

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
7 June 2023  
(Also the agenda for the Mayoral Committee Meeting : 12 June 2023)**

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**8.  
ERF 6119 HERMANUS – OLD HARBOUR MUSEUM: CONDITION B(a) –  
CONSENT FOR ADDITIONAL USE OF PROPERTY**

**A Le Roux  
24 April 2023**

**Manager: Property Administration**

**(028) 316 - 5623**

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**1. Executive Summary**

A request was received from the Trustees of the Old Harbour Museum (the “Applicant”) for Council to consent to the use of a portion of Erf 6119 Hermanus (“the Property”), situated at 64 Marine Drive, Hermanus, as a restaurant in order to generate additional funding as motivated below.

See Locality map attached marked Annexure “A”.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Property Administration

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
The encouragement of structured community participation in the matters of the municipality

**4. Delegated Authority**

None

**5. Legal Requirements**

None

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

The previous Municipality of Hermanus sold Erf 6119 Hermanus to the Old Harbour Museum on 17 August 1982 at a nominal purchase price of R1.00. The transaction was registered in the Deeds Office on 25 March 1983.

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
7 June 2023  
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---

The Title deed of the property, T10445/1983, contains the following condition which was imposed by Council as a condition of the sale (not the subdivision to create the Property):

*SUBJECT FURTHER to the following conditions imposed by the Municipality of Hermanus for its benefit:*

- (a) *The purchaser, or its successors in title, shall utilize the land hereby purchased for the erection of a building/s to be **used exclusively for Museum purposes**. Should the erection of such building/s not be commenced within a period of (2) two years after transfer or within such further period as the Council with the consent of the Administrator of the Provincial Administration of the Cape of Good Hope may allow, or should the land at any time cease to be used for the said Museum purposes by the transferee or its successors in title, the land shall revert to the Council without payment of compensation of any nature whatsoever and the transferee or its successors in title shall be bound to do all things necessary and to sign all documents for the purpose of effecting re-transfer to the Council, the cost of the transfer to be borne by the transferee or its successors in title, whereafter the land with the approval of the Council and the Administrator may be used for such purpose as agreed to by the Council and the Administrator.*

The Applicant submitted the following motivation in support of the application:

*“It is the vision of the Board of Trustees of the Old Harbour Museum to upgrade our current exhibitions in all three of our museums, particularly the Old Harbour Museum where everything started. As museums are starting to lose their relevance, it is important to us to keep our museum alive as much as possible, meaning we will need to constantly adjust exhibitions.*

*The current exhibition in the Old Harbour Museum has been there since the start of the museum in 1972 and has grown tired. In 2012 research was completed for a new exhibition to be installed called ‘Fishing, Politics and Poverty’ based on life in Hermanus before we know it as it is now. This will be an interactive exhibition which is costly, and funds are needed for this. Further to this, The Whale Museum needs constant upgrades as this is a more modern museum, and as we are trying to move with the times and research and develop exhibitions, this is also costly. Our purpose is to educate the community on times passed, but we also need to consider current matters that need to be carried over to communities in terms of conservation.*

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
7 June 2023  
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---

*As it is our main objective to educate, this is quite difficult as we have major financial constraints. Operational costs are high, we are struggling to keep up with maintenance of our buildings, and thus the decision to put our office up for rent. The income from this will be saved so that these long-term plans can come into effect.*

*To achieve the goal of installing new exhibitions, we need an urgent boost in funding, thus the decision to put our administrative building out in the rental market in order to generate the needed additional income as with our current budget, reduced subsidies from the Department of Cultural Affairs and Sport, we need to look at other ways to generate income. These plans however cannot be realised as we are facing a restriction in our title deed.*

*We hereby request your permission that we may continue with the proposed plans of leasing this building out as a restaurant to cover the said expenses. Should this be successful, not only will it benefit the museum, but Hermanus as well as jobs will be created, and another tourist attraction created as the Old Harbour is an important and common meeting spot for locals and visitors alike.”*

### **Discussion**

The current zoning of the Property is Open Space Zone 2: Public Open Space with an approved consent use to accommodate tourist facilities, e.g., abalone and wine tasting (see approval attached marked Annexure “B”). An area was allocated to a tenant for this purpose; however, it was found that it was not viable to only cater for abalone and wine tasting, thus the use was extended to operate a restaurant known as “Perlemoen” (see Annexure “C”).

The Applicant now wishes to lease out another building, currently used as an administration office, for restaurant purposes (see Annexure “D”) as motivated above. However, the title deed condition restricts the use of the Property to that of a museum which needs to be addressed before and land use planning application can be submitted.

The above zoning makes provision for the following consent uses:

*“Cemetery, environmental facilities, informal trading (subject to the provisions of Chapter 16.10), recreational facilities, tourist facilities, transmission apparatus (subject to the provisions of Chapter 16.10), urban agriculture, utility service, any other related uses permitted by the Municipality.”*

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
7 June 2023  
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Tourist facilities are defined as “*amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise) but does not include a hotel or overnight facilities*”.

The main use of the Property will remain a museum and these two small restaurants will be additional to the main use to generate an income to upkeep and maintain the museum. The Applicant will have to obtain Land Use Planning approvals to continue with the current restaurant as well as to accommodate the new proposed restaurant. In this regard, the Town and Spatial Planning Department will advise the Applicant accordingly.

### **Evaluation**

The relevant condition stipulates as follows (my highlight):

- (a) *The purchaser, or its successors in title, shall utilize the land hereby purchased for the erection of a building/s to be **used exclusively for Museum purposes**.*
  - (b) *Should the erection of such building/s not be commenced within a period of (2) two years after transfer or within such further period as the Council with the consent of the Administrator of the Provincial Administration of the Cape of Good Hope may allow,*
  - (c) *or should the land at any time cease to be used for the said Museum purposes by the transferee or its successors in title.*
- (a) The main use of the Property will still be a museum as the Property is declared as a monument in terms of Proclamation number 1092 dated 10 July 1970. With the possible additional use, the Property will however not be exclusively used as a museum anymore. However, the funding generated from this additional use is needed to ensure the financial viability of the museum.
  - (b) The buildings have been erected and thus this portion of the restriction has lapsed.
  - (c) The main use of the Property will remain a museum, being the purpose, the Property was transferred. The additional use can most probably be accommodated under a consent use for which a formal process must be followed. However, the Applicant requests that the Municipality deal with the title deed restriction first.

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
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**Conclusion**

As the proposed additional use will only be supplementary to the main use as a museum, it is recommended that the Municipality at this stage give consent to the deviation from the title deed restriction in order for the Applicant to proceed with the necessary Land Use Planning applications. The latter will go through a public participation process.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

- Annexure A: Locality plan
- Annexure B: Letter dated April 2019 – consent use
- Annexure C: Locality map with current restaurant “Perlemoen”
- Annexure D: Locality map with proposed new restaurant

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from condition B(a) as contained in Title Deed number T10445/1983 2014 to accommodate tourist facilities in the form of restaurants, **be approved**, subject thereto that the required land use planning approvals are obtained.

<b>RESPONSIBLE OFFICIAL :</b>	<b>A LE ROUX</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>28 JULY 2023</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>28 JULY 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

**AGENDA of the  
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24 April 2023**

**Manager: Property Administration**

**(028) 316 - 5623**

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE  
PORTFOLIO COMMITTEE ON 7 JUNE 2023, WHICH COMMITTEE RECOMMENDED  
AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from condition B(a) as contained in Title Deed number T10445/1983 2014 to accommodate tourist facilities in the form of restaurants, **be approved**, subject thereto that the required land use planning approvals are obtained.

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Navrae:  
Enquiries: H van der Stoep (Senior Town Planner)

Lêerverwysing:  
File Reference: 6119 HNC (4195)

Datum:  
Date: 25 April 2019



N Lloyd  
32 Mitchell Street  
**HERMANUS**  
7200

REGISTERED MAIL

Dear Madam

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**DECISION LETTER TO APPLICANT**

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**ERF 6119, OLD HARBOUR, HERMANUS: PROPOSED CONSENT USE: N LLOYD ON BEHALF OF OLD HARBOUR MUSEUM-HERMANUS**


1. The application received on 1 October 2018 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Authorised Official on 25 April 2019.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

**RESOLVED**

- "1. *that the application in terms of Section 16(2)(o) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 on Erf 6119, Hermanus for a consent use to accommodate tourist facilities e.g. abalone and wine tasting, be approved, subject to the following conditions, in terms of the provisions of Section 61 of the By-Law:*
  - (a) *that this approval is only for the development for abalone and wine tasting in the existing structures at the Old Harbour;*
  - (b) *that disabled access to the tasting area be provided, as well as a disabled toilet;*
  - (c) *that balustrades be installed/provided to all areas where difference in level is more than 1m;*
  - (d) *that a history of this structure is to be displayed in the altered use structure;*
  - (e) *that drawings for statutory approval be submitted to the Local Heritage and Aesthetics Committee;*
  - (f) *that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage;*
  - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation;*

- (h) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
- (i) that all the conditions in the Services Report (attached as Annexure D), be complied with, and
- (j) that all the conditions imposed by the Fire Department (attached as Annexure E), be complied with.
2. that the applicant 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 conditions of approval."
4. Reasons for the above decision are as follows:
- The Old Harbour may come to life and actually serve a purpose to the benefit of the area.
  - The change of use will have no impact on the surrounding area.
  - The activity will be located in the existing buildings.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3034-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website ([www.overstrand.gov.za](http://www.overstrand.gov.za)).
- 5.3 Contact details are as follows:
- |                    |  |
|--------------------|--|
| Physical address : | 16 Paterson Street, Hermanus, 7200                                       |
| Postal address :   | PO Box 20, Hermanus, 7200  |
| E-mail address :   | <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a> |

Yours faithfully



S MÜLLER


**DIRECTOR : INFRASTRUCTURE AND PLANNING**

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR CONSENT USE: ERF 6119, OLD HARBOUR, HERMANUS  
(4195)**

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

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that any commercial food preparation facilities (e.g. restaurant / guest house etc.) must be provided with a grease trap, which must comply with the standards and specification of the Department: Operational Services;
4. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
5. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
6. that stormwater be allowed to discharge through Erf 6119, Old Harbour, unobstructed;
7. that any additional and / or extended vehicle entrances will be for the owner's account;
8. that refuse will be removed from the sidewalks as per municipal arrangement;
9. that no on-street parking be allowed.

<p>CONSENT USE IS SUBJECT TO THE PREMISES COPLYING WITH THE REQUIREMENTS OF NATIONAL FIRE PROTECTION REGULATIONS SANS10400T:2011 AND THE OVERSTRAND COMMUNITY FIRE SAFETY BY-LAW P.N. 6454 of 2007. REFER TO ANNEXURE A FOR MINIMUM REQUIREMENTS.</p>		
		<p>MUNICIPALITEIT OVERSTRAND MUNICIPAALITY FIRE BRIGADE / BRANDWEER APPROVED / GOEDGEKEUR</p>
		<p>18 DEC 2018</p>
Signature:		Date:
		2018

See provide your comments with specific reference to any conditions of approval that you have proposed in the space provided below or in a

2/2

	<p><b>OFFICE of THE CHIEF FIRE OFFICER</b> PO BOX 20 HERMANUS 7200 Tel: 028 313 8980 Fax: 028 313 1493</p>	
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Compliance requirements for A1 - Restaurants, Bars, Entertainment, Tourist Facility - Public Gathering venues in terms of the National Fire Protection Regulations SANS10400T:2011  
**ANNEXURE A - TOWN PLANNING APPLICATION: ERF 6119 OLD HARBOUR, HERMANUS**  
**APPLICATION No: 4199**

- > Free standing building - Provide fire hose reels in compliance with Section 4.34 of SANS10400T:2011 - 1x30m FHR per 500m<sup>2</sup> in the case of a building being larger than 250m<sup>2</sup>.
- > Provide 1 x Fire Hydrants for any building larger than 1000m<sup>2</sup> or part thereof in compliance with Section 4.35.4 of SANS10400T:2011.
- > Provide a SANS10139 compliant manually activated visual and audible alarm system in compliance with Section 4.31.3 of SANS10400T:2011.
- > Provide 1 x Fire Extinguisher per 200m<sup>2</sup> of either type: Water - 9litre; Carbon Dioxide CO<sub>2</sub> - 5kg; Dry Chemical Powder - 4.5kg. Locations to be marked by SANS1186-5 (Photoluminescent) signs.
- > Fire protection of air conditioning systems must be in compliance with Section 4.43 of SANS10400T:2011.
- > **Kitchen Extraction Systems:**  
Kitchen extraction systems must be in compliance with SANS1850:2012 - Design of Commercial Kitchen Extraction Systems. Maintenance and clearing of extraction systems must be on a 6 monthly basis with certificate of work done issued by the maintenance company.
- > **Solid Fuel Ovens (Pizza or Tandoori):**  
Solid Fuel ovens shall be provided with a suitable dedicated extraction/ventilation system in compliance with Section 7 of SANS1850:2012
- > **Release of Solid Fuel Combustion Products:**  
Where there is a risk of airborne sparks being produced, a suitable spark arrester shall be fitted to prevent embers entering the extraction duct in compliance with Section 7.2 of SANS1850:2012.
- > **Grease Draws:**  
All canopies shall be fitted with an internal gutter and grease draw of capacity large enough as to not require constant attention, or some other device to contain any run-off safely. Such a device should have a maximum capacity of 500millilitre.
- > **Fire Suppression of Deep Frying Units:**  
At least one Type F (Saponification/Wet Chemical) fire extinguisher shall be supplied for cooking operations involving deep frying units. The size and rating of the unit should be commensurate with the oil capacity of the frying unit. Type extinguishers should meet the requirements of ISO 7165 or acceptable equivalent. In accordance with Section 11 of SANS1850
- > Provide automatic self-contained emergency lighting in compliance with Section 4.30.2 & 4 of SANS10400T:2011 that is able to provide lighting for a minimum period of 60 minutes or alternatively provide automatic power supply i.e. Generator or Battery backup with a maximum startup of 10 seconds time lapse.
- > Provide emergency fire exits in compliance with Sections 4.16, 4.17, 4.18 & 4.21 of SANS10400T:2011 including provision for the escape of persons with disabilities in compliance with SANS10400S. i.e. 1m in width for up to 100 persons without disabilities and 1.5m width for persons with disabilities.
- > All emergency exits must be indicated along the entire route with SANS1186-5 (Photoluminescent) signs and directional arrows together with illuminated EXIT signs above exit doors in compliance with Section 4.29 of SANS 10400T:2011.
- > Final escape doors must be provided with a panic bar release system in compliance with Section 4.16.10 of SANS10400T:2011.
- > Seating and furniture arrangement within places of entertainment must be in compliance with Section 4.29 of SANS10400T:2011 i.e. that a walking space between the backrests of chairs shall be a minimum of 500mm.
- > The use of any place of entertainment is subject to the issue of a Population control certificate issued by the local authority for which application must be submitted to the Fire & Rescue Service in terms of the Overstrand Community Fire Safety By-law P.N. 6454 of 2007.

