



FILE: 18/3353/PB

ERF 3353, PLETTENBERG BAY: PROPOSED REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND SUBDIVISION

DECISION BY THE ACTING DIRECTOR: PLANNING AND DEVELOPMENT IN HIS CAPACITY AS THE AUTHORIZED OFFICIAL IN TERMS OF SECTION 35 (3) OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013)

1. DECISION

1.1 That **approval be granted** in terms of Section 60 of the Bitou Municipality: Land Use Planning Bylaw (2015) ('the Planning By-Law') for the following:

- (a) The relaxation of Title Deed Condition B(i)(d)(1) in respect of Erf 3353, Plettenberg Bay (as applied for in terms of Section 15(2)(f) of the Planning By-Law) to allow the subdivision of this consolidated property;
- (b) The removal of Title Deed Conditions B(ii)(1) and B(ii)(2) in respect of Erf 3353, Plettenberg Bay (as applied for in terms of Section 15(2)(f) of the Planning By-Law);
- (c) The subdivision of Erf 3353, Plettenberg Bay into Portion X (853m² in extent) and a Remainder (1001m² in extent) as shown on Plan 3353 SUB-HT-R0 dated September 2024 (as applied for in terms of Section 15(2)(d) of the Planning By-Law).

1.2 That the following be **refused** in terms of Section 60 of the Bitou Municipality: Land Use Planning Bylaw (2015) ('the Planning By-Law'):

- (a) The removal of Title Deed Condition B(i)(d)(4).

1.3 That it be recorded that the registration of a servitude for a height restriction is exempted in terms of Section 24(1)(f)(iii) of the Planning By-Law, and that accordingly no application to or approval by the Municipality is required.

2 CONDITIONS IMPOSED IN TERMS OF SECTION 66 OF THE PLANNING BY-LAW

- (a) That both Portion A and the Remainder of Erf 3353, Plettenberg Bay retain a Residential Zone I zoning category.
- (b) That Title Deed Condition B(i)(d)(1) continue to apply to both Portion A and the Remainder of Erf 3353, Plettenberg to prevent future subdivision of these newly created properties;
- (c) That it be recorded for the purposes of Section 66(2)(w) of the Planning By-Law that this approval is valid for a period of 5 years (i.e. until 22 July 2028).
- (d) That, if applicable, augmentation and development charges for the provision of engineering services be paid in accordance with the policy of the Municipality prior to the issuing of the certificate contemplated by Section 28 of the Planning By-Law, and that it be recorded that the decision in this regard is to be made by the Technical Services Department of the Municipality.

3 REASONS FOR THE DECISION

- (a) Erf 3353, Plettenberg Bay is a consolidation of the original Erven 1100 and 1102, Plettenberg Bay. The purpose of the application is for all intents and purposes to re-instate the original component erven of Erf 3353, Plettenberg Bay. As the sizes of the original component erven are compatible with the erf sizes in the surrounding area there can be no valid reason to refuse the subdivision application.
- (b) The restrictive conditions of title preventing the subdivision of Erf 3353, Plettenberg Bay were originally applicable to the component Erven 1100 and 1102, Plettenberg Bay (i.e. the intention at the time was that those two properties should not be further subdivided). The effect of the approval is to allow the subdivision of Erf 3353, Plettenberg Bay into two portions (i.e. the Title Deed restriction is 'relaxed' to allow this), but that the restrictive condition preventing subdivision will continue to apply to the future Portion A and the Remainder of Erf 3353, Plettenberg Bay.
- (c) No objection has been received against the application to remove the restrictive conditions relating to the submission of building plans to the township developer (condition B(ii)(1) and roof material / form (condition B(ii)(2)). As these are 'third party' conditions that were imposed by the original township developer (and not by the statutory authorities) for the benefit of the

other property owners in the township there is no reason for the restriction to be retained if the 'beneficiaries' of that restriction have no objection to its removal.

- (d) No reason has been provided by the applicant as to why the restrictive conditions relating to building lines (Condition B(i)(d)(4) cannot be complied with. He has not suggested that there are any on-site or other constraints that will make compliance with the 'title deed building lines' difficult and which may warrant a relaxation of those building lines.
- (e) In addition to the above, the applicant has failed to apply (or even just mention) the criteria mentioned in Section 33 of the Planning By-Law, which are mandatory matters that have to be specifically considered (and motivated) when applications are made for the removal of restrictive conditions of title.
- (f) Furthermore, the owners of Erf 1103, Plettenberg Bay have placed on record their concern about the impact of a proposed future building on Portion X on *"the views north to the mountains"*. Although they specifically referred to any height relaxations it is of equal relevance to any building line relaxations. The position of the existing house on Erf 1103, Plettenberg Bay is such that any encroachment over the building lines in the area of the south-eastern corner of the future Portion X will indeed have a potential detrimental impact on *"the views north to the mountains"*.
- (g) The suggestion of the Plett Ratepayers Association that *"written approval of all aspects of this application must be obtained from all the neighbours to Erf 3353"* is unreasonable and contrary to the requirements of the relevant legislation.
- (h) As mentioned above, Erf 3353, Plettenberg Bay is a consolidation of the original Erven 1100 and 1102, Plettenberg Bay. This consolidation occurred during 1981. Prior to that date the owners of the original two properties had to pay rates and taxes on those properties. Since 1981 (a period of more than 40 years) rates and taxes have been paid on only a single property. The owner of the consolidated Erf 3353, Plettenberg Bay who had the benefit of paying rates and taxes on only a single property cannot now claim the benefit of automatic access to municipal services for an additional erf, but for which services he had not paid any availability fees (or taxes) for more than 40 years. It is for this reason that it must be determined to what extent the owner is liable for the payment of augmentation fees and development charges for the creation of a 'new' erf.

- (i) In addition to the above, the services master plans for the Municipality take into account the existing number of erven. As Erf 3353, Plettenberg Bay has been a single erf for more than 40 years this is what would have been considered. The capacity that was originally available to the second one of the original two component erven would long ago have been allocated elsewhere. It can therefore again not simply be assumed that as Erf 3353, Plettenberg Bay was originally two erven the capacity for an additional erf is still available.



22 July 2025

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ACTING DIRECTOR: PLANNING & DEVELOPMENT

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DATE