



munisipaliteit umasipala municipality

to be the best together

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Olwethu Yonke

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044 501 3317

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Our ref: 18/5627/PB

20 June 2024

Sir/Madam

REMOVAL OF RESTRICTIVE CONDITION FOR ERF 5627, PLETTENBERG BAY, BITOU MUNICIPALITY

Applicant: Beacon Survey

Notice is hereby given that Bitou Municipality has received an application in terms of section 15(2) of the Bitou By-law on Municipal Land Use Planning 2015; the application details are as follows:

1. Application is made in terms of Section 15(2)(f) of the Bitou Municipality: Land Use Planning By-Law (the 'Planning By-law') for the removal of restrictive condition E(a) which stipulates that Erf 5627 "shall not be subdivided".

A copy of the application and full supporting documentation is available for viewing on the Municipal website. Enquiries regarding the application may also be directed to the Municipal Land Use Management official Olwethu Yonke at 044 501 3317/ townplanning@plett.gov.za.

Any comments or objections to the application, with reasons therefore, must be lodged in writing to the abovementioned official by means of email (townplanning@plett.gov.za) or hand-delivery within 30 days of the date of registration of this notice, and must include the name and contact details of the person concerned. Comments/ objections received after 30 days may be disregarded. A person who cannot write may visit the Land Use Management office, where a staff member will assist to transcribe their comments.

The personal information of anyone who submits comment / objection might be made available as part of processing the application and might be used during formal application processing.

Regards
Chris Schliemann
Manager: Land Use and Environmental Management

Beacon Survey

Professional Land Surveyors
and Sectional Title Practitioners

103 Longships Drive P.O. Box 350 Plettenberg Bay
Tel: (044) 533 2230 Fax: (044) 533 0264

e-mail: beaconsurvey@mweb.co.za

14 March 2024

Ref: P5627BM-1

The Municipal Manager
Bitou Municipality

Att: Ms A. Sanchez

By AFLA Portal

**PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS OF TITLE - ERF 5627
PLETTENBERG BAY**

Herewith please find the following documents relating to the above:

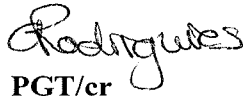
- 1) Motivation Report, appendix and annexures A - D.
- 2) Application Form.
- 3) Copies of Special Powers of Attorney.

We hereby make application in terms of the Planning By-Law for the proposed removal of restrictive conditions of title.

Yours faithfully

Beacon Survey

Per:



PGT/cr



to be the best together

Private Bag X1002 Plettenberg Bay 6600
Tel +27 (0)44 501 3000 Fax +27(0)44 533 3485

LAND USE PLANNING APPLICATION FORM

BITOU MUNICIPALITY: LAND USE PLANNING BY-LAW

KINDLY NOTE: Please complete this form using BLOCK capitals and ticking the appropriate boxes.

PART A: APPLICANT DETAILS

First name(s)	PHILIP GEORGE		
Surname	TEGGIN		
South African Council for Planners (SACPLAN) registration number (if applicable)			
Company name (if applicable)	BEACON SURVEY		
Postal Address	PO BOX 350		
	PLETTENBERG BAY	Postal Code	6600
E-mail	beaconsurvey@mweb.co.za		
Tel		Cell 072 767 6974	044 - 5332230

PART B: REGISTERED OWNER(S) DETAILS (If different from applicant)

Name of registered owner(s)	NIGEL JOHN WEBBER		
E-mail	nigel_webber@hotmail.com		
Tel		Cell 082 8086017 Mr. D. Webber	

PART C: PROPERTY DETAILS (in accordance with title deed)

Property Description (Erf No / Farm No):	5627.		
Physical/ Street Address (if available)	Longstone Drive		
Town	Plettenberg Bay		
Current Zoning	Single Residential Zone 1	Land Use	Residential.

Extent	959m ² /ha		
Applicable Zoning Scheme	Plottenberg Bay Zoning Scheme Section 7		
	LUPO Scheme Regulations : Section 8		
Are there existing buildings?	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	
Title Deed number and date	T 104893/2002.		

Are there any restrictive conditions in the title deed that prohibit the proposed use/ development?		Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>
If Yes, list such condition(s)	E(a) "shall not be subdivided".		

Are the restrictive conditions in favour of a third party(ies)?		Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>
If Yes, list the party(ies)			

Is the property bonded?		Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>
If yes, (attach proof) If no proof is d provided upon submission a copy of Bondholders Consent must be provided prior to decision being taken.			

Are there any existing unauthorized buildings and/or land use/s on the subject property(ies)?	Y <input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, is this application to legalize the building / land use?	Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>
Are there any pending court case(s) / order(s) relating to the subject property(ies)?	Y <input type="checkbox"/>	<input checked="" type="checkbox"/>	Are there any land claim(s) registered on the subject property(ies)?	Y <input type="checkbox"/>	<input checked="" type="checkbox"/>

PART D: PRE-APPLICATION CONSULTATION

Was a pre-application consultation held with the Municipality? ☒ If Yes, complete the information below and attach the minutes of the pre-application consultation.

Official's name	Mrs A. Sanchez	Date of consultation	Feb 2024.
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PART E: LAND USE PLANNING APPLICATIONS IN TERMS OF SECTION 15 (2) OF THE BITOU MUNICIPALITY : LAND USE PLANNING BY-LAW (tick applicable application/s)

Tick	Section	Type of application
<input type="checkbox"/>	2(a)	a rezoning of land;
<input type="checkbox"/>	2(b)	a permanent departure from the development parameters of the zoning scheme;
<input type="checkbox"/>	2(c)	a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;
<input type="checkbox"/>	2(d)	a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;
<input checked="" type="checkbox"/>	2(e)	a consolidation of land that is not exempted in terms of section 24;
<input checked="" type="checkbox"/>	2(f)	a removal, suspension or amendment of restrictive conditions in respect of a land unit;

	2(g)	a permission required in terms of the zoning scheme;
	2(h)	an amendment, deletion or imposition of conditions in respect of an existing approval;
	2(i)	an extension of the validity period of an approval;
	2(j)	an approval of an overlay zone as contemplated in the zoning scheme;
	2(k)	an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram;
	2(l)	a permission required in terms of a condition of approval;
	2(m)	a determination of a zoning;
	2(n)	a closure of a public place or part thereof;
	2(o)	a consent use contemplated in the zoning scheme;
	2(p)	an occasional use of land;
	2(q)	to disestablish a home owner's association;
	2(r)	to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;
	2(s)	a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.

APPLICATION AND NOTICE FEES (please note the following)

1. Application fees are determined by Council annually in terms of the approved Municipal tariffs. An invoice will be sent to the applicant after an application is confirmed to be complete.
2. Application fees that are paid to the Municipality are non-refundable. Applications will only be processed after the application fees are paid in full and proof of payment is submitted to the Municipality.
3. The applicant is liable for the cost of publishing and serving notice of an application by.
4. The Municipality may request the applicant to undertake the publication and serving of notices
5. The Municipality will be responsible to serve notices to External Commenting Authorities, if necessary.

PART F: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION FOR LAND USE PLANNING APPLICATION [section 15(2)(a) to (s) of the Bitou Municipality Land Use Planning By-Law]

Complete the following checklist and attach all the information and documentation relevant to the proposal. Failure to submit all information and documentation required will result in the application being deemed incomplete. It will not be considered complete until all required information and documentation has been submitted.

Primary Documentation

Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	Power of Attorney
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Company Resolution
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	Motivation (based on the criteria in section 65 of the Bitou Planning By-law)
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Executive Summary of the Motivation
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	Locality plan
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Site development plan or conceptual layout plan
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	Full copy of Title Deed
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	S.G. diagram / General plan extract
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Bondholders Consent

Supporting Information & Documentation (if applicable)

Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Land use plan / Zoning plan
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Consolidation plan
Y <input checked="" type="checkbox"/>	N <input checked="" type="checkbox"/>	Proposed subdivision plan
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Proof of agreement or permission for required servitude
Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Copy of any previous land development approvals (i.e. Rezoning, consent use departures)

Y	N <input checked="" type="checkbox"/>	Abutting owner's consent
Y	N <input checked="" type="checkbox"/>	Services Report or indication of all municipal services / registered servitudes
Y	N <input checked="" type="checkbox"/>	Conveyancer's certificate
Y	N <input checked="" type="checkbox"/>	Street name and numbering plan (Applicable to Subdivision Only)
Y	N <input checked="" type="checkbox"/>	1 : 50 / 1:100 Flood line determination (plan / report)
Y	N <input checked="" type="checkbox"/>	Landscaping Plan(if applicable)
Y	N <input checked="" type="checkbox"/>	Home Owners' Association consent
Y	N <input checked="" type="checkbox"/>	Proof of failure of Home owner's association
Y	N <input checked="" type="checkbox"/>	Other (Specify)

PART G: AUTHORISATION(S) OBTAINED IN TERMS OF OTHER LEGISLATION		
Y	N <input checked="" type="checkbox"/>	National Environmental Management Act, 1998 (Act 107 of 1998)
Y	N <input checked="" type="checkbox"/>	Specific Environmental Management Act(s) (SEMA) (e.g. Environmental Conservation Act, 1989 (Act 73 of 1989), National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004), National Environmental Integrated Coastal Management Act, 2008 (Act 24 of 2008), National Environmental Management: Waste Act, 2008 (Act 59 of 2008), National Water Act, 1998 (Act 36 of 1998)
Y	N <input checked="" type="checkbox"/>	National Heritage Resources Act, 1999 (Act 25 of 1999)
Y	N <input checked="" type="checkbox"/>	Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970)
Y	N <input checked="" type="checkbox"/>	Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA)
Y	N <input checked="" type="checkbox"/>	If required, has application for EIA / HIA / TIA / TIS / approval been made? If yes, attach documents / plans / proof of submission etc.
Y	N <input checked="" type="checkbox"/>	If required, do you want to follow an integrated application procedure in terms of section 44(1) of Bitou Municipality: Land Use Planning By-Law ? If yes, please attach motivation.
Y	N <input checked="" type="checkbox"/>	Other (specify)

PART H: SUBMISSION OF APPLICATION	
<p>The application together with supporting information and documentation should be electronically lodged on the AFLA PORTAL system. This AFLA PORTAL has been designed and developed by Esri South Africa to assist Bitou Municipality to diminish queues and promote faster turnaround times on land development applications.</p> <p>The AFLA system is accessible to members of the public, enabling online submission of town planning applications at Bitou Municipality using GIS.</p> <p>A profile by either the owner of agent needs to be created before an application can be lodged on the Portal. Below is a link to the AFLA Portal.</p> <p>https://maps.bitou.gov.za/aflaportal/</p> <p>Hard copies will not be accepted by the Municipality unless supporting documentation and information may only be provided upon request by the Municipality.</p>	

SECTION I: DECLARATION

I hereby confirm the following :

1. That the information contained in this application form and accompanying documentation is complete and correct.
2. I'm aware that it is an offense in terms of section 86(1) to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.
3. I am properly authorized to make this application on behalf of the owner and (where applicable) that a copy of the relevant power of attorney or consent are attached hereto.
4. Where an agent is appointed to submit this application on the owner's behalf, it is accepted that correspondence from and notifications by the Municipality in terms of the by-law will be sent only to the agent and that the owner will regularly consult with the agent in this regard.
5. That this submission includes all necessary land use planning applications required, by Bitou Municipality: Land Use Planning By-Law to enable the development proposed in terms of the Bitou Municipality: Land Use Planning Bylaw (2015) as amended.
6. I am aware that development charges to the Municipality in respect of the provision and installation of external engineering services may be payable by the owner as a result of the proposed development.
7. I am aware that by lodging an application, the information in the application and obtained during the process, may be made available to the public.

SUBMISSION REQUIREMENTS

Y	N	Soft copy of the application submitted on the AFLA PORTAL (see Part H)
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Applicant's signature:



Date:

14/03/2024

Full name:

PHILIP GEORGE TEGGINS

Professional capacity:

PLS III S LAND SURVEYOR

SPECIAL POWER OF ATTORNEY

I, the undersigned,

NIGEL JOHN WEBBER

duly authorised, do hereby nominate, constitute and appoint **PHILIP GEORGE TEGGIN** of the firm **BEACON SURVEY**, Land surveyors, with power of substitution to be my lawful agent, in my name, place and stead to make application, as described below, to the relevant authorities and to sign all application forms, documents and other papers as may be required in such application.

DESCRIPTION OF PROPERTY:

ERF 5626 PLETTENBERG BAY

NATURE OF APPLICATION:

PROPOSED AMENDMENT OF COMMON BOUNDARIES WITH ERF 5627 PLETTENBERG BAY

SIGNED AT London, England

THIS 30th DAY OF May 2023.

N. J. Webber

OWNER/AUTHORISED AGENT

WITNESSES

1. Heather Webber
2.

SPECIAL POWER OF ATTORNEY

I, the undersigned,

NIGEL JAMES WEBBER

duly authorised, do hereby nominate, constitute and appoint **PHILIP GEORGE TEGGIN** of the firm **BEACON SURVEY**, Land surveyors, with power of substitution to be my lawful agent, in my name, place and stead to make application, as described below, to the relevant authorities and to sign all application forms, documents and other papers as may be required in such application.

DESCRIPTION OF PROPERTY:

ERF 5627 PLETTENBERG BAY

NATURE OF APPLICATION:

PROPOSED SUBDIVISION AND AMENDMENT OF COMMON BOUNDARIES
WITH ERF 5626 PLETTENBERG BAY

SIGNED AT LONDON, ENGLAND

THIS 30th DAY OF MAY 2023.

N. James Webber

OWNER/AUTHORISED AGENT

WITNESSES

1. Heather Webber
2.

MOTIVATION REPORT

ERF 5627

REMOVAL OF RESTRICTIVE CONDITION OF TITLE

**Prepared on behalf of
BEACON SURVEY
MARCH 2024**

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APPENDIX: THE DECISION-MAKING CRITERIA

ANNEXURE A: LOCALITY PLAN

ANNEXURE B: SURVEYOR GENERAL DIAGRAM

ANNEXURE C: TITLE DEED

ANNEXURE D: PROPOSED SUBDIVISION PLAN NO. P5627, DATED MAY 2023

1. INTRODUCTION

- 1.1. Erf 5627, Plettenberg Bay is situated on Longstone Drive as can be seen in Figure 1 below. A locality plan is attached as Annexure 'A'.



FIGURE 1: LOCALITY PLAN

- 1.2. Erf 5627 is 927 square meters in extent and zoned 'Single Residential Zone I' in terms of the Bitou Municipality: Zoning Scheme By-law, 2023.
- 1.3. An extract of the S-G diagram for Erf 5627 is shown in Figure 2 below and attached as Annexure 'B'.

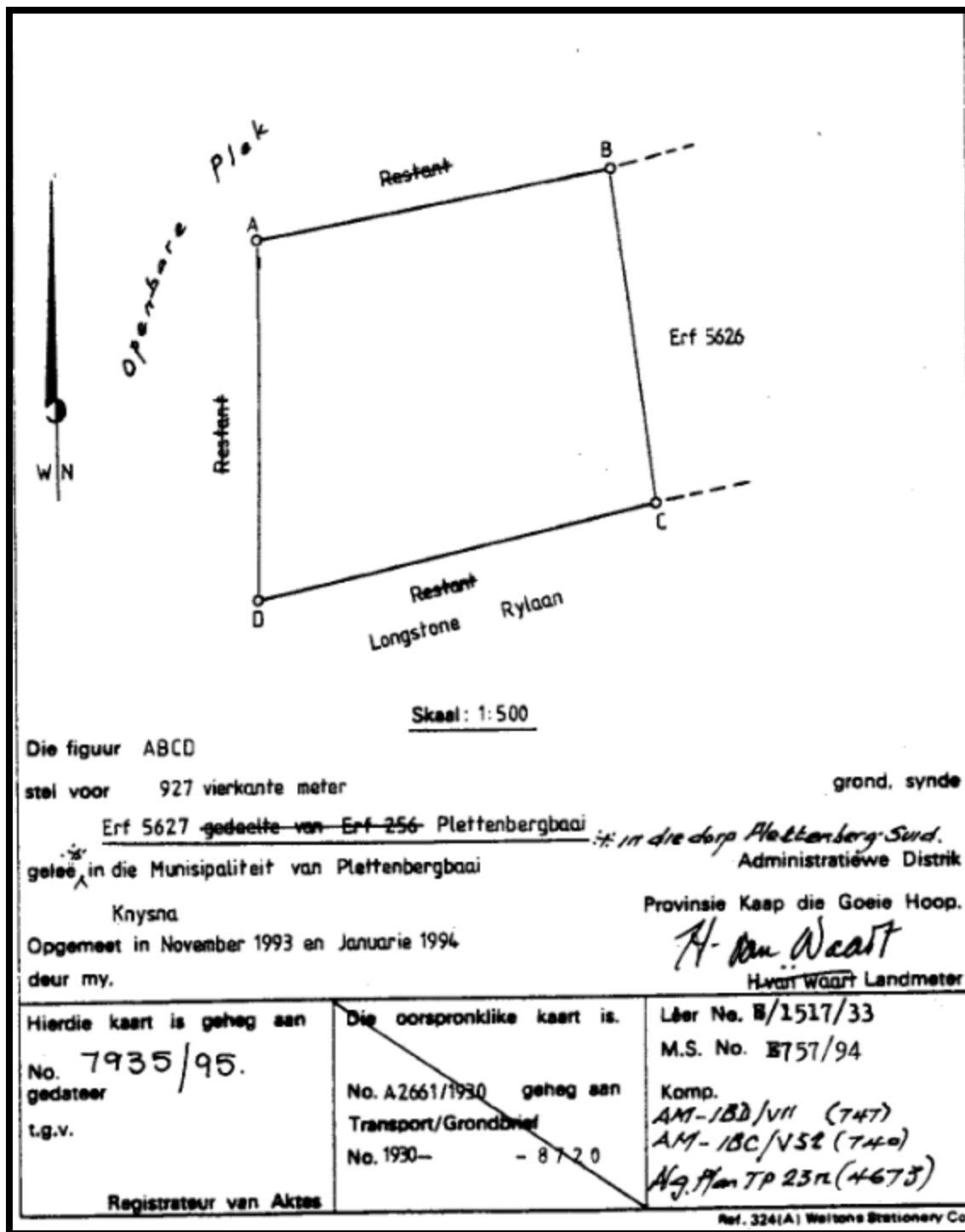


FIGURE 2: EXTRACT OF S-G DIAGRAM

- 1.4. Certain structures erected by the owners of Erf 5626 encroach into the neighbouring Erf 5627 (the subject property). To rectify the above, the respective owners have reached an agreement to amend the common boundaries between the two properties. A portion ('Portion A') measuring approximately 28 square meters in extent shall be subdivided from Erf 5627 and consolidated with Erf 5626.
- 1.5. Section 24 of the Planning By-Law stipulates that a minor amendment of common boundaries is exempt from obtaining Municipal approval if the resulting change in the area of any land unit does not exceed 10 percent. The amendment of common boundaries of Erven 5627 and 5626 as proposed does not require Municipal approval.
- 1.6. However, the title deed for Erf 5627 prohibits the subdivision of the property. Consequently, an application is submitted to remove the restrictive condition of title, thus enabling the proposed subdivision of Erf 5627.

2. TITLE DEED

- 2.1. The title deed for Erf 5627 is attached as Annexure 'C'.
- 2.2. The only restrictive condition of title relevant to the current application is restrictive condition E(a) which stipulates that Erf 5627 *"shall not be subdivided"*.

3. THE APPLICATION

- 3.1. Application is made in terms of Section 15(2)(f) of the Bitou Municipality: Land Use Planning By-Law (the 'Planning By-law') for the removal of restrictive condition E(a) which stipulates that Erf 5627 *"shall not be subdivided"*.

4. THE DECISION MAKING CRITERIA

- 4.1. Certain decision-making criteria prescribed in terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)('SPLUMA') and the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)('LUPA') have to be applied by the Municipality during consideration of any application for land development¹. For the sake of completeness these criteria are briefly explained in the Appendix to this Report.
- 4.2. In addition to the above, the Planning By-Law stipulates that when the Municipality considers the removal of a restrictive condition the following aspects must also be considered²:
- 4.2.1. the financial or other value of the rights in terms of the restrictive condition enjoyed by a person as the owner of a dominant tenement;
 - 4.2.2. the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
 - 4.2.3. the personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed;
 - 4.2.4. the social benefit of the restrictive condition remaining in place in its existing form;
 - 4.2.5. the social benefit of the removal of the restrictive condition; and

¹ "land development" means "... the change in the utilization of land ... or any deviation from the land use or utilization permitted in terms of an applicable zoning scheme" [Section 1(1) of 'SPLUMA']

² Section 33(5)(a-f) of the 'Planning By-Law'

- 4.2.6. whether the removal of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

5. THE PROPOSAL

- 5.1. As mentioned above, the respective owners of Erven 5627 and 5626 have reached an agreement to amend their common boundaries in order to address an encroachment. Due to the amendment of common boundaries being considered minor, as the change constitutes less than 10% of either property, it is exempt from municipal approval. Currently, the only restriction on the amendment of the common boundaries is that the title deed for Erf 5627 prohibits the subdivision of the property. Hence, application is made for the removal of the 'no subdivision' restrictive condition of title.
- 5.2. The portion of Erf 5627, measuring approximately 28 square meters, which is to be subdivided and consolidated with the neighboring Erf 5626, is delineated in Figure 3 below. The proposed amendment of common boundaries plan no. P5627/SUB, dated May 2023 is attached as Annexure 'D'.

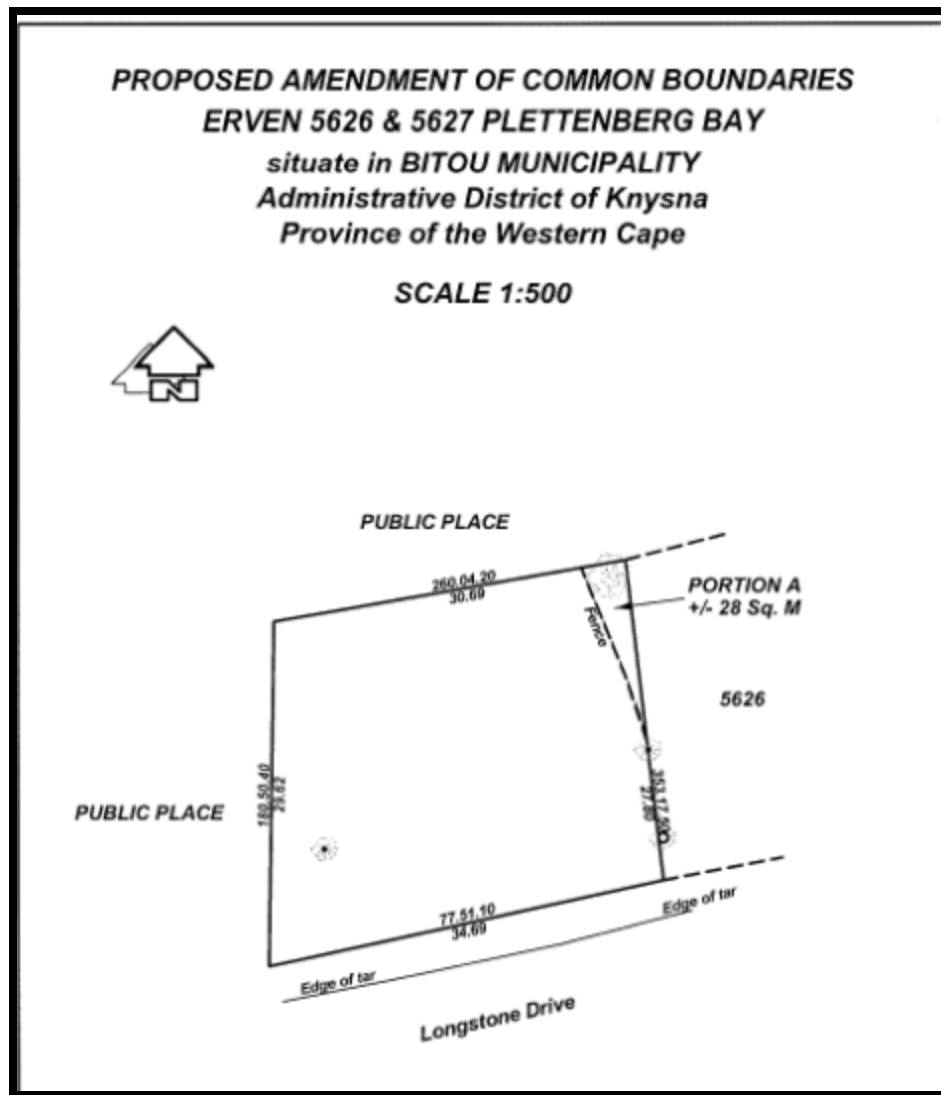


FIGURE 3: PROPOSED AMENDMENT OF COMMON BOUNDARIES

5.3. The removal of the 'no-subdivision' restrictive condition of title is therefore solely to amend the common boundaries to address encroachments of the neighbouring property.

6. IMPACT ON NEIGHBOURS:

6.1. As depicted in Figure 4 below, Erf 5627 does not directly abut any residential dwelling, with the sole exception of Erf 5626, with which the

common boundaries are being amended. Consequently, the removal of the 'no subdivision' restrictive condition of title to allow the amendment of common boundaries will not have any impact on directly abutting neighbours, such as an impact on views or access to sunlight. Due to the removal being solely to facilitate the amendment of common boundaries, it will not adversely impact the character of the area.



FIGURE 4: AERIAL LOCALITY PLAN

7. SERVICES AND TRAFFIC

- 7.1. The removal of the 'no subdivision' restrictive condition will not have any impact on services or traffic.
- 7.2. The removal of the 'no subdivision' restrictive condition is only required to allow the minor amendment of the common boundaries. In any event, for

any subdivision to occur other than what is exempt from municipal approval, a land use application would be required where such impacts would then be evaluated.

8. LOCALITY FACTORS

8.1. As seen in Figure 5 below, which is an extract from the Bitou Local Spatial Development Framework, 2022, Erf 5627 is situated in an 'urban' area and is situated within the 'urban edge'. The immediate area is predominately single residential in nature.

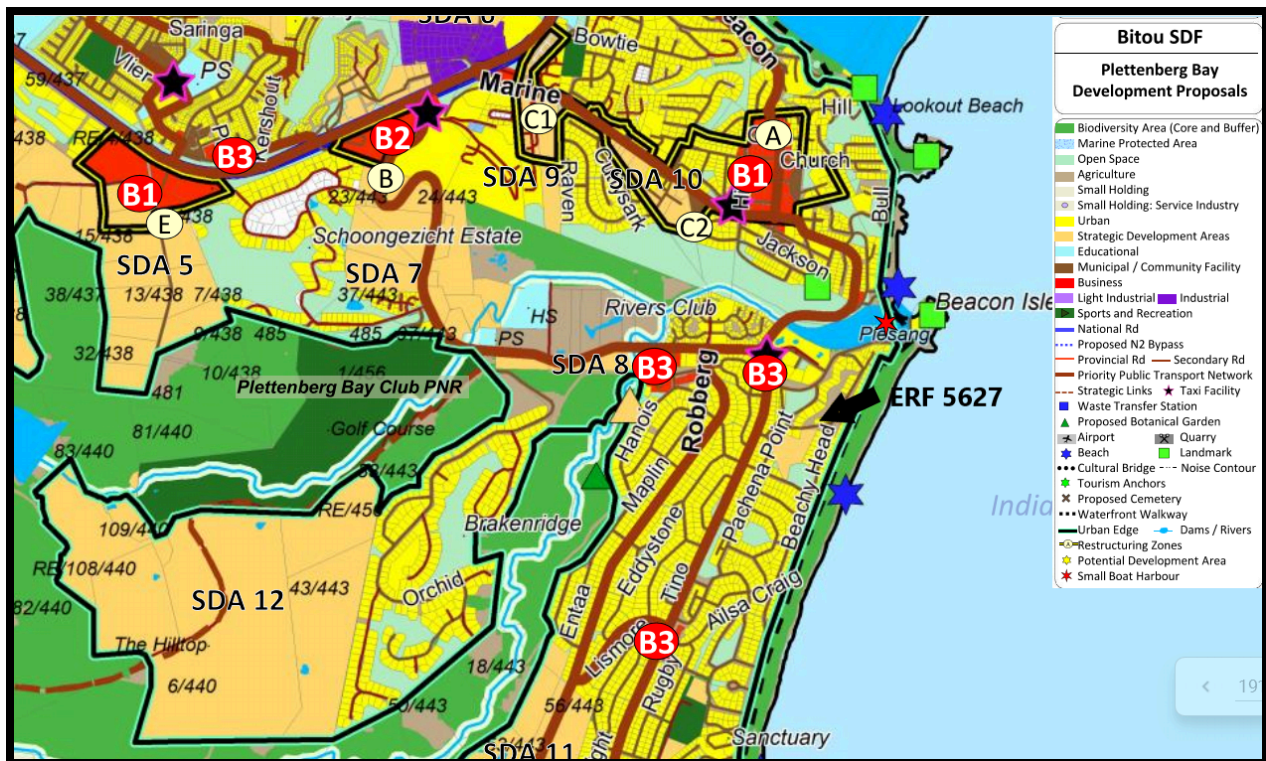


FIGURE 5: EXTRACT OF BITOU SDF SHOWING PLETTENBERG BAY'S DEVELOPMENT PROPOSALS

9. SITE-SPECIFIC CONSIDERATIONS AND OTHER CONTEXTUAL INFORMANTS

- 9.1. Erf 5627 is not situated in an ecological corridor or an immediate area with high biodiversity importance³. Erf 5627 does not have any cultural⁴ or heritage⁵ features of significance. The property is not located in a risk area that is subject to factors such as flooding, storm surges, fire hazards and is situated more than 100m from the HWM ⁶. The property is suitable for development⁷. .
- 9.2. The proposed removal of the restrictive 'no subdivision' condition does not trigger any listed environmental activities⁸.

10. SPATIAL DEVELOPMENT FRAMEWORK AND INTEGRATED DEVELOPMENT PLAN

- 10.1. It will serve little purpose for aspects such as compliance with the Spatial Development Framework, provision of services, densification, and so forth to be considered and discussed in further detail due to the following:
- 10.1.1. The proposal for the removal of the 'no subdivision' restrictive condition of title will presently only allow for a minor amendment of common boundaries;
- 10.1.2. The proposal relates to an existing serviced erf within an existing developed township; and

³ Natural habitat, ecological corridors and areas with high biodiversity importance 'LUPA' s.59(2)(b)(i)

⁴ Landscapes or other natural features of cultural importance 'LUPA' s.59(2)(b)(iii)

⁵ Heritage Resources 'LUPA' s.59(2)(b)(ii)

⁶ Factors such as sea-level rise, storm surges, flooding, fire hazards and geological formations 'LUPA' s.59(2)(e)

⁷ Areas unsuitable for development, including flood plains, steep slopes, wetlands and areas with a high water table 'LUPA' S59(2)(b)(iii)

⁸ Ensure compliance with environmental legislation (SPLUMA S42(2); By-law S5(1)(q))

- 10.1.3. there will be no change in use, zoning, or density.
- 10.2. The removal of the 'no subdivision' restrictive condition is only required to allow the minor amendment of the common boundary. For any other subdivision to occur a land use application would be required where such impacts would then be evaluated.
- 10.3. The current application for the removal of the 'no subdivision' restrictive condition has minimal implications for the specific policies and strategies outlined in the SDF. Likewise, the regional, provincial, and national SDFs do not provide detailed guidance on removing the restrictive 'no subdivision' condition to allow an amendment of common boundaries.
- 10.4. Nevertheless, the only applicability of these strategic documents, is that they iterate the principles of development within the urban edge and thereby the efficient use of resources.

11. REMOVAL OF THE 'NO SUBDIVISION' RESTRICTIVE CONDITION OF TITLE

- 11.1. The Planning By-Law stipulates that when the Municipality considers the removal of a restrictive condition the following aspects must also be considered⁹:
 - 11.1.1. the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
 - 11.1.1.1. The restriction on subdivision does not hold any direct financial value.

⁹ Section 33(5)(a-f) of the 'Planning By-Law'

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

11.2.1. Arguably, the only relevant personal benefit that would accrue to the holder of the rights is that the owners of Plettenberg Bay South Township could have some certainty regarding minimum property sizes and the prevention of densification through subdivision (should the 'one dwelling' restriction also be removed).

11.2.2. However, the current application for the removal of the 'no subdivision' restrictive condition is to allow the amendment of common boundaries to address encroachments. Any subdivision of the property not exempt from the municipal land-use application process would, in any event, require a land-use application in which impacts such as property sizes and densification would be evaluated.

11.3. the personal benefits that will accrue to the person seeking the removal of the restrictive condition if it is removed:

11.3.1. The personal benefits that will accrue to the owner of Erf 5627 is that they would be able to amend their common boundary with Erf 5626 in order to resolve encroachments on their property.

11.4. the social benefit of the restrictive condition remaining in place in its existing form and/or the social benefit of its removal:

11.4.1. The social benefit stemming from the 'no subdivision' restrictive condition is the preservation of the area's character and sense of place by maintaining a minimum erf size. Even if a subdivision takes place, the only way for an additional dwelling unit to be constructed on the subdivided portion is to remove the 'one dwelling' restrictive condition as well.

11.4.2. Furthermore, should a subdivision occur for purposes other than the minor amendment of common boundaries, it will, in any event, necessitate another land-use application in which potential impacts will be evaluated.

- 11.4.3. It is desirable for the boundaries to be amended to resolve the encroachments and it will have no impact on neighbouring properties or the area in general.
- 11.5. whether the removal of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights:
 - 11.5.1. The application only relates to the removal of the 'no subdivision' restrictive condition, as all other conditions will remain in place.

12. DEVELOPMENT PRINCIPLES

- 12.1. Notwithstanding the categorisation of land use principles as explained in the Appendix to this report all of them apply to all aspects of spatial planning, land development and land use management. Decisions concerning land use development have to be explicitly related to the extent to which the proposal meets the objectives set out in these principles.
- 12.2. However, it is necessary for the principles to be considered holistically and at the appropriate planning level and geographic scale. This is so because the interpretation and application of the principles are context specific as the conditions upon which the principles have to be applied are not uniform throughout the municipal area.
- 12.3. In addition (and in particular) a mechanical approach whereby the land use principles are applied on a one-by-one basis without regard for their overall intention and spirit should be avoided. Such a 'one-by-one' methodology is contrary to the very purpose of a normative approach to planning (namely to move away from a controlling to an interpretive approach).

- 12.4. The reality is that no single development project/proposal can on its own achieve the overall objective envisaged by the introduction of the land use principles. Different development projects/proposals will have/achieved different objectives (compare for example a new school with a new shopping center), while not all the (components of the) various land use principles will necessarily apply in all instances. It is the responsibility of the Municipality as the 'planning authority' to ensure that the planning for and the actual use of land in the municipal area as a whole would comply with and achieve the desirable outcomes envisaged by the introduction of the land use principles.
- 12.5. In view of the above the land use principles do not prescribe 'yes-or-no' outcomes. In essence, a land development application has to be assessed in terms of its potential to further the holistic goals underpinning the principles.
- 12.6. Having said the above, the only principles that could be applicable in the current matter is:
- 12.6.1. The principle of spatial sustainability insofar as it relates to:
- 12.6.1.1. *"Promoting land development that is within the fiscal, institutional and administrative means of the Republic";*
- 12.6.1.2. *"Consider(ing) all current and future costs to all parties for the provision of infrastructure and social services in land developments";*
- 12.6.1.3. *"Promot(ing) land development in locations that are sustainable and limit urban sprawl"* and
- 12.6.1.4. *"(which will) result in communities that are viable".*

12.6.2. The principle of efficiency insofar as it relates to:

12.6.2.1. *“Land development (that) optimizes the use of existing resources and infrastructure”.*

12.6.3. The removal of the 'no subdivision' restrictive condition of title to allow the amendment of the boundaries will not impose any additional services, or any further development even though the property is situated within the urban edge and within a developed area.

13. CONCLUSION

13.1. The removal of the 'no subdivision' restrictive condition of title is only to allow the minor amendment of the common boundaries to address encroachments from the neighboring owner onto Erf 5627 (the subject property). For any other subdivision to occur a land use application would be required where impacts such as traffic, services, character of the area, and so forth would then be evaluated. The removal of the 'no subdivision' restrictive condition will in any event not lead to densification without a further application for the removal of the 'one dwelling' restrictive condition.

March 2024

APPENDIX

LAND USE PLANNING PRINCIPLES

THE DECISION-MAKING CRITERIA

The Land Use Planning and Land Use Management Act, 2013 (Act 16 of 2013) ('SPLUMA') came into operation on 1 July 2015 and has been implemented by the Bitou Municipality since 1 December 2015.

With the introduction of 'SPLUMA' legislation in the planning sphere became normatively-based. This implies that the law introduced five substantive principles¹ that must guide all aspects of land development, including spatial planning and decision-making². These land use principles are schematically depicted in Figure 1.

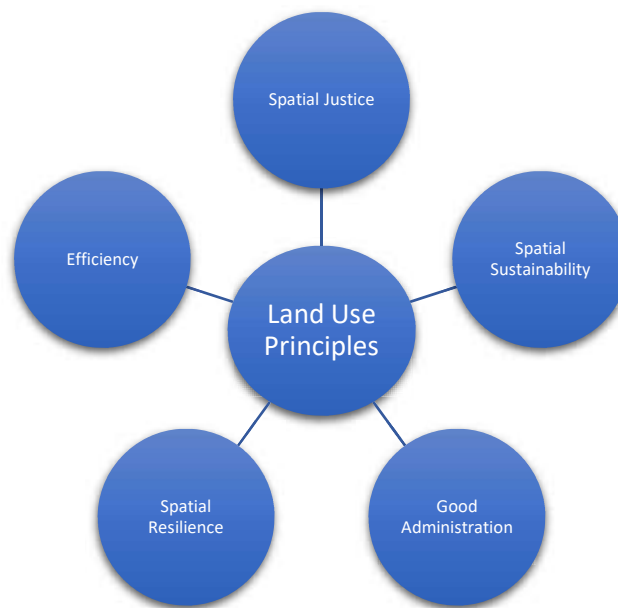


FIGURE 1

Normative legislation calls for a planning system which places the emphasis on considered judgements and the discretion of decision makers, as opposed to the application of standardised rules and regulations³.

The various land use principles been 'unpacked' in 'SPLUMA' to provide some clarity of what is required⁴.

¹ Section 7 of 'SPLUMA'.

² Section 6 (1) of 'SPLUMA'.

³ Paragraph 2.1.3.1 of the Green Paper on Development and Planning (1999).

⁴ Section 7 (a) – (e) of 'SPLUMA'.

The Provincial Government also promulgated its own Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)('LUPA'), which further entrenched⁵ and expanded⁶ upon these principles.

The overall objective of the principles is to directly influence planning decisions and to achieve planning outcomes that⁷:

- (a) Restructure spatially inefficient settlements;
- (b) Promote the sustainable use of land resources;
- (c) Channel resources to areas of greatest need and development potential, thereby redressing the inequitable historical treatment of marginalized areas;
- (d) Take into account the fiscal, institutional and administrative capacities of role players, the needs of the communities and the environment;
- (e) Support an equitable protection of rights to and in land.

In addition to the land use principles, both 'SPLUMA'⁸ and 'LUPA'⁹ prescribe certain other factors that equally are to be taken into account by the Municipality when applications for land development are considered. Lastly, the Planning By-Law itself also introduced certain additional criteria that have to be considered¹⁰.

Figure 2 illustrates schematically how the various criteria and factors interact with each other and impact on an application for land development.

Notwithstanding the categorisation of the land use principles, they all apply to all aspects of spatial planning, land development and land use management¹¹. Decisions concerning land use and development have to be explicitly related to the extent to which the proposals meet the objectives set out in the principles¹². It is of particular importance to ensure that the land use principles are not applied on a one-by-one basis without regard for their overall intention and spirit¹³.

⁵ Section 58 of 'LUPA'.

⁶ Section 59 (1) – 59 (5) of 'LUPA'.

⁷ Paragraph 2.1 of the White Paper on Spatial Planning and Land Use Management (July 2001).

⁸ Section 42 (1) – 42 (2) of 'SPLUMA'.

⁹ Section 49 of 'LUPA'.

¹⁰ Section 65 (1) of the Planning By-Law.

¹¹ Section 6(2) of 'SPLUMA'.

¹² Paragraph 2.2 of the White Paper on Spatial Planning and Land Use Management (July 2001).

¹³ Paragraph 2.2.2 of the Green Paper on Development and Planning (1999).

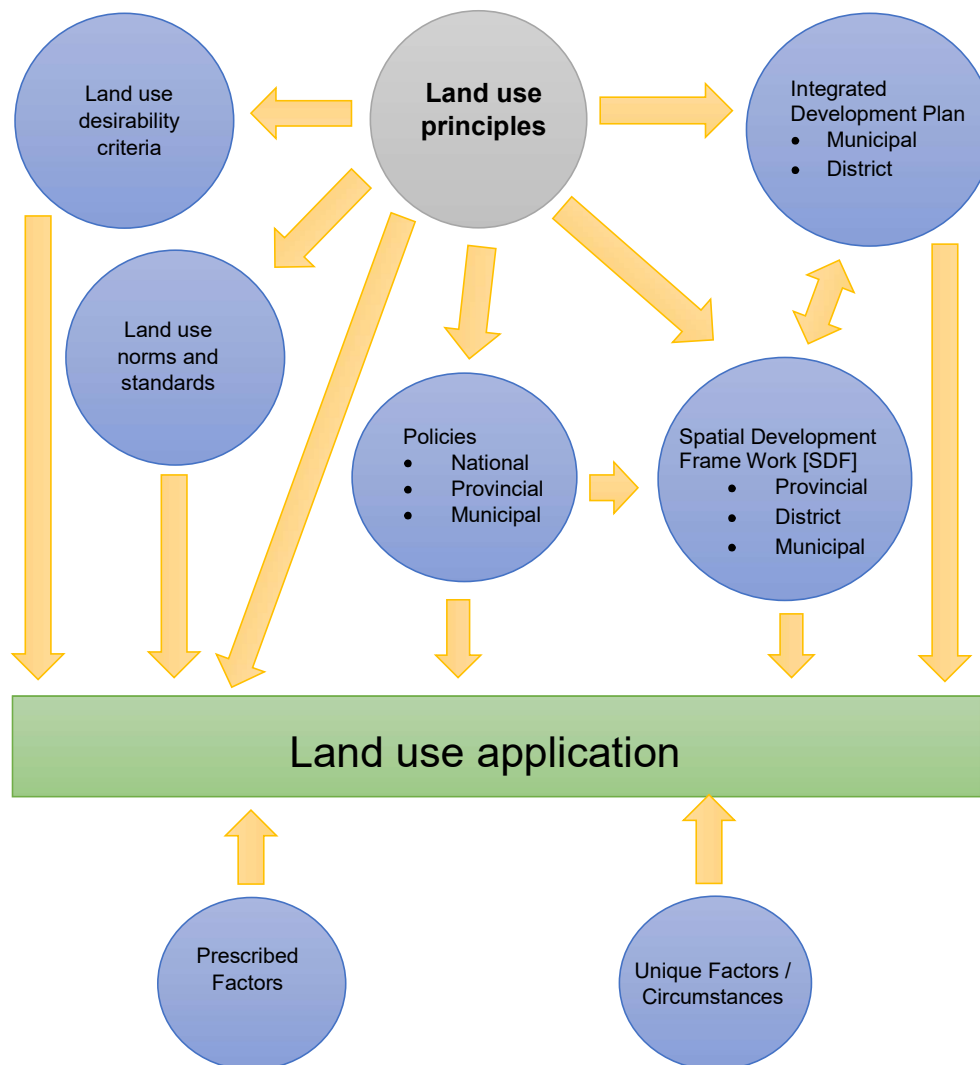


FIGURE 2

The principles do not prescribe ‘yes-or-no’ outcomes, and the interpretation and application thereof is context specific as the conditions upon which the principles have to be applied are not uniform throughout the municipal area¹⁴.

Lastly, if there is a potential conflict between more than one principle it is up to the decision-maker which one to favour. That decision however has to be clearly argued and reasoned, identifying why it is in that the particular context requires the favouring of one principle over the other¹⁵.

¹⁴ Paragraph 2.2 of the White Paper on Spatial Planning and Land Use Management (July 2001).

¹⁵ Paragraph 2.2 of the White Paper on Spatial Planning and Land Use Management (July 2001).

AERIAL PHOTOGRAPHY PLAN
ERF 5626 & 5627 PLETTENBERG BAY
situate in BITOU MUNICIPALITY
Administrative District of Knysna
Province of the Western Cape



SCALE 1:2500



Notes:

1. Cadastral information from Surveyor-General's GIS.

Beacon Survey

Professional Land Surveyors
and Sectional Title Practitioners

103 Longships Drive P.O.Box 350 Plettenberg Bay

Tel: (044) 533 2230 Fax: (044) 533 0264

e-mail: beaconsurvey@mw eb.co.za

Date: August 2023

PLAN NO. P5626&5627/LOCIM

AERIAL PHOTOGRAPHY PLAN
ERF 5626 & 5627 PLETTENBERG BAY
situate in BITOU MUNICIPALITY
Administrative District of Knysna
Province of the Western Cape



SCALE 1:2500



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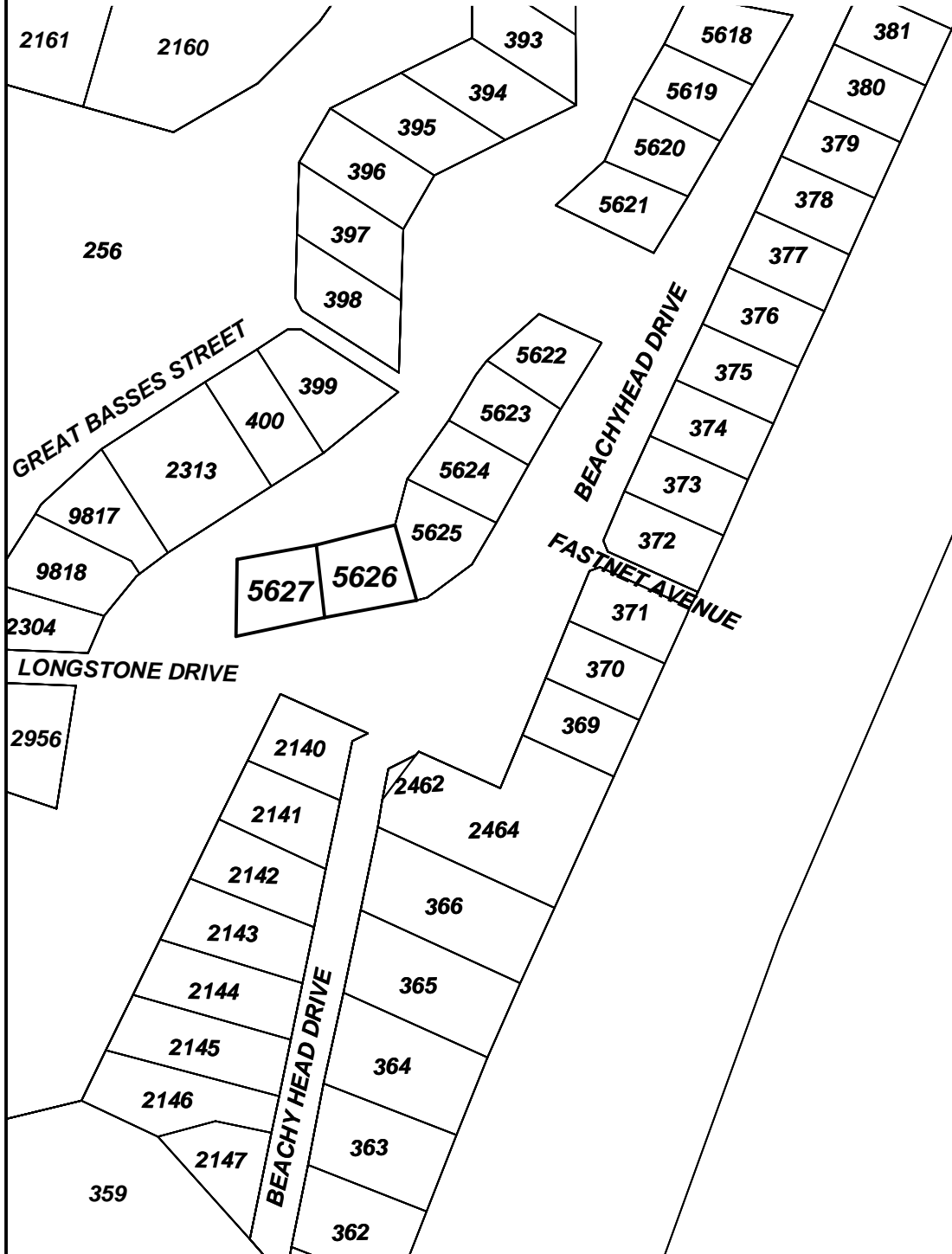
Date: August 2023

PLAN NO. P5626&5627/LOCIM

LOCALITY PLAN
ERF 5626 & 5627 PLETTENBERG BAY
situate in BITOU MUNICIPALITY
Administrative District of Knysna
Province of the Western Cape



SCALE 1:2500



Notes:

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103 Longships Drive P.O.Box 350 Plettenberg Bay

Tel: (044) 533 2230 Fax: (044) 533 0264

e-mail: beaconsurvey@mweb.co.za

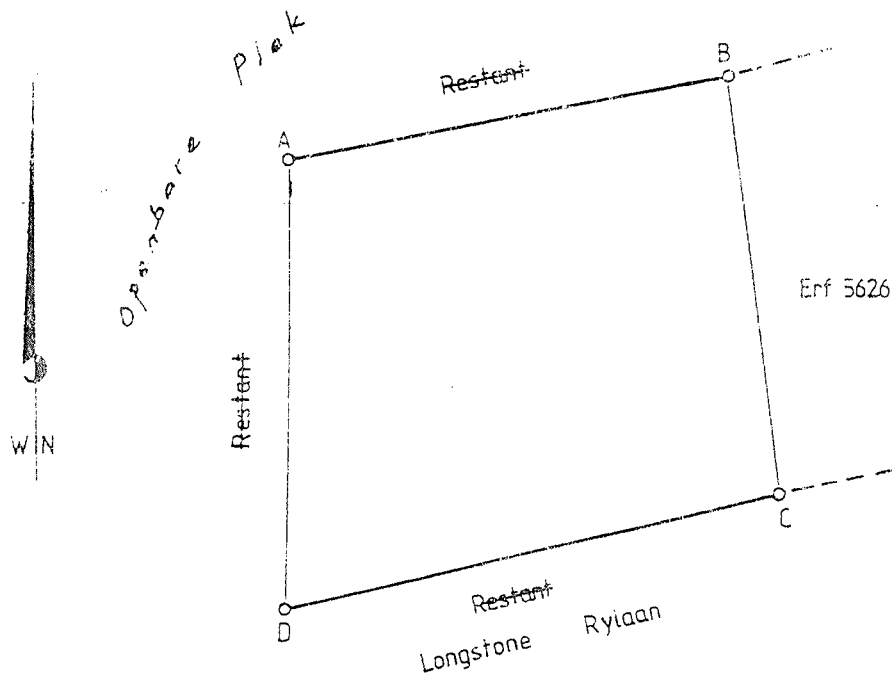
Date: August 2023

PLAN NO. P5626&5627/LOC

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CD	34,69	77 51 10	C	- 4 621,90	+ 676,89		
DA	29,62	180 50 40	D	- 4 587,99	+ 684,19		
		24AB8	⊕	- 4 826,09	+ 420,54		
		25AB8	⊕	- 4 714,28	+ 608,43		

Bakens

ABCD 12mm ysterpen



Skaal: 1:500

Die figuur ABCD

stel voor 927 vierkante meter

grond, synde

Erf 5627 gedeelte van Erf 256 Plettenbergbaai

geleë in die Munisipaliteit van Plettenbergbaai

in die dorp Plettenberg-Suid.
Administratiewe Distrik

Knysna

Provinsie Kaap die Goeie Hoop

Opgemeet in November 1993 en Januarie 1994

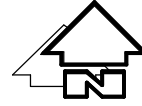
deur my.

H. van Waart

H. van Waart Landmeter

Hierdie kaart is geheg aan	Die oorspronklike kaart is.	Lêer No. S/1517/33
No. gedateer	No. A2661/1930 geheg aan	M.S. No. E757/94
t.g.v.	Transport/Grondboek	Komp.
	No. 1930- - 8720	AM-1BD/VII (747)
		AM-1BC/V52 (740)
		A/g. Plan TP 23n (4673)
Registrateur van Aktes		

AERIAL PHOTOGRAPHY CONTOUR PLAN
ERF 5626 & 5627 PLETTENBERG BAY
situate in BITOU MUNICIPALITY
Administrative District of Knysna
Province of the Western Cape



SCALE 1:2500



Notes:

1. Cadastral information from Surveyor-General's GIS.
2. Contour intervals = 2m intervals.

Beacon Survey

Professional Land Surveyors
and Sectional Title Practitioners

103 Longships Drive P.O.Box 350 Plettenberg Bay

Tel: (044) 533 2230 Fax: (044) 533 0264

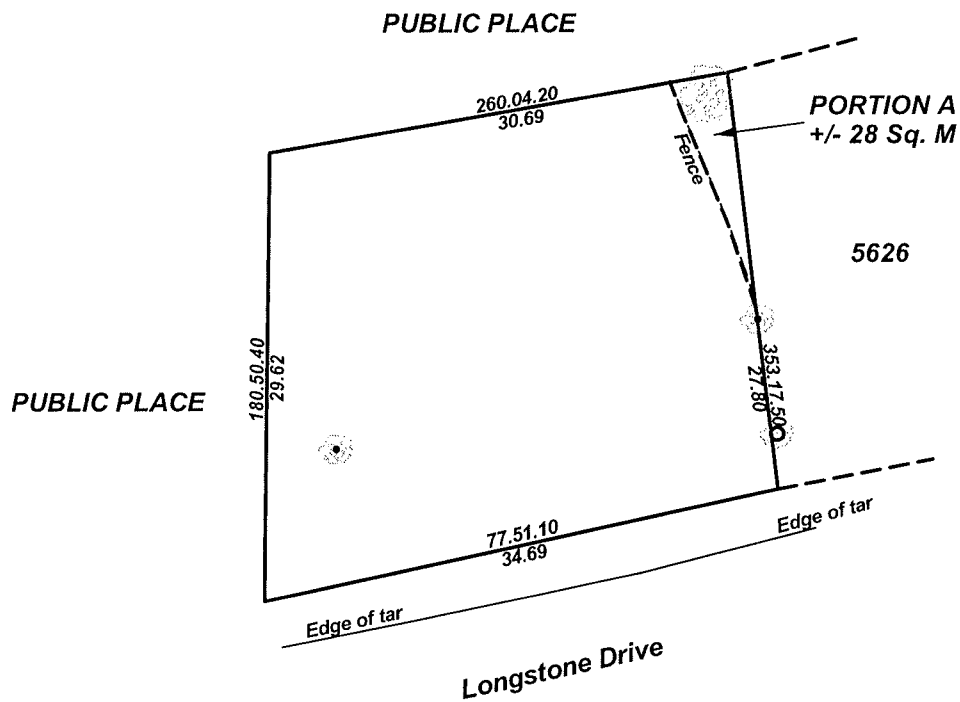
e-mail: beaconsurvey@mw eb.co.za

Date: August 2023

PLAN NO. P5626&5627/LOCIMCP

**PROPOSED AMENDMENT OF COMMON BOUNDARIES
ERVEN 5626 & 5627 PLETTENBERG BAY**
*situate in BITOU MUNICIPALITY
Administrative District of Knysna
Province of the Western Cape*

SCALE 1:500



Notes:

1. Cadastral information from Surveyor-General's GIS.
2. Portion A to be consolidated with Erf 5626.

Beacon Survey

Professional Land Surveyors
and Sectional Title Practitioners

103 Longships Drive P.O.Box 350 Plettenberg Bay

Tel: (044) 533 2230 Fax: (044) 533 0264

e-mail: beaconsurvey@mwweb.co.za

Date: MAY 2023

PLAN NO.P5627/SUB