use [zoning] scheme for home occupation;

"hotel" means a property used [as a temporary residence] for transient guests, where lodging and meals are provided, and may include;...

"house shop" means the conducting of a retail trade from a dwelling house, or outbuilding by the operator of the enterprise [one or more occupants of the dwelling house concerned,] who shall reside on the premises, provided that the dominant use of the property concerned shall remain [for] the [living] accommodation of a single family;

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"household pet" means a pet kept primarily for a person's company and / or relaxation and / or protection restricted to dogs; cats; racing pigeons; hamsters; mice; rats; canaries; budgies; parakeets; parrots, and other talking birds; snakes; spiders; fish and scorpions but excludes wild animals in its widest sense; farm animals; livestock in its widest sense; laboratory animals, and animals bred or kept or captured for commercial purposes. The list may not be exhaustive. "Pet" will have the same meaning. The keeping of household pets will be subject to compliance with the applicable noise and health legislation and may not have a detrimental impact on the amenity of the area;

"Industry" means a property, which in [Council] the municipality's opinion, is used as a factory or workshop and in which an article or part of such article is made, manufactured, produced, built, assembled, compiled, printed, ornamented, processed, treated, adapted, repaired, renovated, rebuilt, altered, painted (including spray painting), polished, finished, cleaned, dyed, washed, broken up, disassembled, sorted, packed, chilled, frozen or stored in cold storage; and includes self-storage, [including] offices, caretaker's quarters, warehouses and breweries, distilleries and mechanical workshops or other uses which are subservient and ancillary to the use of the property as a factory [and includes a warehouse, brewery, distillery and mechanical workshop,] but does not include [a service station] noxious trade or risk activities;

"informal trading" means the selling of products in areas demarcated or leased by [Council] the municipality for such purposes [specifically for those purposes, such as markets and other demarcated areas];

"inter-leading" means the inter-accessibility of two or more habitable rooms or habitable spaces (excluding via bathrooms, garage, store rooms and bedrooms);

## L

"land unit" means a portion of land registered in the Deeds Registry, or shown on a valid plan of subdivision approved by [Council] the municipality or other competent authority, as an erf, stand, lot or plot; and includes servitudes and leased areas;

"land use scheme" has the same meaning as zoning scheme;

"Land Use Planning Act" means the Land Use Planning Act No 3 of 2014, (as amended);

"loading bay" means an area which is clearly demarcated for loading of goods onto commercial vehicles and off-loading of goods from commercial vehicles, and which has vehicular access to a public street to the satisfaction of [Council] the municipality;

"lodge" has the same meaning as "hotel" and is [means accommodation] located in a natural area such as nature reserves and farms;

## M

"market" means an outdoor venue [permitted by Council] for the sale [to the public] of fresh produce, food and beverages, crafts, art and manufactured goods to the public;

"medical centre" includes a laboratory, a pharmacy, medical consulting rooms and offices;

"multiple parking garage" means a place, [excluding a road, street and on-site parking associated with a primary or consent use, that is] used for the parking of motor vehicles by the public, with or without payment of a fee, and may include parking within a building but

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excludes parking on a road, or a street and on-site parking associated with a primary or consent use;

"multi-purpose centre" means a building utilised and designed for the purpose of accommodating a range of compatible institutional and community services permitted in the CO1 zone, provided that [Council] the municipality's consent is required to include any of the consent uses as part of the multi-purpose centre;

## N

"noxious trade" means [offensive] poisonous or potentially harmful trade, use or activity which, because of fumes, emissions, [smell] odours, vibrations, noise, waste products, nature of materials used, processes employed, or other causes, is considered by [Council] the municipality to be a potential source of danger or health risk [, nuisance or offence] to the general public or persons in the surrounding area. [and] "Noxious Industry" has the same meaning;

## O

"occasional use" means the use of a property for short- term activities, which includes but is not limited to; craft markets, public meetings, festivals, religious gatherings, fund raising projects, garage sales, bazaars, shows and film shoots;

"occupant" means any person who inhabits a building, structure or land, or any person [having] who is in charge of it or [the charge or] [management] manages [thereof] it, and includes the agent of any person absent from the area or whose whereabouts are unknown;

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

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

- (i) stipulates development parameters for a land unit or area, in addition to the underlying zoning or base zone requirements;
- (ii) may include further development parameters in a particular area or zone which may be more or less restrictive than for land units which are not covered by the overlay zoning;

## P

"parking area" means a practical parking layout approved by [Council] the municipality;

"parking bay" means an area measuring no less than 5,0 m × 2,5 m for a perpendicular or angled parking and 6,0 m × 2,5 m for parallel parking, which is clearly outlined and demarcated for parking of one motor vehicle and which is accessible to the satisfaction of [Council] the municipality;

**“Planning Law”** means the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; Land Use Planning Act, No 3 of 2014 and the Spatial Land Use Management Act, No 16 of 2013 or succeeding legislation which governs the preparation and administration of municipal planning including all related planning in Local, Provincial and National Government [the Western Cape or South Africa, whichever is applicable];

**“Poultry”** means fowls, ducks, muscovy ducks, geese, turkeys, pigeons, peacocks and domestic guinea-fowl

**["primary natural area”** means land which contains natural resources that are considered important for the well being of human and natural communities, by Council and comprise protected natural land, and “virgin land” as defined in environmental legislation, in either public or private ownership, as well as land earmarked for inclusion in such area; excluding agriculture activities, other than the sustainable harvesting of natural products;]

**“primary use”** in relation to land or buildings means any use specified in this land use [zoning] scheme as a primary use, being a use that is permitted without the need to first obtain [Council] the municipality’s consent;

**“private road”** means privately owned land which provides vehicular access to a separate land unit or land units and which is designated as private road or private street on an approved general plan, diagram or approved plan of subdivision; it may include ancillary access control infrastructure such as a gatehouse, guardhouse, refuse room and utility room, but does not include a driveway on a property or a servitude;

**“private open space”** means land which is in private ownership, used primarily for outdoor sports, play, rest or recreation, or as a park area or nature area, and includes associated buildings, infrastructure and uses, and may include an indoor or outdoor swimming pool and facilities, with the consent of **[Council] the Municipality;**

**“public road”** means any highway, road, thoroughfare, lane, footpath, sidewalk, alley, passage, bridge or any other place of a similar nature or any portion thereof serving as a public right of way which is registered in the name of the State or local authority, and includes a public street;

## R

**“recreational facilities”** means the use of land **[(including stretches of coastline and large, uncovered or open developed or undeveloped areas)]** to practice a particular sport or combination of sports and general recreation and includes a clubhouse and associated infrastructure and buildings, indoor and outdoor swimming pools and associated infrastructure, and a shooting and driving range but does not include any building or structure that is used for business or any other use not aligned to or dependant on the sport concerned;

**“register”** means the record held by **[Council] the municipality** in connection of all departures, certification uses, consent uses, site development plans, conditions relating to use rights or special zone development parameters;

**“renewable energy structures”** means any wind turbine or solar voltaic apparatus, or grouping thereof, which captures and converts wind or solar radiation into energy and is erected for commercial use and gain irrespective of whether it feeds onto the national electricity grid or not, and includes any appurtenant structure or any test facility or structure which may lead to the generation of energy on a private or commercial basis;

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**“residential building”** means a building where lodging is provided for human habitation, together with such outbuildings as are ordinarily used therewith **[and]**, limited to, boarding houses, **[backpackers (hostels),] and** old age homes **[, and or]** where facilities are shared;

**“retirement village”** means a development for the purposes of accommodating retired persons and associated facilities and conforms to the following conditions:

- (i) Other than staff accommodation, each dwelling unit shall be occupied by at least one person **[who is 50 years or older or as amended] and must comply with the applicable legislation;**
- (ii) A range of care and other facilities shall be provided to the satisfaction of **[Council] the municipality;**
- (v) Additional development management provisions may be determined by **[Council] the municipality** in respect of a retirement village;

**“roof”** means a water proof covering, excluding shade ports;

**“rooftop base station”** means a cell phone base station where antennae are attached to the roof or side of an existing building; provided that any antennae support structure or equipment room that is not part of the building does not extend more than 2,5 m in height above the top of the building;]

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

## S

**“sale of alcoholic beverages”** means the sale or offering for sale of drinks **[to the public, of drinks]** capable of producing intoxication in a consumer, and may include bars, pubs and taverns;

**“scrap yard”** means a property which is utilised for one or more of the following purposes (subject to the provisions of Chapter 16.10):

- (i) storage, depositing or collecting of junk or scrap material or articles for purposes of recycling;
- (ii) the dismantling of vehicles, machines or other articles to recover components or materials;
- (i) **[Storing, depositing or collecting of junk or scrap material or articles the value of which depends mainly or entirely on the material used in the manufacture thereof;**
- (ii) **The dismantling of second hand vehicles or machines to recover components or material; and**
- (iii) **The storing or sale of second hand parts, poles, steel, wire, lumber, tyres, bricks, containers or other articles which are suitable to be left out in the open without any serious damage being incurred; and includes blast furnaces for melting and moulding of metals;**
- (iv) **Subject to the provisions of section 8.1.9 and 8.1.10]**

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

- (i) The second dwelling unit must be situated [shall remain] on the same land unit;
- (ii) The second dwelling unit shall comply with the requirements specified in this land use [zoning] scheme;

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- (iii) **[Council]** The municipality may require the payment of a bulk services levy or such other levy as it may determine when permitting the erection of a second dwelling unit;
- (iv) Where a wendy house, **[shelter]** or outbuilding is used for accommodation purposes, such wendy house **[shelter]** or outbuilding shall be considered a second dwelling unit for the purpose of this scheme;

**"sectoral framework"** means a broad policy plan and supporting documentation for a specified planning area and the surrounding area. It may include principles and broad heads of agreement summarising the general obligations of **[Council]** the municipality, the owner of property and / or developer of land in relation to the specified planning area. A contextual framework is prepared by **[Council]** the municipality, or a land owner or development agency under the supervision of **[Council]** the municipality

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

**"service agreement"** means a written agreement which is concluded between a property developer and / or owner and **[Council]** the municipality, in terms of which the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of internal and external infrastructure or engineering services and the standard of such infrastructure or services are determined; which agreement is also applicable to any successor~~[/](s)~~ in title of the developer;

**"service trade"** means an enterprise which **[is]**:

- (iii) is not **[liable]**likely, in the event of fire, **[to cause]** to cause excessive combustion, **[give]**resulting in **[poisonous]**noxious fumes or **[cause]** explosions; and
- (iv) includes a builder's yard and allied trades, fitment centre for tyres, shock absorbers or exhausts systems, and similar types of uses; but
- (v) excludes **[Does not include]** an abattoir, **[brick-making site]** brick yard, sewage works and service station **[or motor repair garage];**

**"servitude"** means a registered personal or registered / unregistered praedial right that grants or restricts use over a property or part thereof for specific purposes;

**"shop"** means a property or part of a property used for the retail sale of goods, items and services to the public, including a retail concern where goods which are sold are manufactured and repaired; provided that the floor space relating to such manufacture or repair shall not exceed 50% of the floor space of the shop; "shop" does not include an industry, service trade, motor repair garage, service station, adult entertainment business or sale of alcoholic beverages, and if such uses are included on the property they shall be regarded as separate uses subject to such separate development parameters **[rules]** as may be determined by **[Council]** the municipality;

**"single family"** means a household which may consist of:

- a single parent with or without children; or
- a married or unmarried couple with or without children and / or dependents; or,
- a legal guardian of a child / children,

[means a household, all the members of which are placed under the guidance of a single family head provided that with the exception of unmarried children every member of the household shall be a dependant by commonlaw of the said family head. No more than two unrelated or independent persons who earn and receive an independent income and who maintain a common household.]

**“site development plan”** means a scaled and dimensioned plan which indicates details of proposed development and may include the following:

(xix) Any other details as may reasonably be required by [Council] the municipality such as co-ordinates;

**“staff quarters”** means a building, whether attached or detached from the main unit for the sole purpose of the housing of staff, and where [Council] the municipality may request proof of necessity of staff quarters;

**“street boundary”** means the boundary which separates a land unit and a public road or private road; provided that the boundary of a pedestrian way or service lane that, in the opinion of [Council] the municipality, is not and never will be used by motor vehicles, shall be deemed to be a common boundary for the purpose of determining building lines, street centreline setback and site access requirements;

**“structure”** has the same meaning as “building” (i.e. Anything built by man); [without in any way limiting its ordinary meaning, includes any building, shelter, wall, fence, pillar, pergola, steps, landing, surfaced or covered driveway, terrace, sign, ornamental architectural feature, swimming pool, fuel pump and underground tank, and any portion of a structure;]

**“subdivisional area”** means a land unit or land units zoned in a manner permitting subdivision as contemplated in [the] Planning Law and which has been made subject to:

- (i) A use determination;
  - (ii) A density determination;
  - (iii) Relevant conditions and stipulations contained in this land use [zoning] scheme;
  - (iv) The planning stipulations of any applicable legislation and or planning documents;
- and
- (v) Any other conditions laid down at the time of the approval for the rezoning;

## T

**“this land use [zoning] scheme”** means the land use [zoning] scheme of the Overstrand municipality;

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

**“transport use”** means a transport undertaking based on the provision of a transport service and includes a public or private undertaking such as, (but not limited to) an airport, a railway station, a bus depot or bus terminus, a taxi rank, a public transport interchange and, a harbour and associated uses, including communications, transport, accommodation and facilities, sheds, container depots, workshops, offices and directly related shops;

## U

**“urban agriculture”** means the cultivation of crops and or keeping of animals and poultry (which may be sold in neighbouring markets), on relatively small demarcated areas within urban areas [, for sale in neighbouring markets,] provided that cultivation of a garden by an occupant shall not be regarded as urban agriculture for the purposes of control in terms of this land use [zoning] scheme;

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

**“utility service”** means a use or infrastructure that is required to provide engineering and associated services for the proper functioning of urban development and includes a water reservoir and purification works, electricity substations and transmission lines, waste water pump stations and treatment works, renewable energy infrastructure such as wind turbines and solar panels, whether above or below ground or water, and may include such sustainable service delivery technology as **[Council]** the municipality may approve, but does not include road, or transport use;

#### V

**“vertical division”** of a building means a portion of the building with multiple floor levels that is clearly distinguishable as a logical vertical component from the other portions of the building, and where a building is divided in vertical divisions, then every such division shall have a separate base level, with a minimum difference in floor level of one meter, for the purpose of administrating this land use scheme;

[of a building means a portion of the building bounded by external and or internal walls, with or without openings, which portion is clearly identifiable as a logical vertical component from the other portions of the building, and Council may deem that a building is divided in vertical divisions where every such division shall have a separate base level for the purpose of administrating this zoning scheme;]

#### W

**“wendy house”** means a wooden structure used primarily for the storage of goods, and may [may] be regarded as an outbuilding, provided that:

- (i) When it exceeds 10 m<sup>2</sup> in **[size]** extent, building plans must be submitted to **[Council]** the municipality for consideration;

#### Z

**“zoning map”** means an approved map or maps **[showing]** indicating the land units within **[Council]** the municipality's area of jurisdiction and applicable zoning and Overlay Zones;

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**By amending PART 1: CHAPTER 1 as follows:**

- 1.1.1 This document forms part of the land use [zoning] scheme of the Overstrand Municipality, and applies to the area of jurisdiction of the Overstrand Municipality with effect from the date [that notice of adoption] of [is] publication [published] in the Provincial Gazette.
- 1.1.3 The land use [zoning] scheme consists of the rules contained in this document, the zoning map or maps which indicate the zoning of property, and the record of all approved departures, special consents and conditions as per the Land Use Register.

**By amending and renumbering PART 1: CHAPTER 2 as follows:****Submission of applications**

- 2.1.1 In addition to the requirements stipulated in any other law, the following requirements relate to applications submitted in terms of this land use [zoning] scheme.
- (a) Applicants shall ensure that applications submitted to the Municipality are:
- (i) Clearly and legibly written or typed and explained in plain language;
  - (ii) Fully completed and properly motivated, in the required format and accompanied by the fees and other documents as required by **[Council]** the municipality from time to time; and ...
- [(b) The Municipal Manager or his delegate shall, within fourteen calendar days from the date of receipt of an application, notify the applicant in writing of any aspects that require additional information or documentation, if any.**
- (c) If additional information is required, the date on which the application is resubmitted with the additional information to the satisfaction of the Municipal Manager or delegate shall be the date of the application.]**

**[2.2 APPLICATION FOR A CONSENT USE]****[Application for a consent use]**

- 2.2.1 **[The owner of a property may apply to the Council to use the property concerned, for the purposes of a consent use that is permitted in a particular zone with the Council's consent;**
- 2.2.2 **Where the Council is of the opinion that any land owner may have an interest in the application, the Council may first advertise the application concerned, and the provisions of 2.4 will apply.**
- 2.2.3 **The Council may grant or refuse its consent and the provisions of 2.4 will apply.**

**Conditions applicable to consent uses**

- 2.2.4 **Any consent use in a primary zone shall be subject to the development parameters of that zone and to the particular restrictions provided for a particular use in the zone concerned, unless special land use restrictions apply in respect thereof; and**

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- 2.2.4 The Council may impose other conditions with regard to the specific property concerned.]

**[2.3 APPLICATION FOR THE CONSOLIDATION OF LAND UNITS]**

**[Application for the consolidation of two or more properties]**

- 2.3.1 [No person shall from the commencement of these regulations consolidate any land except in accordance with an application granted under 2.3.6 by the Council.
- 2.3.2 An owner of land may apply in writing to the Municipal Manager for the granting of approval to consolidate land.
- 2.3.3 The Municipal Manager may:
- (a) Require that the application be advertised if, in the opinion of the Municipal Manager, the proposed consolidation may adversely affect the character of the area or the interests that any person has in land; and
  - (b) Request the comment of any person or entity that in the opinion of the Municipal Manager has an interest in the application.
- 2.3.4 If the Municipal Manager acted in terms of 2.3.3 he or she shall submit copies of the objections or comments received to the applicant for comment.
- 2.3.5 The Municipal Manager shall submit the application and all relevant documents to the Council for consideration.
- 2.3.6 The Council may grant or refuse an application under 2.3.2; provided that such an application may only be refused on the basis of its effect on existing rights concerned or to preserve the built form and character of the surrounding area.
- 2.3.7 When the Council grants an application for consolidation it:
- (a) May do so subject to such conditions as it deems fit;
  - (b) Shall notify the applicant and the Surveyor-General concerned of the Council's decision and where applicable furnish them with a copy of the conditions imposed by the Council.]

**2.2 ADDITIONAL REQUIREMENTS RELATING TO PUBLIC PARTICIPATION**

**Advertisements**

- 2.2.1 Advertising of all applications shall take place in accordance with the requirements of applicable planning law, applicable legislation and [Council] the municipality's advertising policy, as approved by [Council] the municipality from time to time.

**[Petitions**

- 2.4.2 In addition to requirements stipulated in any other law, the following requirements relate to objections submitted in the form of a petition.
- (a) All petitions shall clearly indicate:

- (i) The full name, national identity number and physical address of each signatory;
  - (ii) The full name, postal address, telephone number and facsimile of no more than two specified persons to whom further communication relating to the application may be directed; provided that where such information is not made available, the Council shall direct further communication only to the first person who signed such petition and whose address is known; and only the first objector will be recorded as the legal objector; and
  - (iii) Each page of a petition containing the signature of a petitioner shall contain at least a summary of the objection.
- (b) Any written notification by the Council to petitioners shall be regarded as sufficient if such notification is sent to the persons contemplated in 2.4.2(a) (ii) above.
  - (c) Any petition that does not comply with the above requirements will not be considered and processed as valid objection.
  - (d) Any petition submitted in terms of 2.4.1 establishes a single right of appeal with respect to decisions taken in terms of this land use scheme.]

## **[2.5 DECISIONS]**

### **[Procedures for decisions]**

**2.5.1 Council may approve or refuse an application submitted in terms of this land use scheme, and may impose conditions on approval.**

**2.5.2 The Council shall, when considering an application in terms of this land use scheme, take into account, but not limited to the following:**

- (a) The general purpose of the land use scheme;
- (b) Principles and policies established for such applications in terms of relevant legislation by national, provincial and municipal spheres of government, as may be amended from time to time;
- (c) Any objections received on or before the closing date in response to an advertisement of the application, as well as comments received from other organs of state;
- (d) Any response received from the applicant to objections and comments;
- (e) Any approved integrated development plan, spatial development framework or sectoral plan that applies to the application or area concerned;

**Provided that Council shall not refuse any application solely on the basis of trade competition.]**

## **[2.6 CONDITIONS OF APPROVAL]**

**2.6.1 The Council may impose conditions of approval for applications submitted in terms of this land use scheme, including approval for a consent use, and such conditions may include provisions not contained in this land use scheme but which are consistent with the general purposes of the land use scheme and requirements of the Planning Law, or any other requirements deriving from the circumstantial factors surrounding the application.**

- 2.6.2 If the Council grants its consent in terms of this land use scheme it may, in addition to any other conditions, impose conditions of approval that:
- (a) Limit the consent use for a specific period of time;
  - (b) Limit the consent use to a specific activity described in the definition of the use in this land use scheme;
  - (c) Require that a consent use does not adversely affect the potential of the property to be used for its primary uses in terms of this land use scheme.

2.6.3 If Council grants its consent in terms of this land use scheme, it may require that a copy of the approved general plan or section plan be submitted to Council, prior to clearance certificates being issued for the purpose of transfer.]

### **2.3 [2.7] VALIDITY OF INFORMATION**

2.3.1 Any information in connection with this land use [zoning] scheme, that is given by an official to a person making enquiries, shall only be valid if it is in writing, signed by the official with the delegated power of **[Council] the municipality**, and if such information is not in conflict with the provisions of this land use [zoning] scheme, the zoning map, or an approval granted by **[Council] the municipality**, or any applicable legislation.

2.3.2 At all relevant times when considering the furnishing of the information referred to in clause **[2.7.1] 2.3.1**, the provisions of the Promotion of Access to Information Act will apply, **[or]** as amended.

### **[2.8 APPEALS]**

#### **[Appeals]**

2.8.1 An applicant or person who has objected to an application may submit an appeal against a decision relating to the application in terms of this land use scheme, and the appeal procedures as stipulated in Planning Law will *mutatis mutandis* apply for processing appeals submitted in terms of this regulation.

2.8.2 An objection submitted in the form of a petition establishes a single right of appeal and will be considered and processed as a single appeal.]

### **2.4 [2.9] ERRORS ON ZONING MAPS**

2.4.1 In the event that a zoning has been wrongly allocated on the zoning map or wrongly converted from a former zoning map associated with a former land use [zoning] scheme, the owner of the property, or the municipality, after consultation with the owner, may submit an application to **[Council] the municipality** to correct such error, subject to the following provisions:

- (a) The applicant must submit material proof of an error and proof of the lawful land use rights;
- (b) The applicant must propose a suitable zoning to be allocated to the property;
- (c) The application procedures in accordance with the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended will apply; and
- (d) The applicant will be exempted from the payment of any application fee.

2.4.2 **[Council] The municipality** shall consider an application submitted in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 [2.9.1] and if

such application is approved, shall amend its zoning maps in accordance with the approval.

**By amending PART 1: CHAPTER 3 as follows:**

3.1.2 (b) With a split-zoning where one base zone applies to a portion of the land unit and one or more other base zones apply to other defined portions of the land unit, provided that where a split-zoning is envisaged the applicant must submit a plan prepared by a suitably qualified land surveyor, clearly identifying the area of each base zone concerned, to the satisfaction of **[Council]** the municipality; and

3.1.6 All property owners, within the urban edge (as indicated in the applicable SDF, are limited to the keeping of household pets as defined. The keeping of household pets is subject to any applicable legislation, By-Law and or policy relating to household pets.

**Bulk zones**

**[3.1.6]** 3.1.7 Certain use zones make provision for different bulk zones that distinguish between different building forms or intensity of land use, through different development parameters [rules]. In order to change or relax the development parameters [rules] applicable to a property regulated by a bulk zone, the following must be submitted and approved and the municipality may determine which method shall be used:

- (a) an application for a departure from the development parameters [rules] or bulk zone; or
- (b) an application for a rezoning to another use zone; **.[must be submitted and approved, and Council the municipality may determine which method shall be used.]**

**3.2 CATEGORIES OF USES**

**Primary uses**

3.2.1 The use of a property for any purposes specified as a primary use in this land use [zoning] scheme for that property is permitted without the consent of **[Council]** the municipality, provided that such use conforms to the provisions specified in the particular zone, overlay zone where applicable and definitions in this land use [zoning] scheme.

**[Consent uses**

3.2.2 The use of a property for any purposes specified as a consent use in this land use scheme for that property is permitted only if the Council grants its prior written consent.

3.2.3 The Council may grant or refuse an application for a consent use.

3.2.4 The Council may limit its approval of a consent use application to one or more uses included within the definition of the consent use.]

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**Additional use rights**

**3.2.2** **[3.2.5]** An activity or use described as an "Additional Use Right" in a particular zone is a primary use in that zone, provided that any conditions specified for such activity or use are adhered to. In this scheme additional use rights are only applicable to Authority Zone 1 and Community Zone 1 **[and the Less Formal Development Zone]**.

**Uses not permitted**

**[3.2.6]** **3.2.3** Subject to any provisions to the contrary in the Land Use Scheme [Planning Law] and or any condition of title, property may not be used for any purpose without the approval of the municipality. **[which is not specified in this land use scheme.]**

**[3.2.7]** **A property shall only be used for the purposes set out in the primary or consent use provisions for a particular zone.]**

**Special uses**

**3.2.4** **[3.2.8]** A special use may be permitted in the Special Zone with the consent of the **[Council]** municipality.

**Occasional uses**

**[3.2.10]** **3.2.5** The occasional use conforms **[with]to** the **[Council]** municipality's By-law [policy, if such policy exists;] provided that the approval does not absolve the applicant from compliance with any other relevant legislation.

**[3.2.11]** **3.2.6** Approval granted under **[3.2.10]** **3.2.5** shall be subject to such conditions as the **[Council]** municipality may impose, which may include, but are not limited to, the following:

- (a) That the applicant provides parking and toilet facilities to the **[Council]** municipality's satisfaction;
- (b) That such occasional use does not extend beyond the hours of operation or duration in terms of days as determined by the **[Council]** municipality; and
- (c) That such approval may be withdrawn by written notice to the applicant, if in the opinion of the **[Council]** municipality, any condition of approval is not complied with or if a public nuisance is created.
- (d)** The municipality may determine a public participation process, with special regard to the affected community.

**Uses shown on building plans**

**[3.2.13]** **3.2.7** A building plan may not be considered and approved in terms of the National Building Regulations and Building Standards Act No 103 of 1977, or as amended, where the uses indicated on the property or within the proposed building or structures are in contradiction with this land use [zoning] scheme, or any other legislation.

**[3.2.14]** **[If any building plan is approved showing uses on a property, such uses are not considered to have been approved in terms of this land use scheme.]**

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[3.2.15] [A lawful non-conforming use shall not constitute an offence in terms of this land use scheme.]

By amending and renumbering PART 1: Chapter 4 as follows:

#### 4.1 [SUMMARY OF USE ZONES AND DEVELOPMENT RULES

4.1.1 Table A overleaf contains a summary of the zones and development rules contained in this land use scheme. This table is provided for ease of reference, but the detailed development rules are contained in Part 2 of this document. In the event of a difference between Table A and Part 2, the provisions of Part 2 shall prevail.]

#### 4.1 INTERPRETATION

##### Rules for interpretation

4.1.1 The following rules of interpretation shall apply:

- a) In this land use scheme, in the register, in any note on the zoning map and in any condition imposed in terms of this land use scheme, the words and expressions shall have the meanings assigned to them in accordance with the definitions contained in these land use scheme regulations, except where a contrary interpretation is clear from the context. Interpretation of words not defined in this chapter will have the meanings assigned to them in the "New Shorter Oxford English Dictionary" published by Oxford University Press, except where a contrary interpretation is clear from the context.
- b) Headings contained in this land use scheme shall be used for reference purposes but shall not be construed to govern, limit or modify the meaning or intent of any provision of the land use scheme.
- c) The masculine gender includes the feminine and neuter, and vice versa, and the singular includes the plural unless the context indicates otherwise.
- d) Whenever reference is made to a law, ordinance or by-law, the reference applies to all substitutions, amendments and additions of that law, ordinance or by-law.
- e) Whenever reference is made to the use of a building, land unit or property, the reference applies also to the erection of a building, to the use of part of a building and to the use of a land unit, whether a building is erected on the land unit or not.
- f) It is understood that the terms "must" and "shall" are mandatory, and the term "may" is not mandatory unless the context clearly indicates otherwise.
- g) The municipality's interpretation of the text shall prevail unless the contrary is proven.

##### Methods of measuring distances, levels and heights

4.1.2 The following provisions apply with regard to measuring distances, levels or heights:

- a) If required by the municipality, the owner or applicant shall appoint a registered surveyor to supply or verify information necessary for the

municipality to make a decision about compliance with distances or heights required in terms of this land use scheme.

- b) Where reference is made or implied to the distance between boundaries or between a building and a boundary, this distance shall be measured in the following manner:
- (i) The boundary or boundaries and all points of the building shall be projected onto a horizontal plane, and all measurements shall be made in such a plane.
  - (ii) The distance between a point on a building and a boundary shall be measured at the shortest distance between the point and the boundary.
- c) Where reference is made to a portion of a boundary "opposite" a building, such portion shall be defined by drawing lines in a manner described in clause (b), from points on such building, at right angles to such boundary.
- d) Where reference is made to a distance, ground level or height of a point on a building or other measurement, then such distance, level or height shall be calculated in accordance with the land use scheme. In any case where the distance, level or height involved is so irregular that calculation in accordance with these principles is impractical or leads to a result which is clearly not in accordance with the intent of the land use scheme, the municipality shall determine the distance, level or height concerned for the purpose of administering this scheme.

#### Interpretation of boundaries

4.1.3 Where uncertainty exists as to the boundaries of use zones, the following rules apply in the order listed:

- a) Boundaries shown as following or approximately following any public street or road shall be construed as following the street or road cadastral boundary.
- b) Boundaries shown as following or approximately following any land unit boundary shall be construed as following such cadastral boundary.
- c) Boundaries shown as following or approximately following natural features shall be construed as following such features.
- d) In the event of further uncertainty as to the boundaries of a use zone, the municipality shall make a determination or may appoint a professional land surveyor of his choice to determine the boundaries at the cost of the land owner.

#### Interpretation of category of use and zoning

4.1.4 The municipality shall determine the category of use or zoning, and its decision shall be final unless the contrary is proven, where:

- a) there is uncertainty or dispute about zoning categories;
- b) there is conflict between the provisions of a zoning map, this land use scheme and the register; and

- c) there is uncertainty or dispute about the zoning of property.

### Architectural guidelines

4.1.5 Architectural Guidelines approved prior to the promulgation of the Overstrand Municipality Zoning Scheme 2013, or as amended, shall prevail unless otherwise determined

By amending and renumbering PART 2: Chapter 5 as follows:

## CHAPTER 5: AGRICULTURAL AND RURAL ZONES

### 5.1 AGRICULTURE ZONE 1: AGRICULTURE (AGR1)

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

- (a) **Primary uses** are: agriculture, crèche, dwelling house, [day care centre], guest rooms, home occupation;
- (b) **Consent uses** are: additional dwelling units, agricultural industry, animal care centre, aquaculture, day care centre, [crèche], farm shop / stall, fertilizer plant, guest house, hotel, institution, intensive animal farming, intensive horticulture, lodge, mining, place of assembly, place of entertainment, place of instruction, plant nursery, riding stables, [rooftop base,] service trade, tourist accommodation, tourist facilities, transmission apparatus [tower], utility services, wellness centre, 4 x 4 trail.

### Development parameters [rules]

5.1.2 The following parameters [rules] apply:

- (a) **Floor space**

The total floor space of all buildings on the land unit, may not exceed 5 000m<sup>2</sup>; provided that **[Council]** the municipality may relax this requirement if it is satisfied that such buildings are required for bona fide farming activities on the land unit.

- (c) **Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure [roof] is 8,0 m, provided that;
- (ii) Agricultural buildings other than dwelling units shall not exceed a height of 12,0 m measured from the base level to the top of the structure [roof]; and where **[Council]** the municipality is satisfied that a greater height is necessary for the agricultural function of the building, it may permit such greater height; and

### [Additional dwelling units]

5.1.1 The Council may approve additional dwelling units in Agricultural Zone 1 provided that:

- (a) The additional dwelling units shall remain on the same cadastral units as the primary dwelling unit;
- (b) The number of additional dwelling units shall not exceed the 1 unit per 10,0 ha, up to a maximum of five additional dwelling units per land unit, and
- (c) No additional dwelling units may be erected within 100 m of the high water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of Council.

#### **Farm shop/stall**

**5.1.2 The Council may approve a farm shop provided that:**

- (a) The maximum floor area is 300m<sup>2</sup>;
- (b) The maximum height does not exceed 8,0 m, measured from the base level to the top of the roof;
- (c) Sufficient parking is provided to the satisfaction of Council; and
- (d) The access requirements of the relevant roads authority must be complied with.

#### **Agricultural industry**

**5.1.3 The Council may approve an agricultural industry, if it is satisfied that the proposed use or activity is desirable, provided that:**

- (a) The area affected by the agricultural industry must be clearly identified on a land survey diagram or other plan prepared by a suitably qualified person to Council's satisfaction, and endorsed by Council; and
- (b) The following development rules apply:
  - (i) A site development plan, must to be submitted to Council's satisfaction, in terms of 16.3, for all new development or extensions within an area determined in terms of (a) above; and
  - (ii) Parking and access shall be provided on the identified portion in terms of Chapter 17, provided that Council may require additional parking and loading requirements in response to the operational requirements of a particular agricultural industry.

#### **Guest rooms**

**5.1.4 The following provisions shall apply where a portion of a property is used for the purposes of guest rooms or where rooms are let by an occupant of that property to paying guests or lodgers:**

- (a) No more than two rooms per property shall be used for the bedroom accommodation for paying guests or lodgers, and no more than 5 guests or lodgers shall be supplied with lodging or meals at any one time;
- (b) Guest rooms may not be converted to, or used as, separate dwelling units, and there shall be no cooking facilities in the guest rooms, apart from a kettle;
- (c) Meals shall only be supplied by the landowner or manager to guests or lodgers who are staying on the property;
- (d) No advertising sign shall be displayed without the written approval of Council other than a single un-illuminated sign or notice affixed to the

building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law; and

- (e) One on-site parking bay shall be provided per guest room.

#### Day care centre

5.1.5 The following provisions shall apply where a portion of the property is used by the occupant of the property for the purposes of a day care centre:

- (a) No more than 5 children are permitted at any one time;
- (b) A register of children must be kept, and completed, and the register must be produced for inspection on the request of Council;
- (c) The services shall be primary day care or educational and not medical;
- (d) The hours of operation shall be restricted to 07h00 and 18h00 from Mondays to Friday and from 07h00 to 13h00 on Saturdays;
- (e) The proprietor of the day care centre shall reside on the property;
- (f) No more than two assistants may be employed at the day care centre; and
- (g) The minimum indoor and outdoor play space shall be provided as follows:

Indoor Play Space	Outdoor Play Space
1,5 m <sup>2</sup> per child	2,0 m <sup>2</sup> per child

#### Home occupation

5.1.6 The following provisions shall apply where a portion of the property is used for the purposes of home occupation:

- (a) The dominant use of the dwelling house or dwelling unit shall be for the living accommodation of a single family;
- (b) The total area used for a home occupation shall not exceed 25% of the total floor area of the buildings on the property;
- (c) No more than 5 persons in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- (d) No portion of such dwelling, and no home occupation shall be used for the purposes of noxious trade, risk activity or sale of alcoholic beverages;
- (e) No advertising sign shall be displayed without the written consent of the Council other than a single un-illuminated sign or notices affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand by-law relating to outdoor advertising and signage;
- (f) The storage of products, goods, or supplies connected to the home occupation shall be inside a building or screened from neighbours and public streets;
- (g) The hours of operation are restricted to 07h30 and 17h30 Monday to Friday and 7h30 to 13h00 on Saturdays;
- (h) On site parking must be provided to the satisfaction of Council, provided that at least two on site parking bays are provided;
- (i) No more than one vehicle, not exceeding 3 500 kg gross weight, shall be utilised for the home occupation; and
- (j) The Council may impose additional conditions in order to minimise any potential public nuisance.]

**Additional dwelling units**

5.1.3 The provisions of Chapter 16.10 apply.

**Farm shop/stall**

5.1.4 The provisions of Chapter 16.10 apply.

**Agricultural industry**

5.1.5 The provisions of Chapter 16.10 apply.

**Guest rooms**

5.1.6 The provisions of Chapter 16.10 apply.

**Guest house**

5.1.7 The provisions of Chapter 16.10 apply.

**Day care centre**

5.1.8 The provisions of Chapter 16.10 apply.

**Home occupation**

5.1.9 The provisions of Chapter 16.10 apply.

**Transmission apparatus**

5.1.10 The provisions of Chapter 16.10 apply.

**Site development plan**

5.1.11 [5.1.9] [Council] The municipality may require that a site development plan be submitted for approval in accordance with Chapter 16.3.

**[RURAL ZONES]****RURAL ZONE 1: AGRICULTURAL SMALL HOLDINGS (R1)****Use of the property**

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

- (a) **Primary uses** are: agriculture, crèche, dwelling house, [day care centre], guest rooms, home occupation;
- (b) **Consent uses** are: agricultural industry, animal care centre, aquaculture, conservation use, day care centre [crèche], farm shop / stall, intensive animal farming, intensive horticulture, place of assembly, place of entertainment, place of instruction, plant nursery, recreational facilities, riding stables, [rooftop base,] second dwelling unit, tourist accommodation, tourist facilities, transmission apparatus [tower], utility services.

**Development parameters [rules]**

5.2.2 The following parameters [rules] apply:

**(a) Floor space**

The total floor space of all buildings on the land unit[,may], may not exceed 2 000m<sup>2</sup>; provided that **[Council]** the municipality may relax this requirement if it is satisfied that such buildings are required for **[genuine]** bona fide farming activities on the land unit.

**(c) Building lines**

(ii) Where the configuration of the land unit, is of such a nature that alternative building lines need to be considered, **[Council]** the municipality may approve such alternative building lines to permit the use of the property as defined in this zone, provided that where Rural Zone 1 abuts an urban area the building lines of the adjacent property shall apply along the shared boundary; and

**(d) Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure [roof] is 8,0 m;
- (ii) Agricultural buildings other than dwelling units shall not exceed a height of 10,0 m measured from the base level to the top of the structure [roof]; provided that where **[Council]** the municipality is satisfied that a greater height is necessary for the agricultural function of the building, it may permit such greater height; and

**Minimum subdivision size**

5.2.3 The provisions of Chapter 16.10 apply.

**[The following development rules apply:**

- (a) No new subdivision or any remainder to be zoned Rural Zone 1 shall be less than:**
  - (i) 5,0 ha, if no minimum subdivision size is specified on the zoning map; or**
  - (ii) Where Council has specified a minimum subdivision size, as indicated on the zoning map in terms of an overlay zone for the area concerned, that minimum subdivision size applies.]**

**Second dwelling unit**

5.2.4 The provisions of Chapter 16.10 apply.

**[The following development rules apply to a second dwelling unit:**

- (a) The floor area of the second dwelling unit shall not exceed 250 m<sup>2</sup> in area;**

- (b) **A second dwelling unit shall be constructed in a similar architectural style and with external material, finishes and colour similar to the primary dwelling unit;**
- (c) **A second dwelling unit may be contained within the same building as a primary dwelling unit and may be either on the ground or first floor; and**
- (d) **A second dwelling unit may not be separately alienated in terms of the Sectional Title Act.]**

#### **Farm shop/stall**

**5.2.5** The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.4 apply.]**

#### **Agricultural industry**

**5.2.6** The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.5 apply.]**

#### **Guest rooms**

**5.2.7** The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.6 apply.]**

#### **Day care centre**

**5.2.8** The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.7 apply.]**

#### **Home occupation**

**5.2.9** The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.8 apply.]**

#### **Transmission apparatus**

**5.1.10** The provisions of Chapter 16.10 apply.

#### **Site development plan**

**5.2.11** **[Council]** The municipality may require that a site development plan be submitted for approval in accordance with Chapter 16.3.

**RURAL ZONE 2 : CONSERVATION USAGE (R2)****Use of the property**

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

- (a) **Primary uses** are: conservation use, dwelling house, guest rooms and home occupation;
- (b) **Consent uses** are: agriculture, aquaculture, day care centre, harvesting of natural resources, intensive animal farming, intensive horticulture, place of assembly, place of entertainment, place of instruction, plant nursery, recreational facilities, [rooftop base,] second dwelling unit, tourist accommodation, tourist facilities, transmission apparatus [tower], [utility]and utility services.

**Development parameters**

5.3.2 The following development parameters [rules] apply:

(a) **Floor space**

The total floor space of all buildings on the land unit may not exceed 800m<sup>2</sup>; provided that [Council] the municipality may relax this requirement if it is satisfied that such accommodation is required for bona fide conservation and / or farming activities on the land unit.

(c) **Building lines**

- (ii) Where the configuration of the land unit, is of such a nature that alternative building lines need to be considered, [Council] the municipality may approve such alternative building lines to permit the use of the property as defined in this zone, provided that where Rural Zone 2 abuts an urban area the building lines of the adjacent property shall apply along the shared boundary; and

(d) **Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure [roof] is 8,0 m; [provided that];
- (ii) Where [Council] the municipality is satisfied that a greater height is necessary for the agricultural function of the building, it may permit such greater height; [and]

**Minimum subdivision size**

5.3.3 The provisions of Chapter 16.10. apply

**[The following development rules apply:**

- (a) **No new subdivision or any remainder to be zoned Rural Zone 2 shall be less than:**

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- (i) 5,0 ha, if no minimum subdivision size is specified on the zoning map;  
or  
(ii) Where Council has specified a minimum subdivision size, as indicated on the zoning map in terms of an overlay zone for the area concerned, that minimum subdivision size applies.]

#### Second dwelling unit

5.3.4 The provisions of Chapter 16.10. apply

**[The provisions of 5.2.4 apply.]**

#### Guest rooms

5.3.5 The provisions of Chapter 16.10. apply

**[The provisions of 5.1.6 apply.]**

#### Day care centre

5.3.6 The provisions of Chapter 16.10. apply

**[The provisions of 5.1.7 apply.]**

#### Home occupation

5.3.7 The provisions of Chapter 16.10. apply

**[The provisions of 5.1.8 apply.]**

#### Transmission apparatus

5.3.8 The provisions of Chapter 16.10 apply

#### Site development plan

5.3.9 **[5.3.8][Council]** The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

#### 5.4 RURAL ZONE 3: AGRI-VILLAGE (R3)

##### Use of the property

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

- (a) **Primary uses** are: agriculture, crèche, dwelling house, town housing, home occupation, **[day care centre, ]**private open space, private road, second dwelling unit;

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- (b) **Consent uses** are: agricultural industry, clinic, community facility, day care centre, [crèche], farm shop / stall, guest house, house shop, intensive animal farming, intensive horticulture, market, place of assembly, place of instruction, plant nursery, restaurant, retirement village, [rooftop base], shelter, shop, tourist accommodation, tourist facility, transmission apparatus [tower], and utility services.

#### **Development parameters [rules]**

5.4.2 The following parameters [rules] apply:

(c) **Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure [roof] 8,0 m; **[provided that]**
- (ii) Where **[Council]** the municipality is satisfied that a greater height is necessary for the agricultural function of a building, it may permit such greater height; **[and]**

(d) **Building lines**

- (iv) **[Council]** the Municipality may require a 3,0 m combined building line between structures for reasons of health and safety.

(g) **Additional requirements**

The following additional requirements apply in this zone:

- (iv) Engineering services must be provided to the satisfaction of **[Council]** the municipality.

#### **Second dwelling unit**

5.4.3 The provisions of Chapter 16.10 apply.

**[The provisions of 5.2.4 apply, provided that:**

- (a) Where a wendy house or shelter is utilised for accommodation uses, such wendy house or shelter shall be regarded as a second dwelling unit; and
- (b) A second dwelling unit may not exceed 120 m<sup>2</sup>.]

#### **Farm shop/stall**

5.4.4 The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.4 apply.]**

#### **Agricultural industry**

5.4.5 The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.5 apply.]**

**Guest rooms**

5.4.6 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.6 apply.]

**Day care centre**

5.4.7 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.7 apply.]

**Home occupation**

5.4.8 ~~[5.4.7]~~ The provisions of Chapter 16.10 apply.

[The provisions of 5.1.8 apply, provided that:

- (a) No more than 5 persons in total shall be engaged in home occupation activities in a dwelling unit, including occupants or the occupant and any assistants; and
- (b) On site parking shall be provided to the satisfaction of Council.]

**House shop**

5.4.9 The provisions of Chapter 16.10 apply

[The following provisions shall apply where a portion of a dwelling unit or outbuilding is used

for the purposes of a house shop, by one or more occupants of a property:

- (a) The maximum floor area of that portion of a dwelling unit or second dwelling unit that is used for the purposes of a house shop shall not exceed 30,0m<sup>2</sup> or 25% of the floor area of the dwelling unit, whichever is the most restrictive;
- (b) No more than 3 persons, including the occupant or occupants of the dwelling unit, are permitted to be engaged in retail activities on the property, other than with the consent of Council;
- (c) No portion of the house shop shall be used for the purposes of noxious trade, risk activity, sale of alcoholic beverages, place of entertainment or gambling purposes;
- (d) No products, goods, or supplies connected to the house shop may be stored on the property outside a building;
- (e) Any new structure or alteration to the existing structure must conform to the residential character of the area concerned;
- (f) Only one un-illuminated sign, shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand by-law relating to outdoor advertising and signage;
- (g) The hours of operation and trading shall be restricted to 8h00 to 17h00 from Monday to Friday and from 8h00 to 13h00 on Saturday, and does not include public holidays or Sundays, or such trading hours as permitted by Council;
- (h) On site parking shall be provided to the satisfaction of Council;
- (i) Permission to operate a house shop is granted to a particular operator and is not transferable
- (j) No more than one vehicle, not exceeding 3 500 kg gross weight shall be utilised for the house shop; and

(k) Permission may only be granted for a fixed period, not exceeding 5 years and may on application, be extended by the Council, for a period determined by the Council.]

**Transmission apparatus**

5.4.10 The provisions of Chapter 16.10 apply

**Site development plan**

5.4.11 [Council] The municipality may require that a site development plan be submitted for approval in accordance Chapter with 16.3.

**By amending and renumbering PART 2: Chapter 6 as follows:**

**16.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)**

**Use of the property**

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

- (a) **Primary uses** are: [day care centre, ]crèche, dwelling house, guest rooms, home occupation, second dwelling unit, self-catering;
- (b) **Consent uses** are: crèche, [day care centre, ] green house, guest house, house shop, institution, place of instruction, place of worship, residential building, [intensive] and intensive horticulture.

**Development parameters [rules]**

6.1.2 The following parameters [rules] apply:

(a) **Coverage**

The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area as listed in the table below:

Net erf area	Maximum coverage
Less than 150m <sup>2</sup>	80%

(b) **Building lines**

(i) **Street building line**

The street building line is determined in accordance with the net erf area as listed in the table below:

Net erf area	Street building line
Less than 150m <sup>2</sup>	1.0 m

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- Where a garage obtains direct access off the street, a 4,0 m building line applies.
- The street building line of erven of 400 m<sup>2</sup> and greater is 4,0 m, provided that:
  - erf with an average depth of 20,0 m or less has a 3,0 m street building line.

[provided that erven of 400m<sup>2</sup> and greater:

- An erf with an average depth of 20,0 m or less has a 3,0 m street building line; and
- where a garage obtains direct access off the street a 4,0 m building line applies.]

(ii) Side and rear building line

The side and rear building lines are determined in accordance with the net erf area, as listed in the table below:

Net erf area	Side and rear building lines
<u>Less than 150 m<sup>2</sup></u>	<u>At least 1,0 m one side and 0 m on the other side. Rear = 1,0 m.</u>

**c) Height**

- (i) The maximum height of a building measured from the base level to the top of the structure [roof] is 8,0 m

**Subdivision and density standards**

6.1.3 The provisions of Chapter 16.10 apply.

**[(a) Minimum subdivision area**

Council may specify the minimum size of a subdivisional area in terms of an overlay zone and may prescribe the minimum size of subdivided portions to be achieved in such zone.]

**[(b) Maximum density**

Council may specify a maximum density for a land unit in terms of an overlay zone.]

**Second dwelling unit**

6.1.4 The provisions of Chapter 16.10 apply.

[The provisions of 5.2.4 apply; provided that:

- (a) The total floor area of the second dwelling units shall not exceed 120m<sup>2</sup>;
- (b) The same development rules apply as for the primary dwelling unit;
- (c) One on-site parking bay must be provided to the satisfaction of Council; and
- (d) Confirmation of the availability of services shall be obtained from the Director of Infrastructure and Planning or his successor in title.]

**Self-catering**

6.1.5 The provisions of Chapter 16.10 apply.

**Guest rooms**

6.1.6 The provisions of Chapter 16.10 apply.

[6.1.5 The provisions of 5.1.6 apply.]

**Day-care centre**

6.1.7 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.7 apply, provided that:

- (a) No more than 3 persons in total shall be engaged in the day care centre activities on the property, including the occupants or occupant and any assistants.]

**Home occupation**

6.1.8 The provisions of Chapter 16.10 apply.

[6.1.7 The provisions of 5.1.8 apply, provided that:

- (a) No more than 3 persons in total shall be engaged in the home occupation activities on the property, including the occupants or occupant and any assistants; and  
(b) On site parking must be provided to the satisfaction of Council, provided that at least one on-site parking bay is provided.]

**House shop**

6.1.9 The provisions of Chapter 16.10 apply.

[6.1.8 The provisions of 5.4.9 apply.]

**Sectional title**

6.1.10 No portion of a property zoned for single residential use, may be alienated in terms of the Sectional Title Act, or as amended.

**6.2 GENERAL RESIDENTIAL ZONE 1: TOWN HOUSING (GR1)****Use of the property**

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

- a. **Primary uses** are: [dwelling house in accordance with 6.1.2, ]town housing, private road, private open space;
- (b) **Consent uses** are: crèche, day care centre, dwelling house in accordance with 6.1.2, flats, green house, home occupation, residential building, retirement village, tourist accommodation.

**Development parameters [rules]**

6.2.2 The following parameters [rules] apply:

**(a) Density**

- (i) The maximum gross density in this zone is 35 units a hectare.
- (ii) A minimum erf size of 3000m<sup>2</sup> is applicable for densification

**(b) Coverage**

The maximum coverage for all buildings on the land unit is **[50]65%**.

**(c) Height**

- (i) The maximum height of a building measured from the base level to the top of the structure [roof] is 8,0 m

**(d) Building lines on the perimeter of a town housing development**

- (i) The building line on the perimeter of the property is 3,0 m; and
- (ii) The general building line exemptions of 16.1 apply.

**[The following building lines apply on the perimeter of a town housing site:**

- (i) The street building line is 5,0 m;
- (ii) The side building line is 3,0 m;
- (iii) The rear building line is 3,0 m; and
- (iv) The general building line exemptions of 16.1 apply.]

**(g) Internal roads**

The minimum internal road reserve width is 8,0 m; provided that **[Council]** the municipality may require a greater road reserve width where it is of the opinion that the vehicular use or length of the road requires a greater road reserve width.

**Day-care centre**

6.2.4 The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.7 apply.]**

**Home occupation**

6.2.5 The provisions of Chapter 16.10 apply.

**[The provisions of 5.1.8 apply, provided that in this zone:**

- (a) No more than two persons, including the proprietor may be employed within a dwelling unit;
- (b) The required parking provision does not apply; and
- (c) Where a home occupation is conducted from a flat, no more than 2 persons in total shall be engaged in the home occupation activities within the dwelling unit, including occupants or occupant and assistants.]

### Site development plans

6.2.6 **[Council]** the municipality may require that a site development plan be submitted for approval in accordance with 16.3.

### Open Space Provision

6.2.7 The following requirements to the satisfaction of the municipality is applicable:

- a. Communal open space of at least 10% of the whole property must be provided as outdoor recreational / garden area as one functional space.

### 6.3 GENERAL RESIDENTIAL ZONE 2: TOWN HOUSING (GR2)

#### Use of the property

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

- (a) **Primary uses** are: **[dwelling house in accordance with 6.1.2, ]**town housing, private open space, private road;
- (b) **Consent uses** are: crèche, day care centre, dwelling house in accordance with 6.1.2, flats, green house, home occupation, residential building, retirement village, **[rooftop base,]** tourist accommodation and transmission **[tower]** apparatus.

#### Development parameters [rules]

6.3.2 The following development parameters [rules] apply:

(a) **Density**

- (i) The maximum gross density in this zone is 50 units a hectare.
- (ii) A minimum erf size of 3000m<sup>2</sup> is applicable for densification.

(c) **Height**

The maximum height of a building (other than flats), measured from the base level to the top of the structure [roof], is 8,0 m, provided that the maximum height for flats, measured from the base level to the top of the structure [roof], is 9,0 m.

(d) **Building lines on the perimeter of a town housing development**

- (i) The building line on the perimeter of the property is 3,0 m.
- (ii) The general building line exemptions of 16.1 apply.

(g) **Internal roads**

The minimum internal road reserve width is 8,0 m; provided that **[Council]** the municipality may require a greater road reserve width, where it is of the

opinion that the vehicular use or length of the road requires a greater road reserve width.

#### Day-care centre

6.3.4 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.7 apply.]

#### Home occupation

6.3.5 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.8 apply, provided that:

(a) No more than two persons, including the proprietor may be employed within a dwelling unit;

(b) The required parking provision does not apply; and

(c) Where a home occupation is conducted from a flat, no more than 2 persons in total shall be engaged in the home occupation activities within the dwelling unit, including occupants or occupant and assistants.]

#### Site development plans

6.3.6 [Council] The Municipality may require that a site development plan be submitted for approval in accordance with 16.3.

#### Open Space Provision

6.3.7 The following requirements to the satisfaction of the municipality is applicable:

Communal open space of at least 10% of the whole property must be provided as outdoor recreational / garden areas as one functional space

### 6.3 GENERAL RESIDENTIAL ZONE 3: FLATS (GR3 and GR4)

#### Use of the property

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

(b) **Consent Uses** are: crèche, day care centre, home occupation, hotel, institution, place of assembly, place of instruction, place of worship, retirement village, tourist accommodation, and transmission apparatus [tower].

#### Development parameters [rules]

6.4.2 The following development parameters [rules] apply:

(a) Density

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A minimum erf size of 3000m<sup>2</sup> is applicable for densification

**(b) [a] Floor factor and coverage**

**(c) [b] Height**

- (i) The maximum height of a building measured from the base level to the top of the structure [roof] is determined in accordance with the bulk zone as specified in the table below:

**(d) [c] Setback**

- (i) The **[Council] municipality** may require an 8,0 m setback from the centreline of the abutting street, provided that **[Council] the municipality** may permit stoeps to be located within the setback line; and

**(e) [d] Building lines**

- (ii) The side building line is 4,5 m, provided that where a fourth storey is provided, **[Council] the Municipality** may require the fourth storey to be set back 6,0 m from the property boundary;
- (iii) The rear building line is 3,0 m provided that where a fourth storey is provided, **[Council] the Municipality** may require the fourth storey to be set back 6,0 m from the property boundary; and

**(f) Open space**

- (i) Every block of flats, residential building or hotel in this zone must have access to an outdoor living area, and will provide [which may include private or] communal open space, but excludes parking, service yards and roads; and  
**[(ii) [May include gardens, balconies, courtyards and outdoor recreational areas.]**
- (ii) Communal open space of at least 10% of the whole property must be provided as outdoor recreational / garden areas as one functional

### Home occupation

6.4.3 The provisions of Chapter 16.10 apply.

**[Where a home occupation is conducted from a flat no more than 2 persons in total shall be engaged in the home occupation activities within the dwelling unit, including occupants or occupant and assistants.]**

### Transmission apparatus

6.4.4 The provisions of Chapter 16.10 apply

### Site development plan

6.4.5 [6.4.4][Council] The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

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## 6.6 LESS FORMAL DEVELOPMENT ZONE: (LFD)

### Use of the property

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

- (a) **Primary uses** are: crèche, [day care centre,] dwelling house, guest rooms, home occupation, private road, private open space, second dwelling unit, shelter, [informal trading];
- (b) **Consent uses**, are: authority use, clinic, day care centre, [crèche,] flats, house shop, institution, place of assembly, place of instruction, place of worship, residential building, service trade, urban agriculture, utility service and a bottle store

### Development parameters [rules]

6.5.2 The following development parameters [rules] apply:

(b) **Building lines**

The following building lines apply where the less formal settlement has occurred or is intended to occur in terms of an approved layout or cadastral plan:

- (i) The street building line is [~~2,0~~] 1,0 m;
- (ii) At least 1,0 m one side and 0 m on the other side [~~The side building line is 1,0 m;~~];
- (iii) The rear building line is 1,0 m, provided that:
- (iv) [~~Council~~] The Municipality may require a 2,0 m building line where a mid-block sewer system is installed or planned to be installed.

(c) **Spaces between buildings and roads**

The following spaces must be provided between buildings and roads, where the settlement has not occurred or is not intended to occur in terms of an approved layout or cadastral plan:

- (i) Every building shall be set back at least [~~2,0 m~~] 1,0 m from the edge of a road or thoroughfare;
  - (ii) No building shall be erected closer than [~~2,0 m~~] 1,0 m to an adjacent building;
  - (iii) Where 4 dwelling units or shelters are attached to each other, the municipality may require a space of 2,0 m between such dwellings or shelters and any other building or shelter on the property concerned or any adjacent property, and
  - (iv) Site boundary line: 3,0 m from the property boundary along the perimeter of the site as determined by the municipality.
- [[iii) An uninterrupted space of at least 1,5 m shall be kept open from the front side of every dwelling to the rear side of every dwelling, unless dwellings are linked together, in which case no more than 4 dwellings shall be linked without a break of 3,0 m between buildings.]

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**(d) Height**

The maximum height measured from the base level to the top of the structure [roof] is 8,0 m

**(e) Parking and loading**

The provisions of 17.1 do not apply and parking must be provided in accordance with the following table:

<b>Use of the property</b>	<b>Parking standard</b>
Dwelling unit	As required by [Council] the municipality
Second dwelling unit, home occupation	As required by [Council] the municipality
Other primary or consent uses	As required by [Council] the municipality

**Second dwelling unit**

6.5.3 The provisions of Chapter 16.10 apply.

[The provisions of 5.2.4 apply, provided that:

- (a) Where a wendy house or shelter is utilised for accommodation purposes, such wendy house or shelter shall be regarded as a second dwelling unit; and  
 (b) A second dwelling unit may not exceed 120m<sup>2</sup>.]

**Guest rooms**

6.5.4 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.6 apply.]

**Day -care centre**

6.5.5 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.7 apply.]

**Home occupation**

6.5.6 The provisions of Chapter 16.10 apply.

[The provisions of 5.1.8 apply, provided that the parking requirements are in accordance with 6.5.2(e).]

**House shop**

6.5.7 The provisions of Chapter 16.10 apply.

**Constructed road or road reserve or land identified for roads**

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- 6.5.8 No building shall be erected on land which has been constructed as a road, set aside as a road reserve, or has been identified by the [Council] municipality as a future road.

**[Informal trading]**

- 6.5.10 [Informal trading is permitted on land which has been set aside as a road reserve or identified by the [Council] municipality as a future road reserve provided that:
- (a) No permanent structures are to be erected on the land;
  - (b) There is no interference with pedestrian or vehicular movement, the amenity of the neighbourhood, or with any [Council] municipality utility service; and
  - (c) There is, in the [Council] municipality's opinion, no threat to public health or safety.]

**Land used or identified for firebreaks**

- 6.5.10 No building or structure may be erected on land which has been set aside or identified by the [Council] municipality as a firebreak.

**Approval of building plans**

- 6.5.11 Notwithstanding the fact that individual land units may not have been created or transferred to individual beneficiaries, the [Council] municipality may approve building plans in terms of the National Building Act, subject to the requirements of the Act, for a building relating to a primary or consent use, with the exception of a shelter, provided that the [Council] municipality is satisfied that:

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By amending and renumbering PART 2: Chapter 7 as follows:

## 7.1 BUSINESS ZONE 1 & 2: GENERAL BUSINESS (B1 and B2)

### Use of the property

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

- (a) **Primary uses** are: business premises, conference facility, flats (above ground floor), guest house, hotel, place of assembly, place of instruction, **[rooftop base station] and self-catering;**
- (b) **[Informal trading], transmission [tower] apparatus (subject to the provisions of Chapter 16.10)**

### Development parameters [rules]

7.1.2 The following development parameters [rules] apply:

#### (b) Setback

- (i) **[Council] Municipality** may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street;
- (ii) Where special circumstances exist, **[Council] the municipality** may require a wider setback; and...

#### (c) Building lines

- (i) The street building line is 0 m subject to:
  - the setback restriction if required by **[Council] the municipality** in terms of 7.1.2(b); and
- (ii) The side building line is 0 m **but [subject to]:**
  - **without the consent of the municipality,** the building or portion erected on the property boundary may have no windows, doors, ventilation or other openings in any wall on such boundary, **[without the consent of Council];** and
- (iv) The **[Council] municipality** may impose more restrictive building lines in the interests of public health and safety; and

#### (d) Height

- (i) The maximum height of a building, measured from the base level to the top of the **structure [roof],** is determined in accordance with the bulk zone as specified in the table below:

#### (f) Canopies and projections

- (i) The **[Council] municipality** may require, or permit a canopy or projection over the street boundary, provided that:
- (iv) The owner shall enter into an encroachment agreement with **[Council] the municipality** in the case of a canopy projection.

**Site development plan**

7.1.4 **[Council]** The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**7.2 BUSINESS ZONE 3: LOCAL BUSINESS (B3)****Use of the property**

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

- (a) **Primary uses** are: shops, dwelling unit (above ground floor) in accordance with 6.3.2, flats (above ground floor), offices, restaurant, self-catering;
- (b) **Consent uses** are: bottle store, business premises, clinic, conference facility, dwelling unit (on ground floor) in accordance with 6.3.2, flats (on ground floor), town housing in accordance with 6.3.2, tourist accommodation [guest house], hotel, [informal trading], institution, place of assembly, place of entertainment, place of instruction, place of worship, [restaurant, rooftop base station] recreational facilities, residential building, sale of alcoholic beverages, service station, service trade, transmission [tower] apparatus (subject to the provisions of Chapter 16.10).

**Development parameters [rules]**

7.2.2 The following development parameters [rules] apply:

- (c) **Height**
  - (i) The maximum height of a building, measured from the base level to the top of the structure [roof], is 8,5 m.
- (d) **Setback**
  - (i) **[Council]** The municipality may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street;
  - (ii) Where special circumstances exist, **[Council]** the municipality may require a greater setback; and
- (e) **Building lines**
  - (i) The street building line is 0 m; provided that a [3,5] 5,0 m building line applies where fuel pumps are erected;
  - (iii) The rear building line is 3,0 m; provided that where any Business Zone 3 abuts another zone, the rear building line is 3,0 [4,5] m;
  - (iv) Provided that **[Council]** the municipality may require more restrictive building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right; and

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**(i) Screening**

- (i) The [Council] municipality may require screening in accordance with 16.7; and
- (ii) Where a Business Zone 3 abuts a residential zone, [Council] the municipality may require a suitable wall of no less than 1,8m in height to be erected on the common boundary.

**[Informal trading**

**7.2.3 Informal trading shall only be permitted in the area indicated on a plan submitted to and approved by Council.]**

**Site development plan**

**7.2.4 [7.2.5] [Council] the municipality may require that a site development plan be submitted for approval in accordance with 16.3.**

**7.3 BUSINESS ZONE 4: SERVICE STATION (B4)**

- (a) Primary uses are: service station, [rooftop base station],
- (b) **Consent uses** are: heavy vehicle service station, motor repair garage, multiple parking garage, restaurant, transmission [tower] apparatus (subject to the provisions of Chapter 16.10), transport use, and utility service.

**Development parameters [rules]**

**7.3.2 The following development parameters [rules] apply:**

**(c) Setback**

- (i) The [Council] municipality may require that all buildings and structures are set back 8,0 m from the centre line of the abutting public street or streets; and
- (ii) The provisions of 16.2 apply.

**(d) Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure [roof] is 8,5 m.

**(e) Building lines**

- (iv) The [Council] Municipality may impose more restrictive building lines in the interests of public health and safety; and...

**(i) Storage**

Any part of the premises of a service station which is used for the storage purposes for empty containers such as oil drums or packing cases, or other scrap shall be enclosed with a suitable brick wall, at least 2,0 m high or contained in a building, to the satisfaction of [Council] the Municipality.

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**Site development plan**

7.3.3 [Council] The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**Amending and renumbering PART 2: CHAPTER 8 as follows:****8.1 INDUSTRIAL ZONE 1: GENERAL INDUSTRY (IND 1)**

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

- (a) Primary uses are: industry, agricultural industry, builder's yard, care taker's accommodation, factory shop, funeral parlour, heavy vehicle service station, industrial café (subject to the provisions of Chapter 16.10), motor repair garage, [rooftop base station] service trade, service station, transmission [tower] apparatus, transport use, utility services, warehouse and workshop.
- (b) Consent uses are: abattoir, adult entertainment business, aquaculture, business premises, [container site], crematorium, dwelling unit, [informal trading], mining, noxious trade, place of assembly, place of entertainment, place of instruction, recreational facilities, restaurant, sale of alcoholic beverages and, scrap yard.

**Development parameters [rules]**

8.1.2 The following development parameters [rules] apply in this zone.

- (c) **Height**
  - (i) The maximum height of any building measured from the base level to the top of the structure [roof] is 12,0 m, provided that;
  - (ii) Where a structure of greater height is required for the industrial function of the property, [Council] the municipality may grant approval for such greater height; and
- (d) **Building lines**
  - (ii) The side and rear building line shall be [2,0] 0 m;
  - (iv) Notwithstanding the above, [Council] the municipality may stipulate greater building lines for considerations of public health and safety, fire control and in order to enforce any law or right; and...
- (e) **Setback**
  - (ii) Notwithstanding the above [Council] the municipality may stipulate a setback for considerations of public health and safety, fire control and in order to enforce any law or right; and
- f) **Boundary walls**

A wall of 2,1 [5,0] m high must be erected where a land unit has a common boundary with another land unit that is not zoned General Industry (IND1) or Risk Industry (IND2) or when hazardous substances are stored on site.

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**Factory shop**

8.1.3 The provisions of Chapter 16.10 apply.

[The occupant of an industrial property or a portion of an industrial property may operate a shop for the sale of goods which have been completely or partially manufactured on the property, and such other goods as the Council may permit, provided that:

(i) The total floor space of the property or portion thereof may be devoted to the sale of goods shall not exceed 10% of the total floor space of all buildings on the land unit;

and

(ii) Such other goods that are offered for sale, but have not been manufactured on the property, are connected with the goods that are manufactured on the property.]

**Service station**

8.1.4 The provisions of Chapter 16.10 apply.

[The development rules in 7.3.2 apply.]

**Environmental considerations**

8.1.5 An environmental study and/or environmental management plan may be required by [Council] the municipality for its consideration and approval in accordance with 16.4.

8.1.6 No activity that includes the storage of on-site hazardous substances shall be permitted unless a risk management and prevention plan has been approved by [Council] the municipality.

8.1.7 [Council] the municipality may impose conditions of approval to mitigate the environmental impact of industrial activities on adjacent properties, for considerations of public health and safety, fire control and in order to enforce any law or right.

**Site development plans**

8.1.8 [Council] the municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**Scrapyard Development parameters**

8.1.9 The provisions of Chapter 16.10 apply.

**Caretaker's Dwelling**

8.1.10 The provisions of Chapter 16.10 apply.

**Office space**

8.1.11 The provisions of Chapter 16.10 apply.

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## 8.2 INDUSTRIAL ZONE 2: NOXIOUS & RISK INDUSTRY (IND 2)

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

- (a) Primary uses are: care taker's accommodation, factory shop, noxious trade, **[rooftop base station]** risk industry and, transmission [tower] apparatus (subject to the provisions of Chapter 16.10);
- (b) Consent uses are: aquaculture, industry, **[informal trading]**, mining, scrap yard, service trade, shop, transport use, utility service and waste disposal site.

### Development parameters [rules]

8.2.2 The following development parameters [rules] apply:

- (c) **Height**
  - (i) No height restriction applies to noxious industry, risk activity and industry, provided that any other building on the land unit shall not exceed 12,0 m measured from the base level to the top of the structure [roof];
  - (ii) Notwithstanding the above, where a structure of greater height is required for the industrial function of the property, **[Council]** the municipality may grant approval for such greater height; and
- (d) **Building lines**
  - (iii) Notwithstanding the above, **[Council]** the municipality may stipulate greater building lines for considerations of public health and safety, fire control and in order to enforce any law or right; and
- (e) **Setback**
  - (i) A setback of 8,0 m from the centreline of the road applies;
  - (ii) Notwithstanding the above, the **[Council]** municipality may stipulate a greater setback for considerations of public health and safety, fire control and in order to enforce any law or right; and

### Service station

8.2.3 The development parameters [rules] in 7.3.2 apply.

### Factory shop

8.2.4 The provisions of Chapter 16.10 apply.

**[The occupant of an industrial property or a portion of an industrial property may operate a shop for the sale of goods which have been completely or partially manufactured on the property, and such other goods as the Council may permit, provided that:**

- (i) The total floor space of the property or portion thereof that may be devoted to the sale of goods shall not exceed 10% of the total floor space of all buildings on the land unit; and

(ii) Such other goods that are offered for sale but have not been manufactured on the property are connected with the goods that are manufactured on the property.]

#### Environmental impact

- 8.2.5 An environmental study and / or environmental management plan may be required by [Council] municipality for its consideration.
- 8.2.6 No activity that includes the on-site storage of hazardous substances shall be permitted unless a risk management and prevention plan has been approved by the [Council] municipality.
- 8.2.7 The [Council] municipality may impose additional conditions of approval to mitigate the environmental impact of industrial activities on adjacent properties.

#### Site development plans

- 8.2.8 [Council] The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

#### Office space

- 8.2.9 The provisions of Chapter 16.10 apply.

By amending PART 2: CHAPTER 9 as follows:

#### 9.1 COMMUNITY ZONE 1: COMMUNITY FACILITIES (CO1)

##### Use of the property

- 9.1.1 The following use restrictions apply to property in this zone:
- b) **Consent uses are:** dwelling units, cemetery, conference facility, dwelling house, hospital, institution, recreational facilities, residential building, [rooftop base station] transmission [tower] apparatus (subject to the provisions of Chapter 16.10) and urban agriculture.
- (c) **Additional use:** A property in this zone may occasionally be used for fundraising or social functions provided that:
- (i) Such functions are incidental and subsidiary to the uses permitted in this zone;
- (ii) Such functions do not, in the [Council] Municipality's opinion, generate excessive or prolonged disturbance including noise, traffic or other public nuisance; and

##### Development parameters [rules]

- 9.1.2 The following development rules apply in this zone, provided that the development rules for a dwelling house are determined by the development parameters [rules] that apply to the Single Residential Zone (SR1):

**(c) Height**

The maximum height of any building is 10,5 m, measured from the base level to the top of the structure [roof], provided that there is a 14,0 m height limit for a bell tower, steeple, minaret or similar architectural feature to accentuate the significance of a building.

**Dwelling units**

**9.1.3 The following development parameters [rules] apply to dwelling units:**

- (a) The height of a dwelling unit which does not form part of a residential building, measured from the base level to the top of the structure [roof], is 8,0 m.

**Site development plans**

- 9.1.4 **[Council]** The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**Landscape master plans**

- 9.1.5 **[Council]** The municipality may require a landscape master plan to be submitted for approval in accordance with 16.4.

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By amending PART 2: CHAPTER 10 as follows:

### 10.1 AUTHORITY ZONE: AUTHORITY USAGE (AU)

#### Use of the property

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

- (a) **Primary uses** are: authority use, [**rooftop base station**] additional use rights in accordance with 3.2.5.
- (b) **Consent uses** are: cemetery, informal trading (subject to the provisions of Chapter 16.10), transmission [tower] apparatus (subject to the provisions of Chapter 16.10), utility service, any other use determined by [Council] Municipality.
- (c) **Additional use:** A property in this zone may occasionally be used for fundraising or social functions provided that:
  - (i) Such functions are incidental and subsidiary to the uses permitted in this zone;
  - (ii) Such functions do not, in the Council Municipality's opinion, generate excessive or prolonged disturbance including noise, traffic or other public nuisance; and
  - (iii) All relevant policies and by-laws must be adhered to.

#### Development parameters [rules]

10.1.2 The following development parameters [rules] apply:

- (a) No structure shall be erected nor property used in this zone, unless it is considered by [**Council**] the municipality to be compatible or associated with the primary or consent use;
- (b) [**Council**] The municipality may require and approve a site development plan submitted in terms of 16.3 and / or an environmental management plan submitted in terms of 16.4; and
- (c) Prior to the approval of any building plan or engineering services plan, [Council] the municipality shall determine the development parameters [rules] that apply to this zone when:
  - (ii) considering any site development plan or environmental management plan.[is considered; or]
  - (iii) [Prior to the approval of any building plan or engineering services plan.]

### 10.2 UTILITY ZONE: UTILITY SERVICES (UT)

#### Use of the property

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

- (a) **Primary use is:** utility service;
- (b) **Consent uses are:** authority use, cemetery, crematorium, informal trading (subject to the provisions of Chapter 16.10), transmission **[tower] apparatus (subject to the provisions of Chapter 16.10)** **[rooftop base station]** and any other associated use determined by **[Council] the municipality**.

#### **Development parameters [rules]**

10.2.2 The following development parameters **[rules]** apply:

- (a) No structure shall be erected nor property used in this zone, unless it is considered by **[Council] the municipality** to be compatible or associated with the permitted or consent use;
- (b) **[Council] The municipality** may require and approve a site development plan submitted in terms of 16.3 and/or an environmental management plan submitted in terms of 16.4; and
- (c) **[Council] The municipality** shall determine the development parameters **[rules]** that apply to this zone **[when]: ...**

By amending PART 2: CHAPTER 11 as follows:

#### **11.1 TRANSPORT ZONE 1: TRANSPORT USAGE (TR1)**

##### **Use of the property**

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

- (a) **Primary uses are:** multiple parking garage, transport use **[rooftop base station]** and utility service;
- (b) **Consent uses are:** informal trading, motor repair garage, service station, shops, transmission **[tower] apparatus (subject to the provisions of Chapter 16.10)** or, any other use approved by the **[Council] municipality**, provided that...

##### **Development parameters [rules]**

11.1.2 The following development parameters **[rules]** apply:

- (d) **Setback**
  - (i) **[Council] The municipality** may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street;
  - (ii) Where special circumstances exist, the **[Council] municipality** may require a wider setback; and

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**(e) Building lines**

- (iv) Provided that **[Council]** the municipality may require building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right; and

**(h) Screening**

- (i) The **[Council]** municipality may require screening in accordance with 16.7; and

**Informal trading**

11.1.3 The provisions of Chapter 16.10 apply.

**[Informal trading shall only be permitted on sites demarcated for informal trading in terms of a diagram prepared by a suitably qualified land surveyor submitted to the Council for approval, or in line with Council's by-law on informal trading.]**

**Site development plan**

11.1.5 **[Council]** The municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**11.2 TRANSPORT ZONE 2: ROAD AND PARKING (TR2 A & B)****Use of the property**

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

- (a) TR2 A Primary uses** are: private parking, private road, **[public road, public parking;]**

**[(a)] (b) TR2 B Primary uses** are: public road and, public parking;

**[(b)] (c) Consent uses** are: informal trading, **[rooftop base station]** transmission **[tower]** apparatus (subject to the provisions of Chapter 16.10), any other uses determine by **[Council]** the municipality provided that:

**Development parameters [rules]**

11.2.2 The following development parameters [rules] apply:

**(a) Deemed zoning**

Any public **[street]**road and / or street, or any portion of land indicated as a public road on an approved subdivision plan that has not lapsed, shall be deemed to be zoned as Transport Zone 2 **B: Public Road**.

**(b) Construction and deposit of materials**

Except with written consent of the Municipality and adherence to its requirements;

- (iv) Deposit or leave any goods, articles, building materials or waste in a public street other than for a reasonable period of time during the course of loading, off-loading or removal [thereof] of these goods, articles, building materials or waste;

**[Except in accordance with the written permission and requirements of the municipality.]**

**Informal trading**

11.2.3 The provisions of Chapter 16.10 apply.

**[Informal trading shall only be permitted on sites demarcated for informal trading in terms of a diagram prepared by a suitably qualified land surveyor submitted to the Council for approval, or in line with Council's by-law on informal trading.]**

**Site development plan**

11.2.4 **[Council]** The Municipality may require that a site development plan be submitted for approval in accordance with 16.3.

**11.3 TRANSPORT ZONE 3: HARBOUR ZONE (TR3)****Use of the property**

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

- (b) **Consent uses** are: aquaculture, business premises, conference facilities, flats, holiday accommodation, hotel, industry, informal trading, institution, markets, multiple parking garage, offices, place of assembly, place of entertainment, place of worship, recreational facility, restaurant, **[rooftop base station]** sale of alcoholic beverages, service station, tourist accommodation, tourist facility, transport use, town housing, utility service, transmission **[tower]** apparatus (subject to the provisions of Chapter 16.10), provided that **[Council]** the municipality may approve any other use associated with waterfront development where:

- (ii) The property shall be rezoned if the other use constitutes a significant and permanent change from the primary use, and if this land use [zoning] scheme provides a more suitable alternative.

**Development parameters [rules]:**

**[The following development parameters apply:]**

**Harbour usage**

- 11.3.2 The **[Council]** municipality may require and approve a site development plan in terms of 16.3, or an environmental management plan in terms of 16.4.
- 11.3.3 The **[Council]** municipality must determine the development parameters **[rules]** applicable to a land unit when, prior to the approval of any building plans or engineering services:
- (a) The zoning of a land unit to this zone is approved;
  - (b) Any environmental impact report is considered;
  - (c) Any environmental management plan is considered;
  - (d) Any site development plan is approved; and
  - (e) **[Prior to the approval of any building plans or engineering services.]**
- 11.3.4 Structures / buildings may be erected with the written consent of **[Council]** the municipality, should **[Council]** the municipality deem it necessary, provided that **[Council]** the municipality may impose conditions relating to design, architecture and developments parameters.

**Consent uses****(b) Height**

- (i) The maximum height of a building, measured from the base level to the top of the structure **[roof]**, is 11,0 m.

**(d) Setback**

- (i) **[Council]** the municipality may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street;
- (ii) Where special circumstances exist, **[Council]** the municipality may require a wider setback; and

**(e) Building lines**

- (iv) Provided that **[Council]** the municipality may require more restrictive building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right; and

**(h) Screening**

- (i) The **[Council]** municipality may require screening, in accordance with Chapter 16.7; and

**Consent uses**

- 11.3.5 Other than for town housing and informal trading, the following development parameters **[rules]** apply to all consent uses in this zone:

**Town housing**

- 11.3.6 The development parameters **[rules]** in 6.3.2 apply.

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**Informal trading****11.3.7 The provisions of Chapter 16.10 apply.**

**[Informal trading shall only be permitted on sites demarcated for informal trading in terms of a diagram prepared by a suitably qualified land surveyor submitted to the Council for approval, or in line with Council's by-law on informal trading.]**

**Site development plan****11.3.9 [Council] The Municipality may require that a site development plan be submitted for approval in accordance with 16.3.**

**By amending PART 2: CHAPTER 12 as follows:**

**12.1 OPEN SPACE ZONE 1: NATURE RESERVE (OS1)****Use of the property****12.1.1 The following use restrictions apply to property in this zone:**

- (a) **Primary use[is] are: nature reserve and conservation use;**
- (b) **Consent uses are: dwelling units, environmental facilities, [rooftop base station] transmission [tower] apparatus (subject to the provisions of Chapter 16.10), tourist accommodation, tourist facilities, utility service and any other related use permitted by [Council] the municipality.**

**Development parameters [rules]****12.1.2 The following development parameters [rules] apply:**

- (a) **A site development plan must be submitted in terms of 16.3 to the satisfaction of [Council] the municipality;**
- (b) **[Council] The municipality may require an environmental study and/or environmental management plan in terms of 16.4;**
- (c) **Prior to the approval of any building plans or engineering services [Council] the municipality must determine the development parameters [rules] applicable to a land unit, when:**
  - (v) **[Prior to the approval of any building plans or engineering services; and]**
- (d) **Structures / buildings may be erected with the written consent of [Council] the municipality, should [Council] the municipality deem it necessary, provided that [Council] the municipality may impose conditions relating to design, architecture, and developments parameters.**

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**12.2 OPEN SPACE ZONE 2: PUBLIC OPEN SPACE (OS2)****Use of the property**

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

- (b) **Consent uses** are: cemetery, environmental facilities, informal trading (subject to the provisions of Chapter 16.10), recreational facilities, **[rooftop base station]** tourist facilities, transmission apparatus (subject to the provisions of Chapter 16.10) **[tower]**, urban agriculture, utility service, any other related use permitted by **[Council]** the municipality.

**Development parameters [rules]**

12.2.2 The following development parameters [rules] apply:

- (b) A site development plan must be submitted in terms of 16.3 to the satisfaction of **[Council]** the municipality;
- (c) The **[Council]** municipality may require an environmental study and/or environmental management plan in terms of 16.4;
- (d) Prior to the approval of any building plans or engineering services **[Council]** the municipality must determine the development parameters [rules] applicable to a land unit, when:
- (i) The zoning of a land unit to this zone is approved;
  - (ii) Any environmental impact report is considered;
  - (iii) Any environmental management plan is considered;
  - (iv) Any site development plan is approved;
  - (v) **[Prior to the approval of any building plans or engineering services; and]**
- (d) No structure shall be erected or use practiced except such as is compatible with "public open space" as defined; and
- (e) Structures / buildings may be erected with the written consent of **[Council]** the municipality, should **[Council]** the municipality deem it necessary, provided that **[Council]** the municipality may impose conditions relating to design, architecture and developments parameters.

**12.3 OPEN SPACE ZONE 3: PRIVATE OPEN SPACE (OS3)****Use of the property**

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

- (b) **Consent uses** are: cemetery, environmental facilities, recreational facilities, **[rooftop base station]** tourist accommodation, tourist facilities, transmission apparatus (subject to the provisions of Chapter 16.10) **[tower]**, urban agriculture, utility service, any other related use permitted by **[Council]** the municipality.

**Development parameters [rules]**

12.3.2 The following development parameters [rules] apply:

- (a) A site development plan must be submitted in terms of 16.3 to the satisfaction of **[Council]** the municipality;

- (b) The **[Council]** municipality may require an environmental study and/or environmental management plan in terms of 16.4;
- (c) Prior to the approval of any building plans or engineering services **[Council]** the municipality must determine the development parameters **[rules]** applicable to a land unit, when:
  - (v) **[Prior to the approval of any building plans or engineering services; and]**
- (d) No structure shall be erected or use practiced except such as is compatible with the "private open space" as defined; and
- (e) Structures / buildings may be erected with the written consent of **[Council]** the municipality, should **[Council]** the municipality deem it necessary, provided that **[Council]** the municipality may impose conditions relating to design, architecture and development parameters **[rules]**.

By amending PART 2: CHAPTER 13 as follows:

### 13.1 RESORT ZONE: HOLIDAY RESORTS (RZ)

#### Use of the property

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

- (a) **Primary uses** are: conservation use, holiday accommodation, private open space, private road and tourist accommodation;
- (b) **Consent uses** are: additional dwelling units, conference facilities, holiday housing, hotel, place of assembly, place of entertainment, recreational facilities, restaurant, **[rooftop base station]** transmission apparatus (subject to the provisions of Chapter 16.10) **[tower]**, tourist facilities; any other use determined by **[Council]** the municipality.

#### Development parameters **[rules]**

13.1.2 The following development parameters **[rules]**:

- (a) Prior to the approval of any building plans or engineering services **[Council]** the Municipality must determine the development parameters **[rules]** applicable to a land unit, when:
  - (v) **[Prior to the approval of any building plans or engineering services; and]**
- (b) A site development plan must be submitted to the **[Council]** municipality for approval in accordance with 16.3;
- (c) A landscape master plan and environmental management plan shall be submitted to the **[Council]** municipality and approved in terms of provision stipulated in 16.4; and
- (d) The **[Council]** municipality shall stipulate the required services and other infrastructure required to service the resort.

#### Identification of zoned area

13.1.3 The **[Council]** municipality may approve a resort zoning on a portion of a land unit, if it is satisfied that the proposed use or activity is desirable, provided that:

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- (a) The area affected by the activity must be clearly identified on a survey diagram or other plan prepared by a suitably qualified person to **[Council]** the municipality's satisfaction, and endorsed by **[Council]** the municipality; and
- (b) The area thus identified **[shall be]** is clearly marked on the zoning map.

#### **Holiday housing**

13.1.4 The following additional development parameters apply to holiday housing:

- (a) Holiday housing shall not comprise more than 50% or a lesser percentage as determined by the **[Council]** municipality of the units provided on the property concerned;
- (b) Height applicable to be applied in this zone shall be determined by **[Council]** the municipality but is restricted to a maximum of two storeys; **[and]**
- (c) A home owner's association shall be established and the home owners' association's constitution submitted to the **[Council]** municipality for approval, where holiday housing is provided.

#### **Additional dwelling units**

13.1.5 **[Council]** the municipality may approve additional dwelling units; provided that:

- (a) **[Council]** the municipality is satisfied that additional dwelling units are for the normal accommodation of employees of the resort who are active in the normal resort practice conducted on the property;
- (c) Be subject to the development parameters **[rules]** as determined by **[Council]** the municipality.

#### **Site development plan**

13.1.6 **[Council]** The Municipality may require that a site development plan be submitted for approval in accordance with 16.3

#### **Environmental management plan**

13.1.7 **[Council]** The municipality may require an environmental management plan to be submitted in accordance with 16.4.

By amending PART 2: Chapter 14 as follows:

CHAPTER 14: OTHER [SPECIAL] ZONES

14.1 **SUBDIVISIONAL AREA ZONE (SA)**

**Development parameters [rules]**

14.1.1 The following development parameters [rules] apply:

- (c) Any plan of subdivision submitted for a land unit that is zoned Subdivisional Area, shall stipulate the intended zoning of each proposed subdivision, or land portion, include a legend with a colour scheme and zoning in accordance with the land use [zoning] scheme, be properly numbered and may include retention of the Subdivisional Area Zone for specified land portions to be further subdivided and developed at later stages, provided that **[Council] the municipality** may request such additional information as it deems necessary to be included in the plan of subdivision; and
- (d) At the confirmation of a subdivision for property which has been zoned as Subdivisional Area, the zoning provisions approved by **[Council] the municipality** as conditions of the subdivision approval, shall be deemed to be a substitution scheme.

14.2 **SPECIAL ZONE (SZ)**

**Use of the property**

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

- (b) **Consent uses** are: special usage, which means any other use determined by **[Council] the municipality** when approving a Special Zone and which is not catered for under a primary or consent use contained in the scheme.

**Development parameters [rules]**

14.2.2 The **[Council] municipality** shall determine the development parameters [rules] when the use of land is approved, provided that:

- (b) When granting an application for a Special Zone, the **[Council] municipality** must determine development parameters [rules] with regard to maximum floor space, coverage, height, building lines, parking, density, layout and the use of the property;
- (c) The **[Council] municipality** may determine the development parameters [rules] in accordance with a Special Zone Annexure or Special Zone Site Development Plan; and
- (d) Special Zone annexures and Special Zone site development plans must be adopted and may be amended by the **[Council] municipality** in terms of **[Council] the Municipality's** resolution, and do not require the formal amendment of this land use [zoning] scheme.

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**Special zone annexure**

- 14.2.3 When **[Council]** the municipality employs the Special Zone annexure method of development management, **[Council]** the municipality must:
- (a) Identify the area concerned on the zoning map by way of a separate number, and must stipulate the development parameters **[rules]** that apply for the area as a separate Special Zone in an annexure to this land use **[zoning]** scheme;
  - (b) Give each Special Zone, where the development parameters **[rules]** are unique, a separate number, and each number with the accompanying development parameters **[rules]**, must be recorded as a separate Special Zone in the annexure to the land use **[zoning]** scheme; and
  - (c) Compile a list of Special Zone Annexures established in terms of this land use **[zoning]** scheme and record these in Annexure B.

**Special zone site development plans**

- 14.2.4 When **[Council]** the municipality employs the Special Zone site development plan method of development management, **[Council]** the municipality must:
- (b) Register the reference number of the site development plan approved by **[Council]** the municipality; and;
  - (c) Compile a list of special zone site development plans established in terms of this land use **[zoning]** scheme and record these in Annexure B.

**Landscape master plan**

- 14.2.5 **[Council]** The municipality may require a landscape master plan to be submitted in accordance with 16.3.

**Environmental management plan**

- 14.2.6 **[Council]** The municipality may require an environmental management plan to be submitted in accordance with 16.4.

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By amending PART 3, CHAPTER 15 as follows:

#### Adoption or amendment of overlay zones

- 15.1.1 The **[Council] municipality** may prepare, approve, amend or repeal overlay zones for specific areas in order to:
- (b) Respond to particular types of development, urban form, landscape character or environmental features, provided that the **[Council] municipality** is satisfied the abovementioned objectives are appropriate for the area concerned, and the fulfillment of these objectives does not detract from **[Council] the municipality's** ability to serve the needs of the municipal area as a whole.
- 15.1.2 If the Council **[municipality]** intends to adopt, amend or repeal an overlay zone, the Municipal Manager shall:
- (a) Cause the proposed adoption, amendment or repeal to be advertised in accordance with the public consultation policy of the **[Council] municipality**, affording interested parties the opportunity to submit written comments or objections to the Municipal Manager within a period of not less than thirty days from the date of such advertisement;
  - (d) Submit the proposed overlay zone, amendment or repeal, and all relevant documentation to the **[Council] municipality** for consideration and a decision;
  - (e) Notify all persons who submitted comments relating to the adoption, amendment or repeal of the overlay zone within the prescribed period, of the **[Council] municipality's** decision; and

#### Identification and numbering

- 15.1.3 The **[Council] municipality** shall approve a distinctive name and number for each overlay zone and any sub-zone, when adopting such overlay zone or sub-zone.
- 15.1.4 The **[Council] municipality** shall indicate the area of an overlay zone on the zoning map and:
- (a) Shall record the existence of an overlay zone in Annexure C to this **land use [zoning]** scheme, with reference to where any detailed provisions of the overlay zone may be found; and

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By amending and renumbering PART 4, CHAPTER 16 as follows:

## 16.1 GENERAL ENCROACHMENTS [ENCROACHMENT OF BUILDING LINES]

### 16.1.1 Encroachment of building lines permitted [General encroachments]

- (a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may, **[provided they do not extend beyond the boundaries of the land unit]**, be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:
- (ii) open and uncovered stoeps, pools and filling lower than 1,0 m above the existing ground level;
  - (vi) **[Cornices]** chimney breasts, flower boxes, water pipes and drain pipes **[and minor decorative features]** not projecting more than 500 mm from the wall of the building;
  - (vii) minor decorative features not projecting more than 250 mm from the wall of the building;
  - (viii) swimming pools, if closer than 1,0 m from the erf boundary, an engineering certificate is required;
  - (ix) pool pumps/pump houses not exceeding 1,0 m above existing ground level;
  - (x) **[ix]** a refuse room that has a footprint not exceeding 5 m<sup>2</sup> and, if covered, a roof height not exceeding 3,0 m or as required by the **[Council]** municipality in terms of 17.4;
  - (xi) **[x]** built braais up to a maximum of 1,0 m in height above the existing ground level, with the consent of affected neighbours;
  - (xii) water tanks and gas bottle storage enclosures not exceeding 2,1 m in height and screened behind a boundary wall/screen to the same height; and
  - (xiii) any encroachment or structure which causes additional impact will be subject to compliance with the applicable policy or legislation.

### Encroachment of height restriction permitted

- (b) The following structures or portions of structures may encroach upon the height restriction, provided that:
- (i) Chimney(s) (excluding cowl(s), TV antennas and satellite dishes no more than 1,0 m above the height restrictions;
  - (ii) A chimney that encroach upon the height restriction may not be more than 1,0 m in width; and
  - (iii) The erection of renewable energy structures above the height restriction (solar panels, wind turbines etc.) may not exceed 1m in height and 1,0 m in width;

### Encroachment of side and rear building lines permitted

- (c) **[b]** The **[Council]** municipality may approve the [erection of an outbuilding, which] construction of a structure used for the housing of vehicles, that encroaches onto [into] the side and rear building lines, provided that:
- (i) Written consent of the immediate neighbours is obtained [no building exceeds the height of one storey];

- (ii) No building **[wall on]** that encroaches the building line may be higher than 3,5 m above the existing ground level on the common boundary provided that the height may increase at a 40 degree angle away from such boundary;
- (iii) The length and width of the structure does not exceed one third of the lateral and rear boundary concerned or 9,0 m, whichever is the most restrictive (except in cases as prescribed in point iv below);
- (iv) Where the lateral / rear boundary of the property is less than 19,5 m in width the structure will have a maximum width of 6,5 m on the rear boundary;
- (v) No doors and windows shall be permitted in any wall closer than 1,0 m to the rear or side boundary;  
A 1,0 m access may be required to the satisfaction of the Fire Department. [In the event of a property being accessed via a private street an access way of at least 1,0 m shall be provided from the private street to every vacant portion of the land unit concerned other than a courtyard;]
- (vi) No runoff of rainwater from a roof shall be discharged directly onto adjoining properties;
- (vii) The garage / carport [outbuilding] shall be included in the calculation of coverage on the land unit;
- (viii) The **[Council]** municipality is satisfied that the structure does not pose a fire hazard and is constructed of appropriate material to its satisfaction;  
**[(x) Where the written consent of the immediate neighbours is obtained the Council need not advertise the application further.]**

#### Encroachment of the street building line

- (c) Upon an application, the following general principles will be considered by the Municipality: [The Council may relax the street building line under the following circumstances:]  
**[(i) In the case of a garage or carport subject to 16.1.2;]**
  - (i) **[(ii)]** if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a street;
  - (ii) **[(iii)]** if, in its opinion, there are special circumstances, motivated to its satisfaction by the property owner, such as the topography of the site;
  - (iii) all other buildings and outbuildings are to comply with the street building line applicable within the zone concerned; and
  - (iv) in the case of a garage or carport, 16.1.2 will apply.

#### Garages and carports within street building lines

- 16.1.2 (a) Upon an application the following development parameters [rules] will be considered:
- (i) The **[Council]** municipality may permit the construction of a garage over a street building line, if in the **[Council]** municipality's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit, or for other reasons provided;

(b) **[A carport may be erected on the street boundary]** The **[Council] municipality may permit the construction of a carport over the street building line** provided that:

- (i) The width of such carport shall not exceed 6,5 m;
- (ii) The roof of the carport shall be supported by metal or timber post or brick, concrete or masonry pillars;
- (iii) The carport shall not be enclosed on any side except by:
  - a boundary fence or wall;
  - wall which forms the external wall of a building; or
  - security or automated gate.

the height of such carport measured from the natural ground level to the highest point of the structure over the building line may not exceed 3,0 m on the street boundary, but the height may increase at a 40 degree angle away from such boundary (roof).

**[The edges of the roof sheeting must be trimmed with a fascia board not less than 150 mm in width.]**

## 16.2 SETBACKS

16.2.1 The portions of any land unit falling within a setback area shall be excluded for the purpose of determining coverage and maximum floor space, unless the owner transfers the portion concerned to the **[Council] municipality** free of any charge. In that case the portion shall be included for the purpose of determining the coverage or maximum floor space on the land unit.

## 16.3 SITE DEVELOPMENT PLANS

16.3.1 The **[Council] municipality** may require a site development plan to be submitted to its satisfaction for any land unit provided that:

- (b) The **[Council] municipality** may require amendments of detail to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, environmental management, engineering services or similar concerns, and
- (c) **[Council] The** municipality may cause the site development plan to be advertised, where it is of the opinion that advertisement of the proposed development is in the public interest.

16.3.2 The following provisions shall apply with regard to site development plans:

- (a) A site development plan shall show the details referred to in the definition of "site development plan", unless the **[Council] municipality** agrees to waive certain requirements;
- (b) If the **[Council] municipality** considers it necessary, a transport impact assessment may be required in conjunction with a site development plan, the extent of which shall be determined by the **[Council] municipality** depending on the magnitude of the development;
- (c) If the **[Council] municipality** considers it necessary, a storm water management assessment and management plan may be required in conjunction with a site development plan, the extent of which shall be determined by the **[Council] municipality** depending on the magnitude of the development;
- (d) The **[Council] municipality** may approve a site development plan which is submitted for its approval, or may require amendments before it is approved, or may refuse it.
- (e) In circumstances where a site development plan is required in terms of this land use [zoning] scheme, no application for building plan approval in terms

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- of the National Building Act, shall be granted by the **[Council] municipality**, unless a site development plan has first been approved;
- (f) The property shall be developed generally in accordance with the site development plan as approved by the **[Council] municipality**, and to the satisfaction of the **[Council] municipality**;
  - (g) Application may be submitted to the **[Council] municipality** for amendment of an approved site development plan;
  - (h) The **[Council] municipality** shall process an application to approve or amend a site development plan in accordance with its policy for transparency, public consultation and administration of such applications; and
  - (i) When approving a site development plan or amendment to a site development plan, the **[Council] municipality** may impose conditions of approval.

#### 16.4 ENVIRONMENTAL MANAGEMENT PLANS

16.4.1 The following provisions shall apply with regard to environmental management plans:

- (a) An environmental management plan shall contain the information specified in the definition of "environmental management plan" unless the **[Council] municipality** agrees to waive certain requirements;
- (b) An environmental management plan must be compiled by a suitably qualified or registered environmental specialist;
- (c) The **[Council] municipality** may approve an environmental management plan which is submitted for its approval, or may require amendments before it is approved, or may refuse it;
- (d) If an environmental management plan is required in terms of this **land use [zoning]** scheme, no site works are permitted, and no application for subdivision of land, transfer of land units, or building plan approval in terms of the National Building Act, shall be granted by the **[Council] municipality**, until it has first approved an environmental management plan;
- (e) The property shall be developed and managed generally in accordance with the environmental management plan as approved by the **[Council] municipality**, and to the satisfaction of the **[Council] municipality**;
- (f) Application may be submitted to the **[Council] municipality** for amendment of an approved environmental management plan;
- (g) The **[Council] municipality** shall process an application to approve or amend an approved environmental management plan in accordance with its policy for transparency, public consultation and administration of such applications; and
- (h) When approving an environmental management plan or amendment to an environmental management plan, the **[Council] municipality** may impose conditions of approval.

#### 16.5 OWNERS' ASSOCIATION OR BODY CORPORATE

16.5.1 If the **[Council] municipality** requires an owners' association to be established for any development, either an owners' association in terms of the Planning Law, or a body corporate in terms of the Sectional Titles Act, may satisfy this requirement.

16.5.2 In addition to the requirements of any other law, the following provisions shall apply to an owners' association or body corporate in terms of this land use scheme.

- (a) Every owner of property in a development, to which the owners' association or body corporate applies, shall be a member of the owners' association or body corporate;

- (b) The owners' association or body corporate shall maintain all common property owned by the owners' association or body corporate including private roads, private utility services and infrastructure, private open spaces and perimeter fences;
- (c) The owners' association or body corporate shall be responsible for control and adherence to the design requirements approved in terms of its constitution or articles of association; and
- (d) The constitution or management and conduct rules must clearly define the responsibilities and requirements of the home owner's association or body corporate with respect to building plan submission, deviations from approved development guidelines and development parameters, the need for endorsement of the home owner's association or board of trustees on any application submitted to Council by a property owner within the development concerned, provided that:
  - (i) Nothing in this provision will preclude the Council from advertising an application submitted, in respect of which Council is of the opinion that it is in the interests of the public and that an endorsement by the body corporate or the board of trustees as the case may be does not compel Council to approve an application.]

#### 16.6 BOUNDARY WALLS [EARTH BANKS AND RETAINING STRUCTURES]

16.6.1 Without the prior written permission [consent] of the [Council] municipality no boundary wall or fence shall exceed 2,1 m in height above the existing ground level abutting such wall or fence (unless other heights are required by Fire Regulations), provided that where the ground levels on opposite sides of the wall or fence are unequal, the height of the wall or fence shall be measured from the higher of the two levels.

16.6.2 Only electric fencing will be allowed above the 2.1 m height restriction, subject to a maximum height of 0,5 m.

[Without the prior written consent of the Council:

- (a) No earth bank, retaining structure, column, suspended floor, other device or series of such devices, shall be constructed that enables a ground floor of a building to be raised more than 1,5 m above the base level;
- (b) No earth bank or retaining structure used for holding back earth or loose rock, whether associated with a building or not, shall be constructed to a height of more than 1,5 m above the base level; and
- (c) No series of earth banks or retaining structures shall be constructed to a cumulative height of more than 1,5 m above the base level, unless an approximately level area of at least 3,0 m wide is incorporated between successive embankments or retaining structures for every 1,5 m of cumulative height.]

#### 16.7 SCREENING

16.7.1 The [Council] municipality may require screening in accordance with the following:

- (b) Any external utility service or equipment which is required for a building shall be appropriately screened from view from a public street, and such screening shall be integrated with the building in terms of materials, colour, shape and size, and shall be to the [Council] municipality's satisfaction.

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## 16.8 AESTHETICS AND MAINTENANCE OF PROPERTY AND PLACEMENT OF VEHICLES

### Maintenance of property

16.8.1 Property shall be properly maintained by the owner or occupant and aesthetics of the property must generally be in keeping with the surrounding area. The property shall not be left in a neglected or offensive state and shall not:

- (b) Contain an accumulation of motor wrecks or used motor parts, unless these are part of a primary or consent use in terms of this land use [zoning] scheme; or
- (c) Contain outdoor storage of building material, appliances or similar items unless these are:
  - (i) Part of a primary or consent use in terms of this land use [zoning] scheme;

### Placement of vehicles in residential zones

16.8.2 The following development parameters [rules] apply to the placement of vehicles in the Single Residential Zones and General Residential Zones:

- (b) Placement of private motor vehicles shall not exceed more than five, inside a garage or on the property, including motor vehicles used for recreational purposes. [A recreation vehicle, such as a caravan, may not be used for habitation by the occupant or guests for more than 60 days during any 12-month period.]

### Mobile homes

16.8.3 The following development parameters [rules] shall apply with regard to mobile homes placed on a land unit zoned for resort purposes:

- (a) The mobile home shall be sited on a foundation slab and anchored to the [Council] municipality's satisfaction;
- (d) Any structural additions shall be of materials which, in the opinion of the [Council] municipality, are compatible with the mobile home.

## 16.9 OTHER [COUNCIL] MUNICIPAL BY-LAWS, POLICIES AND DEVELOPMENT CONTROLS

### Compliance with by-laws

16.9.1 The provisions of this land use [zoning] scheme do not detract from compliance with any other [Council] municipality by-laws.

### Conditions of approval

16.9.3 If [Council] municipality imposes a condition of approval that is more restrictive than the land use [zoning] scheme, the development controls contained in the approval take precedence over the land use [zoning] scheme and these must be included in the register.

### Keeping of animals

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16.9.4 The keeping of animals is restricted to household pets by property owners, within the urban edge as indicated in the applicable SDF (excluding agricultural zoned properties).

By adding PART 4, CHAPTER 16, Section 16.10 (subject to change to alphabetical order), as follows;

#### 16. 10 GENERAL DEVELOPMENT PARAMETERS

##### Additional dwelling units

16.10.1 The Municipality may approve additional dwelling units in Agricultural Zone I provided that:

- (a) The additional dwelling units shall remain on the same cadastral boundary as the primary dwelling unit;
- (b) The number of additional dwelling units shall not exceed the 1 unit per 10,0 ha, up to a maximum of five additional dwelling units per land unit;
- (c) One additional dwelling unit will also be considered for land units less than 10,0 ha.
- (d) No additional dwelling units may be erected within 100 m of the high water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of the municipality and
- (e) The total floor area of the dwelling is limited to 250m<sup>2</sup>.

##### Farm shop / stall

16.10.2 The municipality may approve a farm shop provided that:

- (a) The maximum floor area of the farm shop / stall shall not exceed 300m<sup>2</sup>;
- (b) The maximum height does not exceed single storey, measured from the base level to the top of the structure;
- (c) Sufficient parking is provided to the satisfaction of Municipality; and
- (d) The access requirements of the relevant roads authority must be complied with.

##### Agricultural industry

16.10.3 The municipality may approve an agricultural industry, if it is satisfied that the proposed use or activity is desirable, provided that:

- (a) The area affected by the agricultural industry must be clearly identified on a land survey diagram or other plan prepared by a suitably qualified person to the municipality's satisfaction, and endorsed by the municipality; and
- (b) The following development parameters apply:
  - (ii) A site development plan, must to be submitted to the municipality's satisfaction, in terms of 16.3, for all new development or extensions within an area determined in terms of (a) above; and
  - (iv) Parking and access shall be provided on the identified portion in terms of Chapter 17, provided that the municipality may require additional parking and loading requirements in response to the operational requirements of a particular agricultural industry.

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**Guest Rooms**

16.10.4 The following provisions shall apply where a portion of a property is used for the purposes of guest rooms or where rooms are let by an occupant of that property to paying guests or lodgers:

- (a) Guest rooms shall be subject to the submission of a site plan for record purposes demonstrating compliance with the applicable provisions.
- (b) Guest rooms will be limited to the main dwelling.
- (c) Maximum 2 bedrooms (5 persons) per property may be used for paying transient guests or lodgers.
- (d) Guest rooms may not be converted to, or used as, separate dwelling units.
- (e) Meals shall only be supplied by the landowner or manager to transient guests or lodgers who are staying on the property.
- (f) No advertising sign shall be displayed without the written approval of the municipality other than a single un-illuminated sign or notice affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law.
- (g) One on-site parking bay shall be provided per guest room, subject to the submission of a parking layout.
- (h) No cooking facilities or prep bowls may be provided in the guest room.

**Self-catering accommodation**

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

- (a) It shall be utilised for single family occupation;
- (b) Self-catering shall be restricted to either the main dwelling or the second dwelling unit if a:
  - i. second dwelling unit exists on the property (but not both);
  - ii. Self-catering will not be permitted if there is a home occupation or guest rooms;
- (c) No activities constituting a source of nuisance shall be carried out; and
- (d) The municipality may impose additional conditions in order to minimise any potential public nuisance.

**Crèche [Day-care centre]**

16.10.6 The following provisions shall apply where a portion of the property is used by the occupant of the property for the purposes of a crèche:

- (a) No more than 5 children are permitted at any one time;
- (b) A register of children must be kept, and completed, and the register must be produced for inspection on the request of the municipality;
- (c) The services shall be primary crèche or educational and not medical;
- (d) The hours of operation shall be restricted to 06h00 and 18h00 from Mondays to Friday and from 06h00 to 13h00 on Saturdays;
- (e) The proprietor of the crèche shall reside on the property;
- (f) No more than two assistants may be employed at the crèche; and
- (g) The minimum indoor and outdoor play space shall be provided according to applicable legislation;

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**Day-care centre [Crèche (Early Childhood Centres)]**

**16.10.7 The following provisions shall apply where a day-care centre is operated on a Residential Zone 1 property:**

- (a) a maximum of 30 children / babies subject to compliance with the minimum indoor and outdoor play space according to applicable legislation;
- (b) compliant with all the applicable relevant legislation;
- (c) a minimum of 1 parking bay per teacher and a pick up and go facility must be provided to the satisfaction of the engineering services;
- (d) applicable tariffs as per the Municipal budget
- (e) the land use rights will not be transferable;
- (f) A register of children must be kept, and completed, and the register must be produced for inspection on the request of the Municipality;
- (g) The hours of operation shall be restricted to 06h00 and 18h00 from Mondays to Friday and from 06h00 to 13h00 on Saturdays; and
- (h) The proprietor of the day care centre shall reside on the property;

**Home occupation**

**16.10.8 Home occupation will be restricted to the following non-residential categories:**

- (a) Office type work (administration);
- (b) Professional / clerical;
- (c) Custom sewing, fabric crafts, baking;
- (d) Creation of visual arts, excluding cabinet maker, recycling, welding;
- (e) Personal services such as a Barber / hairdresser / beautician / masseuse; and
- (f) Sales and services over the internet / phone.

**General development parameters for home occupation**

- (a) The proprietor of the home occupation must permanently reside in the dwelling;
- (b) The total area used for a home occupation, including storage area required for the use, shall not exceed 25% or 50m<sup>2</sup> (whichever is most restrictive) of the total floor area of the building from which it is to be conducted;
- (c) No more than 3 persons in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- (d) Home occupation shall be conducted completely in doors;
- (e) The storage of products, goods, or supplies connected to the home occupation shall be inside a building;
- (f) No more than one vehicle, not exceeding 3 500 kg gross weight, shall be utilised for the home occupation;
- (g) The hours of operation are restricted to 07h30 and 17h30 Monday to Friday and 7h30 to 13h00 on Saturdays;
- (h) On-site parking must be provided to the satisfaction of the municipality, provided that at least two on site parking bays are provided in addition to the normal parking required;
- (i) The exercise of home occupation shall be subject to the submission of a site plan for record purposes demonstrating compliance with the requirements pertaining to home occupation and the land use parameters;
- (j) A conveyancing certificate shall be submitted demonstrating there is no title deed restrictions that restricts the home occupation;

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- (k) The use shall also comply with all environmental and nuisance control regulations;
- (l) The exterior of the building and the lot shall not be changed in such a way as to decrease its residential appearance, except for permitted parking spaces and the permitted sign.
- (m) The use shall not involve the storage or use of hazardous, flammable or explosive substances, other than types and amounts commonly found in a dwelling. The use shall not involve the use or storage of toxic substances; and
- (n) The municipality may impose additional conditions in order to minimise any potential public nuisance and.
- (o) Occupation shall be subject to the submission of a site plan for record purposes, demonstrating compliance with the requirements

### Home Occupation in Residential Zone 2 and 3: Additional rules

#### Subject to approval of HOA / Body Corporate:

- (a) No more than two persons, including the proprietor may be employed within a dwelling unit
- (b) Only the occupant may be involved in the activities of the home occupation
- (c) Parking provisions will apply; and
- (d) Where a home occupation is conducted from a flat, no more than 1 person shall be engaged in the home occupation activities within the dwelling unit.

#### Minimum subdivision size

##### 16.10.9 The following development parameters apply:

- (a) No new subdivision or any remainder to be zoned Rural Zone 1 and 2 shall be less than:
  - (iii) 5.0 ha, if no minimum subdivision size is specified on the zoning map;  
or
  - (iv) Where the municipality has specified a minimum subdivision size, as indicated on the zoning map in terms of an overlay zone for the area concerned and concern / read together with the SDF and related documents that minimum subdivision size applies.

#### Second dwelling unit

##### 16.10.10 The following additional development parameters apply to a second dwelling unit:

- (a) The total floor area of the second dwelling unit shall not exceed 120 m<sup>2</sup>;
- (b) A second dwelling unit may be contained within the same building as a primary dwelling unit and may be either on the ground or first floor;
- (c) A second dwelling unit may not be separately alienated in terms of the Sectional Title Act; and
- (d) Parking must be provided on the property as per the Chapter 17, section 17.1.3 to the satisfaction of the Municipality.
- (e) A second dwelling must be located within the applicable building lines.

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**House shop**

- 16.10.11 The following provisions shall apply where a portion of a dwelling house or outbuilding is used for the purposes of a house shop, by one or more occupants of a property:
- (a) The maximum floor area of that portion of a dwelling house that is used for the purposes of a house shop shall not exceed 30,0m<sup>2</sup> or 25% of the floor area of all buildings on the land unit;
  - (b) No more than 3 persons, including the occupant or occupants of the dwelling unit, are permitted to be engaged in retail activities on the property, other than with the consent of the Municipality;
  - (c) No portion of the house shop shall be used for the purposes of noxious trade, risk activity, sale of alcoholic beverages, place of entertainment or gambling purposes;
  - (d) The operator of the enterprise shall permanently reside on the premises;
  - (e) No products, goods, or supplies connected to the house shop may be stored on the property outside a building;
  - (f) Any structure or alteration to the existing structure must conform to the residential character of the area concerned and all the relevant legislation;
  - (g) Only one un-illuminated sign, shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand By-law relating to outdoor advertising and signage;
  - (h) The hours of operation and trading shall be restricted to 6h00 to 21h00 from Monday to Friday and from 6h00 to 21h00 on Saturday, does not include public holidays or Sundays, or such trading hours as permitted by the Municipality;
  - (i) On-site parking shall be provided to the satisfaction of the municipality;
  - (j) Permission to operate a house shop is granted to a particular operator and is not transferable;
  - (k) No more than one vehicle, not exceeding 3 500 kg gross weight shall be utilised for the house shop;
  - (l) Permission may only be granted for a period determined by the municipality; and
  - (m) No subletting is permitted.

**Factory shop**

- 16.10.12 The occupant of an industrial property, or portion thereof may operate a shop for the sale of goods which have been completely or partially manufactured on the property, and such other goods as the municipality may permit, provided that:
- (i) The total floor space of the property or portion thereof may be devoted to the sale of goods shall not exceed 10% of the total floor space of all buildings on the land unit; and
  - (ii) Such other goods that are offered for sale, but have not been manufactured on the property, are related to the goods that are manufactured on the property.

**Scrapyard and Recycling**

- 16.10.13 A scrapyard must have boundary walls of a minimum of 2,1 m, and the Municipality may require a wall height in excess of 2,1 m where it is deemed necessary for the public interest;

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- 16.10.14 A Operational Management Plan must be submitted for approval, which addresses noise, odour, visual impact and hours of operation, but not limited thereto.
- 16.10.15 No scrap and/or recyclable material may be stored or recycled outside the boundary of the erf.
- 16.10.16 The erf must be neat at all times.

#### Caretaker's dwelling

- 16.10.17 The following provisions shall apply where a portion of an industrial structure is used for the purposes of housing a caretaker:
- (a) A caretaker's dwelling may not exceed 80 m<sup>2</sup>.
  - (b) A caretaker's dwelling may only be utilised in connection with the industrial property.

#### Informal trading

- 16.10.18 Informal trading is permitted on land as demarcated or leased by the municipality for such purposes, provided that:
- (a) there is no interference with pedestrian or vehicular movement, the amenity of the neighbourhood, or with any municipal utility service;
  - (b) a site plan demonstrating compliance with the requirements pertaining to land use parameters is submitted;
  - (c) there is, in the municipality's opinion, no threat to public health or safety; and
  - (d) the overnight storage of products on the land is only allowed in an approved structure, if prior approval is obtained from the municipality.

#### Office space

- 16.10.19 The following provisions shall apply where a portion of an industrial structure is used for the purposes of an office by the occupant(s) of a property:
- (a) The total floor area of the office space shall not exceed 25% of the floor area of the structures on the site;
  - (b) An office may only be utilised in connection with the use of the industrial property.

#### Industrial Café

- 16.10.20 An industrial café may not exceed 100m<sup>2</sup>

#### Transmission Apparatus

- 16.10.21 Applications for the installation of Transmission Apparatus (TA) shall, to the satisfaction of the Municipality, incorporate the following:
- (a) Site Development Plan which clearly illustrates the proposal in the context of the existing landscape and receiving environment, with reference to application guidelines as may be incorporated in the application form;

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- (b). Telecommunication Apparatus Infrastructure Plan (indicating but not limited to the following, namely dimensioned plans showing detail of TA, graphic illustration of the proposed facility, elevation details, proposed materials and colours, screening or fencing)
- (c). Site Development Plan & Telecommunication Apparatus Infrastructure Plan to be accompanied by a report detailing the motivation for the selected site, how the siting and design of the facility responds to the SDP;
- (d). Motivation report to be accompanied by relevant proof pertaining to need and desirability (demand & technical requirements);
- (e). Application to satisfactorily demonstrate to the AO / MPT that all alternatives to the site itself have been explored within a 1km radius of the subject property;
- (f). Minimum of two alternative sites and design options to be considered;
- (g). Zoning and land use map to accompany application, that shall also indicate all areas of heritage or environmental significance, if applicable;
- (h). Visual Impact Assessment prepared by a suitably qualified professional, if required by the municipality, that shall incorporate mitigation measures limiting visual impact;
- (i). Landscaping plan to accompany application, if required by the municipality, and
- (j). Statement demonstrating that the installation complies with the applicable health and safety standards

#### **Subdivision and density standards**

16.10.21 The following subdivision and density provisions apply:

(a) Minimum subdivision area

Council may specify the minimum size of a subdivisional area in terms of an overlay zone and/or policy, and may prescribe the minimum size of subdivided portions to be achieved in such zone.

(b) Maximum density

Council may specify a maximum density for a land unit in terms of an overlay zone

#### **Guest house (only applicable in Residential Zone 1)**

16.10.22 The following provisions shall apply where dwelling house, or second dwelling is used for a guest house:

- (a) The manager and / or owner shall reside in the main or second dwelling (excluding outbuildings) on the property.
- (b) Maximum 5 bedrooms (10 persons) per property may be used for paying transient guests.
- (c) Guest rooms may not be converted to, or used as, separate dwelling units
- (d) Meals may also be provided to bona fide guests on the property.
- (e) The residential character must be retained.
- (f) Subject to obtaining a liquor licence, alcoholic beverages may only be sold to resident guests for consumption with meals on site.
- (g) Home occupation will not be permitted on the same property as a guest house.
- (h) A place of entertainment shall not be permitted.
- (i) No more than 3 staff members shall be employed in support of the establishment at any given time.
- (j) No advertising sign shall be displayed without the written approval of [Council] the municipality other than a single un-illuminated sign or notice

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affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law at any given time.

- (k) No activities constituting a source of public nuisance shall be carried out.
- (l) No disturbance from loud music and other sources are allowed after 22:00.
- (m) The minimum parking provisions as listed in section 17.1.3 shall apply.
- (n) Occupation shall be subject to the submission of a site plan (for record purposes) demonstrating compliance with the requirements pertaining to guest rooms.
- (o) No cooking facilities or prep bowl may be provided in the guest room.

By amending PART 4, CHAPTER 17 as follows;

## 17.1 PARKING REQUIREMENTS

### Off-street parking requirements

17.1.1 The following off-street parking requirements apply unless otherwise stated in this land use [zoning] scheme:

- (a) In cases where parking requirements are not stipulated for a particular use, or in terms of a specific condition imposed by the **[Council] municipality**, parking shall be provided at a minimum ratio in accordance with the **[following]** table titled "Minimum Off-Street Parking Requirements" (see below);
- (b) The **[Council] municipality** shall determine off-street parking requirements for land uses not stipulated in the table "Minimum Off-Street Parking Requirements"; and
- (c) Off-street parking shall be provided:
  - (ii) On the property for which the parking is required;
  - (ii) Subject to the **[Council] municipality's** approval, in public parking facilities available in the vicinity; or
  - (iii) In accordance with 17.1.2. and applicable policies.

### Alternative parking [supply] provision

17.1.2 As an alternative to compliance with the off-street parking requirements in terms of this land use [zoning] scheme, an owner may with the approval of the **[Council] Municipality**:

- (a) Acquire an area of land sufficient for the permanent parking requirements elsewhere in a position approved by the **[Council] municipality**; or
- (b) Acquire permanent rights to a parking facility or portion of a parking facility elsewhere in a position approved by the **[Council] municipality**; and shall register a notarial deed of servitude against such land or parking facility to link the properties concerned for the purpose of parking, and the owner shall cause the parking concerned to be constructed and maintained at his cost to the satisfaction of the **[Council] municipality**. The cost of registration of the servitude shall be borne by the owner; or
- (c) Pay **[Council] the municipality** the amount to the value of the parking to be provided, in accordance with the zoning concerned, together with the construction cost, in cases where the provision of parking is precluded in terms of other legislation or site specific constraints or a contribution is made to an approved **[Council] Municipality** parking fund or project for the provision of parking; and
- (d) For the purpose of determining the value of a parking bay a minimum area of 25m<sup>2</sup> will be utilized.

### Combined parking requirements

17.1.3 Where two or more land uses share a common parking area, the [Council] municipality may reduce the [amount] number of parking bays [that would be] required for [to be provided] the independent uses; provided that:

- (a) The [Council] municipality is satisfied that the utilisation of the same parking area by different activities, is not concurrent; and
- (b) Bays intended for combined use may not subsequently be reallocated to selected uses, without the approval of the [Council] municipality.

#### Minimum off-street parking requirements

Land use	Standard areas
Dwelling house	Two [2] on-site parking bays per dwelling unit, provided that on erven less than 400 m <sup>2</sup> , only one on-site parking bay needs to be provided
Second dwelling	One [1] bay
Group dwelling/town housing	One [1] bay per dwelling unit plus one bay per dwelling for visitors
Flats	1.5 bays per one bedroom dwelling unit Two bays per two and more bedroom dwelling units
Guest house	Two [2] bays per establishment (owner/manager) One bay per bedroom; two persons accommodated Additional parking may be required for any additional facilities to the satisfaction of the Municipality
[Boarding house, Guest house]	[1 bay per bedroom/2 persons accommodated]
Hotel	One [1] bay per bedroom plus an additional six parking bays per 100 m <sup>2</sup> of public access areas Additional parking may be required for any additional facilities to the satisfaction of the Municipality
Retirement home	1.25 bay per bedroom plus 0.25 bays per frail-care bed
Crèche, day care centre	One [1] bay per 10 children plus stop-and-drop facility where a day care centre [crèche] makes provision for more than 30 [20] children or determined by the Municipality
School	One [1] bay per classroom or office plus a stop-and-drop facility
Place of instruction (tertiary education facility)	0.5 bays per student plus one bay per classroom or office
Residential building	Two bays per establishment (owner/manager) One bay per guest room Additional parking may be required for any additional facilities to the satisfaction of the Municipality
Place of assembly/entertainment/funeral parlour	One [1] bay per four [4] seats

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Recreation/sport	One <b>[1]</b> bay per four <b>[4]</b> seats or persons	
Hospital/clinic (general and private)	One <b>[1]</b> bay per bed plus four <b>[4]</b> bays per consulting room	
Medical consulting rooms	Four <b>[4]</b> bays per 100 m <sup>2</sup> GLA*	
Conference centre	One <b>[1]</b> bay per four <b>[2]</b> seats	
Place of worship	One <b>[1]</b> bay per six <b>[6]</b> seats	
Supermarket/shopping centre	Local business	Four bays per 100m <sup>2</sup> GLA
	General business	Six <b>[6]</b> bays per 100m <sup>2</sup> GLA
Shops/restaurants	Local business	Four bays per 100m <sup>2</sup> GLA
	General business	Six <b>[6]</b> bays per 100m <sup>2</sup> GLA
Offices	Local business	Four bays per 100m <sup>2</sup> GLA
	General business	Six <b>[6]</b> bays per 100m <sup>2</sup> GLA

Land use	Standard areas
Motor showroom	Two <b>[2]</b> bays per 100 m <sup>2</sup> GLA* and one <b>[1]</b> bay per 100 m <sup>2</sup> outdoor display area
Motor repair garage/service station/service centre	One <b>[2]</b> bay per service bay plus two <b>[2]</b> bays per 100 m <sup>2</sup> GLA up to 500 m <sup>2</sup> , thereafter one per 100 m <sup>2</sup> GLA
Motor fitment centre	One <b>[2]</b> bay per service bay plus two <b>[2]</b> bays per 100 m <sup>2</sup> GLA up to 500 m <sup>2</sup> , thereafter one per 100 m <sup>2</sup> GLA
Car wash	Four <b>[4]</b> bays per wash bay plus two <b>[2]</b> bays per 100 m <sup>2</sup> GLA (for office component)
Industry	Two <b>[2]</b> -bays per 100 m <sup>2</sup> GLA up to 500 m <sup>2</sup> , thereafter one per 100 m <sup>2</sup> GLA
Warehouse/storage	Two <b>[2]</b> bays per 100 m <sup>2</sup> GLA up to 500 m <sup>2</sup> , thereafter one per 100 m <sup>2</sup> GLA
Self-storage units	One <b>[1]</b> bay per 100 m <sup>2</sup> GLA

17.1.4 The following minimum requirements, with reference to the parking policy, as amended, and the requirements of the Engineering Department shall apply to parking bays:

- a) a parking bay shall measure a minimum of 2,5 m in width and a minimum of 5,0 m in length, for perpendicular or angled parking, and 6,0 m x 2,5 m for parallel parking;
- b) covered parking areas shall have minimum headroom of 2,3 m and
- c) on- site parking shall remain accessible for customers during business hours.

PHYSICALLY DISABLED ACCESSIBLE PARKING (AS PER PART S OF SANS 10400-S)

Total no. of parking bays	Required number of bays accessible to the physically disabled
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<u>General requirement</u>	<u>At least one parking bay per 25 parking bays, or part thereof</u>
<u>At rehabilitation and medical facilities</u>	<u>20% of the parking bays shall be provided for the parking of vehicles used by persons with disabilities</u>

17.1.7 Parking for the physically disabled shall comply with the following requirements:

- (a) Parking bays shall be in accordance with SANS 10400-S, as amended;
- (e) Additional signage indicating the parking bay as reserved for the exclusive use by physically disabled persons may be required by [Council] the municipality; and
- (f) Where five or less parking bays are provided, at least one bay shall be 3,5 m wide and marked to provide a parking bay of 2,5 m with an access aisle 1,0 m, but the bay does not need [not] to be reserved exclusively for physically disabled persons.

#### Motorcycle and bicycle spaces

17.1.9 The [Council] Municipality may require that parking be provided for motorcycles and bicycles.

17.1.11 Signage, bollards and racks, or other devices for storing bicycles and motorcycles shall be installed to the satisfaction of [Council] the municipality.

#### Parking layout plan.

17.1.12 The [Council] municipality may require a parking layout plan to be submitted, indicating the way in which it is intended that motor vehicles shall park, the means of entrance and exit, and landscaping proposals.

17.1.13 The [Council] Municipality may approve or disapprove the parking layout plan and impose conditions of approval.

#### 17.2 LOADING BAYS

**[17.2.1] The minimum off-street loading must be provided to the satisfaction of the Engineering Department [requirements are 1 bay per 500 m<sup>2</sup> for the first 1 000 m<sup>2</sup> of GLA, thereafter 1 bay per 1 000 m<sup>2</sup>]; provided that:**

**17.2.1 Council may, for the purposes of preventing the obstruction of traffic on any public street or road adjacent to a land unit, require specific provision for the loading, offloading or refueling of vehicles that are likely to occur on the land unit under normal circumstance;**

- (a) **Facilities for the loading, offloading or refueling of vehicles shall be provided by the owner to the satisfaction of Council, and no loading, offloading or refueling of vehicles shall be permitted other than in accordance with proposals as approved by the Council;**

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Any deviation from the requirements may only be allowed with approval from the engineering department.

17.2.2 The minimum requirements as per the Parking Policy as amended and requirements of the engineering department shall apply to loading bays:]

### 17.3 INFRASTRUCTURE AND AVAILABILITY OF SERVICES

17.3.1 Engineering services installed by an owner or developer shall comply with the minimum standards for the provision of engineering services as laid down by the [Council] municipality from time to time.

### 17.4 REFUSE ROOMS

17.4.1 The [Council] municipality may, for the purposes of collecting refuse, require the owner to install a refuse receptacle on the land unit which shall:

- (a) Be of sufficient size to accommodate the refuse generated from the land unit for one week;
- (b) Be located adjacent to a public street or, at [Council] the municipality's discretion, in a position which will provide acceptable access to a refuse collection vehicle;
- (d) Comply with any other reasonable condition [Council] the municipality may impose relating to access, health, pollution control, safety or aesthetics.

17.4.2 [Council] The Municipality may require an owner of property to provide an embayment for refuse removal vehicles to its satisfaction.

17.4.3 The construction of a refuse area may require the following:

- (a) a boundary wall height of a minimum 2,1 m;
- (b) a door with a width of 1,2 m;
- (c) the door must be solid;
- (d) the area must have a tap and floor level gully;
- (e) the gully must drain to the sewer and not the storm water system or road;
- (f) storm water generated outside of the refuse area may not drain into the gully,  
and
- (g) no hazardous waste may enter the main sewer system.

If the refuse area is roofed or if the storage area is in a room or basement within the building, adequate ventilation must be provided.

17.4.4 The following ratios may be used when determining the size of a refuse area

<u>Offices</u>	<u>0,5 m<sup>2</sup> per 100 m<sup>2</sup></u>
<u>Industrial</u>	<u>1,0 m<sup>2</sup> per 100 m<sup>2</sup></u>
<u>Shops/restaurants</u>	<u>2,0 m<sup>2</sup> per 100 m<sup>2</sup></u>
<u>Group housing/general residential</u>	<u>0,5 m<sup>2</sup> per 100 m<sup>2</sup></u>

17.4.5 Any deviation from the requirements may only be allowed with approval of the engineering department.

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By amending and renumbering PART 4, CHAPTER 18 as follows:

**[Deemed approval for building line and coverage departures**

**18.1.1** When the Council grants approval of the subdivision of a land unit containing one or more existing structures, so as to locate different structures on separate land units, Council's approval is deemed to have been granted for any building line or coverage departure that arises from the approved subdivision, provided that future structures comply with the requirements of the land use scheme.

**Utility services**

**18.1.2** Where a subdivision is granted, the owner of any land unit of the subdivision shall, without compensation allow:

- (a) Gas mains, electricity, telephone and television cables, water pipes, foul sewers, storm water pipes, ditches and channels from any other land unit or land units to be conveyed across the land unit concerned;
- (b) Installations such as mini-substations, meter kiosks and service pillars to be installed thereon; and
- (c) If considered necessary by the Council, in such manner and position as may from time to time be reasonably required, and shall allow the right of access to the land unit at any reasonable time for the purpose of constructing, removing, repair or inspecting any works connected with the above.

**Bank stability**

**18.1.3** Where a subdivision is granted, the owner of any land unit shall, without compensation:

- (a) Receive such material or permit such excavation on the land unit as may be required to allow the use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit; or
- (b) Alternatively the owner may elect to build retaining structures to the satisfaction of, and within a period to be determined by, the Council.

**Building on a subdivision not confirmed**

**18.1.4** The Council may permit a building or structure to be erected on a land unit forming part of a subdivision that has not been confirmed, provided:

- (a) Such building or structure is not in conflict with this land use scheme or any relevant condition of subdivision;
- (b) The current registered owner of the land unit agrees to the erection of the building or structure concerned; and
- (c) Provided that where a subdivisional approval has lapsed the registered land owner shall apply to Council to consider the legalization of such structure in terms of the relevant legislation. ]

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## 18.1 Subdivision of a property with consent use rights or a temporary land use departure

- 18.1.1** [18.1.5] If a property that has been granted a consent use right or temporary land use departure is subsequently subdivided, the consent use right or temporary land use departure shall apply to only one of the resulting subdivisions, unless the [Council] municipality states otherwise by means of a condition of the subdivision.

### Subdivision of Residential properties

Subdivision in an area will be generally be allowed if it is consistent with the planning policies and the average size and density of surrounding residential properties will also be considered.

By amending and renumbering PART 4, CHAPTER 19 as follows:

#### [Rules for interpretation

##### 19.1.1 The following rules of interpretation shall apply:

- (a) In this zoning scheme, in the register, in any note on the zoning map and in any condition imposed in terms of this zoning scheme, the words and expressions shall have the meanings assigned to them in accordance with the definitions contained in these zoning scheme regulations, except where a contrary interpretation is clear from the context. Interpretation of words not defined in this chapter will have the meanings assigned to them in the "New Shorter Oxford English Dictionary" published by Oxford University Press, except where a contrary interpretation is clear from the context;
- (b) Headings contained in this zoning scheme shall be used for reference purposes, but shall not be construed to govern, limit or modify the meaning or intent of any provision of the zoning scheme;
- (c) The masculine gender includes the feminine and neuter, and visa versa, and the singular includes the plural, unless the context indicates otherwise;
- (d) Whenever reference is made to a law, ordinance or by-law, the reference applies to all substitutions, amendments and additions of that law, ordinance or by-law;
- (e) Whenever reference is made to the use of a building, land unit or property, the reference applies also to the erection of a building, to the use of part of a building and to the use of a land unit, whether a building is erected on the land unit or not;
- (f) It is understood that the terms "must" and "shall" are mandatory, and the term "may" is not mandatory, unless the context clearly indicates otherwise; and
- (g) The Council's interpretation of the text shall prevail unless the contrary is proven.]

**[Methods of measuring distances, levels and heights]**

- 19.1.2** The following provisions apply with regard to measuring distances, levels or heights:
- (a) If required by the Council, the owner or applicant shall appoint a registered surveyor to supply or verify information necessary for the Council to make a decision about compliance with distances or heights required in terms of this zoning scheme;
  - (b) Where reference is made or implied to the distance between boundaries or between a building and a boundary, this distance shall be measured in the following manner:
    - (i) The boundary or boundaries and all points of the building shall be projected onto a horizontal plane, and all measures shall be made in such a plane; and
    - (ii) The distance between a point on a building and a boundary shall be measured at the shortest distance between the point and the boundary.
  - (c) Where reference is made to a portion of a boundary "opposite" a building, such portion shall be defined by drawing lines in a manner described in clause (b), from points on such building, at right angles to such boundary; and
  - (d) Where reference is made to a distance, ground level, height of a point on a building or other measurement, then such distance, level or height shall be calculated in accordance with recognised geometric principles. In any case where the distance, level or height involved is so irregular that calculation in accordance with these principles is impractical or leads to a result which is clearly not in accordance with the intent of the zoning scheme, the Council shall determine the distance, level or height concerned for the purpose of administering this scheme.]

**[Interpretation of boundaries]**

- 19.1.3** Where uncertainty exists as to the boundaries of use zones, the following rules apply in the order listed:
- (a) Boundaries shown as following or approximately following any public street or road shall be construed as following the street or road cadastral boundary;
  - (b) Boundaries shown as following or approximately following any land unit boundary shall be construed as following such cadastral boundary;
  - (c) Boundaries shown as following or approximately following natural features shall be construed as following such features; and
  - (d) In the event of further uncertainty as to the boundaries of a use zone, the Council shall make a determination, or may appoint a professional land surveyor of his choice to determine the boundaries at the cost of the land owner.]

**[Interpretation of category of use and zoning]**

- 19.1.4** The Council shall determine the category of use or zoning, and its decision shall be final unless the contrary is proven, where:
- (a) There is uncertainty or dispute about zoning categories;
  - (b) There is conflict between the provisions of a zoning map, this zoning scheme and the register; and
  - (c) There is uncertainty or dispute about the zoning of property.]

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By amending Chapter 20 as follows:

**CHAPTER [20] 19: GENERAL PROVISIONS APPLICABLE TO ANNEXURES**

**19.1 [20.1] ANNEXURES**

The Annexures shall be maintained and updated by [Council] the municipality. [after a final rezoning decision is made or land use scheme amendment has been promulgated in terms of Planning Law. The Annexures must also be available to the general public for inspection.

Council may only amend or add to these Annexures after a rezoning has been approved, or this scheme has been amended in terms of the Overstrand Municipal By-law on Municipal Land Use Planning.]

**ANNEXURE A: NOTATION ON ZONING MAP****DISCLAIMER:**

The Overstrand Municipality does not guarantee as to the accuracy of the information supplied through the Zoning Maps. Persons who rely on the information provided do so entirely at their own risk. The Overstrand Municipality will not be liable for any claims whatsoever, whether for damage or otherwise, which may arise as a result of inaccuracies in the information supplied. The user is responsible to verify the information supplied, before making any decisions or taking any actions based on the information. Zoning can be verified by means of an official Zoning Certificate which can be obtained from the Overstrand Municipality: Town Planning Department.

The Zoning Maps provided on hard copy or in electronic format (PDF) are not continuously updated. The Overstrand Municipality' GIS system contains the master copy of the Zoning Maps which is maintained and updated continuously.

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## ANNEXURE B: LIST OF SPECIAL ZONES

NAME OF SPECIAL ZONE	DEFINITION OF SPECIAL USE	REFERENCE NUMBER (IF APPLICABLE)
Benguela Cove	-	SZ 1
Bosplasia	-	SZ 2
<u>Driehoek Onrus</u>	-	SZ 3
<u>Farms 215/0</u>	-	SZ 4
<u>Farm 641/8</u>	-	SZ 5
<u>Farms 688/1</u>	-	SZ 6
<u>Farm 692/7</u>	-	SZ 7
<u>Farm 698/1</u>	-	SZ 8
<u>Farm 703/14</u>	-	SZ 9
<u>Farm 720/0</u>	-	SZ 10
<u>Farm 919</u>	-	SZ 11
<u>Gansbaai(Grootbos)</u>	-	SZ 12
Hemel-en-Aarde Village	-	SZ 13
Kleinmond Harbour	-	SZ 14
Redevelopment Area	-	SZ 15
Mtimkhulu Village	-	SZ 16
<u>Volmoed</u>	-	SZ 17

## ANNEXURE C: LIST OF OVERLAY ZONES

NAME OF OVERLAY ZONE	NUMBER OF OVERLAY ZONE	REFERENCE NUMBER (IF APPLICABLE)
<u>Environmental Management Overlay Zone</u>	<u>EMOZ1</u>	
<u>Heritage Protection Overlay Zone and Stanford Heritage Overlay Zone</u>	<u>HPOZ 2</u>	
Repealed - Stanford Urban Conservation Area Overlay Zone	[OZ 1-S/CA]	

**Short Title:**

The scheme is called Schedule 2: Overstrand Municipality Land Use Scheme 2019.

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## OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT ENVIRONMENTAL MANAGEMENT OVERLAY ZONE REGULATIONS

### Explanatory note:

[ ] Words in bold font in bold square brackets indicate omissions from the Overstrand Municipality Draft Environmental Management Overlay Zone Regulations 30 September 2016

..... Words underlined with a solid line indicate insertions to the Overstrand Municipality Draft Environmental Management Overlay Zone Regulations 30 September 2016

### CHAPTER 1: INTERPRETATION, OBJECTS AND APPLICATION OF THE REGULATIONS:

#### 17 Definitions

17.1. [.]1 the Overstrand Municipality By-Law on Municipal Planning, ~~[2013]~~ 2015;

17.1. [.]2 the National Environmental Management Act, 1998 (Act 107 of 1998);

17.1. [.]3 the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

17.1. [.]4 the National Environmental Management Air Quality Act, 2005 (Act 39 of 2004);

17.1. [.]5 the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);

17.1. [.]6 the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);

17.1. [.]7 the National Environmental Management: Waste Act, 2008 (Act 59 of 2008);

17.1. [.]8 the National Water Act, 1998 (Act 36 of 1998);

17.13 "ISO 14001" means the international standard that specifies the requirements for effective environmental management as per the International Organisation of Standards (ISO);

17.[13]14 "land use authorisation" means any authorisation, consent, permit or exemption granted under the Land Use Planning Ordinance 15 of 1985, Land Use Planning Act, 2015; Overstrand Municipality By-Law on Municipal Planning, ~~[2013]~~ 2015 or any other legislation that governs the use of land within the municipal coastal zone;

17. [14]15 "NEMA" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

17.[15]16 "NEM:AQA" means the National Environmental Management Air Quality Act, 2005 (Act 39 of 2004);

17.[16] 17 "NEMBA" means the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);

17.[17]18" NEMPAA" means the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);

17. [18]19 "NEMWA" means the National Environmental Management: Waste Act, 2008 (Act 59 of 2008);

17. [19]20 "NWA" means the National Water Act, 1998 (Act 36 of 1998);

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17. ~~[20]~~[21] "Overstrand Municipal Area" means the geographical area over which the Overstrand Municipality has jurisdiction;

17. ~~[21]~~[22] "permissible activity" means an activity listed in Schedule B to these regulations that is permissible within a particular EMOZ only with the Council's written consent;

17. ~~[22]~~[23] "prohibited activity" means an activity listed in Schedule A to these regulations that is prohibited within a particular EMOZ;

17. ~~[23]~~[24] "Provincial Department" means the Department of Environmental Affairs and Development Planning or any other department within the Provincial Government of the Western Cape to which responsibility for coastal management may be transferred;

17. ~~[24]~~[25] "spatial development framework" means a spatial development framework referred to in section 26 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

17. ~~[25]~~[26] "littering" means the act of discarding waste in public areas, other than in a public litter container;

17. ~~[26]~~[27] "maintenance" means actions performed to keep a structure or system functioning or in service on the same location, capacity and footprint;

17. ~~[27]~~[28] "maintenance management plan" means a management plan for maintenance purposes defined or adopted by the competent authority;

17. ~~[28]~~[29] "pathway" means an area that has been planned and signposted by the Municipality to facilitate pedestrian or bicycle traffic, where vegetation has been cleared to facilitate public access and where a sandy, gravel covered or concrete surface exists;

17. ~~[29]~~[30] "Special Management Areas" are areas of excellence and good practice, to be managed in accordance with ISO 14001 Environmental Management Systems to achieve sustainable development;

17. ~~[30]~~[31] "staying overnight" means sleeping or otherwise taking shelter in any building, informal structure, infrastructure or vegetation on Municipal open space properties between the hours of 20:00 and 06:00;

17. ~~[31]~~[32] "utility services" means the provision by the Municipality of basic services in the discharge of its constitutional responsibilities including water, electricity, waste removal, storm water management, municipal public transport and municipal public works.

## **CHAPTER 2: SPECIFIC ENVIRONMENTAL MANAGEMENT OVERLAY ZONE REGULATIONS:**

### **20 COASTAL PROTECTION ENVIRONMENTAL MANAGEMENT OVERLAY ZONE ("COASTAL PROTECTION EMOZ"):**

#### **20.5[.]3 Management of Indigenous Coastal Vegetation:**

20.5. [.]3.2 The Municipality may implement measures to manage vegetation within a Coastal Reserve by burning (with the consent of the Chief Fire Protection Officer), thinning, pruning, brush-cutting, chipping and removing vegetation where appropriate, according to the management plan for each Coastal Reserve]

**[20.5. 6.3 All organs of state that own land within the Rural Coastal Protection EMOZ**

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must compile and IAS monitoring, control and eradication plan for land under their control. Copies of these plans and an annual report on implementation status must be submitted to the municipality. Should they fail to do so, the municipality may report the matter to the Department of Environmental Affairs, Biodiversity Directorate.]

20.7[.]6.2 Public access to the coastline must be protected through appropriate zoning of land (for example to Public Open Space Zone [III] I) and the designation of such land as Public Places under the municipal zoning scheme and/or the registration of public access servitudes against the title deeds of private land.

**22.5[.]2 Limiting and/or prohibiting inappropriate land uses in the buffer zone of National, Provincial and /or Municipal Nature Reserves in the Overstrand:**

22.5[.]2.1 A list of activities that are prohibited or that require written Council consent [permissible only with the consent of the Council] are set out in Schedules A and B.

22.5[.]2.2 In deserving cases, where there is no NEMA requirement for an Environmental Impact Assessment ("EIA") process and Environmental Management Plan ("EMP"), the Municipality may **[impose the need for an EIA and/or EMP in terms of the duties of care under section 28 of NEMA and/or the NWA] request additional information and/or an EMP for approval by the Municipality prior to granting its written consent and/or approving building plans or any development.**

**24.5[.]1 Designation of categories for undeveloped conservation worthy land and adjacent buffer areas:**

24.5[.]1.1.1 Category A: [eg. Milkwood Forest, Franskraal] Pristine Ecosystems

24.5[.]1.1.2 Category B: [ eg. Willem-Appel Dam] Semi-Modified Ecosystems

24.5[.]1.1.3 Category C: Modified Ecosystems [eg.Paddevlei] Modified Ecosystems

### **CHAPTER 3: APPLICATION AND APPROVAL PROCEDURES:**

25 The Overstrand Municipality By-Law on Municipal Planning, **[2013] 2015** will apply in respect of all applications, processes and decisions contemplated in these Regulations.

26 Appeals:

26.1 Any person who is dissatisfied by a decision taken by the Council or by delegated authority in terms of these Regulations may appeal in writing to the municipal appeal authority in accordance with the Overstrand Municipality By-Law on Municipal Planning, **[2013] 2015.**

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## SCHEDULE A

## PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES

PROHIBITED ACTIVITY	Applicable Environmental Management Overlay Zone (EMOZ)				
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation
Agricultural practices within this EMOZ which may cause water logging and [salination] siltation.	x	x	x	x	x
Planting or harbouring of declared alieninvasive plant species on properties located within and adjacent to this EMOZ.	x	x	x	x	x
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	x	x	x	x	x
Planting or harbouring of locally important emerging weed species within and adjacent to this EMOZ.	x	x	x	x	x
Development or agriculture on slopes steeper than 1:4.	x	x	x	x	x
Development above the 120m geographical contour line.		x	x	x	x
Development on the crest of a mountain, ridge or hill.		x	x	x	x
Establishment of Informal settlements or Temporary Relocation Areas.	x	x	x	x	x
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	x	x	x	x	x
Placement of religious symbols or memorabilia.	x		x		x

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Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	x		x		x
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF [without MLRA licence].	x		x		x
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	x		x		x

PROHIBITED ACTIVITY	Applicable Environmental Management Overlay Zone (EMOZ)					
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation	
Modification of the littoral active zone / functional dune system in absence of approved management plans.	x		x			x
Feeding, disturbing / pursuit of fauna.	x	x		x		
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	x	x	x	x		x
Defacing / damaging / removing of any notice, sign, barrier building or other infrastructure.	x	x		x		x
Playing or tampering with any rope, float, buoy, [marine] vessel, shelter or similar life-saving device.	x			x		
Staying overnight.	x	x	x	x		x
[Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.]	[x]	[x]	[x]	[x]		[x]

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The discharging of domestic effluent / grey water into [EMOZ Zones] all natural systems	x	X		x		x	x
Tampering with security / surveillance infrastructure	x		X	x		X	x
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	x	X	X		X		x
Graffiti, vandalism or damaging of municipal infrastructure.	x	X		X		X	X
Littering.	x	X		X		X	X
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items.	x	x	x		x	x	x
Dog walking/exercise in non-designated zones	x	x		x		x	x

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## SCHEDULE B

## ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES

ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT	Applicable Environmental Management Overlay Zone (EMOZ)					
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation	
<b>A) WITH WRITTEN PERMISSION BY DELEGATED AUTHORITY</b>						
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	x					x
Removal or destruction of [protected tree species] vegetation which is protected and/or of conservation concern.	x	x	x	x		x
Dune maintenance on private land [in Betty's Bay and Pringle Bay.] on all sensitive dune systems, as per approved [Overstrand] dune maintenance management plans.	x					x
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	x	x	x	x		x
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	x	x	x	x		x
<b>B) PERMIT UPON APPROVAL BY DELEGATED AUTHORITY AND / RECEIPT OF TARIFF</b>						
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	x	x	x	x		
Access from private properties to open spaces, including the removal of vegetation and the establishment of structures and infrastructure.	x	x	x			x

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Commercial filming.	x	x	x	x	x
Construction or placement of any temporary object, building, shelter or structure.	x	x	x	x	x
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	x	x	x	x	x
Launching of vessels at registered launch sites.	x			x	

ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT	Applicable Environmental Management Overlay Zone (EMOZ)				
	Coastal	Mountain	Protected Area Buffer	Riverine	Urban Conservation
<b>C) COUNCIL AUTHORISATION PENDING Consent Use Application / Lease Agreement / Applicable Tariffs as applicable</b>					
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	x	x	x	x	x
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	x		x		x
Encroachment of private buildings, structures, infrastructure, access routes.	x		x		x
Commercial Harvesting/collection and removal of any natural resource [:]	x	x	x	x	x
Construction or placement of any permanent object, building, shelter or structure	x	x	x	x	x

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**SCHEDULE C  
GENERAL REGULATIONS APPLICABLE TO THE ENVIRONMENTAL OVERLAY ZONES OF THE OVERSTRAND MUNICIPALITY**

GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION	Applicable Environmental Management Overlay Zone (EMOZ)				
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation
<p><b>Access</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Municipal EMOZ open spaces shall be regarded as Public Places whereby the right of access for the general public is guaranteed, excluding where such access constitutes a negative environmental impact or where such access will constitute a public nuisance.</li> <li><input type="checkbox"/> Members of the public shall at all times respect the right of other users of Municipal property in terms of access to natural areas within EMOZ Open Space Properties as well as the personal integrity, health, safety and wellbeing of other persons present.</li> <li><input type="checkbox"/> Members of the public shall at all times respect the environment and natural resources within Municipal EMOZ properties and refrain from inflicting damage to natural resources, the ecology or landscape integrity in such areas.</li> <li><input type="checkbox"/> Members of the public shall at all times respect Municipal infrastructure and refrain from damaging any building, structure, work, amenity, regulation sign or interpretive material present in these public places.</li> <li><input type="checkbox"/> The Municipality may designate existing development nodes and access routes on spatial plans per suburb in the Municipal area, signpost such areas and provide for their operational management in maintenance management plans.</li> <li><input type="checkbox"/> Members of the public shall not stray beyond designated nodes, access routes and associated infrastructure.</li> <li><input type="checkbox"/> Council may from time to time promulgate bylaws prohibiting specific actions and behaviour within <u>all</u> [urban and coastal] EMOZ properties and impose penalties for transgression of such bylaws.</li> </ul>	x	x	x	x	x

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GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION	Applicable Environmental Management Overlay Zone (EMOZ)				
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation
<p><b>Restriction of Access</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> [The right of access to EMOZ properties shall be restricted to hours between 06:00 – 20:00.]</li> <li>• [Occupation of buildings, infrastructure and vegetation on Municipal EMOZ properties between 20:00 – 06:00, with the exception of Municipal Festivals and official events, shall be deemed as staying overnight.]</li> <li><input type="checkbox"/> The right of access shall be restricted to formally designated, demarcated and signposted development nodes, pathways and trails, in an identified EMOZ.</li> <li><input type="checkbox"/> Council or the delegated management authority may close any access point, trail or encroachment that has or will have an adverse impact on the environment or that is deemed to be an unlawful or unauthorised access point or route.</li> <li><input type="checkbox"/> Objectors towards any closure or removal of any path, trail, route or encroachment will have to provide proof of Municipal authorisation or permission for the establishment of such means of access from private properties.</li> <li><input type="checkbox"/> Council or the delegated management authority may order the removal of structures in unauthorised access points or routes and the rehabilitation of such sites at the expense of the responsible party.</li> <li><input type="checkbox"/> Overstrand Municipality may publish Bylaws which manage the right of public access to - and recreational use of watercourses, wetlands and dams.</li> </ul>	x	x	x	x	x

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Applicable Environmental Management Overlay Zone (EMOZ)					
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation
<p><b>GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION</b></p> <p><b>Remedy of Breach of the Right of Access and Occupation of Municipal EMOZ Properties</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Council may remove buildings, structures, pathways, vegetation, memorabilia or religious symbols which have been placed, erected, constructed, cleared or planted on Municipal EMOZ properties.</li> <li><input type="checkbox"/> Council may issue repair / removal / rehabilitation notices where structures, vegetation, memorabilia or religious symbols encroach on Municipal property and where the ownership or custodianship of such items can be established.</li> <li><input type="checkbox"/> Costs incurred in the removal of infrastructure as well as for the repair / rehabilitation of damaged ecosystems, shall be for the account of the responsible party.</li> </ul>	x	x	x	x	x

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<p><b>Development Nodes</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The design and development of new buildings, infrastructure and utilities within development nodes in EMOZ properties must complement the natural character and sense of place of the ecological corridor and existing development in such areas.</li> <li><input type="checkbox"/> Council may require the submission of Environmental Impact Assessments and EMPs for activities, buildings and infrastructure within development nodes, for each application.</li> <li><input type="checkbox"/> Council may require the submission of independent environmental audit reports for specified activities contained in environmental management plans for consent use activities.</li> <li><input type="checkbox"/> Based on the NEMA 'Precautionary' and 'Duty of Care' principles, the Municipality may also direct the developer/owner/applicant to prepare and submit Construction and Operational EMPs to prevent, mitigate and manage any adverse impacts in sensitive EMOZ zones, for consideration and approval by the Municipality.</li> </ul>	<p>X</p>	<p>X</p>	<p>X</p>	<p>X</p>	<p>X</p>	<p>X</p>	<p>X</p>
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<p><b>GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION</b></p>	<p><b>Applicable Environmental Management Overlay Zone (EMOZ)</b></p>			
	<p>Coastal</p>	<p>Mountain Catchment</p>	<p>Protected Area Buffer</p>	<p>Riverine Urban Conservation</p>
<p><b>Management Agreements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Municipality may enter into Co-Management Agreements with community organisations with locus standing for the funding / operational management of Municipal Open Spaces EMOZ zones.</li> <li><input type="checkbox"/> The Municipality may enter into Co-Management Agreements with public / community organisations for the management and funding of operational management activities in <b>[Buffer Zones] EMOZ</b>.</li> </ul>	<p>X</p>	<p>X</p>	<p>X</p>	<p>X</p>

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<p><b>Management of Locally Problematic Invasive Alien Species &amp; Emerging Weeds</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Council may, within any EMOZ, consider and approve a list of locally problematic alien invasive species and emerging weeds which pose a risk to the environment and which could have cost implications for the Municipality if such species had to be removed from Municipal land.</li> <li><input type="checkbox"/> Council may, through a system of delegations, issue removal notices for locally listed alien invasive species and emerging weeds which are found on properties within or adjacent to EMOZ properties, including those on State Owned land.</li> </ul>	x	x	x	x	x
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GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION	Applicable Environmental Management Overlay Zone (EMOZ)				
	Coastal	Mountain Catchment	Protected Area Buffer	Riverine	Urban Conservation
<p>Management Plans for NEM:BA Invasive Alien Species</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> [All organs of state owned land within the Overstrand Environmental Management Zones must compile an IAS monitoring, control and eradication plan for land under their control (legally required in terms of NEMBA). Copies of these plans and an annual report on implementation status must be submitted to the municipality. Should they fail to do so, the municipality may report the matter to the Department of Environmental Affairs Biodiversity Directorate.]</li> <li><input type="checkbox"/> Overstrand Municipality may request access to Invasive Alien Species Management Plans from that are required for all State Land, from Government Departments responsible for land, where such State Land falls within an EMOZ.</li> <li><input type="checkbox"/> Overstrand Municipality may correspond with DEA: Biosecurity Directorate and request the serving of Directives for the clearing of Invasive Alien Species on Government Departments that have jurisdiction over State Land, if there are no IAV plans in place for such properties.</li> <li><input type="checkbox"/> Council may request access to Alien Invasive Species Clearing plans for private land, if such private land is found to contain listed NEM:BA or locally important Invasive Species and Emerging Weeds.</li> </ul>	x	x	x	x	x

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<p><b>Management of Forests [In Urban Areas] on Municipal Land</b></p> <p><input type="checkbox"/> The Municipality may categorise, designate and manage specific forest areas as Coastal Forest Reserve / Recreational Area / Special Management Area, depending on the existing state of transformation of such ecosystems and in accordance with the provisions of management plans for such areas, as approved by Council.</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
<p><b>GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION</b></p> <p><b>Prioritisation of Areas for Fire Control Management</b></p> <p><input type="checkbox"/> The municipality may prioritise and facilitate areas for proactive and / or urgent Fire Control Management in collaboration with landowners - where the fire risk to natural environment as well as life and property is reaching extreme levels.</p> <p><input type="checkbox"/> The Municipality may call for the submission or development of co-operative fire protection and fire management plans for private properties within the Environmental Overlay Zones or within the buffer zones that abut Overstrand property.</p> <p><input type="checkbox"/> The Municipality may request the provision of fire protection and fire management plans from Government Departments that have jurisdiction over State Land that abuts or is part of an Environmental Overlay Zone and report the said Departments to the MEC for Agriculture, Forestry and Fisheries if such plans are not forthcoming from the relevant department.</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
<p><b>Applicable Environmental Management Overlay Zone (EMOZ)</b></p>					
<p><b>Coastal</b></p>		<p><b>Mountain Catchment Area Buffer</b></p>	<p><b>Protected Area Buffer</b></p>	<p><b>Riverine</b></p>	<p><b>Urban Conservation</b></p>

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<b>GENERAL REGULATIONS APPLICABLE TO OVERLAY ZONES IN THE OVERSTRAND MUNICIPAL REGION</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>				
	<b>Coastal</b>	<b>Mountain</b>	<b>Protected</b>	<b>Riverine</b>	<b>Urban</b>

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<p><b>Fire Management</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Overstrand Municipality may develop an Ecological Fire Management Plan in coordination with the Fire and Rescue department of the Municipality for the ecological management of open spaces within the urban edge.</li> <li><input type="checkbox"/> Properties subject to the fire management plan shall be exempt from the general Overstrand Fire Management Policy and will be burned according to correct fire management cycles.</li> <li><input type="checkbox"/> The Municipality may prepare fuel breaks and fire breaks on and along the boundaries of all residential properties to provide access for fire fighting teams and to reduce the risk of the spread of fires across boundaries.</li> <li><input type="checkbox"/> The Municipality may restrict the placement of high fire risk structures and buildings within building lines on the boundary of the EMOZ Open Spaces and order the removal of structures where such structures constitute a fire hazard and / threaten life / other property.</li> <li><input type="checkbox"/> The Municipality may order the installation of sprinkler systems / fire protection systems on buildings with thatched roofs, which are located adjacent to <u>EMOZ Open Spaces</u> [open space] properties.</li> </ul>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
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<p><b>Management of Encroachment</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Council may institute measures to safeguard coastal land against encroachment of private properties (gardens, garden refuse, structures, mown areas etc.) into EMOZ open spaces or to prosecute persons that cause such encroachments.</li> <li><input type="checkbox"/> Council may approve procedures for the removal of infrastructure that is placed in open spaces without authorization from the Municipal Manager or the delegated Authority.</li> <li><input type="checkbox"/> Council may authorize procedures for the recovery of costs from persons that are responsible for encroachments, dumping or the modification of vegetation in the EMOZ.</li> <li><input type="checkbox"/> Council may prohibit the installation of memorabilia, religious symbols, objects of art and culture or other structures in open spaces.</li> </ul>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
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**OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT HERITAGE PROTECTION  
OVERLAY ZONE REGULATIONS**

[ ] Words in bold and in square brackets indicate deletions from the existing enactment.  
 \_\_\_\_\_ Words with a solid line indicate insertions in the existing enactment.

To amend the provisions in the Heritage Overlay Zone (OZH2) and the Stanford Heritage Overlay Zone (OZS3), this will be integrated as Annexure C with the revision of the Overstrand Municipality Land Use Scheme, 2013;

BE IT ENACTED by the Council of the Overstrand Municipality as follows:

**By amending the PREAMBLE as follows;**

WHEREAS Chapter 15 of the Overstrand Municipality's **[Zoning Scheme Regulations]** Land Use Scheme empowers municipalities to prepare, approve, amend or delete overlay zones for specific areas;

**By amending and renumbering the CHAPTER 1 as follows;**

1.1..1 the Overstrand Municipality By-Law on Municipal Planning, 2015[3]

[1.2] ["base level" of a building means an imaginary plane drawn horizontally at the average ground level of the building or vertical division, for the purpose of an uncovered stoep and or deck, a separate base level will be applicable; "Base level" means the mean point between the highest point on the site and the lowest point as defined in the Zoning Scheme.]

[1.3] 1.2

[1.4] 1.3

[1.5] 1.4

[1.6] 1.5

[1.7] 1.6 "land use authorisation" means any authorisation, consent, permit or exemption granted under the **[Land Use Planning Ordinance 15 of 1985]**Spatial Land Use Planning Management Act 201[4]3 (Act No. 16 of 2013), Land Use Planning Act, 201[4]3 (Act No 3 of 2014); Overstrand Municipality By-Law on Municipal Planning, **[2013]201[6]5** or any other legislation that governs the use of land **[within the municipal coastal zone];**

**[Land Use Planning Act 2014 (Act No. 3 of 2014)]**

[1.8] 1.7

[1.9] 1.8

[1.10] 1.9 "permissible activity" means an activity or use that is permissible within a particular HPOZ only with the **[Council's] Municipality's** written consent;

[1.11] 1.10

[1.12] 1.11

[1.13] 1.12

[1.14] 1.13 "Scenic Drives" means those routes which link scenic corridors, which are primarily located within approved urban edges and which thus contribute to the continuity of a scenic route network.

[1.15] 1.14 "SAHRA" means the South African Heritage Resources Agency;

**[Spatial Land Use Management Act, 2013 (Act No. 16 of 2013)]**

1.15 "spatial development framework" means a spatial development framework referred to in section 26 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Spatial Land Use Management Act, 2013 (Act No. 16 of 2013), or as amended;

1.17 "municipality" means the Council of the Municipality and includes a councillor, the Municipal Manager, a committee, or official where delegated authority is granted to decide a matter on behalf of the Municipality;

**By amending and renumbering the CHAPTER 2 as follows;**

5 It should be noted that while the Municipality will make its own decisions in respect of proposed development inside the identified HPOZ's under the Overstrand Municipality By-Law on Municipal Land Use Planning [By-Law], [2013] 2015 it will be further constrained by these regulations.

7 Any land use, planning, building plan or related application pertaining to a property or activity located within a Heritage Overlay Zone must be referred to the Overstrand Heritage and Aesthetics Committee and Stanford Heritage Committee, or a registered conservation body, for comment prior to a decision being taken for the approval or refusal of such an application by the Municipality. **[The following activities are included:]**

[7.1 **Removal, felling, lopping, topping or otherwise damaging any tree that contributes to the cultural landscape that is either more than 6 meters in height or more than 500mm in diameter other than for the removal of dangerous branches or bona fide pruning. Alien invasive vegetation is excluded.]**

[7.2 **Alteration to or removal of any historical landscape or landscape feature including boundary hedges and mature plantings; or addition or removal of or alteration to hard landscape surfaces, street furniture or signage.]**

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[8. Such activities will only be permitted following comment from the Overstrand Heritage and Aesthetics Committee and Municipal approval.]

By amending and renumbering the CHAPTER 3 as follows;

[9] 8

[9.1] 8.1

[9.2..1] 8.2..1 The first purpose is  to maintain and enhance the scenic drive network in the Overstrand, which is a heritage resource of considerable environmental, historic and aesthetic significance and which contributes substantially to the economic base of the region.

[9.2..2] 8.2..2 The second purpose is  to promote the tourism, environmental and amenity potential of the Overstrand scenic route network by enhancing the user's experience and understanding.

[9.2..3] 8.2..3 The third purpose is  to ensure that the actual route is embedded within the landscape rather than imposed upon it.

[9.2..4] 8.2..4

[9.2..5] 8.2..5

[9.2..6] 8.2..6

[9.2..6.1] 8.2..6.1

New buildings must **[be sited to avoid]** not block[ing] views from scenic routes, particularly views towards the mountains and the coastline, and towards places/sites identified as having visual or heritage significance, where possible.

[9.2..6.2] 8.2..6.2

Comment must be obtained from the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee, and/or a registered conservation body on potential visual impacts before the Municipality approves any applications within this HPOZ.

[9.2..6.3] 8.2..6.3

[9.2..6.4] 8.2..6.4

[9.2..6.5] 8.2..6.5

New developments must be associated and linked with existing settlements, rather than being built on isolated sites on undeveloped land.

[9.2..6.6] 8.2..6.6

[9.2..6.7] 8.2..6.7

Building platforms on sloping sites must be kept to a minimum. Buildings on high stilts in excess of 2.4 m as measured from the

base level as defined in the **[Zoning Scheme] Land Use Scheme** must be avoided. New levels must be designed to fit into the surrounding land form. Mitigation measures must be identified to limit visual impacts.

[9.2..6.8] 8.2..6.8

[9.2..6.9] 8.2..6.9

[9.2..6.10] 8.2..6.10

[9.2..7] 8.2..7

[9.2..7.1] 8.2..7.1

No departure from the 30m building line applicable to Agricultural Zones will be considered without the comment from the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee, and/or a registered conservation body [or a registered conservation body]. Mitigation measures must be identified for any departure from this provision.

[9.2..8] 8.2..8

[9.2..8.1] 8.2..8.1

Visually intrusive structures, such as billboards, **[power lines,]** are prohibited adjacent to scenic routes.

[9.2..8.2] 8.2..8.2

[9.2..8.3] 8.2..8.3

[9.2..8.4] 8.2..8.4

[9.2..8.5] 8.2..8.5

[9.2..8.6] 8.2..8.6

[9.2..9] 8.2..9

[9.2..9.1] 8.2..9.1

[9.2..9.2] 8.2..9.2

[9.2..10] 8.2..10

[9.2..10.1] 8.2..10.1

[10] 9

[10.1] 9.1

[10.2] 9.2 **Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:**

[10.2..1] 9.2..1

[10.2..2] 9.2..2

[10.2..3] 9.2..3

[10.2..4] 9.2..4

[10.2..5] 9.2.5

[10.2..6] 9.2.6

[10.2..6.1] 9.2.6.1

All planning or building plan applications, if applicable, **[must]** be submitted to the Overstrand Heritage and Aesthetics Committee and Stanford Heritage Committee, or a registered conservation body for comment.

[10.2..7] 9.2.7

[10.2..8] 9.2.8

[10.2..8.1] 9.2.8.1

[10.2..8.2] 9.2.8.2

[10.2..9] 9.2.9

[10.2..9.1] 9.2.9.1 Building heights are restricted to 8m as measured from base level to the top of the structure **[to base level]**.

[10.2..9.2] **[The wall plates of buildings facing onto public areas are restricted to 5.5m above finished floor level.]**

[10.2..10] 9.2.10

[10.2..10.1] 9.2.10.1

[10.2..10.2] 9.2.10.2

[10.2..10.3] 9.2.10.3

No prefabricated materials, including "vibracrete" walls and false stone walls will be permitted to face onto the coastline ocean in this zone.

[10.2..11] 9.2.11

[10.2..11.1]

**[Flat roofs must only be permitted on lean-to additions and must not constitute the majority of the roof space.]**

[10.2..11.2] 9.2.11.1

Similarly dormers must not constitute more than one third of the roof space facing onto the coastline in Greenfield or Brownfield developments.

[10.2..12] 9.2.12

[10.2..12.1] 9.2.12.1

[10.2..12.2] 9.2.12.2

[10.2..12.3] 9.2.12.3

[10.2..13] 9.2.13

[10.2..13.1] 9.2.13.1

[10.2..13.2] 9.2.13.2

[10.2..14] 9.2.14

**[10.2..14.1] 9.2..14.1**

The felling of mature trees which contribute to area character (the Norfolk pines and flowering gums (*Corymbia ficifolia*) in Northcliff and Eastcliff) will not be permitted without the written consent of the Municipality **[which may only be granted once comment from the Overstrand Heritage and Aesthetics Committee has been obtained].**

**[10.2..14.2] 9.2..14.2****[10.2..15] 9.2..15****[10.2..15.1] 9.2..15.1****[11] 10****[11.1] 10.1**

**[11.2] 10.2 Purpose:** To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

**[11.2..1] 10.2..1****[11.2..2] 10.2..2****[11.2..3] 10.2..3****[11.2..3.1] 10.2..3.1**

**P[No p]lanning and building plan applications in the HPOZ will be considered with [hout] comment from the Overstrand Heritage and Aesthetics, or a registered conservation body, only if applicable [Committee].**

**[11.2..3.2] 10.2..3.2**

No land uses, or deviations from the Town Planning Scheme, which threaten the ecological integrity of the vlei and associated seepage system will be considered without the comment from the Overstrand Environmental Services[permitted].

**[11.2..3.3]**

**Building interventions which do not adhere to sustainable environmental building practices, particularly water management systems, will not be permitted.]**

**[11.2..3.3] 10.2..3.3**

The creation of access ways to the water's edge, across public land and through the reed systems will not be permitted without the comment from the Overstrand Environmental Services.

**[11.2..3.4] 10.2..3.4**

Strip foundations which interfere with the natural water drainage adjacent to the wetland areas will not be permitted without the prior approval from the Overstrand Environmental Services.

**[11.2..4] 10.2..4****[11.2..4.1] 10.2..4.1****[11.2..4.2] 10.2..4.2**

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[11.2..4.3] **[Wall plate heights on any facades facing onto the public zone (vie) area and coastal zone) must not exceed 5.5m above the finished floor level.]**

[11.2..4.4] 10.2..4.3 The use of materials and colours, especially on roofs, must be earth-toned or [and] blend into the natural landscape rather than contrast with it.

[11.2..4.5] **[Bright colours and reflecting materials will not be permitted.]**

[11.2..4.6] 10.2..4.4 A wall-dominated recessive architectural treatment must be adopted. Any **[large] continues glazed surface[s] larger than 25% of the facades facing onto the public zone, [in excess of 1.5m<sup>2</sup>], must be recessed [placed]** at least 0.5m from the **[front]** façade of the building.

[11.2..5] 10.2..5

[11.2..5.1] 10.2..5.1

[11.2..5.2] 10.2..5.2

[11.2..6] 10.2..6

[11.2..6.1] 10.2..6.1

[11.2..6.2] 10.2..6.2

[11.2..6.3] 10.2..6.3

[11.2..6.4] 10.2..6.4

[12] 11

[12.1] 11.1

11.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[12.2]

[12.2..1] 11.2..1

[12.2..2] 11.2..2

[12.2..3] 11.2..3

[12.2..4] 11.2..4

[12.3] 11.3

[12.3..1] 11.3..1 All land use planning and building applications, if applicable, be [must be] referred to the Overstrand Heritage and Aesthetics Committee, or a registered conservation body for comment.

[12.3..2] 11.3..2 Land uses which are not of an agricultural or rural nature (apart from the **[residential]** land uses permitted in terms of the Land Use Scheme**[zoning scheme]**) will be discouraged in the smallholding area.

[12.4] 11.4

[12.4..1] 11.4..1

[12.5] 11.5

[12.5..1] 11.5..1

[12.5..2] 11.5..2 Building on slopes must be stepped down the slope, and buildings must not be built on stilts higher than 2.4 m above the base level. Mitigation measures must be applied to minimise visual impact.

[12.5..3] 11.5..3 Residential buildings must not exceed 8m above the base level to top of the structure.

[12.5..4] **[Wall plates on sea facing facades are restricted to 5.5m above the finished floor level.]**

11.5.3.1 A wall-dominated recessive architectural treatment must be adopted. Any continues glazed surface larger than 25% of the facades facing onto the public zone, must be recessed at least 0.5m from the façade of the building.

[12.5..5] **[A wall-dominated architectural treatment should be adopted.]**

[12.5..6] **[Any large glazed surfaces, in excess of 1.5m<sup>2</sup>, must be placed at least 0.5m from the front façade of the building.]**

[12.5..7] The use of materials and colours, especially on roofs, must be earth-toned **[and] or** blend into the landscape rather than contrast with it. **[Bright colours and reflecting materials will not be permitted.]**

11.5.4

[12.6] 11.6

[12.6..1] 11.6..1 Boundary treatments comprising precast concrete, "vibracrete" walls, unpainted cement block walls, high security fencing (higher than 0.5m above the 2.1m wall height) and razor wire treatment are prohibited in the small holding area. Visually impermeable boundary treatments higher than 2.1m will not be permitted.

[12.6..2] 11.6..2

[12.6..3] 11.6.3

[12.6..4] 11.6.4

[12.6..5] 11.6.5

[12.7] 11.7

[12.7..1] 11.7..1

[12.7..2] 11.7.2

[12.8] 11.8 [Inappropriate] Signage:

[12.8..1] 11.8..1

[12.9] 11.9

[12.9.1] 11.9.1

[12.9.2] 11.9.3

[12.9.3] 11.9.3

[12.10] 11.10

[12.10..1] 11.10..1 Any new subdivision, permitted in terms of the Land Use Scheme[zoning scheme], must be subject to a Site Development Plan (SDP) which specifies siting, massing, scale, materials, colours and the treatment of access ways in terms of the regulations stipulated above.

[13] 12

[13.1] 12.1

[13.2] 12.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[13.2..1] 12.2..1

[13.2..2] 12.2.2

[13.2..3] 12.2.3

[13.2..4] 12.2.4

[13.3] 12.3

[13.3..1] 12.3..1 All land use planning and building applications, [must be]if applicable, be submitted to the Overstrand Heritage and Aesthetics Committee for comment, or a registered conservation body.

[13.4] 12.4

[13.4..1] 12.4.1

[13.4..2] 12.4.2

[13.4..3] 12.4.3

[13.5] 12.5

[13.5..1] 12.5.1

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**[13.6] 12.6**

**[13.6..1] 12.6..1** The 8m height restriction, as measured from the base level[, ] to top of the structure **[applies]**.

**[13.6..2 Wall plate heights on any facades facing onto public areas are restricted to 5.5m above the finished floor level.]**

**[13.6..3] 12.6..2****[13.7] 12.7**

**[13.7..1] 12.7..1** The use of materials and colours, especially on roofs, must blend into the landscape rather than contrast with it. **[Bright colours and reflecting materials will not be permitted.]**

**[13.8] 12.8****[13.8..1] 12.8..1****[13.9 Vegetation:]**

**[13.9..1** No mature vegetation exceeding 1.5m in height, can be removed without the special consent of the Municipality.]

**[14] 13 GANSBAAI HERITAGE CORE HERITAGE PROTECTION ZONE ("GANSBAAI CORE HPOZ")**

**[14.1] 13.1**

**[14.2] 13.2** Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

**[14.2..1] 13.2..1****[14.2..2] 13.2..2****[14.2..3] 13.2..3****[14.3] 13.3**

**[14.3..1] 13.3..1** All land use planning and building plan applications, if applicable, **[must]** be submitted to the Overstrand Heritage and Aesthetics Committee for comment, or a registered conservation body.

**[14.4] 13.4****[14.4..1] 13.4..1****[14.5] 13.5****[14.5..1] 13.5..1**

**[14.5..2] 13.5..2** No prefabricated materials, including "vibracrete" walls and false stone walls will be permitted in this zone. **[Boundary walls above 2.1m must be visually permeable.]**

**[14.6] 13.6 Building massing and solid to void relationship**

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[14.6..1] 13.6..1[14.6..2] 13.6..213.6..2.1

[Large glazed surfaces in excess of 1.5m<sup>2</sup> must be located at least 0.5m behind the front façade of the building.] A wall-dominated recessive architectural treatment must be adopted. Any continuous glazed surface larger than 25% of the facades facing onto the public zone, must be recessed at least 0.5m from the façade of the building.

[14.6..3]

[14.7] 13.7 13.7**Architectural styles**[14.7..1] 13.7..1[14.7..2] 13.7..2[14.8] 13.8[14.9] 13.9[14.9..1] 13.9..1

[15] 14 **HAWSTON HERITAGE CORE HERITAGE PROTECTION OVERLAY ZONE ("HAWSTON HERITAGE CORE HPOZ")**

[15.1] 14.1

[15.2] 14.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[15.2..1] 14.2..1[15.2..2] 14.2..2[15.3] 14.3

[15.3.1] 14.3.1 All land use planning and building applications, if applicable, must should be submitted to the Overstrand Heritage and Aesthetics Committee [for comment] or a registered conservation body for comment.

[15.3.2] 14.3.2[15.3.3] 14.3.3[15.4] 14.4[15.4.1] 14.4.1[16] 15[16.1] 15.1

[16.2] 15.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[16.2.1] 15.2.1[16.2.2] 15.2.2[16.2.3] 15.2.3[16.2.4] 15.2.4[16.2.5] 15.2.5[16.2.6] 15.2.6[16.3] 15.3

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**[16.3.1] 15.3.1** All land use planning and building plan applications, if applicable, should [must] be submitted to the Overstrand Heritage and Aesthetics Committee [for comment] or a registered conservation body for comment.

**[16.5] 15.5** Building heights

**[16.5.1] 15.5.1** Building heights are restricted to 8\_m from [the] the base level to the top of the structure [to the base level].

**[16.5.2]** [Wall plate heights on facades facing onto public spaces are restricted to 5.5m above the finished floor level.]

**[16.6] 15.6** Additions

**[16.6.1] 15.6.1**

**[16.7] 15.7** Interface between public and private realms

**[16.7.1] 15.7.1**

**[16.7.2]** [Boundary walls facing public streets must be a maximum of 2.1m.]

**[16.8] 15.8**

**[16.8.1] 15.8.1** **[Similarly]** Dormer windows must not constitute more than one-third of the roof space.

**[16.8.1] 15.8.2**

**[16.9] 15.9**

**[16.9.1] 15.9.1**

**[16.9.2] 15.9.2**

**[16.9.3] 15.9.3**

**[16.10] 15.10**

**[16.10.1] 15.10.1**

**[16.10.2] 15.10.2**

**[16.10.3] 15.10.3**

**[16.11] 15.11**

**[16.11.1] 15.11.1**

**[16.12] 15.12**

**[16.12.1] 15.12.1**

**[17] 16** HISTORIC CORE OF HERMANUS HERITAGE PROTECTION OVERLAY ZONE  
("HERMANUS HISTORIC CORE HPOZ")

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[17.1] 16.1

[17.2] 16.2 To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[17.2.1] 16.2.1

[17.2.2] 16.2.2 These heritage features all contribute to an area of particular character, reflecting many of the heritage themes identified in the Overstrand area and worthy of the status of a HPOZ in terms of the Overstrand Municipality Land Use Scheme[Zoning Scheme].

[17.3.1] 16.3.1 All land use planning and building plan applications, if applicable, [must] be submitted to the Overstrand Heritage and Aesthetics Committee for comment or a registered conservation body.

[17.4] 16.4

[17.4.1] 16.4.1

[17.4.2] 16.4.2

[18] 17 ONRUST PENINSULA, LAGOON AND CAMPSITE AREA HERITAGE PROTECTION OVERLAY ZONE ("ONRUST HPOZ")

[18.1] 17.1

[18.2] 17.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[18.2.1] 17.2.1

[18.2.2] 17.2.2

[18.2.3] 17.2.3

[18.2.4] 17.2.4

[18.2.5] 17.2.5

[18.3] 17.3

[18.3.1] 17.3.1 All land use planning and building plan applications, if applicable, [must] be submitted to the Overstrand Heritage and Aesthetics Committee, or a registered conservation body for comment.

[18.4] 17.4

[18.4.1] 17.4.1

[18.5] 17.5

[18.5.1] 17.5.1 Building heights are restricted to 8 m from the base level to the top of the structure.

[18.5.1] [Building heights are restricted to 8m from the base level.]

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[18.5.2] **[Wall plate heights on any facades facing onto public areas are restricted to 5.5m above the finished floor level.]**

[18.6] 17.6 Additions:

[18.6.1] 17.6.1

[18.7] 17.7

[18.7.1] 17.7.1

[18.7.2] 17.7.2

[18.7.3] 17.7.3

[18.7.4] 17.7.4

[18.7.5] 17.7.5

[18.8] 17.8

[18.8.1] 17.8.1

**[Similarly d] Dormer windows must not constitute more than one third of the roof space facing onto the coastline.**

[18.9] 17.9

[18.9.1] 17.9.1

[18.9.2] 17.9.2

[18.9.3] 17.9.3

[18.10] 17.10

[18.10.1] 17.10.1

[18.10.2] 17.10.2

[18.11] 17.11

[18.11.1] 17.11.1

[18.11.2] 17.11.2

The removal or excessive pruning of mature trees in excess of 1.8m in height which contribute to the public realm will not be permitted. Comment from the Overstrand Heritage and Aesthetics Committee, or a registered conservation body is required.

[18.12] 17.12

[18.12.1] 17.12.1

[19] 18 STANFORD HERITAGE PROTECTION OVERLAY ZONE ("STANFORD HPOZ");

[19.1] 18.1

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[19.2] 18.2 Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

[19.2.1] 18.2.1 To protect and enhance the wide range of heritage sites and streetscapes of considerable heritage significance **[and]** which contribute to the unique townscape character.

[19.2.2] 18.2.2 To protect and enhance the role of Market Square and Queen Victoria Street as major structuring elements within the historic core of Stanford which [and which] reflect a number of architectural and historical features [which] and establish the character and sense of place in Stanford.

[19.2.3] 18.2.3

[19.2.4] 18.2.4

[19.2.5] 18.2.5

[19.2.6] 18.2.6 To protect and enhance historical building typologies. Inappropriate typologies must be avoided in the historical core of Stanford with its significant spatial character **[must be avoided]**. The historical present, streetscape and street block character and the role of buildings as landmarks, street liners or corner buildings in contributing to this character must be respected.

[19.2.6] 18.2.7

[19.3] 18.3

[19.3.1] 18.3.1 All land use planning and building plan applications, if applicable, [must] be submitted to the Stanford Heritage [and Aesthetics] Committee for comment.

[19.4] 18.4

[19.4.1] 18.4.1 No new building in the Stanford HPOZ to exceed 6.8 m in height, except on erven zoned for commercial use in the commercial core in Queen Victoria Street between Daneel St and Church Street where a maximum height of 8 m is permitted above the base level.

[19.4.2] 18.4.2 **[Buildings within the single residential zone must be restricted to 6.8m.]** No **[point] portion** of any building **[on] shall [any portion thereof shall]** exceed the prescribed maximum height [prescribed, measured] from base level, save for the general encroachments as prescribed in the applicable land use scheme.

[19.4.3] 18.4.3

[19.4.3.1] 18.4.3.1

[19.4.3.2] 18.4.3.2

[19.4.4] 18.4.4

[19.4.5] 18.4.5

[19.5] 18.5

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[19.5.1] 18.5.1 Parking provision standards/ratios may be relaxed when, in the opinion of the [Council]Municipality, the imposition of obligatory parking ratios will have a negative impact on building-street relationships and the continuity of the streetscape where such streetscapes are considered to have heritage significance.

[19.5.2] 18.5.2

[19.5.3] 18.5.3 Relaxation of parking provisions will be subject to the alternative parking arrangements provided for in the Land Use Scheme[Zoning Scheme].

[19.5.4] 18.5.4

[19.5.5] 18.5.5 Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics]Committee.

[19.6] 18.6

[19.6.1] 18.6.1 In the case of an existing building which is being altered/extended, the existing building line shall be maintained, except where the existing condition deviates from the pattern and rhythm of the street, subject to such exceptions that the [Council]Municipality may specially approve.

[19.6.2] 18.6.2 In the case of new building construction work to be undertaken on a vacant site or portion of a vacant site or alterations to an existing building, a building line must be prescribed by the [Council]Municipality to protect the building line generally observed in the immediate context.

[19.6.3] 18.6.3

[19.7] 18.7

[19.7.1] 18.7.1

[19.7.2] 18.7.2

[19.8] 18.8

[19.8.1] 18.8.1

[19.8.2] 18.8.2

[19.8.3] 18.8.3 Roof cover materials must be either Victorian-profile corrugated metal sheeting or thatch with cement capping. Lip-lock and IBR type (fibre cement products) roofing is permitted if not visible from the street and only on roofs with a pitch less than 5° **[No fibre cement products are permitted]**. Roof colours must be: Cape Victorian Green, dark green, brick red, black or grey

[19.9] 18.9

[19.9.1] 18.9.1 Doors, windows and openings must not exceed 30% of any façade facing the street and must be vertically proportioned.

[19.9.2] **[Any horizontal opening must be set back from the primary facade in vertically proportioned panels.]**

[19.10] 18.10

[19.10.1] 18.10.1

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[19.10..1.1] 18.10..1.1

[19.10..1.2] 18.10..1.2

[19.10..1.3] 18.10..1.3

[19.10..1.4] 18.10..1.4 Paint colours must be white or pastel shades. Differentiated [Accent] colours to emphasize architectural features and on recessed walls set back from the street boundary will be submitted to Stanford Heritage Committee for comment. [are permitted to emphasize architectural features and on recessed walls set back from the street boundary] Striped verandah roofs are permitted.

[19.10..1.5] [Alternatively colours must be compatible with the overall street architecture.]

[19.10..2] 18.10..2

[19.10..2.1] 18.10..2.1

[19.10..2.2] 18.10..2.2

[19.10..2.3] 18.10..2.3

[19.10..2.4] 18.10..2.4

[19.10..2.5] 18.10..2.5 IBR roofs or 'clip-lock' roof, unless on a pitch less than 5° and not visible from the street.

[19.10..2.6] 18.10..2.6

[19.10..2.7] 18.10..2.7

[19.11] 18.11

[19.11..1] 18.11..1 The maximum height of boundary walls and fences [or hedges] on street boundaries must be 1.2m measured from [pavement]ground level. For security reasons [palisade], visually permeable fencing not more than 50% solid, with openings of at least 20mm will be permitted up to a height of 1.8m on the street boundary. The solid vertical components must not exceed 20mm in width.

[19.11..2] 18.11..2 The maximum height of walls and fences [or hedges] other than on street boundaries must be a maximum of 1.8m, reducing to 1.2m at the street building line with the proviso established above.

[19.11..3] 18.11..3 Building plans of walls or fences must be submitted to [Council]Municipality for written permission, with comment from the Stanford Heritage [and Aesthetics]Committee, prior to any construction work.

[19.11..4] 18.11..4 No artificial stone cladding will be permitted. Walls and fences on boundaries shall only be constructed with the following materials:

[19.11..4.1] 18.11..4.1

[19.11..4.2] [No artificial stone cladding will be permitted natural stone;]

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[19.11..4.3] 18.11..4.2

[19.11..4.4] 18.11..4.3

[19.11..4.5] 18.11..4.4

[19.11..4.6] 18.11..4.5

[19.11..4.7] 18.11..4.6

[19.12] 18.12

[19.12.1] 18.12.1

[19.13] 18.13

[19.13..1] 18.13..1

[19.13..2] 18.13..2

[19.13..3] 18.13..3 Water tanks and exterior elements must not be visible from the street, nor protrude above the eaves or ridge line and in compliance with the Land Use Scheme[zoning scheme].

[19.14] 18.14

[19.14..1] [No person shall fell, uproot or cause to destroy a mature tree more than 50mm in diameter, or hedge row taller than 1.8m on private land without the permission of the Municipality.]

[19.14..2] 18.14..1 No street trees or vegetation in public spaces may be cut without written permission from the Municipality and comment from the Stanford Heritage and [Aesthetics]Committee.

[19.15] 18.15

[19.15..1] 18.15..1 No alteration [or covering] of the 'leiwater' system will be permitted without the permission of the Municipality with comment from the Stanford Heritage [and Aesthetics]Committee.

[19.16] 18.16

[19.16..1] 18.16..1 All signage must comply with the Overstrand Signage By Law and submitted to the Stanford Heritage Committee for comment.

[19.17] 18.17

[19.17..1] 18.17..1 All road works, (including verges, sidewalks, kerbs, storm water channels, culverts and street lighting), as well as pump stations, substations and electrical kiosks, to be in sympathy with the heritage townscape, and to be submitted, were deemed necessary by the Municipality, to the Stanford Heritage [and Aesthetics] Committee (or equivalent body) for comment before finalisation of the design.

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**[20] 19 LANDSCAPES OF VERY HIGH NATURAL, SCENIC AND HERITAGE SIGNIFICANCE HERITAGE PROTECTION OVERLAY ZONE ("LANDSCAPES HPOZ")**

**[20.2] 19.2** Purpose : To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:

**[20.2..1] 19.2..1**

**[20.2..2] 19.2..2**

**[20.3] 19.3**

**[20.3.1] 19.3..1** All land use planning and building plan applications, if [must be] applicable, be submitted to the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee and Heritage Western Cape, and/or a registered conservation body for comment.

**[20.3.2] 19.3..2** If any intervention in landscapes identified as having high significance could have an impact on the visual and cultural landscape, the Municipality may require a Visual Impact Assessment or an equivalent assessment to [assess] determine the nature and scale of such impacts and to identify mitigation measures.

**By amending and renumbering the CHAPTER 4 as follows;**

**[21] 20** The Overstrand Municipality By-Law on Municipal Planning, **[2013] 2015** will apply in respect of all applications, processes and decisions contemplated in these Regulations.

**[22] 21**

**[23] 22**

**[23.1] 22.1**

**[23.2] 22.2**

**[23.3] 22.3**

**[23.4] 22.4**

**[23.5] 22.5**

**[23.6] 22.6**

**[24] 23**

**[25] 24**

**[25.1] 24.1**

**[25.2] 24.2**

**[25.3] 24.3**

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[25.4] 24.4

[25.5] 24.5

[25.6] 24.6 implementation of development timeframes **[for all work approval to];**

[25.7] 24.7

[25.8] 24.8

[25.9] 24.9

[26] 25 Written approval may take the form of a municipal **[permit or ]**stamped plan, and or  
a permit from HWC (where NHRA legislation applies) in combination with a municipal  
**[or permit in combination with a]** stamped plan.

[27] 26

[28] 27

[28.1] 27.1

[28.2] 27.2

[28.3] 27.2.1

[28.4] 27.2.2

[28.5] 27.2.3

[28.6] 27.2.4

[28.7] 27.2.5

[28.8] 27.2.6

[28.9] 27.2.7

[28.10] 27.2.8

[28.11] 27.2.9

[29] 28 The Municipality shall not give its approval to any development activity or land use if such activity or use, which may include, *inter alia*, construction, demolition, alteration, expansion, defacing, **[felling or uprooting,]** is deemed to be detrimental to the protection and/or maintenance of the significance of the heritage place or heritage area in which such activity is proposed.

[30] 29

[30.1] 29.1 Any person who is dissatisfied by a decision taken by the **[Council]**Municipality or by delegated authority in terms of these Regulations may appeal in writing to

the municipal appeal authority in accordance with the Overstrand Municipality By-Law on Municipal Planning, ~~[2013]~~2015.

#### CHAPTER 5: ENFORCEMENT:

[31] 30 The provisions contained in the Overstrand Municipality By-Law on Municipal Planning, ~~[2013]~~2015 as they relate to enforcement notices will apply to these Regulations.

[32] 31

[32.1] 31.1 A person who undertakes any development or activity within a HPOZ, other than a permissible activity or an activity with the ~~[Council]~~Municipality's consent, is guilty of an offence.

[32.2] 31.2

[33] 32

[33.1] 32.1

[34] 33

[34.1] 33.1

[34.1..1] 33.1..1

[34.1..2] 33.1..2

[34.1..3] 33.1..3

[34.1..4] 33.1..4

[34.2] 33.2

[35] 34

[35.1] 34.1

[36] 35 Short title:

These regulations are called the Overstrand Heritage Protection Overlay Zone Regulations, ~~[2016]~~ 2019.

[37] 36

Office of the Director:  
Infrastructure & Planning  
Environmental Management

## MEMORANDUM

Kantoor van die Direkteur:  
Infrastruktuur & Beplanning  
Omgewingsbestuur

Date : 10 January 2019

To: Liezl de Villiers (Senior Manager: Environmental Management)  
From: Penelope Aplon (Environmental Manager)

RE: Review of Overlay Zones

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Please receive the following comments on the review document:

- The review document gives definitions for "Special Management Areas" and "ISO 14001" however these terms are not used further in the document. It is recommended that these definitions be omitted from the final document.
- Suggested reconstruction of sentence under heading: Management plans for NEM:BA Invasive Alien Species

*"It is a requirement in terms of the NEM:BA that Invasive Alien Species (IAS) management plans must be compiled for State land. The managing Government Department must compile these plans. Overstrand Municipality may request access to these IAS management plans, where such State land falls within an EMOZ."*

- Please insert page numbers
- Comment on Rob Fryer request regarding zoning and definition of Public Open Space will be submitted by Tarron Dry.

Kind regards,



Penelope Aplon  
Environmental Manager

**From:** Bella Clayton <rinatjie52@gmail.com>  
**To:** <cgroenewald@overstrand.gov.za>  
**CC:** <lw Wallace@overstrand.gov.za>  
**Date:** 2019/12/03 06:13  
**Subject:** SAVE FERNKLOOF

Dear Sir,

Whale Coast Conservation (WCC) has considered the above documentation and has serious reservations in a number of areas.

Once again, WCC wishes to bring to the Overstrand Municipality's attention our serious concerns regarding the:

1. Definition in the Overstrand Municipality Land Use Scheme, 2019 of "Open Space Zone I: Nature Reserves" and its application to protected and conservation-worthy land in the area, and
2. Overstrand By-Law on Municipal Land Use Planning 2015 Section 72, defining the composition of the Municipal Planning Tribunal.

The following aspects also need consideration:

- o Section 51 of the Overstrand By-Law on Municipal Land Use Planning 2015;
- o Grammatical errors in the By-Law;
- o Various definitions in the Overstrand Municipality Land Use Scheme, 2019
- o An obscure statement in the Environmental Management Overlay Schedule TEL +27 28 316 2527 FAX 086 695 0046 CELL +27 72 185 5726  
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PBO 18/11/13/4541 NPO 020-771

## 1 ZONING OF OVERSTRAND'S NATURE RESERVES

The Fernkloof Nature Reserve (FNR) has an exceptional level of biodiversity that is well documented and world renowned. It is a biodiversity hotspot within a larger area of extreme conservation concern. As such, it is so worthy and indeed needful of protection that the reserve's core area warrants classification as a "wilderness area" as defined in Section 26 of the National Environment Management: Protected Areas Act (NEM:PA). The functions of a NEM:PA wilderness area are defined as:

1. (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
2. (b) to provide outstanding opportunities for solitude;
3. (c) to control access which, if allowed, may only be by non-mechanised means.

The land use zone associated with FNR needs to be aligned with this section of NEM:PA. If the Municipality does not ensure this it will be in dereliction of its greater duty to the protection of the area's unique environment.

WCC pointed out in the public participation process for the drafting of the original integrated zone scheme regulations that the model zone scheme regulations given by the Western Cape Department of Environment and Development Planning (DEA&DP) provides a description for an appropriate zone for FNR. This is Conservation Zone 1: Wilderness Area (CON1). The description aligns well with the NEM:PA wilderness area and reads as follows:

### Objective

*The objective of Conservation Zone 1: Wilderness Area, is to provide for the conservation of predominantly natural, remote and environmentally unspoilt areas. Such areas may be proclaimed nature areas or may not be proclaimed, but in either case the range of permitted uses is extremely limited.*

### Use of Property

- 12.1.1 The following use restrictions apply to property in this zone: (a) Primary use is: wilderness conservation
- (b) Consent uses are: none.

### Management Provisions

- 12.1.2 An environmental management plan shall be prepared to the satisfaction of the Management Agency.

*12.1.3 The Management Agency, in consultation with the Council, shall determine the land use restrictions and the management provisions for the property based on the objectives of this zone, the particular circumstances of the property and in accordance with an approved environmental management plan*

The DEA&DP model zone regulations offers three conservation zone descriptions, namely CON1, CON2 and CON3. The Overstrand OS1: Nature Reserve zone which gives its highest level of protection aligns most closely with DEA&DP's CON3 which offers the least protection for a conservation area. This is a travesty given the undisputed environmental value of FNR in particular, as well as other land that also has unique biodiversity and scenic beauty within the Overstrand.

In addition and in the interests of promoting tourism to the area, the Municipality should be encouraging landowners to rezone undeveloped land, especially that above the 120 m contour line, to zones equivalent to DEA&DP's CON2 and CON3. Tragically short-sighted planning does not provide

local zones that align with the DEA&DP model and this land thus also remains unprotected and undervalued.

It is strongly recommended that the Municipality incorporate DEA&DP's CON1, CON2 and CON3 models into its zone scheme regulations. The entire core area of FNR should be zoned as CON1 and the Cliff Path and other areas of FNR should be zoned as CON2 and CON3 as appropriate.

#### MEMBERSHIP OF THE OVERSTRAND MUNICIPAL PLANNING TRIBUNAL (MPT)

The Overstrand MPT comprises of municipal employees and a single (non-municipal) employee of DEA&DP. This meets the minimum legal requirement of the Spatial Planning and Land Use Management Act (SPLUMA) and Section 3(2)(a) of its regulations. In complying with the minimum requirements, the Overstrand municipal administration has been able to avoid the participation of civil society representation on the MPT as well as the requirement to advertise vacancies on the MPT.

As a result of this minimum compliance the MPT is totally dominated by municipal employees who are under the control of the municipal manager. There is no representative voice of any sectoral interest group such as environmental, heritage, business or tourism. The workings of the Tribunal are therefore obscure to the general population of the area. This is clearly not in the spirit of SPLUMA, which allows in regulation 3(2)(a) for broad participation from the following, with only the prescription of competence in spatial planning being a requirement for eligibility:

(a) an official or employee of-

(i) any department of state or administration in the national or provincial sphere of government;

(ii) a government business enterprise;

(iii) a public entity;

(iv) organised local government as envisaged in the Constitution;

(v) an organisation created by government to provide municipal support; (vi) a non-governmental organisation; and

(vii) any other organ of state not provided for in subparagraph (i) to (iv).

(b) an individual in his or her own capacity.

Section 72 of the municipal by-law should require that if only one non-Overstrand municipal employee is to be allowed as a member of the MPT, then that position must be filled by a local person with the necessary competence drawn from civil society, following advertising of the vacancy. Ideally there should be representation on the Tribunal of a range of civil society interests, including the environment, business and tourism.

It is strongly recommended that the Municipality amends the by-law to recognise the need for transparency and broader local civil society participation in the MPT in the spirit of SPLUMA and the interests of good governance.

### 3 OBSERVATIONS

#### 3.1 By-Law on Municipal Land Use Planning 2015 Section 51

Section 51 sets out requirements by the Municipality for a petition to be accepted.

Section 51(a)(ii) requires that a list of details must be provided for at least two specified people, including their facsimile numbers, but not their email addresses. Facsimile numbers are no longer in common use, and this requirement should thus be for either facsimile numbers or email addresses according to the preference of those providing the details.

Section 51(a)(iv) and (v) presumably only apply to the two specified people referred to in 51(a)(ii) but is somewhat ambiguous. It could be interpreted that (iv) and (v) apply to every person signing the petition, which would be unreasonable. The wording should be changed to make the requirement clear.

Section 51(2) says "Any written notification by the municipality to petitioners shall be regarded as sufficient if such notification is sent to persons contemplated in sections 50(1)(f) and 51(1)(a)(ii)." 50(1)(f) does not relate to petitions so presumably should not be included here.

#### 3.2 Grammatical errors

53(f) insert a comma after "submit a petition"

58(f) contains "... may not exceed than 12 months" "than" should be deleted.

64(f) contains "... does not change its decision or results in an..." "results" should be "result".

66(g) replace "." with ";" at the end of the section

#### 3.3 Definitions in the Zoning/Land Use Scheme Amendments

"Environmental Impact Assessment": The definition should be in accordance with NEMA and NEMA regulations that provide listings of activities that trigger an EIA.

"Hobby": the definition is clumsy, unnecessarily complicated and needs rewording, viz. "hobby" means an activity done regularly in one's leisure time for pleasure, not related to a commercial venture and excluding activities creating noise, health hazards and nuisance;

"Home Occupation": the definition is clumsy and needs rewording.

"renewable energy structures": The definition is confusing. It suggests that only those that are erected for commercial use fall within the definition, but then ends a long and convoluted sentence with "may lead to the generation of energy on a private or commercial basis." The definition is clumsy and confusing and needs rewording.

#### 3.4 Environmental Management Overlay Schedule obscurity

Under the heading "Management Plans for NEMBA Invasive Alien Species" the Environmental Management Overlay Schedule states "Overstrand Municipality may request access to IAS plans from that are required for all State Land, from Government Departments responsible for land, where such State Land falls within an EMOZ." Please reword this impenetrable sentence to make its meaning clear so that it can be considered.

#### IN CONCLUSION

1. The Overstrand zone description for conservation areas is unacceptable as it offers inadequate protection for FNR and other conservation-worthy land in the Overstrand.

The CON1 to CON3 zones defined in the DEA&DP model zone scheme regulations must be incorporated in place of the OSI: Nature Reserve as part of the current amendment process. If the proposed zones are not changed to concur with the DEA&DP model zones this will remain a key concern. It can be expected to be a stumbling block to acceptance of any proposed management plan for FNR.

1. In the interests of transparency and good governance the membership of the Overstrand MPT needs to include members of civil society interest groups. The by-law must ensure that this is a requirement.
2. Ambiguity and errors in sections 51, 53, 58, 64 & 66 need to be clarified and corrected.
3. Identified definitions need to be reworded for clarity.

Kindly confirm receipt of this submission.

#### THE LETTER IS IN RESPONSE TO THIS NOTICE:

#### OVERSTRAND MUNICIPALITY

Draft Amendments to the By-Laws Relating to Municipal Land Use Planning 2015

The public is in terms of section 12 of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) invited to submit representations in connection with the proposed amendments of the by-law to the Municipality by submitting such representation on or before 2 December 2019 to the Municipal Manager (For attention Mr. Lionel Wallace) at the under mentioned address or fax number.

The proposed amendments to the by-law will be available for perusal during office hours at the office of the Area Managers in Gansbaai, Stanford, Hermanus and Kleinmond, in all the public libraries in the Overstrand and the Corporate Head Office of the municipality in Hermanus, as well as the official website

Notice Number: 118/2019

Regards  
Bella Clayton  
0834734357

Kooi Els 5/98  
RERA

## Buffer Zone: Report-Back to Stakeholders from 2018 Meeting

At the 2018 Stakeholders Meeting RERA was tasked by those present to pursue the potential for Rooiels to be incorporated into the Buffer zone of the Kogelberg Biosphere Reserve. In response to the difficulties where some regulations and processes for Rooiels the KBRC Board Chairperson suggested that it would be appropriate for Rooiels to apply to be incorporated into the Buffer zone.

RERA appointed the environmental sub-group to look into this. Hilgard and Veronica have both spoken to members of the KBRC Board and to Cape Nature. The working group has prepared a Draft motivation to be sent to the KBRC Board. The stakeholder meeting on 19<sup>th</sup> October will discuss the issue and decide whether to endorse RERA to formally apply for Rooiels to be re-designated as part of the Buffer zone. Other steps taken include a preliminary outreach to universities to assess the potential for Rooiels to become a centre for research and so contribute to the UN Man in the Biosphere (MAB) programme and the SA Biosphere Reserves strategy. In addition to providing a base for scientists carrying out research into the Core, Rooiels itself would become a living laboratory.

### What does it mean?

A Biosphere Reserve has 3 zones:

- the Core where there is no human activity (or very limited and transient, with nature conservation paramount);
- the Buffer zone where there is human activity (and occasionally settlement) but where the emphasis is on co-existence in a way that ensures protection of the biodiversity of the Core;
- the Transition zone where human activity predominates (agriculture, industry, settlements) with some effort made to reduce negative impacts on the environment and biodiversity.

As part of the Buffer zone Rooiels would commit to **continue with what it is currently doing** - living in harmony with nature and to finding ways to reconcile conflicts between residents and our role in the environment. If we are formally designated as part of the Buffer zone this would make it possible for the Overstrand Municipality to ensure that regulations for Rooiels are in keeping with its Vision, even if this means some difference with regulations for other urban areas.

### What is involved?

We need to continue to retain significant areas of indigenous fynbos in order to act as a "refuge" for the Core acting as a seedbank and providing habitat for wildlife (insects, birds and animals). We would encourage people to garden naturally. But people **would still be free to plant whatever they prefer** in their own gardens (even roses and violets) provided that it is **not an alien invasive**<sup>1</sup>.

We would commit to keeping all the public areas as natural as possible. It is fine to have some gardened areas at the village business centre but as far as possible we need to maintain public areas natural. Residents will be encouraged to garden in ways that support our natural heritage. For those who would like brighter gardens, the plants included in the village centre gardens, are examples of what can be colourful but still supportive to our environment.

We would need to continue to encourage people to live in harmony with the wild animals and to ensure that Rooiels is a place where we find ways to adapt our behaviour to reduce conflict and to **make it possible for wildlife and people to co-exist**.

<sup>1</sup> a plant which is not natural to this area and which then spreads outside your garden displacing indigenous fynbos in the wild areas and the Core

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We would act as a defence against fire in the Kogelberg Biosphere Reserve – both in prevention and in fighting any fires. Where fire prevention and biodiversity are in conflict, we will call on botanical and fire experts to ensure that a reasonable compromise is arrived at in keeping with our role as a buffer and a Heritage Protection Overlay Zone.

We will also apply for the coast around Rooiels to be part of a marine buffer zone – not a marine reserve (or core) but a buffer. Here limited recreational and artisanal fishing, crayfishing, collection of molluscs, bait etc will be allowed, but not large trawlers and not commercial harvesting along the shoreline. A buffer zone will help to sustain the marine life and help to restore sea-life populations

### What we plan to do

Some of these things have already been done – others are still a “twinkle” in our eyes:

- We will approach universities locally and abroad to carry out research based in Rooiels (we have started on this and a meeting is tabled with the head of Dept Conservation Ecology at Stellenbosch on 17<sup>th</sup> October)
- Work to get the proposed changes to the Overlay in place and consider if there are other municipal regulations which need to be adapted and apply to get these changed to enable Rooiels to strengthen its role in conserving biodiversity and in trialling green living options.
- Develop coherent ideas for research and reach out to find willing researchers
- Provide local expertise and support to researchers
- We would re-establish the EcoCentre and we would undertake to share our experiences and research widely as part of efforts to educate and raise awareness on protecting biodiversity and ecosystem services
- We will discuss the possibility to raise funds for:
  - A virtual library of research in the KBR
  - A community centre to house the Eco-centre, meetings and to provide desk space
  - Raise funds to support some specified research and offer research grants
  - Raise funds to establish a Rooiels Postgraduate Scholarship Trust for Overstrand residents
  - Raise funds to purchase two properties in sensitive areas where houses have burned down

Rooiels would be choosing to be declared part of the Buffer zone to ensure that it will continue to be able to implement its Vision of caring for nature. If we remain part of the transition zone then we are accepting that we may not be granted exceptions to regulations applied to all urban settlements in the Overstrand which could mean changing the nature of Rooiels.

Addendum

**Ideas for Rooiels as a Research Node:**

**Rooiels as a Research Node - Preliminary Draft Ideas**

1. **Reasons to enhance our potential to become a Research Node**
  - a. We would all like to know more about our environment; to understand what flora and fauna we have in the village and to better understand how we impact on nature and what actions we could take to better support the environment and the KBR.
  - b. Supporting research is a direct way that Rooiels can contribute to the Kogelberg Biosphere Reserve and will be important to our rationale for being included as part of the Buffer Zone for the KBR (see our draft rationale for being included in the KBR Buffer zone).
  - c. As we become better known as a village that supports researchers, we will attract the kind of visitors (researchers and their friends and family) to the village who are

more likely to understand our commitment to the environment and the need to take measures to avoid conflict with wild animals and to preserve our indigenous flora and fauna. Visitors who will not be put off by wind, baboons, no lights and bumpy roads

- d. We as Rooielsers can find a variety of ways through supporting research to give back to society. We can share our knowledge and experience, we can help to support further education of Overstrand youth, we can establish a repository of information and research on local biodiversity and also on how communities can adapt to living closely with nature. In this way we can put to good use the special comparative advantage of Rooiels as a society living closely with nature, with remaining areas of natural habitat, flora and fauna, as well as the skills and accommodation potential of the village.

## 2. Steps Taken to Better Understand What is Needed for Rooiels to encourage researchers

- a. Hold discussions with local universities and researchers to understand what they would find useful.

Contact has been made with

Dr. Ruida Pool-Stanvliet, Cape Nature;

Stellenbosch University: Dept of Conservation Ecology;

University of Cape Town: Institute of Communities and Wildlife;

We will be in touch with Hermanus University and Univ of Western Cape.

In future we can establish mechanisms to reach out to universities and research agencies throughout South Africa and internationally.

*Call for Rooielsers to make contacts:* Please will any person in Rooiels with a contact at a university or an NGO, research institute or company, reach out to that person and ask if they think that there is an interest for some of their researchers or students to carry out their field work in Rooiels. Ask them what they would need from Rooiels in order to initiate this dialogue and what is needed to attract their researchers to Rooiels.

- b. Dept of Conservation Ecology, Stellenbosch University indicated that they have a range of options:

- i. To attract senior researchers and post-graduate Doctoral and Masters' students, we would need to find scholarships, or at least cover the research costs. Alternatively, as we become known as research friendly, we may attract researchers in externally funded projects to do their fieldwork here.
- ii. The most likely window, with limited expectations on us to finance, would be for us to attract Final year undergraduate students to carry out their research projects in Rooiels. In order to do this we need to put together a list of topics which are of interest to us, and which we think would be attractive to the students. This list of projects should be ready by June 2020. Students get to select the projects they are interested in as they chose things that match their passion. They will carry out most of their field research over the long vacation November – February (but not during the period 10 Dec-15 January).

*Call for Rooielsers to put forward ideas for what research we would like to see in Rooiels*

- iii. Undergraduate students, normally classes of around 50, are taken on a week field trip annually. If we don't have the needed accommodation, they could stay at a hostel in nearby village. However this would only be applicable in future as they are currently established in the Karoo until 2021.

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- c. It will be important for Rooiels to set up a comprehensive Repository of information and research. This can be done initially on our website. It will be a way to attract researchers and as a way for us to bring together the existing knowledge on our environment.

*Call for Rooielsers to gather together any information or articles they have and share them. (Ask any experts you know in the different fields – geology, botany, archeology, ornithology etc. etc – to see what articles in their own field they can find that are of relevance to Rooiels and to the Kogelberg Biosphere Reserve and ask them to share the links. This should not be limited to academic research – all interesting information on nature and on living with nature in the Western Cape is of relevance to include in the Repository. We would also like to have a section on Green Living and Green Building.)*

- d. Identifying Accommodation options

Once we see if there is traction (for Rooielsers to want to become a research node, and for researchers to come to Rooiels) we will need to ascertain what is available, which periods it is offered, and what the conditions are (e.g. if free for students, at a discount for researchers, including also the options at regular list prices). There is not a rush to do this yet – but we should keep it in mind.

### 3. Some preliminary ideas for research

- a. **Species Inventories.** Most terrestrial and marine flora and fauna in Rooiels is undocumented or remains very incomplete. There is a comprehensive bird list (Ayer and Jones 2019), an identification guide to indigenous flowers of Rooiels (de Klerk, 2010) but there have been no scientific surveys identifying species since the incomplete surveys of the 1970s referred to in Heinecken *et al* Estuaries CSIR Report, 1982.
- b. **Related to this is Vegetation and animal mapping**  
Mapping of the vegetation and identification of particularly vulnerable species or areas is of importance to Rooiels as it continues its role as a “refuge” for the KBR with its seed banks and natural habitat.  
The species lists and maps would be incorporated into the Overstrand GIS mapping project underway.
- c. **The impact of human activity on species distribution and natural processes** (e.g. a comparison of vegetation across time - before, during and after the heavy rooikrans infestations in Rooiels; what motivates compliance with sound waste management; how conflicts between residents and nature are resolved)
- d. **The potential for Green Living and Green Building** – reviewing or experimenting with different approaches that would usefully inform us and also the Overstrand Municipality and UN MAB programme on workable solutions for sustainable living in this environment.

*Call for Rooielsers to consider ideas for Research and to share these. They can be additions to the more broad categories as outlined above or very much to be encouraged would be some specific ideas of what you would like to see researched in Rooiels or in the adjacent KBR.*

## EMOZ – Environmental Management Overlay Zones

**Purpose:** To provide a mechanism for land use management, additional to existing statutory land use controls, whereby Council may give effect to specific guidelines in a spatial development framework or policy plan or address a specific management issue

### SPECIFIC ENVIRONMENTAL MANAGEMENT OVERLAY ZONE REGULATIONS

Coastal Reserves and Protection Zones – Plan 1 to see designated areas

Mountain Catchment – See Plan 2

Riverine – See Plan 4

Urban Conservation EMOZ, Plan 5 – 5.1-5.16 – to protect and manage undeveloped land that is especially fragile or worthy of conservation and retention of viable priority ecological corridors from mountains to coast

Protected Area Buffer EMOZ -- See Plan 3 for the areas so identified.

Rationale to reduce pressure on the core protected area. Gives special attention to eliminating alien vegetation invasion and special consideration for fire management protocols and to limit inappropriate land use

**It is proposed that the Protected Area Buffer EMOZ, Plan 3 should be extended to include all of Rooiels, including the urban footprint, as part of the Buffer zone EMOZ in recognition of its importance as a refuge to the natural flora and fynbos in the Kogelberg Biosphere Reserve. Alternatively to declare all of Rooiels an Urban Conservation EMOZ and so add on a Plan 5.17 that would show Rooiels as an urban EMOZ**

#### **The Rationale for including Rooiels into an identified EMOZ:**

Rooiels is one of the few areas of coastal plain within the Kogelberg Biosphere Reserve that is still dominated by indigenous vegetation. The other areas are either significantly altered by urban footprint and/or by alien vegetation (Kogelbay beach, Pringle Bay, Hangklip and Betty's Bay). This makes Rooiels and the adjacent smallholdings very important in linking the mountains to the sea and in preserving the biodiversity of the coastal fynbos.

Rooiels, with its natural fynbos also plays an important "refuge" role acting as a seed bank and as habitat for insects and all fauna. It supports the core protected area of the Kogelberg Biosphere Reserve.

Rooiels is able to play a valuable role in understanding how to reduce conflicts between human development and the environment. It is a small settlement that has demonstrated its commitment to nature and with its still existing natural vegetation and animals, it can act as a living laboratory.

Rooiels is a settlement where the residents have committed to taking their own measures to reduce baboon/human conflict by implementing strict waste management guidelines and by educating residents and visitors on appropriate mitigation and adaptation mechanisms. This reduces pressure on the municipality to provide services to manage human/baboon conflict and ensure that the baboons still have access to play their important role in the ecology of coastal fynbos.

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VERSION: 9a Nov 2019

ROOIELS CONSERVATION TASK GROUP

SUBGROUP: CONSERVATION OF THE CHARACTER OF RE BY TITLE DEED CONDITIONS AND LEGISLATION

MISSION: INCORPORATION OF ADDITIONAL PROTECTION IN THE DRAFT RE HERITAGE PROTECTION OVERLAY ZONE

MEMORANDUM E – DRAFT ROOIELS HERITAGE PROTECTION OVERLAY ZONE

### 13. ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("HPOZ")

**13.1 SPATIAL DELINEATION: Refer to Plan 4 (To be amended) – The whole of RE should logically be delineated as a Heritage Protection Overlay Zone, in view of its small area and 'Kogelberg Biosphere Reserve corridor character'.**

**13.2 PURPOSE: PROTECTING THE NATURAL PHYSICAL CHARACTER OF ROOIELS:**

#### 13.2.1

The character of Rooiels can be described as follows:

Rooiels is a conservation community, situated directly between the core section of the Kogelberg Biosphere (KBR) and the buffer zone to the Biosphere.

Rooiels advocates, as communicated to property owners through the Rooiels Vision, and as published on the Rooiels website <https://rooiels.weebly.com/>, a document approved by all the community organisations of Rooiels, to conserve conservation of its natural eco-heritage, which has been established and maintained over decades. The Rooiels Vision emphasises that, only through a strong community spirit and by putting the Vision for Rooiels into action, can the natural splendour of Rooiels as the gateway to the KBR be maintained and conserved.

Rooiels strives to conserve its natural character by:

- Protecting and maintaining local landmark features such as Klein Hangklip Mountain, the Koppie and the green edge facing the wetland areas, the Rooiels River estuary and the coastal open zone.
- Protecting and maintaining the Rooiels Nature Reserve and natural street reserves. These serve as green linkages between the mountains and the coastal open zone and contribute to the rural and eco-character of Rooiels.
- Ensuring that the natural green fynbos context remains the dominant element and that the built environment remains subsidiary to the landscape, rather than dominating it.
- Ensuring that the title deed conditions, which preserve the character of Rooiels, are complied with.
- Ensuring that the spatial residential use of owners may continue with limited commercial use, does not detract from the character of Rooiels and is compatible with the surroundings.
- Promoting and encouraging research of flora and fauna on land and sea surrounding Rooiels. Cultivating research on archaeological sites of interest, such as the middens and fish-trap, with a view to protecting them.
- Protecting natural and indigenous fauna and flora "refuge" in Rooiels through respect and harmonious co-existence.

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- Be a Fire-wise community by being cognisant of the high flammability of the fynbos and act in a responsible manner to prevent risk to life and property
- Working with the Overstrand Municipality to ensure that regulations enhance the character of Rooiels.

### 13.3 LAND USE APPLICATIONS AND APPLICATIONS FOR REMOVAL OF TITLE DEED RESTRICTIONS:

13.3.1 Land use applications and applications for removal of title deed restrictions shall only be approved if they are for the positive advantage of the Rooiels community. To that end all property owners in Rooiels shall receive notice of land use applications and applications for removal of title deed restrictions, except where otherwise indicated.

### 13.4 BUILDING PLAN APPLICATIONS:

13.4.1 Building plans shall, prior to approval, be made available for scrutiny at the offices of the Municipality to a nominee of an approved Rooiels community organisation, such as the Rooiels Ratepayers' Association. (RERA)

13.4.2 Applicants for building plans shall be required to declare with their signature on the building plans that the building plans comply with the title deed conditions of the erf and with the terms of the HPOZ.

13.4.3 Septic-tank-soakaway-systems may be utilized instead of conservancy tanks in most parts of Rooiels where they do not pose any environmental risk or ground water contamination, subject to approval by the Municipality. Owners with existing conservancy tanks may be allowed where appropriate, to convert to septic-tank-soakaway systems, subject to Municipality approval.

### 13.5 STREET RESERVES (STREET VERGES):

In order to protect and maintain the street reserves, which serve as green linkages between the mountains and the coastline and which contribute to the character of Rooiels, the following natural features will be maintained:

13.5.1 Streets and roads will not be widened and will be brick-paved where necessary.

13.5.2. Streets and roads already serve as firebreaks. *Fuel-breaks* will not be constructed next to streets and roads, unless specifically required and motivated for in terms of the an Overstrand Municipality approved Fire / Rescue & Disaster Management Plan presented by an approved Rooiels community organization, such as the Rooiels Rate Payers Association.

13.5.3 Trimming may be done of vegetation that overhangs streets and road verges in accordance with the management plan mentioned in 13.5.2.

13.5.4 Indigenous vegetation is preferable and encouraged as verges to retain the character of Rooiels.

### 13.6 SINGLE RESIDENTIAL DWELLINGS:

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13.6.1. Erven currently zoned as Single Residential 1 shall be used for residential purposes only and no building other than one dwelling together with such outbuildings as per individual Title Deeds, shall be erected thereon. Outbuilding may be used to accommodate family members, guests or a caregiver (assisted living) but may not be used for rental purposes.

13.6.1.1. A dwelling shall house no more than a single family, as defined in the Overstrand Municipality Zoning Scheme Regulations, but including family and friends of the single family.

13.6.2. Densification (two dwellings per erf) shall not apply to Rooiels and no deviation from the Title Deeds will be allowed.

13.6.3. Subdivision of erven is not allowed, except when the subdivision will be to the positive advantage to Rooiels erf owners in general. All erf owners of Rooiels will be included in the public participation process prescribed by law.

13.6.4. The maximum total coverage for all buildings on the erf shall be as per Title Deeds.

### 13.7 SHORT-TERM AND LONG-TERM HOME RENTAL.

13.7.1 The letting of dwellings other than as a guest house or guest room for fewer than 30 consecutive days shall constitute short-term home rental.

13.7.2 Long-term home rental is the letting of a dwelling for 30 or more consecutive days and the letting shall only be for the housing of a single family, as defined in the Overstrand Municipality Zoning Scheme Regulations.

13.7.3 Utilisation for renting shall be restricted to two adults per bedroom, with a maximum of ten adults per dwelling.

13.7.4.1 The short-term home rental of dwellings is a consent use valid for five years, subject to the appointment of a manager, who occupies a dwelling in Rooiels, should the owner not be present / resident in Rooiels. Short-term home rental consent use is renewable on expiry.

13.7.4.2 The standard terms and conditions for consent use applies and contact details of the manager shall be recorded and as per Overstrand Municipal Regulations.

13.7.5 Notices of applications for short-term home rental consent use shall be given to all property owners who, at the discretion of the Municipality, are immediate and affected neighbours of the applicant

### 13.8 GUEST HOUSE AND GUEST ROOM CONSENT USE:

13.8.1 Guest room consent use for the purpose of this overlay zone shall be as for guest accommodation as per paragraph 5.1.6 of the Overstrand Municipality Zoning Scheme Regulations.

13.8.1.1 Two guest rooms may be rented out in keeping with the Overstrand Municipal Zoning Regulation.

13.8.1.2 Guest rooms of 3 to a maximum of 5 rooms requires consent use.

13.8.1.3 Guest rooms consent use is renewable on application for periods of five years as per Overstrand Municipal Zoning Regulations.

13.8.1.4 A guest house shall not be allowed on single residential erven. Existing guest house consent uses shall revert to two guest rooms, on expiry of consent use.

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13.8.2 Utilisation for letting shall be restricted to two adults per bedroom, with a maximum of ten adults per dwelling.

13.8.3 Notices of applications for guest room consent use shall be given to all property owners who are, at the discretion of the municipality, immediate or affected neighbours of the applicant. The neighbours shall be required to give their written consent, which consent shall not be withheld unreasonably.

13.8.4. The owner, and during his temporary absence, a manager, must, when guest rooms are rented out, occupy the property, in keeping with the residential character of Rooiels.

13.8.5. The consent use and contact details of the manager shall be recorded in the register as referred to in the definitions to the Overstrand Municipality Zoning Scheme Regulations.

13.8.6 Subject to 13.8.7, if a guest room consent use is approved, consent use does not pass on to new owners with a sale of the property and the wording of the title deed restrictions shall be appropriately amended to provide for fallback to single residential purpose on change of ownership, or majority shareholding or majority of trusteeships to provide for periodical consent use application.

13.8.7 In view of the costs involved and in view of the limitation of the number of guest rooms imposed to the advantage of the other Rooiels property owners, compliance with paragraph 13.8.6 can be deferred for an indefinite time at the discretion of the Municipality.

13.8.8 No indulgence, leniency or extension of time granted by the Municipality in terms of paragraph 13.8.7 shall constitute a waiver of any of the rights of the other property owners of Rooiels under these terms, or constitute a basis for a legitimate expectation by the applicant and, accordingly, the Municipality and any other Rooiels property owner shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the applicant which may have arisen in the past or which might arise in the future.

13.8.9 No advertising sign shall be displayed without the written approval of Council other than a single un-illuminated sign or notice affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law.

### 13.9 ARCHITECTURAL GUIDELINES.

#### 13.9.1 Character and Aesthetics:

13.9.1.1 New building interventions must respect the character of the existing built environment, in terms of relatively low buildings and buildings which are integrated into the surrounding landscape and which are stepped down slopes rather than being perched on stilts above the slopes.

13.9.1.2 Double-storey buildings must be fragmented and disaggregated on elevations and not be monolithic.

#### 13.9.2 Building on stilts:

Stilts for building platforms may not exceed 2,4 meters in height above the base level. The height of stilts forms part of the total height of the structure. Mitigation must be applied to limit visual impacts.

#### 13.9.3 Coverage and height of structures:

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13.9.3.1 The 8m height restriction, as measured from base level, applies.

13.9.3.2 Wall plates heights on any facades facing onto public areas are restricted to 5,5m above the finished floor level.

13.9.3.3 The definition of basements as contained in the Overstrand Zoning Scheme Regulations must be strictly applied to ensure that no three storey structures present themselves.

13.9.3.3 No structure may exceed two storeys. The space below pitched roof structures may however be utilised as a loft providing the height restriction is not exceeded.

13.9.4 Use of material and colours:

Architectural design and finishes should consider the environmental domain and blend with the natural surroundings

13.9.5 Boundary treatment:

13.9.5.1 No solid, visually impermeable boundary treatments above 2,1m will be permitted.

13.9.5.2 The use of prefabricated concrete walls, vibracrete, un-plastered cement block walls and razor wire is prohibited.

13.9.5.3 To conserve the spatial natural corridor character of Rooiels, should owners require screen walls to kitchen yards or private patios, they are encouraged to build them suitably closer to their dwellings, rather than on their boundaries.

13.9.6 No mature indigenous vegetation exceeding 1,5m in height can be removed without the special consent of the Municipality.

13.10 STREET LIGHTS AND LIGHTING.

13.10.1 Street lights shall not be erected in Rooiels and light pollution is discouraged.

13.10.2 External lights of residential buildings shall face downwards to avoid spillage over boundaries.

13.10.3 In place of static lights, the use of sensor-operated external lights (that are switched off when the lights are not activated) is encouraged.

13.11 OPEN SPACE ZONE 1: NATURE RESERVE (OS1)

The primary uses of erven zoned Nature Reserve (OS1) shall be nature reserve and conservation use and the declared Nature Reserves shall retain their status as indicated on the zoning map. Consent uses shall not be approved.

13.12 FIRE-WISE

13.12.1 As a fire-wise community, owners need to have a ready supply of water. To relieve pressure on the water supply system, rainwater harvesting, and storage is encouraged. Owners are encouraged to investigate coatings / claddings / materials that incorporate flame retardants. In the event of fires, wind carried embers are a great risk to structures. Compliance to Overstrand Municipality Building codes and regulations is obligatory. Non-compliance places the residents at risk and may have insurance claim implications.

13.13. GREEN LIVING

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13.13.1 Greywater treatment for the use in ablutions as well as gardening further relieves pressure on the available water supply system.

13.13.2. Untreated Black water spillage and runoff into the water table, estuary / river system and ocean will contaminate the water table and is not allowed.

13.13.3. Alternative water heating, photovoltaic and alternative power storage systems for domestic use is encouraged so reducing household energy use and carbon footprint. Placement of structures needs consideration as they do tend to dominate the skyline. Erection of masts for wind power harvesting or other purposes on a residential property is prohibited.

#### 13.14 BUILDING LINES

13.14.1 The erection of buildings and structures are prohibited within the building lines as described in paragraph 13.14.2

13.14.2 The most restrictive of the building lines according to the title deed conditions of erven currently zoned as Single Residential 1 or the following building lines apply:

- (i) The street building line is 4,0 m;
- (ii) The side building line is 2,0 m;
- (iii) The rear building line is 2,0 m.

13.14.3 The following development rules apply with regard to garages within building lines:

13.14.3.1 The Council may permit with consent, the erection of a garage over a street building line, if in the Council's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit, or for other reasons provided;

- (i) The height of such garage from the natural ground level to the top of its roof
- (ii) The garage may not be closer than 5,0 m to the road kerb/surface.

13.14.3.2 Garages shall not be allowed within the side and rear building lines.

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Overstrand Municipality 16 Paterson Street, Hermanus – emails in response to the advertisement to be sent to [hvdstoep@overstrand.gov.za](mailto:hvdstoep@overstrand.gov.za) on or before 2 December 2019, stating your, name, address and contact details, interest in the application and reasons for your comments.

Ms. Allison Vienings, Chairperson, RERA – email: [rera.chair@rooiels.org.za](mailto:rera.chair@rooiels.org.za) tel: 0824163916  
Or Mr. Hilgard Muller, Vice-Chairperson, RERA – email: [hilgardmullerprojects@absamail.co.za](mailto:hilgardmullerprojects@absamail.co.za)

In response to the Overstrand Municipal Advertisement on 1<sup>st</sup> October, 2019 requesting invitation for comments on the respective overlay zones and the integration of the zoning maps into the revised Overstrand Municipality land use scheme (regulation), 2013: The Rooiels Ratepayers Association has alerted all residents and made the documentation available and we are in the process of compiling comments and feedback which we will share before 2<sup>nd</sup> December, 2019.

In the meantime, the Rooiels Ratepayers Association (RERA) has been tasked by its members to enquire from Overstrand Municipality whether it will be possible to incorporate all of Rooiels Village into the Heritage Protection Overlay Zone. Attached hereunder is the rationale drawn up by our stakeholders for why they would like to see all of Rooiels incorporated into the Heritage Protection Overlay Zones.

In essence:

Rooiels would like to apply for the entire village area to be incorporated into the Heritage Protection Overlay Zone.

**12.1 Spatial Delineation:** Refer to Plan 4

This change will require that the Map in Plan 4, referred to, is altered so that the entire village is incorporated. We are requesting that all the area shown as grey be re-shaded to yellow. This will then mean that all of Rooiels falls under protection through the Heritage Protection Overlay Zone designation.

To achieve this would **not** require changes to the wording in Section 12 – but it would require that the map on Plan 4 be changed so that it shades all of Rooiels village as HPOZ. The result would be to join the Coastal HPOZ and the Hangklip smallholding HPOZ with all of the Rooiels Village, and not just a portion of the village as currently reflected in Plan 4. This will ensure that all of Rooiels is protected as part of the Heritage Protection Overlay Zone in order to enhance the value of the village as part of the visual spatial threshold at the point of entry to the Overstrand and its role as a buffer to the neighbouring protected area.

We would like to enquire from the Overstrand Municipality if this would be feasible, and what steps RERA must take to action this request.

### **Rationale for all of Rooiels to be included in the HPOZ**

**Purpose of Rooiels HPOZ:** To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance to enhance the visual spatial threshold at the point of entry to the Overstrand Municipality and adjacent to the Kogelberg Biosphere Reserve. Furthermore, together with the coastal HPOZ that applies to the first line of erven along the shore, to protect the natural, environmental, scenic and social values of enhancing the green linkages between the mountains and the sea.

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Reasons for applying for all of Rooiels to be included in the Heritage Protection Overlay Zones:

1. Currently the designation of Rooiels HPOZ applies only to the sections that can be seen from the R44 and to erven along the sea front which are included in the Coastal HPOZ. The residents of Rooiels would like to apply for HPOZ status for the entire village in order to ensure that we maintain the natural fynbos of this scenic corridor.
2. The Rooiels Residents' Vision reflects the values articulated in the HPOZ but applies to our entire village. The Vision is also in line with our support for Rooiels to be active as a buffer to the protected area of the Kogelberg Biosphere Reserve. The well attended stakeholders meeting in 2018 reaffirmed the commitment of residents, for Rooiels to apply to be formally incorporated as a Buffer zone into the KBR. Rooiels is proud of its heritage as a community that lives closely with nature and helps to enhance the value of the environment for the future. The residents would like to ensure that it continues this legacy.
3. The sections of Rooiels currently designated as HPOZ are only certain areas that can be seen from the R44. They are so designated because of the important scenic and aesthetic role that the corridor plays in the Overstrand economy. However Rooiels in its entirety adds real value to the attraction because of the way it reflects people living in harmony with nature. Most of the village is open and retains indigenous fynbos along the roadsides and many of the Erfs. Wildlife can be seen foraging naturally in the village and visitors to the Overstrand often incorporate a drive through Rooiels as part of their visitor experience. To retain this, we do need all of Rooiels to be incorporated into the HPOZ designation. Thus the rationale that was applied by the Overstrand Municipality, for the designation of parts of Rooiels as an important HPOZ along the scenic corridor, is also relevant to the entire village. Rooiels is committed to finding ways to enable wildlife to continue as part of the village and for the residents to take steps to reduce human/baboon conflict. As such this is an attraction to tourists coming in to the Overstrand. They are able to drive through en route to their holiday destinations and this village in nature adds to their experience.
4. In addition to its role in the aesthetics and attraction of the Overstrand, Rooiels also currently plays an important role in mitigating the risks of the loss of diversity through climate change. Rooiels still retains much of its natural fynbos and thus acts as a seed bank and also as a host for insects and all animal life. Rooiels is also currently exploring the options of actively engaging in providing opportunities and support for Western Cape universities, including Hermanus, to carry out research on sustainable living in ways that promote natural ecological systems. The importance of climate risk mitigation and adaptation is increasingly recognised as essential to the future in South Africa.
5. Rooiels with its widespread locally indigenous flora is an important buffer to the neighbouring protected area. Rooiels residents have invested considerable time and money over many years to remove invasive alien plants. What was once a forest of rooikrans (*Acacia cyclops*) is now naturally seeded fynbos. This provides habitat and

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food for insects and animals and the natural areas are an important seedbank. Thus Rooiels helps to sustain the biodiversity of the Kogelberg Biosphere Reserve. If all of Rooiels is part of the HPOZ it will be easier to safeguard the indigenous road reserves, the narrow untarred roads, no pavements and other protection measures. This will help to ensure that Rooiels continues to play its important biodiversity refuge role, retains its natural appeal to visitors entering the Overstrand as well as its character and property values.

6. The Rooiels residents and the ratepayers association would find it easier to achieve the objectives of the HPOZ and maintain the scenic corridor and ensure compliance, if the same conditions applied to all of Rooiels. Public participation and joint decisions would be more easily achieved if the entire village is designated as part of the Heritage Overlay Protection zones.
7. We would, therefore, as a community, appeal that all of Rooiels be recognised as part of the HPOZ and that Plan 4 be changed to reflect this.

19/98

Naurae  
 Enquiries: Dir N Michaels  
 Verwysing  
 Reference:  
 Datum / Date: 20 September 2019



DIREKTORAAT: BESKERMINGSDIENSTE  
 DIRECTORATE: PROTECTION SERVICES

Dear Riaan

**INVITATION FOR COMMENTS WITH REGARD TO ADDITIONAL REVISIONS OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2015, THE OVERSTRAND MUNICIPALITY ZONING SCHEME, 2013, THE RESPECTIVE OVERLAY ZONES AND THE INTEGRATION OF THE ZONING MAPS INTO THE REVISED OVERSTRAND MUNICIPALITY LAND USE SCHEME (REGULATION), 2013**

Your letter dated 18 September 2019 refers.

Kindly receive my comments regarding Overstrand Municipality By-law on Municipal Land Use Planning, 2015, and Zoning Scheme, 2013.

The sections what I miss in your revision document are as follow:

- Obeying and interfering with an authorised official e.g. no person may obstruct, hinder, abuse or interfere with any authorised official in the exercise of his or her power. A person who contravenes a provision of this section commits an offence.
- Penalties  
 Any person who contravenes or fail to comply with any provision of this by-law or fail to comply with a legal notice after he/she was issued to skip illegal activities will be guilty of an offence and liable upon conviction.

Regards

NJ MICHAELS

DIRECTOR: PROTECTION SERVICES

20/19/18



## BREED-GOURITZ

51 Baring Street Worcester 6850, Private Bag X3055 Worcester 6850

Enquiries: F. Smith

Tel: 023 346 8000

Fax: 023 347 2012

E-mail: [fsmith@bgcma.co.za](mailto:fsmith@bgcma.co.za)

Our Reference no: 715/1/Overstrand Municipality

Date: 15 November 2019

Overstrand Municipality  
P. O. Box 20  
Hermanus  
7200

For Attention: P. Roux

Sir/Madam,

**INVITATION FOR COMMENTS WITH REGARD TO ADDITIONAL REVISIONS OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2015, THE OVERSTRAND MUNICIPALITY ZONING SCHEME, 2013, THE PERSPECTIVE OVERLAY ZONES AND THE INTEGRATION OF THE ZONING MAPS INTO THE REVISED OVERSTRAND MUNICIPALITY LAND USE SCHEME (REGULATION), 2013**

With reference to your letter dated 20/09/2019 with Overstrand municipal file reference By-Law Revision, and received by BGCMA on 30/09/2019, herewith the following:

1. It is important that the planned revision should be in line with all relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use.
2. During initial/internal assessment by Overstrand municipality, should it be anticipated that water resources would be impacted, application should be made to the BGCMA to provide comment in a timely manner (as is currently the case).

Please be advised that no activities may commence without the appropriate approvals/authorizations (where needed) from the responsible authority.

The onus remains with the registered property owner to confirm adherence to any relevant legislation that such activities might trigger and/or need authorization for.

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

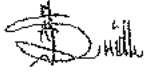
Please do not hesitate to contact this office if you have any further queries.

Please ensure to quote the above reference in doing so.

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Yours faithfully,

pp.



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

22/18

Municipal Manager  
Overstrand Municipality  
PO BOX 20  
HERMANUS  
7200

PO Box 12772  
Mill Street  
Cape Town  
8010  
28 November 2019  
eldie.brink@gmail.com

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

MUNICIPAL NOTICE NO 93/2019

**COMMENTS ON THE STRUCTURE OF THE PROPOSED HPOZ REGULATIONS AND EMOZ REGULATIONS, IN SUPPORT OF THE APPLICATION FOR THE WHOLE OF ROOIELS TO BE INCLUDED IN THE RE HPOZ.**

1. It would appear as if the newly proposed revised RE HPOZ can be accommodated within the existing proposed RE HPOZ, as the OM proposals in any event deal with hybrid area and township situations or are hybrid regulations in themselves.
2. The hybrid nature of area specific HPOZ's, such as for RE, Stanford, etc, should be managed by inserting a new interpretation provision in both the HPOZ Regulations and the EMOZ Regulations, similar to the current interpretation provision in the OM Scheme Regulations, for differences between the OM Overlay Zone Regulations and the OM Scheme Regulations, where for example a provision in a specifically planned and drafted HPOZ, such as for Rooiels, Stanford, etc, differs from a provision in the EMOZ Regulations.
3. There would appear to be no need to create a new category of Overlay Zone for specific townships in addition to their existing proposed HPOZ's.

Such a new category could have been called a "Local Area Overlay Zone", such as used by the City of Cape Town. This is apparently the only other category used by Cape Town, and which is not used by the OM.

The drafters of the OM proposals must have been well aware of the overlay zoning categories used by Cape Town. Instead of creating such a category, which is used apparently exclusively for existing building and new construction conservation purposes, such as the heights of buildings and building restrictions, the OM drafters have realised that these "Local Area Overlay Zones", also deal with heritage protection (previously more narrowly called "conservation").

Consequently we find certain, normally local area overlay provisions, such as heights of buildings and building restrictions, in the OM heritage overlay regulations.

4. Not only are the proposed OM overlay regulations hybrids in nature, as described in paragraph 3, but the areas and townships themselves are also hybrids in nature through the application of both the EMOZ Regulations and the HPOZ Regulations to the same area or township. The two sets of regulations will co-exist with each other, without a need for concise compartmentalisation.

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5. As long as:

5.1 Care is taken not to draft a township specific or area specific HPOZ in conflict with an EMOZ, unless it so specifically planned and drafted; and

5.2 The provision dealing with differences as set out in paragraph 2 is inserted in the EMOZ Regulations and the HPOZ Regulations,

**then there should be no problem in including the whole of Rooiels in the existing proposed RE HPOZ.**

6. And then:

At a later stage, **please**, can the new Rooiels Heritage Protection Overlay proposals be discussed with the OM for possible inclusion.

Yours faithfully,

Eldie Brink

Owner of erf 237 Rooiels.

27/12/19

Estelle Raymond  
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Eversdal  
7550  
[eraymond@mweb.co.za](mailto:eraymond@mweb.co.za)

1 December 2019

**Municipal Manager**  
[hvdstoep@overstrand.gov.za](mailto:hvdstoep@overstrand.gov.za)  
**Overstrand Municipality**  
**Hermanus**

### **MUNICIPAL NOTICE NO 93/2019 COMMENT**

Thank you for the opportunity to comment on various planning documents and legislation as per Municipal Notice 93/2019.

Firstly, I wish to congratulate Overstrand Municipality with its initiative in drafting the various overlays. If implemented, this will make Overstrand Planning Department a leader in this field in South Africa, taking planning to a new level of sophistication to benefit local communities and the environment.

Although there will undoubtedly be some oversights or mistakes in these new documents, I urge Overstrand Municipality to implement the overlays without undue delay and to correct, update and make additions to these documents on a regular basis.

I am the owner of two properties in Rooiels. I have been involved in various Rooiels community organisations for 25 years. I am limiting my comments to Rooiels and its immediate surroundings as this is the area that I know intimately. I hold a Masters Degree in Environmental Law and am a qualified Attorney and Conveyancer, which enables me to make the comment under A1 below (regarding erf 324 Rooiels), with some authority.

#### **A. Comment on the advertised zoning map for Rooiels 2019**

##### **1. The new draft zoning map contains a mistake regarding erf 324 Rooiels and deviates from the existing zoning map (2014), which was correct.**

**1.1 The mistake:** At the bottom corner of erf 324 (next to erf 282), four apparent subdivisions of erf 324 are indicated in yellow as Single Residential. These subdivisions do not in actual fact exist as they were never registered. They lapsed in May 1979 in terms of the Townships Ordinance 33 of 1934, which provided that registration of subdivided erven had to be effected in the deeds office within two years, failing which such subdivision lapses. Unfortunately, it appears that the map held by the Surveyor General was never updated to reflect the lapse of this subdivision in 1979.

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In substantiation of the above, I have in my possession the report by Mr CK Rabie (Provincial Chief Director of Planning) to Minister Lampie Fick in 1997, in which he states:

"An application by the owner at the time (Mr H Forrer), for a subdivision of Erf 324 into a Remainder and four new residential erven next to the coast was approved in May 1977 (the remainder as Erf 328, and Erven 329,330,331 and 332 below Porter Drive)."

"None of the said erven were however registered within the prescribed period and the subdivisional approval of 1977 lapsed in May 1979. The present zoning of the property is undetermined, with rights to erect only one dwelling unit on Erf 324.

- 1.2 During 1980 the property was sold to Mr Reinecke. Mr Reinecke later applied for a new subdivision (14 erven) - which was granted - and the property was then sold to Mr Nel. However, the applicant had failed to remove a relevant title deed condition and the subdivision could not be proceeded with. This application for removal of title deed restriction was advertised in November 1996 and more than 80 objections were received - including from the Rooiels Ratepayers' Association and the Save Klein Hangklip Association. The removal of the title deed restriction was approved by the Provincial Minister of Planning. The Save Klein Hangklip Association then brought a review application to the High Court (Case No 1054/98). The High Court set aside the rezoning, subdivision and removal of restrictive title deed condition. The High Court in its judgment on 3 November 2000 ordered that erf 324 reverted to "undetermined zoning".
- 1.3 The 2014 Zoning Map correctly reflects this position and the Court Order in Case No 1054/98).
- 1.4 There exists no rational basis for the "rezoning" as Single Residential of the four phantom "erven" on erf 324. It appears to be a result of the confusion generated by the 1977 subdivisional map which was lodged with the Surveyor General but had subsequently lapsed as stated in 1.1.1 above. Hence, the changes to the draft zoning map with regard to erf 324 are based on an error of fact and should be corrected forthwith.
- 1.5 Please confirm that this will be corrected. Alternatively, in the unlikely event of Overstrand Municipality not agreeing with the above submission, kindly provide full reasons for the change in the dispensation regarding erf 324. Kindly also quote the relevant sections of the enabling legislation for this change, if they exist.
- 1.6 For the sake of completeness, this mistake is found on the following maps: Rooiels Zoning Map, Rooiels and Hangklip Smallholdings HPOZ Plan 4, Plan A HPOZ Overstrand Wide as well as Rural Map 1 Kleinmond Area.

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2. Erf 321 has been incorrectly designated as **Public Open Space (Zone 2)** instead of **Nature Reserve (Zone1)**. This is correctly reflected in the current 2014 Zoning Map.

If this is not a mere error, kindly furnish the rationale for this and what process was followed. Kindly also quote the relevant sections of the enabling legislation.

**B. Comment of HPOZ in respect of Rooiels**

**1. Plan 4 Rooiels & Hangklip smallholdings HPOZ refers:**

1.1 the four erven in the vicinity of erf 282 do not exist as they were part of a subdivision which lapsed in 1979 (See comment under A 1 above).

1.2 It appears that only the slope of Klein Hangklip which is visible from the R44 scenic drive, receives protection in terms of the HPOZ. The greater part of Klein Hangklip faces away from the R44 with a beautiful and dramatic cliff face which looms over the village. I am concerned that this iconic face of Klein Hangklip has not received adequate protection in the HPOZ or EMOZ overlays. Please ensure that this is indeed the case and that the **whole** of Klein Hangklip is protected as it is of heritage, cultural and environmental importance.

**Motivation:**

1.2.1 The steep slope and cliff face of Klein Hangklip on the southern side of Rooiels (situated mostly on erf 324), is probably the most important natural feature lending Rooiels its own unique sense of place.

1.2.2 This iconic image has graced numerous covers of the Rooiels community publication "The Breeze" (see attached photo).

1.2.3 This southern face of Klein Hangklip has been fiercely protected by the residents of Rooiels over the years. There have been petitions and a court case to preserve this natural feature in its near pristine state. In the court case in the erf 324 matter (about a subdivision affecting the southern face of Klein Hangklip, see par 1.3), Judge Conradie remarked that there is "something special about Klein Hangklip and its rock face, galvanising so many people to protect it."

1.2.4 It is the wild and near pristine southern side of Klein Hangklip (not directly visible from the R44) that many eco tourists and birders come to photograph, as this is where Rooiels has had a breeding pair of Verreaux' Eagles for more than 30 years.

1.2.5 There have even been poems written about Klein Hangklip, including one by well known Afrikaans poet, Louis Esterhuysen (who is not even a resident of Rooiels):

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Rooiels*By Rooiels*

*is die kuslyn gebroke, is die rotse  
 gepunte tande teen die breek  
 van lig en sand  
 die branders 'n skuimtrop wilde dier  
 in gallop by skitterhuise  
 tussen bos verby*

*By Rooiels*

*staan Klein-Hangklip skuinsverlate  
 die eenkant genoot  
 van hoop en baken  
 eeue deur, 'n muur van klip  
 wat selfs die geringste mens  
 en blom*

*beskut*

*Want hier, uitgelewer aan wind  
 uitgelewer aan die die tier van reën  
 en sliert: hier tussen bos en klip*

*Die klein bedagte baai van behoud  
 inhamme van samesyn.*

*langs 'n kuslyn só gebroke  
 tussen die rotse gepunt as tand  
 teen die breek van klip en sand*

- 1.3 I notice that the "Koppie" is designated a "Landmark", while the Rooiels Nature Reserve and Klein Hangklip are designated as "Special Places" on Plan 4. I could find no definition of either "Landmark" or "Special Places" in the HPOZ regulations. Kindly explain the difference and significance of both in the HPOZ. **It is submitted that Klein Hangklip is of equal or greater HPOZ significance as compared to the Koppie.**
- 1.3.1 It appears to be illogical and a mistake that the HPOZ is not extended to the erven around the dramatic cliff face of Klein Hangklip on the southern side of Rooiels. [See also Plan A (HPOZ Overstrand Wide) and comment in 1.2.3.]
- 1.3.2 It appears to be illogical and a mistake that the HPOZ is not extended to the erven around the Rooiels Nature Reserve. See also Plan A [See also Plan A (HPOZ Overstrand Wide) and comment in 1.2.3.]
- 1.3.3 Plan 4 appears to be inconsistent with Plan A (HPOZ Overstrand Wide). On Plan A **both** Klein Hangklip and the Rooiels Nature Reserve are indicated as

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"Very High" in "Landscape Significance". Yet these places of very high landscape significance are afforded no protection, if the HPOZ overlay (indicated on Plan 4) does not cover those erven adjoining Klein Hangklip and the Rooiels Nature Reserve.

1.3.4 In the light of the above, you are accordingly requested to amend Plan 4 to include the following erven in the HPOZ for Rooiels: 282, 281, 280, 278, 277, 276, 248, 247, 246, 245, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292 (Klein Hangklip) and 154, 155, 156, 165, 166, 185, 186, 187, 222, 221, 220, 219, 218, 217, 216, 215 (Rooiels Nature Reserve)

## 2 Plan 2 Mountain Catchment EMOZ and Plan 4 Riverine EMOZ refer:

2.3 It is unclear why the Mountain Catchment area on the northern side of the R44 between Rooiels and Pringle Bay is not included in Plan 2. This area is the catchment area for the "Buffelstaldam" which supplies Rooiels, Pringle Bay and a part of Bettys Bay with water. This whole area is indicated on Google Earth as "Hottentots Holland Mountain Catchment Area".

2.4 It is unclear why the Rooiels river (as well as others in Pringle Bay, Bettys Bay and Kleinmond) are not included in Plan 4 Riverine EMOZ. The Rooiels River is according to a CSIR report on of only a handful in South Africa which is relative pristine from source to mouth.

## 3 Draft HPOZ Regulations

A community working group, comprising members of both the Rooiels Ratepayers Association and the Friends of Rooiels, have been working since July 2019 on draft HPOZ regulations for Rooiels which incorporates a shared Vision for Rooiels. This process commenced before Overstrand published its current regulations for comment. Although some aspects of the Rooiels Working Group's submissions are now already covered by Overstrand draft HPOZ regulations, it should be noted that the Rooiels Working Group's work is far more detailed and tailored to the specific needs and problems of Rooiels. I support both these documents in general terms. I also support the undertaking given by Mr Riaan Kuchar (Senior Manager: Town & Spatial Planning) at the public meeting of 16 November 2019, to engage with this Rooiels Working Group in either drafting a special overlay for Rooiels or incorporating the remaining provisions into the existing overlay documents.

**Please acknowledge receipt hereof. I also request a copy of the Town Planning Department's answers or comments on the questions raised in my letter.**

Yours faithfully

Estelle Raymond  
282 and 278 Rooiels

29/9/18

# FRIENDS OF ROOIELS

---

FriendsofRooiels@gmail.com

28 November 2019

Municipal Manager

Overstrand Municipality

PO BOX 20

HERMANUS

7200

Fax: 028 313 2093

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

## **MUNICIPAL NOTICE NO 93/2019**

### **OUR COMMENT ON DRAFT 2019 ZONING MAP, AMENDMENTS TO SCHEME REGULATIONS AND HPOZ**

Friends of Rooiels is a non-profit community based organisation established in March 2018 as a direct result of our community's dissatisfaction with a number of Overstrand Municipality's Planning decisions, which were in our opinion eroding the special character of Rooiels to the detriment of both our community and the natural environment.

We welcome the Overstrand Municipality's intention to use Overlays as planning instruments. We also welcome the planning refinement and sensitivity which Overlays have the potential to bring to special places such Rooiels, a small village with a unique character, within a much larger Overstrand Municipality.

#### **1. COMMENT ON DRAFT 2019 ZONING MAP**

The latest draft zoning map of Rooiels contains a number of errors. The 2014 map currently on Overstrand Municipality's website is correct regarding Rooiels.

##### **1.1 ERF 321 ZONING ERROR**

Erf 321 has been incorrectly designated as Public Open Space (Zone 2) instead of Nature Reserve (Zone1). This is correctly reflected in the current 2014 Zoning Map.

30/9/8

There has been no rezoning of this land since 2014, so the zoning needs to stay the same.

It should be noted that Erf 321 directly adjoins the Core Zone of the Kogelberg Biosphere Reserve and that a zoning of Nature Reserve (Zone1) is not only correct, but also appropriate.

## **1.2 ERF 324 APPARENT SUBDIVISION AND INCORRECT ZONING OF FOUR "ERVEN"**

There is a mistake on the draft Zoning Map regarding Erf 324. There has been no rezoning or subdivision of this property since 2014.

The four erven depicted on the 2019 Draft Zoning map on the southern border of Erf 324 do not exist as they were never registered. These "erven" form part of erf 324 which is zoned "undetermined" and these "erven" cannot have a "single residential" zoning. The 2014 Rooiels Zoning map is correct in this regard.

This 2019 mistake on the Draft Zoning map, indicating erven which didn't exist on the 2014 Zoning Map, is probably the result of the fact that these erven are still erroneously indicated on the Surveyor General's map. This map came into being as a result of a subdivision which was approved in 1977, but which had already lapsed in 1979, because it wasn't acted upon.

Overstrand Municipality is requested to please inform the Surveyor General of this mistake on the Rooiels map, so that this mistake is not repeated in future.

## **2. COMMENT ON DRAFT AMENDMENTS TO SCHEME REGULATIONS**

### **2.1 MAXIMUM COVERAGE REPEALED?**

2.1.1 Para 6.1.2 (a) enacts a maximum coverage for net erf areas of less than 150 sq. m. The amendment is formulated in such a way that it appears to repeal the existing maximum coverage categories.

2.1.2 This could surely not have been the intention, as maximum coverage requirements are fundamental requirements in maintaining the character of residential townships.

31/ 98

## 2.2 BUILDING LINES REPEALED?

- 2.2.1 Para 6.1.2 (b) enacts building lines for net erf areas of less than 150 sq. m. The amendment is formulated in such a way that it appears to repeal the existing building line categories.
- 2.2.2 This could surely not have been the intention, as building lines are fundamental in maintaining the character of residential townships.

## 2.3 AQUACULTURE

- 2.3.1 We notice that the definition of Agricultural Industry has been broadened to include Aquaculture, which in the case of Overstrand will probably be salmon culture and perlemoen culture.
- 2.3.2 We wish to point out that previously concerns and legal opposition to the environmental impact of salmon and perlemoen farming have been successfully concluded by ratepayers in the Overstrand Municipal Area.
- 2.3.3 Insofar as the change will extend the footprint of aquaculture to other land units than the farming unit on which the aquaculture takes place, we object to the change.

## 2.4 AGRICULTURAL INDUSTRY – UNNECESSARY REFERENCES

- 2.4.1 The definition includes the following phrase:

*"where produce packed is not produced on the land unit"*

- 2.4.1.1 This presumably refers to the packing of apples specific to the Overstrand area, where farmers on their land units also pack for their immediate neighbours, due to the capital intensiveness of packing stores.
- 2.4.1.2 It is already covered by the rest of the definition, the phrase does not appear in word-for-word similar definitions of other municipalities, and it creates an unnecessary interpretation complexity to the definition.
- 2.4.1.3 If the intention of the phrase was to facilitate community-wide pack stores on farms, on a co-operative basis, then it is an out-and-out industrial use which should be situated in the industrial areas of the neighbouring towns.
- 2.4.1.4 We therefore request that the phrase be removed.

2.4.2 The following phrase is inserted in the definition:

*"or promotion of tourism related activities"*

2.4.2.1 This appears to us very much like the tail wagging the dog.

2.4.2.2 Please bear in mind that the definition was primarily enacted to enable a farmer to process his farming products, as an industrial use, on his farm.

2.4.2.3 Practicalities apparently ensued, requiring an exception to be made, for the processing to be done on another farming land unit, close to the land unit where the produce is produced.

2.4.2.4 A commercial use (such as a farm shop and other tourist related activities) was not allowed, as they are already enabled as a consent in respect of the farming land unit on which the farming produce is produced.

2.4.2.5 To extend the definition to a use for which it never was intended, in our opinion simply goes too far and distorts the Scheme Regulations.

2.4.2.6 It raises the spectre of commercial so-called "farm stalls", which are none other than commercial enterprises or shops also selling non-farming products from all over SA in these shops.

2.4.2.7 It also raises the spectre of farm stalls all along the scenic country roads of the Overstrand, thereby competing with the properly zoned and planned existing businesses of the inhabitants of the neighbouring towns.

### **3. ROOIELS WORKING GROUP HPOZ SUBMISSION**

Friends of Rooiels has actively participated in the HPOZ drafted by a Rooiels Working Group and we support this as a general submission to Overstrand (with a minor amendment reducing the number of rooms which are permissible as short term rentals to two). We trust that this document, which has the support of the community, will either be incorporated into the HPOZ or into other Overlays for Rooiels and we look forward to engaging with the Overstrand Municipality on this in 2020.

33/98

**Please acknowledge receipt of this letter.**

On behalf of the Friends of Rooiels

D Esterhuyse

(Chairperson)

34/98



## Stanford Heritage Committee

---

PO Box 539 STANFORD 7210 stanfordheritage@gmail.com 028 341 0164  
www.stanfordconservation.co.za

28<sup>th</sup> November 2019

The Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus  
7200

Hanneen van der Stoep  
Email: [hvdstoep@overstrand.gov.za](mailto:hvdstoep@overstrand.gov.za)

Attention: Mr. Lionel Wallace/C. Groenewald  
cc. Mr. F Myburgh: [fmyburgh@overstrand.gov.za](mailto:fmyburgh@overstrand.gov.za)

Ref: Notice Number: 93/2019  
September 2019

Dear Sirs,

**AMMENDMENTS TO THE DRAFT HERITAGE PROTECTION OVERLAY ZONE REGULATIONS**

**AMMENDMENTS TO STANFORD HERITAGE PROTECTION OVERLAY ZONE (STANFORD HPOZ) AS RECOMMENDED BY THE STANFORD HERITAGE COMMITTEE** *Registration number: HM/CB/0815/30 – NOVEMBER 2019*

Stanford Heritage Committee (SHC) and the Stanford Conservation Trust are registered as Interested & Affected Parties in the revision of the above-mentioned by-law.

Our comments and recommendations are as follows:-

Only the revised paragraphs are indicated, with new text shown in red.  
It needs to be read in conjunction with the full documents.

- 18.2.6 To protect and enhance historical building typologies types. Inappropriate typologies must be avoided in The historical core of Stanford with its significant spatial character must be conserved. The historical present, streetscape and street block character and the role of buildings as landmarks, street liners or corner buildings in contributing to this character must be respected. Appropriate modern interpretations will be considered by the Municipality with comment from Stanford Heritage Committee.**
- 18.3.1 All land use planning and building plan applications, if applicable, within the defined Stanford Area must be submitted to the Stanford Heritage Committee for comment.**
- 18.5.1 Parking provision standards/ratios may be relaxed when, in the opinion of the Municipality, with comment from the Stanford Heritage Committee, the imposition of obligatory parking ratios will have a negative impact on building-street relationships and the continuity of the streetscape where such streetscapes are considered to have heritage significance.**
- 18.6.2 In the case of new building construction work to be undertaken on a vacant site or portion of a vacant site or alterations to an existing building, a building line must be prescribed by the Municipality to protect the building line generally observed in the immediate context. In such cases the prescribed building line shall not be considered a departure nor subject to advertising or departure fees.**
- 18.8.3 Roof cover materials must be either Victorian-profile corrugated metal sheeting or thatch with cement capping. Lip Clip-lock, and IBR or similar (fibre cement products) roofing is permitted if not visible from the street, or screened by means of a parapet, and only on roofs with a pitch less than 5°. Roof colours must be: Cape Victorian Green, dark green, brick red, black or grey**
- 18.9.1 Doors, windows and openings of residential buildings must not exceed 30% of any façade facing the street and must be vertically proportioned. Recessed facades may exceed the 30% opening subject to approval by the Municipality with comment from the Stanford Heritage Committee.**
- 18.10.1.4 Paint colours must be white or pastel shades. Differentiated colours to emphasize architectural features and on recessed walls set back from the street boundary are permitted. will be submitted to Stanford Heritage Committee for comment. Striped verandah roofs are permitted.**

- 18.10.2.5 IBR, roofs or 'Clip-lock' or similar roof roofing, unless on a pitch less than 5° and not visible from the street, or concealed by a parapet.
- 18.11.1 The maximum height of boundary walls and fences on street boundaries must be 1.2m measured from ground level. For security reasons, visually permeable fencing not more than 50% solid, with openings of at least 20mm will be permitted up to a height of 1.8m on the street boundary. The solid vertical components must not exceed 20mm 50mm in width.
- 18.11.3 Building plans of walls or fences must be submitted to the Municipality for written permission, with comment from the Stanford Heritage Committee, prior to any construction work.
- 19.13.3 Water tanks and exterior elements must not be visible from the street, nor protrude above the eaves or ridge line and be in compliance with the Land Use Scheme.

Yours faithfully,



Liz Hochfelden: Stanford Heritage Committee

Bea Whittaker: Stanford Conservation Trust



VOEELGAT NATURE RESERVE (PTY) LTD  
South African Natural Heritage Site No 5

Tel 028 3141411 Fax 0866932708 · P O Box 2115 · Hermanus 7200 South Africa · Email  
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12<sup>th</sup> November 2019

**Comments with regards to additional revisions: Municipal Notice No. 93/2019**


Dear Mrs Van der Stroop

Thank you for the opportunity to comment on the above revisions.

In my opinion Erven 4771; 4833; 4831; 249; 243 and 1253 Hermanus are not satisfactory protected in terms of the Environmental Act. I would suggest that the entire Fernkloof Nature Reserve inclusive of these erven are entered with Cape Nature as a Contractual Nature Reserve within the constraints of their Stewardship Programme.

There may be no deviation from the initial terms and conditions that Fernkloof was proclaimed.

Kind regards

  
Giorgio Lombardi MSc Rhodes University  
Warden Vogelgat Nature Reserve



overstrand conservation foundation, trading as

# whale CONSERVATION

*Caring for your environment*

2019-11-28

Municipal Manager  
Overstrand Municipality  
PO Box 20  
HERMANUS  
7200

For attention Mr. Lionel Wallace

Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za) cc [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Sir

**WHALE COAST CONSERVATION COMMENT ON THE PROPOSED OVERSTRAND  
MUNICIPALITY AMENDMENT BY-LAW ON MUNICIPAL LAND USE PLANNING 2019 AND  
ASSOCIATED DOCUMENTS.**

Whale Coast Conservation (WCC) has considered the above documentation and has serious reservations in a number of areas.

Once again, WCC wishes to bring to the Overstrand Municipality's attention our serious concerns regarding the:

1. Definition in the Overstrand Municipality Land Use Scheme, 2019 of "Open Space Zone I: Nature Reserve" and its application to protected and conservation-worthy land in the area, and
2. Overstrand By-Law on Municipal Land Use Planning 2015 Section 72, defining the composition of the Municipal Planning Tribunal.

The following aspects also need consideration:

- Section 51 of the Overstrand By-Law on Municipal Land Use Planning 2015;
- Grammatical errors in the By-Law;
- Various definitions in the Overstrand Municipality Land Use Scheme, 2019
- An obscure statement in the Environmental Management Overlay Schedule

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Green House, R43 Vermont, Hermanus PO Box 1949 Hermanus South Africa 7200

PBO 18/11/13/4541 NPO 020-771



## 1 ZONING OF OVERSTRAND'S NATURE RESERVES

The Fernkloof Nature Reserve (FNR) has an exceptional level of biodiversity that is well documented and world renowned. It is a biodiversity hotspot within a larger area of extreme conservation concern. As such, it is so worthy and indeed **indeed** needful of protection that the reserve's core area warrants classification as a "wilderness area" as defined in Section 26 of the National Environment Management: Protected Areas Act (NEM:PAA). The functions of a NEM:PAA wilderness area are defined as:

- (a) *to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;*
- (b) *to provide outstanding opportunities for solitude;*
- (c) *to control access which, if allowed, may only be by non-mechanised means.*

The land use zone associated with FNR needs to be aligned with this section of NEM:PAA. If the Municipality does not ensure this it will be in dereliction of its greater duty to the protection of the area's unique environment.

WCC pointed out in the public participation process for the drafting of the original integrated zone scheme regulations that the model zone scheme regulations given by the Western Cape Department of Environment and Development Planning (DEA&DP) provides a description for an appropriate zone for FNR. This is Conservation Zone 1: Wilderness Area (CON1). The description aligns well with the NEM:PAA wilderness area and reads as follows:

### *Objective*

*The objective of Conservation Zone 1: Wilderness Area, is to provide for the conservation of predominantly natural, remote and environmentally unspoilt areas. Such areas may be proclaimed nature areas or may not be proclaimed, but in either case the range of permitted uses is extremely limited.*

### *Use of Property*

**12.1.1** *The following use restrictions apply to property in this zone:*

- (a) *Primary use is: wilderness conservation*
- (b) *Consent uses are: none.*



### *Management Provisions*

*12.1.2 An environmental management plan shall be prepared to the satisfaction of the Management Agency.*

*12.1.3 The Management Agency, in consultation with the Council, shall determine the land use restrictions and the management provisions for the property based on the objectives of this zone, the particular circumstances of the property and in accordance with an approved environmental management plan.*

The DEA&DP model zone regulations offers three conservation zone descriptions, namely CON1, CON2 and CON3. The Overstrand OS1: Nature Reserve zone which gives its highest level of protection aligns most closely with DEA&DP's CON3 which offers the least protection for a conservation area. This is a travesty given the undisputed environmental value of FNR in particular, as well as other land that also has unique biodiversity and scenic beauty within the Overstrand.

In addition and in the interests of promoting tourism to the area, the Municipality should be encouraging landowners to rezone undeveloped land, especially that above the 120 m contour line, to zones equivalent to DEA&DP's CON2 and CON3. Tragically short-sighted planning does not provide local zones that align with the DEA&DP model and this land thus also remains unprotected and undervalued.

**It is strongly recommended that the Municipality incorporates DEA&DP's CON1, CON2 and CON3 models into its zone scheme regulations. The entire core area of FNR should be zoned as CON1 and the Cliff Path and other areas of FNR should be zoned as CON2 and CON3 as appropriate.**

## **2 MEMBERSHIP OF THE OVERSTRAND MUNICIPAL PLANNING TRIBUNAL (MPT)**

The Overstrand MPT comprises of municipal employees and a single (non-municipal) employee of DEA&DP. This meets the minimum legal requirement of the Spatial Planning and Land Use Management Act (SPLUMA) and Section 3(2)(a) of its regulations. In complying with the minimum requirements, the Overstrand municipal administration has been able to avoid the participation of civil society representation on the MPT as well as the requirement to advertise vacancies on the MPT.

As a result of this minimum compliance the MPT is totally dominated by municipal employees who are under the control of the municipal manager. There is no representative voice of any sectoral interest group such as environmental, heritage, business or tourism. The workings of the Tribunal are therefore obscure to the general population of the area. This is clearly not in the spirit of SPLUMA, which allows in regulation 3(2)(a) for broad participation from the following, with only the prescription of competence in spatial planning being a requirement for eligibility:

41/98



*(a) an official or employee of-*

*(i) any department of state or administration in the national or provincial sphere of government;*

*(ii) a government business enterprise;*

*(iii) a public entity;*

*(iv) organised local government as envisaged in the Constitution;*

*(v) an organisation created by government to provide municipal support;*

*(vi) a non-governmental organisation; and*

*(vii) any other organ of state not provided for in subparagraph (i) to (iv).*

*(b) an individual in his or her own capacity.*

Section 72 of the municipal by-law should require that if only one non-Overstrand municipal employee is to be allowed as a member of the MPT, then that position must be filled by a local person with the necessary competence drawn from civil society, following advertising of the vacancy. Ideally there should be representation on the Tribunal of a range of civil society interests, including the environment, business and tourism.

**It is strongly recommended that the Municipality amends the by-law to recognise the need for transparency and broader local civil society participation in the MTB in the spirit of SPLUMA and the interests of good governance.**

### **3 OBSERVATIONS**

#### **3.1 By-Law on Municipal Land Use Planning 2015 Section 51**

Section 51 sets out requirements by the Municipality for a petition to be accepted.

Section 51(a)(ii) requires that a list of details must be provided for at least two specified people, including their facsimile numbers, but not their email addresses. Facsimile numbers are no longer in common use, and this requirement should thus be for either facsimile numbers or email addresses according to the preference of those providing the details.

Section 51(a)(iv) and (v) presumably only apply to the two specified people referred to in 51(a)(ii) but is somewhat ambiguous. It could be interpreted that (iv) and (v) apply to every person signing the petition, which would be unreasonable. The wording should be changed to make the requirement clear.

9/2/98



Section 51(2) says "Any written notification by the municipality to petitioners shall be regarded as sufficient if such notification is sent to persons contemplated in sections 50(1)(f) and 51(1)(a)(ii)." 50(1)(f) does not relate to petitions so presumably should not be included here.

### 3.2 Grammatical errors

53(1) insert a comma after "submit a petition"

58(1) contains "...may not exceed than 12 months" "than" should be deleted.

64(1) contains "...does not change its decision or results in an..." ... "results" should be "result".

66(g) replace ";" with "." at the end of the section

### 3.3 Definitions in the Zoning/Land Use Scheme Amendments

"Environmental Impact Assessment": The definition should be in accordance with NEMA and NEMA regulations that provide listings of activities that trigger an EIA.

"Hobby": the definition is clumsy, unnecessarily complicated and needs rewording, viz. "hobby" means an activity done regularly in one's leisure time for pleasure, not related to a commercial venture and excluding activities creating noise, health hazards and nuisance;

"Home Occupation": the definition is clumsy and needs rewording.

"renewable energy structures": The definition is confusing. It suggests that only those that are erected for commercial use fall within the definition, but then ends a long and convoluted sentence with "may lead to the generation of energy on a private or commercial basis." The definition is clumsy and confusing and needs rewording.

### 3.4 Environmental Management Overlay Schedule obscurity

Under the heading "Management Plans for NEM:BA Invasive Alien Species" the Environmental Management Overlay Schedule states "Overstrand Municipality may request access to IAS plans from that are required for all State Land, from Government Departments responsible for land, where such State Land falls within an EMOZ." Please reword this impenetrable sentence to make its meaning clear so that it can be considered.

### IN CONCLUSION

1. The Overstrand zone description for conservation areas is unacceptable as it offers inadequate protection for FNR and other conservation-worthy land in the Overstrand.

43/98



The CON1 to CON3 zones defined in the DEA&DP model zone scheme regulations must be incorporated in place of the OS1: Nature Reserve as part of the current amendment process. If the proposed zones are not changed to concur with the DEA&DP model zones this will remain a key concern. It can be expected to be a stumbling block to acceptance of any proposed management plan for FNR.

2. In the interests of transparency and good governance the membership of the Overstrand MPT needs to include members of civil society interest groups. The by-law must ensure that this is a requirement.
3. Ambiguity and errors in sections 51, 53, 58, 64 & 66 need to be clarified and corrected.
4. Identified definitions need to be reworded for clarity.

Kindly confirm receipt of this submission.

Regards

A handwritten signature in black ink, appearing to read "Rob Fryer".

Rob Fryer  
General Manager

44/98

2019-11-28

Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

FAO: Mr Lionel Wallace

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND  
USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Kind regards

Carol van Hoogstraten

45/98

**From:** Lionel Wallace  
**To:** Petrus Roux; Hanneen van der Stoep  
**Date:** 2019/12/02 07:49  
**Subject:** Fwd: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS  
**Attachments:** Land use planning draft amendments - Letter supporting WCC comments.docx

FYI

>>> "Anton Odendal" <birding@overberg.co.za> 2019/12/02 06:30 >>>  
2019-12-02

Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)  
CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)  
Dear Messrs Groenewald and Wallace

FAO: Mr Lionel Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well. This is done with the support of our committee.

Sincerely,

Anton Odendal

Dr. Anton Odendal

BirdLife Overberg

Manager: CleanMarine campaign

Manager: [www.westerncapebirding.co.za](http://www.westerncapebirding.co.za)

Email: [birding@overberg.co.za](mailto:birding@overberg.co.za)

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41/98

**From:** Coenie Groenewald  
**To:** Stephen Muller; Riaan Kuchar  
**Date:** 2019/12/03 10:24  
**Subject:** Fwd: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BYLAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS

FYI

**Coenie Groenewald**  
Municipal Manager / Munisipale Bestuurder | Umphathi Kamasipala  
Overstrand Municipality | Munisipaliteit | Umasipala

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>>> "Richard Franck" <[rfranck30@gmail.com](mailto:rfranck30@gmail.com)> 02/12/2019 06:39 PM >>>  
Dear Messrs Groenewald & Wallace

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

<https://emsfoundation.org.za/whale-coast-conservation/>

Yours sincerely  
Richard Franck

Richard Franck  
131 8th Street  
Voelklip  
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Cell No : 082 320 1328  
Home No : 028 314 0299

47/98

8 Luyt Street  
Eastcliff  
HERMANUS  
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2 December 2019

The Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus  
7200

FOR ATTENTION: MR LIONEL WALLACE

Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)  
cc: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with every single one of the points made in Whale Coast Conservation's comment, dated 28 November 2019, on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Please acknowledge receipt of my email.

Thank you.

MRS R E DU PLOOY

48/98

## ANNEXURE

28th November 2019

Municipal Manager Overstrand Municipality  
 PO Box 20  
 HERMANUS  
 7200

FOR ATTENTION: MR LIONEL WALLACE

Email: [egroenewald@overstrand.gov.za](mailto:egroenewald@overstrand.gov.za)  
 Cc: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Sir,

Whale Coast Conservation (WCC) has considered the above documentation and has serious reservations in a number of areas.

Once again, WCC wishes to bring to the Overstrand Municipality's attention our serious concerns regarding the:

1. Definition in the Overstrand Municipality Land Use Scheme, 2019 of "Open Space Zone I: Nature Reserve" and its application to protected and conservation-worthy land in the area, and
2. Overstrand By-Law on Municipal Land Use Planning 2015 Section 72, defining the composition of the Municipal Planning Tribunal.

The following aspects also need consideration:

- Section 51 of the Overstrand By-Law on Municipal Land Use Planning 2015;
- Grammatical errors in the By-Law;
- Various definitions in the Overstrand Municipality Land Use Scheme, 2019
- An obscure statement in the Environmental Management Overlay Schedule  
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PBO 18/1 U/13/4541 NPO 020-771

## 1 ZONING OF OVERSTRAND'S NATURE RESERVES

The Fernkloof Nature Reserve (FNR) has an exceptional level of biodiversity that is well documented and world renowned. It is a biodiversity hotspot within a larger area of extreme conservation concern. As such, it is so worthy and indeed needful of protection that the reserve's core area warrants classification as a "wilderness area" as defined in Section 26 of the National Environment Management: Protected Areas Act (NEM:PAA). The functions of a NEM:PAA wilderness area are defined as:

1. *to protect and maintain the natural characteristics of the area and, by its location, as a source of natural and cultural resources, and the provision of environmental goods and services;*
2. *to provide outstanding opportunities for scientific*

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3. *no mechanical access which, if allowed, may only be by non-mechanised means.*

The land use zone associated with FNR needs to be aligned with this section of NEM:PAA. If the Municipality does not ensure this it will be in dereliction of its greater duty to the protection of the area's unique environment.

WCC pointed out in the public participation process for the drafting of the original integrated zone scheme regulations that the model zone scheme regulations given by the Western Cape Department of Environment and Development Planning (DEA&DP) provides a description for an appropriate zone for FNR. This is Conservation Zone 1: Wilderness Area (CON1). The description aligns well with the NEM:PAA wilderness area and reads as follows:

*Objective:*

*The objective of Conservation Zone 1: Wilderness Area, is to provide for the conservation of predominantly natural, remote and environmentally unspoilt areas. Such areas may be proclaimed nature areas or may not be proclaimed, but in either case the range of permitted uses is extremely limited.*

*Use of Property:*

*12.1.1 The following use restrictions apply to property in this zone: (a) Primary use is wilderness conservation  
(b) Current uses are none.*

*Management Provisions:*

*12.1.2 An environmental management plan shall be prepared at the satisfaction of the Management Agency.*

*12.1.3 The Management Agency, in consultation with the Council, shall determine the land use restrictions and the management provisions for the property based on the objectives of this zone, the particular circumstances of the property and in accordance with an approved environmental management plan.*

The DEA&DP model zone regulations offers three conservation zone descriptions, namely CON1, CON2 and CON3. The Overstrand OSI: Nature Reserve zone which gives its highest level of protection aligns most closely with DEA&DP's CON3 which offers the least protection for a conservation area. This is a travesty given the undisputed environmental value of FNR in particular, as well as other land that also has unique biodiversity and scenic beauty within the Overstrand.

In addition and in the interests of promoting tourism to the area, the Municipality should be encouraging landowners to rezone undeveloped land, especially that above the 120 m contour line, to zones equivalent to DEA&DP's CON2 and CON3. Tragically short-sighted planning does not provide local zones that align with the DEA&DP model and this land thus also remains unprotected and undervalued.

It is strongly recommended that the Municipality incorporates DEA&DP's CON1, CON2 and CON3 models into its zone scheme regulations. The entire core area of FNR should be zoned as CON1 and the Cliff Path and other areas of FNR should be zoned as CON2 and CON3 as appropriate.

50/98

## MEMBERSHIP OF THE OVERSTRAND MUNICIPAL PLANNING TRIBUNAL (MPT)

The Overstrand MPT comprises of municipal employees and a single (non-municipal) employee of DEA&DP. This meets the minimum legal requirement of the Spatial Planning and Land Use Management Act (SPLUMA) and Section 3(2)(a) of its regulations. In complying with the minimum requirements, the Overstrand municipal administration has been able to avoid the participation of civil society representation on the MPT as well as the requirement to advertise vacancies on the MPT.

As a result of this minimum compliance the MPT is totally dominated by municipal employees who are under the control of the municipal manager. There is no representative voice of any sectoral interest group such as environmental, heritage, business or tourism. The workings of the Tribunal are therefore obscure to the general population of the area. This is clearly not in the spirit of SPLUMA, which allows in regulation 3(2)(a) for broad participation from the following, with only the prescription of competence in spatial planning being a requirement for eligibility:

(a) an official or employee of-

(i) any department of state or administration in the national or provincial sphere of government;

(ii) a government business enterprise;

(iii) a public entity;

(iv) an organ of state government as envisaged in the Constitution;

(v) an organisation created by government to provide municipal support, self-administered governmental organisation; and

(vi) any other organ of state not provided for in subparagraph (i) to (v).

(b) an individual in his or her own capacity.

Section 72 of the municipal by-law should require that if only one non-Overstrand municipal employee is to be allowed as a member of the MPT, then that position must be filled by a local person with the necessary competence drawn from civil society, following advertising of the vacancy. Ideally there should be representation on the Tribunal of a range of civil society interests, including the environment, business and tourism.

It is strongly recommended that the Municipality amends the by-law to recognise the need for transparency and broader local civil society participation in the MPT in the spirit of SPLUMA and the interests of good governance.

## 3 OBSERVATIONS

## 3.1 By-Law on Municipal Land Use Planning 2015 Section 51

Section 51 sets out requirements by the Municipality for a petition to be accepted.

Section 51(a)(ii) requires that a list of details must be provided for at least two specified people, including their facsimile numbers, but not their email addresses. Facsimile numbers are no longer in common use, and this requirement should thus be for either facsimile numbers or email addresses according to the preference of those providing the details.

Section 51(a)(iv) and (v) presumably only apply to the two specified people referred to in 51(a)(ii) but is somewhat ambiguous. It could be interpreted that (iv) and (v) apply to every person signing the petition, which would be unreasonable. The wording should be changed to make the requirement clear.

Section 51(2) says "Any written notification by the municipality to petitioners shall be regarded as sufficient if such notification is sent to persons contemplated in sections 50(1)(D) and 51(1)(a)(ii)." 50(1)(D) does not relate to petitions so presumably should not be included here.

5/1/98

### 3.2 Grammatical errors

53(1) insert a comma after "submit a petition"

58(1) contains "...may not exceed than 12 months" "than" should be deleted.

64(1) contains "...does not change its decision or rewrites in an..." ... "results" should be "result".

66(g) replace ";" with ":" at the end of the section

### 3.3 Definitions in the Zoning/Land Use Scheme Amendments

"Environmental Impact Assessment": The definition should be in accordance with NEMA and NEMA regulations that provide listings of activities that trigger an EIA.

"Hobby": the definition is clumsy, unnecessarily complicated and needs rewording, viz. "hobby" means an activity done regularly in one's leisure time for pleasure, not related to a commercial venture and excluding activities creating noise, health hazards and nuisance;

"Home Occupation": the definition is clumsy and needs rewording.

"renewable energy structures": The definition is confusing. It suggests that only those that are erected for commercial use fall within the definition, but then ends a long and convoluted sentence with "may lead to the generation of energy on a private or commercial basis." The definition is clumsy and confusing and needs rewording.

### 3.4 Environmental Management Overlay Schedule obscurity

Under the heading "Management Plans for NEM:BA Invasive Alien Species" the Environmental Management Overlay Schedule states "Overstrand Municipality may request access to IAS plans from that are required for all State Land, from Government Departments responsible for land, where such State Land falls within an EMOZ." Please reword this impenetrable sentence to make its meaning clear so that it can be considered.

### IN CONCLUSION

1. The Overstrand zone description for conservation areas is unacceptable as it offers inadequate protection for FNR and other conservation-worthy land in the Overstrand.

The CON1 to CON3 zones defined in the DEA&DP model zone scheme regulations must be incorporated in place of the OSI Nature Reserve as part of the current amendment process. If the proposed zones are not changed to concur with the DEA&DP model zones this will remain a key concern. It can be expected to be a stumbling block to acceptance of any proposed management plan for FNR.

1. In the interests of transparency and good governance the membership of the Overstrand MPT needs to include members of civil society interest groups. The by-law must ensure that this is a requirement.
2. Ambiguity and errors in sections 51, 53, 58, 64 & 66 need to be clarified and corrected.
3. Identified definitions need to be reworded for clarity.

Kindly confirm receipt of this submission.

Regards

Rob Fryer, General Manager, WHALE COAST CONSERVATION

52/98

Postal: PO Box 89, Onrus, 7201  
 DCS Accreditation: 15/18/044  
 NPO Registration: 165-758 NPO

NHW Number: 079 419 9276  
 E-mail: theowl@onverwag.org.za  
 Website: www.onverwag.org.za



02 December 2019

The Municipal Manager  
 Overstrand Municipality  
 PO Box 20  
 Hermanus 7200  
 Email: cgroenewald@overstrand.gov.za

FAO: Mr Lionel Wallace

CC: lwallace@overstrand.gov.za

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL  
 LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I fully align myself, the executive committee and members of our Onrus Vermont Neighbourhood Watch with all points made in the Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Yours sincerely,

AF Inghels  
 Chair: Onrus-Vermont Neighbourhood Watch

*Howl if you see our owl!*

Executive committee: Chair: Abner Inghels Vice Chair: Japie Louw Treasurer: Graham Thomason PR: Caroline Gabb Secretary: Penny Wiefening  
 Patrols: Eddie Holloway Incident register: Anne Droomer Other: Michiel de Kock, Ilse Myburgh, Jan Roodhof & Jan Vorster  
 OnVerWag (Onrus-Vermont Neighbourhood Watch) is an accredited Neighbourhood Watch with the Western Cape Department of Community Safety and Hermanus Community Police Forum, as well as a registered Non-Profit Organisation with the Department of Social Development.



**Ailene Theart - Fwd: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

**From:** Schalk van der Merwe  
**To:** Ailene Theart; Petrus Roux  
**Date:** 2019/12/02 03:06 PM  
**Subject:** Fwd: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS  
**Attachments:** WHALE COAST CONSERVATION.docx

Collab asb.

**Schalk van der Merwe**  
 Senior Town Planner, Town & Spatial Planning Department  
 Overstrand Municipality  
**A:** 16 Paterson Street, Hermanus, 7200 **P:** P O Box 20, Hermanus, 7200  
**T:** 028 313 8900 | **F:** 028 313 2093 **E:** [schalk@overstrand.gov.za](mailto:schalk@overstrand.gov.za)

----- Forwarded message -----

Municipal Manager FAO: Mr Lionel Wallace  
 Overstrand Municipality  
 PO Box 20  
 Hermanus 7200

Email: [wallace@overstrand.gov.za](mailto:wallace@overstrand.gov.za)  
 CC: [van.der.merwe@overstrand.gov.za](mailto:van.der.merwe@overstrand.gov.za)

Dear Messrs Obernewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached, and wish these to be registered as my individual comments as well. I urge the Municipality to take remedial action regarding this important aspect of our environmental heritage.

Christine Stilwell (Professor)  
 3 Under the Oaks  
 Main Road  
 Onrus  
 0283162514

55/98

**From:** Lionel Wallace  
**To:** Hanneen van der Stoep; Petrus Roux  
**Date:** 2019/12/02 12:14  
**Subject:** Fwd: Objections to Draft Amendments to the By-Laws Relating to Municipal Land Use Planning 2015  
**Attachments:** WCC Objections Draft Amendments to the By-Laws Relating to Municipal Land Use Planning 2015.docx

FYI

>>> Beth Peterson <8414lycaon@gmail.com> 2019/12/02 11:45 >>>

Municipal Manager (AO): Mr Lionel Wallace

Overstrand Municipality

PO Box 20

Hermanus 7200

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

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

As an Overberg resident, committed to citizen protection of biodiversity and a sustainable environment, I am in full support of Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well. In times of climate emergency I think that is vital that the leadership of Overstrand Municipality places people and planet before profit that only enriches the rich at the expense not just everyone else but significant natural resources that should be to the benefit of all, including our future generations.

BETH PETERSON

072 411 0124

[8414lycaon@gmail.com](mailto:8414lycaon@gmail.com)

56/98



**Hermanus Botanical Society** Established in 1960

**Hermanus Botaniese Vereniging** Gestig in 1960

2019-11-28

Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

Attention: Mr Lionel Wallace

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE  
PLANNING AND ASSOCIATED DOCUMENTS**

We the members of the Hermanus Botanical Society, align ourselves fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as our comments as well.

Please confirm receipt of our submission.

Regards,

*DJ Marais*

Dr DJ Marais

Chairperson Hermanus Botanical Society

028 312 1162

[maraisdianne@gmail.com](mailto:maraisdianne@gmail.com)

5-7/98



2019-02-12

Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: cgroenewald@overstrand.gov.za

FAO: Mr Lionel Wallace

CC: lwallace@overstrand.gov.za

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL  
LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

The Hermanus Ratepayers Association aligns itself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as our comments as well.

Hermanus Ratepayers Association  
PO BOX 134  
Hermanus  
7200

BH Wridgway  
Chairperson.

**Rina van antwerp - FNR**

**From:** Coenie Groenewald  
**To:** Stephen Muller; Riaan Kuchar  
**Date:** 2019/12/02 12:52 PM  
**Subject:** FNR

---

FYI

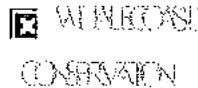
**Coenie Groenewald**  
 Municipal Manager / Munisipale Bestuurder | Umphathi Kamasipala  
 Overstrand Municipality | Munisipaliteit | Umasipala

**M:** +27 (0)82 552 9555 | **T:** +27 (0)28 313 8003 | **F:** +27 (0)86 568 9726  
**E:** [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

My contact details are available on the website of the Department of Environmental Affairs and Forestry.

My contact details:

**Rene Taljaard**  
 73 Fifth Street  
 Voëlklip  
 Hermanus  
 7200  
 Telno: 0723854363  
 Landline: 028 314 1610



Watermark text: WATERSKOP CONSERVATION

COMMENT ON THE  
 PROPOSED OVERSTRAND  
 MUNICIPALITY  
 AMENDMENT BY-LAW ON  
 MUNICIPAL LAND USE  
 PLANNING 2019 AND  
 ASSOCIATED DOCUMENTS



57/96

**From:** Coenie Groenewald  
**To:** Stephen Muller; Riaan Kuchar  
**Date:** 2019/12/02 15:08  
**Subject:** Fwd: COMMENTS and OBJECTIONS ON THE PROPOSED OVERSTRAND MUNICIPALITY AMENDMENT BY-LAW ON MUNICIPAL LAND USE PLANNING 2019 AND ASSOCIATED DOCUMENTS

FYI

**Coenie Groenewald**  
 Municipal Manager / Munisipale Bestuurder | Umphathi Kamasipala  
 Overstrand Municipality | Munisipaliteit | Umasipala

M: +27 (0)82 552 9555 | T: +27 (0)28 313 8003 | F: +27 (0)86 568 9726  
 E: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

>>> Michael Raimondo <[michael@greenrenaissance.co.za](mailto:michael@greenrenaissance.co.za)> 02/12/2019 02:45 PM >>>  
 > 2nd December 2019

> Municipal Manager Overstrand Municipality

> PO Box 20  
 > HERMANUS  
 > 7200

> For attention Mr. Lionel Wallace

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

> cc [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

> Dear Sir,

> As Trustee of Whale Coast Conservation (WCC) and Director of Hoek Van De Berg Nature Reserve and Director of Green Renaissance and in my private capacity I fully endorse and concur with WCC's below letter that I have attached below. Please can you confirm receipt of this e-mail and my objections and comments.

> Regards,  
 > Michael Raimondo

> Whale Coast Conservation (WCC) has considered the above documentation and has serious reservations in a number of areas.

> Once again, WCC wishes to bring to the Overstrand Municipality's attention our serious concerns regarding the:

- > • Definition in the Overstrand Municipality Land Use Scheme, 2019 of "Open Space Zone I: Nature Reserve" and its application to protected and conservation-worthy land in the area, and
- > • Overstrand By-Law on Municipal Land Use Planning 2015 Section 72, defining the composition of the Municipal Planning Tribunal.

> The following aspects also need consideration:

- > • Section 51 of the Overstrand By-Law on Municipal Land Use Planning 2015;
- > • Grammatical errors in the By-Law;
- > • Various definitions in the Overstrand Municipality Land Use Scheme, 2019
- > • An obscure statement in the Environmental Management Overlay Schedule TEL +27 28 316 2527 FAX 086 695 0046 CELL +27 72 185 5726

> E-MAIL [greenhouse.wcc@gmail.com](mailto:greenhouse.wcc@gmail.com) WEBSITE [www.whalecoastconservation.org.za](http://www.whalecoastconservation.org.za) Green House, R43 Vermont, Hermanus PO Box 1949 Hermanus South Africa 7200

> PBO 18/11/13/4541 NPO 020-771

#### > 1 ZONING OF OVERSTRAND'S NATURE RESERVES

> The Fernkloof Nature Reserve (FNR) has an exceptional level of biodiversity that is well documented and world renowned. It is a biodiversity hotspot within a larger area of extreme conservation concern. As such, it is so worthy and indeed needful of protection that the reserve's core area warrants classification as a "wilderness area" as defined in Section 26 of the National Environment Management: Protected Areas Act (NEM:PAA). The functions of a NEM:PAA wilderness area are defined as:

- > • (a) to protect and maintain the natural character of the environment, biodiversity, associated natural and cultural resources and the provision of environmental goods and services;
- > • (b) to provide outstanding opportunities for solitude;
- > • (c) to control access which, if allowed, may only be by non-mechanised means.

> The land use zone associated with FNR needs to be aligned with this section of NEM:PAA. If the Municipality does not ensure this it will be in dereliction of its greater duty to the protection of the area's unique environment.

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#### > Objective

> The objective of Conservation Zone 1: Wilderness Area, is to provide for the conservation of predominantly natural, remote and environmentally

60/98

unspoilt areas. Such areas may be proclaimed nature areas or may not be proclaimed, but in either case the range of permitted uses is extremely limited.

- >
- > Use of Property
- > 12.1.1 The following use restrictions apply to property in this zone: (a) Primary use is: wilderness conservation
- > (b) Consent uses are: none.
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- > Management Provisions
- >
- > 12.1.2 An environmental management plan shall be prepared to the satisfaction of the Management Agency.
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- > 12.1.3 The Management Agency, in consultation with the Council, shall determine the land use restrictions and the management provisions for the property based on the objectives of this zone, the particular circumstances of the property and in accordance with an approved environmental management plan.
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- > In addition and in the interests of promoting tourism to the area, the Municipality should be encouraging landowners to rezone undeveloped land, especially that above the 120 m contour line, to zones equivalent to DEA&DP's CON2 and CON3. Tragically short-sighted planning does not provide local zones that align with the DEA&DP model and this land thus also remains unprotected and undervalued.
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  - >
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  - >
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  - >
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- >
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- >

61/ 98

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- >
- > "Home Occupation": the definition is clumsy and needs rewording.
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> IN CONCLUSION

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- > 1. The Overstrand zone description for conservation areas is unacceptable as it offers inadequate protection for FNR and other conservation-worthy land in the Overstrand.
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- > The CON1 to CON3 zones defined in the DEA&DP model zone scheme regulations must be incorporated in place of the OS1: Nature Reserve as part of the current amendment process. If the proposed zones are not changed to concur with the DEA&DP model zones this will remain a key concern. It can be expected to be a stumbling block to acceptance of any proposed management plan for FNR.
- >
- > • In the interests of transparency and good governance the membership of the Overstrand MPT needs to include members of civil society interest groups. The by-law must ensure that this is a requirement.
- > • Ambiguity and errors in sections 51, 53, 58, 64 & 66 need to be clarified and corrected.
- > • Identified definitions need to be reworded for clarity.
- > Kindly confirm receipt of this submission. Regards
- >
- > Rob Fryer General Manager
- >

62/98

**From:** Lionel Wallace

**To:** Hanneen van der Stoep; Petrus Roux

**Date:** 2019/12/02 07:49

**Subject:** Fwd: DRAFT AMENDMENTDS TO OVERSTRAND MUNICIPALITY'S BYLAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS

>>> "Sue Franck" <francks@intekom.co.za> 2019/11/30 16:22 >>>

Dear Messrs Groenewald & Wallace

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

<https://emsfoundation.org.za/whale-coast-conservation/>

Yours sincerely

Sue Franck

Sue Franck  
PO Box 344  
Hermanus 7200

131 8<sup>th</sup> Street  
Voelklip  
Hermanus 7200  
Tel: 028 314 0299  
Cell: 072 230 9169  
Email: francks@intekom.co.za

63/98

**From:** Lionel Wallace

**To:** Hanneen van der Stoep; Petrus Roux

**Date:** 2019/12/02 07:49

**Subject:** Fwd: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS

FYI

>>> "Tom de Roo" <tderoo@mweb.co.za> 2019/11/30 14:56 >>>

Municipal Manager

FAO: Mr Lionel Wallace

Overstrand Municipality

PO Box 20

Hermanus 7200

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

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Tom de Roo  
20 Parklane  
University Drive  
Pinelands  
7405

And also owner of Unit 38 Lagoon Edge Hermanus

Phone: 021 531 1532

Cell: 082 553 5290

64/98

2019-11-28

Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus 7200  
Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

FAO: Mr Lionel Wallace

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND  
USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Dr PH van Niekerk

PO Box 47

Onrus River 7201

61/98

**From:** Coenie Groenewald

**To:** Stephen Muller; Riaan Kuchar

**Date:** 2019/12/03 10:00

**Subject:** DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS

FYI

**Coenie Groenewald**

Municipal Manager / Munisipale Bestuurder | Umphathi Kamasipala  
Overstrand Municipality | Munisipaliteit | Umasipala

M: +27 (0)82 552 9555 | T: +27 (0)28 313 8003 | F: +27 (0)86 568 9726

E: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

>>> Jane van Niekerk <[janeevann@gmail.com](mailto:janeevann@gmail.com)> 02/12/2019 04:35 PM >>>

Municipal Manager FAO: Mr Lionel Wallace

Overstrand Municipality

PO Box 20

Hermanus 7200

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

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

Jane van Niekerk

P O Box 13

Onrus River 7201

62/98

**From:** Tasneem Goncalves  
**To:** reivey@iafrica.com  
**CC:** Lionel Wallace; Petrus Roux  
**Date:** 2019/12/02 14:45  
**Subject:** Fwd: Fw: DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING  
**Attachments:** 20191128 - land use planning amendments - WCC comment.pdf

Dear Ms. Elspeth Ivey

On behalf of Mr. Wallace, I hereby acknowledge receipt of your e-mail.

Kind regards

Tasneem Goncalves  
 Administrative Assistant: Legal Services  
 Overstrand Municipality  
 Administratiewe Assistent: Regsdienste  
 Munisipaliteit Overstrand  
 Tel (w): 028 313 5014  
 Fax: 028 312 3876  
 Mail: PO Box 20, Hermanus, 7200  
 Email: tderhoode@overstrand.gov.za

>>> Lionel Wallace 12/2/2019 8:10 AM >>>  
 Please sent an acknowledgment of receipt mail to the author.  
 >>> "Elspeth Ivey" <reivey@iafrica.com> 2019/11/30 21:53 >>>

>

2019-11-29 For Attention : Mr Lionel Wallace

Municipal Manager

Overstrand Municipality

PO Box 20

Hermanus 7200

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

CC: [wallace@overstrand.gov.za](mailto:wallace@overstrand.gov.za)

Dear Messrs Groenewald and Wallace

#### **DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS**

I align myself fully with all the points made in Whale Coast Conservations comment on the above draft amendments, attached hereto, and wish these to be registered as my comments on behalf of the HLPO as well. Contact details are provided below.

The Members of the HLPOA live on the shores of the Kleinrivier Estuary and have a direct interest in the land use of property adjacent to the Estuary and in the Kleinriver Catchment Area.

The land use of these properties, as it affects the mountain streams and wetlands in particular, has an impact on the quality of the water of the Estuary. The Estuary is an important breeding ground for fish which in turn are a source of income for the fishing industry of Walker Bay. Furthermore the Estuary is recognised as an area of natural beauty, part of a scenic drive which is an attraction to both tourists and locals.

The land north of the R43 has been maintained in its natural state and includes Proclaimed nature reserves on land currently zoned Agriculture.

KREF and many landowners of the HLPOA are members of Hermanus Botanical Society and have a great interest and deep concern for Fernkloof Nature Reserve. The Association is a member of

Thank you for this opportunity to comment. Please acknowledge receipt of this email.

Regards

Elspeth L L Ivey

HERMANUS LAGOON PROPERTY OWNERS' ASSOCIATION

P O Box 235, Stanford, 7210.

636) R43, between Hermanus and Stanford, 7210

landline 028 314 0263 email [reivey@iafrica.com](mailto:reivey@iafrica.com)

Waterfalls, (Erf  
 cellphone 082 770 7320



6/11/18

**From:** Caro Swarts <manna4love@gmail.com>

**To:** <cgroenewald@overstrand.gov.za>

**CC:** <iwallace@overstrand.gov.za>

**Date:** 2019/12/03 07:11

**Subject:** DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE PLANNING AND ASSOCIATED DOCUMENTS

Municipal Manager FAO: Mr Lionel Wallace

Overstrand Municipality

PO Box 20

Hermanus 7200

Dear Messrs Groenewald and Wallace

I align myself fully with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as my individual comments as well.

I Caroline Anne Swarts of Stanford 50A Daneel Street

Find that your methods of trying to turn the Overberg into a theme park despicable! I am so disappointed in the Democratic Alliance to discover that they are Of the same ilk as the party ANC trying to line their own pockets! Concentrate your efforts on curbing poaching and over population and protecting our natural heritage!

Please register my displeasure and if this goes through I promise you will lose many votes and then you'll be responsible for the destruction of our natural heritage.

In the meantime I'll pray for you all to be guided by the true government of our country ... God The Father!

Caroline Swarts

0824480237

[https://emsfoundation.org.za/whale-coast-conservation/?fbclid=IwAR0YvaSVHBhPdmb0PbZj7QSydDaHfLXnwN15TdieilRS\\_2EUYTZVy953kc&sfns=mo](https://emsfoundation.org.za/whale-coast-conservation/?fbclid=IwAR0YvaSVHBhPdmb0PbZj7QSydDaHfLXnwN15TdieilRS_2EUYTZVy953kc&sfns=mo)



BELASTINGBETALERSVERENIGING  
**ONRUSRIVIER**  
 RATEPAYERS ASSOCIATION



65/98

Posbus / P.O. Box 512  
 ONRUSRIVIER / ONRUS RIVER  
 7201  
 1<sup>st</sup> December 2019

Tel: 028 3165016 Voorsitter  
 Cel: 082 569 5324 Chairman  
 e-pos / mail: [pos@onsdorp.com](mailto:pos@onsdorp.com)

Municipal Manager  
 Overstrand Municipality  
 PO Box 20  
 Hermanus 7200  
 Email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)

FAO: Mr Lionel Wallace

CC: [lwallace@overstrand.gov.za](mailto:lwallace@overstrand.gov.za)

Dear Messrs. Groenewald and Wallace

**DRAFT AMENDMENTS TO OVERSTRAND MUNICIPALITY'S BY-LAW ON MUNICIPAL LAND USE  
 PLANNING AND ASSOCIATED DOCUMENTS**

Hereby Onrusriver Ratepayers Association notifies you that we fully align ourselves with all the points made in Whale Coast Conservation's comment on the above draft amendments, attached hereto, and wish these to be registered as a interested and affected group.

We are in particular concerned with public groups being provided effective access and input into the decision-making process regarding the subject matter.

Kindly acknowledge timely receipt of this communication.

H.J. Greeff - Chairman

66/98



**Western Cape  
Government**  
Environmental Affairs and  
Development Planning

Head of Department

Piet van Zyl

Our ref. 15/15/2/1/3/BO3 Overstrand Municipal Land Use Planning By-law (incl. the Zoning Scheme)

Your ref. By-law Revision

**The Municipal Manager  
Overstrand Municipality  
P.O. Box 20  
Hermanus, 7299**

Attention: Mr C Groenewald

**PROVINCIAL COMMENTS ON THE PROPOSED (AMENDED) OVERSTRAND MUNICIPALITY LAND USE PLANNING BY-LAW (INCLUSIVE OF THE SINGLE THE ZONING SCHEME) IN TERMS OF SECTION 27(2) OF THE WESTERN CAPE LAND USE PLANNING ACT, 2014**

Your letter dated 20 September 2019, requesting comment on the draft Overstrand Municipal Land Use Planning By-law, has reference.

The Department herewith wishes to thank the municipality for its continued leadership in the Western Cape and the country at large in the planning field and is commended for the continued improvements and progress made.

The draft Overstrand Municipal Land Use Planning By-law and the Zoning Scheme (Schedule 2) were considered, and the Department has no objection to the by-law from a provincial planning point of view. The Department does however wish to make some suggestions for consideration as constructive input, aimed at improving the by-law and its zoning scheme. Our detailed comments and recommendations are attached as Annexure A.

Officials from my Department are available to discuss the comments in further detail and to respond to any concerns or questions you may have in this regard.

If any further assistance is required regarding the contents of this communication, please direct such request to **Theo Rebel** (021-483 8375) / [theo.rebel@ecdp.gov.za](mailto:theo.rebel@ecdp.gov.za) or **Kobus Munro** (021-483 4796) / [kobus.munro@ecdp.gov.za](mailto:kobus.munro@ecdp.gov.za)

Yours sincerely

**Piet van Zyl**  
Head of Department  
Environmental Affairs and Development Planning

**Date: 10.12.2019**

Copy to Mr. R Kuchar (Senior Manager Town Planning & Property Administration)

Comment on 2019 Overstrand Planning By-law amendment  
and Zoning Scheme By-law conversion/amendment

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Section	Content	Comment / recommendation
General	<p>Comment on sections/provisions not proposed for amendments</p> <p><b>PART A – COMMENT ON BY-LAW ON MUNICIPAL LAND USE PLANNING</b></p>	<p>During the scrutiny of the planning by-law and the zoning scheme and cross referencing to the original documents, several sections have been identified which should also be considered for amendment, but which the municipality did not suggest to be amended. Comments on such sections also appear in this table of comments for consideration.</p>
General	<p>5 year lapsing provisions</p>	<p>It is noted that the municipality still regulates for a 5-year lapsing period and that it may not be increased beyond 5 years. Whilst it is recognised that it is the municipality's prerogative to do so, it will give the municipality and developers no further leeway if the Department is successful in obtaining exemption from the provisions of section 43(2) of SPLUMA if SPLUMA is amended to provide for longer periods or omits such restrictions. We recommend that the municipality remove the "automatic 5 year lapsing clause and regulate the lapsing of applications as required on a case by case basis as proposed in the Departmental Standard Draft By-law. In the current austere economic conditions, it is important to not overregulate aspects which does not require validity periods.</p>
1	<p>Agent</p>	<p>It is noted that there is no definition for agent, yet the term is frequently used in the by-law and would be useful to be included.</p>
1	<p>Consolidation - in relation to land, means the merging of two or more adjacent land units into a single land;</p>	<p>Although this is not included in the amendment, we propose that it be considered to include the missing the word "unit" at the end of the sentence.</p>
1	<p>land use scheme" means the Zoning Scheme as contained in Schedule 2: Overstrand Municipality Land Use Scheme (as amended);</p>	<p>Why then not call it a Zoning Scheme? Also, in schedule 2 it is called the Overstrand Municipality Land Use Scheme 2019 (not as amended)?</p>

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<p>1</p>	<p>Existing phrase "contravention penalty" is implemented when a person transgresses the Zoning Scheme <i>Regulations</i> and provisions.</p>	<ol style="list-style-type: none"> <li>This does not relate to the new section 15(2)(s) which speaks of an application for an <u>administrative penalty</u> and should be reconsidered.</li> <li>Then there is the use of the term "zoning scheme regulations" – the existing scheme is a regulation scheme under LUPA, but now the scheme will be converted to a by-law and not thus not a regulation anymore. A municipality does not make regulations, it can only make by-laws. This term also needs to be amended in definition of site development plan. Recommend that it be amended to "zoning scheme by-law".</li> <li>It is also not considered good law drafting to mention an action/process in a definition. It may be considered to re-phrase something to the effect of "<i>contravention penalty</i>" means a <i>penalty imposed for a transgression of a zoning scheme by-law provision.</i>"</li> </ol> <p>The existing Overstrand By-law does not include the MPT/AO as part of the municipality. This provides challenges in the scheme part of the by-law where many references and decision are linked to either the council or the municipality and in many such cases it is actually the MPT/AO as per SPLUMA. So, either it must be amended in each case to specify municipality/council/MPT/AO or include it in the definition of municipality which is perhaps the easier option.</p>
<p>1</p>	<p>Definition of municipality</p>	<p>The term advertisement is not really defined or described in this by-law and it is assumed that it actually means the publication and/or serving of notices as set out in sections 47 and 48. If this is correct then it is suggested that the wording in this section be amended to ensure consistent use of terminology.</p>
<p>7(1)(b)</p>	<p>Status of a spatial development framework and a Local Spatial Development Framework</p> <p>(1) If an application is inconsistent with an applicable spatial development framework or a Local Spatial Development Framework, the applicant must describe the inconsistency in --</p> <p>(a) the application; and</p> <p>(b) the advertisement of the application.</p>	<p>It is unclear why section 8 of LUPA is referenced in this context as it does not appear to be relevant in this context.</p> <p>The proposed amendment in this section seeks to amend "owner of land" with "owner", but there are various other instances in the by-law where it does not seem to have been amended e.g. 16(2), 45(2), 91(2), and 93(1) – it is recommend that these be amended as well.</p>
<p>7(2)</p>	<p>Reference to section 8 of LUPA</p>	
<p>13.</p>		

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deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.

It is also recommended that this section be reconsidered to align with the wording in LUPA i.e. "The owner or his or her agent may apply in terms of section 15(2) to the Municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act." as it encompasses the reference to the repealed ordinance, but also in other instances. The by-law should not only refer to the repealed ordinance provisions.

13(3) If the lawful zoning of land contemplated in Subsection (1) cannot be determined the Municipality must determine a zoning and give notice of its intention in terms of Section 48.

In essence when this point is reached, the only practical solution is to rezone the land from an unknown zoning to the zoning category that it needs to be. In this respect it is suggested that this section be rephrased to provide "if subsection (2)(e) is applicable, the Municipality must rezone the land concerned in terms of section 16(2)(a)" - as amended.

16(2)(d) Consolidation of land

It is unclear why this has not been qualified by "if it is not exempted in terms of section 26" as section 26 contains such exemption, but this clause provides that it must be applied for and is thus ambiguous.

16(4) Reference to SPLUMA section 52

It is suggested that this section which refers to section 52 of SPLUMA be deleted in total. Firstly, is it only informative and, secondly it lends municipal credibility to a SPLUMA provision, the content of which is regarded unconstitutional. If section 52 of SPLUMA is challenged or amended, it may mean that the by-law will have to be amended as a result.

16(2)(s) determination of an administrative penalty

The phrase administrative penalty is not defined and is not used anywhere in the by-law either. It is assumed to be contravention penalty which is defined and used - so amendments are recommended to use terms consistently. (Also see under definitions section 1 comment on contravention penalty.)

16(2)(k) Existing phrase "a phasing, amendment or cancellation of a plan of subdivision or a part thereof"

This often involves amending a General Plan or diagram as well and since the existing phrase does not include this, it is not really aligned with section 25 and we have experienced difficulties with the Surveyor-General in phrasing of approvals etc. especially where closure of a public place is involved where a GP amendment is required. It is therefore recommended that the phrase in the departmental version be used e.g. "an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram". This will also better align the list of application types to the wording of the approval section, section

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<p>61 which specifically speaks of section 16(2) matters. Otherwise there is a disconnect between section 61 and section 25 (2).</p> <p>Also note that the minimum standard in section 36(10) of LUPA requires that "A competent person must apply to the municipality if he or she requires the amendment or cancellation of an approved subdivision plan, including the conditions of approval, the general plan or diagram, in relation to erven shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.</p> <p>This section 5 is not linked to any other clause in this section and as a result appears to be ambiguous – there must be some phrase before "must" to indicate what it that must comply with the subsequent list.</p>	<p>18(5) Must, where applicable, include at least the following:                  (a) density requirements;                  (b) major land uses and the extent thereof; and                  (c) a detailed phasing plan or a framework including—                  (i) major transport routes;                  (ii) major land uses;                  (iii) bulk infrastructure;                  (iv) requirements of organs of state;                  (v) public open space requirements; and                  (vi) physical development constraints.</p> <p>19(1) 5 year lapsing clause</p> <p>20(3) – (5) No provision for occasional use?</p> <p>22(5) "effect the registration of transfer of a land unit or land units as indicated on the registration diagram / diagrams, or, General Plan; by obtaining of a Certificate of Registered or Consolidated Title"</p>
<p>See comment in General</p> <p>It is noted that the definition of occasional use has been omitted (as per departmental recommendation) but that section 20 has not been amended as per departmental recommendation to provide for occasional use – see comprehensive comment on this aspect in section 67 below.</p> <p>There is something wrong with this proposed amendment. The registration of transfer of a land unit is not the same as a Certificate of Registered or Consolidated Title. Registration of transfer is not affected by obtaining a Certificate of Registered or Consolidated Title. Perhaps there should be an "or" directly in front of <u>by obtaining</u>.</p> <p>However, it may still not read well when done this way as it may not relate to land units on the GP. It is therefore recommended that this section be re-phrased to read "registration of the transfer of ownership, a certificate of consolidated title or certificate of registered title in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan".</p>	

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24(3) and (4)	5-year lapsing	The content of these 2 sections appear to be a duplication in so far as it refers to "extension contemplated in Subsection (2) may be granted for a period not exceeding five years..."
25(1)	Was 25(2) - The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval and/or the general plan or diagram, in relation to a land unit or units indicated on the general plan or diagram [of which no transfer has] which has or have not been registered as per the provisions of the Deeds Registries Act.	It is not possible to amend a GP where registration of transfer has been affected hence the phrase "has been registered" should be considered for omission.
25(2)	(was 3) When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed.	It is recommended that reference be made to section 28 in terms of which public places are closed and, which also includes a section whereby the Surveyor-General is notified thereof and obliged to amend his records. This makes the addition to the new 25(3) "and where applicable, the closure of the public place as contemplated in Subsection (2)" superfluous.
25(3)	(was 4) The Municipality must notify the Surveyor-General of an approval in terms of Subsection (1), and the Surveyor-General must endorse the records of the Surveyor General's office to reflect the amendment or cancellation of the subdivision, and where applicable, the closure of the public place as contemplated in Subsection (2).	It is recommended that the addition not be made, if 25(2) is amended as explained directly above.
25(4)	(was 5) existing unaltered phrase	The effect of the content of this unaltered section is that the clock would stop for the validity period of a subdivision for the duration of the time from when an application for amendment has been submitted until it is approved and can therefore be abused to "buy" more time, even by making a small amendment and then delay the approval by various means after which the remaining period would apply.
		This was extensively discussed and confirmed at the meeting of the Municipal Planning Heads Forum on 17 May 2017 to prevent "stopping of the clock" by way of submitting an amended subdivision, however small the changes may be, as it can be abused to gain more time beyond the original validity period. It is consequently recommended that the departmental phrase be considered, i.e. "An amended subdivision approval contemplated in subsection 1 does not extend the validity period"

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	<p><i>of the initial approval of the subdivision as contemplated in (your) section 22(5).</i></p>
<p>26(1)(f)</p>	<p>the conveyancing of land in order to effect transfer to the beneficiaries of an approved Municipal housing project</p> <p>This amendment raises several concerns. Firstly, what is an "approved municipal housing project" – all housing projects are to be approved by the municipality? Secondly if it means a municipal housing project, would this then not exclude projects by the provincial or national government? Also, as phrased it would only exempt the subdivision, but it does not exempt the rezoning of the land, hence what is this use? It is recommended that this section be reconsidered. It also removes the option of municipal conditions regarding the subdivision, e.g. engineering services, development charges etc.</p>
<p>26(1)(g)</p>	<p>the subdivision of land in order to effect its transfer between spheres of government</p> <p>Is it again to be assumed that it does not affect the rezoning of the land?</p>
<p>26</p>	<p>General</p> <p>It is the municipality's prerogative but is noted that certain of the latest departmental proposals e.g. sectional title and instances where no confirmation is necessary have not been included.</p>
<p>27</p>	<p>Amendment to the heading</p> <p>Also, the wording of section 26(3) i.e. "...subdivision and/or consolidation have been exempted.." may be construed that there was an application for exemption which was approved, whereas this is not the case. The effect of section 26 is that the instances in the list are exempted. It is thus suggested that "have been" is replaced with <i>is/are</i></p> <p>This heading was amended to align with the departmental version, but then the wording in 27(2) should also be re-phrased to read "The Municipality may in terms of conditions imposed in terms of section (your) 6.7 determine that land designated for the provision of <u>municipal service infrastructure and amenities on an approved subdivision plan be transferred to the Municipality upon confirmation of the subdivision or a part thereof.</u></p>
<p>30</p>	<p>(1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit; to apply for a certificate of registered title or a certificate of consolidated title, as the case may be, unless the Municipality has issued a certificate in terms of this Section</p> <p>Also remove the comma and s in respect of services, infrastructure</p> <p>It is noticed that the existing content only refers to "new" land unit. As this is not defined it is recommended to be re-phrased to the first registration of a land unit arising from a subdivision, but by wording it this way or sticking to the unaltered phrase it means that no certification in terms of the by-law is required for subsequent transfers. There is no</p>

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<p>30(3) Proof must be furnished [provided] to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, prior to the transfer of the first [last] erf to the owners' association as contemplated in Section 31</p>	<p>obligation to do so but note that it will for instance not enable the municipality to prevent transfer of land unit where a compliance notice has been issued which has not been adhered to. The way this section is worded there is no obligation on the transfer of such common property to the owner's association, which is really what should happen. A re-phrasing of this section should attempt to ensure that the transfer of the first property may not be done prior to the full development of the common properties which must then also be transferred simultaneously to the owner's association.</p>
<p>30(4) The Surveyor-General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this Section without written confirmation from municipality that the subdivision or consolidation is exempted by the [a] municipality in accordance with this Section.</p>	<p>This section appears to be out of place in section 30 and should perhaps in be re-phrased in (your) section 26 as it appears to be more appropriate there. Reference to "this Section" is also unclear as section 30 does not provide for any exemptions.</p>
<p>30 general Grammar in (1) and (2) does not make sense.</p>	<p>The wording of the altered sections needs to be re-phrased from a grammatical perspective re. unit: to apply &amp; property: the application</p>
<p>30 general Whole content</p>	<p>it is submitted that the municipality re-consider this section and perhaps use the content of the corresponding part in the departmental version which is more comprehensive.</p>
<p>31(1) "...applicant upon the transfer of the first sub-divided property to the new owner. [for an area determined in the conditions.]"</p>	<p>The insertion appears to be superfluous and a duplication of (your) section 31(9)(a) &amp; (b)</p>
<p>31(5) "Subsection (3), is approved by the Municipality." The whole</p>	<p>It is suggested that it should read "must be approved by the Municipality" Although not obligated to it is suggested that the municipality considers rephrasing the whole of these 2 sections by using sections 33 and 34 of the latest departmental version. (Your section 35(1) publication of a notice in the Gazette could be incorporated in section 47 and 35(3) in section 48. Also, why would the municipality in section 35(2) possibly require the original title deed? This poses a risk to the municipality as such original title deeds need to be kept in a safe etc. and if lost the municipality could be held liable for the cost and process to have a new copy in terms of the Registrar of Deeds' requirements. It is submitted that this part of the requirement be omitted.</p>

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36 General	No requirement for simultaneous application and decision if land use application also requires removal of a title condition.	<p>Previously a land use application was done in terms of LUPO and the removal, suspension or amendment of a restrictive condition in terms of the Removal of Restrictions Act, 1967. Now they are all done in terms of the same legislation (because of the provisions of SPLUMA) and since this is the case these matters should be applied for and considered simultaneously, which is why these 2 new sections are provide for – which do not appear in the municipality's by-law:-</p> <p>(7) <i>If an owner intends to apply in terms of section 15(2) for land development that is contrary to a restrictive condition applicable to the land concerned, the owner must when the application for land development is submitted simultaneously apply for the removal, suspension or amendment of the restrictive condition.</i></p> <p>(8) <i>The Municipality must consider the land development application and the application for the removal, suspension or amendment of the restrictive condition contemplated in subsection (7) together and make an integrated decision.</i></p>
36(2)	“...restrictive condition by notice in the Provincial Gazette...”	<p>Replace “by notice” with “of the notice” – by notice refers to the action taken, whereas at this point the action (the decision on the title condition) has already been taken.</p>
40(3)	If the application was not advertised such fees may be refunded.	<p>It is assumed that this refers to notification, however the municipality in other instances may require the applicant to give notice of an application.</p>
42 & 43	Information in general	<p>Are there then reduced application fees?</p> <p>It appears as if the by-laws do not properly distinguish between outstanding information and additional information and is recommended that the municipality reconsiders the content of the departmental version section 41 and 42. The municipality's section 43(2) is questionable – if the additional information is not provided then it is submitted that the municipality must still consider the application, without the additional information, albeit to the detriment of the application.</p>
45	Inclusion of provisions to amend a land use application	<p>It is noticed that the provisions of (your) section 53 have been relocated to (your) section 45. In that case it should be considered to change the heading as well as the heading of section 45 only concerns the withdrawal of an application.</p> <p>It is also not clear what is meant by “considered finalised” – it could be interpreted that a decision has been taken. If it is withdrawn, then it is withdrawn and, there nothing that can be deemed finalised?</p>

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45(4)	Amendment after notification	Why is the option to amend restricted only to after notification? Surely it can also be amended prior to notification as well? It is suggested that amendments not be linked to either before or after notification.
47(1)(a)	"....an application for a rezoning or a rezoning on the initiative of the Municipality,"	An application for rezoning should suffice as a rezoning on the initiative of the municipality is still a rezoning. In this regard the municipality's attention is drawn to the department's reworded sections 15(4)-(7)
48(1)	".....affected by the approval...."	It is not clear why "the approval" has been omitted as the application itself cannot affect the rights it is really the approval that may affect the rights of a person.
51(1)(a)	Requirements in respect of petitions	Also note that the minimum requirement in section 44(2)(a) of LUPA specifically provides that "on each person whose rights or legitimate expectations will be affected if the matter or application is approved." Although it is not really a planning issue it is questioned whether or not the municipality may insist on somebody's ID no. on a petition. How will a person's interest be reflected on a petition? The municipality should consider a standard form that provides for it and that must be used for a petition. The part which states "(v) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is prepared to act in regard to the application or appeal as the Municipality may direct." How is this to be included in a petition – surely every person signing a petition cannot take that petition for affidavit purposes or is this directed at the person(s) who are organising the petition? It is unclear how reference to section 50(1)(f) relates to persons involved in a petition?
51(2)	"....Sections 50 (1)(f) and 51 (1)(a)(ii)."	It appears to be somewhat confusing to have provisions on a petition in section 51 and then again in sections 53 and 54. It may be reconsidered to lump these together.
51	General	This heading to be reduced to "Requirements for submission of comments", as comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions and is already defined as such in section 1. The same applies the content in this and other sections.
52	Heading - Requirements for objections, comments or representations	The terms petition in section 51 is a noun, i.e. a form with signatures as opposed to "petition" to intervene (as a verb i.e. request to be granted
53	Request to be granted intervenor status (This is a bit of a mine field as the SPLUMA concept of an intervenor and it provisions	

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intervener status as used in section 45(2) of SPLUMA. The municipality may want to relook at this matter, as it also refers to a prescribed form as a "petition on the prescribed form". Does this mean that for the petition in section 51 there is/will be a prescribed form, or does it mean that by petitioning for intervener status a prescribed form must be used? It is recommended that this apparent ambiguity be revisited. The rest of section 53 may be affected by the apparent ambiguity.

What is meant here? Who is or could be the delegated authority? The MPT is not a delegation and neither is the Authorised Official. It may not be lawful to prevent a person from submitting a petition. Whilst the municipality may not consider it or accept the petition, it ought not be regulated that it may not be submitted when a person has been notified in terms of other sections.

This appears to be ambiguous. Resolved by who? In (a) it should be by the MPT or AO and it is suggested that it should not be resolved but perhaps "determined" as set out in section 35(1) and (2) of SPLUMA.

In respect of (b) this is the situation after initial determination by the MPT or AO. The SPLUMA provides in section 45(2) that a person may petition in intervene in application before the (MPT – this has now been over and done) and an appeal. The effect is that a person can only intervene after an MPT/AO decision, if there is an appeal. So, such a person (potential intervener) either must submit an appeal within the 21-day period or if somebody else has already submitted an appeal and the 21 days are over, and the appeal has not been determined yet, apply for intervener status. One cannot intervene in process which has been completed. Somebody wanting to intervene after an appeal has been determined must submit a judicial review application to the courts.

Note the provision of SPLUMA regulation 31(1) "but within seven days of becoming aware of the proceedings, petition the Municipal Planning Tribunal, authorised official or appeal authority in writing in the form determined by the municipality, to be granted intervener status" The 7 days relates to a process before the MPT/AO/AA not after the decision on the land use application has been made. The way it is worded in the by-law may create expectations which are not aligned with SPLUMA.

*about are rather vague and appear to be outside of ambit of the normal notification period and procedures, nevertheless some comments and ideas are provided.)*

Submission to delegated authority?

A person may submit a petition only if he or she has not been given notice of the application in terms of Sections 48, 50(f) or 50(g)

Resolved

..... petitioner became aware of the application or resolution....

53(2)

53(3)

53(3)(a) and (b)

53(4)(a)

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53(4)(b)	<u>after 21 days from the date of the decision of the Authorised Official or Municipal Planning Tribunal</u>	This may not be practical – if there is an appeal and it has not been determined, then it would be permissible to submit a petition to be granted intervener status – it would only be practical if the request is made after 21 from the decision if no appeal was submitted. It is suggested this section be re-phrased to include this.
53(5)	<u>A petitioner must submit the required information as contemplated for in Section 51 (1)(a) and (b).</u>	Again, this may be the result the apparent ambiguity in using petition as a noun or a verb interchangeably. Here the municipality attempts to apply the rules for a petition (noun) to petitioning (verb) as an intervener status.
53(7)	<u>(a) refuse a petition if submitted late or as contemplated in terms of Subsection (3) and (4)</u>	it is confusing – is this now a petition against a land use application or a petition (verb-request) for intervener status, in which case it is suggested to be re-phrased accordingly – the same applies to 7(b)
53(7)(b)(ii)	the Appeal Authority if the application has been decided	It is suggested that this be qualified. It is submitted that a person can only apply for intervener status (after an MPT/AO decision) if there was an appeal submitted and thus a process before the AA. If no appeal was submitted, then what process would there be to intervene in? Such a person would then have to appeal the decision within the 21 days and if it is after the 21 then there cannot be an appeal anymore.
53(8)(f)	<u>granting the petition would not cause undue delay or otherwise prejudice the interests of any party to the proceedings.</u>	It is submitted that in all instances allowance of an intervener will delay procedures. By allowing an intervener, said person would be allowed to do a written or verbal presentation on which an applicant should be given a fair chance to respond. Whilst it can be understood why this provision is suggested, the practicality of it is that it will then have to be refused in all cases as it will inevitably lead to a delay, whether long or short.
53(11)	A person who is granted intervener status is regarded as an appellant.	This cannot be correct as the person petitioning for intervener status may do so in the initial process before the MPT/AO – at that stage such a person cannot be regarded as an appellant.
53	In general, re. intervener	As stated above, if there is an appeal process (not yet determined) then a person can be granted intervener status, but it is submitted that it cannot make him/her an appellant. It is submitted that if a person wants to intervene after an MPT/AO decision, there must be process before the AA and if there is not, such an intervention can then only be of such a person submits a valid appeal within the 21-day period, and that can then only be as an appellant.
		It is submitted that an intervener is normally somebody opposed to a land use application or part of it. As such his/her views towards the application will be negative and in order to adhere to the <u>audi alteram partem</u> rule

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<p>58(1)</p>	<p><u>land development and or land use application</u></p>	<p>the applicant in a matter should always be afforded an opportunity to respond to the submission made by person granted intervenor status. It is suggested that it be re-phrased to just land use applications as LUPA defines this an application to a municipality contemplated in Chapter IV (LUPA). The amendment is a copy of the SPLUMA regulation 16, but it should be considered what the situation would be if the administrative phase extends beyond 12 months for reasons beyond the municipality's control, e.g. applicant stall the process by not submitting information etc. Decision making powers on land use applications cannot be delegated, see SPLUMA section 56. In section 35, of SPLUMA an MPT determines land use applications, but an official may be <u>authorised to determine</u> certain categories of applications. This is not a delegation. If it was a delegation, then it means that the original power to decide land use applications lie with the Council and such a delegation could be withdrawn. This is not what SPLUMA provides for. It is thus suggested throughout this by-law that the term delegation be omitted where it applies to an official authorised to determine land use applications.</p>
<p>58(3) &amp; (4)</p>	<p>..... delegated to an authorised employee...</p>	<p>Also, the 60- and 90-day decision making period in the by-law is specifically linked to end of 12-month administrative phase. Since in many instances the administrative phase is or can be completed ahead of the 12 months period, it is suggested that the wording be amended to include something to the effect that the decision-making period starts after completion of the administrative phase if this phase is/was completed before expiry of the 12-month period. It should be noted that there is a school of thought that if an application's administrative phase is complete e.g. within 5 months (well within the outer limit of 12 months) and no decision is being taken, an appeal for undue delay could be submitted. So, while the 12 months is an outer limit, the by-law should recognise a procedure for completing the administrative phase ahead of 12 months. In this regard guidance may be taken from the departmental version (section 57) which links to the start of the decision-making phase to the finalisation of specific steps.</p>
<p>58 &amp; General</p>	<p>Reference to the Municipal Planning Tribunal</p>	<p>In section 1 the Tribunal is defined as being the Municipal Planning Tribunal. Having done so this term should be used consistently and not in</p>

58(3)	<b>(b) In the case of the Tribunal, if an oral hearing is to be held.]</b>	some cases use the term Municipal Planning Tribunal and in some other cases only Tribunal. This applies to the whole of the by-law. It is unclear why this has been omitted. Although oral hearings may not be the norm in a specific municipality, a request for an oral hearing could lead to delays. The inclusion of this phrase would just cover the municipality in such events.
59	Inaccurate referencing in respect of failure to act within time limit.	Extending the period for additional information is provided for elsewhere in the by-law. Although not mentioned as an amendment, reference in section 59 to sections 58(1) and (2) will be inaccurate if the amendments to section 58 (new additions and renumbering) are adopted, in which case such referencing should rather be 58(3) and (4).
61	The Municipality may in respect of any application contemplated in Section 16(2)---	Although only the heading is proposed for amendment, it is noted that the section refers to Municipality, whereas it should be the MPT or the AO in this context. Also, subsections (c), (d), (e), (f) and (g) originate (or is a duplication of section 40(7) of SPLUMA, which is applicable specifically to the MPT and not to the municipality. Section 35(4) of SPLUMA applies to these and other sections then also directly to the AO, hence the suggestion that municipality should be replaced by MPT and AO.
66(g)	(g) a registered planner's written assessment in terms of Section 66 of LUPA, 2014, including, <b>[application in terms of the By-Law:]</b>	it is suggested that "a registered planner's written assessment" be re-phrased to read "registered planner appointed by the Municipality" as departmental experience and enquiries have shown that this if often misinterpreted by e.g. members of SAGI (South African Geomatics Institute) to see this as the motivational report which must be submitted with an application. The municipality may want to consider the suggested re-phrase to provide more clarity on this matter.
(i)	an amendment of a Spatial Development Framework or Land Use Scheme	
(ii)	an approval of an overlay zone contemplated in the land use scheme	
(iii)	a phasing, amendment or cancellation of a subdivision plan or part thereof	
(iv)	a determination of a zoning	
66	In general,	Although LUPA as framework legislation requires a minimum list of matters to consider, the wider list was provided in the departmental version of the planning by-laws. In this respect it is noted that the

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<p>67</p>	<p><u>(2)(w) the payment of an administrative penalty as contemplated in Section 90 in respect of the unlawful use of land;</u></p> <p><b>[(w) requirements for an occasional use that must specifically include –</b></p> <ul style="list-style-type: none"> <li><b>(i) parking and the number of abatement facilities required;</b></li> <li><b>(ii) maximum duration or occurrence of the occasional use; and</b></li> <li><b>(iii) parameters relating to a consent use in terms of the zoning scheme;]</b></li> </ul>	<p>municipal list does not include all such items, which is their prerogative, but it is to be noted and recommended that it be reconsidered.</p> <p>In respect of (2) <i>(also consider the comment on contravention penalty in section 1)</i> – Section 90 refers to contravention penalty and not an administrative penalty – these terms especially where it is a punitive measure should be clear and consistent – if the municipality chooses to use an administrative penalty it should be used throughout in the by-law and well as in the definitions.</p> <p>Secondly, it is unclear why (w) has been omitted. It is noticed that the municipality deleted “occasional use” from the list of definitions as suggested by the Department, since an occasional use is regarded as a specific type of temporary departure. This is why the Department has suggested a re-phrase of section (its) section 18(4) to provide that “A temporary departure contemplated in subsection (1)(b), except for a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event, may not be approved more than once in respect of a particular use on a specific land unit.” – this is to facilitate the distinction.</p> <p>Since the municipality has not made this amendment, there is no enabling clause for allowing such a temporary use and by deleting (w) there is no also no provision for necessary conditions to be imposed. It is recommended that the municipality (a) does not omit (w) from this section and (b) that (your) section 20(3), (4) and (5) be reconsidered to align with the departmental version sections 18(3) and (4).</p> <p>It is not clear why the municipality has not provided for instances an extension of validity period also requires an amendment of conditions of approval as provided in section 67(3) of the departmental version.</p> <p>While this amendment is as per the departmental suggestion, the department made this amendment due to the fact the content of (its) sections 68 and 69 were amended and added to as a result of the realisation that not all applications listed in (its) section 15(2) necessarily qualify as land development applications as set in SPLUMA and as such do not by default have to be considered by the MPT/AO and may be considered by the Council or an official delegated to, which will accordingly also impact on the appeal authority, it is noted that</p>
<p>68</p>	<p>instances where adjustment of conditions may be required</p>	<p>approval as provided in section 67(3) of the departmental version.</p>
<p>69 (&amp; 70)</p>	<p><b>Amendment to heading - Municipal planning decision-making structures in respect of applications and appeals</b></p>	<p>While this amendment is as per the departmental suggestion, the department made this amendment due to the fact the content of (its) sections 68 and 69 were amended and added to as a result of the realisation that not all applications listed in (its) section 15(2) necessarily qualify as land development applications as set in SPLUMA and as such do not by default have to be considered by the MPT/AO and may be considered by the Council or an official delegated to, which will accordingly also impact on the appeal authority, it is noted that</p>

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municipality did not make these amendments, which again is its prerogative, but it was done for good reason and it is recommended that the municipality reconsiders this section and to align it with the departmental version.

Also, as commented on earlier, decision-making powers which SPLUMA affords to the MPT and AO are not delegations.

Although not part of the municipality's amendments it was noticed that subsections (8) and (9) are actually subparagraphs of subsection (7) and should hence be amended so that (8) becomes (a) and (9) becomes (b). In the departmental version this section is addressed in two different subsections, the reason being that an aggrieved party may appeal an MPT or AO decision within 21 days' time from the notice of the decision and in a separate section provides for an appeal for the failure to take a decision in time and then specifies this as any time after expiry of the decision-making period. It is not coupled to a decision as there was no decision.

The municipality's existing section 78(2) does not separate or draw a distinction between these 2 instances, which means that an appeal for undue delay must be submitted within 21 days of the decision. Yet in those cases there is no decision, so when can such a person then appeal? It is suggested that the municipality rephrase this section in line with the departmental version section 79(2) and (3).

The logic behind the departmental version was that if an applicant submits an appeal she/he must serve the appeal on all who commented on the application, the reason being - he/she would have all the information on the file and it would reduce the burden on the municipality. If a person other than the applicant appeals, he/she will not have all the information that the applicant has and can therefore not be expected to serve a copy of the appeal on the applicant and other parties, hence the obligation on the municipality to do. By deleting/omitting 79(7) what mechanism will there be to ensure that if a party other than be applicant, appeals, that the appeal be made known/served on the applicant as well? Such regulatory void should be prevented.

It is suggested that for clarity purposes - closing date be rephrased to "closing date for comment on the appeal"

Inaccurate numbering?

A person whose rights are affected by a decision of the Tribunal or an authorised employee or by the failure of the Tribunal or an authorised employee to take a decision within the period contemplated in Sections 59 and 61 may appeal in writing to the Appeal Authority within 21 days of the decision.

[(7) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.]

(was 9) [(9)] The Municipality may refuse to accept any comments after the closing date.

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83(4)	<p>It is noted that the amendment of this section does not include the deletion of condition 4, re enforcement of title conditions.</p> <p>It is the Department's view that a municipality is only able to enforce the conditions imposed in terms of the by-laws and laws repealed by LUPA. It cannot include all title conditions as many of these may be so-called "contractual" conditions in that the municipality has no role to play or has no interest in. It is the statutory provisions which must be enforced by this, it is submitted that it will be covered by the proposed improved wording and the deletion of (d). Leaving the condition in as worded will mean that a person can insist on the municipality to enforce title conditions that have nothing to do with the municipality. This however does not mean that the municipality cannot consider the removal suspension or amendment of such conditions on application but enforcing them is something different. This may have to be revisited.</p>
90	<p>Administrative penalty</p> <p>As set out before perhaps consider renaming the definition contravention penalty and then use this term consistently in this by-law.</p> <p>Does this imply that when an administrative penalty has been determined and paid, that the contravention has now been legalised or does it still require an appropriate land use application and approval before the "contravention" is legalised? If not, it may not be aligned with the minimum requirement of LUPA that states that a land development may not be undertaken without the appropriate land use application, e.g. rezoning, departure, consent use.</p> <p>Is there or will there be a detailed policy/guideline for the determination of administrative penalties?</p> <p>Since the municipality proposes that section 16 be amended by making provision for an application for an administrative penalty, will the MPT's/AO's/AA's terms of reference be amended to provide for such powers and how will it affect any categorisation as this may also have to be re-looked at.</p>
91(7)(b)	<p>Provisions of section 62?</p> <p>It is suggested that it be further qualified because it falls under a section in which the appeal authority take a decision and then there cannot be a further appeal option available and perhaps only a judicial review.</p>
<p><b>PART B – SCHEDULE 2 – ZONING SCHEME</b></p>	
Definitions	<p>Additional dwelling units in the Agriculture Zone 1, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned; and</p> <p>It is not clear why this has only been linked to Agricultural 1 zone as there are various other zonings that also provide for additional dwellings units, although it is like this in the department's model zoning scheme as well.</p>

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additional dwelling units may be used for long or short term accommodation purposes;

Definitions	<p>Agricultural Industry means an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products are grown, harvested and raised where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products, and includes, inter alia: dairies, wineries, distilleries, olive processing facilities, breweries and other facilities required for the processing of agricultural products, where produce packed is not produced on the land unit, but does not include service trades;</p>	<p>The effect of this current (unaltered definition) is that since there is no basic requirement that the majority of the input must be sourced from the farm on which the industry is to be established. That differs little from a normal industrial use, which is also not aligned to the WCG's Western Cape Land Use Planning Guidelines Rural Areas, 2019. It is therefore suggested that the municipality consider utilising the department's definition of Agricultural industry which provides that:-  <i>"agricultural industry" —</i>                  (a) means an enterprise for the processing of agricultural products of which the majority of the products is sourced from that land unit and if not produced on that land unit, then from the land units farmed by the owners of the enterprise with a minority of the products sourced from the surrounding or nearby farms;                  (b) includes a winery, dairy, distillery, the bottling of water, a saw mill; and                  (c) does not include an abattoir.</p>
Definitions	Agriculture	<p>It is submitted that the definition in the department's model zoning scheme by-law's definition be considered, but also make linear infrastructure and limited camping part of the primary rights under Agricultural Zone 1 or part of the land use definition or description.</p>
Definitions	Applicant	<p>The zoning scheme will now be a schedule (or part of) the planning by-law. The planning by-law also defines applicant, albeit in a different way. The zoning scheme and planning by-law should not be read in isolation and therefore it is suggested that the definition of applicant in the planning by-law be amended to include the additional items in the zoning scheme and then in the zoning scheme just refer to the planning by-law definition or have identical definitions.</p>
Definitions	Authority use	<p>The municipality may want to consider including "a foreign government including an embassy or consulate, but does not include a dwelling house when the dominant use is for living accommodation of foreign diplomatic personnel"?</p>
Definitions	Consent	<p>This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.</p>

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Definitions	Consolidation	This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.
Definitions	Contravention penalty	See comments made in Part A of this document re. contravention penalty and administrative penalty and ensure that wording and meaning are consistent throughout this whole document, to prevent interpretational and other issues.
Definitions	Council	This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.
Definitions	Community Facilities	The word 'generally' does not need to be repeated in the definition.
Definitions	Development framework	Unless there is a specific reason, or it is misunderstood, this definition appears to be referring to the MSDF and LSDF as set out in the planning by-law. This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, the use and wording of these definitions should ideally be consistent or not be repeated at all.
Definitions	Dominant use	The municipality's attention is drawn to the departmental definition of dominant use, which use may not always only be the lawful primary or secondary land use in particular zone and the department's view is that it means the predominant or major lawful use of a property, and may consist of primary uses, consent uses, or other lawful uses permitted on the property.
Definitions	Existing use	The existing use of a land unit may not always be lawful?
Definitions	Guest house	Means a dwelling house, or second dwelling unit which is used for the purpose of lodging of transient guests for compensation.
Definitions	Home occupation	'Practising of an occupation or conducting an enterprise' may be a better alternative to "a non-residential use".
Definitions	Land, Land Unit and Land Use	These definitions originate from the time before the implementation of LUPA, which specifically defines these terms and it is suggested that these terms be rephrased to align with LUPA.
Definitions	LUPO	Since LUPO has been repealed there appears to be little use for retaining this definition.
Definitions	Lawful non-conforming use	The term "non-conforming use" as defined in the main body of the planning by-law by implication is not illegal. Since this zoning scheme predates the planning by-law, but is now part of it, terms and definitions should be the same and used consistently. Hence the term "lawful" could

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Definitions	Less Formal Township Establishment Act	be removed, but the rest of the definition should be aligned with that in the planning by-law or refer to it as having the same meaning. There appears to be little use in retaining this definition as it does not seem to be used in the main body of the planning by-law or Schedule 2 thereof.
Definitions	Occasional use	Consider amending the definition by stating an occasional use means a temporary departure granted by the Municipality for a specific occasion or event including..... it will clarify which type of land use application it is.
Definitions	Overlay zone	These terms are not defined the same in the planning by-law and the schedule 2 zoning scheme and since these are now one by-law, these definitions should be aligned, or referred to as having the same meaning as... (besides that the term planning law referred to has outdated content.)
Definitions	Owners' association	See comment on definition of municipality in section 1 of the planning by-law. This comment applies to all such cases and needs to be revisited otherwise this by-law will contain ambiguous provisions that are not aligned with national legislative prescripts.
Definitions	Primary use and reference to Council	This definition pre-dates LUPA which in section 24(c) describes a register in relation to a zoning scheme as "the keeping of a register to record departures, non-conforming land uses contemplated in section 29(1)(c)(i) and consent uses" and should be rephrased to at least make provision for those aspects.
Definitions	Registered surveyor	Reference to the Professional and Technical Surveyors Act, 1984 is outdated and this term needs to be adjusted to make provision for current legislation regulating the land surveyor profession. It may have been superseded by the Geomatics Profession Act, 2013.
Definitions	Renewal energy structures	The definition initially states that said structures be erected for commercial use and then states towards the end of the definition that energy may be generated on a private or commercial basis?
Definitions	Servitude	It is unclear why reference is made to "unregistered". LUPA defines it as a servitude registered against a title deed of land, and it should be aligned as such.

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Definitions	Single family	May be criticized as having a very narrow meaning. Consider the departmental definition to include a number of unrelated persons. There appears to be little use in retaining this definition as it is not used in the main body of the planning by-law or Schedule 2 thereof.
Definitions	Townships Ordinance	Allow the keeping of animals within urban areas. Section 16.9. however, restricts the keeping of animals to pets within an urban edge.
Definitions	Urban agriculture	In terms of LUPA utilisation is defined as, "in relation to land, means the use of land for a purpose or the improvement of land, whether lawful or not." and this scheme definition should be aligned herewith.
Definitions	Utilisation	As these terms are defined in LUPA, the definitions in the scheme should be aligned herewith.
Definitions	Zoning, zoning map and zoning scheme	Previously the Overstrand Zoning Scheme was a stand-alone document, now it is part of the planning by-law and it is therefore suggested to be reworded to <u>This document forms part of the land use [zoning] scheme of the Overstrand Municipality By-law on Municipal Land Use Planning, 2015</u>
1.1.1	This document forms part of the [land use [zoning]] scheme of the Overstrand Municipality, and applies to the area of jurisdiction of the Overstrand Municipality with effect from the date [that notice of adoption] of [is] publication [published] in the Provincial Gazette	This document is now a "Schedule" of the planning by-law? – See comment on Maps above.
1.1.3	Document & maps	This section regulates the same as section 39(1)(k) & (l) except that in the latter it may be required, but in the former it states it must be submitted. Is it also not onerous on applicants in areas where it is known that there are no restrictive conditions?
2.1.1(a)(iii)	Submission of applications	Since 2.2 and 2.3 are to be omitted it results in a downstream renumbering, it is noticed that such new number have been recognised but not underlined as per the protocol used for this by-law amendment.
Numbering	2.2, 2.3 & 2.4 and onwards	The by-law provides publication of notices and serving of notices and additional methods of public notice – should this reference to advertisement not also refer to notification of applications?
2.2.1	Advertising	Is this not a duplication of sections 16(2)(m) and 13(5)-(10) of the main by-law itself?
2.4.1	Error on zoning maps	The should be a "j" after SDF? and secondly, there may still be agricultural land within the urban edge – will it then not unnecessarily be restrictive? ?
3.1.6	All property owners, within the urban edge (as indicated in the applicable SDF, are limited to the keeping of household pets as defined. The keeping of household pets is subject to any applicable legislation, By-Law and or policy relating to household pets.	What is the purpose in a by-law to state that other laws apply. Stating the obvious?

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3.1.7	Rules v/s development parameters	Here development rules were replaced by development parameters, but it appears as if this was not consistently amended accordingly in the Schedule?
3.2.3	Title conditions "... and or any condition of title..."	See comment in 83(4) of the main planning by-law.
4.1.1(a)	<p>In this land use scheme, in the register, in any note on the zoning map and in any condition imposed in terms of this land use scheme, the words and expressions shall have the meanings assigned to them in accordance with the definitions contained in these land use scheme regulations, except where a contrary interpretation is clear from the context. Interpretation of words not defined in this chapter will have the meanings assigned to them in the "New Shorter Oxford English Dictionary" published by Oxford University Press, except where a contrary interpretation is clear from the context.</p>	<ul style="list-style-type: none"> <li>• Conditions are imposed in terms of section 67 of the main by-law and not in terms of the scheme?</li> <li>• Land use scheme regulations? Cannot be regulations – suggest to refer to "this schedule"</li> <li>• "this chapter"? Definitions in the scheme are not in this chapter, suggest "this schedule"</li> </ul>
4.1.3(d)	Reference to "professional land surveyor"	In other instances, "registered surveyor" was used, but there are also references to a suitably qualified surveyor?
5.1.1(b)	<p>Consent uses are: additional dwelling units, agricultural industry, animal care centre, aquaculture, day care centre, [crèche], farm shop / stall, fertilizer plant, guest house, hotel, institution, intensive animal farming, intensive horticulture, lodge, mining, place of assembly, place of entertainment, place of instruction, plant nursery, riding stables, [rooftop base,] service trade, tourist accommodation, tourist facilities, transmission apparatus [tower], utility services, wellness centre, 4 x 4 trail.</p>	<ul style="list-style-type: none"> <li>• It is unclear why transmission apparatus is used instead of tower as the former is not defined, but the latter is? It appears as if the definition of transmission towers may have to be renamed?</li> </ul>
5.1.6	Guest rooms	This is not a consent use in 5.1.1.(b)? and guest house does not appear in 16.10 as in 16.10.22 it states that it is only applicable in Residential Zone
5.1.8	Day care centre	1. Where does it leave Agricultural zone then?
5.2.1(b)	Development parameters	This is not a consent use in 5.1.1.(b) it has been replaced by creche?
5.3.2.	Relaxing of 800m <sup>2</sup>	Some of the comment as for 5.1.1.(b) and 5.1.6 & 8 applies it is assumed that this "relaxation" will be an approval in terms of the scheme. The bylaw makes provision for a relaxation outside of a departure application, i.e. permission in terms of the scheme. This is a good example why these applications should be separated out from land development applications which have to go to the AO or MPT and are subject to appeals. This could be dealt with on very short notice if handled

correctly. As the planning by-law and land use scheme currently stands, this type of application still needs to be considered by the MPT/AO. Whilst the municipality has not suggested amendments to the by-law in so far as decision making is concerned. *Please refer back to the comment made under section 69 (&70) in the main planning by-law. This comment may be applicable to other similar instances in the zoning scheme, which have not all be mentioned.*

5.3.4-8 Uses mentioned  
6.5.1 Informal trading

Some of these uses are not primary or consent uses in 5.3.1. It is unclear why informal trading has been deleted from the primary use in the Less Formal Development Zone as this is where such a use will often occur? It is also not a consent use option?

6.5.11 General numbering

When getting to this and cross referencing to the existing scheme is was found that this point is 6.5.12 and the amendments do not indicate that the numbering is amended. This may apply in various other instances where land use zones are discussed — it has not been checked further but the municipality is advised to ensure that the numbering is correct otherwise interpretational issues may occur.

Also - The proposal to number headings is also not consistent with the way we make regulations, laws or by-laws. Look at SPLUMA, LUPA or other regulations. Headings are in fact not officially part of the law and should not be numbered.

6.5.11 Building plans

It is understood that building plans "may" be approved, but there is no indication if in this zone building plans are a requirement or that it is not a requirement?

7.2.2.(e)(iv) More restrictive building lines

It is unclear at what stage the municipality will impose such a more restrictive building line and where will it actually be reflected in the zoning scheme? It is assumed that it will be at building plan stage, but will it then be indicated in the register as well? This will be a departure initiated by the municipality to which a right of appeal may be created.

8.1.5-7 Environmental considerations

Whilst concern for the environment is fully supported and although it appears in the original scheme (and this may be applicable in other zones as well) there are some concerns about this:-

1. At what stage will be municipality require compliance with these sections as it may possibly only be known at building plan stage especially 8.1.5.

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<p>8.2.1</p>	<p>Industrial zone 2</p>	<p>2. Who is to approve of such an environmental study or management plan?                  This zone provides noxious trade as a primary right. That being the case and if somebody owns such a site and wants to develop it, only a building plan needs to be submitted and approved of. Therefore, when and how will 8.2.5-7 become applicable/enforced or imposed? Some revisit will be necessary as the outcome may be that a person cannot exercise his/her primary right.                  The reference to rules is unclear – should these not be parameters as no “rules” could be found in SR 1 and in most instances “rules” have been replaced with parameters?                  See 9.1.1(c)                  It is unclear why a dwelling unit is a consent use in this zone as it may lead to permanent habitation in the zone which may not be desirable especially since there appears to be no restriction on ownership – it may be abused for exclusive rural residential occupation.                  Where in this schedule or by-law is it explained what private open space entails? Guidance may be taken from the department’s model zoning scheme by-law SCHEDULE 2, LAND USE DESCRIPTIONS AND DEVELOPMENT PARAMETERS</p>
<p>9.1.2</p>	<p>The following development rules apply in this zone, provided that the development rules for a dwelling house</p>	<p>Additional use                  Open Space Zone 1</p>
<p>10.1.1 12.1.1</p>	<p>Private Open Space</p>	<p>12.3</p>
<p>15.1+</p>	<p>Adoption or amendment of overlay zones</p>	<p>This section provides for “prepare, approve, amend or repeal overlay zones for specific areas” which is fine, but the distinction between creating a new overlay on the schedule (scheme) as opposed to making an existing overlay zone application to an area which was not previously subject to an overlay zone, is not apparent.                  • To create a totally new overlay zone, i.e. an addition to the by-law schedule (scheme) equates to amending the existing by-law and consequently the provisions of section 12 and 13 of the MSA are applicable and that process has to be followed. It would also be applicable if the existing overlay zone itself is to be amended. All decisions in this regard will be Municipal Council decisions, as per the MSA and as per section 28(4) of SPLUMA.                  • However, if the municipality has an existing overlay zone in its zoning scheme by-law and it wants this overlay zone to become applicable to a geographical area (in addition to its base zoning) which was not previously subject to this overlay zone, the process to be followed</p>

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<p>16.1.1.1</p> <p>General encroachments</p>	<p>would be a rezoning, which decision is an MPT decision, if it is on an ad-hoc basis.</p> <ul style="list-style-type: none"> <li>As a result, the wording of 15.1.2 may have to be revisited.</li> </ul> <p>(a)(x) and (xii) could the type of uses which may prompt the municipality to impose a stricter building line, e.g. 7.2.2.(e)(iv)?</p> <p>Encroachment of street building line may have to be renumbered to (d).</p>
<p>Numbering</p> <p>Encroachment of side and rear building lines permitted and Encroachment of street building line both appear to be numbered (c)?</p>	<p>It is recommended that a re-phrase be considered to the effect that when considering an application for encroachment of the street building the municipality will also take the following principles into account: <i>(The same may apply to the wording of 16.1.2, as these will be in addition to the considerations in section 66 of the main by-law.)</i></p> <p>This appears to be a duplication of section 3.1.6 but also at odds with it as it excludes agricultural zoned properties, which 3.1.6 does not?</p>
<p>16.1.1(c)</p> <p><u>Upon an application, the following general principles will be considered by the Municipality</u></p>	<p>In terms of section 16(1)(c) integrated Coastal Management Act, 2004 the coastal protection zone is any land unit situated wholly or partially within one kilometre of the high-water mark which, when this Act came into force was zoned for agricultural or undetermined use.</p> <p>In the WCG Guidelines for the development of rural areas this is recognised, and the policy position is that no additional dwelling units on farm land should be allowed within 1 km from the high-water mark. This has also been recognised in the departments model zoning scheme by-law where no additional dwelling units on farm land is permissible within 1 km from the high-water mark. The policy statement provides that "Land development proposals must avoid negative impacts on coastal resources and be responsive towards coastal risk zones. Therefore, no additional dwelling units or any other type of accommodation, except the homestead/owner's dwelling should be permitted within 1km from the high-water mark of the sea or tidal river. Due consideration must be given of any coastal management/set-back line and zone risks."</p> <p>The coastline of the WC still looks the way it is because of these kinds of restrictions, otherwise many more houses would have been developed all along the coast line. The coastline is a provincial asset and should be protected as such and as a result zoning scheme provisions that would</p>
<p>16.9.4</p> <p><u>The keeping of animals is restricted to household pets by property owners, within the urban edge as indicated in the applicable SDF (excluding agricultural zoned properties).</u></p>	<p>The keeping of animals is restricted to household pets by property owners, within the urban edge as indicated in the applicable SDF (excluding agricultural zoned properties).</p>
<p>16.10.1(d)</p> <p><u>No additional dwelling units may be erected within 100 m of the high water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of the municipality and</u></p>	<p>No additional dwelling units may be erected within 100 m of the high water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of the municipality and</p>

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allow (almost promote) development of such units just above the 100 m line above the high-water mark, should be strongly discouraged. The municipality is urged to amend this provision to provide for:-

- an additional unit may not be erected within 1 km of the high-water mark of the sea or a tidal river except where a proclaimed township is situated between the additional dwelling unit and the sea or tidal river;
- one additional dwelling unit may be erected within the 1km high water mark of the sea or a tidal river, provided that the additional dwelling unit is attached to the main house and does not exceed a floor area of 60m<sup>2</sup>; and
- no alienation of additional dwelling units will be permitted whether by cadastral subdivision or sectional title.

The term used in the definition part of the scheme is "self catering" -- it is assumed that this is same, but it is suggested that the defined term be rephrased to "self-catering accommodation" for the purpose of consistency.

This is when a land use application is made, but at what stage will such potential additional conditions be imposed where there maybe existing rights where are primary rights?

- This is specifically the case where it is on Residential 1 zoned properties, but what are the conditions where it is a primary right under another use zone? This does not appear to be regulated and where it is not a consent use, where and how will conditions then be imposed?

- Under Residential 1 is it a primary right -- in this respect how can/will provisions (e) the land use rights will not be transferable be practically imposed as no rights will be granted on application?

This is regulated under 16.10.8 with subsections (a)-(f) but then there is an unnumbered heading General development parameter for home occupation, again with subsections (a) - (o) There are under point 16.10.8 two sets of (a)-(f) with different provisions. It is consequently suggested that the sections heading General development parameters be given a number e.g. 16.10.8.(1). The same would apply for additional rules (should perhaps be parameters?) for a home occupation in Residential Zones 2 and 3.

Heading Self-catering accommodation

16.10.5

The municipality may impose additional conditions in order to minimise any potential public nuisance.

16.10.5

The following provisions shall apply where a day-care centre is operated on a Residential Zone 1 property.

16.10.7

Home occupation

16.10.8

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<p>It is also suggested that as for guest rooms, a condition be inserted that "No advertising sign shall be displayed without the written approval of the municipality other than a single un-illuminated sign or notice affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law." as this is often a problem where home occupations are exercised, especially where it is an estate agency.</p>	
<p>As there is no (b) there is little use in having (a) – further the subsections are (iii) and (iv), but there appears to be no (i) and (ii)?</p> <p>it is unclear if this includes a veranda, open stoep, pergola, carport and garage associated with the second dwelling units. If so consideration can be given to indicate it as such.</p>	
<p>What would the situation be if 25% is more than 30m<sup>2</sup>? There is no provision for instance whichever is the greatest or whichever is the smallest.</p>	<p>Area of house shop - house shop shall not exceed 30.0m<sup>2</sup> or 25% of the floor area of all buildings on the land unit</p>
<p>Is this only allowed or provided for in the Industrial zone?</p> <ul style="list-style-type: none"> <li>• Here there is reference to "telecommunication apparatus" – is it to be assumed that it is the same as "transmission"</li> <li>• Does this include the tower structures as well?</li> <li>• Note that the by-law amendment does not appear to have amended the detail of the definition of "transmission tower" to transmission apparatus.</li> </ul>	<p>Caretaker's dwelling</p> <p>Telecommunication Apparatus Infrastructure Plan (indicating but not limited to the following, namely dimensioned plans showing detail of TA, graphic illustration of the proposed facility, elevation details, proposed materials and colours, screening or fencing)</p>
<p>Spelling</p> <p>What type of application will this be – a departure or amendment of conditions of approval – if so then the MPT/AO should be the decision-maker</p>	<p>Municipality</p> <p>Any deviation from the requirements may only be allowed with approval of the engineering department.</p>
<p>It is assumed that the municipality will – in consultation with the applicant for the subdivision, determine to which part of the subdivision the consent use right or temporary departure will be applicable and include this in the letter of approval. Technically the original letter of approval should then also be amended?</p>	<p>18.1.1 If a property that has been granted a consent use right or temporary land use departure is subsequently subdivided, the consent use right or temporary land use departure shall apply to only one of the resulting subdivisions, unless the [Council] municipality states otherwise by means of a condition of the subdivision.</p>
<ul style="list-style-type: none"> <li>• This section is not numbered, and it is unclear to which part of the scheme it relates.</li> <li>• The scheme's rules for interpretation in 4.1.1.(b) provides that "Headings contained in this land use scheme shall be used for reference purposes but shall not be construed to govern, limit or</li> </ul>	<p>??</p> <p>Subdivision of Residential properties</p> <p>Subdivision in an area will be generally be allowed if it is consistent with the planning policies and the average size and density of surrounding residential properties will also be considered.</p>

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modify the meaning or intent of any provision of the land use scheme.” Therefore, the content does not indicate for which zoning this provision will be applicable and should thus be re-phrased.

- It is also suggested that the re-phrasing should include that the relevant considerations will be in addition to those in 66 of the main planning by-law.

**OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT ENVIRONMENTAL MANAGEMENT OVERLAY ZONE REGULATIONS**

Much of what is put forward in the Environmental Management Overlay Zone should not be contained in an overlay zone, bearing in mind that an overlay zone should prescribe specific zoning parameters, which can be the subject of a departure application. The provisions as proposed rather constitute policy that informs decision-making for planning applications and building plan applications.

Provision should be made in the scheme to include the following:  
*The Municipality may also, after following due process, adopt guidelines for an Environmental Management Overlay Zone which is not part of the scheme and which constitutes policy that informs decision-making for planning applications and building plan applications.*

Heading	Regulations	These cannot be regulations, but only provisions of a schedule of the by-law or overlay zone
17.1.4	NEM:AQA, 2005 (Act 39 of 2004)	NEM:AQA, 2004 (Act 39 of 2004)
17.16	NEM:AQA, 2005 (Act 39 of 2004)	NEM:AQA, 2004 (Act 39 of 2004)
17(14)	Municipal coastal zone	What is this zone? Is it the Coastal Protection Zone in terms of ICMA?
17(22)	"permissible activity" means an activity listed in Schedule B to these regulations that is permissible within a particular EMOZ only with the Council's written consent	It is submitted that this permission is in fact a permission in terms of the scheme, which when read with the decision-making structures cannot be the Council, but only the MPT/AO or AA if there was an appeal.
20.7.6.2	Municipal Zoning Scheme	Land Use Scheme
20.7.6.2	Designate as Public Places under the municipal zoning scheme	Does the new land use scheme make provision for Public Place?
22.5.2.1	A list of activities that are prohibited or that require written Council consent [permissible only with the consent of the Council] are set out in Schedules A and B.	See comment above on 17(22)

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22.5.2.2	<p>22.5.1.2.2 In deserving cases, where there is no NEMA requirement for an Environmental Impact Assessment ("EIA") process and Environmental Management Plan ("EMP"), the Municipality may impose the need for an EIA and/or EMP in terms of the duties of care under section 28 of NEMA and/or the NWA] request additional information and/or an EMP for approval by the Municipality prior to granting its written consent and/or approving building plans or any development.</p> <p>Regulations</p>	<ul style="list-style-type: none"> <li>• See comment on decision making authority above.</li> <li>• It is questionable if additional information or an EMP can be requested prior to the approval of building plans. At what stage will it be required? What is an applicant's recourse if it is not approved? What appeal will be applicable?</li> <li>• In the first part of the paragraph it is stated "where there is no requirement for an EMP" yet in the last part of the paragraph it is stated that an EMP may be required?</li> </ul> <p>It is suggested that this be replaced by provisions of this schedule/overlay zone etc.</p>
25	<p>Any person who is dissatisfied by a decision taken by the Council or by delegated authority in terms of these Regulations may appeal in writing to the municipal appeal authority in accordance with the Overstrand Municipality By-Law on Municipal Planning, [2013] 2015.</p>	<p>Appeal – all land use decisions are to be taken by the MPT and AO and not by the Council or a person with delegations. See more detailed response on decision-making elsewhere in this set of comments. <i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto, e.g. 29.1)</i></p>
General	<p><b>OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT HERITAGE PROTECTION OVERLAY ZONE REGULATIONS</b></p>	
1.17	<p>Much of what is put forward in the Heritage Protection Overlay Zone should perhaps not be contained in an overlay zone, bearing in mind that an overlay zone should prescribe specific zoning parameters, which can be the subject of a departure application.</p> <p>The provisions as proposed rather constitute policy that informs decision-making for planning applications and building plan applications.</p> <p>Provision should be made in the scheme to include the following:  <i>The Municipality may also, after following due process, adopt guidelines for a particular Heritage Protection Overlay Zone which is not part of the scheme and which constitutes policy that informs decision-making for planning applications and building plan applications.</i></p> <p>Regulations</p>	
Heading		<p>These cannot be regulations, but only provisions of a schedule of the by-law or overlay zone</p>
1.9	<p>Municipality's written consent</p>	<p>See comment in 1. "definition of municipality" on page 1 of this set of comments.</p>
1.17	<p>Definition of municipality</p>	<p>See comment in 1. "definition of municipality" on page 1 of this set of comments.</p>

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5	Regulations	See comment in heading
7	Registered conservation body	Should provide clarity with whom said conservation body should be registered with.
7	Specifically states that ANY planning, building line or related application pertaining to a property within a HOZ MUST be referred to ... for comment	The document sets out in each subsequent HOZ that ALL land use planning and building plan applications be submitted for comment IF APPLICABLE. This statement contradicts with "any" and "all". Where is the applicability set out?
Throughout	And/or registered conservation body	This is used throughout the document in respect of requests for comment. It would be more prudent and not open to discretion to decide on either 'and' or 'or'.
8.2.1 – 8.2.3	First, second and third purpose	Why is it necessary to order the purposes? It presupposes an order of importance or preference.
8.2.6.2	Regulation of applications	This appears to be a duplication of section 7.7
8.2.6.5	New developments must be associated and linked with existing settlements, rather than being built on isolated sites on undeveloped land.	This appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if a new development is not linked or associated in case where there are merits – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)
8.2.6.7	Building platforms on sloping sites must be kept to a minimum. Buildings on high stilts in excess of 2.4 m as measured from the base level as defined in the [Zoning Scheme] Land Use Scheme must be avoided. New levels must be designed to fit into the surrounding land form. Mitigation measures must be identified to limit visual impacts.	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if a new development exceeds the 2.4 m stilts height in case where there are merits – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)
8.2.7.1	No departure from the 30m building line applicable to Agricultural Zones will be considered without the comment from the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee, and/or a registered conservation body [or a registered conservation body]. Mitigation measures must be identified for any departure from this provision.	Is it correct to assumed that this will only be applicable to agricultural land situated within this overlay zone or will it also be applicable for other agricultural land not within this overlay zone – if so then then the section should be re-positioned.
9.2, 10.2, 11.2, 12.2. etc.	Purpose: To ensure that any land use application ...	Should this item not rather be listed under the purpose heading?
9.2.6.1	" All planning..."	Suggest using "land use applications"

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9.2.10.3	Coastline ocean	Use either coastline or ocean
9.2.11.1	Similarly, dormers must not constitute more than one third of the roof space facing onto the coastline in Greenfield or Brownfield developments.	Greenfield or Brownfield developments are not defined terms and may lead to interpretational challenges which should be avoided. It is also submitted that these two terms generally encompass all types of the development and as a result there is little use in mentioning it – it could be re-placed with “in any development in .....” Remove the word ‘similarly’ given that preceding sentence has been deleted.
10.2.3.2	Town Planning Scheme	To be replaced by OMLUS
10.2.3.1	“ All planning.”	Suggest using “land use applications”
10.2.3.2	No land uses, or deviations from the Town Planning Scheme, which threaten the ecological integrity of the vlel and associated seepage system will be considered without the comment from the Overstrand Environmental Services	Suggest a rephrase to be aligned with current terminology (and consistency) <u>“No land use application. No land uses, or deviations from the Town Planning Scheme, which threaten the ecological integrity of the</u>
10.2.3.3	The creation of access ways to the water’s edge, across public land and through the reed systems will not be permitted without the comment from the Overstrand Environmental Services.	What type of application will such an access way trigger and who will be the decision maker be in such cases?
10.2.4.4	facades	Façades
10.2.4.4	Continues	continuous
10.2.4.3	The use of materials and colours, especially on roofs, must be earth-toned or [and] blend into the natural landscape rather than contrast with it.	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if different colours are used? – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (if the municipality wants to provide for it.)
10.2.4.4 & 11.5.3.1	A wall-dominated recessive architectural treatment must be adopted. Any [large] continues glazed surface[s] larger than 25% of the facades facing onto the public zone, [in excess of 1.5m <sup>2</sup> ], must be recessed [placed] at least 0.5m from the [front] façade of the building.	It is unclear that the term “A wall-dominated recessive architectural treatment must be adopted” means and who must adopt it. (This comment is applicable to all subsequent section which contain this provision or provisions similar thereto.)
11.3.1	“ All planning.”	Suggest using “land use applications”
11.3.2	Permitted in terms of the Land Use Scheme	Would that imply primary and consent uses?
11.3.2	Land uses which are not of an agricultural or rural nature (apart from the [residential] land uses permitted in terms of the Land Use Scheme [zoning scheme]) will be discouraged in the smallholding area.	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if uses not of an agricultural or rural nature are applied for? how will it be discouraged – will it then require a departure? It is not

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<p>11.5.3.1</p> <p>Continues</p>	<p>worded in a manner that it is firm prohibition possibly with exceptions for a departure? (if the municipality wants to provide for it.)</p> <p>continuous</p>
<p>11.5.4</p>	<p>The use of materials and colours, especially on roofs, must be earth-toned [and] or blend into the landscape rather than contrast with it. [Bright colours and reflecting materials will not be permitted.]</p>
<p>11.6.1</p> <p>High security fencing</p>	<p>Delete the word high, as a description of height follows.</p>
<p>12.3.1</p> <p>" All planning."</p>	<p>Suggest using "land use applications"</p>
<p>12.7.1</p>	<p><i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto.)</i></p> <p>This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if different colours are used? – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)</p>
<p>13.2</p>	<p><i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto.)</i></p>
<p>13.6.2.1</p>	<p>Should this item not rather be listed under 13.2?</p>
<p>17.11.2</p>	<p>continuous</p>
<p>18.4.2</p>	<p>Amend to read " exceed the prescribed maximum height as measured from base level"</p> <p>" .....in the applicable land use scheme.." There will be only one land use scheme after adoption of the by-law, so the word applicable appears to be superfluous and could be replaced with land use scheme in schedule 2 of this by-law.</p>
<p>18.4.2</p>	<p>[Buildings within the single residential zone must be restricted to 6.8m.] No [point] portion of any building [on] shall [any portion thereof shall] exceed the prescribed maximum height [prescribed, measured] from base level, save for the general encroachments as prescribed in the applicable land use scheme.</p>

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<p>18.5..1</p> <p>Parking provision standards/ratios may be relaxed when, in the opinion of the [Council] Municipality, the imposition of obligatory parking ratios will have a negative impact on building-street relationships and the continuity of the streetscape where such streetscapes are considered to have heritage significance.</p> <p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>	<p>What type of application will this be and who will be the decision maker?</p> <p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p> <ul style="list-style-type: none"> <li>• The wording and meaning of this section are not very clear. How and why would be existing building line deviate from "existing conditions and which conditions are these – a previous departure approval or the standard in the schedule 2?</li> <li>• Also, what if the existing condition is more restrictive than where the existing building is situated?</li> <li>• What application would be required for the "exceptions" which the municipality may approve and who will be the decision maker?</li> <li>• At what stage will this be required?</li> </ul> <p>Whilst the concept is understandable, it is questionable if it is really legally possible to impose a new building line at building plan stage. It is suggested that the option be considered to indicate on such sites that the building line will be the building line generally observed in the immediate context – then it is known what it is/will be and is there no condition to be imposed at a point where conditions cannot really be imposed.</p>
<p>18.5..5</p> <p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>18.6..1</p> <p>In the case of an existing building which is being altered/extended, the existing building line shall be maintained, except where the existing condition deviates from the pattern and rhythm of the street, subject to such exceptions that the [Council] Municipality may specially approve.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>18.6..2</p> <p>In the case of new building construction work to be undertaken on a vacant site or portion of a vacant site or alterations to an existing building, a building line must be prescribed by the [Council] Municipality to protect the building line generally observed in the immediate context.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>18.11.1</p> <p>A clear distinction should be made between boundary walls and fences that are solid (non-permeable) and fencing that is permeable. Although it is implied, it is not specifically stated as such.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>18.17.1</p> <p>The statement that all road works, etc. must be in sympathy with the heritage townscape is subjective and open to interpretation. Not a condition that can be enforced or departed from.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>19.3..1</p> <p>All land use planning and building plan applications, if [must be] applicable, be submitted to the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee and Heritage Western Cape, and/or a registered conservation body for comment.</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>
<p>28</p> <p>Deemed to be detrimental ...</p>	<p>Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics] Committee.</p>

**COMMENTS AND RESPONSES PART B**

Comment on Advert placed in 2019 regarding the amendment of the Overstrand Planning By-law amendment and Zoning Scheme (Land Use Scheme), and adoption of the Zoning Maps and incorporation of the Overlay Zones, and determination of Zoning.

PROVINCIAL COMMENT - PART A - COMMENT ON BY-LAW ON MUNICIPAL LAND USE PLANNING		Response on comment
Section	Content	
General	<p>Comment on sections/provisions not proposed for amendments</p> <p>During the scrutiny of the planning by-law and the zoning scheme and cross referencing to the original documents, several sections have been identified which should also be considered for amendment, but which the municipality did not suggest to be amended. Comments on such sections also appear in this table of comments for consideration.</p>	Noted
General	<p>5 year lapsing provisions</p> <p>It is noted that the municipality still regulates for a 5-year lapsing period and that it may not be increased beyond 5 years. Whilst it is recognised that it is the municipality's prerogative to do so, it will give the municipality and developers no further leeway if the Department is successful in obtaining exemption from the provisions of section 43(2) of SPLUMA if SPLUMA is amended to provide for longer periods or omits such restrictions. We recommend that the municipality remove the "automatic 5 year lapsing clause and regulate the lapsing of applications as required on a case by case basis as prosed in the Departmental Standard Draft By-law. In the current austere economic conditions, it is important to not overregulate aspects which does not require validity periods.</p>	Will rectify. New regulations allow for a 10-year lapsing clause or any other time legally permitted by legislation. It will be amended accordingly.

1	Agent	It is noted that there is no definition for agent, yet the term is frequently used in the by-law and would be useful to be included.	Removed in heading – change “agent” to “applicant” under section 63 and under section 17 change “agent” to “person authorised by the owner”
1	Applicant	Definition to align land use scheme with by-law with.	Align with scheme
1	Consolidation - in relation to land, means the merging of two or more adjacent land units into a single land;	Although this is not included in the amendment, we propose that it be considered to include the missing the word “unit” at the end of the sentence.	
1	land use scheme” means the Zoning Scheme as contained in Schedule 2: Overstrand Municipality Land Use Scheme (as amended);	Why then not call it a Zoning Scheme? Also, in schedule 2 it is called the Overstrand Municipality Land Use Scheme 2019 (not as amended)?	Land Use Scheme aligns with SPLUMA, (or as amended) has been removed. The amendment speaks of land use scheme and not zoning scheme.
1	Existing phrase “contravention penalty” is implemented when a person transgresses the Zoning Scheme Regulations and provisions.	<ol style="list-style-type: none"> <li>1. This does not relate to the new section 16(2)(s) which speaks of an application for an <u>administrative penalty</u> and should be reconsidered.</li> <li>2. Then there is the use of the term “zoning scheme regulations” – the existing scheme is a regulation scheme under LUPO, but now the scheme will be converted to a by-law and not thus not a regulation anymore. A municipality does not make regulations, it can only make by-laws. This term also needs to be amended in definition of site development plan. Recommend that it be amended to “zoning scheme by-law”.</li> <li>3. It is also not considered good law drafting to mention an action/process in a definition. It may be considered to re-phrase something to the effect of ““<i>contravention penalty</i>” means a penalty imposed for a transgression of a zoning scheme by-law provision.”</li> </ol>	<p>The contravention penalty is reworded to reads as follows:                  Contravention: includes a failure to comply with a duty or requirement in terms of the provisions of Section 84 of the By- Law.</p> <p>“<b>administrative penalty</b>” is implemented when a person transgresses the land use scheme and provisions including failure to comply with a duty or requirement in terms of the provisions of Section 84 of the By-Law;</p>

1	Definition of municipality	<p>The existing Overstrand By-law does not include the MPT/AO as part of the municipality. This provides challenges in the scheme part of the by-law where many references and decision are linked to either the council or the municipality and in many such cases it is actually the MPT/AO as per SPLUMA. So, either it must be amended in each case to specify municipality/council/MPT/AO or include it in the definition of municipality which is perhaps the easier option.</p>	<p>It is catered for in the delegation of powers. or its delegate.</p> <p>Definition will be reworded</p> <p>“Municipality” means a municipality established in terms of section 155 of the Constitution read with the provisions of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and includes the Municipality of the Overstrand established by Establishment Notice No. P.N. 494/2000 of 22 September 2000 read with issued in terms said Act; and any employee of the Municipality acting in terms of delegated or sub-delegated authority thereof or being authorised to perform functions in terms of planning law, including; ....</p> <ul style="list-style-type: none"> <li>(a) the Council;</li> <li>(b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-law;</li> <li>(c) the Municipal Planning Tribunal, Authorised Official or delegated to perform a function or exercise a power in terms of this By-law;</li> <li>(d) the Municipal Manager; and</li> <li>(e) an authorised employee.</li> <li>(f)</li> </ul> <p>Municipal Manager: means a person appointed in terms of section 82(1) of the Local Government: Municipal Structures Act No 27 of 1998 and is also the Accounting Officer in terms of section 60 of the Local Government: Municipal Finance Management Act No 56 of 2003;</p> <p>Municipal Planning Tribunal: means the Tribunal established in terms of the provisions of sections 71 and 72 of the Overstrand Municipality By –Law Relating to Land Use Planning 2016.</p>
7(1)(b)	Status of a spatial	The term advertisement is not really defined or	Incorporated advertise – will remove advertise and change

<p>development framework and a Local Spatial Development Framework                  (1) If an application is inconsistent with an applicable spatial development framework or a Local Spatial Development Framework, the applicant must describe the inconsistency in —                  (a) the application; and                  (b) the advertisement/                  advertise of the application.</p>	<p>described in this by-law and it is assumed that it actually means the publication and/or serving of notices as set out in sections 47 and 48. If this is correct then it is suggested that the wording in this section be amended to ensure consistent use of terminology.</p>	<p>as follow - publication and or serving of notices contained in sections 47 and 48 of this By-Law.</p>
<p>7(2)</p>	<p>Reference to section 8 of LUPA</p>	<p>Remove</p>
<p>13.</p> <p>(1) The owner [of land] or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in Section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.</p>	<p>It is unclear why section 8 of LUPA is referenced in this context as it does not appear to be relevant in this context.</p> <p>The proposed amendment in this section seeks to amend "owner of land" with "owner", but there are various other instances in the by-law where it does not seem to have been amended e.g. 16(2), 45(2), 91(2), and 93(1) – it is recommend that these be amended as well.</p> <p>It is also recommended that this section be reconsidered to align with the wording in LUPA i.e. "The owner or his or her agent may apply in terms of section 15(2) to the Municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act." as it encompasses the reference to the repealed ordinance, but also in other instances. The by-law should not only refer to the repealed ordinance provisions.</p>	<p>Rectified, to read with section 16(2)(m). Ordinance and reference to ordinance will be replaced with the By-law</p>
<p>13(3)</p>	<p>If the lawful zoning of land contemplated in Subsection (1)</p>	<p>No do not agree. The determination of zoning is not a rezoning application. The Municipality will determine the</p>

	cannot be determined the Municipality must determine a zoning and give notice of its intention in terms of Section 48.	unknown zoning to the zoning category that it needs to be. In this respect it is suggested that this section be rephrased to provide "If subsection (2)(e) is applicable, the Municipality must rezone the land concerned in terms of section 16(2)(a)" - as amended.	zoning taken due cognisance of the area to ensure that the zoning is in feel with the surrounding area.  "zoning" and "rezoning" are two different concepts - "rezoning" or "rezoned" means that an already "zoned" area is to be rezoned.
16(2)(d)	Consolidation of land	It is unclear why this has not been qualified by "if it is not exempted in terms of section 26" as section 26 contains such exemption, but this clause provides that it must be applied for and is thus ambiguous.	Change "that is not" to "if it is not". It is not ambiguous since the request for exemption still need documentation to be provided to establish if it qualifies as an exemption.
16(4)	Reference to SPLUMA section 52	Is it suggested that this section which refers to section 52 of SPLUMA be deleted in total. Firstly, is it only informative and, secondly it lends municipal credibility to a SPLUMA provision, the content of which is regarded unconstitutional. If section 52 of SPLUMA is challenged or amended, it may mean that the by-law will have to be amended as a result.	Do not see the problem. An application will be submitted to the Municipality and National Government if required, it is the same scenario where applications need to be submitted to the Municipality and the Province.  If unconstitutional, where has it been addressed and still in the SPLUMA legislation. It needs to be determined or it needs to be amended by the relevant department
16(2)(s)	determination of an administrative penalty	The phrase administrative penalty is not defined and is not used anywhere in the by-law either. It is assumed to be contravention penalty which is defined and used - so amendments are recommended to use terms consistently. (Also see under definitions section 1 comment on contravention penalty.)	Legal comment: <i>I am unable to establish whether this section or parts of it has/have been declared unconstitutional. If so please advise on what Constitutional Court authority.</i>  The definition of contravention penalty has been reworded.
16(2)(k)	Existing phrase "a phasing, amendment or cancellation of a plan of subdivision or a part thereof"	This often involves amending a General Plan or diagram as well and since the existing phrase does not include this, it is not really aligned with section 2.5 and we have experienced difficulties with the Surveyor-General in phrasing of approvals etc. especially where closure of a public place is	Added

	<p>involved where a GP amendment is required. It is therefore recommended that the phrase in the departmental version be used e.g. <i>“an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram”</i>. This will also better align the list of application types to the wording of the approval section, section 61 which specifically speaks of section 16(2) matters. Otherwise there is a disconnect between section 61 and section 25 (2).</p> <p>Also note that that the minimum standard in section 36(10) of LUPA requires that <i>“A competent person must apply to the municipality if he or she requires the amendment or cancellation of an approved subdivision plan, including conditions of approval, the general plan or diagram, in relation to erven shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.”</i></p>	
	<p>This section 5 is not linked to any other clause in this section and as a result appears to be ambiguous – there must be some phrase before “must” to indicate what it that must comply with the subsequent list.</p>	<p>Must, where applicable, include at least the following:</p> <ul style="list-style-type: none"> <li>(a) density requirements;</li> <li>(b) major land uses and the extent thereof; and</li> <li>(c) a detailed phasing plan or a framework including— <ul style="list-style-type: none"> <li>(i) major transport routes;</li> <li>(ii) major land uses;</li> <li>(iii) bulk infrastructure;</li> <li>(iv) requirements of organs of state;</li> <li>(v) public open space requirements; and</li> </ul> </li> </ul>
<p>Inserted “the application”</p>		<p>18(5)</p>

19(1)	(vi) physical development constraints. 5 year lapsing clause	See comment in General	Noted changed to 10 years, New regulations allow for a 10-year lapsing clause or any other time legally permitted by legislation. It will be amended accordingly.
20(3) – (5)	No provision for occasional use?	It is noted that the definition of occasional use has been omitted ( <i>as per departmental recommendation</i> ) but that section 20 has not been amended as per departmental recommendation to provide for occasional use – see comprehensive comment on this aspect in section 67 below.	Occasional use is not required in the by-law as it is contained under the Occasional use falls under the Overstrand Municipality Events By-Law and Events Policy.
22(5)	“effect the registration of transfer of a land unit or land units as indicated on the registration diagram / diagrams, or, General Plan; by <u>obtaining</u> of a Certificate of Registered or Consolidated Title”	There is something wrong with this proposed amendment. The registration of transfer of a land unit is not the same as a Certificate of Registered or Consolidated Title. Registration of transfer is not affected by <u>obtaining</u> a Certificate of Registered or Consolidated Title. Perhaps there should be an “or” directly in front of <u>obtaining</u> .  However, it may still not read well when done this way as it may not relate to land units on the GP. It is therefore recommended that this section be re-phrased to read “ <i>registration of the transfer of ownership, a certificate of consolidated title or certificate of registered title in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan</i> ”.	Replace of with or  Legal comment: An ordinary run of the mill registration of transfer of an erf /land unit has no effect on the General Plan because nothing vis a vis the erf proper changes. The General Plan will however be affected, i.e., changed, by a sub-division or a consolidation or closure of a public place.
24(3) and (4)	5-year lapsing	The content of these 2 sections appear to be a duplication in so far as it refers to “ <i>extension contemplated in Subsection (2) may be granted for a period not exceeding five years...</i> ”	Rectified changed to 10 years. New regulations allow for a 10-year lapsing clause or any other time legally permitted by legislation. It will be amended accordingly
25(1)	Was 25(2) - The Municipality may approve the amendment or cancellation of a subdivision	It is not possible to amend a GP where registration of transfer has been affected hence the phrase “has been registered” should be considered for	The wording “has been registered” will be omitted.  Legal comment: Before a final subdivision or consolidation of an erf or 2 or more erven may be registered in the Deeds Registry, the

<p>Applicant must have a relevant survey diagram prepared by his surveyor. Then an application must be submitted to the municipality for its approval and if approved, the diagram and the approval must be submitted to the SG whom will prepare and issue a final Registration Diagram which will form part of the bundle of registration documents to be submitted to the Deeds Registry for registration purposes.</p>	<p>omission.</p>	<p>plan, including conditions of approval and/or the general plan or diagram, in relation to a land unit or units indicated on the general plan or diagram [of which no transfer has] which has or have not been registered as per the provisions of the Deeds Registries Act.</p>	<p>25(2)</p>
<p>Noted, the following will be added: " and read with Section 28." In Section 25(3)</p>	<p>It is recommended that reference be made to section 28 in terms of which public places are closed and, which also includes a section whereby the Surveyor-General is notified thereof and obliged to amend his records. This makes the addition to the new 25(3) "and where applicable, the closure of the public place as contemplated in Subsection (2)" superfluous.</p>	<p>(was 3) When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed.</p>	<p>25(3)</p>
<p>Noted, however section 25(2) is not superfluous.</p>	<p>It is recommended that the addition not be made, if 25(2) is amended as explained directly above.</p>	<p>(was 4) The Municipality must notify the Surveyor-General of an approval in terms of Subsection (1), and the Surveyor-General must endorse the records of the Surveyor General's office to reflect the amendment or cancellation of the subdivision, and where applicable, the closure of the public place as contemplated in Subsection (2).</p>	<p>25(4)</p>
<p>Amend as proposed: An amended subdivision approval contemplated in section 25(1) does not extend the validity period of the initial approval of the subdivision as contemplated in section 22 (5)</p>	<p>The effect of the content of this unaltered section is that the clock would stop for the validity period of a subdivision for the duration of the time from when an application for amendment has been submitted until it is approved and can therefore</p>	<p>(was 5) existing unaltered phrase</p>	<p>25(4)</p>

	<p>be abused to "buy" more time, even by making a small amendment and then delay the approval by various means after which the remaining period would apply.</p> <p>This was extensively discussed and confirmed at the meeting of the Municipal Planning Heads Forum on 17 May 2017 to prevent "stopping of the clock" by way of submitting an amended subdivision, however small the changes may be, as it can be abused to gain more time beyond the original validity period. It is consequently recommended that the departmental phrase be considered, i.e. "An amended subdivision approval contemplated in subsection 1 does not extend the validity period of the initial approval of the subdivision as contemplated in (your) section 22(5).</p>	
<p>26(1)(f)</p>	<p>the conveyancing of land in order to effect transfer to the beneficiaries of an approved Municipal housing project</p>	<p>This amendment raises several concerns. Firstly, what is an "approved municipal housing project" – all housing projects are to be approved by the municipality? Secondly if it means a municipal housing project, would this then not exclude projects by the provincial or national government? Also, as phrased it would only exempt the subdivision, but it does not exempt the rezoning of the land, hence what is this use? It is recommended that this section be reconsidered. It also removes the option of municipal conditions regarding the subdivision, e.g. engineering services, development charges etc.</p> <p>Is it again to be assumed that it does not affect the rezoning of the land?</p>
<p>26(1)(g)</p>	<p>the subdivision of land in order to effect its transfer between spheres of government</p>	<p>Municipal housing project be amended to subsidized housing projects. Please note subsidized housing is a land use approval in terms of the by-law.</p> <p>No subdivision or rezoning is exempted, due to the impact on the community</p> <p>Please refer to section 101</p>
<p>26</p>	<p>General</p>	<p>Yes</p> <p>Correct</p>

		<p>e.g. sectional title and instances where no confirmation is necessary have not been included.</p> <p>Also, the wording of section 26(3) i.e. "...subdivision and/or consolidation have been exempted.." may be construed that there was an application for exemption which was approved, whereas this is not the case. The effect of section 26 is that the instances in the list are exempted. It is thus suggested that "have been" is replaced with <i>is/are</i>.</p>	<p>Have been will be replaced with <i>is/are</i></p>
<p>27</p>	<p>Amendment to the heading</p>	<p>This heading was amended to align with the departmental version, but then the wording in 27(2) should also be re-phrased to read "<i>The Municipality may in terms of conditions imposed in terms of section (your) 67 determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan be transferred to the Municipality upon confirmation of the subdivision or a part thereof.</i>"</p> <p>Also remove the comma and s in respect of services, infrastructure</p>	<p>Noted, however it is more descriptive and there is no need to have it changed.</p>
<p>30</p>	<p>(1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit; to apply for a certificate of registered title or <u>a certificate of consolidated title, as the case may be,</u> unless the Municipality has issued a certificate in terms of this Section</p>	<p>It is noticed that the existing content only refers to "new" land unit. As this is not defined it is recommended to be re-phrased to the first registration of a land unit arising from a subdivision, but by wording it this way or sticking to the unaltered phrase it means that no certification in terms of the by-law is required for subsequent transfers. There is no obligation to do so but note that it will for instance not enable the municipality to prevent transfer of land unit where a compliance notice has been issued which has not been adhered to.</p>	<p>Noted, "new" will be removed</p>

30(3)	Proof must be furnished [provided] to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, prior to the transfer of the first [last] erf to the owners' association as contemplated in Section 31	The way this section is worded there is no obligation on the transfer of such common property to the owner's association, which is really what should happen. A re-phrasing of this section should attempt to ensure that the transfer of the first property may not be done prior to the full development of the common properties which must then also be transferred simultaneously to the owner's association.	amended a follows: (2) The Registrar of Deeds may register the transfer of a land unit, a certificate of title or a certificate of consolidated title, as the case may be, only if the Municipality has issued a certificate in terms of this Section certifying that all requirements and conditions for the approval have been complied with. (3) Proof must be furnished to the Municipality that all common property including private roads and private places originating from the subdivision, have been developed and transferred to the owners association prior to the registration of transfer of the first erf.
30(4)	The Surveyor-General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this Section without written confirmation from municipality that the subdivision or consolidation is exempted by the [a] municipality in accordance with this Section.	This section appears to be out of place in section 30 and should perhaps in be re-phrased in (your) section 26 as it appears to be more appropriate there.  Reference to "this Section" is also unclear as section 30 does not provide for any exemptions.	Noted  The reference to this section is the one in which the conformation is requested, it cannot be another section.
30 general	Grammar in (1) and (2) does not make sense.	The wording of the altered sections needs to be re-phrased from a grammatical perspective re. unit; to apply & property; the application	Noted amended where applicable
30 general	Whole content	It is submitted that the municipality re-consider this section and perhaps use the content of the corresponding part in the departmental version which is more comprehensive.	Noted
31(1)	"...applicant upon the transfer of the first sub-divided property to the new owner. [for an area determined in the conditions.]"	The insertion appears to be superfluous and a duplication of (your) section 31(9)(a) & (b)	There is no 31 (9) (a) and (b)
31(5)	"Subsection (3), is approved by	It is suggested that it should read "must be	Not relevant.

	the Municipality."	approved by the Municipality"	Legal agree.
35 & 36	The whole	<p>Although not obligated to it is suggested that the municipality considers rephrasing the whole of these 2 sections by using sections 33 and 34 of the latest departmental version. (Your section 35(1) publication of a notice in the Gazette could be incorporated in section 47 and 35(3) in section 48.</p> <p>Also, why would the municipality in section 35(2) possibly require the original title deed? This poses a risk to the municipality as such original title deeds need to be kept in a safe etc. and if lost the municipality could be held liable for the cost and process to have a new copy in terms of the Registrar of Deeds' requirements. It is submitted that this part of the requirement be omitted.</p>	<p>Section 35(2) will be amended to take out Original Title Deed – reword to – "submit a certified copy of the title deed to the Municipality";</p> <p>Not all applications are advertised in the Provincial Gazette and therefore the distinction</p>
36 General	<p>No requirement for simultaneous application and decision if land use application also requires removal of a title condition.</p>	<p>Previously a land use application was done in terms of LUPO and the removal, suspension or amendment of a restrictive condition in terms of the Removal of Restrictions Act, 1967. Now they are all done in terms of the same legislation (because of the provisions of SPLUMA) and since this is the case these matters should be applied for and considered simultaneously, which is why these 2 new sections are provide for – which do not appear in the municipality's by-law:-  <i>(7) If an owner intends to apply in terms of section 15(2) for land development that is contrary to a restrictive condition applicable to the land concerned, the owner must when the application for land development is submitted simultaneously apply for the removal, suspension or amendment of the restrictive condition.</i>  <i>(8) The Municipality must consider the land development application and the application for</i></p>	<p>Not all removals necessitate and application for required land use. There is no application to be lodged if a primary use is to taken up, therefore only a restrictive condition removal is necessary.</p> <p>The applicant shall provide detail of which primary right he wants to take up and how he wants to exercise it</p>

36(2)	" ...restrictive condition <u>by</u> notice in the Provincial Gazette..."	<i>the removal, suspension or amendment of the restrictive condition contemplated in subsection (7) together and make an integrated decision.</i> Replace "by notice" with "of the notice" – by notice refers to the action taken, whereas at this point the action (the decision on the title condition) has already been taken.	It is correct the decision has been taken; however the Registrar of Deeds requires the notice to execute the decision.  Legal comment: The suggested "of the notice" does not make sense to me grammatically
40(3)	If the application was not advertised such fees may be refunded.	It is assumed that this refers to notification, however the municipality in other instances may require the applicant to give notice of an application. Are there then reduced application fees?	The application form makes provision for differentiated fees with regard to advertisement and notification. If an application is withdrawn before the advertisement was placed, is to be refunded.
42 & 43	Information in general	It appears as if the by-laws do not properly distinguish between outstanding information and additional information and is recommended that the municipality reconsiders the content of the departmental version section 41 and 42. The municipality's section 43(2) is questionable – if the additional information is not provided then it is submitted that the municipality must still consider the application, without the additional information, albeit to the detriment of the application.	Difference: Outstanding is to fully comply with the required information applicable to all applications. Additional information is what the Town Planner may require to process the application.  Thus if additional information is not forthcoming the By-law regulations section 42 and 43 will be applicable.
45	Inclusion of provisions to amend a land use application	It is noticed that the provisions of (your) section 53 have been relocated to (your) section 45. In that case it should be considered to change the heading as well as the heading of section 45 only concerns the withdrawal of an application. It is also not clear what is meant by "considered finalised" – it could be interpreted that a decision has been taken. If it is withdrawn, then it is withdrawn and, there nothing that can be deemed finalised?	Finalise means file is closed. Will include "finalised/closed"
45(4)	Amendment after notification	Why is the option to amend restricted only to	If an amendment was made before notification it has no

		after notification? Surely it can also be amended prior to notification as well? It is suggested that amendments not be linked to either before or after notification.	impact on the information to the public, however if after notification and or advertisement, it may. Therefore the distinction
47(1)(a)	"...an application for a rezoning or a rezoning on the initiative of the Municipality,"	An application for rezoning should suffice as a rezoning on the initiative of the municipality is still a rezoning. In this regard the municipality's attention is drawn to the department's reworded sections 15(4)-(7)	It is unclear, the referencing to section 15 (4)-(7). Section 15 does not have a (4) to (7). It reiterates that the Municipality is not exempted of procedure.
48(1)	".....affected by the approval...."	It is not clear why "the approval" has been omitted as the application itself cannot affect the rights it is really the approval that may affect the rights of a person.  Also note that the minimum requirement in section 44(2)(a) of LUPA specifically provides that "on each person whose rights or legitimate expectations will be affected if the matter or application is approved."	Noted, however interpretation is not correct, the section refers to an application in process not an approval
51(1)(a)	Requirements in respect of petitions	Although it is not really a planning issue it is questioned whether or not the municipality may insist on somebody's ID no. on a petition. How will a person's interest be reflected on a petition? The municipality should consider a standard form that provides for it and that must be used for a petition. The part which states "(v) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is prepared to act in regard to the application or appeal as the Municipality may direct." How is this to be included in a petition – surely every person signing a petition cannot take that petition for affidavit purposes or is this directed at the person(s) who are organising the petition?	An illegal immigrant cannot be part of the petition. Further change section 51(1) to state the following: Comments in respect of an application submitted by the public in the form of a petition must clearly state...  The rest noted
51(2)	"...Sections 50 (1)(f) and 51 (1)(a)(ii)."	It is unclear how reference to section 50(1)(f) relates to persons involved in a petition?	The same address/contact details will be used.

51	General	It appears to be somewhat confusing to have provisions on a petition in section 51 and then again in sections 53 and 54. It may be reconsidered to lump these together.	Section 51(3) wording will be removed: "or as contemplated in 53 (3-4)", to remove cross referencing with section 53.
52	Heading - Requirements for objections, comments or representations	This heading to be reduced to "Requirements for submission of comments", as comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions and is already defined as such in section 1. The same applies the content in this and other sections.	Amended to : Requirements for submission of comments
53	Request to be granted intervener status ( <i>This is a bit of a mine field as the SPLUMA concept of an intervenor and it provisions about are rather vague and appear to be outside of ambit of the normal notification period and procedures, nevertheless some comments and ideas are provided.</i> )	The terms petition in section 51 is a noun, i.e. a form with signatures as opposed to "petition" to intervene (as a verb i.e. request to be granted intervener status as used in section 45(2) of SPLUMA. The municipality may want to relook at this matter, as it also refers to a prescribed form as a "petition on the prescribed form". Does this mean that for the petition in section 51 there is/will be a prescribed form, or does it mean that by petitioning for intervener status a prescribed form must be used? It is recommended that this apparent ambiguity be revisited. The rest of section 53 may be affected by the apparent ambiguity.	Noted and agreed, will be addressed
53(2)	Submission to delegated authority?	What is meant here? Who is or could be the delegated authority? The MPT is not a delegation and neither is the Authorised Official.	Noted changed to Authorised Official, Municipal Planning Tribunal or Appeal Authority, as the case may be.
53(3)	<u>A person may submit a petition only if he or she has not been given notice of the application in terms of Sections 48, 50(f) or 50(g).</u>	It may not be lawful to prevent a person from submitting a petition. Whilst the municipality may not consider it or accept the petition, it ought not to be regulated that it may not be submitted when a person has been notified in terms of other sections.	Noted
53(3)(a) and	Resolved	This appears to be ambiguous. Resolved by who?	Will replace with determined

<p>(b)</p>	<p>In (a) it should be by the MPT or AO and it is suggested that it should not be resolved but perhaps "determined" as set out in section 35(1) and (2) of SPLUMA.</p> <p>In respect of (b) this is the situation after initial determination by the MPT or AO. The SPLUMA provides in section 45(2) that a person may petition in intervene in application before the (MPT – this has now been over and done) and an appeal. The effect is that a person can only intervene after an MPT/AO decision, if there is an appeal. So, such a person (potential intervener) either must submit an appeal within the 21-day period or if somebody else has already submitted an appeal and the 21 days are over, and the appeal has not been determined yet, apply for intervener status. One cannot intervene in process which has been completed. Somebody wanting to intervene after an appeal has been determined must submit a judicial review application to the courts.</p>	<p>There is no confusion if read with (a) That is correct, than the only other option is judicial review.</p>
<p>53(4)(a)</p> <p>..... petitioner became aware of the application or resolution....</p>	<p>Note the provision of SPLUMA regulation 31(1) "but within seven days of becoming aware of the proceedings, petition the Municipal Planning Tribunal, authorised official or appeal authority in writing in the form determined by the municipality, to be granted intervener status" The 7 days relates to a process before the MPT/AO/AA not after the decision on the land use application has been made. The way it is worded in the by-law may create expectations which are not aligned with SPLUMA.</p>	<p>53(4)(a) does give a person the opportunity.</p>
<p>53(4)(b)</p> <p>after 21 days from the date of the decision of the Authorised Official or Municipal Planning</p>	<p>This may not be practical – if there is an appeal and it has not been determined, then it would be permissible to submit a petition to be granted</p>	<p>Irrespective of the appeal, one can request for Intervenor status within the 21 days and if granted constitute an appeal, which will be dealt with as an appeal after the 21</p>

	Tribunal	intervener status – it would only be practical if the request is made after 21 from the decision if no appeal was submitted. It is suggested this section be re-phrased to include this.	days.
53(5)	A petitioner must submit the required information as contemplated for in Section 51 (1)(a) and (b).	Again, this may be the result the apparent ambiguity in using petition as a noun or a verb interchangeably. Here the municipality attempts to apply the rules for a petition (noun) to petitioning (verb) as an intervener status.	Rectified
53(7)	(a) refuse a petition if submitted late or as contemplated in terms of Subsection (3) and (4)	It is confusing – is this now a petition against a land use application or a petition (verb-request) for intervener status, in which case it is suggested to be re-phrased accordingly – the same applies to 7(b)	Read in context, if the request is late, it relates to the section dealing with Intervenor status.
53(7)(b)(ii)	the Appeal Authority if the application has been decided	It is suggested that this be qualified. It is submitted that a person can only apply for intervener status (after an MPT/AO decision) if there was an appeal submitted and thus a process before the AA. If no appeal was submitted, then what process would there be to intervene in? Such a person would then have to appeal the decision within the 21 days and if it is after the 21 then there cannot be an appeal anymore.	Correct, if the 21 days have lapsed it is up for judicial review.
53(8)(f)	granting the petition would not cause undue delay or otherwise prejudice the interests of any party to the proceedings.	It is submitted that in all instances allowance of an intervener will delay procedures. By allowing an intervener, said person would be allowed to do a written or verbal presentation on which an applicant should be given a fair chance to respond. Whilst it can be understood why this provision is suggested, the practicality of it is that it will then have to be refused in all cases as it will inevitably lead to a delay, whether long or short.	Noted . That is why we have a 21 day prescript.
53(11)	A person who is granted intervener status is regarded as an appellant.	This cannot be correct as the person petitioning for intervener status may do so in the initial process before the MPT/AO – at that stage such a	Amended to read as objector/ appellant

		<p>person cannot be regarded as an appellant. As stated above, if there is an appeal process (not yet determined) then a person can be granted intervener status, but it is submitted that it cannot make him/her an appellant. It is submitted that if a person wants to intervene after an MPT/AO decision, there must be process before the AA and if there is not, such an intervention can then only be of such a person submits a valid appeal within the 21-day period, and that can then only be as an appellant.</p>	
53	In general, re. intervener	<p>It is submitted that an intervener is normally somebody opposed to a land use application or part of it. As such his/her views towards the application will be negative and in order to adhere to the <u>audi alteram partem</u> rule the applicant in a matter should always be afforded an opportunity to respond to the submission made by person granted intervener status.</p>	Provision is made under section 53 (6)
58(1)	<u>land development and or land use application</u>	<p>It is suggested that it be re-phrased to just land use applications as LUPA defines this an application to a municipality contemplated in Chapter IV (LUPA). The amendment is a copy of the SPLUMA regulation 16, but it should be considered what the situation would be if the administrative phase extends beyond 12 months for reasons beyond the municipality's control, e.g. applicant stall the process by not submitting information etc.</p>	Remove land development
58(3) & (4)	..... delegated to an authorised employee...	<p>Decision making powers on land use applications cannot be delegated, see SPLUMA section 56. In section 35, of SPLUMA an MPT determines land use applications, but an official may be <u>authorised</u> to determine certain categories of applications. This is not a delegation. If it was a delegation, then it means that the original power to decide land</p>	<p>In terms of the Delegation Powers and Duties of the Council, any decision making is acknowledged in terms of the applicable legislation. Authorised official in terms of SPLUMA is the official authorised, read with the MSA. Will be reworded to change "delegated" to "authorised" and include Authorised official.</p>

		<p>use applications lie with the Council and such a delegation could be withdrawn. This is not what SPLUMA provides for. It is thus suggested throughout this by-law that the term delegation be omitted where it applies to an official authorised to determine land use applications.</p> <p>Also, the 60- and 90-day decision making period in the by-law is specifically linked to end of 12-month administrative phase. Since in many instances the administrative phase is or can be completed ahead of the 12 months period, it is suggested that the wording be amended to include something to the effect that the decision-making period starts after completion of the administrative phase if this phase is/was completed before expiry of the 12-month period. It should be noted that there is a school of thought that if an application's administrative phase is complete e.g. within 5 months (well within the outer limit of 12 months) and no decision is being taken, an appeal for undue delay could be submitted. So, while the 12 months is an outer limit, the by-law should recognise a procedure for completing the administrative phase ahead of 12 months. In this regard guidance may be taken from the departmental version (section 57) which links to the start of the decision-making phase to the finalisation of specific steps.</p>	<p>The decision period starts as soon as the administrative period is complete, however to ensure that this is the understanding, it will be clarified.</p>
58 & General	Reference to the Municipal Planning Tribunal	<p>In section 1 the Tribunal is defined as being the Municipal Planning Tribunal. Having done so this term should be used consistently and not in some cases use the term Municipal Planning Tribunal and in some other cases only Tribunal. This applies to the whole of the by-law.</p>	Will amend to Municipal Planning Tribunal
58(3)	[(b) In the case of the	It is unclear why this has been omitted. Although	The procedures of the MPT does not allow for oral hearings,

	<b>Tribunal, if an oral hearing is to be held.]</b>	<p>oral hearings may not be the norm in a specific municipality, a request for an oral hearing could lead to delays. The inclusion of this phrase would just cover the municipality in such events.</p> <p>Extending the period for additional information is provided for elsewhere in the by-law.</p>	<p>but the scheme does allow the possibility should the procedures of the MPT change.</p>
59	Inaccurate referencing in respect of failure to act within time limit.	<p>Although not mentioned as an amendment, reference in section 59 to sections 58(1) and (2) will be inaccurate if the amendments to section 58 (<i>new additions and renumbering</i>) are adopted, in which case such referencing should rather be 58(3) and (4).</p>	<p>Remain must be read in context.</p> <p>Noted, will only reference Section 58 and not subsections</p>
61	The Municipality may in respect of any application contemplated in Section 16(2)—	<p>Although only the heading is proposed for amendment, it is noted that the section refers to Municipality, whereas it should be the MPT or the AO in this context. Also, subsections (c), (d), (e), (f) and (g) originate (or is a duplication of section 40(7) of SPLUMA, which is applicable specifically to the MPT and not to the municipality. Section 35(4) of SPLUMA applies to these and other sections then also directly to the AO, hence the suggestion that municipality should be replaced by MPT and AO.</p>	<p>Replace Municipality with MPT and AO</p>
66(g)	<p>(g) a registered planner's written assessment <u>in terms of</u> Section 66 of LUPA, 2014, <u>including: [application in terms of the By-Law:]</u></p> <p>(i) <u>an amendment of a Spatial Development Framework or Land Use Scheme</u></p> <p>(ii) <u>an approval of an overlay zone</u></p>	<p>It is suggested that "a registered planner's written assessment" be re-phrased to read "registered planner appointed by the Municipality" as departmental experience and enquiries have shown that this if often misinterpreted by e.g. members of SAGI (South African Geomatics Institute) to see this as the motivational report which must be submitted with an application. The municipality may want to consider the suggested re-phrase to provide more clarity on this matter.</p>	<p>Corrected, remove "in terms of Section 66 of LUPA 2014" and incorporate a "(v) a rezoning"</p> <p>Amend to a registered planner's or a planner eligible for registration</p>

	<p>contemplated in the land use scheme</p> <p>(iii) <u>a phasing, amendment or cancellation of a subdivision plan or part thereof</u></p> <p>(iv) <u>a determination of a zoning</u></p>		
66	<p>In general,</p>	<p>Although LUPA as framework legislation requires a minimum list of matters to consider, the wider list was provided in the departmental version of the planning by-laws. In this respect it is noted that the municipal list does not include all such items, which is their prerogative, but it is to be noted and recommended that it be reconsidered.</p>	<p>Noted, Will keep to the minimum requirements of LUPA, which is already extensive. In present day, the idea is to fast track development, however legislation requirements make it impossible and therefore the LUPA requirements will suffice.</p>
67	<p>(2)(w) <u>the payment of an administrative penalty as contemplated in Section 90 in respect of the unlawful use of land;</u></p> <p>[(w) requirements for an occasional use that must specifically include –</p> <p>(i) parking and the number of ablution facilities required;</p> <p>(ii) maximum duration or occurrence of the occasional use; and</p>	<p>In respect of (2) <i>(also consider the comment on contravention penalty in section 1)</i> – Section 90 refers to contravention penalty and not an administrative penalty – these terms especially where it is a punitive measure should be clear and consistent – if the municipality chooses to use an administrative penalty it should be used throughout in the by-law and well as in the definitions.</p> <p>Secondly, it is unclear why (w) has been omitted. It is noticed that the municipality deleted “occasional use” from the list of definitions as suggested by the Department, since an occasional use is regarded as a specific type of temporary departure. This is why the Department has suggested a re-phrase of section (its) section 18(4) to provide that “A temporary departure contemplated in subsection (1)(b), except for a right to utilise land for a purpose granted on a</p>	<p>Corrected, the contravention will be by means of an administrative penalty.</p> <p>The occasional use falls under the Overstrand Municipality Events By-law and Events Policy</p>

	<p>(iii) parameters relating to a consent use in terms of the zoning scheme;]</p>	<p>temporary basis for a specific occasion or event, may not be approved more than once in respect of a particular use on a specific land unit." – this is to facilitate the distinction.</p> <p>Since the municipality has not made this amendment, there is no enabling clause for allowing such a temporary use and by deleting (w) there is no also no provision for necessary conditions to be imposed. It is recommended that the municipality (a) does not omit (w) from this section and (b) that (your) section 20(3), (4) and (5) be reconsidered to align with the departmental version sections 18(3) and (4).</p>	
<p>68</p>	<p>Instances where adjustment of conditions may be required</p>	<p>It is not clear why the municipality has not provided for instances an extension of validity period also requires an amendment of conditions of approval as provided in section 67(3) of the departmental version.</p>	<p>Amended as purposed</p>
<p>69 (&amp; 70)</p>	<p>Amendment to heading - <b>Municipal planning decision-making structures in respect of applications and appeals</b></p>	<p>While this amendment is as per the departmental suggestion, the department made this amendment due to the fact the content of (its) sections 68 and 69 were amended and added to as a result of the realisation that not all applications listed in (its) section 15(2) necessarily qualify as land development applications as set in SPLUMA and as such do not by default have to be considered by the MPT/AO and may be considered by the Council or an official delegated to, which will accordingly also impact on the appeal authority. It is noted that municipality did not make these amendments, which again is its prerogative, but it was done for good reason and it is recommended that the municipality reconsiders this section and to align it with the departmental version.</p>	<p>Relating to SPLUMA and not MSA.</p>

		<p>Also, as commented on earlier, decision-making powers which SPLUMA affords to the MPT and AO are not delegations.</p>	
73(7)-(9)	Inaccurate numbering?	<p>Although not part of the municipality's amendments is noticed that subsections (8) and (9) are actually subparagraphs of subsection (7) and should hence be amended so that (8) becomes (a) and (9) becomes (b).</p>	Rectified
78(2)	<p>A person whose rights are affected by a decision of the Tribunal or an authorised employee or by the failure of the Tribunal or an authorised employee to take a decision within the period contemplated in Sections 59 and 61 may appeal in writing to the Appeal Authority within 21 days of the decision.</p>	<p>In the departmental version this section is addressed in two different subsections, the reason being that an aggrieved party may appeal an MPT or AO decision within 21 days' time from the notice of the decision and in a separate section provides for an appeal for the failure to take a decision in time and then specifies this as any time after expiry of the decision-making period. It is not coupled to a decision as there was no decision.</p> <p>The municipality's existing section 78(2) does not separate or draw a distinction between these 2 instances, which means that an appeal for undue delay must be submitted within 21 days of the decision. Yet in those cases there is no decision, so when can such a person then appeal? It is suggested that the municipality rephrase this section in line with the departmental version section 79(2) and (3).</p>	Dealt with in section 59
79(7)	<p><b>[(7) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.]</b></p>	<p>The logic behind the departmental version was that if an applicant submits an appeal she/he must serve the appeal on all who commented on the application, the reason being – he/she would have all the information on the file and it would reduce the administrative burden on the municipality. If a person other than the applicant appeals, he/she will not have all the information that the applicant</p>	<p>Please note that the Municipality does it and not the applicant. This is to ensure a fair administrative process. In some instances, personal information included in objection, which is not distributed.</p>

		has and can therefore not be expected to serve a copy of the appeal on the applicant and other parties, hence the obligation on the municipality to do. By deleting/omitting 79(7) what mechanism will there be to ensure that if a party other than be applicant, appeals, that the appeal be made known/served on the applicant as well? Such regulatory void should be prevented.		
79(7)	(was 9) [(9)] The Municipality may refuse to accept any comments after the closing date.	It is suggested that for clarity purposes - closing date be rephrased to "closing date for comment on the appeal"	The heading clearly indicates that we are dealing with appeals. Amend as follows for clarity purposes: closing date for comment on the appeal.	
83(4)	It is noted that the amendment of this section does not include the deletion of condition 4, re enforcement of title conditions.	It is the Department's view that a municipality is only able to enforce the conditions imposed in terms of the by-laws and laws repealed by LUPA. It cannot include all title conditions as many of these may be so-called "contractual" conditions in that the municipality has no role to play or has no interest in. It is the statutory provisions which must be enforced by this, it is submitted that it will be covered by the proposed improved wording and the deletion of (d). Leaving the condition in as worded will mean that a person can insist on the municipality to enforce title conditions that have nothing to do with the municipality. This however does not mean that the municipality cannot consider the removal suspension or amendment of such conditions on application but enforcing them is something different. This may have to be revisited.	There is no 83 (4). Amend 83(d) of By Law and 3.2.3, including statutory Title Conditions	
90	Administrative penalty	As set out before perhaps consider renaming the definition contravention penalty and then use this term consistently in this by-law.	Contravention penalty has been amended.	
90(1)	A person who is in contravention of this By-Law, and who wishes to rectify the	Does this imply that when an administrative penalty has been determined and paid, that the contravention has now been legalised or does it	It is incorporated into the same application and process under Section 16 of the By-law.	

	<p><u>contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.</u></p>	<p>still require an appropriate land use application and approval before the "contravention" is legalised? If not, it may not be aligned with the minimum requirement of LUPA that states that a land development may not be undertaken without the appropriate land use application, e.g. rezoning, departure, consent use. Is there or will there be a detailed policy/guideline for the determination of administrative penalties? Since the municipality proposes that section 16 be amended by making provision for an application for an administrative penalty, will the MPT's/AO's/AA's terms of reference be amended to provide for such powers and how will it affect any categorisation as this may also have to be re-looked at.</p>	<p>Incorrect section should be 90 (7)(b) Does not make sense. A decision will be taken and an appeal against the decision can be lodged.</p>
<p><b>PROVINCIAL COMMENT - PART B – SCHEDULE 2 – ZONING SCHEME</b></p>			
<p><b>Section</b> Definitions</p>	<p>Additional dwelling units in the Agriculture Zone 1, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned; and additional dwelling units may be used for long or short term accommodation purposes;</p> <p>Agricultural Industry means an enterprise for the processing</p>	<p><b>Content</b></p> <p>It is not clear why this has only been linked to Agricultural 1 zone as there are various other zonings that also provide for additional dwellings units, although it is like this in the department's model zoning scheme as well.</p>	<p><b>Response on comment</b></p> <p>Agriculture is the only category where then 2 dwelling units are allowed. The reason is that agriculture does have schemes such as share block or more than one share holder. The properties are big enough to accommodate such a use, however is also limited to 5 dwellings to ensure that one does not establish townships on agricultural land. The restriction is that the main use remains agriculture in nature.</p> <p>The short and long term have been removed, since it is encapsulated in the tourism accommodation definition.</p> <p>The reason why it is not so narrowly defined is due to the fact that most of the farms in the Western Cape are small and</p>
<p>Definitions</p>	<p>The effect of this current (unaltered definition) is that since there is no basic</p>		

<p>of agricultural related products on or close to the land unit where these agricultural products are grown, harvested and raised where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products, and includes, inter alia: dairies, wineries, distilleries, olive processing facilities, breweries and other facilities required for the processing of agricultural products, where produce packed is not produced on the land unit, but does not include service trades;</p>	<p>requirement that the majority of the input must be sourced from the farm on which the industry is to be established. That differs little from a normal industrial use, which is also not aligned to the WCG's Western Cape Land Use Planning Guidelines Rural Areas, 2019. It is therefore suggested that the municipality consider utilising the department's definition of Agricultural Industry which provides that: -  <i>"agricultural industry"</i> -                  (a) means an enterprise for the processing of agricultural products of which the majority of the products is sourced from that land unit and if not produced on that land unit, then from the land units farmed by the owners of the enterprise with a minority of the products sourced from the surrounding or nearby farms;                  (b) includes a winery, dairy, distillery, the bottling of water, a saw mill; and                  (c) does not include an abattoir.</p>	<p>restricted by the natural vegetation, thus limiting agricultural viability and productivity. Thus, to ensure that the land remains agriculture and structures be utilised for agriculture, a wider interpretation is necessary, especially in light of climate change. Agriculture practices and infrastructure will have to be rethink to be much more resilient.                   It also restricts the viable tourism industry needs in terms of uses as a result of tourism, such as boutique distilleries especially in the Overstrand. The guidelines are generic applicable to the Western Cape and does not make provision for area specific requirements                   In carefully reading the definition of the WC Guidelines, it does not require that the majority of product be sourced from that land unit.</p>
<p>Definitions</p>	<p>Agriculture</p>	<p>The question is what is seen as limited camping? In order to establish the impact of camping, the use will remain under consent use, which includes accommodation and facilities. The same applies to infrastructure.</p>
<p>Definitions</p>	<p>Applicant</p>	<p>The definition in the By-Law will be aligned with the land use scheme.</p>

Definitions	Authority use	scheme just refer to the planning by-law definition or have identical definitions. The municipality may want to consider including "a foreign government including an embassy or consulate, but does not include a dwelling house when the dominant use is for living accommodation of foreign diplomatic personnel"?	The definition in its present form, can accommodate a foreign government body.
Definitions	Consent	This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.	The definition will be aligned with the By-law
Definitions	Consolidation	This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.	The definition of the By-Law will be aligned with land use scheme
Definitions	Contravention penalty	See comments made in Part A of this document re. contravention penalty and administrative penalty and ensure that wording and meaning are consistent throughout this whole document, to prevent interpretational and other issues.	Wording will be amended accordingly
Definitions	Council	This definition's wording differs slightly from the planning by-law's definition and since these two documents are one, and the use and wording of these definitions should ideally be consistent.	The word is not defined in the Scheme-not correct reference
Definitions	Community Facilities	The word 'generally' does not need to be repeated in the definition.	Noted, removed
Definitions	Development framework	Unless there is a specific reason, or it is misunderstood, this definition appears to be referring to the MSDF and LSDF as set out in the planning by-law. This definition's wording differs slightly from the planning by-law's	There is a difference. The By Law make reference to legislation, whilst scheme is defining the concept.

		<p>definition and since these two documents are one, the use and wording of these definitions should ideally be consistent or not be repeated at all.</p>	
Definitions	Dominant use	<p>The municipality's attention is drawn to the departmental definition of dominant use, which use may not always only be the lawful primary or secondary land use in particular zone and the department's view is that it means the predominant or major lawful use of a property, and may consist of primary uses, consent uses, or other lawful uses permitted on the property;</p>	<p>The wording "other lawful uses permitted on the property" will be added to the existing definition.</p>
Definitions	Existing use	<p>The existing use of a land unit may not always be lawful?</p>	<p>The Municipality recognises only the lawful existing use.</p>
Definitions	Guest house	<p>Means a dwelling house, or second dwelling unit which is used for the purpose of lodging of transient guests for compensation ...</p>	<p>Noted, and amended</p>
Definitions	Home occupation	<p>'Practising of an occupation or conducting an enterprise' may be a better alternative to "a non-residential use".</p>	<p>Noted will remain non residential</p>
Definitions	Land, Land Unit and Land Use	<p>These definitions originate from the time before the implementation of LUPA, which specifically defines these terms and it is suggested that these terms be rephrased to align with LUPA.</p>	<p>Noted</p>
Definitions	LUPO	<p>Since LUPO has been repealed there appears to be little use for retaining this definition.</p>	<p>It is not mentioned in the definitions</p>
Definitions	Lawful non-conforming use	<p>The term "non-conforming use" as defined in the main body of the planning by-law by implication is not illegal. Since this zoning scheme predates the planning by-law, but is now part of it, terms and definitions should be the same and used consistently. Hence the term "lawful" could be removed, but the rest of the definition should be aligned with that</p>	<p>Noted, and amended</p>

		in the planning by-law or refer to it as having the same meaning.	
Definitions	Less Formal Township Establishment Act	There appears to be little use in retaining this definition as it does not seem to be used in the main body of the planning by-law or Schedule 2 thereof.	It is not mentioned in the definitions
Definitions	Occasional use	Consider amending the definition by stating an occasional use means a temporary departure granted by the Municipality for a specific occasion or event including..... It will clarify which type of land use application it is.	It is not a temporary departure, the Policy on events deals with events.
Definitions	Overlay zone	These terms are not defined the same in the planning by-law and the schedule 2 zoning scheme and since these are now one by-law, these definitions should be aligned, or referred to as having the same meaning as...	It reads precisely the same on both By-Law and Land Use Scheme definitions
Definitions	Owners' association	These terms are not defined the same in the planning by-law and the schedule 2 zoning scheme and since these are now one by-law, these definitions should be aligned, or referred to as having the same meaning as... (besides that the term <i>planning law referred to has outdated content.</i> )	The By-law refers to stipulations guiding the owners Association regulatory framework, whilst the scheme gives an explanation on the meaning
Definitions	Primary use and reference to Council	See comment on definition of municipality in section 1 of the planning by-law. This comment applies to all such cases and needs to be revisited otherwise this by-law will contain ambiguous provisions that are not aligned with national legislative prescripts.	Land Use scheme definition of primary use does not include Council.
Definitions	Register	This definition pre-dates LUPA which in section 24(c) describes a register in relation to a zoning scheme as "the keeping of a register to record departures, non-conforming land uses contemplated in section 29(1)(c)(i) and consent uses" and should be rephrased to at least make provision for those aspects.	Add lawful non-conforming uses to definition

Definitions	Registered surveyor	Reference to the Professional and Technical Surveyors Act, 1984 is outdated and this term needs to be adjusted to make provision for current legislation regulating the land surveyor profession. It may have been superseded by the Geomatics Profession Act, 2013.	Noted
Definitions	Renewal energy structures	The definition initially states that said structures be erected for commercial use and then states towards the end of the definition that energy may be generated on a private or commercial basis?	Noted. Remove first commercial in definition
Definitions	Servitude	It is unclear why reference is made to "unregistered". LUPA defines it as a servitude registered against a title deed of land, and it should be aligned as such.	The unregistered refers to lease agreements, which falls under the category of servitudes, but is not registered against the Title Deeds
Definitions	Single family	May be criticized as having a very narrow meaning. Consider the departmental definition to include a number of unrelated persons.	Will amend to read as follows; "single family" (a) one person maintaining an independent household; or (b) two or more persons related by blood, marriage or civil union maintaining a common household; or (c) not more than five unrelated persons without dependants maintaining a common household; but does not exclude up to six foster children, or dependants under legal guardianship as part of a household;
Definitions	Townships Ordinance	There appears to be little use in retaining this definition as it is not used in the main body of the planning by-law or Schedule 2 thereof.	Removed
Definitions	Urban agriculture	Allow the keeping of animals within urban areas. Section 16.9. however, restricts the keeping of animals to pets within an urban edge.	It makes reference to demarcated areas
Definitions	Utilisation	In terms of LUPA utilisation is defined as, "in relation to land, means the use of land for a purpose or the improvement of land, whether lawful or not." and this scheme definition	No, there is no reason that it should be aligned. Utilisation of land in terms of the scheme can only be lawful and if not, be addressed.

Definitions	Zoning, zoning map and zoning scheme	should be aligned herewith. As these terms are defined in LUPA, the definitions in the scheme should be aligned herewith.	It is amended to align with the Land Use Scheme
1.1.1	This document forms part of the <u>land use [zoning]</u> scheme of the Overstrand Municipality, and applies to the area of jurisdiction of the Overstrand Municipality with effect from the date <u>[that notice of adoption] of [is] publication [published]</u> in the Provincial Gazette	Previously the Overstrand Zoning Scheme was a stand-alone document, now it is part of the planning by-law and it is therefore suggested to be reworded to <i>This document forms part of the land use [zoning] scheme of the Overstrand Municipality By-law on Municipal Land Use Planning, 2015.....</i>	Noted and rectified
1.1.3	Document & maps	This document is now a "Schedule" of the planning by-law? – See comment on Maps above.	Removed. Addressed in 1.2.2
2.1.1(a)(iii)	Submission of applications	This section regulates the same as section 39(1)(k) & (l) except that in the latter it may be required, but in the former it states it must be submitted. Is it also not onerous on applicants in areas where it is known that there are no restrictive conditions?	Not correct, both make provision, if required.
Numbering	2.2, 2.3 & 2.4 and onwards	Since 2.2 and 2.3 are to be omitted it results in a downstream renumbering, it is noticed that such new number have been recognised but not underlined as per the protocol used for this by-law amendment...	Noted
2.2.1	Advertising	The by-law provides publication of notices and serving of notices and additional methods of public notice – should this reference to advertisement not also refer to notification of applications?	Add notification
2.4.1	Error on zoning maps	Is this not a duplication of sections 16(2)(m) and 13(5)-(10) of the main by-law itself?	Remove
3.1.6	All property owners, within the urban edge (as indicated	The should be a "y" after SDF? and secondly, there may still be agricultural land within the	Do not agree. It is not stating the obvious; the general public sees approvals as all-encompassing and needs to be reminded that

	<p>in the applicable SDF, are limited to the keeping of household pets as defined. The keeping of household pets is subject to any applicable legislation, By-Law and or policy relating to household pets.</p>	<p>urban edge – will it then not unnecessarily be restrictive? What is the purpose in a by-law to state that other laws apply. Stating the obvious?</p>	<p>there may be other legislation applicable. The restriction on household pets within the Urban Edge is to limit the keeping of Alpacas, miniature horses and pigs. Any agricultural zoned erf within the urban edge will be dealt with on merit.</p>
3.1.7	<p>Rules v/s development parameters</p>	<p>Here development rules were replaced by development parameters, but it appears as if this was not consistently amended accordingly in the Schedule?</p>	<p>Noted development “rules” changed to development “parameters”</p>
3.2.3	<p>Title conditions “... and or any condition of title...”</p>	<p>See comment in 83(4) of the main planning by-law.</p>	<p>Include statutory</p>
4.1.1(a)	<p><u>In this land use scheme, in the register, in any note on the zoning map and in any condition imposed in terms of this land use scheme, the words and expressions shall have the meanings assigned to them in accordance with the definitions contained in these land use scheme regulations, except where a contrary interpretation is clear from the context. Interpretation of words not defined in this chapter will have the meanings assigned to them in the “New Shorter Oxford English Dictionary” published by Oxford University Press, except where a contrary interpretation is clear from the context.</u></p>	<ul style="list-style-type: none"> <li>• Conditions are imposed in terms of section 67 of the main by-law and not in terms of the scheme?</li> <li>• Land use scheme regulations? Cannot be regulations – suggest to refer to “this schedule”</li> <li>• “this chapter”? Definitions in the scheme are not in this chapter, suggest “this schedule”</li> </ul>	<p>Noted and amended to Schedule</p>
4.1.3(d)	<p>Reference to “professional</p>	<p>In other instances, “registered surveyor” was</p>	<p>Noted, amendment made</p>

	land surveyor"	used, but there are also references to a suitably qualified surveyor?	Transmission apparatus is all inclusive
5.1.1(b)	<p><b>Consent uses are:</b>            additional dwelling units,            agricultural industry, animal care centre, aquaculture, <u>day care centre</u>, [crèche], farm shop / stall, fertilizer plant, guest house, hotel, institution, intensive animal farming, intensive horticulture, <u>lodge</u>, mining, place of assembly, place of entertainment, place of instruction, plant nursery, riding stables, [rooftop base,] service trade, tourist accommodation, tourist facilities, transmission <u>apparatus</u> [tower], utility services, wellness centre, 4 x 4 trail.</p>	<ul style="list-style-type: none"> <li>It is unclear why transmission apparatus is used instead of tower as the former is not defined, but the latter is? It appears as if the definition of transmission towers may have to be renamed?</li> </ul>	
5.1.6	Guest rooms	This is not a consent use in 5.1.1.(b)? and guest house does not appear in 16.10 as in 16.10.22 it states that it is only applicable in Residential Zone 1. Where does it leave Agricultural zone then?	The restrictions of a guest house in residential zone 1 are not applicable in an Agricultural Zone. Guest room is not a consent use in Residential zone 1
5.1.8	Day care centre	This is not a consent use in 5.1.1.(b) it has been replaced by crèche?	Refer to the definitions
5.2.1(b)	Development parameters	Some of the comment as for 5.1.1.(b) and 5.1.6 & 8 applies	Read heading and parameters
5.3.2.	Relaxing of 800m <sup>2</sup>	It is assumed that this "relaxation" will be an approval in terms of the scheme. The bylaw makes provision for a relaxation outside of a departure application, i.e. permission in terms of the scheme. This is a good example why these applications should be separated out	No it will not be separated. The impact must still be evaluated through a land use application.

		<p>from land development applications which have to go to the AO or MPT and are subject to appeals. This could be dealt with on very short notice if handled correctly. As the planning by-law and land use scheme currently stands, this type of application still needs to be considered by the MPT/AO. Whilst the municipality has not suggested amendments to the by-law in so far as decision making is concerned. <i>Please refer back to the comment made under section 69 (&amp;70) in the main planning by-law. This comment may be applicable to other similar instances in the zoning scheme, which have not all be mentioned.</i></p>	
5.3.4-8	Uses mentioned	Some of these uses are not primary or consent uses in 5.3.1.	Do not agree, they all are.
6.5.1	Informal trading	It is unclear why informal trading has been deleted from the primary use in the Less Formal Development Zone as this is where such a use will often occur? It is also not a consent use option?	It is catered for in the definition of a house shop as a consent use or on demarcated areas.
6.5.11	<b>General numbering</b>	<p>When getting to this and cross referencing to the existing scheme is was found that this point is 6.5.12 and the amendments don not indicate that the numbering is amended. This may apply in various other instances where land use zones are discussed – it has not been checked further but the municipality is advised to ensure that the numbering is correct otherwise interpretational issues may occur.</p> <p>Also - The proposal to number headings is also not consistent with the way we make regulations, laws or by-laws. Look at SPLUMA,</p>	<p>The cross referencing is correct.</p> <p>The headings will be amended, however it still is much easier to reference and user friendly.</p>

6.5.11	Building plans	LUPA or other regulations. Headings are in fact not officially part of the law and should not be numbered. It is understood that building plans "may" be approved, but there is no indication if in this zone building plans are a requirement or that it is not a requirement?	It goes without saying that a structure if not classified as a shelter needs a building plan.
7.2.2.(e)(iv)	More restrictive building lines	It is unclear at what stage the municipality will impose such a more restrictive building line and where will it actually be reflected in the zoning scheme? It is assumed that it will be at building plan stage, but will it then be indicated in the register as well? This will be a departure initiated by the municipality to which a right of appeal may be created.	This will be dealt on merit basis and special circumstances. It is not agreed that a departure is required, since it will be discussed with the applicant and if a condition, the applicant has a right to appeal.
8.1.5-7	Environmental considerations	Whilst concern for the environment is fully supported and although it appears in the original scheme (and this may be applicable in other zones as well) there are some concerns about this:- 1. At what stage will be municipality require compliance with these sections as it may possibly only be known at building plan stage especially 8.1.5. 2. Who is to approve of such an environmental study or management plan?	The environmental considerations are not part of NEMA and a Municipal requirement, which will be dealt with by the Overstrand Environmental Section.
8.2.1	Industrial zone 2	This zone provides noxious trade as a primary right. That being the case and if somebody owns such a site and wants to develop it, only a building plan needs to be submitted and approved of. Therefore, when and how will 8.2.5-7 become applicable/enforced or imposed? Some revisit will be necessary as the outcome may be that a person cannot exercise his/her primary right.	The Overstrand does not have an Industrial Zone 2 at present; however provision is made for future references. The environmental considerations are already implemented in terms of air and noise pollution

<p>9.1.2</p>	<p>The following development rules apply in this zone, provided that the development rules for a dwelling house</p>	<p>The reference to rules is unclear – should these not be parameters as no “rules” could be found in SR 1 and in most instances “rules” have been replaced with parameters?</p>	<p>Noted development “rules” changed to development “parameters”</p>
<p>10.1.1</p>	<p>Additional use</p>	<p>See 9.1.1(c)</p>	
<p>12.1.1</p>	<p>Open Space Zone 1</p>	<p>It is unclear why a dwelling unit is a consent use in this zone as it may lead to permanent habitation in the zone which may not be desirable especially since there appears to be no restriction on ownership – it may be abused for exclusive rural residential occupation.</p>	<p>It is found desirable if the manager of the Nature Reserve needs to reside on the property e.g. reserve manager.</p>
<p>12.3</p>	<p>Private Open Space</p>	<p>Where in this schedule or by-law is it explained what private open space entails? Guidance may be taken from the department’s model zoning scheme by-law SCHEDULE 2, LAND USE DESCRIPTIONS AND DEVELOPMENT PARAMETERS</p>	<p>The definition defines private open space and the development parameters will be determined in view of the environmental considerations, that will determined the possible use of the private open space.</p>
<p>15.1+</p>	<p>Adoption or amendment of overlay zones</p>	<p>This section provides for “prepare, approve, amend or repeal overlay zones for specific areas” which is fine, but the distinction between creating a new overlay on the schedule (scheme) as opposed to making an existing overlay zone application to an area which was not previously subject to an overlay zone, is not apparent.</p> <ul style="list-style-type: none"> <li>To create a totally new overlay zone, i.e. an addition to the by-law schedule (scheme) equates to amending the existing by-law and consequently the provisions of section 12 and 13 of the MSA are applicable and that process has to be followed. It would also be applicable if the existing overlay zone itself is to be amended. All decisions in</li> </ul>	<p>The creation of the Land Use Management Scheme will be approved by Council. The Overlays will be dealt as a departure and thus relates to the AO and MPT.</p>

	<p>this regard will be municipal Council decisions, as per the MSA and as per section 28(4) of SPLUMA.</p> <ul style="list-style-type: none"> <li>• However, if the municipality has an existing overlay zone in its zoning scheme by-law and it wants this overlay zone to become applicable to a geographical area (in addition to its base zoning) which was not previously subject to this overlay zone, the process to be followed would be a rezoning, which decision is an MPT decision, if it is on an ad-hoc basis.</li> <li>• As a result, the wording of 15.1.2 may have to be revisited.</li> </ul>		
16.1.1	<p>(a)(x) and (xii) could the type of uses which may prompt the municipality to impose a stricter building line, e.g. 7.2.2.(e)(iv)?</p>	<p>General encroachments</p>	
Numbering	<p>Encroachment of street building line may have to be renumbered to (d).</p>	<p>Encroachment of side and rear building lines permitted and Encroachment of street building line both appear to be numbered (c)?</p>	
16.1.1(c)	<p>It is recommended that a re-phrase be considered to the effect that when considering an application for encroachment of the street building the municipality will also take the following principles into account: <i>(The same may apply to the wording of 16.1.2, as these will be in addition to the considerations in section 66 of the main by-law.)</i></p>	<p><u>Upon an application, the following added general principles will be considered by the Municipality</u></p>	<p>Reference incorrect, it is (d). Be amended as follows: Upon an application the Municipality will also take the following principles into account.....</p>
16.9.4	<p>This appears to be a duplication of section 3.1.6 but also at odds with it as it excludes agricultural zoned properties, which 3.1.6 does not?</p>	<p><u>The keeping of animals is restricted to household pets by property owners within the urban edge as indicated in the applicable SDF (excluding agricultural zoned</u></p>	<p>Noted , will be rectified.</p>

<p>16.10.1(d)</p>	<p>properties). No additional dwelling units may be erected within 100 m of the high water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of the municipality and</p>	<p>In terms of section 16(1)(d) Integrated Coastal Management Act, 2004 the coastal protection zone is any land unit situated wholly or partially within one kilometre of the high-water mark which, when this Act came into force was zoned for agricultural or undetermined use. In the WCG Guidelines for the development of rural areas this is recognised, and the policy position is that no additional dwelling units on farm land should be allowed within 1 km from the high-water mark. This has also been recognised in the department's model zoning scheme by-law where no additional dwelling units on farm land is permissible within 1 km from the high-water mark. The policy statement provides that "Land development proposals must avoid negative impacts on coastal resources and be responsive towards coastal risk zones. Therefore, no additional dwelling units or any other type of accommodation, except the homestead/owner's dwelling should be permitted within 1km from the high-water mark of the sea or tidal river. Due consideration must be given of any coastal management/set-back line and zone risks." The coastline of the WC still looks the way it is because of these kinds of restrictions, otherwise many more houses would have been developed all along the coast line. The coastline is a provincial asset and should be protected as such and as a result zoning</p>	<p>Please note that some portions of land are so small that the 1km is falls on another portion of land. The coastal management line determined for the Overstrand will form part and parcel of the Scheme and is dealt with in the Overlay Zones.  There is no reason why an additional dwelling only be 60sq, the Western Cape Rural Guideline proposes 175sq. The zoning scheme does not promote development along the coastline and the remark is uncalled for if taking into consideration that Municipalities did not allow developments in CBA, dune movement areas etc. Such as Betty's Bay. The parameters clearly indicate the units be located on the same cadastral area, thus implying no subdivision.  The compromise will be to add: no sectional title and alienation of units.</p>
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		<p>scheme provisions that would allow (almost promote) development of such units just above the 100 m line above the high-water mark, should be strongly discouraged. The municipality is urged to amend this provision to provide for:-</p> <ul style="list-style-type: none"> <li>• an additional unit may not be erected within 1 km of the high-water mark of the sea or a tidal river except where a proclaimed township is situated between the additional dwelling unit and the sea or tidal river;</li> <li>• one additional dwelling unit may be erected within the 1km high water mark of the sea or a tidal river, provided that the additional dwelling unit is attached to the main house and does not exceed a floor area of 60m<sup>2</sup>; and</li> <li>• no alienation of additional dwelling units will be permitted whether by cadastral subdivision or sectional title.</li> </ul>	
16.10.5	<p>Heading <b><u>Self-catering accommodation</u></b></p>	<p>The term used in the definition part of the scheme is “self-catering” – it is assumed that this is same, but it is suggested that the defined term be rephrased to “self-catering accommodation” for the purpose of consistency.</p>	<p>Noted, definition to change and the wording to be corrected throughout the schedule</p>
16.10.5	<p>The municipality may <u>impose additional conditions in order to minimise any potential public nuisance.</u></p>	<p>This is when a land use application is made, but at what stage will such potential additional conditions be imposed where there maybe existing rights where are primary rights?</p>	<p>As part of the process and or building plan process.</p>
16.10.7	<p>The following provisions <u>shall apply where a day-care centre is operated on a Residential Zone 1 property</u></p>	<ul style="list-style-type: none"> <li>• This is specifically the case where it is on Residential 1 zoned properties, but what are the conditions where it is a primary right under another use zone? This does</li> </ul>	<p>It is only applicable to Residential 1, in other zones the normal parameters are applicable. Residential 1 is to limit the impact on the residents, traffic, parking and character of a residential township.</p>

		<p>not appear to be regulated and where it is not a consent use, where and how will conditions then be imposed?</p> <ul style="list-style-type: none"> <li>Under Residential 1 is it a primary right – in this respect how can/will provisions (e) <u>the land use rights will not be transferable</u> be practically imposed as no rights will be granted on application?</li> </ul>	<p>It is not transferable in order to ensure that the property is not being market as a commercial property and any new owner is enlightened with regard to the parameters of a day care centre in a residential area.</p>
16.10.8	Home occupation	<p>This is regulated under 16.10.8 with subsections (a)-(f) but then there is an unnumbered heading General development parameter for home occupation, again with subsections (a) – (o) There are under point 16.10.8 two sets of (a)-(f) with different provisions. It is consequently suggested that the sections heading General development parameters be given a number e.g. 16.10.8.(1). The same would apply for additional rules (should perhaps be parameters?) for a home occupation in Residential Zones 2 and 3.</p> <p>It is also suggested that as for guest rooms, a condition be inserted that <i>“No advertising sign shall be displayed without the written approval of the municipality other than a single un-illuminated sign or notice affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand Signage By-Law.”</i> as this is often a problem where home occupations are exercised, especially where it is an estate agency.</p>	<p>Noted and corrected</p>
16.10.9	Flow of numbering	<p>As there is no (b) there is little use in having (a) – further the subsections are (iii) and (iv), but there appears to be no (i) and (ii)?</p>	<p>Noted, this was done to only indicate where changes would occur</p>
16.10.10	Total floor area of second dwelling	<p>It is unclear if this includes a veranda, open stoep, pergola, carport and garage associated</p>	<p>Numbering reference incorrect should be 16.10.20. It is not included; please refer to definition of a floor area.</p>

			with the second dwelling units. If so consideration can be given to indicate it as such.	
16.10.11	Area of house shop - <u>house shop shall not exceed 30.0m<sup>2</sup> or 25% of the floor area of all buildings on the land unit</u>	Caretaker's dwelling	What would the situation be if 25% is more than 30m <sup>2</sup> ? There is no provision for instance whichever is the greatest or whichever is the smallest.	Corrected
16.10.17			Is this only allowed or provided for in the Industrial zone?	To be included on Business zoning. Correct dwelling to accommodation
16.10.21(b)	<u>Telecommunication Apparatus Infrastructure Plan (indicating but not limited to the following, namely dimensioned plans showing detail of TA, graphic illustration of the proposed facility, elevation details, proposed materials and colours, screening or fencing)</u>		<ul style="list-style-type: none"> <li>Here there is reference to "telecommunication apparatus" – is it to be assumed that it is the same as "transmission"</li> <li>Does this include the tower structures as well?</li> <li>Note that the by-law amendment does not appear to have amended the detail of the definition of "transmission tower" to transmission apparatus.</li> </ul>	Referencing incorrect: 16.10.23 Corrected The By Law does not reflect a definition of transmission tower.
17.1.2	<u>Municipality</u>		Spelling	Corrected
17.4.5	<u>Any deviation from the requirements may only be allowed with approval of the engineering department.</u>		What type of application will this be – a departure or amendment of conditions of approval – if so then the MPT/AO should be the decision-maker.	No, as it may be used according to its primary use
18.1.1	<u>If a property that has been granted a consent use right or temporary land use departure is subsequently subdivided, the consent use right or temporary land use departure shall apply to only one of the resulting subdivisions, unless the [Council] municipality states otherwise by means of a condition of the</u>		It is assumed that the municipality will – in consultation with the applicant for the subdivision, determine to which part of the subdivision the consent use right or temporary departure will be applicable and include this in the letter of approval. Technically the original letter of approval should then also be amended?	Why? The subdivision will allocate an existing right and be reflecting as such, thus trumping the precious approval.

<p>??</p>	<p>subdivision.  <b>Subdivision of Residential properties</b>  <u>Subdivision in an area will be generally allowed if it is consistent with the planning policies and the average size and density of surrounding residential properties will also be considered.</u></p>	<ul style="list-style-type: none"> <li>This section is not numbered, and it is unclear to which part of the scheme it relates.</li> <li>The scheme's rules for interpretation in 4.1.1.(b) provides that "<u>Headings contained in this land use scheme shall be used for reference purposes but shall not be construed to govern, limit or modify the meaning or intent of any provision of the land use scheme.</u>" Therefore, the content does not indicate for which zoning this provision will be applicable and should thus be re-phrased.</li> <li>It is also suggested that the re-phrasing should include that the relevant considerations will be in addition to those in 66 of the main planning by-law.</li> </ul>	<p>Corrected, will be residential areas. It is not necessary re phrasing, since it goes without saying.</p>
<p><b>PROVINCIAL COMMENT – PART C - OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT ENVIRONMENTAL MANAGEMENT OVERLAY ZONE REGULATIONS</b></p>			
<p>Section</p>	<p>Much of what is put forward in the Environmental Management Overlay Zone should not be contained in an overlay zone, bearing in mind that an overlay zone should prescribe specific zoning parameters, which can be the subject of a departure application.                  The provisions as proposed rather constitute policy that informs decision-making for planning applications and building plan applications.                  Provision should be made in</p>	<p><b>Response on comment</b></p>	<p>Do not agree. The Overlays are a useful tool to direct planning and land use controls at specific problems or issues. The Environmental Overlay has been carefully drafted to ensure policy and planning goals of which one is to start integrating environmental issues with planning legislation to ensure coordinated development.</p> <p>The Overlay public participation is compliant with the MSA, SPLUMA, LUPA and The By-Law participation and will serve before the Council for adoption.</p>

	the scheme to include the following: <i>The Municipality may also, after following due process, adopt guidelines for an Environmental Management Overlay Zone which is not part of the scheme and which constitutes policy that informs decision-making for planning applications and building plan applications.</i>		
Heading	Regulations	These cannot be regulations, but only provisions of a schedule of the by-law or overlay zone	It can be regulations, please refer to the definition of a regulation and provision
17.1.4	NEM:AQA, 2005 (Act 39 of 2004)	NEM:AQA, 2004 (Act 39 of 2004)	Rectified
17.16	NEM:AQA, 2005 (Act 39 of 2004)	NEM:AQA, 2004 (Act 39 of 2004)	Rectified
17(14)	Municipal coastal zone	What is this zone? Is it the Coastal Protection Zone in terms of ICMA?	Municipal coastal zone must change to Coastal protection zone, incorrect reference should be 17.13
17(22)	"permissible activity" means an activity listed in Schedule B to these regulations that is permissible within a particular EMOZ only with the Council's written consent	It is submitted that this permission is in fact a permission in terms of the scheme, which when read with the decision-making structures cannot be the Council, but only the MPT/AO or AA if there was an appeal.	Document to change throughout to MPT/AO
20.7.6.2	Municipal Zoning Scheme	Land Use Scheme	Noted, and corrected
20.7.6.2	Designate as Public Places under the municipal zoning scheme	Does the new land use scheme make provision for Public Place?	Yes in terms of the definition, should read public open space
22.5.2.1	A list of activities that are prohibited or that require written Council consent [permissible only with the	See comment above on 17(22)	Rectify to MPT/AO

	<p><b>consent of the Council] are set out in Schedules A and B.</b></p>	<p>22.5.2.2 In deserving cases, where there is no NEMA requirement for an Environmental Impact Assessment ("EIA") process and Environmental Management Plan ("EMP"), the Municipality may [impose the need for an EIA and/or EMP in terms of the duties of care under section 28 of NEMA and/or the NWA request additional information and/or an EMP for approval by the Municipality prior to granting its written consent and/or approving building plans or any development.</p>	<ul style="list-style-type: none"> <li>• See comment on decision making authority above.</li> <li>• It is questionable if additional information or an EMP can be requested prior to the approval of building plans. At what stage will it be required? What is an applicant's recourse if it is not approved? What appeal will be applicable?</li> <li>• In the first part of the paragraph it is stated "where there is no requirement for an EMP" yet in the last part of the paragraph it is stated that an EMP may be required?</li> </ul>	<p>It stipulates that the Municipality may require such a study even though not necessary in terms of listed activities, but in terms of 28 of NEMA, Duty of Care.</p> <p>The request of an EMP will be dependent on the sensitivity of the site and environmental impacts</p>
25	Regulations		<p>It is suggested that this be replaced by provisions of this schedule/overlay zone etc.</p>	<p>Regulations is correct in terms of defining regulations versus provisions</p> <p>Will be rectified throughout the document.</p>
26.1	<p>Any person who is dissatisfied by a decision taken by the Council or by delegated authority in terms of these Regulations may appeal in writing to the municipal appeal authority in accordance with the Overstrand Municipality By-Law on Municipal Planning, [2013] 2015.</p>		<p>Appeal – all land use decisions are to be taken by the MPT and AO and not by the Council or a person with delegations. See more detailed response on decision-making elsewhere in this set of comments.</p> <p><i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto, e.g. 29.1)</i></p>	
<p><b>PROVINCIAL COMMENT – PART D - OVERSTRAND MUNICIPALITY: AMENDMENTS TO DRAFT HERITAGE PROTECTION OVERLAY ZONE REGULATIONS</b></p>				
Section	<p><b>Content</b></p>			
General	<p>Much of what is put forward in the Heritage Protection</p>		<p>Response on comment</p>	<p>Same comment as above relating to the comment.</p>

	<p>Overlay Zone should perhaps not be contained in an overlay zone, bearing in mind that an overlay zone should prescribe specific zoning parameters, which can be the subject of a departure application.</p> <p>The provisions as proposed rather constitute policy that informs decision-making for planning applications and building plan applications. Provision should be made in the scheme to include the following:</p> <p><i>The Municipality may also, after following due process, adopt guidelines for a particular Heritage Protection Overlay Zone which is not part of the scheme and which constitutes policy that informs decision-making for planning applications and building plan applications.</i></p>		
Heading	Regulations	These cannot be regulations, but only provisions of a schedule of the by-law or overlay zone	Same
1.9	Municipality's written consent	See comment in 1. "definition of municipality" on page 1 of this set of comments.	Will be rectified
1.17	Definition of municipality	See comment in 1. "definition of municipality" on page 1 of this set of comments.	same
5	Regulations	See comment in heading	Same as Heading
7	Registered conservation body	Should provide clarity with whom said conservation body should be registered with.	Registered with the Overstrand Municipality and or Cape Nature
7	Specifically states that ANY	The document sets out in each subsequent	The section does not have an "if applicable " .

	<p>planning, building line or related application pertaining to a property within a HOZ MUST be referred to .... for comment</p>	<p>HOZ that ALL land use planning and building plan applications be submitted for comment IF APPLICABLE. This statement contradicts with "any" and "all". Where is the applicability set out?</p>	<p>Municipality and / or Cape Nature</p>
<p>Throughout</p>	<p>And/or registered conservation body</p>	<p>This is used throughout the document in respect of requests for comment. It would be more prudent and not open to discretion to decide on either 'and' or 'or'.</p>	<p>Why make the assumption, it does not say anything about importance.</p>
<p>8.2.1 – 8.2.3</p>	<p>First, second and third purpose</p>	<p>Why is it necessary to order the purposes? It presupposes an order of importance or preference.</p>	<p>? There is no mention of regulations</p>
<p>8.2..6.2</p>	<p>Regulation of applications</p>	<p>This appears to be a duplication of section 7.?</p>	<p>It stipulates must, therefore no confusion, this is to prevent pockets that are scattered.</p>
<p>8.2..6.5</p>	<p>New developments must be associated and linked with existing settlements, rather than being built on isolated sites on undeveloped land.</p>	<p>This appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if a new development is not linked or associated in case where there are merits – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)</p>	<p>Needs to depart.</p>
<p>8.2..6.7</p>	<p>Building platforms on sloping sites must be kept to a minimum. Buildings on high stilts in excess of 2.4 m as measured from the base level as defined in the [Zoning Scheme] Land Use Scheme must be avoided. New levels must be designed to fit into the surrounding land form. Mitigation measures must be identified to limit visual impacts.</p>	<p>This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if a new development exceeds the 2,4 m stilts height in case where there are merits – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)</p>	<p>Needs to depart.</p>

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8.2..7.1	No departure from the 30m building line applicable to Agricultural Zones will be considered without the comment from the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee, and/or a registered conservation body [or a registered conservation body]. Mitigation measures must be identified for any departure from this provision.	Is it correct to assumed that this will only be applicable to agricultural land situated within this overlay zone or will it also be applicable for other agricultural land not within this overlay zone – if so then then the section should be re-positioned.	Correct
9.2, 10.2, 11.2, 12.2. etc.	Purpose: To ensure that any land use application ...	Should this item not rather be listed under the purpose heading?	Please refer to the headings, Different zones and thus purpose
9.2..6.1	" All planning.."	Suggest using "land use applications"	Noted, revision made
9.2.10.3	Coastline ocean	Use either coastline or ocean	Should be 9.2..11.3 Remove ocean
9.2..11.1	Similarly, dormers must not constitute more than one third of the roof space facing onto the coastline in Greenfield or Brownfield developments.	Greenfield or Brownfield developments are not defined terms and may lead to interpretational challenges which should be avoided. It is also submitted that these two terms generally encompass all types of the development and as a result there is little use in mentioning it – it could be re-placed with "in any development in ....." Remove the word 'similarly' given that preceding sentence has been deleted.	Remove "similar" and replace "green and brownfield developments" with "new" and "infill"
10.2.3.2	Town Planning Scheme	To be replaced by OMLUS	Noted, revision made
10.2..3.1	" All planning.."	Suggest using "land use applications"	Noted, revision made
10.2..3.2	No land uses, or deviations from the Town Planning Scheme, which threaten the ecological integrity of the vleis and associated seepage system will be considered without the	Suggest a rephrase to be aligned with current terminology (and consistency) " <u>No land use application</u> <del>No land uses, or deviations from the Town Planning Scheme, which threaten the ecological integrity of the</del>	Noted, revision made

	comment from the Overstrand Environmental Services			
10.2..3.3	The creation of access ways to the water's edge, across public land and through the reed systems will not be permitted without the comment from the Overstrand Environmental Services.	What type of application will such an access way trigger and who will be the decision maker be in such cases?	The creation of a right of way servitude is exempt in terms of the By-law	
10.2.4.4	facades	Façades	Revision made	
10.2.4.4	Continues	continuous	Revision made	
10.2..4.3	The use of materials and colours, especially on roofs, must be earth-toned or [land] blend into the natural landscape rather than contrast with it.	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if different colours are used? – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (If the municipality wants to provide for it.)	It gives an option depending on the locality	
10.2..4.4 & 11.5..3.1	A wall-dominated recessive architectural treatment must be adopted. Any [large] continues glazed surface[s] larger than 25% of the facades facing onto the public zone, [in excess of 1.5m <sup>2</sup> ], must be recessed [placed] at least 0.5m from the [front] façade of the building.	It is unclear that the term "A wall-dominated recessive architectural treatment must be adopted" means and who must adopt it.  <i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto.)</i>	The building plan needs to reflect this requirement, which is drafted by an Architect	
11.3..1	" All planning.."	Suggest using "land use applications"	Revision made	
11.3.2	Permitted in terms of the Land Use Scheme	Would that imply primary and consent uses?	Yes	
11.3..2	Land uses which are not of an agricultural or rural nature (apart from the [residential])	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What	Depart from the HOZ	

	land uses permitted in terms of the Land Use Scheme (zoning scheme) will be discouraged in the smallholding area.	would the situation be if uses not of an agricultural or rural nature are applied for? how will it be discouraged – will it then require a departure? it is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (if the municipality wants to provide for it.)	
11.5.3.1	Continues	continuous	Revision made
11.5.4	The use of materials and colours, especially on roofs, must be earth-toned [and] or blend into the landscape rather than contrast with it. [Bright colours and reflecting materials will not be permitted.]	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if different colours are used? – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (if the municipality wants to provide for it.)	It is a regulation and not a provision. This has been amended and there is no mention of bright colours.
11.6.1	High security fencing	Delete the word high, as a description of height follows.	Revision made however the high (2.1m) needs to be stipulated since owners erect additional security measures exceeding 2.1m, which does not need a building plan
12.3.1	" All planning.."	Suggest using "land use applications" <i>(This comment is applicable to all subsequent section which contain this provision or provisions similar thereto.)</i>	Revision made
12.7.1	The use of materials and colours, especially on roofs, must blend into the landscape rather than contrast with it. [Bright colours and reflecting materials will not be permitted.]	This also appears to be more of a policy statement than a provision of an overlay zone provision either enabling or restricting. What would the situation be if different colours are used? – will it then require a departure? It is not worded in a manner that it is firm prohibition possibly with exceptions for a departure? (if the municipality wants to provide for it.) <i>(This comment is applicable to all subsequent</i>	Regulation: The regulation does not read as such, the previous version did. Thus not applicable.

			<i>section which contain this provision or provisions similar thereto.)</i>	
13.2	Purpose: To ensure that any land use application ...	Should this item not rather be listed under 13.2?	It is listed as 13.2	
13.6.2.1	Continues	continuous	Revision made	
17.11.2		Why is the comment from the Heritage and Aesthetics Committee or registered conservation body required if the removal of trees is specifically prohibited?	In various suburbs there are trees which significantly contribute to the character of the area, should these trees be removed then it will influence the scenic and characteristics of the suburb.	
18.4.2	... exceed the prescribed maximum height from base level..	Amend to read" exceed the prescribed maximum height as measured from base level"	Noted, revision not required	
18.4..2	<b>[Buildings within the single residential zone must be restricted to 6.8m.] No [point] portion of any building [on] shall [any portion thereof shall] exceed the prescribed maximum height [prescribed, measured] from base level, save for the general encroachments as prescribed in the applicable land use scheme.</b>	" .....in the applicable land use scheme..." There will be only one land use scheme after adoption of the by-law, so the word applicable appears to be superfluous and could be replaced with land use scheme in schedule 2 of this by-law.	Revision made	
18.5..1	Parking provision standards/ratios may be relaxed when, in the opinion of the [Council]Municipality, the imposition of obligatory parking ratios will have a negative impact on building-street relationships and the continuity of the streetscape where such streetscapes are considered to have heritage significance.	What type of application will this be and who will be the decision maker?	Land use scheme determines a departure application	

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18.5..5	Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics]Committee.	Standard application processes for offsite parking will be required with comment from the Stanford Heritage [and Aesthetics]Committee.?	This has been removed
18.6..1	In the case of an existing building which is being altered/extended, the existing building line shall be maintained, except where the existing condition deviates from the pattern and rhythm of the street, subject to such exceptions that the [Council]Municipality may specially approve.	<ul style="list-style-type: none"> <li>The wording and meaning of this section are not very clear. How and why would be existing building line deviate from "existing conditions and which conditions are these – a previous departure approval or the standard in the schedule 2?</li> <li>Also, what it the existing condition is more restrictive than where the existing building is situated?</li> <li>What application would be required for the "exceptions" which the municipality may approve and who will be the decision maker?</li> <li>At what stage will this be required?</li> </ul>	Stanford is a unique situation that is dealt with on a merit basis, which takes into consideration the environment it is located and this makes provision for it. The Municipality will approve.
18.6..2	In the case of new building construction work to be undertaken on a vacant site or alterations to an existing building, a building line must be prescribed by the [Council]Municipality to protect the building line generally observed in the immediate context.	Whilst the concept is understandable, it is questionable if it is really legally possible to impose a new building line at building plan stage. It is suggested that the option be considered to indicate on such sites that the building line will be the building line generally observed in the immediate context – then it is known what it is/will be and is there no condition to be imposed at a point where conditions cannot really be imposed.	Impossible to identify sites, as it varies throughout the town. The process of determining the appropriate street building line will be done via the Building Plan process.
18.11.1	A clear distinction should be made between boundary walls and fences that are solid (non-permeable) and fencing that is permeable. Although it is implied, it is not specifically		It is clearly stated in the documentation.

	stated as such.		In relation with the Stanford Overlay Zone it can be enforced
18.17.1	The statement that all road works, etc. must be in sympathy with the heritage townscape is subjective and open to interpretation. Not a condition that can be enforced or departed from.		
19.3..1	All land use planning and building plan applications, if [must be] applicable, be submitted to the Overstrand Heritage and Aesthetics Committee, Stanford Heritage Committee and Heritage Western Cape, and/or a registered conservation body for comment.	This provision resort under the heading LANDSCAPES OF VERY HIGH NATURAL, SCENIC AND HERITAGE SIGNIFICANCE HERITAGE PROTECTION OVERLAY ZONE, which is assumed to be applicable to a wide area and it is therefore questioned by such an application must also be submitted to the Stanford Heritage Committee as it may not be in their area?	Read "if applicable"
28	Deemed to be detrimental ...	Statement is subjective and open to interpretation	Correct, will remain

GENERAL COMMENTS FROM INTERESTED AND AFFECTED PARTIES		
WHALE COAST CONSERVATION		
Section	Content	Response on comment
in general	<p><b>Whale Coast Conservation's</b>  <b>Comment on Zoning of</b>  <b>Overstrand's Nature Reserves</b></p> <p>The following persons are in support of the comments and has registered as affected parties:</p> <p>Bella Clayton  Carol van Hoogstraten,  Dr. A Odendal: Birdlife Oerberg  Richard Franck  Ms RE du Plooy  AF Inghels: Onrus Vermont  Neighbourhood Watch  FG van Heerden  Professor C Stillwell  Beth Peterson  Dr. DJ Marais: Hermanus  Botanical Society  BH Wridgway: Hermanus  Ratepayers Association  Rene Tlajaard  Michael Raimondo  Sue Franck  Tom de Roo  Dr PH van Niekerk  Jane van Niekerk  Elspeth LL Ivey  Liza van Copenhagen  Caroline Swarts  HJ Greeff: Onrus Ratepayers  Association</p>	<p>The mentioned Act clearly defines a wilderness area and process, which FNR does at present comply with. A small area of Fernkloof is undeveloped and roadless and has not been designated by the Minister in terms of Section 22 or 26 as a wilderness area.</p> <p>Fernkloof is a proclaimed Nature Reserve and thus needs to be de-proclaimed and re-proclaimed as a wilderness area. The nature Reserve does not comply with the definition of a wilderness area.</p> <p>The scheme does give broad categories of uses and not the detail. Thus, in the case of Fernkloof Nature Reserve falls under the category Nature Reserve, which is further regulated by the Fernkloof Management Plan. The most restrictive regulatory tool is applicable and, in this case, the Fernkloof Management Plan. Therefore, if any use is not mentioned in the Management Plan, the Scheme cannot override the Management Plan.</p>

In general	Whale Coast Conservation's Comment on the Membership of the Overstrand Municipal Planning Tribunal	The Tribunal consists of Municipal employees and one member of DEA&DP. This is however not representative of the community.	Noted. It adheres to the relevant legislation
In general	Whale Coast Conservation's Comment on the Section 51 By-Law on Municipal Land Use Planning	The Section is ambiguous with regard to Section 51(a)(iii)(iv)(v) Section 51(a)(ii) information required does not include e-mail addresses, which is more relevant than facsimile numbers Grammatical errors	It refers to a body or person, thus in this case if people are part of the body of interest, the spokesperson and representative of the body will be subject to the requirements. Noted and will be included
In general	Whale Coast Conservation's Comment in general	Environmental Impact Assessment	Noted
Definitions	Whale Coast Conservation's Comment on Definitions of the Land Use Scheme	Home Occupation is clumsy and needs rewording	This is not an Assessment in terms of NEMA, since there may be uses that does not trigger MEMA listed activities, but in terms of Duty of Care and environmental impacts that need to be addressed.
Definitions	Whale Coast Conservation's Comment on Definitions of the Land Use Scheme	Renewable Energy Structures	Noted will include and
Definitions	Whale Coast Conservation's Comment on Definitions of the Land Use Scheme	Management Plans for NEM:BA Invasive Alien Species. The meaning is unclear	Noted, but will remain
Definitions	Whale Coast Conservation's Comment on Environmental Overlay Zone		Noted: will amend
In general			Reword: Take out "that are required for"

VOGELGAT NATURE RESERVE		
Section	Content	Response on comment
In general	<p><b>Vogelgat Nature Reserve</b> comment on Erven 4771,4833, 249, 243 and 1253 Hermanus Contractual Nature Reserve</p>	<p>The Overstrand Municipality is the Designated Management Authority of the Protected Area and is therefore the institution in which the authority to manage the reserve vests. The FNR is protected under NEM:PAA (2003), Provincial protected areas. A protected area which immediately before this section took effect was reserved or protected in terms of provincial legislation for any purpose for which an area could in terms of this Act be declared as a nature reserve or protected environment, must be regarded to be a nature reserve or protected environment for the purpose of this Act. It gives FNR the highest protection under the provisions of the Act.</p>
STANFORD HERITAGE COMMITTEE (SHC) COMMENT REGARDING THE HPOZ		
Section	Content	Response on comment
18.2.6	<p><b>Stanford Heritage Committee (SHC)</b> -To protect and enhance historical building typologies types. Inappropriate typologies must be avoided in The historical core of Stanford with its significant spatial character must be conserved. The historical present, streetscape and street block character and the role of buildings as landmarks, street liners or corner buildings in contributing to this character must be respected. Appropriate modern interpretations will be considered by the Municipality with comment from Stanford Heritage Committee.</p>	<p>Only " Appropriate modern interpretations will be considered by the Municipality with comment from Stanford Heritage Committee." will be incorporated</p>
18.3.1	<p><b>Stanford Heritage Committee (SHC)</b> -All land use planning and building plan applications, if applicable, within the defined Stanford Area must be submitted to the Stanford Heritage Committee for comment.</p>	<p>The proposed amendment will be incorporated as follows; "within the defined HOPZ Area must"</p>
18.5.1	<p><b>Stanford Heritage Committee (SHC)</b> -Parking provision standards/ratios may be relaxed when, in the opinion of the Municipality, with comment from the Stanford Heritage Committee, the imposition ...</p>	<p>Amendment unnecessary as it is already covered under section 18.5.5</p>
18.6.2	<p><b>Stanford Heritage Committee (SHC)</b> -In the case of new building construction work to be undertaken on a vacant site or portion of a vacant site or alterations to an existing building, a building line must be prescribed by the Municipality to protect the building line generally observed in the immediate context. In such cases the prescribed building line shall not be considered a departure nor subject to advertising or departure fees.</p>	<p>The proposed amendment will be incorporated as follows; " In such cases the prescribed building line shall not be considered."</p>

	Change
18.8.3	<p><b>Stanford Heritage Committee (SHC) -Roof cover materials must be either Victorian-profile corrugated metal sheeting or thatch with cement capping. Lip Clip-lock, and IBR or similar (fibre cement products) roofing is permitted if not visible from the street, or screened by means of a parapet, and only on roofs with a pitch less than 5°. Roof colours must be: Cape Victorian Green, dark green, brick red, black or grey</b></p>
18.9.1	<p><b>Stanford Heritage Committee (SHC) -Doors, windows and openings of residential buildings must not exceed 30% of any facade facing the street and must be vertically proportioned. Recessed facades may exceed the 30% opening subject to approval by the Municipality with comment from the Stanford Heritage Committee.</b></p>
18.10.1.4	<p><b>Stanford Heritage Committee (SHC) -Paint colours must be white or pastel shades. Differentiated colours to emphasize architectural features and on recessed walls set back from the street boundary are permitted. will be submitted to Stanford Heritage Committee for comment. Striped verandah roofs are permitted.</b></p>
18.10.2.5	<p><b>Stanford Heritage Committee (SHC) -IBR, roofs or 'Clip-lock' or similar roof roofing, unless on a pitch less than 5° and not visible from the street, or concealed by a parapet.</b></p>
18.11.1	<p><b>Stanford Heritage Committee (SHC) -The maximum height of boundary walls and fences on street boundaries must be 1.2m measured from ground level. For security reasons, visually permeable fencing not more than 50% solid, with openings of at least 20mm will be permitted up to a height of 1.8m on the street boundary. The solid vertical components must not exceed 20mm in width.</b></p>
18.11.3	<p><b>Stanford Heritage Committee (SHC) -Building plans of walls or fences must be submitted to the Municipality for written permission, with comment from the Stanford Heritage Committee, prior to any construction work.</b></p>
19.13.3	<p><b>Stanford Heritage Committee (SHC) -Water tanks and exterior elements must not be visible from the street, nor protrude above the eaves or ridge line and be in compliance with the Land Use Scheme.</b></p>
	<p>“Residential building” will not be incorporated as this relates to any building/land use in the conservation area. “ Recessed facades may exceed the 30% opening subject to approval by the Municipality with comment from the Stanford Heritage Committee.” Will be incorporated.</p>
	<p>Wording will change as follow; “ Paint colours must be white or pastel shades. Differentiated colours to emphasise architectural features and on recessed walls set back from the street boundary may be permitted provided that comment is obtained from Stanford Heritage Committee. Striped veranda roofs are permitted.”</p>
	<p>Will not be incorporated, this will prohibit the property owners from constructing with accessible materials in an area which various roofing materials have been used.</p>
	<p>Will be incorporated.</p>
	<p>Will be incorporated.</p>
	<p>Will be incorporated.</p>

FRIENDS OF ROOI ELS		
Section	Content	Response on comment
In general regarding Zoning Map	Friends of Rooi Els comment on Erf 321: Zoning Error	Correct, will amend on GIS
In general	Friends of Rooi Els comment on Erf 324	Correct, the subdivision has lapsed and will inform SG, the correct zoning is Rural Zone 2 Conservation Use
In general regarding Land use Scheme	Friends of Rooi Els comment on Land Use Scheme Regulations	This is to cater for the wider and previously disadvantaged groups, especially in housing projects where the erven is less than 150sq and enable the household to erect a dwelling of 40sq, with no possibility of extension. These communities has extended families that needs to be catered for, especially the elderly and children headed households which relies on their families for housing..
In general regarding Land use Scheme	Friends of Rooi Els comment on Land Use Scheme Regulations	Same as above, since it is not possible to extend a house, except going through a departure application. The latter is earning less than R3000-00 a month and then forcing a departure fee, results in illegal structures. Rather make it possible to extend legally and comply with National Building Regulations. In both cases fees has be reduced to make an application possible.
In general regarding Land use Scheme definition	Friends of Rooi Els comment on Land Use Scheme Regulations - Aquaculture under Agricultural Industry.	It should be noted that Province advocates that it should be included as a primary use under Agriculture. However due to the impact, it is included as a consent use. It does not absolve the applicant to comply with various applicable legislation. It should also be noted that the Scheme caters for the whole of the Overstrand and not only Rooi Els. There are areas in the Overstrand such as Hawston and Gansbaai where it is viable and Acceptable. It is a work employment opportunity. Rooi Els and enviros are presently experiencing major poaching activities and aquaculture may have a positive impact in addressing the poaching problem in appropriate locations.

<p>In general regarding Land use Scheme definition</p>	<p><b>Friends of Rooi Els comment on Land Use Scheme Regulations - Agricultural Industry</b></p>	<p>The definition is too wide and includes activities which are not directly related to the produce cultivated on the farm. The so called farm stalls is indirect competition to business activities in the towns itself.</p>	<p>It should be mentioned that the definition of agricultural industry in the scheme relates to the whole of the Overstrand and not only Rooi Els. The Overstrand has portions of land that is too small for traditional agricultural practices to be financially viable. In order to assist the farmer, is to allow practices related to agriculture to ensure a sustainable and viable farming unit. Agriculture and related practices is market driven and flexibility is required to ensure sustainable practices to the benefit of the community, the environment and the owner.</p> <p>Eco tourism is one of the major role players in this regard. Thus boutique breweries, distilleries and farm stalls cater and add value to the sustainability and resilience to the area and property. The suitability and scale will differ from area to area.</p> <p>The other aspect that needs to be taken into consideration is that boutique activities relates to area and scale.</p> <p>The agricultural related activities along scenic routes relate to the passing traffic and not the leisure tourist and thus the target market differ.</p>
<p><b>Estelle Raymond</b></p>			
<p><b>Content</b></p>			
<p>In general regarding Zoning Map</p>	<p>Erf 324 Rooi Els</p>	<p>Subdivision has lapsed</p>	<p>Has been addressed</p>
<p>In general regarding Zoning Map</p>	<p>Erf 321 Rooi Els</p>	<p>Incorrect zoning</p>	<p>same</p>
<p>In general</p>	<p>HPOZ</p>	<p>The overlays do not sufficiently protect the Klein Hangklop and should be addressed, especially relating to HPOZ Plan 4</p>	<p>In order to delineate, cadastral boundaries have been followed effectively address the scenic route adjacent the R44. The enforcing of the HPOZ will not be possible on an imaginary line.</p>
<p>In general</p>	<p>HPOZ</p>	<p>No definition for special place or landmark as depicted on maps</p>	<p>Noted and will be incorporated</p>
<p>In general EMOZ</p>	<p>HPOZ</p>	<p>Various erven to be incorporated in Plan 4 of the HPOZ</p>	<p>Difference should be made between the immediate impact of a scenic route transgressing the area and the Plan A that deals with high significance of the area not captured in Plan 4 that deals</p>

In general regarding EMOZ	EMOZ	EMOZ: Plans 2 and 4: Why is the Hottentots Holland Mountain Catchment Area not included as well as the Rooi Els River	with specifics. Hottentots Holland Mountain Catchment Area – already in in biosphere – same applies for the rooi-els river
<b>Eldie Brink</b>			
<b>Section</b>	<b>Content</b>	<b>Response on comment</b>	
In general	HPOZ and EMOZ Overlays The overlays are hybrids in nature and should not be in contradiction with each other. A new overlay for Rooi Els addressing specific issues, is thus not necessary and can be incorporated in the existing overlays	Noted	
<b>Neville Michaels</b>			
<b>Section</b>	<b>Content</b>	<b>Response on comment</b>	
In general	Missing: Obeying and interfering with an authorised official Penalties It should be included that entails an offence	Noted	
In general	Ignoring a non-compliance notice will be guilty of an offence	Noted	
<b>BREDE GOURITZ CATCHMENT MANAGEMENT AGENCY</b>			
<b>Section</b>	<b>Content</b>	<b>Response on comment</b>	
In general	Any development that may impact must have the necessary approvals/permits That no activity may commence before the necessary documentation is in place	Noted	
<b>ROOI ELS RATE PAYERS ASSOCIATION</b>			
<b>Section</b>	<b>Content</b>	<b>Response on comment</b>	
In general	EMOZ To include the town of Rooi Els in the Protected Area buffer zone or include Rooi Els and the agricultural holdings in the Urban EMOZ	A proclaimed township is not seen as part of a buffer or included in the definition of NEM:PAA describing a protected area neither is a proclaimed town included in the UNESCO Man and the Biosphere Program.  Rooi Els can also not be included in the Urban EMOZ, since the Municipality may not spend any money on private properties in terms of the MFMA	
In general	HPOZ To include the town of Rooi Els into the Heritage Protection Overlay Zone	Plan 4 deals with the specific impact of the scenic route of the R44 and how one can address the immediate impact. General	

In general	Building Plans	A nominee of the Rooi Els community organisation must have privy to the building plans, including that the owner sign that he or she complies with the Title Deed and that owners may convert conservancy tanks to soak away	rules of the High scenic impact deals with the wider impact. A building plan of any property is protected in terms of the Constitution and no member of the public, except with the consent of the owner have access to a building plan. It is not for the Community of Rooi Els to determine Architecture or the interpretation of the National Building regulations. Soakaway is in direct conflict to preserve and protect the underground water table against pollution. This is also in contrast with the Department of Water Affairs and Forestry that moves away from septic tanks and soakaway. A Building plan must comply with the National Building Regulations and any other applicable legislation. The aforementioned will create a situation that all building plans and uses be investigated in Rooi Els and appropriate action be taken if enforced.
In general	Street Reserves	Streets and roads will not be widened and serve as fire breaks	Cannot be enforced, the street reserves are depicted on the General Plan and can and when necessary be widened in consultation with the various internal departments. All residents of Rooi Els bought with full knowledge that there is a street reserve that at any time can be executed.
In general	Single Residential Dwellings	Densification, second dwelling, subdivision etc.	The land use scheme is for the whole of the Overstrand. The aforementioned aspects needs to be addressed on a separate platform and cannot be accommodated in the Scheme.
		Letting of dwellings	same
		Guest Houses Guest Room Consent	same
	Architectural Guidelines	Architectural guidelines proposed for Rooi Els	This aspect is not relevant, since most of Rooi Els has been developed and Architectural guidelines will have no place or meaning
	Street Lighting	No street lights External lightning on residential shall face down wards	The aspect of that no street lights be permitted is not the function the community to dictate whether street lightning will or will not be erected. It is a municipal function; a request from the community can be evaluated. It should also be noted that every owner of Rooi Els has a right to safeguard his property and himself and the request for lights to face downward must be supported by the residents.
	Open Space Zone 1	No consent uses shall be approved	This is a municipal mandate and not for the community of Rooi

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	EIs to prescribe		
Fire Wise	This aspect is not a Municipal Function and cannot be accommodated in the Scheme	Owners to be encouraged to investigate fire wise materials	
Green living	The aforementioned cannot be enforced in terms of the scheme and is an internal matter. The Municipality in terms of the National Building Regulations does request an alternative water heating technology. It is however not the mandate of the Municipality to force owners to make use of green technology.	Grey water treatment for ablutions and gardening, alternative water heating and green technology	
Building lines	It is a Municipal mandate and not for the Rooi EIs community to dictate, the scheme is for the whole of the Overstrand and not only for Rooi EIs and there are other communities in the Overstrand.	No garages shall be allowed on the lateral or rear boundary	
HPOZ	The study included areas of visual and heritage protection as per definition. The core area of Rooi EIs has no significant impact on the aforementioned or a specific architectural style worth conserving	The whole of Rooi EIs township be included in the HPOZ.	
<b>OVERSTRAND OVERSTRAND ENVIRONMENTAL SECTION</b>			
<b>Section</b>		<b>Content</b>	<b>Response on comment</b>
EMOZ: Schedule A		To restrict the informal and or temporary relocation areas in the protected Area Buffer	Noted

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**CIRCULAR WC 22 OF 2019/2020**

**FROM : PROVINCIAL DIRECTOR OF OPERATIONS**  
**TO : EXECUTIVE MAYOR**  
**MUNICIPAL MANAGER**  
**DIRECTORS AND OFFICIALS RESPONSIBLE FOR DEVELOPMENT PLANNING,**  
**SPATIAL PLANNING AND, LAND USE MANAGEMENT**  
**DATE : 21 FEBRUARY 2020**

**SPLUMA LAND USE SCHEMES COMPLIANCE DEADLINE**

**1. PURPOSE**

The purpose of this circular is to:

1. Outline the Land Use Schemes (LUS) compliance progress and provide a compliance projection for municipalities.
2. Request municipalities to indicate anticipated dates for full compliance with Section 24(1) of the SPLUMA.
3. Outline the key conclusions of the draft legal opinion sought by the Department of Agriculture Land Reform and Rural Development (the Department) on applications for LUS compliance exemption.
4. Coordinate and facilitate the submission of applications (to the Department) requesting for exemption from compliance with the deadline set out in Section 24(1) of the SPLUMA.

Municipalities are requested to note the conclusions of the draft legal opinion on SPLUMA exemption applications.

**Municipalities are requested to prepare and submit their respective exemption applications (as outlined in Section 3.2 below) to SALGA by 20 March 2020.**

**2. BACKGROUND**

The Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA) was promulgated in August 2013 and came into effect in July 2015. The SPLUMA is the first post-apartheid spatial planning legislation that asserts and elevates the role of local government in municipal planning. Municipalities are required to meet a number of readiness indicators in order to give effect to the provisions of the SPLUMA. The development and adoption of single land use schemes that cover the entire extent of municipalities' areas of jurisdiction is one of the key readiness indicators that municipalities are required to meet.

In the current and in previous financial years, SALGA (in partnership with the Department of Agriculture Land Reform and Rural Development, the Department of operative Governance and Traditional Affairs (COGTA), the Municipal Infrastructure Support Agency, and selected Offices of the Premier) rolled out SPLUMA training

and provided differentiated capacity building support in municipalities across the country. Despite the continuous SPLUMA training and the support provided by SALGA and its strategic partners, many municipalities have still not met all the SPLUMA compliance requirements. As such, municipalities are at different stages of SPLUMA compliance.

### **3. DISCUSSION**

#### **3.1 LAND USE SCHEME COMPLIANCE PROGRESS AND PROJECTION**

Section 24 (1) of the SPLUMA requires municipalities to develop single land use schemes (LUS) that cover the entire extent of municipalities' areas of jurisdiction. The LUS should be in keeping with the principles of the SPLUMA and should be linked to the Spatial Development Frameworks of the respective municipalities. The SPLUMA stipulates that the LUS should be developed and implemented within 5 years of the SPLUMA coming into effect. As such, all municipalities are required to have SPLUMA compliant LUS by 30 June 2020.

A proactive approach, therefore, needs to be taken by municipalities (through the support of SALGA) to ensure that the Department:

- Takes cognisance of SPLUMA compliance delays and the root causes of non-compliance and;
- Notes municipalities' intentions to apply for exemption from complying with Section 24(1) of the SPLUMA.

#### **3.2 KEY CONCLUSIONS OF THE DRAFT LEGAL OPINION ON SPLUMA EXEMPTION APPLICATIONS**

The Department sought a legal opinion on whether applications for extension of time and exemption from compliance with certain provisions of the SPLUMA can be submitted to the Department. To this end, a draft legal opinion has been received by the Department. Although the Department has not circulated the draft legal opinion, the key conclusions of the draft legal opinion have been discussed at the National SPLUM Forum (13 November 2019) and the structured engagement between SALGA, the Department and COGTA on the SPLUMA LUS compliance deadline (4 December 2019). The key conclusions of the draft legal opinion are summarized below.

- The current legislative framework does not allow for applications for extension of time. A legislative review would be required in order for the Department to acknowledge, receive and assess applications for extension of time to comply with certain provisions of the SPLUMA. Therefore, all applications compiled and packaged by municipalities should not make reference to extension of time. Rather, reference to 'exemption' should be made.
- The Minister: Agriculture Land Reform and Rural Development must (prior to the SPLUMA June 2020 compliance deadline) write to the Executive Mayors of municipalities to indicate the municipalities' unlikelihood to meet the deadline set out in the SPLUMA.
- SALGA can coordinate the submission of exemption applications by municipalities and facilitate engagements between the Department and municipalities on this matter.

- Although SALGA can legally collect the applications and coordinate the submission of the applications to the Minister: Agriculture Land Reform and Rural Development, the actual preparation of exemption applications should be done by individual municipalities.
- The Minister: Agriculture Land Reform and Rural Development has the prerogative to grant exemption from compliance with the Act.

Based on the afore-mentioned conclusions of the draft legal opinion on SPLUMA exemption applications, municipalities are urged to draft and package their individual applications for exemption prior to the SPLUMA deadline. **The exemption applications should include the following as a minimum:**

- A cover letter signed off by the Executive Mayor (or any official delegated by the Executive Mayor).
- A Council resolution outlining the municipality's application to the Minister: Agriculture Land Reform and Rural Development for exemption from complying with Section 24(1) of the SPLUMA.
- A Council-approved Motivating Memorandum outlining (a) the reasons for non-compliance; (b) specific timeframes for compliance; (c) remedial action to be implemented to ensure compliance within the specified timeframe and; (d) motivation for granting of exemption by the Minister. An action plan with realistic milestones may be attached to the Motivating Memorandum.
- A list of required municipal support interventions (signed off by the MMC responsible for Development Planning or Spatial Planning and Land Use Management (or any official delegated by the MMC)) to improve overall SPLUMA compliance. This list should be addressed to the Provincial Directors of Operations in each respective SALGA provincial office. The list will not form part of the submission to the Department, but will rather assist SALGA in customising support interventions and, in its advocacy and lobbying efforts.

Municipalities may include additional information and documentation that they deem suitable to strengthening their individual exemption applications.

#### 4. ENQUIRIES

Further enquiries relating to this circular may be directed to the following SALGA officials:

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Regards



**KHALIL MULLAGIE**  
PROVINCIAL DIRECTOR OF OPERATION

**5.11****RULES AND PROCEDURES FOR THE MUNICIPAL PLANNING TRIBUNAL AND THE APPEAL AUTHORITY****(ITEM 15, PAGE 610 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)****RESOLVED (UNANIMOUSLY):**

that the draft Rules and Procedures for the Municipal Planning Tribunal and Appeal Authority be adopted.

**RESPONSIBLE OFFICIAL :****R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****10 AUGUST 2016**