



**MEETING OF THE  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**27 JULY 2023  
VIRTUALLY  
10:00**

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

20 July 2023

**TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

**CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

**NOTICE IS HEREBY GIVEN** that the **Municipal Planning Tribunal (MPT)** will go into session **VIRTUALLY** on **Thursday, 27 July 2023 at 10:00**, to consider the attached agenda.

**H JANSER (MS)**  
**CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

**Distribution:**

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Secretariat

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**27 July 2023**

**I N D E X**

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

- |            |  |          |
|------------|--|----------|
| <b>4.1</b> | <b>ERF 4419, 9 MAIN ROAD, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR TEMPORARY DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLANACTIVE TOWN &amp; REGIONAL PLANNERS ON BEHALF OF HJ FOURIE</b> | <b>1</b> |
|------------|--|----------|

- 1. OPENING**
- 2. APPLICATIONS FOR LEAVE OF ABSENCE**
- 3. CONFIRMATION OF MINUTES**
  - 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 29 June 2023**
- 4. ITEM FOR CONSIDERATION**
  - 4.1 ERF 4419, 9 MAIN ROAD, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR TEMPORARY DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF HJ FOURIE**

Report attached

## 4.1

**ERF 4419, 9 MAIN ROAD, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR TEMPORARY DEPARTURE AND DETERMINATION OF  
ADMINISTRATIVE PENALTY: PLANACTIVE TOWN & REGIONAL PLANNERS ON  
BEHALF OF HJ FOURIE**

4419 HNC (4151/2022)

H van der Stoep

8 May 2023

(028) 313 8900

Hermanus Administration

**1. EXECUTIVE SUMMARY**

An application has been received on 5 May 2023 from Plan Active Town & Regional Planning on behalf of Dr HJ Fourie on Erf 4419, Hermanus for the following:

- ❖ **Temporary Departure** in terms of Section 16.(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to allow for the continuous operation of the existing dental practice on the property.
- ❖ **Determination of Administrative Penalty** in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the above unauthorised land use.

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, while the proposed Site Development Plan is attached as Annexure C.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The erf measures 1041m<sup>2</sup> and is zoned Residential Zone I. The property comprises of an existing single dwelling residential property with a second dwelling at the rear. However, the property has been used a dental practice since 1997.

The dental practice has been in existence for approximately the past 25 years. The first approval dates back to 1997 for the approval of a dentist practice, valid for five (5) years. The approved building plan dated 1997 depicts the departure approval.

A Notice of Non-Compliance from the Overstrand Municipality has been issued in 2016 and subsequently in 2021.

The owner responded to the 2021 notice by submitting an application.

#### 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is as follows:

##### TEMPORARY DEPARTURE

- The dental practice has been in existence for more than 25 years and the practice employs two (2) dentists, two (2) nurses, two (2) receptionists, an Oral Hygienist, cleaner and a laboratory technician.
- The operation hours of the facility are Monday to Friday from 08:00 to 17:30.
- It is evident by the consent uses granted, the area surrounding the application area, is transforming into a mixed-use area. The approved consent uses relates mostly to professional uses such as medical consulting rooms, dentists and physiotherapists and a day care centre.
- The proposed parking plan and required parking bays as discussed with the Overstrand Engineering Services Department is eight (8) parking spaces which has been provided accordingly.
- The second dwelling on the property is located to the north of the erf and is used as a residential unit with a single garage.
- The facility (dental practice) has been in operation since 1997 and is well managed and does not cause a nuisance.
- All services on the subject property already exist.
- Parking of eleven (11) bays is provided with three (3) parking bays at the front of the practise and the remainder behind the dental practise.
- The GLA of the of the practise is 110,2m<sup>2</sup> and in terms of the parking requirements of 4 bays / 100m<sup>2</sup>, only 5 bays are required for the practise, however 11 parking bays are provided.

##### ADMINISTRATIVE PENALTY

Application was made for removal of restrictive title deed conditions and a departure to operate a dental practice in 1997. The owner was under the impression that he has gone through an application process and that the restrictions have been removed from the Title Deed, and therefore his rights have vested and continued to utilise the former dwelling as a dental practise.

After receiving correspondence from the Overstrand Municipality informing the applicant that the operation of a dental practise from the property is not in order, he appointed the consultants to address the issue and rectify the situation.

In terms of the By-law the applicant must provide the following in terms of Section 90(3) of the By-Law, namely:

**(a) *nature, duration, gravity and extent of the contravention***

The practise was established in 1997 with a departure approval. The dentist are well established and makes provision for three (3) consulting rooms, reception area, waiting area and associated uses.

The nature of the practise is unobtrusive in nature and does not cause a nuisance or impact negatively on the surrounding properties.

The use of the former dwelling consists of the following:

<b>LAYOUT OF DENTAL PRACTICE</b>	
Entrance	2m <sup>2</sup>
Reception	6,6m <sup>2</sup>
Waiting area	23,7m <sup>2</sup>
Consulting Room 1	10,2m <sup>2</sup>
Consulting Room 2	35,2m <sup>2</sup>
Consulting Room 3	13m <sup>2</sup>
Toilet Facilities	2,2m <sup>2</sup>
Laboratory	7m <sup>2</sup>
Sterilisation	4,5m <sup>2</sup>

**(b) the conduct of the person (allegedly) involved in the contravention**

The owner did apply for a rezoning and removal of restrictive conditions during 1996. The removal of restrictive conditions was approved, but not the rezoning. However, a departure was approved in 1997. The owner was under the impression that the rights has vested and was only made aware of the unlawful use long after the departure approval has lapsed. The owner has appointed the consulting firm Plan Active to rectify the situation in terms of the Land Use Scheme.

**(c) whether the unlawful conduct was stopped**

The owner is in the process of rectifying the matter by applying for a departure to continue to utilise the full extent of the former dwelling as a dental practise. The dental practise is still operating as the sudden closure will have dire repercussions. Cognisance must also be taken of the fact that the owner was under the impression that his land use rights that he applied for in 1997 vested.

**(d) a report by a quantity surveyor in matters of unauthorised building/construction**

We request that no penalty fee be imposed because the owner did put in the effort to get the land use rights in place in order to utilise the former dwelling as a dental practise. If the Overstrand Municipality finds it necessary that an administrative penalty fee be enforced, the required documentation will be submitted in due course to calculate the applicable penalty fee.

**(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.**

The owner was served with a Notice of Non-Compliance and subsequently appointed Plan Active to rectify the situation.

We appeal to the Overstrand Municipality to take into consideration the low impact of the facility and that no complaints from surrounding property owners have been submitted with regards to the use of the former dwelling as a dental practice.

It should also be considered that the dental practise provides several job opportunities and with the current limited economic opportunities, it would be very difficult for people to find new job opportunities.

OTHER RELEVANT LEGISLATION:

The property is not subject to the Environmental and or Heritage Overlay Zone or legislation.

FORWARD PLANNING DOCUMENTS

The property will retain its present zoning - Residential Zone 1: Single Residential - and thus is compliant with the Overstrand Growth Management Strategy, 2010 and the Spatial Development Framework, 2020.

PLANNING PRINCIPLES

**Spatial Justice**

The practice is in line with the current land use tendencies found alongside Main Road, Hermanus. The proposed departure will be beneficial to the community.

**Spatial sustainability**

The proposed application will have no impact on conservation worthy land.

**Efficiency**

The practise is easily accessible and conveniently located in an urban area in close proximity of the Hermanus CBD.

**Spatial Resilience**

Not Applicable.

**Good Administration**

The application complies with the procedures of the Overstrand Municipality.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Local newspaper	<b>Yes</b>	22 July 2022	26 August 2022
Registered notices	<b>Yes</b>	21 July 2022	26 August 2022
Internal departments	<b>Yes</b>	21 July 2022	26 August 2022
Ward councillor	<b>Yes</b>	21 July 2022	26 August 2022
Total comments	<b>None</b>		

Total letters of support	<b>None</b>
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?	<b>Yes</b>
Was the application processed correctly (if no, elaborate below):	<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	<b>Yes</b>

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

Name	Date received	Summary of comments
Building Control	21/07/2022	No objection in principle. There are no record building plans. An as-built plan application is required to comply with all applicable law.
Fire Department	26/07/2022	No objection subject to compliance with provisions of SANS 10400-A:2016, SANS 10400-T:2020 and the By-Law relating to fire safety.
Waste Management	22/07/2022	No objection. Applicant to confirm that all medical waste generated by the practice is removed by an authorized healthcare risk waste company and disposed of at an approved medical waste disposal facility.
Services Report	09/11/2022	See Annexure D.
Western Cape Government: Transport & Public Works	24/10/2022	See Annexure E.

#### 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

N/A

#### 8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

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

N/A

#### 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.

The objectives relating to:

**Spatial Justice**

The proposal will not in any way contribute to the perpetuation of the past apartheid spatial development imbalances as the proposal will legally accommodate an existing professional dentist practice on the application area.

**Spatial Sustainability**

The proposal will allow for an existing dental practice within the existing approved residential dwelling within the urban edge and will therefore have no impact on agricultural land, environmentally sensitive areas, and biodiversity rich areas.

**Efficiency**

The proposal represents the intensification of the application area which is ideally located in terms of visibility and accessibility in a mixed-use area located on the Main Road between the CBD and the industrial/commercial/business node. The dental practice provides much needed professional dental services to the community as well as to tourists without any negative impact foreseen on the surrounding area.

**Spatial Resilience**

The proposed development will not lead to any economical and/or environmental shocks as the application allows for an existing dental practice within a mixed-use area.

**Good Administration**

Good procedure was followed and with a good public participation process.

**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**

Same as Point 10.2 above.

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

N/A

**10.6 Impact on Municipal Engineering Services**

Existing services will be used.

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

N/A

**10.8 Existing and proposed zoning comparisons and considerations.**

The application is in line with the Overstrand Spatial documents.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

N/A

**12. THE DESIRABILITY OF THE PROPOSAL**

The property is situated in a residential neighbourhood of Northcliff where the surrounding area is mixed use in nature. As mentioned previously, the property is 1041m<sup>2</sup> and consists of a residential dwelling which is currently used as a dental practice.

The proposed dental practice has previously been granted approval, dated 1997, from the Overstrand Municipality to conduct a dental practice on the property. This approval has lapsed, and a notice of non-compliance has been submitted by the Overstrand Municipality for the unauthorised use.

**TEMPORARY DEPARTURE:**

The zoning applicable (Residential Zone I: Single Residential) does not make provision for the property to be utilised as a dental practice and therefore triggers the need for a temporary departure in terms of Section 16.(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The property is located along Main Road (R43) and is relatively in close proximity to the CBD. The surrounding area is mixed-use in nature which comprises of business, community and residential zonings. The uses in the area are also relatively mixed-use in nature due to the surrounding area comprising of businesses, places of worship as well as various forms of residential uses. The use of the property as a dental practice is therefore not out of character and is consistent with the surrounding land uses in the area. The merit in this case is that the property has an approved building plan dated 1997.

The proposed application site area is subject to the Liveable Areas Objective 4 (LO4) in terms of the Overstrand Municipality Spatial Development Framework, 2020 which states to ensure that mixed-use densification of land uses is achieved when managing the urban growth. The proposed utilisation of the site as a dental practice and the additions made to the site ensures that the property is optimally utilised as well as intensified. The proposal is therefore consistent with the Overstrand Municipality Spatial Development Framework, 2020. However it is not foreseen that business will be allowed permanently until such time an alternative distribution road is provided.

Access to the site is directly gained off Main Road and no off-street parking is permitted. See Annexure D – Services Report.

From a town planning perspective, the application for the temporary utilisation of the site (zoned Single Residential I) as a dental practice is consistent with the mixed-use nature of the surrounding area and consistent with the forward planning documents of Overstrand Municipality. The latter has bearing on the possibility of the By-Pass Road in process that will have an impact on the temporary nature of the application, thus the departure is limited to a ten (10) year period, taking due cognisance of the aforementioned. The rights applied for is limited to the existing footprint with o possible future extension of the building or additional dentists to the practice.

The parking layout indicates sufficient parking and manoeuvrability to ensure that vehicles do not reverse into the Main Road. However, at present the parking has not been indicated as per the parking layout plan and needs to comply with the parking layout as submitted with the application.

#### **DETERMINATION OF AN ADMINISTRATIVE PENALTY:**

In terms of the By-Law the applicant must provide the following in terms of Section 90.(3) of the By-Law, it is evident that the applicant did provide the information and herewith is the Overstrand Municipality town planner's input on the information:

##### ***(a) nature, duration, gravity and extent of the contravention***

The existing dwelling unit is used for a dental practice for which the previous temporary departure has expired. There are internal changes which have no approved building plans.

The owner was served with a notice from Overstrand Municipality regarding the illegal activity and unauthorised structures, first in 2016 and subsequently in April 2021 and the final notice in May 2021. The owner therefore submitted this application to legalise the current dental practice and unauthorised structures.

##### ***(b) the conduct of the person (allegedly) involved in the contravention***

The owner of the property is willing to rectify the existing contravention and to follow the correct statutory procedures. Updated building plans needs to be submitted to reflect the changes made to the internal arrangement of the practise.

##### ***(c) a report by a quantity surveyor in matters of unauthorised building/construction***

The changes that were made to the property are mostly internal for the utilisation of a dental practise. The changes made to the existing dental practice are considered as minor in nature which does conform to the zoning parameters of the Overstrand Municipality Land Use Scheme, 2020.

**(d) whether the unlawful conduct was stopped**

The dental practice is still operating as seizing the business would be detrimental to the business loss of income and employment. The owners have therefore submitted this application to legalise the unauthorised use of the property.

**(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law**

According to the applicant's knowledge, the applicant/owner has not previously contravened this By-Law or a previous planning law. However, it is evident that the owner did contravene the Overstrand Municipality By-Law on Municipal Planning, 2015.

**CONSIDERING THE ABOVE-MENTIONED, THE FOLLOWING IS RECOMMENDED:**

**The determination of the Administrative Penalty for the unauthorised land use for the period of first notification, calculated from 2016 to 2022, is applicable for the following reasons:**

- The existing residential dwelling has been utilised for the purposes of operating a dental practice for approximately 25 years by the current owner with an approval granted by the Municipality for 5 years.
- The Overstrand Municipality has previously granted approval for the utilisation of the property as a dental practice (which has lapsed).
- The owner, Dr Fourie, was informed of the transgression in 2016 and again in 2021 and had been informed of the lapsing of the departure approval dated 1997.
- It is thus not correct to state that Dr Fourie assumed that the rights have vested i.e., approval for a dental practice.

**The determination of an Administrative Penalty for the illegal building work is not applicable for the following reason:**

- Most of the changes that were constructed were internal changes and should therefore be considered as minor changes that would not negatively impact the surrounding property owners and is unobtrusive.

**The applicable administrative penalty for the land use contravention is in accordance with the calculated price per m<sup>2</sup> of the land value (in terms of the current municipal valuation) and is as follows as prescribed in terms of Section 90.(5)(b) of the By-Law:**

- Price per m<sup>2</sup> = land value (R1 476,300) ÷ property size (m<sup>2</sup>) = R1,779-36
- Contravention = price per m<sup>2</sup> (R1779,36) x property size utilised (921m<sup>2</sup>) = R1 638 790,56
- *NOTE: Property size of 1041m<sup>2</sup> – 119,942m<sup>2</sup> (second dwelling) = 921m<sup>2</sup>*

It is recommended that an administrative penalty of 6% (1% per year) of the land value in contravention be payable, which amounts to R98 327,43 (R1 638 790,56 x 6%).

The administrative penalty was determined at 1% per year from the first notice (2016) up to the final notice (2021), which has led to the discussion and submission of the application. The reason for not determining the penalty at 10% is due to the fact that the property has been used for a medical related facility since 1997 and the land use is located in an approved dwelling house.

The administrative penalty determined is R98 327,43 excluding VAT.

In view of the above, the existing dental practice is acceptable from a town planning perspective as it will not have an impact on the privacy or vested rights of any surrounding property owners and will also not have any mentionable visual impacts.

The application is therefore considered to be desirable and is supported.

### 13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(c) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 4419, Hermanus for a temporary departure to allow for the continuous operation of the existing dental practice on the property, **be approved**, in terms of Section 61 of the By-Law, subject to the following conditions:
  - (a) that this approval is only for the development as indicated on plan number her4419q.drw dated 05/2022, as submitted with the application;
  - (b) permission to operate a dental practise is granted to a particular person/entity, and the approval is not transferrable;
  - (c) that the approval is valid for a period of ten (10) years from date of approval whereafter it will lapse;
  - (d) that the single residential parameters be retained on the property and that no further development as allowed in the Land Use Scheme be applicable;
  - (e) that building plans be submitted to the Building Department reflecting the approval for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage;
  - (f) that the development must comply with the provisions of SANS – A:2016, 10400-T:2020 and the By-Law relating to community safety and building plans must be submitted with a separate detailed fire protection plan;
  - (g) that the Overstrand Municipality retains the right to enforce any relevant legislation, as well as law and order on the premises, on the landowner/s;
  - (h) that commercial rates and service tariffs as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;

- (i) that all medical waste generated by the practice need to be collected and disposed of by a registered medical waste service provider;
  - (j) that no off-street parking be allowed;
  - (k) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (l) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
  - (m) that all the conditions in the Services Report (attached as Annexure D), be complied with, and
  - (n) that all conditions imposed by Western Cape Government: Transport & Public Works (attached as Annexure E), be complied with.
2. that the determination of an administrative penalty in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 4419, Hermanus for the above unauthorised land use (dental practice) was considered and that an administrative penalty of R98 327,43 excluding VAT (being 6% of the built cost as per the price per m<sup>2</sup> of the land value + VAT), **be applicable** in terms of Section 90.(4) of the By-Law which penalty must be paid within thirty (30) days from the final date of the decision of the application.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decisions.

#### 14. REASONS FOR RECOMMENDATION

- ❖ The use of the property as a dental practice has been in existence for years.
- ❖ The application has followed due procedure.
- ❖ None of the internal departments have objected to the application.
- ❖ It is in line with the aims of the Overstrand SDF.
- ❖ No objections were received from neighbours.
- ❖ The proposed application will not negatively impact the surrounding area as it has a well-designed street frontage and fits in with the character of the surrounding area.
- ❖ The temporary departure is restricted to the present owner and is not transferable.
- ❖ The uncertainty relating to the By-Pass Road needs to be taken into consideration in terms of land uses generating unforeseen consequences of traffic flow.
- ❖ The administrative penalty was determined at 1% per year from the first notice (2016) up to the final notice (2021), which has led to the discussion and submission of the application.
- ❖ The reason for not determining the penalty at 10% is due to the fact that the property has been used for a medical related facility since 1997 and the land use is located in an approved dwelling house.

**15. ANNEXURES**

- Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Site Development Plan  
Annexure D: Services Report  
Annexure E: Comment: Western Cape Government: Transport & Public Works

**SIGNATURES****REGISTERED PLANNER**

Name: **H VAN DER STOEP**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Scale: NTS  
 Drawing Nr: her4419L.drw  
 Date: 05/2022

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERF 4419  
 HERMANUS**

All distances approximate  
 and subject to survey.  
 COPY RIGHT RESERVED

Stads- en Streeksbeplanners  
 Town & Regional Planners





Annexure B  
1114

Motivation report

TP n/thead  
(H. d. l. e.)

**PROPOSED DEPARTURE AND THE  
DETERMINATION OF AN ADMINISTRATIVE  
PENALTY**

**ERF 4419 HERMANUS**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

FILE NO.	EF 4419 ✓
	Nouveau Hermanus
SCAN NO.	
	HNC 4419
COLLABORATOR NO.	
	1711213

**MOTIVATION REPORT**

**1. BACKGROUND**

Dr. Herman Fourie, the owner of erf 4419 Hermanus, has instructed the company Plan Active to apply for a departure and the determination of an administrative penalty in order to re-instate the rights to utilise a portion of the property as a dental practise that was previously approved on Erf 4419 Hermanus. The former application that was approved to utilise the existing dwelling as a dental practise consisted of a rezoning and the removal of restrictive Title Deed conditions.

On 22 April 1997 Council decided to approve the removal of restrictive Title Deed conditions. The application for the rezoning was however refused. The letter of approval dated 14 May 1997 subsequently made it a condition that the dental practise be approved as a departure subject to conditions. Please refer to a copy of the letter of approval that we have attached as **Annexure A**.

A building plan was submitted for the extension of the existing outbuilding to accommodate a second dwelling unit also indicating the use of the dwelling located on the southern portion of the erf facing Main Road as a dental practise. The plan was

### Motivation report

approved with a condition that conditions C.(a) and (b) be removed from the Title Deed before the commencement of any building work. Please refer to a copy of the letter received from the Building Control Office dated 20 November 1997 that we have attached as **Annexure B**, and an abstract from the building plan.

The Title Deed restrictions numbered C.1.(a), (b), (c) and (d) were removed in terms of the Removal of Restrictions Act, 1967, Act 84 of 1967. Please refer to a copy of the Government Notice of 21 November 1997 that we have attached as **Annexure C**, and the endorsement affixed to the enclosed Title Deed of the subject property.

Erf 4419 Hermanus is 1 041m<sup>2</sup> in extent and it is held by Title Deed number T8743/97. The subject property has been used as a dental practise since the approval was obtained in 1997. The owner was under the impression that because he had gone through an application process and that the restrictions have been removed from the Title Deed that his rights vested to continue to utilise the former dwelling as a dental practise.

After receiving correspondence from the Overstrand Municipality informing Dr Fourie that his land use rights to operate a dental practise from the subject erf is not in order he appointed Plan Active to investigate the matter. We brought it to his attention that the former approval had lapsed and subsequently Plan Active has been appointed to re-apply for a departure to continue to utilise the former dwelling as a dental practise.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(c) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for a departure to continue to utilise the former dwelling as a dental practise located on Erf 4419 Hermanus on a temporary basis for which no provision is made in the land use scheme.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

### 3. GENERAL APPLICATION INFORMATION

#### 3.1 PROPERTY DESCRIPTION

The property is situated at 9 Main Road, between Mountain Drive and Flora Street, Hermanus. Please refer to the enclosed locality map.

#### 3.2 ZONING

Erf 4419 Hermanus is zoned Residential Zone 1 and it is partially utilized as a dental practise. There is also second dwelling unit situated on the property that is being used as such. Surrounding properties are zoned for single residential purposes and general residential purposes (Lodge). The property located opposite Erf 4419 Hermanus to the south is zoned Industrial. Please refer to the abstract from the Zoning Map below:



A number of consent uses and departures have been approved alongside Main Road. The consent uses granted are mostly for professional uses such as medical consulting rooms consisting of doctors, dentists and physiotherapists, and a day care centre.

### 3.3 LAND USE

Erf 4419 Hermanus is used as a dental practise and for residential purposes.

Land uses that surround erf 4419 Hermanus are a lodge, single residential uses and an industrial erf located opposite Main Road to the south. Other land uses that also include medical consulting rooms are also located alongside Main Road. It is therefore evident that erf 4419 Hermanus is surrounded by mixed land uses.

### 3.4 PROPOSED DEVELOPMENT

Application is made in terms of:

- Chapter 4, Section 16(2)(c) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for a departure to continue to utilise the former dwelling as a dental practise located on Erf 4419 Hermanus on a temporary basis for which no provision is made in the land use scheme.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

#### 3.4.1 PROPOSED DEPARTURE

The existing main dwelling established on Erf 4419 Hermanus has been used as a dental practise since 1997 after an approval was obtained. The application that was submitted at the time was for a rezoning and the removal of restrictive Title Deed conditions. The removal of the restrictive Title Deed conditions was approved, and the rezoning was refused. As a condition of the approval the change of land use to a dental practise was approved as a departure for a periode of 5 years. In order to reinstate the land use to utilise the former dwelling, used as a dental practise since 1997, we have also investigated the opportunity to apply for a rezoning of the subject property and after consultation with the Overstrand Municipality we have come to the conclusion that the risk would be too high.

Subsequently we have been advised to apply for a departure in terms of Chapter 4, Section 16(2)(c) of the Overstrand Municipality's Amended By-law on Municipal Land

### Motivation report

Use Planning, 2020, for a departure to utilise the former dwelling on Erf 4419 Hermanus on a temporary basis as a dental practise .

The dental practise established on Erf 4419 Hermanus, is a well-managed established practise. Building plans reflecting the internal layout of the dental practise could not be found on record at the Overstrand Municipality Building Control Office. Subsequently we have surveyed the internal layout of the practise of which the survey information was used to draw the enclosed Layout Plan. With reference to the layout plan the uses of the dental practise can be listed as follow:

- Entrance ( $\pm 2\text{m}^2$ )
- Reception ( $\pm 6.6\text{m}^2$ )
- Waiting area ( $\pm 23.7\text{m}^2$ )
- Consultation Room 1 ( $\pm 10.2\text{m}^2$ )
- Consultation Room 2 ( $\pm 35.2\text{m}^2$ )
- Consultation Room 3 ( $\pm 13.0\text{m}^2$ )
- Toilet Facilities ( $\pm 2.2\text{m}^2$ )
- Laboratory ( $\pm 7.0\text{m}^2$ )
- Sterilisation Room ( $4.5\text{m}^2$ )

The 3 consultation rooms are occupied by 2 dentists and 1 Oral Hygienist. The operating hours of the dental practise are Mondays to Fridays, 8:00am to 17:30pm daily.

Parking bays are established on the property north and south of the existing practise. We have made minor changes to the current physical parking layout on the layout plan in order to comply with the engineering specifications and measurements that are applicable. 3 Parking bays are proposed in front of the dental practise and 8 parking bays behind the practise numbered 4 to 11 on the layout plan. Parking bays 7-9 are shaded parking bays and parking bay No.11 is located within a single garage. Ample parking with sufficient manoeuvre space can be provided onsite. The detail of the parking bays will be dealt with in Section 3.7.2 below.

The second dwelling unit located north of the dental practise also established on Erf 4419 Hermanus is used for residential purposes and includes a single garage as

#### Motivation report

indicated on the plan. The second dwelling will continue to be used for residential purposes.

The current zoning of Erf 4419 Hermanus is Residential Zone 1. In terms of this zoning a dental practise that occupies the total floor space of a former dwelling cannot be accommodated as a consent use, and in this case the only option is to apply for a departure. It is therefore proposed that an application is submitted for a departure in order to utilise the full extent of a former dwelling as a dental practise with 3 consultation rooms and associated uses as listed above on a temporary basis. Section 20 of the By-Law on Municipal Land Use Planning, 2020 makes provision that the municipality may approve a departure to utilise land on a temporary basis not exceeding 10 years.

The dental practise has been operational since 1997 and is a great asset to the community of Hermanus and provides a great dental service. The dental practise is well managed and does not cause a nuisance.

#### **3.4.2 PROPOSED DETERMINATION OF AN ADMINISTRATIVE PENALTY**

As mentioned earlier in this report, Erf 4419 has been used as a dental practise since an approval was obtained in 1997. The owner was under the impression that because he has gone through an application process and that the restrictions have been removed from the Title Deed that his rights vested and continued to utilise the former dwelling as a dental practise.

After receiving correspondence from the Overstrand Municipality informing Dr Fourie that his land use rights to operate a dental practise from the subject erf is not in order he appointed us to investigate the matter. We have explained the conditions of the approval to him and pointed out that it had lapsed because the land use change was approved as a departure. Subsequently Plan Active has been appointed to re-apply for a departure to continue to utilise the former dwelling located on the southern portion of the site as a dental practise.

The owner now intends to formalise the land use to provide his full co-operation to the Overstrand Municipality to ensure that the necessary approval is obtained.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 9, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

#### **3.4.2.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY**

##### **a) The Nature, duration, gravity, and extent of the contravention**

The dental practise was established within the total extent of the dwelling located on the southern portion of Erf 4419 Hermanus and has been operational since 1997 after obtaining an approval for a departure that has lapsed. The dental practise is well established and managed and makes provision for 3 consultation rooms, a reception, waiting area and associated uses listed under Section 3.4.1 above.

The dental practise currently generates an income for 2 dentists, 1 oral hygienist, admin personnel and dental assistances. The dental practise currently operates Mondays to Fridays from 8am to 17:30pm and is closed over weekends.

The existing dental practise is established within the full extent of the existing main dwelling on Erf 4419 Hermanus located on the southern portion of the subject erf. Only the second dwelling unit situated north of the dental practise is utilised for residential purposes. The uses of the former dwelling that is being used as a dental practise consists of the following;

- Entrance ( $\pm 2\text{m}^2$ )
- Reception ( $\pm 6.6\text{m}^2$ )

- Waiting area ( $\pm 23.7\text{m}^2$ )
- Consultation Room 1 ( $\pm 10.2\text{m}^2$ )
- Consultation Room 2 ( $\pm 35.2\text{m}^2$ )
- Consultation Room 3 ( $\pm 13.0\text{m}^2$ )
- Toilet Facilities ( $\pm 2.2\text{m}^2$ )
- Laboratory ( $\pm 7.0\text{m}^2$ )
- Sterilisation Room ( $4.5\text{m}^2$ )

Please refer to the enclosed site development plan.

The owner of the subject property intends to provide his full co-operation to the Overstrand Municipality to rectify the land use as he has previously done to ensure that an approval is obtained.

The nature of the use of the former dwelling as a dental practise is unobtrusive in nature, does not cause a nuisance and does not impact negatively on the surrounding properties. To our knowledge no complaints from surrounding property owners have been raised. The required number of parking bays can be accommodated onsite and no departures from the land use restrictions other than the use of the former dwelling as a dental practise are required.

**b) The conduct of the person involved in the contravention**

The owner applied for the removal of restrictive Title Deed conditions and a rezoning to utilise the full extent of the former dwelling as a dental practise. Subsequently the removal of the restrictive Title Deed conditions was approved. The rezoning was refused but the land use change to utilise the former dwelling as a dental practise was approved as a departure (1997). The owner was under the impression that the change of land use vested as mentioned earlier in this report. He was made aware of the unlawful use by the Overstrand Municipality long after the departure approval had lapsed. The owner has appointed the company Plan Active Town and Regional Planners to submit an application to rectify the unauthorised land use that is in contravention of the zoning scheme regulations.

c) **Whether the unlawful conduct was stopped**

The owner is in the process of rectifying the matter by applying for a departure to continue to utilise the full extent of the former dwelling as a dental practise. The dental practise is still operating as the sudden closure will have dire repercussions. The dental practise is fitted with expensive dental equipment that cannot be simply dismantled and re-assembled at a different location. Furthermore, the dental practise is established, it has been operating from Erf 4419 Hermanus for the last 25 years and is easily accessible. Cognisance must also be taken of the fact that the owner was under the impression that his land use rights that he applied for in 1997 vested.

d) **A report by a quantity surveyor in matters of unauthorised building/construction**

In terms of **Chapter 9, Section 90(5)(b)**, “for land use in contravention of this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the Municipality.”

We request that **no penalty fee** be imposed because the owner did put in the effort to get the land use rights in place in order to utilise the former dwelling as a dental practise that unfortunately lapsed. The use of the former dwelling as a dental practise has not caused a nuisance in the past and also does not have a negative impact on the surrounding erven.

If the Overstrand Municipality finds it necessary that an administrative penalty fee be enforced for the unauthorised land use, the required documentation will be submitted in due course to calculate the applicable penalty fee.

e) **Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law**

The owner received a notice of non-compliance and appointed Plan Active Town and Regional Planners to investigate the best options available to rectify the matter.

#### Motivation report

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised land use has on the surrounding area. It should also be considered that according to our knowledge **no** complaints from surrounding property owners have been submitted with regards to the use of the former dwelling as a dental practise. It should also be considered that the owner applied for the removal of restrictive Title Deed conditions and a rezoning in 1997 prior to establishing the dental practise, even though the rezoning was refused but approved as a departure.

It should also be considered that the dental practise provides several job opportunities as mentioned earlier in this report. With the current limited economic opportunities, it would be very difficult for people to find new job opportunities. With the proposed application the owner intends to rectify the defaults on the subject property in order to obtain the necessary approval for the established dental practise. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

### **3.5 CHARACTER OF THE ENVIRONMENT**

The subject property is situated within a mixed use area consisting of a lodge, medical consulting rooms, single residential erven and underdeveloped industrial zoned land located south of the subject erf opposite Main Road. Erf 4419 Hermanus is located at 9 Main Road between Mountain Drive and Flora Avenue. Accessibility to the dental practise is therefore excellent. The dental practise has been in operation for the last 25 years and has been well managed to such a degree that no complaints to our knowledge have been received.

With reference to the above the impact on the character of the area will therefore remain unchanged. The proposed departure will not have a negative impact on the neighbouring properties or mix use character of the area.

### **3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)**

The zoning of the subject property and land use will remain unchanged. We are applying for a departure to continue to utilise the full extent of the former dwelling as a

dental practise that has been in existence for 25 years. The subject property is well located and easily accessible. The dental practise is well managed and does not cause a nuisance to the surrounding landowners and is a great asset to the community of Hermanus. Property values of surrounding erven will also not be negatively affected by the proposed application.

### **3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES**

#### **3.7.1 PROVISION OF SERVICES**

All services on the subject property already exist. Additional services are not required and therefore the proposal will not have a negative impact on existing services that are provided by the Overstrand Municipality.

#### **3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS**

The existing accesses to Erf 4419, Hermanus from Main Road will be retained. It is proposed that vehicles enter the site on the western side of the erf and exits the site on the eastern side. Please refer to the proposed layout plan.

From the entrance there are 3 angled parking bays situated that are 2.5m x 5m with an manoeuvre isle that is 4.40m in width, that complies with the standards for the measurements of parking bays and manoeuvre space. 8 parking bays are provided behind the dental practise, 4 are open parking bays, 3 shaded parking bays and 1 parking bay within the existing garage. With reference to the layout plan all parking bays comply with the standards applicable to the provision of parking bays and a total of 11 parking bays are provided.

In terms of the Chapter 17, Minimum Off-Street Parking Requirements 4 parking bays per 100m<sup>2</sup> GLA must be provided for the dental practise and 1 parking bay for the second dwelling unit. The GLA of the dental practise is ±100.2m<sup>2</sup> and therefore 5 parking bays are required for the practise. 1 Additional parking bay is required for the second dwelling unit. A total of 6 parking bays are required and 11 parking bays are being provided onsite.

Because the dental practise has been operational since 1997 there will be no additional impact on the traffic flow in the area and the impact will be minimal, as currently being experienced and it will remain unchanged.

### **3.8 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.8.1 HERITAGE VALUE**

Erf 4419 Hermanus is developed and 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 departure will not have a negative impact on the heritage value of the subject property or the Greater Hermanus area.

#### **3.8.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

### **3.9 FORWARD PLANNING AND LAND USE DOCUMENTS**

The *Overstrand Spatial Development Framework (2006)* earmarks the area where erf 4419 Hermanus is situated, as residential. The zoning of the subject property will remain unchanged (Residential Zone 1) and the application constitutes a departure to utilise the former dwelling as a dental practise.

The Overstrand Municipal Growth Management Strategy (OMGMS) indicates that erf 4419 Hermanus is located within Planning Unit 9. Densification is proposed for this area.

The Overstrand Municipality Spatial Development Framework 2020 earmarks the site as Urban Development. Retaining the zoning and applying for a departure, to reinstate the land use rights to utilise the former dwelling as a dental practise, are in line with the proposed forward planning of the area and is also in line with the current land use tendencies alongside Main Road, Hermanus.

### 3.10 **PLANNING PRINCIPLES**

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

**Spatial Justice:** The proposed departure to reinstate the land use rights to continue to utilise a former dwelling as a dental practise is in line with the current land use tendencies found alongside Main Road, Hermanus. The proposed departure will be beneficial to the community.

**Spatial sustainability:** The proposed application for a departure will have no impact on the conservation worthy areas and the land use will be in line with the current land use character of the area.

**Efficiency:** The dental practise is easily accessible and conveniently located in an urban area in close proximity of the Hermanus CBD.

**Spatial Resilience:** Spatial resilience is not applicable to this application.

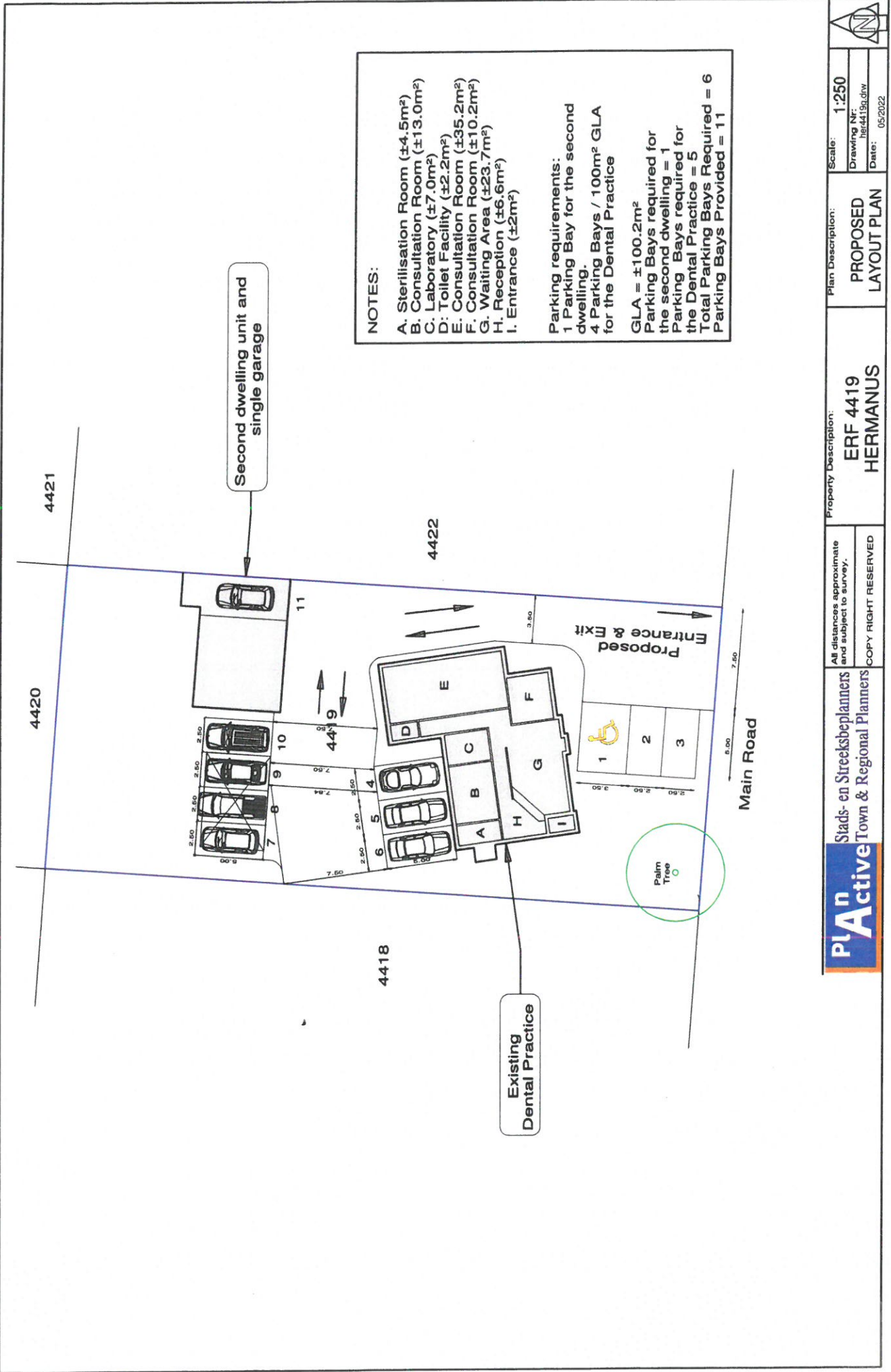
**Good Administration:** Our company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning.

#### 4. **RECOMMENDATION**

When this application is evaluated, it is important to take note of the following:

- The application is merely to reinstate a well-established dental practise that has a good reputation, is extremely well managed, does not cause a nuisance and that has been operational for 25 years;
- All services on the subject properties already exist;
- The proposed departure falls within the existing land use tendencies in the area;
- The proposal is compatible with the existing built character of the area;
- The impact on the traffic and services will not increase with this application;
- The proposed departure will not have a negative impact on the current character and land values of the surrounding erven.
- The property is large enough to make provision for the adequate number of parking bays.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the proposed departure for Erf 4419 Hermanus.



**NOTES:**

- A. Sterilisation Room (±4.5m<sup>2</sup>)
- B. Consultation Room (±13.0m<sup>2</sup>)
- C. Laboratory (±7.0m<sup>2</sup>)
- D: Toilet Facility (±2.2m<sup>2</sup>)
- E: Consultation Room (±35.2m<sup>2</sup>)
- F. Consultation Room (±10.2m<sup>2</sup>)
- G. Waiting Area (±23.7m<sup>2</sup>)
- H. Reception (±6.6m<sup>2</sup>)
- I. Entrance (±2m<sup>2</sup>)

**Parking requirements:**  
 1 Parking Bay for the second dwelling.  
 4 Parking Bays / 100m<sup>2</sup> GLA for the Dental Practice

**GLA = ±100.2m<sup>2</sup>**  
 Parking Bays required for the second dwelling = 1  
 Parking Bays required for the Dental Practice = 5  
**Total Parking Bays Required = 6**  
**Parking Bays Provided = 11**

	Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: <b>ERF 4419</b> <b>HERMANUS</b>	Plan Description: <b>PROPOSED</b> <b>LAYOUT PLAN</b>	Scale: <b>1:250</b> Drawing Nr: <b>hcd419a.dwg</b> Date: <b>05/2022</b>
	North Arrow				

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR TEMPORARY DEPARTURE & DETERMINATION OF AN  
ADMINISTRATIVE PENALTY: ERF 4419, NORTHCLIFF (4151/2022)**

Stormwater (SW) : In Order  
Electricity : In Order  
Water : In Order  
Sewer : In Order  
Roads and traffic : In Order

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. 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 owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that all medical waste generated will need to be collected by a registered healthcare risk waste company and disposed of at an approved facility as per the undertaking
5. that on-site parking facility be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
6. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
7. that any additional and / or extended vehicle entrances will be for the owner's account;
8. that stormwater be allowed to discharge through Erf 4419, Northcliff, unobstructed.

  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

  
**DATE**



Western Cape  
Government



Annexure E

Transport and Public Works

**Vanessa Stoffels**

Chief Directorate: Road Planning

Vanessa.Stoffels@westerncape.gov.za | Tel: 021 483 4669

Ref: TPW/CFS/RP/LUD/REZ/SUB-21/263 (Job 8193)

The Municipal Manager  
Overstrand Municipality  
PO Box 20  
**HERMANUS**  
7200

Attention: Ms H van der Stoep

Dear Madam

FILE NO. EF 4419
HNC
SCAN NO.
COLLABORATOR NO. 1767859

**ERF 4419, HERMANUS: PROPOSED TEMPORARY DEPARTURE**

1. Letter 4419 HNC to this Branch dated 21 July 2022.
2. The subject property is in Hermanus and takes access off Main Road 28.
3. The proposal is for the following:
  - 3.1. Departure to continue utilising the existing dwelling unit for dental practices.
4. This Branch offers no objection to the proposal in terms of the Land Use Planning Act 3 of 2014.

Yours Sincerely

**SW CARSTENS**

**For DEPUTY DIRECTOR-GENERAL: ROADS**

**DATE: 24 OCTOBER 2022**