

andrew.ballantyne@drdlr.gov.za

13/08/2019

Dear Andrew,

Our discussion of this morning refers.

Will you kindly confirm if my understanding was correct:

In the context of the application we are busy with, i.e. an Environmental Authorisation in terms of the National Environmental Management Act 107 of 1998 (NEMA), the path will fall below the HWM. The Land Survey Act only makes provision for the SG to become involved when there is subdivision of a property of which the seaward boundary is the HWM (i.e. through site inspection for endorsement of a new SG diagramme).

For this development, where there is no private property owner or subdivision of a property, the Land Survey Act does not apply and the SG is not compelled to do a site inspection. A NEMA application will therefore not require the SG to do a site inspection or confirm the HWM, as no SG diagramme will be needed.

A private land surveyor could be appointed (and has been) to determine the current HWM, but should this be contested it would be at the appointed surveyor's risk. There is also no provision for a public consultation process in the Land Survey Act whereby the SG must confirm the HWM with all the neighbouring landowners present. In this particular case, public consultation will take place through the NEMA application process whereby neighbouring property owners will have the opportunity to contest the surveyed HWM, should they not agree. They would then have to appoint their own surveyor and if there is still not agreement, then further steps would have to be taken by the contesting party, likely through a submission to the court.

As stated in your email below, if a property has its seaward boundary defined by the high water mark then it is considered an ambulatory curvilinear boundary that is subject to move. Therefore the SG diagramme for a property cannot be overlain onto current aerial imagery to determine where the boundary / HWM is in the current day.

If the above is correct, I will include it with our report for confirmation of the requirements for determining the HWM.

Thank you again for your advice.

Kind regards,

Kozette Myburgh

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From: Basson Geldenhuys [<mailto:Basson.Geldenhuys@dpw.gov.za>]

Sent: 07 August 2019 12:00 PM

To: Kozette Myburgh

Subject: FW: RE:ESTABLISHMENT OF THE HIGH WATER MARK: THE PROPOSED CONSTRUCTION OF A FOOT PATH IN HERMANUS

Hi Kozette

Please see the comprehensive reply from Mr Andrew Ballantyne for your information.

Kind regards

Basson Geldenhuys Pr.PlIn | chief town planner | projects and professional services | national department of public works, cape town regional office | room 1419, customs house | lower heerengracht street | cape town | e-mail: basson.geldenhuys@dpw.gov.za | telephone number: +27 21 402 2174 | Fax number: 086 272 8660 | cell phone number: 071 648 8656

From: Andrew Ballantyne [<mailto:andrew.ballantyne@drdlr.gov.za>]

Sent: Wednesday, 07 August 2019 11:47

To: Basson Geldenhuys <Basson.Geldenhuys@dpw.gov.za>

Cc: Julian Williamson <Julian.Williamson@drdlr.gov.za>

Subject: RE: RE:ESTABLISHMENT OF THE HIGH WATER MARK: THE PROPOSED CONSTRUCTION OF A FOOT PATH IN HERMANUS

Dear Basson

If a property has its seaward boundary defined by the high water mark then it is considered an ambulatory curvilinear boundary that is subject to move. The definition of the high water mark is in the Integrated Coastal Management Act 24 of 2008 (ICMA).

“high-water mark” means the highest line reached by coastal waters, but excluding any line reached as a result of-

(a) *exceptional or abnormal weather or sea conditions; or*

(b) *an estuary being closed to the sea;*

The principle of erosion and accretion apply. If the high water mark moves inland so does the boundary of a property defined by the high water mark. If it moves seaward the property gains land.

If a property is bounded by a fixed straight line boundary and the high water mark moves over and inland of the fixed straight line boundary then the land owner loses the land to the State as coastal public property. See Section 14(5) of the ICMA.

In terms of Section 32 of the Land Survey Act our office only needs to be notified when there is a division of a property. Our office will do a field inspection when the survey is physically done by the land surveyor who is appointed by the land owner. Typically we also do field inspections when the properties have a high water mark boundary and are consolidated by survey or when a diagram of substitution is framed. The private practicing land surveyor is appointed by the land owner and the State is represented by the Surveyor General (Section 47 of the Land Survey Act) for the purposes of determining and surveying the high water mark.

In determining the high water mark, factors such as swash, debris lines, vegetation, rock discolouration and erosion are taken into account when physically looking at a property. It can be highly subjective in certain parts and one has to try to factor in spring tides and ordinary winter storms in the Western Cape. The evidence presented on a coast line can change month to month, season to season or an abnormal storm can obliterate physical evidence on a coastline.

For the path in Hermanus, I believe a group is wanting to extend the pathway to be in front of some properties who's seaward boundary is defined by the high water mark. If the pathway is below the high water mark then it should be expected that coastal waters should inundate it during periods of a year. If it is to be constructed above the high water mark line then it is on private property and negotiations with the owners would have to occur and ultimately servitudes registered over the private property or the properties subdivided, where the walkway will be, and the land transferred to the municipality.

A private practicing land surveyor did approach us and wanted us present when he did the survey of this stretch of coastline. He has been appointed by the group and not the land owners. Our office has refused his request mainly as its not in our Act that we need to be present, no diagrams are being framed and that the landward owners will not be represented in the determination.

Kind Regards

Andrew Ballantyne

Chief Professional Land Surveyor
Office of the Surveyor-General: Western Cape



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA



NATIONAL WOMEN'S DAY 2019

Keynote Address: **President Cyril Ramaphosa**

DATE: 09 August 2019 **TIME:** 09:00 AM

VENUE: Vryburg Showgrounds,
Dr Ruth Segomotsi Mompati District,
North West Province

25 Years of Democracy
Growing South Africa
Together for Women's Emancipation

#WhatWomenWant
#WomensDay
#WomensMonth2019

From: Basson Geldenhuys [<mailto:Basson.Geldenhuys@dpw.gov.za>]

Sent: 06 August 2019 09:46 AM

To: Andrew Ballantyne

Cc: Kozette Myburgh

Subject: RE:ESTABLISHMENT OF THE HIGH WATER MARK: THE PROPOSED CONSTRUCTION OF A FOOT PATH IN HERMANUS

Dear Andrew

The above-mentioned matter has bearing. I would please like to obtain your input wrt to how the HWM is determined. The question is when the SG determine the HWM and it will have an effect on the cadastral boundary of the land owners must the SG follow a PPP to attain comments from the landowners? It is my view when you own property along the coastline and rivers it is a given that due to erosion, climate change etc. the boundary will move automatically and that in most cases there would be a clause contained in the title deed that will address the issue that the boundary lines will move and that you as the land owner will lose that portion of your property to the state?

But however I would really like to please obtain your take on this issue.

Kind regards

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