

Appendix 3: Registration and comments

Mark Todkill

Comments to the Proposed Amendments as per- NOTIFICATION OF PUBLIC PARTICIPATION PROCESS- Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

1. Amendment request

Contact details of applicant (No impact)

Amendment of condition to

No impact

Comment

Agreed, please furnish the actual contact details as it would appear in the amendment.

2. Amendment request

7.1 The change land use of Portions 1 and 34 of the Farm Mauritzkraal No 501, to be affected within 12 months of the date of signature of this authorization, by means of a rezoning in terms of the Land Use Planning Ordinance, Ordinance 15 of 1985.

Amendment of condition to:

7.1 to: The change land use of Portions 1 and 34 of the Farm Mauritzkraal No 501, to be affected **within 24 months** of the date of signature of this authorization, by means of a rezoning in terms of the **SPLUMA**

Comment

- **SPLUMA – the full act and version should be detailed.**
 - Amendments are intended to **update or correct conditions** to reflect current law, practical realities, or unforeseen circumstances.
 - They are **not meant to excuse negligence** or retroactively validate non-compliance.
 - Conditions were ignored and not implemented, that is a **breach of the original authorization**, not something that can be erased by amendment.
 - Development is mostly completed and ownership transferred, rezoning or land use conditions were approved, attempting to extend timeframes after completion is seen as a **procedural cover-up** rather than a legitimate amendment.
 - Negligence by the committee in implementing conditions is a **governance failure, as is shown in the Compliance Audit findings.**
 - **Legislative Update**, updating references from LUPO to SPLUMA is feasible and most probably necessary, but this should be framed as a **technical alignment**, not as a way to excuse past failures.
-

3. Amendment request

7.3 Construction of housing infrastructure to commence within 12 months of completion of the construction of bulk service infrastructure and to be completed within 60 months of commencement.

Amendment of condition to:

7.3 Construction of individual dwelling to commence **after** completion of the construction of bulk service infrastructure and to be completed within **12 months from date of commencement of construction.**

Comment

- This change is a material amendment as it alters the nature of the obligation from a “collective works” (Housing infrastructure) to the “individual dwellings”
 - It **shifts focus** from collective infrastructure to individual units, which is a **material change** in scope
 - By **changing the scope to individual dwellings**, it **changes the object of the regulation.**
 - It now reduces the timeframe from 5 to 1 year and can lead to **non-compliance issues by individual owners**, especially if there are **delays in approvals (municipal and financial)** or contractor availability
 - The development is mostly complete and to apply it retroactively, is seen as a **procedural patch** and not a meaningful safeguard/amendment.
 - **Legislative updates are valid, but timeframe compression and scope changes must not be used to mask past negligence** by committees
-

4. Amendment request

8.3.12 The development footprint of each Individual unit as well as the area to be used for the installation of services and the Individual approach road to each site to be clearly demarcated with pegs. All areas outside the demarcated areas are to be Indicated as "no-go" areas for construction workers, machinery and vehicles and access to these areas are to be prohibited

Amendment of condition to:

8.3.12 The development footprint of each Individual unit as well as the area to be used for the installation of services and the Individual approach road to each site to be clearly demarcated with pegs. **Permission from KHOA to be granted for required laydown areas that may encroach onto open space 2; these must be clearly demarcated with pegs. All open space 3 areas and areas outside the demarcated area to be designated as "no-go" areas for construction workers, machinery and vehicles and access to these areas are to be prohibited.**

Comment

- The amendment is **premature** because it assumes rezoning that has not yet occurred.
 - A **valid court order** stipulates that all common property (other than individual member units) must be zoned **Open Space 3 (conservation)**.
 - A valid court order has binding force until lawfully amended.
 - **Judicial Procedure** has not been followed to amend or set aside that order.
 - Rezoning from **OS2 to OS3** is still **in question** and unresolved.
 - Any amendment to the ROD that assumes rezoning has already occurred (OS2 designation) is **legally defective, as** the land remains **OS3** under the court order.
 - The amendment to Clause 8.3.12 proposes allowing **KHOA discretion** to authorize laydown areas in “Open Space 2.” KHOA cannot override a court order or zoning designation — only a judicial amendment together with municipal rezoning under SPLUMA can do so.
-

5. Amendment request

8.4.13.2 Limited landscaping can be allowed as part of site rehabilitation on Individual portions, but such landscaping must be restricted to the use of indigenous plant species and must be in keeping with the natural vegetation found on the property. Established, non-Invasive alien species may be retained but the area is to be kept clear of all invasive alien plant species.

Amendment of condition to:

8.4.13.2 Limited landscaping can be allowed as part of site rehabilitation on Individual portions and open space 2, but such landscaping must be restricted to the use of indigenous plant species and must be in keeping with the natural vegetation found on the property. Established, non-Invasive alien species may be retained but the area is to be kept clear of all invasive alien plant species.

Comment

As noted in Amendment request 4, above the following fact are applicable;

- The amendment is **premature** because it assumes rezoning that has not yet occurred.
- A **valid court order** stipulates that all common property (other than individual member units) must be zoned **Open Space 3 (conservation)**.
- A valid court order has binding force until lawfully amended.
- **Judicial Procedure** has not been followed to amend or set aside that order.

Additionally,

- **Expands scope of landscaping** from **private portions only** to **private portions and Open Space 2**. (which is not resolved)
 - Landscaping is only allowed on individually owned portions, irrespective of whether it is OS2 or OS3, this is communal property and is managed by the HOA. Members may not do any landscaping on common property, and the HOA committee may not allocate or appropriate any common property to individual members.
-

6. Amendment request

All undeveloped land within portions 1 and 34 to be zoned as Open Space III, regarded as common property and to be managed as a protected natural area or Nature Reserve by the Kingsway Homeowners Association.

Amendment of condition to:

All undeveloped land within portions 1 and 34 (currently Ptn 35 / 501 and RE 209 / 501) outside designated sectional title erven and open space 2 area between these sectional title erven, to be zoned as Open Space zone 3 and managed as a as a protected natural area or Nature Reserve by the Kingsway Homeowners Association.

Comment

I find it disingenuous that the author has not full identified the clause or section that the above pertains to and has included it with clause 8.2.1 on not as a separate item. This refers to 1. Description of Activity, 2nd paragraph, point 4.

- Once again this is a premature and unlawful amendment as per Amendment Requests 4 and 5 above.
 - This is a substantive amendment not just a technical update.
 - The original authorisation insured a strong conservation protection with no carve-outs or exception.
 - The amendment shifts the **balance between Conservation and Development by reducing the Conservation Footprint.**
 - The Conservation protections are being weakened / reduced and is being used as a procedural device to hide non-compliance of the regulatory framework as imposed by the original ROD and highlighted in the Environmental Audit Report.
 - Amendments to the ROD are being used in an attempt to obscure Procedural Negligence by the KHOA Excom.
-

7. Amendment request

8.2.1 Portion 34 of the farm Mauritzkraal 501 within the Kouga Municipal area to be rezoned from Resort I to Resort II and Private Open Space III In terms of the Land Use Planning Ordinance, Ordinance 15 of 1985 and Portion 1 of the farm Mauritzkraal 501 to be rezoned from Agriculture to Resort II and Private Open Space III to facilitate the upgrading/ expansion of the existing Kingsway Resort

Amendment of condition to:

8.2.1: Portion 34 of the farm Mauritzkraal 501 (currently RE 209 / 501) within the Kouga Municipal area to be rezoned from Resort I to Resort II **and open space 2** and open Space 3 In terms of the Land Use Planning Ordinance, Ordinance 15 of 1985 (currently SPLUMA) and Portion 1 (currently Ptn 35 / 501 and RE 209 / 501) of the farm Mauritzkraal 501 to be rezoned from Agriculture to Resort II **and open space 2** and open space 3 to facilitate the upgrading/ expansion of the existing Kingsway Resort.

Comment

As stated in Assessment Request 4,5 and 6 above;

- A court order stipulates all common property must be OS3, then introducing OS2 is **premature and unlawful** unless the order is amended.
 - Delegates discretion to HOA to manage OS2 differently, weakening uniform conservation protections.
 - Same comments as in items 4,5 and 6 above apply to this proposed amendment.
 - Rezoning and judicial amendment have not occurred; this change is **premature and procedurally defective**.
-

8. Amendment request

8.2.4.2 Allocation of all land other than Individual Resort II portions as Open Space III.

Amendment of condition to:

8.2.4.2 to: Allocation of all land other than Individual Resort II portions **and open space 2 area** as Open Space 3

Comment

As stated in Assessment Request 4,5,6 and 7 above;

- A court order stipulates all common property must be OS3, then introducing OS2 is **premature and unlawful** unless the order is amended.
 - Delegates discretion to HOA to manage OS2 differently, weakening uniform conservation protections.
 - Same comments as in items 4,5 and 6 above apply to this proposed amendment.
 - Rezoning and judicial amendment have not occurred; this change is **premature and procedurally defective**.
-

9. Amendment of Mitigation measure

The common land (Erf 172) registered in the name of Kingsway Caravan Park (Pty) Ltd; all this common land be transferred to the Kingsway HOA on completion of the development and that it be managed as Public Open Space Zone III (i.e. as a protected natural area).

The proposed land use restriction that should be registered against the title deed of Portion 1 (in perpetuity) and its management as Public Open Space III and its proposed incorporation into the Caravan Resort as a Protected Area or Nature Reserve.

Amendment of Mitigation measure to:

The proposed land use restriction that should be registered against the title deed of Portion 1 ((currently Ptn 35 / 501 and RE 209 / 501) (in perpetuity) (and its management as Public Open Space III and its proposed incorporation into the Caravan Resort as a Protected Area or Nature Reserve

Comment

- Once again, this mitigation amendment assumes that the rezoning is already done, and does not take into account the rezoning of 172 was already done in 2009 as Open Space 3 and is for all common ground, refer to the Environmental Audit Report, and Annexure B of the said report.
 - The fact that the Kouga Town Planning department has already communicated (in writing) that the current Rezoning Certificates were erroneously altered, and that any rezoning will have to reflect that of the Court Order, ROD etc.
 - The assumption that the proposed zoning of open space 3 (between the erven) will be or remain as open space 2 is premature and procedurally defective, especially as this matter is being investigated by the Mayor of Kouga, and relevant departments.
 - Complaint to the validity of the zoning is currently before Kouga Executive Management and case lodged with the OMBUD – CSOS (Case No. 470GP25 & 8314GP25) and both are awaiting final adjudication, (note that such adjudications is equivalent to a High Court Order).
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10. Assessment of Proposed Amendments

The proposed amendments share a common concern: **procedural negligence** in the implementation of regulatory requirements is being **presented as technical amendment**, with the exception of legitimate technical updates such as name changes or references to current legislation.

Given that the **rezoning of Open Space** areas **remains under review** by multiple role-players, the **notice to amend is premature and invalid**. The following role-players are actively engaged in this matter:

- **DEDEAT:** Mr. Govender has formally notified, in writing, that non-compliance has been escalated to the Compliance and Enforcement Division, which is mandated to conduct an audit of the park.
- **Kouga Municipality:** Ongoing communication with the Mayor, Municipal Manager, and Town Planner confirms that zoning violations are under review. A legal opinion sought by Kouga Municipality indicates that any zoning changes will require a comprehensive amendment of all regulatory documents, subject to the finalisation of judicial proceedings.
- **CSOS:** Cases 470 and 8314 have been lodged, directly impacting mandates, voting procedures, voting results, zoning proposals, and the validity of committee actions. These cases highlight contraventions of the Constitution and other regulatory prescripts governing the Kingsway Resort.

Conclusion

The proposed amendments, aside from technical updates, **represent an attempt to circumvent regulatory compliance obligations**. Until **judicial proceedings** and **formal reviews** by the relevant **authorities** are **concluded**, any amendment notice is procedurally defective and legally **unenforceable**.

claire@eapservices.co.za

From: Mark Todkill <[REDACTED]>
Sent: Friday, 21 November 2025 13:54
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Flag Status: Flagged

Hi

👍 I can access the document.

Thank you

Mark

On 2025/11/21 13:44, claire@eapservices.co.za wrote:

Hi Mark

Could you please try again, I have corrected my side, so the full document is there.

Sorry about that.

<https://eapservices.co.za/wp-content/uploads/2025/11/draft-Part-2-amendment-assessment-report-KHOA-Nov2025-Appendix-2-Draft-EMPr.pdf>

Kind Regards
Claire

From: Mark Todkill <mark.todkill@gmail.com>
Sent: Friday, 21 November 2025 11:40
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Hi

Thanks, I have again tried via the "all reports link" and on opening the link for the "Draft- EMPr" it is only the cover page.(1page)?

I have a copy of the report that was done in Nov 2024 (80 page report), but not sure if this is the latest version.

Thanks

Mark

On 2025/11/21 09:25, claire@eapservices.co.za wrote:

Good day

Please try the following link:

https://eapservices.co.za/wp-content/uploads/2025/11/draft-Part-2-amendment-assessment-report-KHOA_20-November-2025-12-January-2026_review-and-comment_.pdf

All the reports are available at:

<https://eapservices.co.za/khoa-part-2-amendment/>

Thank you

Kind Regards

Claire

Claire De Jongh

0846074743

EAPASA registration: **2021/3519**

From: Mark Todkill <n [REDACTED]>
Sent: Friday, 21 November 2025 08:51
To: claire@eapservices.co.za

Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT
REFERENCE: EC08/1M/74-98

Hi Claire

Please note that the link to "[draft-Part-2-amendment-assessment-report-KHOA-Nov2025-Appendix-2-Draft-EMPr](#)" does not contain the full report but only the 1st page.

Thanks

Mark Todkill

0813041763

From: claire@eapservices.co.za <claire@eapservices.co.za>

Sent: Thursday, November 20, 2025 8:58 AM

To: admin@eapservices.co.za

Subject: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application
KHOA DEDEAT REFERENCE: EC08/1M/74-98

NOTIFICATION OF PUBLIC PARTICIPATION PROCESS

Notice is hereby given that the landowner and applicant (Kingsway Homeowners Association (KHOA)) intends to apply for a part 2 amendment application for environmental authorisation (DEDEAT REFERENCE: EC08/1M/74-98) in terms of the National Environmental Management Act (Act 107 of 1998) (NEMA)

Competent authority: Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEAT)

Kingsway Resort is located within the Kouga Municipal area on the eastern bank of the Gamtoos River estuary, approximately 3.5 km from the estuary mouth.

Approximate central coordinates: 25° 0'63.6"S; 33° 57'2.6"S

An environmental authorisation (EC08/1m/74-98) was granted on 29 April 2008 for the expansion / upgrading of the Kingsway Resort in terms of Section 22 of the Environmental Conservation Act (Act 73 of 1989) to undertake a listed activity as schedule under Section 21 of the Act. The following activities were authorised:

1(m) - The construction or upgrading of public and private resorts and associated infrastructure

1(k) - The construction or upgrading of reservoirs for public water supply

2(c) - The change of land use from agricultural or zoned undetermined use or an equivalent zoning, to any other

Amendments are required for conditions contained within the EA (EC08/1M/74-98) and related measures in the scoping report. A draft part 2 amendment assessment report has been compiled to assess the impact of the proposed amendments. An EMPr has been compiled

A public participation process will be conducted according to Regulation 41 of the NEMA 2014 EIA Regulations (as amended, 2017). Permission to exclude placement of site notices (regulation 41 (2) a; regulation 41 (4)) and an advert (regulation 41 c) has been received from the DEDEAT; the original application process was subjected to a public participation process where Regulation 41 (2) and (4) were met.

All identified interested and affected parties are encouraged to participate in the process.

The preapplication draft Part 2 application assessment report is hereby made available for a 30-day review and comment period.

Review and comment Period: **20 November 2025 – 12 January 2026** (the days between 14 December and 5 January are not counted)

The report and appendices are available for download at: <https://eapservices.co.za/khoa-part-2-amendment/>

Following the 30-day review and comment period, the draft part 2 amendment assessment report will be updated accordingly and the part 2 amendment application will be submitted to the DEDEAT for consideration

Provide comment within 30 days of this notice at the contact details provided below.

Environmental Assessment Practitioner appointed for the NEMA part 2 amendment application process:

Claire De Jongh (EAPASA registration: 2021/3519)

Tel: 0846074743

Email: claire@eapservices.co.za

Post: 17 High St, Mount Pleasant, 6070, Eastern Cape

Kindly find attached:

1. Notice of intent

2. draft Part 2 assessment report for 30-day review and comment

Please submit comments by 12 January 2026.

Thank you for your participation in this process.

Kind Regards

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

--
Kind Regards

Mark Todkill
+27 (0)81 304 1763

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Kind Regards

Mark Todkill
+27 (0)81 304 1763

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Kind Regards

Mark Todkill

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claire@eapservices.co.za

From: claire@eapservices.co.za
Sent: Monday, 08 December 2025 13:39
To: 'Mark Todkill'
Subject: RE: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Hi Mark

All the comments received during the process are recorded as well as the responses provided. You can submit as many as you like. I will send you responses to comments received to date.

Kind Regards
Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill <[REDACTED]>
Sent: Monday, 08 December 2025 12:35
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire

For the sake of clarity, those were not my comments to the notice of the public participation process, issued by yourself, that will follow on receipt of information / explanation as requested below.

Kind Regards

Mark

On 2025/12/08 12:25, claire@eapservices.co.za wrote:

Hi Mark

I have received your comments.

Thank you

Kind Regards

Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill <mark.todkill@ec08.gov.za>
Sent: Monday, 08 December 2025 12:19
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire,

I refer to my previous emails dated 01 December and 04 December 2025 regarding the inconsistencies between the June 2024 audit findings and the current notice of application.

As the environmental specialist who issued the notice, it is your duty to provide clarity on queries arising directly from it. At present, the audit findings do not align with the notice, and without your explanation, I am unable to complete my review and submit informed comments before going on leave.

For ease of reference, I have already highlighted several clauses from the audit report dated 27 June 2024 which confirm:

1. Rezoning of Portions 1 and 34 to Open Space III (Conservation) was completed in 2009/2010.
2. Portions 1 and 34 were notorially tied, with restrictions registered in perpetuity.
3. The Record of Decision (ROD) and subsequent Court Orders remain binding and legally supersede any later allocations.
4. The audit verified compliance with these restrictions, yet the notice of application suggests otherwise.

Given these discrepancies, I respectfully request that you provide a clear explanation of how the audit findings reconcile with the notice of application, particularly in relation to:

1. The zoning status of Open Space land and the validity of the September 2024 zoning certificates.
2. The notarial tie and land use restrictions confirmed in the audit.
3. The process by which any amendments could lawfully proceed, considering the ROD and Court Orders.

Your timely response is essential to ensure procedural fairness and transparency in this matter.

Thank you for your attention.

Kind regards,
Mark Todkill

On 2025/12/04 11:40, Mark Todkill wrote:

Hi Claire

Any update on the below requested clarification on how the audit findings reconcile with the notice of application, based on the below response sent to you on the 01/12/2025. I would like to complete my review of the notice (+ supporting documents) and hopefully submit my comments prior to going on leave next week.

Many Thanks

Mark.

On 2025/12/01 15:12, Mark Todkill wrote:

Hi Claire,

Thanks for the response; however, it has raised further questions rather than resolving the query.

As you may or not be aware, the zoning of Open Space remains under review with Kouga Municipality (Town Planner, Municipal Manager, Mayor, and Kouga Legal). I have received written confirmation from Lawrence Ramakuwela that the zoning certificates issued in September 2024 are more than likely incorrect.

This situation arose, as when we received the zoning certificates from the committee, I queried it and due to no response from the committee I approached Kouga directly, I maintained that the zoning certificates were obtained without due process and that there was an issue with the date of issue, as copies would have reflected the 2009/2010 date and not the Sept 2024 date. So this is currently at the Executive level of Kouga for resolution

Your audit report appears to support this, noting that zoning was undertaken in 2009/2010 and that all Open Space was zoned as *Open Space 3 – Conservation*. I trust this was verified during the audit process.

Kouga has indicated in my communications with them that both the municipality and its legal department are reviewing the zoning. Any changes must comply with the Record of Decision (ROD) and the two Court Orders, which legally supersede any subsequent allocations.

Furthermore, your audit reflects that the land use restriction per the ROD has been completed and that Portions 1 and 34 were notarially tied. I trust this too was confirmed in the June 2024 audit, yet the current notice of application suggests otherwise. If the audit confirmed the restriction, then logically the restriction must first be lifted before any application for amendments can proceed, following the prescribed administrative process.

At present, the audit findings do not align with the notice of application. For ease of reference, I have included below several clauses and findings from the audit report dated 27 June 2024 that highlight these inconsistencies:

Key References from Audit Report (27 June 2024):

- 1. Background and History of Development (Item 2.2.1, Rezoning and EA)**
 1. ROD (EC08/1m/74-98) granted on 29 April 2008.
 2. Application submitted to rezone Portion 172 from Resort II to Open Space III, approved July 2009.
 3. Common land (Erf 172) registered under Kingsway Caravan Park (Pty) Ltd, managed at the cost of Kingsway HOA, with scoping report confirming intent to transfer all common land to HOA for management as Open Space III.
- 2. Table 1 – Description of Activity in ROD**
 1. All undeveloped land within Portions 1 and 34 to be zoned Open Space III, managed as protected natural area/Nature Reserve by Kingsway HOA.
 2. Rezoning information available (Appendix B).
 3. Portions 1 and 34 tied notarially as Portion 35. Rezoning approved by Kouga Municipality in 2009.
- 3. General Conditions**
 1. Site falls within aquatic CBA 1 (Eastern Cape Biodiversity Conservation Plan, 2022), requiring highest level of protection.
 2. Rezoning of Portions 1 and 34 completed and compliant (Appendix B).
 3. Consolidation of Portions 1 & 34 completed and compliant.
 4. Audit notes erven extending into Open Space, but Kouga has issued 50–60 notices to members, indicating non-compliance.
 5. Vegetation removal and annexation of Open Space by members further demonstrate regulatory breaches.

4. Operational Phase (Table 5)

1. Compliance noted only for Portion 1 (12 hectares), omitting OS3 area on Portion 34.
2. Internal fencing noted as partially compliant, but audit fails to reflect widespread non-compliance in common grounds.

5. Additional Measures

1. Common land (Erf 172) to be transferred to Kingsway HOA and managed as Public Open Space III.
2. Land use restriction against Portion 1 to be registered in perpetuity.
3. No boundary fences or clearing of vegetation permitted; audit findings misrepresent extent of non-compliance.

In light of these discrepancies, I respectfully request clarification on how the audit findings reconcile with the notice of application.

Thank you for your attention to this matter.

Kind regards,
Mark

On 2025/12/01 11:52, claire@eapservices.co.za wrote:

Hi Mark

The current zoning is private open space ii; the open areas between dwellings is proposed to remain as private open space and the eastern (intact thicket) and western (estuary) must be rezoned to open space 3 and managed as conservation areas as required by the conditions of the ROD.

There will be no changes to the mitigation measures, so private open space will still need to be indigenous and free from AIS etc. and managed as common property by the KHOA.

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Kind Regards

Mark Todkill

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Kind Regards

Mark Todkill
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Mark Todkill

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Kind Regards

Mark Todkill

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From: Mark Todkill <[REDACTED]>
Sent: Sunday, 08 February 2026 10:48
To: claire@eapservices.co.za
Cc: 'Graham Todkill'; Maartje Weyers
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Flag Status: Flagged

Dear Claire,

Thank you for your recent response. However, I must respectfully note that your reply does not address the core issues I have raised in my previous correspondence, nor does it provide the reconciliation or verified documentation I have repeatedly requested.

Specifically:

1. Zoning Certificates and Authority

Your reference to “the Town Planner” is materially misleading. The individual cited is a private consultant, not the official Town Planner of Kouga Municipality. As you are aware, only the municipal planning department — not private consultants — has the legal authority to confirm zoning status. Kouga’s own officials, including Mr Lawrence Ramakuwela, have stated in writing that the September 2024 zoning certificates are incorrect and under review. This is a critical matter that cannot be dismissed or substituted with private opinion.

2. Failure to Reconcile Contradictions

You have not provided the requested point-by-point reconciliation between the June 2024 Audit Report, the ROD (EC08/1M/74-98), the court orders, and the Draft Part-2 amendments. This reconciliation is essential to ensure that the proposed amendments are lawful, procedurally sound, and do not conflict with binding instruments and current regulation.

3. Ongoing Municipal and Legal Review

Your response does not acknowledge that Kouga Municipality and DEDEAT’s Compliance and Enforcement Division are actively reviewing the violations and zoning status and related compliance matters. Proceeding with the Draft Amendment Report while these processes remain unresolved is procedurally premature and risks prejudicing their outcomes.

4. Deflection and Delay

I note a pattern of deflection and delay in your responses. Rather than addressing the substance of the concerns raised — including the

violations of common property, legal status of the land, the validity of the proposed amendments, and the integrity of the public participation process — your replies have consistently deferred responsibility or introduced ambiguity.

Please note that this correspondence is for your information only and does not alter the formal complaint being submitted to EAPASA. That process will proceed independently.

I again urge you to provide the requested reconciliation and supporting documentation without further delay, and to ensure that the Draft Amendment Report is brought into alignment with the verified legal and environmental record.

Sincerely,
Mark Todkill
Plot 119, Kingsway Resort

+ [REDACTED]

On 2026/02/07 22:31, claire@eapservices.co.za wrote:

Hi Mark

Apologies for the delay. I am sending your comments to the town planner for input. I only do the impact assessment and from what I can see, the open space 3 zoning on the east and west and open space 2 zoning around the dwellings will not have any significant environmental impact with the implementation of the conditions of ROD and the EMPR.

Kind Regards
Claire

Claire De Jongh (nee Jarvis)
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill <[REDACTED]>
Sent: Thursday, 29 January 2026 12:48
To: claire@eapservices.co.za
Cc: 'Graham Todkill' <[REDACTED]>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Hi Claire

Another week has passed since the below email, without any acknowledgement or response to the queries raised. I have no knowledge whether the application has been submitted to the department as yet?

Due to none communication/response, we will thus be escalating the matter to the EAPASA.

Regards

Mark.

On 2026/01/22 12:53, Mark Todkill wrote:

Hi Claire

Any update as to when your formal response will be received (per your below email).

Regards

Mark

On 2026/01/13 11:54, Mark Todkill wrote:

Hi Claire

Attached is the email correspondence with Lawrence and take note of Item 4/5, which is very clear that the current zoning is incorrect and needs to be in line with the court order as Open Space 3 - Conservation.

Adding to this which is still outstanding from Lawrence and the Municipal Manager is the fact that in Sept 2024 the current zoning certificates were issued and paid for (By HOA to Kouga - R2011) for the certificates. It is my understanding that Chris v/d Merwe did the request and collection of said certificates, and it is now up to Lawrence to answer as to how this was obtained without following the required application process and public participation process. These concerns are now with the Mayor to address, as both Lawrence and M/Manager are delaying answering the query.

It must also be noted that the committee members were all aware of this communication, as I posted it on the Kingsway WhatsApp group prior to the Special General Meeting. Not to mention the fact that there are 3 Complaints Lodged with CSOS, 2 of which are awaiting adjudication and relate to rezoning, amongst other items under consideration, and the committee is fully aware of this as they are the responding party and took part in the proceedings.

Regards

Mark

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Good day Mr Todkill

Thank you for your comments. I am currently drafting responses and **will send you a formal response soonest.**

-

In the interim, could you please share correspondence between yourself and Lawrence Ramakuwela that the zoning certificates issued in September 2024 are more than likely incorrect in order for me to include in the public participation and comments and response report.

Thank you

Kind regards

Claire

Claire De Jongh
0846074743
EAPASA registration: 2021/3519

From: Mark Todkill <[REDACTED]>
Sent: Monday, 12 January 2026 14:33
To: claire@eapservices.co.za
Cc: Graham Todkill <[REDACTED]>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

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Please find the attached document, which highlights our comments per each proposed amendment. (Comments to the Proposed Amendments_Part 2 amend.docx)

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Kind Regards

Mark Todkill

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Kind Regards

Mark Todkill

+27 (0) 81 204 1762


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claire@eapservices.co.za

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Cc: 'Graham Todkill'
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98
Attachments: Kouga_Confirmation of Items Discussed.pdf
Flag Status: Flagged

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0846074743
EAPASA registration: 2021/3519

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Cc: 'Graham Todkill'
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Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill <[REDACTED]>
Sent: Monday, 12 January 2026 14:33
To: claire@eapservices.co.za
Cc: Graham Todkill <Admin@maintenancenetwork.co.za>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

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Also note that as per your response below, I am still awaiting your responses to my previous emails. I trust that I will receive those prior to the finalisation of any applications to DEDEAT, so that I can make amendments to my comments, if so required, and based on the response.

Many Thanks

Mark & Graham Todkill



On 2025/12/08 13:38, claire@eapservices.co.za wrote:

Hi Mark

All the comments received during the process are recorded as well as the responses provided. You can submit as many as you like. **I will send you responses to comments received to date.**

Kind Regards
Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill mark.todkill@eapservices.co.za
Sent: Monday, 08 December 2025 12:35
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire

For the sake of clarity, those were not my comments to the notice of the public participation process, issued by yourself, that will follow on receipt of information / explanation as requested below.

Kind Regards

Mark

On 2025/12/08 12:25, claire@eapservices.co.za wrote:

Hi Mark

I have received your comments.

Thank you

Kind Regards

Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill [REDACTED]
Sent: Monday, 08 December 2025 12:19
To: claire@eapservices.co.za
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire,

I refer to my previous emails dated 01 December and 04 December 2025 regarding the inconsistencies between the June 2024 audit findings and the current notice of application.

As the environmental specialist who issued the notice, it is your duty to provide clarity on queries arising directly from it. At present, the audit findings do not align with the notice, and without your explanation, I am unable to complete my review and submit informed comments before going on leave.

For ease of reference, I have already highlighted several clauses from the audit report dated 27 June 2024 which confirm:

1. Rezoning of Portions 1 and 34 to Open Space III (Conservation) was completed in 2009/2010.
2. Portions 1 and 34 were notorially tied, with restrictions registered in perpetuity.
3. The Record of Decision (ROD) and subsequent Court Orders remain binding and legally supersede any later allocations.
4. The audit verified compliance with these restrictions, yet the notice of application suggests otherwise.

Given these discrepancies, I respectfully request that you provide a clear explanation of how the audit findings reconcile with the notice of application, particularly in relation to:

1. The zoning status of Open Space land and the validity of the September 2024 zoning certificates.
2. The notarial tie and land use restrictions confirmed in the audit.
3. The process by which any amendments could lawfully proceed, considering the ROD and Court Orders.

Your timely response is essential to ensure procedural fairness and transparency in this matter.

Thank you for your attention.

Kind regards,
Mark Todkill

On 2025/12/04 11:40, Mark Todkill wrote:

Hi Claire

Any update on the below requested clarification on how the audit findings reconcile with the notice of application, based on the below response sent to you on the 01/12/2025. I would like to complete my review of the notice (+ supporting documents) and hopefully submit my comments prior to going on leave next week.

Many Thanks

Mark.

On 2025/12/01 15:12, Mark Todkill wrote:

Hi Claire,

Thanks for the response; however, it has raised further questions rather than resolving the query.

As you may or not be aware, the zoning of Open Space remains under review with Kouga Municipality (Town Planner, Municipal Manager, Mayor, and Kouga Legal). I have received written confirmation from Lawrence Ramakuwela that the zoning certificates issued in September 2024 are more than likely incorrect.

This situation arose, as when we received the zoning certificates from the committee, I queried it and due to no response from the committee I approached Kouga directly, I maintained that the zoning certificates were obtained without due process and that there was an issue with the date of issue, as copies would have reflected the 2009/2010 date and not the Sept 2024 date. So this is currently at the Executive level of Kouga for resolution

Your audit report appears to support this, noting that zoning was undertaken in 2009/2010 and that all Open Space was zoned as *Open Space 3 – Conservation*. I trust this was verified during the audit process.

Kouga has indicated in my communications with them that both the municipality and its legal department are reviewing the zoning. Any changes must comply with the Record of Decision (ROD) and the two Court Orders, which legally supersede any subsequent allocations.

Furthermore, your audit reflects that the land use restriction per the ROD has been completed and that Portions 1 and 34 were notarially tied. I trust this too was confirmed in the June 2024 audit, yet the current notice of application suggests otherwise. If the audit confirmed the restriction, then logically the restriction must first be lifted before any application for amendments can proceed, following the prescribed administrative process.

At present, the audit findings do not align with the notice of application. For ease of reference, I have included below several clauses and findings from the audit report dated 27 June 2024 that highlight these inconsistencies:

Key References from Audit Report (27 June 2024):

1. **Background and History of Development (Item 2.2.1, Rezoning and EA)**
 1. ROD (EC08/1m/74-98) granted on 29 April 2008.
 2. Application submitted to rezone Portion 172 from Resort II to Open Space III, approved July 2009.
 3. Common land (Erf 172) registered under Kingsway Caravan Park (Pty) Ltd, managed at the cost of Kingsway HOA, with scoping report confirming intent to transfer all common land to HOA for management as Open Space III.
2. **Table 1 – Description of Activity in ROD**
 1. All undeveloped land within Portions 1 and 34 to be zoned Open Space III, managed as protected natural area/Nature Reserve by Kingsway HOA.
 2. Rezoning information available (Appendix B).
 3. Portions 1 and 34 tied notarially as Portion 35. Rezoning approved by Kouga Municipality in 2009.
3. **General Conditions**
 1. Site falls within aquatic CBA 1 (Eastern Cape Biodiversity Conservation Plan, 2022), requiring highest level of protection.
 2. Rezoning of Portions 1 and 34 completed and compliant (Appendix B).
 3. Consolidation of Portions 1 & 34 completed and compliant.
 4. Audit notes erven extending into Open Space, but Kouga has issued 50–60 notices to members, indicating non-compliance.

5. Vegetation removal and annexation of Open Space by members further demonstrate regulatory breaches.

4. Operational Phase (Table 5)

1. Compliance noted only for Portion 1 (12 hectares), omitting OS3 area on Portion 34.
2. Internal fencing noted as partially compliant, but audit fails to reflect widespread non-compliance in common grounds.

5. Additional Measures

1. Common land (Erf 172) to be transferred to Kingsway HOA and managed as Public Open Space III.
2. Land use restriction against Portion 1 to be registered in perpetuity.
3. No boundary fences or clearing of vegetation permitted; audit findings misrepresent extent of non-compliance.

In light of these discrepancies, I respectfully request clarification on how the audit findings reconcile with the notice of application.

Thank you for your attention to this matter.

Kind regards,
Mark

On 2025/12/01 11:52, claire@eapservices.co.za wrote:

Hi Mark

The current zoning is private open space ii; the open areas between dwellings is proposed to remain as private open space and the eastern (intact thicket) and western (estuary) must be rezoned to open space 3 and managed as conservation areas as required by the conditions of the ROD.

There will be no changes to the mitigation measures, so private open space will still need to be indigenous and free from AIS etc. and managed as common property by the KHOA.

I hope this answers your question.

Thanks
Kind Regards
Claire

From: Mark Todkill

Sent: Friday, 28 November 2025 15:58

To: claire@eapservices.co.za

Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Sorry I misread the question, not use to answering on the phone, screen too small.

Yes, the current zoning.

Mark

On 2025/11/28 15:54, Mark Todkill wrote:

Hi

The Rod specified all open space to be OS3- conservation and land use restriction against common property in perpetuity.

Thanks

Mark

On 2025/11/28 15:42, claire@eapservices.co.za wrote:

Hi Mr
Todkill

Could
you
please
clarify
what you
mean by
the
registered
land use
restrictio
n – do you
mean the

current
zoning?


Thanks
Claire

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Kind Regards


Mark Todkill


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claire@eapservices.co.za

From: Mark Todkill <[REDACTED]>
Sent: Tuesday, 24 March 2026 12:37
To: claire@eapservices.co.za
Cc: 'Graham Todkill'; 'Maartje Weyers'
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98
Attachments: Response to Claires Comments Report_16032026.pdf; LHC1 Saché Email_ Kingsway Home Owners _ Committee members.pdf; KHOA_Appendix 1 - PP and CRR - final for decision making_Public copy final.pdf

Hi Claire

I have reviewed the "KHOA_Appendix 1 -PP and CRR - final for decision-making" document and attached my response letter.

Thanks

Mark

0813041763

On 2026/03/18 15:40, Mark Todkill wrote:

Thanks, Claire

I will review in the next day or so and revert.

I notice the attachment is named as the final version, so I assume this has already been submitted to the competent authority? If so on what date was the submission made.

Thanks

Mark.

On 2026/03/18 14:55, claire@eapservices.co.za wrote:

Good day Mr Todkill

I trust you are well. Kindly find attached the public participation and comments and response report which contains all the comments received during the 30 day review and comment period and the responses to the comments.

The draft amendment report will be updated to a final version and the part 2 amendment application and accompanying report will be submitted to the competent authority for decision making.

Kindly note I was in hospital between 14 January to 7 February and I was unable to respond to emails during this time.

Thank you for your participation in this process.

Kind Regards

Claire

Claire De Jongh (nee Jarvis)

0846074743

EAPASA registration: **2021/3519**

SACNASP (certificated): **115390**

BSc Environmental Management: Zoology Stream

BSc Honours: Environmental monitoring and modelling

From: Mark Todkill <mark.todkill@route2.co.za>
Sent: Sunday, 08 February 2026 10:48
To: claire@eapservices.co.za
Cc: 'Graham Todkill' <gtodkill@route2.co.za>; Maartje Weyers <maartje@route2.co.za>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire,

Thank you for your recent response. However, I must respectfully note that your reply does not address the core issues I have raised in my previous correspondence, nor does it provide the reconciliation or verified documentation I have repeatedly requested.

Specifically:

1. Zoning Certificates and Authority

Your reference to “the Town Planner” is materially misleading. The individual cited is a private consultant, not the official Town Planner of Kouga Municipality. As you are aware, only the municipal planning department — not private consultants — has the legal authority to confirm zoning status. Kouga’s own officials, including Mr Lawrence Ramakuwela, have stated in writing that the September 2024 zoning certificates are incorrect and under review. This is a critical matter that cannot be dismissed or substituted with private opinion.

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[REDACTED]

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Regards

Mark

On 2026/01/13 05:44, claire@eapservices.co.za wrote:

Good day Mr Todkill

Thank you for your comments. I am currently drafting responses and **will send you a formal response soonest.**

-
In the interim, could you please share correspondence between yourself and Lawrence Ramakuwela that the zoning certificates issued in September 2024 are more than likely incorrect in order for me to include in the public participation and comments and response report.

Thank you

Kind regards

Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill [REDACTED]
Sent: Monday, 12 January 2026 14:33
To: claire@eapservices.co.za
Cc: Graham Todkill [REDACTED]

Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Hi Clare

Please find the attached document, which highlights our comments per each proposed amendment. (Comments to the Proposed Amendments_Part 2 amend.docx)

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Many Thanks

Mark & Graham Todkill



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claire@eapservices.co.za wrote:

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many as you like. **I will send you responses to comments received to date.**

Kind Regards
Claire

Claire De Jongh
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill


>

Sent: Monday, 08
December 2025 12:35

To:
claire@eapservices.co.za

Subject: Re: FW:
NOTIFICATION OF PUBLIC
PARTICIPATION PROCESS -
Part 2 amendment
application KHOA DEDEAT
REFERENCE: EC08/1M/74-
98

Dear Claire

For the sake of clarity,
those were not my
comments to the notice
of the public

participation process,
issued by yourself, that
will follow on receipt of
information /
explanation as
requested below.

Kind Regards

Mark

On 2025/12/08 12:25,
[claire@eapservices.co](mailto:claire@eapservices.co.za)
[.za](mailto:claire@eapservices.co.za) wrote:

Hi Mark

I have
received
your
comment
s.

Thank you

Kind
Regards
Claire

**Claire De
Jongh**
084607474
3
EAPASA

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--

Kind Regards

Mark Todkill
+27 (0)81 304 1763

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Kind Regards

Mark Todkill


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claire@eapservices.co.za

From: Mark Todkill <n [REDACTED]>
Sent: Tuesday, 24 March 2026 12:37
To: claire@eapservices.co.za
Cc: 'Gr [REDACTED]'
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98
Attachments: Response to Claires Comments Report_18032026.pdf; Eric Fouche Email_ Kingsway Home Owners _ Committee members.pdf; KHOA_Appendix 1 - PP and CRR - final for decision making_Public copy final.pdf

Hi Claire

I have reviewed the "KHOA_Appendix 1 -PP and CRR - final for decision-making" document and attached my response letter.

Thanks

Mark

0813041763

On 2026/03/18 15:40, Mark Todkill wrote:

Thanks, Claire

I will review in the next day or so and revert.

I notice the attachment is named as the final version, so I assume this has already been submitted to the competent authority? If so on what date was the submission made.

Thanks

Mark.

On 2026/03/18 14:55, claire@eapservices.co.za wrote:

Good day Mr Todkill

I trust you are well. Kindly find attached the public participation and comments and response report which contains all the comments received during the 30 day review and comment period and the responses to the comments.

The draft amendment report will be updated to a final version and the part 2 amendment application and accompanying report will be submitted to the competent authority for decision making.

Kindly note I was in hospital between 14 January to 7 February and I was unable to respond to emails during this time.

Thank you for your participation in this process.

Kind Regards

Claire

Claire De Jongh (nee Jarvis)

0846074743

EAPASA registration: **2021/3519**

SACNASP (certificated): **115390**

BSc Environmental Management: Zoology Stream

BSc Honours: Environmental monitoring and modelling

From: Mark Todkill <mark.todkill@route2.co.za>
Sent: Sunday, 08 February 2026 10:48
To: claire@eapservices.co.za
Cc: 'Graham Todkill' <mark.todkill@route2.co.za>; Maartje Weyers <maartje@route2.co.za>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire,

Thank you for your recent response. However, I must respectfully note that your reply does not address the core issues I have raised in my previous correspondence, nor does it provide the reconciliation or verified documentation I have repeatedly requested.

Specifically:

1. Zoning Certificates and Authority

Your reference to “the Town Planner” is materially misleading. The individual cited is a private consultant, not the official Town Planner of Kouga Municipality. As you are aware, only the municipal planning department — not private consultants — has the legal authority to confirm zoning status. Kouga’s own officials, including Mr Lawrence Ramakuwela, have stated in writing that the September 2024 zoning certificates are incorrect and under review. This is a critical matter that cannot be dismissed or substituted with private opinion.

2. Failure to Reconcile Contradictions

You have not provided the requested point-by-point reconciliation between the June 2024 Audit Report, the ROD (EC08/1M/74-98), the court orders, and the Draft Part-2 amendments. This reconciliation is essential to ensure that the proposed amendments are lawful, procedurally sound, and do not conflict with binding instruments and current regulation.

3. Ongoing Municipal and Legal Review

Your response does not acknowledge that Kouga Municipality and DEDEAT’s Compliance and Enforcement Division are actively reviewing the violations and zoning status and related compliance matters. Proceeding with the Draft Amendment Report while these processes remain unresolved is procedurally premature and risks prejudicing their outcomes.

4. Deflection and Delay

I note a pattern of deflection and delay in your responses. Rather than addressing the substance of the concerns raised — including the violations of common property, legal status of the land, the validity of the proposed amendments, and the integrity of the public participation process — your replies have consistently deferred responsibility or introduced ambiguity.

Please note that this correspondence is for your information only and does not alter the formal complaint being submitted to EAPASA. That process will proceed independently.

I again urge you to provide the requested reconciliation and supporting documentation without further delay, and to ensure that the Draft Amendment Report is brought into alignment with the verified legal and environmental record.

Sincerely,
Mark Todkill
Plot 119, Kingsway Resort

[REDACTED]

On 2026/02/07 22:31, claire@eapservices.co.za wrote:

Hi Mark

Apologies for the delay. I am sending your comments to the town planner for input. I only do the impact assessment and from what I can see, the open space 3 zoning on the east and west and open space 2 zoning around the dwellings will not have any significant environmental impact with the implementation of the conditions of ROD and the EMPR.

Kind Regards
Claire

Claire De Jongh (nee Jarvis)
0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill <[REDACTED]>
Sent: Thursday, 29 January 2026 12:48
To: claire@eapservices.co.za
Cc: 'Graham Todkill' <[REDACTED]>
Subject: Re: FW: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Hi Claire

Another week has passed since the below email, without any acknowledgement or response to the queries raised. I have no knowledge whether the application has been submitted to the department as yet?

Due to none communication/response, we will thus be escalating the matter to the EAPASA.

Regards

Mark.

On 2026/01/22 12:53, Mark Todkill wrote:

Hi Claire

Any update as to when your formal response will be received (per your below email).

Regards

Mark

On 2026/01/13 11:54, Mark Todkill wrote:

Hi Claire

Attached is the email correspondence with Lawrence and take note of Item 4/5, which is very clear that the current zoning is incorrect and needs to be in line with the court order as Open Space 3 - Conservation.

Adding to this which is still outstanding from Lawrence and the Municipal Manager is the fact that in Sept 2024 the current zoning certificates were issued and paid for (By HOA to Kouga - R2011) for

the certificates. It is my understanding that Chris v/d Merwe did the request and collection of said certificates, and it is now up to Lawrence to answer as to how this was obtained without following the required application process and public participation process. These concerns are now with the Mayor to address, as both Lawrence and M/Manager are delaying answering the query.

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Mark & Graham Todkill

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Claire

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0846074743
EAPASA registration: **2021/3519**

From: Mark Todkill


2
Sent: Monday, 08
December 2025 12:35

To:
claire@eapservices.co.za

Subject: Re: FW:
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Part 2 amendment
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Thank you

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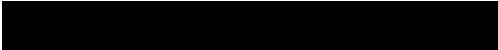
**Claire De
Jongh**
084607474
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Kind Regards

Mark Todkill


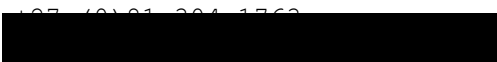
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claire@eapservices.co.za

From: Mark Todkill <[REDACTED]>
Sent: Tuesday, 31 March 2026 15:56
To: claire@eapservices.co.za; chad alcock; Roslyn Alcock
Cc: Mpho Mahlola
Subject: Re: Fwd: NOTIFICATION OF PUBLIC PARTICIPATION PROCESS - Part 2 amendment application KHOA DEDEAT REFERENCE: EC08/1M/74-98

Dear Claire

I have been forwarded a copy of your response to Mr Alcock, and we discussed the response, and find it to be misleading the affected parties, we both agree that this places your independence as an Environmental Practitioner in question and is deeply concerning.

Mr Alcock has given me permission to include this in my complaint to the EAPASA.

Subject: Rebuttal to Statement Regarding EMPr, Audit Findings, and Amendment Process

We must formally rebut your recent statement concerning the Part 2 amendment process and the Environmental Management Programme (EMPr). **Several assertions made are a misrepresentation and inconsistent with the legal requirements** under the National Environmental Management Act (NEMA), the Environmental Conservation Act, and the original Record of Decision (RoD).

1. Clause 8.1.3 of the RoD

The RoD clearly stipulates:

“Any changes in the project that could have significant environmental impacts and that would differ from that which was authorised by this Department, is to be submitted to this Department for approval prior to such changes being effected.”

This clause makes it explicit that deviations from the authorised project scope must be submitted for approval before implementation. The absence of an EMPr submission constitutes a direct breach of this condition, and **it is incorrect to suggest that compliance obligations are suspended until an amendment is approved.**

2. **Failure to Submit EMPr**

The RoD required the submission and implementation of an EMPr as a binding condition. The fact that no EMPr was ever submitted means the **authorisation holder has been in continuous non-compliance since the date of the RoD**. A Part 2 amendment cannot retroactively excuse this breach.

3. **Audit Report Deficiencies (June 2024)**

Your audit report failed to provide a full list of non-compliance on a plot-by-plot basis, despite Kouga Municipality identifying up to 60 non-compliance issues. **This omission undermines the credibility of the audit and leaves members without a clear record of individual transgressions**. Furthermore, no plot pegs were visible during your inspection, yet you spent less than one day assessing 136 plots. Such a limited inspection cannot reasonably be considered a comprehensive audit.

4. **Irregular Amendment Application Process**

On 10 September 2025 at 12h21, you submitted a Part 1 amendment application to DEDEAT. Later that same day at 15h39, DEDEAT advised that there was a misunderstanding and that the changes were substantive, requiring a Part 2 amendment. You thereafter submitted a Part 2 application. However, this application was never approved at any Special General Meeting (SGM), including the SGM of 18 August 2025. The entire amendment process has therefore proceeded without a mandate from members, notwithstanding the requirements of the RoD and NEMA.

5. **Responsibility for Compliance**

The primary duty of compliance rests with the holder of the authorisation—the HOA. While individual members may have committed transgressions (e.g., fencing encroachments), liability under NEMA attaches to the authorisation holder for failing to enforce and implement the EMPr.

6. **Legal Consequences**

Section 24F of NEMA prohibits undertaking listed activities without complying with authorisation conditions. Failure to submit and implement the EMPr is a contravention of this section. Penalties include fines of up to R10 million and/or imprisonment of up to 10 years, with **potential personal liability for directors or committee members**.

Conclusion

The HOA has been in breach of its authorisation since the EMPr was not submitted as required by the RoD. Clause 8.1.3 reinforces that changes or deviations must be approved prior to implementation, which has not occurred. Your audit report did not adequately capture the extent of non-compliance, nor did the inspection process meet the standard required for 136 plots. Furthermore, the amendment process has proceeded without member mandate, rendering it procedurally defective.

We therefore **request that your communications reflect the true legal position**: that non-compliance has occurred, remains ongoing, and must be rectified without delay, and that any amendment process must be properly mandated and procedurally sound.

Regards

Mark & Roslyn/Chad Alcock


On 2026/03/31 12:00, Chad Alcock wrote:

I agree that encroachments and transgressions have occurred as identified in the audit report. This part 2 amendment process has been recommended by the DEDEAT in order to have your EMPr put in place so that it is legally binding and the members of KHOA can address the non-compliances.

It is recommended in the EMPr that an internal ECO be nominated in order to keep the EM file up to date and address all the transgressions. The EMPr is intended for use by KHOA to manage the resort and open space areas in line with the EMPR. This will include addressing fencing issues, areas that need to be rehabilitated and other transgressions committed by individual members. Unfortunately, no EMPr was ever submitted and therefore it is not yet legally binding and therefore all members are non-compliant currently. I would like to have the amendment approved first so that the EMPr can be in place and then individual transgressions can be addressed by KHOA in communication with the DEDEAT.

--

Kind Regards

Mark Todkill


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**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Ref: CSOS470/GP/25

IN THE MATTER BETWEEN

MARK TODKIL

APPLICANT

and

DIRECTORS OF KINGSWAY HOMEOWNERS ASSOCIATION

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39 (4) In respect of meetings “(c) an order declaring that a resolution purportedly passed at a meeting of the executive committee, or at a general meeting of the association- (i) was void; or (ii) is invalid.”
Section 39(7) In respect of general and other issues- (b) “any other order proposed by the chief ombud.”
- Date Adjudication conducted:
12 March 2026.

- Name of the Adjudicator:
N. Foca.

- Order:
 - (a) The relief sought by the Applicant against the Respondent in terms of section 39(4)(c) of the CSOS Act, granted.
 - (b) The relief sought by the Applicant against the Respondent in prayer (b) and (c), is misconceived, and accordingly, is dismissed in terms of **section 53 (1) (a) of the CSOS Act.**

INTRODUCTION

1. The Applicant is **MARK TODKIL**, the registered owner of Plot (Erf) 119, Disco Drive Kingsway Resort, Gamtoos, Eastern Cape Province.

2. The Respondent is the **DIRECTORS OF KINGSWAY HOMEOWNERS ASSOCIATION**, a non-profit company duly registered at the Companies and Intellectual Properties Commission, which is a community scheme, as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer to as the "HOA".

3. This is an application for dispute resolution in terms of section 38 of the CSOS Act. The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.

4. The application seeking relief in terms of sections 39 (4) (c) and 39 (7) (b) of the CSOS Act.

5. Parties were advised that this matter will be adjudicated on the papers in the file without any attendance by the parties in terms of section 48, 50, 51 read with section 53 & 54 of the CSOS Act 9 of 2011.

6. The application and supporting documents were served on the affected persons in terms of Section 43 of the CSOS Act and the Respondent was invited to respond. Where a response was received (if any) from the Respondent, the Applicant was given

an opportunity to inspect and make a further response in terms of Section 44 of the CSOS Act, and to confirm whether it wishes to proceed with the application.

7. This matter is adjudicated in terms of the CSOS Act and the CSOS Consolidated Practice Directive dated 18 July 2025 which provides under paragraph 15.102. that “if it is determined by the Adjudicator that the adjudication shall be conducted based on documents filed by the parties, and the parties to the adjudication have not requested a face-to-face hearing, further written submissions, documents, and information (including evidence in the form of affidavits and photographs) may be requested by the appointed Adjudicator and/or CSOS official in terms of section 51 of the CSOS Act.” The parties were requested to make written submissions, and the adjudication was conducted on the **12th of March 2026**, and an order is now determined.

PRELIMINARY ISSUES

8. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

9. Section 1 of the CSOS Act defines-
- "community scheme" as “any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning”.
 - "dispute" as “a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly”.
10. Section 38 of the CSOS Act provides-
- “Any person may make an application if such person is a party to or affected materially by a dispute”.
11. Section 45(1) provides-
- “The Ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the Ombud refers the application to an adjudicator”.

12. Section 47 provides-

“On acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the Ombud must refer the matter to conciliation”.

13. Section 48 (1) provides-

“If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

14. In terms of Section 50-

“The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”

15. Section 51 provides for the investigative powers of the Adjudicator:

“(1) When considering the application, the adjudicator may-

(a) require the applicant, managing agent or relevant person-

(i) to give to the adjudicator further information or documentation;

(ii) to give information in the form of an affidavit or statement; or

(iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;

(b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and

(c) enter and inspect-

(i) an association asset, record or other document;

(ii) any private area; and

(iii) any common area, including a common area subject to an exclusive use arrangement”.

16. Accordingly, a certificate of Non- resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud referred the application together with all submissions and responses thereto to an adjudicator on the **11 February 2026**.

SUMMARY OF RELEVANT EVIDENCE

Applicant’s Submissions

17. The Applicant submitted that the Respondent allowed an unlawful vote to take place after the scheme’s Special General Meeting (“SGM”) held on the 15th of March 2025, and that the same was done in violation of the scheme’s constitution.

18. The Applicant further submitted that the SGM was convened for purposes of explaining issues relating to Environmental Audit / Rezoning Proposal, however when he requested the information prior to SGM, the Respondent failed to provide the same.
19. According to the Applicant, at the time of lodging his dispute, the Environmental Audit report had not been completed and submitted to DEDEAT / Kouga and all other activities, such as rezoning hinges on the outcomes of the report.
20. The Applicant submitted that the electronic voting had not been approved by the members, and that voting via Word Document is not a secure or approved voting method and as such there is no audit trail of eligible voters vs the results of the votes.
21. The Applicant further submitted that even though the vote was unlawful and procedurally flawed, the Respondent still did not obtain the required 75% "yes" vote of members.
22. In filing a response to the Respondent's submissions, the Applicant submitted that the Respondent acknowledged that the scheme's constitution governing voting procedures in that it specifically permits only two methods which is voting by show of hands and by ballot with the quorum approval.
23. The Applicant further submitted that in the scheme's constitution there is no clause permitting unilateral alteration of voting procedures.

Relief sought by the Applicant:

24. Wherefore, the Applicant seeks relief in the following terms:
- (a) An order declaring all voting results done via email and word document, obtained after the SGM held on the 15th of March 2025 be declared invalid and unlawful.
 - (b) An order directing the Respondent to furnish all the requested information in the past and future within 7-14 days from the said date of request.
 - (c) An order directing the Respondent to send notification of withdrawal of all applications or submissions made to Kouga Local Municipality and any other authority (DEDEAT) based on the unlawful vote obtained.

Respondent' Submissions

25. In refuting the Applicant's claim the Respondent submitted that in accordance with the scheme's constitution, the rules specify that voting must take place either by show of hands or ballot, counted and verified by at least two members, and that the process was followed.
26. The Respondent further submitted that at the SGM, it was proposed with those present and based on the mass of information that had to be digested, that the Respondent conducts the vote electronically via email, within 48 hours.
27. According to the Respondent, the voting results were audited by committee members as well as members of the park, explaining that the reason was to move with the times and make the process more inclusive and accessible for all members, a process that was supported by all the members present in the meeting.
28. The Respondent submitted that all members that had attended the meeting, voted positively within the 48-hour window.
29. According to the Respondent, to overcome the proxy oversight and promote wider participation, the vote was extended to all members, not just those who were present and that the same was done to uphold the spirit of procedural fairness.
30. The Respondent further submitted that the decision to extend the vote to members who had not attended the meeting was to ensure inclusivity and that the same was done after obtaining consent of the members that were in attendance.
31. According to the Respondent, there was no prejudice suffered as a result of allowing members that were not in attendance to vote, as the outcome from the attendees was unanimous approval, therefore, the outcome would not have been different even if the vote were done by show of hands or ballot.
32. The Respondent submitted that the process was open, fair, and done in good faith and that the deviation did not alter the result or disadvantage anyone, and that the approach was done to align with modern practices and promoted broader inclusion.

33. In addressing the Applicant's complaint regarding the environmental audit and alleged rezoning, the Respondent submitted that as at the time of filling their response, they confirm that the Environmental Audit process was currently underway and being handled in close cooperation with DEDEAT and the Kouga Municipality and that they were awaiting feedback from DEDEAT and that no concerns and objections had been received regarding the timing of the audit.
34. The Respondent further submitted that all steps taken were fully aligned with the regulatory guidance provided by the relevant authorities.
35. The Respondent submitted that no formal deadlines were committed to, and no actions have been taken such as rezoning and that the same would only be done once all regulatory requirements are completed and proper approvals are obtained, In line with DEDEAT.
36. According to the Respondent, the purpose of the SGM was to inform members of the background, reasoning, and processes the committee is pursuing in relation to potential rezoning and that the vote that occurred at the SGM related to minor constitutional amendments, which were properly tabled and passed in accordance with the association's procedures.
37. The Respondent submitted that at the SGM, 53 members who were physically present had engaged in a discussion regarding the voting protocol, and that in the interest of inclusivity and fair representation, and with the full understanding and agreement of those present, it was decided that the vote would also be extended to non-attending members via electronic means.

Relief sought by the Respondent.

38. None submitted.

EVALUATION & FINDING

39. I have perused the parties' written submissions.
40. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.

41. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighed up and determined whether the Applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
42. In prayers (a), the Applicant seeks an order declaring the voting results obtained after the SGM held on the 15th of March 2025, invalid and unlawful.
43. Section **39 (4) (c) of the CSOS Act** makes provision for the following competent order to be handed down by an Adjudicator, "an order declaring that a resolution purportedly passed at a meeting of the executive committee, or at a general meeting of the association- (i) was void; or (ii) is invalid."
44. To enable the writer to make a finding relating to the relief sought by the Applicant against the Respondent, it is prudent to establish whether there is a lawful or alternatively, a reasonable basis on which the relief prayed for by the Applicant may be granted.
45. The Respondent has confirmed that the scheme's constitution governing voting procedures provides for two methods which is voting by show of hands and by ballot.
46. In justifying the reasons why there was deviation from the provisions of the scheme's constitution, the Respondent submitted that the members that were in attendance supported the same for purposes of including members that were not in attendance.
47. By own admission, the Respondent further confirmed that what was voted on, were the minor amendments to the scheme's constitution.
48. In issuing this order, readers are referred to the Article 9.10 of the scheme's constitution under the heading 'Votes', which provides as follows, "At all General Meeting, resolutions put to the vote shall take place by show of hands **unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately.** Voting whether by show of hands or by ballot, shall take place in accordance with the following provisions:

- 9.10.1 Each member present in person shall have one vote regardless of the number of land units owned by such a member.
- 9.10.2 Each person present as proxy for a member shall have one vote for every member for which he is proxy regardless of the number of land units owned by such a member.
- 9.10.3 Each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid.
- 9.10.4 The Developer or its duly authorised representative shall have one vote regardless of the number of land units owned.
- 9.10.5 All resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting.
- 9.10.6 The chairperson of the meeting shall count the votes cast for and against the resolution and shall declare it carried or defeated as the case may be." (**Own emphasis.**)

49. The above provisions as confirmed by both parties to the dispute, only provides for voting by show of hands or by ballot subject to the later where applicable being voted by the members in attendance.

50. It must be further noted that the scheme's governance framework regulating voting does not make provision for members who are not in attendance to be accommodated to cast vote, as voting is to be done in the meeting by members who are in attendance or through proxy.

51. In issuing this order, readers are referred to Supreme Court of Appeal judgment in the matter of **Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh and Others (323/2018) [2019] ZASCA 30; 2019 (4) SA 471 (SCA) 28 March 2019**, where the Honourable Seegobin, J, stated the following (Chetty and Bezuidenhout J concurring): "[19] When the respondents chose to purchase property within the estate and become members of the Association, *they agreed to be bound by its rules*. The relationship between the Association and the respondents is thus contractual in nature. **The conduct rules, and the restrictions imposed by them, are private ones, entered into voluntarily when the owner elects to buy property within the estate.**" And later in the judgment: **Contractually binding regulations are enforceable by the parties to the contract**, and against them only."

52. In the circumstances, I have found that the Respondent has acted inconsistently with the scheme's constitution.

53. It follows that the Applicant has succeeded in making a case for the order to be granted.
54. Accordingly, the relief sought by the Applicant in terms of sections 39(4)(c) of the CSOS Act, is granted.
55. Turning my attention to the Applicant's prayers for relief in (b) and (c), which is an order directing the Respondent to provide information to the Applicant within fourteen days after the request as and when the Applicant requests the information as well as directing the Respondent to issue a notice of withdrawal of applications.
56. It is common cause that the process of accessing information by members of the association is regulated in terms of the scheme's governance rules that sets out the process of applying for accessing the information, therefore the applicant by virtue of being a member of the association will have to be subjected to the same process as opposed to being granted an order that guarantees access to information as and when he will be requesting the same.
57. Communication on the scheme's decisions is also the Respondent's discretion; therefore, the Adjudicator lacks the legal basis to grant an order directing the same.
58. The relief sought by the Applicant in prayers (b) and (c), is not relief that is competent for an Adjudicator to grant in terms of Section 39 of the CSOS Act.
59. Section 38(3)(a) of the CSOS Act specifically states that the application to CSOS for dispute resolution must include statements that set out the relief sought by the Applicant, **and in addition, the relief sought must be within the scope of one or more of the prayers for the relief contemplated in section 39 of the Act.**
60. Should any of the relief fall outside of the scope of the prayers of the relief as set out in section 39 of the Act as aforesaid, then the Adjudicator is not empowered to grant an order in terms of the Act.
61. The Western Cape High Court in the case of "**Trustees for the Time Being of the Avenues Body Corporate vs Shmaryahu and Another (A31/2018) [2018] ZAWCHC 54 2018 (4) SA 566 (WCC) (10 May 2018) add paragraph [17]**", held that "the character of the various types of substantive relief that an Adjudicator is empowered to grant in terms of the Act appears from the provisions of Section 39".

62. The court further held at paragraph [18] that “It provides for the possibility of a number of different types of orders being made in respect of seven expressly specified categories of issues; viz (i) financial issues, (ii) behavioural issues, (iii) scheme governance issues, (iv) issues in respect of meetings, (v) in respect of management services, (vi) in respect of works pertaining to private and common areas and (vii) in respect of general and other issues. It is evident from the character of each of the categories of issues that they pertain primarily to matters germane to the community schemes, and only incidentally to related personal or individual interests or rights”.
63. From the submissions made by the Applicant it is evident that the relief sought by the Applicant, does not fall within any of the categories as set out in Section 39 of the CSOS Act.
64. The Court in “***Evergreen Investment (Pty) Ltd v Messerschmidt 2019 (3) SA 481 (GP)***” quoting from the “***Road Accident Appeal Tribunal v Gouws 2018 (3) SA 413 (SCA)***” held that: “*Repositories of power can only exercise such power as had been conferred upon them by law*”.
65. The Adjudicator is not empowered in terms of the applicable legislative framework to make an order as per the relief sought by the Applicant.
66. CSOS is a creature of statute, and the Adjudicator is bound to make orders that are competent and enforceable in terms of the Act.
67. Accordingly, the Applicant’s complaint against the Respondent in respect of his prayers in (b) and (c), is dismissed in terms of **section 53(1) (a) of the CSOS Act**.

COSTS

68. There is no order as to costs.

ADJUDICATION ORDER

69. In the circumstances, the following order is made:
- (a) The relief sought by the Applicant against the Respondent in terms of section 39(4)(c) of the CSOS Act, granted.
 - (b) The voting that was facilitated by the Respondent after the scheme’s SGM held on the 15th of March 2025, is declared invalid, accordingly, the Respondent is

directed to reconvene the SGM and place the item on the agenda for voting in accordance with the provisions of Article 9.10 of the scheme's constitution, within 30 (thirty) days from the date of delivery of this order

- (c) The relief sought by the Applicant against the Respondent in prayer (b) and (c), is misconceived, and accordingly, is dismissed, in terms of **section 53 (1) (a) of the CSOS Act.**
- (d) No order as to costs.

RIGHT OF APPEAL

70. Section 57 of the CSOS Act, provides for the right of appeal-

- (1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

DATED ON THIS 25TH DAY OF MARCH 2026.



N FOCA
ADJUDICATOR

From: Eric Fouche

Sent: Tuesday, 03 December 2019 2:53 PM

Subject: Kingsway Home Owners / Committee members

Good afternoon to all members,

I am a little shocked at the recent response from KHOA committee for request for information. Firstly let me confirm that I have not forced the committee in anyway way for information but merely followed advice from committee when asking information regarding Kingsway resort to get Power of Attorney as it seemed that a Proxy was no longer valid. Chris van der Merwe confirmed that a power of attorney letter would resolve this infighting that seemed to be only between Yolande and myself. This is also stated in the constitution under point 10 where power of attorney and proxy are explained.

For those of you that don't know me I am Eric Fouche Plot number 160, I served on the committee for 2 years where I focused on the outstanding legal issues between Developer at the time and KHOA, land resolution being portions of PORTIONS 34 and 35 (Portions of Portion 29) of the farm MAURITSKRAAL NO 501, situated in the Administrative District of Uitenhage, Province of the Eastern Cape. During that time we also addressed outstanding servitude connected to our current reservoir and started process for registering of plot (Erf 30) where we appointed Andrew Hemsley (Hemsley & Myrdal Land Surveyors) to apply for registration of plot (Erf 30) which I will explain in below documents. Along with upgrades to entrance gate, water, roads and other.

At the end of the day all the below points are relative and our current committee have confirmed they have ceased proceeding with virtually all the points of concern which ultimately puts us back right where we started. I address these points to all members so that they are now educated in the outstanding matters and regardless of the time taken to effect resolution of these matters abandoning them will create unrepairable consequences down the road as we have seen in the past

History:

The developer at the time Bool Smuts had through original ROD bound himself to the Kingsway development and its management plan through way of plot sales and registration, it was recorded that until the last and final plot for Kingsway Resort had been sold and registered that Bull Smuts would still be entitled as member of the Committee, Kevin Brown and I had then engaged in discussion with then Kingsway appointed attorney Louise Schoeman and Bull Smuts Attorney Craid De Lange in order to find resolution for the outstanding legal matter that had been dragged out through courts and was simply amassing a large invoice between the lawyers. After seeking legal advice it was agreed that the following would resolve the matter

- Bool Smuts would be compensated for his remaining plot of which there was no allowable space at our current portions 34, 35 and 29 / Bull would only step down and remove himself from ROD and other rights to nature reserve Mauritskraal 501 once final plot had been registered and that allowance was made for no further development to be done on either portions or nature reserve
- Current recreation facility was identified by appointed BDLS attorney Craig De Lange and Andrew Hemsley (Land Surveyor) identified as the most viable position to engage with Kouga Municipality in order to register Erf 30 as the developments final plot
- KHOA PORTIONS 34 and 35 (Portions of Portion 29) of the farm MAURITSKRAAL NO 501 would then be tied notarially which could only be done once the subdivision of clubhouse which would be registered as Plot 30 was complete. We all need to know that at the time we had a resolution from all members to proceed with this, since then the Committee without any amended resolution from its members have ceased with this application which was confirmed to us at AGM Meeting.

With all these items set out the previous committee had planned for a few years to resolve as we know and understand the process of events with local and national municipality and the deeds office. In November 2017 Andrew Hemsley's office confirmed in writing to committee (*I have finally had a response from Kouga regarding your query and they seem happy with the proposal and all environmental issues but require a full application to be submitted. Please confirm that you wish to proceed and I will forward a letter to you requesting the required documentation. I cannot understand why it has taken them so long to come back now with the request for the application. At least we have their backing now for the proposal.*) I have also attached the mail called **kingsway – Gamtoos for your reference**. This would then alter be explained as: *I have attached a report from Anton Bok together with a letter from Andries Struwig regarding the 30th Erf at Kingsway Resort. As explained to you before, the Developers had the right to develop 30 Residential Erven but have chosen to create the 30th Erf as the Community Hall and Ablution Facility. In doing so, they are ensuring that there will be one less building erected thus having less impact on the services and vegetation. As Anton Bok's report states, there will be no disturbance of any vegetation and the new Erf will have low conservation or sensitivity and he highly recommends the proposal. Andries Struwig states in his letter that they have no issues with the proposal but there are some pertinent questions which need to be attended to. (the HOA are dealing with this and shall revert to Andries as soon as possible) As the HOA would like to have this matter*

resolved as soon as possible, would you please revert back to us with the way forward. As the creation of the 30th Erf has no impact on anyone outside of the Development and that no additional services are required, Would your Council please issue us with an approval in order that we can submit our Diagrams to the Surveyor General for his approval.

To this there is also the ROD which is relevant to all other clearance of land / road building and other which needs to be approved first through Kouga Municipality, the extract from their mails as very specific (*any changes that have significant environmental impacts and that would differ from that which was authorised by this department, is to be submitted to this department for approval prior to such changes being effected –*

Our instruction was sent through to Hemsley's office along with Power of Attorney and resolution for them to proceed with application and press Kouga for a response in order to resolve (This matter has since been stopped as confirmed by Hemsley's office as the committee felt that this was no longer pertinent as the successful registration of this plot would create "unnecessary" costs such as **levies**, small price to pay). **Andrew Hemsley Hemsley & Myrdal Land Surveyors** 26 Madelaine Street, Mangold Park, Port Elizabeth, 6070 P O Box 12598, Centrahil, Port Elizabeth, 6006 Tel: 041 585 1537 Cell: 083 449 1761 – I urge the current or next committee to continue with this application in order to secure any and all future issues that might arise from this

My request for information from KHOA committee was simple: it requested confirmation that if the new road that has been built was done without consent from Kouga Municipality and there were any latent costs which came from penalties which could be to the maximum of ZAR 5 million would these costs then be for all the homeowners even if the homeowners did not agree or would this be for the cost of the committee that voted on this illegal build (I was informed that I was not allowed to discuss any matters with the committee as my name did not appear on the title deeds. Kevin Brown also submitted a similar request for information and was informed that he too was not entitled to a reply as he had an outstanding account.... It seems that we need to get back to focusing on the good of KHOA rather than any specific individual. I have been part of many land re-zoning applications and seen what happens when the rules are not followed, KHOA are certainly on the same path and the steps taken a few years ago to ensure the safety of this have been forgotten.... Pity

There is so much more that needs to be addressed but for now – these are the most important

Below are reference points for discussion

1. THE STATUS OF THE ASSOCIATION

The Association shall be an association with separate legal personality, capable of suing and being sued in its own name and the ownership of land and none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by Excom in terms of, and subject to the provisions of this Constitution

1.1 *To regulate all environmental and management issues relating to the park;*

2. PROXY

Votes may be given either personally or by proxy.

2.1 *The instrument appointing a proxy shall be in writing in the common form, or any form approved by Excom under the hand of the appointee or of his attorney duly authorised in writing, or if such appointee is a company, under the hand of an officer authorised thereto.*

The instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarially certified copy thereof, shall be deposited at the domicilium citandi of the Association at least three days before the time appointed for holding the meeting or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof

16. SUBMISSION OF PLANS

No member shall commence the alteration of or addition to any building or other structure on any Land Unit or permit the same unless the plans thereof have been submitted to and approved on behalf of the Association in accordance with the procedures hereinafter set forth:

17.1 *A member or prospective member proposing to erect or add to or alter any building or other structure on his Land Unit shall cause plans and specifications clearly indicating the nature and quality of the proposed works to be prepared and shall submit such plans and specifications to Excom for approval prior to such time as the plans and specifications are submitted to the Developer's Architects or the Municipality.*

17.2 *Excom shall be entitled to call for such further particulars in regard to the proposal and to obtain such professional and/or other advice as Excom may, in its discretion, deem desirable.*

17.3 *Members must comply with HOA building regulations.*

12. *Upon approval by the Homeowners Association the plans shall be presented for official approval to the Kouga Municipality by the requestor. Kouga Municipality will be responsible for the official inspections and issuing of approvals of work completed.*

13. *Before commencement of buildings, the following matters need to be clarified with the Park Manager of the Homeowners*

Association.

22.1) *Storage of building material.*

22.2.) *Access to the plot.*

22.3) *Removal and / or damaging of any vegetation white milkwood, sideroxylon* *inermis is protected and permits are required to remove or prune.*

22.4) *Builders must supply chemical toilets for workers to prevent pollution and infection of surrounding area.*

22.5) *Builder's workers must be educated by the builder regarding plastic bags* *and littering.*

22.6) *A site plan must indicate boundary pegs, location and distances. All* *boundary pegs must be visible for inspection, prior to any submission of plans for approval or commencement of buildings/alterations.*

22.7) *The proposed building, alteration or additions must state distance from*
boundary line.

22.8) *Plans approved by the Homeowners Association Exco not requiring Kouga* *Municipality approval will expire*
180 days after date of approval and where *Kouga Municipality approval is required the expiry date will be*
12 months of date of approval.

22.9) *Septic and soak away tanks no longer permitted. Only conservancy tanks to be installed.*

22.10) *Building Plans must be strictly adhered to after approval by the Homeowners Association and Kouga Municipality. No*
deviations to the approved plans are permitted unless official written permission is granted by the Homeowners
Association Management.

The Record of Decision effective date is 29/04/2008 and prohibits all encroachments onto Private Open Space.

We have spent so much time and money to date to resolve these items... to stop now simply makes no sense?

I do not have all the members contact info on hand

thanks

Eric Fouche

Director

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— image005.png —



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— mime-attachment —

Subject: KINGSWAY - GAMTOOS

From: "andrew@hemsley.co.za" <andrew@hemsley.co.za>

Date: 2017/11/27, 07:57

To: Eric Fouche <ericf@scribanteconcrete.com>

CC: "kevinbrownie50@gmail.com" <kevinbrownie50@gmail.com>, Craig De Lange <craig@bdlsattorneys.co.za>, "rohan.zoutendyk@gmail.com" <rohan.zoutendyk@gmail.com>

Morning Eric

I have finally had a response from Kouga regarding your query and they seem happy with the proposal and all environmental issues but require a full application to be submitted. Please confirm that you wish to proceed and I will forward a letter to you requesting the required documentation. I cannot understand why it has taken them so long to come back now with the request for the application. At least we have their backing now for the proposal. Regards.

Andrew Hemsley

Hemsley & Myrdal Land Surveyors

26 Madelaine Street, Mangold Park, Port Elizabeth, 6070

P O Box 12598, Centrahil, Port Elizabeth, 6006

Tel: 041 585 1537

Cell: 083 449 1761

Email: andrew@hemsley.co.za

Surveying the Eastern Cape and surrounds for 86 years.

Please note that after more than 40 years at No.5 Rose Street Central, we have moved our office to No.26 Madelaine Street Mangold Park as of 1 May 2017

— Attachments: —

image001.png	8,9 KB
Attached Message Part	927 bytes
image002.png	726 bytes
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image003.png	835 bytes
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Kingsway Resort GP_22062016_094653.pdf	966 KB
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Kingsway Resort_22062016_094540.pdf	1,0 MB
Attached Message Part	238 bytes
JN2302.pdf	25,5 KB
Attached Message Part	238 bytes
OTP, POA AND CONVEY CERTIF.pdf	227 KB
Attached Message Part	238 bytes
UPDATED Constitution - Kingsway Homeowners 20120527.doc	115 KB
Attached Message Part	238 bytes
MANAGEMENT AND CONDUCT RULES - KINGSWAY (4)20120413.doc	44,0 KB
Attached Message Part	238 bytes
GENERAL BUILDING REGULATIONS VERSION 8 20150727.doc	212 KB
Attached Message Part	238 bytes
AGM Minutes of Meeting - 27 May 2018.docx	139 KB
Attached Message Part	180 bytes

Hi Claire

After review of your response per the attached report the following is noted.

Unfortunately, the core issues were again not answered, below I refer to the Items to which my communication were directed.

1. My Communication on **1 Dec 2025**

a. **Zoning**

- i. You don't answer or supply information as requested, which was *"noting that zoning was undertaken in 2009/2010 and that all Open Space was zoned as Open Space 3 – Conservation. I trust this was verified during the audit process"*

Did you or did you not verify the zoning certificates or zoning documents, as stipulated in your audit report the zoning was compliant. (a simple yes or no would suffice)?

- ii. **The zoning plan provided in 2009, was or should still be consistent with the ROD, which means it would all have been OS3.**
- iii. **You state** *"The current application is an amendment to the existing ROD. This will allow for open space 3 areas east and west of the resort and open space 2 area surrounding the residential units"*. Does this imply that all the Open Space is OS3, and only after the proposed amendment it will be OS2? If so then, as stated also implies that the zoning certificates are incorrect?
- iv. **Furthermore, you state, ".../ The proposed amendment in will facilitate practical management of the open space 2 area. Kindly note that all conditions of the existing ROD (with exception of those highlighted for amendment) will need to be complied with, including indigenous landscaping, ongoing AIS removal; fencing permitted around individual dwellings only (keeps dogs inside), and no fencing between the residential units to allow for throughway of small mammals".** *.../ "Any further activities which trigger a NEMA listed activity will require an environmental authorisation including clearing of indigenous vegetation within the resort (indigoes open space 2) and outside the resort area in the two open space 3 areas."*
- a. Kindly elaborate on how the proposed amendment will facilitate practical management of OS2 area, as for the past two decades or more it was managed perfectly fine with one park manager, now we have two park managers. What exactly are the management challenges referred to?
- b. Why did your audit not reference the many fences that shared common ground between neighbours (with/without committee approval), Brick walls, fencing off common property, vegetation removal between plots and the wide-spread annexing of common property etc.?

- c. Documentary evidence shows that during the audit period and as recent as a few weeks ago, blanket clearing of vegetation on and between the units, including on the river front has occurred, with stone walls being built, pathways to the river cleared. This after Mr. Struwig supposedly spray painted his demarcation line at the river front.

It is abundantly clear that what you and the committee are putting in writing does not match the reality taking place in the park. Your Audit unfortunately only facilitated the continued destruction of vegetation on the OS3 (including between the units) areas within the park, as you did not fully document the violations during the audit process/report. (Refer to photographs below).

.../ [“the zoning and land portions have changed since to facilitate the growing resort, and the current amendment is to enable the current portions to be zoned as open space 3 and 2 as applicable and to have an EMPr approved”](#). You keep referring to “will enable” the zoning to be changed, but your application and the zoning certificates refer to the zoning which has already been done, you included the certificates. Again, are you now confirming that these zones are/should be per you audit finding and the actual certificates you attached are incorrect?

.../” [Currently KHOA is non-compliant \(this currently includes all members\) to the ROD ...”](#) Firstly this is factually incorrect, it does not include all members. Secondly, I find this statement to be contradictory to your audit report, in which you highlight “a few” and now it is “all”. I do agree that a large contingent are non-compliant, and that was highlighted in my communication sent to DEDEAT, KHOA and yourself in the document titled “Comments to the Environmental Audit”. **Which is it?**

In Conclusion – Zoning questions and response

Once again you have failed to address the cores issues I have raised in my correspondence. It does not reconcile or give verified documentation per the Zoning Certificates and Authority, please refer to my emails dated 08 Feb 2026, 08 Dec 2025, 01 Dec 2025.

There has been NO MANDATE OR ZONING APPLICATION submitted to Kouga Municipality prior to the issue of the September 2024 Zoning Certificates (if you are aware of such, please forward copies).

I have done a PAIA application to Kouga for the applications, which was only partially approved and limited documentation submitted. An Urgent Applications for Information has been lodged with the Information Regulator on the 11 March 2026 for the outstanding Information, awaiting ruling.

Concerning inconsistency are:

- Zoning certificates are dated 24 September 2024,
- payment for those certificates is recorded 26 September 2024,

- Zoning application was submitted 10 February 2025.
- No SGM or HOA resolution authorised the committee to rezone prior to 24 September 2024.

Combined with the fact that Kouga does not want to sent the application records, gives rise to serious concerns of an unlawful changing of zoning certificates in Sep 2024.

The Kouga Town Planner assertion that this was due to an error in conversion, seem highly unlikely, this zoning change was done unlawfully by Kouga (in my view) and a full investigation by the Mayor and Municipal manager is required. (we in Process of updating Public Protector Complaint Against Kouga)

Notwithstanding the above, all parties (Kouga, DEDEAT, KHOA and yourself) are skirting around the judiciary requirements pertaining to Zoning and Amendments to ROD namely:

- The Court Ordered Deed of Settlement that specifically reference the existing ROD for compliance, also specifically referenced all common ground as OS3-conservation in perpetuity.
- Without following the judicial process, neither DEDEAT or Kouga can approve any amendments, they are mandated by law to comply with valid court orders, of which there are two, that refer to the ROD. Approvals that fail to adhere to the judicial process will be contempt of court, and we will file such contempt allegations if a when we reach that milestone.
- Title Deed Conditions – I assume all parties are familiar with the requirements to be taken into account.
- Common Property Encroachment – here I assumed all parties would be familiar with this, but it seems not to be the case.
 - It's not individual members property, firstly.
 - Constitution prohibits it.
 - What is currently happen in the park is (legally) an unlawful occupation.
 - Even if such encroachments are tolerated (should not be), it is still unlawful.
 - Any special meeting and/or Resolutions voted on etc. by the committee cannot override the illegal land use.
 - Encroachments on common property are illegal.
- It is expected that the Environmental Practitioner, the Town Planner (Kouga and Private) should be fully aware of the above.
- Many of the common-ground issues identified as prohibited in the public participation documents were not recorded in your June 2024 audit report and remain evident within the park. Neither the Kingsway Homeowners' Association, DEDEAT or Kouga have taken any steps to remedy these violations.
- The DEDEAT notification for the environmental audit in Feb 2024, was specific, on the issue of violations and that it must be address prior to any applications being submitted.

b. Notarially tie Portion 1 & 34 / Land use Restriction Registered in Perpetuity

As noted in my email correspondence of 8 December 2025, your audit report of June 2024 showed that the Notarial Tie and the Land Use Restrictions had been compliant! Your response evades the questions related to these items.

For any amendments to take place any land use restrictions registered must first be lifted, has this been done and please provide documentation to that effect?

It is also concerning that Eric Fouche who is driving the zoning issues and part of the committee, has allowed the same violations to continue despite his email to the committee on the 03 December 2019, where he highlights the regulatory requirements to the committee and berates them for non-adherence, and ironically, he is doing exactly the same. (See attached email from Eric)

Below are some photos to show the vegetation removal that is continuing currently, In violation of existing regulation.



The red circle indicates no common ground between the properties.

Blanket Clearing (Including common ground between plots) of 2x Plots by the park manager in the past +-month. No wonder there is destruction of vegetation by members, if this is what the PM, whom is supposed to uphold the regulations does.



Clearing of Vegetation on the river front, which was supposedly demarcated by Mr. Struwig as OS3, within his setback line.



Pathway from a river front property to the river, including stone wall
Slabs on pathway, cutting of vegetation for river view, all within the
Setback line and on OS3



River Front property Clearing of vegetation for view of the river within the setback line OS3, as far
back as July 2024.



These pictures show the gradual annexing of common property. The red line is an approximation of the property boundary line. It clearly shows the removal of vegetation, and the eventual laying of stones for a driveway, the majority on common ground. This last phase of laying the stones, occurred weeks before the CEN environmental audit, but after the notification from DEDEAT for the audit to take place?

Regards

Mark Todkill

24 March 2026

Subject: RE: Confirmation of Points per discussion
From: Lawrence Ramakuwela <lramakuwela@kouga.gov.za>
Date: 2025/07/25 14:04
To: Mark Todki [REDACTED]

Good day Mr Todkill

Please see my responses in RED.

1. You confirmed that no rezoning for Kingsway has taken place or approved by Kouga Municipality to date, irrespective of whether any applications have been submitted.

Correct, to my records, there has not been an application for rezoning approved in the past 12 months.

2. In your meetings with Kingsway Homeowners Association committee members, you detailed the procedures to the members present, and that they 1st need to get an amended court order to proceed with any rezoning applications or approval of such applications.

Correct, the rezoning process was explained to the KHOA.

3. The fact that Maartje Weyers apparently told one of the members that the section on the river front has already been rezoned, this statement is false.

I am not aware on any rezoning as per the first response. If any property was rezoned, this was not in the past year. If you have the property details, please send it to me for confirmation.

4. The current rezoning certificates, which were issued by Kouga Municipality in Sept 2024, are incorrect and/or invalid. We discussed that if those were copies and no prior rezoning was done by the developer, as should have been done, that the zoning should reflect "agricultural" per the original zoning. Either way, it is incorrect and must be as per the court order, which is OS3-conservation, and for the houses, Resort 2 (which the zoning certificate already shows for the houses)

5. The zoning certificates were issued based on the zoning maps of the municipality. I am however, convinced that this must have been a result of the transition table during the amendment of the land use scheme. If this is the case, the properties in questions would have to be rezoned in terms of SPLUMA to comply with the court order.

6. You agreed that the current encroachments onto common property is a violation, as the constitution protects property rights, thus individual boundaries lines cannot be encroached.

Correct, encroachments are a violation, and this was also discussed. Encroachments can be rectified by either amendment of site plans or repositioning of existing structures.

7. That Kouga is dealing with the structural violations currently, and then all violations will be subject to a 2nd notice and thereafter referred to legal for court order to rectify or demolishing, including encroachments onto common property.

Correct, Kouga is currently dealing with the violations, if there is no compliance, we will serve final notices then refer the matter to Legal Department for intervention.

Regards,



LAWRENCE RAMAKUWELA

DIRECTOR: PLANNING & DEVELOPMENT

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The Greater Garden Route

Cape St Francis • Hankey • Humansdorp • Jeffreys Bay • Loerie • Oyster Bay • Patensie • St Francis Bay • Thornhill

From: Mark Todkill <[REDACTED]>
Sent: Friday, July 25, 2025 11:28 AM
To: Lawrence Ramakuwela <lramakuwela@kouga.gov.za>
Subject: Confirmation of Points per discussion

Hi Lawrence

Just some points that we discussed during our telephonic discussion yesterday, 24 July 2025 @ 16h30 (via WhatsApp).

1. You confirmed that no rezoning for Kingsway has taken place or approved by Kouga Municipality to date, irrespective of whether any applications have been submitted.
2. In your meetings with Kingsway Homeowners Association committee members, you detailed the procedures to the members present, and that they 1st need to get an amended court order to proceed with any rezoning applications or approval of such applications
3. The fact that Maartje Weyers apparently told one of the members that the section on the river front has already been rezoned, this statement is false.
4. The current rezoning certificates, which were issued by Kouga Municipality in Sept 2024, are incorrect and/or invalid. We discussed that if those were copies and no prior rezoning was done by the developer, as should have been done, that the zoning should reflect "agricultural" per the original zoning. Either way, it is incorrect and must be as per the court order, which is OS3-conservation, and for the houses, Resort 2 (which the zoning certificate already shows for the houses)
5. You agreed that the current encroachments onto common property is a violation, as the constitution protects property rights, thus individual boundaries lines cannot be encroached.
6. That Kouga is dealing with the structural violations currently, and then all violations will be subject to a 2nd notice and thereafter referred to legal for court order to rectify or demolishing, including

encroachments onto common property.

Please confirm and or amend any of the above items you disagree with.

Thanks

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Kind Regards

Mark Todkill

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