

ERF 4929, 39 CHURCH STREET, WESTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND THE DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF CYNMAR (PTY) LTD

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that an application, applicable to Erf 4929, Hermanus, has been received for the following:

- Departure in terms of Section 16(2)(c) of the By-Law to deviate from the provisions of Chapter 16.10.10 (home occupation) of the Overstrand Land Use Scheme, 2020, to allow for the repair of cell phones, tablets, and related electronic devices, the keeping of a limited supply of electronic device accessories, and assisting customers with the setup and support of electronic devices from a portion (35m²) of the dwelling unit on the property; and the
- Determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus. Any comments on the proposal must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) on or before **30 September 2022**, quoting your name, address and contact details, interest in the application, as well as the reasons for comment. Telephonic enquiries can be made to **Mr H. Boshoff** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

ERF 4929, KERKSTRAAT 39, WESTCLIFF, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN DIE BEPALING VAN 'N ADMINISTRATIEWE BOETE: PLANACTIVE TOWN & REGIONAL PLANNERS NAMENS CYNMAR (PTY) LTD

Kennis word hiermee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening op Munisipale Grondgebruikbeplanning, 2020 (Verordening) gegee dat 'n aansoek, van toepassing op Erf 4929, Hermanus, ontvang is vir die volgende:

- Afwyking ingevolge Artikel 16(2)(c) van die Verordening om af te wyk van die bepalings van Hoofstuk 16.10.10 (tuisberoepsbeoefening) van die Overstrand Grondgebruikskema, 2020, om voorsiening te maak vir die herstel van selfone, tablette en verwante elektroniese toestelle, die aanhou van 'n beperkte voorraad elektroniese toestelbykomstighede, en kliënte behulpsaam te wees met die opstel en ondersteuning van elektroniese toestelle vanuit 'n gedeelte (35m²) van die wooneenheid op die eiendom; en die
- Bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende woensdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) bereik voor of op **30 September 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, sowel as redes vir die kommentaar. Telefoniese navrae kan gerig word aan **Mnr H. Boshoff** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

ISIZA ESINGUERF 4929, 39 CHURCH STREET, WESTCLIFF, HERMANUS, KUMMANDLA KAMASIPALA WASE-OVERSTRAND: ISICELO ESINGOKWAHLULA NENGIKELELO YEPENALTHI/UMDLIWO: NGABAKWAPLANACTIVE TOWN & REGIONAL PLANNERS EGAMENI LIKACYNMAR (PTY) LTD

Kukhutshwe isaziso esimayela nemiba yeSolotyama-48 loMthethwana kaMasipala waseOverstrand ngeZicwangciso Zokusetyenziswa koMhlaba ku2020 (UMthethwana) esithi kufunyenwe isicelo esibenza kwisiza esinguErf 4929, eHermanus, simayela nale miba ilandelayo:

- Ukwahlulahlula ngokwemiba yeSolotyama-16(2)(c) loMthethwana ukushenxa kwizibonelelo zeSahluko se-16.10.10 (umsebenzi wasekhaya) weSkim Sokusetyenziswa koMhlaba eOverstrand ku2020, ukuvumela ukulungisa iiselifowuni, iithabhlethi nobuxhakaxhaka bombane ukugcina inani elincinci lezinto ezihambelana nobuxhakaxhaka bengcingo nentanjana zombane ezixhasa ukusebenzisa nobuxhakaxhaka obuchazwe ngentla ukunceda abathengi bamisele unxibelelwano noqhakamshelwano lweengcingo zombane kwinxalenye yomhlaba ozizikwemitha eizngama (35m²) kwiyunithi yokuhlala; kunye
- nengqikelelo yentlawulo yepenalthi/yomdliwo ngokweSolotyama-16(2)(q) loMthethwana.

linkcukacha ezipheleleyo mayela nezi zindululo ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukusukela kwixesha eliphakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Izicwangciso zeDolophu, 16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo zingangeniswa kwaMasipala ngokwezibonelelo zeSolotyama-51 nelama52 loMthethwana kaMasipala ochazwe ngentla (16 Paterson Street, Hermanus / (f) 0283132093 / alida@overstrand.gov.za) ngomhla okanye ngaphambi komhla **wama-30 kuSeptemba 2022**, uchaze igama lakho, idilesi yakho neenkukacha zakho, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingathunyelwa kuMchwangciso weDolophu Oyintloko, **Mnu. H. Boshoff** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe leziCwangciso ngeDolophu apho igosa likamasipala liza kumnceda ukufaka izimvo zakhe ngokusemthethweni

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

ERF 4929 HERMANUS

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Mr. J.C. Odendaal, the director of Cynmar (Pty)Ltd, the owner of erf 4929 Hermanus, has instructed the company Plan Active to investigate and apply for a departure and the determination of an administrative penalty to accommodate the, The Big Byte enterprise on the subject property after receiving a notice of non-compliance from the Overstrand Municipality.

A meeting was arranged at the Town Planning Department with Mr. Riaan Kuchar and Ms. Naudica Gerber on the 4 March 2022 to discuss the matter if the, The Big Byte enterprise can be accommodated on a single residential property as a home occupation. We could not come to an agreement regarding the aforementioned at the time of our meeting. Further conversations followed in which it was conveyed that the business (The Big Byte) conducted by Mr. Craig Martens falls within the land use defined as a service trade.

We however felt strongly inclined that the business that is conducted from Erf 4929 Hermanus can be accommodated as a home occupation on a single residential zoned property due to the reasons referred to in Section 3.4.1 below.

We also disagreed with the statement that the work that Mr. Craig Martens performs is categorised as a service trade. With reference to the Overstrand Municipal Land Use Regulations of 2020 the definition of service trade read as follows:

“service trade” means an enterprise which:

- (i) is primarily involved in the rendering of a service to the local community such as the **repair of household and electrical appliances or the supply of household services;**
- (ii) is not likely to be a source of disturbance to surrounding properties;
- (iii) is not likely, in the event of fire, to cause excessive combustion, resulting in noxious fumes or explosions;
- (iv) **includes a builder’s yard and allied trades, fitment centre for tyres, shock absorbers or exhausts systems and similar types of uses;**
- (v) excludes an abattoir, brick yard, sewage works and service station;

Household and electrical appliances are defined as follow:

Household appliance (noun): “devices or machines, usually electrical, that are in your home and which you use to do jobs such as cleaning or cooking;
the vacuum cleaner, the washing machine, and other household appliances”

The definition of an electrical appliance is similar to that of a household appliance.

With reference to the above definition electronic devices such as cell phones, tablets etc. do not fall within the definition of household appliances or electrical appliances.

The land uses mentioned above covered in the definition of a service trade refer to the repair of household and electrical appliances that can be categorised as small and large appliances. Household and electrical appliances are microwave ovens, ovens, vacuum cleaners, dishwashers, fridges, freezers, tumble dryers, washing machines etc.

The above mentioned reasoning was referred to the Overstrand Municipal Legal Department that advised that an application for a departure be submitted to accommodate the, The Big Byte enterprise on Erf 4929 Hermanus. With reference to our most recent discussion with Mr. Helgaardt Boshoff on 14 June 2022 it was agreed that we apply for a departure from the land use restriction applicable to a home occupation as defined in Section 16.10.10 of the Overstrand Municipal Land Use Scheme Regulations, 2020.

We have scrutinised the relevant Title Deed, T19111/2021 that contains no restrictions, but it refers to further conditions referred to in Deed of Transfer No.T6887/1914. We have obtained a copy of the last-mentioned Title Deed and we can also confirm that this Title Deed contains no restrictions prohibiting the use of a portion of the dwelling for business purposes.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(c) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for a departure from Section 16.10.10 of the Overstrand Municipal Land Use Scheme Regulations, 2020 to accommodate the, The Big Byte enterprise within a portion of the dwelling situated on Erf 4929 Hermanus.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

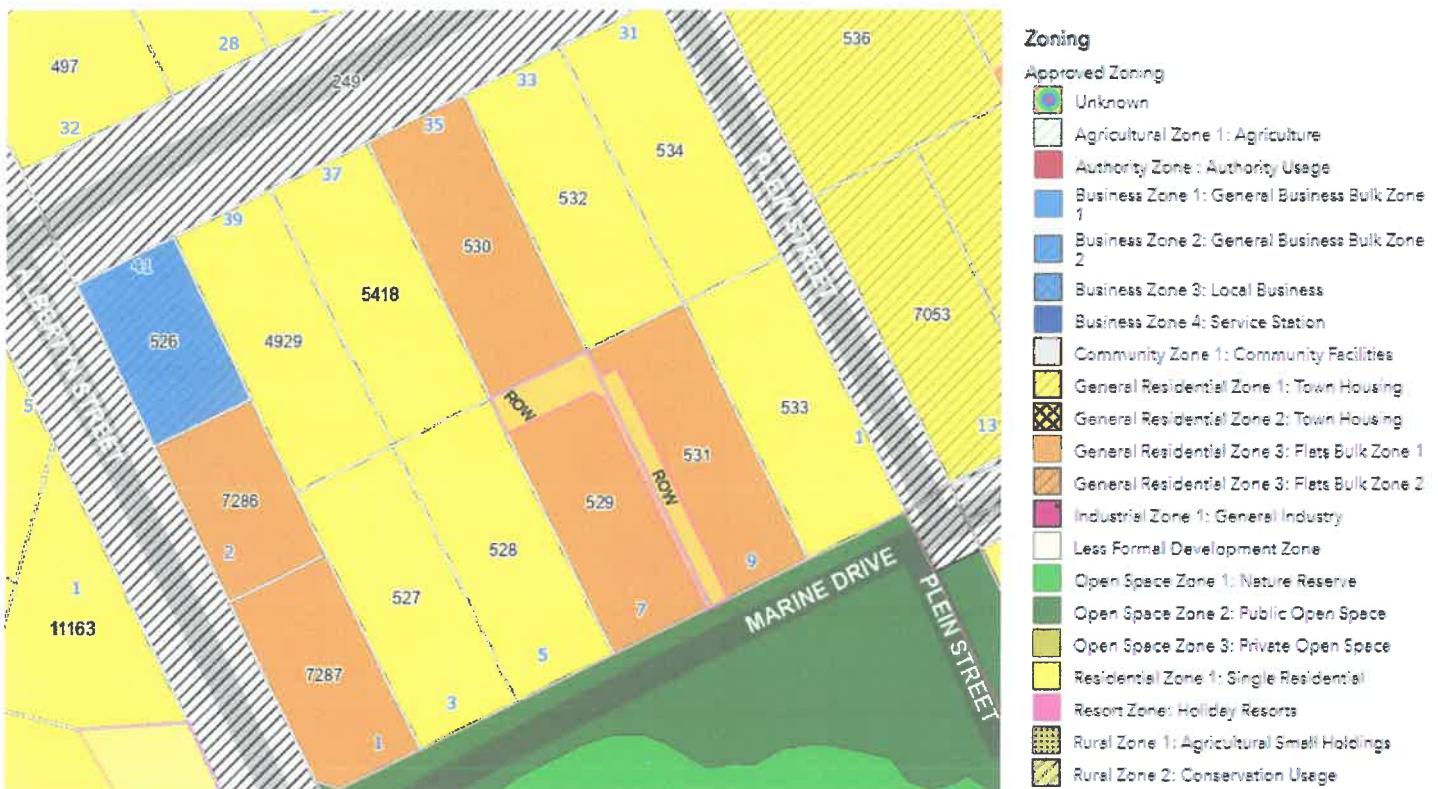
The property is situated at 39 Church Street, as indicated on the street map below:



Please also refer to the enclosed locality map.

3.2 ZONING

Erf 4929 Hermanus is zoned Residential Zone 1 and it is primarily used for residential purposes. The, The Big Byte operates from a portion of the dwelling of which the detail will follow. Surrounding properties are zoned for single residential purposes and general residential purposes (boutique hotels, guesthouses) and general business purposes. Please refer to the abstract from the Zoning Map below:



A number of rezonings, consent uses and departures have been approved alongside Church Street. The consent uses granted are mostly for guesthouse purposes.

3.3 LAND USE

Erf 4929 Hermanus is used for residential purposes and the, The Big Byte also utilises a small section of the existing dwelling.

Land uses that surround erf 4929 Hermanus are tourist accommodation establishments, offices and residential uses. It is evident that erf 4929 Hermanus is surrounded by mixed land uses.

3.4 PROPOSED DEVELOPMENT

Application is made in terms of:

- Chapter 4, Section 16(2)(c) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for a departure from Section 16.10.10 of the Overstrand Municipal Land Use Scheme Regulations, 2020 to accommodate the, The Big Byte within a portion of the dwelling located on Erf 4929 Hermanus.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

3.4.1 PROPOSED DEPARTURE

The, The Big Byte enterprise owned by Mr. Craig Martens is making use of a portion of 35m² on the ground floor of the existing dwelling, that he occupies for residential purposes, to mainly repair Apple cell phones, Apple tablets and other related Apple products. This is his main source of income. With reference to the section of the dwelling being used for business purposes, he also has a number of display units that contain collectable Apple products "antiques" that form part of Craig's own private collection, these displayed items are not for sale. He does have an extremely limited stock supply of Apple chargers, charging cables and accessories, items that visitors / tourists are in need of as they often lose them or leave them behind in guest houses. These items that are for sale are insignificant in numbers and account for less than 5% of his income.

Craig also provides end-to-end solutions providing services as diverse as support, maintenance, repairs, and assistance to the vast majority of Apple users in the area. Approximately 60% of his customer base could be classified as "elderly" whom he assists and supports to better setup their devices for their needs such as internet banking and communicating with their families and friends. This includes customers with specific requirements such as accessibility needs due to impaired eyesight, hearing or motor control issues and includes blindness, deafness, MS etc.

The, The Big Byte enterprise is the only establishment outside of Somerset West or the Greater Cape Town area where Apple products can be repaired, and where replacement components are strictly original parts and are covered by warranties. The, The Big Byte frequently engages with insurance companies to provide them with necessary documentation and assessments for claims, as well as implementing authorised repairs or replacements.

In terms of a home occupation the proprietor of the home occupation must permanently reside in the dwelling. We can confirm that Mr. Craig Martens, the proprietor of The Big Byte occupies the house that he rents from Cynmar (Pty)Ltd. The area being used for the business is $\pm 35\text{m}^2$ in extent and constitutes $\pm 15.5\%$ of the dwelling's floor space, that is less than the allowable 50m^2 or 25% of the dwelling. Mr. Craig Martens is also the only person that engages in the business, and he has nobody else in his employ. The business is conducted completely indoors, products are not stored outside, he does not use a vehicle that exceeds the prescribed weight that is 3 500kg and he operates within the prescribed hours as defined in Section 16.10.10 (2)(g) of the Overstrand Municipal Land Use Regulations of 2020.

Accordingly the use of the property conforms to the land use restrictions defined in Section 16.10.10 of the Overstrand Municipal Land Use Regulations of 2020 and can therefore be accommodated on Erf 4929 Hermanus.

With reference to our meeting held on 4 March 2022 it was the Town Planning Department's opinion that the business conducted by The Big Byte does not fall within the categories provided for in the Overstrand Municipality Land Use Scheme, 2022, under Section 16.10.10(1). The categories provided are:

- Office type work (administration);
- Professional / clerical;
- Custom sewing, fabric crafts and baking;
- Creation of visual arts, excluding cabinet maker, recycling and welding;

- Personal services such as a barber, hairdresser, beautician and masseuse; and
- Sales and services over the internet / phone.

We felt that the work The Big Byte performs, falls within the abovementioned Professional category. The reason being that with reference to numerous dictionaries the meaning of the word professional and variations thereof in the sense of “work” read as follows:

Professional (Adjective):” following an occupation as a means of livelihood or for gain”

Professional (Adjective):” Professional means relating to a person's work, especially work that requires special training.”

Professional (Noun):” a person who belongs to one of the professions, especially one of the learned professions.”

Professional (Noun):”a person who has a job that needs skill, education, or training”

Professional (Noun):”someone who has worked hard in the same type of job for a long time and has become skilled at dealing with any problem that might happen.”

The sale of products was also discussed, and it was explained to us that only sales and services over the internet / phone are allowed in terms of Section 16.10.10(1). With reference to the various categories listed under this section of the Overstrand Municipality Land Use Scheme, 2022, listed above, sales over the internet / phone is a category on its own and is additional to the other categories that are also listed. Reasonably a person that does custom sewing, fabric art and baking will sell the items from their home. Nowhere it is mentioned that items are only to be supplied to another outlet such as a boutique, art gallery or confectionary. The same would apply to a hairdresser and beautician. A hairdresser also sells shampoo, conditioner and other products to suit the treatment of your hair that you can purchase and use at home. A beautician also sells nail polish, cream etc.

We are of the opinion that because sales are not specifically excluded that the uses listed go hand in hand with sales within the ambit of that specific use. Therefore, as mentioned earlier in this document, The Big Byte does have an extremely limited stock of Apple chargers, charging cables and accessories and that the sale thereof should be allowed. The items that are for sale are insignificant in number and accounts for less than 5% of the income. The major concern of The Big Byte is the repair of Apple products such as cell phones, tablets and related electronic devices.

As earlier mentioned, the matter was also referred to the Overstrand Municipal Legal Department that advised that we apply for a departure to accommodate the, The Big Byte enterprise on Erf 4929 Hermanus. Also, with reference to our most recent discussion with Mr. Helgaardt Boshoff on 14 June 2022 it was agreed that we apply for a departure from the land use restriction applicable to a home occupation as defined in Section 16.10.10 of the Overstrand Municipal Land Use Scheme Regulations, 2020.

We are therefore applying for a departure from the categories provided under Section 16.10.10(1) of the Overstrand Municipality Land Use Scheme, 2022 that are:

- Office type work (administration);
- Professional / clerical;
- Custom sewing, fabric crafts and baking;
- Creation of visual arts, excluding cabinet maker, recycling and welding;
- Personal services such as a barber, hairdresser, beautician and masseuse;
and
- Sales and services over the internet / phone.

to allow the following uses carried out by the, The Big Byte that are compatible with the uses allowed for a home occupation:

- The repair of cell phones, tablets and related electronic devices;

- Keeping a limited stock supply for sale of Apple chargers, charging cables and accessories (Items that visitors / tourists normally lose or leave behind in guest houses);
- Assisting customers with the setup and support of their electronic devices.

3.4.2 PROPOSED DETERMINATION OF AN ADMINISTRATIVE PENALTY

The, The Big Byte moved to the premises on Erf 4929 Hermanus, in April 2021 where it has been operating from a portion of the existing dwelling that is $\pm 35\text{m}^2$ in extent or $\pm 15.5\%$ of the extent of the dwelling. The business owner was under the impression that he was operating within the ambit of the land use restrictions applicable to a home occupation that is a primary right. With reference to Section 1, Background, it is clear that the interpretation of the land use restrictions applicable to a home occupation is rather challenging and that the interpretation thereof can differ from person to person.

Once the owner received a notice of a possible non-compliance, the owner appointed Plan Active to investigate and address the matter and we started to liaise with the Overstrand Municipal Town Planning Department. Subsequently we concluded that an application be lodged for a departure as described in the former section of the motivation report.

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

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

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

3.4.2.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

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

The, The Big Byte was established within a portion on the ground floor of the existing dwelling situated on Erf 4929 Hermanus and has been operational since April 2021. The, The Big Byte formerly rented business space in the Hermanus CBD at the Astoria Village. Due to the Covid pandemic and the weak economy the, The Big Byte had no choice than to move to a more affordable premises. The portion of the dwelling that the, The Big Byte is utilising on ground floor is $\pm 35\text{m}^2$ in extent or $\pm 15.5\%$ of the extent of the dwelling. Mr. Craig Martens, the operator of the, The Big Byte rents the dwelling from Cynmar (Pty)Ltd and is also the proprietor of the, The Big Byte. He is also the only person that engages in the business, and he has nobody else in his employ.

The, The Big Byte has not caused any nuisance and according to our knowledge no complaints have been lodged. The type of work performed is the assessment of damage to cell phones, tablets etc, provision of detail damage reports to insurance companies, fixing of cell phones, tablets etc, assisting with the setup of devices for various personal needs as previously mentioned.

The owner and tenant of the subject property intend to provide their full co-operation to the Overstrand Municipality to rectify the land use. The nature of the use of the $\pm 35\text{m}^2$ area of the existing dwelling is unobtrusive in nature, does not cause a nuisance and does not impact negatively on the surrounding properties. The required number of parking bays can be accommodated onsite and no departures from the land use restrictions other than what is applied for with this application are required.

b) The conduct of the person involved in the contravention

The owner and tenant were under the impression that the change of land use was in line with prescribed land use restrictions applicable to a home occupation. They were made aware of the unlawful use by the Overstrand Municipality and immediately made work of it to rectify the matter by appointing Plan Active. Plan Active Town and Regional Planners was instructed to submit an application to rectify the unauthorised land use that is in contravention of section 16.10.10 of the Overstrand Municipality Zoning Scheme regulations.

c) Whether the unlawful conduct was stopped

The owner and tenant are in the process of rectifying the matter by applying for a departure to continue to utilise a portion of the existing dwelling that is $\pm 35\text{m}^2$ in extent. The, The Big Byte is still operating as the sudden closure will have dire economic repercussions for the business owner and he would not be able to generate an income. Cognisance must also be taken of the fact that the owner and tenant were under the impression that The Big Byte is operating within the ambit of the land use rights.

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

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

We request that **no penalty fee** be imposed because the owner and tenant were unaware of the fact that The Big Byte was in contravention of the applicable land use restrictions in terms of the zoning of the property. After receipt of the notice, the owner appointed Plan Active to investigate the matter to which we agreed to submit an application for a departure. The use of a portion of the dwelling as a type of home

occupation has not caused a nuisance in the past and does not have a negative impact on the surrounding erven.

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

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

The owner received a notice of non-compliance and appointed Plan Active Town and Regional Planners to investigate the matter and if necessary to rectify it. The interpretation of the definition of a home occupation does pose difficulties resulting in possible illegal land uses as can be seen in this case. The owner and tenant were under the impression that they were operating within the law. We have however come to an agreement to apply for a departure to rectify the land use.

We appeal to the Overstrand Municipality to take into consideration the low impact the so-called unauthorised land use has on the surrounding area. It should also be considered that according to our knowledge no complaints from surrounding property owners have been submitted with regards to the use of a portion of the dwelling as a type of home occupation.

With the current limited economic opportunities, it would be very difficult for people to find new job opportunities. With the proposed application the owner intends to rectify the defaults on the subject property in order to obtain the necessary approval for the, The Big Byte. We therefore respectfully request that a penalty fee not be imposed on the property owner for the reasons given above.

The subject property is situated within a mixed use area consisting of a boutique hotel, guesthouses, offices, single residential erven and medical facilities. The, The Big Byte has been in operation for the last 1 year and 2 months and has been well managed to such a degree that no complaints to our knowledge have been received.

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

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

The zoning of the subject property and land use will remain unchanged. We are applying for a departure from Section 16.10.10 of the Overstrand Municipality Zoning Scheme Regulations to continue to utilise a portion of the dwelling for the repair of cell phones and tablets, writing of damage reports of the devices mentioned and providing assistance to users. The subject property is well located and easily accessible. The, The Big Byte is well managed and does not cause a nuisance to the surrounding landowners and is a great asset to the community of the Greater Hermanus. Property values of surrounding erven will also not be negatively affected by the proposed application.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

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

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

The existing accesses to Erf 4929, Hermanus from Church Street will be retained. It is proposed that vehicles enter and exit the site via the existing driveway. Please refer to the proposed layout plan.

From the entrance 2 parking bays are provided on the southern side of the property that will be dedicated to being used by the, The Big Byte, each parking bay is 2.5m x 5.5m with a manoeuvre isle that is 7.5m in width. Because of the low impact use of a portion of the dwelling there will not be a negative impact on the traffic flow in the area.

3.8 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.8.1 HERITAGE VALUE

Erf 4929 Hermanus is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

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

3.8.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

3.9 FORWARD PLANNING AND LAND USE DOCUMENTS

The Overstrand Municipal Growth Management Strategy (OMGMS) indicates that Erf 4929 Hermanus is situated within planning unit 13, that consists of Hermanus CBD and is mostly used for business purposes with a limited number of permanent residential units. Densification is proposed for this area by means of site consolidation development into 3 storey gallery access simplex row housing for 30% of this planning unit.

The Overstrand Municipal Wide Spatial Development Framework (2006) earmarks the site as residential. With this application the Residential Zone 1 zoning will be retained. We are applying only for a departure from Section 16.10.10 of the Overstrand Municipal Land Use Regulations of 2020 as described. The proposal is compatible with the existing land uses of the area. It is therefore our opinion that the proposed land use is compatible with the SDF.

The May 2020 Overstrand Municipality SDF earmarks the area where Erf 4929 Hermanus is located as an urban area and the site is situated partially within the Heritage Protection Overlay Zone.

The proposed departure from Section 16.10.10 of the Overstrand Municipal Land Use Regulations of 2020 will remain compatible with the existing surrounding residential land use. The proposal is in line with the built character of the area. The portion of the dwelling that is $\pm 35\text{m}^2$ in extent utilised by the, The Big Byte is located at the back of the dwelling and is not visible from the street front. The building is still perceived as a dwelling as per the approved building plans and is still visually pleasing. The proposed departure has no impact on the street scape and how the dwelling is perceived from Church Street.

The proposed departure is in line with the above mentioned spatial development frameworks and the Growth Management Strategy.

3.10 PLANNING PRINCIPLES

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

Spatial Justice: The proposed departure is in line with the current land use tendencies found alongside Church Street, Hermanus. The proposed departure will be beneficial to the community.

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

Efficiency: Erf 4929 Hermanus is easily accessible and conveniently located in an urban area in close proximity of the Hermanus CBD.

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

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

3.11 TITLE DEED

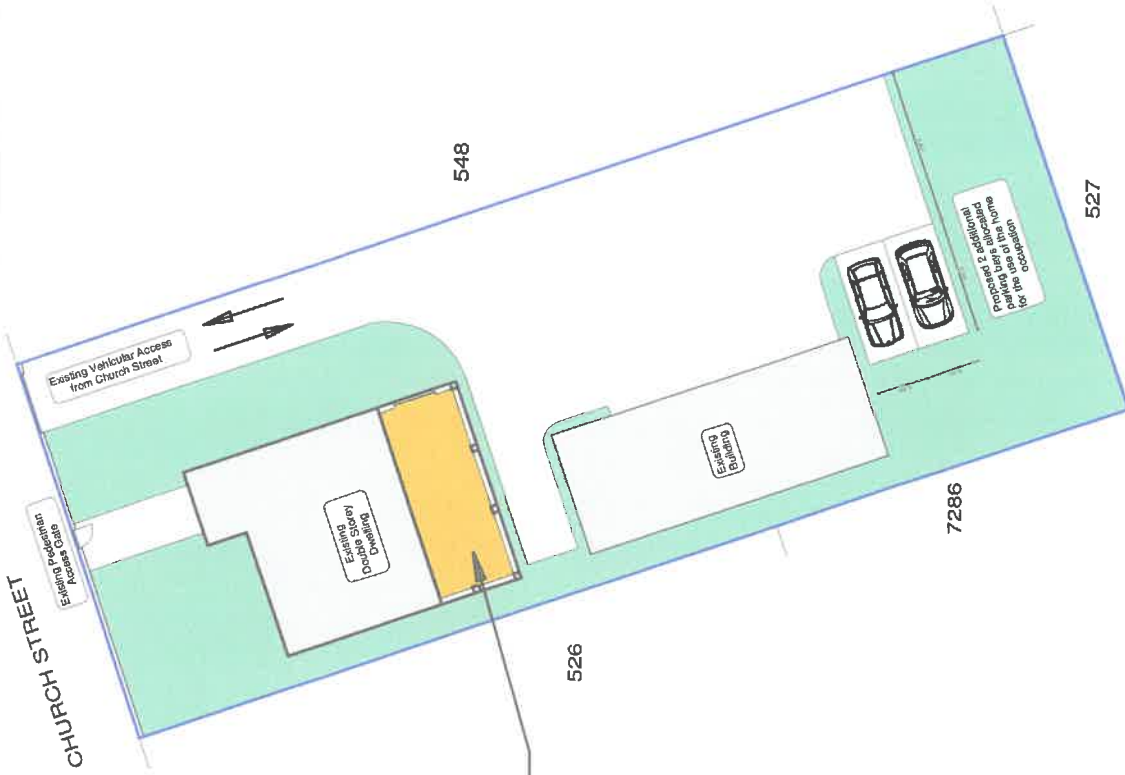
The property is 940m² in extent and held by Title Deed T19111/2021 and has no restrictions that need to be removed, in order for this application to be approved.

4. RECOMMENDATION

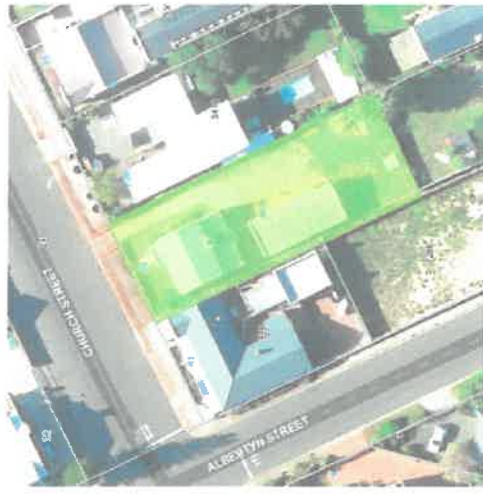
When this application is evaluated, it is important to take note of the following:

- The application is to continue to utilise a portion of an existing dwelling that is $\pm 35\text{m}^2$ in extent for a use that is very compatible with a home occupation but that is not included within the prescribed uses defined in Section 16.10.10 of the Overstrand Municipal Land Use Regulations of 2020;
- All services on the subject properties already exist;
- The proposed departure falls within the existing land use tendencies in the area;
- The proposal is compatible with the existing built character of the area;
- The impact on the traffic and services will insignificant;
- The proposed departure will not have a negative impact on the current character and land values of the surrounding erven.
- The property is large enough to make provision for the adequate number of parking bays.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the proposed departure for Erf 4929 Hermanus and not impose an administrative penalty.



Area being used for home occupation purposes that is ±35m² in extent, that constitutes ±15.5% of the existing dwelling



Scale: 1:350
 Drawing Nr: her4929.drw
 Date: 02/2022

Plan Description:
**PROPOSED
 SITE PLAN**

Property Description:
**ERF 4929
 HERMANUS**

All distances approximate and subject to survey.
 COPY RIGHT RESERVED

PLActive Stads- en Streeksbeplanners
 Town & Regional Planners