



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

DATE:	29 NOVEMBER 2018
VENUE:	TOWN PLANNING COMMITTEE ROOM HERMANUS
TIME:	14:00

OVERSTRAND MUNICIPALITY

Office of the Municipal Manager
Civic Centre
HERMANUS
7200

8 November 2018

TO : THE CHAIRPERSON AND MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that a meeting of the **Municipal Planning Tribunal (MPT)** will go into session on **Thursday, 29 November 2018 at 14:00, Town Planning Committee Room, 16 Paterson Street, Hermanus**, to consider the attached agenda.

You are kindly requested to submit any amendments/additions to Ms S Swart (sswart@overstrand.gov.za) on or before **15 November 2018**.

STEPHEN MÜLLER
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Mr S Müller (Chairperson)
2. Mr R Williams (Vice Chairperson)
3. Mr S Madikane (Member)
4. Ms D Arrison (Member)
5. Ms H Janser (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr P Roux (Town Planner)
10. Secretariat

MUNICIPAL PLANNING TRIBUNAL (MPT)

29 November 2018

I N D E X

ITEM

**PAGE
NUMBER**

APPLICATIONS FOR LEAVE OF ABSENCE

- | | | |
|------------|--|-----------|
| 4.1 | ERF 4013, DISA ROAD, BETTY'S BAY : REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND CONSENT USE : MESSRS HEADLANDS TOWN PLANNERS ON BEHALF OF JC KANNEMEYER | 1 |
| 4.2 | ERVEN 1154, 1157 AND 1300, DE KELDERS, OVERSTRAND MUNICIPAL AREA: PROPOSED SUBDIVISION, CONSOLIDATION, AMENDMENT OF THE APPROVED SITE DEVELOPMENT PLAN AND CONDITIONS OF APPROVAL, CONSENT USE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF PC SIPPEL, MA CROLE AND THE GALLO ROJO TRUST | 86 |

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 1 November 2018

4. ITEMS FOR CONSIDERATION

4.1 ERF 4013, DISA ROAD, BETTY'S BAY : REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND CONSENT USE : MESSRS HEADLANDS TOWN PLANNERS ON BEHALF OF JC KANNEMEYER

Report attached

4.2 ERVEN 1154, 1157 AND 1300, DE KELDERS, OVERSTRAND MUNICIPAL AREA: PROPOSED SUBDIVISION, CONSOLIDATION, AMENDMENT OF THE APPROVED SITE DEVELOPMENT PLAN AND CONDITIONS OF APPROVAL, CONSENT USE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF PC SIPPEL, MA CROLE AND THE GALLO ROJO TRUST

Report Attached

4.1

ERF 4013, DISA ROAD, BETTY'S BAY : REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND CONSENT USE : MESSRS HEADLANDS TOWN PLANNERS ON BEHALF OF JC KANNEMEYER

4013 BB (3714)
H van der Stoep
23 July 2018

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 20 June 2017 from Messrs Headland Town Planners on behalf of JC Kannemeyer on Erf 4013, Betty's Bay for the following:

- ❖ Removal of restrictive title conditions with reference to Clauses B.5 and B.6 of Title Deed T53677/2004 applicable to Erf 4013, Betty's Bay in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

The restrictive conditions contained in Title Deed T53677/2004 to be removed read as follows:

"B.5. - *No building on this erf shall be used or converted to use for any purpose other than the permitted in terms of these conditions*

B.6. *This erf shall be used solely for recreational purposes or any other use as the Administrator may, from time to time after reference to the Townships Board and the Local Authority, authorise and it shall not be transferred by the Local Authority to another person without the written consent from the Administrator."*

- ❖ Rezoning of Erf 4013 from Open Space Zone 3 to Open Space Zone 1 in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.
- ❖ Consent use for a dwelling unit in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

An application for rezoning to residential was lodged in 2005 to create seven (7) erven and the remainder as Private Open Space. Simultaneously a removal of restrictive conditions was applied for. The Department of Environmental Affairs and Development Planning refused the Removal of the Restrictive Conditions in 2009.

An application for the rezoning of the erf to Open Space Zone 1, consent to permit one (1) dwelling and the Removal of Restrictive Conditions was submitted in 2014. The application was not recommended and the Department of Environmental Affairs and Development Planning refused the Removal of Restrictive Conditions in 2016.

4. SUMMARY OF APPLICANT'S MOTIVATION

The planning principles can be summarized as follows:

4.1 As mentioned in Section 1, the previous application (Appendix G), which made the same land use proposals, was refused. The application is being re-submitted, with specific improvements to the motivation for viability of the proposed development which is fundamentally desirable, suitable and compatible in the proposed location. With this in mind, counterpoints to the 2016 refusal's reasons for decision are argued:

(a) *the Title Deed intention was to restrict any residential development on the property.*

Although this may be the case, the current zoning contains consent uses for environmental facilities, recreational facilities, rooftop base station, tourist accommodation, tourist facilities, transmission tower and utility service which, if granted, would result in a more intrusive use of the property as opposed to a single dwelling.

(b) *that the erf retain its undeveloped character of a unique wetland system, which is seasonal in nature.*

What seems to have been missed in the previous application is that the proposed site development plan indicates the location of the wetland, and it is clearly visible that the proposal has been purposefully located away from it. The integrity of the wetland will be retained since the proposed dwelling will have no impact on it

(c) *the mitigation measures with regards to view has not been addressed or discussed.*

The dwelling location was first informed by the presence of environmental and heritage resources on site, which eliminated most areas from consideration in establishing a dwelling. In the area where a dwelling could be considered, an additional selection process involved positioning the dwelling in a way which caused the least disruption to the site as well as the least impact on views from neighbouring properties. This resulted in the proposed location of the "disturbed area" for the dwelling as illustrated in appendix E. An analysis of the views from each of the surrounding properties' balconies or seaward facing windows is provided in Section 5.4.

(d) *the building of structures in terms of the present zoning will not serve any purpose if it is not for the benefit of the wider public – as determined by the Title Deed.*

The property is privately owned and as such, the use practised on the property is at the choice of the developer, (whether for personal or public

benefit) within the appropriate land uses stipulated by the Overstrand Zoning Scheme. None of the structures permitted for recreational use under the existing zoning (e.g. a recreational clubhouse) appeal to the owner who would instead like to reserve a minor area to the establishment of a dwelling.

The recreational use condition includes a section which states that the property should not be transferred without the consent of the Municipality. The property was transferred through four (4) successive owners (Agger Investments (Pty) Ltd in 1979, Erik Barnard in 1989, resold to Betty's Bay Trust in 1995 and James Kannemeyer in 2004) none of which should have been permitted, however they cannot be reversed. The history of transfers discounts the merit of the condition entirely, which is why it should be removed.

Owing to the requirements of the new land owner, a very small portion of the land is being proposed for personal use by the owner, leaving approximately 98% of the property untouched. However, potential public access to the rest of the property will be at the discretion of the owner. A refusal prejudices the land owner substantially more than an approval prejudices the surrounding residents.

- (e) *the value of erven adjacent to Erf 4013 may be compromised should Erf 4013 be developed.*

The location of properties in a village setting, within walking distance of the coast and close to the Kogelberg Nature reserve far outweighs the imagined minor impact on views. The assumed adverse impact on the value of erven is unfounded. An assumed reduction in the market value of an adjacent property must be backed up by substantiated evidence.

- (f) *historical information e.g. Structure Plan (dated 1997) clearly indicates the adherence of the restrictive condition, which has not been changed over the years, due to its unique environmental features,*

The historical adherence to the restrictive condition may have been due to the desire of consecutive owners to leave the condition in place or due to the assumed tediousness of the process for removing the condition. Historical adherence cannot be relied on as an indicator that the condition should continue to exist. The removal of the condition will not result in any damage to the property's unique environmental features which will in fact be retained over 98% of the property.

- (g) *the identification of a grave site on the property may have significant heritage and cultural influence, which has not been dealt with sufficiently.*

On the contrary, the matter was dealt with adequately by Heritage Western Cape (HWC). Due process was followed and a Notification of Intent to Develop (NID) application was submitted to HWC. Subject to various measures taken to shield the heritage resource from developmental impacts, an approval was granted permitting development in the proposed location.

The site is currently unfenced and open to the general public who may currently traipse over the property in a leisurely manner to access the coastal front. Since the property contains various environmental and heritage

assets, it is motivated that a permanent residential presence will permit formal policing of the natural conservation area which is otherwise free for all. In this way, it will be ensured that the property is and remains undisturbed.

Further to the primary Overstrand Municipal Planning By-Law requires the criteria contained in Sections 66 and 35(4) to be satisfied in order for an application to be considered correctly motivated. The proposal has taken into account the requirements for the proposed By-Law applications and has provided sufficient documentation in support of each.

4.2 Following sub-sections motivate for the desirability of the proposal, taking a variety of pertinent factors into consideration.

4.2.1. Impact on Heritage:

As previously mentioned, the site contains graves which are heritage resources however they are not impacted by the proposal, because they lie within the 32m wetland buffer area, and the 100m from HWM setback. The proposed dwelling unit development will be located outside of this sensitive area and therefore will not impact its integrity. This is further echoed by the Heritage approval obtained in 2015 which granted the owner the right to construct a dwelling provided that appropriate measures are taken to protect the grave site from construction as well as pedestrian movement. This approval is significant, because it recognises the lack of impact of a single dwelling on the existing heritage resources.

4.2.2. Impact on Biophysical Environment:

The biophysical features were identified by the Freshwater and Botanical Specialists in the 2005/2006 studies where the importance of large parts of the site were identified. These studies concluded that although the property contains areas of environmental significance, there are some areas within the site that could be developed for a single residential use without directly or indirectly impacting these identified sensitive areas.

4.2.3. Character of the Environment:

The proposed change in land use will permit it to remain dominantly untouched as a nature reserve and conservation area. The consent for a double storey dwelling unit is clearly compatible with the immediate residential surrounding, four (4) of which are two storeys in height. The privacy of neighbours will not be impacted and neither will their views since the proposed dwelling unit will be located a reasonable distance away. The distance of the proposed dwelling unit from the surrounding properties and their views has been illustrated in Figure 2.

4.2.4. Impact on Existing Rights:

The development will not adversely impact the rights of surrounding owners. The predominant use of the land as a conservation area will remain the same with the addition of a double storey dwelling taking up a meagre 1,7% of the site. An analysis of the proposed location of the dwelling, as well as its impact on the existing neighbours through a consideration of their locations, view lines

and distances from the proposed unit, uncovered that the proposal will have a negligible impact. A view is not a right and the following points, together with Figure 2 (overleaf), provide a description of the minimal impact of the proposed development on each view corridor:

- Erf 3993 exploits its view position from the second storey and is able to look over Erven 4014 and 4015 in front of it;
- Erf 3992 is rotated 15° (15 degree) away from a direct perpendicular to the sea view, and only experiences the view from the second storey;
- Erf 3991 appears to be orientated towards “Die Been” and almost completely misses Erf 4013, in terms of overlooking. There is a minor window directed across Erf 4013 at a 68° (68 degree) angle, but again from the second storey only;
- Erf 3990 is entirely vacant, and any house here would not be blocked by the proposed dwelling position on Erf 4013;
- Erf 3989 has exploited the sea view to full effect, and its “lion’s share” of the view is almost entirely unaffected by the proposed dwelling position;
- Erf 4014 has views from second storey (over Erf 4015) parallel to the proposed dwelling position on Erf 4013, and is therefore entirely unaffected (note mostly blank wall facing Crassula Crescent and proposed dwelling location);
- Erf 4015 is entirely unaffected, as it sits further ahead of the proposed dwelling on Erf 4013.

4.3 In addition to the above, the topography of the site (see plan BB4013/SDP for contours) reinforces the logic of choosing the dwelling position as advocated in this application:

- ❖ The site has a high point at the Disa Road/Crassula Crescent intersection (16m contour height at that point);
- ❖ From visual inspection, it is clear on site that Erven 3992 and 3993 (immediately west of the intersection) are situated higher than the road;
- ❖ Crassula Crescent drops down towards the sea;
- ❖ The identified position for the dwelling has a 1,5m elevation difference to Disa Road and potentially a 2m (or more) difference to Erven 3992 and 3993;
- ❖ The identified position is also on a level piece of ground, and therefore the need for cut and fill is minimised, making for the least harmful construction impact.

4.4. Desirability of the proposed utilisation:

The proposed use is highly desirable and adds one more dwelling to the existing residential suburb. As previously mentioned, the dominant use of the land will be a natural conservation area with approximately 1,7% of the property being utilised for a double storey dwelling.

4.5. Impact on municipal engineering services:

The proposal for a single dwelling unit does not necessitate additional engineering services. Since the surrounding area has already been developed for residential use, the existing municipal services will be sufficient to service the development. The development will be accessed from Crassula Crescent.

4.6. Investigations carried out in terms of other laws which are relevant to the consideration of the application:

The proposal is influenced by the NEMA, however it does not trigger the need for an EIA since the proposal is located away from the areas of the site that have environmental sensitivities. In terms of the preservation of the natural and developed environment, the Coastal Zone remains in-tact, because only a minor portion of the site will be developed. The Environmental Management: Air Quality, Occupational Health and Safety Act and Management: Waste and National Water Act are not relevant to the consideration of this application.

4.7 Consideration of forward planning and land use documents:

❖ **Provincial Spatial Development Framework, 2013 (draft)**

The PSDF illustrates the need to maintain a balanced approach in promoting development, whilst simultaneously protecting the distinctive character of the coastal landscape and natural assets throughout the province.

❖ **Overstrand Spatial Development Framework and Growth Management Strategy, 2010 (draft)**

The underlying objectives of the Overstrand SDF are to protect prime agricultural assets and biodiversity areas, conserve heritage resources, manage spatial growth in a sustainable manner and retain the rural cultural landscape.

❖ **Betty's Bay Local Spatial Development Principles**

Betty's Bay is known as a quaint town known for its various tourist attractions and retirement town due to its quaint. The principles highlight the need to retain the village landscape by protecting the town's natural assets, conserving cultural heritage sites and promoting infill development within the town's boundaries.

The proposal demonstrates salvages a major portion of the property for and allocates a minor portion for the development of a single dwelling. The proposal satisfies the main objectives of the PSDF, Overstrand SDF and the Betty's Bay Local Plan and is cognisant of the conservative view of development, especially in the proposed location. The proposed dwelling will be on very small scale, of a minimal impact and will not reduce the village appearance in any way.

Although the site is located outside of an urban edge, a single dwelling on the property does not mean it is inconsistent with the SDF. Single dwellings are permitted as of right outside of urban edges, for example on farms, smallholdings and other rural areas. Additional dwelling units are in fact permitted outside of

urban edges on farms as a consent use. The consent use is therefore not inconsistent with a policy. The proposal entails the establishment of one (1) dwelling on one (1) property, which is consistent with the SDF.

The policies, principles of planning, development norms and criteria as set out in Section 42 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) and Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA) was regarded and that the proposed application is compliant with it.

4.8 Removal of Restrictions Motivation:

4.8.1. Section 39(5) of the Land Use Planning Act (LUPA), 2014:

This section of the Act states that a Municipality should have regard to the following factors when considering the “removal, suspension or amendment of a restrictive condition”. The factors are noted below and include responses motivating the application’s consideration of each for the removal Conditions B.5 and B.6 from the Title Deed.

- ❖ **the financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;**

The removal of the restrictive conditions intends to increase the use rights of the property to permit a single dwelling unit. The value of the rights is vested in the owner of the property and since the conditions restricts the uses permitted on the property the value of these rights could be potentially greater than they are at present. The development is not proposing an unusually large scale form of development, but simply intends to obtain the rights for a single dwelling as has been granted to owners of surrounding properties.

- ❖ **the personal benefits which accrue to the holder of rights in terms of the restrictive conditions;**

The conditions were imposed by the Administrator for the benefit of the surrounding township. The only personal benefit to the holder is that the property may be used for recreational purposes such as an amenity for tourism.

- ❖ **the personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed;**

The removal of Conditions B.5 and B.6 will be beneficial in permitting the owner to establish a dwelling and reside on the property and fully enjoy the benefits of residing in the coastal suburb.

- ❖ **the social benefit of the restrictive conditions remaining in place in its existing form;**

The social benefit would result in the land possibly being utilised for recreational facilities which may only be beneficial if opened to the public. This would deter from the residential nature of the area.

- ❖ **the social benefit of the removal or amendment of the restrictive conditions; and**

The conditions confines development on the property to facilities that is not useful to the owner. The social benefit is the ability to establish a private residence on the property which is currently not permitted.

- ❖ **whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights.**

The removal of the restrictive conditions will not remove any rights enjoyed by the beneficiary, but will instead expand the value of these rights to a use that is considered to be more desirable and useful to the

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	10/8/2017	15/9/2017
Gazette	Yes	11/8/2017	15/9/2017
Notices	Yes	14/8/2017	15/9/2017
Ward councillor	Yes	10/8/2017	15/9/2017
Total comments	NINE (9) of which TWO (2) were late		
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments	Recommendation
Engineering Services	14/11/2017	Annexure G	Positive
Environmental Section	14/8/2017	No objection	Positive

Fire Department	3/10/2017	Comply with SANS 10400T:2011	Positive
Western Cape Heritage	20/8/2017	Annexure I	Positive
Building Control	13/10/2017	Comply with SANS 10400	Positive
Local Heritage Committee	14/9/2017	Refer to Western Cape Heritage	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Objections were received from nine (9) individuals of which two (2) were late (Erven 3990 and 3991). See the objections (attached as Annexure E). The applicant's response to the objections received (attached as Annexure F).

The objections can be summarized as follows:

Objection: (Erven 3990, 3991, 3944 and 4016, Betty's Bay) All previous owners purchased the property with the knowledge of its zoning and restrictions. The owner wants to increase the market value of the land by obtaining a more favourable zoning permitting a dwelling.

Applicant's reply:

The owner would like the opportunity in order to enjoy the same rights as the surrounding residents. It could be argued that every land owner has a right for a residence in the case of non-commercial and non-industrial zoning.

Planner's comment:

The objectors are correct as the purchase was made with full knowledge of the restriction. The removal will give an additional benefit to the owner. The argument that every person has a right to erect a dwelling on property not zoned primarily for a residential dwelling, it is not correct.

Objection: (Erf 3944) The reason for refusal of previous applications is that the Title Deed intention was to restrict any residential development on the property.

Applicant's reply:

Although this may be the case, the present zoning makes provision for consent uses such as environmental facilities, recreational facilities, rooftop base station, tourist accommodation, tourist facilities, transmission tower and utility service, which if granted, would result in a more intrusive use of the property.

Planners comment:

Noted, the associated consent uses may be more intrusive than a dwelling.

Objection: (Erf 4016) The report refers to similar rights as the surrounding owners are not correct, since the adjacent owners' properties are zoned for residential purpose.

Applicant's reply:

There is no bio physical difference between the application and the surrounding erven

Planner's comment:

The application cannot be seen in the same light.

Objection: (Betty's Bay Rate Payers Association) Non-compliance with the title deed conditions and removal will lead to the infringement negatively on the community.

Applicant's reply:

The Title Deed conditions are not being ignored that is the reason for the application. The possible construction of a house is less on an infringement as to a local fishing club.

Planner's comment:

Noted, in terms of physical presence of a building, the dwelling may have less than an impact than recreational facilities.

Objection: (Erf 3994) Objection against the rezoning, because it was never the intention of the original developers and the Administrator to grant development rights and the property should be kept Public Open Space in perpetuity.

Applicant's reply:

The intention of the original developers is not relevant to the current application especially that the property has been successively transferred through four (4) owners against the Title Deed. We are acting proportionally to the fact that the transfer occurred and that only one (1) dwelling is an inherent right.

Planner's comment:

Irrespective of the four (4) previous transfers, the Title Deed conditions specifically restricts the land uses on the property. It does not make reference to any inherent right of a residential dwelling.

Objection: (Erf 3994) Granting the rezoning could pave the way for future development of additional units.

Applicant's reply:

The proposal is for one (1) dwelling only and the remainder be rezoned to Open Space, leaving the remainder as a nature reserve.

Planner's comment:

The application is for only one (1) dwelling.

Objection: (Erf 3994) A change in rezoning would be a gross violation of the Title Deed conditions and the rights of the vast number of property owners based on the recreational use.

Applicant's reply:

The Title Deed does not prohibit any rezoning. The application involves the rezoning to nature reserve, which carries a stronger declaration for protection and conservation of the property than the present zoning. The objector equates recreational use with no buildings: recreational use permitted could also be a clubhouse or any sports of recreational association.

Planner's comment:

The application is for a consent use for a dwelling and a rezoning to Open Space Zone 1.

Objection: (Erven 3991 and 4016) Granting the rezoning will create a dangerous precedent for other Open Space Zone 3 properties.

Applicant's reply:

All planning applications must be dealt with on merit.

Planner's comment:

Open Space Zone 3 is private open space and an Open Space Zone 1 is nature reserve/ conservation. It is unclear why a precedent will be created, since Open Space Zone 1 is the most restrictive zoning for environmental sensitive properties.

Objection: (Erf 3993) Rezoning will have a detrimental impact on the environmental and ecological surrounding area.

Applicant's reply:

It is not correct, since the application is from Open Space Zone 3 to Open Space Zone 1. The primary use is nature conservation of which 98% of the property will be nature conservation. Note also that 180° (180 degree) of the surrounding area is the existing residential township of Betty's Bay, which is in itself damaging to the ecology.

Planner's comment:

The rezoning of the property will not be detrimental to the environmental and ecology of the surrounding area, the consent use however may have.

Objection: (Erven 3991 and 4016) The photographs used in the report are out dated. Erf 4014 has bigger windows and a balcony and the proposed building will obstruct the view.

Applicant's reply:

Noted, however the proposed building will only partially obstruct the view.

Planner's comment:

A building plan was approved with bigger windows and a balcony.

Objection: (Erf 4016) Pictures used were taken from Google and no site visits had been made.

Applicant's reply:

Google was used, but two (2) site visits were made.

Planner's comment:

Noted

Objection: (Erf 4016) The proposed 299m² is clearly to circumvent an EIA. The impact of a residential building is much wider than the footprint and is thus misleading.

Applicant's reply:

The footprint of 299m² is sufficient and construction will be limited to the proposed footprint and thus no EIA triggers.

Planner's comment:

The application is in line with the requirements of NEMA as per letter dated 17 October 2017 issued by the Western Cape Government: Environmental Affairs and Development Planning.

Objection: (Erven 4016 and 3992) A double storey will seriously alter the view across the coastline and detract from the natural resources and detract from the economic benefits.

Applicant's reply:

The proposed development is not large enough to detract from the coastal landscape. There are many houses along the coast of which the objector (Erf 4016) is part of. The objector of Erf 4016 has a full sea view and is separated from the location of the proposed dwelling by a dwelling on the neighbouring property (Erf 4015) therefore the physical impact is negligible.

Planner's comment:

Erf 4016 has full sea view, since the proposed dwelling is located adjacent Erf 4015.

Objector: (Erven 4016 and 3992) The standard height and setbacks is at discretion of the Council, but should be restricted to a single storey.

Applicant's reply:

The applicant indicated that the proposed dwelling will comply with the development parameters of the Zoning Scheme. The gentle downwards slope of the property it is motivated that the impact of a double storey will not have a major impact.

Planner's comment:

Noted

Objection: (Erf 4016) The applicant had residential in mind and never had the intention to the property in line with its restriction.

Applicant's reply:

Irrelevant, but correct.

Planner's comment:

Noted

Objection: (Erf 4016) Reference 5.1(d) of the town planning report reads "*prejudices the land owner substantially more that an approval prejudices the surrounding residents*". This reads as a veiled threat, a successful rezoning is not an entitlement that the applicant is deprived of it's a decision at the decision of the Council

Applicant's reply:

The statement intended to draw a comparison between the loss of opportunity by the owner and the gain of the surrounding residents. A refusal will have more impact on the surrounding residents.

Planner's comment:

It is assumed that the applicant indicated that should he make use of his existing rights, it may have more of an impact on the surrounding community.

Objection: (Erf 4016) Betty's Bay has no shortage of undeveloped residential zoned land. Why the applicant did not bought a property with the correct zoning?

Applicant's reply:

It is not the objectors place to question the purchase of Erf 4013.

Planner's comment:

It is a rhetorical question that only the applicant will know.

Objection: (Erf 3991) It is requested that the Building Inspector oversee so that no wrongdoing is violated.

Applicant's reply:

It is not clear what wrongdoing is spoken of.

Planner's comment:

Noted

Objection: (Betty's Bay Rate Payers Association) The collective impact of the bio physical and heritage features would be seriously damaged if the proposed development was fitted into the ecological and historical centres of the reserve.

Applicant's reply:

Heritage and environmental assessments were done by qualified consultants who concluded that a development of this scale (1,68%) of the property will have no impact the ecological and historical qualities of the property.

Planner's comment:

The applicant did the required studies and was submitted to the relevant department.

Objection: (Erven 3990 and 3991) Lack of awareness of the endangered African Penguin, which is expanding to Erf 4013.

Applicant's reply:

The establishment of a single dwelling will not be detrimental to the expanding habitat of the African Penguin. The granting of the proposed rezoning to the remainder of the property to Open Space 1 will enhance the safety and preservation of this habitat.

Planner's comment:

The expansion of the penguin colony onto a private erf is an issue between Cape Nature and the applicant.

Objection: (Erf 3991) It has not been established with certainty where the graves are located.

Applicant reply:

A qualified heritage consultant identified the location of the graves.

Planner's comment:

Noted

Objection: (Erf 3991) Any development in this area will be detrimental to the preservation of our country's heritage

Applicant's reply:

The proposed 299m² is not large enough to impact the country's heritage.

Planner's Comment:

Noted, Heritage Western Cape had commented on the application and did not object to the application.

Objection: (Betty's Bay Rate Payers Association) The house will clearly stand out in the reserve and is located outside the urban edge.

Applicant's reply:

The dwelling is located alongside existing dwellings. The urban edge is to set limitations to development. Single dwellings are allowed outside the urban edge such as on agricultural zoned properties as a consent use. The application is similar and is not be rezoned for development, but a consent use subservient to the stricter use applied for.

Planner's comment:

The proposed development will be located in a nature reserve as proposed as a subservient use however the cumulative impact of residential associated uses may have an impact on the activities in the nature reserve.

Objection: (Erf 4014) Environmental implications of the application have not be addressed properly and the applicant's submission that the proposed dwelling does not constitute a listed activity does not hold water.

Applicant's reply:

The applicant has used all baseline information of the high water mark, wetlands and setbacks and the existence of endangered ecosystems to determine the location of the proposed dwelling.

Planner's comment:

A letter to support the applicant's reply was supported by the Western Cape Government, Environmental and Development Planning.

Objection: (Erf 3992) A premium price was paid for the property due to its position and the Municipal Valuation Appeals Board informed objector the sea view was taken into consideration.

Applicant's reply:

The comment makes it appear that the entire view will be blocked and the proposed dwelling 70m away from the objector will not ruin the objector's view. The fact that the property will become a nature reserve will stabilize the property values.

Planner's comment:

The objector's view will not be totally blocked.

Objection: (Erf 3992) The property was valued for capital gain tax by an appraiser. The proposed double storey will result in a massive devaluation of

the objector's property. Reference to a High Court decision that a view is a right.

Applicant's reply:

The dwelling will be located on a gentle downward slope and the rezoning creates certainty that 98% will be nature reserve and not erection of clubhouse as per primary right. The High Court case was pertaining to the fact that the building contravened the height restriction. In terms of SPLUMA, Section 7(a)(vi) the Municipal Planning Tribunal may not considered derogation of value as a decision making criteria.

Planner's comment:

The objector must accept that any other related use as per the Title Deed condition may be exercised, including the erection of structures that may impede his view in some form.

Objection: (Erf 3992) Applicant states the objector's view will be partially affected is not true, it will be completely deprived.

Applicant's reply:

The partial loss does not tarnish the view of the sea line.

Planner's comment:

The objector must acknowledge the fact that the present zoning makes provision for structures that may impede his view to some extent.

Objection: (Erf 3992) Objector has been living on the property for 27 years and the present situation should remain as is. Household residents have been traumatised by the development proposal.

Applicant's reply:

The property owner is exercising his right to obtain a single dwelling.

Planner's comment:

The applicant has a right to lodge an application, similar to the objector's right to lodge an application.

Objection: (Erf 3992) Applicant stated that a clubhouse of two storeys is permitted, however as resident of Erf 3992, this will be objected to. A single storey with a low pitch is acceptable.

Applicant's reply:

The primary use of Open Space Zone 3 relates to the condition, which clearly indicates associated buildings, infrastructure, etc. with consent of the Council. Should a building plan be submitted in this regard, it is the Municipality that approves a building plan only and the process does not include comments from the surrounding owners.

Planner's comment:

Any building plan in line with the Title Deed and the Zoning Scheme is not distributed to adjacent owners for comments.

Objection: (Erf 3993) The proposed development will acquire extra services.

Applicant's reply:

The development links to existing services and therefore only an erf connection will be created.

Planner's comment:

Services are available.

Objection: (Erf 4014) The location will never satisfy the objector.

Applicant's reply:

The applicant has a right to lodge an application.

Planner's comment:

Noted

Objection: (Erf 4014) Applicants have a right to lodge an application, however, the expenses incurred by the objector and the objector reserve the right to recover all costs from the applicant.

Applicant's reply:

This is entirely incorrect, the interested and affected parties reserve the right to comment on any application and any costs incurred in doing so are the sole responsibility of these parties.

Planner's comment:

This aspect is a civil matter.

Objection: (Erf 4014) The surrounding land uses and the impacts are not addressed.

Applicant's reply:

The surrounding uses and impacts were assessed in detail in Section 5.2 of the Motivation Report.

Planner's Comment:

The view loss has been extensively dealt with in the report.

Objection: (Erf 4014) The development principles as set out by SPLUMA and other legislation has not been addressed.

Applicant's reply:

The motivation report added all relevant planning policy in Sections 5.9, 5.10 and 5.11.

Planner's comment:

The planning principles were addressed in the application report.

Objection: (Erf 4014) The applicant's analysis of the views from the objector's property is a lack of understanding of the problem.

Applicant's reply:

The objector's dwelling is still seaward facing where uninterrupted views may be enjoyed between Erven 4013, 4015, 4015 and 4016. The objector's property is elevated. The objector's dwelling has a large facing window facing Crassula Crescent, the predominantly view is of the mountain range and part sea line. The proposed dwelling will be partially situated in view of the sea and will not completely obstruct this view.

Planner's comment:

The proposed dwelling will have an impact on the objector's view.

Objection: (Erf 4014) The geotechnical features of the site and suitability for the proposed land use have not been addressed.

Applicant's reply:

The geotechnical features of the site have been identified on the site plan.

Planner's comment:

The geotechnical features have been identified.

Objection: (Erf 4014) The notice of the application is unauthorised and flawed.

Applicant's reply:

The objector did not indicate why the application is unauthorised and flawed.

Planner's comment:

The objector did not indicate to what extent the application is flawed and thus a response is not possible.

External Departments:Comments of Department of Environmental Affairs and Development Planning:

- 1. In terms of the Overstrand SDF, Erf 4013 is located outside the urban edge on land earmarked as conservation-agriculture buffer. Expansion beyond the edge is discouraged.**

Applicant's reply:

It is understood that the urban edge is to curb development, however, there are cases where such minor development is permitted and it is argued that the proposed development qualifies as such. It is allowed on farm land, which is located outside the urban edge and thus is not inconsistent with the SDF.

Planner's comment:

The urban edge is to contain unnecessary urban extension. The property is located in the urban realm, similar to the rest of Betty's Bay and other coastal towns. However, these developments were approved before the Overstrand SDF and has commenced. This application is located in a highly sensitive property and development and the creeping of development in highly sensitive areas should be discouraged irrespective of scale.

- 2. The SDF states that the demarcated urban edge is essentially the existing coastal setback line. No development should be permitted in this setback area to ensure a continuous coastal corridor.**

Applicant's reply:

The definition of a coastal setback is defined by the Intergovernmental Coastal Management Act (ICM Act) does not reflect the urban edge a setback line. The development is above the High Water Mark (HWM) and the urban edge cannot be the coastal setback as that ignores the properties along Crassula Crescent.

Planner's comment:

The urban edge is not the setback line and the NEMA and ICM Act applies. In terms of NEMA the erf has commenced and the setback line as per the ICM Act has not been promulgated by the Minister. Another factor is that although there are erven that does not comply with the present legislation, it cannot be made retrospective on the Township of Betty's Bay as approved.

- 3., 4., 5. and 6.: The ICM Act is to protect coastal public property, coastal protection zone and reduce risks of climate change and control and prevent inappropriate and unsustainable developments.**

Applicant's reply:

The principles are acknowledged and all the relevant assessments were done to ensure a location with the least impact, whilst simultaneously ensure the preservation of the erf (98%) as nature reserve. The proposed location is located outside the HWM and the 100m above the HWM.

Planner's comment:

The applicant did address the possible influence and compliance with the ICM Act.

7. The detrimental impact on the surrounding owners would be severe.

Applicant's reply:

The basis and motivation of which the properties were sold is irrelevant to the applicant. The property was transferred from public to private ownership and this should have been conveyed to the surrounding property owners. The sale of an Open Space should have been advertised and gone through a public participation process and objections could have been lodge at that stage. The property owner has the right to lodge an application.

Planner's comment:

Development in any manner will have an influence on surrounding property, especially if was vacant for an extensive period as in this case.

8. The property links the surrounding residential units to the shore line and the fact that the land is privately owned is irrelevant.

Applicant's reply:

The fact that the land is privately owned is highly relevant. Irrespective of the property's zoning, the owner has a right to prohibit access and trespassing on his property, since there are no public access servitudes on site. The proposal is limited to 299m² of 17 772m² and thus not large enough to limit access to the shore line.

Planner's comment:

The owner has a right to fence his property as it is private property. If there should be a dispute on access, this aspect must be proven by the alleged users of such access point. Access to the coast is a responsibility of the Overberg District Council

The property is zoned Open Space 11 and no residential rights have been attached to the Title Deed to put in place protection of the coastal strip.

Applicant's reply:

The property is zoned Open Space III and not II. The proposed dwelling will have of a lesser impact than the allowed recreational facilities and associated uses.

Planner's comment:

To a certain extent the applicant is correct, however, recreational facilities should be established and application for a consent use will have to be submitted and

not necessarily granted. The impact of human movement over the property is of greater concern in terms of impact.

Internal Departments

No negative comments were received.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

The principle addresses the need to address the past imbalances with regard to opportunity. This application is located on an erf as per the establishment of the Betty's Bay Township and is this principle not applicable.

Spatial Sustainability

The proposed application does not comply with the sustainability principle with regard to protecting biodiversity rich landscapes. On the other hand should the property be developed, the proposed one (1) dwelling will be the most suitable option since more than 98% of the property will remain undeveloped.

Efficiency

The proposed development will enable the applicant to use his erf more efficiently, since it can be connected to existing services.

Spatial Resilience

The principle advocates the built environment to ensure sustainability of a property and or development. It is located 110m above the HWM and outside the wetland area.

Good administration

The application followed due procedure.

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

Same as Point 10.2 above.

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

The Spatial Development Framework, 2006 earmarks the area as Open Space. The zoning will in essence not change.

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

Not applicable.

10.6 Impact on Municipal engineering services

None.

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

Not applicable.

10.8 Existing and proposed zoning comparisons and considerations

The application is being made to remove the restrictive conditions and a consent use as per the Zoning Scheme.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**The financial or other value of the rights**

The applicant will accrue financial benefit in as far as it will add value to the property. However, the community will accrue social value should the property be rezoned to Open Space Zone I.

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

The applicant will benefit personally should all the requested conditions be removed in as far as the cost implication is concerned and the opportunity to make use of the land use, one (1) dwelling, allocated within the Open Space Zone 3 zoning.

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

The social benefit should the conditions remain in place, is that the erf will not be able to develop for individual benefit. The erf will be used solely for recreational purposes.

The social benefit should the conditions be removed, is that the applicant be enabled to erect a residential dwelling building.

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

The removal of the conditions will not remove the rights of the beneficiary.

12. THE DESIRABILITY OF THE PROPOSAL

In terms of a holistic approach, the application is desirable since it will ensure that a highly sensitive environmental property would be reverted back to a more restrictive zoning be put in place and gain a more restrictive zoning category.

The application was not approved in 2016 and the counterpoints to the reasons are dealt with as the primary motivation in the application. However, the counterpoints should have been dealt with in lodging an appeal against the decision. The applicant did not make use of this option.

The desirability will be based as per the application submitted. The erf is located in Betty's Bay outside the present Overstrand Spatial Development Framework, 2006. The property is zoned Open Space Zone 3, which relates to Private Open Space. The application is for the rezoning to Open Space Zone I (Nature Conservation). If proclaimed as such, stricter zoning parameters and other legislation are applicable; however, with the aforementioned in mind, it also entails a financial liability for the Municipality. The rezoning will affect and safeguard the biodiversity, wetlands and graves on the property.

The application for a consent use for a residential dwelling is provided for under the proposed zoning. The applicant did various studies e.g. wetland, heritage and environmental since 2006 in order to obtain residential land use on the property. Thus the location and size of the proposed dwelling is very specific to adhere to various legislation and the studies that have been done.

The proposed development is limited to a 299m² footprint and the scale is less than 2% of the property. The impact will insignificant in terms of the property, however the feeling of the owners of the surrounding properties are that they have a right to a sea view and built their houses to benefit maximally from the view on offer. Although view is not seen as right, in this case their objections do carry some weight. The reason being is that the property's Title Deed restricts any land use to recreational purposes with associated infrastructure. Thus it is not unreasonable to assume that the owners surrounding the property have a valid point with regard to their sea view.

The Title Deed make specific reference to the sole use for recreational purposes, that the erf be transferred to the local authority and might only be transferred to a private entity with the consent of the Administrator.

In 2007 the Municipality obtained a legal opinion from Advocate Farlam. The Municipality has referred the legal opinion to Messrs Fairbridges Wertheim Becker Attorneys to clarify the previous opinion in relation with the present planning legislation. In their reply they concur with the opinion of Advocate Farlam. The outcome is as follows: *"The removal of the Title Deed restriction cannot be removed as it is clear that from the context of the Title Deed that it was the intention of the Administrator to ensure that the property would be owned by the Municipality."* He argues that all the subsequent purchasers were aware of the condition and thus aware of the earmarked use. In conclusion to have the condition removed would be to compound the problem created by the initial error and to deprive the local residents of a valuable amenity which it was intended they should have.

It is clear from a legal point of view that the application cannot be entertained and thus not be recommended for approval.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for the removal of restrictive title conditions with reference to Clauses B(6) of Title Deed T53677/2004 applicable to Erf 4013, Betty's Bay, rezoning in terms of Section 16(2)(a) of the aforesaid By-Law and the consent use in terms of Section 16(2)(o) of the aforesaid By-Law in order to accommodate a residential dwelling **not be approved**, due to the following reason:
 - (a) that the Municipality, in terms of legal standing, cannot approve the removal of the mentioned condition as per the legal opinion, Advocate Farlam dated 5 August 2007 and Messrs Fairbridges Wertheim Becker Attorneys dated 31 May 2018, and
2. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Site Development Plan
Annexure C:	Motivation Report
Annexure D:	Title Deed
Annexure E:	Objections received
Annexure F:	Applicant's response to objections received
Annexure G:	Services Report
Annexure H:	Legal Opinions
Annexure I:	Western Cape Heritage
Annexure J:	Western Cape Government: Environmental and Development Planning

SIGNATURES

REGISTERED PLANNER

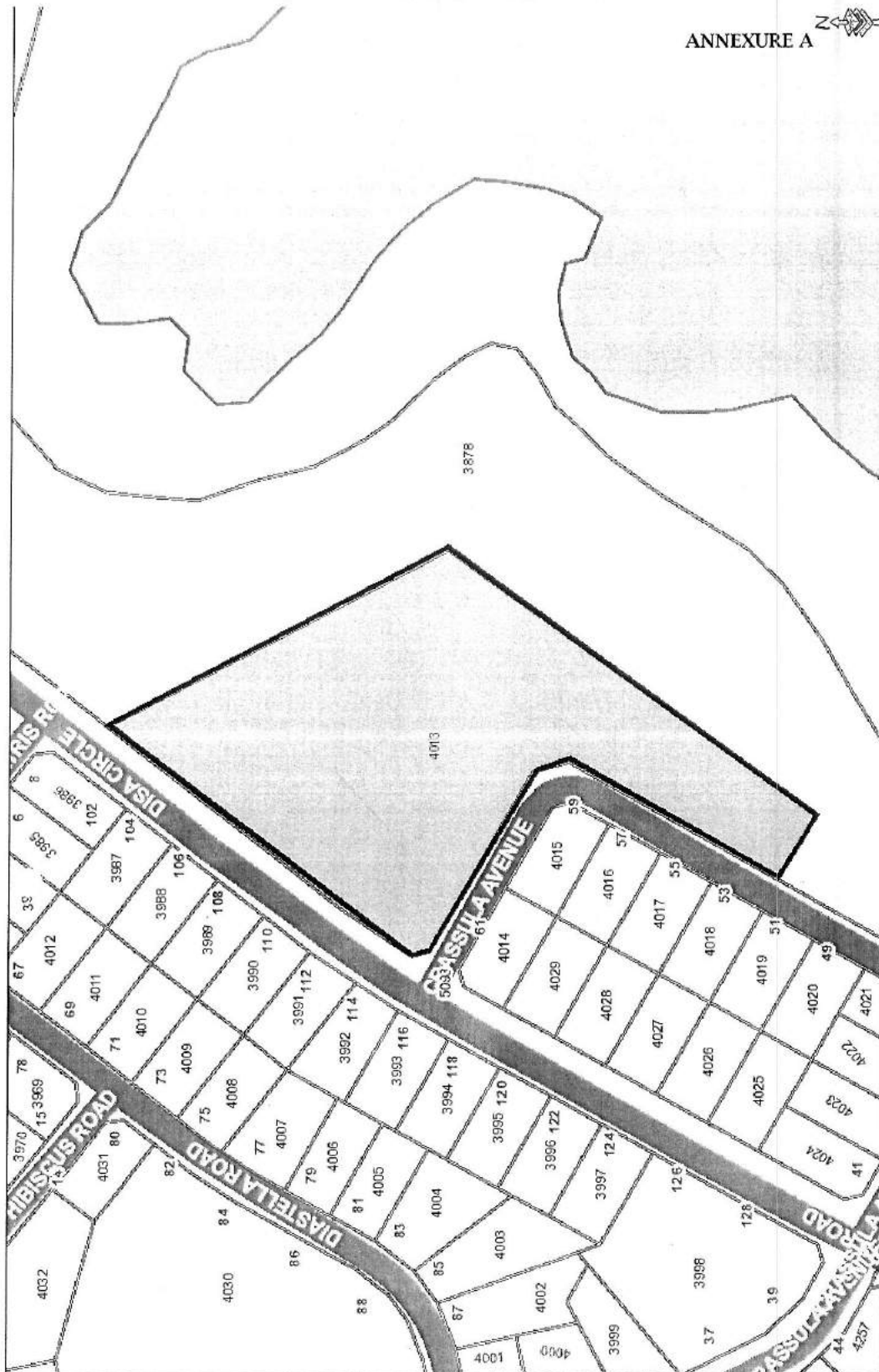
Name : **H VAN DER STOEP**

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

Signature : _____

Date: _____

ANNEXURE A



LOCALITY PLAN - ERF 4013 BETTY'S BAY

OVERSTRAND



Appendix E

ANNEXURE B

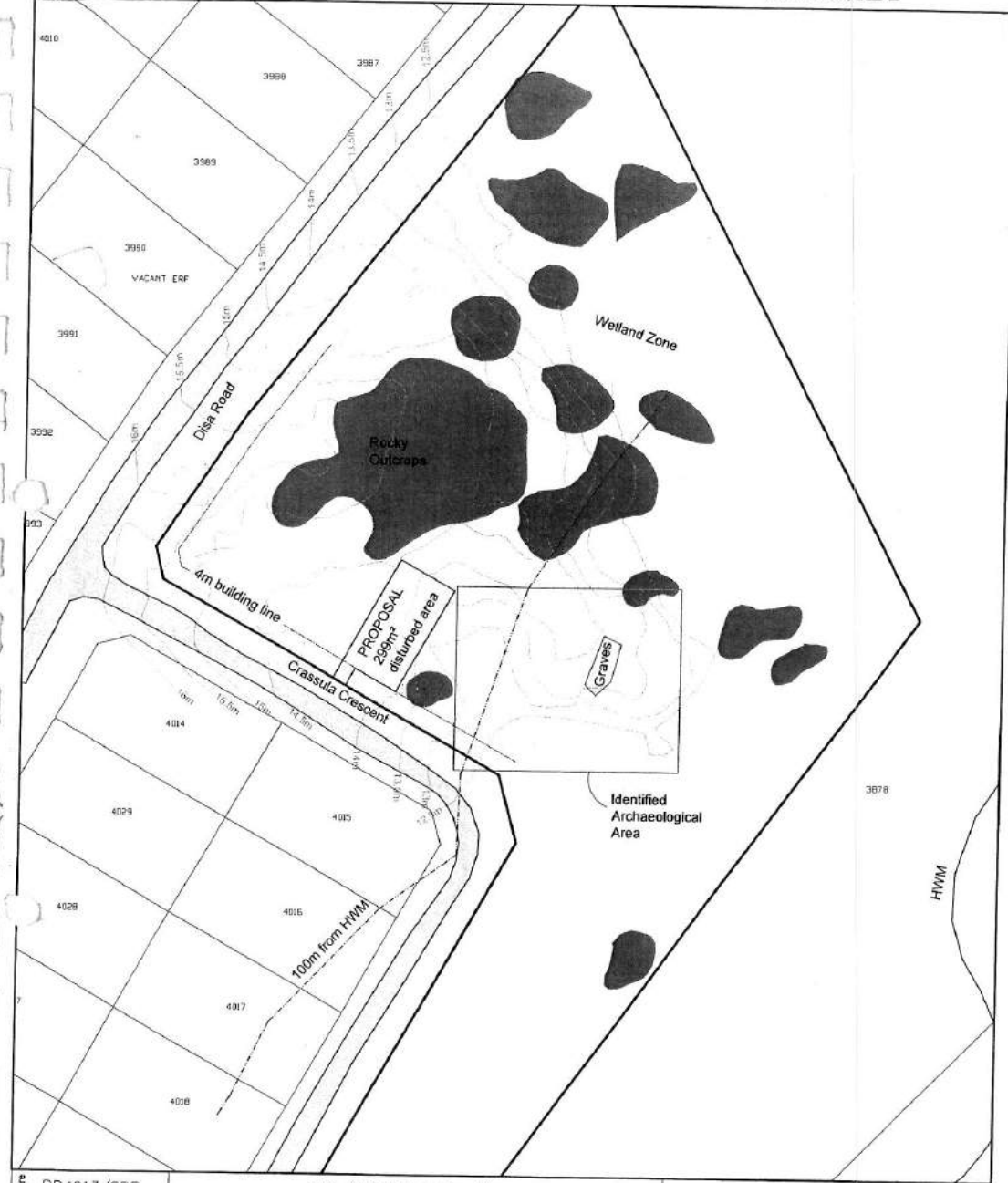


figure	BB4013/SDP	project	Erf 4013 Betty's Bay: Rezoning and Consent Use	client	J Kannemeyer
file	BB4013	drawing	Site Development Plan		
date	12 June 2017	notes / key	Effective maximum ground floor building platform: 250m², maximum house size therefore 500m²		
scale	1 : 1000				

ANNEXURE C 1/10

**APPLICATION FOR REZONING, CONSENT USE AND REMOVAL OF RESTRICTIVE CONDITIONS:
ERF 4013, SITUATED AT THE CORNER OF DISA ROAD AND CRASSULA CRESCENT, BETTY'S BAY**

1. INTRODUCTION

Erf 4013 is situated close to the coast of Betty's Bay. The property is currently vacant and zoned Open Space 3, the primary use of which is private open space. An application was previously submitted to Council to authorise the establishment of a dwelling on the property. This application was refused on the basis that the property is environmentally sensitive and due to the objection of surrounding property owners to the establishment of a double storey building. A new application is being submitted for the same purpose and with a reinforced motivation for the owner's right to establish a double storey dwelling on his property.

2. APPLICATIONS

The following applications are required in order to realise the development:

- o a **rezoning application** to rezone erf 4013 to Open Space 1, in terms of **section 16 (2) (a) of the Overstrand By-law on Municipal Land Use Planning**;
- o a **consent use application** for a dwelling unit in terms of **section 16 (2) (o) of the Overstrand By-law on Municipal Land Use Planning**;
- o a **removal of restrictive conditions application** to permanently remove conditions B.6 and B.5 from the title deed in terms of **section 16 (2) (f) of the Overstrand By-law on Municipal Land Use Planning**.

3. PROPERTY DETAIL AND CONTEXT

3.1. Property Information

Table 2: Table of property information

Erf Number	Erf 4013, Betty's Bay
Property Diagram	8502/1971 (appendix A)
Title Deed	T53677/2004 (appendix B)
Property Extent	1,7772ha
Registered Owner	James Charles Kannemeyer
Title Deed Conditions	Yes, Conditions B.5 and B.6. Refer to section 3.2.
Servitudes	No
Applicant	Headland Planners (Pty) Ltd (appendix C)
Applicable Zoning Scheme	Overstrand Zoning Scheme Regulations, 2013

Current zoning: Open Space 3



ANNEXURE C 2/10

Current Land Use	Vacant
Any Unauthorised Land Use/ Structures	No
Departures required	No
Special/Conservation Area	Yes, see section 3.3
Subject to SAHRA/PHRA	Yes, see section 3.4. ROD approval obtained from HWC (appendix F)

3.2. Title Deed Conditions

The conveyancer's certificate (appendix D) confirms that the following restrictive title deed conditions (Condition B.6 read with Condition B.5) constrain further development on the property limiting it to recreational use and structures only.

Condition B.6: "This erf shall be used solely for recreational purposes or any other use as the Administrator may, from time to time after reference to the Townships Board and the Local Authority, authorise and it shall not be transferred by the Local Authority, to another person without the written consent of the Administrator."

The condition also includes a prohibition of sale which has not been/has never been amended in the title deed. However, the ownership of the property was transferred through 4 successive private owners and it is impossible to reverse the sequence of sales. It is therefore prudent to rectify this anomaly by removing the condition in its entirety.

An application is being made for this condition to be removed.

Condition B.5: "No building on this erf shall be used or converted to use for any purpose other than permitted in terms of these conditions."

This condition is read together with Condition B.6. Since B.6 is being removed, this condition is no longer applicable and should be removed as well.

An application is being made for this condition to be removed.

3.3. Context and Location

The subject property is located along the coast, north of the Penguin Colony and between "Die Been" and "Stony Point". It overlooks the western portion of the Betty's Bay Marine Reserve. The surrounding area is made up of a single residential neighbourhood and the open space zone protecting the coastline.

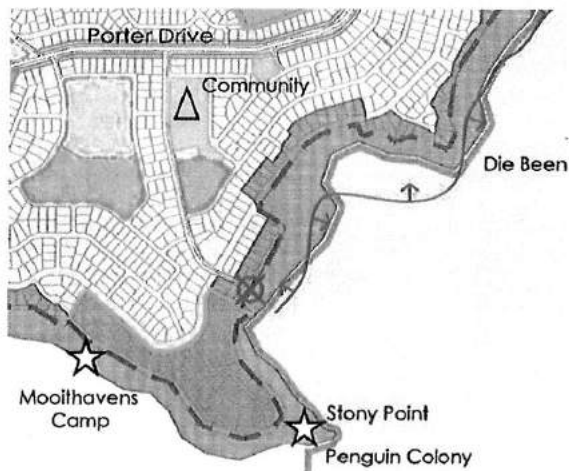


Figure 1: Coastal context

3.4. Environmental Site Characteristics

The environmental features present on and adjacent to the site create buffer areas and setbacks which limit the exercising of "as of right" uses. In terms of the EIA listed activities, the following are relevant determinants on the property:

Listing Notice 1 of 2014:

Activity 19A deals with the infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from - (i) the seashore; (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater.

Activity 23 deals with the development of cemeteries of 2500 square metres or more in size.

Listing Notice 3 of 2014:

Activity 12 (iv) deals with the clearance of an area of 300 square metres or more of indigenous vegetation "on land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning".

Activity 15 deals with the transformation of land bigger than 1000 square metres in size, to residential, retail, commercial, industrial or institutional use, where, such land was zoned open space, conservation or had an equivalent zoning, on or after 02 August 2010. (c) In Western Cape: (i) Outside urban areas.

Since the site has been subject to rigorous environmental screening and scoping processes previously, the impact of the bio-physical constraints is already known. The ones that affect the location of any potential dwelling are:

- High Water Mark (HWM) and 100m setback

The HWM forms the western edge of the adjacent public place erf 3878. The impact of the 100m setback is that the site is reduced to a ca. 6,500m² portion in the western corner (at Disa/Crassula road intersection).

- Wetlands and 32m setback

The on-site wetlands have been mapped in the past, and by imposing a 32m setback from the edges, this still leaves a significant land portion (ca. 5,000m²)

- Endangered ecosystems

Almost the entire site forms part of an endangered ecosystem (apart from invaded road edges), so it is clear that the removal of indigenous vegetation greater than 300m² would trigger an EIA.

Specialist Studies during EIA:

During the 2005/2006 application, the Freshwater and Botanical specialists highlighted the importance of large parts of the site, and its contribution to conservation in Betty's Bay. Natural areas have an intrinsic value in upholding the general lifestyle appeal of a coastal town. It is clear from the studies that formed part of the 2005/2006 process, that there are areas within the site that could be developed for a single residential use and it is within these non-sensitive areas that one residential unit is being proposed.

The proposed dwelling footprint has been positioned in such a manner as not to trigger an EIA - it is situated outside of/below any of the thresholds, and **therefore an EIA process is not required** for this application.

3.5. Heritage Site Characteristics

The archaeological study undertaken for the 2005/2006 application identified graves on site; these are resources classified in terms of section 36 of the NHRA (25 of 1999). They do not impact on a proposed development footprint as they predominantly lie within the 32m wetland buffer area, and the 100m from HWM setback.

ANNEXURE C 4/10

4. DEVELOPMENT PROPOSAL**4.1. Development Proposal**

The proposal is to rezone the property from Open Space Zone 3 to Open Space Zone 1 (Nature Reserve), with Consent for 1 (one) dwelling unit, as a double storey house, on a maximum disturbed area of 299m², per plan BB4013/SDP (appendix E). This disturbed area includes the area inside the 4m street building line, in which only the driveway and garden area may be constructed.

4.2. Development parameters

The property will be rezoned to Open Space 1 (OS1) in terms of the Overstrand Zoning Scheme Regulations which permits dwelling units as a consent use. The zoning scheme does not specify development rules in an OS1 zone and the Council shall determine the development 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.

OS1 zone has no specific development parameters. Although the development rules are at the discretion of the Council, it is deemed appropriate to impose the same development parameters as the surrounding single residential area (R1) for the proposed single dwelling on erf 4013, namely a

(a) 4m street building line and

(b) 8m height to top of roof.

The need for an environmental study (in terms of the development rules) is not required as the site had been the subject of a substantial and robust environmental screening and scoping process during the 2005/2006 application process. Section 3.3 dealt with the environmental restrictions that have informed the proposal.

4.3. Parking

The minimum requirement for a dwelling unit is 2 bays per unit however, even less than 400m² in size only require one bay. 2 parking bays will be provided.

5. MOTIVATION AND DESIRABILITY**5.1. Primary Motivation – Response to Reasons for Decision (2016 Refusal)**

As mentioned in section 1, the previous application (appendix G), which made the same land use proposals, was refused. The application is being re-submitted, with specific improvements to the motivation for viability of the proposed development which is fundamentally desirable, suitable and compatible in the proposed location. With this in mind, counterpoints to the 2016 refusal's reasons for decision are argued:

(a) the Title Deed intention was to restrict any residential development on the property.

Although this may be the case, the current zoning contains consent uses for environmental facilities, recreational facilities, rooftop base station, tourist accommodation, tourist facilities, transmission tower and utility service which, if granted, would result in a more intrusive use of the property as opposed to a single dwelling.

(b) that the erf retain its undeveloped character of a unique wetland system, which is seasonal in nature.

What seems to have been missed in the previous application is that the proposed site development plan indicates the location of the wetland, and it is clearly visible that the proposal has been purposefully located away from it. The integrity of the wetland will be retained since the proposed dwelling will have no impact on it.

ANNEXURE C 5/10

(c) the mitigation measures with regards to view has not been addressed or discussed.

The dwelling location was first informed by the presence of environmental and heritage resources on site, which eliminated most areas from consideration in establishing a dwelling. In the area where a dwelling could be considered, an additional selection process involved positioning the dwelling in a way which caused the least disruption to the site as well as the least impact on views from neighbouring properties. This resulted in the proposed location of the "disturbed area" for the dwelling as illustrated in appendix E. An analysis of the views from each of the surrounding properties' balconies or seaward facing windows is provided in section 5.4.

(d) the building of structures in terms of the present zoning will not serve any purpose if it is not for the benefit of the wider public – as determined by the Title Deed.

The property is privately owned and as such, the use practised on the property is at the choice of the developer, (whether for personal or public benefit) within the appropriate land uses stipulated by the Overstrand Zoning Scheme. None of the structures permitted for recreational use under the existing zoning (eg a recreational clubhouse) appeal to the owner who would instead like to reserve a minor area to the establishment of a dwelling.

The recreational use condition includes a section which states that the property should not be transferred without the consent of the Municipality. The property was transferred through 4 successive owners (Agger Investments (Pty) Ltd in 1979, Erik Barnard in 1989, resold to Betty's Bay Trust in 1995, James Kannemeyer in 2004) none of which should have been permitted, however they cannot be reversed. The history of transfers discounts the merit of the condition entirely, which is why it should be removed.

Owing to the requirements of the new land owner, a very small portion of the land is being proposed for personal use by the owner, leaving approximately 98% of the property untouched. However, potential public access to the rest of the property will be at the discretion of the owner. A refusal prejudices the land owner substantially more than an approval prejudices the surrounding residents.

(e) the value of erven adjacent to Erf 4013 may be compromised should Erf 4013 be developed.

The location of properties in a village setting, within walking distance of the coast and close to the Kogelberg Nature reserve far outweighs the imagined minor impact on views. The assumed adverse impact on the value of erven are unfounded. An assumed reduction in the market value of an adjacent property must be backed up by substantiated evidence.

(f) historical information eg. Structure Plan (dated 1997) clearly indicates the adherence of the restrictive condition, which has not been changed over the years, due to its unique environmental features,

The historical adherence to the restrictive condition may have been due to the desire of consecutive owners to leave the condition in place or due to the assumed tediousness of the process for removing the condition. Historical adherence cannot be relied on as an indicator that the condition should continue to exist. The removal of the condition will not result in any damage to the property's unique environmental features which will in fact be retained over 98% of the property.

(g) the identification of a grave site on the property may have significant heritage and cultural influence, which has not been dealt with sufficiently.

On the contrary, the matter was dealt with adequately by Heritage Western Cape (HWC). Due process was followed and a Notification of Intent to Develop (NID) application was submitted to HWC. Subject to various measures taken to shield the heritage resource from developmental impacts, an approval was granted permitting development in the proposed location.

The site is currently unfenced and open to the general public who may currently traipse over the property in a leisurely manner to access the coastal front. Since the property contains various environmental and heritage assets, it is motivated that a permanent residential presence will permit formal policing of the natural conservation area which is otherwise free for all. In this way, it will be ensured that the property is and remains undisturbed.

Further to the primary Overstrand Municipal Planning By-law requires the criteria contained in sections 66 and 35(4) to be satisfied in order for an application to be considered correctly motivated. The proposal has taken into account the requirements for the proposed By-Law applications and has provided sufficient documentation in support of each. The

ANNEXURE C 6/10

following sub-sections motivate for the desirability of the proposal, taking a variety of pertinent factors into consideration.

5.2. Impact on heritage

As previously mentioned, the site contains graves which are heritage resources, however, they are not impacted by the proposal because they lie within the 32m wetland buffer area, and the 100m from HWM setback. The proposed dwelling unit development will be located outside of this sensitive area and therefore will not impact its integrity. This is further echoed by the Heritage approval obtained in 2015 which granted the owner the right to construct a dwelling provided that appropriate measures are taken to protect the grave site from construction as well as pedestrian movement. This approval is significant because it recognises the lack of impact of a single dwelling on the existing heritage resources.

5.3. Impact on biophysical environment

The biophysical features were identified by the Freshwater and Botanical specialists in the 2005/2006 studies where the importance of large parts of the site were identified. These studies concluded that although the property contains areas of environmental significance, there are some areas within the site that could be developed for a single residential use without directly or indirectly impacting these identified sensitive areas.

5.4. Character of the environment

The proposed change in land use will permit it to remain dominantly untouched as a nature reserve and conservation area. The consent for a double storey dwelling unit is clearly compatible with the immediate residential surrounding, four of which are two storeys in height. The privacy of neighbours will not be impacted and neither will their views since the proposed dwelling unit will be located a reasonable distance away. The distance of the proposed dwelling unit from the surrounding properties, and their views has been illustrated in figure 2.

5.5. Impact on existing rights

The development will not adversely impact the rights of surrounding owners. The predominant use of the land as a conservation area will remain the same with the addition of a double storey dwelling taking up a meagre 1,7% of the site. An analysis of the proposed location of the dwelling as well as its impact on the existing neighbours through a consideration of their locations, view lines and distances from the proposed unit, uncovered that the proposal will have a negligible impact. A view is not a right and the following points, together with Figure 2 (overleaf), provide a description of the minimal impact of the proposed development on each view corridor:

- Erf 3993 exploits its view position from the second storey and is able to look over erf 4014&5 in front of it;
- Erf 3992 is rotated 15 degrees away from a direct perpendicular to the sea view, and only experiences the view from the second storey;
- Erf 3991 appears to be orientated towards "Die Been" and almost completely misses erf 4013, in terms of overlooking. There is a minor window directed across erf 4013 at a 68 degree angle, but again from the second storey only;
- Erf 3990 is entirely vacant, and any house here would not be blocked by the proposed dwelling position on erf 4013;
- Erf 3989 has exploited the sea view to full effect, and its "lion's share" of the view is almost entirely unaffected by the proposed dwelling position;
- Erf 4014 has views from second storey (over erf 4015) parallel to the proposed dwelling position on erf 4013, and is therefore entirely unaffected (note mostly blank wall facing Crassula Crescent and proposed dwelling location);
- Erf 4015 is entirely unaffected, as it sits further ahead of the proposed dwelling on erf 4013.

In addition to the above, the topography of the site (see plan BB4013/SDP for contours) reinforces the logic of choosing the dwelling position as advocated in this application:

- The site has a high point at the Disa Road/ Crassula Crescent intersection (16m contour height at that point);

ANNEXURE C 7/10

- From visual inspection, it is clear on site that erven 3992 & 3993 (immediately west of the intersection) are situated higher than the road;
- Crassula Crescent drops down towards the sea;
- The identified position for the dwelling has a 1,5m elevation difference to Disa Road and potentially a 2m (or more) difference to erven 3992 & 3993;
- The identified position is also on a level piece of ground, and therefore the need for cut and fill is minimised, making for the least harmful construction impact.

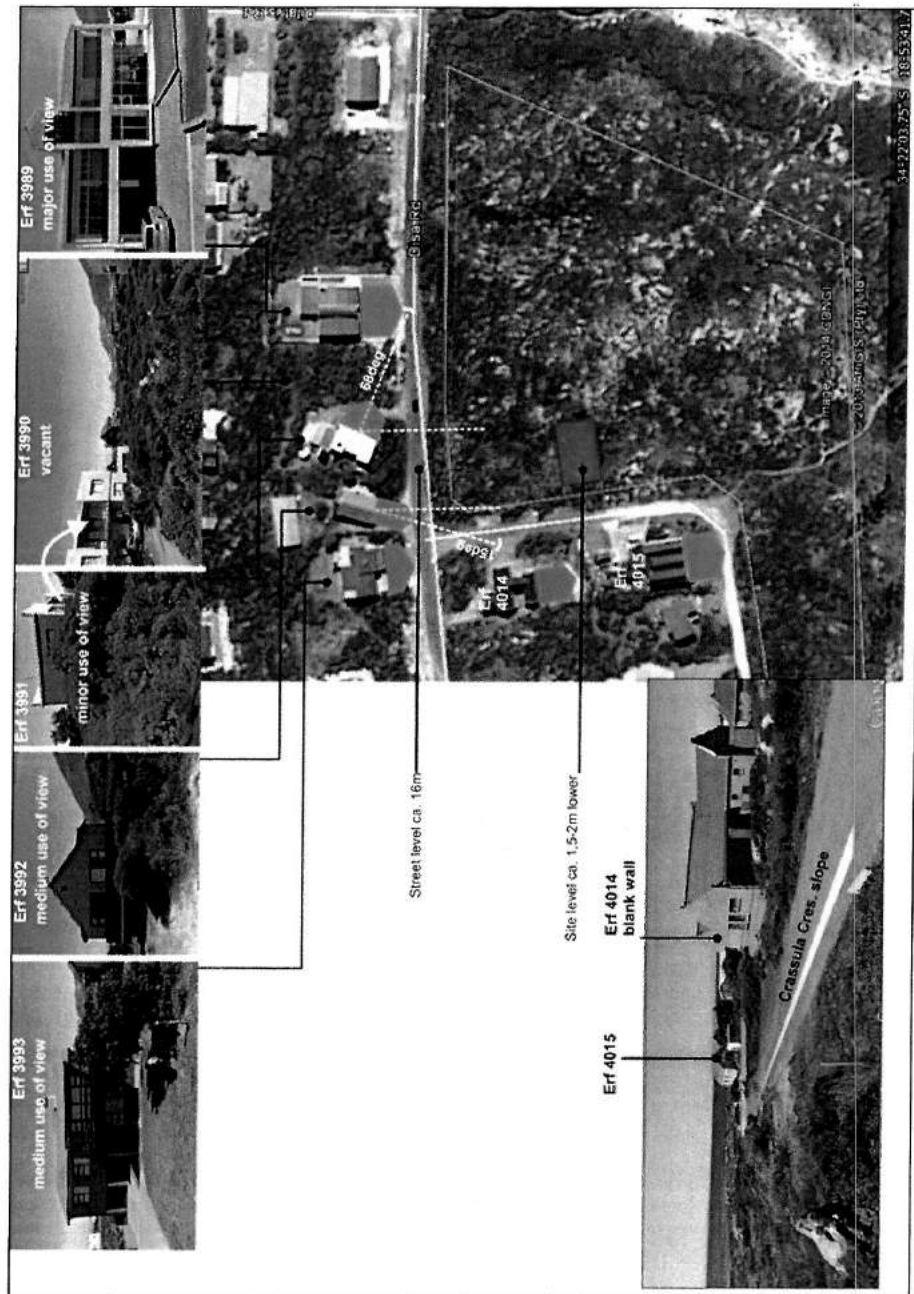


Figure 2: Analysis of views from neighbouring properties

ANNEXURE C 9/10

5.6. Desirability of the proposed utilisation

The proposed use is highly desirable and adds one more dwelling to the existing residential suburb. As previously mentioned, the dominant use of the land will be a natural conservation area with approximately 1,7% of the property being utilised for a double storey dwelling.

5.7. Impact on municipal engineering services

The proposal for a single dwelling unit does not necessitate additional engineering services. Since the surrounding area has already been developed for residential use, the existing municipal services will be sufficient to service the development. The development will be accessed from Crassula Crescent.

5.8. Investigations carried out in terms of other laws which are relevant to the consideration of the application

The proposal is influenced by the NEMA, however it does not trigger the need for an EIA since the proposal is located away from the areas of the site that have environmental sensitivities. In terms of the preservation of the natural and developed environment, the Coastal Zone remains in-tact, because only a minor portion of the site will be developed. The Environmental Management: Air Quality, Occupational Health and Safety Act and Management: Waste and National Water Act are not relevant to the consideration of this application.

5.9. Planning principles

The policies, principles of planning, development norms and criteria as set out set in Section 42 of the Spatial Planning and Land Use Management Act, 2013 (ACT 16 of 2013) (SPLUMA) and Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA) was regarded and that the proposed application is compliant with them.

5.10. Consideration of forward planning and land use documents

- *Provincial Spatial Development Framework, 2013 (draft)*

The PSDF illustrates the need to maintain a balanced approach in promoting development whilst simultaneously protecting the distinctive character of the coastal landscape and natural assets throughout the province.

- *Overstrand Spatial Development Framework and Growth Management Strategy, 2010 (draft)*

The underlying objectives of the Overstrand SDF are to protect prime agricultural assets and biodiversity areas, conserve heritage resources, manage spatial growth in a sustainable manner and retain the rural cultural landscape.

- *Bettys Bay Local Spatial Development Principles*

Betty's Bay is known is a quaint town known for its various tourist attractions and retirement town due to its quaint. The principles highlight the need to retain the village landscape by protecting the town's natural assets, conserving cultural heritage sites and promoting infill development within the town's boundaries.

The proposal demonstrates salvages a major portion of the property for and allocates a minor portion for the development of a single dwelling. The proposal satisfies the main objectives of the PSDF, Overstrand SDF and the Bettys Bay Local Plan and is cognisant of the conservative view of development, especially in the proposed location. The proposed dwelling will be very small scale, of a minimal impact and will not reduce the village appearance in any way.

Although the site is located outside of an urban edge, a single dwelling on the property does not mean it is inconsistent with the SDF. Single dwellings are permitted as of right outside of urban edges, for example on farms, smallholdings and other rural areas. Additional dwelling units are in fact permitted outside of urban edges on farms as a consent use. The consent use is therefore not inconsistent with policy. The proposal entails the establishment of one dwelling on one property, which is consistent with the SDF.

ANNEXURE C 10/10

5.11. Removal of Restrictions Motivation**5.11.1. Section 39(5) of the Land Use Planning Act (LUPA), 2014**

This section of the Act states that a municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition". The factors are noted below and include responses motivating the application's consideration of each for the removal Conditions B.5 and B.6 from the title deed.

- **the financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;**

The removal of the restrictive conditions intends to increase the use rights of the property to permit a single dwelling unit. The value of the rights is vested in the owner of the property and since the conditions restricts the uses permitted on the property, the value of these rights could be potentially greater than they are at present. The development is not proposing an unusually large scale form of development but simply intends to obtain the rights for a single dwelling as has been granted to owners of surrounding properties.

- **the personal benefits which accrue to the holder of rights in terms of the restrictive conditions;**

The conditions were imposed by the Administrator for the benefit of the surrounding township. The only personal benefit to the holder is that the property may be used for recreational purposes such as an amenity for tourism.

- **the personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed;**

The removal of Conditions B.5 and B.6 will be beneficial in permitting the owner to establish a dwelling and reside on the property and fully enjoy the benefits of residing in the coastal suburb.

- **the social benefit of the restrictive conditions remaining in place in its existing form;**

The social benefit would result in the land possibly being utilised for recreational facilities which may only be beneficial if opened to the public. This would deter from the residential nature of the area.

- **the social benefit of the removal or amendment of the restrictive conditions; and**

The conditions confines development on the property to facilities that are not useful to the owner. The social benefit is the ability to establish a private residence on the property which is currently not permitted.

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

The removal of the restrictive conditions will not remove any rights enjoyed by the beneficiary but will instead expand the value of these rights to a use that is considered to be more desirable and useful to the owner.

6. CONCLUSION

The proposal avoids all environmental and heritage sensitive areas on the site, and the scale of the development falls below the EIA triggers; the conclusion is that there is no detrimental effect on the environment. The single dwelling opportunity created by this application is a reasonable expectation, particularly in relation to the general public's right to habitation of their own properties. The proposition of a double storey dwelling does not result in a significantly different impact on views as compared to a single storey development due to its substantial distance from Disa Road. The proposal has given consideration to all aspects of the physical and social environment in which the property exists and successfully motivated for the suitability of a double storey dwelling on the property.

Prepared by me
[Signature]
CONVEYANCER
VAN DER MERWE HP

SEELREG
DUTY R _____
FOCI
FEE R 500.00

[Handwritten signature]

T 000053677 / 2004

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN
THAT JOHLENE FOURIE
appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said Appearer, being
duly authorised thereto by a Power of Attorney granted to him/her by

THE BETTY'S BAY TRUST
NO. IT802/1995

which said Power of Attorney is dated 19 April 2004 and signed at BELLVILLE

AND the said Appearer declared that his/her principal the said TRANSFEROR had on 26 February 2004 truly and legally sold and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

JAMES CHARLES KANNEMEYER
Born on 14 August 1941
Unmarried

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

ERF 4013 BETTYS BAY
in the Overstrand Municipality,
Division Caledon
Western Cape Province

IN EXTENT: 1,7772 (ONE comma SEVEN SEVEN SEVEN TWO) hectares

FIRST TRANSFERRED by Deed of Transfer No. T33672/1977 with General Plan No. TP8276 relating thereto and held by Deed of Transfer No. T34128/1995.

- A. **SUBJECT** to the conditions referred to in Deed of Transfer No. T26686/1970.
- B. **SUBJECT FURTHER** to the following conditions mentioned in Deed of Transfer No. T33672/1977, imposed by the Administrator of the Cape Province in terms of Ordinance 33/1934 with the approval of BETTYS BAY TOWN EXTENSION NUMBER 3, namely:
1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No 623 dated the 14th August 1970.
 2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf, any provisions thereof which are more restrictive than any conditions of title applicable to this erf shall take precedence. Furthermore, nothing in these conditions shall be construed as overriding the provisions of section 146 of Ordinance No. 15 of 1952, as amended.
 3. The owner of this erf shall without compensation be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or erven inside or outside this township to be conveyed across this erf, if

< get

CONDEED

LegalSuite / Bornman & Hayward Inc

WHEREFORE the said Appearer, renouncing all the right, title and interest which the said transferor heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to, the same; and that, by virtue of these presents, the said transferee, his heirs, executors, administrators or assigns now are and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of R1 200 000.00 (ONE MILLION TWO HUNDRED THOUSAND RAND).

IN WITNESS WHEREOF I, the said Registrar of Deeds together with the Appearer, have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 9 June 2004



J. q. Signature of Appearer

In my presence:


REGISTRAR OF DEEDS

CONDEED

Lees/Suto / Berman, K. Harwood Inc.

ANNEXURE E 1/16

Munisipale Bestuurder
Overstrand Munisipaliteit
Posbus 20
HERMANUS.
Ingehandig by Kleinmond Munisipalekantore.

TP - A Theart
(H vld Stoep)



10 September 2017.

Geagte Me H van der Stoep,

i/s Hersenering van erf 4013 Bettysbaai.

Ek is die eienaar van erf 3990 in Disastraat en ook n gereelde besoeker aan Bettysbaai.

Dit was my voorneme om my erf te ontwikkel, maar het besluit om my erf te verkoop aangesien daar van die begin af kontroversieele herseneringsaansoeke deur ontwikkelaars gedoen is. Dit het geskied bloot as winsbejag en geen ontsag vir die bewaring van groen gebiede vir ons fauna en flora in n bewaringsarea nie. Sodra voornemende kopers egter hoor van be-oogde ontwikkeling van 4013, taan die belangstelling. My erf word al ver onder markwaarde aangebied en nog steeds stel kopers nie belang nie, alhoewel n erf een eiendom verder vir oor R1,000,000-00 verkoop is.

Mnr Kannemeyer was van die begin af bewus van die beperkinge en tree bloot oppertunisties op vir eie gewin. Boonop tree hy na my mening oneties op om die owerhede onder n wanindruk te bring i.v.m. die bestaande eiendomme se uitsig en waardevermindering a.g.v. beoogde ontwikkeling.

Is u bewus van die bedreigde Afrika Pikkewyn wat besig is om na erf 4013 uit te brei? Enige ontwikkeling, hoe min of klein ook al, is tot direkte nadeel van die unieke habitat in die Kogelberg Reservaat en Bewarings area.

Hiermee versoek ek u dat u hierdie aansoek met omsigtigheid sal hanteer wat dit verlang.

Die uwe,

Dr S.J.P. KRUGER
Privaatsak X 020,
VANDERBIJLPARK. 1900.

FILE NO:	EL 4013
SCAN NO:	Betty's Bay
COLLABORATOR NO:	1076836

ANNEXURE E 2/16

Munisipale Bestuurder,
Overstrand Munisipaliteit,
Posbus 20,
HERMANUS
7200.



TR A Theart
CH vbl stoep!

Aflewering aan Overstrand Munisipalekantoor te Kleinmond.

15 September 2017.

Geagte Bestuurder,

r/e Hersonerig van erf 4013 BETTYSBAAI.

Dit is nou al 25 jaar dat verskeie eienaars gepoog het om die beperkte voorwaardes opgehef te kry om die erf 4013 te ontwikkel.

Enige ontwikkeling in hierdie sensetiewe gebied sal tot nadeel geskied t.o.v. die bewaring van ons land se erfenis.

As deel van die Kogelberg Natuurreserwe se Buffergebied is dit u plig as Munisipaliteit om bewaring hoog op prys te stel.

Soos Cape Nature u seker al in kennis gestel het, beweeg die bedreigde Afrika Pikkewyn se aktiwiteite in die rigting van die erf. Hulle is nie meer beperk tot Stoney Point nie. Die beweging is besig om vinnig te geskied.

Die voorgestelde ontwikkeling skep n presedent vir toekomstige bewaring van ons skaarser wordende kusgebiede.

Die Ontwikkelaar bring ook die Munisipaliteit onder n wanindruk van uitsigbelemmering van meeste van die betrokkenes. Bv dat erf 4014 n blanko muur na die beoogde ontwikkeling sou he. Hul belangrikste uitsig sal belemmer word aangesien DIE muur hul grootste vensters en balkon bevat.

Om die ontwikkelaar tegemoet te kom sal ons voorstel dat die gebou slegs enkelverdieping met n plat dak sal wees. Ook dat die gebou se fondasie nie gelig word om gebou hoer te plaas nie.

Verder versoek ons die Munisipale Bouinspekteur om toesig te hou sodat daar nie "per abuis" oortree word en hul net met n boete wegkom na oortreding nie. [Soos voorheen gebeur het met hoogte oorskryding]

Neem egter kennis dat daar nie met sekerheid vasgestel is waar presies die grafte gelee is nie. Daar n sterk vermoede van oergrafte. Dit sal net vassgestel kan word wanneer die fondasies vir ontwikkeling plaasvind en kom neer op erfenis skending. Al die eienaars was deurentyd ten volle bewus van die beperkings op erf 4013. Almal het vertrou hul sou die betrokke owerhede kon omseil vir eie gewin en winsbejag. Dus versoek ons u ernstig om hierdie aansoek met die nodige omsigtigheid te benader.

Groetings die uwe,
DU TOIT PWJ & EE. Erf 3991 Disaweg Bettysbaai.

P. N. N. N.

FILE NO:	EL 4013
	Betty's Bay
SCAN NO:	
COLLABORATOR NO:	1076833

TP- A Theart
(Huld Steep)

Loretta Gillion - erf4013, disaweg, bettysbaai: opheffing van beperkte voorwaarde...

From: Hermien de Vos <hermiendevos@gmail.com>
To: <loretta@overstrand.gov.za>
Date: 15/09/2017 03:51 PM
Subject: erf4013, disaweg, bettysbaai: opheffing van beperkte voorwaarde....



goeiedag ek is n inwoner
 ek is gekant enige opheffing!
 dis n pragtige ongeskonde fynbosstrook
 enige bouwerk indien enigsins behoort op die sensitiefste maniere denkbaar beskikbaar gedoen
 te word
 n dubbelverdieping raak ons almal
 dankie
 groete
 hermien de vos
 unastraat bettysbaai tel 0823496919

FILE NO:	EL 4013
	Bettys Bay
SCAN NO:	11
COLLABORATOR NO:	1076644

TP 18 SEP. 07

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/59BBF707HermanusMunpos... 2017/09/18

ANNEXURE E 4/16

TP-A Theart
C Hudstrop



FILE NO:	4013
SCAN NO:	Betty's Bay
COLLABORATOR NO:	1076554

DATE: 14/9/17
 TO: OVERSTRAND MUNICIPALITY
 NAME: JN BRITS
 CONTACT DETAILS: 15 ST JAMES TERRACE, MAIN ROAD ST JAMES, 7945
 TELEPHONE: 082 7875712
 EMAIL: jnbrits@gmail.com
 CAPACITY: PART OWNER ERF 3944, 3 DILATRIS ROAD BETTYS BAY

REGARDING: APPLICATION FOR REZONING, CONSENT USE AND REMOVAL OF RESTRICTIVE CONDITIONS ERF 4013, DISA ROAD BETTYS BAY

MOTIVATION FOR OBJECTION:

As part owner of erf 3944, Dilatris Road, a property that has an extensive view and is closely situated to the subject property as well as a long time resident of Bettys Bay, I hereby object to all 3 Applications as set out below:

1 Application for removal of restrictive title deed conditions.

In terms of the conditions of granting development and township rights to the original owners of the property, a certain percentage of the property would have been set aside for public open space with restrictive use.

This was clearly the case with the subject property which was set aside for recreational and environmental use. Hence the restriction in the title imposed namely clause B.6 that reads *that this erf shall be used solely for recreational purposes.*

Hence the condition also included a prohibition of sale due to fact that the land should never be sold to preserve the use of the property in perpetuity to the benefit of future residents of the township.

Now the applicant argues that as there were four sales of the subject property and as the four sales cannot be reversed, therefore this wrong should simply be rectified.

This is patent nonsense. This wrong should not be made right by giving the existing owner additional rights that he has never had and knowingly would never have when, he bought the property even though the sale was prohibited in terms of the title deed and intention and commitment of the original developers and the Administrator.

It is my contention that all the 4 owners including the current owner knew the purpose of the zoning and the detail of the restrictive conditions of the subject property but nevertheless purchased the property in some hope that they could somehow get the zoning changed for commercial benefit hence the history of failed rezoning and development applications in the past.

The primary reason for the refusal of a previous application that the Title Deed intention was to restrict any residential development on the property. I contend that this should still be reason why this application should be turned down as set out above.

TP

15 SEP 2017

ANNEXURE E 5/16

A further reason for refusal in the previous application was that the Structural Plan clearly indicates the adherence of the restrictive conditions due to its unique environmental features. It is my contention that there is nothing new in this application that will change this reason for refusing the application

The application to remove restriction B5 should therefore also be rejected

2. Application to rezone the property from Open Space Zone 3 to Open Space 1.

For the same reasons that I oppose the 1st mentioned application I oppose this rezoning application. Rezoning the subject property to Open Space 1 in terms of the Overstrand Zoning Scheme Regulations, will permit dwelling units as a consent use. OS1 zoning could therefore pave the way for future development of additional building units on the subject property.

As motived in 1 above this was never the intention of the original developers of the property and the Administrator in granting development rights and should be kept public open space in perpetuity.

A change in zoning will therefore be a gross violation of the Title Deed restrictions of the subject property and rights of a vast number of property owners that bought erven in that part of Bettys Bay based on the recreational use land set aside by the developers which includes the subject property.

3. Application for consent use to enable the owners to build a double storey dwelling.

In terms of my objections to Application 1 and 2 this application should be rejected outright.

Conclusion:

All the arguments in favour of the application by the Town Planners is in my view totally subservient to the fact that the intention of the developers of the greater property and the consent given by the then Administrator for the right to develop the property was that Erf 4013 was set aside as private open space. Hence the restrictive conditions in the Title Deed. All subsequent owners of this erf knew or should have been made aware of these restrictive conditions by the subsequent sellers but nevertheless willingly and knowingly went ahead with the purchase of the subject property.

They must therefore accept that they bought property that was intended as private open space.

This wrong cannot be condoned and made right with this application

JN BRITS

14/9/2017



ANNEXURE E 6/16

Hurst Family Trust
 c/o HL Barrett
 P.O. Box X3
 Sun Valley
 7985

TP - A Theart
 (Huld Stoop)

14 September 2017

cell: 076 187 4855
 email: graemephurst@gmail.com

Municipal Manager
 Overstrand Municipality
 P.O. Box 20
 Hermanus
 7200

FILE NO:	Erf 4013
	Betty's Bay
SCAN NO:	09
COLLABORATOR NO:	1076186

Dear Sir / Madam,

RE: Objection to the Application for Rezoning, Consent Use and Removal of Conditions: Erf 4013 Betty's Bay – Municipal Notice No. 106/2017

I am a trustee of the Hurst Family Trust which owns Erf 4016, a property in close proximity to Erf 4013. On behalf the Trust I wish to object to the application on the following grounds:

1. Inaccurate representation of context: Impact of Existing Rights (section 5.5, pg 6)

The photographs in Figure 2 (page 8) provided to support the above section and showing the neighbouring properties are out of date as the house on Erf 4014 has been substantially extended and no longer has the blank wall that the application refers to. This is seriously misleading and renders this part of the application null and void.

Furthermore, there is evidence that the photos have been taken off Google Street View (see the bottom right hand corner of the bottom left hand photo on page 8) which indicates that a site visit wasn't made. If a site visit wasn't made then what else is incorrectly represented?

2. Deceptive use of built footprint

I note that section 4.1. (page 4) refers to the ground footprint being 299m². This is clearly to circumvent an Environmental Impact Assessment (which as I understand it, is required from 300m²) but it's obvious that the 'impact' of any residential building will be much wider than the footprint area once access paths, patios and gardens etc. are factored in (as the use of a building is not limited to its exact footprint). So in light of this, the 299m² footprint is misleading regarding the lack of a need for an EIA.

3. Negative impact on the aesthetic appeal of the coastline

TP

15 SEP .017

A double storey (to a potential 8m in height) standing in isolation (as there are no neighbouring properties on the coastal side of Crassula Crescent) will seriously alter the view across the coastline and detract from the natural coastal landscape. The scenic beauty of the area is a key attraction for visitors and as such benefits the local economy.

The assumption made in the application that the standard height and setbacks for regular residential land be adopted is not for the applicant to make as the municipality has clear discretion to set such zoning guidelines. In light of this and the above point (regarding aesthetic) appeal any agreement to allow a residential structure should at least limit it to a single-storey structure.

4. Precedent for a loss of Open Space

A change in zoning to Open Space 1 and the removal of the title deed restrictions will set a dangerous precedent for other Erfs of the same zoning to be similarly changed as – quite simply – if this is approved for one owner, then the municipality will be required to do the same for others.

5. Inaccurate comment on Removal of Restrictions Motivation (section 5.11.1)

The third paragraph of the above section (on page 10) refers to 'as has been granted to owners of surrounding properties.' This is incorrect as the surrounding properties are zoned for residential use so no right was granted. Rather the 'right' to build was obtained by the owners deciding to purchase residentially zoned land which the owner of Erf 4013 could have done.

6. Evidence of speculation

Erf 4013 was purchased by the current owner in the full knowledge that its zoning was not suitable for residential use and he paid a market price associated with that zoning (Open Space 3). This application has all the hallmarks of a desire to increase the market value of the land by obtaining a favourable zoning with a permitted dwelling.

Further to the above, it is clear from the applicants previous 3 applications (2005/6 and 2014) that the owner of Erf 4013 has had a residential use in mind from the outset (just a year after purchase) and never had any intention of a use in line with Open Space 3 as there have been no applications related to such a use.

Further the point in section 5.1(d) page 5 commenting on a refusal 'prejudices the land owner substantially more than the an approval prejudices the surrounding residents' reads as a veiled threat and in any event doesn't make sense as a successful rezoning is not an entitlement that the applicant is being deprived of. Rather it is a decision at the discretion of the authorities.

ANNEXURE E 8/16

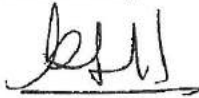
7. Lack of need for additional residential dwellings

Betty's Bay has no shortage of undeveloped residentially zoned land. There is no compelling reason to change the zoning and remove the title deed restrictions to allow a residential dwelling at the expense of open space. If the applicant wishes to have a residential dwelling then why not purchase a property with the appropriate zoning to do so?

As an interested and affected party we reserve the right to raise additional points relating to our objection as and when they may arise.

Thank you in advance for assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'GH', with a horizontal line underneath.

Graeme Hurst

Trustee of the Hurst Family Trust (Erf 4016 Betty's Bay)



BBRA / BBBV
Betty's Bay Ratepayers' Association
Bettysbaai se Belastingbetalersvereniging



Overstrand Municipality
Town Planning
Hermanus
7200

FILE NO:	EL 4013
SCAN NO:	Betty's Bay
COLLABORATOR NO:	1073237

T.P.A. Theat
C. Mulder
5 September 2017

File Reference 5406 & 5407 KBB 9 (3638)

ATTENTION S MULLER: INFRASTRUCTURE AND PLANNING

Dear Sir,

APPLICATION FOR REZONING, CONSENT USE & REMOVAL OF RESTRICTIVE CONDITIONS:

ERF 4013, SITUATED AT THE CORNER OF DISA ROAD AND CRASSULA CRESCENT, BETTYS BAY

Introduction

Previously, this application was refused on the basis that the property is environmentally sensitive and was objected to by the surrounding property owners as well as many of the Bettys Bay community.

The land was originally owned by the Municipality. After the sale of the land to various people, mistakenly in our view, numerous proposals to establish various sized developments were rejected on the basis of the areas' unique environmental and historical characteristics.

Although the focus of the current Application may have changed and certain bases may be covered more thoroughly than previous Applications, the environmental significance of the area has not changed.

Title Deed Conditions

The Title Deeds (B.6) have been accurately stated in the proposal in respect of the ERF which "shall be used solely for recreational purposes or any other use as the Administrator may, from time to time after reference to the Township Board and the Local Authority, authorise....." etc

We strongly object to the dilution or non - compliance of any Title Deed conditions of any property where the changes affect relevant stakeholders and communities. Ignoring Title Deed conditions often negatively affect communities or individuals where rights

Chairman: Rudi Perold
028 272 9054
BBRA, P O Box 48, Betty's Bay, 7141

Treasurer: Adrian de Kock
082 940 4619
BBBV, Postbus 48, Bettysbaai, 7141

Secretary: Adrian de Kock
0282729998

06 SEP 2017



BBRA / BBBV

Betty's Bay Ratepayers' Association
Bettysbaaise Belastingbetalersvereniging

and / or expectations have been infringed - a scenario currently being experienced by the Bettys' Bay community.

The net result of this proposal, following the transfer of the property through 4 successive owners, is the request to remove Title Deed conditions B.5 and B.6.

The original omission or error relating to the Title Deeds in this case must not open the door to further dilution of the Title Deed conditions, as serious and relevant objections to the consequences exist.

Response to the Motivation and Desirability

The collective impact of the bio – physical and heritage features would be seriously damaged if the proposed development was “fitted into”, located “in and amongst or positioned such that it “narrowly missed” the ecological and historical centres of the Reserve.

The house would clearly stand out in the Reserve as very noticeable, out of place and therefore very inappropriate. Any proposed development must be located **inside** an urban edge for it not to stand out inappropriately.

The Overstrand Spatial Development Framework and Growth Management Strategy, 2010 (draft), and related papers, (as stated) suggests that “protection of bio - diversity areas and heritage resources” and “the retention of the rural cultural landscape “ would be best served by locating residences **inside** an urban edge.

It is agreed that a view is not a right and therefore 5.5 is accepted.

However, this objection relates purely to protection of the environmental and heritage sites which form a significant part of ERF 4013.

In conclusion, the proposal, as with the rejections of previous proposals, would have a detrimental effect on an environment which is under continual threat and is therefore strongly opposed.

BETTYS BAY RATEPAYERS ASSOCIATION
5 September 2017

Chairman: Rudi Porold
026 272 9054

Treasurer: Adrian de Kock
082 940 4619

Secretary: Adrian de Kock
0282729998

BBRA, P O Box 46, Betty's Bay, 7141 / BBBV, Poebus 48, Bettysbaai, 7141

Municipal Manager
 Overstrand Municipality
 Paterson Street

Hermanus 7200

28 August 2017

Dear Sir, Madam

H. D. V. Beink for the Henry Beink Family Trust

ERC No 3992, Disc Road, Betty's Bay

ANNEXURE E 11/16

Reg

Stads Beplanner

P.O. Box 20

Hermanus 7200

att: Me H. van der Stoep

of die

att:

- This letter serves as an affected Party objecting to the rezoning of Erf 4013 as per application by Head Land Planners on behalf of J.C. Kannemeyer
1. The intention to build a double storey house with a roof height of plus 8 meters will block my front sea view almost completely.
 2. When I purchased my property I paid a premium price because of the position. When my property was valued for rates (market value) I was informed by the Municipality Valuation appeals Board that my sea view was taken into consideration resulting in a higher market value. The chairman also stated that no one could interfere with my view under the present zoning conditions. This statement by the chairman is on record (take record)
 3. I have had my property valued for capital gains tax purposes by an appraiser appointed by the then Minister of Housing. He describes my property as a sea front residence with beautiful uninterrupted frontal view of coastal rocks and sea. A highly marketable and sought after, but scarce property. The double storey, 8 meter plus roof height with a total floor area of five hundred square meters in front of my property will drastically change the above description

P.T.

resulting in a massive financial devaluation of my Property. Local estate agents have inspected the site of the proposed development and confirm what I have stated above. I request a site meeting so that I may point out the impact of the proposed development. Headland Planners states that my view will only be partially affected. Which is not true. If I am partially deprived, then I am deprived - Period!

4. I have been living on the fringe of Eof 4013 for twenty seven years. It should remain with the present zoning in place. My family and I are traumatized by the proposed development on Eof 4013. Why should we not object to the rezoning if such rezoning results in the loss of my view and Property value?
5. The applicant also states a clubhouse of two storeys is permitted in present zoning. We would object to that proposal as well. We would not object to a single story clubhouse with a low pitch roof.
6. I am submitting a copy of a News Paper article on how a High Court judgement deals with the case of respecting the sea view of an existing property.

My contact details are.

Land line 021-5572893

Mobile 0847420711

Yours faithfully
A. D. Brink

Henry D.V. Brink

For The Henry Brink Family Trust.

Hofbevel oor uitsig 'n wending

Dit sal dalk voortaan onwettig wees om 'n huis of ander gebou op te rig wat die uitsig van bestaande wonings of ander geboue belemmer.

In 'n onlangse hooggeregshofsaak het die regter beslis dat bouwerk wat die uitsig van 'n bestaande woning versper, gesloop moet word.

Die bouwerk is nogal gedoen deur 'n ontwikkelaar wat die bestaande woning aan die klaer verkoop het.

Tony Clarke, besturende direkteur van Rawson Properties, sê 'n woning se see-uitsig is toegebou, en die eienaar het hom tot die

bouwerk in ag geneem nie, maar gesê dit is "onredelik en ongeens".

Die regter se beslissing is ongevoem omdat Suid-Afrikaanse houe nog altyd taamlik traag was om "waardvolle" geboue te laat sloop as ander oplossings gevind kon word, byvoorbeeld om skadevergoeding te gelas of om te bevestig dat die struktuur van die gebou aangepas word.

In hierdie geval is twee faktore belangrik. Die eerste is dat die ontwikkelaar aanhou bou het nadat die klaer 'n aansoek by die plaaslike owerheid ingedien het dat die bouwerk gestaak word en

alle uitsig-versperrende bouwerk verwyder word.

Die tweede is dat die ongerief wat die klaer moet verdur so groot is, dat sy uitsig belemmer word en dat die bouwerk "onredelik en ongewens" is.

Die ontwikkelaar het gesê die sloping sal R1 miljoen kos, en dit sal die waarde van die bestaande huis van R8 miljoen aansienlik verlaag.

In die nuusbrieff *LA Law*, wat op die regsberoop gerig is, word voorgestel dat teen die beslissing appaleer word. Indien die appèlhof die regter in sy uitspraak getyk gee, sal dit 'n deurslaggewen-

de beslissing oor 'n baie ou en nettelige geskildpunt in Suid-Afrika wees.

Clarke sê die moedswillige versperping van die uitsig van bestaande wonings behoort nie net aanvaar te word nie. Onsensitiewe en soms onwettige bouwerk gaan reeds te lank in Suid-Afrika aan. Eienaars moet opstaan vir hul regte sodat 'n nuwe boubedanking gevolg kan word en moontlik nuwe wette geskryf kan word om die ernstige probleem eens en vir altyd uit die weg te ruim.

Rig navrae aan Tony Clarke by
 ☎ 021 658 7100 of per e-pos by tony@rawsonproperties.com.

Reg

Municipal Manager
Overstrand Municipality
16 Paterson Street
Hermanus, 7200



PO Box 104
Betty's Bay, 7141

1st September 2017

*TR A Theart
(Hubl Stoep)*

Dear Sir,

OBJECTION: REMOVAL OF RESTRICTIVE TITLE CONDITIONS, PROPOSED REZONING & CONSENT USE: ERF 4013, BETTY'S BAY

I refer to your Municipal Notice No. 106/2017

I hereby object to the removal of the restrictive title conditions and simultaneous rezoning/consent use of the above mentioned property based on the following grounds –

1. The rezoning as applied for will have a detrimental affect on the environmental and ecological surrounding area.
2. Previous attempts to rezone this property for development were refused, the objections of the adjacent property owners were upheld by the Authorities and for this reason we are again objecting to the rezoning
3. To my knowledge the surrounding property owners are all in objection to the rezoning of the above property
4. Development of the property will require extra services to be provided for by the Municipality, which will affect the surrounding properties, i.e. laying new water pipes, sewerage system, drainage, electricity, etc

We reserve our rights to employ legal representation and to elaborate on our objections.

Yours faithfully

JE Hornbrook
Owner of 3993 Disa Road

FILE NO:	<i>EL 4013</i>
	<i>Betty's Bay</i>
SCAN NO:	<i>57</i>
COLLABORATOR NO:	<i>1073031</i>

ANNEXURE E 15/16



TP - A Theart
(H vld stoep)

POSBUS 262
FAERIE GLEN
0043

TEL: 082 444 0061

4 September 2014.

Municipal Manager
Overstrand
Private Bag X3
Kleinmond
7195

FILE NO:	EC 4013
	Betty's
SCAN NO:	56
COLLABORATOR NO:	1073025

OBJECTION: APPLICATION IN TERMS OF THE OVERSTRAND BY LAW ON MUNICIPAL LAND USE PLANNING FOR THE REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND CONSENT USE: ERF 4013 BETTY'S BAY

Please take note that I, as a direct neighbour of the application property and subsequently as an interested and affected party to this application has to date not been notified of the application submitted to you. I act herein on information received from my neighbours.

I hereby object to the removal of the restrictive conditions and simultaneous rezoning/consent use of the above mentioned property. My objection is based on the following grounds:

- This is the fourth application of this nature and the second identical application for a dwelling house on the application property. I found it somewhat sinister that the owner of the subject property does not discuss his intention with the owners of neighbouring properties to find a solution. This said, by siting the proposed dwelling in the intended position will never satisfy me and the only solution will be to find another building site.
- The applicant's right to apply for rezoning etc is recognised, this has however become an expensive exercise for me to object and I reserve my rights to recover costs from the applicant.
- The surrounding land uses is not addressed and the impact of the application on the surrounding land uses is not addressed.
- Planning and development principles as set out in the Spatial Planning and Land Use Management Act (Act 16 of 2013) and other planning legislation have not been addressed.
- The environmental implications of the application have not been properly addressed and the applicant's submission that the proposed dwelling house does not constitute a listed activity does not hold water.
- The applicant's analysis of the views from my property and his statement that Erf 4014 is entirely unaffected by the application is an indication of the total lack of understanding of the problem.
- The assumption that the proposed development will have no impact on my property is not correct and should be ignored by the authorities. Fact is that the proposed dwelling house will be directly in my view and will have a negative impact on my property.

TP
2014 SEP 09

6 SEP 2014

ANNEXURE E 16/16

- The geo-technical features of the site and suitability of the site for the proposed land use have not been addressed and the applicant conveniently ignores this important factor in the assessment of the site for the proposed land uses.
- The notice of this application is unauthorized and hence fatally flawed.

From the above it is clear that the application is flawed and does not constitute a proper application which can be assessed by any planning authority to come to a logical conclusion.

We reserve our rights to employ legal representation and to elaborate on our objections.

Yours faithfully


IRENE HUGO

5/9/17

PO Box 197
edgemead 7407
tel: 021 559 6849
fax: 086 510 8188
e-mail: claus@headland.co.za
www.headland.co.za

Your Reference: 4013KBB (3714)
Our Reference: BB4013

For Attention: Ms Haneen van der Stoep
Overstrand Municipality
PO Box 20
HERMANUS
7200



TP-A Theart
(H vld Stoep)

Date: 25 October 2017

Dear Haneen

ERF 4013 BETTYS BAY: PROPOSED APPLICATION FOR REMOVAL OF TITLE DEED CONDITIONS, REZONING AND CONSENT USE
SUMMARISED COMMENT AND RESPONSE TO PUBLIC OBJECTIONS

The above-mentioned application underwent a public participation process from the 10th August 2017 to the 15th September 2017. The public was informed of the proposed development through an on-site advert and registered letters served to the surrounding property owners. During this time 9 objections were received, the details of which are summarised in the table below. Further comment was also received from the Provincial Department of Environmental Affairs and Development Planning.

Correspondence with Heritage Western Cape confirming that the previously issued ROD is still valid, is included in this document as appendix A. In addition, correspondence with the Department of Environmental Affairs and Development Planning has also been included as appendix B.

Objector	Address/Contact details
1. Dr. S.J.P Kruger	Disa Road Erf 3990
2. P.W.J & E.E du Toit	Disa Road Erf 3991
3. H de Vos	Una Street
4. JN Brits	Dilatrix Road Erf 3944
5. Hurst Family Trust (G Hurst)	Erf 4016
6. Bettys Bay Rate Payers Association	
7. The Henry Brink Family Trust (H Brink)	Disa Road Erf 3992
8. JE Hornbrook	Disa Road Erf 3993
9. I Hugo	Erf 4014

Map of respondents (respondent's number in reference with property ownership information tabulated above).

FILE NO: EL 4013-KBB
SCAN NO:
COLLABORATOR NO: 1094583

TP
26 OCT 2017



1. SUMMARISED OBJECTIONS AND RESPONSES

Removal of Title Deed Conditions

All previous owners purchased the property with the knowledge of its zoning and restrictions in the hope that they could get the zoning changed for commercial benefit. The property was purchased by the current owner in full knowledge of the zoning not being suitable for residential use and he paid the market price associated with this zoning. The owner wants to increase market value of the land by obtaining a favourable zoning with a permitted dwelling (Objectors 1, 2, 4 and 5).

The owner purchased a coastal piece of land and would like to be afforded the opportunity to create a residence on the property in order to fully enjoy the same rights that all surrounding residents currently enjoy. It could be argued that it every land owner's right to expect to be able to use his/her property for a residence (in the case of non-commercial or non-industrial zoning). The objectors would be depriving this landowner of this inherent right, if their objections would stand.

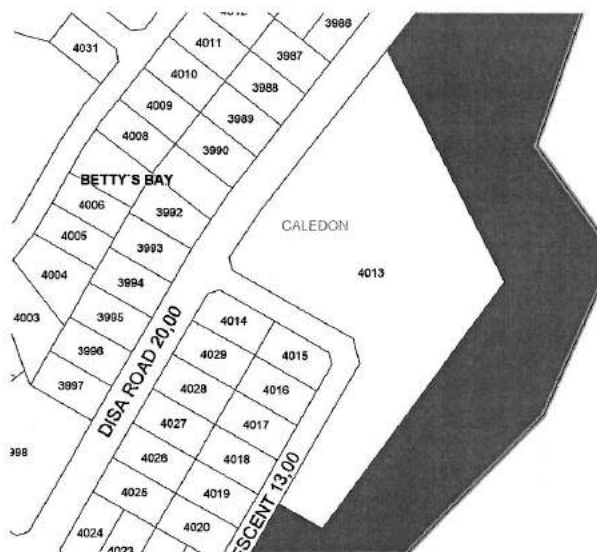
ANNEXURE F 3/11

Primary reason for refusal of previous applications is that the title deed intention was to restrict any residential development on the property. There is nothing new in this application and the removal of title deed conditions should similarly be refused (Objector 4).

Counter points to the reasons for the previous refusal have been provided in the motivation report and these should be taken into consideration.

The planning report (page 10) refers to "...as has been granted to owners of surrounding properties" as being incorrect because the surrounding properties are zoned for residential use so no right was granted (Objector 5).

Their right to individual dwellings was created when the sprawling coastal township of Betty's Bay was established. There was no bio-physical difference between (for example) erven 4014 – 4018 and our client's erf, seeing as they are all at the same elevation above, and distance, from the sea. Parts of 4016-4018 are even below the High Water Mark.



Objection to the non-compliance with any of the title deed conditions where the changes affect relevant stakeholders and communities. Ignoring title deed conditions often negatively impacts communities/individuals where rights have been infringed on (Objector 6).

No title deed conditions are being ignored, this is why the application for Removal is required. The conditions to be removed and the resulting dwelling proposed will have a benign impact as compared to a recreational building that is permitted on the property as of right (in terms of zoning and title deed). A local fishing club could be established, with a recreational hall for its members.

Rezoning

Objection against the rezoning because it was never the intention of the original developers of the property and the administrator to grant development rights and the property should be kept public open space in perpetuity (Objector 4).

The intention of the original developers is not relevant to the current application especially considering the fact that the property has been successively transferred through 4 owners against the title deed condition. We are acting

ANNEXURE F 4/11

proportionally to the fact that the transfer occurred (pre-dating our client significantly) in that only one dwelling is requested (which it could be argued is an inherent right). We reiterate that from a biophysical perspective there is no significant impact on any of the neighbours.

Granting the rezoning could pave the way for future development of additional units on the property (Objector 4).

The proposal is for Council consent for a single dwelling in an Open Space zoning, leaving the rest of the site as a nature reserve. All planning applications must be dealt with on merit, not precedent. Furthermore, the Council may impose conditions that limit the establishment of additional dwellings on the property.

A change in zoning would be a gross violation of the title deed restrictions and the rights of a vast number of property owners based on recreational use, which the property forms part of (Objector 4).

A rezoning is not prohibited by the title deed. In addition, the application involves a rezoning from OS3 (private open space) to OS1 (nature reserve). Note that OS1 carries a stronger declaration for protection and conservation of the property than the existing OS3 zoning. Note further that the objectors seem to equate "recreational use" with no buildings: recreational use permitted could also be a clubhouse for fishermen, or any sports of recreational association.

Granting the rezoning could act as dangerous precedent for the rezoning of other OS3 zoned properties (Objectors 2 and 5).

All planning applications must be dealt with on merit, not precedent.

Rezoning will have a detrimental impact on the environmental and ecological surrounding area (8).

This is not true because the rezoning is from Open Space 3 to Open Space 1. The primary use in OS1 is nature reserve defined as "national park or conservation area..." which will be enacted on 98% of the property. As mentioned previously, OS1 carries a stronger declaration for protection and conservation of the property than OS3, therefore this rezoning will be highly beneficial. The development proposal is being submitted for the utilisation of a meagre 2% of the property for a single dwelling unit.

Note also that 180 degrees of the "surrounding area" is the existing residential township of Betty's Bay, which is in itself damaging to the ecology.

Other

Photographs used in report are outdated since the house on erf 4014 has been substantially extended and no longer has the blank wall referred to in report. This is misleading. The dwelling on erf 4014 has big windows and a balcony facing the proposed dwelling and this would obstruct their views (Objectors 2 and 5).

Noted. The proposed dwelling will still be situated across Crassula Crescent beyond an appropriate, Council approved setback. This will mitigate the disruption of views. And the potential building siting only partially interrupts the view.

Pictures used in the report were taken off google street therefore a site visit was not made (Objector 5).

Although the pictures were taken off street view, two site visits were made.

The 299m² is clearly to circumvent an EIA. The 'impact' of any residential building will be much wider than the footprint area once paths, patios and gardens etc are factored in because the use of a building is not limited to its exact footprint. The 299m² footprint is misleading regarding the lack of need for an EIA (Objector 5).

A total area of 299m² is deemed to be sufficient for the development of a dwelling. All construction will be limited to this footprint. The activity in EIA regulations is therefore not triggered.

ANNEXURE F 5/11

A double storey will seriously alter the view across the coastline and detract from the natural coastal landscape. The scenic beauty is a key attraction for visitors and benefits the local economy (Objectors 5 and 7).

The proposed development is not large enough to significantly detract from the coastal landscape. There are many existing dwellings along the coast, one of which is the property of objector 5 (erf 4016). It should be noted that objector 5 has a full sea view and is separated from the location of the proposed dwelling by a dwelling on the neighbouring property (erf 4015) therefore, the physical impact on this objector is negligible.

The standard height and setbacks is not for the applicant to decide but is at the clear discretion of the council. Any agreement to permit a residential structure should at least limit it to a single storey building (Objectors 2 and 5).

The motivation report simply states that the dwelling should follow specifications similar to that of the surrounding dwellings. It is understood that the Council is the deciding authority on whether this is suitable or not. If all other members of the Betty's Bay township were to accept a height limitation of single storey, then the objectors' argument would have had merit.

Any agreement to permit a residential structure should at least limit it to a single storey building (Objectors 2 and 5).

Given the gentle downward slope of the property, it is motivated that a double storey dwelling will not have much more of an impact.

The applicant has had residential use in mind from after the year of purchase and never had the intention to use the property in line with OS3 since there are no applications related to OS3 use (only residential) (Objector 5).

This is correct, but is not a relevant point.

Reference to section 5.1(d) of the town planning report, the point "prejudices the land owner substantially more than an approval prejudices the surrounding residents." This reads as a veiled threat and doesn't make sense because a successful rezoning is not an entitlement that the applicant is being deprived of – it is a decision at the discretion of the Council (Objector 5).

The statement intended to draw a comparison between the loss of opportunity by the owner and the gain by surrounding residents; it is an argument of proportionality in the context of reasonable decision-making. The granting of a refusal is more impactful on the property owner because it results in his inability to reside on the property whereas an approval would be beneficial to the surrounding resident by simply resulting in the property remaining vacant.

Bettys Bay has no shortage of undeveloped residentially zoned land. There is no compelling reason to change the zoning and remove the title deed restrictions to allow a residential dwelling at the expense of open space. If the applicant wants a residential dwelling why not purchase a property with the appropriate zoning to do so? (Objector 5).

It is not the objector's place to question the purchase of erf 4013 or propose alternative land purchases.

It is requested that the Municipal Building Inspector to oversee so that no "wrongdoing" is violated and they will only be fined for infringement (as previously happened with height overrun) (Objector 2).

It is not understood what previous height overrun the objector is referring to. If this is in reference to the High Court ruling article, it is assured that the entire land use planning process is formal and transparent and that the construction of the building will be based on Council approved building plans.

Environmental/Heritage

The collective impact of the bio-physical and heritage features would be seriously damaged if the proposed development was "fitted into" the ecological and historical centres of the reserve (Objector 6).

ANNEXURE F 6/11

Heritage and environmental assessments were conducted by qualified consultants who concluded that a development of this scale would not impact the ecological and historical qualities of the property. The argument also makes no sense as only 1.68% of the property is earmarked for alteration.

Lack of awareness of the endangered African Penguin which is expanding to erf 4013. Any development, however small is a direct disadvantage of the unique habitat of the Kogelberg Reserve and Conservation Area. As Cape Nature has already informed you, the endangered Africa Penguin's activities have been moved towards the yard. They are no longer restricted to Stoney Point and the movement is taking place quickly (Objectors 1 and 2).

The establishment of a single dwelling on a maximum disturbed area of 299m² will not detrimentally impact the expanding habitat of the African Penguin. The expansion of this endangered species onto erf 4013 is welcomed and any measures to enhance the safety and preservation of this habitat will be adhered to. This will be especially so if the rezoning is granted because the primary use right in OS1 is nature reserve (national park or conservation area).

It has not been established with certainty exactly where the graves are located. There is a strong suspicion of graves. It will only be possible when the foundations for development take place and constitute a violation of inheritance (Objector 2).

A qualified heritage consultant identified the location of the graves (detailed on the site plan) and the applicant has purposefully located the dwelling a reasonable distance away.

Any development in this sensational area will be detrimental to the preservation of our country's heritage (Objector 2).

The proposed 299m² dwelling is not large enough to impact the country's heritage and is located a good distance away from the identified heritage sensitivities of the site.

The house would clearly stand out in the reserve as very noticeable out of place and very inappropriate. Any proposed development must be located inside the urban edge for it not to stand out. The Overstrand SDF and Growth Management Strategy suggest that "protection of bio-diversity areas and heritage resources and the retention of the rural cultural landscape would be best served by locating residences inside the urban edge (Objector 6).

The dwelling will be located alongside existing dwellings. The urban edge is a line used to set limitations for development. The fact that the dwelling will be located outside of the urban edge will not affect its appearance or make it stand out in any way.

Although the site is located outside of an urban edge, a single dwelling on the property does not mean it is inconsistent with the SDF. Single dwellings are permitted as of right outside of urban edges, for example on farms, smallholdings and other rural areas. Additional dwelling units are in fact permitted outside of urban edges on farms as a consent use. The consent use is therefore not inconsistent with policy. The proposal entails the establishment of one dwelling on one property, which is consistent with the SDF. Also, the site is not being rezoned to dwelling rights, a subservient and stricter consent use is applied for.

Environmental implications of the application have not been properly addressed and the applicant's submission that the proposed dwelling does not constitute a listed activity does not hold water (Objector 9).

To paraphrase the law: development less than 300m² does not require an EIA. We have used credible baseline information to check the bio-physical constraints (High Water Mark (HWM), wetlands and setbacks and the existence of endangered ecosystems); all of these informed the location of the proposed dwelling. It is motivated that the potential environmental implications have been adequately addressed.

A premium price was paid for the property due to its position and the municipal valuation appeals board informed the objector that the sea view was taken into consideration when property was valued for rates – a higher market value was given. The chairman stated that no one could interfere with the view under erf 4013's current zoning conditions- statement on record (Objector 7).

ANNEXURE F 7/11

This comment makes it appear as though the proposed dwelling will block the entire view, which is not the case at all. The development of a single dwelling approximately 70m away (from the objector's dwelling) will not ruin the objector's view. The sea-line stretches from the Kogelberg Mountains past the proposed dwelling on erf 4013. The rezoning creates certainty that the status of 98% of the land will become a nature reserve and not a recreational clubhouse (as per existing rights) and this certainty should in fact keep property values stable.

Property was valued for capital gain tax purposes by an appraiser who described the property as a sea front residence with beautiful uninterrupted views of the coastal rocks and sea and highly marketable and sought after but scarce property. The proposed double storey will drastically change this description resulting in a massive devaluation of objector's property. Local estate agents have inspected the site of the proposed development and confirm this. Objector requests a site meeting in order to point out the impacts of the proposed development. Reference to a High Court Ruling that a view is a right (Objector 7).

As mentioned previously, the rezoning creates certainty that the status of 98% of the land will become a nature reserve and not a recreational clubhouse (as per existing rights). Given the distance of the objector from the proposed dwelling, as well as the gentle downward slope on which the dwelling will be situated, the objector's view will remain predominantly intact.

Although, the High Court ruling was in favour of the removal of the dwelling, this also had to do with the fact that the dwelling was found to have contravened the height restriction. The High Court judgement did not formally entrench the dictum "a view is a right"; it dealt with whether the Municipality failed to take into account one building plan's impact on the adjacent property, and it dealt with the retention of PARTIAL views.

Note also that section 7(a)(vi) of the SPLUMA (Act 16 of 2013) states that no Municipal Planning Tribunal may consider derogation of value as a decision making criterion.

Applicant states that objector view will be partially affected which is not true. Partially deprived = completely deprived (Objector 7).

This is not true. A partial loss of view does not completely tarnish the view of the sea-line.

Objector living on the property for 27 years and it should remain within the present zoning. Household residents are traumatised by the development proposal (Objector 7).

The property owner is simply exercising his right to obtain a single dwelling which will not cause significant harm to the objector's property value or view lines.

Applicant stated that a clubhouse of two storeys is permitted within the current zoning. Objector would object to this proposal as well. The objector would not object to a single storey clubhouse with a low pitch roof (Objector 7).

The primary use in Open Space 3 is Private Open Space. This is defined in the Overstrand Zoning Scheme regulations as "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". Given this definition, the exercising of existing rights requires building plan approval by the municipality ONLY, a process which does not consider comments from the surrounding owners.

The development of the property will require extra services to be provided for by the municipality which will affect the surrounding properties i.e. laying of new pipes sewerage systems etc (Objector 8).

The development links into existing services, and therefore only an erf connection will be created.

The proposed location of the dwelling will never satisfy the objector, the only solution is to find another building site. (9)

The property owner reserves the right to submit land use proposals and pursue this residential development option.

ANNEXURE F 8/11

Applicants right to apply for rezoning is recognised however it has become an expensive exercise for objector to object and reserves the right to recover all costs from applicant (Objector 9).

This is entirely incorrect. Interested and affected parties reserve the right to comment on the application and any cost incurred in doing so is the sole responsibility of these parties.

The surrounding land uses and the impact of the application on these are not addressed (Objector 9).

The surrounding uses and impacts were assessed in detail in section 5.2 of the motivation report which dealt with the impact on existing rights. This section identified the individual impact on each of the immediate neighbouring properties and indicated that the impact is minimal, at worst.

Planning and development principles as set out by SPELUM and other planning legislation have not been addressed (Objector 9).

The motivation report addressed all relevant planning policy in sections 5.9, 5.10 and 5.11.

The applicant's analysis of the views from the objector's property and the statement that erf 4014 is entirely unaffected by the application is an indication of the total lack of understanding of the problem (9).

It is acknowledged that the objector has a window on the once blank wall. Firstly, the objector's dwelling is still seaward facing where uninterrupted views may be enjoyed between erven 4013 and 4015, and 4015 and 4016. Secondly, Crassula Crescent has a gentle downward slope placing the objector's property at a slightly higher elevation. Finally, a single dwelling, which will be separated from the objector by a road (Crassula Crescent) as well as setback lines (to be determined by Council), cannot ruin an entire viewscape, especially given the fact that the objector's property is only separated from the ocean by 2 adjacent neighbouring dwellings.

The assumption that the proposed development will have no impact on objector's property is incorrect and should be ignored by council. The proposed dwelling will be directly in objector's view and have a negative impact on objector property (Objector 9).

Since the objector's dwelling now contains a large window facing Crassula Crescent, the predominant view is of the mountain range which forms part of the Kogelberg Nature Reserve and part of the sea-line. Although the proposed dwelling will be partially situated in view of the sea, it will not completely obstruct this view.

The geo-technical feature of the site and suitability of the site for the proposed land use have not been addressed and the applicant conveniently ignores this important factor for the assessment of the site for the proposed land uses (Objector 9).

The geotechnical features of the site have been identified on the site plan and acknowledged. The rocky outcrop on most of the property, the area of archaeological significance and the 100m HWM setback line all informed the most suitable location of the dwelling on the property.

The notice of this application is unauthorised and hence fatally flawed (Objector 9).

The objector has not specified why the application is considered to be unauthorised or what the flaws are. The notice instructions supplied by Council were adhered to and proof of this was submitted to the Council.

2. SUMMARISED DEPARTMENTAL COMMENTS AND RESPONSES

Western Cape Provincial Government: Department of Environmental Affairs and Development Planning (DEADP)

The letter received from Municipality dated 2 October 2017 states that DEADP should be consulted to obtain a "favourable outcome". After contacting the relevant DEADP official to discuss this application, it was highlighted that the Local Municipality are the final deciding authority and that an unfavourable comment from Provincial Government may be used to inform the final decision but cannot be the sole basis on which the application is refused (refer to appendix B).

1. In terms of the Overstrand SDF erf 4013 is located outside the approved urban edge on land earmarked as a conservation – agriculture buffer. Expansion beyond the edge is discouraged.

It is understood that the urban edge is intended to curb development however there are cases in which small scale, minor development is permitted outside the urban edge and it is argued that the proposed dwelling qualifies as such. Although the site is located outside of an urban edge, a single dwelling on the property does not mean it is inconsistent with the SDF. Single dwellings are permitted as of right outside of urban edges, for example on farms, smallholdings and other rural areas. Additional dwelling units are in fact permitted outside of urban edges on farms as a consent use. The proposed consent use is therefore not inconsistent with policy. The proposal entails the establishment of one dwelling (ultimately 2% of property) on one property which is consistent with the SDF.

2. The SDF states that the demarcated urban edge is essentially the existing coastal setback line, which should be maintained. No development should be permitted in this setback area to ensure a continuous coastal corridor is maintained.

Although the urban edge may be considered to be the coastal setback line, the definition of this line in the Integrated Coastal Management (ICM) Act is, "...a line determined by an MEC in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives." By this definition, conservative development may still be permitted.

Note that development is proposed above the High Water Mark; secondly, the urban edge cannot be the coastal setback line, as that ignores the fact that properties along Crassula Crescent are much lower down (in terms of elevation) and area closer to the sea.

3. Setback lines are used as a means to control and prevent insensitive, inappropriate and unsustainable development in sensitive coastal environments and to reduce risks posed by climate change (sea level rise-related storms and storm surges).

Aside, from its location, the proposed development is completely compatible with its existing, single residential, low density surroundings. Heritage and environmental assessments were conducted and identified particular environmental and heritage features on site (as identified on the site plan). This prior research was conducted to ascertain the sensitivities of the site resulting in the identification of the most suitable/developable part of this site. Given that this is a special case in which a small area of the site was not found to contain any heritage or environmental sensitivities, the argument is that the majority of the site (98%) will be retained as the coastal management zone. The extent of the development is not significant enough to detrimentally impact conservation objectives in this zone.

4. Section 25 of the ICM Act that is part of NEMA states that Coastal Management Lines should be established in order to:

- i) protect coastal public property, private property and public safety;*
- ii) protect the coastal protection zone;*
- iii) preserve the aesthetic values of the coastal zone; and*

iv) for any other reason consistent with the objectives of this Act.

These objectives are acknowledged and they would provide useful reasoning for refusing a large-scale development that would significantly impact the coastal management area. Firstly, the coastal management zone will remain predominantly (98%) intact. Secondly, the proposed development is not large enough to adversely impact the aesthetic value of the coastal zone.

5. A Coastal Management Line is defined as a line determined by the MEC in order to demarcate an area in which development will be prohibited or controlled in order to achieve the objects of the coastal management objectives.

The coastal setback line has been correctly defined and it is motivated that the proposed dwelling would fall under the type of development that may be controlled since is located outside the 100m-from-High Water Mark (HWM), away from the identified heritage (graves) and environmental (rocky outcrops and wetland) sensitivities of the site.

6. The property is located on the seaward side of the Coastal Management Line where building, erection, alteration or extension of structures may be prohibited or restricted.

The property is located within the coastal management line which is a type of coastal setback line where development may be prohibited or controlled. It is argued that the area proposed for the development of the dwelling is located outside the 100m from HWM zone and immediately adjacent to existing residential dwellings and may therefore be considered.

7. The detrimental impact of the proposal on the surrounding properties would be severe as properties purchased with the knowledge that Erf 4013 is zoned Open Space which ensures undisturbed views, access to the sea and the enjoyment of the natural beauty of the area. Development would result in the loss of sea views in part and depreciation in property values.

The basis and motivation on which properties were sold to surrounding owners is irrelevant to the property owner. Any assurance given to these owners should have included the fact that the property was transferred from public to private ownership. The sale of the Open Space portion would have been advertised in the local media/newspapers and any objections should have been submitted at that stage. The property owner reserves the right to propose a new land use and given the contentious location of the property as well as its transfer history, he has settled for a single dwelling in order to enjoy the rights that the surrounding property owners enjoy.

It is argued that the comment assumes a decrease in value due to interrupted views. This factor is not significant enough to impact on property values given the prime location of the surrounding properties close to the sea, public access to the sea and the surrounding natural environment which will be retained (since 98% of erf 4013 will become conservation area).

8. The property links the surrounding residential units to the neighbouring shoreline and the fact that the land is privately owned is irrelevant. The proposal will limit access to the shoreline, which is not in the public's interest.

On the contrary, the fact that the land is privately owned is highly relevant. Irrespective of the property's zoning, the owner reserves the right to prohibit access and trespassing on his property since there are no public access servitudes on site, should the need arise. The proposal will not result in limited access to the shoreline since it only suggests the establishment of a single dwelling. It is further impressed that the dwelling unit will only cover 299m² of the 17 772m² sized property. A development of this size is not large enough to sever access to the shoreline.

9. The present zoning of the property is Open Space II, which means that its usage is limited to recreational purposes with the corresponding minimal impact on the natural environment. No residential rights exist and the Title Deed condition was essentially put in place to protect the coastal strip to the benefit of the broader public.

The current zoning of the property is Open Space III and not Open Space II.

ANNEXURE F 11/11

The title deed condition restricts the use of the property for "recreational purposes". The definition of a recreational use which is offered as a consent use under OS3 includes "...a clubhouse, associated infrastructure and buildings, indoor and outdoor swimming pools and associated infrastructure and includes a firing range and driving range..." Overstrand Scheme regulations stipulate recreational. Although no residential rights currently exist on the property, in comparison to the uses that align with the title deed restriction, the proposed dwelling is considered to be far less impactful.

Yours faithfully
HEADLAND



Claus Mischker

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS, REZONING &
CONSENT USE: ERF 4013, BETTY'S BAY (3714)**

Stormwater (SW)	:	In order
Electricity	:	Escom
Water	:	In order
Sewer	:	In order
Roads and traffic	:	In order

Conditions

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

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

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

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

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

The contribution according to the current policy (**2017/2018**) is as follows:

Freehold erven:


Water	R 21 500.00 x 1	=	R 21 500.00
Sewerage	R 14 496.00 x 1	=	R 14 496.00
Roads	R 6 500.00 x 1	=	R 6 500.00
Stormwater	R 7 500.00 x 1	=	R 7 500.00
Solid Waste	R 1 300.00 x 1	=	R 1 300.00
TOTAL (inclusive of VAT)		=	R 51 296.00

Note:

1.3 The above figures are estimates

2. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;

3. that stormwater be allowed to discharge through Erf 4013, Betty's Bay, unobstructed;
4. that no on-street parking be allowed.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

13/11/2017
DATE



ANNEXURE H 1/13

Date: 31 May 2018

N. What must the Municipality do where numerous transfers to third parties have taken place without enforcing a reversionary clause in a title deed condition?

1. The opinion of Adv Farlam states that the land cannot be reclaimed by the Municipality. The Municipality was never the owner of the property. This resulted due to a typographical error in the drafting of the title deed. The title deed was not amended to reflect the Administrator's true intention. He however adds a rider to his conclusion regarding reclaiming the land and that is that the title deed restriction cannot be removed as it is clear from the context of the title deed that it was the intention of the Administrator to ensure that the property would be owned by the Municipality. He argues that all the subsequent purchasers were aware of the condition and thus aware of the earmarked use – to have the condition removed would be to compound the problem created by the initial error and to deprive the local residents of a valuable amenity which it was intended they should have.
2. If his opinion is correct it places the Municipality in a difficult position. On the one hand it can't reclaim the property and on the other it can't remove the condition. Due to the fact that the property has been transferred to 3rd parties numerous times already, it will be difficult for the Municipality to now apply to have the condition amended or removed.
3. Should the Municipality wish to obtain further clarity on this point we suggest that further counsel's opinion be obtained, given that you have advise from a counsel which would be difficult to ignore. The advice was however given in 2007 so his view may have changed.

Conclusion

In general the Municipality may consider an application or apply itself to remove, amend or suspend a restrictive condition.



Ex parte: OVERBERG MUNICIPALITY

In re: ERF 4013, BETTY'S BAY

OPINION

Furnished to: C & A Friedlander
Atten: F W Muggleston
3rd Floor
42 Keerom Street
Cape Town

P B J FARLAM

5 August 2007

INTRODUCTION

1. My Consultant is the OVERBERG MUNICIPALITY ("the Municipality").
2. The Municipality has requested me to furnish it with an opinion as to the interpretation of paragraph 18 of the Administrator's conditions applicable to Erf 4013, Betty's Bay ("the property"), and in particular:
 - 2.1 whether on a proper interpretation of the said condition, the property should have been transferred into the name of the Municipality (or, more accurately, Consultant's predecessor, the Municipality of Betty's Bay); and
 - 2.2 whether, in the light of the fact that the property has been transferred to a third party without the requisite consent having been furnished by the Administrator (or, since, April 1994 the relevant Provincial Minister), the Municipality is entitled to reclaim the property from the present registered owner.
3. For the purposes of this opinion, I have been briefed with the following documents:
 - 3.1 a document from the Municipality headed "Memorandum to Attorney and Advocate", dated 27 March 2007, together with various annexures;
 - 3.2 a letter from my instructing attorneys to the Betty's Bay Residents and Ratepayers Association ("the Betty's Bay Residents Association"), dated 1 March 2007;

- 3.3 a copy of General Plan TP8267 in respect of Betty's Bay Township Extension No. 3 ("the township");
- 3.4 a copy of the Administrator's Conditions imposed at the time of the opening of the township, as well as extracts from those Conditions containing paragraph 18;
- 3.5 a copy of my instructing attorneys' letter to the (Provincial) Minister of Local Government, dated 11 April 2007;
- 3.6 an acknowledgment of receipt of that letter from the Minister of Local Government and Housing, dated 13 April 2007;
- 3.7 copies of letters from the Western Cape Department of Environmental Affairs and Development Planning dated 4 June 2007 and 25 July 2007 (in relation to the 11 April 2007 request).

RELEVANT BACKGROUND FACTS

4. The property, which is 1.7772 hectares in extent, is situated on the sea side of Disa Road and Crassula Crescent in Betty's Bay, abutting the Atlantic Ocean. It is zoned Open Space Zone 11, in terms of the Land Use Planning Ordinance, 15 of 1985 ("LUPO"), and currently accommodates "private open space".
5. The property was demarcated in about 1972, when the township was established. The township was laid out on what was originally Erf 5098, Betty's Bay, an erf (measuring 53,2539 hectares in extent) which was then owned by Glen Anil Development Corporation Limited

("Glen Anil") under Certificate of Consolidated Title No. T21831. The General Plan for the township indicated 283 erven (including the property) and 8 public places.

6. The then Administrator of the Province of the Cape of Good Hope ("the Administrator") imposed various conditions in respect of the township, in terms of the Townships Ordinance, 33 of 1934 ("the Townships Ordinance") – the legislation which governed the establishment of townships at that time.
7. Paragraph 18 of the Administrator's conditions related directly, and only, to the property (Erf 4013). Paragraph 18 read, in English and Afrikaans, as follows:

"The erf shall be used solely for recreational purposes for any other use as the Administrator may, from time to time after reference to the Townships Board and the local authority, authorise and it shall not be transferred by the local authority to another person without the written consent of the Administrator."

"Hierdie erf mag alleenlik gebruik word vir ontspanningsdoeleindes of enige ander gebruik wat die Administrateur van tyd tot tyd na oorlegpleging met die Dorpekommissie en die plaaslike owerheid goedkeur en dit mag nie sonder die Administrateur se skriftelike toestemming oorgedra word van die plaaslike owerheid aan 'n ander persoon nie."

8. I am instructed that the property has to date been utilized for recreational purposes, as paragraph 18 ("the erf 4013 condition") requires.
9. The property has however been transferred about three or four times to private persons since the establishment of the township. The provincial Department of Environmental Affairs and Development Planning has been able to find no evidence that the Administrator, or

ANNEXURE H 6/13

the Provincial Government, has ever given consent or approval to any person to acquire ownership of the property.

10. The current owner of the property is one James Kannemeyer. He purchased the property in 2004 for R1.2 million, and took ownership in terms of Deed of Transfer T53677/2004. That Deed of Transfer indicates that a restrictive condition imposed on the property ("the restrictive condition") is that:

"This erf shall be used solely for recreational purposes or any other use as the Administrator may, from time to time after reference to the Townships Board and the Local Authority, authorise and it shall not be transferred by the Local Authority to another person without the written consent of the Administrator."

11. Kannemeyer has recently applied to rezone the property in order to subdivide it into seven residential plots, with the balance to be donated to the Municipality as marine reserve. An application has also been lodged to remove the restrictive condition.
12. A draft scoping report has been prepared in respect of Kannemeyer's application, and was published for comment at provincial government level in 2006. The Betty's Bay Residents Association apparently voiced their concern over the development of the property and requested the Municipality to intervene. More especially, the Municipality was asked to "reclaim" the property and to transfer it into its name.

**QUESTION ONE: WHETHER THE ERF 4013 CONDITION REQUIRED
THE PROPERTY TO BE TRANSFERRED TO THE
BETTY'S BAY MUNICIPALITY**

13. As is apparent from the English wording of the erf 4013 condition, it stipulated that the property "shall not be transferred by the local authority to another person without the written consent of the Administrator".
14. The local authority was not at the time (and as far as I know has never been) involved with the transfer of private property between corporate entities or individuals. If a piece of land was in private hands, it would moreover not be transferred "by the local authority" [emphasis added]. It is also not possible in my view to argue that the phrase just quoted means that the property must not be transferred *without the consent* of the local authority; for, later in the erf 4013 condition, the Administrator indicates (with reference to the Administrator's consent) how he would have expressed himself had that been his intention. The Afrikaans version of the erf 4013 condition in any event dispels any such suggestion: it provides that the property cannot be transferred "van die plaaslike owerheid aan 'n ander persoon nie" [emphasis added]. In my opinion, the only conclusion which can thus reasonably be reached in respect of the erf 4013 condition is that the Administrator was assuming that the property would be transferred to the local authority (then the Betty's Bay Municipality) by the township developer, and that the local authority would be holding the property for the foreseeable future. If that were not so, the relevant paragraph in the Administrator's condition (paragraph 18) would be nonsensical.
15. That conclusion is also supported, in my view, by the nature and location of the property, and the use for which it was reserved by the

erf 4013 condition. As is apparent from sheet 3 of the General Plan, the property was located right next to the Atlantic Ocean, directly contiguous to two roads and a large public place, and reserved for recreational purposes. It makes eminent sense for an erf of that size, in that position, and with that reservation of use, to have been intended to be endowed to the local authority.

16. My interpretation of the erf 4013 condition is also supported by section 15 of the Townships Ordinance (the Ordinance which, as mentioned, was then the operative ordinance in respect of the establishment of townships).

16.1 Section 14(1) of the Townships Ordinance provides that the Administrator "may as a condition of a grant of an application for the establishment of a township or subdivided estate and having due regard to the community needs and public expenditure which he considers may arise from the establishment of such township ... require the owner [*inter alia*] ... to grant land for the purposes of or as an endowment to or for the benefit of local authorities, whether existing or prospective ...".

16.2 Section 15 then provides that:

"It shall not be competent for the local authority to whom any erf in a township or subdivided estate has been given by the owner as an endowment in connection with the establishment of the township or subdivision of the estate to sell or otherwise dispose of such erf without the consent of the Administrator."

16.3 The requirement in the erf 4013 condition that the Administrator consent to a transfer of the property to another person is thus an echo of the requirement in section 15 of the Townships


Section 15
(give requirement)

Ordinance in respect of erven which have been given by a township developer to a local authority as a condition of the approval of the township. This is, in my view, further confirmation that the Administrator was apparently operating under the assumption that the property would be transferred to the local authority by the township developer (Glen Anil) pursuant to the conditions imposed by the Administrator when approving the township.

17. Thus, to recap: the erf 4013 condition (i.e. paragraph 18 of the Administrator's conditions for approving the township) was, in my opinion, clearly imposed on the assumption by the Administrator that the property (erf 4013) would be given to the local authority as an endowment.

18. The problem is, however, that paragraph 4 of the Administrator's conditions did not provide for the property to be so reserved, and transferred. That paragraph instead states the following:

"The following erven shall be reserved for the purposes indicated: -

- | | | |
|-----|---|---|
| (a) | for local authority purposes: | Erf 4030 |
| (b) | <u>as an endowment to the local authority</u> | <u>Erven Nos. Nil</u>  |
| (c) | for Provincial purposes and to be transferred to the Educational Trustees | Erven Nos. Nil |
| (d) | for Government purposes | Erf No. 4035 |
| ... | | |

[emphasis added]

19. There is thus an inconsistency between paragraph 4 of the Administrator's conditions and what was apparently assumed to be the case in respect of paragraph 18 thereof. Put simply, there

appears to have been a typographical error with regard to paragraph 4(b) of the Administrator's conditions.

20. I should emphasize that I do not consider paragraph 4 of the Administrator's conditions to undermine the conclusion which I have reached with regard to the erf 4013 condition (i.e. paragraph 18). As I have indicated, there really is no other conclusion which can be reached in respect of paragraph 18 other than that the Administrator was operating under the assumption that the property would be transferred to the local authority by Glen Anil for recreational use by the community. Paragraph 4(b), by contrast, is explicable as a clerical or typographical error.
21. Paragraph 4 does, however, mean that Glen Anil was arguably under no obligation to transfer the property to the local authority until such time as the Administrator's conditions had been amended. Had the mistake been detected at the time or in the years before Glen Anil sold the property to Agger Inv (Pty) Ltd ("Agger") (in 1979), I do not see how Glen Anil could realistically have objected to condition 4(b) being amended to reflect the Administrator's evident intention, and understanding, when imposed the erf 4013 condition. But until such time as the document was rectified, it was potentially open to Glen Anil to rely on the express (albeit clearly mistaken) wording of paragraph 4(b) and to argue that it did not have to transfer the property to the Betty's Bay Municipality. Phrased differently, it is difficult to construe an implied obligation to transfer the property (from paragraph 18) when there is an express term to the contrary (in paragraph 4), albeit one evidently typed in error.

QUESTION TWO: WHETHER CONSULTANT IS ENTITLED TO RECLAIM
THE PROPERTY FROM THE CURRENT OWNER

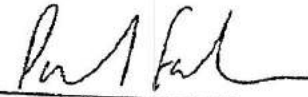
22. As I have mentioned, the property was transferred from Glen Anil to Agger in 1979. The property was then apparently sold and transferred twice more before Kannemeyer bought it in 2004 for R1.2 million. On no occasion was the consent of the Administrator, or the relevant Provincial Minister, obtained.
23. It appears that all purchasers (and sellers) would have been aware of the clause 4013 condition, and that it was registered against their title deeds. The condition is included as the sixth (and last) condition in Kannemeyer's deed of transfer. *60413*
24. Notwithstanding the purchasers' knowledge, the Municipality cannot, in my view, realistically consider itself entitled to "reclaim" the property from the present registered owner. The local authority was not the owner of the property (and thus cannot bring a vindicatory action). Nor, as I have indicated above, can the Municipality simply seek to enforce the Administrator's conditions, or rely upon a breach thereof. The Administrator evidently intended to stipulate that the property be transferred to the Betty's Bay Municipality, but due to a clerical or typographical error failed to do so. As a consequence, too, there was never a transfer of the property by, or from, the local authority to another person, such as to trigger the requirement for the Administrator's consent.
25. Had Glen Anil clearly been unable to transfer the property to a third party, as opposed to the local authority, the Municipality could potentially have sought to unpick each of the transactions and void each of the deeds of transfer, certificates of title etc. While the

transfers which have taken place thus far are valid until set aside by a Court (section 6(1) of the Deeds Registries Act, 47 of 1937), this does not mean that, where there is no valid transfer of ownership, registration should itself be thought to confer an unimpeachable title (see Knysna Hotel CC v Coetzee NO 1998 (2) SA 743 (SCA) at 753B-D, Cape Explosives Works Ltd and another v Denel (Pty) Ltd and others 2001 (3) SA 569 (SCA) at 579E-580E, and Ex parte Menzies et Uxor 1993 (3) SA 799 (C) at 803B-807C). But even were it to be feasible to seek to cancel all of the deeds of transfer for the property from 1972 (which I doubt), I do not see how, on the basis of what I have set out in paragraphs 21 and 25 above, it could successfully be argued that all the transfers were invalid.

26. I should, however, add one important rider in the context of the present matter. While the local and provincial authorities may not be able to demand that the land be transferred to the Municipality, I have difficulty in seeing how the relevant provincial department could properly agree to remove the restrictive condition in the title deed, in terms of the Removal of Restrictions Act, 84 of 1967. As I have indicated above, it was clearly the intention of the Administrator in 1972 to ensure that the property was owned by the local authority for the foreseeable future for recreational use by the community. Due to an error and an oversight, this did not happen. All the purchasers of the land were however aware of the condition, and thus aware of the earmarked use as well as the evident intention of the Administrator that the land be held by the local authority. To allow the restrictive condition to be removed would be to compound the problem created by the initial error, and to deprive the local residents of a valuable amenity which it was intended they should have. And if the restrictive condition is not removed, it follows, too, that the rezoning and subdivision applications (brought in terms of Chapter III of LUPO)

ANNEXURE H 13/13

must also fail.



P B J FARLAM

Chambers

Cape Town

5 August 2007

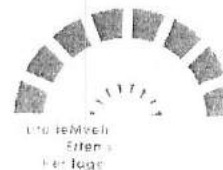
Appendix F

ANNEXURE I

Our Ref: HMICAPE TOWN METROPOLITAN BETTYS BAYERF 4013

Enquiries: Guy Thomas
 Tel: 021 483 9685
 Email: guy.thomas@westerncape.gov.za

Date: 20 August 2015
 Case No: 14090804GT0918E
 Auto IDs: 2933 - 4236

**FINAL COMMENT**

In terms of section 38(8) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape Provincial Gazette 6061, Notice 298 of 2003

Attention: Mr Claus Mischker
 Headland Planners
 PO Box 197
 Edgemead
 7407

CASE NUMBER: 14090804GT0918E

HIA: PROPOSED DEVELOPMENT AND REZONING OF ERF 4013, CRASSULA CRESCENT, BETTYS BAY.

The matter above has reference.

Heritage Western Cape is in receipt of your correspondence on the above matter, the application was tabled at the Impact Assessment Committee.

FINAL COMMENT

1. The cemetery and shell middens must be made out of bounds and cordoned off with hazard tape during any period of construction.
2. Appropriate measures must be implemented to discourage unnecessary impact to the heritage resources by pedestrian movement.
3. A Heritage Agreement must be entered into with HWC regarding the long term management of the known heritage resources.

Terms and Conditions:

1. This approval does not exonerate the applicant from obtaining local authority approval or any other necessary approval for the proposed work.
2. If any heritage resources, including archaeological material, palaeontological material, graves or human remains, are encountered work must cease and they must be reported to Heritage Western Cape immediately.
3. Heritage Western Cape reserves the right to request additional information as required.

Should you have any further queries, please contact the official above and quote the case number above.

Yours faithfully

Dr Errol Myburg
 Interim Chief Executive Officer
 Heritage Western Cape

Page 1 of 1

Heritage Western Cape
 Street Address: Protea Avenue Building, Green Market Square, Cape Town, 8001 • Postal Address: Private Bag 4013, Cape Town, 8001
 • Tel: +27 (0)21 483 9685 • E-mail: hwc@westerncape.gov.za

Street Address: Protea Avenue Building, Green Market Square, Cape Town, 8001 • Postal Address: Private Bag 4013, Cape Town, 8001
 • Tel: +27 (0)21 483 9685 • E-mail: hwc@westerncape.gov.za

From:

To: *00283132093

17/10/2017 14:41 #627 P.001/002
ANNEXURE J 1/2

DIRECTORATE: DEVELOPMENT MANAGEMENT (REGION 2)



REFERENCE: 16/3/3/6/E2/1/1250/17

ENQUIRIES: Ms. B Qwashu / Mr. D'mitri Matthews

DATE: 2017-10-17

The Municipal Manager
Overstrand Municipality
PO Box 20
Hermanus
7200

Attention: H van der StoepTR A Theart
C H vd Stoep

FILE NO:	EL 4013
SCAN NO:	Betty's Bay
COLLABORATOR NO:	1091436

Tel.: (028) 313 8900
Fax: (028) 313 2093

Dear Sir/ Madam

ACKNOWLEDGEMENT AND COMMENT ON THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED), FOR THE REMOVAL OF RESTRICTIVE CONDITIONS, REZONING AND CONSENT USE, ERF NO. 4013, BETTY'S BAY

1. The above-mentioned document, dated 10 August 2017, as received by this Department on the 16 August 2017, refers.
2. The Department acknowledges receipt of the above-mentioned applicability checklist.
3. According to the information contained in the aforementioned correspondence, this Department notes the following:
 - 3.1. The proposal entails the removal of restrictive conditions, rezoning and consent use, on Erf No. 4013, Betty's Bay.
 - 3.2. The site is situated close to the coast of Betty's Bay.
 - 3.3. The proposal is to rezone the property (1.7ha) from Open Space Zone 3 to Open Space zone 1, with Consent for 1 dwelling unit, as a double storey house, on a maximum disturbed area of 299m² (including driveway).

4. On 7 April 2017 the Minister of Environmental Affairs promulgated amendments to the Regulations in terms of Chapter 5 of the National Environmental Management Act,



Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eadp

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1998 (Act No. 107 of 1998) ("NEMA"), viz, the EIA Regulations 2014 (Government Notice ("GN") No. 326, 327, 325 and 324 in Government Gazette No. 40772 of 7 April 2017). These regulations came into effect on 7 April 2017.

5. Your attention is therefore drawn to the listed activities in terms of the NEMA EIA Regulations 2014 (as amended) as defined in GN No. 327, 325 and 324 of 7 April 2017. Be advised that, based on the information provided, the removal of restrictive conditions, rezoning and consent use of Erf No.4013 area **does not** constitute any listed activities and the Environmental authorisation does not need to be obtained as defined in terms of the NEMA EIA Regulations 2014 (as amended).
6. The above-mentioned is based on the following:
 - 6.1. The proposed site is not located within 100m of the high-water mark of the sea.
 - 6.2. Less than 300m² of endangered vegetation will be removed for the access road as well as building.
 - 6.3. There are wetlands located on the property, however wetlands are located further than 32m of the site.
 - 6.4. Although it is zoned open space, the land to be transformed is 299m² which is below the 1000m² threshold.
7. However, should any revision of your development comprise any activities that constitute a listed activity as defined in Government Notice ("GN") No. 327, 325 and 324 in Government Gazette No. 40772 of 7 April 2017, an application for environmental authorisation must be submitted to the competent authority and authorisation obtained before such activity(ies) may commence.
8. You are further reminded of your general duty of care towards the environment in terms of section 28(1) of NEMA which states:
"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."
9. Kindly quote the abovementioned reference number in any future correspondence concerning the proposed development.
10. This Department reserves the right to revise or withdraw its comments and request further information based on any information received.

Yours faithfully

[Handwritten Signature]

HEAD OF DEPARTMENT

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

