PRE-APPLICATION BASIC ASSESSMENT REPORT FOR THE PROPOSED DEVELOPMENT OF 5 RESIDENTIAL UNITS ON ERVEN 4139, 4140, 4141, 4142, 4143, 4144, 4145 (ERF 3997), STILL BAY – WEST, WESTERN CAPE

DEADP REF: 16/3/3/6/7/1/D5/19/0173/20

COMMENTS ON BAR

I have registered as an IAP for this project and wish to comment as follows:

1. First of all I must compliment you on a very thorough BAR for this relatively small development. It is on a potentially sensitive coastline, but your report indicates that all precautions have been considered to ensure that the potential impact on the natural environment is avoided or minimised . The Environmental Management Plan also ensures that impacts during the construction phase are kept to the minimum.
2. I am a bit disappointed that the architectural designs are not similar to the Bosbokduin design concept; the proposed style of these dwellings are completely different, and, while much more energy efficient, may not be to everybody's liking. But that is a matter of taste, always a difficult issue to handle.
3. I note that no provision is being made for stormwater run-off post construction (the EMP mentions precautionary measures during construction), but I think that a short mention that the situation be monitored should be included. In the Civil Engineering Services Report (Appendix M) it is mentioned that the dwellings will have thatched roofs and that stormwater will free flow from and around structures. But in the Building Design Guidelines (Appendix P) the roof finishes are metal roof sheeting with gutters and downpipes.

   One of the effects of climate change is that we have more frequent heavy downpours, particularly during the winter months – this results in peaks of stormwater run-off which can be an erosion risk. At this stage I am not proposing any additional measures for stormwater management, but I suggest that the possibility be brought to the attention of the owners that they may have to introduce stormwater management systems in the future if severe run-off causes erosion. This need not be expensive structures, I think a simple swale on or close to the southern boundaries of the new erven into which stormwater can drain may be sufficient to prevent erosion further down the slope.

I have no further comment, and support your recommendations for this proposed development.

Kind regards

Niel van Wyk
Environmental Specialist
Stilbaai

16 August 2021

LANDSCAPE EAST – CONSERVATION INTELLIGENCE MANAGEMENT UNIT
postal Private Bag X6546, George, 6530
physical 4th Floor, York Park Building, York Street, George 6530
website www.capenature.co.za
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email **msimons@capenature.co.za**
reference LS14/2/6/1/6/5/Erf 3997_Development_Stillbay
date **02 September 2021**

Sharples Environmental Services cc,
P.O.Box 9087,
George,
6530

Attention: Mr Michael Bennett
By email: michael@sescc.net

Dear Mr Michael Bennett

THE PRE-APPLICATION BASIC ASSESSMENT REPORT FOR THE PROPOSED DEVELOPMENT OF 5 RESIDENTIAL UNITS ON ERVEN 4139, 4140, 4141, 4142, 4143, 4144, 4145 (ERF 3997), STILL BAY – WEST, HESSEQUA LOCAL MUNICIPALITY, WESTERN CAPE

DEA&DP Reference: 16/3/3/6/7/1/D5/19/0173/20

CapeNature would like to thank you for the opportunity to review the application for the proposed development of 5 residential units on erven 4139, 4140, 4141, 4142, 4143, 4144, 4145 in still bay – west. The applicant proposes the following as extracted from the PreApp BAR:

"The holder of the EA would like to amend the existing EA. However as confirmed by the DEADP the proposal cannot be undertaken in accordance with an amendment and a new application for environmental Authorisation must be submitted.

The Applicant would like to consolidate, subdivide and rezone the site as per the layout plan, Figures 1 to 4, to allow for the development of an addition 5 new erven along the northern boundary of the property. In addition, the two existing, but undeveloped erven, are proposed to be rezoned and incorporated into the Open Space. Please refer to Figure 5 for the approved site development plan. The approved road which crosses the open space will be relocated to the north of the proposed erven."

Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application. CapeNature wishes to make the following comments:

The Western Cape Nature Conservation Board trading as **CapeNature**
Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

According to the Western Cape Biodiversity Spatial Plan (WCBSP 2017)[1] the proposed site is outside the extent of Critical Biodiversity Areas but has Ecological Support Areas (ESA 1: Terrestrial, Aquatic, Wetland).

The reasons behind WCBSP delineation on the site are the following:

- Bontebok Extended Distribution Range
- Coastal resource protection-Eden
- Blombos Strandveld (LT)
- South Strandveld Western Strandveld Unchannelled Valley Bottom Wetland

According to Mucina and Rutherford[2] and the Western Cape Biodiversity Spatial Plan (WCBSP 2017) the vegetation unit likely affected by the proposed development is the Least Threatened Blombos Strandveld (Moderately Protected). This unit is not listed as a threatened ecosystems in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM: BA). The conservation target for this specific vegetation unit is listed as 36% of its original extent. The National Biodiversity Assessment (2018) has mapped the area as Hartenbos Dune Thicket (Least Concerned) [3].

Ecological Support Areas are not essential for meeting biodiversity targets but play an important role in supporting the ecological functioning of CBAs and deliver important ecosystem services. They facilitate landscape connectivity, promote resilience to climate change, and buffer elements of the landscape including protected areas and sites that are important for the survival of individual species.

The coastal corridor is mapped as a feature of ESA which forms part of the ecological infrastructure. Thus, any changes or impacts to the coastal corridor can affect the ecological functioning and/or the resilience of the coast to withstand impacts that may arise as the result of climate change and impact on coastal processes. Therefore, these ESAs do need to remain ecologically functional, which means that they need to be maintained in at least a near-natural state, although some loss of biodiversity pattern through a variety of land uses is acceptable in line with the Western Cape Land Use Guideline Handbook (WCBSP 2017). We agree that the coastal corridor must remain intact and undisturbed by the proposed development.

Although the protected trees[4] are outside the focus area we recommend obtaining comments the Department of Forestry, Fisheries and Environment (DFFE). CapeNature will not object to the findings\recommendations as DFFE is a custodian of forestry resources in South Africa.

Prior to construction a search-and-rescue should be conducted for plant species. A CapeNature permit would be required for plant search-and-rescue. If any animal species are found, they should be relocated to suitable habitats. The plant species can be used during rehabilitation.

In terms of the Alien and Invasive Species Regulations, NEM: BA[5],2014, specific alien plant species are either prohibited or listed as requiring a permit; aside from restricted activities

[1] Pool-Stanvliet, R., Duffell-Canham, A., Pence, G. & Smart, R. 2017. The Western Cape Biodiversity Spatial Plan Handbook. Stellenbosch: CapeNature.

[2] Mucina, L. & Rutherford, M. C. (EDS) 2006. The Vegetation of South Africa, Lesotho and Swaziland. Strelitzia 19. South African National Biodiversity Institute, Pretoria. (revised 2012)

[3] Skowno, A. L., Poole, C. J., Raimondo, D. C., Sink, K. J., Van Deventer, H., Van Niekerk, L., Harris, L. R., Smith-Adao, L. B., Tolley, K. A., Zengeya, T. A., Foden, W. B., Midgley, G. F. and Driver, A. 2019. National Biodiversity Assessment 2018: The status of South Africa's ecosystems and biodiversity. Synthesis Report. Pretoria, South Africa. 214 pp.

[4] Notice of the List of Protected Tree Species under the National Forest Act, 1998 (Act No. 84 of 1998)

[5] Government Gazette No. 37885, GN No. R. 598 (2014) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) Alien and Invasive Species Regulations, 2014

concerning, *inter alia*, their spread, and should be removed. The level of alien infestation is therefore not seen as reducing the sensitivity of a site, nor is the subsequent removal of alien vegetation from a property regarded as a mitigation measure as this is a legal requirement.

During the clearing of alien invasive plants, areas susceptible to erosion should be protected by installing the necessary temporary structures. It is essential to clearly mark alien and invasive plants that will be removed to avoid damaging and distinguishing indigenous vegetation.

The topsoil used in the rehabilitation phase should not be contaminated. We recommend that all topsoil stockpiles be less than 1.5m in height and have adequate signage to illustrate which are topsoil and subsoil for rehabilitation purpose.

All stormwater runoff within the development area must be managed in a manner as to minimise erosion and to avoid flooding.

Waste should be removed from the entire site and not only the development footprint. Waste generated by the development must be stored on site until it is removed to a registered facility. Ensure that waste bins and containers do not overflow by emptying them regularly.

CapeNature reminds the applicant of Section 28 of National Environmental Management Act (NEMA) (Act 104 of 1998 as amended) (Duty of Care) that states the following:

> *"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."*

Any action that causes wilful degradation of the environment may therefore constitute a breach of this Duty of Care and the penal provisions of NEMA will apply.

A qualified Environmental Control Officer (ECO) should be appointed to monitor and ensure the implementation of the proposed mitigation measures. The ECO must identify any harmful activities to the environment.

In conclusion, at this time proposed Alternative A (Preferred Alternative) seems to have less of a negative impact on the environment. Although no Species of Conservation Concern will be impacted for Alternative A; the species diversity is high for the focus area and the impact that the proposed development might have on these species remains concerning.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely,

Megan Simons
For: Manager (Landscape Conservation Intelligence)
The Western Cape Nature Conservation Board trading as **CapeNature**

Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

Department of Environmental Affairs and Development Planning
Development Management (Region 3)
Shireen.Pullen@westerncape.gov.za
Tel: +27 44 814 2021
Private Bag X6509, George, 6530
4th Floor, York Park Building, York Street Street, George, 6529

REFERENCE: 16/3/3/6/7/1/D5/19/0173/20
ENQUIRIES: Shireen Pullen
DATE OF ISSUE: **20 August 2021**

Mr. Willem Nel
8 Nautilus Lane
GEORGE
6530

Attention: Mr. W. Nel

Tel.: 028 735 1772
Email: Willemnel54@gmail.com

Dear Sir

COMMENT ON THE PRE-APPLICATION DRAFT BASIC ASSESSMENT REPORT (BAR) FOR THE DEVELOPMENT OF 5 RESIDENTIAL UNITS ON ERVEN 4139, 4140, 4141, 4142, 4143, 4144, 4145 (ERF 3997), STILL BAY - WEST

1. The abovementioned document received by the Directorate: Development Management (Region 3), hereinafter referred to as "this Directorate" via electronic mail on 29 July 2021, refers.

2. This letter serves as an acknowledgment of receipt of the abovementioned document.

3. This Directorate has reviewed the document and comments as follows:

   3.1 This Directorate noted the explanation of the need and desirability of the proposed development; however, it is silent regarding what was previously authorised (open space) on the property and the reasoning behind it.

   3.2 It is noted that no alternatives were considered other than the preferred alternative and the no-go alternative. Be advised that in terms of NEMA the investigation of alternatives is mandatory. The consideration of alternatives are not limited to activity alternatives, but include layout alternatives, design, activity, operational and technology alternatives. You are hereby reminded that it is mandatory to investigate and assess the option of not proceeding with the proposed activity (i.e.w. the "no-go" option) in addition to other alternatives identified. It is therefore required that at least one alternative along with the preferred and the no-go must be considered.

   3.3 Also ensure that comment from the Department of Agriculture, as well as the Civil Aviation Authority is obtained and submitted to this Directorate along with the final BAR.

3.4 Also be reminded that the Breede-Gouritz Catchment Management Agency must confirm whether a water use license is/is not required for the proposed development. Such confirmation must be submitted to this Directorate along with the final BAR.

3.5 Further to the above, the final BAR must also contain comment from the Coastal Management Unit of this Department.

3.6 Due to the sites being located within intact strandveld and milkwood thicket, input from the Department of Environment, Forestry and Fisheries pertaining to protected tree species which may occur on site.

3.7 Due to the proximity of the site to steep areas, a detailed stormwater management plan must be developed to manage the cumulative impact of the proposed development on the surrounding sloped areas. This plan must contain a detailed description and diagrammatical presentation of the storm water management measures that will be proposed and these must be included in the EMPr under section 8.9.

3.8 Please ensure that final BAR also contains written confirmation from Hessequa Municipality that the Municipality has sufficient unallocated capacity to provide the proposed development with water and sewage services.

4. Please note that the activity may not commence prior to an environmental authorisation being granted by this Directorate.

5. This Directorate reserves the right to revise or withdraw initial comments or request further information from you based on any new or revised information received.

Yours faithfully

pp Malcolm Fredericks

Digitally signed by Malcolm Fredericks
Date: 2021.08.30 15:13:45 +02'00'

HEAD OF DEPARTMENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Copies to: Mr. Mr. M. Bennett	SEScc (EAP)	Email: michael@sescc.net
Mr. H. Visser	Hessequa Municipality	Email: info@hessequa.gov.za
Ms. I. Oosthuizen	Irma Oosthuizen Trust IT 1596/2008	Email: swartwater@easycoms.co.za

Peritus Trust
189 Kleine Street
Nieuw Muckleneuk
Pretoria, 0181
Contact No. 082 55 11671
Email : johan@leitasteel.co.za

SES
For the attention of: Michael Bennett
michael@sescc.net

Copied to:
Hessequa Municipality
For the attention of: Paul Louw
Paul@hessequa.gov.za

30 August 2021

Re: PRE-APPLICATION DRAFT BASIC ASSESSMENT REPORT FOR THE DEVELOPMENT OF STAND 3997 for an EA approval for a revised/new application for development of Erf 3997, Still Bay – West, Western Cape Province,

With reference to the above application, please note that Peritus Trust, Owner of Erf 2299, Nr. 6 Periwinkle, Bosbokduin Private Nature Reserve, Stillbay West, is an affected party.

In fact, with the closest dwelling to the North of Erf 3997, we consider ourselves as the most affected party.

We hereby officially comment on the above matter as follows:

1. On 28 August 2019, Peritus Trust, officially lodged an objection against a similar application by Mr. Willem Nel. A copy of which is attached.
    a. Peritus Trust's view remains that the case is functus officio based on the Authorities approvals and preconditions of 2000 and 2006 of portion 21/485 Plattebosch (Erf 3997).
    b. Therefore Mr. W. Nel and Me I. Oosthuizen have no right over erfen 3997's open areas.
2. Comments on the BAR.
    a. Positive Impacts p47 "Income generation for the municipality by increasing the Tax Base and generating rates and taxes for the new proposed erven".
        i. Considering that the net effect of this application will add only three properties to the total tax income of the municipality (5 x added less 2 x existing) and the possible risk with litigation, it is highly doubtful that any council will favorably consider any such application.
    b. The Declaration of the environmental assessment practitioner ("EAP") p76, ninth bullet reads " "I have ensured that the comments of all interested and affected parties were considered, recorded, responded to and submitted to the Competent Authority in respect of this application;" Refer to our consideration of most affected party above. This statement by yourself is false and will be referred to Regulation 48 of the NEMA EIA regulations.
    c. Density p37
        i. The application will increase the density of houses to the south of Bosbokduin to an unacceptable level.

ii. Not only will this create an increased fire hazard but will also limit the traffic of animals through Bosbokduin to the neighbouring remainder of portion 485 of the farm Plattebosch to the west of Bosbokduin.

d. Architectural Guidelines p42
   i. No reference is made in the report to the Bosbokduin unique style of designs. It is important to note the original Bosbokduin design style was in fact derived from the two older houses currently on Erfen 4141 and 4145 on Erf 3997. It is highly doubtful that any authority will consider or allow "… flexibility for individual expression" designs. It is important to note that the two remaining (open) erfen on erf 3997 have strict design and building guidelines according the 2000 and 2006 authority approvals. Again, we question your declaration that all aspects were considered.

e. Visual Sensitivity
   i. Again, the report is questioned here. Your reference to "Only the few housing units" to the North falls short of a proper investigation. At least ten properties will be affected negatively, of which our property will be seriously affected.

Conclusion.

Peritus Trust rejects the Basic Assessment report in its entirety and will oppose any further or new applications for revising the already approved development plans for Erf 3997.

Peritus Trust will call on the Bosbokduin HOA to finally resolve this issue with Erf 3997, by referring this matter to final legal decision.

We also support the Objections/submissions from various individual members of the Bosbokduin HOA as well the official reply/comments of the Bosbokduin HOA of today's date.

Regards

J. Greyling
(Peritus Trust)

J.A.L. Greyling LLm
(Peritus Trust)

Peritus Trust
189 Kleine Street
Nieuw Muckleneuk
Pretoria, 0181Contact No. 082 55 11671
Email : johan@leitasteel.co.za

Att: Mr PJ Louw
Manager Planning
Hessequa Municipality
P.O. Box 29
Riversdale
6670
By Email to: objections@hessequa.gov.za

28 August 2019

Dear Mr. Louw,

Re: **SUBDIVISION, REZONING & CONSOLIDATION OF ERF 3997 STILBAY WEST**

Peritus Trust, Owner of Erf 2299, Nr. 6 Periwinkle, Bosbokduin Private Nature Reserve, Still Bay West, hereby officially lodge an **Objection** against the application for the Subdivision, Rezoning & Consolidation of Erf 3997 Still Bay West by Piet Groenewald on behalf of WA Nel.

This objection is based on the following arguments:

1. **The property, Erf 3997, has been previously sub-divided, re-zoned and consolidated by thorough process stretching from the year 2000 through 2006.**
   Please refer to the attached;
   1.1. Letter from the "Departement Omgewing- en Kultuursake en Sport" of 26 October 2000, reference SNO 25/4/355(3310)",
   1.2. The approval letter from the Still Bay Municipality to Dr Piet Groenewald (Reference D/6/15 FLS870) of 8 December 2000,
   1.3. Extract from the re-application by the same owner and representative in September 2005 and
   1.4. The notice from the Hessequa Municipality of 19 April 2006, certifying that the aforementioned application had been approved.

2. **The above approvals, etc. were subject to very specific conditions namely:**
   2.1. Extract from item 1.1. above
   2.1.1. Voorwaarde 1:
   2.1.1.1. Die terrein van aansoek sal onderverdeel word en gekonsolideer word met Bosbokduin
   2.1.1.2. Twee nuwe eiendomme word geskep. Die res van die terrein van aansoek bly oopruimte wat sal inskakel by die oopruimte van Bosbokduin
   2.1.1.3. Die eienaars van die vier erwe sal lede word van die huiseienaarsvereniging van Bosbokduin. Die grondwet en reëls van die huiseienaarsvereniging sal ook op die nuwe lede van toepassing wees

   2.1.2. Voorwaarde 2:
   2.1.2.1. Slegs een woonhuis van 'n maksimum oppervlakte van 120vk.m mag op elk van die bykomende erwe gebou word. Geen buitegeboue mag op die erwe toegelaat word nie. Daar word verstaan dat die nuwe woonhuise sal aanpas by die argitektoniese riglyn van die

Bosbokduin ontwikkeling. Daar word verstaan dat die nuwe woonhuise nie hoër sal wees as die bestaande naasliggende geboue nie.

2.1.3. Voorwaarde 6:

2.1.3.1. Die huiseienaarsvereniging van Bosbokduin moet 'n persoon aanwys om toesig te hou oor die konstruksie van die huise en dienste en om te verseker dat daar voldoen word aan al die goedkeuringsvoorwaardes van hierdie Departement."

2.2. Extract from item 1.2. above

2.2.1. Die nakoming van die voorwaardes deur die Dept. van Omgewingsake soos per skrywe SNO 25/4/355(3310) van 26 Oktober 2000 (soos hierbo aangehaal)

2.2.2. Dat die gedeelte grond wat in die aansoek ter sprake is, as deel van die bestaande Bosbokduin Oord bestuur word

2.2.3. Dat die skriftelike toestemming van die Bosbokduin Huiseienaarsvereniging tot die bestuur van die gedeelte as deel van Bosbokduin verkry word

2.2.4. Dat die gedeelte notarieel met Bosbokduin-oord gekoppel word en nie apart vervreem mag word nie.

2.3. Extract from item 1.3. above

2.3.1. Die aansoek word dus geensins gewysig nie en gevolglik word slegs aansoek gedoen om bevestiging van dit wat reeds deur die betrokke owerhede goedgekeur is, naamlik insluiting van 4 bykomende erwe asook Privaat Oopruimte in Bosbokduin-oord".

2.4. Extract from item 1.4. above

2.4.1. Die nakoming van die voorwaardes deur die Dept. van Omgewingsake soos per skrywe SNO 25/4/355(3310) van 26 Oktober 2000

2.4.2. Dat die gedeelte grond, ongeveer 1,8 ha groot wat in die aansoek ter sprake is, as deel van die bestaande Bosbokduin Oord bestuur word

2.4.3. Dat die skriftelike toestemming van die Bosbokduin Huiseienaarsvereniging tot die bestuur van die gedeelte as deel van Bosbokduin verkry word

2.4.4. Dat die oopruimte gedeelte deur die Bosbokduin Huiseienaarsvereniging bestuur word.

3. The density of dwellings per hectare will be increased substantially.

This is not in line with the surrounding properties, especially considering that the original development intent and ethos of the Bosbokduin properties are based on a nature reserve type housing resort with larger open areas between dwellings. This is to provide for larger vegetated areas in order to accommodate the growth of indigenous plant species and allow for the free movement of resident wild animals. This is a much beloved aspect of the Bosbokduin development and is critical to consider, since it plays a significant part in the incentive of past, present and prospective homeowners alike.

4. **Larger fire hazard due to the increased density.**

Considering the Thatch roof structures of Bosbokduin and the latest statistics of fire tragedies/catastrophes in the area, the increased risk of fire hazard is a serious consideration that threatens not only pecuniary interests but also the safety of both humans and indigenous species.

5. Provision of Services.

The application for the new development is vague as regards services, and does not provide sufficient information regarding the provision of these services. The application merely states in 3.6 that *"Alle siviele en elektriese diense (sic) is aanliggend beskikbaar en aansluitings kan oor kort afstande gedoen word. Tans word*

water en elektriese krag met die netwerke in Bosbokduin geskakel. Gruispaaie is van goeie gehalte". It is common cause that the water supply to Bosbokduin has been a problem since its inception. Even with the recent upgrade of the water supply line, the effect of the neighboring Skulpiesbaai development requirements will pose problems. Needless to mention the additional requirements for firefighting purposes.

6. Building regulations and building aesthetics.

The application is once again vague as regards to aesthetics. There is a clear lack of detail, and where information is provided it is vague. Surely the statement in 1.2 that " *Daar kan aan alle skema- en bouregulasies voldoen……estetiese voorkoms asook alle ander bouperkings kan nagekom word"* is inadequate to assess an application. Especially considering the area and neighboring estate. The application provides no information as to the intention of the prospective developer. It is not sufficient that the developer states "requirements **can** be accepted" without explicitly accepting them.

7. Conclusions

7.1. While items 3 through 6 on its own should be sufficient grounds to dismiss this application, consideration of the application should mainly be referred to item 1 and 2 above, that the previous approvals for rezoning and subdivision of portion 21/485 Plattebosch (Erf 3997) of the year 2000 and later in 2006, remains final and binding as per Administrative Law and the *functus officio* doctrine. By implication, the mere fact that title deeds have been issued to the property owners of subdivided properties of 3997, is proof that the conditions applicable to the original subdivision is the current implicitly accepted status quo. Therefore,

7.1.1. 3997 and any subdivided properties under it shall be managed as an integral part of Bosbokduin;
7.1.2. the owners of the four properties shall become members of the homeowner's association of the Bosbokduin estate and,
7.1.3. the constitution and rules of the Bosbokduin estate will be applicable on the owners of the four properties of erf 3997,
7.1.4. any future buildings on the four properties will be subject to strict building regulations and the Bosbokduin building guidelines; and
7.1.5. the complete portion of erf 3997 should be incorporated into the Bosbokduin estate and that it may not be alienated, owing to the development intent as well as and more importantly, the property rights of all other Bosbokduin tenants.

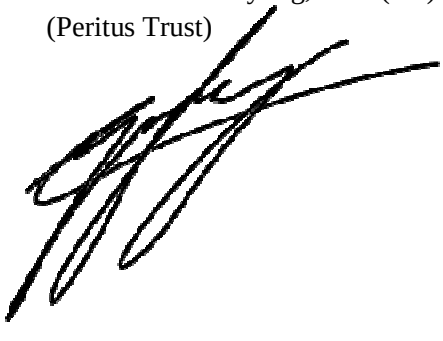
It is therefore clear that:

7.1.5.1.1.1. The application is invalid
7.1.5.1.1.2. Any new and future applications should be referred to the Homeowners association of Bosbokduin for approval.

Considering all of the above, we strongly recommend that you do not consider this application- it is unworthy of the valuable time that has already been spent on it, not even considering the potential future time investment. We reiterate that this matter had already been dealt with and should be considered *functus officio* as per the attached items referred to in items 1 and 2 above, and thank you sincerely for your time in considering this objection.

Best regards,

Jacobus A.L. Greyling, LLB (UP) LLM (UCT)
(Peritus Trust)



BOSBOKDUIN HOME OWNERS ASSOCIATION

30 August 2021

From Bosbokduin Home Owners Association
E mail: jpmulder.bosbokduin@gmail.com
Cell nr.: 073 0448878

To Mr. John Sharples/ Michael Bennet
SES
E mail: michael@sescc.net

Your reference number (DEADP REF): 16/3/3/6/7/1/D5/19/0173/20

Re: Pre-application draft basic assessment report for the development of 5 residential units on erven 4139, 4140, 4141, 4142, 4143, 4144, 4145 (erf 3997) Still Bay – West, Western Cape

Dear Mr Bennet

Please find below the comments of the Bosbokduin Home Owners Association on the above mentioned report.

Please note that Mr Jac Besuijen and Mr Beau van Wyk, two of our members, have also commented seperately in support of the report of the Home Owners Association.

Your consideration of this report is appreciated.

Best regards

JP Mulder
Chairman
Bosbokduin Home Owners Association

Copy: Mr Paul Louw, Hessequa Municipality

BOSBOKDUIN HOME OWNERS ASSOCIATION

30 August 2021

COMMENTS OF THE BOSBOKDUIN HOME OWNERS ASSOCIATION ON THE PRE-APPLICATION DRAFT BASIC ASSESSMENT REPORT FOR THE DEVELOPMENT OF STAND 3997, STILBAAI

Statement:

The Basic Assesment Report (BAR) referred to above, was made available to all 80 owners of the Bosbokduin Home Owners Association.

The comments-report that follows, is signed on behalf of the Bosbokduin HOA and is supported by the vast majority of our members. Not one of our members informed the HOA that they support the BAR.

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INTRODUCTION

The Bosbokduin Home Owners Asssociation (BBD HOA) as an interested party, was requested to provide comments on the latest pre-application for development of ERF 3997, Stilbaai, also known as Muishondsbaai. The pre-application, or the Basic Assesment Report (BAR), is submitted by *Sharples Environmental Services (SES)* on behalf of the applicants Mr W Nel and Mrs Irma Oosthuizen. This is not a formal application, but a Basic Assessment Report (BAR), which may serve as input for a formal application to the Department of Environmental Affairs and Development Planning in order to obtain environmental approval.

It should be noted at the outset that the BBD HOA is not merely an interested party, but rather an *integral* party to this matter, because of the shared history of ERF3997 and Bosbokduin over a period of more than 20 years. ERF3997, comprising 4 erven, came into existence subject to the provisions previously imposed by the Department of Environmental Affairs and the Hessequa Municipality, as well as with the approval of the BBD HOA. These restrictive conditions are still valid, notwithstanding the fact that Mr Willem Nel, the primary applicant, distanced himself from the incorporation of the property into Bosbokduin.

This pre-application for the development of ERF 3997 is the second application within a period of two years, that we have been requested to comment on.

On 26 August 2019 we provided extensive comments to the Municipality regarding the application for the redevelopment of stand 3997 in the South-western corner adjacent to Bosbokduin (Reference 15/4/4/5). The application asked for approval to develop 8 erven instead of the originally (2000 and 2006) approval for 4 erven only. Our comprehensive comments report comprised 38 pages. It dealt extensively with the history of ERF 3997 since 1999 in order to provide context for our objections. It referred to the original approval by the Department of Environmental Affairs and the Hessequa Municipality in 2000 and 2006, as well as to the restrictive conditions for the development of ERF 3997. Our report also provided legal arguments why the approval of 2006 is still valid. A total of (28) 35% of the members of the BBD HOA lodged objections to the application of 2019. Not one member supported it.

The BBD HOA made the following recommendations regarding the application of 2019:

" 1.1 That the Municipality do not approve the application

1.2 That the Municipality insist that Mr Willem Nel, as the primary developer, adhere to the existing and valid restrictive conditions:

- *to tie ERF 3997 to Bosbokduin notarially*
- *to pay the outstanding levies to Bosbokduin*
- *to accept the Bosbokduin constitution and regulations as applicble to ERF 3997*

1.3 That the applicants enter into discussion with the BBD Management Committee to determine how the open area of ERF 3997 should be managed as prescribed in the approval conditions."

We have unfortunately not received any formal feedback on our comments, neither from the Municipality, nor the applicants or any affected party, despite our regular enquiries as to

the progress of the application. We were informed however, that the formal approval process was still ongoing.

THE CURRENT APPLICATION – THE VIEW OF THE BOSBOKDUIN HOA

The new pre-application does not differ materially from the previous application, asking for a total of seven erven instead of eight erven in 2019. However, the placing of the additional five erven (including the current two undeveloped stands) on the open area to the North, directly adjacent to Bosbokduin, makes the BAR even more unacceptable. It will increase the density of houses even more, and increase the fire risk to unacceptably high levels.

The Bosbokduin HOA were not approached by *SES* or the applicant Mr W Nel, regarding the BAR. No consultation or discussion took place prior to us receiving the BAR for comments. We were simply ignored.

The BBD HOA view this pre-application as disregarding due process and regulations and as disrespecting of approval authorities, as well as affected parties like the Bosbokduin HOA, especially whilst the previous application is still in progress to the best of our knowledge.

The BBD HOA is of the opinion that all the objections lodged in our previous report are still valid and should receive serious consideration.

We again urge Mr W Nel, the primary applicant, to accept and adhere to the restrictive conditions as approved by the authorities in 2006. Good reasons exist why the restrictive conditions were imposed by the Department of Environmental Affairs and the Hessequa Municipality, back in 2006.

We, as the Bosbokduin HOA therefore object in the strongest possible terms to this pre-application BAR.

We urge the relevant competent authorities to reject the BAR without consideration.

As further motivation for our view, we refer in the paragraph below to the legal objections as provided by our legal adviser, also including the still valid legal objections that were incorporated in our previous report of 26 August 2019.

OBJECTIONS FROM A LEGAL PERSPECTIVE

Objections regarding the BAR

1. Although the Basic Assessment Report (BAR) indicates on page 2 paragraph 6 that it is current as of November 2019, the report itself has been signed on 22 July 2021 by the Environmental Assessment Practitioner and is dated 26 July 2021.

2. The report therefore should have dealt with the objections lodged by the Bosbokduin Home Owners Association dated 26 August 2019.

3. The allegation contained on page 76 that:

" I have ensured that the comments of all interested and affected parties were considered, recorded, responded to and submitted to the Competent Authority in respect of this application;"

is therefore not correct, as the BAR does not deal with the legal objections lodged in terms of Article 15(2)(f) Hessequa Municipality By Law on Municipal Land Use Planning, published in PN 287 of 2015, as well as Section 37(1) of SPLUMA.

4. The BAR should therefore not be accepted as comprehensive.

Legal Objections previously communicated, but also applicable to this pre-application

1. Both Erf 3997 (held in terms of SGT 52351/2006) and Erf 4141 (held in terms of T68481/2015) are currently held subject to the General Plan 449/2006 and its conditions. This is evident from the endorsement on page 6 of SGT 52351/2006 and the paragraph on page 2 of T68481/2015 (Annexure 1 hereto).
2. The application does not include any application for the removal, suspension or amendment of the restrictive conditions in respect of both Erf 3997 or Erf 4141, as required for in terms of section 15(2)(f) of the Hessequa Municipality: By Law on Municipal Land Use Planning, published in Provincial Notice PN 287 of 2015. On this basis alone, the application is fatally flawed. Any consolidation and subdivision will have to be subject to the existing conditions of the properties, alternatively these conditions will have to be removed or amended.
3. By obtaining a clearance and levy certificate from the Bosbokduin Home Owners Association when Erf 4141 was transferred in 2015 to the current applicant Irma Oosthuizen Trust, the applicant has already subjected itself to the control and management of the Bosbokduin Home Owners Association. It also confirms that condition (vi) contained in the subdivision conditions (dated 19 April 2006) has already been fulfilled, being that the Bosbokduin Homeowners Association already consented to the management of the property. The objection lodged by the Bosbokduin HOA is therefore crucial for the application.
4. The application is an application in terms of which the applicants applied to conduct a land development as defined by the *Spatial Planning and Land Use Management Act No 16 / 2013* (SPLUMA). The application does not contain any reference to the

removal or amendment of the existing restrictive conditions, as provided for in section 37(1) of SPLUMA. There is also no application for the amendment of the existing general plan LG 449/2006. These failures also render the application fatally defective.

THE INTEGRAL AND INTERDEPENDENT NATURE OF BOSBOKDUIN AND ERF 3997

The integral nature of Bosbokduin and Erf 3997 is aptly described by the existing restrictive conditions imposed on both ERF 3997 and Bosbokduin by the Department of Environmental Affairs, as well as the Hessequa Municipality in 2000 and 2006.

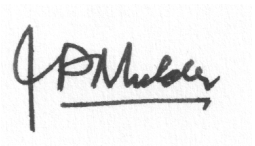
It is of utmost importance that the notice by the Hessequa Municipality dated 19 April 2006, confirmed the approval of the subdivision of 485/51 (later ERF 3997) into 4 erven, a private road and a private open space, **subject to certain conditions**, being *inter alia*

1. The compliance with conditions imposed by the Department of Environmental Affairs in its letter dated 26 October 2000 with reference SNO 25/4/355(3310);
2. That the land, approximately 1.8 hectares referred to in that application, should be managed as part of the Bosbokduin Reserve
3. That the written consent of the Bosbokduin Home Owners Association to manage the land as part of Bosbokduin be obtained;
4. That the open space be managed by the Bosbokduin Home Owners Association
5. The General Plan 449/2006, as approved by the Hessequa Municipality's municipal manager, Mr Jan Veldsman, on 18 January 2006 and approved by the office of the Surveyor General on 23 February 2006, was endorsed by the Deeds Office in Cape Town on 13 July 2006. The General Plan expressly stated that the subdivision was approved subject to the conditions. The certificate issued by the Chief of Planning, Hessequa Municipality, dated 19 April 2006 also confirmed the conditions. A copy is attached hereto as Annexure 2.

CONCLUSIONS

We conclude that:

1. The basic Assessment Report is flawed for the reasons mentioned above;
2. The Applicant and his Environmental Practitioners should adhere to and accept the existing restrictive conditions which are legally binding;
3. Any application to follow should deal with the existing conditions.



JP Mulder

Chairman Bosbokduin HOA

ANNEXURE 1

"E"

4

DE KLERK & VAN GEND
KAAPSTAD

MAT 60521/GC

Opgestel deur my,

TRANSPORTBESORGER
HENDRIK PETRUS SERFONTEIN

	Fee endorsement Amount	Office fee
Purchase price/Value	R 2 200 000,00	R 1160,00
Mortgage capital Amount	R	R
Reason for exemption	Cat	Exempt i.t.o Act

DATA / CAPTURE
04 DEC 2015
MADAMA L

T000068481 / 2015

TRANSPORTAKTE

SY DIT KENNELIK AAN ALMAL WIE DIT MAG AANGAAN

Dat **JOLINE NORMAN**

voor my, die Registrateur van Aktes, verskyn het te **KAAPSTAD**, die genoemde komparant synde behoorlik daartoe gemagtig deur 'n volmag geteken te SWELLENDAM op 30 SEPTEMBER 2015 en aan hom/haar verleen deur

Die Eksekuteurs in die Boedel Wyle
LANCE LINDENBERG TOMLINSON
Nommer 27704/2014

DATA / VERIFY
14 DEC 2015
MURIE LORRAINE

ANNEXURE 1 (CONTINUED)

En genoemde komparant het verklaar dat die ondergemelde Transportnemer geregtig is tot die ondervermelde eiendom in terme van Klousule 2.1 van die Laaste Wil en Testament gedateer 15 Mei 2014 van die oorledene, wie oorlede is op die 22ste Augustus 2014 en onderhewig aan klousule 8 van gemelde Testament

EN DAT hy, die vermelde komparant, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

Die Trustees interlyd van die IRMA OOSTHUIZEN TRUST

Registrasienommer IT 1596/2008

Diese Opvolgers in Titel of Regverkrygendes, in volkome en vrye eiendom

ERF 4141 STILBAAI-WES
IN DIE HESSEQUA MUNISIPALITEIT
AFDELING RIVERSDAL, WES-KAAP PROVINSIE;

GROOT : 974 (NEGE HONDERD VIER EN SEWENTIG) VIERKANTE METER

EERSTE GETRANSPORTEER EN STEEDS GEHOU KRAGTENS TRANSPORTAKTE NOMMER T103770/2006 MET ALGEMENE PLAN L.G. NR. 449/2006 WAT DAAROP BETREKKING HET

I. **ONDERHEWIG** aan die voorwaardes waarna verwys word in volgende Transportaktes naamlik :

Nr. 63 gedateer 5 February 1877;
Nr. 244 gedateer 21 Desember 1888;
Nr. 5526 gedateer 2 September 1896;
Nr. 55 gedateer 5 November 1868;
Nr. 489 gedateer 26 Augustus 1879;
Nr. 67 gedateer 9 Junie 1884;
Nr. 6818 gedateer 7 September 1916;
Nr. 5858 gedateer 17 Augustus 1910;
Nr. 6817 gedateer 7 September 1916;
Nr. 8899 gedateer 25 Oktober 1912.

ANNEXURE 1 (CONTINUED)

II. **ONDERHEWIG aan en GEREGTIG** op die voordele onder die volgende spesiale voorwaardes genoem in Transportakte gedateer 17 Maart 1938, No 2532, welke voorwaardes soos volg lees :

"1. That all existing roads on any of the properties hereby partitioned shall remain as heretobefore for the joint use of all the said partitioning owners and their successors in title.

2. The waters arising in certain three fountains situate respectively on Lot M of Platte Bosch hereby transferred, Lot C. Plattebosch transferred to Estate Johanna Margaretha de Jager, (born de Jager), widow, on this dat No. 2531, and Lot B of Platte Bosch to be transferred this day to P.R. de Jager, M.J. Son, and marked on the diagrams thereof as a, b and c respectively, shall be divided and apportioned between the said partitioning owners as follows :

(a) To P.R. de Jager as the owner of Lot B Platte Bosch and Lot F. Platte Bosch to be transferred to him this day, from Monday mornings at sunrise to Wednesday evenings at sunrise.

(b) To Estate of the Late J.M. de Jager as the owner of Lot C Plattebosch, Lot E Platte Bosch, Lot L Platte Bosch and Lot G Plattebosch transferred this day No. 2531 from Wednesday mornings at sunrise to Wednesday evenings.

(c) To M.J. de Jager as the owner of Lot D Platte Bosch, Lot H Platte Bosch and Lot M Platte Bosch, hereby transferred, from Thursday mornings at sunrise to Thursday evenings.

ANNEXURE 1 (CONTINUED)

(d) To C.J. de Jager as the owner of Lot A Platte Bosch and Lot J. Platte Bosch, transferred to him on this day No. 2530 from Friday mornings at sunrise to Friday evening.

(e) To Estate of the late J.M. de Jager as owner aforesaid from sunrise to 12 moon and to P.R. de Jager as owner aforesaid from 12 noon until evening on every alternative Saturday, and to M.J. de Jager as owner aforesaid on every intervening Saturday.

(f) C.J. de Jager as owner aforesaid of Lot A Platte Bosch shall have the right to draw water for domestic use at the aforesaid spring marked "b" on the diagram of Lot C Platte Bosch and for that purpose shall have the right to a footpath to the said spring over and across Lot B of Platte Bosch and Lot C Platte Bosch as marked on diagrams thereof.

(g) P.R. de Jager as the owners aforesaid of Lot B Plattebosch shall have the right to draw water for domestic use at the aforesaid spring marked "b" on the diagram of Lot C Platte Bosch as marke don the diagram thereof.

(h) The existing furrows along which the water from the aforesaid spring is conveyed and marked "ae" on the diagram of Lot M, "efg" on the diagram of Lot C "gch" on the diagram of Lot B, "hk" on the diagram of Lot A, "kl" on the diagram Lot B, "lm" on the diagram of Lot L, and "mn" on the diagram of Lot A, shall remain for the joint use and benefit of the said owners, who shall be responsible for the maintenance at their own expense of such portions of the said furrow as traverse their respective properties, and who

ANNEXURE 2

HESSEQUA
Munisipaliteit / Municipality / U Masipala

Rig alle korrespondensie aan die Munisipale Bestuurder
Address all correspondence to the Municipal Manager

Tel.: (028) 713 2418, 713 2419, 713 2420
Faks/Fax: (028) 713 3146
Posbus / P. O. Box 29, RIVERSDAL(E) 6670
E-pos/E-mail: riversdal@ezinet.co.za

Verw./Ref: O/4

Navrae/Enquiries: JH Veldsman

19 April 2006

(B)

SERTIFIKAAT

ONDERVERDELING GEDEELTE 51/485 PLATTEBOSCH

Hiermee word gesertifiseer dat ingevolge Artikel 25 van die Grondgebruiksordonnansie 15 van 1985, die Hessequa Munisipaliteit die onderverdeling van Gedeelte 51 van Plattebosch 485, Stilbaai in vier residensiële persele, pad en twee oopruimte persele goedgekeur het, onderhewig aan die volgende voorwaardes:

(i) Die goedkeuring van die Wes-Kaap Premier vir die wysiging van die Stilbaai Struktuurplan verkry word;
(ii) Die nakoming van die voorwaardes deur die Departement van Omgewingsake soos per skrywe SNO 25/4/355(3310) van 26 Oktober 2000;
(iii) Dat die gedeelte grond ± 1,8 ha groot wat in die aansoek ter sprake is, as deel van die bestaande Bosbokduin Oord bestuur word;
(iv) Dat die ontwikkelaar verantwoordelik is vir die koste ten opsigte van die voorsiening van alle munisipale dienste aan die 4 oordpersele wat geskep word;
(v) Dat die ontwikkelaar 'n bydrae maak ten opsigte van die grootmaatkoste vir water en riool;
(vi) Dat die skriftelike toestemming van die Bosbokduin Huiseienaarsvereniging tot die bestuur van die gedeelte as deel van Bosbokduin verkry word;
(vii) Dat die oopruimte gedeelte deur die Huiseienaarsvereniging van Bosbokduin bestuur word.

JH VELDSMAN
HOOF BEPLANNINGSDIENSTE

From Jac Besuijen
Owner plot 2298
Reestraat 24c
1016 DN Amsterdam
The Netherlands
Mobile: + 31 6 8284 0390

To SES
For the attention of: Michael Bennett
michael@sescc.net

Hessequa Municipality
For the attention of: Paul Louw

Amsterdam, 27 August 2021

Your reference number (DEADP REF): 16/3/3/6/7/1/D5/19/0173/20
Re: Pre-application draft basic assessment report for the development of 5 residential units on erven 4139, 4140, 4141, 4142, 4143, 4144, 4145 (erf 3997) Still Bay – West, Western Cape Province.

Dear Mr. Sharples, Mr Bennet, Mr Louw

Attached you will find a document with my comments on the above mentioned report dated the 26th of July 2021 regarding the development of 5 residential units.

All the documents that I have referred to can be made available upon request.

Thank you very much for considering my comments.

Best regards,

Jac Besuijen

TABLE OF CONTENT

I. Introduction: history of this application

II. Initial application: preconditions authorities for approval

III. Second application: confirmation of preconditions by authorities

IV. Current status of Erf 3997

V. My objections against the pre-application by Mr W Nel (26 July 2021)

VI. Concluding remarks

Appendix 1: sertifikaat onderverdeling gedeelte 51/485 plattbosch

Appendix 2: 2006 map – signed

I. Introduction: history of this application

The history of this application goes back almost 20 years when the late Mr A Nel (the father of the current owner Mr W Nel) for the first time applied for rezoning of what was then called gedeelte 485/51 (now Erf 3997). To properly understand the reasons behind this first application I quote from a letter drafted by Mr Piet Groenewald dated 9 may 2001[1]:

,, Die twee bestaande huis van mnre Tomlinson en Nel wat reeds bestaan het voordat Bosbokduin to stand gekom het, beskik nie oor erwe nie en die primaire doel van die aansoek was om veral vir mr Tomlinson van 'n eie erf te voorzien."

Apparently these two houses (erven 4141 and 4145) were at the time not registered. The underlying idea was to cut of this small piece of land from a larger area (farm) and add this to the Bosbokduin development so that registration – and other benefits stemming from the Bosbokduin development – could be obtained for these two houses as well.

The original application would add Erf 3997 (previously known as gedeelte 485/51) to Bosbokduin and gave permission to build two more houses subject to strict building requirements. The two new houses would be located in between the two existing ones (erven 4141 and 4145), i.e. a total of four houses (see also Appendix 2: 2006 map – signed).

The Bosbokduin homeowners association approved this original application on 28 December 1999 ('eenparig')[2]. The original application was approved by the relevant authorities – subject to certain preconditions – on the 26th of October 2000 and once again on the 8th of December 2006. It is my understanding that these approvals – subject to the same preconditions – are still valid to this day.

II. Initial application: preconditions authorities for approval

As said the initial application for the rezoning by Mr A Nel was approved by the Department of Environmental and Cultural Affairs and Sport[3] on the 26th of October 2000 and by the Still Bay Municipality[4] on the 8th of December 2000.

The approvals of both authorities however came with a number of preconditions of which I will highlight a few.

---

[1] Letter from Piet Groenewald 9 Mei 2001 to die Asst Munisipale Bestuurder, Langeberg Munisipaliteit-Stilbaai, regarding: Bosbokduin, ged van ged 51 van plattebosch 485: Woonerwe

[2] ,, Op die Algemene Jaarvergadering van 28 Desember 1999 is eenparig besluit dat die inlywing van gedeelte 51/485 Plattebosch by Bosbokduin, Bosbokduin in die algemeen bevoordeel en daarom wenslik is."

[3] Letter from the Department of Environmental and Cultural Affairs and Sport to Bosbokduin, Insake: goedkeuring vir die verandering van grondgebruik van gedeelte 51 van die plaas plattebosch 485.

[4] Letter from die Stilbaai Municipality to Piet Groenewald, Aansoek: wysiging van stilbaai struktuurplan van gedeelte 51/485 plattebosch aangrensend bosbokduin.

26-10-2000 Preconditions Department of Environmental and Cultural Affairs and Sport

"Goedkeuring van die voorgestelde ontwikkeling word toegestaan streng onderhewig aan die volgende voorwaardes (Jac: I have made a selection, in total there were 9 preconditions):

Voorwaarde 1:

- Die terrein van aansoek sal onderverdeel word en gekonsolideer word met Bosbokduin
- Twee nuwe eiendomme word geskep. Die res van die terrein van aansoek bly oopruimte wat sal inskakel by die oopruimte van Bosbokduin
- Die eienaars van die vier erwe sal lede word van die huiseienaarsvereniging van Bosbokduin. Die grondwet en reëls van die huiseienaarsvereniging sal ook op die nuwe lede van toepassing wees
- Alle dienste (water, elektrisiteit en riolering) sal ondergronds wees en aansluit by die bestaande dienstennetwerke in Bosbokduin

Voorwaarde 2:
Slegs een woonhuis van 'n maksimum oppervlakte van 120vk.m mag op elk van die bykomende erwe gebou word. Geen buitegeboue mag op die erwe toegelaat word nie. Daar word verstaan dat die nuwe woonhuise sal aanpas by die argitektoniese riglyn van die Bosbokduin ontwikkeling. Daar word verstaan dat die nuwe woonhuise nie hoër sal wees as die bestaande naasliggende geboue nie.

Voorwaarde 3:
Die steil helling aan die suidekant van die voorgestelde nuwe woonhuise en die begroeide duin aan die noordekant moet ongeskonde gelaat word. Die voorgestelde nuwe woonhuise moet ten minste 4 meter vanaf die steil helling aan die suidekant gebou word.

Voorwaarde 6:
Die huiseienaarsvereniging van Bosbokduin moet 'n persoon aanwys om toesig te hou oor die konstruksie van die huise en dienste en om te verseker dat daar voldoen word aan al die goedkeuringsvoorwaardes van hierdie Departement."

8-12-2002 Preconditions Still Bay Municipality

Hiermee om u mee te deel dat die Raad die aansoek om hersonering van 'n gedeelte van 51/485 Plattebosch aangrensend Bosbokduin (4 persele) vanaf Privaat Oopruimte na Oordsone II tydens sy vergadering van 4 Desember 2000 goedgekeur het, onderhewig aan die volgende voorwaardes (Jac: 'n toepaslike seleksie van die voorwaardes word hier woordeliks aangehaal):

- Die nakoming van die voorwaardes deur die Dept. van Omgewingsake soos per skrywe SNO 25/4/355(3310) van 26 Oktober 2000 (soos hierbo aangehaal)
- Dat die gedeelte grond wat in die aansoek ter sprake is, as deel van die bestaande Bosbokduin Oord bestuur word
- Dat die skriftelike toestemming van die Bosbokduin Huiseienaarsvereniging tot die bestuur van die gedeelte as deel van Bosbokduin verkry word
- Dat die gedeelte notarieel met Bosbokduin-oord gekoppel word en nie apart vervreem mag word nie.

III. Second application: confirmation of preconditions by authorities

As a result of a delay in the execution of the aforementioned first application, the then owner Mr A Nel re-applied in September 2005 for the same rezoning[5], because:

" Die aansoek om hersonering ten opsigte van 4 bykomende erwe in Bosbokduin was reeds goedgekeur, maar aangesien daar meer as twee jaar verloop het sedert die goedkeuring, moet daar nou weer aansoek gedoen word om bevestiging van die goedkeuring deur die betrokke owerhede.

Weens onvoorsiene vertragings het daar meer as twee jaar verloop sedert die Departement van Omgewingsake hul goedkeuring in hul Rekord van Besluit verleen het.

Hierdie is slegs 'n heraansoek om presies dieselfde regte as waarvoor oorspronklik aansoek gedoen is. Die terrein en erwe is ook dieselfde. Die aansoek word dus geensins gewysig nie en gevolglik word slegs aansoek gedoen om bevestiging van dit wat reeds deur die betrokke owerhede goedgekeur is, naamlik insluiting van 4 bykomende erwe asook Privaat Oopruimte in Bosbokduin-oord".

This 2005 proposal (heraansoek) was approved on 19 April 2006 by the Still Bay Municipality under the following preconditions[6]:

- Die nakoming van die voorwaardes deur die Dept. van Omgewingsake soos per skrywe SNO 25/4/355(3310) van 26 Oktober 2000
- Dat die gedeelte grond, ongeveer 1,8 ha groot wat in die aansoek ter sprake is, as deel van die bestaande Bosbokduin Oord bestuur word
- Dat die skriftelike toestemming van die Bosbokduin Huiseienaarsvereniging tot die bestuur van die gedeelte as deel van Bosbokduin verkry word
- Dat die oopruimte gedeelte deur die Bosbokduin Huiseienaarsvereniging bestuur word.

As stated previously, it is my understanding that this approval – subject to the same preconditions – is still valid to this day.

IV. Current status Erf 3997

We could refer to the current status as somewhat confusing because some claim that Erf 3997 is de facto (though not formally) incorporated in Bosbokduin, whilst others (only Mr W Nel) claim that they have nothing to do with Bosbokduin. To explain this confusing situation I refer to the minutes of the 2006 AGM and the 2007 AGM followed by a few comments from my side.

- Minutes 2006 AGM Bosbokduin Homeowners Association

  From the minutes of the December 2006 annual meeting it becomes clear that the members of the Bosbokduin homeowners association feel that Erf 3997 (gedeelte 51/485) had become part of Bosbokduin:

[5] Bosbokduin gedeelte plattebosch 485/51 Heraansoek hersonering en onderverdeling (konsultant Piet Groenewald)

[6] See also appendices 1 and 2: Sertifikaat onderverdeling gedeelte 51/485 plattebosch and 2006 Map – signed

2006 Notule 7.2 Gedeelte 485/51 Willem Nel se grond

,, Die Voorzitter wens Willen Nel geluk met die registrasie van sy grond wat pas plaagevind het en bedank hom vir die draad wat verwyder is. Daarmee word gedeelte 485/51 nou ingesluit by Bosbokduin. Die Nel gesin asook Lindenberg en Emmé Tomlinson word hartlik verwelkom as volwaardige lede van Bosbokduin."

- Minutes 2007 AGM Bosbokduin Homeowners Assocation

In the 2007 annual meeting Mr W Nel (son of Mr A Nel and by then the new owner) objected against the minutes of the 2006 AGM. His point was that gedeelte 485/51 had **not** become part of Bosbokduin despite was stated in the minutes of the 2006 AGM.

2007 Notule 6.5.2

6.5.2 Bevraagtekening van notule

Willem Nel bevestig opnuut dat hy beswaar maak teen die volgende sin onder punt 7.2 in die notule van die Jaarvergadering van 2006:

Die Voorsitter wens Willem Nel geluk met die registrasie van sy grond wat pas plaasgevind het en bedank hom vir die draad wat verwyder is. Daarmee word Gedeelte 485/51 nou ingesluit by Bosbokduin. Die Nel-gesin asook Lindenberg en Emmé Tomlinson word hartlik verwelkom as volwaardige lede van Bosbokduin.

Die voorsitter haal aan uit die notule van die Jaarvergadering 2002, Punt 3.9, bladsy 4 (vir die doel van hierdie notule word slegs die tersaaklike voorwaardes neergestip):

Dat daar goedkeuring gekry is vir die inlywing van gedeelte 485/51 met o.a. die volgende voorwaardes

1. *Dat vier bykomende woonerwe 1,2,3 en 4, tesame met 'n oop ruimte geskep word*
2. *Dat die hele bykomende gedeelte wat die vier erwe sowel as die privaat oop ruimte insluit, by die bestaande Bosbokduinoord ingelyf word.*
4. *Dat die Bosbokduin Huiseienaarsvereniging beheer sal uitoefen oor hierdie privaat oop ruimte, soos ook die geval van die ander oop ruimtes in Bosbokduin*
5. *Dat die eienaars van erwe 1,2,3 en 4 lede sal wees van Bosbokduin Huiseienaarsvereniging en onderworpe sal wees aan die bepalings, reëls en voorwaardes van die hierdie vereniging.*

Die Voorsitter haal ook die Notule van 2003 aan waarin Beattie Gernetzky onder punt 3.8, bladsy 6, die voorwaardes vir hersonering van gedeelte 485/51 opnuut aan die Jaarvergadering uitgelig het..

Willem Nel is steeds nie oortuig nie, en dien opnuut die voorstel in dat die sin *Daarmee word Gedeelte 485/51 nou ingesluit by Bosbokduin...* uit die notule verwyder word en die notule daarna as korrek aanvaar kan word. Die voorstel word gesekondeer deur Attie Nel. Die voorstel vind nie algemene goedkeuring nie, word tot stemming gebring en met meerderheid van stemme verwerp. Die notule word onveranderd as korrek aanvaar.

Willem versoek dat daar uitdruklik genotuleer word dat hy steeds nie met die genoemde sin in die notule saamstem nie.

The situation where Mr W Nel claims that Erf 3997 (gedeelte 51/485) is not part of Bosbokduin has never been resolved since. Because of this Mr W Nel continues to claim that he has the right to develop Erf 3997 separate from Bosbokduin and that he has nothing to do with their homeowners association. I however find this claim dubious.

Why do I find Mr W Nel his claim dubious?

- Mr W. Nel (plot 4145) and the late Mr Tomlinson (plot 4141, now owned by his daughter Mrs Irma Oosthuizen) managed to register their properties in 2006. An important precondition for registration, as formulated by both the Department of Environmental and Cultural Affairs and Sport and the Still Bay Municipality, however was that Erf 3997 had to become part of Bosbokduin!
  Since Erf 3997 has not been registered yet as part of Bosbokduin one can interpret this in two ways: 1.) the registration of the properties was illegal (because the preconditions have not been met) and should therefore be cancelled asap or 2.) the registration of Erf 3997 has de facto taken place but the formal process has not been concluded yet.

- Mr Tomlinson (and later his daughter Irma Oosthuizen) are of the opinion that they are part of Bosbokduin. They have been paying their memberships fees since the registration of their house in 2006[7] and the husband of Mrs Oosthuizen has been a long standing member of the Management Committee of Bosbokduin.

- Both properties are connected to the Bosbokduin water and electricity supply and both properties have been using the entrance gate and internal roads of Bosbokduin for decades. Another reason for me to consider Erf 3997 as a de facto part of Bosbokduin.

All in all a complex situation: the owners of plot 4141 feel that they are part of Bosbokduin and behave accordingly, whilst the owner of 4145 claims he is not part of Bosbokduin and can therefore develop Erf 3997 without involving Bosbokduin.

V. My objections against the application by Mr W Nel of the 26th of July 2021

My objections against the proposal of the 26th of July 2021 can be summarised as follow:

1. Preconditions authorities.
   The approvals and preconditions as set by the authorities in 2000 and 2006 are still valid. The map signed by the Hessequa Munacipality in 2006 (Appendix 2) still stands. In my opinion the new application has to be rejected on the basis of this alone.

2. Bosbokduin homeowner association has not been involved.
   Although Mr W Nel uses many of the Bosbokduin facilities (water, electricity, roads, entrance gate) and – according to his new application dated 26 July 2021 – wishes to continue to do so – he has not involved the Bosbokduin homeowners association in this new application. To make matters worse Mr W Nel completely ignores our comments to his application of 2019[8]. The allegation contained on page 76 that: " I have ensured that the comments of all interested and affected parties were considered, recorded, responded to and submitted to the Competent Authority in respect of this application;" is therefore not correct.

[7] Mr W Nel refuses to pay any membership fees for plot 4145 given the fact that he claims gedeelte 51/485 is not part of bosbokduin

[8] 17 August 2019: Kommentaar op aansoek rakende die onderverdeling en konsolidatie van Erf 3997 Stilbaai-Wes

3. ERF 3997 is a de facto part of Bosbokduin.
   The properties of Mrs Irma Oosthuizen and mr W Nel were registered in 2006, this could have only happened after the preconditions as set at the time by the authorities would have been fully complied with (which include membership of Bosbokduin). Further evidence of inclusion in Bosbokduin is the fact that the owners of 4141 have been paying their memberships fees for years (and are even participating in the Management Committee of Bosbokduin). Lastly erven 4141 and 4145 have been benefitting from the Bosbokduin infrastructure for decades and wish to continue to do so.

4. Building density.
   The application of 26 July 2021 will lead to an unacceptable increase in the density of housing <u>especially in the south west part of Bosbokduin</u> (which – with the benefit of hindsight – could be considered to be a <u>too high density area already</u>). The latter will cause a significant increase in fire hazard with so many houses / plots on such a small area surrounded by natural vegetation.
   I would also like to refer to what is stated on page 37 (Constraint Analysis, final sentence):
   ,, …. should be as at density guided by the Skulpiesbaai development guidelines."
   This does not make any sense and is extremely arbitrary, the proposed development has <u>everything</u> to do with Bosbokduin and <u>nothing</u> to do with Skulpiesbaai. If anything guidance with respect to the building density should be based on that of Bosbokduin.
   Finally I refer to the letter of the Bosbokduin homeowner association of 17-08-2019 for more information with respect to the impact on the building density of the application.[9]

5. Development and architectural guidelines.
   As you might be aware of the development of Bosbokduin Nature Reserve was only possible under strict guidelines, as part of this the Bosbokduin homeowners association has develop extensive building guidelines. The existing houses on erven 4141 and 4145 have been built in line with these guidelines (another argument that supports my view that Erf 3997 is a de facto part of Bosbokduin).
   The new application does not refer to any of the Bosbokduin building guidelines, on page 42 the following is stated: *,,The guidelines should not be restrictive conditions but should promote an overall design sensitivity whilst allowing flexibility for individual expression."*
   It goes without saying that when the building guidelines of any new house on Erf 3997 are not going to be in line with those of the Bosbokduin homeowner association, that the visual impact on such a small area is going to be significant.

6. Visual sensitivity.
   An approval of the application of 26 July 2021 will result in a significant decrease of the value of a number of houses since their currently unobstructed (sea) views would be seriously negatively affected (any real estate agent in Still Bay will be able to confirm this).
   This is confirmed by the application which states that (page 40): *,, Only the few housing units (first row) located directly next to the project area will have a **high** visual sensitivity."*

[9] Kommentaar op aansoek rakende die onderverdeling, hersonering en konsolidasie van erf 3997 stilbaai-wes

The overall judgement however has been categorised as *medium* since it concerns – according to the application – *only a few housing units*. I would like to disagree with this. In my opinion the value of the following houses/plots would be seriously negatively affected: 2295, 2296, 2297, 2298, 2299, 2300, 2302, 2303, 2304 and 2305, i.e. a total of 10 houses/plots, this is not a few! The combined decrease in value of these properties will be significant.

7. Visual intrusion.
   The statement under the heading *visual intrusion* on page 40 is simply untrue: *„The proposed development is an extension of the surrounding rural settlement and housing patterns and is as such compatible with the qualities of the area. The visual intrusion for the proposed development is therefore low."*
   This is a false statement since on the one hand the new application claims that the *guidelines should not be restrictive conditions* (point 5) and therefore can deviate from those of Bosbokduin whilst on the other hand it claims that: *the development is an extension of the surrounding rural settlement and housing patterns*, it goes without saying the latter statement is incorrect and contradictory.

8. Potential Visual Impact.
   The last sentence states that: *„The proposed development is located next to an existing low density existing housing development and will therefore not change the visual character of the surrounding landscape."*
   As said previously the housing units / plots adjacent the proposed development (south west Bosbokduin) is already a high density part of Bosbokduin (see point 4). If we add to this that the new development is not obliged to follow the building guidelines of Bosbokduin than it is clear that was has been stated in this paragraph could not be further from the truth.

VI. Concluding remarks

For me this is simple. Approvals from relevant authorities have been obtained in 2000 and 2006 subject to certain preconditions. To me these approvals including the preconditions still stand today. The original plan – referred to in the new application as the No-Go-Alternative was based on extensive discussions with the Bosbokduin homeowners association and was in itself already a compromise. There is therefore no reason what so ever to deviate from this original plan.

For the Attention

MANAGER : PLANNING

1. With reference to the Hessequa Municipality Notice (15/4/5 ; 15/4/2/7 and SBW – 3997) regarding the subdivision, rezoning and consolidation of Erf 3997, Stilbaai Wes Bosbokduin.

2. I, the owner (P R van Wyk) of Erf 2319 (Visvywerlaan 2) take issue with/opposing the consolidation and rezoning of the 4 (four) stands into 8 (eight) stands as per the applicants proposed subdivision (Item 2.6 "Onderverdelingsplan" of their submission).

3. The justification to my opposing this application is:
   - 3.1 The additional traffic (due to the increase of stands/properties) past Visvywerlaan 2 to connect with the private road as set out in 2,3 and 2,6 fo the "Algemene Plan" and "Onderverdelings Plan".
   - 3.2 The precedent that will be set if the application, specifically the additional stand to the detriment of public open spaces are approved. This pertaining to the current Bosbokduin's Development Concept/Charter if a rezoning application are filed for what ever reason(s).

4. Also to be noted:
   - 4.1 The Applicant(s) acknowledgement that access is through the existing Bosbokduin road (Visvywerlaan) as per Item 3.5 "Wenslikheid" of the Applicant's submission.
   - 4.2 The Applicant(s) acknowledgement that services (electricity and water) are ("geskakel") with Bosbokduin as per Item 3.6 "Wenslikheid" of the Applicant's submission.
   - 4.3 The Applicant(s) acknowledgement the the current "Lay of the Land" been as per Item 2.3 "Algemene Plan" of the Applicant's submission.

5. Notwithstanding he above acknowledgements:
   - 5.1 The Applicant(s) are silent as to the process of rezoning the original Erf 3997 during the period 1999 to 2006.
   - 5.2 The Applicant(s) are silent as to the conditions attached to the rezoning to its current status as per Item 2.3 "Algemene Plan" (see attached document A of these conditions).

6. I, along with some other Bosbokduin residents, am opposed to the rezoning application as the Applicant(s)
   - 6.1 The Applicant(s) have not proved the need and desirability of such a rezoning.
   - 6.2 Further, the Applicant(s) silence to specific previous agreed conditions, yet his selective use of benefits as per the Applicant's acknowledgements are improper.

6.3 The granting of such a rezoning will be to the detriment (loss of property value) of the Home Owners behind (to the North West) of these additional stands.

I appeal to the Municipality/Planning Manager not to allow the rezoning/development.

P.R. VAN WYK

BYLAAG 3

'N GEKATEGORISEERDE OPSOMMENDE LYS VAN VOORWAARDES WAARAAN DIE EIENAARS VAN ERF 3997 ASOOK DIE BOSBOKDUIN HEV MOET VOLDOEN

1. **Konsolidasie met Bosbokduin**
   - *Die terrein van aansoek sal onderverdeel word en **gekonsolideer word met Bosbokduin (DOS 2000)***
   - *Twee nuwe eiendomme word geskep. **Die res van die terrein bly oop ruimte wat sal inskakel by die oopruimte van Bosbokduin** (DOS 2000)*
   - *Die gedeelte moet **notarieel met Bosbokduin oord gekoppel word en mag nie apart vervreem word nie** (MUN 2000)*

2. **Lidmaatskap van Bosbokduin**
   - *Die eienaars van die vier erwe sal **lede word van die van Bosbokduin HEV** (DOS 2000)*
   - *Die **grondwet en reëls van die huiseienaarsvereniging sal ook op die nuwe lede van toepassing wees** (DOS 2000)*

3. **Bouriglyne**
   - ***Slegs een woonhuis** met maks oppervlakte van 120 vk m mag op elk van die bykomende erwe gebou word (DOS 2000)*
   - *Die nuwe woonhuise sal aanpas by die **argitektoniese riglyne van Bosbokduin** (DOS 2000)*
   - *Die nuwe woonhuise **sal nie hoër wees** as die bestaande naasliggende geboue nie (DOS 2000)*

4. **Die bestuur van Erf 3997**
   - *Die huiseienaarsvereniging van Bosbokduin moet 'n persoon aanwys om **toesig te hou** oor die konstruksie van die huise en **dienste en om te verseker dat daar voldoen word aan al die goedkeuringsvoorwaardes van hierdie Departement** (DOS 2000)*
   - *Die gedeelte grond moet **as deel van die Bosbokduin oord bestuur** word (Mun 2000), (MUN 2006)*
   - *Die **skriftelike toestemming van die Bosbokduin HEV** tot die bestuur as deel van Bosbokduin moet verkry word (MUN 2000), (MUN 2006)*
   - *Die **oopruimte gedeelte moet deur die Bosbokduin HEV bestuur word** (MUN2006)*

- DOS: Departement Omgewingsake
- MUN: Hessequa Munisipaliteit

Document A

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