



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

A G E N D A

**DATE:
VENUE:
TIME:**

**30 SEPTEMBER 2021
VIRTUAL
10:00**

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

15 September 2021

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

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

NOTICE IS HEREBY GIVEN that, due to the Covid-19 lockdown, a meeting of the **Municipal Planning Tribunal (MPT)** will go into session by means of a virtual platform on **Thursday, 30 September 2021 at 10:00**, to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (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 H Olivier (Town Planner)
10. Secretariat

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 26 August 2021

4. ITEMS FOR CONSIDERATION

4.1 ERF 22, 21 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF NUNGU TRADING 174 (PTY) LTD

Report attached.

4.2 ERF 1497, LYNX ROAD, VERMONT: APPLICATION FOR REZONING, SUBDIVISION, DEPARTURE AND APPROVAL OF STREET NAMES: MESSRS ATLAS TOWN PLANNING ON BEHALF OF CHRISTATUS INVESTMENTS 85 CC

Report attached.

4.3 PORTION 203 OF THE FARM NO. 559, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND CONSENT USE: MESSR IC@PLAN ON BEHALF OF C-VIEW AT PRINGLE (PTY) LIMITED

Report attached.

4.4 ERF 4043, 50 GLADIOLUS CRESCENT, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND REZONING: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF AJ MOLLER

Report attached.

**MUNICIPAL PLANNING TRIBUNAL
(MPT)**

30 September 2021

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4.1

ERF 22, 21 MARINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF NUNGU TRADING 174 (PTY) LTD

22 GBH (2622/2018)

SW van der Merwe

27 August 2021

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 5 March 2020 from Interactive Town and Regional Planners on behalf of Nungu Trading 174 (Pty) Ltd applicable to Erf 22, Birkenhead for the following:

- removal of restrictive title deed conditions C.(b) and C.(d) as contained in Title Deed T16547/2005 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law);
- rezoning from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA) in terms of Section 16(2)(a) of the By-Law;
- subdivision in four (4) Residential Zone 1: Single Residential (SR1) erven and one (1) Open Space Zone 3: Private Open Space erf in terms of Section 16(2)(d) of the By-law, and
- departure in order to relax the 4m street building line for each residential zoned erf to 2m in terms of Section 16(2)(b) of the By-law.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, the proposed Site Development Plan is attached as Annexure C, and Title Deed T16547/2005 is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 22, Birkenhead is zoned Residential Zone 1: Single Residential and measures 3,038 ha in extent. The property is vacant and is surrounded by mostly vacant properties, save for Erf 61 to the north and Erf 21 to the west which is also developed with dwelling houses. Currently Erf 21 obtains access across the application property, whilst the adjacent Erf 61 obtains access directly off Marine Drive, but the internal access traverses the lateral- and rear boundaries of the application property. It also appears from the arial photography that the dwelling on Erf 61 encroach onto the application property. The Title Deed and diagram of the application property does not indicate that a right of way had been registered in favour of the aforesaid properties. The encroachments onto the application property are considered a civil matter to be resolved between the respective property owners but will be further discussed in the evaluation.

Council adopted the Danger Point Precinct Plan on 3 December 2014. The aforesaid provides a Policy Framework providing for limited densification. The

property owner, Nungu Trading 174 (Pty) Ltd, in accordance with the provisions of the Danger Point Precinct Plan proposes the following:

- ❖ four (4) 600m² Residential Zone 1: Single Residential erven within the 150m development area;
- ❖ remainder Open Space Zone 3: Private Open Space;
- ❖ a 9 713m² portion of the Private Open Space portion to be set aside for a future nature reserve;
- ❖ a 20m development setback from Marine Drive (street boundary);
- ❖ 5m rear- and lateral building lines (remainder portion);
- ❖ 2m building lines from the respective cadastral boundaries (Single Residential erven);
- ❖ refuse area of 5m² at the access;
- ❖ access from Marine Drive leading via a 5m right of way servitude to the proposed erven, and
- ❖ the property will be managed by a Homeowners' Association (HOA).

The application therefore comprises the following:

Removal of restrictive title deed conditions C.(b) and C.(d) as contained in Title Deed T16547/2005.

In addition to the above, the application entails rezoning from Residential Zone 1: Single Residential (SR1) to Subdivisional Area Zone (SA), subdivision in four (4) Single Residential erven measuring 600m² each and a remainder Open Space Zone 3: Private Open Space. Application is also made for a departure in order to relax the 4m street building line applicable to each single residential erf to 2m from the internal access road. Access to the individual erven will be secured from Marine Drive by means of a right of way servitude.

4. SUMMARY OF APPLICANT'S MOTIVATION

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

- ❖ The proposed development is consistent with the development parameters contained as per sub-precinct policies 3. and 4.
- ❖ The motivation for the removal of restrictions application are as follows:

- (a) Financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement

No financial or other value of the rights in terms of the restrictive conditions enjoyed by the owner, are evident

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

No material personal benefit to accrue to the holder of the rights in terms of the restrictive conditions are evident. With the restrictive condition being upheld, even less development will occur on the application area.

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

The proposal will enable four (4) dwelling units with associated outbuildings to be developed, resulting in an increase in property value. Each owner will enjoy a tranquil lifestyle and will be able to exercise their individual rights on the property

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

There is no material benefit evident in the restrictive condition remaining in place

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

The social benefits are increased security and property values, support of existing businesses and creation of new eco friendly tourist facilities, thus sustaining and creating employment opportunities

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

Only the one (1) dwelling unit restriction and building line restrictions will be removed.

- ❖ The development will be subject to more restrictive building lines than the title deed building lines being removed.
- ❖ The rezoning proposal is aligned with the requirements of the Danger Point Precinct Plan.
- ❖ The proposal will facilitate the development of four (4) single residential erven of 600m² each, a servitude access and remainder Private Open Space.
- ❖ The communal areas (Private Open Space portion) will be managed by an HOA in accordance with an Environmental Management Plan (EMP).
- ❖ The HOA will also accept responsibility for the maintenance of engineering services of the development.
- ❖ Less than 11% of the property (servitude access included) will be developed for residential purposes.
- ❖ The largest portion of the property will constitute Open Space Zone 3: Private Open Space, whilst the portion thereof beyond the 150m development line is foreseen to be incorporated within a private nature reserve.
- ❖ The proposed development will not adversely impact on the character of the area and preserve the natural scenic beauty of the area due to its low density.
- ❖ Building design and siting guidelines will ensure the residential buildings preserve the visual integrity of the environment and sit "in" rather than "on" the landscape.
- ❖ New development in the area will support existing tourist facilities and may result in new eco-friendly tourist facilities being created.
- ❖ The property is above the high-water mark and outside the coastal management line. The proposed development will therefore not have any implications in terms of ICMA.

- ❖ The proposed development does not comprise listed activities in terms of NEMA.
- ❖ The Notice of Intent to Development (NID) had been submitted in terms of the National Heritage Resources Act and will not have any impact outside the Coastal Protection Zone.
- ❖ The proposed single storey dwellings will blend in with the landscape.
- ❖ The application is consistent with the planning principles in terms of LUPA and SPLUMA.
- ❖ The application is consistent with the applicable spatial planning and policy documents (SDF 2020, Danger Point Precinct Plan, 2016).

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	15 July 2020	21 August 2020
Gazette	Yes	17 July 2020	21 August 2020
Notices	Yes	15 July 2020	21 August 2020
Notices	Yes	18 February 2021	23 March 2021
Ward councillor	Yes	14 July 2020	21 August 2020
Total comments	Ten (10) received (2 late objections)		
Total letters of support	Five (5)		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			Yes

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

Name	Date received	Summary of comments
Fire Services	15/07/2020	No objection.
Telkom	15/07/2020	Annexure G.
Waste Management	21/07/2020	No objection.

Eskom	29/07/2020	Annexure H.
Health	21/08/2020	Existing and new/proposed developments to comply with all relevant health legislation and requirements in terms of certification and compliance.
Environmental Section	28/08/2020	No objection.
Building Department	01/09/2020	No objection.
Department of Transport and Public Works	09/10/2020	Annexure I.
Engineering Services	19/11/2020	Annexure J.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four (4) letters of objection were received from Michelle Ritter da Silva, Carina Kruger & Johan Koen, Birkenhead Conservancy and the Western Cape Department of Transport. Two (2) late objections were received after the closing date for objections from Messrs Futureplan Town- and Regional Planners on behalf of the Vimarg Trust (owner of Erf 21, Birkenhead) and C Steyn (the owner of Erf 37, Birkenhead).

Five (5) letters of support were received from Professor de Villiers (owner of Erf 1, Birkenhead), MLS de Kock (owner of Erf 2, Birkenhead), A & R de Klerk, (owners of Erf 4, Birkenhead), T van Wyk (owner of Erf 29, Birkenhead) and AM Schrecker on behalf of HS Schrecker (owner of Erf 35, Birkenhead,).

The objection letters and letters of support is attached as Annexure E. The applicant's comment is attached as per Annexure F. The main grounds of objection are summarised as follows:

❖ BIRKENHEAD CONSERVANCY (BC)

1. Point of objection

The Danger Point Precinct Plan limits development to 1 dwelling unit per full hectare, therefore a maximum of 3 dwelling units.

Response from applicant

The final Danger Point Precinct Plan, 2014 accepted and approved by the Municipality states: "Owners who wish to develop their properties may apply for an increase in density to a maximum of one (1) dwelling unit per hectare rounded up to the next hectare, i.e. 3,01 hectares will be calculated as 4 hectares." Therefore, according to the relevant final approved policy, four (4) dwellings are allowed on Erf 22 with an extent of 3,016 ha. The principle had been discussed and agreed by the Municipality prior to the submission of the application.

Response from Town Planner

The proposal is consistent with the provisions of the Danger Point Precinct Plan adopted by Council on 3 December 2014 as elaborated upon in the applicant's comment above.

2. Point of objection

BC insists that the remainder be rezoned to Open Space Zone 3 without the option for current or future owners to later develop and or subdivide.

Response from applicant

The applicant is of the opinion that the point of objection has no relevance on the application and should be ignored.

Response from Town Planners

The applicant's comment is noted.

The Municipality cannot prohibit any further applications.

The current application provides for rezoning of the remainder to Open Space Zone 3 as per the objector's comment. A condition will be imposed in the approval conditions that the use of the Open Space Zone 3 portion is limited to open space purposes only whilst the use of the portion beyond the 150m development line be limited to conservation use as defined in the Overstrand Land Use Scheme, 2020.

3. Point of objection

A 2m street building line should not be necessary should the development only entail three dwelling units.

Response from applicant's comment

The Danger Point Precinct Plan, 2016 already requires a 20m setback area from the street (Marine Drive) within which vegetation will be protected to ensure the conservation of the visual integrity and natural, scenic character of the area. Therefore, relaxation of the 4m street building line on each proposed subdivided single residential erf, will have no negative impact on the environment. The building line relaxation will provide more building space as well as more positioning options on the single residential erf.

Response from Town Planner

The applicant's comment is noted and agreed with.

4. Point of objection

BC questions the statement that the Integrated Coastal Management Act, 2008 (as amended, 2014) is not applicable as the application area is not within 100m from the high-water mark.

Response from applicant

The Assistant Environmental Officer from the Overstrand Municipal Environmental Management Division confirmed the following in an e-mail dated 1 November 2018 (attached as Annexure C): *“The property outside high water mark, coastal management line and risk line therefore it will not have any impact on the NEMA Regulations amended in 2014.”*

Response from Town Planner

The competent authority confirmed in writing that the proposed development does not trigger NEMA and that the property is situated more than 100m from the high-water mark.

5. Point of objection

BC conservancy questions whether the waterpipe north of the application area is generally available since it was privately bought and paid for by I&J?

Response from applicant

The availability of the waterpipe as addressed in the services report was confirmed with the municipal engineer. The point of objection should therefore be omitted as irrelevant to the subject application. The objector should take this up with the Municipal Engineering Department for further clarification.

Response from Town Planner

The Engineering Services Department confirmed that municipal water is available.

6. Point of objection

BC is not in favour of the amendment of the restrictive title condition limiting development to one dwelling with outbuildings through which the same rights in terms of permitted outbuildings will be conferred to each of the subdivided portions.

Response from applicant

The number of outbuildings could be mitigated in terms of conditions of approval.

Response from Town Planner

The applicant's comment is noted and will be addressed in the approval conditions. The Land Use Scheme stipulates that outbuildings be subservient to the primary dwelling on a property and be used in connection with the applicable primary rights. Further, in terms of Policy 4 (v) of the Danger Point Precinct Plan bulk is limited to 250m² in total, including outbuildings. Therefore, given the area of the application property, the applicable building lines and development set back being achieved, the opinion is held that the proposal will not detract from the character of the area. This point of objection will be further addressed in the evaluation below.

❖ C KRUGER AND J KOEN**1. Point of objection**

The objectors are of the opinion that the proposed rezoning and subdivision as well as the proposed density is not in accordance with the Danger Point Precinct Plan.

Response from applicant

The proposal complies with Policy 3 (iv) stating as follows: “*Additional dwellings constructed on the parent properties in line with the proposed increased density policy may be alienated by subdivision or sectional title.*” The Municipality furthermore confirmed that the application should be for rezoning and subdivision into five (5) erven, with four (4) erven for residential dwellings and one (1) erf for Private Open Space.

In addition, Policy 1 (i) pertaining to density stipulates the following: “*owners who wish to development their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3,01 hectares will be calculated as 4 hectares.*”

Response from Town Planner

The applicant’s comment is noted and agreed with and demonstrates that the proposed density, rezoning and subdivision applications are consistent with the Danger Point Precinct Plan as adopted by the Municipality.

2. Point of objection

There is no municipal water supply.

Response from applicant

The internal reticulation system will be connected via a servitude over Erf 61, Birkenhead to the existing municipal supply which has sufficient capacity to connect the development.

Response from Town Planner

The Engineering Services Department confirmed that municipal water is available.

3. Point of objection

The management of sewage is stated as a concern.

Response from applicant

Sewage reticulation will be dealt with by a package plant.

Response from Town Planner

The proposed development will be serviced by an internal sewerage system draining into a bulk conservancy tank in accordance with the comment from the Engineering Services.

❖ M RITTER DA SILVA**1. Point of objection**

The number of dwellings to be built is not in accordance with the Danger Point Precinct Plan, it should only be three units.

Response from applicant

Refer to the applicant's response provided under the relevant point of objection by BC, confirming that the proposed density is in accordance with the Danger Point Precinct Plan.

Response from Town Planner

The proposal is consistent with the provisions of the Danger Point Precinct Plan adopted by Council as elaborated upon in the applicant's comment above.

2. Point of objection

The Residential Zone 1 Regulations should not allow future subdivision and re-assurance is required to that no further rezoning of the Open Space Zone 3 area be permitted allowing additional dwelling units to be added.

Response from applicant

Further subdivision of residential erven or further development of the Open Space Zone 3 portion is irrelevant to the application under consideration and not in accordance with the Danger Point Precinct Plan.

Response from Town Planner

The applicant's comment is noted and agreed with although it should also be borne in mind that the Municipality cannot prohibit or prevent the property owner to submit any future applications, since each application is to be considered on its individual planning merit.

3. Point of objection

Outhouses (presumably outbuildings) to remain within the boundaries of the Residential Zone 1 erven and not in the Open Space 3 Zone.

Response from applicant

The outhouses are required by law to be built within the residential erf boundaries.

Response from Town Planner

The applicants' comment is noted and agreed with.

❖ FUTURE PLAN TOWN & REGIONAL PLANNERS ON BEHALF OF VIMARG TRUST

1. Point of objection

The owner received the registered notice that was sent during the lockdown period only on 9 September 2020, past the due date for comments.

Response from applicant's response

No comment received.

Response from Town Planner

Registered notices were only distributed following relaxation of the initial hard lock down regulations with the due date for comment on 21 August 2020. Public participation commenced after confirmation was received from SAPO that postal services had resumed.

2. Point of objection

There is certain omission on the SDP, namely GPS points, no indication of the current access to Erf 22 or adjacent erven, no indication of the location of existing buildings/structures on adjacent properties making it difficult to assess the impact on Erf 21. The comment primarily relates to the fact that the owner of Erf 21 currently obtains access across Erf 22. The objector is thus of the view that the safety aspects for the owner of Erf 21 be considered.

Response from applicant

The applicant is of the view that this objection is not directly related to the application for rezoning and subdivision and that the affected owners should come to an internal agreement between themselves regarding vehicle access and impact of fencing, thus a civil solution.

Response from Town Planner

The objector's property, Erf 21 abuts Marine Drive, Birkenhead. Currently there is two (2) accesses to the objector's property via the application property, the closest of which is not ideal from a traffic safety point of view (according to the objector).

The proposed development might impact upon the current access which appears to be within the developable area of the subject property. The Title Deed of the subject property and property diagrams does not indicate any formal right of way servitudes across Erf 22 in favour of the objector's property, nor did the objector provided substantive evidence in this regard. The opinion is therefore held that direct access to the objector's property cannot be refused from Marine Drive, thus the objector's property will not be land locked should the development proceed, and the property

owner construct a boundary wall or fence on the perimeter of the property. The Conveyancers Certificate did not indicate the existence of servitudes impacted by the proposal.

❖ C STEYN

1. Point of objection

It is suggested that the original 2013 application be looked at again for an overall blanket approval applicable to all owners and not one request at a time, which could be problematic in terms of future requests.

Response from applicant

The approved Danger Point Precinct Plan provides sufficient guidance for development as well as promoting preservation of the natural environment. The opinion is held that development on a piecemeal basis permits flexibility in the decision-making process as each application is different and may change over time. Town Planning Management Structures needs to be adaptive within a framework that promotes balanced development and incorporates environmental conservation.

Response from Town Planner

The Danger Point Precinct Plan was approved by Council on 3 December 2014. The precinct plan is a forward planning document providing a common spatial planning vision for the area but does not confer development rights onto the individual properties. Therefore, in cases where property owners submit applications to develop their respective properties, such applications are evaluated for compliance with the applicable forward planning and policy documents, thereby ensuring each application is considered on individual planning merit in accordance with the broad parameters stipulated as per the Danger Point Precinct Plan. Thus, the applicant's response is agreed with.

2. Point of objection

The developable area on erven in Birkenhead should be restricted further, thus increasing the portion of land used for Open Space. In support of three houses, but not the current proposal (i.e. four residential erven).

Response from applicant

The proposed development is fully consistent with the guidelines as per the Danger Point Precinct Plan and considered to strike a perfect balance between development and environmental conservation. The residential plots and right of way only represent 11% development of the total property (excluding civil infrastructure), whilst the remainder consist of private open space as well as a future nature reserve.

Response from Town Planner

The applicant's comment is agreed with. It should also be noted that despite the upgrade in development rights as per the application, the extent of development proposed is less than that currently permitted in terms of scale/size and building footprint when compared to the current primary rights.

3. Point of objection

Owners who were allowed business ventures should be restricted to only that and not be allowed any further division of property or expansion of their business.

Response from applicant

The objection is not considered relevant to the application.

Town Planners response

The objector is not clear about the relevance of the specific point to the proposed development and therefore not considered relevant to the application.

❖ DEPARTMENT OF TRANSPORT AND PUBLIC WORKS

- ***Concern is that Erven 21 and 61 currently have vehicular access across the application area Erf 22.***
- ***If Erf 22 is fenced off, the most northern boundary goes right up to the buildings on Erf 61 and will make access to the garage impossible.***
- ***There might be historical access rights which have not been exercised.***
- ***Applicant indicated that they have no intention to register right of way servitudes for the adjacent two properties.***

Response from applicant

Objection is not directly related to the application. A civil solution regarding access should be negotiated between the parties. Therefore, the objection should be dismissed.

Response from Town Planner

The objectors did not submit proof of access rights over the application property. Erf 21 borders Marine Drive and is not landlocked. Thus, objection based on traffic safety and impact of fencing on access should be dismissed. Further, Erf 61 obtains access directly from Marine Drive and not over the application property. A portion of the internal access road of Erf 61 traverse the application property on the lateral and rear boundary. As such the objection from DOT should be dismissed.

The letters of supported were submitted by -

1. Prof de Villiers

Supports the proposal since the opinion is held that the proposed development achieves the perfect balance with biodiversity and natural ecosystem conservation.

2. MLS de Kock

Supports the proposed development since the opinion is held that the development will achieve an acceptable density to support amongst others improved security in the area.

3. A de Klerk

Birkenhead is in stagnation for a long time thus, densification is considered crucial to improve security in the area.

4. T van Wyk

Proposed development is supported on the basis that it will promote upliftment of Birkenhead.

5. AM Schrecker**1. Point of comment**

Comments submitted on behalf of his spouse, HSS Schrecker, the registered owner of Erf 35 Birkenhead. The comments are not considered a formal objection but enquires how firefighting will take place with reference to access to the open space portion as well as the applicable building lines (i.e. 20m, 2m etc).

Response from applicant

With reference to firefighting provision is made for a 5m building line along the eastern and western lateral boundaries which will be utilised for access of emergency vehicles.

Response from Town Planner

The applicant's comment is noted and agreed with.

2. Point of comment

The applicable building lines (i.e. 20m vs 2m) are questioned.

Response from applicant

The building lines referred to are based on the Overstrand Land Use Scheme, 2020 as well as the building lines as per the Danger Point Precinct Plan. A departure is applied for the street building lines from 4m to 2m and will be dealt with via the Site Development Plan.

Response from Town Planner

The applicant's comment is noted and agreed with. The development proposal provides for a remainder Private Open Space within which four (4) single residential erven is proposed. As such the following development parameters as illustrated on the attached Site Development Plan (as per Annexure C) applies:

- i) the residential erven will be set back 20m from the street boundary of Erf 22;
- ii) 5m lateral- and rear building lines are applicable.
- iii) residential erven will have 2m street-, lateral- and rear building lines, calculated from the communal boundary between the communal erf boundaries abutting the respective Private Open Space portions.

iv) the residential erven are situated within the 150m developable area.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Refer to paragraph 7 above.

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

Refer to paragraph 7 above.

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

10.1 Background

N/A

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

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

Spatial Justice

The proposal will not perpetuate past spatial imbalances and provide access to housing opportunities.

Spatial sustainability

The property is situated within the urban edge. The proposal will not impact on agricultural land or unacceptably impact on the natural environment. Development is contained towards the south of the property, leaving a private open space remainder with a portion to be transferred in future for nature conservation purposes.

Efficiency

The proposal whereby the residential erven are clustered together will ensure optimal and efficient utilisation of the property.

Spatial Resilience

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

Good administration

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

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

Same as Point 10.2 above.

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

The proposed development is consistent with the provisions of the SDF and Danger Point Precinct Plan.

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

N/A

10.6 Impact on Municipal engineering services

The proposed development will be self sufficient with reference to electricity utilising an off-grid system. Sewage disposal will occur via an internal network into a bulk conservancy tank, whilst the development will connect to municipal water. The development is supported by the Engineering Services Department on the basis of availability and capacity of relevant services, subject to conditions, including the payment of a bulk development contribution levy.

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

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

10.8 Existing and proposed zoning comparisons and considerations

The proposal provides for four (4) single residential erven situated within a Private Open Space remainder. The residential erven will be limited to two (2) storeys, a maximum floorspace of 250m² including outbuildings, whilst limited to a coverage of 50%. The proposed development comprises a more restrictive/limited development compared to the current primary rights in terms of building lines applicable to the remainder of the property, as well as coverage (50% of the original property) and height. The proposed single residential erven situated within the Private Open Space outside the 20m development setback will have 2m lateral building lines.

10.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The Title Deed restricts development on the subject property to residential purposes, the construction of one (1) dwelling house with associated outbuildings, 4,72m street-, 1,57m lateral- and 2m rear building lines and coverage of 50% permitted in terms of the Zoning Scheme. Thus, the Title Deed theoretically permits a total building footprint of 15 000m² once primary rights are fully exercised, subject to amongst others an 8m height restriction.

The application entails the removal of restrictive title conditions C.(b) and C.(d) in terms of Title Deed T16547/2005, namely:

- “(b) That only One dwelling together with such outbuildings as are ordinarily required to be used therewith be erected on this erf;*
- (d) That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 15 feet to the street line which*

forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."

The proposed development, although an upgrade of rights will occur in terms of four (4) primary dwelling units, will be more restrictive and have less impact on the character of the area, including the natural environment since development will be limited to 50% coverage of each 600m² erf with the total floor area of buildings (including) outbuildings be limited 1000m² (250m² per erf) and a two-storey height restriction.

The financial or other value of the rights

The Title Deed stipulates that the property may only be utilised for residential purposes and has a more restrictive street building line than the Zoning Scheme. The removal of the condition relating to one (1) dwelling only will have a beneficial financial impact for the property owner as well as property owners in Birkenhead through increased property value as the proposal will facilitate densification in accordance with the Danger Point Precinct Plan.

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

The original holder of rights became null and void when the Municipality took over its functions. The Municipality will gain no personal benefit with the removal of the restrictions, whilst property owners in Birkenhead will benefit through increased property value and improved security.

The personal benefit for the property owner is that the proposal will enable four (4) dwelling units with associated outbuildings to be developed, resulting in an increase in property value. Each owner will enjoy a tranquil lifestyle and will be able to exercise their individual rights on the property.

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

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

The social benefit of the removal will be that enhanced development rights is considered to turn around the stagnating Birkenhead Township through additional investment/development in increased property values and security, whilst also supporting existing businesses/tourist facilities and employment opportunities

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

The application only removes title deed conditions C.(b) and C.(d) contained in Title Deed T/16547/2005.

11. THE DESIRABILITY OF THE PROPOSAL

The Township of Birkenhead had been established in the 1930's as town subject to conditions of establishment that has been carried over into the Title Deeds and

registered in favour of all owners within the township. Birkenhead to date remain primarily undeveloped, save for a few dwelling houses, most of which is not permanently occupied, as well as a restaurant/tourist facility. The area is subject to poaching with poachers traversing private properties, thus safety and security is a concern in the area.

The application area forms part of a sensitive coastal environment of outstanding natural beauty with potential for biodiversity conservation/recreational corridor with limited off grid development with minimal impact on the natural environment. The proposed development is fully consistent with the provisions of the SDF and Danger Point Precinct Plan as adopted by Council. From a strategic point of view, the proposed development strikes a balance between development and protection of natural environment and will enhance the character of the area (i.e. additional inhabitants, capital investment resulting in improved rates and security) thus also beneficial for the town of Birkenhead, including the greater Gansbaai region.

The application for removal of restrictive title conditions to permit densification is considered desirable as per the evaluation in paragraph 10.9 above.

Although the proposal will result in densification, i.e. three (3) additional single residential erven with four (4) dwellings in total, the combined development footprint and height will be more restricted compared to the existing primary rights in terms of building lines, total floor space and permitted height of buildings and structures. The opinion is therefore held that the proposal will have visually less impact upon the character of the area opposed to the extent of development permitted under the current primary rights whilst at the same time facilitates much needed investment in the area.

The proposed development provides for the residential erven to be set in a remainder Private Open Space, which will be managed by a HOA in accordance with approval conditions that amongst others requires a maintenance management plan. The proposal also permits a further portion of the Private Open Space to be included in a future nature reserve which is part of the long-term strategic vision for the area. The proposed development is therefore considered to strike the perfect balance between the built environment, whilst also protecting the natural environment. Furthermore, the proposal will make use off-grid sustainable energy sources, whilst the development and maintenance of the property will occur in accordance with the Environmental Management Plan (EMP). The HOA will be responsible to ensure development and management of the property in accordance with the EMP.

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

The proposed departure of the 4m internal street building line is not considered to detract from the character of the area or vested rights of adjoining property owners.

The subject property will be accessed from Marine Drive in a location approved by the District Road Engineer. The internal access will comprise a servitude road.

The District Roads Engineer is concerned about the fact that Erven 21 and 61 obtain access over the application property and if fenced off might prevent access to the garage on Erf 61, whilst there might be historical access rights currently not

exercised. As such a formal objection was submitted in terms of LUPA. It should be noted that Erf 21 abuts Marine Drive and has access to a public road in terms of the township establishment. The application property does not contain any servitudes providing access to Erven 21 and 61 as confirmed by the conveyancer's certificate. Erf 61 has an existing access from Marine Drive and is not land locked. The access to the garage in question is part of an illegal structure encroaching into the application property as such, the matter is considered a civil matter between the respective property owners.

The view is held that an objection based on access to the adjoining properties cannot be sustained and should be dismissed. The Department of Transport will be notified of the outcome of the application and be shown on their right of appeal.

The proposed development does not trigger NEMA or the provisions of the Integrated Coastal Management Act.

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

12. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for removal of restrictive title conditions C(b) and C(d) in Title Deed T/16547/2005, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(a) of the By-Law for rezoning from Residential Zone: Single Residential (SR1) to Subdivisional Area, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for subdivision in terms of Section 16(2)(d) of the By-Law in four Residential Zone 1: Single Residential (SR1) erven of 600m² each and a Remainder Open Space Zone 3: Private Open Space (OS3), **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for departure in terms of Section 16(2)(b) of the By-Law in order to relax the 4m street building line applicable to the Residential Zone 1 erven to 2m, **be approved** in terms of the provisions of Section 61 of the By-Law,
5. that the approvals in paragraphs 1. to 4. above be subject to the following conditions:

- (a) that a Homeowners' Association (HOA) be established prior to the transfer of the first erf;
 - (b) that the constitution of the HOA be submitted for municipal approval, which constitution must provide for the development, upkeep and maintenance of the property in accordance with an approved Environmental Management Plan and Architectural Guidelines;
 - (c) that Architectural Guidelines be submitted for municipal approval prior to submission of building plans demonstrating compliance with the Danger Point Precinct Plan, and amongst others limit development to two-storeys and a maximum floor space of 250m²;
 - (d) that the conditions in the Services Report (attached as Annexure J), be complied with;
 - (e) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (f) that the use of the remainder Open Space Zone 3 portion beyond the 150m development line be limited to conservation use as per the Overstrand Land Use Scheme, 2020;
 - (g) that an Environmental Management Plan be submitted for municipal approval prior to commencement of the development. The EMP shall address both construction and operational phases of the development, including rehabilitation, and
 - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
6. that the applicant and persons who commented 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 conditions of approval.

13. REASONS FOR RECOMMENDATION

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

14. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Site Development Plan
- Annexure D: Title Deed
- Annexure E: Objection received

Annexure F: Comment from applicant
Annexure G: Comment: Telkom
Annexure H: Comment: Eskom
Annexure I: Department of Transport and Public Works
Annexure J: Services Report

SIGNATURE**REGISTERED PLANNER**

Name: **SW VAN DER MERWE**

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

Signature: _____

Date: _____

ANNEXURE A



ERF 22 : BIRKENHEAD : GANSBAAI

1. Introduction

a. Brief
Interactive Town and Regional Planning was appointed by the owner of the property Nungu Trading 174 Pty Ltd, to prepare and submit an application for the removal of restrictive title deed conditions, a rezoning, a subdivision and building line departures, with regards to the property, Erf 22, Birkenhead, in terms of Chapter IV, Section 16(2)(a),(b),(d) & (f) of the Overstrand By-Law on Municipal Land Use Planning 2015.

b. Development Objective & Application Proposal
On the application area, the owners wish to erect four dwelling units with views over the ocean on four separate single residential erven in relatively close proximity to the existing access road, Marine Drive.

Furthermore, the owners wish to utilize the remainder of the application area for the purposes of communal private open space within the 150m development line. The remaining 9713m² collective area is to be set aside for possible future nature reserve purposes and to form part of the recreational biodiversity corridor in accordance with the approved Spatial Precinct Plan for the area.

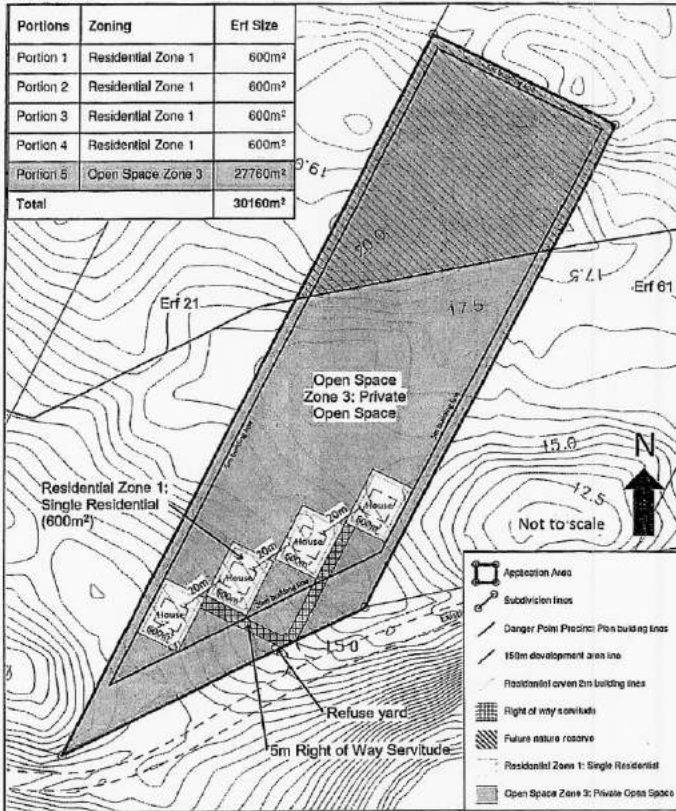


Figure 1: Site Plan extract

	<p>Subsequently, the application proposal will include;</p> <ul style="list-style-type: none"> • Removal of restrictive title deed conditions which limit the development in terms of number of dwelling units permitted and building lines required • Rezoning to Subdivisional Area • Subdivision into five portions consisting of four single residential portions of 600m² each and the remaining 27 760m² portion for Private Open Space • Building line departure to relax the street building lines for each proposed single residential erf from 4m to 2m <p>Cognisance should be taken of the following:</p> <ul style="list-style-type: none"> • A right of way servitude will be registered on the application area to provide access to Portions 1 to 4 • An HOA will be established to ensure shared responsibility for the installation and maintenance of engineering services and the maintenance of the proposed communal private open-space. • An Environmental Management Plan as required by the Zoning Scheme Regulations, 2013 Section 16.4 will be submitted after the approval of the application. • The proposal does not constitute any listed activities as defined in the NEMA EIA Regulations, 2014. • ICMA 2008 as amended in 2014, is non-applicable to the application, as the application area is outside the high water mark, coastal management line and risk line. • The proposal triggers Section 38 of the NHRA and an NID will be submitted to Heritage Western Cape in conjunction with this application.
<p>c. Background</p>	<p>The application area consists of a 30160m² vacant erf which is currently zoned Residential Zone 1: Single Residential and is surrounded mostly by vacant erven, apart from Erf 61 to the north, which accommodates a dwelling house.</p> <p>The application area is situated southwest of Gansbaai within the Birkenhead sub-precinct and with Mount Dyer to the northeast and the ocean in close proximity to the south. Access to the application site is obtained from an existing adjacent road, Marine Drive, to the south of the application area.</p> <p>The owners wish to erect four single residential dwelling units on separate single residential erven respectively with the remaining portion to be utilized for Private Open Space purposes. Access is to be gained from Marine Drive. In accordance with the Danger Point Precinct Plan, the following is proposed namely a 20m setback area from the street, 5m rear and side building lines and a 150m development line, beyond which the 9713m² collective area is foreseen to be set aside for future nature reserve to form part of the recreational biodiversity corridor.</p> <p>There are restrictive title deed conditions in terms of number of dwellings and building lines permitted which are required to be removed.</p> <p>The establishment of an HOA is required to ensure shared responsibility for the installation and maintenance of engineering services and the maintenance of the proposed communal private open-space.</p>

2. Summary of Application:					
<p>a. Development Criteria:</p> <p>The development parameters for the Erf 22, Birkenhead as per the Zoning Scheme Regulation, are summarised as follows:</p>	<p>The application area is zoned Residential Zone 1: Single Residential.</p> <p>The proposal is for removal of restrictive title deed conditions, a rezoning, a subdivision and a building line departure,</p>				
	Parameters	Existing Zoning	Proposed Zoning	Comments	
	Zoning	Residential Zone 1: Single Residential (SR1)	Subdivisional Area Zone (SA) Residential Zone 1: Single Residential (SR1); Open Space Zone 3: Private open space (OS3);	Application is for a rezoning	
	Primary Uses	Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;	Dwelling house, private open space	Consistent	
	Consent Uses	Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.	None	Consistent	
	Coverage	50%	50%	Consistent	
	Height	8m	8m	Consistent	
	Building lines	Street	4m for road or street	2m	Application is for a relaxation
		Side	2m	2m	Consistent
		Rear	2m	2m	Consistent
Parking	Dwelling house: 2 bays	2 bays	Consistent		
<p>The proposal adheres to all Zoning Scheme, 2013 parameters other than the building line departures and rezoning.</p>					
<p>b. Application:</p> <p>The application form is attached as Annexure D and the Site Plan as Annexure J</p>	<p>Application is hereby made in terms of Chapter IV, Section 16.2(a),(b),(d) &(f) of the Overstrand By-Law on Municipal Land Use Planning 2015, for:</p> <ul style="list-style-type: none"> • The removal from Title Deed T16547/2005 of the reference to conditions C (b) and (d) which originated from Title Deed T20174/1966 • The rezoning of the application area with an extent of 30160m² and a zoning of Residential Zone 1: Single Residential to Subdivisional Area Zone (SA). • The subdivision of the application area into 5 portions where; <ol style="list-style-type: none"> 1. Portions 1 is 600m² Residential Zone 1: Single Residential, 2. Portion 2 is 600m² Residential Zone 1: Single Residential, 3. Portion 3 is 600m² Residential Zone 1: Single Residential, 4. Portion 4 is 600m² Residential Zone 1: Single Residential and 5. Remainder is 27760m² Open Space Zone 3: Private Open Space, 				

- A building line departure to relax the 4m southern street building line to 2m for Portions 1 to 4

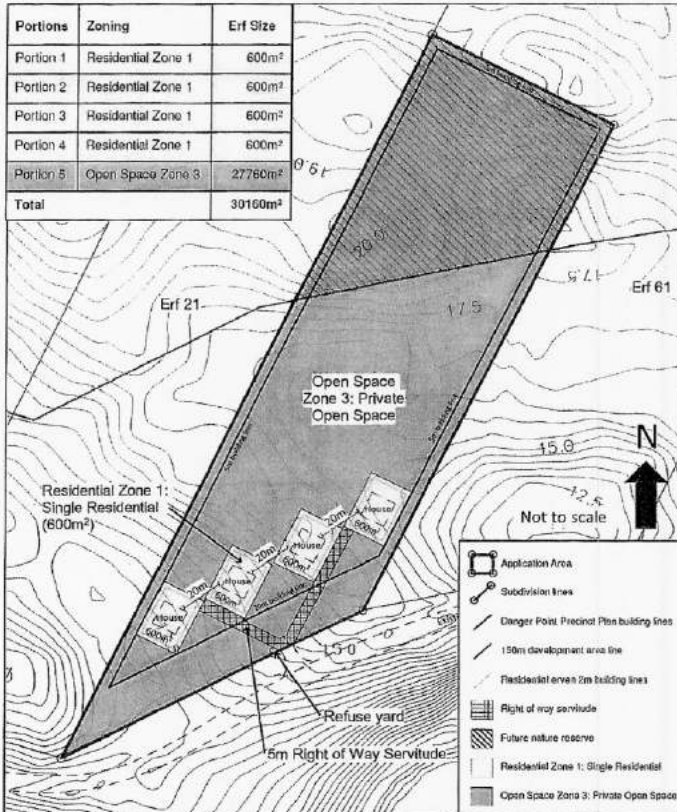


Figure 2: Site Plan extract

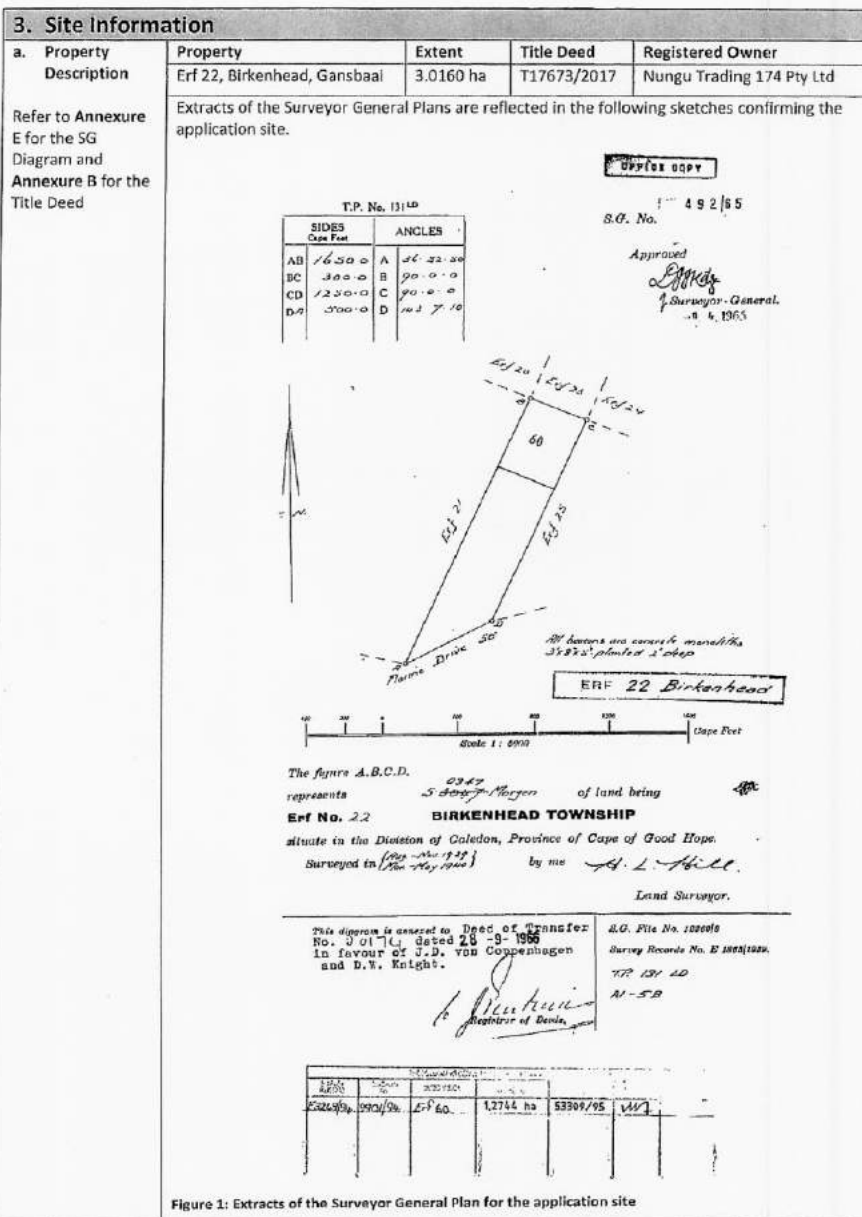
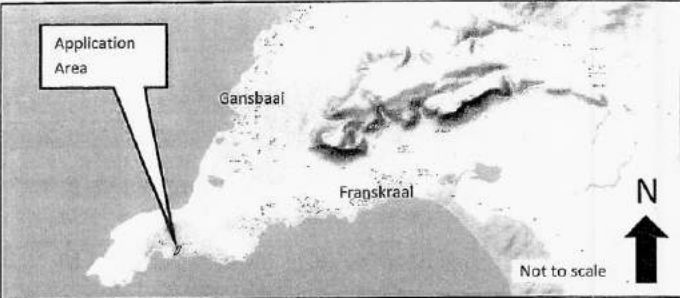
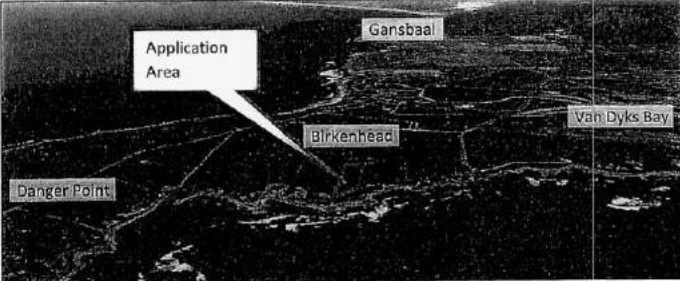


Figure 1: Extracts of the Surveyor General Plan for the application site

<p>b. Title Deed</p> <p>Refer to Annexure C for the Conveyancer Certificates.</p>	<p>The Conveyancer Monica Korf issued a certificate confirming that there are <u>two restrictive title deed conditions</u> originating from Title Deed T20174/1966 referred to in Title Deed T16547/2005 which restrict the development proposal which need to be removed. These restrictive conditions read as follows:</p> <ul style="list-style-type: none"> • "C. Onderhewig verder aan die voorwaardes vervat in Transportakte Nr T20174/1966 opgele deur die Administrateur in terme van Ordonnansie Nr 33 van 1934, naamlik: <p>AS SYNDE ten gunste van die geregistreerde eienaar van enige erf in die Dorp onderhewig aan wysiging of verandering deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie Nr 33 van 1934:</p> <p>(b) "That only One dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf".</p> <p>(d) That no buildings or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 15 feet to the street line which forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."</p>
<p>c. Location:</p> <p>Refer to Annexure F for the locality plans.</p>	<p>Regional Context: Within the regional context, the application area is situated in Birkenhead with Danger Point to the west, Gansbaai to the northeast, Franskraal to the east, Mount Dyer to the northeast and the Atlantic-ocean to the south.</p>  <p>Figure 2: Locality Plan – Regional Context</p>  <p>Figure 3: Google Satellite three-dimensional perspective illustration of the application area.</p>

Local Context:

Within the local context, the application area is located on Erf 22 within the Birkenhead sub-precinct which forms part of the larger Danger Point precinct. The application area is surrounded by Erf 21 to the west and Erf 61 to the east and the north of the application area. The application area is adjacent to the existing coastal road, Marine Drive, to the south thereof.

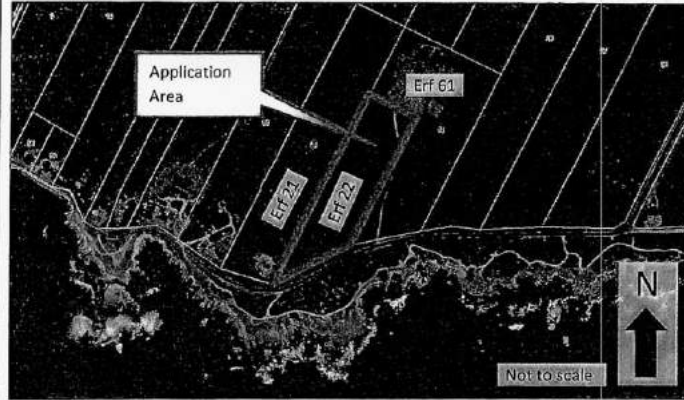


Figure 4: Locality Plan – Local Context

d. Land Use:

Refer to Annexure H for the Land Use Plan.

The land use of the application area is vacant and is proposed to be used for four single residential dwelling units and private open space, being consistent with the surrounding residential erven which are currently mostly vacant and which allow for single residential dwellings as well. The portion of open space north of the 150m development line is foreseen to be incorporated into the larger private nature reserve forming part of the biodiversity corridor.

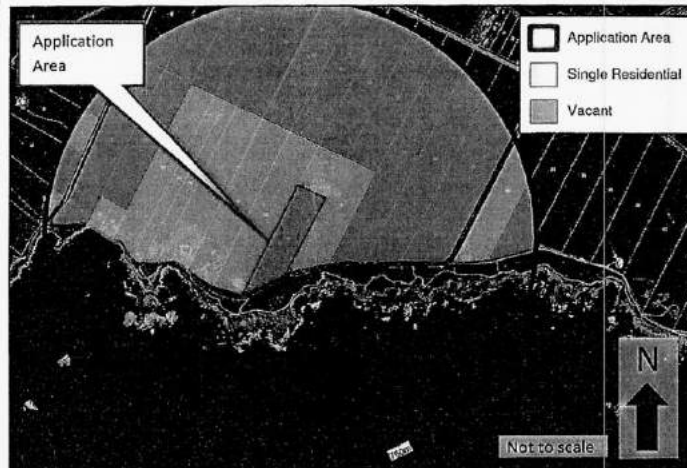


Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties

e. Zoning:
 Refer to the Extract of Gansbaai Final Zoning 2014 map attached as Annexure G

The application area, Erf 22, Birkenhead is zoned Residential Zone 1: Single Residential and is consistent with the surrounding properties which are zoned Residential Zone 1: Single Residential as well, except for one of the erven to the east of the application area, which is zoned General Residential Zone 3: Flats Bulk Zone 2. The proposal includes rezoning to Subdivisional Area Zone (SA) to include four portions to be zoned Residential Zone 1: Single Residential and the remainder to be zoned as Open Space Zone 3: Private Open Space.

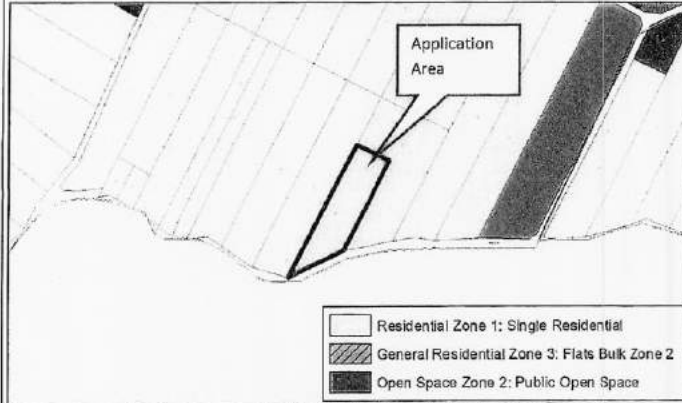


Figure 6: Extract from the Overstrand Municipality: Gansbaai Final Zoning 2014 map

f. Laws and policies relevant to the consideration of the application and forward planning and land use documents

The following policy extracts are applicable to the application area:

i. Overstrand Municipal Spatial Wide Development Framework, 2006
 The application area falls within an Urban Extension and Proposed Danger Point Conservancy Area.

The application proposal is consistent with the Overstrand Municipal Spatial Wide Development Framework, 2006, as the largest portion of the application area is proposed for private open space and private nature reserve and the development footprint will represent less than 11 % of the total application area.

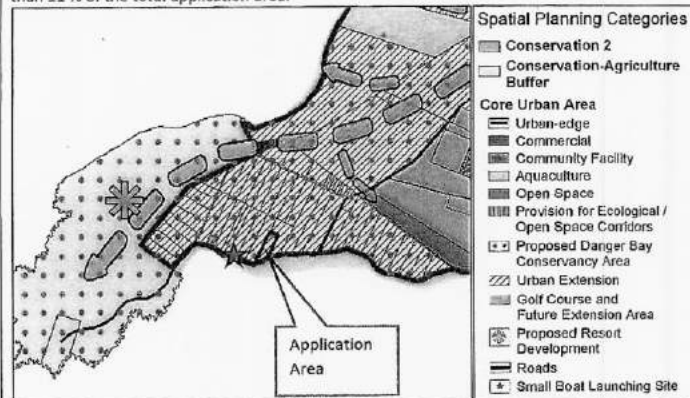


Figure 7: Overstrand Spatial Wide Development Framework, 2006 Spatial Proposals Plan

ii. Overstrand Municipality Growth Management Strategy, 2010

The application area is located within a Less than 10 Dwelling Units Per Hectare Densification Zone and a Conservancy Area. The application is consistent with the Overstrand Municipality Growth Management Strategy, 2010, as it proposes 1 dwelling unit per ha.

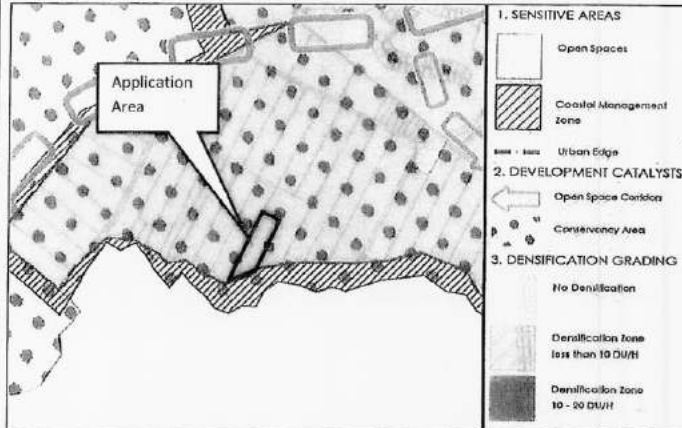


Figure 8: Extract from the Overstrand Municipality Growth Management Strategy, 2010 reflecting the envisaged land-uses for the area.

iii. Danger Point Precinct Plan 2016

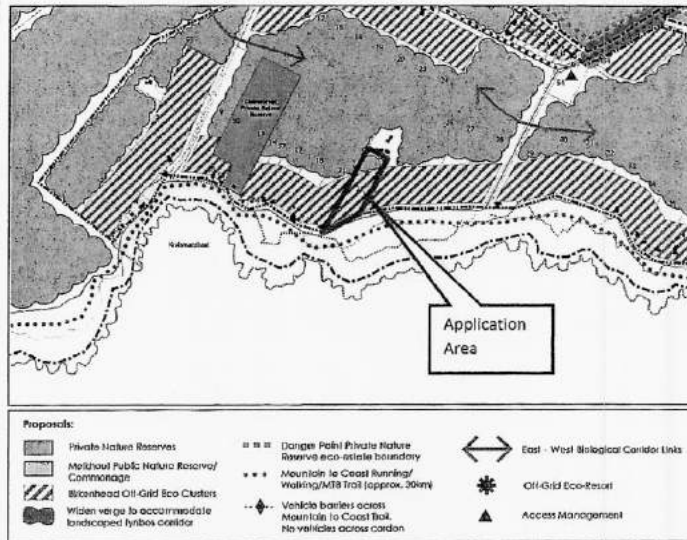
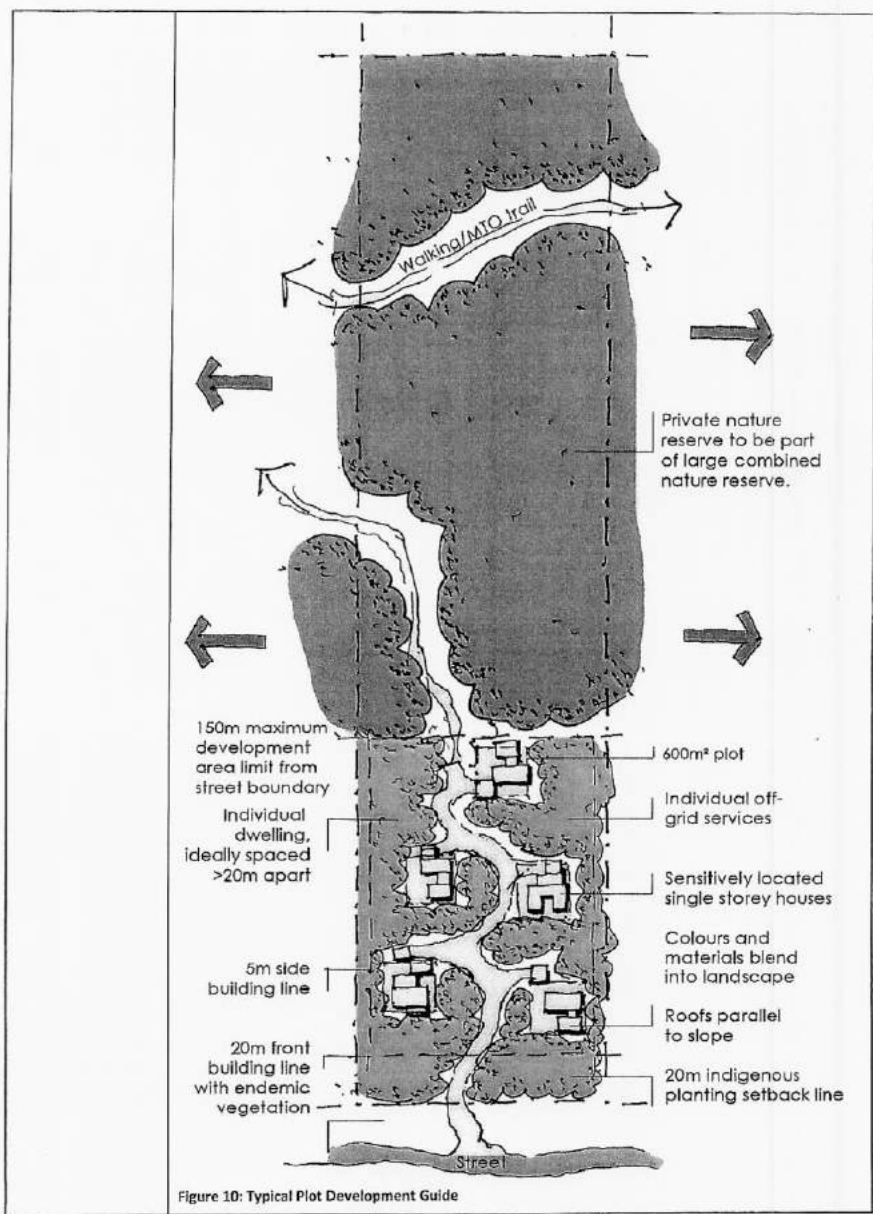


Figure 9: Danger Point Precinct Plan 2016 extract



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	<p>The following extracts from the Danger Point Precinct Plan, 2016 are relevant to the application proposal.</p> <p>3.4 POLICY FOUR: NATURE AREAS ON PRIVATE LAND All private land not used for urban development purposes should be included in private conservation areas on preferably, protected nature areas, and an authority such as the municipality, CapeNature, a home-owners association or improvement district as relevant be mandated to manage them.</p> <p>Implementation ii. Where landowners submit development applications making the balance of their land available for inclusion in such private nature reserves should be made a condition of approval.</p> <p>4.1 POLICY ONE: DENSITY i. Owners who wish to develop their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3.01 hectares will be calculated as 4 hectares.</p> <p>Implementation The density policy will be implemented on a piecemeal basis as and when those owners who wish to increase the densities on their properties submit applications.</p> <p>4.3 POLICY THREE: DEVELOPMENT BOUNDARIES AND SET BACK LINES “iv. The 150m maximum development line from certain roads is intended to encourage the location of dwellings towards the ends of the properties while still leaving enough space for each dwelling to be relatively secluded. The overall effect of this development line will be to keep the majority of the internal areas of the properties free from development. This will create the potential for a meaningful biodiversity conservation and recreational corridor, particularly if property owners agree to allow these portions of their properties to form part of a private nature reserve.”</p> <p>Conclusion: The application proposal is consistent with the Danger Point Precinct Plan, 2016.</p>
<p>g. Municipal engineering services</p> <p>Refer to the Engineering Services report in Annexure K</p>	<p>Deca Consulting Engineers compiled a services report which is summarized as follows:</p> <ul style="list-style-type: none"> • That the proposed internal water reticulation system will consist of an uPVC water reticulation system to be connected to the existing external water reticulation system to the north of the site; • That a servitude be registered across the neighbouring Erf 61 and Erf 23 to the north of the site to accommodate the proposed water connection; • That there is sufficient capacity in the existing water reticulation network to accommodate the proposed development. • That no formal sewerage reticulation system currently exists in the vicinity of the development and it is therefore proposed that the sewage from the development be treated by means of a new sewage treatment plant (package plant) from a manufacturer approved by the municipality; • That the post-development runoff from the site for the various R.I. storm events remains small and no stormwater infrastructure or quantity- (attenuation) or quality control measures are proposed. • That access to the four erven will be from the existing road (Marine Drive) to the south of the site from a single access point and a 5m Right of Way Servitude will be implemented to allow access to all erven. • The proposed development will be self-sufficient in terms of electricity and will utilize an off-the-grid solar-powered system. No connection to the external electrical network is required.

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	<p>Conclusion:</p> <p>Apart from the water, all other services are off-grid. Water needs to be obtained from the existing pipe-line as there is not sufficient water available off the grid.</p> <p>Furthermore, with regards to solid waste, a refuse area not exceeding 5m² will be provided next to the entrance to the application area.</p>
<p>h. Environmental Scan Refer to Annexure J for the DEADP Letter</p>	<p>The NEMA Checklist was submitted to DEA&DP by Guillaume Nel Environmental Consultants and the DEA&DP determined that the proposal does not constitute any listed activities as defined in the NEMA EIA Regulations, 2014.</p> <p>However, should any future expansion activities be undertaken on new Erf 22 within the 100m high-water mark of the sea, the Department must be consulted before any commencement of expansion activities.</p>
<p>i. Environmental Management Plan</p>	<p>An Environmental Management Plan as required by the Zoning Scheme Regulations, 2013 Section 16.4 will be submitted after the approval of the application. The following will be addressed as required by the Zoning Scheme Regulations, 2013 namely;</p> <ul style="list-style-type: none"> • The impact on the environment of specified, proposed activities and monitoring measures in order to guide the implementation of the proposal • Ongoing maintenance after implementation • Sustainable utilisation of the resources on the land unit

4. The application motivation	
<p>Motivation for the application:</p> <p>Refer to Annexure I for the</p>	<p>a. Introduction and background</p> <p>The application area consists of vacant Erf 22 of 3,0160 ha in extent situated in the Birkenhead sub-precinct southwest of the Gansbaai urban area. The surrounding erven are mostly undeveloped with a private nature reserve in close proximity to the west.</p> <p>The application area is currently zoned Residential Zone 1, which permits a single residential dwelling.</p> <p>The application area falls within an Urban Extension and Proposed Danger Point Conservancy Area, within a "Less than 10 Dwelling Units Per Hectare Densification Zone" in terms of the Overstrand Growth Management Strategy, 2010.</p> <p>According to the Danger Point Precinct Plan, 2016 the application area is within an area envisaged for an off-grid eco cluster development and private nature reserve. A setback of 20m is required from the road, as well as a 150m maximum development area limit from the street of which the area beyond the development line should be incorporated into the larger nature reserve for protection of endemic vegetation. Furthermore, a 5m rear and side building line for the total development is required.</p> <p>b. Proposal</p> <p>The development objective is for an off-grid eco cluster residential development consisting of 4 residential dwelling units on 4 separate single residential erven staggered in a linear cluster with optimal ocean views along a 20m set-back line from the existing access road to the south.</p> <p>The remaining portion of land surrounding the proposed subdivided residential erven is to become private open space. A portion of 9713m² is proposed to be incorporated as private nature reserve in accordance with the Danger Point Precinct Plan, 2016, and forming part of the recreational biodiversity corridor linking Mount Dyer with the Danger Point peninsula.</p> <p>A right of way servitude is proposed to access the development from a single access point from the existing road south of the application area and to split into two internal access roads. The right of way servitude of 559m² provides access across the Remainder to Portions 1 to 4.</p> <p>A refuse area not exceeding 5m² will be provided next to the entrance to the application area.</p> <p>Evident from the contours and a cross-section of the landscape viewed in figure 12, the proposal will have a <u>minimal visual impact</u>, as the landscape slopes toward the ocean. Therefore, ocean views from the surrounding properties will not be obstructed by the proposal and the proposed dwellings will blend in with the landscape.</p> <p>No development plans for the proposed dwellings have been drawn up yet but will comply to building design and siting guidelines to ensure residential buildings preserve the visual integrity of the environment and sit "<u>in</u>" rather than "<u>on</u>" the landscape.</p>

Refer to the table below for a summary of the Birkenhead Sub-Precinct Parameters of Policy 3 and 4.

Birkenhead Sub-Precinct Parameters: Policy 3 & 4		
Parameters	Proposal	Comment
20m setback from road	20m	Consistent
5m setback from common property boundaries	5m	Consistent
150m maximum development line	150m	Consistent
Additional dwellings may be alienated by subdivision	Subdivision	Consistent
Erven no larger than 600m ²	600m ² per erf	Consistent
Access to erven may be facilitated by servitude	Servitude	Consistent
Location: Sit "in" rather than "on" the landscape	Sit in the landscape	Consistent
Layout may be clustered or separated	Clustered	Consistent
Roofs: Slope largely parallel with average ground slope	Roof slope parallel	Consistent
Height: Up to 2 storeys - visual impact taken into account	2 - storeys	Consistent
Bulk: Maximum 250m ² incl. garages & outbuildings	250m ²	Consistent
Massing: No single component of building larger 100m ²	100m ²	Consistent
Colours: Walls: natural, earthy or light-coloured plaster	Same	Consistent
Colours: Roof: Dark green (Graaff-Reinet) or charcoal	Same	Consistent
Lighting: All luminaries to be 50% shaded	Same	Consistent
Boundary Wall & Fences: Not more than 30% solid with balance as planted palisade or "clearvu" fencing	Same	Consistent
Retaining Walls: not higher than 1m & landscaped, built or faced with natural materials	Same	Consistent

In order to achieve the development objective, the application proposal is as follows:

- i. Removal of restrictive title deed conditions

The removal of the reference in title deed T T16547/2005 to conditions C(b) and (d) which originate from title deed T T20174/1966 is required, to allow for the proposal.

1. **Condition C(b)** limits the development to one dwelling with outbuildings on the application area.
2. **Condition C(d)** limits the building lines of the development to a 4,572m street building line and a 1,524m rear building line.

The application proposal has been evaluated in terms of Section 35(4) of the Overstrand By-Law on Municipal Planning, 2015 regarding personal and social benefits which are foreseen to result from the removal versus non-removal of the restrictive title deed condition and the following conclusions were made:

- (a) Financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement

No financial or other value of the rights in terms of the restrictive conditions enjoyed by the owner, are evident.

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

No material personal benefits which accrue to the holder of rights in terms of the restrictive conditions, are evident.

The result of the restrictive rights being upheld, is that even less development will occur on the application area.

	<p>The proposed development will represent less than 11 % of the total application area, which is already a small footprint.</p> <p>(c) <u>Personal benefits which will accrue to the person seeking the removal of the restrictive conditions</u></p> <ul style="list-style-type: none"> • The 4 owners of the consortium wish to accommodate four single residential erven with one single residential dwelling together with the associated outbuilding on each of the four erven • The property value will increase • Owners are able to enjoy a tranquil lifestyle • Each owner is able to exercise their individual rights on the property <p>(d) <u>The social benefit of the restrictive conditions remaining in place in its existing form</u></p> <p>No material social benefits to the restrictive condition remaining in place in its existing form, are evident.</p> <p>The visual impact of the proposal on the environment is minimal with surrounding erven maintaining their current ocean views.</p> <p>(e) <u>The social benefit of the removal or amendment of the restrictive conditions</u></p> <p>The social benefits of the removal of the restrictive condition are as follows:</p> <ul style="list-style-type: none"> • On a small and accumulative scale, the increase in the security of the area as a result of more surveillance by additional residents in the area • On a small and accumulative scale, better security leads to higher property values • On a small and accumulative scale, the support of existing business and the establishment of new eco-friendly tourist/ business facilities, thus sustaining and creating more employment opportunities within the area. • May serve as a trigger to further eco-friendly residential development in the area <p>(f) <u>Will the removal, suspension or amendment of the restrictive conditions completely remove all rights enjoyed by the beneficiary or only some of those rights</u></p> <p>The only <u>two rights</u> that will be removed are as follows:</p> <p>Condition C(b) which limits the development to one dwelling with outbuildings on the application area.</p> <p>The removal of this restrictive condition will allow for the proposed 4 dwellings, each with their associated outbuildings, on 4 separate single residential erven, accordingly.</p> <p>The largest portion of the application area is proposed for private open space and private nature reserve and therefore the development footprint will represent less than 11 % of the total application area.</p> <p>The proposed dwelling units will adhere to all the relevant Zoning Scheme regulations, Birkenhead Sub-Precinct policies and title deed restrictions, other than the subject restrictive conditions for which a removal is being applied.</p> <p><u>Removal of this condition is not foreseen to create any negative impact</u> as the existing and intended character of the area will be preserved by the proposed development complying to all relevant regulations and policies. New development would also further support existing tourist facilities, thus contributing to sustaining employment opportunities.</p> <p>Condition C(d) which limits the building lines of the development to a 4,572m street building line and a 1,524m rear building line.</p>
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The Danger Point Precinct Plan, 2016 is more restrictive concerning building lines, where the street building line is 20m and the rear building line is 5m for the total development.

Removal of this condition is not foreseen to create any negative impacts as the proposed building lines are in accordance with the Danger Point Precinct Plan, 2016 which is more restrictive in terms of building lines, than the title deed.

ii. Application for Rezoning

The application area is proposed to be rezoned to Subdivisional Area Zone and subdivided into 5 portions of which 4 portions are for single residential purposes and 1 portion is for private open space erf. Furthermore, in accordance with the Danger Point Precinct plan, 2016 a 150m maximum distance for development limit on the erf will be set, beyond which the 9713m² area will be made available for a private nature reserve which forms part of the proposed recreational, biodiversity and scenic corridor of the Danger Point Precinct area.

The rezoning proposal is aligned with the requirements of the Danger Point Precinct Plan, 2016.

iii. Application for Subdivision

The application area is proposed to be subdivided into 5 portions. Each of the portions 1 to 4 are proposed to be 600m² Residential Zone 1: Single Residential erven. The remainder is proposed to be a 27 760m² Open Space Zone 3: Private Open Space erf which will be registered in the name of a Home-Owners Association to be established together with a constitution and development rules. An Environmental Management Plan for the Private Open Space erf will be drawn up as a condition of approval.

This layout will ensure that each subdivided residential erf is equal in size and value and that each residential unit has a clear view of the ocean. A 20m setback from the street is provided on the southwestern side within which vegetation will be protected to ensure the conservation of the visual integrity and natural, scenic character of the area. Furthermore, 5m building lines on the rear and side boundaries of the application area will be applicable and residential units are to be 20m apart.

The subdivision layout proposal is in accordance with the requirements of the Danger Point Precinct Plan, 2016.

i. Application for building line departures

Building line departures to relax the 4m street building line of each proposed subdivided single residential erf to 2m, are required.

The Danger Point Precinct Plan, 2016 already requires a 20m setback area from the street within which vegetation will be protected to ensure the conservation of the visual integrity and natural, scenic character of the area.

Therefore, relaxation of the 4m street building line on each proposed subdivided single residential erf, will have no negative impact on the environment and will not be negatively impacted. The building line relaxation will provide more building space as well as more positioning options on the single residential erf.

Cognisance should be taken of the following:

- Registering the Right-of-Way Servitude

Access to each subdivided erf is proposed by a 5m right of way servitude from a single access point from the existing road south of the application area which splits into two internal access roads across the Private Open Space communal area. The 559m² access road provides access to Portions 1 to 4.

The proposed layout for the right-of-way servitude minimizes the surface area used for the internal roads and building costs for the internal roads.

- **Establishment of an HOA**

The establishment of an HOA is required to ensure shared responsibility for the installation and maintenance of engineering services and the maintenance of the proposed communal private open-space.

- **Environmental Management Plan**

An Environmental Management Plan as required by the Zoning Scheme Regulations, 2013 Section 15.4 will be submitted after the approval of the application.

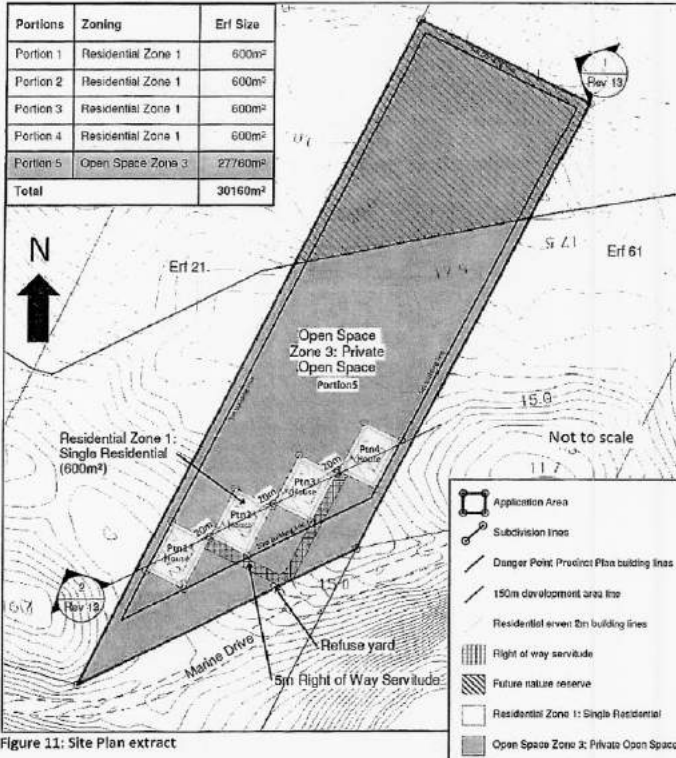
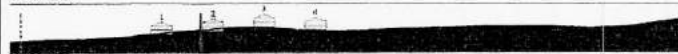


Figure 11: Site Plan extract

Section 1



Section 2



Figure 12: Sections

c. Existing character of the area

The application area forms part of a sensitive, coastal environment of outstanding natural beauty with potential for a biodiversity conservation and recreational corridor, encouraging off the grid eco-cluster development with minimal impact on the environment. This form of development is able to respond appropriately to sensitive coastal environments of outstanding natural beauty and maximise property values at low density situations where conventional urban services will not be available.

Less than 11 % of the total application area including the right-of-way servitude is to be developed for residential use with the largest portion of the land proposed to be zoned private Open Space and of which the portion beyond the 150m development line is foreseen to be incorporated as private nature reserve forming part of the recreational biodiversity corridor linking Mount Dyer with the Danger Point peninsula.

The proposed development will support and enhance the existing character of the environment as it adheres to the criteria of the Danger Point Precinct Plan, 2016 which promotes the preservation of the sensitive and natural coastal character of this area.

The proposal is thus foreseen to support the existing and intended/envisoned character of the area.

d. Desirability of the proposal

- Desirability refers to compatibility with surrounding properties. The proposed development will be compatible with the surrounding properties, as the development proposal adheres to all the guidelines and parameters as set out by the policy documents for the area.
- The proposed development which is in accordance with the Precinct Plan, 2010 will ensure that the existing character of the area is preserved in terms of low density and preservation of the natural scenic beauty of the area. Furthermore, the building design and siting guidelines will ensure that the residential buildings preserve the visual integrity of the environment and sit "in" rather than "on" the landscape.
- New development in the subject area is foreseen to support existing tourist facilities as well as may contribute to the establishment of new eco-friendly tourist facilities, thus sustaining and creating more employment opportunities within the area.
- The property is outside the high-water mark, coastal management line and risk line therefore it will not have any impact on the ICMA, 2008 as amended in 2014.
- Furthermore, the proposal does not constitute any listed activities as defined in the NEMA EIA Regulations 2014.
- In terms of RORA, regarding personal and social benefits which are foreseen to result from the removal versus non-removal of the restrictive title deed condition it was concluded that there are various personal and social benefits with no negative impacts to the holder of rights evident, in terms of the removal of the restrictive conditions.
- A NID will be submitted in terms of Section 38 of the NHRA to Heritage Western Cape in conjunction with this application.
- An analysis of a cross-section of the contours of the application area and the surrounding landscape, indicates that the proposed dwellings will be visible from the street as well as from the adjacent erven. In the case of single-storey dwellings less of a visual impact occurs. The surrounding vegetation as well as the Birkenhead sub-precinct parameters will ensure that the proposed dwellings blend in with the landscape, thus mitigating the visual impact.

Thus, new development which is in harmony with the sensitive natural coastal environment, such as the proposed development, is considered desirable.

e. **Planning Principles**

The application has also been analyzed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:

- (a) **Spatial Justice** which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The proposed development adheres to the policy guidelines for the application area to preserve the existing character of the area. The proposed development will provide housing while protecting the environment.

Spatial justice is adhered to.

- (b) **Spatial Sustainability** which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

Possible results of the development

The proposed development will ensure the protection of an environmentally sensitive and biodiversity rich area by proposing minimal residential development on the application area. Furthermore, off-grid services are proposed to be eco-friendly with minimal impact on the environment. Water needs to be obtained from the existing pipe-line as there is not sufficient water available off the grid.

The proposed residential units are situated at the edge of the erf thus keeping the majority of the property free from development. Furthermore, the land beyond the 150m maximum development line is to be incorporated into the private nature reserve as part of the larger recreational biodiversity corridor.

New development is foreseen to support existing tourist facilities as well as encourage new eco-friendly tourist facilities, thus sustaining and creating more employment opportunities.

The proposal is consistent with spatial sustainability.

- (c) **Efficiency** which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The layout of the proposed development is highly efficient as dwellings are clustered together, yet far enough apart to ensure privacy and are situated at the edge of the application area in close proximity to the existing access road. This ensures efficient provision of off-grid services, except for the water, and internal access which minimizes costs and the impact on the environment as well as a development which can contribute to a proposed biodiversity conservation and recreational corridor within the Danger Point Precinct area.

The proposal is consistent with the efficiency principle.

- (d) **Spatial Resilience** which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The proposed development adheres to criteria set by policy guidelines for the area and is not foreseen to cause any environmental or economic shocks but rather to protect the environment and stimulate the local economy by forming part of a larger nature reserve with eco-tourism opportunities such as walking trails and MTB trails as well as being in close proximity to a proposed resort and existing holiday accommodation. The proposal is consistent with spatial resilience.

- (e) **Good Administration** which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

Consultative practices are being followed in this application as it is done in consultation with all relevant role players and specialists as well as the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the different tiers of government and the general public to participate in the eventual decision-making process.

The application is consistent with the principle of good administration.

f. Conclusion

The application is consistent with all policies and strategic plans, will enhance the character of the area and the abutting properties. Therefore, this application for the removal of restrictive title deed conditions, rezoning, subdivision and departure for building line relaxations, is considered desirable.

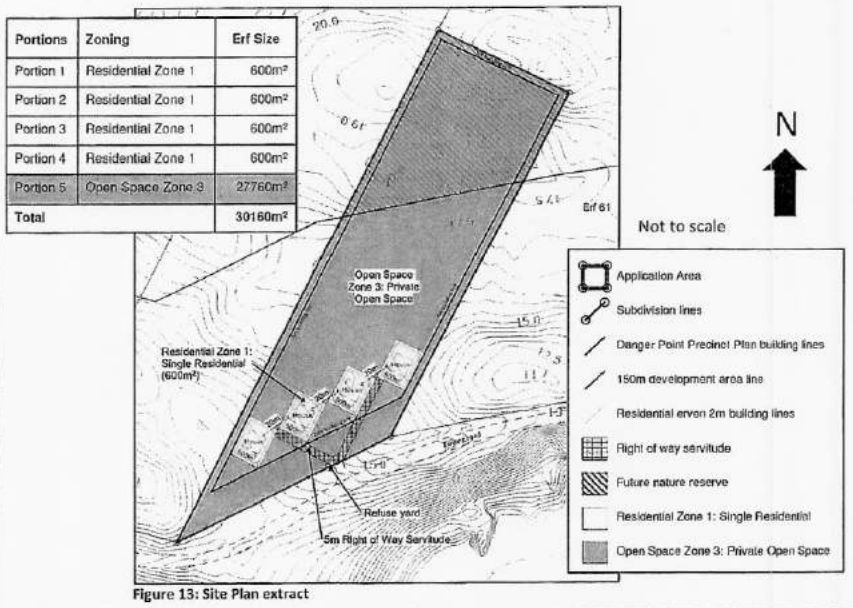
5. Conclusion

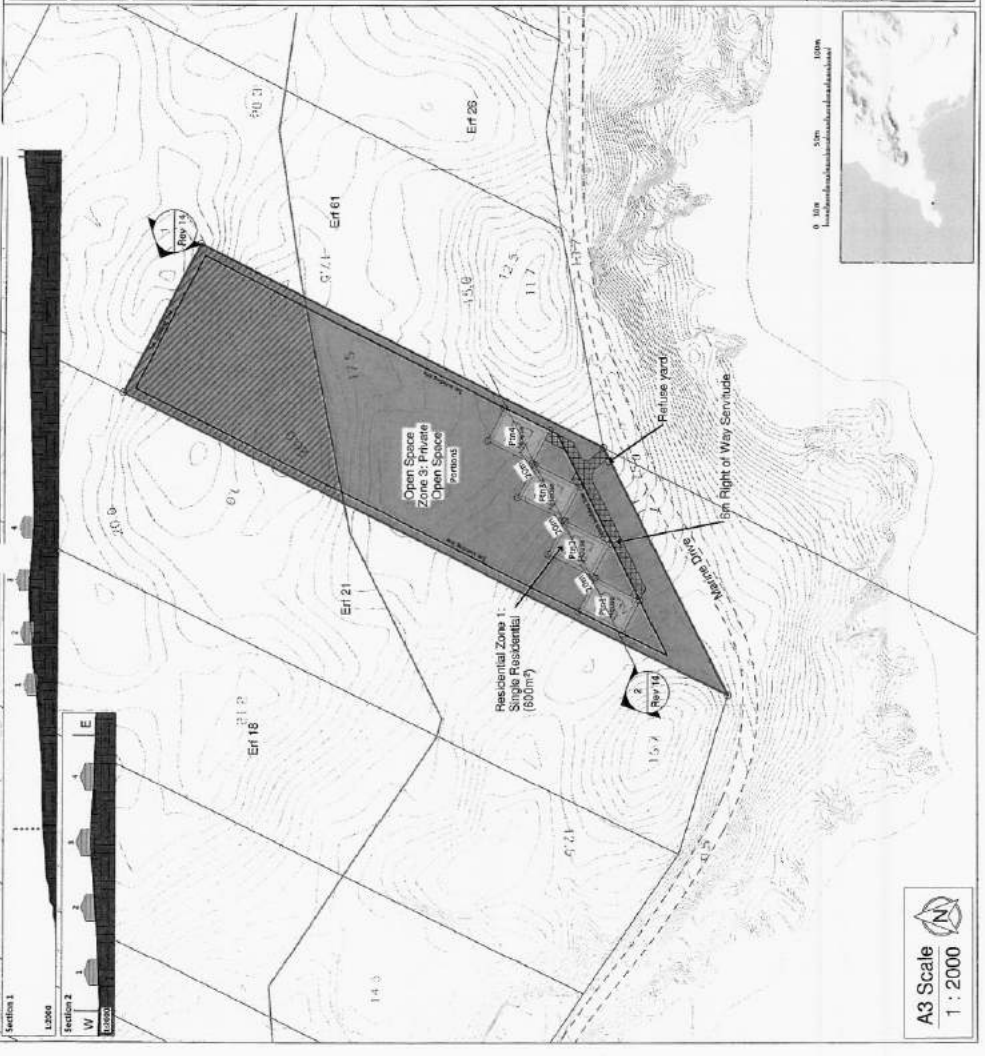
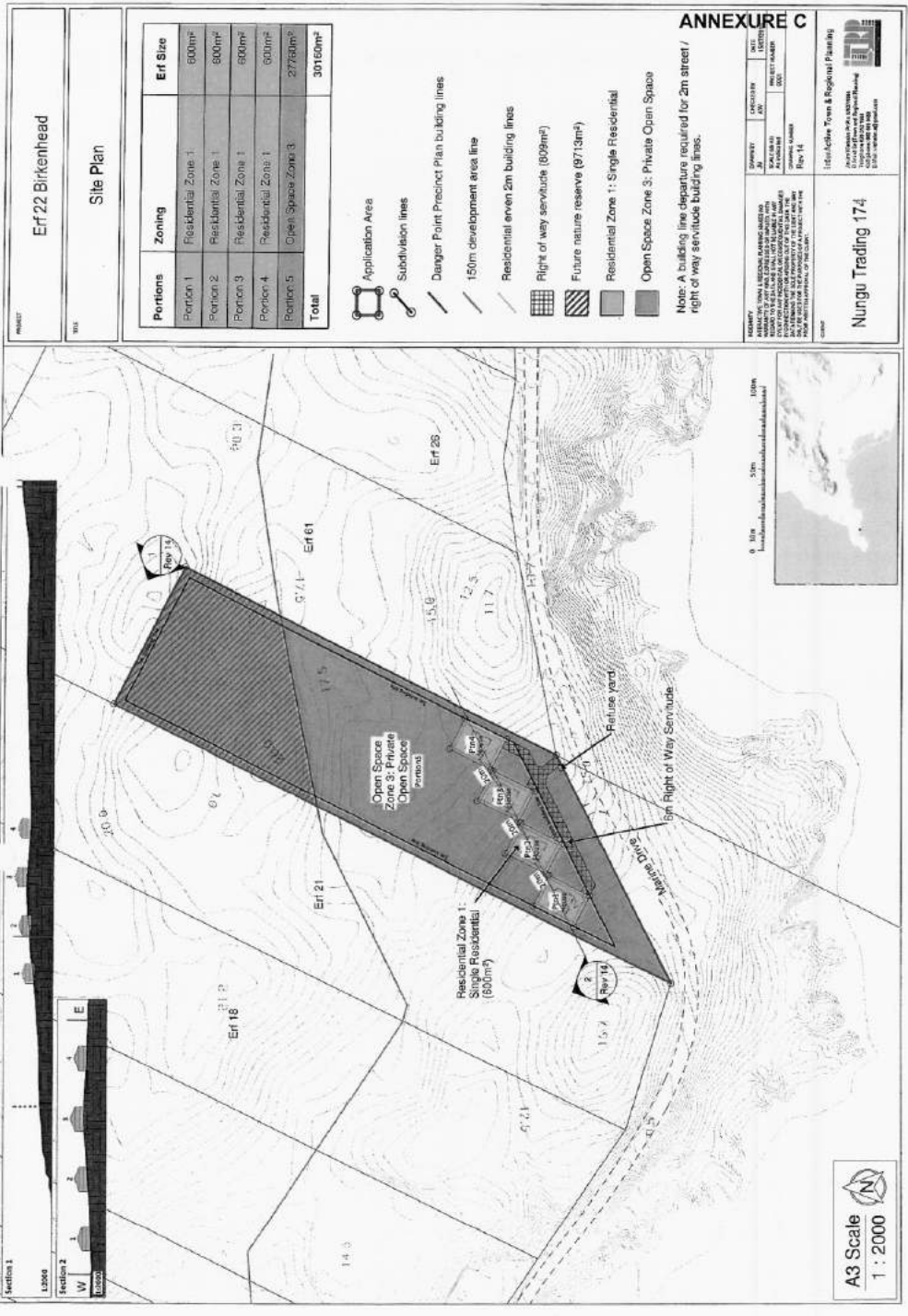
The application as motivated in this report is regarded desirable within its local context and well integrated within the existing community land-use activities. It is therefore recommended that this application made in terms of Chapter IV, Section 16.2(a),(b),(d) & (f) of the Overstrand By-Law on Municipal Land Use Planning 2015 be as follows:

- The **removal of the reference in Title Deed T16547/2005 to the restrictive title deed conditions C(b) and (d)** which originated from Title Deed T20174/1966,
- The **rezoning of Erf 22 Birkenhead with a zoning of Residential Zone 1: Single Residential to Subdivisional Area Zone (SA),**
- The **subdivision of Erf 22 Birkenhead with an extent of 30160m² into 5 portions where;**
 1. Portions 1 is 600m² Residential Zone 1: Single Residential,
 2. Portion 2 is 600m² Residential Zone 1: Single Residential,
 3. Portion 3 is 600m² Residential Zone 1: Single Residential,
 4. Portion 4 is 600m² Residential Zone 1: Single Residential and
 5. Remainder is 27760m² Open Space Zone 3: Private Open Space,
- A **building line departure** to relax the 4m southern street building line to 2m for Portions 1 to 4,

Furthermore, **cognisance** should be taken of the following which will be required from the registered owners, once this application for removal of restrictive title deed condition, rezoning, subdivision and building line departure has been approved:

- A **5m Right of Way servitude** of 559m² is required to be registered from a single access point from Marine Drive over the Remainder (Portion 5) in favour of Portions 1 to 4.
- An **HOA** is required to be established.
- An **Environmental Management Plan** as required by the Zoning Scheme Regulations, 2013 Section 16.4 will be submitted after the approval of the application.





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07 MAR 2005	REGISTRATEUR

DATA / VERTEK
29 MAR 2005
VERTEK

TRANSPORTAKTE

070016547/2005

SY DIT KENNELIK AAN ALMAL WIE DIT MAG AANGAAN

Dat **MARISA KOORTS** JOHANNA CATHARINA VAN ZIJL *JZ*
voor my, die Registrateur van Aktes, verskyn het te **KAAPSTAD**, die
genoemde komparant synde behoorlik daartoe gemagtig deur my volmag
geleken te ROBERTSON op 9 DESEMBER 2004 en aan hom/haar verleen
deur

DAVID WALTER KNIGHT
IDENTITEITSNOMMER : 240727 5013 08 9
GETROUD BUIE GEMEENSAP VAN GOED

18 MAR 2005

For Information Only

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En genoemde komparant het verklaar dat voormelde TRANSPORTGEWER waarik en wettiglik verkoop het op 16 NOVEMBER 2004 en dat hy, in sy/haar voornoemde hoedanigheid hierby in volle en vrye eiendom sedgeer en transporteer aan en ten gunste van

NINGU TRADING 174 (PROPRIETARY) LIMITED
NR 2004/032259/07

of regsverkrygendes

RESTANT ERF 22 BIRKENHEAD
IN DIE MUNISIPALITEIT OVERSTRAND
AFDELING CALEDON, PROVINSIE WES-KAAP;

GROOT: 3,0380 (DRIE KOMMA NUL DRIE AGT NUL) FAKTAAR

EERSTE OORGEDRA KRAGTENS TRANSPORTAKTE NR T20174/1966 MET KAART NR 492/65 DAARAAN GEHEG EN GEHOU KRAGTENS AKTE VAN VERDELINGSTRANSPORT NR T 834/1967.

- A. ONDERHEWIG AAN** sodanige voorwaardes soos na verwys word in Transportakte Nr T8461/1929.
- B. ONDERHEWIG VERDER AAN** die spesiale voorwaarde vervat in Transportakte Nr T14051/1919, dat die eienaars van Roman's Baai, gedeelte van Klipfontein, te alle tye die reg sal he om water slegs vir huishoudelike doeleindes te neem uit enige van die fonteine op die eiendom hierdeur getranspoteer, en dat toegang daartoe sal wees deur middel van die publieke pad, en dat daar op geen wyse sal oortree word op enige ander gedeelte van bogemelde eiendom nie.
- C. ONDERHEWIG VERDER AAN** die voorwaardes vervat in transportakte Nr T20174/1966 opgele deur die Administrateur in terme van Ordonnansie Nr 33 van 1934, naamlik :

AS SYNDE ten gunste van die geregistreerde eienaar van enige erf in die Dorp en onderhewig aan wysiging of verandering deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie Nr 33 van 1934 :

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

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(b) That only One dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.

(c) That not more than ½ of the area of this erf be built upon.

(d) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 15 feet to the street line which forms a boundary of this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf."

AS SYNDE ten gunste van die Plaaslike Owerheid :

(f) That the owner of this erf shall be obliged to allow drainage or sewerage of any other erf to be conveyed over this erf if deemed necessary by the local authority and in such manner and such position as may from time to time be reasonably required by the said Local Authority.

(g) That no building for human habitation shall be erected on this erf unless provision is made above ground for the storage of rain-water, the said storage to have a capacity of not less than 2,000 gallons."

For Information Only

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Weshalwe die Komparant afstand doen van al die regte en titel wat

TRANSPORTGEWER

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

TRANSPORTNEMER

of regsverkrygendes fans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat; en erken hy/sy ten slotte dat die hele Koopsom die bedrag van

R1 250 00,00 (EEN MILJOEN TWEE HONDERD EN VYFTIG DUISEND RAND)

bedra, wat ten volle betag of verseker is.

Ten Bewyse waarvan ek, die genoemde Registrateur, tesame met die Komparant, hierdie Akte onderteken en dit met die Ampseël bekragtig het.

ALDUS GEDOEN en verly op die Kantoor van die Registrateur van Aktes, te KAAPSTAD op 2 Maart 2004. 2005

J. B. J.
q.q. sy Prinsipaal/ale

In my teenwoordigheid,

Olivero
REGISTRATEUR VAN AKTES.

BIRKENHEAD

Conservancy
Bewarea

BIRKENHEAD CONSERVANCY COMMENTS ON THE PROPOSED

Erf 22 Birkenhead (MN60_2020) - ROR Rezoning Subdivision Departure

Municipal Notice No. 60/2020

19 August 2020

Version 1.0

Any written comments must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) aconradie@overstrand.gov.za) on or before 21 August 2020, quoting your name, address, contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to the Senior Town Planner, Mr. SW van der Merwe at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment

<https://www.overstrand.gov.za/en/documents/notices>



Birkenhead Conservancy / Bewarea Steering Committee
www.birkenheadconservancy.org
info@birkenheadconservancy.org
P.O Box 939, Gansbaai, 7220

Page 1 of 8

**BIRKENHEAD CONSERVANCY
(BC)**

1. Executive Summary

The Birkenhead Conservancy (B) has taken note of the below mentioned application under Sections 47 and 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 of the applications mentioned below applicable to Erf 22, Birkenhead namely:

Removal of Restrictive Title Deed Conditions Application in terms of Section 16(2)(f) of the aforementioned By-Law with reference to conditions C.(b) and C.(d) of Title Deed T16547/2005 to accommodate the proposed development.

Rezoning Application in terms of Section 16(2)(a) of the aforementioned By-Law to rezone the property from Residential Zone 1: Single Residential to Subdivisional Area (SA).

Subdivision:

Application in terms of Section 16(2)(d) of the aforementioned By-Law to subdivide the property into four (4) single residential portions and one (1) private open space (the Remainder).

Departure

Application for a departure in terms of Section 16(2)(b) of the aforementioned By-Law to relax the 4m street building lines to 2m for each single residential erf.

The Applicants Proposal:

On the rezoning application the owners have indicated that they wish to erect four dwelling units on four separate single residential erven. (Single Residential SR1)

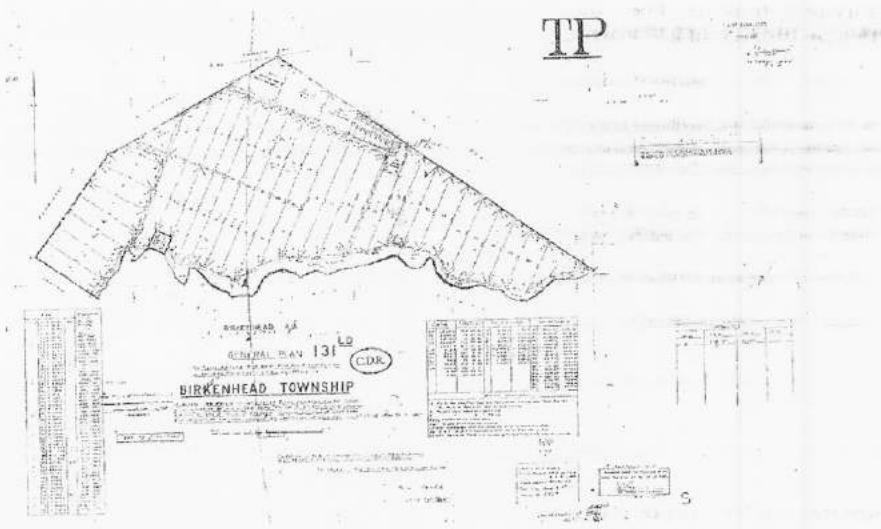
The remaining collective area of the Erf 22, totalling 9713 meters, would then be set aside for a possible nature reserve and form part of the recreational biodiversity corridor in accordance with the approved Spatial Precinct Plan for the Birkenhead peninsula. This area would naturally then be Rezoned to Open Space Zone 3 (OS3)

Removal of Restrictive Title Deed Conditions

Here the owners have indicated that they would like to remove Restrictive Conditions which limit the development in terms of the number of dwelling units permitted and the building lines required.

**BIRKENHEAD CONSERVANCY
(BC)**

In terms of this the Birkenhead Conservancy (BC) would like to bring to your attention of the permissible density agreement, achieved for the Birkenhead Peninsula, which recorded the dwelling limitation to be one Unit per full Hectare. This was based upon the original Birkenhead Township boundary demarcation plan.



**BIRKENHEAD CONSERVANCY
(BC)**

BIRKENHEAD

Conservancy
Bewarca

23 May 2014

Ms Nazeema van Rooyen
CNdV Africa Planning & Design CC
Ground Floor
Bree Street Studios
17 New Church Street
Cape Town
8001

Dear Nazeema,

**BIRKENHEAD CONSERVANCY RESPONSE to the
DANGER POINT CONCEPT PRECINCT PLAN DRAFT REPORT
March 2014**

The Birkenhead Conservancy (BC) is a formally constituted organisation registered with CapeNature Conservation. It is also registered as an Interested and or Affected Party concerning matters focussed on the Birkenhead Peninsular with the Overstrand Municipality.

The BC's Executive Committee has convened to discuss the "Danger Point Concept Precinct Plan Report - March 2014 Draft Document" presented and published by CNdV Africa Planning & Design CC.

Based on this document and the official minutes recorded for the public meeting held on the 22 April 2014, at the Overstrand Municipality, the following points must be mentioned:

- 1) The BC is generally satisfied with the "Danger Point Concept Precinct Plan Report - March 2014 Draft Document" even-though the BC would have preferred the "Status Quo" option to remain.
- 2) The proposed concept of a clustered development, limited to 1 unit per full hectare and allowing for a green zone in the middle, as proposed, is acceptable to the BC.

In Point 4.1 Policy One: Density (The following needs to be noted)

- i. "Owners who wish to develop their properties may apply for an increase in the density to a maximum of one dwelling unit per hectare" should correctly state one dwelling unit **per full hectare**". Based on this 3.01 hectares cannot be rounded up to 4 hectares and based on this only 3 dwellings should be considered and allowed.

**BIRKENHEAD CONSERVANCY
(BC)**

The proposal also mentions that the CMA 2008 as amended in 2014, not applicable to this application as the application area is outside the high water "market" (possibly meant to mean "mark"), coastal management line and the risk line.

Does the following below not apply?

18 No. 31884

GOVERNMENT GAZETTE, 11 FEBRUARY 2009

Act No. 24, 2008 NATIONAL ENVIRONMENTAL MANAGEMENT, INTEGRATED
COASTAL MANAGEMENT ACT, 2008

"coastal protection zone" means the coastal protection zone contemplated in section 17;

"coastal public property" means coastal public property referred to in section 7;

"coastal resources" means any part of—

(a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or

(b) the coastal environment that is of actual or potential benefit to humans;

"coastal set-back line" means 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;

"coastal protected area" means a protected area that is situated wholly or partially within the coastal zone and that is managed by, or on behalf of, an organ of state, but excludes any part of such a protected area that has been excised from the coastal zone in terms of section 22;

36 No. 31884

GOVERNMENT GAZETTE, 11 FEBRUARY 2009

Act No. 24, 2008 NATIONAL ENVIRONMENTAL MANAGEMENT, INTEGRATED
COASTAL MANAGEMENT ACT, 2008

(e) any land unit not referred to in paragraph (d) that is situated wholly or partially within 100 metres of the high-water mark;

(f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e);

(g) any part of the seashore which is not coastal public property, including all privately owned land below the high-water mark;

(h) any admiralty reserve which is not coastal public property; or

(i) any land that would be inundated by a 1:50 year flood or storm event.

(2) An area forming part of the coastal protection zone, except an area referred to in subsection (1)(g) or (h), may be excised from the coastal protection zone in terms of section 26.

**BIRKENHEAD CONSERVANCY
(BC)**

7/24



The BC further agrees that this Proposal does meet the Overstrand Municipal Spatial Wide Development Framework, 2006 as indicated on Figure 7 of the Application.

In terms of the Water supply pipe to the north along Van Bloemenstein Street, it was believed that this pipeline was privately bought and paid for by Irvin & Johnson Ltd. Based on this knowledge the BC is a little confused as to whether this water supply is now generally available to all local owners. Clarity in respect of this is required from the appropriate and responsible authority assessing this application.

In terms of the section "F" on page 15 referring to an amendment of restrictive title deed conditions. Here the BC is not in favour of transferring the same right to having numerous "outbuildings" applied to all the newly proposed smaller dwellings units as this is not in line with current practice. If 3 outbuildings were originally allowed for these original sized small holdings it will not now mean that each individual, subdivided dwelling, will be allowed to have 3 outbuildings each.

BIRKENHEAD CONSERVANCY
(BC)

8/24

A more equitable limiting formula will need to be applied to ensure that we do not now have many more outbuildings especially as the outbuilding practice is fundamentally dated in terms of common law.

We trust that our abridged input to this application will be considered favourably.

9/24

TEL: 012-3454573
FAX: 086-5214543
E-MAIL: unique@upic.co.za

P O BOX 88
WINGATE PARK
0153

21 August 2020

Attention: A Conradie
Town & Spatial Planning Department
Overstrand Municipality
E-mail: aconradie@overstrand.gov.za

WITHOUT PREJUDICE

Dear Ms Conradie

REF: MUNICIPAL NOTICE 60/2020
ERF 22 BIRKENHEAD: APPLICATION FOR RE-ZONING / SUB-DIVISION

We are the owners of Erf no. 6, Birkenhead, Gansbaai.

The proposed application for re-zoning and sub-division is not in accord with the Municipal accepted Danger Point Precinct plan. Although owners' consent was obtained for more than one house per title deed, sub-division of property title is STRICTLY NOT allowed

Erf 22 is 3.016 Hectare which will allow it 3 dwellings to be erected WITHOUT sub-dividing the property or part thereof. One dwelling per full hectare was agreed upon and was so constituted.

We have no supply of water from the local authority at present.

The management of sewerage in the area is of great concern.

Yours faithfully,



CARINA KRUGER AND JOHAN KOEN
OWNERS PLOT NO 6
BIRKENHEAD

10/24

Daphnie adams - COLLAB INCOMING - ERF 22 - BIRKENHEAD (MNG0_2020) RESONING SUB DIVISION DEPARTURE

From: Alida Conradie
To: Ingrid Hanekom; Daphnie adams
Date: 2020/08/22 12:30 PM
Subject: COLLAB INCOMING - ERF 22 - BIRKENHEAD (MN60_2020) RESONING SUB DIVISION DEPARTURE

TP-A Thout
(Svid merwe)



>>> <admin@udoon.co.za> 08/21/20 7:53 PM >>>

Dear Mr van der Merwe

I trust this email finds you well.

As an owner of ERF 17, 15 Marine Drive Birkenhead Gansbaai I would like to take this opportunity to comment on the abovementioned subject title.

- We acknowledge that the owners have a right to develop according to the restrictions placed on the original title deed.
- We find that the number of proposed dwellings to be built totalling 4 for this erf is higher than what was allowed and agreed. In fact we believe that the maximum number of dwellings that should be allowed for this erf size should be 3 units as per the prior precinct plans discussed.
- We appreciate the that the proposed dwellings would be situated away from the green belt along the road in line with prior agreements.
- Should the proposal for the said dwellings be approved we trust that the zoning regulations RS1 for the dwellings will not allow for further possible sub division of said properties.
- In terms of the open space 3 we would like to be assured that no further rezoning of this specific area be allowed to accommodate future possibility of additional dwellings to be added/considered/changed (rezoned).
- Should any outhouses be considered then they will have to remain within the boundaries of the single residential zone 1 dwellings and not in the open space zone .

Overall we trust that you will consider our comments in a favourable light as we do believe this peninsula is unique and should not be over densified.

Kind regards

Michelle Ritter da Silva

FILE NO: EL 22 - Birkenhead
SCAN NO: 27
COLLABORATOR NO: 1443951



11/24



The Municipal Manager
Overstrand Municipality
P.O. Box 20
HERMANUS, 7200

TP - A Theart
(Suid merke)

Date: 22/09/2020

Via Email: aconradie@overstrand.gov.za & svdmewe@overstrand.gov.za

Sir / Ms

FILE NO: EL 22-Birkenhe
SCAN NO: 04
COLLABORATOR NO: 1460591

MUNICIPAL NOTICE No. 60/2020: ERF 22, 21 MARINE DRIVE, BIRKENHEAD: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION, DEPARTURE

Our Client, The Vimarg Trust (via its representative Mr G Holtman) being the owner of Erf 21, 19 Marine Drive, Birkenhead, requested that we forward you this communication.

We wish to state clearly that our client does not oppose the application and the intentions of the land use planning applications, but wish to comment on the following and request that these comments form part of the thought process when this application is evaluated.

1. The owner was informed of the Land Use Planning Application during the Covid-19 Lockdown Period.
2. The registered post was sent to the postal address of the said Trust.
3. Because of the regulations and following strict social distancing the client's representative only received the notice on the 9th of September 2020, way past the due to for comments and or objections. See attached scanned copy of envelope.
4. There are no GPS-locations within the proposal to evaluate the proposal against any or potential impacts that the development will have directly on Erf 21, 18 Marine Drive, Birkenhead.
5. On the site development plan, there is no indication of current access to this erf (Erf 22), and for that matter, none of the adjacent property entrances is illustrated.
6. A further omission is any or all building structures on the adjacent erven.
7. All these omissions made the evaluation of the proposal that more difficult and without these mentioned omissions it owner and us have no real picture of what the proposal will impact on.
8. What should be considered further, is the safety of our clients when they make use of their property on Erf 21, adjacent to the subject property.
9. The Vimarg Trust makes use of the existing entrance to Erf 22 and drives along the edge of the property to get safe and secure access from Marine Drive. The following picture illustrates the entrance on Erf 22, which our client make use of. It also indicates the only

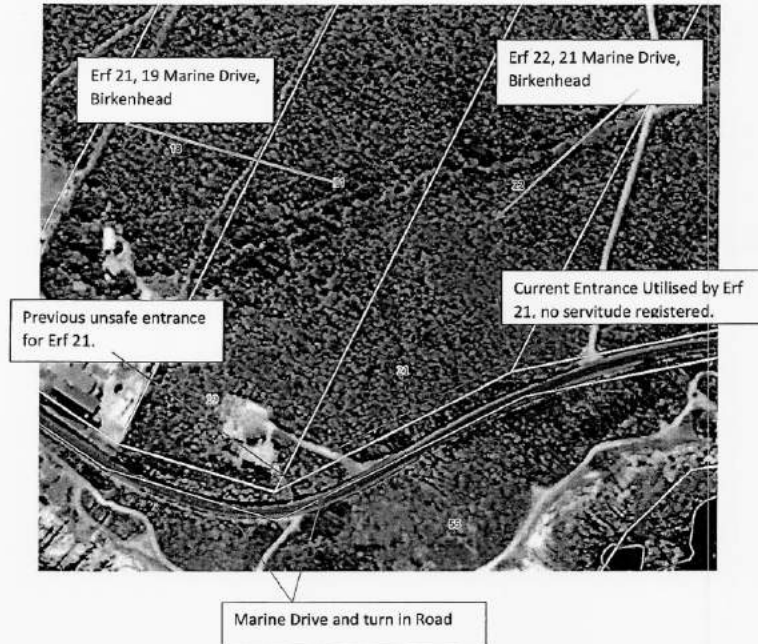
Address: Botrivier Estate, PO Box 66, BOTRIVIER, 7185

Cell: +27 82 57 60901 Email: javisagie@gmail.com / jan@futureplan.co.za Fax: +27 86 604 2983

9 0 000 0000

23 SEP 2020

other entrance to Erf 21, which is not an ideal entrance from a road traffic safety point of view, as this entrance is on the turn of the road, with poor visual sight distances for any of the oncoming traffic in the area.



10. Both previous and current entrance that owners of Erf 21 make use of are over Erf 22, because of safety and environmental issues. Therefore the request to the Municipality to keep these factors in mind when evaluation of this application is made.
11. It would have been ideal if the owners of both these properties had some concrete agreement before this application was lodged.
12. As a recommendation to be considered, the following is provided:
 - 12.1 That the location of structures located on Erf 21 be submitted to Council.
 - 12.2 That both previous and existing entrance roads be illustrated on the same drawing with aerial photo as a backdrop for reference.
 - 12.3 That the proposed servitude roads and placement of the most southwestern 2 houses makes provision for the owner of Erf 22 to obtain entrance to its property by mutual agreement between the owners.

We wish to submit these points for consideration and hope that some agreement can be reached to the benefit of both parties, being the owners of Erf 21 and Erf 22 Marine Drive, Birkenhead.

Kind regards,



JAN ABRAHAM VISAGIE
PROFESSIONAL PLANNER (A/1090/199)

14/24

SPECIAL POWER OF ATTORNEY


I, the undersigned – GREG HOLTMAN,

being the authorised representative of the Owner (Vimarg Trust) of ERF 21, 19 MAINE DRIVE, BIRKENHEAD, OVERSTRAND MUNICIPALITY,

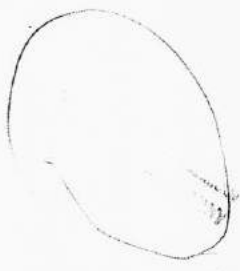
appoint JAN ABRAHAM VISAGIE (ID NR 6908025284082) as my Town and Regional Planner and agent with power of substitution, for me and on my behalf and in my name, place and standing to appear before the committee pertaining anything and everything in terms of the future application(s) in terms of the Land Use Planning Applications and comments handed in with this Special Power of Attorney anywhere in the Republic of South Africa, and that he may on my behalf may sign and execute the said town planning applications / dealing with building plan approvals and the right to obtain all relevant information on my behalf from the local authority of past and for present application(s);

AND generally to do whatsoever shall be necessary or requisite to make the said submissions (land use and comments on land use planning applications) valid and effective in every respect, and to fulfil the purposes of this authority as fully and effectually to all intents and purposes whatsoever as I could do if personally present, and acting herein, hereby ratifying, allowing and confirming, and promising and agreeing to ratify, allow and confirm all and whatsoever my Town and Regional Planner and agent, or any of them, shall lawfully do or cause to be done under these presents.

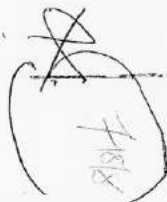
Signed at BOTRIVIER on the 18TH day of SEPTEMBER 2020.



GREG HOLTMAN



To:
The Vinnang Trust
PO Box 1424,
Durbanville,
7550



M00373 2467

D



RC372016518ZA
RECIPIENT NAME (please print clearly)

collected 09/09/2020

TP. n. shoot
(S. ud n 16/24)

Telephone: (H) 012-653-0644
Cell: (C) 082-637-2458
Enquiries: Mr C. Steyn



Havenga Place
Sec 2 Bluebell Park
Eldoraigne X47
0157
2 Apr 2021

Town Planning Hermanus

ERF 22 BIRKENHEAD: REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

1. Registered mail dd 19 Feb 21, received 30 Mar 21 and collected 1 Apr 21 has reference. (I would still like the opportunity to reply as the target date of 23 Mar could not be reached for obvious reasons)
2. Par 3 to 7 were our reply when the "DANGER POINT PRECINCT PLAN draft STATUS QUO REPORT JULY 2013" its a proposed Precinct Plan was tabled. (To my knowledge not approved and Birkenhead area still zoned as agricultural)
3. As a co-owner of plot 37 my brother and I support the idea of open space corridor/ conservation concept.
4. We are of the opinion that all owners should buy in on a plan to forfeit at least 30% of their properties to this cause.
 - a. On closer inspection we notice that some properties as per current layout, forfeit any % between almost 70% to 30%.
 - b. That all properties/ owners must be dealt with the same. (It is either 50% or 30%) If the reason for a greater % is due to a botanical or visual sensitive area, that should be agreed with each owner.
5. That the rest of the 70% of the property, should be managed on the basis of 1 units per ha (thus 30%, allowing for 80% development), and the rest of the property, in terms of the private open space concept, inclusive of roads etc (thus 70%). (Similar to Figure 10 on pg 10)
6. If this cannot be agreed it would mean that some owners would be able to develop a 100% of their current properties while some would only be allowed to develop as little as 30%.
7. Owners who were allowed business ventures should be restricted to only that, as it currently stands, and not be allowed any further division of property, or for that matter any further expansion of their business. The original purpose of Danger Point was to keep the agricultural feel, and allowing certain owners business rights clash with that idea.

FILE NO:	01 22
SCAN NO:	Birkenhead
COLLABORATOR NO:	152 6150
	Steyn

Further comment on current application.

The applicant is aware of the Spatial Precinct Plan as "proposed", but it is just a little bit bent for own advantage = 3.0160 ha equal to 3 not 4.

I would suggest that the original application of 2013 be looked at again for an overall blanket approval to all owners and not just one request at a time. An approval could lead to a problem its future request that you are surely going to receive.

I would support if 3 houses were erected on the front 1 ha of the property as per the proposed figure 10 Pg 10 plan plan, but not as per the current request.

If owners on either side would apply for the same "removal" the restrictions its distance from every building would not be complied to and an overall town management plan should be approved so that every owner can know beforehand where building may be erected on any property on Birkenhead and the same rule apply to all.

06 APR 2021

17/24 2

9. We would support any development according to a managed plan that would bring employment opportunities, higher revenue and social benefits to the people in the area of Gansbaai district.

10. Your co-operation is appreciated.

Accept as signed
(C.STEYN)

TP. n. Aheer
(S. ud m end)



18/24

Binnekring 17
Dalsig
STELLENBOSCH
7600
12 Maart 2021

Senior Stadsbeplanner
Munisipaliteit Overstrand
alida@overstrand.gov.za
Geagte mnr Van der Merwe

KOMMENTAAR ERF 22, MARINE RYLAAN 21, BIRKENHEAD

As eienaars van Erf 1 te Birkenhead, neem ons kennis van die aansoek van Nungu Trading 174 vir die opheffing van beperkende titelakte voorwaardes, hersonering, onderverdeling en afwyking van bestaande verordeninge.

Ons steun die aansoek ten volle. Die beplande ontwikkeling word verwelkom as uitstekende balans met biodiversiteit en bewaring van die natuurlike ekosisteem.

Vriendelik die uwe,

Prof J de Villiers

Sel : 072-391-4363

FILE NO:	21.22
	Birkenhead 21/22
SCAN NO:	02
COLLABORATOR NO:	1517246

15 MAR 2021

TP. N. / heet
(S. Ud N. end)



A Conradie

From: MLS de Kock <mare.dekock49@gmail.com>
Sent: Tuesday, 23 March 2021 15:41
To: A Conradie
Subject: Aansoek om opheffing van beperkende titelakte voorwaardes Erf 22 Marinerylaan 21, Birkenhead Gansbaai, Overstrand,

Re: Opheffing Erf 22, Marinerylaan 21, Birkenhead, Gansbaai, Overstrand

AANSOEK ONDERSTEUN.

Geagte Heer/Dame

Dankie vir u skrywe gedateer 19 Februarie 2021.

As mede eienaar van Erf 2 Marinerylaan, Birkenhead, Gansbaai, Overstrand wens ek die aansoekers ten sterkste te steun.

Die beperkende titelaktes strem die nodige beperkte ontwikkeling om verdigting te verseker om sodoende onder andere sekuriteit in die area te verbeter.

Die Uwe

Marthinus Lourens Smith de Kock

mare.dekock49@gmail.com
 0823311349

FILE NO:	Erf 22
Birkenhead Gansbaai	
SCAN NO:	03
COLLABORATOR NO:	1519914

24 MAR 2021



A Conradie

From: Arnold <arnolddeklerek@yahoo.com>
Sent: Tuesday, 23 March 2021 14:22
To: A Conradie
Subject: ERF 22 ,BIRKENHEAD

TP. A / theab
 (S. Ud n'one)

Goeiedag,

Bogenoemde aansoek word ten sterkste ondersteun omrede Birkenhead al vir baie jare in 'n toestand van stagnasie is en enige opheffing verwelkom word.

Verdigting in Birkenhead is dringend nodig, o.a. om meer bronne daar te stel om die sekuriteitskwessies in die gebied aan te spreek.

1. Arnold de Klerk

Erf 4 Birkenhead. (Eienaar)

Tel:

0833517288

2. Riette de Klerk (permanente inwoner)

Erf 4 Birkenhead

Kontak:

rietteklerek4@gmail.com

.el;

0728786834

FILE NO:	21/22
Birkenhead Gansbaai	
SCAN NO:	04
COLLABORATOR NO:	1519917

24 MAR 2021



A Conradie

From: Tom Van Wyk <tomvanwyk777@gmail.com>
Sent: Tuesday, 23 March 2021 17:26
To: A Conradie
Subject: AANSOEK ERF 22 BIRKENHEAD

TP. N. Theart
(S. Ud n'None)

Goeiemiddag

Hiermee ondersteun ons bogenoemde aansoek ten sterkste ten einde die opheffing van Birkenhead te bespoedig.

Tom van Wyk (Eienaar)
Erf 29 Birkenhead

tel: 0836284427

FILE NO:	CF 22
	Birkenhead Condo
SCAN NO:	05
COLLABORATOR NO:	1519918

24 MAR 2021

22/24

ERF 22, 21 MARINE DRIVE, BIRKENHEAD: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
 CONDITIONS, REZONING, SUBDIVISION, DEPARTURE, REGISTRATION OF RIGHT OF WAY
 SERVIDUTE AND ESTABLISHMENT OF HOMEOWNERS ASSOCIATION: INTERACTIVE TOWNSHIP
 REGIONAL PLANNING (obo NUNGU TRADING 174 PTY LTD)



COMMENTS SUBMITTED BY AM SCHRECKER Pr Eng., 35 MARINE DRIVE, BIRKENHEAD

Date: 23 March 2021

TP- N. Schrecker
 (S. u.d. N. b. d.)

FOR ATTENTION OF

- Mr. SW van der Merwe
- Ms. Alida Calitz (alida@overstrand.gov.za)
- aconradie@overstrand.gov.za

FILE NO:	CF 22
	Birkenhead Gansbaai
SCAN NO:	06
COLLABORATOR NO:	1519921

Identification of Objector/Commentator

As required, the Objector/Commentator provides the following information:

NAME: AM SCHRECKER

ADDRESS: 35 Marine Drive, Birkenhead, Gansbaai

STATUS: The Objector/Commentator is not the registered Owner of Erf 35. He is the spouse of Mrs. HS Schrecker who is the registered Owner. AM Schrecker being an Engineer is, however, deemed to be better qualified to make comments.

CONTACT DETAILS:

- malanschrecker@gmail.com
- Mobile No. 082 769 1405

INTEREST IN APPLICATION AND REASONS FOR COMMENT:

- Owner and inhabitant of a neighbouring property,
- Professional Engineer and
- Someone who recognises that
 1. the outcome of this application will have a profound effect on the future development of Birkenhead Township
 2. as well as property values,
 3. Municipal rates,
 4. provision of Municipal services,
 5. general security of the area,
 6. etcetera.

COMMENTS

Comment 1 - Fire Hazards & Fire Fighting

24 MAR 2021

It is noted that four dwelling units are to be located along the South-Western side of Erf 22, parallel to Marine Drive.

On Erf 22 no formal access route has been identified for vehicles to gain access to the so-called "Open Space Zone 3: Private Open Space", as well as the adjacent area further North (beyond the so-called "150m development area line"). Refer FIGURE 1: Site Plan Extract, on page 1 of the Document.

The question arises: "How are fire fighting vehicles supposed to gain access to the vegetated area to the North of the dwelling units?"

- Is the intention to squeeze vehicles from Marine Drive, past the sides of dwelling units, without leaving Erf 22?
- Or is the intention to approach a fire via adjacent properties, namely erven 21 or 20 or 23 or 24 or 61?

Comment 2 - Street Building Lines (Alternative terminology used in Document: "Set-back Lines")

Whilst studying the Document, the Objector/Commentator noticed that there was a fair amount of confusion and/or inconsistency regarding the "distance" of the building line relative to the boundary line.

Primarily, it is not clear whether the Applicant is asking for a 2.0m or a 20.0m set-back. [This will be elaborated upon, below.]

Other values that could possibly add to the confusion are 4.0m, 4.572m and 5.0m. [By reading carefully, one can generally conclude that these last three value originate from earlier recommended or existing sources, such as title deed stipulations, Precinct Plans, etc.]

Elaboration [20m or 2m street set-back?]

Sources suggesting Applicant is asking for 20.0m

- Virtually all drawings, sketches, and Site Plans state 20.0m
- Page 13: after "b. Proposal", it is written "... 4 residential dwelling units on 4 separate single residential erven staggered in a linear cluster with optimal ocean views along a 20m set-back line from the existing access road to the south."
- In the Document reference is made to a 559m² access road reserve. The width of servitude is mentioned to be 5m. Therefore, the total length of servitude will be of the order of 112m. Looking at the Site Plans provided (which, incidentally, refer to a "20m building line"), it is impossible to accommodate 112m of road reserve on a site having a 2m building line – therefore, the implied building line set-back, indeed, is 20m.

Sources suggesting Applicant is asking for 2.0m

- Covering letter, originating from the Overstrand Municipality, after the sub-heading "Departure".
- Page 2
- Table on page 3

- Page 16
- Page 21

TP - A Theart
(S vld Merwe)



InterActive Town & Regional Planning
PO Box 980
Hermanus
7200

Reference: Erf 22 Birkenhead: Response to Objections

Date: 14 April, 2021

Attention: Schalk van der Merwe – Town Planning, Overstrand Municipality

RESPONSE TO OBJECTIONS: BIRKENHEAD 22 - REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION & BUILDING LINE DEPARTURES: ADDITION OF LATE OBJECTION BY C STEYN

The e-mail received from the municipality on the 13th of April 2021 requesting a response to the late objection by C Steyn, although considered invalid, refers.

According to the municipality, an objection dated 2 April 2021 was received from C Steyn on 6 April 2021 after the closing date for comment/objections, which was 23 March 2021 and is therefore deemed invalid.

Kindly find below the incorporation of this late objection into the original "Response to Objections" report.

A. Introduction

The letters received from the Department of Transport and Public Works on the 16th of October 2020 as well as from the Overstrand Municipality dated 27th and 31st of August as well as 6th of October 2020 and, requesting written response to the objections received from Michelle Ritter da Silva as well as from Carina Kruger & Johan Koen and Birkenhead Conservancy, from JA Visagie, respectively, refers.

The methodology used to respond to the objections consist of a summary of the application proposal and objections followed by a response to the objections, a conclusion and final recommendations.

B. Summary of the Objective & Application Proposal

The development objective of this application is to make provision for four optimum located single residential erven with ocean views in relatively close proximity to the existing access road, Marine Drive, Birkenhead, Gansbaai. Refer to Figure 1 to the left. Furthermore, provision is to be made to utilize the remainder of the application area for the purposes of communal private open space within the 150m development line. The remaining 9713m² collective area is to be set aside for possible future nature reserve purposes and to form part of the recreational biodiversity corridor in Birkenhead. The above is fully aligned with the Final approved Danger Point Precinct Plan, 2014.

21 APR 2021

FILE NO: EL 22 - Birkenhead
SCAN NO: GBH 22
COLLABORATOR NO: 1531239

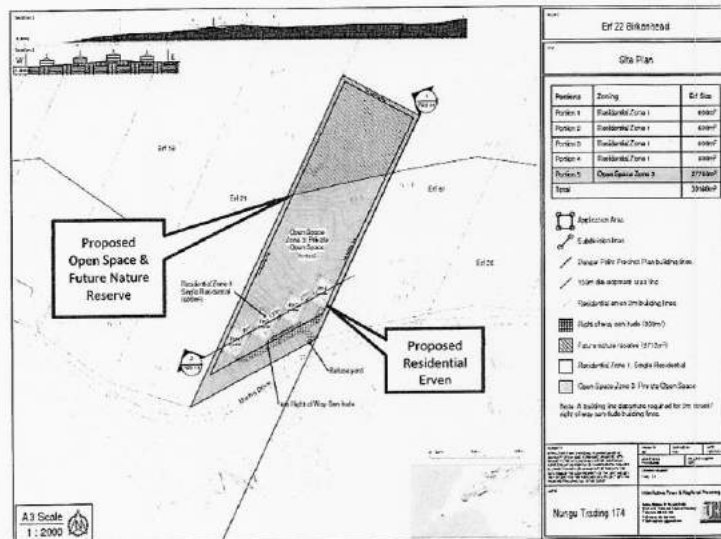


Figure 1: Birkenhead Site Development Plan

Subsequently, the application proposal will include:

- **Removal of restrictive title deed conditions** which limit the development in terms of number of dwelling units permitted and building lines required
- **Rezoning** to Subdivisional Area
- **Subdivision** into five portions consisting of four single residential portions of 600m² each and the remaining 27 760m² portion for private open space
- **Building line departure** to relax street building lines for each subdivided erf from 4m to 2m
- **Cognisance** should be taken of the following:
 - A **right of way servitude** will be registered on the application area to provide access to Portions 1 to 4
 - An **HOA** will be **established** to ensure shared responsibility for the installation and maintenance of engineering services and the maintenance of the proposed communal private open-space.
- An Environmental Management Plan as required by the Zoning Scheme Regulations, 2013 Section 16.4 will be submitted after the approval of the application.
- The proposal **does not constitute any listed activities as defined in the NEMA EIA Regulations, 2014**.
- ICMA 2008 as amended in 2014, is **non-applicable** to the application, as the application area is outside the high-water mark, coastal management line and risk line.
- The proposal triggers Section 38 of the NHRA and an **NID will be submitted to Heritage Western Cape** in conjunction with this application.

C. Objector & Objections

The objections submitted by Carina Kruger & Johan Koen, Michelle Ritter da Silva, Birkenhead Conservancy, JA Visagie, the Department of Transport and Public Works and the late objections by C Steyn are summarized in the table here below:

OBJECTOR & OBJECTION		
<p>Carina Kruger & Johan Koen</p> <ul style="list-style-type: none"> The proposal is not in accordance with municipally accepted Danger Point Precinct Plan Only 3 dwellings are allowed on Erf 22 which is 3.016 ha to be constructed without subdividing Subdivision is strictly not allowed One dwelling per full hectare was agreed upon and so constituted No water supply from the municipality exists Sewerage management is of great concern 	<p>Michelle Ritter da Silva</p> <ul style="list-style-type: none"> Three dwelling units are allowed according to the prior precinct plans discussed No further subdivision of Single Residential 1 erven should be allowed Require assurance that the area to be rezoned to Open Space 3 will not be rezoned in future to accommodate the possibility of additional dwellings Outhouses should be constructed within the Single Residential 1 zoned erven boundaries and not in the Open Space area Peninsula is unique and should not be over densified 	<p>Birkenhead Conservancy</p> <ul style="list-style-type: none"> Only one dwelling per full hectare is allowed as per the original Birkenhead Township Boundary Demarcation plan Thus only 3 dwellings and not 4 are permitted 3.01 ha should be rounded down and not up The questionable phrase "rounded up to the next ha" that was included by CNDV Africa in the Danger Point Precinct Plan Draft Report, 2014 The 27760m² to be rezoned to Open Space 3 should not be allowed to develop or be subdivided further in future The proposal is within the 100m distance from the high-water mark If only 3 dwelling units are allowed, the 4m building line should not be required to be relaxed to 2m as there will be sufficient space to maintain the 4m street building line The responsible authority is requested to confirm whether the privately owned water supply pipe-line to the north along Van Bloemenstein Steet referred to is now generally available to all local owners? The number of outbuildings should be limited and not allowed to be 3 outbuildings per erf in accordance with the original three outbuildings per small holding permitted within the title deed

<p>Department of Transport & Public Works</p> <ul style="list-style-type: none"> Concern is that Erven 21 and 61 currently have vehicular access across the application area Erf 22 If Erf 22 is fenced off, the most northern boundary goes right up to the buildings on Erf 61 and will make access to the garage impossible There might be historical access rights which have not been exercised Applicant indicated that they have no intention to register right of way servitudes for the adjacent two properties <p>Due to the unresolved matters, the Department objects to the application</p>	<p>JA Visagie on behalf of the Owner of Erf 21 "The Vimarg Trust"</p> <ul style="list-style-type: none"> The owner of Erf 21 only received the notice on 9 September past the due date for objections/comments There are certain omissions on the SDP namely no GPS locations, no indication of current access to Erf 22 or adjacent erven and no indication of existing buildings on adjacent erven The omissions make it difficult to determine potential impacts The concern is regarding the safe access of Erf 21 from Marine Drive which is currently over Erf 22 <p>The hope is that some agreement may be reached regarding the access by the owner of Erf 21 over Erf 22</p>	<p>C Steyn (Late Objection)</p> <ul style="list-style-type: none"> It is suggested that the original application of 2013 be looked at again for an overall blanket approval to all owners and not just one request at a time. An approval could lead to a problem in terms of future requests. 3 houses on the front 1 ha of the property as per the proposed figure 10 Pg 10 plan is supported but not as per the current request. In terms of building lines, an overall town management plan should be approved so that every owner can know beforehand where building may be erected on any property on Birkenhead and the same rule apply to all. As a co-owner of plot 37 the idea of open space corridor/ conservation concept is supported. The suggestion is that all owners should buy in on a plan to forfeit at
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		<p>least 30% of their properties to this cause.</p> <ul style="list-style-type: none"> • That the rest of the 70% of the property, should be managed on the basis of 1 units per ha (thus 30%, allowing for 80% development), and the rest of the property, in terms of the private open space concept, inclusive of roads etc (thus 70%). • Owners who were allowed business ventures should be restricted to only that, as it currently stands, and not be allowed any further division of property, or for that matter any further expansion of their business. • Any development according to a managed plan that would bring employment opportunities, higher revenue and social benefits to the people in the area of Gansbaai district is supported.
<p>Prof J de Villiers, MLS de Kock, A de Klerk and T van Wyk</p> <ul style="list-style-type: none"> ▪ The applications are supported mainly for reasons to support the development and improved the security of the area. 	<p>AM Schrecker</p> <ul style="list-style-type: none"> ▪ The application is supported in principle ▪ Fire hazards and fighting- questions access to the Open Space Zone 3: Private Open Space" erf to combat fire situations. ▪ The building lines are questioned i.e. 20m vs 2m 	

D. Response to the Objections

In this section each of the main consolidated points of objections / comments are responded to.

Several similar points of objections / comments were raised by the three objectors and therefore the points of objections / comments are consolidated in the following points and accordingly responded to:

1. Only a maximum of three units should be permitted on the subject property of 30160m²
2. No subdivision should be permitted
3. No further subdivision of residential erven should be permitted
4. No further rezoning, subdivision or development of the Open Space 3 zoned should be permitted
5. The number of "outhouses" (outbuildings) should be limited and constructed within the residential erf boundaries
6. Maintain the 4m building lines
7. The proposal is 100m distance from the high-water mark
8. Provision of water and sewerage is a concern
9. Is the waterpipe to the north of the application area available for the general public
10. An agreement should be reached regarding the accesses of neighbouring erven
11. If owners on either side would apply for the same "removal" the restrictions in terms of distance from every building would not be complied to. In terms of building lines, an overall town management plan should be approved so that every owner can know beforehand where buildings may be erected on any property on Birkenhead and the same rule apply to all
12. Building lines questioned and access for emergency vehicles?
13. Overall blanket approval rather than one request at a time
14. The developable land on each property should be restricted further thus increasing the portion of land used for open space (Late objection from C Steyn)

SUMMARY OF OBJECTIONS & RESPONSE

Objection 1: Only a maximum of three units should be permitted on the subject property of 30160m² (includes the late objection from C Steyn)

Response:

It is evident that this point of objection is the most concerning point of objection from all the objectors.

The approved Danger Point Precinct Development Plan Final Precinct Plan Report, July 2014 in Paragraph 4.1 i. allows for the rounding up to the next hectare and which in this scenario is specifically applicable to the subject property being 3, 016 hectares and therefore will allow for 4 dwelling units. This matter was clarified with the Overstrand officials and accordingly accepted during meetings and written communication. The layout of the application was done in accordance with this approved Policy document.

- The reasons provided in the Final Danger Point Precinct Plan, 2014, for this policy involves inter alia the following:
 - An increased number of new buildings, located and constructed, will assist towards creating sufficient critical mass of appropriately designed development. This, in turn, should help to improve the general urban and environmental quality of the area and, thereby, increase land values and encourage permanent residential occupation. More 24/7 activity in the sub-precinct will also create surveillance and improve security.
 - Permitting an increase in densities, in some cases two or three times the number of units permitted under the current zoning, is considered necessary to provide an incentive to address larger public policy issues including promoting bio-diversity conservation and the creation of a significant, contiguous private nature reserve and to address social issues such as security through having more activity and surveillance;
 - The density policy will be implemented on a piecemeal basis as and when those owners who wish to increase the densities on their properties submit applications.
- The objectors' information is incorrect being not based on the final approved Danger Point Precinct Development Plan Final Precinct Plan Report, July 2014
- Therefore, according to the Final Precinct Plan, Erf 22 Birkenhead, with an extent of 3.016 ha, may accommodate 4 dwellings units.

Conclusion:

This objection should be rejected as the proposal is fully in accordance with the Final Danger Point Precinct Plan, 2014.

Objection 2: No subdivision should be permitted

Response:

- Policy 3 number four of the Final Precinct Plan, states that "Additional dwellings constructed on the parent properties in line with the proposed increased density policy may be alienated by subdivision or sectional title"
- Prior to application submission, the municipality confirmed that the application should be for rezoning and subdivision into 5 erven, with 4 erven for residential dwellings and 1 erf for Private Open Space.
- The application proposal is therefore fully consistent with the said policy document and the objectors are clearly incorrect objecting stating that "sub-division of property title is STRICTLY NOT allowed." Therefore also the reason as part of the application for removing the Condition C(b) which originated from Title Deed T20174/1966 reading:

"C. Onderhewig verder aan die voorwaardes vervat in Transportakte Nr T20174/1966 opgele deur die Administrateur in terme van Ordonnansie Nr 33 van 1934, naamlik:

AS SYNDE ten gunste van die geregistreerde eienaar van enige erf in die Dorp onderhewig aan wysiging of verandering deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie Nr 33 van 1934:

(b) "That only One dwelling together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf".

Conclusion:

This objection should be omitted as the proposal is fully in accordance with the Final Danger Point Precinct Plan, 2014.

Objection 3: No further subdivision of residential erven should be permitted

Response:

- The further subdivision of the Single Residential 1 erven on the application area is not considered relevant to the application and would also not be in accordance with the following typical plot development guide of the Final Precinct Plan, as illustrated in Figure 2 below, where the ideal subdivided plot size is 600m²

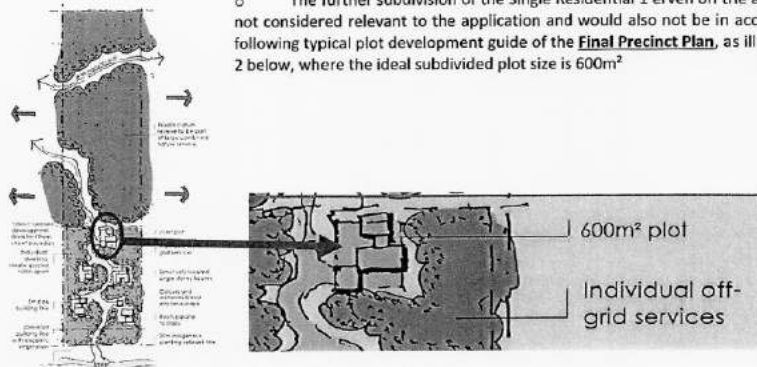


Figure 2: Extract from typical plot development guide from the Final Danger Point Precinct Plan, 2014

Conclusion:

This objection should be ignored as it is irrelevant to the application.

Objection 4: No further, rezoning, subdivision or development of the Open Space 3 erf should be permitted

Response:

7/12

- The further rezoning, subdivision or development of the Open Space 3 erf on the application area in future is not applicable to the subject application or aligned with the Danger Point Precinct Development Plan Final Precinct Plan Report, July 2014 and should subsequently be ignored.

Conclusion:

This objection should be ignored as it is irrelevant to the subject application.

Objection 5: The number of "outhouses" / outbuildings should be limited and constructed within the residential erf boundaries

Response:

In terms of the Overstrand Municipal Planning By-Law Zoning Scheme, 2020 an outbuilding "means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit and includes a building designed to be used for the garaging of motor vehicles, for storage purposes and any normal activities in so far as these are usually and reasonably required in the connection with the main dwelling as well as the accommodation of recreational activities such as a pool room, braai room, lapa and gazebo and the practising of hobbies (which may not cause a nuisance and/or disturbance and/or noise and/or damage to a neighbouring property or properties or premises); outbuildings are primary uses under each zoning except in open space zones where the Municipality may permit outbuildings should it be deemed necessary;"

Based on the above definition as part of the Overstrand Municipality Land Use Scheme, 2020, outbuildings should be applied accordingly to the proposed zonings / erven of the application site.

Therefore the proposed Residential Zone 1 properties will in terms of the Overstrand Municipality Land Use Scheme, 2020 should it be approve allows to be used as primary right for "crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering" and the Open Space Zone 3 Private Open Space erf for "private open space". Private Open Space in terms of the Overstrand Municipality Land Use Scheme, 2020 definitions "means land which is in private ownership, used primarily for outdoor sports, play, rest or recreation or as a park area or nature area, and includes associated buildings, infrastructure and uses and may include an indoor or outdoor swimming pool and facilities, with the consent of the Municipality."

Subsequent to the above certain buildings with outbuildings in terms of the outbuildings, should the application be approved, should be accordingly be allowed.

Conclusion:

The objection or concern should be ignored as current relevant statutory legislation in terms of the Overstrand Municipality Land Use Scheme, 2020 accordingly be enforced.

Objection 6:

- a. Maintain the 4m street building line.

b. If owners on either side would apply for the same "removal" the restrictions its distance from every building would not be complied to. In terms of building lines, an overall town management plan should be approved so that every owner can know beforehand where buildings may be erected on any property on Birkenhead and the same rule apply to all (Late objection from C Steyn)

Response:

- o The Danger Point Precinct Plan, 2014 already requires a 20m setback area from the street within which vegetation will be protected to ensure the conservation of the visual integrity and natural, scenic character of the area.
- o Therefore, relaxation of the 4m street building line to 2m on each proposed subdivided single residential erf, is not foreseen to negatively impact the environment or be negatively impacted. The building line relaxation is foreseen to provide additional building space and positioning options on the single residential erf.
- o Specific building lines for residential properties are already required in terms of the Overstrand Amendment By-Law on Municipal Land-Use Planning, 2020. The subject application was still submitted in terms of the Overstrand By-Law on Municipal Land Use Planning 2015, with the same building lines applicable to residential erven. In terms of the same by-law, an application for a departure to relax building lines are permitted.
- o Condition C(d) limits the building lines of the development to a 4,572m street building line and a 1,524m rear building line. The Danger Point Precinct Plan, 2016 is more restrictive concerning building lines, where the street building line is 20m and the rear building line is 5m for the total development.

Conclusion:

This objection should be rejected as the proposed building line relaxation is in accordance with the Final Precinct Plan.

Objection 7: The proposal is within the 100m distance from the high-water mark

Response:

- o The position of the high-water mark was confirmed with the Overstrand Municipal Environmental Management division confirmed Refer to Annexure B:
 - "The property is outside the high-water mark, coastal management line and risk line therefore it will not have any impact on the NEMA Regulations amended in 2014"

Conclusion:

This objection should be omitted as it is confirmed to be unsubstantiated according to the Overstrand Environmental Management Division.

Objection 8: Water & Sewerage is a concern

Response:

- o With reference to the objector's concerns about water supply and sewerage management, the appointed Civil Engineers to the project confirmed the following in the engineering report:
 - That the proposed internal water reticulation system will consist of an uPVC water reticulation system to be connected to the existing external water reticulation system to the north of the site;
 - That a servitude be registered across the neighbouring Erf 61 and Erf 23 to the north of the site to accommodate the proposed water connection;
 - That there is sufficient capacity in the existing water reticulation network to accommodate the proposed development.

- That no formal sewerage reticulation system currently exists in the vicinity of the development and it is therefore proposed that the sewage from the development be treated by means of a new sewage treatment plant (package plant) from a manufacturer approved by the municipality;

In the approved Final Danger Point Precinct Plan, 2014 it is stated that "Development in the Birkenhead sub-precinct should follow the form and layout of 'off-grid eco-clusters'." meaning that the proposals made civil engineer is aligned with the said policy with the exception of the provision of water. The mentioned water pipeline was installed after the approval of the said precinct plan and availability of "off-the-grid" water in this specific area is restricted. The provision of the water via a pipeline will also have no impact on the environmental vision and objective for the area. Therefore, the concern by the objectors are considered unjustified.

Conclusion:

This objection should therefore be **rejected**, as the water supply and sewerage maintenance is to be sufficiently accommodated as confirmed in the engineering services report.

Objection 9: Is the waterpipe to the north of the application area generally available?

Response:

This comment is considered to have no relevance to the merit of the application.

The following should also be taken into consideration:

- The comments by the engineer for the application area was that the proposed internal water reticulation system will consist of an uPVC water reticulation system and be connected to the existing water reticulation system.
- The availability of the waterpipe as addressed in the services report was confirmed with the municipal engineer
- Any further queries in this regard should be directed to the engineers

Conclusion:

This comment / objection should be **omitted** as it is considered irrelevant to the subject application.

Objection 10: An agreement should be reached regarding the accesses of neighbouring erven

Response:

- An internal agreement between the owners themselves of Erven 21, 22 and 61, Birkenhead should be reached regarding vehicular access from Marine Drive across Erf 22 to neighbouring properties as well as the impact of possible fencing on Erf 22 which may prevent vehicular access to the garage on Erf 61.

Conclusion:

This objection is not directly related to the application and should therefore be **omitted**. A civil solution regarding access should be negotiated and resolved among the owners themselves.

Objection 11: Building lines questioned and access for emergency vehicles?

Response:

- The Fire Hazards and Firefighting – reference is made that no formal access has been identified for vehicles to gain access to the Open Space erf resulting to the question "How are fire fighting vehicles supposed to gain access to the North of the dwelling units?". Based on the Danger Point Precinct Plan, 2016 provision has been made for 5m building lines along the eastern and western boundaries which will allow for access of emergency vehicles.
- The building lines referred to are based on the Overstrand Municipal Planning Land-use scheme By-Law, 2020 as well as the prescribed Danger Point Precinct Plan building lines as motivated in the subject application report in Paragraph 3 f. iii. Pages 9 to 11. A departure is applied for the street building lines from 4m to 2m, resulting that parking on the property will be dealt with via the site development plan.

<p>Conclusion: These relevant matters raised by the objector has been addressed and therefore these points of objections / questions / comments should be ignored.</p>
<p>Objection 12: Overall blanket approval rather than one request at a time (Late objection from C Steyn)</p>
<p>Response:</p> <p>The final approved Precinct Plan is considered to provide sufficient guidance for development while promoting preservation of the environment as well. By allowing approval on a piecemeal basis, flexibility is incorporated into the decision-making process as each development application is different and circumstances change over time. Therefore, town planning management structures are required to be adaptive within the framework of promoting balanced development which incorporates environmental conservation.</p>
<p>Conclusion: The objection is considered to be one-sided and based on erroneous deduction in terms of the function of a precinct plan as well as the myriad of factors that are required to be considered when an application for development is received by the decision-makers. Therefore, this objection should be rejected.</p>
<p>Objection 13: The developable land on each property should be restricted further thus increasing the portion of land used for open space (Late objection from C Steyn)</p>
<p>Response:</p> <p>The Precinct Plan strongly promotes the incorporation of the open space corridor and other open spaces when development applications are submitted, by providing the following development guidelines:</p> <ul style="list-style-type: none"> • 20m setback from the street for indigenous planting • 150m development line with the remainder contributed to the open space corridor • Individual dwelling ideally spaced 20m apart • 600m² plots • 5m side and rear building lines for the total property • Owners who wish to develop their properties may apply for an increase in density to a maximum of one dwelling unit per hectare rounded up to the next hectare, i.e. 3.01 hectares will be calculated as 4 hectares; <p>These development guidelines are considered to strike an efficient balance between development and environmental conservation. The subject application fully complies to these guidelines and the proposed development consisting of residential plots and right of way servitude represents only 11% development of the total property excluding civil service infrastructure. The remainder consists of proposed private open space, future nature reserve and the indigenous planting setback area.</p>
<p>Conclusion: The objection aims to restrict development even more by essentially suggesting that erf sizes be decreased by 30%. This is considered one-sided and unreasonable within the bigger picture of the growing need for housing and should be rejected.</p>

Objection 14: Owners who were allowed business ventures should be restricted to only that and not be allowed any further division of property or further expansion of their business. The original purpose of Danger Point was to keep the agricultural feel and allowing certain owners business rights clash with that idea. (Late objection from C Steyn)

Response:

o The objection over the further subdivision of business erven or expansion of businesses is not considered relevant to the application.

Conclusion:

This objection should be ignored as it is irrelevant to the subject application.

E. Conclusion

Most of the objections seem to originate from a deep-rooted concern regarding "over-densification".

The subject application is not foreseen to contribute to over-densification now or in the future for the following reasons:

- The proposal is fully consistent with the approved Final Danger Point Precinct Plan, 2014.
- The core aim of the Final Precinct Plan is to ensure that the Birkenhead area is not "over-densified" and that development is in harmony with the sensitive coastal environment which is evident from the following extract:
- "Development in the Birkenhead sub-precinct should follow the form and layout of 'off-grid eco-clusters' as this form of development is able to respond appropriately to sensitive coastal environments of outstanding natural beauty and maximize property values at low density situations where conventional urban services will not be available"
- There is more than sufficient space for four 600m² single residential erven with a total area of 37 473m² remaining for the purposes of private open space and nature reserve. The residential component together with right of way servitude will represent less than 11 % of the total application area.
- The proposal was discussed with and agreed upon by the municipality as part of the pre-submission phase of the application.
- Any future application to further subdivide residential erven or to rezone, develop or subdivide the Open Space 3 erf is considered not applicable to this subject application as it does not form part of this application.
- Subsequently, should the need exist for any further application in future, it will be subjected and evaluated on its own merits, based on the relevant spatial legislation at that stage.

The second main concern is that engineering services in the area are insufficient to accommodate the subject application.

According to the engineering services report, engineering services will mostly be off-grid apart from water which will be supplied by the existing water pipe-line with sufficient capacity located to the north of the application area.

F. Recommendation

The proposal represents a low-density development which is able to respond appropriately to a sensitive coastal environment of outstanding natural beauty as well as will allow the owners to appreciate and enjoy this unique environment.

Furthermore, the proposal will contribute to potentially increasing the threshold of existing business and lead to the generation of new business and employment opportunities, as well as provide an incentive to address larger public policy issues including promoting bio-diversity conservation and the creation of a significant, contiguous private nature reserve and to address social issues such as security through having more activity and surveillance.

12/12

As the application is considered desirable and fully consistent with the Council approved spatial policy document, the Final Danger Point Precinct Plan, 2014, we therefore recommend that the application be approved.

Regards



Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

Loretta Hartman
Tel: 021 414 5725
Email: lorettah@openserve.co.za

Our Ref.: WWIP_LH_252 WHMN
Your Ref.: Erf 22 Birkenhead

15 July 2020

Attention: Loriann Isaacs

Overstrand Municipality
PO BOX 20
HERMANUS
7200

PLANT AFFECTED : COPPER ROUTE

APPLICATION FOR WAYLEAVE NOTICE OF INTENTION BY MUNICIPALITY TO THE REZONING AND DEPARTURE OF PROPERTY ERF 22, 21 MARINE DRIVE, BIRKENHEAD.

With reference to your application received 12 June 2020.

As important cables and other infrastructure are affected, please contact our representative PIETER LAMBERT 023-342 1817 / 081 392 6737 / PieterL@openserve.co.za 48 hours prior to commencement of construction work.

I hereby inform you that OpenServe approves the proposed work indicated on your drawing in principle. This approval is valid for 12 MONTHS ONLY, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,
Private Bag X881, Pretoria, Gauteng, 0001

Approval is granted, subject to the following conditions.

As per sketch attached, OpenServe infrastructure WILL BE AFFECTED, consequently the conditions below and on the attached legend will apply.

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should OpenServe infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All OpenServe rights remain reserved.

Yours Sincerely,

Loretta Hartman

For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region



Legend

	Existing Manhole		Existing P&B		Existing D/C		Existing Pole		Planned Overhead Route		Consult Terminus (Virtual Element)
	Planned Manhole		Planned P&B		Planned D/C		Planned Pole		To Be Recovered Overhead Route		
	To Be Recovered Manhole		To Be Recovered P&B		To Be Recovered D/C		To Be Recovered Pole		Existing Underground Route		
	Existing Joining PH		Existing SDC		Existing Pillar Joint		Shul		Planned Underground Route		
	Planned Joining PH		Planned SDC		Planned Pillar Joint		Stay		To Be Recovered Underground Route		
	To Be Recovered Joining PH		To Be Recovered SDC		To Be Recovered Pillar Joint		Access Point (Virtual Element)		Existing Overhead Route		



TP-A Theart
(Suid merwe)



OVERSTRAND MUNICIPALITY
Per email: aconradie@overstrand.gov.za

Date:
29 July 2020

Enquiries:
Shaun Swanepoel
Tel: +27 21 980 3913
Fax: +27 06 660 0941

Dear Sir / Madame

PLEASE NOTE: THIS IS NOT A WORKING PERMIT. OBTAIN WORKING PERMIT FROM CUSTOMER NETWORK CENTRE – CALEDON CNC

RE: REMOVAL OF RESTRICTIVE TITLE DEED

OUR REF: 01734-20
YOUR REF: 22 GBH

I refer to your email dated 14 July 2020.

This application affects Eskom power lines servitudes and services.

THIS IS NOT AN APPROVAL TO START CONSTRUCTION

I hereby inform you that Eskom has no objection to the proposed work indicated on your drawing in principle. This approval is valid for **12 months** only, after which reapplication must be made if the work has not been completed.

- a) **Dirk Swart, Caledon CNC** must be contacted on +27 83 502 2590 or SwartDi@eskom.co.za before working in close proximity to the overhead power lines.
- b) The following Servitude widths / building and tree restriction on **either side of centre line** of overhead power line must be observed:

Voltage	Servitude / Building restriction either side of centre line
11kV	9.0 m
66kV	11.0 m
132kV	15.5 m

- c) No construction work may be executed closer than **6 (SIX) metres** from any Eskom structure or structure-supporting mechanism.

FILE NO: EL 22 - Birkenhead
SCAN NO: 22
COLLABORATOR NO: 1435694

Eskom Holdings SOC Limited Reg No 2002/015527/30

28 JUL 2020

- d) No work or no machinery nearer than the following **distances from the conductors**:

Voltage	Not closer than:
11kV	3.0 m
66kV	3.2 m
132kV	3.8 m

- e) Natural ground level must be maintained within Eskom reserve areas and servitudes.
 f) That a **minimum ground clearance** of the overhead power line must be maintained to the following clearances:

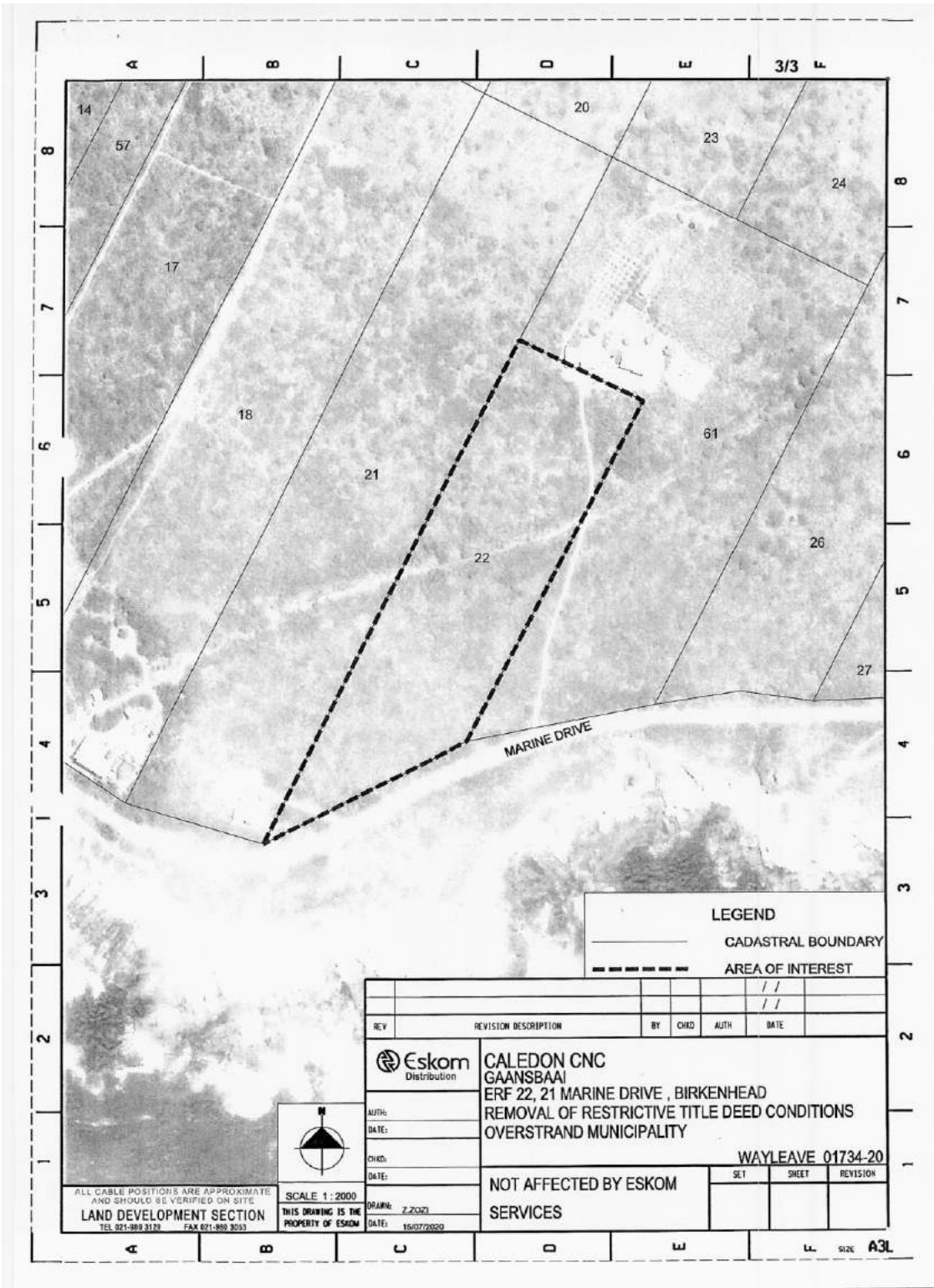
Voltage	Safety clearance above road:
11kV	6.3 m
66kV	6.9 m
132kV	7.5 m

- g) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.
 h) That Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
 i. Having 24 hour access to its infrastructure according to the rights mentioned in (a) above,
 ii. To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules,
 iii. To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom,
 iv. To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure.
 i) Eskom must have at least a 10m obstruction free zone around all pylons (not just a 10m radius from the centre).
 j) Eskom shall not be liable for the death or injury of any person, or for loss of or damage to any property, whether as a result of the encroachment or use of the area where Eskom has its services, by the applicant, his/her agent, contractors, employees, successors in title and assignee.
 k) The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
 l) Eskom shall at all times have unobstructed access to and egress from its services.
 m) Any development which necessitates the relocation of Eskom's services will be to the account of the developer.

Kindly contact **Shaun Swanepoel** at Tel: **021 980 3913**, should you require any further information.

Yours sincerely

Shaun Swanepoel
LAND DEVELOPMENT (BRACKENFELL)
 (Transmitted electronically and thus not signed)



LEGEND

	CADASTRAL BOUNDARY
	AREA OF INTEREST

REV	REVISION DESCRIPTION	BY	CHKD	AUTH	DATE

Eskom Distribution

**CALEDON CNC
GAANSBAAI
ERF 22, 21 MARINE DRIVE, BIRKENHEAD
REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS
OVERSTRAND MUNICIPALITY**

WAYLEAVE 01734-20

NOT AFFECTED BY ESKOM SERVICES	SET	SHEET	REVISION

ALL CABLE POSITIONS ARE APPROXIMATE AND SHOULD BE VERIFIED ON SITE
LAND DEVELOPMENT SECTION
 TEL 021-889 3120 FAX 021-889 3033

SCALE 1:2000
 THIS DRAWING IS THE PROPERTY OF ESKOM
 DRAWN: Z.ZOZI
 DATE: 15/07/2020

A B C D E F 3/3 F SIZE A3L



Western Cape
Government

Transport and Public Works



ANNEXURE I 1/3

ROAD NETWORK MANAGEMENT

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PO Box 2603, Cape Town, 8000

TP- n/heard
(S. vd Merwe)

REFERENCE: TPW/CFS/RP/LUD/REZ/SUB-21/211 (Job 27854)
ENQUIRIES: Ms GD Swanepoel
DATE: 9 October 2020

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

Attention: Mr SW van der Merwe

Dear Sir

FILE NO:	GF 22 ✓
	Birkenhead
SCAN NO:	GBH 22
COLLABORATOR NO:	1472427

ERF 22, BIRKENHEAD, GANSBAAI: MINOR ROAD 4019: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEPARTURE

1. The following refer:
 - 1.1 Your letter 22 GBH dated 14 July 2020;
 - 1.2 Meeting with the Applicant on site on 19 August 2020;
 - 1.3 Revised access plan shown on Revision 14 dated 15 July 2019 and
 - 1.4 Title deed received on 28 September 2020.
2. Erf 22 is located in the Birkenhead area of Gansbaai and is currently undeveloped.
3. This application is for the removal of restrictive title deed conditions, Rezoning, Subdivision into four single residential portions and Departure.
4. The proposed location of the driveway offers very limited shoulder sight distance in an easterly direction. However, if the driveway is located as close as possible to the easternmost point of the site, then shoulder sight distance is improved. This is reflected in the revised SDP(Revision 14)
5. A concern that the Branch has is that Erf 21 and Erf 61 currently have vehicular access over the subject erf.
6. Additionally, if Erf 22 is fenced off, the most northern boundary goes right up to the dwellings on Erf 61 and it might make vehicular access to the garage impossible.

28 OCT 2020

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7. There might be historical access rights which have not been exercised as well.
8. The Applicant stated that they do not intend to register any servitudes for the right of ways of Erven 21 and 61.
9. Due to the unresolved matters as raised above, this Branch has to object to the land use application in terms of the Land Use Planning Act 3 of 2014.

Yours faithfully



SW CARSTENS
For CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT

ENDORSEMENTS

1. Overstrand Municipality
Attention: Mr SW van der Merwe (e-mail: svdmerwe@overstrand.gov.za)
2. Interactive Town and Regional Planning
Attention: A Wiehahn (e-mail: info@iatrp.co.za)
3. District Roads Engineer
Paarl
4. Mr Hein Uys (e-mail)
4. Mr SW Carstens (e-mail)
5. Mr F Fakier (e-mail)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, REZONING, SUBDIVISION & DEPARTURE: ERF 22,
BIRKENHEAD**

Electricity	:	In order
Water	:	In order
Sewer	:	In order
Stormwater	:	In order
Roads and traffic	:	In order

Conditions:

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

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

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

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

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

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

Freehold erven:

Water	R 23 957.00 x 4	=	R 95 828.00
Sewerage	R 16 153.00 x 4	=	R 64 612.00
Roads	R 7 243.00 x 4	=	R 28 972.00
Stormwater	R 8 357.00 x 4	=	R 33 428.00
Solid Waste	R 1 448.00 x 4	=	<u>R 5 792.00</u>
TOTAL (inclusive of VAT)		=	<u>R 228 632.00</u>

Note:

- 1.3 The above figures are estimates**
1.4 The above figures do not include connection fees

2. that, as no municipal water network is available in the vicinity of Erf 22, and no municipal water services will be rendered to Erf 22, the owner is responsible for the provision of any water supply and / or-services to the development;
3. that the proposed development on Erf 22 must be provided with an internal sewer main line, to which the sewer services of the development must connect to, which goes into a communal tank, which must comply with the relevant legislation;
4. that it is noted that an off grid solar system will be used. Should the developer have the need to connect to the electricity grid in the future, a full network investigation will be conducted. All costs for investigations, upgrade and connections will be for their account;
5. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
6. that, as no municipal refuse removal services are rendered in the area, the owner is responsible for removal of all refuse generated on the property, and disposal of thereof at a registered municipal waste transfer station or-waste disposal facility;
7. that on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
8. that any additional and / or extended vehicle entrances will be for the developer's account;
9. that stormwater be allowed to discharge through Erf 22, Birkenhead, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE