

PLETTENBERG BAY ERF 1601

APPLICATION FOR:

PERMANENT DEPARTURES AND REMOVAL OF TITLE DEED RESTRICTIONS



CLIENT: SK STONE

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PLANNERS



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EXECUTIVE SUMMARY

Informant	Description	Reference
Property:	Erf 1601 Plettenberg Bay in the Municipality and Division Plettenberg Bay Province of Western Cape.	Par. 3
Size:	625m ²	Par. 3
Locality / Address:	97 Beachy Head Drive, Plettenberg Bay Coordinates: 34° 4'37.96"S and 23°22'13.34"E	Par. 7
Development Proposal:	To accommodate the existing dwelling house on Erf 1601	Par. 4
Existing Land Use:	Dwelling house and outbuilding used as a servant's quarter.	Par. 9.1
Development Application:	<ul style="list-style-type: none"> ▪ Permanent Departures <ul style="list-style-type: none"> ○ Relaxation of street & side building lines ○ Relaxation of allowed boundary wall height; ○ Relaxation of coverage; and ○ Relaxation of height restriction ▪ Removal of title deed restrictions 	Par. 5
Services Availability:	Services capacity available	Par. 6
Spatial Policy Framework:	<u>Bitou Integrated Development Plan 2017-2022</u> The property is located in Ward 2 Development consistent with development objectives of the IDP.	Par. 11.1
	<u>Bitou SDF (2013)</u> Located in urban Edge suitable for development complies with policies relevant to area	Par. 11.3
	<u>Western Cape Provincial SDF (2014)</u> Located in urban edge suitable for development	Par. 11.2
	<u>National Environmental Management Act, 1998 (Act 107 OF 1998)</u> No listed activities triggered no EIA required	Par. 8.3
Motivation Criteria:	<u>Removal of title Deed Restrictions</u> Considerations proposed for Bitou Municipality to consider	Par. 12
	<u>Consistency with Spatial Planning Policies</u> Consistent with relevant spatial planning policies	Par. 13
	<u>Consistency with the character of the Surrounding Area</u> Area contains flat roofs Building line departure approvals Application consistent with character of area	Par. 14
	<u>Accessibility of the Area</u> Access to property is obtained via Beachy Head Drive	Par. 15
	<u>Visual Impact And Visual Viewshed</u> Property will not impact on primary viewshed of surrounding properties	Par. 16
	<u>Height of Building</u> He highest point measured on site was 8.55m above NGL	Par. 17

Informant	Description	Reference
	The extent of over tolerance is approximately 0.4m ² , about 0.25 from the curved edge of roof	
	<u>Boundary Walls</u> The sloping nature of the NGL on site results in irregular height of boundary wall. Departures are applied for to accommodate height of each boundary wall/fence exceeding the height limit.	Par. 18
	<u>Deviation from Built Area</u> The total built area is 554m ² (88.6%)	Par. 19
	<u>Coverage</u> Coverage is 355m ² (56.8%)	Par. 20
	<u>Building Line Departures</u> Street building line from 4.5 to 0m to accommodate existing sea deck. Southern lateral boundary line from 1.5 to 0m to accommodate the existing staircase. Aggregate building line needs to be relaxed from 4,5m to 2.93m to accommodate the existing staircase within the southern lateral building line.	Par. 21
	<u>No Impact On Existing Rights</u> Refer to this paragraph for detailed motivation	Par. 22
	<u>Impact on Value of Surrounding Area</u> No negative impact is associated with the value of surrounding property owners	Par. 23
	<u>Property Sizes</u> Property measures 625m ² and only allows for 312.5m ² Due to the small property size the allowed coverage is significantly less than the single residential properties in the surrounding area	Par. 24
SPLUMA Principles:	<u>Spatial Justice:</u> Consistent.	Par. 26.1
	<u>Spatial Sustainability:</u> Consistent.	Par. 26.2
	<u>Spatial Efficiency:</u> Consistent.	Par. 26.3
	<u>Spatial Resilience:</u> Consistent.	Par. 26.4
	<u>Good Administration:</u> Applicable to Bitou Municipality.	Par. 26.5
Conclusion:	Meets the criteria as set out in The Spatial Planning and Land Use Management Act (SPLUMA) and Bitou Municipality By-Law on Municipal Land Use Planning (2015); is desirable and it is therefore recommended that the application for the proposal be supported by the relevant authorities and approved by Bitou Municipality.	

SECTION A :

BACKGROUND

1. BACKGROUND

Plettenberg Bay Erf 1601, is located at 97 Beachy Head Road, Plettenberg Bay and is 625m² in extent. The property is currently zoned as "Single Residential" zone in terms of the Plettenberg Bay Zoning Scheme Regulations.

The owner of Plettenberg Bay Erf 1601 (Stuart Kevin Stone), hereafter referred to as "the Applicant", obtained a demolition permit to demolish the previous dwelling on Plettenberg Bay Erf 1601, and instructed a Professional Architect to design a new dwelling for Plettenberg Bay Erf 1601. The Architect consulted with the Bitou Municipality on a number of occasions prior to submission of the building plans, to ensure that the design complies with the applicable prescribed development parameters.

Building plans were submitted, and since the Applicant was confident that the building plans would be approved (after all the pre-consultations with the Bitou Municipality), he applied for permission to commence with construction prior to building plan approval (in terms of Section 7(6) of the National Building Regulations and Building Standards Act No. 103 of 1977). Bitou Municipality granted the land owner permission to proceed with construction on 18 October 2016 (refer to **ANNEXURE A**). Bitou Municipality approved the building plans for the new dwelling on Plettenberg Bay Erf 1601 on 16 January 2017 (refer **ANNEXURE B**).

The neighbouring property owners (owners of Erven 1590, 1599 & 1600) launched legal action to obtain an interdict to stop the Applicant's construction activities on Plettenberg Bay Erf 1601, pending finalisation of an application to review and set aside the decision approving building plans. No interdict was issued, but eventually on 21 November 2017, the High Court has set aside the Bitou Municipality's decision to approve the building plans for Plettenberg Bay Erf 1601, and the Court ruled that the Applicant must lodge the necessary land development applications with the Bitou Municipality, legalise the transgression of the building, within 60 days from the date of the judgement.

The purpose of this land development application is to apply for the necessary permanent departures and removal of Title Deed restrictions, to legalise the "as built" house, and in particular those sections of the building that contravene the Plettenberg Bay Zoning Scheme Regulations, in accordance with the previously approved building plans.

The Applicant appointed Marika Vreken Town Planners CC to lodge the required land development applications in terms of Section 15(2) of the Bitou Municipality Land Use Planning By-Law (the By-Law) which commenced on 1 December 2015 published in PN 273 in the Western Cape Provincial Gazette, No 7467 of 12 August 2015.

2. THE APPLICATION

Marika Vreken Urban & Environmental Planners have been appointed by the Applicant to prepare and submit the undermentioned applications in terms of Section 15(2) of the By-Law (refer to **ANNEXURE C**: Power of Attorney and **ANNEXURE D**: Application Form).

The purpose of this land development application is to apply for the necessary permanent departures and removal of Title Deed restrictions, to legalise the "as built" house, and in particular those sections of the building that contravene the Plettenberg Bay Zoning Scheme Regulations, in accordance with the previously approved building plans. Application is therefore made for:

- (i) A permanent departure to relax the street building line from 4.5 m to 0m to allow the existing sea deck, in terms of Section 15(2)(b) of the By-Law;
- (ii) A permanent departure to relax the southern lateral building line to 0m to allow a staircase, in terms of Section 15(2)(b) of the By-Law;
- (iii) A permanent departure to relax the aggregate side space from 4,5m to 2.93m, to allow a staircase in the building line, in terms of Section 15(2)(b) of the By-Law;
- (iv) A permanent departure to relax the allowed coverage from 50% to 56,8% to allow for the existing structures, in terms of Section 15(2)(b) of the By-Law;
- (v) A permanent departure to relax the 6m height restriction from the average natural ground level, to the wall plate to legalise the existing building, in terms of Section 15(2)(b) of the Bitou Municipality By-Law on Municipal Land Use Planning;
- (vi) A permanent departure in terms of Section 15(2)(b) of the Bitou Municipality By-Law on Municipal Land Use Planning, to relax the 8,5m height restriction to 8,55m to legalise an encroachment over the height restriction of an area of approximately 0,5m²;
- (vii) A permanent departure to relax the height of the street boundary wall/ fence from 1.8m to 2.0m, in terms of Section 15(2)(b) of the By-Law;
- (viii) A permanent departure to relax the height of the northern boundary wall/fence from 1.8m to 2.15m, in terms of Section 15(2)(b) of the By-Law;
- (ix) A permanent departure to relax the height of the rear boundary fence from 1.8m to 3.14m, in terms of Section 15(2)(b) of the By-Law;
- (x) Removal of restrictive Condition 4(c), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow construction on more than half (1/2) of Erf 1601;
- (xi) Removal of restrictive Condition 4(d), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow building line relaxations;

- (xii) Removal of restrictive Condition E (1), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow a concrete roof;
- (xiii) Removal of restrictive Condition E (2), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow a flat roofed dwelling;

3. PROPERTY DESCRIPTION, SIZE, AND OWNERSHIP

A copy of the Title Deed of Erf 1601 that includes the information outlined below, is contained in **ANNEXURE E**. No individual SG Diagram exists for Plettenberg Bay Erf 1601. An extract from the General Plan (SG 2659/1955) including Plettenberg Bay Erf 1601, is contained in **ANNEXURE F**.

Erf Number:	1601
SG Diagram No:	No Individual SG Diagram exists for this erf. This erf is included in Sheet 10 of General Plan (SG 2659/1955). Refer to ANNEXURE F .
Title Deed Number:	T14312/2016
Property Owner:	Stuart Kevin Stone
Property Description:	Erf 1601 Plettenberg Bay in the Bitou Municipality and Division Knysna Province of Western Cape
Property Size:	625m ² (Six hundred and Twenty-Five Square Meters)
Title Deed Restrictions:	<u>Imposed by the Administrator:</u> <ul style="list-style-type: none">- Condition 4(c) - No more than half the area thereof shall be built upon.- Condition 4(d) - No building, or structures or any portion thereof (except walls and fences) shall be erected nearer than 4.72m to the street line which forms the boundary of the erf, or within 3.15m if the rear or 1.57m of the lateral boundary common to any adjoining erf- provided with consent of the Local Authority. <u>Imposed by the Plettenberg Bay Estates Limited:</u> <ul style="list-style-type: none">- Condition E(1) - Plans and specifications of all building plans and all additions or alterations to be erected on an erf shall be submitted to and approved by the Transferor before the commencement of building operations. Such buildings and any additions or alterations shall be constructed of stone, brick or similar material used. Roofs of all buildings to be erected constructed of either thatch, tiles, shingles or slated.- Condition E2 – The erection of flat, lean to or mono-pitch roofs or flat or corrugated iron or asbestos fencing is prohibited.

Planning Implication:

The title deed contains restrictive conditions that prescribe that:

- building lines that prevent the existing structures on the property;
- limit construction to 50% of the area of the site;
- mandate that all roofs be constructed of either thatch tiles schillings or slate; and
- no flat roofs are allowed.
- To allow for the as-built structures on the property the restrictive title deed conditions must be removed.
- Applications for the removal of the restrictive title deed conditions are required in terms of Section 15(2)(f) of the By-Law. Refer to statutory specifications in Paragraph 6 of this report.

Servitudes: There are no servitudes registered over the property.

Bonds: No bond is registered over the property.

SECTION B :

THE PROPOSAL

4. DEVELOPMENT PROPOSAL

As described in Paragraph 1 of this report, the main purpose of this application is to legalise the existing "as built" dwelling house on Plettenberg Bay Erf 1601. There was approved building plans for this dwelling, but the building plan approval was set aside by the Western Cape High Court.

The application now, is to obtain approval for those portions of the existing dwelling that do not comply with the prescribed development parameters for "Single Residential" zoned properties, as prescribed in the Plettenberg Bay Zoning Scheme Regulations. Same with the approval that was granted for the removal of Title Deed Restrictions.

4.1. Pre-Application Consultation Meeting

A pre-application consultation was held with Bitou Municipality on 4 December 2017 (refer to **ANNEXURE G** for a copy of the minutes of the meeting). The requirements to legalise the contraventions of the Zoning Scheme Regulations, as referred to in the Judgement of the High Court on 21 November 2017, as well as what information and documents need to be submitted were discussed as prescribed in Section 37(1) of the By-Law.

4.2. The New Dwelling House on Erf 1601

The original house on Plettenberg Bay Erf 1601 was demolished during 2016. Building Plans for a new dwelling unit were submitted to the Building Control section of the Bitou Municipality on 6 September 2016. Bitou Municipality approved an application to commence with construction prior to building plan approval in terms of Section 7(6) of the National Building Regulations and Building Standards Act 103 of 1977 on 18 October 2016.

Bitou Municipality Approved the building plans for Plettenberg Bay Erf 1601 on 16 January 2017. A copy of the approved building plans is attached as **ANNEXURE A**.

The existing building was constructed in accordance with the approved building plans, but minor deviations occurred, mainly to accommodate concerns expressed by some of the neighbours, particularly the neighbouring property to the north, being Plettenberg Bay Erf 1600. These minor amendments include the omission of a portion of the sea deck on the ground floor and boundary wall along the street boundary and replacing the solid concrete with see-through glass panes. Final "as built" plans are attached as **ANNEXURE I**.

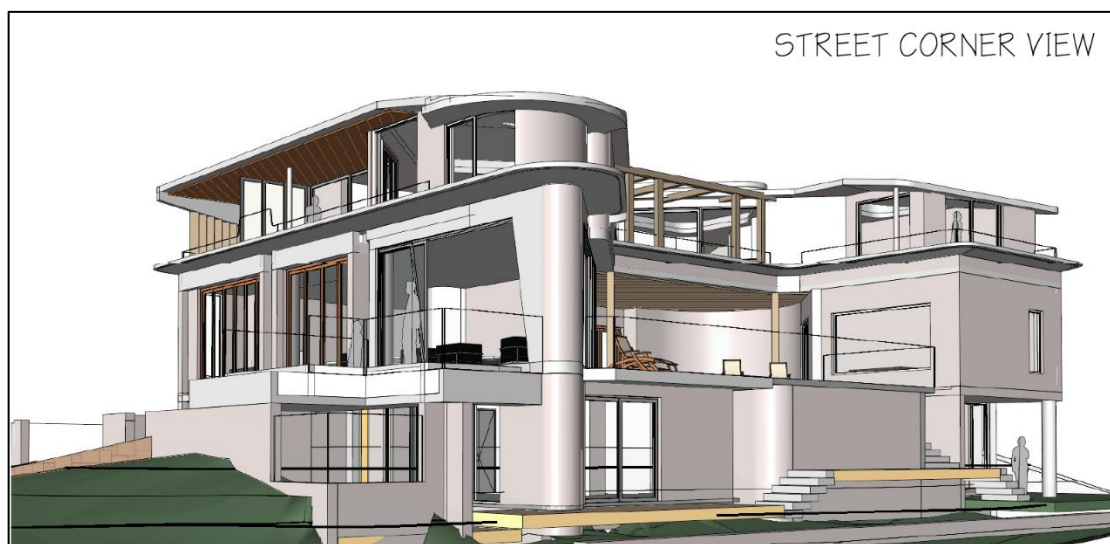


FIGURE 1: SOUTH EASTERN VIEW OF THE NEW DWELLING HOUSE ON PLETTENBERG BAY ERF 1601

The total floor area of the existing dwelling house on Plettenberg Bay Erf 1601 is 666m² in extent. This 666m² excludes an area of 143m² that is used for patios and balconies. The dwelling house consists of a ground floor; first floor and a basement. Given the downward sloping topography of the site, the building is perceived to have three levels. The figure below shows a cross-section of the new building on the sloping site, indicating that the new building does not exceed 2 storeys at any given point.



FIGURE 2: EAST/ STREET ELEVATION OF THE NEW DWELLING ON ERF 1601

The table below provides a description of the uses / rooms within the new dwelling on Plettenberg Bay Erf 1601:

Basement	Ground Floor	First Floor
<ul style="list-style-type: none"> ▪ Double Garage ▪ House Keeper's Quarters ▪ Lobby ▪ Playroom ▪ Store Room ▪ Guest Bathroom 	<ul style="list-style-type: none"> ▪ Den and TV Rooms ▪ Dine Patio ▪ Dining Area ▪ Lounge ▪ Kitchen ▪ Scullery laundry ▪ Guest WC ▪ In Or Out ▪ Sea Deck 	<ul style="list-style-type: none"> ▪ Main Bedroom with en-suite Bathroom ▪ 3x Balconies ▪ Bedroom 2 with En suite Bathroom ▪ Bedroom 3 with En suite Bathroom ▪ Bedroom 4 with En suite Bathroom ▪ Pyjama Lounge ▪ Study

After a thorough examination of the "as built" building plans, it was established that the following land use applications will have to be lodged, in order to legalise the constructed dwelling house on Plettenberg Bay Erf 1601:

- (i) A permanent departure¹ to:
 - relax a portion of the street building line from 4.5 m to 0m;
 - relax a portion of the southern lateral building line to 0m to allow a staircase;
 - relax the aggregate side space from 4,5m to 3m, to allow a staircase in the building line;
 - relax the coverage from 50% to 56,8% to allow for the existing structures, in terms of Section 15(2)(b) of the By-Law;
 - relax the height of the street boundary wall/ fence from 1.8m to 2.0m;
 - relax the height of the northern boundary wall/fence from 1.8m to 2.15m
 - relax the height of the rear boundary fence from 1.8m to 3.14m
 - relax the 6m height restriction from the average natural ground level, to the wall plate to legalise the existing building;
 - relax the 8,5m height restriction to 8,55m to legalise an encroachment over the height restriction of an area of approximately 0,5m²
- (ii) Removal of restrictive Title Deed Conditions, to allow the following:
 - (Condition 4(c)) - *built area of more than half (½) of Erf 1601;*
 - (Condition 4(d)) - *building line relaxations;*
 - (Condition E(1)) - *a concrete roof,*
 - (Condition E2) - *a flat roofed dwelling.*

5. STATUTORY SPECIFICATIONS OF THE APPLICATION

The Plettenberg Bay Zoning Scheme Regulations prescribes development parameters for buildings in a Single Residential zone. The new dwelling house on Plettenberg Bay Erf 1601 does not comply with all these parameters, therefore, it is necessary to apply for departures from the Plettenberg Bay Zoning Scheme Regulations to allow for the existing dwelling.

¹ It is important to note departures required in this section are of limited nature and do not involve the whole length of any specific building line. The required departures are only applicable to the position of the building as shown the latest as built building and for this particular application, and does not imply that it is a general consent for any future building line relaxations.

The table below provides a summary of the departures as required:

Single Residential Zone			
Parameter	Zoning Scheme	Proposal	Compliance
Coverage	max 50%	56.8%	Permanent Departure Required (Refer to Par 5.4)
Building lines	Street: 4,5m	0m	Permanent Departure Required (Refer to Par 5.3)
	Lateral: 1.5m	0m	Permanent Departure Required (Refer to Par 5.3)
	Rear: 3.0m	3.15m	Comply
	Aggregate Side Spaces: No less than 4.5m	2.93m	Permanent Departure Required (Refer to Par 5.3)
Height	6m Datum Line	According to the Architect, the concrete roof has no "wall plate" and therefore it is not possible to comply with this height restriction. Approval is sought to legalise the current building that cannot comply with this height restriction.	Permanent Departure Required (Refer to Par 5.1)
	Max Height of Building: 8.5m above NGL	8.55m	Permanent Departure Required (Refer to Par 5.2)
Boundary Wall/fence height	1.8m above NGL	Maximum Street 2.0 Maximum Lateral (north) 2.15m Maximum rear 3.14	Permanent Departure Required (Refer to Par 5.5)

In order to legalise the existing dwelling house on Plettenberg Bay Erf 1601, the following land development applications are applied for:

5.1. Permanent Departure: Height Restriction – 6m to the Wall Plate

The Plettenberg Bay Zoning Scheme Regulations (Section 7) prescribe the following height restriction in a Single Residential Zone:

*"...No building in this zone shall exceed two floors within a maximum height of 6m measured from a datum-line being determined by the **contiguous average natural ground level**² of that portion of the building nearest to or furthest from the principal or main road frontage*

Contiguous: touching, near, sharing a common border, adjoining, abutting, etc.

Average: a number expressing the typical value in a set of data, the mean, which is calculated by dividing the sum of values in the set by their number.

Natural: existing in or derived from nature, not made or caused by humankind.

Ground: the solid surface of the earth.

Level: a height or distance from the ground or another stated or understood base.

and taken around the perimeter of the building to the underside of the **wall plate** and no point or any portion of the building shall be higher than 8,5 m above the natural ground level directly below such point or any portion of the building.

The area below the (horizontal) datum-line formed by the natural ground level of the site may be utilized for additional floors despite same not being in compliance with the basement definition providing such floors otherwise comply with all the other relative provisions of the Town Planning Scheme and the Building By-Laws..."

Shaun McMillan Professional Land Surveyor was instructed to survey the position and height of the existing dwelling and to also calculate the reconstructed natural ground level of the application area, in order to calculate the height of the building and to determine compliance with the applicable height restrictions.

According to Shaun McMillan, the datum-line is determined by the summation of the value ascribed to the spot heights (points a to f) divided by the number of spot heights. The image below illustrates a simple sketch plan to determine the height of a datum line.

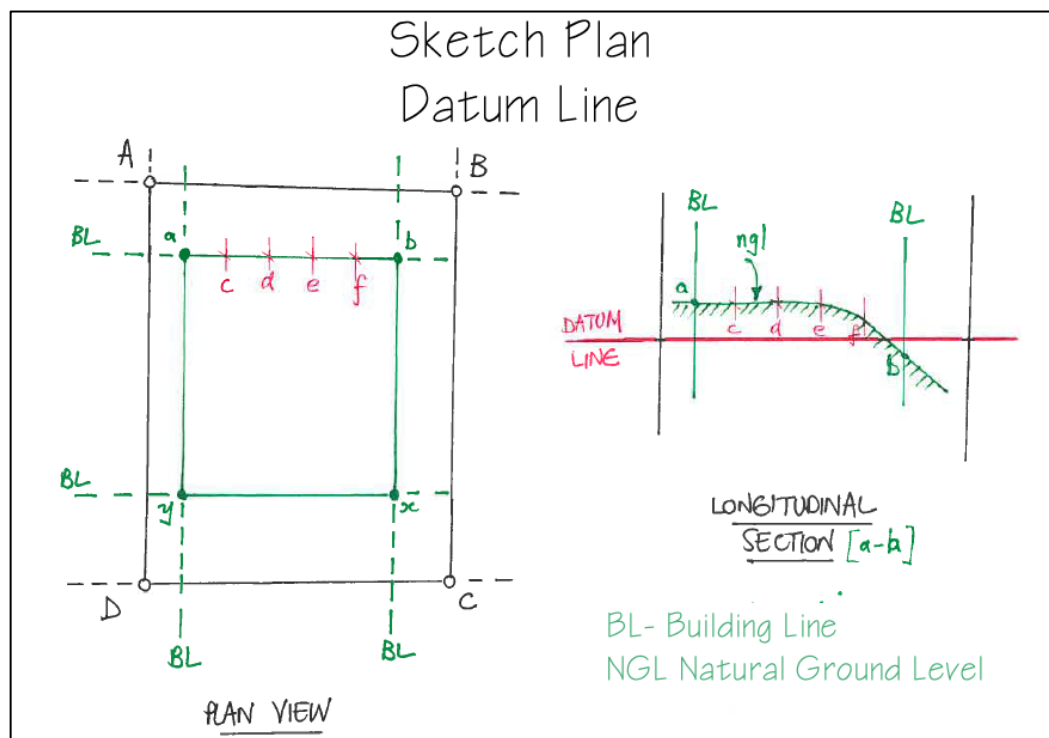


FIGURE 3: SKETCH PLAN: DATUM LINE

- The datum-line average = $(a + b + c + d + e + f) / 6$
- The number of increments (the distance along the datum-line between spot heights) is not specified in the definition.
- Another approach is the mean of the two terminals, that is, $(a + b) / 2$.
- Either of these two approaches are not specified in the determination of the datum-line.

5.1.1. Surveyed Datum Line Erf 1601

Spot heights were extracted from the model of the reconstruction and regeneration of contours. Points 1 and 2 at 0.5 m incremental intervals, along that part of where the structure is contiguous to the ground.

Based on the points, contiguous to house as per land survey drawing, the average Natural Ground Level contiguous to the house was calculated at 17.98m above Mean Sea Level. Therefore, the wall plate of the building should be at a height of 23.98m above MSL.

The image below illustrates how the Land Surveyor has calculated the Datum Line.

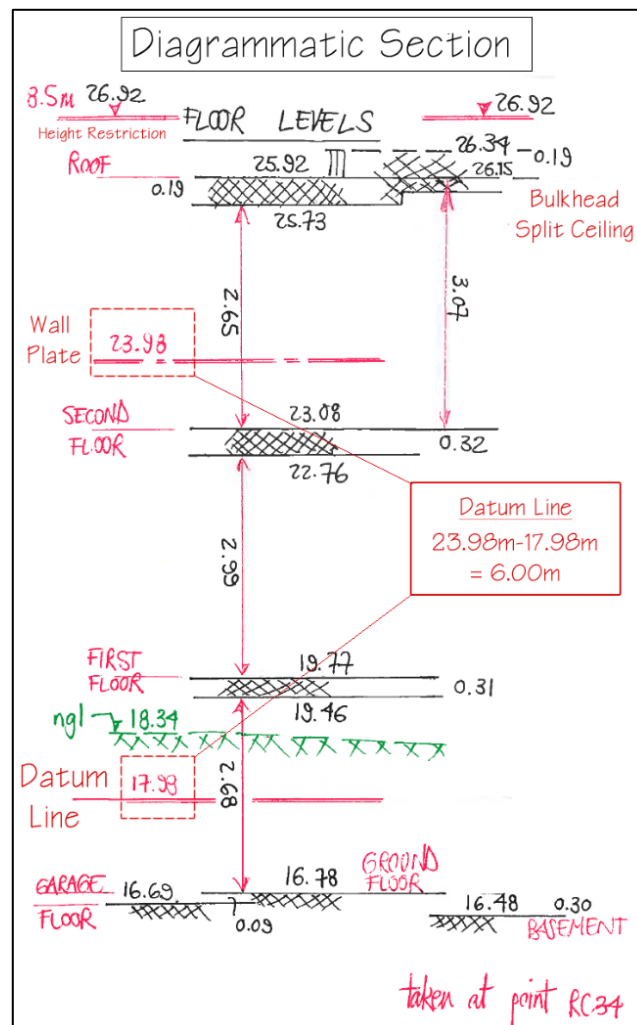


FIGURE 4: DATUM LINE CALCULATION – EXPLANATORY SKETCH

The Plettenberg Bay Zoning Scheme Regulations do not define a "Wall plate". The Collins Dictionary defines a "Wall Plate" as: "...a horizontal timber member placed along the top of a wall to support the ends of joists, rafters, etc, and distribute the load..."

Given the design and nature of the constructed building, (concrete roof and no timber beams) on Erf 1601, it is not possible to pin-point the position of the wall plate. In the house under discussion, there is no physical 'wall plate'. The roof is eccentric and has various angles and stepped heights.

Since it is unclear to define any particular "wall plate" in the concrete dwelling, it is not possible to comply with the height requirement of a wall plate that may not exceed 6m from the datum line.

Figure 4 illustrates the floor levels, ceiling heights, floor (slab) thickness, natural ground level at point RC34, assumed wall plate height, datum-line and 8.5 metre height restriction, as surveyed by Shaun McMillan Land Surveyor.

Based on the surveyed calculations the height of the wall plate is calculated at potentially, 23.98m, should this be the position of the wall plate, even if this "wall plate" does not comply with any definition of a "wall plate".

In view of the modern design and architecture of the property, the 6 meter height restriction finds no material application to the structure on the property. The notion of a wall plate, as envisaged in the height restriction, simply does not find application to the kind of building erected on Erf 1601. Therefore, the 8,5 meter height restriction is the actual operative height restriction that should apply to the building on Erf 1601.

It is therefore necessary to apply for a permanent departure, to deviate from the height restriction that uses the "wall plate" as a measure to calculate the height restriction.

5.2. Permanent Departure - Height Restriction – 8,5m above Natural Ground Level

According to the Plettenberg Bay Zoning Scheme Regulations, no point or any portion of the building shall be higher than 8.5m above the natural ground level.

Shaun McMillan Surveyors compiled a survey report. This report is attached as **ANNEXURE M**. A field survey was undertaken to determine the actual height on top of the roof structure which includes all up-stands, chimneys, geysers and roof features. Detailed heights of the surveyed points are being presented in a table of results in the surveyed report.

The maximum height of the new dwelling, as surveyed on the roof, exceeds the prescribed height restriction by 5cm. None of the heights taken from the checks, chimney or geysers exceed the 8.5m height restriction (refer to heights in table P12-77).

The highest point on Plettenberg Bay Erf 1601 is at the curved edge of the roof which encroaches the height restriction by 5cm.

Therefore, application is made to relax the allowed height for a single residential zone from 8.5m to 8.55m in terms of Section 15(2)(b) of the By-Law. It should be noted that the

departure is only required for an area of approximately 0,4m². The remainder of the building complies with the prescribed height restriction.

Figure 5 below, shows that portion of the building on Erf 1601 that encroaches the prescribed height restriction.

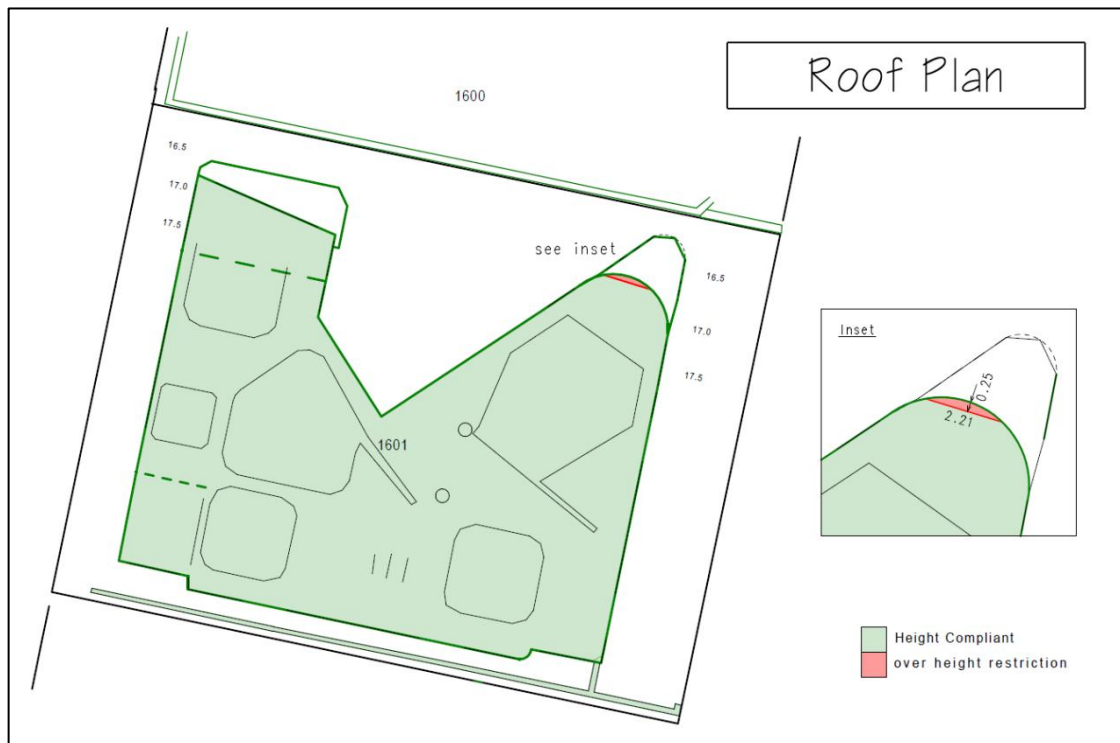


FIGURE 5: AREA THAT ENCROACH THE 8,5M HEIGHT RESTRICTION

5.3. Permanent Departure - Building Line relaxation

The as-built structures currently encroach the lateral, rear and street building lines. The figure below illustrates the new building lines in the application area:

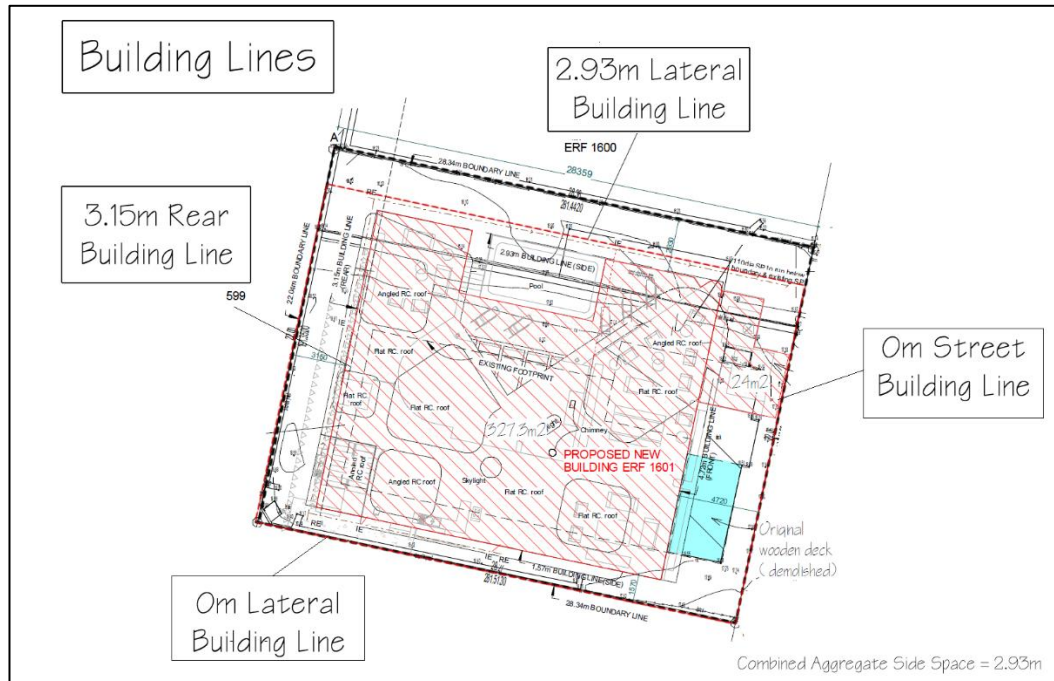


FIGURE 6: SITE DEVELOPMENT PLAN – BUILDING LINES

5.3.1. Street Building Line

The sea deck currently encroaches the prescribed street building line. A permanent departure for a street building line relaxation to 0m is required to accommodate the encroaching deck. The building line relaxation to 0m is *only for that portion of the building line where the existing deck was constructed*, between the street boundary and the dwelling house, and not for the entire street building line.

5.3.2. Southern Lateral Building Line

An existing outside staircase is located in the southern building line. A portion of this staircase is below natural ground level and a portion of this stair case is at a height of 1,4m above natural ground level. This stair case is not covered by a roof, and can be regarded as “minor building” works. However, this staircase encroaches over the prescribed building line, and therefore an application for the relaxation of this building line is required.

It should be noted that this building line relaxation is only for the stair case, and the actual dwelling house with windows and openings, is still 1,57m away from the boundary.

5.3.3. Aggregate Side Space

An existing outside staircase is located in the southern building line. Because of this staircase, it is necessary to relax the aggregate side space from 4,5m to 2.93m.

5.4. Permanent Departure - Coverage

The Plettenberg Bay Zoning Scheme Regulations prescribes a 50% coverage for Single Residential zoned properties.

These regulations define "coverage" as: *"...the total percentage area of site that may be covered by buildings, **measured over the outside walls** and **covered by a roof or projection** provided that the area covered by a max projection of at least 1m shall be excluded for the purpose of determining the maximum permissible coverage..."*

The coverage of the new dwelling on Plettenberg Bay Erf 1601 calculates to 56,8%. To allow for the as-built structures an application is made to relax the allowed coverage from 50% to 56,8% in terms of Section 15(2)(b) of the By-Law.

The main reason for this encroachment is because previously, the void area, next to the swimming pool, was excluded from the calculation of coverage. Since this area is enclosed by the outside walls, this area is now covered by a "roof" and therefore it is included in the calculation of coverage. Should there be an opening between the pool area and the void (i.e. not enclosed by the outside walls, it would not have been included in the calculation of coverage).

It is therefore necessary to apply for a permanent departure to depart from the allowed coverage for single residential zoned properties.

5.5. Permanent Departure - Boundary Wall Height

Shaun McMillan Professional Land Surveyor was appointed to survey the actual heights of the existing structures and boundary fences on the application area. The maximum allowed height of a boundary wall according to the Bitou Zoning Scheme Regulations is 1.8m above Natural Ground Level (NGL).³

³ Clause 4.3.2 of the zoning scheme provides that boundary walls and fences may not exceed a height of 1.8m above the NGL and this height restriction may only be exceeded with the consent of Council and the abutting property owners consent in writing. Plans are first to be submitted for approval in respect of boundary walls and fences in excess of a height of 1.8m above NGL

The actual surveyed height of the existing boundary fences measures:

Actual Surveyed Height		
Boundary	Height	Consistency
Street Boundary	2.00m	Departure Required
Lateral boundary north	2.15m	Departure Required
Lateral Boundary south	1.8m	No Departure Required
Rear boundary	3.14m	Departure Required

It should be noted that only certain increments of the boundary wall encroach the prescribed boundary wall heights along the north lateral boundary. The rear boundary wall heights differ from panel to panel, as a result of the level of the natural ground level. The boundary wall on the street level encroaches the prescribed height by only 0.2m.

To allow for the existing boundary wall/fence heights the following departures are applied for in terms of Section 15(2)(b) of the By-Law as per the surveyed height of the encroaching boundary walls and fences. The detail of these heights encroachments is motivated in detail in Paragraph 18 of this report.

5.6. Removal of Restrictive Title Deed Conditions

In terms of Section 45 (6) of the Spatial Planning and Land Use Management Act, (SPLUMA), all references to "the Administrator" is now replaced by a reference to the Municipality. This means that the restrictive Title Deed conditions may be removed with the consent of Bitou Municipality.

The Title Deed of Plettenberg Bay Erf 1601 contain certain restrictive title deed conditions. To legalise the new dwelling on Plettenberg Bay Erf 1601, the following restrictive conditions have to be removed from Title Deed T14312/2016:

Condition in Deed	Reason for Removal
<u>Condition 4(c):</u> No more than half the area thereof shall be built upon.	The total built area on the erf is 88.6%. To allow for the built area on the erf this restrictive title deed condition needs to be removed.
<u>Condition 4(d):</u> No building, or structures or any portion thereof (except walls and fences) shall be erected nearer than 4.72m to the street line which forms the boundary of the erf, nor within 3.15m if the rear or 1.57m of the lateral boundary common to any adjoining erf- provided with the consent of the Local Authority.	The following building lines are applicable to the as-built structures on the Erf. <ul style="list-style-type: none"> ▪ Rear 3.15m ▪ Lateral (southern line)- 1.57m ▪ Lateral (northern line) 2.93m ▪ Street Building Line – 0m

Condition in Deed	Reason for Removal
	To accommodate the existing structures on the property this restrictive condition must to be removed.
<p><u>Condition (E) (1):</u> Plans and specifications for all building plans and all additions or alterations to be erected on an erf shall be submitted to and approved by the transferor before the commencement of building operations. Such building and any additions or alterations shall be constructed of stone, brick or any other similar material approved by the transferor. Roofs of all buildings to be erected on an erf shall except with the permission in writing of the transferor, be constructed of either thatch, tiles shingles or slate.</p>	This restrictive condition only allows roofs to be constructed using either thatch, tiles, shingles or slate. The dwelling house has a reinforced concrete roof and to allow for the building plans to be considered for approval this restrictive condition needs to be removed.
<p><u>Condition (E) (2):</u> The erection of flat learn-to or mono-pitch roofs or of flat corrugated iron or asbestos fencing is prohibited.</p>	To allow for the flat roof on the existing structure this condition needs to be removed.

6. SERVICES INFRASTRUCTURE

Given the fact that the application area is located within the existing urban fabric, and within an existing residential area, the property has existing connections to municipal infrastructure provision and has existing land use rights to accommodate service provisions to a Single Residential Zone and uses associated within this zone.

SECTION C :

CONTEXTUAL INFORMANTS

7. LOCALITY

(Plan 1: Locality Plan)

Plettenberg Bay Erf 1601, is located at 97 Beachy Head Drive, Plettenberg Bay Extension 5. There are no dwelling units between the application area and the Beach which is on the eastern boundary of Beachy Head Road. Noticeable viewpoints from the property include Robberg to the south-east and the Beacon Hotel northeast. The coordinates for the centre of the property is located at 34° 4'37.96"S and 23°22'13.34"E.



FIGURE 7: LOCALITY

8. SITE CHARACTERISTICS

8.1. Topography

The application area slopes downwards from the western boundary towards the eastern boundary. The contours of the application area run from the western boundary towards the eastern boundary and drop down towards the eastern boundary. The highest point on the

application area measures 19m above MSL and the lowest part of the application area measures 16m above MSL (Refer to **ANNEXURE H**).

The unique topography allows the property to accommodate three habitable floors which adhere to the definitions of a dwelling unit and a basement as contained in the Plettenberg Bay Zoning Scheme Regulations. The property owner made use of the favourable downward facing slope by constructing a basement⁴ ground floor and first floor.

8.2. Built Environment

According to the latest "as-built" building plans From Paul Oosthuizen Architects (refer **ANNEXURE I**), the existing floor area⁵ is 809m², calculated as follows:

Floor	Size
Basement (Lower Ground)	256m ²
Ground Floor	276m ²
1 st Floor	277m ²
Total	809m²

It should be noted that there is no prescribed floor area ratio (FAR) restrictions for "Single Residential" zoned properties in terms of the Plettenberg Bay Zoning Scheme Regulations.

- The total built area according to the latest survey plan is 554m² which calculates to 88.6%
- The coverage of the property with the as-built structures calculate to 56,8%
- Maximum height of the roof measures 8.55m above NGL. The extent of the height encroachment is approximately 0.4m². The remaining extent of the roof area complies with prescribed 8.5m building height for "Single Residential" zoned properties.

8.3. Natural Environment

The entire property has been disturbed and comprises of a mixture of hard and soft surfaces.

The application area is located within the 100m of the High-Water Mark (HWM), however, the construction of the dwelling house on Erf 1601 did not trigger the need for Environmental Authorisation, because:

⁴ **Basement** means that portion of a building the finished floor level of which is at least 2m below a level half-way between the highest and the natural ground levels immediately contiguous to the building.

⁵ **Total Floor Area** means the total area of all floors of all buildings which is covered by a roof slab or projection Such area shall be measured from the external surface of the walls of any such buildings but shall not exceed the maximum floor area.

- (i) The property is located within an existing urban area, then construction of buildings within 100m from the HWM is excluded (Listing Notice 1, Activity 17); and
- (ii) Development of this neighbourhood has lawfully commenced when the neighbourhood was developed. Only that part of the dwelling that exceeds the building line towards the sea is applicable with the Listing Notice 1, Activity 19 is considered. No more than 10m³ of soil was excavated for the construction of the sea view deck.

Provincial Circular 24 of 2014, dated 9 December 2014, provides an explanation on the interpretation of “commencement” in terms of the NEMA Regulations. According to this Circular, it is clear that there is no need to obtain environmental authorisation to legalise the existing dwelling on Erf 1601, Plettenberg Bay.

9. CURRENT LAND USE AND ZONING

9.1. Land Use

(Plan 2: Land Use Plan)

The application area is currently used for single residential purposes. The application area currently contains a single dwelling house and an outbuilding used as a servant’s quarter.



FIGURE 8: SINGLE RESIDENTIAL DWELLING ON ERF 1601

9.2. Zoning

Plettenberg Bay Erf 1601 is currently zoned "Single Residential" zone in terms of the Plettenberg Bay Zoning Scheme Regulations.

10. CHARACTER OF THE AREA

The land uses within a 150m radius of the application area was studied to determine the character of the area. This study area is characterised by a mixture of medium to large residential dwellings mostly used as holiday homes and tourism accommodation establishments.

The area contains several huge residential dwellings, and tourist accommodation establishments, especially along Beachy Head Road and the higher lying areas.

It was established that within this study area, most of the structures have a contemporary architectural style that contributes to the unique built environment. All properties within the entire study area, except Erf 1599, contain double dwelling houses. At least 6 of these dwelling houses near Plettenberg Bay Erf 1601 have flat or mono-pitch roofs.

Examples of these flat roofed buildings are shown in the figure below:



FIGURE 9: SINGLE RESIDENTIAL USES WITHIN 150M RADIUS OF APPLICATION AREA

It is therefore clear that the existing dwelling on the application area is consistent with the existing character of the surrounding area. The proposed departures and removal of title deed restrictions, does not mar the existing character of the area.

11. EXISTING POLICY FRAMEWORKS

11.1. Bitou Integrated Development Plan 2017-2022

The IDP is a municipal planning instrument that drives the process to address the socio-economic challenges as well as the service delivery and infrastructure backlogs experienced by communities in the municipality's area of jurisdiction.

Bitou Municipality approved the 4th generation IDP during June 2017 Council Resolution Number: C/6/23/05/17. According to this IDP, the municipality's vision⁶ is to:

Bitou IDP Vision
To address the disjuncture in services delivery, inequality, unemployment and economic participation caused by the apartheid system which benefited a certain racial group at the neglect or exploitation of others
Vision:
To be the best together

Bitou Municipality has adopted seven strategic objectives to deliver on its vision and to help realize the objectives of the district economic development, provincial strategic goals and national development plan which eventually will contribute to the globally sustainable development goals. These objectives are:

Objective	Interventions
Grow local economy, create jobs, empower previously disadvantaged, transform ownership patterns 2. Economic development of local economy	Job creation: Support projects that will enable job creation in the municipality
Universal access to decent quality of services	Legislative Compliance To avoid audit findings and penalties for noncompliance for operational efficiencies within the legislative framework

The application area is located in Ward 2 of the Bitou Municipality. The following Ward based planning interventions are considered to be applicable to the land development application:

ECONOMIC DEVELOPMENT ⁷	Planning Intervention
	Make development more accessible and expedite applications (rezoning and building plans) make industrial and commercial development possible.

Planning Implication:

The IDP is a municipal planning tool to integrate municipal planning and allocate municipal funding to achieve strategic objectives that will contribute to the overall municipal vision.

⁶ Pg1, Bitou Integrated Development Plan 2017-2022

⁷ Pg 74, Bitou Integrated Development Plan 2017-2022

Although this application is not considered to be an important strategic objective it can be motivated that the development of the land has supported important municipal interventions amongst others creating economic jobs within the ward. Further to the above the municipality adhered to the ward based planning objective of making development more accessible by approving the building plans for the application area during January 2017.

It is the considered opinion that the existing development has contributed to the strategic objectives within Ward 2.

11.2. Western Cape Provincial SDF (2014)

The Western Cape Provincial SDF was approved in 2014 by the Western Cape Parliament and serves as a strategic spatial planning tool that “communicates the provinces spatial planning agenda”.

The recent shift in legislative and policy frameworks have clearly outlined the roles and responsibility of provincial and municipal spatial planning and should be integrated towards the overall spatial structuring plan for the province to create and preserve the resources of the province more effectively through sustainable urban environments for future generations.

Planning Implication:

The Western Cape Spatial Development Framework has a strong emphasis on revitalising urban spaces creating an urban living environment which is more convenient, efficient and aesthetically pleasing to residents. The provincial SDF is a provincial orientated planning document rather than municipal scale. Meaning an application for a permanent building line departure and removal of title deed restrictions to allow for the existing structure will not be applicable to the PSDF. It is the considered opinion that the land development application is within the urban edge and has lawful zoning rights to erect a dwelling house on the application area meaning it is suitable for urban development.

11.3. Bitou SDF (2013)

The updated Bitou Spatial Development Framework (SDF) was approved by the Bitou Municipal Council in May 2013. The SDF is, therefore, the primary spatial tool for guiding development within the municipal area.

The SDF echoes the principles laid down by the provincial SDF including densification, the importance of compact settlements and walkability and the promotion of a mixture of uses in close proximity to one another.

The Bitou SDF locates Plettenberg Bay Erf 1601 within the urban edge of Plettenberg Bay, therefore the site has been identified as within the desired envelope of development for the settlement.

The application area is located within the urban edge and the identified existing urban area of Plettenberg Bay.

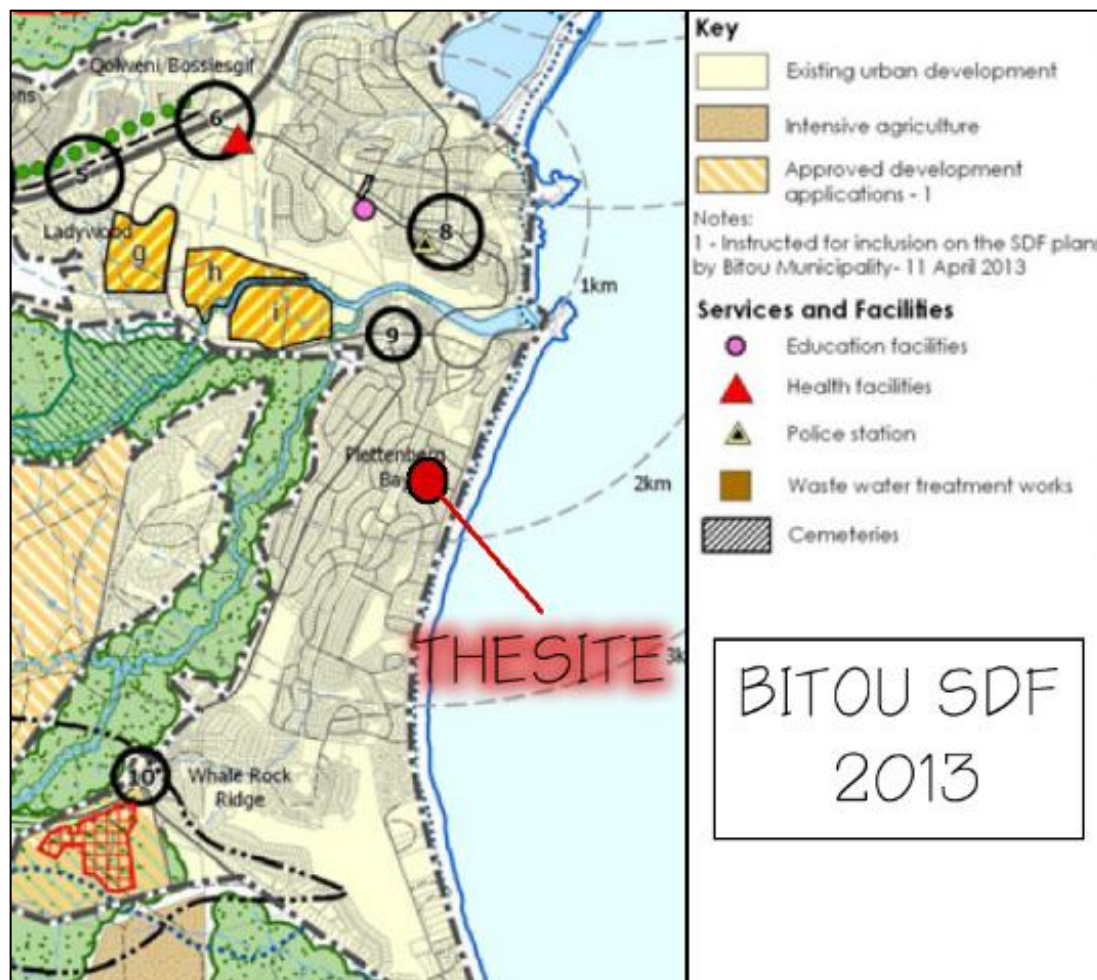


FIGURE 10: EXTRACT FROM THE BITOU SDF (2013)

The following urban design guidelines are proposed to guide **all** future development in the Municipality:

Urban Design Guidelines	Planning Implication
UD 10 Space buildings from each other to provide adequate solar access to buildings. In this regard the roof pitch of buildings should be orientated so that roof solar panels have a maximum continuous direct access to the sun.	Consistent - surrounding properties in the surrounding area have north eastern and south eastern facing facades. The contravening structures on 1601 is located on the lower ground and ground floor and will have no impact on surrounding property owners' solar access.

Urban Design Guidelines	Planning Implication
UD11 – Any proposals for the redevelopment of existing buildings should consider their heritage value, elements of the vernacular architecture and, where possible, retain these important elements. Similarly, the historical characteristics of existing buildings should be considered to draw from their elements that could be integrated into the design and construction of new buildings close by.	Consistent - <i>The design of the existing structure integrates with the existing monolithic structures located in the surrounding area.</i>
UD12 – The use of local materials should be encouraged in the construction of new buildings	Consistent - <i>Local contractors and materials were used in the construction of the dwelling unit</i>
UD14 – Ensure that the main streets of the urban areas are appropriately landscaped to encourage a pleasant gateway treatment into the settlements.	Consistent - <i>Driveway that provides access to Erf 1601 has been professionally landscaped providing an appealing environment and pleasant gateway especially along wide road reserve that abuts the property to the east.</i>

The following Smart Growth Principles in the Bitou SDF are applicable to the proposed development that should be used to help achieve integrated and efficient human settlements:

Smart Growth Principles Bitou SDF	Planning Implication
Provide for a mix of different kinds of land uses, e.g. residential. Retail, business, and recreational opportunities.	Consistent - <i>The existing structure is located in an area surrounded by different land uses including public open space recreational facilities and holiday accommodation.</i>
Create well-designed compact neighbourhoods where the different activities are in close proximity to each other.	Consistent – <i>The existing dwelling on Erf 1601 is consistent with the character of the area and contribute to achieving compact settlements.</i>
Create a variety of housing opportunities, i.e. in terms of function, form and affordability.	Consistent - <i>Existing Structure consistent with the housing market of the surrounding area.</i>

Encourage growth in existing communities this can be done through infrastructure upgrade, urban renewal, new amenities and densification.	Consistent - <i>the Previous outdated structure was demolished and replaced by a new contemporary design supporting urban renewal.</i>
Foster a unique neighbourhood identity building on the unique and diverse characteristics of each community.	Consistent <i>The area is characterised by large single residential and tourist accommodation dwelling, most of them used as holiday homes or second homes.</i>

Planning Implication

The development proposal for the guest house on the application area is consistent with the relevant spatial planning policies.

SECTION D :

MOTIVATION

In Section 65 of the By-law the general criteria necessary for considering an application by the Bitou Municipality is stated.

The following criteria must be considered when evaluating the desirability of this land development application submitted in terms of Section 15(2) of the By-Law:

- The integrated development plan, including the municipal spatial development framework;
- The applicable local spatial development frameworks adopted by the Municipality;
- The applicable policies of the Municipality that guide decision-making;
- The provincial spatial development framework;
- The policies, principles and the planning and development norms and criteria set by the national and provincial government;
- The matters referred to in section 42 of the Spatial Planning and Land Use Management Act;
- Principles referred to in Chapter VI (6) of the Land Use Planning Act; and
- The applicable provisions of the zoning scheme.

12. REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

12.1. Spatial Land Use Management Act, 2013 (act 16 of 2013)

Section 47 of this Act makes reference to restrictive conditions.

- (1) *A restrictive condition may, with the approval of a Municipal Planning Tribunal and on the prescribed manner, be removed, amended or suspended.*
- (2) *A removal of, amendment or suspension of a restrictive condition considered by a Municipal Planning Tribunal must in the absence of the contemplated written consent be affected:*
 - (a) *In accordance with Section 25 of the Constitution and this Act;*
 - (b) *With due regard to the respective rights of all those affected, and to the public interest;*
 - (c) *In the prescribed manner,*

if such a removal, amendment or suspension will deprive any person of property as contemplated in Section 25 of the Constitution for the Republic of South Africa, Act 108 of 1996.

Section 25 of the Constitution states that no person may be deprived of property and it further deals with property expropriations.

This section further states that the "...public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources..."

Planning Implication:

It is the considered opinion that the proposed removal of restrictions will not deprive any person of property as stated in Section 25 of the Constitution of South Africa.

12.2. Land Use Planning Act, 2014 (Act 3 of 2014)

Section 39 of this Act refers to removal, suspension or amendment of restrictive conditions. It states that:

- (2). Notice of the application must be served in accordance with Section 44 on at least the following persons:
 - (a). any person mentioned in the title deed for whose benefit the restrictive condition applies; and
 - (b). any other person whose rights or legitimate expectations will be affected by the approval of the application.
 - (3). When a municipality removes, suspends or amends a restrictive condition on its own initiative, the municipality must comply with subsection (2) and Section 43 (Publication of Notices) and must have regard to at least the matters referred to in section 49(a) to (e).
 - Section 39(5) of this act directly correlates with Section 33(5) of the Bitou Municipality Land Use Planning Bylaw (2015).
 - Section 49 (a) to (e) of this Act directly correlates with Section 65(1) of the Bitou Municipality Land Use Planning Bylaw (2015).

Planning Implication:

Compliance with the prescribed criteria contained in the Bitou Land Use Planning Bylaw will make this land development application compliant with the necessary requirements and considerations contained in this Act.

12.3. Bitou Land Use Planning By-Law, 2015

According to Section 33(5) of the Bitou Municipality's Land Use Planning By-Law, the Bitou Municipality must have regard to the following, when considering the removal, suspension or amendment of restrictive title deed conditions:

- (a) 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.

Relevant points to take into consideration:

The only value associated with the restrictive title deed conditions was to ensure a uniform architectural style for this neighbourhood, when it was developed. These Title Deed Conditions were the only way to regulate land use, and to ensure that structures adhere to the required building lines as imposed by the Administrator and conform to the specification of the transferor before submitting building plans for approval.

The regulatory framework for Town Planning has changed since the development of Plettenberg Bay Extension 5 in 1955. Given the fact the Plettenberg Bay Zoning Scheme Regulations now regulate land use management, there is no need exercise land use control via title deed conditions.

There is thus no financial value for the Municipality (Administrator), or the beneficiaries (property owners in Extension 5), if these conditions are removed or not.

- (b) The personal benefits which accrue to the holder of rights.

Relevant points to take into consideration

*Plettenberg Bay Estates Limited no longer exists and has been deregistered. A copy of a Windeed Report, confirming the deregistration of the Company, is attached as **ANNEXURE O** to this report.*

During the previous planning regime that preceded zoning schemes, development control was conducted via Title Deeds.

These conditions were imposed by the Administrator and can be relaxed with the written permission of the Administrator.

The Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) came into effect on 1 July 2013. Section 45(6) of this Act "replaced" the "Administrator" with the local municipality. Hence the municipality is now in a position to make a decision on the relaxation of the title deed restrictions.

The Bitou Municipality hold a delegations from Plett Estates Limited, where decision making powers were delegated to Bitou Municipality, prior to the deregistration of this

Company. Bitou Municipality is therefore duly authorised to decide on this application for removal of title deed restrictions.

Firstly, the Council has deviated from these restrictive conditions in the past as several structures in the surrounding area have flat roofs to increase the height of the floor level to maximise views to the Indian Ocean.

Secondly, there are no design guidelines that regulate building design and aesthetics in the surrounding area.

Thirdly, numerous small erven in the surrounding area have very large dwelling houses, it is therefore assumed that coverage departure applications were most likely considered by the Council before approving the building plans.

With the Plettenberg Bay Zoning Scheme Regulations that regulates land use management, the removal of the restrictive conditions will not impact on any personal benefits that the holders of the rights might have.

- (c) The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;

Relevant points to take into consideration:

The personal benefit to the applicant will result in the removal of the restrictive title deed conditions to legalise the new dwelling house on the application area, that were built in accordance with previously approved building plans.

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

Relevant points to take into consideration:

There will be no social benefit if the restrictive conditions remain in place. Currently, there is a "double standard" of development parameters that have to be adhered to in this neighbourhood (e.g. zoning scheme regulations as well as title deed restrictions). If the restrictive condition is removed, it will contribute towards achieving a uniform set of development parameters for the entire neighbourhood. If it is not removed, confusion of double standards will remain.

- (e) The social benefit of the removal, suspension or amendment of the restrictive condition;

Relevant points to take into consideration:

The restrictive land development parameters contained in Condition C (4) can be regarded as obsolete as the Plettenberg Bay Zoning Scheme Regulations do have prescribed parameters for coverage and building lines. The social benefit of removing this restrictive title deed condition means that the property must still comply with the prescribed development parameters for a Single Residential Zone as contained in the

Plettenberg Bay Zone Scheme Regulations. Any departure from this zoning scheme needs to be approved by the applicable delegated decision maker, prior to building plan approval.

- (f) 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;

Relevant points to take into consideration

It should be noted that any extension or proposed development of the property must still comply with the prescribed development parameters of the Plettenberg Bay Zoning Scheme Regulations. Should the owner wish to relax a building line, a land development application must still be submitted in terms of the By-Law (hence, the reason for the permanent departure application). The removal of the restrictive condition will not result in uncontrollable deviations from prescribed development parameters. In Fact, it will contribute towards achieving a uniform set of development parameters applicable to the entire neighbourhood.

- (g) Whether the removal would be in the public interest.

Relevant points to take into consideration

There is a dispute between the Applicant and the owners of Erven 1590, 1599 & 1600.

The precedent for a flat roof is a well- established precedent in the neighbourhood. The dwelling houses on Erven 1590 and 1600 also have a flat roofs. Erf 1590 has a 0m eastern lateral building line, which is an established precedent that council supports building line departure that contravene the title deed building line restrictions. Removal of the restrictive Title Deed conditions will be in the public interest, as it will contribute towards achieving a uniform set of development parameters applicable to the entire neighbourhood.

13. CONSISTENCY WITH SPATIAL PLANNING POLICIES

As described in Paragraph 11 of this report, the proposal is consistent with the relevant spatial planning policies.

14. CONSISTENCY WITH THE CHARACTER OF THE SURROUNDING AREA

As mentioned in Paragraph 11, the area surrounding the application area is characterised by large, single residential dwellings. Several of these dwelling houses have flat or mono-pitched roofs and accommodate structures on the boundary lines.

Paul Oosthuizen Professional Architect design the dwelling house on Erf 1601. A copy of the Architectural inputs from Paul Oosthuizen Architect is attached as **ANNEXURE K** to this report. The Architect assessed the character of the area and established that of the 15 houses visible on

the Google Earth images, in close proximity to the application area, 10 appear to have flat roofs (including Erf 1601). These houses have a common aesthetic character that establishes a strong architectural language in the neighbourhood. The house on Erf 1601, undeniably, resembles an aesthetic in keeping with this architectural language.

Large double storey dwellings:

The figures below show the locality of dwelling houses that have more than 1 floor, to capitalise on ocean towards Robberg and the Beacon Isle. It is clear that the dwelling houses in this neighbourhood are mostly developed to its full potential to maximise views, so close to the ocean.

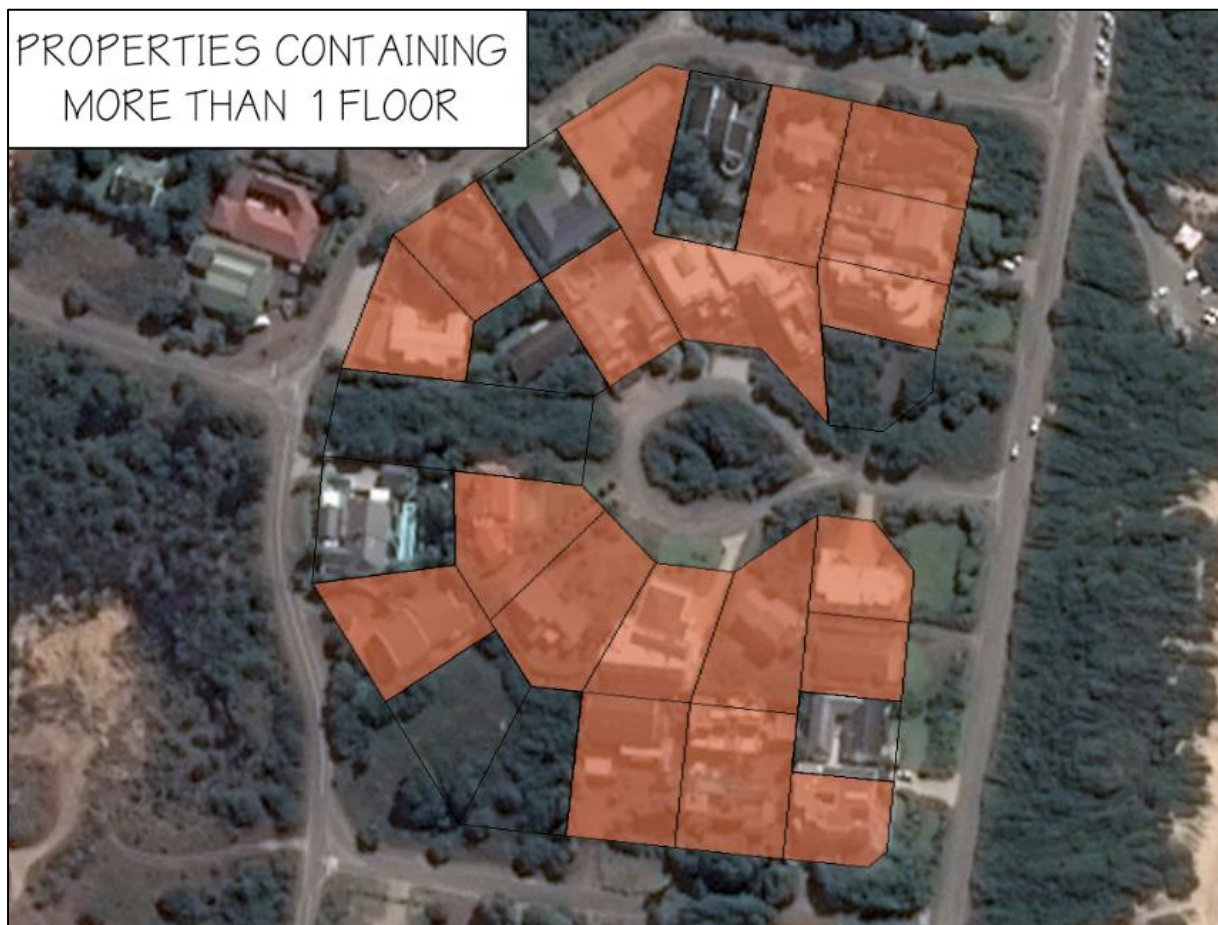


FIGURE 11: PROPERTIES CONTAINING MORE THAN ONE FLOOR

Flat or Mono Pitch Roofs:

The image below illustrates the locality of dwellings houses with a flat or mono-pitched roof in close proximity to the application area. It is clear that that most of the neighbouring properties have been constructed with concrete roofs.



FIGURE 12: PROPERTIES CONTAINING FLAT OR MONO PITCHED ROOFS WITHIN 150M RADIUS



FIGURE 13: LARGE, FLAT ROOFED STRUCTURES IN CLOSE PROXIMITY TO THE APPLICATION AREA

The area surrounding the application area is characterised by large buildings with concrete roofs. The Architectural Style of the building on Erf 1601 is consistent with the style of various other building in close proximity of the application area. For this reason, it is the considered opinion that, the architecture of the constructed dwelling will not:

- disfigured the neighbourhood, as the Aesthetical appearance of this building is consistent with the established architectural language of the neighbourhood
- be unsightly or objectionable, since the concrete structure and design is consistent with the established Architectural style in the neighbourhood.

Building Line Departures:

Bitou Municipality has approved an eastern lateral building line departure from 3.0m to 0m on Plettenberg Bay Erf 1590 to accommodate a garage during 1988. See attached See approval attached as **ANNEXURE N**. However, no record of decision could be obtained on municipal file that the provincial government made a final decision to relax the building lines in terms of the now repealed Removal of Restrictions Act 84 of 1967. Therefore, it is clear that Bitou Municipality has supported a 0m building line departures in the surrounding area in conflict with the restrictive title deed conditions.

15. ACCESSIBILITY OF THE AREA

Vehicular access and egress to the application area are obtained via Beachy Head Drive. Beachy Head Drive has a very wide road reserve of 90 feet (i.e. ±28m wide) and there is at least 15m space between the street boundary and road surface, hence the proposed street building line relaxation has no impact whatsoever on the accessibility to and from the application area, and no impact on the traffic flow or sight distances in the area.

16. VISUAL IMPACT AND VISUAL VIEW SHEDS

In the past, various case law has confirmed that a view is not a right. Previously there was a single storey dwelling on Plettenberg Bay Erf 1601. According to the applicable zoning scheme regulations, the Applicant is allowed to build a building with a roof pitch that does not exceed 8,5m above natural ground level. Therefore, at any stage, the owner of Plettenberg Bay Erf 1601 is allowed to build a double storey building, but on condition that it complies with the applicable height restrictions.

In the affidavit from neighbouring properties owners (Erf 1590, 1599 and 1600), complained about the new dwelling on Plettenberg Bay Erf 1601's "unsightly" appearance and that the building impacts on the owners of Erf 1590 & 1599's sea views.

16.1. Visual Impact of the dwelling on Erf 1601

When the visual impact of the "as built" structure on Erf 1601 Plettenberg Bay is considered, the following aspects have to be taken into consideration:

- The height restriction of buildings in this area is 8,5m above Natural Ground Level. *Except for a 0,4m² that encroaches the height restriction by five (5) centimetres, the dwelling on Erf 1601 complies with the maximum allowed height.*
- The departure from the 6m height restriction from the datum line to the wall plate, is not applicable to this dwelling, since *the concrete design of this building does not have a wall plate – it is therefore impossible to comply with this height restriction as set out in the Zoning Scheme Regulations.*
- The only building line relaxation for this dwelling, is the street building line relaxation from 4,5m to 0m, for a sea view deck. Initially this deck was supported by a solid boundary wall on the northern and eastern property boundaries. After approval of the building plans, and during the construction process, the applicant communicated with the northern abutting neighbour, and as an attempt to accommodate the northern abutting property owner, the applicant has decided to cut back / break down the corners of the boundary wall to accommodate the views of Erf 1600 and to mitigate visual impact. The result being that the former boundary walls are no longer regarded as boundary walls, and now these walls encroach over the building lines. These have minimal impact on the sea views of the surrounding properties.
- Given the topography of the land, the boundary walls on the application area encroach the prescribed height restriction. These boundary walls consist of "beta fencing" that is permeable, and one can see through the fencing. This fencing therefore also mitigates visual impact.

16.2. Visual Impact on Erf 1599

A site visit on Erf 1599 indicated that the building on Erf 1599 was constructed in such a way that it faces the Beacon Isle Hotel. The dwelling on Erf 1599 still has an unimpeded view in a north-eastern direction.

It is the considered opinion that the structure on this erf was designed in such a way to protect the views of the property onto the Indian Ocean.

The Figure below shows the view as seen from Erf 1599. From this image it is clear that the dwelling on Erf 1599 enjoys an unimpeded north eastern view toward the Beacon Isle Hotel and Keurboomstrand.

The departures to legalise the dwelling on Erf 1601 do not impact on these views in any way.

The Figure below shows the primary viewshed as seen from Erf 1599:

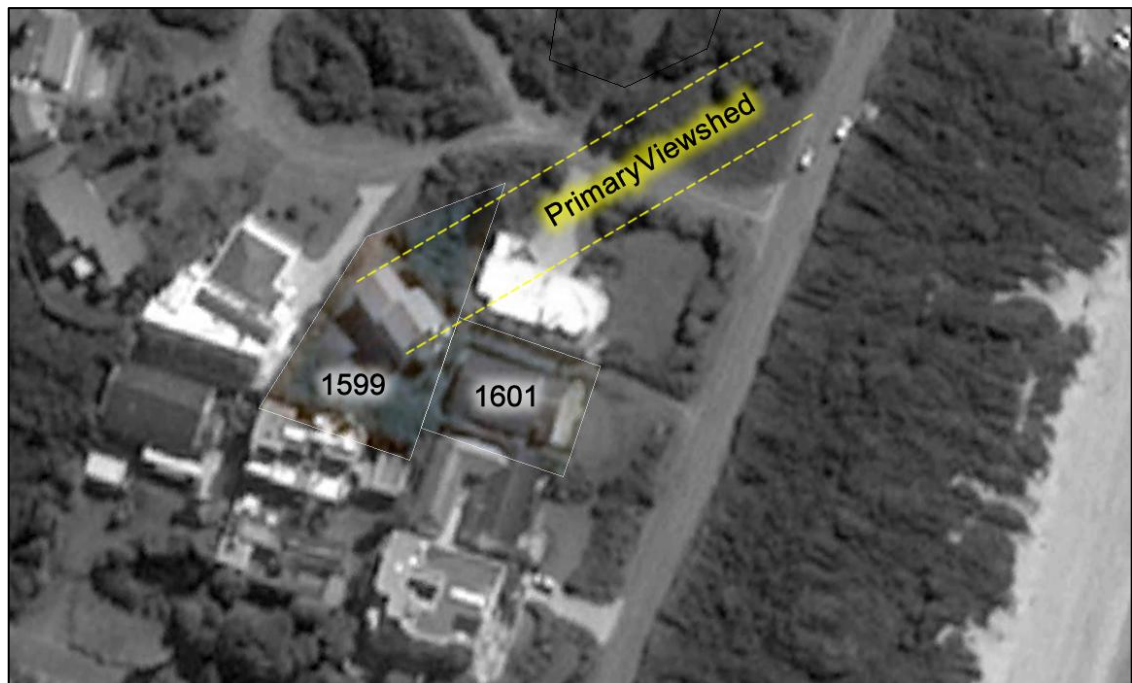


FIGURE 14: DIRECTION OF PRIMARY VIEWSHED FOR ERF 1599



FIGURE 15: VIEW AS SEEN FROM THE DWELLING ON ERF 1599



FIGURE 16: NO STRUCTURES OBSTRUCTING PRINCIPLE VIEWSHED OF ERF 1599

It can be concluded that:

- The existing dwelling on Erf 1599 faces in a north eastern direction;
- The minor encroachments of the "as built" structure on Erf 1599 has no impact whatsoever on the Erf 1599.

16.3. Visual Impact on Erf 1590

The figure below shows the primary viewshed of the dwelling on Erf 1590. The primary view shed is to the east (across Erf 1602) and the southeast (across Erf 1589).



FIGURE 17: DIRECTION OF PRIMARY VIEWSHED FOR Erf 1599

The figure below shows the dwelling on Erf 1590, as seen from the second storey of the building on Plettenberg Bay Erf 1601. From this picture it is clear that the dwelling on Erf 1590 fronts in a south western direction towards Robberg. This dwelling on Erf 1590 still has an unimpeded view of Robberg.



FIGURE 18: DWELLING ON Erf 1590 FACING IN A SOUTH EASTERN DIRECTION, TOWARDS ROBBERG

An extract of the latest approved building plans for Erf 1590 (attached as **ANNEXURE J**) confirms that the master bedroom located on the first floor has a primary viewshed towards the east and a private terrace with a view towards the south and east of the property. This property was never designed with a principle view towards the North East where the application area is located.

Based on the latest approved building plans for Erf 1590 it is clear that the principle viewshed for this property is in a southern and eastern direction. The image below clearly indicates the principle viewshed according to the latest approved building plans.

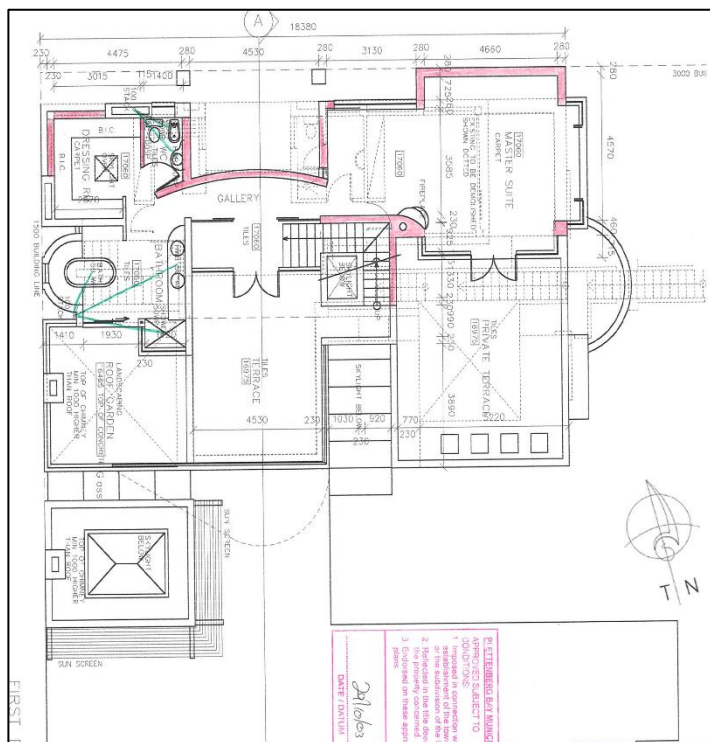


FIGURE 19: EXTRACT OF THE APPROVED BUILDING PLANS ON ERF 1590

From the above it is clear that the new dwelling on Plettenberg Bay Erf 1601 will not impact the sea views of Erf 1590.

16.4. Visual Impact on Erf 1600

The owner of Erf 1600 stated that the views south of his property are permanently obliterated further stating that a holiday home with a view is more desirable and more valuable than a home without a view⁸. Erf 1600 is on the southwestern corner of Beachy Head Drive and Tarbet Ness Close.

⁸ High Court WC Case No 6803/17- Par29.5 - 10th Applicants Affidavit.



FIGURE 20: DIRECTIONS OF PRIMARY AND SECONDARY VIEW SHEDS ON ERF 1600



FIGURE 21: NO STRUCTURES WILL INFLUENCE THE PRIMARY VIEWSHED OF ERF 1600

The 1st floor of the dwelling on Erf 1600 is the only floor that presents this property with a view towards the Indian Ocean and Robberg.

According to the owner of Erf 1600, the sea deck over the street building line on Erf 1601, impacts negatively on the sea views of Erf 1600.

As mentioned in Par 16.1 of this report, this deck was initially supported by a solid boundary wall on the northern and eastern property boundaries. After approval of the building plans, and during the construction process, the applicant communicated with the northern abutting neighbour, and as an attempt to accommodate the northern abutting property owner, the applicant has decided to cut back / break down the corners of the boundary wall to accommodate the views of Erf 1600 and to mitigate visual impact. The result being that the former boundary walls are no longer regarded as boundary walls, and now these walls encroach over the building lines.

The applicant decided to remove the previous solid boundary walls and to replace a section of the boundary wall with see-through glass pane to ensure that Erf 1600's views of Robberg will not be impeded. From the images below, it is clear that the owner of Erf 1601 has clearly done his utmost to accommodate his neighbour and to protect Erf 1600's views of Robberg.

The figure below shows that the picture frame window in the dwelling on Erf 1600, that overlook Robberg, is still unimpeded, as it still views toward Robberg through the glass balustrades on Erf 1601.



FIGURE 22: TRANSPARENT WINDOW PANE DOES NOT OBSTRUCT VIEWS OF ROBBERG

Since Erf 1600 is the first line of properties that abuts Beachy Head Road to the west, and no properties will ever be developed east of this road, Erf 1600's primary views will never be obliterated. Therefore, surrounding properties located on the boundary of the beachfront will remain desirable and more valuable than dwelling units located behind these principle properties. These properties will have an uninterrupted view of the Indian Ocean, irrespective of a neighbour properties development footprint within a land unit.

17. HEIGHT OF BUILDING

According to surveyed report on Erf 1601, attached as **ANNEXURE M**, the maximum height taken on the roof exceeds the height restrictions with a maximum of 5cm. None of the heights taken from the checks chimney or geysers exceed the 8.5m height restriction.

The extent of the height encroachment is approximately 0.4m², about 0.25 from the curved edge of roof at RC23 and RC24. The highest point on Plettenberg Bay Erf 1601 is at the curved edge of the roof which encroaches the height restriction by 5cm.

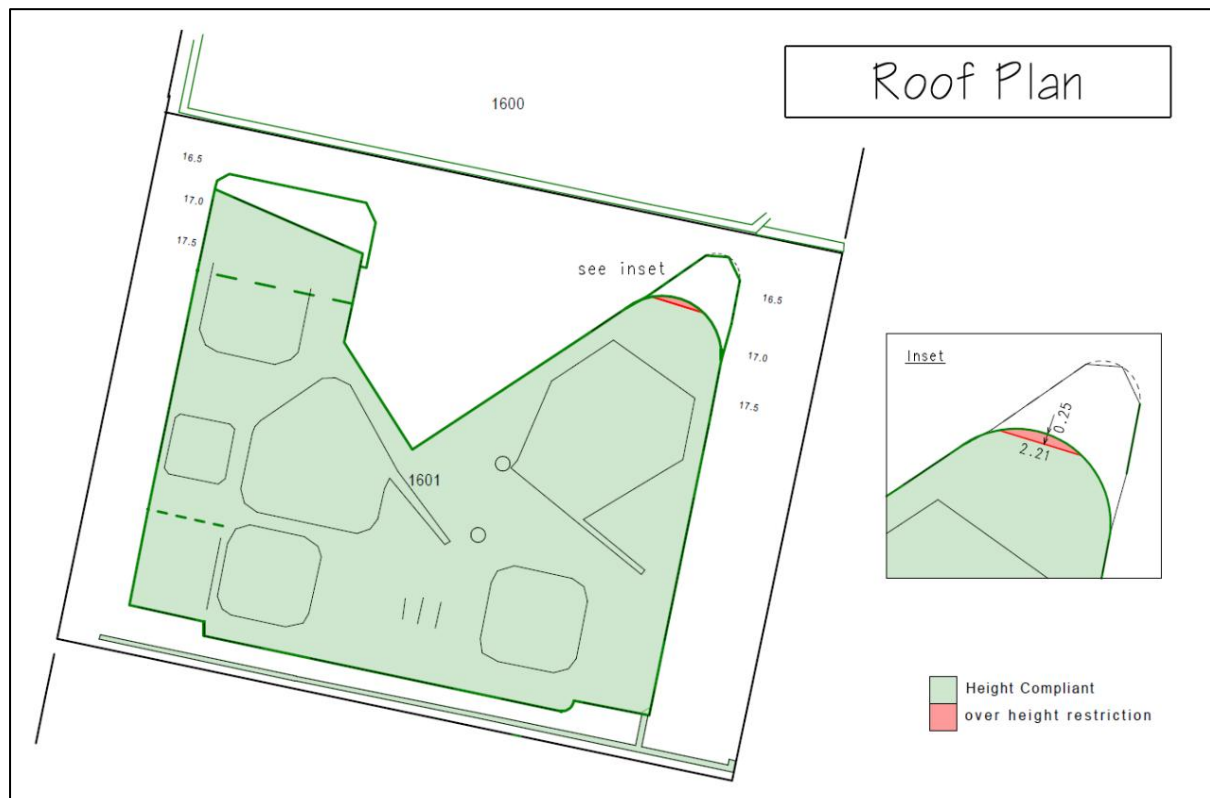


FIGURE 23: AREA THAT ENCROACH THE 8,5M HEIGHT RESTRICTION

The extent of that portion of the building that exceeds the 8,5m height restriction is approximately 0.4m². It must be noted that the remaining area of the roof plan including all the up stands, chimneys and geysers conform to the 8.5m height restriction. The height infraction is considered, so minor that making the minor amendments to the roof structure will have no have no favourable impact of views of surrounding property owners if the entire roof ought to comply with the 8.5m. The minor encroachment will not have any negative impact as based on the primary sight lines established in paragraph18 of this report.

18. BOUNDARY WALL HEIGHTS

According to surveyed report on Erf 1601, attached as **ANNEXURE M**. The image below shows the locality of the encroachments.

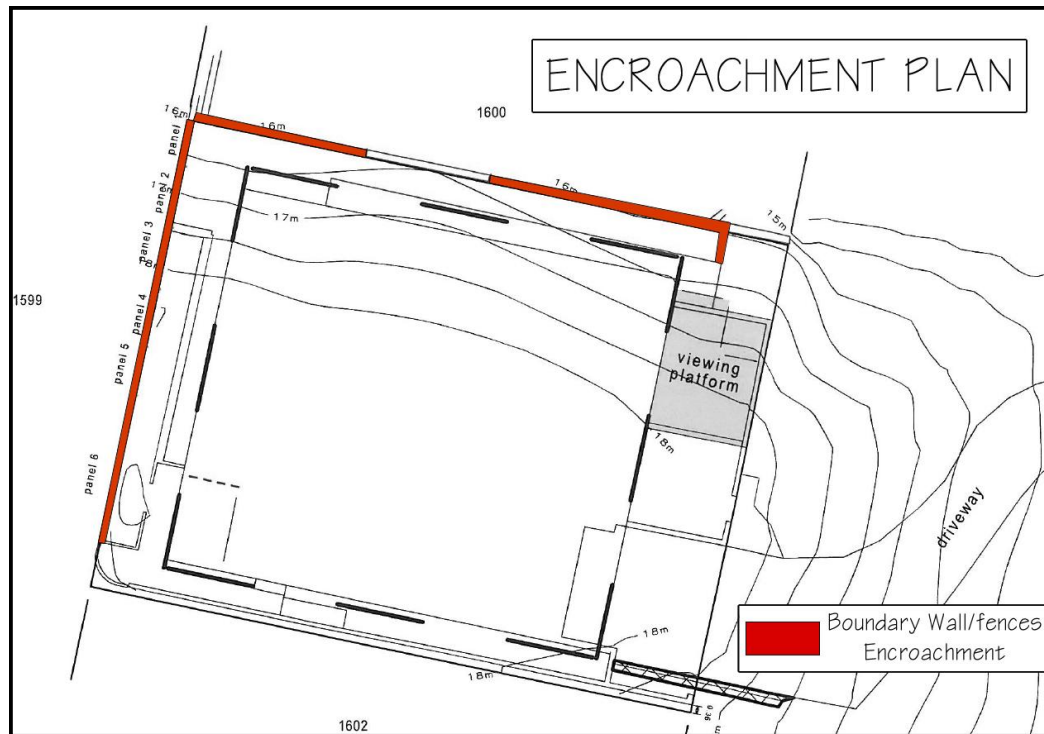


FIGURE 24: BOUNDARY WALL/FENCES ENCROACHMENT

The heights to boundary walls and fences were surveyed with the following results:

18.1. Street Boundary Height Encroachments:

The glass balustrade on the lower level is at a height of 18.67m with the natural ground level immediately below at 16.67 metres, thus the height on top of the glass is 2.00 metres above natural ground level. The glass balustrade on the northern end of the boundary wall exceeds the height restriction by 0.2 metres.

The glass balustrade (north-eastern corner) on the higher level (off the First Floor) is at a height of 20.66 metres less natural ground level of 16.57 metres is 4.09 metres above natural ground level.

The boundary wall (part of the deck structure) at the northern end (planter corner) exceeds the height restriction by 0.68 metres, while the southern end conforms and is at 1.8 metre above natural ground level.

The main reason for these encroachments are the fact that the application area was filled in along the eastern boundary, and as a result of this filling, Natural Ground level is now much lower than the artificial, landscaped ground level. The glass balustrades also serves as a boundary wall and was heightened to protect the dwelling against the sea winds.

The boundary walls are not unsightly and does not impact on sight distances of vehicles in Beachy Head Drive.



FIGURE 25: STREET LINE ENCROACHMENTS

18.2. Northern Lateral Boundary adjacent to Erf 1600

The fence exceeds the 1.8 permissible height along the two end portions of the fence. The western end by a length of 8.0 metres and the eastern end by a length of 11.30 metres. The height is exceeded with a maximum of $(2.15 - 1.8) = 0.35$ metres.

This encroachment is mainly as a result of the topography of the site. The boundary wall at this point is also of beta fencing, with no visual impact. If the fence is removed and replaced by dense shrubs / vegetation, it will have more impact on Erf 1600 than just the permeable beta fencing.

The beta fencing is constructed on top of a retaining wall. Dave Visser Consulting Structural Engineer confirmed in a specialist report that the retaining wall will have no impact whatsoever on the integrity of the structures on the abutting Erf 1600. The issues relating

to structural evaluations of the foundations was addressed in the answering affidavit to the 10th applicants founding affidavit **ANNEXURE L**.



FIGURE 26: NORTHERN LATERAL BUILDING LINE

18.3. Lateral Boundary (South) adjacent to Erf 1602

The boundary wall is off-set from the boundary line by 0.36 metres. The wall tapers to the west and conforms to 1.8 metres. The eastern section drops 0.69 metres (the step), well within the 1.8 metres and conforms at the seaward beacon wall end.

18.4. Rear Boundary

The fence erected on top of the stepped boundary wall exceeds the height restriction of 1.8 metres above natural ground level along the full length of the boundary. There is a section unfenced of 2.10 metres in length at the southern end, this section comprises a low circular wall which is compliant in relation to the height.

The rear boundary wall is stepped and comprises 6 panels of fence at various heights, relative to the stepped wall.

The sections are detailed as panels and these are numbered panel 1 to panel 6 commencing from the northern end (see Encroachment Plan for detail).

For ease of reference a Table below details the critical height in excess of the 1.8 metre boundary wall or fence.

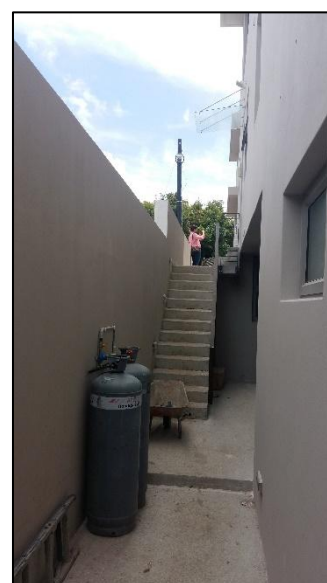


FIGURE 27: SOUTHERN LATERAL BOUNDARY LINE

Panel 1: 1.28m	Panel 3:1.34m	Panel 5:0.67m
Panel 2: 0.81m	Panel 4:0.77m	Panel 6:0.95m

On average the height to the top of the fence exceeded the height restriction by 0.97 metres.



FIGURE 28: BOUNDARY WALL TO THE WEST OF THE APPLICATION AREA

The natural ground level and the actual ground level has significantly changed since the dwelling units were originally built on the property.

As a result of this change the difference the actual ground level can allow one to access another property by simply jumping over a minor wall. For instance, panel 6 along the western boundary measures 2.75m above the Natural Ground Level. Removing this fence will make it significantly easier for a possible intruder to access the erf, severely compromising the Erf security.

A photo taken on site shows the height of the actual ground level on Erf 1599 is almost the similar height as the boundary wall. The same principle applies to Erf 1600 only in this instance Erf 1600 will not benefit from the lower boundary fence as the security of their erf will be compromised as a result of a lower boundary fence. This is the only justifiable reason to allow for the boundary fence wall departure on the application area.



FIGURE 29: ACTUAL GROUND FLOOR COMPARED TO THE EXISTING BOUNDARY WALL

19. DEVIATION FROM THE ALLOWED "BUILT AREA"

Condition 4(c) of the Title Deed of Erf 1601 states that no more than 50% of the site may be built upon.

The interpretation of "built area" is open for interpretation as neither the Plettenberg Bay Zoning Scheme Regulations, nor the Title Deed contain any definition of "built area".

The condition with reference the "built area" was imposed by the Administrator under the provisions Ordinance No 33 of 1934. The transition of zoning schemes, approved in terms of the Township Ordinance was provided for in Section 7(1) of The Land Use Planning Ordinance, 1985(Ordinance 15 of 1985). In effect meaning that all provision and regulations contained in the Township Ordinance prior to the commencement of LUPO shall be deemed to be a zoning scheme in force in terms of LUPO. Thus, meaning if any definition of "*built area*" were contained in any of the supplementary schemes before the commencement of LUPO it would have been promulgated in the Plettenberg Bay Zoning Scheme.

If no definition regulates built area the definition can be open for interpretation. As "*built area*" can include any physically transformed area on a land unit to accommodate a structural entity, this can include paved areas, boundary walls, cover areas, reconstructed areas etc.

19.1. Surveyed Built Area

All features of a built nature were surveyed and depicted on plans attached as **ANNEXURE M**. An extract of the plan is illustrated in the image above. The features are typically a 'hard' surface, comprising; wooden decks, stairs, paving, retaining walls, driveway, walkways, including the habitable space.

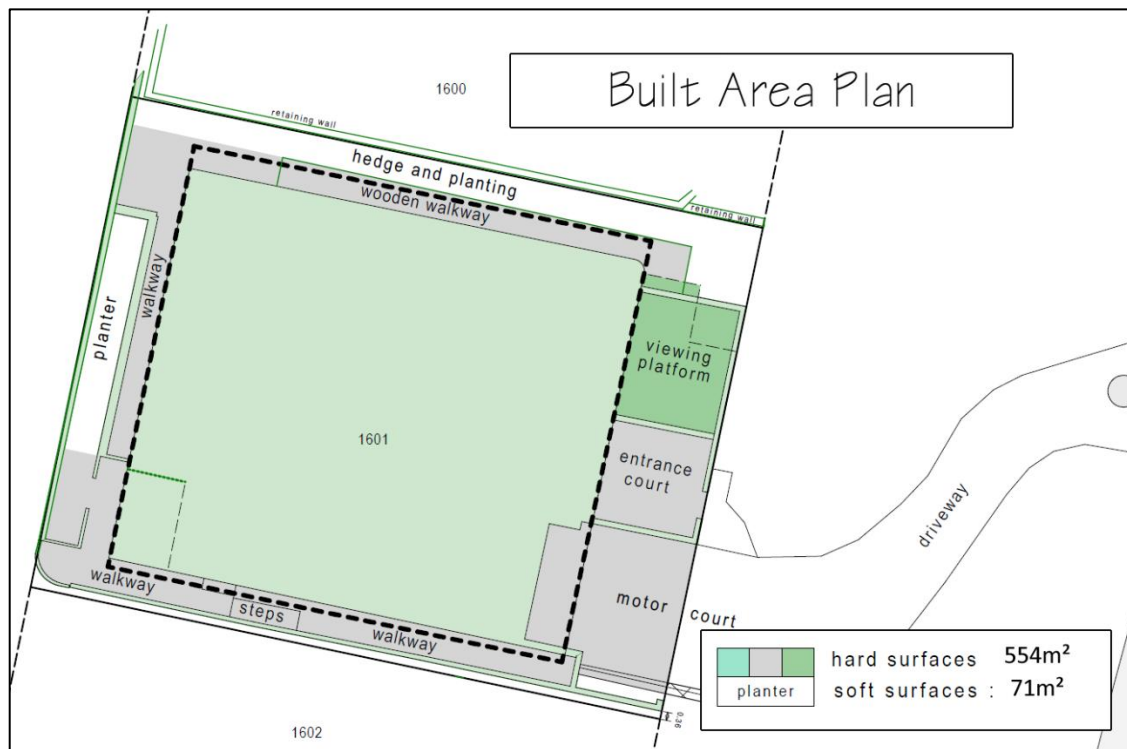


FIGURE 30: BUILT AREA

Soft surfaces are typically, vegetation planting and those areas undisturbed. It can be argued that the planters, being constructed and acting in some cases as retaining wall are hard surfaces and thus built.

The extent of the hard surfaces is 554m² while the soft surface is 71m².

To legalise the built area on the property the municipality should assess the relevancy of "built areas" and whether this has been replaced with definition of coverage.

Since the Plettenberg Bay Zoning Scheme Regulations have development parameters that limit the coverage (i.e. built area) on properties, there are no longer any purpose in controlling development via "built areas".

It should further be noted that given the focus and awareness of water scarcity and droughts, property owners are more and more reluctant to have large gardens and landscaped areas that puts a burden on water use and irrigation. Therefore, there are more paved and hardened surfaces, what are not part of the building, but per definition these are part of the "built area".

Again, removal of this title deed condition, will eliminate confusion between “coverage” and “built area” and will also contribute to water saving as this condition forces large gardens that require high volumes of water for irrigation – which is not desirable in a water scarce area.

20. COVERAGE

The Plettenberg Bay Zoning Scheme Regulations define coverage as: *“...the total percentage area of site that may be covered by buildings, **measured over the outside walls and covered by a roof** or projection, provided that the area covered by a maximum eaves projection of 1m shall be excluded for the purpose of determining the maximum permissible coverage...”*

When the building plans for Erf 1601 were initially received by Bitou Municipality on the 6th of September 2016⁹ the coverage was 290m² ¹⁰. The building plans have been approved as such.

During 2017 the owner demolished the boundary wall to accommodate the view of the abutting property north, Erf 1600 (this was established in Par. 16 of this report). As a result of this amendment the coverage of the structure and recalculation of the deck area the coverage increased from 46.4% to 56.8% according to the latest as built plans.

The coverage of the original building plans increased as a result of:

- The sea deck was not initially calculated as coverage, as it did not adhere to the definition of coverage according to Plettenberg Bay Zoning Scheme Regulation. Removing a section of the boundary wall in the north-east corner resulted in the void to be converted to a grotto. The sea deck was now perceived as a roof projection over the grotto resulting in an addition of 25m² to the coverage calculation
- The deck area surrounding the swimming pool covering the “void” space and is higher than 1m above natural ground level. Since the staircase towards the pool now encloses the “void” area, the void area is now enclosed by the outside wall, and in terms of the definition of “coverage” in the Plettenberg Bay Zoning Scheme Regulations, this space must now be included in the calculation of “coverage”. This resulted in an additional of 40m² to be added to the coverage calculations.
- The pool was excluded in the coverage calculation.

It should be noted that if the sea deck was not included in the calculation the coverage of the property would have been 52.8%. It must be noted that the land owner did not expand on what was initially approved during 2016, in fact, the pool deck’s size was decreased to mitigate visual

⁹ High Court WC Case No 6803/17 Annexure HE19 4th to 9th applicants Affidavit

¹⁰ High Court WC Case No 6803/17 Annexure HE 16 4th to 9th applicants Affidavit

impact for the northern abutting neighbour. As result of minor changes to the existing boundary wall the coverage calculation changed.

According to the land surveyor the surveyed coverage calculates to 56.8%. This conforms to the latest as built plans of the application area. The Image below shows an extract of the coverage plan.

The figure below shows that area of the building that is included in the calculation of coverage.

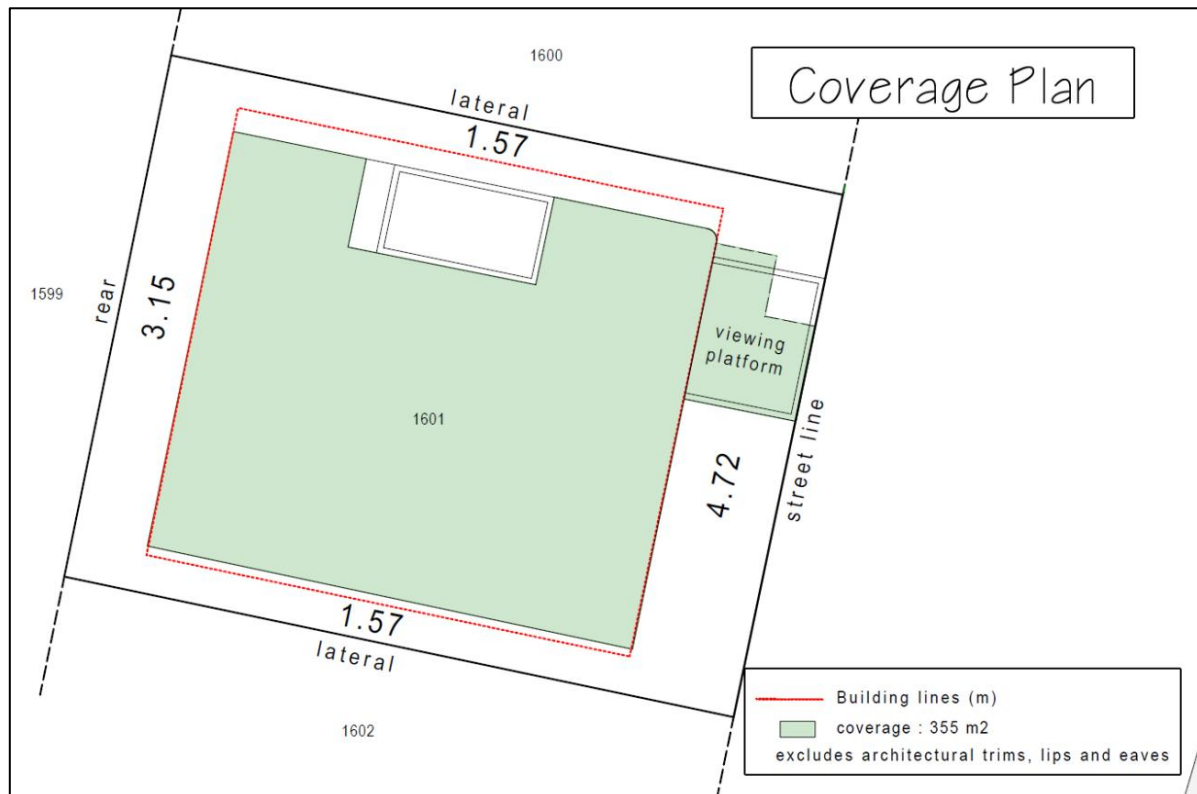


FIGURE 31: SURVEYED COVERAGE PLAN

It should be noted that when the building plans were initially approved, the void area south of the swimming pool was excluded from the calculation of coverage, same with the seaside deck.

Figure 32 below shows the outside walls and a portion of the void area that is covered by a roof (blue hatching). This figure shows the implication of the "void" area on the coverage calculation: if the stair case that provides access to the pool is removed to open the void area, the void area will not be included in the calculation of "coverage" as it will be excluded by the "outside walls". This opening alone, will decrease the coverage significantly. The implication being, that if the void area is opened, the building will almost comply with the prescribed coverage. Hence it means that the increased coverage / coverage encroachment does not necessarily mean that the building on Erf 1601 is too big – it is merely the balcony of the seas deck and the enclosure of the void area next to the pool that resulted in the building exceeding the allowed coverage.

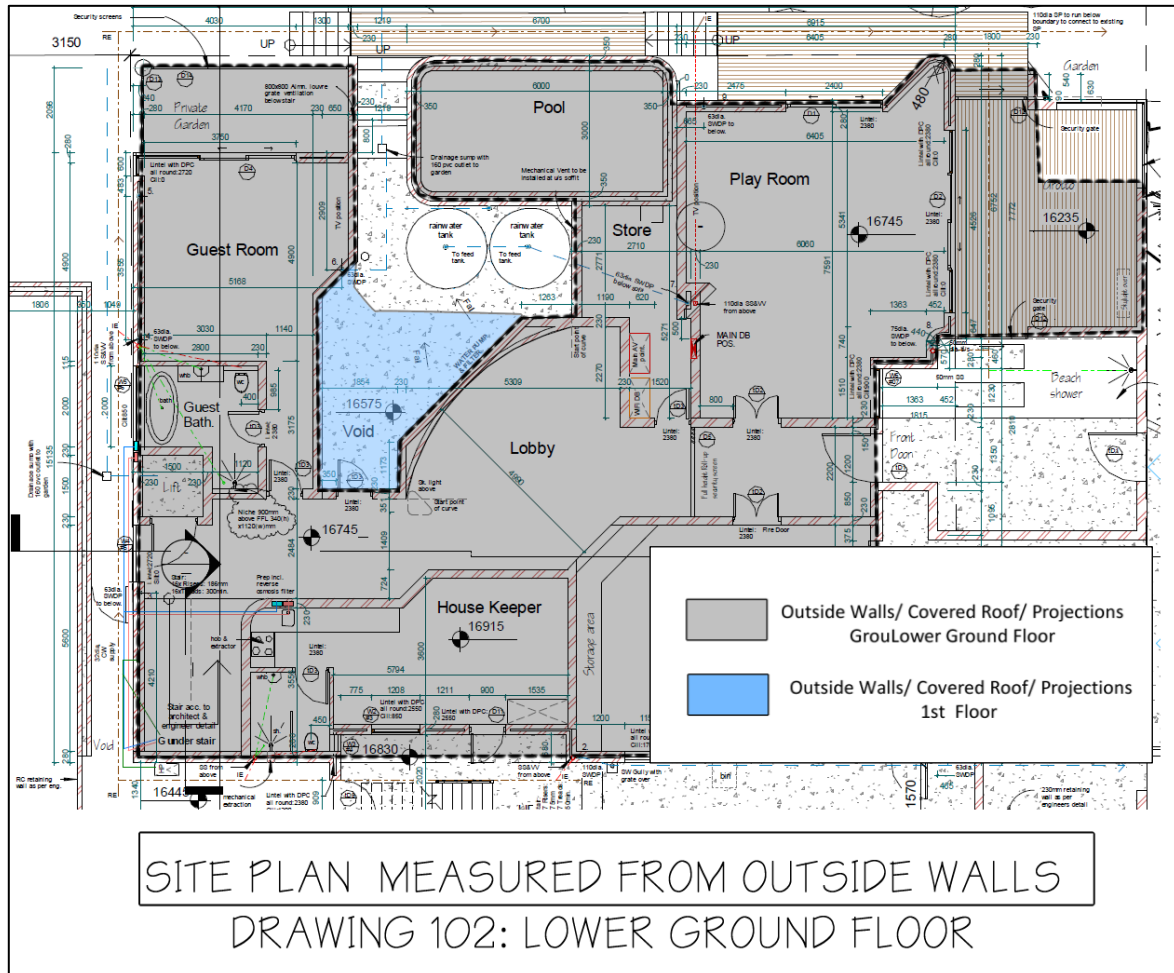


FIGURE 32: CALCULATION OF COVERAGE – VOID AREA

21. BUILDING LINE DEPARTURE / RELAXATION

Returning to the conditions of title, it is evident that such conditions hail from a time when the township was proclaimed by the then Administrator of the Province. In the absence of a town planning or similar instrument at the time, conditions of title were used as the mechanism to regulate the use of land including the establishment of building lines for various purposes.

The purpose of the building line is to allow for municipal services, the protection of privacy (and to ensure ventilation and solar access), accessibility and visibility.

21.1. Street Building Line Relaxation for the Sea Deck

The existing structure (sea deck) will not impede on the established sense of place already established in the surrounding area. The structures impeding the building line is the sea deck which was originally approved by council as it was not perceived as structure during the time of the building plan approval. Amendment to the boundary was made to ensure that the abutting neighbour to the north was not impeded by the boundary wall.

The building line relaxation application is to legalise the sea deck measuring 25m² in extent, on the eastern side of the existing dwelling. The remaining structures on the property conform to the prescribed building lines.

The 25m² encroachment over the prescribed street building line does:

- Not impact on traffic flow or sight distances
- Not impact on municipal services
- Not impact on ventilation or privacy
- Not impact on views
- Not impact on sunlight

For the above reasons the street building line is regarded as being desirable and not impacting on any rights.

Bitou Municipality has approved building line relaxation on Plettenberg Bay Erf 1590 to accommodate a garage. The departure was for the relaxation of the eastern later building line from 3m to 0m to accommodate the garage. This building line departure was approved by Bitou Municipality together with the building plans for the garage during 1987. However, no record of decision could be obtained on municipal file that the provincial government made a final decision to relax the building lines in terms of the now repealed Removal of Restrictions Act 84 of 1967. Therefore, it is clear that council has supported building line departures in the surrounding area in conflict with the restrictive title deed conditions. The precedent for street building line relaxations have therefore been set.

21.2. Southern Lateral Building Line Relaxation for the Staircase

An existing outside staircase is located in the southern building line. A portion of this staircase is below natural ground level and a portion of this stair case is at a height of 1,4m above natural ground level. This stair case is not covered by a roof, is below the communal boundary wall between the application area and Erf 1602.

It should be noted that this building line relaxation is only for the stair case, and the actual dwelling house with windows and openings, is still 1,57m away from the boundary. The proposed staircase does not impact on privacy, ventilation, sunlight or views. The staircase has no impacts whatsoever.

21.3. Relaxation of the Aggregate Side Space

An existing outside staircase is located in the southern building line. Because of this staircase, it is necessary to relax the aggregate side space from 4,5m to 2.93m.

It should be noted that even though the staircase results in an encroachment of the actual aggregate space, the actual dwelling house complies with the prescribed aggregate side space.

22. NO IMPACT ON EXISTING RIGHTS

The land development applications on Plettenberg Bay Erf 1601 relate to building line relaxations for a stair case, balcony, and a seaside viewing deck. The title deed restrictions relate to building line relaxations that are stricter than the applicable zoning scheme regulations.

- The sea side deck encroaches the street building line. This deck was altered and replaced by glass balustrades to mitigate the visual impact on the abutting Erf 1600.
- The appearance of the building (i.e. flat roof vs. pitched roof, and roof material) does not impact on any rights of any person. There are various other flat roofed buildings in close proximity to the application area (refer Figure 10). There is no proof whatsoever of how a roof style can impact on any rights of any surrounding land owners especially if flat roofs are considered the "*architectural language*" of the surrounding area.
- The transgression over the 8.5m height calculates to an area of 0.4m² that exceeds the prescribed height restriction by 5cm. The remainder of the roof height complies with the prescribed height restrictions of the Plettenberg Bay Zoning Scheme Regulations. It is the considered opinion that the slight transgression will not impact the views of the surrounding property based on the orientation of surrounding dwelling units affecting their primary viewsheds to the surrounding area.
- The seaside deck is the reason why the allowed coverage on the property is exceeded. The deck does not impact on any privacy, it does not impact on accessibility or on sunlight. Therefore, the increased coverage (as a result of the seas-side view deck) does also not impact on any rights.

23. IMPACT ON VALUE OF SURROUNDING AREA

The owner of a property is entitled to develop his / her property to the full potential that the applicable legislation (zoning scheme regulations and title deed restrictions) allow for. If the building that is to be developed, impacts on the value of the surrounding properties, that impact on value must be assessed from the perspective whether the building complies with the prescribed development parameters. If it does, the alleged impact on value is irrelevant. If the building does indeed exceed / encroach the prescribed development parameters, the impact on the value has to be assessed from the perspective of the impact on the value of only those portions of the building that encroach the prescribed development parameters.

In the case of the dwelling on Erf 1601, the following aspects have to be assessed when the impact on the monetary value of the surrounding properties are assessed:

Encroachment	Impact on Value
Relax the street building line from 4.5 m to 0m	<i>Insignificant impact as this encroachment consist of see-through glass panels and it does not impact on any view lines,</i>

Encroachment	Impact on Value
Relax the allowed coverage from 50% to 56,8%	<i>No impact – refer to Par 20 where the coverage departure is motivated.</i>
6m height restriction from the average natural ground level, to the wall plate	<i>No impact as the building (like many others in the neighbourhood) has no wall plate, and this 6m height restriction has no impact on the views of surrounding properties. The Majority of the building complies with the prescribed 8,5m height restriction.</i>
Relax the 8,5m height restriction to 8,55m to legalise an encroachment over the height restriction of an area of approximately 0,4m ²	<i>A 0,4m² portion of the building that encroaches by 5cm will not be visible with the bare eye, hence no impact on view lines and no impact on value.</i>
Height of the street boundary wall/ fence from 1.8m to 2.0m	<i>The boundary wall is permeable (see through), and increases safety and security, hence no impact on value – increased safety & security = higher property values.</i>
Height of the northern boundary wall/fence from 1.8m to 2.15m	<i>The boundary wall is permeable (see through), and increases safety and security, hence no impact on value – increased safety & security = higher property values.</i>
Relax the height of the rear boundary fence from 1.8m to 3.14m	<i>The boundary wall is permeable (see through), and increases safety and security, hence no impact on value – increased safety & security = higher property values.</i>
Removal of restrictive Condition 4(c) to allow construction on more than half (1/2) of Erf 1601	<i>This aspect was discussed in detail in Par 48 – no impact on Value.</i>
Removal of restrictive Condition 4(d), to allow building line relaxations	<i>Insignificant impact as this encroachment consist of see-through glass panels and it does not impact on any view lines,</i>
Removal of restrictive Condition E (1), to allow a concrete roof	<i>The Architectural style of many buildings in this neighbourhood consist concrete roofs, hence the proposal is consistent with the character of the area and there is no proof how a concrete roof will impact on the value of the surrounding properties.</i>
Removal of restrictive Condition E (2), , to allow a flat roofed dwelling	<i>The Architectural style of many buildings in this neighbourhood consist flat roofs, hence the proposal is consistent with the character of the area and there is no proof how a flat roof will impact on the value of the surrounding properties.</i>

It is the considered opinion that the minor encroachments, that were constructed in accordance with previously approved building plans, and small deviations to accommodate neighbours, does not impact on the monetary value of the surrounding properties.

24. PROPERTY SIZES

The table below is the summary of the sizes of the properties in close proximity to the application areas, as well as the allowed coverage (m²) on these properties, based on the property sizes. From this summary it is clear that the application area and the southern abutting Erf 1602 are the smallest properties in the neighbourhood.

Given the small size of Plettenberg Bay Erf 1601, it is really difficult not to exceed the prescribed coverage on the property. Even though the coverage (measured as a % of the size of the erf) exceeds the allowed 50% coverage, the actual allowed coverage measured in (m²) is actually much smaller than the surrounding properties.

The seaside deck calculates to 4% coverage based on the size of the application area. This deck was originally designed to be an entrance area with a private outdoor shower area, for when the owners return from the beach. This private area was then covered with a projection, for in case of foul weather. It should be noted that the dwellings to the south of the application area has a similar structure, the only difference being that those areas are covered with pergolas, and not a reinforced concrete roof.

Erf No.	Area (m ²)	Coverage (50%)
1592	863.54	431.77
1596	1057.86	528.93
1599	1149.00	574.5
1602	624.96	312.48
1666	873.86	436.93
1674	713.54	356.77
1678	815.06	407.53
1669	1151.61	575.805
1589	658.89	329.445
1667	933.21	466.605
1598	967.42	483.71
1591	1178.00	589
1593	1060.63	530.315
1601	621.67	310.835
1673	676.01	338.005
1594	1105.95	552.975
1600	685.68	342.84
1665	952.53	476.265
1671	880.11	440.055
1590	1176.38	588.19
1597	1213.47	606.735
12625	2515.28	1257.64
1672	836.11	418.055
1677	948.71	474.355
8786	1154.04	577.02

Application Area
 Erven Less than 50 m from Application Area

FIGURE 33: ALLOWABLE COVERAGE (50%) OF SURROUNDING PROPERTY AREAS¹¹

25. NO IMPACT ON MUNICIPAL SERVICES

The application area is located within the urban fabric of Bitou Municipality and has access to municipal services. The property has existing rights to build a dwelling house with outbuildings and a servant's quarter on the property.

The outbuilding on the lower ground floor is used by the house servant and is a primary right on a Single Residential Zone. It is the considered opinion that the existing land use will not have any additional impact on the existing services provided by Bitou Municipality.

No municipal services or servitudes are affected by the building line relaxations for the staircase, balcony or sea view deck.

¹¹ According to 2017 Western Cape Cadastral as Proved by the NGI

26. SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013)

One of the main objectives of SPLUMA is to provide a framework for spatial planning and land use management to address past spatial and regulatory imbalances. This section illustrates how the application is consistent with the 5 main development principles applicable to spatial planning and land use management as set out in Section 42 of SPLUMA:

26.1. Spatial Justice

Criteria	Compliance	Planning Implication
Past spatial and other development imbalances must be redressed through improved access to and use of land.	Not applicable	This objective is not applicable to a building line relaxation nor the removal of a restrictive title deed condition that regulates building lines.
Spatial Development Frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation.	Not applicable	This is not a Spatial Development Framework; therefore, this criterion is not applicable to this particular land development application.
Spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons.	Comply	The application area forms part of an existing approved residential township with existing access. This application is a minor building line departure and removal of restrictive title deed conditions application. The provision of a kitchenette in a servant's quarter within the dwelling, merely allows for dignified living conditions for a caretaker.

26.2. Spatial Sustainability

Criteria	Compliance	Planning Implication
Promote land development that is within the fiscal, institutional and	Comply	The proposed development is within the urban edge of

Criteria	Compliance	Planning Implication
administrative means of the Republic.		Plettenberg Bay and within an established urban environment. No additional spending or costs for the local authority is necessary to accommodate this land development application.
Ensure that special consideration is given to the protection of prime and unique agricultural land.	Not applicable	This criterion is not applicable to this land development application.
Uphold consistency of land use measures in accordance with environmental management instruments.	Comply	The application area is located within the urban edge of Plettenberg Bay and does not trigger any listed activities in terms of the National Environmental Management Act (1998).
Promote and stimulate the effective and equitable functioning of land markets.	Comply	The proposed development is consistent with the character of the surrounding area and will not detract from the value of the surrounding properties.
Consider all current and future costs to all parties for the provision of infrastructure and social services in land developments.	Comply	The proposed land use will have no impact on the existing municipal services of Bitou Municipality, hence, no additional cost for any party.
Promote land development in locations that are sustainable and limit urban sprawl, and result in communities that are viable.	Comply	No urban sprawl will be created because of the building line departure and removal of title deed restriction application.

26.3. Spatial Efficiency

Criteria	Compliance	Planning Implication
Land development optimises the use of existing resources and infrastructure.	Comply	Plettenberg Bay Erf 1601 was optimally developed within the available infrastructure for the area.
Decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts.	Comply	As mentioned before in this report, approval of this application will have no negative impacts on the

Criteria	Compliance	Planning Implication
		environment, no financial impact, nor any social impacts.
Development application procedures are efficient and streamlined and timeframes are adhered to by all parties.	Not Applicable	The Bitou Municipality should process this application within the prescribed time frames of the By-Law.

26.4. Spatial Resilience

Criteria	Compliance	Planning Implication
Flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks	Not Applicable	This criterion is not applicable to this land development application.

26.5. Good Administration

Criteria	Compliance	Planning Implication
All spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act.	Applicable to Bitou Municipality	This principle has no direct bearing on the application, however the Bitou Municipality is obligated to consider the application fairly and within the timeframes provided for in terms of the By-Law. What is however important is that all decision-making is aligned with sound policies based on national, provincial and local development policies.
All government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks.		
The requirements of any law relating to land development and land use are met timeously.		
The preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties		

Criteria	Compliance	Planning Implication
the opportunity to provide inputs on matters affecting them.		
Policies, legislation and procedures must be clearly set in order to inform and empower members of the public.		

27. CONCLUSION

In light of this motivation, and the information contained within the foregoing report, it is clear that the application for:

- (i) A permanent departure to relax the street building line from 4.5 m to 0m to allow the existing sea deck, in terms of Section 15(2)(b) of the By-Law;
- (ii) A permanent departure to relax the southern lateral building line to 0m to allow a staircase, in terms of Section 15(2)(b) of the By-Law;
- (iii) A permanent departure to relax the aggregate side space from 4,5m to 2.93m, to allow a staircase in the building line, in terms of Section 15(2)(b) of the By-Law;
- (iv) A permanent departure to relax the allowed coverage from 50% to 56,8% to allow for the existing structures, in terms of Section 15(2)(b) of the By-Law;
- (v) A permanent departure to relax the 6m height restriction from the average natural ground level, to the wall plate to legalise the existing building, in terms of Section 15(2)(b) of the Bitou Municipality By-Law on Municipal Land Use Planning;
- (vi) A permanent departure in terms of Section 15(2)(b) of the Bitou Municipality By-Law on Municipal Land Use Planning, to relax the 8,5m height restriction to 8,55m to legalise an encroachment over the height restriction of an area of approximately 0,5m²;
- (vii) A permanent departure to relax the height of the street boundary wall/ fence from 1.8m to 2.0m, in terms of Section 15(2)(b) of the By-Law;
- (viii) A permanent departure to relax the height of the northern boundary wall/fence from 1.8m to 2.15m, in terms of Section 15(2)(b) of the By-Law;
- (ix) A permanent departure to relax the height of the rear boundary fence from 1.8m to 3.14m, in terms of Section 15(2)(b) of the By-Law;
- (x) Removal of restrictive Condition 4(c), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow construction on more than half (1/2) of Erf 1601;

- (xi) Removal of restrictive Condition 4(d), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow building line relaxations;
- (xii) Removal of restrictive Condition E (1), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow a concrete roof;
- (xiii) Removal of restrictive Condition E (2), contained in the Title Deed (T14312/2016) of Plettenberg Bay Erf 1601, in terms of Section 15(2)(f) of the By-Law, to allow a flat roofed dwelling;

Meets the criteria as set out in the SPLUMA and the By-Law, is desirable and it is therefore recommended that the application for the proposal be supported by the relevant authorities and approved by Bitou Municipality.

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February 2018

