

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

17.

**ERF 4413, BETTY'S BAY OVERSTRAND MUNICIPAL AREA: APPLICATION FOR
REMOVAL OF RESTRICTION, REZONING AND SUBDIVISION: MESSRS WRAP
PROJECT OFFICE ON BEHALF OF BS McLEOD**

4413 KBB

R Kuchar

Senior Manager : Town & Spatial Planning

6 September 2021

(028) 3138900

1. Executive Summary

An application was received on 20 January 2020 from Messrs WRAP Project Office on behalf of BS Mcleod on Erf 4413, Betty's Bay for the following:

- Removal of Restrictive Title Deed Conditions in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.6, B.7.(a), B.7.(b), B.7.(d), B.8, B.8.(a), B.8.(b), B.8.(c), B.9 and B.10 as contained in Title Deed T5778/2020 to permit the proposed application.
- Rezoning in terms of Section 16(2)(a) of the By-Law to rezone the property from Business Zone 3: Local Business to Residential Zone 1: Single Residential.
- Subdivision in terms of Section 16(2)(d) of the By-Law to subdivide the property into 3 portions, namely Portion A ($\pm 602\text{m}^2$), Portion B ($\pm 793\text{m}^2$) and the Remainder ($\pm 818\text{m}^2$).
- Deviation from Overstrand Municipal Growth Management Strategy, 2010 in terms of Section 10 to deviate from the density prescript of 5,1 dwelling units per hectare to permit the proposed maximum density of 27,1 dwellings units per hectare (additional dwelling units included).

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C. Title Deed T5778/2020 is attached as Annexure D.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priorities

Promotion of tourism, economic and social development
Provision of democratic, accountable and ethical governance

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Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Municipal System Act, 2000

6. Background/Discussion/Evaluation/Conclusion

Background

The erf is located in Betty's Bay Extension 5, established 13 October 1972 on the corner of Lachnenalia and Ixia Roads. The erf is zoned Business Zone 3 and surrounded by Residential Zone 1 erven. The residential erf sizes vary from approximately 600m² to 1000m² with an average erf size of 710m².

The application was considered by the Municipal Planning Tribunal on 29 April 2021, and it was resolved as follows:

“RESOLVED:

- “1. *that the application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.6, B.7.(a), B.7.(b), B.7.(d), B.8, B.8.(a), B.8.(b), B.8.(c), B.9 and B.10 as contained in Title Deed T5778/2020 to permit the proposed application, **be approved** in terms of the provisions of Section 61;*
2. *that the application in terms of Section 16(2)(a) of the By-Law to rezone Erf 4413, Betty's Bay from Business Zone 3: Local Business to Residential Zone 1: Single Residential, **be approved** in terms of the provisions of Section 61;*
3. *that the application in terms of Section 16(2)(d) of the By-Law to subdivide Erf 4413, Betty's Bay into three (3) portions, namely: Portion A ($\pm 602\text{m}^2$), Portion B ($\pm 793\text{m}^2$) and the Remainder ($\pm 818\text{m}^2$), **be approved** in terms of the provisions of Section 61;*
4. *that the approvals in Points 1., 2. and 3. be subject to the following conditions:*
 - (a) *that subdivision be in line with Drawing No.19/117 dated December 2019 submitted with this application;*

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- (b) *that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;*
- that all other development parameters as prescribed in the relevant*
- (c) *Zoning Scheme be complied with; and*
- (d) *that all the conditions in the Services Report be complied with.*
5. *that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.*

RECOMMENDATION TO COUNCIL

*that the deviation of the Overstrand Municipal Growth Management Strategy, 2010 from the density prescribed of 5,1 units per ha to permit the proposed density of 27,1 units per ha (additional dwellings included) in terms of Section 10 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, **be approved.***

REASONS FOR RESOLUTION:

- The objections are noted.
- The proposed erf sizes are in line with the existing erf sizes.
- The reason for the rezoning of a business erf to single residential that is more in line with the character of the area than business erf.
- The present title deed conditions relating to the business erf are more lenient in some instances than the parameters contained in the Overstrand Zoning Scheme for residential 1.
- The present nett density of Betty's Bay Extension 5 is calculated at 15,1 du/ha which is the same as the application erf.
- The figure will double should second dwellings be included.
- The latter will also be applicable to the existing developed erven should a second dwelling be added.

The item that served before the Municipal Planning Tribunal is attached as Annexure A, while the decision letter dated 7 May 2021 is attached as Annexure B.

This item serves to inform the Council regarding the application and the subsequent decision which was taken by the Municipal Planning Tribunal and to receive Council's decision in terms of the Municipal Systems Act, 2000 read with Section 10 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to deviate from the Overstrand Municipality Growth Management Strategy, 2010.

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Evaluation

The application for the abovementioned is to bring the business erf in line with the residential character of the Betty's Bay Extension 5. The density proposed will be similar in nature with the surrounding erven of the area.

The subdivision and rezoning of the erf into three (3) residential erven will benefit the tranquillity of an existing residential neighbourhood versus the noise pollution a business erf may generate.

The density as approved by the Municipal Planning Tribunal will not be to the detriment of the direct adjacent erven and the erf sizes are larger than some of the existing residential erven in the area.

It should be noted that none of the objectors appealed the decision.

It should be noted that with the adoption of the Spatial Development Framework in May 2020, the Business Corridors is not part of the SDF, but only an informative strategy document.

Conclusion

That the application be supported as per the recommendation below.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

| | |
|-------------|---|
| Annexure A: | Item served before the Municipal Planning Tribunal on 29 April 2021 |
| Annexure B: | Decision letter dated 17 May 2021 |
| Annexure C: | Subdivision Plan |
| Annexure D: | Services Report |

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RECOMMENDATION TO THE COUNCIL:

that the application to deviate from the Overstrand Growth Management Strategy, 2010 in order to allow the density of 27,1du/ha for Erf 4413, **be approved.**

| | |
|--|-------------------------|
| RESPONSIBLE OFFICIAL : | R KUCHAR |
| TARGET DATE FOR IMPLEMENTATION : | 11 NOVEMBER 2021 |
| TARGET DATE TO INFORM APPLICANT : | 11 NOVEMBER 2021 |
| TARGET DATE TO INFORM OBJECTOR : | N/A |

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ERF 4413, BETTY'S BAY OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTION, REZONING AND SUBDIVISION: MESSRS WRAP PROJECT OFFICE ON BEHALF OF BS McLEOD

4413 KBB

R Kuchar

6 September 2021

Senior Manager : Town & Spatial Planning

(028) 3138900

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the application to deviate from the Overstrand Growth Management Strategy, 2010 in order to allow the density of 27,1du/ha for Erf 4413, **be approved.**

RESPONSIBLE OFFICIAL :

R KUCHAR

TARGET DATE FOR IMPLEMENTATION :

11 NOVEMBER 2021

TARGET DATE TO INFORM APPLICANT :

11 NOVEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

ERF 4413, 4 LACHENALIA ROAD, BETTY'S BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEVIATION FROM THE OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY, 2010: WRAP ON BEHALF OF BS MCLEOD

4413 KBB

H van der Stoep
2 March 2021

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 20 January 2020 from WRAP on behalf of BS Mcleod on Erf 4413, Betty's Bay for the following:

- Removal of Restrictive Title Deed Conditions in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.6, B.7.(a), B.7.(b), B.7.(d), B.8, B.8.(a), B.8.(b), B.8.(c), B.9 and B.10 as contained in Title Deed T5778/2020 to permit the proposed application.

The restrictive title deed conditions read as follows:

- "B.6. *This erf shall be used solely for the purpose of erecting thereon a building comprising shops and business premises with the right to include residential accommodation above the ground floor or such other buildings as the Administrator may, from time to time after reference to the Townships Board and the Local Authority approve, provided that if the erf is included within the area of a Town Planning Scheme, the local Authority may permit such other uses as are permitted by the scheme, subject to the conditions and restrictions stipulated by the scheme.*
- B.7.(a) *No building or structure or any portion thereof above the ground floor, may be entered within 5 meters or half the height of the building, whichever is the greater, from the lateral or rear boundary of the erf, provided that that portion of the lateral boundary which is situated within 13m of a street boundary, shall be exempt from this requirement.*
- B.7.(b) *Not more than 80% of the area of this erf shall be built upon, provided that any floor used wholly or in part for residential purposes shall not have a total floor area of more than half the area of the erf.*
- B.7.(d) *The design and external appearance of the façade of any building erected on this erf shall conform to such canopy and cornice lines as the local authority may prescribe and the materials used in the facing thereof shall be in conformity with standards laid down by the local authority.*
- B.8. *No residential accommodation shall be provided on this erf, unless provision shall simultaneously be made, to the satisfaction of the local authority, for parking bays to accommodate not less than one motor-car for every flat or in the case of other residential accommodation for every two bedrooms contained in the building, provided that.*

- B.8.(a) *If situated under the building the said parking area shall not be enclosed for more than 50% of its perimeter.*
- B.8.(b) *The said parking area and the access and exit thereto shall be located, hardened and surfaced to the satisfaction of the local authority.*
- B.8.(c) *If in erecting his buildings the owner provides lock-up garages on the erf, the required parking area may be reduced by one parking bay for each garage up to a maximum of 75% of the original area required in terms of the foregoing.*
- B.9. *On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.*
- B.10. *In the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf."*
- Rezoning in terms of Section 16(2)(a) of the By-Law to rezone the property from Business Zone 3: Local Business to Residential Zone 1: Single Residential.
 - Subdivision in terms of Section 16(2)(d) of the By-Law to subdivide the property into 3 portions, namely Portion A ($\pm 602\text{m}^2$), Portion B ($\pm 793\text{m}^2$) and the Remainder ($\pm 818\text{m}^2$).
 - Deviation from Overstrand Municipal Growth Management Strategy, 2010 in terms of Section 10 to deviate from the density prescript of 5,1 dwelling units per hectare to permit the proposed maximum density of 27,1 dwellings units per hectare (additional dwelling units included).

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf is located in Betty's Bay Extension 5, established 13 October 1972 on the corner of Lachnenalia and Ixia Roads. The erf is zoned Business Zone 3 and surrounded by Residential Zone 1 erven. The residential erf sizes vary from approximately 600m^2 to 1000m^2 with an average erf size of 710m^2 .

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

Intent

- o There are four (4) commercial properties within a radius of 1,2km that are vacant. This illustrates that there has historically never been a demand for commercial land uses within the vicinity.
- o Viable commercial land uses are located along Clarence Drive in various commercial nodes. Any commercial outside of Clarence Drive is not seen as viable.
- o The dominant residential character will be unduly disrupted with commercial land uses.
- o Considering the property is 35m from the Grootvei lagoon, the establishment of commercial activities is uncommon in such close proximity.

The proposed removal of restrictive conditions is motivated as follows:Condition: B.6.

"This erf shall be used solely for the purpose of erecting thereon a building comprising shops and business premises with the right to include residential accommodation above the ground floor or such other buildings as the Administrator may, from time to time after reference to the Townships Board and the Local Authority approve, provided that if the erf is included within the area of a Town Planning Scheme, the local Authority may permit such other uses as are permitted by the scheme, subject to the conditions and restrictions stipulated by the scheme."

Rationale for the removal:

This title deed condition prohibits the proposed rezoning and subdivision which is the rationale for the removal thereof.

This title deed condition was inserted in 1977 under the assumption that western side of Betty's Bay would function as a settlement which has individual commercial zonings which are dispersed. The current development trend in the area is that there has been two thirds uptake of the residential erven within a 1,2 km radius from the subject property and none of the commercial areas have been developed. This illustrates that the development trends and pressures in Betty's Bay on the west are not for commercial land uses but for residential. The restrictive title deed condition is therefore not responsive to the prevailing development pressures of the area which justifies the removal thereof.

Condition: B.7.(a)

"No building or structure or any portion thereof above the ground floor, may be entered within 5 meters or half the height of the building, whichever is the greater, from the lateral or rear boundary of the erf, provided that that portion of the lateral boundary which is situated within 13m of a street boundary, shall be exempt from this requirement."

Rationale for the removal:

This restrictive title deed condition is not in harmony with the building lines of the OMZS and is more onerous.

This title deed condition was inserted in 1977 for commercial properties and will become irrelevant when the property is rezoned to Residential. Considering that the land use rights sought are for residential purposes, the building lines relating to how commercial land uses developed in 1977 are inappropriate for what is applied for. Notwithstanding the above, current commercial development trends are for commercial land uses to be located close to the street boundary to create a close-knit interaction between the customers in the buildings and the pedestrians.

Condition: B.7.(b)

"Not more than 80% of the area of this erf shall be built upon, provided that any floor used wholly or in part for residential purposes shall not have a total floor area of more than half the area of the erf."

Rationale for the removal

This title deed condition is not in harmony with the provision of the OMZS.

This title deed condition was inserted in an era when the prevailing development pattern was the promotion of monofunctional land uses where different coverages were applicable to the different uses. The current development trends which are promoted by modern planning policies are mixed uses which provide a greater degree of coverage flexibility due to the increased pressures which urbanisation places for unlocking additional residential units. The removal of this restrictive title deed condition would confer an SR1 zoning on the subject property and enable future coverage departures if deemed necessary without having to submit a removal of restriction application

Condition: B.7.(d)

"The design and external appearance of the façade of any building erected on this erf shall conform to such canopy and cornice lines as the local authority may prescribe and the materials used in the facing thereof shall be in conformity with standards laid down by the local authority."

Rationale for the removal

This restrictive title deed condition was inserted with the intent of ensuring that all buildings to be constructed in Betty's Bay were of high architectural integrity. The National Building Regulations and Building Standards Act no. 103 of 1977 and the OMZS contains regulations pertaining to external appearance of the façade, canopies and cornice lines and materials used in construction. The insertion of this restrictive title deed condition is therefore not necessary which justifies the removal thereof.

Condition: B.8

"No residential accommodation shall be provided on this erf, unless provision shall simultaneously be made, to the satisfaction of the local authority, for parking bays to accommodate not less than one motor-car for every flat or in the case of other residential accommodation for every two bedrooms contained in the building, provided that."

Condition: B.8.(a)

"If situated under the building the said parking area shall not be enclosed for more than 50% of its perimeter."

Condition: B.8.(b)

"The said parking area and the access and exit thereto shall be located, hardened and surfaced to the satisfaction of the local authority."

Condition: B.8.(c)

"If in erecting his buildings the owner provides lock-up garages on the erf, the required parking area may be reduced by one parking bay for each garage up to a maximum of 75% of the original area required in terms of the foregoing."

Rationale for removal:

These parking standards were inserted in 1977 at a time when vehicle ownership was lower than it is currently. This was done to ensure that property owners do not park in the street as that would interfere with the traffic and movement networks.

Vehicle ownership is generally much higher today than it was in 1977. This has subsequently led to parking standards in zoning schemes increasing to respond to that. The parking standards which are imposed by the OMZS are higher than the standards in the title deed and more responsive to the higher vehicle ownership which is prevalent in Betty's Bay. The removal of this title deed condition is therefore justified as it is in harmony with current development trends and pressures.

Condition: B.9

"On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf."

Condition: B.10

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

Rationale for removal

The title deed conditions referred to in Section 8.5 are explaining standard conveyancing procedure and are therefore not necessary.

Section 35(4) of the Overstrand By-Law on Municipal Land Use Planning, 2015, highlights the relevant Municipal considerations for the removal, suspension or amendment of restrictive title deed conditions.

Herewith are the relevant considerations assessed in conjunction with this proposal:

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

This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else.

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

There are no personal benefits which accrue to the holder of these restrictive title deed conditions.

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

The purchaser will be able to derive an income from the approval and implementation of this proposal; and the approval and implementation of this proposal will provide the purchaser with a sense of purpose.

The social benefit of the restrictive condition remaining in place.

There is no social benefit if the restrictive conditions remain in place.

The social benefit of the removal of the restrictive condition.

Employment will be created during the construction phase; and additional residential opportunities will be created which will benefit prospective property buyers.

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

There are no rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.

The proposed subdivision and rezoning are motivated as follows:

- The applicant envisaged the subdivision of the erf into 3 portions and construct the dwellings in accordance to the Residential Zone 1 parameters. The application presents the opportunity for infill development in the area which the applicant wants to capitalise on.
- The property is vacant and contributes little to rates and taxes. The approval and construction of homes will substantially increase the value of the property.
- The additional 3 families will contribute to the reduction in crime pertaining to additional surveillance.
- The additional properties will not result into additional cost to the owners of Betty's Bay.
- The proposed 3 portions will not be to the detriment of the surrounding properties due to the conformity of the with the surrounding.
- The development parameters of the proposed subdivision erven will be similar to surrounding erven and will not interfere with views, sunlight and character.
- Investment will occur in the construction of will be labour intensive and assist in the reduction of poverty.
- No listed environmental activities are triggered.

Services:

Access will be obtained from both Lachenala and Axia Roads.

Services will be provided to the newly created erven as stipulated by the Municipality.

Forward Planning:

- Spatial development Framework: (2020)

The erf is located in an area earmarked for residential development.

- Overstrand Growth Management Strategy: (2010)

AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL

29 APRIL 2021

The erf is located in Planning Unit 3 which prescribed density of 5,1 dwelling units per hectare. The subdivision of the property into 3 erven would increase the proposed density to 13,5/ha if one dwelling is constructed. The density would increase to 27,1/ha per ha should the owner act upon the primary SR1 land use right of constructing a second dwelling unit. The existing erf is out with the average erf sizes of the surrounding properties and the alignment which this proposal will bring about with the surrounding would contribute positively to the character of the area.

Planning Principles:

| | |
|-------------------------|---|
| Spatial Justice: | The subdivision will create an opportunity for future landowners to obtain land. |
| Spatial Sustainability: | The subdivision will have no impact on agricultural land, environmentally sensitive areas of biodiversity rich areas. |
| Efficiency: | The application entails the optimal use of the vacant property while conforming to the residential character of the surroundings. |
| Spatial Resilience: | The application is in line with the PSDF and SDF principles of resilience. The proposal is consistent with the surrounding erf sizes but inconsistent with the density. |
| Good Administration: | The process and a public participation process as prescribed by the Municipality will be followed. |

5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising | Date published | Closing date for comments |
|---|----------------|---------------------------|
| Gazette | Yes | 28 August 2020 |
| Local newspaper | Yes | 27 August 2020 |
| Registered notices | Yes | 27 August 2020 |
| Ward councillor | Yes | 27 August 2020 |
| Total comments | SIX (6) | |
| Total letters of support | ONE (1) | |
| Was public participation undertaken in accordance with Section 47 - 50 of the By-Law on Municipal Land Use Planning? | Yes | |
| Was the application processed correctly (if no, elaborate below): | Yes | |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below) | Yes | |

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

| Name | Date received | Summary of comments |
|------------------|---------------|--------------------------|
| Building Control | 23/10/2020 | Refer to Local Heritage. |

| | | |
|--------------------------|------------|-----------------|
| Local Heritage Committee | 05/02/2021 | Supported. |
| Fire Department | 27/08/2020 | No objection. |
| Engineering Services | 26/01/2021 | See Annexure G. |

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

Objections were received from the following six (6) individuals:

- o B van de Ghinste
- o C & A Moine
- o DE & LCG Shaw
- o JH & MW Broom
- o H van Rensburg
- o JM Biggs

One (1) support letter was received from the Betty's Bay Ratepayers Association.

The objections and comments will be grouped as per issue raised, since many were similar. (See Annexure E.) The applicant's response to the objections are attached as Annexure F.

Objection: B Van de Ghinste:

- (a) The calculation of the average erf size is misleading, since of Portion A is closer to 600m² and is too small.**
- (b) The densification from 5,1 unit per ha to 27 units per hectare is not supported. It is not in keeping with the surrounding properties.**
- (c) The document refers that the plot is not visually appealing. The area is part of the Kogelberg Biosphere Reserve and wish that any development should preserve the vegetation and its natural surroundings.**

Applicant's response

- (a) The calculation was based on the average size of the surrounding erven. Section 7 of the Report indicates that the smallest erf is 585m², which nullifies the assertion that the proposed erf size is too small.
- (b) The densification sought in the application as per the following calculations:
An erf measuring 710m² with a second dwelling relates to 28 units per hectares. The proposed subdivision of the increase to 27,1 units per hectares is within the present densification of the surrounding erven (the area demarcated) which nullifies the concerns raised. The present situation within the demarcated area to establish the average size property is at 27 units per ha and the subdivision will not densify the area any further.

- (c) The proposed development will adhere to the Overstrand Zoning Development Parameters for Single Residential e.g., 50% coverage and building lines of 2m.

Town Planner's response

- (a) The report indicated that the average size of erven is more than 700m² and then indicated Portion A as 602m², which is still larger than the smallest erf in the delineated area.
- (b) Erf 4413 is located in Betty's Bay Extension 5, which consists of 165 erven, excluding 5 open space erven and streets and equates to 121 687m² in extent as per General Plan No 8269, dated 1971. The Growth Management Strategy stipulates that Planning Unit 3 has a density of 5,1 units per hectares. Planning Unit 3 consists of Betty's Bay Extensions 2 to 7, Silver Sands and Stoney Point.

The calculation to establish the average erf size of Extension 5 is as follows:

- ↓ 121687m²/165 erven = 737m²/erf.
- ↓ The density at present is 10000m²/737m² = 13,5du/ha.
- ↓ The application erf is 2213m²/ 3 erven = 737m²/erf.
- ↓ The density is 10 000/737m² = 13,5du/ha.
- ↓ The application report made reference to 27,1 du/ha and the reason is that should a second dwelling be built on each erf, the density will be doubled.

Betty's Bay Extension 5 proclaimed in 1972 has a density of 13,5du/ha.

- (c) Noted and agreed.

Objection: DE and LCG Shaw

- (a) *Subdivision into three (3) plots will be an overdevelopment of the erf that would mean that the new buildings will be erected very close to building lines, now 2m. The density of the housing is not in keeping of the current developments.*
- (b) *The subdivision will mean the removal of indigenous vegetation, which is not in keeping with the Kogelberg Biosphere Reserve.*
- (c) *The concern that the Portion A of 602m² has no open space in front of it as all the other plots on Lachenalia Road.*
- (d) *The claim that the proposed erven sizes are in harmony with the surrounding area (demarcated 31 erven) is misleading. A more accurate calculation when looking at harmony is the erven bordering Lachenalia and Ixia Roads between White River and Lobelia Roads. The average size of the 15 erven is 871,5m² - the calculation used by the applicant includes smaller plots which is not situated on the curve of Ixia Road. The average size of the 6 plots on the curve of the road relates to 824,8m².*
- (e) *The increase of the density of 5,1 dwellings units per ha to 5,5 (27,1du/ha) dwelling units per ha is the complete opposite of the harmonious development in a recognized biosphere and derogates the beauty of residential development in Betty's Bay which allow lawn for protection against fire.*

- (f) Section 12.1 of the report is misleading indicating the property is visually unpleasing. The plot is filled with fynbos.**
- (g) The report claims that the permissible will not interfere with the views, sunlight and character enjoyed by property owners. Contrary to the claim, double story buildings will be erected close to the boundary that will impede views and sunlight enjoyed by owners.**
- (h) The plot is across the greenbelt and freshwater lake and the current houses are built and positioned in harmony with this. Constructing three (3) separate dwellings on three (3) plots of the proposed sizes will violate the very reason that Betty's Bay lies within the Kogelberg Biosphere Reserve.**

Applicant's response

- (a) All property owners of Betty's Bay have the SR1 zoning that permits construction to occur up to the 2m from the side boundary line. The owner of the erf will abide by the SR1 parameters and is in keeping with the current location of dwellings.
- (b) The subject property does not form part of the formally protected Kogelberg Biosphere Reserve and therefore not an environmentally sensitive site.
- (c) The practice of planting fynbos is every owner's own preference and cannot be enforced by anyone.
- (d) The delineation of the area as indicated in Section 7 of the report was to illustrate that the density sought in the proposal is in harmony with the immediate surroundings. The proposed delineation which is proposed by the objector would not illustrate the immediate surroundings and therefore have misleading calculations conclusions.
- (e) The densification sought in the application as per the following calculations: An erf of 710m² with a second dwelling relates to 28 units per hectares. The proposed subdivision of the increase to 27,1 units per hectares is within the present densification of the surrounding erven (the area demarcated) which nullifies the concerns raised. The present situation within the demarcated area to establish the average size property is at 27 units per ha and the subdivision will not densify the area any further.
- (f) The property is invested with alien vegetation and the little fynbos prevalent on the erf will perish if alien clearing is not done.
- (g) The proposed erf sizes are similar to that of the surrounding and will not unlock and excessively dense collection of buildings. Any property owner including the objector has a right to developed itself in line with the Zoning Scheme. The placement of more onerous restrictions on the proposed application cannot be justified.
- (h) The proposal entails infill development and does not encroach on environmentally sensitive green belt and large freshwater lake and cannot be regarded as violating the character of the area.

Town Planner's response

- (a) The objector is correct in as far as the present building lines as per the application is more lenient than the surrounding residential erven.

The Conditions of Establishment of Extension 5 has the following restrictions:

Street building line: 5m
All other building lines: 3m

The Conditions of Establishment does make exemptions subject to certain conditions e.g. housing of vehicles and other outbuildings. The density to accommodate possible second dwellings give rise to the 27,1du/ha. This aspect will be dealt with under desirability.

- (b) Agree with the applicant. The town was established in 1972 and the Kogelberg Biosphere came into being as a guiding document after 1972 and cannot be made retrospectively and take rights away. The existing developed erven is thus also part of the Biosphere as per the objector and no mention is made on the indigenous plant material that has been removed in developing the erven.
- (c) Agree with the applicant.
- (d) Erf 4413 is located in Betty's Bay Extension 5, which consists of 165 erven, excluding five (5) open space erven and streets and equates to 121 687m² in extent as per General Plan No. 8269, dated 1971. The Growth Management Strategy stipulates that Planning Unit 3 has a density of 5,1 units per hectares. Planning Unit 3 consists of Betty's Bay Extensions 2 to 7, Silver Sands and Stoney Point.

The calculation to establish the average erf size of Extension 5 is as follows:

- ↓ 121687m²/165 erven = 737m²/erf.
- ↓ The density at present is 10000m²/737m² = 13,5du/ha.
- ↓ The application erf is 2213m²/ 3 erven = 737m²/erf.
- ↓ The density is 10 000/737m² = 13,5du/ha.
- ↓ The application report made reference to 27,1 du/ha and the reason is that should a second dwelling be built on each erf, the density will be doubled.

Betty's Bay Extension 5 proclaimed in 1972 has a density of 13,5du/ha.

- (e) The objector indicates that a densification of 27,1 du/ha is not in keep with the surrounding area. The aforementioned density relates to the erection of second dwellings on the proposed subdivided erven. In terms of the Zoning Scheme a second dwelling is a primary use and to enable the land use, it will be seen as densification. The desirability thereof will be dealt with under desirability.
- (f) Noted.

- (g) It should be noted that the building lines and coverage does make provision to ensure sunlight, privacy, etc. The existing zoning as per the Title Deed Conditions will have more of an impact, since it only stipulates two storeys, thus does not address the height of the roof. The coverage is 75%, which can be one structure thus not allowing for views or sunlight.
- (h) The buildings approved does not attend to the harmony of the environment, since none of them has been designed as eco-friendly structures. The designs are to optimally make use of views and has been positioned as such.

Objection: JH and MW Broom

- (a) *Property be subdivided into 2 erven.*

The reasons are as follows:

- o *Over densification, especially the corner plot of 602m².*
 - o *Increase in population density and related noise, pollution and rubbish which will disturb the tranquillity of Betty's Bay.*
 - o *All fynbos will disappear and not in line with the Kogelberg Biosphere Reserve.*
 - o *Reduction of property prices due to excess dwellings in the area.*
- (b) *Object to the request to permit the maximum proposed density of 27,1 units per ha. It contradicts the precepts of the Kogelberg Biosphere Reserve.*
- (c) *The current vacant erf is not visually pleasing as if dwellings will be more pleasing.*
- (d) *The misconception that three (3) additional families will be advantageous to the surrounding properties due to a reduction in crime. If anything, the reverse will happen, with more criminals being attracted to the area.*

Applicant's response

- (a) In Section 7 of the report, it has been illustrated that the erf sizes are in harmony and general character of the surrounding area.
- o The increase in density will not necessarily create additional noise or pollution levels as that is depended on the behaviour of if the property occupants which are not known, thus making this assertion presumptions.
 - o There is ample fynbos and the one application will not make it disappear
 - o The proposal is in line with the character of the area and will not detract from the property value or prices.
- (b) The densification sought in the application as per the following calculations: An erf of 710m² with a second dwelling relates to 28 units per hectares. The proposed subdivision of the increase to 27,1 units per hectares is within the present densification of the surrounding erven (the area demarcated) which nullifies the concerns raised. The present situation within the demarcated area to establish the average size property is at 27 units per hectare and the subdivision will not densify the area any further.
- (c) The property is invested with alien vegetation and the little fynbos prevalent on the erf will perish if alien clearing is not done.

- (d) The concern around crime is prevalent in all neighbourhoods in South Africa. The additional occupants will ensure extra surveillance which will make criminals cautious about breaking into properties.

Town Planner's response

- (a) The smallest erf in the delineated area is 585m² and of the 31 erven, six (6) erven are 600m² and less. An indication that the proposed erf of 602m² is not the only small erf. The issue of pollution, waste, etc. cannot be an objection, since none of this has happened and is thus an assumption. The clearing of the erf is a right in an approved township to enable the development of the erf. Clearly the developed areas, before it was built, also had fynbos which was removed to build the dwellings. It is unclear why this is now relevant to an undeveloped erf to be developed. No proof has been submitted that there will be a reduction of property values.
- (b) This aspect has been dealt with extensively in previous comments.
- (c) A question of personal preference.
- (d) Agree with applicant.

Objection: Helen van Rensburg

- (a) *Subdivision of Erf 4413: To avoid bias, the average size of erven in the entire Betty's Bay, including mountain area are calculated to find true average and the average size is 759,258m². At most Erf 4413 could be subdivided in two erven.*
- (b) *No social benefit to the proposed amendments. Higher density housing is known for creating serious social problems and will devalue the surrounding properties. There is currently more than adequate housing available for long- and short-term rentals.*
- (c) *Restrictive condition 8.7(b) : Not more than 80% of the erf shall be built on, should remain intact. Due to the fire risks a minimum 20% should not be built on.*
- (d) *Restrictive condition 8.8 : At least 1 parking bay should be provided for every 2 bedrooms. Even with parking provided the overflow can cause disruption of traffic flow. The condition must remain in place.*
- (e) *Restrictive conditions 8.9 and 8.10 : The conditions should remain in place.*
- (f) *Deviation of densification is unacceptable : Betty's Bay is a rural town and is advisable that the owner rather purchase in an area where higher density is accepted.*
- (g) *Higher density creates serious social problems: The proposed density is unacceptable as this will devalue the properties, increase pollution and traffic. The proposed density of 27 units per hectare would enable the owner to build six (6) dwellings, which is not acceptable and could present a substantial fire risk. To reduce fire risk, it is vital to have sufficient*

cleared spaces around one's erf, this enabled by the 20% unconstructed space.

Applicant's response

- (a) Some of the erven along the mountain is approximately 340m² and some erven 800m² along the mountain. The small erven would variably reduce the average size, which would ultimately be around the same size as the average erf size as per the application.
- (b) The increase in density will not necessarily create additional noise or pollution levels as that is depended on the behaviour of if the property occupants, which are not known, thus making this assertion presumptuous.
- (c) The coverage of 80% relating to commercial use and the residential erven has a coverage of 50%, which is lower than the allowable in terms of the title deed. The remaining 20% will reduce the fire risk, whilst the residential erven have a 50% coverage, thus more adept to reduce fire risk.
- (d) The removal of the condition does not absolve the applicant from the Zoning Scheme requirements of 2 bays per dwelling and 1 bay for the second dwelling. The rationale for the condition to remain in place is not necessary.
- (e) The removal is based on the fact that should two of the properties intend to consolidate, the condition becomes applicable on the title deed of the new property, which nullifies the need for this restriction as it is a general practice at the Deeds Office.

Town Planner's response

- (a) The aspect has been dealt with in comments pertaining to density. It should be mentioned that the whole of Extension 5 has been _____ to establish the average erf size and density by the Town Planner. The whole of Betty's bay cannot be made applicable, since Extension 5 has its own Conditions of Establishment.
- (b) The application if for a subdivision in line with the average size of Extension 5, the application is not for a high-density development as per reference to the objector's comments.
- (c) The coverage cannot remain in place, since in effect it will mean that every newly created erf will have a coverage of 80%. A residential erf has a coverage of 50%, which is more than the 20% as indicated by the objector for fire prevention purposes.
- (d) The objector's own single residential erf has a parking ration of 2 parking bays and the 1 parking bay for a second dwelling. It is unclear why the applicant must have more restrictive conditions.
- (e) The restriction of subdivision will have to be removed to enable the application. It is however unclear why the consolidation restriction cannot be removed. This was not extensively elaborated upon.
- (f) The applicant did not apply for a high-density development.

- (g) The higher density relates to a single residential erf, that may as a primary right erect a second dwelling. Due cognisance should be taken that the Conditions of Establishment restricts the erven in Extension 5 to a single dwelling and associated outbuildings. The latter includes staff quarters, habitable units, which in terms of the Zoning Scheme is seen as a second dwelling. Therefore, in terms of the Growth Management Strategy, should owners in Extension 5 have staff quarters, their density will be at 27 du/ha. The Scheme only allows 50% coverage, inclusive of second dwellings, thus the remaining 50% per erf is more than the existing 20% as per the Title Deed.

Objection: MJ Biggs

- (a) *The proposed subdivision will affect Erf 4427 and will entail that all three (3) buildings will border the communal fence and impede the view, sunlight and privacy. There is no objection to the rezoning but would object to the subdivision into 3 instead of 2 portions.*
- (b) *The report indicate that the erf is not visually appealing. The erf is home to tortoise, cape grouse, mongoose, red duiker and porcupine as well as the Victorins warbler.*
- (c) *If developed the fynbos will be removed.*
- (d) *Object to the increase in density, taking into consideration that Betty's Bay is located in the Biosphere.*
- (e) *There are no tar roads.*
- (f) *What will happen to the wild animals?*
- (g) *There are no security problems in the area, but more houses will elicit more temptations. Building activities normally bring security threats.*

Applicant's response

- (a) The objector's erf is only abutted by Portion B and will only be visually exposed to 1 dwelling and may be 2 dwellings should a second dwelling be constructed.
- (b) The objector's house is facing north and south west. The building on proposed portion B will be located towards the north east and cannot interfere with the current views of the objector.
- (c) The present zoning of Business 3 and or the proposed zoning of single residential does not make provision for wild animals per se. The owner is prepared to relocate the wild animals which may be discovered before construction.
- (d) The increase in density will not necessarily create additional noise or pollution levels as that is depended on the behaviour of if the property occupants which are not known, thus making this assertion presumptions.
- (e) This aspect needs to be dealt with by the Municipality.
- (f) The owner is prepared to relocate if found.

- (g) Building activities tend to be characterized by ample surveillance and more houses means more surveillance and has the potential to reduce crime.

Town Planner's response

- (a) Agree with applicant. It should be noted a block building with coverage of 80% will be more imposing and impeding possible views and sunlight.
- (b) Various wildlife seems to establish themselves on the vacant site. The applicant did indicate his willingness to relocate wildlife, if applicable.
- (c) Yes, and so was all the fynbos removed from all the developed erven in Betty's Bay in the past and only replanted later.
- (d) Please note that the town of Betty's Bay were proclaimed before the Kogelberg Biosphere and in terms of the latter's framework, townships and their rights are acknowledged. The Kogelberg Biosphere is a guiding document and not legislation and cannot be implemented retrospectively.
- (e) The gravel roads must be addressed by the Operational Department.
- (f) Addressed by the applicant.
- (g) The same applied when the residents of Betty's Bay built their houses.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

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

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application is within the urban edge and will not impact on agricultural land or environmental areas. The application is in line with the promoting of compaction and infill urban environments.

Efficiency

The landowner wants to use the property to its full potential and make optimal use of municipal services available to the erf that in return contribute economic well-being.

Spatial Resilience

The application is in line with local policies which promote optimal use of an erf to limit urban sprawl. All structures will comply with the National Building regulations and SANS, thus promoting energy efficiency.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

The application does address the Growth Management Strategy Framework with regard to the deviation of the density for Planning Unit 6, Betty's Bay.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services will be used.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The Overstrand Municipality Zoning Scheme Regulations is applicable to this area. The existing zoning is Business Zone 3 and the applications is for a subdivision and rezoning to Single Residential

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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

This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else in Extension 5.

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

The holder of these restrictive title deed conditions will not accrue any personal benefits.

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

The holder of these restrictive title deed conditions will not accrue any personal benefits.

The social benefit of the restrictive condition remaining in place.

The social benefit should the condition remains in place, is that the immediate community will have the possibility of a shop or office development.

The social benefit of the removal of the restrictive condition.

Possible employment opportunities and the development of a vacant erf similar to the surrounding area, thus eliminating the possibility of a commercial development in the midst of a solely residential township.

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

The rights are applicable to the erf exclusively and the only beneficiary is the owner of Erf 4413.

12. THE DESIRABILITY OF THE PROPOSAL

The objections have been addressed extensively under Paragraph 7., however a few aspects need to be addressed in more detail. They are as follows:

Density

Erf 4413 is located in Betty's Bay Extension 5, which consists of 165 erven, excluding five (5) open space erven and streets and equates to 121 687m² in extent as per General Plan No 8269, dated 1971. The Growth management Strategy stipulates that Planning Unit 3 has a density of 5,1 units per hectares. Planning Unit 3 consists of Betty's Bay Extensions 2 to 7, Silver Sands and Stoney Point.

The calculation to establish the average erf size of Extension 5 is as follows:

- ↓ $121687\text{m}^2/165 \text{ erven} = 737\text{m}^2/\text{erf}$.
- ↓ The density at present is $10000\text{m}^2/737\text{m}^2 = 13,5\text{du}/\text{ha}$.
- ↓ The application erf is $2213\text{m}^2/3 \text{ erven} = 737\text{m}^2/\text{erf}$.
- ↓ The density is $10\ 000/737\text{m}^2 = 13,5\text{du}/\text{ha}$.
- ↓ The application report made reference to 27,1 du/ha and the reason is that should a second dwelling be built on each erf, the density will be doubled.

Betty's Bay Extension 5 proclaimed in 1972 has a density of 13,5du/ha.

The application report made reference to 27,1 du/ha and the reason is that should a second dwelling be built on each erf, the density will be doubled relating to units and not cadastral units. The Conditions of Establishment Betty's Bay Extension 5 allows for one dwelling and associated outbuildings. The latter includes a staff quarter. In terms of the Overstrand Zoning Scheme a second dwelling is a primary right. The definition of a second dwelling stipulates that staff quarters will be seen as a second dwelling, thus avoiding the that owners not build a staff quarters, habitable space and a second dwelling. If allowed, a residential erf may end up with three dwellings.

In terms of the GMSF, a second dwelling counts as part of the densification definition, therefore the deviation application to cater for the primary right of a second dwelling on a residential erf. It should be noted that in terms of the Conditions of Establishment, Condition 15 (a): This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrative may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme. Thus, all owners in Extension 5 can erect a second dwelling in terms of the Title Deed conditions and thus will automatically have a density of 27,1 du/ha. The applications are thus not out in line with regard to the Conditions of Establishment or the Zoning Scheme.

Kogelberg Biosphere Framework

The Kogelberg Biosphere Framework was compiled in 2012, giving guidelines on the activities within the Biosphere. Towns within the Biosphere are acknowledged and promoted to form part of the economic and environmental sustainability and viability of the Biosphere. The Framework cannot stipulate or force an owner within an established township to comply with the guidelines.

The Western Cape Biodiversity Spatial Plan Handbook, 2017, clearly stipulate that urban extension be controlled by the Urban Edge and promote compact urban settlements. The application serves as infill development within the urban edge.

Portion A: 602m²

Portion A at 602m² is not the smallest of erven within Betty's Bay Extension 5 and in the applicant's demarcated area of the 31 erven, 6 are less than 600m². The Municipality allows for a 10% variant pertain to subdivisions area of extent. This is in line with the Surveyor General interpretation of the allowable leniency if to deviate from an approved subdivision. Portion A falls within this category.

Building lines

In terms of the Conditions of Establishment of Betty's Bay Extension 5, the building lines applicable to residential erven are as follows: street 5m, rear and side building lines 3m and differs from the Scheme building lines of Street 4m and 2m lateral and rear building lines.

The difference between the Conditions and the Zoning Scheme are as follows:

In terms of the Conditions (residential erf) the Administrator, now Municipality may relax the various building lines and further stipulates that the local authority may allow the housing of vehicles on the 0m building line applicable for rear and lateral building lines. It also allows the local authority to allow outbuildings on the rear and lateral building lines for a distance of 12m measured from the rear boundary or the erf and a corner erf the distance of 12m shall be measured from the point furthest from the street abutting the erf.

In terms of the Zoning Scheme, the housing of vehicles is allowed with neighbour's consent on the 0m rear and lateral boundary. However, outbuildings are not allowed on the 0m building lines and can only be erected through a departure process.

Thus, various owners in Betty's Bay have lodged relaxation of the condition building lines to the scheme building lines to erect outbuildings and dwellings. The application is requesting the same consideration applicable to residential erven in Bettys Bay. And is in line with development of residential erven within the Overstrand Municipal area. It should be noted that that application for the rezoning to Residential Zone 1: Single Residential will have to adhere to the Scheme Regulations.

Conditions of Title

The conditions to be removed is to enable the application.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.6, B.7.(a), B.7.(b), B.7.(d), B.8, B.8.(a), B.8.(b), B.8.(c), B.9 and B.10 as contained in Title Deed T5778/2020 to permit the proposed application, **be approved** in terms of the provisions of Section 61,
2. that the application in terms of Section 16(2)(a) of the By-Law to rezone Erf 4413, Betty's Bay from Business Zone 3: Local Business to Residential Zone 1: Single Residential, **be approved** in terms of the provisions of Section 61,
3. that the application in terms of Section 16(2)(d) of the By-Law to subdivide Erf 4413, Betty's Bay into 3 portions, namely Portion A ($\pm 602\text{m}^2$), Portion B ($\pm 793\text{m}^2$) and the Remainder ($\pm 818\text{m}^2$), **be approved** in terms of the provisions of Section 61,
4. that the approvals in Points 1., 2. and 3. be subject to the following conditions:
 - (a) that subdivision be in line with Drawing No.19/117 dated December 2019

submitted with this application;

- (b) that the proposed subdivided Portions A, and the Remainder be rezoned to Residential Zone 1 as per Drawing No.19/117 dated December 2019;
 - (c) that the following condition be inserted in the Title Deeds of the newly created portions that reads as follows:
"No further subdivisions of the erf be allowed, except with the consent of the Municipality";
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (f) that all the conditions in the Services Report (attached as Annexure G), be complied with.
5. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

RECOMMENDATION TO COUNCIL :

that the application to deviate from the Overstrand Municipal Growth Management Strategy, 2010 in terms of Section 10 to deviate from the density prescript of 5,1 dwelling units per hectare to permit the proposed maximum density of 27,1 dwellings units per hectare (additional dwelling units included), **be recommended for approval** by Council in terms of the provisions of Sections 10 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

14. REASONS FOR RECOMMENDATION

- ❖ The application is in line with forward planning documents.
- ❖ The creation of four (4) residential erven is in line with the surrounding erf extents and will not be to the detriment of the character of the area.
- ❖ The objection with regard to dust and speeding is not the responsibility of the applicant and thus cannot be held responsible.

15. ANNEXURES

| | |
|-------------|--|
| Annexure A: | Locality Plan |
| Annexure B: | Motivation Report |
| Annexure C: | Site Development Plan |
| Annexure D: | Objection received |
| Annexure E: | Applicant's response to the objection received |
| Annexure F: | Services Report |

SIGNATURE**REGISTERED PLANNER**Name : **H VAN DER STOEP**SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING



ENQUIRIES | NAVRAE: Ms. H van der Stoep
FILE REFERENCE | LEËRVERWYSING: 4413 K88
DATE | DATUM: 17 May 2021

WRAP
R Kotze
PO Box 1247
HERMANUS
7200

REGISTERED MAIL
admin@wrapgroup.co.za

Dear Sir

DECISION LETTER TO APPLICANT

ERF 4413, 4 LACHENALIA ROAD, BETTY'S BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, SUBDIVISION AND DEVIATION FROM THE OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY, 2010: MESSRS WRAP ON BEHALF OF BS MCLEOD

1. The application received on 20 January 2020 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 29 April 2021.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. *that the application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.6, B.7 (a), B.7 (b), B.7 (d), B.8, B.8 (a), B.8 (b), B.8 (c), B.9 and B.10 as contained in Title Deed T5778/2020 to permit the proposed application, **be approved** in terms of the provisions of Section 61;*
2. *that the application in terms of Section 16(2)(a) of the By-Law to rezone Erf 4413, Betty's Bay from Business Zone 3: Local Business to Residential Zone 1: Single Residential, **be approved** in terms of the provisions of Section 61;*
3. *that the application in terms of Section 16(2)(d) of the By-Law to subdivide Erf 4413, Betty's Bay into three (3) portions, namely: Portion A (±602m²), Portion B (±793m²) and the Remainder (±818m²), **be approved** in terms of the provisions of Section 61;*
4. *that the approvals in Points 1., 2. and 3. be subject to the following conditions:*
 - (a) *that subdivision be in line with Drawing No.19/117 dated December 2019 submitted with this application;*
 - (b) *that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;*

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: loretta@overstrand.gov.za
PO Box 20 | **HERMANUS 7200**
www.overstrand.gov.za



- (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
- (d) that all the conditions in the Services Report be complied with.
5. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

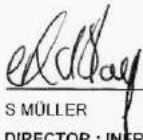
RECOMMENDATION TO COUNCIL :

that the application to deviate from the Overstrand Municipal Growth Management Strategy, 2010 in terms of Section 10 to deviate from the density prescribed of 5,1 dwelling units/ha to permit the proposed maximum density of 27,1 dwellings units/ha (additional dwelling units included), **be approved** in terms of the provisions of Sections 10 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

4. Reasons for the above decision are as follows:
- ❖ The objections were noted.
 - ❖ The proposed erf sizes are in line with the surrounding erf sizes.
 - ❖ The rezoning of the business erf to single residential is more in line with the character of the area than a business erf.
 - ❖ The present Title Deed conditions relating to the business erf are more lenient in some instances than the development parameters contained in the Overstrand Zoning Scheme for Residential Zone 1.
 - ❖ The present net density for Betty's Bay Extension 5 is calculated at 15,3du/ ha, which is the same as the application erf. The figure will double should second dwellings be included. The latter will also be applicable to the existing developed erven should a second dwelling be added.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3351-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).
- 5.3 Contact details are as follows:
- | | |
|--------------------|--|
| Physical address : | 16 Paterson Street, Hermanus, 7200 |
| Postal address : | PO Box 20, Hermanus, 7200 |
| E-mail address : | loretta@overstrand.gov.za |
6. Please be advised that subsequent to the finalization of any appeal, with regard to the above decision, the **recommendation** as contained in the above decision to deviate from the Spatial Development Framework still has to be referred to Council for a decision. You may thus not act on the above decision of the Municipal Planning Tribunal prior to receipt of written confirmation, which will only be issued upon receipt of Council's resolution.

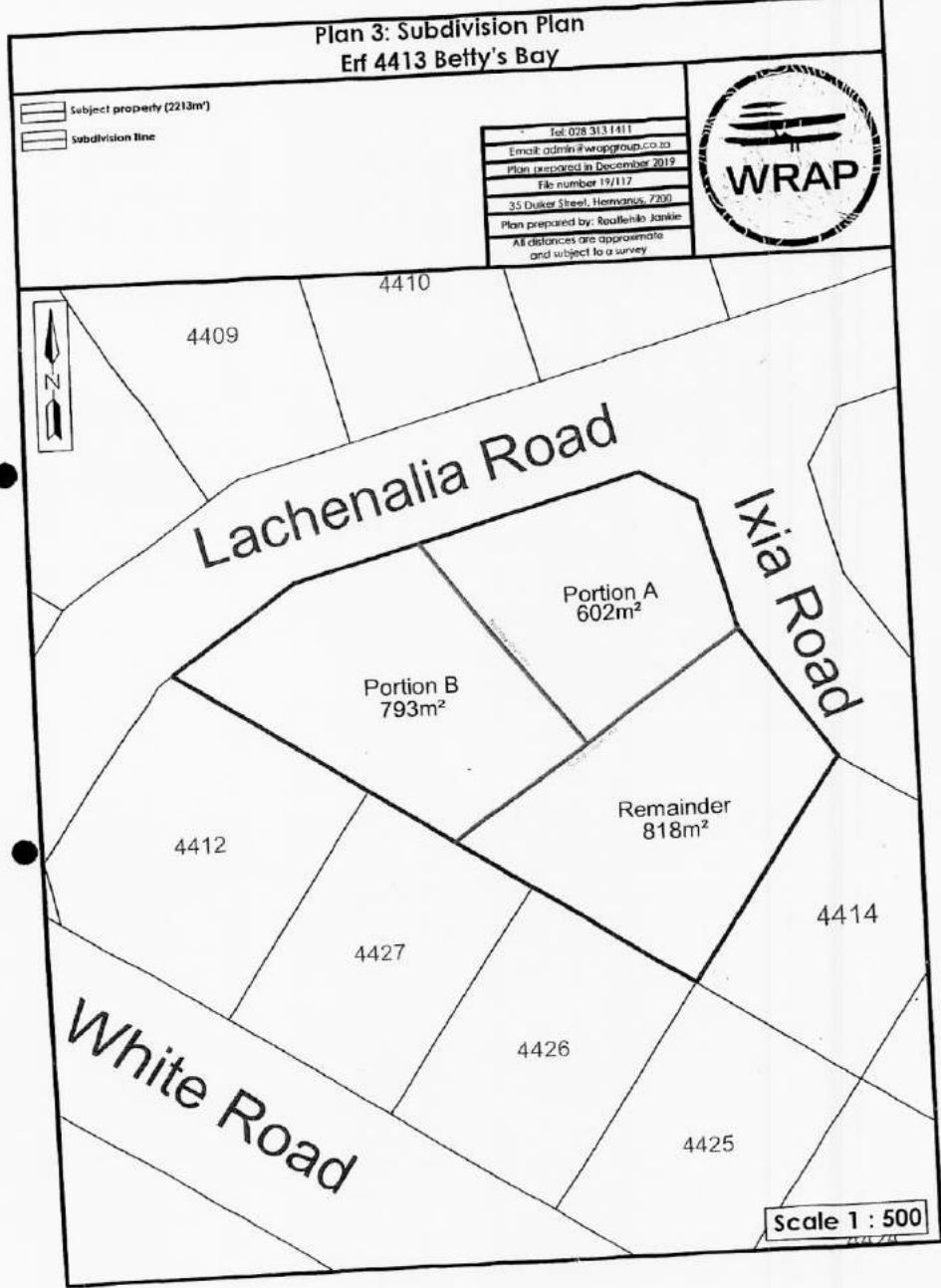


Yours faithfully



S MÜLLER

DIRECTOR : INFRASTRUCTURE AND PLANNING



**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
REZONING, SUBDIVISION & DEVIATION FROM THE OVERSTRAND
MUNICIPAL GROWTH MANAGEMENT STRATEGY, 2010: ERF 4413, BETTY'S
BAY**

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

Conditions:

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

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

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

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

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

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

Freehold erven:


| | | | |
|---------------------------------|-----------------|---|---------------------|
| Water | R 23 957.00 x 2 | = | R 47 914.00 |
| Sewerage | R 16 153.00 x 2 | = | R 32 306.00 |
| Roads | R 7 243.00 x 2 | = | R 14 486.00 |
| Stormwater | R 8 357.00 x 2 | = | R 16 714.00 |
| Solid Waste | R 1 448.00 x 2 | = | <u>R 2 896.00</u> |
| TOTAL (inclusive of VAT) | | = | R 114 316.00 |

Note:

- 1.3 The above figures are estimates**
1.4 The above figures do not include evaluation/investigation levies and connection fees

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2. that each property should have their own water connection and conservancy tanks as per Municipal specification;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that stormwater be allowed to discharge through the proposed Erven, Betty's Bay, unobstructed;
6. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE