

**4.4****ERF 120, 14 GEELBEK STREET, VAN DYKSBAAI (KLEINBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING AND DEPARTURE: MESSRS WRAP CONSULTANCY ON BEHALF OF KS MACLEAN****120 GKB (3364/2019)****SW van der Merwe****7 May 2020****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 25 September 2019 from Messrs WRAP Consultancy on behalf of KS Maclean applicable to Erf 120, Van Dyksbaai in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015 for the following:

- ❖ removal of restrictive title deed conditions C(e), C(f), C(g)(i), C(g)(ii), C.(h), C(i) and C(j) contained in Title Deed T113479/2003 in terms of Section 16(2)(f) of the By-Law;
- ❖ rezoning from Residential Zone 1 (SR1) to Business Zone 3 (B3) in order to utilize the property for commercial purposes in terms of Section 16(2)(a) of the By-Law, and
- ❖ departure to permit the encroachment of the 3m lateral building lines to 1,5m in order to accommodate the existing building in terms of Section 16(2)(b) of the By-Law.

A Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C. Title Deed T113479/2003 is attached as Annexure D.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The town of van Dyksbaai (Kleinbaai) is a holiday town and over recent years became well known for shark and whale watching, giving rise to a lucrative tourism business industry. The aforementioned occurred in an un-coordinated manner attracting large numbers of tourists, locally as well as internationally.

In order coordinate various unauthorised tourism businesses, the area around the slipway was designated as a tourism node / economic opportunity in terms of the Overstrand Growth Management Strategy, 2010. Council, as a result of the aforesaid, adopted the Kleinbaai Nodal Development Framework on 30 March 2016. The framework provides for mixed use tourism related development into the designated node, planning for the specific needs of the sector, balanced against the need to protect the character and amenity of the area.

The subject property is situated within the tourism node on the corner of Geelbek- and Mossel Streets and is zoned for residential purposes. The property measures 587m<sup>2</sup> in extent and is developed with a dwelling and associated outbuildings,

currently being utilised as an office for a shark cage diving tour operator, trading as Sharklady. Parking currently occurs informally in front of the existing garage with access from Mossel Street (cul-de-sac) and on the grass verge adjacent Geelbek Street. Parking does not comply with the relevant engineering standards with reference to location, access, egress and manoeuvring.

The proposed rezoning from Residential Zone 1 to Business Sone 3 is an attempt to legalise the unauthorised land use in accordance with the Scheme Regulations. Daily operations comprise the arrival and registration of guests where after they receive refreshments and a safety briefing, prior to being escorted to the boat for their excursion where they are exposed to the sea life and shark cage diving. Upon return, guests are brought back to the property where they are debriefed and receive a meal / snacks. The boat currently accommodates up to eighteen (18) passengers and a crew of five (5) people. Excursions take place on a daily basis, starting at 07:00. The last trip departs at 15:30. During peak season up to four (4) excursions could be accommodated.

Application is made for removal of restrictive title conditions contained in Title Deed T113479/2003 applicable to Erf 120, van Dyksbaai which conditions reads as follows:

- C. *Subject further to the following conditions referred to in Deed of Transfer No. T15332/1981.....*
- (e) *Geen gebou op hierdie erf mag gebruik word of van gebruik verander word vir 'n ander doel as wat volgens hierdie voorwaardes toegelaat word nie;*
  - (f) *Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Administrateur van tyd tot tyd, na oorleg met die Dorpekommissie en die plaaslike owerheid, goedkeur, met dien verstande dat, indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander geboue wat deur die skema toegelaat word, kan toelaat onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word.*
  - (g) *Geen gebou of struktuur....., met dien verstande dat met die toestemming van die plaaslike owerheid:*
    - (i) *'n buitegebou wat uitsluitende vir die stalling van motorvoertuie gebruik word en hoogstens 3 meter hoog is, gemeet van die vloer van die buitegebou tot by die muurplaat daarvan, binne sodanige sy- en agterruimtes opgerig word, en enige ander buitegebou van dieselfde hoogte binne die agterruimte en syruimte opgerig mag word vir 'n afstand van 12 meter gemeet van die agtergrens van die erf, met dien verstande dat in geval van 'n hoekerf die afstand van 12 meter gemeet moet word van die punt wat die verste is van die strate wat die erf begrens.*
    - (ii) *'n buitegebou ingevolge subparagraaf (i) slegs nader aan 'n sygrens of agtergrens van 'n perseel as die afstand hierbo voorgeskryf opgerig mag word indien geen vensters of deure of enige muur, wat op sodanige grens front, aangebring word nie.*

- (h) *By die konsolidasie van hierdie erf of enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes op die gekonsolideerde eiendom van toepassing asof dit een erf is.*
- (i) *Ingeval hierdie erf onderverdeel word, is elke onderverdeelde gedeelte uitgesonderd 'n gedeelte afgesny vir pad- of derglike doeleindes, onderworpe aan die voorwaardes hierin uiteengesit asof dit die oorspronklike erf is.*
- (j) *Geen gebou vir bewoning deur mense mag op hierdie erf opgerig word nie, tensy voorsiening bogronds geaak word vir die opgaar van minstens 700 liters reënwater.*

Application is also made for departure in order to accommodate the encroachment of the lateral building lines of the existing building from 3m to 1,5m.

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

The applicant's motivation for the application is summarized as follows (the Motivation Report is attached as Annexure B):

- ❖ The proposal is in harmony with the prevailing urban form/fabric.
- ❖ Title deed conditions to be removed are not in harmony with the prevailing development trends in van Dyksbaai.
- ❖ Removal of the restrictive title deed conditions will derive social benefit, whilst there is no social benefit for it remaining in place.
- ❖ The development complies with the applicable development parameters of the proposed zoning.
- ❖ Municipal services are available.
- ❖ The development has a positive economic impact (i.e. promotes tourism and employment opportunities).
- ❖ The development has a positive social impact in terms of knowledge sharing about marine life.
- ❖ Additional surveillance in terms of guests contributes to increased safety.
- ❖ There will be no heritage impact.
- ❖ The development impact could be mitigated with the imposition of conditions of approval.
- ❖ The development is consistent with the PSDF, SDF, OMGMS, van Dyksbaai (Kleinbaai) Nodal Development Framework.
- ❖ The development is consistent with the applicable planning principles in terms of LUPA and SPLUMA.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	29 November 2019	31 January 2020
Gazette	Yes	29 November 2019	31 January 2020
Notices	Yes	27 November 2019	31 January 2020

Ward councillor	Yes	26 November 2019	31 January 2020
Total comments	<b>ONE (1)</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?			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			<b>Yes</b>

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

Name	Date received	Summary of comments
Fire Department	28/11/2019	Annexure G.
Telkom	6/12/2019	Annexure H.
Waste Management	3/01/2020	No objection.
Engineering Services	13/02/2020	Annexure I

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection was received from the Kleinbaai Ratepayers and Residents Association and is attached as Annexure D. The applicant's comment to the objection is attached as Annexure E.

An invalid objection was received from F. van Dyk. The objection was submitted on the heading of the Kleinbaai Ratepayers and Residents Association and unsigned. F van Dyk is also not a board member of the Kleinbaai Ratepayers and Residents Association. The letter of objection does not comply with the requirements pertaining to the submission of objections and cannot be taken into consideration.

The main grounds of objection are the following:

### **1. The association does not support rezoning within residential areas.**

#### Applicant's comment

The subject property has been indicated as a regional economic opportunity in terms of the Overstrand Municipal Growth Management Strategy (OMGMS) thereby promoting the transition of the character of the area from residential to commercial.

Town Planner's comment

The subject property is not situated in a predominant single residential area but an area characterised by mixed land uses and has been earmarked for commercial purposes in with the applicable forward planning documents, i.e. the SDF, OMGMS and Kleinbaai Nodal Development Framework.

**2. *Obstruction of the road reserve (gardening, placement of bollards and signage) obstructing pedestrian traffic, which is not enforced by law enforcement.***

Applicant's comment

The applicant states that Geelbek Street is a 6m tar road situated within a 13m road reserve. As such, the road reserve is sufficient to accommodate pedestrian traffic. The applicant is not guilty of obstructing the road reserve, whilst on-site parking provision will be made available in accordance with the provisions of the Scheme Regulations. The applicant states the threshold for the provision of a loading bay is 500m<sup>2</sup>, thus the applicant is not required to make provision for a loading bay.

Town Planner's comment:

The applicant's comment is noted. No obstruction of the road reserve was observed during the town planner's site inspection, nor has complaints been received.

The applicant will be required to make on-site parking available in accordance with the provisions of the Scheme Regulations, including the provision of a loading bay, opposed to the comment of the applicant in this regard. The Scheme Regulations requires one (1) loading bay per 500m<sup>2</sup> GLA and six (6) parking bays per 100m<sup>2</sup> GLA.

Future encroachments / obstructions of the road reserve will be dealt with in the appropriate manner, should the applicant be guilty thereof.

**3. *Parking remains problematic and should be addressed. The opinion is held that parking provision is not sufficient having had regard to servicing and deliveries, buses obstructing the road / sidewalks, overlapping of clients resulting in parking congestion.***

Applicant's comment

The applicant agrees that parking provision should be made available in accordance with the provisions of the Scheme Regulations that would not disrupt traffic flow in the area. The applicant states that mini-buses will be accommodated in the parking bays on-site.

Town Planner's comment

The applicant will be required to make on-site parking provision in accordance with the provisions of the Scheme Regulations, including the provision of a loading bay. Should the required parking ratio not be met on-site the applicant will be required to make a financial contribution in lieu of the required parking provision that is required for the development of a centrally located communal parking area.

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

Refer to Paragraph 7. above.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

Refer to Paragraph 7. above.

**10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)****10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The proposed application is considered consistent in the following manner from a town planning perspective:

Spatial Justice

The development on the property provides employment opportunities, particularly to the historically marginalised, thus accessed to opportunities. The development therefore contributes to redress past spatial development imbalances.

Spatial sustainability

Approval of the proposed rezoning will permit a complimentary land use that is comparable with the mixed land use that prevails in Van Dyskbaai.

Efficiency

The proposed rezoning will permit optimal use of the property within the prescripts of the Zoning Scheme and existing municipal service capacities.

Spatial resilience

Approval and implementation of the proposal is aligned with all the relevant spatial planning policies and is therefore spatially resilient.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws, including public participation.

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

Same as 10.1 above.

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

The proposed rezoning is consistent with the SDF, OMGMS and Kleinbaai Nodal Development Framework.

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

N/A

**10.5 Impact on municipal engineering services**

The property is already connected to municipal services. It is not expected that the proposal will require upgrading of these services.

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

The proposed rezoning does not trigger the provisions of NEMA or the National Heritage Resources Act.

**10.7 Existing and proposed zoning comparisons and considerations**

The development parameters applicable to Business Zone 3: Local Business will be applicable, should the application be supported.

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

The shark cage diving tour operating company is currently conducted from the property. Application is therefore made for removal of restrictive title conditions C(e), C(f), C(g)(i), C(g)(ii), C(h), C(i) and C(j) contained in the Title Deed, T113479/2003 in order to accommodate the existing land use.

The title deed conditions inserted at the time was in response to the prevailing development trends and pressures prevalent at the time. Today there are new trends and developments not anticipated at the time. The removal of restrictive title deed conditions will permit the use and development of the property in accordance with the provisions of the Scheme Regulations.

In view of the above being stated, the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

**The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement?**

The applicant states that the restrictive condition does not have a beneficial financial value for the property owner or anyone else.

The statement of the applicant is not agreed with. The removal of restrictive conditions will be financially beneficial for the owner as it will enable the owner to act upon the rights provided to him through the Zoning Scheme, thus adding value to his property. It is further clear that the restrictive conditions were registered to protect the residential character of Van Dyksbaai. Modern spatial planning policies encourage mixed land uses that complement each other. The proposed rezoning will facilitate complimentary land uses in accordance with the spatial planning vision for the area that will not detract from the predominant residential character of the area.

**The personal benefits which accrue to the holder of rights in terms of the restrictive condition:**

The Municipality gains no benefits in keeping or removing the restrictive conditions.

**The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:**

The removal of restrictive title conditions will confer the most appropriate development rights to the property and will increase the viability of the commercial enterprise.

**The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:**

The social benefit will be that employment will be retained and that commercial rates and services charges be applicable, thereby ensuring improving service delivery. Furthermore, the business attracts tourists from across the world, thereby improving intercultural interaction and enhanced social fabric which contributes to social cohesion in Van Dyksbaai.

**Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights?**

Only the rights as specified above will be removed.

## **12. THE DESIRABILITY OF THE PROPOSAL**

The subject property is situated within an identified tourism node as per the OMGMS and Kleinbaai Nodal Development Framework. In addition, the SDF promotes a balanced land use mix, economic and tourism development as well as the protection of the natural and built environment. The proposed rezoning from Residential Zone 1 to Business Zone 3: Local Business accords with the proposals contained in the aforementioned documents.

The subject property, contrary to the opinion of the objectors, is not situated within a purely single residential area, but in an area transitioning to commercial use that is evident in the mixed character that in addition to single residential land use also comprises guest house(s), a shop, bottle store, filling station, restaurant and various tourism businesses, situated along Geelbek and Swart Street. The proposed rezoning to Business Zone 3 will not detract from the character and appearance of the surrounding area. Given the location of the property on an activity corridor in an area with a mixed character, the proposal is considered desirable and not to unacceptably detract from the residential amenity of the adjoining properties.

The applicant stated that all services exist and that no additional services will be required. No objection is raised from an engineering services point of view, subject to conditions, including the payment of a bulk development contribution.

The applicant appointed Messrs DECA Consulting Engineers to conduct a Traffic Impact Statement (TIS). The TIS concluded that the development triggers the

provision of seven (7) on-site parking bays, has a low impact and that parking can be provided on-site. The side walk on the northern side of Geelbek Street is of sufficient width to accommodate pedestrian traffic. The development is supported from a transport perspective, subject to sufficient on-site parking.

The SDP provides for seven (7) on-site parking bays in two (2) parking areas. Three (3) parking bays will be accessed from Mossel Street and the remaining four (4) parking bays will be accessed from Geelbek Street. The applicant will be required to implement the parking layout, which will be an improvement on the current informal and uncoordinated parking in accordance with the approved Site Development Plan. The applicant did not provide a loading bay. As such, the applicant will be required to submit a revised parking layout, providing for a loading bay. In case that the parking layout demonstrates a shortfall, the applicant will be required to make a financial contribution in lieu of parking provision in accordance with the requirements of the Scheme Regulations to be paid into a parking fund. Any such contributions to be levied shall be ring-fenced for the planning and development of the communal parking area.

The shark cage industry in Van Dyksbaai promotes tourism and economic development, mixed land uses, thus also providing employment opportunities. Authorization of the current illegal land use will therefore ensure compliance with the planning principles in terms of LUPA and SPLUMA and is considered desirable from a planning point of view.

The proposed removal of restrictive title conditions will allow legalisation of the current unauthorised land use activities in coordinate manner in line with current land use tendencies and the forward planning vision for the area.

The proposed rezoning to Business Zone 3 introduce a more restrictive lateral building line of 3m, hence the application for departure to 1,5m to retain the existing building. The respective elevations do not contain windows and will not impact on the vested rights of the adjoining property owners.

Having had regard to the above, the application for removal of restrictive title conditions, rezoning and departure is considered desirable.

### 13. RECOMMENDATION

1. that in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) the application for the removal of restrictive title conditions C(e), C(f), C(g)(i), C(g)(ii), C.(h), C(i) and C(j) as contained in Title Deed T113479/2003 applicable to Erf 120, Van Dyksbaai, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(a) of the By-Law for the rezoning of Erf 120, Van Dyksbaai from Residential Zone I (SR1) to Business Zone 3 (B3) in order to utilize the property for commercial purposes, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that in terms of Section 16(2)(b) of the By-Law, the application for departure to permit the encroachment of the 3m lateral building line to 1,5m to accommodate the the existing building, **be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the approvals provided in paragraphs 1., 2. and 3. above be subject to the following conditions:
- (a) that a detailed parking layout be submitted within thirty (30) days of the decision date for approval by the Authorised Official, indicating on-site parking provision, including provision of a loading bay in accordance with the provisions of the Scheme Regulations;
  - (b) that the approved parking layout referred to in paragraph (a) above be implemented to the satisfaction of the Authorised Official;
  - (c) that in the event that the parking standards cannot be met on-site, the applicant will be required to make a payment in lieu of onsite parking provision in accordance with the requirements of the Scheme Regulations;
  - (d) that in the event that a payment in lieu of parking provision be applicable, such monies to be ring fenced into a parking fund for the planning and development of a communal parking area in Van Dyksbaai, as per the Kleinbaai Nodal Framework Report;
  - (e) that building plans be submitted within thirty (30) days of the decision date and that all requirements of the Building Control and Fire Department shall be adhered to;
  - (f) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically be adjusted in terms of the annual budget;
  - (g) that the display of advertising shall comply with the Overstrand Signage By-law;
  - (h) that all the conditions in the Services Report (attached as Annexure I), be complied with;
  - (i) that all the conditions of Telkom (attached as Annexure H), be adhered to;
  - (j) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
  - (j) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and objector be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditional approvals.

#### 14. REASONS FOR RECOMMENDATION

- ❖ The proposal is consistent with the IDF, SDF, OMGMS and Kleinbaai Nodal Development Framework.
- ❖ The relevant legislation was considered with the removal of the restrictive conditions in the Title Deed.
- ❖ The proposal is consistent with the spatial principles as set out in SPLUMA and LUPA.

- ❖ The existing unauthorised business activities, promoting tourism, economic development and employment opportunities will have a positive social advantage.
- ❖ The proposed removal, rezoning and departure will not detract from the character of the area, amenity of adjoining properties and is considered desirable.

### 15. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T113479/2003
Annexure E:	Objection received
Annexure F:	Applicant's comment on the objection
Annexure G:	Comment: Fire Services
Annexure H:	Comment: Telkom
Annexure I:	Services Report

### SIGNATURE

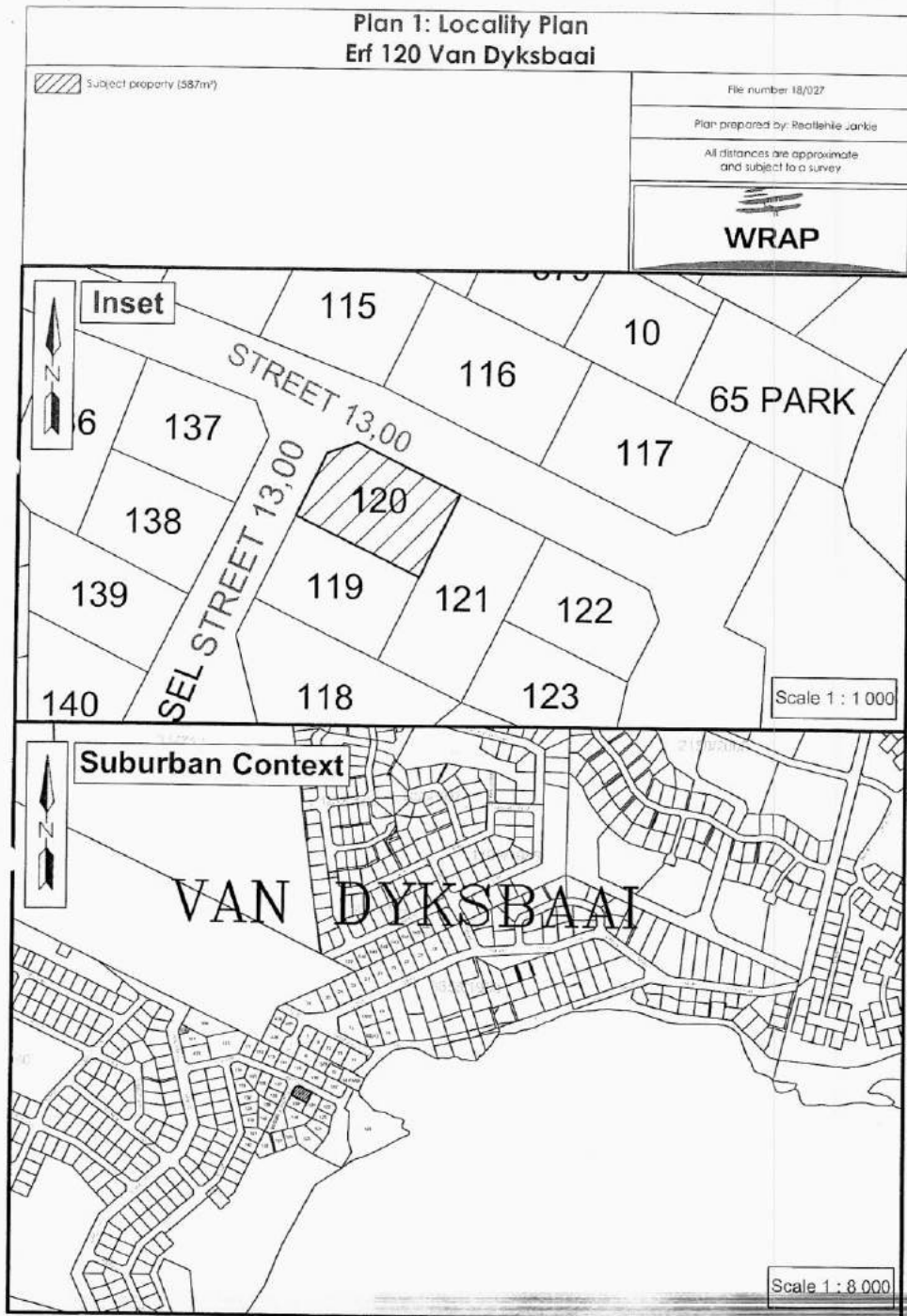
#### REGISTERED PLANNER

Name: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

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

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





## MOTIVATION

## 1. ABBREVIATIONS

Abbreviation	Description
OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SPLUMA	Spatial Planning and Land Use Management Act, 2013
LUPA	Land Use Planning Act, 2014
PSDF	Western Cape Provincial Spatial Development Framework 2014
IDP	Overstrand Municipality Integrated Development Plan
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan

## 2. SUMMARY OF PROPERTY DETAILS

Applicant	WRAP (Wright Approach Consultancy)
Registered owner	Kim Sylvia Maclean
Erf number	120
Suburb	Van Dyksbaai
Property extent	587m <sup>2</sup>
Title deed	T113479/2003
Restrictive title deed conditions	C(E), C(F), C(G), C(G)(i), C(G)(ii), C(H), C(i), C(j)
Applicable zoning scheme	OMZS
Current zoning	Residential Zone 1: Single Residential
Current land use	Meeting and departing facilities for shark cage diving operating tours.

## 3. BACKGROUND AND OWNERS INTENT

The owner of the subject property is currently running a shark cage diving tour operating company, trading as Sharklady, from the premises. Guests arrive at the subject property and register at reception and receive some refreshments. The guests are then escorted to a boat taking them on an ocean tour where they are exposed to the sea life as well as shark cage diving. After the excursion the guests are brought back to the subject property to be debriefed and to have a beverage, meal/snacks. The subject property is currently zoned as Residential Zone 1: Single Residential and the following is proposed to legalise the shark cage diving operation tour business currently operated from the subject property:

- **Removal of restrictive title deed conditions** C(e), C(f), C(g), C(g)(i), C(g)(ii), C(h), C(i), C(j) from title deed T113479/2003;
- **Rezoning** of Erf 120 Van Dyksbaai from Residential Zone 1: Single Residential to Business Zone 3: Local Business; and
- **Departure** from the 3m southern side building line to 1,5m for the existing garage and boat house.

File 18/138  
 Erf 120 Van Dyksbaai  
 Submitted in August 2019 and  
 Amended in November 2019  
 Page | 1



## MOTIVATION

### 4. TECHNICAL APPLICATION ASPECTS

The following motivation illustrates the technical aspects of the proposed application which are essential towards ensuring that the applicant attains the appropriate land use rights.

<b>Application</b>	<ul style="list-style-type: none"> <li>• <b>Removal of restrictive title deed conditions</b> C(e), C(f), C(g), C(g)(i), C(g)(ii), C(h), C(i), C(j) from title deed T113479/2003.</li> </ul>
<b>Rationale</b>	<p>The above title deed conditions need to be removed to permit the proposed land use.</p> <p>These title deed conditions were inserted in 1981 in response the prevailing development trends and pressures which were prevalent at the time. There are new development trends and pressures which are prevalent in Van Dyksbaai in 2019 which were not anticipated in 1981. The reduced relevance of these title deed conditions in the current development climate of Van Dyksbaai will be elucidated in Section 7 of this motivation report.</p>

<b>Application</b>	<ul style="list-style-type: none"> <li>• <b>Rezoning</b> Erf 120 Van Dyksbaai from Residential Zone 1: Single Residential to Business Zone 3: Local Business.</li> </ul>
<b>Rationale</b>	<p>The proposed zoning of Business Zone 3: Local Business is the only zoning which can confer the appropriate land use rights for a shark cage diving operation business, currently operated on the property. The proposed zoning is also of a much lower intensity compared to the zoning of Business Zone 1 &amp; 2: General Business and will not unlock high intensity commercial land uses on the subject property. This will subsequently result in the character of the surrounding being maintained in the current form. The proposed zoning will also ensure that the height of the subject building is capped at 8,5m which is in harmony with the scale of surrounding businesses.</p>

<b>Application</b>	<ul style="list-style-type: none"> <li>• <b>Departure</b> from the 3m southern side building line to 1,5m for the existing garage and boat house.</li> </ul>
<b>Rationale</b>	<p>There are approved building plans which depict the subject property in the current location. The only reason why a building line departure application is submitted with this application is because the historic change of land use from residential to commercial land uses as well as the proposed change in zoning necessitates a departure from the building lines.</p> <p>It is submitted that the buildings which encroach on the southern building lines are outbuildings which are defined in the OMZS as follows:</p> <p><i>"outbuilding" means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit, and includes a building which is designed to be normally used for the <u>garaging of motor vehicles, for storage purposes</u> and any normal activities in so far as these are usually and reasonable required in the connection with the main dwelling, and</i></p>



## MOTIVATION

	<p><i>includes the accommodation of recreational activities such as a pool room, braai room; lapa and the practicing of hobbies but does not include a dwelling unit; and outbuildings are primary uses under each zoning except open space zones, where Council may permit outbuildings should it be deemed necessary;"</i></p> <p>The garage and boathouse which encroach on the southern building line comply with the above definition of an outbuilding and are not used for habitation purposes.</p> <p>Considering that the proposed departure application will not have additional visual impact on the neighbours, the subject proposal can be regarded as appropriate within the immediate setting.</p>
--	---

### 5. URBAN FORM AND FABRIC

The urban form of Van Dyksbaai is characterised by erven which are mostly square shaped in the part of the settlement which has a grid layout and has polygon shapes in the part of the settlement which has a cul de sac and curved suburban layout. The size of the erven which are immediately adjacent to the subject property range from 588m<sup>2</sup> to 948m<sup>2</sup>. The subject property is 587m<sup>2</sup> and is in harmony with the prevailing urban form of Van Dyksbaai as this application does not entail a subdivision or consolidation.

The urban fabric of Van Dyksbaai is predominantly characterised by residential properties which have a variety of housing typologies. The subject property is designed in accordance with the residential housing typologies which are prevalent in Van Dyksbaai. Van Dyksbaai also functions as a popular destination for guests to get onto boats and explore the variety of natural systems which are prevalent in the ocean. The visual appearance of the subject building and the proposed zoning is therefore in harmony with the prevailing urban fabric of Van Dyksbaai.

### 6. TITLE DEED CONDITIONS PROPOSED FOR REMOVAL

The motivation for the applicable title deed restrictions which are proposed for removal as well as the rationale for the removal thereof, are the following:

<b>Title deed restriction</b>	<i>"C(e) Geen gebou op hierdie erf mag gebruik word of van gebruik verander word vir 'n ander doel as wat volgens hierdie voorwaardes toegelaat word nie."</i>
<b>Motivation</b>	The title deed restrictions which prohibit what is applied for are proposed for removal which will nullify the need for the above restrictive title deed condition, as it will be illustrated in this Section of the motivation report.
<b>Title deed restriction</b>	<i>"C(f) Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Administrateur van tyd tot tyd, na oorleg met die Dorpekommissie en die plaaslike owerheid, goedkeur, met dien verstande dat, indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander geboue wat deur die skema</i>



## MOTIVATION

	garages which were not located to the rear of the property. This was the valued form of suburban development in Van Dyksbaai in 1984.  <b>Status quo</b> Considering that the above building line title deed restrictions were inserted when the subject property could only be used for residential purposes, commercial properties require slightly more coverage which necessitates the removal of the above building lines to free up some coverage space. Considering that the existing land use does not constitute a noxious land use, the land use rights which are enjoyed by the neighbours will not be infringed upon.
<b>Title deed restriction</b>	"C(h) By die konsolidasie van hierdie erf of enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes of die gekonsolideerde eiendom van toepassing asof dit een erf is."  "C(i) Ingeval hierdie erf onderverdeel word, is elke onderverdeelde gedeelte uitgesonderd 'n gedeelte afgesny vir pad-of dergelike doeleindes, onderworpe aan die voorwaardes hierin uiteengesit asof dit die oorspronklike erf is."
<b>Motivation</b>	Considering that the title deed restrictions which pertain to town planning considerations are proposed for removal, the above title deed condition is nullified which justifies the removal thereof.
<b>Title deed restriction</b>	"C(j) Geen gebou vir bewoning deur mense mag op hierdie erf opgerig word nie, tensy voorsiening bogronds gemaak word vir die opgaar van minstens 700 liters reenwater."
<b>Motivation</b>	With the rezoning there will be no residential use on the subject property. With the rezoning, this restrictive title deed condition will not be applicable which justifies the removal thereof.

**Requirements for the amendment, suspension or removal of restrictive conditions:**

Section 35(4) of the Overstrand By-Law on Municipal Land Use Planning, 2015, highlights the relevant Municipal considerations for the removal, suspension or amendment of restrictive title deed conditions. Herewith are the relevant considerations assessed in conjunction with this proposal.

**(a) The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.**

This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else.

**(b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition.**

There are no personal benefits which accrue to the holder of these restrictive title deed conditions.



## MOTIVATION

**(c) The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.**

The removal of these restrictive title deed conditions will enable the property owner to derive the following benefits:

- Confer the most appropriate land use rights to the property owner; and
- Increase the viability of the existing commercial enterprise.

**(d) The social benefit of the restrictive condition remaining in place.**

There is no social benefit if the restrictive conditions remains in place.

**(e) The social benefit of the removal of the restrictive condition.**

Herewith are the social benefits

- There are currently people who are employed on the subject property who will be able to retain their employment;
- The property rates category of the subject property will change to Business which will subsequently lead to more rates and taxes which are paid to the Municipality. The rates and taxes contribute improving service delivery in the Overstrand Municipality which is a positive aspect; and
- The subject four operation business attracts people from different countries which enhances intercultural interaction on the subject property. The approval of this proposal will secure the occurrence of this and subsequently contribute to an enhanced social fabric which contributes to social cohesion in Van Dyksbaai.

**(f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.**

There are no rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.

## 7. ZONING

The following zoning parameters of the subject property were assessed in conjunction with the proposal.

<b>Business Zone 3: Local Business (B3)</b>			
	<b>Parameters</b>	<b>Proposal</b>	<b>Comply/ deviate</b>
<b>Primary use</b>	shops, flats (above ground floor), offices	Shop/offices	Comply
<b>Consent use</b>	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	N/A	N/A



## MOTIVATION

	beverages, service station, service trade, transmission tower.		
<b>Land Use Restrictions</b>			
<b>Coverage</b>	The maximum coverage for all buildings on the land unit is 75%. The definition of coverage is the following: <b>"Coverage"</b> means the total area or percentage area of a land unit which may be covered by buildings and covered by a roof.	29%	Comply
<b>Floor factor</b>	The maximum floor factor is 1.5	Permissible floor factor space is 880m <sup>2</sup> and 172,1m <sup>2</sup> is proposed.	Comply
<b>Height</b>	(i) The maximum height of a building measured from the base level to the top of the roof is 8,5 m; (ii) The maximum number of storeys is 2; and (iii) Earth banks and retaining structures shall comply with 16.6.	(i) 4,66m; (ii) 1; (iii) Comply	Comply
<b>Setback</b>	(i) Council may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street; (ii) Where special circumstances exist, Council may require a wider setback; and (iii) The general provisions of 16.2 apply.	(i) Subject to the request of Council; (ii) Subject to the request of Council; and (iii) Comply	Comply
<b>Building lines</b>	(i) The street building line is 0 m; provided that a 3,5 m building line applies where fuel pumps are erected; (ii) The side building line is 0 m provided that where any Business Zone 3 abuts another zone, the side building line is 3,0 m; (iii) The rear building line is 3,0 m; provided that where any Business Zone 3 abuts another zone, the rear building line is 4,5 m; (iv) Provided that Council may require more restrictive building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right; and	(i) 5m; (ii) 1,5m; (iii) 1,5; (iv) subject to the request of Council; (v) Comply	(i) Comply; (ii) Departure motivated; (iii) Departure motivated (v) Comply (v) Comply



## MOTIVATION

	(v) The building line exemptions in 16.1 apply.		
<b>Window and door placement</b>	(i) Where a 0 m building line applies and where a wall of a building is erected 1,0 m or less from the side or rear building line, no door or window shall be permitted in the wall concerned; and (ii) Any portion of the building which contains a door or window onto a side or rear boundary, shall be placed at least 1,5 m away from such boundary. The portion of the building that is required to be set back shall include the door or window, together with such additional length of wall as is required to make up a total of 3,0 m.	(i) N/A; and (ii) 1,5m.	Comply
<b>Parking and access</b>	Shops/offices require 6 parking bays per 100m <sup>2</sup> .	The GLA is 109,3m <sup>2</sup> which requires 6,5 bays and 7 bays are provided	Comply
<b>Loading Bays</b>	Loading bays must be provided on the land unit in accordance with 17.2. The minimum off-street parking loading requirements are 1 bay per 500 m <sup>2</sup> for the first 1 000 m <sup>2</sup> of GLA, thereafter 1 bay per 1 000 m <sup>2</sup> .	The subject proposal does not reach the 500m <sup>2</sup> threshold which nullifies the need for a loading bay.	N/A
<b>Screening</b>	(i) The Council may require screening in accordance with 16.7; and (ii) Where a property zoned Business Zone 3 abuts a residential zone, Council may require a suitable wall of no less than 1,8 m in height to be erected on the common boundary.	(i) Subject to the request of Council; and (ii) Subject to the request of Council.	Comply
<b>Site development plan</b>	Council may require that a site development plan be submitted for approval in accordance with 16.3.	An SDP is submitted with the application (refer <b>Plan 5</b> )	Comply

## 8. SERVICES

The availability of services on the subject property is herewith illustrated:

### 8.1 Electricity

The subject buildings are connected to the existing electricity network in Van Dyksbaai and the approval and implementation of this proposal will not alter this.



## MOTIVATION

### 8.2 Water

The subject property is connected to the existing reliable water network which is provided by the OM and the approval and implementation of this proposal will not alter this.

### 8.3 Sewage

Sewage on the subject property is disposed of by means of conservancy tanks and the approval and implementation of this proposal will not alter this.

### 8.4 Access and egress

Access and egress for parking bays labelled P1, P2, P3 and P4 can be gained from Geelbek Street and there is a 9,5m manoeuvring space behind each parking bay.

Access and egress for the parking bay labelled P5, P6 and P7 can be gained from Mossel Street and there is 7,5m manoeuvring space. There is a 5,2m stacking distance between the erf boundary and P6 and P7.

### 8.5 Traffic related considerations

A traffic impact statement was done by DECA Consulting Engineers for the subject property (refer **Annexure D**). The report concluded that the operations of a shark cage diving business on the subject property would have a low traffic impact. Although report highlights that 9 parking bays are required, in terms of the GLA calculations, only 7 parking bays are required and are provided on the subject property as per the Site Development Plan attached as **Plan 4**.

## 9. DESIRABILITY

DEADP issued the "Provincial support document on Relevant Considerations 2015" which should be considered before the Municipality makes a decision. The desirability guideline in the document was used to assess the desirability of the approval and implementation of this proposal.

Element for consideration	Motivation of the impact of the approval and implementation of this proposal.	Impact Positive or Negative
<b>Economic impact</b>	The subject property contributes to the economic viability of Van Dyksbaai due to the number of employees on the subject property spend a portion of their income in the rest of the town.	<b>Positive</b>
<b>Social impact</b>	The subject shark cage diving enterprise attracts tourists from different parts of the world which promotes Van Dyksbaai as a viable tourist destination and enhances intercultural interaction which contributes to social cohesion.	<b>Positive</b>
<b>Scale of the capital investment</b>	The owner of the subject property has spent a substantial amount of money in the purchase of the property, necessary renovations, etc. This illustrates the	<b>Positive</b>



## MOTIVATION

	commitment of the property owner towards the built environment of Van Dyksbaai.	
<b>Compatibility with surrounding uses</b>	There are several shark cage diving operators within a 200m radius from the subject property. This therefore makes the current land use compatible with the surrounding land uses.	<b>Positive</b>
<b>Impact on safety, health and wellbeing of the surrounding community;</b>	The tourists who visit the subject property provide additional surveillance in Van Dyksbaai which contributes to the safety of Van Dyksbaai.	<b>Positive</b>
<b>Impact on heritage</b>	There are no alterations proposed for the existing building which by implication means that not heritage resources will be impacted on.	<b>Positive</b>
<b>Whether the imposition of conditions can mitigate an adverse impact of the proposed land use</b>	<p>The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived.</p> <ul style="list-style-type: none"> <li>• That all signage complies with the Overstrand Municipality By-Law on Signage. This will ensure that all signage will not be visually intrusive;</li> <li>• That all development parameters in the Business Zone 3: Local Business zoning and other title deed restrictions be complied with. This will ensure that the scale of the subject development remains within reasonable bounds;</li> <li>• That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients;</li> <li>• That commercial rates and service tariffs be paid as prescribed in the annual budget. This will ensure that the operations in the subject building are a financial asset to the OM;</li> <li>• That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and</li> <li>• That all other relevant legislation be complied with.</li> </ul>	<b>Positive</b>
<b>Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)</b>	The existing building is of a similar scale and size as the surrounding buildings. The surrounding buildings are permitted have a maximum height of 8m and the proposed zoning on the subject property permits the building to be 8,5m. The impact of the subject property on the surrounding environment is similar to the existing character of the surrounding environment.	<b>Positive</b>



## MOTIVATION

### 10. SPATIAL PLANNING DOCUMENTS

#### Spatial planning documents

This proposal was assessed in terms of the existing spatial planning documents and the compliance of this proposal with the applicable spatial planning policies will be motivated.

#### PSDF

The aim of the PSDF is to give spatial expression to the national and provincial development agendas and serves as a basis for coordinating, integrating, and aligning ground delivery of national and provincial departmental programmes. The framework also aims to communicate the government's spatial development intentions to the private sector and civil society.

Policy proposals which are pertinent this application was assessed, and the outcome is as follows:

- **The PSDF promotes the protection and enhancement of the prevailing sense of place and settlement patterns.**

The prevailing sense of place in Van Dyksbaai is the residential and local business ambience which is characterised by tourists who go shark cage diving and whale watching. The existing land use on the subject property and application submitted is in harmony with the prevailing sense of place and settlement pattern of Van Dyksbaai.

- **Accessibility at all scales is promoted.**

Access to the subject property can be gained from Geelbek Street and Mossel Street. The subject establishment also has a website which promotes the shark cage diving services available at the establishment and is accessible to all to make online bookings. This is aligned with the PSDF proposal of promoting accessibility at all scales.

- **The promotion of an appropriate land use mix in a settlement is highlighted as integral.**

The subject property is ideally located in an area which is characterised by a mixture of residential and local commercial land uses. The existing land use and proposed zoning on the subject property is in harmony with the valued land use mix of Van Dyksbaai.

#### SDF

The objective of the SDF is to formulate strategic spatially based policy guidelines and proposals where the needs, changes and growth in the area can be managed to benefit the inhabitants and the environment in the Overstrand Municipality. The SDF is guided by a set of objectives and the compliance of this proposal from spatial proposal plan is herewith illustrated.

Policy proposals which are pertinent this application was assessed, and the outcome is as follows:

- **Promote a balanced land use mix, making adequate provision for commercial as well as service industrial growth related to fishing and mari-culture.**

The land uses on the subject property are linked to the mari-culture industry in Van Dyksbaai and contributes to the balanced residential and commercial land use mix in the area.



## MOTIVATION

- **Promote tourism development which is based on the ecological and heritage value of the region.**

The tourism industry in Van Dyksbaai is heavily reliant on shark cage diving and the beauty of the ocean in the area. The existing land use on the subject property is in harmony with the ecological value of Van Dyksbaai.

- **Restrict urban development within the demarcated urban edge.**

The subject property is located within the urban edge.

- **Maintain the unique prevailing village character.**

The existing land use on the property does not constitute a noxious trade and does not emit loud noise or music. The quiet nature of the land uses on the subject property is in harmony with the prevailing village character of Van Dyksbaai.

### Spatial proposal plan

The subject property is designated for residential purposes. Considering that the OMGMS 2010 and Kleinbaai Nodal Development Framework are approved as part of the SDF earmarks the subject property as economic opportunity and tourism business purposes, a deviation from the document will not be necessary.

### OMGMS

The purpose of the Growth Management Strategy is to improve the Overstrand Municipalities' overall environmental sustainability by enhancing the quality and efficiency of the built environment. The consistency of this proposal with the OMGMS can be illustrated as follows:

Policy proposals which are pertinent to this application are assessed, and the outcome are the following:

- **The built environment of Van Dyksbaai should be enhanced and well managed.**

The subject building is currently aesthetically appealing, well maintained and well managed. The visual appeal of the subject property therefore contributes to the enhancement of the built environment in Van Dyksbaai.

- **Promote the optimal land use planning and efficient use of services.**

The land uses on the subject property entail optimal utilisation of services to cater to the variety of tourists who visit the subject property within the services capacity limits of the subject erf.

- **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 subject property and land uses are within the immediate bulk, height and architectural styling of the immediate surrounding as motivated in Section 6 of the motivation report.

### Spatial proposal plan

The spatial proposal plan designates the subject property as a regional economic opportunity. The proposal for the subject erf to be zoned Business Zone 3: Local Business is aligned with the spatial proposal plan.

File 18/138

Erf 120 Van Dyksbaai  
Submitted in August 2019 and  
Amended in November 2019  
Page | 12



## MOTIVATION

### KLEINBAAI DEVELOPMENT STUDY 2016

The study acknowledges Kleinbaai as the shark viewing capital of the world and that the area is located conveniently close to Dyer Island which has a small boat harbour suited for the launch of sizeable vessels. The document also proposes interventions and improvements required to establish a functional commercial and tourism trade centre in Kleinbaai.

Policy proposals which are pertinent to this application were assessed, and the outcome is as follows:

- **Geelbek Street has become a high commercial street of Kleinbaai with a number of sharks viewing businesses which operate in the area.**

The subject shark cage diving business is located along Geelbek Street and contributes to the commercial character of the street.

- **From a planning perspective, it makes sense that commercial properties should be located near the town entrance and close to the harbour which is the town focal point.**

The subject property is located close to the harbour which is the town focal point. The reason for rezoning the subject property from Residential Zone 1: Single Residential to Business Zone 3: Local Business is to confer a commercial zoning on the subject property as prescribe in the subject study.

### Spatial proposal plan

The spatial proposal plan earmarks the subject property as part of the Kleinbaai Node which is proposed for local commercial development. This town planning proposal is aligned with the nature of development which is envisaged in the Kleinbaai Node.

### Consistency with the various planning principles

The analysis of the spatial planning policies illustrates the consistency of the proposal with the PSDF, SDF, OMGMS and Kleinbaai Development Study.

## 11. PLANNING PRINCIPLES

The proposal was analysed for consistency with the planning principles to provide a recommendation to the OM for the application in terms of Section 42 of SPLUMA and Chapter VI of LUPA and the outcome is the following:

### Spatial Justice

Spatial justice in the context of spatial and land use planning refers to development proposals which redress the past apartheid spatial development imbalances. This entails development proposals which aim for equity in the provision of access to opportunities, facilities, services and land. The subject enterprise currently provides numerous employment opportunities, particularly to the historically marginalised. The approval of this proposal would allow the current employees to retain employment and be able to continue accessing opportunities which allow the affordability of facilities, services and land. The approval of this proposal will therefore allow the land uses and commercial activities on the subject property to continue addressing the historic spatial development imbalances caused by apartheid land use and spatial planning.



## MOTIVATION

---

### **Spatial Sustainability**

Spatial sustainability refers to the need of promoting compaction, mixed use urban environments which allow for a functional space economy to flourish. The proposal promotes a complementary land use mix. The existing land uses on the subject property compliments the compatibility of the mixed land use environment prevalent in Van Dyksbaai. The land uses and economic activities on the subject property contribute to a flourishing space economy in Van Dyksbaai.

### **Efficiency**

Efficiency in the context of land use planning refers to the need to create settlement that optimally make use of space, infrastructure, energy, land and resources. The existing land uses on the subject property make optimal use of the space, infrastructure, energy, land and resources on the subject property within the capacity and bulk limits of the subject property.

### **Spatial Resilience**

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner. The subject proposal is aligned with the spatial resilience principles promoted in the PSDF, SDF, OMGMS Kleinbaai Development Study. This will enable the subject property to be resilient in times of economic and environmental shock.

### **Good Administration**

Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued. The proposed development will promote consultative planning as the Municipality will advertise the proposal to the public to allow the comments of the public to be taken into consideration. WRAP will also respond to the comments of the public and take the comments into consideration in the planning of the project. All these measures will ensure that a joint planning approach is pursued to the benefit of the owner of the subject property and the community.



## EVALUATION AND RECOMMENDATION

### 12. EVALUATION

This motivation report can be summarised and evaluated as follow.

#### Application

1. **Removal of restrictive title deed conditions** C(e), C(f), C(g), C(g)(i), C(g)(ii), C(h), C(i), C(j) from title deed T113479/2003;
2. **Rezoning** of Erf 120 Van Dyksbaai from Residential Zone 1: Single Residential to Business Zone 3: Local Business; and
3. **Departure** from the 3m southern side building line to 1,5m for the existing garage and boat house.

#### Urban form/fabric

The subject proposal is in harmony with the prevailing urban form/fabric of Van Dyksbaai.

#### Title deed

- The restrictive title deed conditions proposed for removal are out of harmony with the prevailing development trends in Van Dyksbaai;
- There are many social benefits which will be derived from the removal of these restrictive title deed conditions; and
- There is no social benefit in these restrictive title deed conditions remaining in place.

#### Zoning

- The existing land uses on the subject property are in harmony with the primary rights applicable on the subject property;
- The permissible coverage is 75% and the existing coverage is 29%;
- The permissible height is 8,5m and the existing height is 4,66m;
- Building line departures are applied for;
- There are 6,5 parking bays required and a double garage and 7 parking bays are provided.

#### Availability of services

Service	Availability yes or no
Electricity	Yes
Water	Yes
Sewage	Yes
Access and egress	Yes

#### Desirability

Element for consideration	Motivation	Impact Positive or Negative
Economic impact	Employment in the subject establishment is a positive economic impact.	Positive
Social Impact	The knowledge sharing about marine life on the subject property is a positive social impact.	Positive



## EVALUATION AND RECOMMENDATION

<b>Scale of the capital investment</b>	The substantial amount of money which was spent by the owner of the subject property in the subject establishment illustrates a commitment to the built environment.	<b>Positive</b>
<b>Impact on safety, health and wellbeing of the surrounding community;</b>	The additional surveillance brought by the guests to the subject property contributes to increasing safety in Van Dyksbaai.	<b>Positive</b>
<b>Impact on heritage</b>	There is no heritage impact on the existing building.	<b>Positive</b>
<b>Whether the imposition of conditions can mitigate an adverse impact of the proposed land use</b>	There are several conditions of approval which are proposed to ensure that the land uses on the subject property do not become a nuisance.	<b>Positive</b>

## Spatial planning policies

Applicable spatial planning policy	Motivation	Compliance or deviation
<b>PSDF</b>	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> <li>• Enhance the prevailing Van Dyksbaai sense of place;</li> <li>• Enhance accessibility at all scales; and</li> <li>• Promote an appropriate land use mix.</li> </ul>	<b>Comply</b>
<b>SDF</b>	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> <li>• Promote a balanced land use mix in Van Dyksbaai;</li> <li>• Promote tourism development; and</li> <li>• Maintain the prevailing village character of Van Dyksbaai.</li> </ul>	<b>Comply</b>
<b>OMGMS</b>	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> <li>• Contribute to the enhancement of the built environment of Van Dyksbaai;</li> <li>• Promote optimal land use planning; and</li> <li>• Complies with the prescripts of the spatial proposal plan.</li> </ul>	<b>Comply</b>
<b>KLEINBAAI DEVELOPMENT STUDY</b>	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> <li>• Will maintain the alignment of the subject property with the commercial character of Van Dyksbaai; and</li> <li>• Aligned with the proposal for the subject property to be rezoned to commercial purposes.</li> </ul>	<b>Comply</b>



## EVALUATION AND RECOMMENDATION

## Planning principles

Applicable spatial planning policy	Motivation	Impact Negative or Positive
<b>Spatial justice</b>	The approval of this proposal will maintain the contribution of the subject property towards addressing spatial development imbalances caused by apartheid planning.	<b>Positive</b>
<b>Spatial Sustainability</b>	The approval of this proposal would enable the operations on the subject property to continue to contribute to a more spatially resilient landscape.	<b>Positive</b>
<b>Efficiency</b>	The approval of this proposal will enable the efficiency on the subject property to continue.	<b>Positive</b>
<b>Spatial resilience</b>	The subject tourism business is aligned with the principles of spatial resilience which are a common thread in the PSDF, SDF, Kleinbaai Development Study and OMGMS.	<b>Positive</b>
<b>Good administration</b>	The OM has an inclusive and efficient public participation process where the comments from the public will be taken into consideration and ensure a joint planning approach between WRAP, Municipal Officials and the public.	<b>Positive</b>

## 13. RECOMMENDATION

The desirability of this proposal has extensively been motivated and it is recommended that following be approved:

- 1. Removal of restrictive title deed conditions** C(e), C(f), C(g), C(g)(i), C(g)(ii), C(h), C(i), C(j) from title deed T113479/2003 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- 2. Rezoning** Erf 120 Van Dyksbaai from Residential Zone 1: Single Residential to Business Zone 3: Local Business in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- 3. Departure** from the 3m southern side building line to 1,5m for the existing garage and boat house in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.



269

VAUGHAN ULYATE & ASSOCIATES  
PH: 021 461-1212

Vorster & Steyn  
Mitchell House  
18 Mitchell Street  
HERMANUS  
7200

FOR FURTHER ENDORSEMENTS SEE  
VIR VERDERE ENDOSSEMENTE SIEN... 296

Prepared by me

*[Signature]*  
CONVEYANCER  
Steyn LC

SEELREG  
DUTY R...  
FOOI  
FEE R... 340.00

VERBIND MORTGAGED  
VIR 490 000.00  
R...  
B... 73559 / 2003  
03 SEP 2003  
REGISTRAR

DEED OF TRANSFER T 303113479

BE IT HEREBY MADE KNOWN THAT

**LYNNE BOTHA**

appeared before me, REGISTRAR OF DEEDS, at CAPE TOWN, the said  
appearer being duly authorised thereto by a Power of Attorney which said Power  
of Attorney was signed at HERMANUS on 19 August 2003 granted to him by

**CYRIL TERENCE DANKS**  
Identity Number 540202 5733 08 3  
Unmarried

Page 2

And the appearer declared that his said principal had, on 27 June 2003, truly and legally sold by , and that he, the said Appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of:

**KIM SYLVIA MACLEAN**  
**Identity Number 610527 0062 00 4**  
**Unmarried**

her Heirs, Executors, Administrators or Assigns, in full and free property

**ERF 120 VAN DYKSBAAI in the Overstrand Municipality, Division of Caledon, Western Cape Province**

**IN EXTENT 587 (FIVE HUNDRED AND EIGHTY SEVEN) SQUARE METRES**

**FIRST TRANSFERRED by Deed of Transfer No.T15332/1981 with General Plan No.T P 8401 relating thereto and held by Deed of Transfer No.T9647/2003.**

- A. SUBJECT** to the conditions referred to in Deed of Transfer No.T5132/1935.
- B. SUBJECT FURTHER** to the provisions of the following endorsement dated 25<sup>th</sup> April 1972 on Deed of Transfer No.T29858/1970 which endorsement reads as follows:-

"Kraglens Not.Akte. Nr 158/1972 gedateer 13/3/1972 is die Restant van Gedeelte 22 van die plaas "Klip Fonteyn", groot 93,2915 ha. hieronder gehou onderhewig aan waterskema serwitute met betrekking tot :-

- (a) die hoeveelheid van water per erf per dag;
- (b) die opgaring wat water en opvangwerke;
- (c) die water toevoer deur pype en waterleiding; en
- (d) bykomende regte – die water synde afkomstig van boorgate op die binnegemelde eiendom ten gunste van die Administrateur van die Kaapprovinsie in Trust van sodanige plaaslike owerheid benoem te word.

Soos meer ten volle sal blyk ut gesegde Not.Akte"

- C. SUBJECT FURTHER** to the following conditions referred to in Deed of Transfer No.T15332/1981 and imposed by the Administrator of the Cape of Good Hope Province when approving of VAN DYKSBAAI TOWNSHIP EXTENSION No.2 in terms of Ordinance 33 of 1934, namely:-

- (a) Alle woorde en uitdrukkings wat in die volgende voorwaardes gebesig word het dieselfde betekenis as wat daaraan geheg word by die Regulasies afgekondig by Provinsiale Kennisgewing Nr.623 van 14 Augustus 1970;

- (b) Ingeval 'n dorpsaanlegskema of enige gedeelte daarvan op hierdie erf van toepassing is of daarop van toepassing gemaak word, sal enige bepalinge daarvan wat emer beperkend is as enige voorwaardes van eiendomsreg wat o hierdie erf van toepassing is, voorkeur geniet. Enige bepalinge van hierdie voorwaardes moet nie opgevat word al sou dit die bepalinge van Artikel 146 van Ordonansie Nr.15 van 1952 soos gewysig, vervang nie;
- (c) Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding toe te laat dat elektrisiteitskabels of -drade en hoof en/of ander waterpepe en die rioolvuil en dreinerings, insluitende stormwater van enige ander erf of erwe, binne of buite hierdie dorp oor hierdie erf gevoer word indien dit deur die plaaslike owerheid nodig geag word en wel op die wyse en plek wat van tyd tot tyd redelikerwys vereis word. Dit sluit die reg op toegang te alle redelike tye tot die eiendom in met die doel om enige werke met betrekking tot bogenoemde aan te lê, te wysig, te verwyder of te inspekteer;
- (d) Die eienaar van hierdie erf is verplig om sonder vergoeding op die erf die materiaal te ontvang of uitgrawings op die erf toe te laat al na vereis word sodat die volle breedte van die straat gebruik kan word omrede van die verskil tussen die hoogte van die straat soos finaal aangelê en die erf lensy hy verkies om steunmure te bou tot genoeg van en binne 'n tydperk wat die plaaslike owerheid bepaal;
- (e) Geen gebou op hierdie erf mag gebruik word of van gebruik verander word vir 'n ander doel as wat volgens hierdie voorwaardes toegelaat word nie;
- (f) Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Administrateur van tyd tot tyd, na oorleg met die Dorpekommissie en die plaaslike owerheid, goedkeur, met dien verstande dat, indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander geboue wat deur die skema toegelaat word, kan toelaat onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word.
- (g) Geen gebou of struktuur of enige gedeelte daarvan behalwe grensmure of heinings, mag behalwe met die toestemming van die Administrateur nader as 5 meter van die straatlyn wat 'n grens van hierdie erf uitmaak, asook nie binne 3 meter van die agtergrens of 1,5 meter van die sygrens gemeen aan enige aangrensende erf opgerig word nie, met dien verstande dat met die toestemming van die plaaslike owerheid:
- (i) 'n buitegebou wat uitsluitende vir die stalling van motorvoertuie gebruik word en hoogstens 3 meter hoog is, gemeet van die vloer van die buitegebou tot by die muurplaat daarvan, binne sodanige sy- en agterruimtes opgerig word, en enige ander buitegebou van dieselfde hoogte binne die agterruimte en syruimte opgerig mag word vir 'n afstand van 12 meter gemeet van die agtergrens van die erf, met dien verstande dat in geval van 'n hoekerf die afstand van 12 meter gemeet moet word van die punt wat die verste is van die strate wat die erf begrens;

Page 4

(ii) 'n buitegebou ingevolge subparagraaf (i) slegs nader aan 'n sygrens of agtergrens van 'n perseel as die afstand hierbo voorgeskryf opgerig mag word indien geen vensters of deure of enige muur, wat op sodanige grens front, aangebring word nie.

(h) By die konsolidasie van hierdie erf or enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes op die gekonsolideerde eiendom van toepassing asof dit een erf is.

(i) Ingeval hierdie erf onderverdeel word, is elke onderverdeelde gedeelte uitgesonderd 'n gedeelte afgesny vir pad- of dergelike doeleindes, onderworpe aan die voorwaardes hierin uiteengesit asof dit die oorspronklike erf is.

(j) Geen gebou vir bewoning deur mense mag op hierdie erf opgerig word nie, tensy voorsiening bogronds gemaak word vir die opgaar van minstens 700 liters reënwater.



WHEREFORE the said Appearer, renouncing all right and title which the said  
**CYRIL TERENCE DANKS**

heretofore had to the premises, did in consequence also acknowledge him to be  
entirely dispossessed of, and disentitled to the same, and that by these presents,  
the said

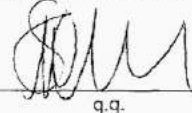
**KIM SYLVIA MACLEAN**

her Heirs, Executors, Administrators or Assigns, now is and henceforth shall be  
entitled thereto, conformably to local custom, the State, however reserving its  
rights, and finally acknowledging the purchase price to be the sum of  
**R490 000,00 (FOUR HUNDRED AND NINETY THOUSAND RAND).**

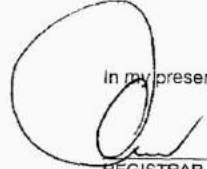
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have  
subscribed to these presents, and have caused the Seal of Office to be affixed  
thereto.

THUS DONE and EXECUTED at the Office of the Registrar of Deeds at CAPE  
TOWN on

3 December 2003



q.q.



In my presence

REGISTRAR OF DEEDS



6

DIE IDENTITEITSNOMMER VAN DIE <i>transkripte</i>	THE IDENTITY NUMBER OF THE
IS VERANDER NA 610527 0062 087	HAS BEEN CHANGED TO
19 AUG 2004	<i>Stall</i> REGISTRATEUR/REGISTRAR

<b>VERBIND</b>	<b>MORTGAGED</b>
VIR FOR R 80 000,00	
<b>B</b> 000065406 / 2004 19 AUG 2004	<i>Stall</i> REGISTRATEUR/REGISTRAR

<b>VERBIND</b>	<b>MORTGAGED</b>
VIR FOR R 1 000 000,00	
<b>B</b> 000033900 / 2007 2007-04-16	<i>Stall</i> REGISTRATEUR/REGISTRAR



**KLEINBAAI BELASTINGBETALERS- EN INWONERSVERENIGING**

Verwysing: 18/27  
Munisipale verwysing: 120 GKB (3364/2019)

TP - N. (Heart)  
(S. Jd Mwand)

Steenbokstraat 26  
KLEINBAAI  
7220

Die Senior Stadsbeplanner  
Overstrand Munisipaliteit  
Posbus 20  
HERMANUS  
7220



29 Januarie 2020

Geagte Mensner/Mevrou

FILE NO:	Gf 120 ✓
SCAN NO:	Kleinbaai
COLLABORATOR NO:	GKB 120
	1380690

**ERF 120, GEELBEKSTRAAT 14, VAN DYKSBAAI: AANSOEK OM VERGUNNINGSGEBRUIK (HERSONERING)**

- Hierdie vereniging keur nie hersonering in enkel residensiële areas goed nie, om al die redes reeds geopper in vorige aansoeke in die verlede in dieselfde area. Ons beseft egter dat die munisipaliteit die haai-bedryf moet reguleer sodat hulle ook aangeslaan kan word vir grootmaat dienste gelewer, ens.
- Die haai-besigtigingsbedryf moet ook voldoen aan die vereiste dat die loopvlakke/padreserwe aangrensend aan die erf vry sal wees van obstrukties vir voetgangerverkeer met 'n skoon loopvlak van minstens 2,5 m soos vereis deur die munisipale regulasies. Geen advertensieborde en tuine tot teen die pad moet die voetgangerverkeer, veral bejaardes, kinders op fietse en mammas met stootkarretjies, belemmer nie. Hierdie versoek word ooglopend nie toegepas deur die wetstoepassers nie, wat dan die algemene publiek warm onder die kraag laat.
- Die sypaadjies mag ook nie afgesper word met klippe nie. Daar is al klagtes geopper dat voertuie gedwing was om uit te wyk wanneer 'n groot voertuig in die pad beweeg, en dan deur die klippe beskadig is. Dit verhoed ook dat die padreserwe gebruik kan word deur voetgangers (weereens).
- Die "geen parkering bordjies" op die sypaadjies voor die betrokke persele moet ook verwyder word. As daar 'n besigheid vanuit 'n perseel bedryf word, moet die betrokke besigheid sorg vir sy eie parkering vir afleweringvoertuie en besoekers, en nie die aangrensende bure daarmee belas voor hulle huise nie. Hierdie aspek lewer 'n groot probleem. (op bladsy 8 onder die hofte "loading bays" word daarna verwys as nie van toepassing op hierdie aansoek nie!); dit is juis van toepassing op alle persele van die haai-bedryf.

5. Parkering bly 'n groot probleem en dit moet aangespreek word in al die aansoeke vir hersonerings- en haaibesigtigingsbesighede.

- Daaglik word daar voorraad, petrol, duikpakke, kos, ens. voor hierdie besighede op- en afgelaai, van drie tot 4 keer per dag, na gelang van die seisoen. Dit dra dikwels by tot groot ontwrigting van die verkeer.
- Toerbusse en minibusse parkeer meestal op die straatoppervlakte, of op die sypaadjie met die rooi strepe wanneer toeriste op/af gelaai word. Toeriste wat dan in die pad beweeg, het tot gevolg dat die motoriste ongeduldig raak. Hierdie situasie is 'n groot bron van kommer in terme van veiligheid.
- Bg busse bly op, en om die perseel vir  $\pm$  4 uur terwyl hulle wag vir die persone op die bote. Intussen daag die volgende groep dan ook al op, wat weer lei tot die oorvleueling van voertuie wat parkering benodig. Persone wat nie elke dag hier beweeg nie, besef nie al hierdie aspekte nie. *Die 7 aangeduide parkeringplekke op die aansoek, is dus baie beslis nie voldoende nie.*
- Voorsiening gemaak word vir die toeriste wat per enkel motor inkom. Daar is heelwat ekstra motors wat om hierdie besighede vergader - soms tot soveel as tien en meer. Dit is dus duidelik dat ander parkeervereistes hier moet geld. *Tot hierdie aansoek se krediet moet genoem word dat hulle poog om hulle kliënte onder op die hawegebied te laat parkeer, maar dit slaag dikwels nie.*
- Bogenoemde geld ook vir die roetine afleveringsvoertuie, soos byvoorbeeld die "Coke lorry". Dikwels oorvleuel afleverings ook.
- Dit moet ook in gedagte gehou word dat elkeen van hierdie besighede ook parkering moet voorsien vir hul aansienlike aantal personeel.

DIT IS DUS 'N NOODSAAKLIKHEID DAT ELKE HAAIBEDRYFBESIGHEID 'N EIE LAAISONE & PARKEER RUIIMTE SAL VOORSIEN SOOS UITTEENGESIT KAN DIE NORMALE PARKERINGVEREISTES SOOS AANGEDUI IN HIERDIE AANSOEK DEFINITIEF NIE HIER GELD NIE.

Ons versoek is dus dat alle haaibesigtigingsbesighede aan dieselfde regulasies moet voldoen as al die ander bedrywe. Ons versoek ook dat daar wetstoepassing ten opsigte van hierdie regulasies geskied. Dit is uiters belangrik dat waar hierdie regulasies bestaan, dit wel afgedwing moet word, tot voordeel van inwoners en besoekers.

Byvoorbaat Dank



Marius van der Merwe  
VOORSITTER KBBV  
083 320 5540



# Project Office

Town Planning & Project Management



Our Reference: 18/027  
Your reference: 120 GKB 3364/2019

9 March 2020

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

TP- A Theart  
(S vld Merwe)

**Attention:** Mr SW van der Merwe

**ERF 120 VAN DYKSBAAI: APPLICATION FOR THE REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING AND DEPARTURE**

Comments and objections were received from:

- Marius van der Merwe, Chairperson of the Kleinbaai Ratepayers Association; and
- F van Dyk.

The OM stated that the objection by F van Dyk is invalid as the objector is no longer a board member of the KRPA and will therefore not be responded to.

FILE NO:	EL 120-GKB
SCAN NO:	GKB 120
COLLABORATOR NO:	1394846

TP 11 MAR 2020

## Response to objections pertaining to the application.

Objection	Comment
<p>"Hierdie vereniging keur nie hersonering in enkel residensiële areas goed nie, om al die redes reeds geopper in vorige aansoeke in die verlede in dieselfde area. Ons besef egter dat die munisipaliteit die haaibedryf moet reguleer sodat hulle ook aangestaan kan word vir grootmaat dienste gelewer, ens."</p>	<p>The OMGMS designates the subject property as a regional economic opportunity. The OMGMS promotes the transition of the character of the area from residential purposes to commercial. The proposed rezoning is therefore in harmony with this prescript.</p> <p>The objector states that the submitted application is not supported, but however acknowledges the need for the regulation of the shark industry which is contradictory.</p> <p>The rationale for the submitted application is for the owner of the subject property to comply with the zoning sought and to pay relevant business rates and tariffs to the OM.</p>

## Response to parking related considerations and zoning related considerations.

Objection	Compliance
<p>"Die haai-besigtigingsbedryf moet ook voldoen aan die vereiste dat die loopvlakke/ padreserwe aangrensend aan die erf vry sal wees van obstrukties vir voetgangerverkeer met 'n skoon loopvlak van minstens 2,5m soos vereis deur die munisipale regulasies.</p> <p>Geen advertensieborde en tuine tot teen die pad moet die voetgangerverkeer, veral bejaardes, kinders op fietse en mamas met stootkarretjies, belemmer nie. Hierdie versoek word ooglopend nie toegepas deur die wetstoepassers nie, wat dan die algemene publiek warm onder die kraag laat."</p>	<p>The road reserves in Geelbek Street and Mossel Street are 13m wide and have a tarred road with which is 6m wide. The pedestrian path on both sides of the tarred road is 3,5m which is wider than the minimum 2,5m which the objector alluded to.</p> <p>The owner of the subject property has not placed any billboards on the premises and does not use the pedestrian walkway as a private garden.</p>
<p>"Die sypaadjies mag ook nie afgesper word met klippe nie. Daar is al klagtes geopper dat voertuie gedwing was om uit te wyk wanneer 'n groot voertuig in die pad beweeg, en dan deur die klippe beskadig is. Dit verhoed ook dat die padreserwe gebruik kan word deur voetgangers (weereens)."</p>	<p>The pavement adjacent to the boundary of the subject property is covered with grass which the owner regularly mows to enable convenient pedestrian movement.</p>
<p>"Die "geen parkering bordjies" op die sypaadjies voor die betrokke persele moet ook vervyder word. As daar 'n besigheid vanuit 'n perseel bedryf word, moet die betrokke besigheid sorg vir sy eie parkering vir afleweringvoertuie en besoekers, en nie die aangrensende bure daarmee belas voor hulle huise nie. Hierdie aspek lewer 'n groot probleem. (op bladsy 8 onder die</p>	<p>There is no sign that prohibits parking on the subject premises.</p> <p>There are 6,5 parking bays required and 7 parking bays are provided on the subject premises which would avert parking occurring in the pavements.</p>



<p>hofie 'Loading bays' word daarna verwys as nie van toepassing op hierdie aansoek nie); dit is juis van toepassing op alle persele van die haabedryf."</p>	<p>A threshold of 500m<sup>2</sup> GLA is required for loading bays to be provided. The GLA on the subject property is only 109,3m<sup>2</sup> which nullifies the need for the provision of loading bays.</p>
<p><b>"Parkering bly 'n groot probleem en dit moet aangespreek word in al die aansoeke vir hersonerings- en haabesigtigingsbesighede.</b></p> <p>Daagliks word daar voorraad, petrol, duikpakke, kos, ens. voor hierdie besighede op- en afgelaai, van drie tot 4 keer per dag, na gelang van die seisoen. Dit dra dikwels by tot groot ontwrigting van die verkeer.</p> <p>Toerbusse en minibusse parkeer meestal op die straatoppervlakte, of op die sypaadjie met die rooi strepe wanneer toeriste op/af gelaai word. Toeriste wat dan in die pad beweeg, het tot gevolg dat die motoriste ongeduldig raak. Hierdie situasie is 'n groot bron van kommer in terme van veiligheid.</p> <p>Bg busse bly op, en om die perseel vir ± 4 uur terwyl hulle wag vir die persone op die bote. Intussen daag die volgende groep dan ook al op, wat weer lei tot die oorfleueling van voertuie wat parkering benodig. Persone wat nie elke dag hier beweeg nie, besef nie al hierdie aspekte nie. Die 7 aangeduide parkeringplekke op die aansoek, is dus baie bestis nie voldoende nie.</p> <p>Voorsiening gemaak word vir die toeriste wat per enkel motor inkom. Daar is heelwat ekstra motors wat om hierdie besighede vergader - soms tot soveel as tien en meer. Dit is dus duidelik dat ander parkeervereistes hier moet geld. Tot hierdie aansoek se krediet moet genoem word dat hulle poog om hulle kliente onder op die hawegebied te laat parkeer, maar dit slaag dikwels nie.</p> <p>Bogenoemde geld ook vir die roetine affeweringsvoertuie, soos byvoorbeeld die "Coke lorry". Dikwels oorvleuel affewerings ook.</p>	<p>The sufficient parking proposed on the subject property would avert the vehicular flow disruptions alluded to by the objector.</p> <p>The mini tour busses which will enter and egress the subject property will be accommodated in the parking bays which are delineated on the subject property. This will avert the safety concerns of the objector.</p> <p>The proposed 7 parking bays are sufficient and comply with Section 17 of the OMZS.</p> <p>The objector acknowledges that the owner of the subject property has taken reasonable measures to ensure that no parking occurs on the adjacent pavement. It would therefore be unfair for the owner of the subject property to be penalised for the inability of other property owners to comply with the prescribed parking standards.</p> <p>The sentiment by the objector that every property owner in Van Dyksbaai comply with parking requirements is agreed with.</p>



<p>Dit moet ook in gedagte gehou word dat elkeen van hierdie besighede ook parkering moet voorsien vir hul aansienlike aantal personeel."</p>	
<p>"Dit is dus 'n noodsaaklikheid dat elke haabedryfbesigheid 'n eie laaisone &amp; parkeer ruimte sal voorsien soos uiteengesit kan die normale parkeringvereistes soos aangedui in hierdie aansoek definitief nie hier geld nie."</p>	<p>The required number of parking bays have been provided on the premises and a loading bay is not required by the OMGMS.</p>
<p>"Ons versoek is dus dat alle haabesigtigingsbesighede aan dieselfde regulasies moet voldoen as al die ander bedrywe. Ons versoek ook dat daar wetstoepassing ten opsigte van hierdie regulasies geskied. Dit is uiters belangrik dat waar hierdie regulasies bestaan, dit wel afgedwing moet word, tot voordeel van inwoners en besoekers."</p>	<p>The land uses on the subject property comply with the proposed zoning. The request that all other properties in Van Dyksbaai comply with prescribed zoning codes is agreed with. It is proposed that the objector notify the OM of the premises which have illegal land uses so that the OM can be in a position to take the necessary action to force property owner to comply with relevant zonings in the OMZS.</p>

**An evaluation done of the submitted proposal.**

Most of the objections relate to other properties in Van Dyksbaai contravening the prescribed zoning parameters. The compliance of this proposal with the prescribed parking requirements has been reiterated in this response to the objection. The objection does contain substantive reason for the refusal of the submitted application. It is therefore proposed that the submitted application be approved.

Yours faithfully

**REA JANKIE**

**TOWN PLANNER (B/8392/2017)**

File reference: 120 GKB 3364/2019  
Date: 26 November 2019



**INTERNAL MEMORANDUM**

From : Town Planning Department  
Town Planner : Schalk van der Merwe

**TO:**

<i>Area Manager</i>	<i>Building Department</i>	<i>District Health</i>	<i>Electrical Department</i>
<i>Environmental Officer</i>	<i>Fire Department</i>	<i>Infrastructure and Planning (Onrus)</i>	<i>Tourism</i>
<i>Operational Services</i>	<i>Traffic Department</i>	<i>Ward Councillor (R de Coning)</i>	<i>Waste Management</i>

Applicant	WRAP (obo KS MACLEAN)
Property Details	ERF 120, VAN DYKSBAAI
Application Description	APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING AND DEPARTURE

**ATTACHMENTS :**

1. Advertisement	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Plan	
3. Motivation	
4. Site Development Plan	

**YOUR DEPARTMENT'S COMMENTS:**

The fire department have no objection provides that the structure complied to the National Fire Protection Regulations SANS-T:2011 and the By-Law relating Community Fire Safety

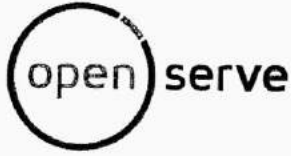
Signature: *E Solomons* Date: 28 NOV 2019

**ASSISTANT CHIEF**  
**Enrico Solomons**  
PO Box 20 MEDUNGANI 7200  
Tel: 028 313 8979 Fax: 028 312 1483

Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo by not later than the date stipulated below. If you require an extension of time for submission of your comments, please request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

- Building Control Department to confirm that all structures are in accordance with the approved building plans.

**COMMENTS REQUIRED BY: 30 December 2019**



TP-A Theart  
(Suid Mente)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

Candice Spammer  
Tel: 021 414 5582  
Fax: 086 480 0617  
Email: spammec1@telkom.co.za

Our Ref.: WWIP\_WGNB4320\_19  
Your Ref.: 120 GKB 3364

6 December 2019

Attention: S Muller

Overstrand Municipality  
HERMANUS

PLANT AFFECTED – COPPER:

**APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING AND DEPARTURE:  
ERF 120, 14 GEELBEK STREET, VAN DYKSBAAI**

With reference to your application received **26 November 2019**.

**As important cables and other infrastructure are affected, please contact our representative Frederik Swart at 028 514 1199 / 081 363 7815 / FrederikS@openserve.co.za 48 hours prior to commencement of construction work.**

I hereby inform you that OpenServe approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

FILE NO: EL 120-GKB
SCAN NO: GKB 120
COLLABORATOR NO: 1364702

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,  
Private Bag X881, Pretoria, Gauteng, 0001

- 6 DEC 2019

As per sketch attached, OpenServe infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

**Should OpenServe infrastructure be damaged while work is undertaken, kindly contact our representative immediately.**

All OpenServe rights remain reserved.

Yours faithfully



---

For Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region



This wayleave, Reference Number WWIP WGNB4320\_19 is valid for 12 months from date here of and is subject to the following conditions:

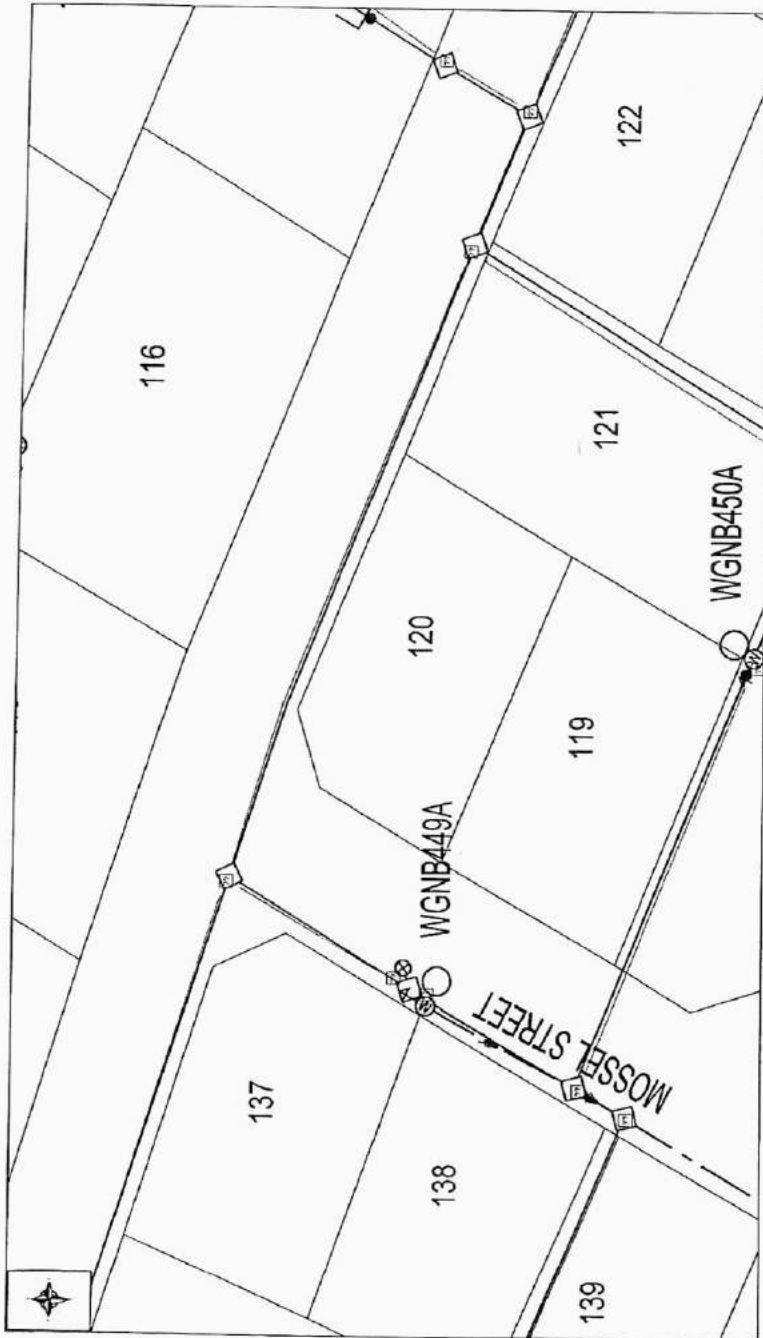
1. No mechanical plant or vibrator type compactors may be used within three metres of any Open Serve plant ( I.E. any Telecommunication equipment above or below ground level ).
2. The position of our plant affected by the proposal is indicated as approximate and Frederik Swart at telephone number 081 363 7815 and email address Frederiks@openserve.co.za must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of Open Serve Plant will be indicated on site.
3. A written request must be submitted to Open Serve for consideration should the applicant require our plant to be relocated. The cost of such relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Open Serve immediately should the applicant locate any Open Serve plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for the damage or loss as a result thereof.

Date: 06 December 2019

By: C. Spammer

For Wayleave Management  
Western Cape

Legend	
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC )	
5. Jointing Pit / AJB	
6. Jointing Pillar ( Pj )	
7. Pipe Junction Box ( B/S )	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable ( A/C )	



Legend	
	Existing Manhole
	Planned Manhole
	To Be Abandoned Manhole
	Existing Junction Pit
	Planned Junction Pit
	To Be Abandoned Junction Pit
	Existing JAB
	Planned JAB
	To Be Abandoned JAB
	Existing Inflow DP
	Planned Inflow DP
	To Be Recovered DP
	Existing DP
	Planned DP
	To Be Recovered DP
	Existing Pave Joint
	Planned Pave Joint
	To Be Recovered Pave Joint
	Existing Underground Route
	Planned Underground Route
	To Be Abandoned Underground Route
	Existing Overhead Route
	Planned Overhead Route
	To Be Recovered Overhead Route
	Existing NMI QADP
	Planned NMI QADP
	Existing Storm ChDF
	Planned Storm ChDF
	Existing Storm and Stay

Completed By	T. Starnini	Project No.	TELKOM REGIONAL EXECUTIVE
Client	Overland Municipality	Date	06/12/2019
Client ref	T20 JAB 3564	Client/Service ref	WGP-WGNB450_19
Details	COPPER SERVICES AFFECTED		

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
REZONING & DEPARTURE: ERF 120, VAN DYKSBAAI (3364/2019)**

Stormwater (SW)	:	In Order
Electricity	:	In Order
Water	:	In Order
Sewer	:	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 (2019/2020) is as follows:

**Freehold erven:**

Water	R 22 925.00 x -0.5628=	-R12 902.19
Sewerage	R 15 457.00 x -0.5628=	-R 8 699.20
Roads	R 6 931.00 x 2.08282=	R 14 436.03
Stormwater	R 7 997.00 x 0.782667=	R 6 258.99
Solid Waste	R 1 386.00 x 0.93709=	<u>R 1 298.81</u>
<b>TOTAL (inclusive of VAT)</b>	<b>=</b>	<b>R 392.44</b>

**Note:**

- 1.3 **The above figures are estimates**
- 1.4 **The above figures do not include connection fees**
2. that the existing water connection and sewer conservancy tank to Erf 120 shall be used to service Erf 120;

2

3. that the developer must 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 only a standard 60 Amp single phase electricity connection will be available per erf;
5. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
6. that stormwater be allowed to discharge through Erf 120, Van Dyksbaai, unobstructed;
7. that any additional and / or extended vehicle entrances will be for the owner's account.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE