

AFRISTAR FOUNDATION

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To: Lawrence Ramakuwela, Director of Planning and Development

Organisation: Kouga Local Municipality

Submitted via: Kouga LM Planning Department — MSDF Public Participation Process

Date: June 2026

Deadline: 8 June 2026

**RE: FORMAL REPRESENTATION — KOGUA MUNICIPAL SPATIAL DEVELOPMENT
FRAMEWORK FINAL DRAFT (2024/2025) — REQUEST FOR SPLUMA SECTIONS 21(1)(c)
AND 22 CONSISTENCY ASSESSMENT BEFORE ADOPTION**

1. Introduction and Standing

Afristar Foundation is a Section 18A Public Benefit Organisation founded in 2003, engaged in bioregional planning, regenerative development, and policy advocacy across Southern Africa. Afristar operates in the Kouga Local Municipality area and has direct standing as a registered NPO with property and operational interests in the Cape St Francis area.

This submission is made in response to the public participation process for the Kouga Municipal Spatial Development Framework Final Draft (2024/2025) (the MSDF). It raises one specific, legally grounded issue that must be addressed before the MSDF is formally adopted by Council under the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).

The nuclear buffer provisions in the MSDF — contained in Section 5.8.2.5 and its subsections (pp.84–85) — conflict with the Sarah Baartman District Municipality DDM One Plan (most recent draft), the instrument directly above Kouga in the planning hierarchy under SPLUMA. Under SPLUMA ss21(1)(c) and 22, where a conflict exists between a higher-order and lower-order spatial development framework, the higher-order instrument prevails.

The nuclear provisions in MSDF Section 5.8.2.5 have never been assessed for consistency with the DDM One Plan. That assessment is a mandatory requirement before the MSDF can be lawfully adopted under SPLUMA s20. Afristar formally requests that this assessment be conducted and that the nuclear buffer provisions be removed from the MSDF before adoption.

2. The SPLUMA Planning Hierarchy and the Legal Obligation

SPLUMA establishes a clear hierarchy of spatial planning instruments:

Level	Instrument	Energy / Nuclear Direction
National	National Spatial Development Framework (NSDF)	Silent on nuclear at Thyspunt. Emphasises spatial justice, sustainability and green economy transition.
Provincial	Eastern Cape Provincial Spatial Development Framework (EC PSDF)	No provision for nuclear power anywhere in the Eastern Cape. Province oriented toward renewable energy, eco-tourism, and oceans economy. Kouga MSDF s6.3.2 commits to EC PSDF alignment.
District	Sarah Baartman DDM One Plan (most recent draft) — directly above Kouga LM	Zero nuclear references. Renewable energy contributing the bulk of electricity in the district by 2050. District positioned as a leading destination for renewable energy. St Francis Bay, Cape St Francis, Jeffreys Bay and Humansdorp elevated to future metropolitan nodes.
Local — Draft	Kouga MSDF 2024/2025 Final Draft — not yet adopted	Full 16km nuclear buffer provisions in s5.8.2.5. Mandatory Eskom Koeberg rezoning referral. Urban expansion restrictions. Infrastructure subordinated to nuclear site. Oyster Bay residential development subject to Eskom confirmation.

SPLUMA ss21(1)(c) and 22 states:

"Where a conflict exists between a spatial development framework of a higher category and one of a lower category, the higher category spatial development framework prevails."

SPLUMA s20 requires that when a municipality adopts or reviews its SDF, it must demonstrate consistency with higher-order spatial planning frameworks. This is not a discretionary step. It is a mandatory requirement of the SPLUMA adoption process.

The Kouga MSDF 2024/2025 acknowledges the DDM One Plan in Section 2.2.1.1, recording the DDM's metropolitan node ambitions for the Kouga coastal zone and committing to ensure that growth between the nodes is promoted in support of the DDM's proposals. It does not, however, assess whether MSDF Section 5.8.2.5 and its subsections are consistent with the DDM One Plan. No such assessment appears anywhere in the MSDF.

3. The Specific MSDF Provisions Being Queried

The following provisions in Kouga MSDF 2026 Section 5.8.2.5 and its subsections (pp.84–85) are identified as being in conflict with the Sarah Baartman DDM One Plan and/or lacking statutory basis under SPLUMA:

Section 5.8.2.5 — Opening Statement (p.84)

"Development within the 16km monitoring and emergency zone of the Thyspunt site must be carefully managed to ensure the long-term viability of the site for possible future nuclear power generation."

This opening statement establishes the entire nuclear buffer framework. It asserts that development across a 16km zone covering Cape St Francis, St Francis Bay, Oyster Bay, Sea Vista, Umzamawethu, and surrounding farms must be managed to serve Eskom's site viability interests. No environmental authorisation has been granted for the proposed nuclear facility. The MSDF does not

acknowledge that the proposal is currently the subject of an active EIA process whose outcome is undetermined.

Section 5.8.2.5.1 — Eskom Nuclear Sites Department Rezoning Referral (p.84)

"Any rezoning applications or changes in land use must be submitted to the Eskom Nuclear Sites Department (Koeberg Nuclear Power Station) for review and comment before approval."

SPLUMA s35 designates Municipal Planning Tribunals as the competent authorities for land use decisions within municipal areas. SPLUMA ss2(2), 33(1), 35(1), 40 and 42 sets out the organs of state that must be notified of land development applications. Eskom Nuclear Sites Department appears in neither provision. Eskom is not a planning authority. It has no statutory role in municipal land use decisions under SPLUMA, the Municipal Systems Act, the Municipal Structures Act, or any other planning legislation. This provision has no statutory basis under the current planning framework and exposes Kouga LM to legal challenge.

Section 5.8.2.5.2 — Urban Expansion and Residential Restrictions (p.84)

This subsection imposes the following restrictions within the 16km zone:

- Oyster Bay and Umzamawethu urban expansion restricted to prevent increasing population density near the nuclear site.
- No institutional land uses — prisons, hospitals, old age homes — within 550m.
- Residential density capped at 10 dwellings per hectare.
- No large educational institutions — only a small school without a hostel is permitted in Oyster Bay.
- New residential estates and settlements strongly discouraged outside the urban edge.

The 16km zone covers Cape St Francis (approximately 8.5km from Thyspunt), St Francis Bay (approximately 10.8km), Sea Vista, and Oyster Bay — settlements that the DDM One Plan simultaneously designates as future metropolitan nodes requiring promoted growth. These restrictions directly contradict that metropolitan growth ambition and conflict with the higher-order instrument under SPLUMA ss21(1)(c) and 22.

Section 5.8.2.5 (Kouga SDF 2020 page 115) — Oyster Bay Residential Confirmation Requirement

The operative Kouga SDF 2020 at page 115 states: "Future residential development should promote integration and be subject to confirmation from Eskom as per the Thyspunt policy." This provision goes beyond a referral requirement — it gives Eskom an effective veto over residential planning decisions in Oyster Bay. This provision carries equivalent effect in the 2026 MSDF and must be specifically addressed in the consistency assessment.

Section 5.8.2.5.3 — Industrial and Agricultural Land Use Management (p.84)

This subsection imposes:

- No new food processing plants within 550m of the Thyspunt site.
- Agricultural activities within 550m to be *"monitored to assess potential risks related to radiation exposure or contamination."*

These restrictions affect active agricultural operations in the Kouga coastal hinterland. Imposing radiation monitoring requirements on agricultural activities before any nuclear facility has been authorised — and before any radiological baseline has been established — is premature and has no regulatory basis in the current EIA process.

Section 5.8.2.5.4 — Infrastructure and Supporting Land Uses (p.85)

"Future bulk infrastructure planning should consider the potential development of the Thyspunt nuclear site, ensuring that water, electricity, and transport networks are sufficiently robust to accommodate both the power facility and surrounding communities."

This provision subordinates Kouga's bulk infrastructure planning to Eskom's undetermined future site requirements — before any environmental authorisation has been granted and before any technology, capacity, or design has been confirmed. Kouga's infrastructure planning obligations are defined by its community's development needs, its IDP, and the higher-order planning frameworks above it — not by an unauthorised, unconfirmed industrial proposal.

4. The Conflict With the Sarah Baartman DDM One Plan

The Sarah Baartman DDM One Plan (most recent draft, 128 pages) is the district-level coordinating instrument directly above Kouga Local Municipality in the SPLUMA planning hierarchy. It has been reviewed in full. Its content in respect of energy, development, and the Kouga coastal zone is as follows:

- The word 'nuclear' does not appear anywhere in the document.
- The words 'Thyspunt', 'Bantamsklip', 'NPP', and 'atomic' do not appear anywhere in the document.
- The document states explicitly: *"By 2050, the district aims to rely primarily on renewable energy."*
- The district is positioned throughout as *"a potential destination for renewable energy initiatives."*
- Investment marketing is directed at agricultural, tourism, and renewable energy markets.
- St Francis Bay, Cape St Francis, Jeffreys Bay, and Humansdorp are elevated to future metropolitan nodes — the same settlements constrained by MSDF Section 5.8.2.5.
- The Kouga coastal strip is designated for tourism, eco-tourism, marine economy, and renewable energy development.
- The Eastern Cape Provincial Spatial Development Framework — which sits above the DDM One Plan — makes no provision for nuclear power at Thyspunt. It orients the province toward renewable energy, eco-tourism, and oceans economy development. Kouga's own MSDF at Section 6.3.2 commits to alignment with the EC PSDF — a commitment that Section 5.8.2.5 directly contradicts.

The Kouga MSDF itself acknowledges the DDM One Plan's metropolitan ambitions in Section 2.2.1:

"The main component to take note of in the draft DSDF, is the elevation of the status of St Francis, Cape St Francis, Jeffreys Bay and Humansdorp to future metropolitan nodes... This will have a direct impact on the amendment of the proposals to ensure that growth between the nodes is promoted in support of the DSDF proposal."

The MSDF then imposes, in Section 5.8.2.5, planning restrictions that cap the growth of the same settlements it has just committed to growing as metropolitan nodes. It does not acknowledge or resolve this contradiction anywhere in the document.

Under SPLUMA ss21(1)(c) and 22, the DDM One Plan must prevail where conflict exists. The nuclear buffer provisions in Section 5.8.2.5 conflict with the DDM One Plan's metropolitan growth ambitions, renewable energy orientation, and coastal development vision. They have not been assessed for consistency with the DDM One Plan. They cannot be lawfully carried into an adopted MSDF without that assessment being conducted and the conflict resolved.

4.2 The EC PSDF — A Further Conflict the MSDF Creates for Itself

The Kouga MSDF commits, at Section 6.3.2 (p.137), to alignment with the Eastern Cape Provincial Spatial Development Framework:

"The Kouga SDF aligns with key national and provincial frameworks, including the National Spatial Development Framework (NSDF), Eastern Cape Provincial Spatial Development Framework (EC PSDF)..."

The EC PSDF makes no provision for nuclear power at Thyspunt or anywhere else in the Eastern Cape. It orients the province toward renewable energy, eco-tourism, and oceans economy development. The Kouga MSDF's own alignment commitment therefore directly contradicts the nuclear buffer provisions in Section 5.8.2.5 — which have no anchor in the EC PSDF and cannot be demonstrated to be consistent with it. The municipality has committed in its own document to alignment with a provincial framework that does not support what the municipality is simultaneously doing in the same document.

5. The Origin of the Nuclear Provisions and Why Removal Is the Correct Remedy

The nuclear buffer provisions do not originate from Kouga Local Municipality's own planning process. They originate from the Kouga Coast Sub-Regional Structure Plan of December 2009 — six years before SPLUMA came into force. Kouga's own December 2009 SDF states verbatim: "The Kouga Coast Sub-Regional Structure Plan was prepared based on the need to maintain the viability of the Thyspunt site for possible future nuclear power generation." The same document states that any future development at Thyspunt must be "subject to all required approvals and international protocol associated with the land use type." Sixteen years later, no such approvals have been granted. No environmental authorisation exists. No permits have been obtained. The restrictions created to await those approvals have been copied from the 2009 SDF into the 2020 SDF and now into the 2026 MSDF — without a SPLUMA consistency assessment at any stage.

These restrictions have been operative in Kouga's planning documents for sixteen years and may have affected rezoning applications, development decisions, and investment in the zone during that period — without affected landowners, residents, and businesses ever being specifically informed that these provisions existed or that their planning applications were subject to Eskom's review.

Kouga Local Municipality did not create these provisions. They were created by an Eskom-driven planning instrument and have been inherited through successive planning cycles. The 2026 MSDF review and adoption process is the first opportunity under the current SPLUMA framework for Kouga to formally assess whether these provisions belong in its planning documents.

The answer, on the evidence of the DDM One Plan and SPLUMA ss21(1)(c) and 22, is that they do not. The legally correct remedy is to remove Section 5.8.2.5 and its subsections from the MSDF before adoption, on the grounds that they conflict with the Sarah Baartman DDM One Plan and that Section 5.8.2.5.1 has no statutory basis under SPLUMA.

This does not require Kouga to take a position on whether nuclear power should or should not be built at Thyspunt. That question is a matter for the national EIA process under NEMA — a process currently underway under DFFE Ref 2025-10-0003. The question of whether Kouga's planning instruments comply with SPLUMA is a separate matter that is entirely within Kouga's own jurisdiction and obligation to resolve.

Removing the nuclear provisions aligns Kouga's planning documents with the district government's own development vision for the coastal zone — metropolitan growth, renewable energy, tourism, and the marine economy. It removes a legally exposed provision from Kouga's planning documents. And it ensures that Kouga's MSDF, when formally adopted, reflects the spatial development vision of the planning hierarchy above it — as SPLUMA s20 requires.

6. Additional Concerns — Cape St Francis

6.1 The Link Road Narrative Must Be Removed — Not Just the Map Line

The map for Cape St Francis (Map 30) no longer shows a specific road link between Cape St Francis and St Francis Bay. However Section 5.5.3.3 of the MSDF (p.111) still states: "Connecting Cape St Francis and St Francis Bay more effectively will enhance access to amenities and foster a sense of shared identity across the corridor" and calls for "improved road networks... to reduce travel times." This narrative provides the policy basis for a future link road even though the line has been removed from the current map.

Any road connecting Cape St Francis to St Francis Bay would necessarily pass through or adjacent to the Cape St Francis Nature Reserve — a protected and ecologically sensitive area forming part of a critical biodiversity corridor. It would fragment wildlife habitat, introduce fire and poaching risks, convert a quiet single-access village into a through-route, and permanently alter the character that makes Cape St Francis economically and environmentally valuable.

What the MSDF must do: Remove the road connectivity language in Section 5.5.3.3 as it applies to Cape St Francis; explicitly state that no additional vehicle access routes through or adjacent to the Cape St Francis Nature Reserve will be permitted; and affirm Cape St Francis's single controlled access point as a planning principle to be maintained in perpetuity.

6.2 Commercial Zoning in Cape St Francis Must Be Clarified and Restricted

The Development Vision for Cape St Francis (Section 5.8.10.2, p.113) correctly describes the village as "a tranquil, eco-sensitive coastal village focused on low-impact living." However Table 26 includes Resort Development (OP5) which explicitly allows "restaurants and convenience stores," and Medium Density Residential (HDA2) at up to 50 units per hectare. These categories are inconsistent with the Development Vision's own stated commitment to low-density eco-sensitive character and open the door to commercial expansion that would permanently alter the village's identity. St Francis Bay is the established commercial centre with appropriate capacity and infrastructure. Duplicating commercial services in Cape St Francis would undermine its residential resort character.

What the MSDF must do: Explicitly exclude new commercial or mixed-use commercial nodes within Cape St Francis; restrict Resort Development (OP5) to exclude restaurants, convenience stores, and commercial uses; align Medium Density Residential (HDA2) with the low-density character stated in the Development Vision; and confirm St Francis Bay as the primary commercial service hub for the corridor.

6.3 The Single Controlled Access Point Must Be Explicitly Affirmed

Cape St Francis has always had a single, controlled access point — a deliberate planning reality that contributes directly to the village's safety, tranquillity, and manageable character. The MSDF does

not affirm this as a planning principle to be maintained. In the context of Section 5.5.3.3's connectivity language, the absence of this affirmation is a material gap.

What the MSDF must do: Explicitly affirm Cape St Francis's single controlled access point as a planning principle to be maintained; and confirm that any future connectivity planning between Cape St Francis and St Francis Bay will be limited to non-motorised transport options — cycling and pedestrian routes — that do not require new vehicle access points or roads through or adjacent to the Cape St Francis Nature Reserve.

6.4 The Cape St Francis Nature Reserve Land Transfer and NEMPAA Proclamation Must Be Included as a Spatial Objective and Implementation Target

Afristar Foundation raised this matter formally with Lawrence Ramakuwela, Director of Planning and Development, in a submission dated 30 October 2025. That submission requested that the SDF include a spatial objective to facilitate the transfer of the Cape St Francis Nature Reserve land from the Department of Public Works and Infrastructure (DPWI) to Kouga Municipality, and define an implementation target to secure formal proclamation and gazetting of the reserve as a protected area under the National Environmental Management: Protected Areas Act (NEMPAA).

The 2026 MSDF Final Draft does not address either request. The Cape St Francis Nature Reserve is listed in Map 4's conservation areas inventory but the MSDF contains no spatial objective committing to the land transfer and no implementation target for formal NEMPAA proclamation. This is the second time Afristar has formally raised this matter with Kouga Municipality.

Until the reserve land is formally transferred from DPWI to Kouga Municipality and proclaimed under NEMPAA, it remains vulnerable to development encroachment. Without formal protected status it has no binding development exclusion. Without the land transfer, Kouga Municipality cannot manage or invest in it. Formal NEMPAA proclamation would also provide the strongest possible legal protection against future road alignments and development proposals — making the commitments sought in Sections 6.1 through 6.3 above permanent rather than merely aspirational.

What the MSDF must include: A specific spatial objective committing Kouga Municipality to pursuing the DPWI to Kouga land transfer for the Cape St Francis Nature Reserve; and a time-bound implementation target for securing formal proclamation and gazetting under NEMPAA, with a responsible official and budget allocation identified.

7. Formal Requests

Afristar Foundation formally requests that Kouga Local Municipality, before adopting the MSDF under SPLUMA s20:

7.1 Conduct a formal SPLUMA ss21(1)(c) and 22 consistency assessment of MSDF Section 5.8.2.5 and its subsections (5.8.2.5.1 through 5.8.2.5.5) against the Sarah Baartman DDM One Plan, the Eastern Cape PSDF, and the NSDF — and make the findings of that assessment publicly available before the MSDF is put to Council for adoption.

7.2 Remove MSDF Section 5.8.2.5 — Thyspunt Nuclear Power Station — and all its subsections (5.8.2.5.1 through 5.8.2.5.5) from the MSDF on the grounds of inconsistency with the Sarah Baartman DDM One Plan under SPLUMA ss21(1)(c) and 22.

7.3 Remove the Eskom Nuclear Sites Department rezoning referral requirement in MSDF Section 5.8.2.5.1 on the grounds that it has no statutory basis under SPLUMA ss2(2), 33(1), 35(1), 40 and 42.

7.4 Amend Section 5.5.3.3 to remove road connectivity language as it applies to Cape St Francis, explicitly exclude any new vehicle access routes through or adjacent to the Cape St Francis Nature

Reserve, and affirm the village's single controlled access point as a planning principle to be maintained.

7.5 Amend Table 26 Cape St Francis Spatial Proposals to explicitly exclude new commercial or mixed-use commercial nodes, restrict Resort Development (OP5) to exclude restaurants and convenience stores, and align Medium Density Residential (HDA2) with the low-density character stated in the Development Vision.

7.6 Include a specific spatial objective committing Kouga Municipality to pursuing the transfer of the Cape St Francis Nature Reserve land from DPWI to Kouga Municipality, and define a time-bound implementation target for securing formal proclamation and gazetting of the reserve under NEMPAA.

7.7 Note formally on the public participation record that this representation has been received, that the SPLUMA ss21(1)(c) and 22 inconsistency has been identified and formally raised, and that the municipality is required to address it before the MSDF is adopted.

8. The Legal Consequence of Proceeding Without Acting

This submission is placed on the public participation record so that Kouga Local Municipality cannot subsequently claim that the SPLUMA inconsistency was not formally raised before adoption.

If Kouga adopts the MSDF with Section 5.8.2.5 intact, without conducting the required SPLUMA ss21(1)(c) and 22 consistency assessment, and without addressing the Cape St Francis-specific concerns in Section 6 of this submission, the adoption decision will be vulnerable to:

- **Judicial review** under the Promotion of Administrative Justice Act (PAJA) on the grounds that the adoption decision is an administrative action taken without consideration of a mandatory and material factor — namely consistency with the Sarah Baartman DDM One Plan as required by SPLUMA ss21(1)(c) and 22 — and is inconsistent with governing legislation.
- **Further PAJA review** of the adoption decision in respect of the Cape St Francis-specific concerns raised in Section 6 of this submission, on the grounds of failure to consider material information formally placed on the record in the submission of 30 October 2025.

Afristar notes also that the planning support gap identified in this submission is formally on record in the public comment process for the Draft Scoping Report for the proposed Thyspunt Nuclear Power Station (DFFE Ref: 2025-10-0003), and will form part of the grounds for any appeal of an Environmental Authorisation arising from that process. The resolution of the SPLUMA consistency question at Kouga LM level is therefore directly relevant to the national EIA process.

Afristar respectfully requests that Kouga Local Municipality address this matter before the MSDF adoption date rather than after it. We are available to discuss this representation and provide any further information required.

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Afristar Foundation is a Section 18A Public Benefit Organisation registered with the Department of Social Development. All provisions cited in this submission have been verified against primary source documents including the Kouga MSDF 2024/2025 (Final Draft) and the Sarah Baartman DDM One Plan (most recent draft).