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**ERF 13, 22 HOOP STREET, GANSBAAI, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REZONING, CONSENT USE AND DEPARTURE : MESSRS ME
PLANNERS ON BEHALF OF MC FRANKEN**

**13 GGB (2622/2018)
SW van der Merwe
15 December 2020**

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 19 June 2020 from Messrs ME Planners on behalf of MC Franken in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Erf 13, Gansbaai for the following:

- rezoning from Residential Zone 1 (SR1) to Business Zone 3: Local Business (B3) and consent use in terms of Sections 16(2)(a) & (o) of the By-Law in order to accommodate a restaurant, place of entertainment and two (2) residential rooms on the property, and
- departure in terms of Section 16(2)(b) of the By-Law to encroach the southern lateral building line from 3m to 2,79m and the rear building line from 4,5m to 1,153m to accommodate the existing dwelling and outbuilding as well as a departure from the applicable on-site parking ratio in order to provide four (4) on-site parking bays per 100m² GLA instead of six (6).

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B and the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 13, Gansbaai measures 892m² in extent. The property is developed with a dwelling and associated outbuilding. The property is currently used as a restaurant with the property owner residing on the premises.

The surrounding area has a mixed character comprising residential properties to the north and west, a church abutting to the south and business properties on the opposite side of Hoop Street, comprising a restaurant, self-catering and function venue.

The applicant seeks to legalise the restaurant, hence the application for rezoning and consent use to accommodate the restaurant, two (2) residential rooms (accommodation for owner) and proposed place of entertainment to allow dinner theatre. The application also entails a departure to accommodate the encroachment of the existing building due to the more restrictive building lines applicable to Business Zone 3 as well as a departure from the applicable parking ratio from six (6) on-site parking bays per 100m² GLA to four (4).

The restaurant will be open for dinner only, seven (7) days per week during season and five (5) days a week during winter with a month shut down during June. The restaurant is a 50-seat fine dining establishment. Application is also made for a place of entertainment to provide cabaret entertainment on the menu for the restaurant.

The owners' accommodation (residential rooms and associated water closets) comprises 60,18m². The total GLA of the restaurant for the provision of on-site parking amounts to 174,64m², thus triggering provision of seven (7) on-site parking bays for the restaurant as well as two (2) parking bays for the residential rooms. A total of nine (9) on-site parking bays, including one (1) disabled parking bay provided on-site. Access to the on-site parking area is obtained from Hoop Street. The restaurant provides employment for ten (10) employees in addition to the owner / manager.

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation (refer to Annexure B) is summarised as follows:

- ❖ Application comprising rezoning to Business Zone 3, consent use for a restaurant, place of entertainment (cabaret shows) and residential rooms (owners' accommodation).
- ❖ Application for departure in order to accommodate existing structures over the lateral and rear building line due to the more restrictive lateral and rear building being under Business Zone 3.
- ❖ The character of the area will not be adversely affected.
- ❖ No impact on heritage resources.
- ❖ Neighbours did not object to the existing structures that encroach the building line.
- ❖ The premises will be limited to a restaurant and will not include a bar.
- ❖ The surrounding area is characterised predominantly by business uses interspersed with residential uses.
- ❖ Commercial use forms a predominant part of the character of the area.
- ❖ The application property is part of the CBD.
- ❖ Access to an on-site parking area providing nine (9) parking bays (including a disabled parking) will be provided from Hoop Street in accordance with municipal requirements.
- ❖ The development enhances the future character of the area.
- ❖ Applicant identified a need for a restaurant and associated business concerns forming part of the tourist industry in Gansbaai.
- ❖ The property is large enough to adhere to on-site parking requirements.
- ❖ The business is not undesirable and will not detract from vested rights of adjoining property owners, nor the built environment.
- ❖ The business is desirable and offers a service that will benefit the local community.
- ❖ The development complies with the Scheme Regulations.
- ❖ The development does not impact traffic flows.
- ❖ The development is already serviced and approval will have an additional impact on municipal services.
- ❖ The Title Deed does not contain any title deed restrictions that prohibit the proposed development.
- ❖ The development is consistent with the PSDF, SDF, OMGMS and IDF.
- ❖ The development does not trigger listed activities in terms of NEMA.

- ❖ The development is consistent with the planning principles in terms of LUPA and SPLUMA

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	31 July 2020	4 September 2020
Notices	Yes	31 July 2020	4 September 2020
Ward councillor	Yes	31 July 2020	4 September 2020
Total comments	ONE (1) objection was received		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Fire Services	3/08/2020	The Fire Department has no objection subjected to compliance with provisions of SANS 10400-A: 2016, SANS 10400-T & By Law Relating to Community Fire Safety.
Waste Management	20/08/2020	No objection, so long as a n adequate refuse storage area is provided for.
Environmental Section	3/09/2020	No objection.
Engineering Services	4/09/2020	Annexure F.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

A letter of objection had been received from HL Fourie, the owner of Erf 10, Gansbaai. The objection letter is attached as Annexure D and the applicant's comment as Annexure E.

The objector specifically states that no objection is raised to the rezoning, consent use for a restaurant and residential rooms, nor the rear- and lateral building lines departure.

The main grounds of objection relate to the place of entertainment (live entertainment) in terms of noise and impact on the character of the area, being the holiday dwelling on Erf 10, as well as the on-site parking area adjacent the objector's property boundary. The objector in his objection letter proposes mitigation measures discussed with the applicant as follows:

- i) replacement of the vibacrete wall between Erven 10 and 13 with a 2,4m high boundary wall, before the end of February 2021, and
- ii) that the place of entertainment be limited to cabaret entertainment within permitted noise levels, limited to four (4) events per quarter, limited to four (4) hours per session between 10:00am and 22:00pm.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The Blue Goose Restaurant has been running in the same street since December 2012 without complaints and is prepared to do everything in his power to adhere to the applicable municipal regulations pertaining to the operation of the business. The applicant further advised that no objection is offered to the suggestions made by Mr Fourie, that live entertainment is dinner theatre with performances lasting a maximum of 1,5 hours. Further, the applicant only held two dinner theatre events over the last two (2) years.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

The Blue Goose Restaurant currently operates for about eight (8) years without any complaint history, initially from an adjoining commercial property, namely Erf 19. The aforesaid property also currently accommodates a restaurant. The Blue Goose restaurant relocated to the subject property during 2018 without any known complaints to date.

The applicant in his response advised that the place of entertainment will be limited to dinner theatre and that he agrees with the proposed mitigation measures suggested by the objector pertaining to the dinner theatre component.

The proposed boundary wall height of 2,4m is not in accordance with the Scheme Regulations. During the site inspection it was noted that the existing vibacrete wall needs replacement in certain sections. The applicant indicated that he is prepared to replace the vibacrete wall with a brick-built boundary wall. The opinion is held that this is a civil matter and should be agreed to between the respective parties.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application:

Spatial Justice

The proposal will not perpetuate past spatial imbalances and provide access to opportunities to all (i.e. commercially zoned land, employment opportunities).

Spatial sustainability

The property is situated within the urban edge and will not impact on agricultural land or environmental sensitive or biodiversity rich areas. The development is situated within the CBD and allow for mixed use of the property, in line with the applicable policy documents.

Efficiency

The proposed development in accordance with the SDF and OMGMS promotes a compact CDB, optimal use of space, energy, infrastructure, resources and land.

Spatial Resilience

The proposed development will allow for / provide land use options allowing for flexibility in the use of the property. The principle relates to climate change to ensure that structures and occupants will be able to use their properties with little as possible physical and financial discomfort. The proposal is consistent with the applicable strategic policy documents, which adheres to the principle of spatial resilience.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The development is consistent with the provision of the SDF that seeks a compact CDB tourist friendly CDB whilst assist with improved linkages to the harbour. The development being situated within the CBD is consistent with the OMGMS and the IDF.

Consistent with the Spatial Development Framework.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

The property is already connected to municipal services. The development is supported by the Engineering Services Department, subject to conditions, including the payment of a bulk development contribution levy.

10.7 Outcomes of investigations/applications i.t.o other legislation

The development does not trigger the provisions of NEMA.

The rezoning does not trigger Section 38 of the Heritage Resources Act.

Although situated within a Heritage Protection Overlay Zone (HPOZ) the regulations were promulgated after the submission of the application. As such, any future additions or extensions will be assessed for compliance with the applicable regulations. Also, the property was not assessed in terms of the Overstrand Heritage Survey.

10.8 Existing and proposed zoning comparisons and considerations

The application for rezoning to Business Zone 3 imposes a more restrictive lateral building line of 3m and rear building line of 4,5m compared to the current 2m building lines applicable to Residential Zone 1, hence the departure application for encroachment of the building line.

The application also entails a departure application in order to depart from the applicable parking ration of six (6) bays per 100m² GLA to four (4) bays per 100m² GLA.

10.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A.

11. THE DESIRABILITY OF THE PROPOSAL

The surrounding area has a mixed character comprising commercial land uses (i.e. restaurant, self-catering, function venue), a church and single residential use predominantly situated to the west and north west. The proposed rezoning to legalise the restaurant is therefore not considered to detract from the character of the area.

The subject property is situated within the CBD as per the OMGMS and the IDF and consistent with the provisions of the SDF. The development provides also for mixed uses within the CBD, provides employment opportunities and contribute to local economic and tourism development, thus consistent with the SDF.

The application was submitted under the Integrated Zoning Scheme Regulations, 2013, which provides for restaurant as a consent use. No objections were received in respect of the rezoning to Business Zone 3, consent use to conduct a restaurant and residential building accommodating residential rooms reserved for use by the property owner. The Blue Goose restaurant had been operating for several years

and since end of 2018 from the application property without any objections. Being a dinner restaurant without bar facilities, the opinion is held that the rezoning and consent use to permit a restaurant and residential use does not adversely impact vested rights of adjoining properties.

The application also entails consent use to conduct a place of entertainment. Thereby allowing cabaret style entertainment to be put on the menu. The applicant in his response refers to dinner theatre being offered and agrees to the suggestions made by objector limiting it to four (4) events per quarter, not exceeding four (4) hours at a time and not outside the hours of 10:00 to 22:00, subject to adherence with the applicable noise regulations.

The primary use of the property will be that of a restaurant with occasional live entertainment (i.e. cabaret entertainment) offered as part of the sit-down dinner. Having had regard to the mitigation measures proposed by the objector as agreed by the applicant pertaining to the frequency and hours of such entertainment and subject to compliance with the applicable noise legislation, the opinion is held that the proposed consent use will not unacceptably detract from the vested rights of adjoining property owners by reason of noise and disturbance. Furthermore, the facilities will be limited to a restaurant, should the recommendation be supported, thus prohibiting the operation of a bar from the property.

The SDP indicates nine (9) on-site parking bays to be provided with sufficient manoeuvring space, accessed from Hoop Street. Provision is also made for a disabled parking bay. Application is made for departure from the applicable parking ratio to lower it from six (6) bays to four (4) bays per 100m². The proposed departure accords with the recently approved Overstrand Municipal Land Use Scheme, 2020, which scheme imposes a parking ratio of 4 bays per 100m² GLA. No objections were received against the departure from the parking ratio. The development subject to implementation of the parking layout will not give rise to traffic congestion of prejudice vehicle and pedestrian safety.

Lastly, the application entails a departure of the 3m lateral building line to 2,7m and the 4,5m rear building line to 1,153m to accommodate the existing building and an outbuilding. The departures are the result of the more restrictive lateral- and rear building lines applicable to Business Zone 3 properties. The departures relate to existing structures and does not detract from the character of the area and vested rights of adjoining properties.

The development is supported from an engineering services' point of view subject to compliance with conditions of approval, amongst others payment of a bulk services levy.

The application for rezoning, consent use and departure are consistent with the applicable policy documents, compatible with the character of the area and will not unacceptably detract from the vested rights of adjoining properties. The development promotes the economic growth and strengthens the CBD of Gansbaai, provide much needed employment opportunities, whilst ensuring optimal use of services. Having had regard to the above the application is considered desirable.

12. RECOMMENDATION

1. that the application in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the rezoning of Erf 13, Gansbaai from Residential Zone I: Single Residential (SR1) to Business Zone 3: Local Business (B3), **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(o) of the By-Law for a consent use to accommodate a restaurant and place of entertainment and two residential rooms (owners accommodation), **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law for a departure in order to encroach the southern lateral building line from 3m to 2,79m as well as the encroachment of the rear building line from 4,5m to 1,153m to accommodate the existing building and outbuilding, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for departure in terms of Section 16(2)(b) of the By-Law to relax the parking ratio applicable to the restaurant from six (6) bays to four (4) bays per 100m² GLA, **be approved** in terms of the provisions of Section 61 of the By-Law,
5. that the approvals in paragraphs 1. to 4. above be subject to the following conditions:
 - (a) that a bar / tavern may not be conducted from the premises;
 - (b) that the parking layout be implemented in accordance with the approval in (a) above;
 - (c) that the requirements of Engineering Services (attached as Annexure F), be adhered to;
 - (d) that building plans be submitted to the Building Department for approval within thirty (30) days of the decision date, and that all conditions of the Building- and the Fire Department be complied with at that stage;
 - (e) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (f) that the display of signage be subject to compliance with the Municipal By-Law on Signage;
 - (g) that this permission do not permit the provision of gambling facilities;
 - (h) that the applicant shall appoint a suitably qualified noise specialist and implement the applicable mitigation measures at his cost, should any justified complains regarding noise and disturbance being received;

- (i) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (j) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
6. that the applicant and person who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditions of approval.

13. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ The development is consistent with the applicable strategic policy documents.
- ❖ The development is consistent with the planning principles.
- ❖ The development does not detract from the character of the surrounding area.
- ❖ The development does not unacceptably detract from the vested rights of adjoining property owners

14. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objection received
Annexure E:	Comment from applicant
Annexure F:	Services Report

SIGNATURE

REGISTERED PLANNER

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: _____

Date: _____

ANNEXURE A

Date: 2



ERF 13 GANSBAAI



MEMORANDUM

APPLICATION FOR: A: REZONING OF, B: CONSENT USE ON AND C: DEPARTURES FOR ERF 13, GANSBAAI: OVERSTRAND MUNICIPALITY: DIVISION CALEDON: WESTERN CAPE PROVINCE

INTRODUCTORY REMARKS

1. INTRODUCTION:

This introduction serves as a short summary of the application before the necessary proposals and motivations are presented.

- 1.1 Applicant: ME Planners Consulting Town and Regional Planner
P.O.Box 552
Hermanus
7200
- 1.2 Power of Attorney: Power of Attorney has been rendered to ME Planners Consulting Town and Regional Planner to lodge this Application for Rezoning in terms of Chapter IV, Section 16(2) (a), Consent Use in terms of Section 16(2) (o) and Departures in terms of Section 16(2) (b) of the Overstrand Municipal By-Law on Municipal Land Use Planning.
- 1.3 Property: Erf 13 Gansbaai, (here after referred to as "the site of application" or "the property")
- 1.4 Street address: 22 Hoop Street, Gansbaai.
- 1.5 Locality: An Erf 13 Gansbaai form part of the established residential area of the Greater Gansbaai and is located adjacent to the CBD, on Hoop Street.
- Erf 13, Gansbaai, is abutted by existing developed properties namely erf 10 on the western side, erf 12 on the southern side, erf 14 on the northern side and Hoop Street on the eastern side.
- The primary access to the subject property will be off Hoop Street.

Existing land uses of surrounding properties in the neighbourhood include established residential areas, restaurants, guest houses, a church and a crèche.

(The surrounding area will be discussed in more detail in Paragraph 2 of this report.)

2. BACKGROUND

- 2.1 Gansbaai is a coastal township within the Greater Gansbaai area with breath-taking views across Walker Bay and is a very popular holiday destination. Tourist attractions include, amongst others, the nearby Kleinbaai Harbour area where Great White Shark Cage Diving and Whale watching tours are hosted. It also includes various accommodation establishments for tourists. Beautiful hiking trails along the coastline and sand beaches at Franskraal further contribute to the popularity of the greater Gansbaai area.
- 2.2 Gansbaai originally developed during the 1900 to 1939 period and started with only 222 erven where after rapid development took place up to and until 1999.
- 2.3 The property, which is situated in Planning Unit 12 of the "Greater Gansbaai Spatial Plan 2000" will be developed into a Restaurant as the primary use and two residential rooms at ground level as secondary uses. The owner is committed to develop the property in terms of the mentioned spatial plan.
- 2.4 The property is currently developed with a Single Residential Dwelling Unit and a Granny Flat. No records could be found that indicate when these structures were developed on the property. It can be presumed that they were not developed in recent times (see photos).
- 2.5 The application property does not contain any mentionable biophysical characteristics that would impact on the redevelopment of the existing structures.
- 2.6 The application property has no mentionable slopes, and hence bares no confines for the proposed development.
- 2.7 Being located close to the coastline, it is likely that the existing underlying materials of the property are that of the typical known coastal material of the broader area. Since no erosion previously occurred on the developed property, no erosion is thus foreseen with the redevelopment of the property.
- 2.8 **A very important fact** is that in terms of the Overstrand Heritage Survey, the structures on the property are not listed under any category of the South African Heritage Resources Act or its Regulations. It is believed that, because these structures had over the years been altered to such an extent that it was not deemed necessary to be listed

as of any heritage value/significance when the said heritage survey was compiled. The Act is hence regarded as not being applicable to the application and therefore no heritage assessment is required.

3. OVERVIEW OF APPLICATIONS:

3.1 Chapter IV, Section 16(2) (a) of the Overstrand Municipality By-Law on Municipal Land Use Planning is applicable as well as Chapter IV, Section 16(2) (o) of the Overstrand Municipality By-Law on Municipal Land Use Planning.

3.1.1 This application is made as it is the intention of the applicant to be able to develop a Restaurant and ancillary uses pertaining to a restaurant; as well as 2 'Residential Rooms' (existing) on the erf.

3.1.2 *THE GRANTING OF A REZONING TO BUSINESS ZONE 3: LOCAL BUSINESS (B3) will, however, HAVE TO be accompanied by an application for a consent use to be able to develop a restaurant and 2 'Residential Rooms' as well as to allow live entertainment in the proposed restaurant.*

Business Zone 3: Local Business (B3) is the **only zoning** suitable for the executing of the Owner's intention to develop the property as a restaurant and the related intended development of the other uses as set out in 3.1.2.

3.1.3 In order to better explain the legal requirements, the following information is important.

Application for Rezoning from "Residential Zone 1" to Business Zone 3: Local Business (B3) with, inter alia, the following use restrictions applicable to it:

- a) Primary uses: shops, flats (above ground floor), offices; as well as
- b) Consent Uses; (See the extract from the Overstrand Town Planning Scheme)

7.2 BUSINESS ZONE 3: LOCAL BUSINESS (B3)

Use of the property

7.2.1 The following use restrictions apply to property in this zone:

- (a) **Primary uses** are: shops, flats (above ground floor), offices;
- (b) **Consent uses** are: bottle store, business premises, clinic, conference facility, flats (on ground floor), town housing, guest house, hotel, informal trading, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, restaurant, rooftop base station, sale of alcoholic beverages, service station, service trade, transmission tower.

3.1.4 This application is made as it is the intention of the applicant to be able to develop a Restaurant and ancillary uses pertaining to a restaurant.

3.1.5 *In summary, the granting of a rezoning will, however, be accompanied by an application for a consent use to be able to conduct a restaurant and to use 2 'Residential Rooms' as secondary uses on Erf 13, Gansbaai as well as to allow live entertainment in the proposed restaurant.*

3.2.1 Application for Consent Uses:

- to allow the conducting of a restaurant;
- to include two existing residential rooms;
and
- to allow for the conduct of live entertainment.

3.2.1.1 Application for a restaurant

The definition for a Restaurant is as follows:

"restaurant" means a licensed business in which mainly meals and beverages are primarily sold to seated patrons, and includes the on-site consumption of liquor but does not include premises used exclusively as a bar, a pub or tavern;

3.2.1.2 Application for "Place of Entertainment"

The application for this consent use is done in order to allow the conducting of live entertainment; the following information is of importance:

- According to the Overstrand Municipality Zoning Scheme of June 2013, the definition of "place of entertainment" is "a place used for commercial entertainment which may attract large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, including a cinema, theatre, amusement park, dance hall, night club, gambling and live music".
- In the case of Erf 13, Gansbaai, it is envisaged to put "cabaret entertainment" on the menu for the restaurant. The owner/developer is adamant that it will not be in the form of the known karaoke evenings. The proposed position of the restaurant-cum-dwelling components is not regarded as being undesirable and will not have any detrimental impact on the rights of surrounding property owners nor the existing built environment in future.
- It will be a 50 seater fine dining restaurant catering predominately to guests from guest houses.
- Open for dinner only, 7 days a week during season and 5 days a week during winter with a month shutdown during June.
- Blue Goose is currently employing 4 cooks, a scully, a cleaner/maintenance man, 3 front of house staff and the owner//manager

ERF 13 GANSBAAI

- NO BAR facilities. Sit down lunch and dinner and alcohol served at the tables.
- Background dinner music.
- It is a dinner restaurant catering to concerning patrons.

3.2.1.3 Application for Residential Rooms

- Application is made for allowing the existing 2 'Residential Rooms' on the ground floor.

From the foregoing information as well as the development envisaged, it is clear that the character of the area will not be disturbed should this application be approved, and although Gansbaai is one of the oldest established townships in the Overstrand area, it will not be necessary to also consider the possibility of the heritage value being affected and disturbed by the application as the existing buildings will not be affected by the application.

3.2.2 **Application for departures** in terms of Chapter 4, Section 16 (2) (b) of the Overstrand Municipality By-Law on Municipal Land Use Planning.

Departures being applied for are for the existing main dwelling having been built 3 meters over the required building line of 3 meters on the northern boundary and 0,291m from the southern boundary with Erf 12. Instead of the 3 meters required by the Town Planning Scheme and the garden shed which has been erected 3,347 meters over the required building line of 4,5m.

These departures are of a long-standing nature and no objections from affected neighbours have ever been received by the owner or the Municipality.

4. GENERAL APPLICATION INFORMATION

4.1 Property Description:

Erf 13 is situated at 22 Hoop Street, Gansbaai as mentioned in para. 1.5 above.

4.2 Size

The property is 892m² in extent.

4.3 **ZONING OF THE ERF**

4.3.1 Present Zoning:

In terms of the Overstrand Municipality Zoning Scheme Regulations the erf is zoned Residential Zone 1: Single Residential (SR1) with the following use restrictions applicable to it:

Primary uses: day care centre, dwelling house, guest rooms, home occupation, second dwelling unit.

4.3.2 **PROPOSED ZONING:**

4.3.2.1 **BUSINESS ZONE 3: LOCAL BUSINESS (B3)**

4.3.2.2 The development will consist mainly of the establishment of a restaurant together with 2 'Residential Rooms' on the ground floor.

Definition of "Restaurant"

- **"Restaurant"** means a licensed business in which mainly meals and beverages are primarily sold to seated patrons, and includes the on-site consumption of liquor but does not include premises used exclusively as a bar, a pub or tavern; whilst
 - a) All parking shall be provided on the property;
 - b) A ratio of 4 parking bays per 100m² GLA as is proposed in the new Zoning Scheme Regulations;
 - The total area of the restaurant is 160m²GLA for which at least 6 parking bays is necessary plus 3 parking bays for the proposed residential section.
 - A total of 8 parking bays are provided, plus 1 for disabled persons.

An application for a departure from the prescribed parking requirements to allow for the parking of the possible overflow of vehicles in Hoop Street will thus not be necessary.

Furthermore the restaurant's business with the planned occasional live music sessions will be conducted in the evenings when possible parking in Hoop Street should not present any problems.

- c) Building lines: As specified in the Overstrand Municipality Zoning Scheme of June 2013.
- d) Vehicle entrances and exits:

Entrance to and exit from the property shall be to the satisfaction of the Overstrand Municipality.

- It is proposed that the entrance and exit be from Hoop Street.

4.4 LAND USE

The property is currently developed with a Single Residential Dwelling.

4.5 CHARACTER OF THE ENVIRONMENT

The area, in which the site is located, is characterized by predominantly business uses interspersed with a number of residential uses and a Suburban business centre situated in the near vicinity which means that business concerns form a prominent part of the character of the area. The proposed business development is merely an extension of and/or similar to the existing character of the area.

The following business concerns are at present operating in and around the vicinity of the site of application:

A restaurant / venue with self-catering accommodation with a bar is in operation directly across the street from ERF 13;

An Italian restaurant and bar is operating diagonally across the street from ERF 13 and a backpackers concern is operating on the property, one plot removed, from ERF13.

On 6 properties in the street, are also two restaurants and a church.

Half of the above-mentioned properties have been rezoned.

The application site is also within walking distance from the business centre mentioned above and basically part of it.

From the foregoing it is clear that the planned future character of the area should thus be enhanced should this application be approved.

4.6 NEED AND DESIRABILITY OF THE PROPOSED UTILIZATION

4.6.1 When considering the application for rezoning and consent use for Erf No. 13, Gansbaai, it is evident that the need and desirability should both fall within the broad parameters and principles set out and necessary for orderly planning.

4.6.2 **Need:**

- a) The **need** in this instance centres mainly on the fact that the tenant wishes to develop a Restaurant with related business concerns.
- b) The fact that the proposed application can form part of the Tourist Industry in Overstrand, it is envisaged that another upper class Restaurant does have the right of existence in a very competitive business market in Gansbaai.
- c) Because of the size of the property, namely 892m², and the existing placing of the building, the applicant observed the potential to apply for the establishment

of the proposed business where space for parking is also one of the determining factors for the successful running of the business. In order to do this, an application for rezoning for Erf13, Gansbaai is made.

4.6.3 **Desirability:**

- a) The existing position of the business is not regarded as being undesirable and will not have any detrimental impact on the rights of surrounding property owners nor the existing built environment in future.
- b) From the foregoing it is clear that the character of the area will not be disturbed should this application be approved, and although Gansbaai is one of the oldest established townships in the Overstrand area, it will not be necessary to also consider the possibility of the heritage value being affected and disturbed by the application as the existing buildings will not be affected by the application.
- c) In the case of this application it can be stated categorically that very few better or more desirable developments can be envisaged for the area, as many people living in the vicinity will now be accommodated by the services of this kind of business.

4.6.4 The proposed development will be done in compliance with the guidelines of the Overstrand Municipality Zoning Scheme of June 2013. Building plans will be submitted to the satisfaction of the Overstrand Local Municipality, as the controlling authority.

4.6.5 In the light of what has been mentioned as far as the need is concerned for this application, the desirability needs no further motivation, but the following is relevant and of interest:

- a) The existing as well as the future character of the area will not be adversely affected should the application be approved.
- b) The traffic flow pattern in the area will not be affected.
- c) Services will not be affected adversely.
- d) The prescribed standards and conditions for the existing zoning of the erf will not be adversely affected through the approval of the application.

4.6.6 **In order to effect the entire development, it can be noted that there are no applications that trigger the requirements for amendment, suspension or removal of restrictive conditions, as set out in Section 35 of the Overstrand Municipality By-Law on Municipal Land Use Planning.**

4.7 TRAFFIC IMPACT, PARKING AND ACCESS**4.7.1 Traffic:**

The low level of traffic generated by this planned kind of development will have no significant effect on the existing and surrounding street network and the traffic flow patterns around the site will not be affected at all.

Because of the foregoing, no traffic impact assessment or environmental impact assessment is necessary with this application.

4.7.2 Access:

The present access to the property is from Hoop Street, and will also provide safe access to and exit from the proposed development.

4.8 IMPACT ON EXTERNAL ENGINEERING SERVICES

4.8.1 The site is located in an existing township.

4.8.2 All services on the property already exist and are sufficient to accommodate the existing buildings and uses, and for that matter also the proposed use.

4.8.2 The approved Growth Management Strategy indeed confirms that for future opportunities there will be sufficient water source capacity, sufficient treatment works, sufficient solid waste capacity as well as sufficient sewerage treatment works.

4.9 TITLE DEED

4.9.1 Erf 13, Gansbaai is registered in the name of Matthys Christiaan Franken.

4.9.2 According to the Title Deed T98376/2005, the size of Erf 13 is 892m sq in extent.

4.9.3 In terms of the said Title Deed the property is described as Erf 13, Gansbaai, situate in the Overstrand Municipality, Division Caledon, and Province of the Western Cape.

4.9.4 The enclosed Title Deed does not contain any Title Deed Restrictions that have to be addressed with the proposed use in mind.

4.9.5 Bond/s

The property is encumbered by a bond, and the Bondholder's Consent has been obtained.

4.10 FORWARD PLANNING & OTHER LAND USE DOCUMENTS

Land uses in the area and on the site of application are being regulated and controlled by the Overstrand Municipality Zoning Scheme of June 2013.

The said Town Planning Scheme -- together with the proposals in the Provincial Spatial Development Framework 2014 (PSDF), the Overstrand Spatial Development Framework (2006) SDF, 2006 and the Overstrand Municipality: Growth Management Strategy, 2010 ----makes provision for rezoning, consent uses and departures such as applied for in this application.

The aims and objectives of the foregoing frameworks and strategy can be summarised as follows:

4.10.1 WESTERN CAPE PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK (March 2014)

The purpose of the PSDF is to give expression to the national and provincial development agendas for land development and serves as a basis for coordinating, integrating and aligning national and provincial programs. It also aims to communicate the spatial development intentions of the government to the private sector.

The following aims underpin the PSDF, together with explanations of how the proposed development will be in line therewith.

- ***“Capitalise and preserve unique local built form and natural typologies, character and heritage.”***

The application will not disturb the local built form much as it aims to only bring a much-needed service within easier reach of the inhabitants of the area. It operates very much in the manner of a “home occupation” which makes it more acceptable in an area previously set aside for housing in the main, but now forms part of the CBD.

- ***“Promote urban rather than suburban model: avoid further fragmentation of townships.”***

The proposed development will not lead to a fragmentation of the area.

- ***“Focus on creating connections to economic and social opportunity to promote spatial and socio-economic integration.”***

The proposed development is an excellent example of the promotion of spatial and socio-economic integration.

- ***“Cluster all social facilities and complementary activities.”***

As a business concern with a basic social background, this development will be a complementary addition to the nearby cluster of various business activities.

4.10.2 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2006)

The objective of the SDF is to formulate strategic policy guidelines and proposals which are spatially based, through which the needs, changes and growth in the area can be managed to the benefit of the inhabitants and the environment of the Overstrand Municipality.

The Overstrand Spatial Development Framework (2006) earmarks the area where Erf 13 Gansbaai is situated, for mixed residential and low key business premises. The current Residential Zone I zoning will be changed to Business Zone 3: Local Business (B3) and the current accesses will also remain as is. The proposal will, therefore, be in line with spatial planning guidelines for the area.

The following objectives are used to test whether the proposed development will be in line with the aims of the SDF:

- ***“To provide an environmentally and economically sustainable bulk service infrastructure and road transport network.”***

The proposed development is already connected to all services and no extra services will be required.

- ***“To ensure that on-going pressure and its spatial implications are managed in a sustainable way that protects the unique character of the existing cultural landscapes and the place-specific character and form of the existing settlement pattern.”***

The proposal will not change anything in the existing cultural landscape and the character and form of the existing settlement pattern.

- ***“Restrict development within the carrying capacity limitation of the natural resources.”***

The proposal will not change anything in the carrying capacity limitation of the natural resources.

- ***“To improve the aesthetic quality of the built environment.”***

The proposed development will definitely lead to the improvement of the aesthetical quality of the built environment.

4.10.3 GROWTH MANAGEMENT STRATEGY

- a) The purpose of the GMS is to improve the Overstrand Municipality's overall environmental sustainability by enhancing the quality and efficiency of the built environment.

- b) In terms of the said Strategy, the property falls within the bigger Planning Area as well as Area C12 and the Contextual overview for Gansbaai in Area C 1.
- *(Refer to plan attached as "Annexure A")*
- c) With reference to the Overstrand Growth Management Strategy the Contextual Overview for the subject erf falls within Planning Unit B2 which is next to C1 the main commercial hub for the region, which indicates the fact that it falls in an area indicated for economic opportunities.
- d) The following core objectives of the strategy will be used to test the suitability of the proposed development.
- ***"Ensure optimal land use planning and the efficient use of infrastructure, services, facilities and land."***
The proposal seeks to make optimal use of the erf and will result in more efficient use of the infrastructure.
 - ***"Contribute to place making and the development of attractive and safe urban environments."***
The proposed development will contribute to place making and a more attractive property and environment.
 - ***"Ensure that the scale and character (in terms of bulk, height and architectural styling) of the higher density areas are appropriate to the immediate context."***
The proposed development will change nothing in the scale and character of the area.
- e) The proposed development will be done in compliance with the guidelines of the Overstrand Municipality Zoning Scheme of June 2013.

4.10.4 OVERSTRAND INTEGRATED DEVELOPMENT FRAMEWORK

The IDF makes provision for the long-term spatial development and planning towards 2050. This study proposes inter alia, that Erf 13, Gansbaai, falls in an area which will be included in the CBD. (Refer to Plan 23 of the said study.)

4.11 RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

4.11.1 HERITAGE VALUE AND IMPACT

Erf 13 Gansbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The existing building situated on Erf 13 Gansbaai is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above-mentioned it is evident that the proposed development will not have a negative impact on the heritage value of the subject property or the Greater area of Gansbaai.

4.11.2 ENVIRONMENTAL IMPACT

The proposed departures for Erf 13 Gansbaai does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

4.12 PLANNING PRINCIPLES

The application has also been analysed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:

(a) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The proposed rezoning, consent use and departures will not in any way contribute to the perpetuation of past apartheid spatial development imbalances as the development of the proposed business will open up the provision of all the above to all persons in the Republic. The right of owners to develop land in accordance with current use rights must be recognized as is the case with this application.

(b) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

Possible results of the development

The proposed development will take place within the urban edge and will therefore have no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas. The application can thus be deemed to be spatially sustainable.

(c) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The proposed development is not intended as a new settlement development and caters specifically for users from far and near.

(d) Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The proposed development will not lead to any economical and/or environmental shocks as the business to be conducted will not differ much from the existing use on the erf and in the area.

(e) Good Administration which, in the context of land uses planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

The applicant is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient and will ensure that time frames are adhered to.

ANNEXURE C



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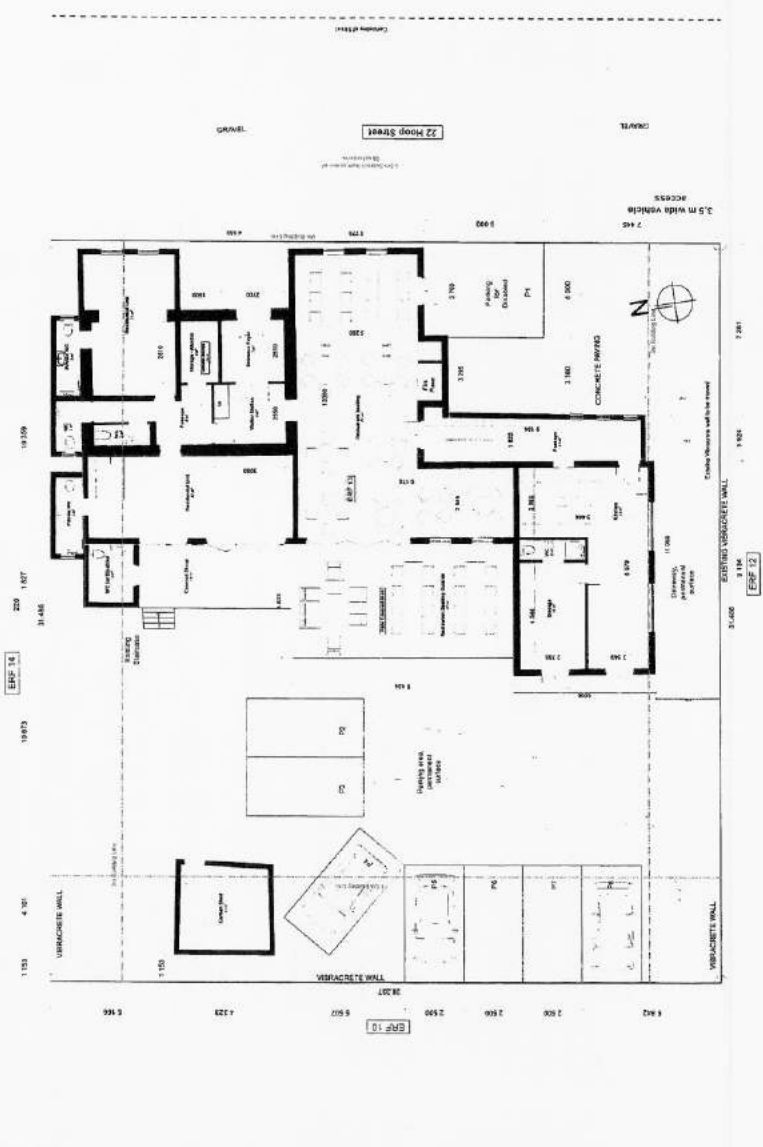


CLIENTS DETAILS

Ribaan Franken
RFN 13 GB
021 905 1463
ce@ribaan.co.za

PROJECT INFO

Drawing Number: **FRA-GB-19/27**
Layout Name: **Town Planning**
Drawing Status: **Parking Layout**
Project Description: **Parking Layout**
Drawn By: **202006029**
Checked By: **202006029**
Martin Prinsloo
Sheet:
Drawing Date: **As Shown**
Sheet Size: **A3**
File name: **Ribaan Doone B.gbh**
Number of pages: **A.02**



Site Development Plan (Scale 1:150)

ANNEXURE D

e-Mail: aconradie@overstrand.gov.za
Your 13 GCB dated 2002-06-19

Hendrik Louis Fourie owner of Erf 10, 21 Germishuys street, Gansbaai and 144 Townsend street, Goodwoodpark, cel.no. 066 2544459 and 021-591-5487.

COMMENT RE ERF 13, HOOP STREET, GANSBAAI

1. NO OBJECTIONS PERTAINING:

- 1.1 Accomodating it to be a restaurant and accommodate two residential rooms Sect 16(2)(o)
- 1.2 Relaxing of the southern lateral building line from 3 m tot 2.709 m to accommodate the existing dwelling on the property, Sect 16 (2)(b)
- 1.3 Relaxion of the rear building line from 1.153 m to accommodate the existing garden shed on the property Section 16(2)(b)

2. OBJECTION PERTAINING:

- 2.1 Live entertainment on the property (noise Level) for cabaret/music
 - 2.1.1 How is it going to influense character of holiday dwelling at Erf 10?
 - 2.1.2 How is it going to be address?
- 2.2 Parking of vehicles in backyard on proposed parking lots in close proximaty of vibracrete wall next to Erf 10 – Noise level (parking + departing)

3. COMMENTS AND SOLUTIONS SUGGESTED

- 3.1 AFTER CONSULTATION TOOK PLACE BETWEEN H.L. FOURIE, ERF 10 AND RIAAN FRANKEN, ERF 13, THE FOLLOWING TO FORM PART OF PERMISSION GRANTED.
 - 3.1.1 The vibracrete wall between Erf 10 and 13 to be replace, before end of February 2021, with a brick wall. Plastered on both sides and heightened from 1.8 m to 2.4 m, on terms and costs agreed by both parties, to eliminate noise level from vehicles and restaurant. It need to give more privacy, be safe and estetic.
 - 3.1.2 That the application for "place of entertainment" be limited to only "cabaret entertainment" (see 3.2.1.2) with following prescripts that such entertainment be limited to:
 - 3.1.2.1 Within prescribed noise level allowed. Maximum four (4) times per quarter and then only for maximum four (4) hours per session between hour 10 am and 10 pm (between 10:00 and 22:00) scheduled.
4. With meeting this obligations and added to memorandum, per codicil, this rezoning is agreed to.

With regards. In anticipation.



H.L. Fourie
31-08-2020



M E Planners

Town and Regional Planner

Jan van Riebeeck Avenue 35, Sandbaai, Hermanus. 7200
 P.O. Box 552, Hermanus 7200
 Phone / Fax: 028 316 4094
 Cell: 083 456 4064
 Email: meplanners@telkomsa.net

ANNEXURE E



TP-A Theart
(A Conradie)

24 September 2020

DELIVERED BY HAND

SENIOR MANAGER: TOWN AND SPATIAL PLANNING
16 Paterson Street / PO Box 20
HERMANUS
7200

For attention: Me Alida Conradie

Sir,

APPLICATION FOR: A: REZONING OF, B: CONSENT USE ON AND C: DEPARTURES FOR ERF 13, GANSBAAI: OVERSTRAND MUNICIPALITY: DIVISION CALEDON: WESTERN CAPE PROVINCE

The objection rose by Mr Fourie of Erf 10 Gansbaai, against the application on Erf 13, has reference.

The objection was discussed with the owner of Erf 13, Mr Riaan Franken, who gave the following input:

1. I hereby take note of the objection of Mr. Fourie, ERF10, Gansbaai.
2. I have been running the Blue Goose Restaurant since December 2012 In the same street in Gansbaai. In the last 8 years, 9 months there has been no complaint about Blue Goose.
3. I do everything in my power to abide by and respect all rules and regulations.
4. I undertake to comply with all prescriptions and regulations of the Overstrand Municipality, regarding the operation of the business.
5. I have no problem with the suggestions made by Mr Fourie. The "live entertainment" offered by Blue Goose is "dinner theatre" and performances last a maximum of 1.5 hours. In the last two years I have offered only 2 "dinner theatres".

Regards,

E. de Kock
 M.E. de Kock
 Elizabeth de Kock
 (PrPln A/027/2007)

FILE NO: EL 13-GB
SCAN NO: 12
COLLABORATOR NO: 1460498

TP

25 SEP 2020

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REZONING, CONSENT USE & DEPARTURE: ERF 13,
GANSBAAI**

Electricity : In order
Water : In order
Sewer : In order
Stormwater : In order
Roads and traffic : In order

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

- 1.1 **Developments containing Sectional Title Units/ Commercial Buildings** (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

- 1.2 **Developments with free standing properties** (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (2020/2021) is as follows:

Freehold erven:

Water	R 23 957.00 x -0.36000=	-R 8 624.52
Sewerage	R 16 153.00 x -0.36000=	-R 5 815.08
Roads	R 7 243.00 x 3.51282=	R 25 443.36
Stormwater	R 8 357.00 x 1.189333=	R 9 939.26
Solid Waste	R 1 448.00 x 1.23000=	R 1 781.04
TOTAL (inclusive of VAT)	=	<u>R 22 724.06</u>

Note:

- 1.3 **The above figures are estimates**
1.4 **The above figures do not include connection fees**

2. that the existing water connection to- and sewer conservancy tank on Erf 13 shall be used to service Erf 13;
3. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
4. that any commercial food preparation facilities (e.g. restaurant / guest house etc.) must be provided with a grease trap, which must comply with the standards and specification of the Department: Operational Services;
5. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
6. that the on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
7. that any additional and / or extended vehicle entrances will be for the developer's account;
8. that stormwater be allowed to discharge through Erf 13, Gansbaai, unobstructed.

p.p. R. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER: ENGINEERING SERVICES

04/09/2020
DATE