



A T T O R N E Y S

CNR WESTBOURNE AND CLEVEDON ROADS, CENTRAL, PORT ELIZABETH 6001.P O BOX 23348, PORT ELIZABETH 6000  
TEL: 041-373-7434 FAX: 041-373-7430/1 / 086 516 1120 E-MAIL: [rosalind@lex-icon.co.za](mailto:rosalind@lex-icon.co.za)/[michael@lex-icon.co.za](mailto:michael@lex-icon.co.za)  
DOCEX: 55

[www.lex-icon.co.za](http://www.lex-icon.co.za)

### MEMORANDUM

Many members will by now have become aware of the fact that the Kouga Municipality is demanding that whenever building alterations which exceed 50m<sup>2</sup> in extent are conducted on marina plots, a basic environmental impact assessment as contemplated by environmental legislation has to be done before any plans for such construction can be approved.

The Municipality appears to have been instructed to this effect by the Provincial Department of Economic Development and Environmental Affairs.

Investigations made with the department indicated that in the light of a recently published amended list of activities which require environmental impact assessments and the criteria related to such activities, the department has placed an interpretation on the new legislation which suggests that such construction now qualifies as a listed activity.

The core issues are, firstly, whether the marina plots are to be found to be within 32m of a watercourse as defined in the legislation or, secondly, whether the canals themselves qualify as part of an estuary as defined in the legislation.

The association has taken legal advice, which indicates that the department is incorrect in its interpretation of both provisions in that the canals do not qualify as a "watercourse" as strictly defined in the legislation nor do they qualify as an "estuary" also as defined.

Formal demand has been made upon the authorities to continue approving building plans in the normal course but no undertaking to this effect has been received from the Municipality.

Accordingly the association is proceeding with an application to the High Court asking the court to declare the association's interpretation of the legislation to be the correct one and to issue the Municipality with an order directing that it process all building plan approval applications in the normal course of events.

**The association will keep you informed of any developments.**